UNITED SATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
CENTRAL DIVISION

SHONDEL CHURCH, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Case No. 17-04057-CV-C-NKL
	)	
STATE OF MISSOURI, et al.,	)	
	)	
Defendants.	)	

PLAINTIFFS' SUGGESTIONS IN SUPPORT OF THEIR MOTION FOR SUMMARY JUDGMENT

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I. INTRODUCTION

Missouri's indigent defense system is a sinking ship.

The attorneys of the Missouri State Public Defender ("MSPD") are "drowning in cases." Ex. A (Carver Dep.) at 71:25-72:23. Each member of Plaintiffs' putative class (indigent defendants in Missouri who have not yet been convicted and sentenced) must share the attention of her MSPD attorney with, on average, hundreds of other defendants—caseloads that, as one MSPD attorney put it, have "blown all of those [national standards] out of the water." Ex. A at 165:4-17. MSPD's workloads are so high that even if every single one of MSPD's attorneys worked 100 hours per week, with zero time off for vacation, illness, or training, MSPD would *still* not be able to provide minimally adequate representation to Plaintiffs, as measured by the key metric of prevailing professional norms presented in this case. Ex. B (Missouri State Public Defender Cumulative Caseload Metrics); Ex. R (American Bar Association and RubinBrown, The Missouri Project (2014)) at 23. *Infra*, ¶¶ 11-43.

As a result, MSPD attorneys do not have the time to perform the most basic tasks of representation. They must triage their cases, knowing that minutes spent interviewing a key alibi witness on one case are minutes taken away from another case, such that they will be unable to visit a client for many months or perform even a perfunctory review of discovery. They must "tread[] water," Ex. C (Hackathorn Dep.) at 73:10-22, taking continuance after continuance while their clients remain behind bars, evidence disappears, and memories fade. And they must negotiate plea agreements essentially blind, with virtually no information about their clients or their clients' cases. The experts in this case all agree that MSPD attorneys fail to live up to the basic expectations of an attorney—and that caseloads are so high that even the most competent attorney could not meet those expectations. *Infra*, ¶¶ 44-118.

The consequences for indigent defendants are dire. Without adequate investigation, prosecutors have no incentive to offer better pleas. Without consistent client communication, Plaintiffs are forced to make life-altering decisions about their cases without the guiding hand of counsel. And without adequate time to prepare for court hearings and trials, MSPD attorneys leave key defenses and evidence on the table. *Infra*, ¶¶ 119-123.

In recent months, in the wake of a Missouri Supreme Court opinion disciplining one of their colleagues for failing to meet his professional obligations in part due to his excessive workload, MSPD attorneys have started to take drastic measures to secure their own law licenses, all at the expense of Plaintiffs. Some MSPD offices have instituted "waitlists" for counsel, as though Plaintiffs were seeking admission to a selective college, not standing on their constitutional rights. Other jurisdictions have unilaterally decided not to appoint counsel in whole categories of cases, an effort that one MSPD attorney likened to "tak[ing] an ice cream scoop to the iceberg that sank the Titanic"—"the ship is still probably going to go down." Ex. A at 49:20-50:10. And one judge has even floated the idea of a "pro se felony docket," in which indigent defendants would face off against the State without even an attorney in name. *Infra*, ¶¶ 124-54.

The evidence for every chapter of this remarkable story is uncontroverted. It shows astronomical caseloads that surpass any nationally accepted measure of an acceptable caseload. *Infra*, ¶¶ 11-43. It shows that those caseloads hobble MSPD attorneys, rendering them unable to provide meaningful representation and forcing them to ration justice, picking and choosing which clients will receive even pro forma investigation. *Infra*, ¶¶ 44-118. It shows that this deficient representation leads to worse outcomes for indigent defendants in Missouri, who are deprived of any leverage with which to negotiate with prosecutors and who sit behind bars for weeks, months, or even years waiting their turn for attention from an attorney. *Infra*, ¶¶ 119-23. And it shows

that the situation in Missouri has reached a crisis point, as MSPD attorneys worried about their bar cards turn away the very indigent defendants they are professionally obligated to serve. *Infra*, ¶¶ 124-54.

Defendants have not adduced any evidence that would undermine these conclusions. They have not deposed Plaintiffs' expert witnesses, produced their own expert witnesses, or supplied any reason to doubt Plaintiffs' experts' conclusions. They have not supplied any alternative to Plaintiffs' measure of prevailing professional norms, a study relying on the judgment of expert criminal defense lawyers in Missouri. They have not elicited any testimony that would call Plaintiffs' deposed witnesses' assertions into question. Named Defendant Michael Barrett has even admitted, time and again, that his office is unable to provide representation to indigent defendants that complies with the requirements of the Constitution. *E.g.*, Ex. G (Barrett Dep.) at 98:19-99:2.

Only systemwide, prospective relief can right the ship in Missouri. Dkt. 69, at 34-37. Any effort to require any one deficient MSPD lawyer to devote more time to a single defendant's case ensures that the same lawyer will shortchange other indigent defendants still further. And the deficiencies in MSPD's representation are clear from the outset of a case, such that waiting until after conviction to right the Sixth Amendment wrong in this context would be to condone an ongoing constitutional violation that is impacting indigent defendants statewide. The safety valve of *Strickland v. Washington*, 466 U.S. 668 (1984)—which provides a mechanism for relief, but only on an individual basis and only after a defendant has already been convicted—is simply inadequate to this task, as this Court recognized in denying State Defendants' motion to dismiss. Dkt. 69, at 34-37.

The undisputed evidence in this case entitles Plaintiffs to summary judgment. Specifically:

- System-wide constraints ensure that even where a lawyer is nominally appointed to represent a member of Plaintiffs' class, she is unable to subject the prosecution's case to meaningful adversarial testing, constructively denying indigent defendants their right to counsel. § IV.A.
- Virtually every MSPD attorney operates under an actual and perpetual conflict of interest, triaging cases such that providing constitutionally adequate representation to one client necessarily means providing constitutionally deficient representation to another. § IV.B.
- MSPD attorneys routinely fail to perform the basic functions of representation, including but not limited to interviewing potentially exculpatory witnesses, communicating with defendants about their cases, preparing adequately for a trial or hearing, reviewing discovery in a timely manner, and securing essential expert witnesses. § IV.C.
- Plaintiffs face a serious risk of conviction of a harsher offense or service of a longer sentence as a direct result of MSPD's deficiencies—a risk serious enough to warrant injunctive intervention by this Court. § IV.D.
- New MSPD policies, such as refusing appointments and placing indigent defendants on waitlists until an attorney becomes available, combine to ensure that Plaintiffs are deprived of counsel—both constructively and actually—during critical stages of their criminal cases. § IV.E.

Any one of those showings alone would entitle Plaintiffs to summary judgment on their state and federal constitutional claims.[1] Taken together, the undisputed material facts reveal an

[1] For similar reasons, Plaintiffs are entitled to summary judgment on their Due Process Clause, Missouri Constitution, and Missouri statutory claims. *See infra*, § III.G.

alarmingly dysfunctional system for providing representation to indigent defendants in Missouri—a system that the Constitution requires repairing.

II. STATEMENT OF UNCONTROVERTED MATERIAL FACTS

1. The State of Missouri relies virtually exclusively[2] on local MSPD offices to provide indigent defense services across the State. Ex. D (Missouri Public Defender Commission, Fiscal Year 2017 Annual Report) at 1.
2. MSPD is composed of the Trial Division, at issue in this case and subdivided into 33 district offices; the Appellate/Post-Conviction Division; and the Capital Division. *Id.*
3. About 52 percent of the Trial Division's cases are felonies. Ex. D at 16-17. The rest are misdemeanors, juvenile cases, probation violation cases, or petitions for release from civil commitment. *Id.* at 15.
4. Each of the 33 Trial Division district offices serves between one and 11 counties and is headed by a "district defender"—a senior attorney who supervises the other attorneys and support staff. *E.g.*, Ex. D at 17; Ex. E (Crowell Dep.) at 10:4-11.
5. Each of the 33 district offices draws from a single pool of funding, which must be allocated by the Central Office to district offices around the State; each district must make requests to the Central Office for litigation expenses of over $500. Ex. F (Lear Dep. Day 1) at 16:12-24:15; Ex. E at 15:1-21.
6. The uncontroverted evidence in this case comes from three sources.
7. First, Plaintiffs present evidence from 18 depositions.

[2] Ninety-five percent of cases in Missouri in which defendants are indigent are handled by MSPD. Ex. D at 66. The remainder are handled by conflict counsel, who are paid from the same source of funding as MSPD lawyers. Ex. G (Barrett Dep.) at 21:5-24; Ex. F (Lear Dep. Day 1) at 18:11-17.

a. Among Plaintiffs' deponents were 10 district defenders from district offices around the State, including rural,[3] urban,[4] and suburban[5] jurisdictions.

b. Six of the district defenders that Plaintiffs deposed supervise offices that are less overloaded than the median office. Ex. B. Four of those district defenders supervise offices that are more overloaded than the median office. *Id.* Plaintiffs' uncontroverted facts do not include testimony from attorneys in any of the three most overloaded offices in the State and do include testimony from the head of the least overloaded district office in the State. *Id.*

8. Second, Plaintiffs present unrebutted expert testimony from three witnesses. Defendants have not identified any expert witnesses, nor did they seek to depose Plaintiffs' experts.

a. Bob Boruchowitz, Professor from Practice and Director of the Defender Initiative at the Seattle University School of Law, led The Defender Association—a public defender in Seattle—for 28 years; has represented criminal defendants at every level of state and federal court; and has led various American Bar Association and Washington State Bar Association committees, including, most recently, the Washington State Bar Association Council on Public Defense. Ex. H (Expert Report of Robert C. Boruchowitz, Oct. 16, 2017) at ⁋⁋ 18-39.

b. Rodney Uphoff is an Emeritus Professor of Law at the University of Missouri School of Law and has taught criminal defense clinics for 30 years. Mr. Uphoff has been active in the National Association of Criminal Defense Lawyers and the American

[3] *E.g.*, Ex. I (Guinn Dep.) at 13:1-23; Ex. J (Martin Dep. Day 1) at 11:7-22; Ex. A (Carver Dep.) at 16:20-23; Ex. E (Crowell Dep.) at 8:14-18.
[4] *E.g.*, Ex. K (Petsch Dep.) at 11:9-23; Ex. A at 16:20-23; Ex. L (Fox Dep.) at 12:5-13.
[5] *E.g.*, Ex. M (Cardarella Dep.) at 17:18- 18:7; Ex. N (Wallis Dep.) at 9:18-20.

Bar Association Criminal Justice Section and is a member of the Missouri Supreme Court Criminal Procedure Committee. Ex. O (Expert Report of Rodney J. Uphoff, Oct. 16, 2017) at 1-2.

c. Stephen Gillers is the Elihu Root Professor of Law at New York University School of Law and has spent 39 years teaching, speaking, and writing about the ethical obligations of lawyers; his publications include many editions of a widely used casebook on legal ethics. Ex. P (Expert Report of Stephen Gillers, Oct. 16, 2017) at 1.

9. Finally, Plaintiffs present documentary evidence obtained in discovery and from publicly available sources.

10. Taken as a whole, Plaintiffs' evidence paints a portrait of a dysfunctional public defender—one in which workloads are astronomical, high workloads lead to unreasonably deficient advocacy, and deficient advocacy leads to systemically worse outcomes for indigent defendants.

MSPD'S WORKLOADS[6] ARE EXTRAORDINARILY HIGH, WELL EXCEEDING ANY NATIONALLY ACCEPTED LIMIT.

11. In Fiscal Year 2017, MSPD's Trial Division provided representation on 79,714 new cases, plus 30,611 cases carried over from the previous year. Ex. D at 4.

[6] Plaintiffs distinguish between caseloads, which refer only to the raw number of cases on a public defender's docket, and workloads, which provide a broader and more accurate view of a public defender's competing responsibilities by taking into account the complexity of the cases, the defender's skill and experience, the support services available to the defender, and the defender's other duties, among other factors. Ex. Q (Statement of Interest of the United States, *Wilbur v. City of Mt. Vernon*, (W.D. Wash. Aug. 14, 2013)) at 9.

12. Of those newly opened cases, 334 were murder or homicide cases, 6,349 were A/B felonies other than sex felonies, 35,284 were C/D felonies other than sex felonies, and 993 were sex felonies. Ex. D at 20.

13. In Fiscal Year 2017, MSPD employed 384 attorneys, 320 of them in the Trial Division. *Id.*

14. In FY2017, an average MSPD attorney handled 350 cases in total; she would have started the year with 73 felonies pending and had 183 new felonies added to her desk during the year. Ex. D at 21.

15. These workload numbers well exceed, by any metric, the number of criminal cases a public defender can carry while still providing effective representation to each of their clients. Ex. A at 165:4-17 ("[M]y caseload was not in compliance with what I felt like it ought to be with any of our ABA, NAC standards, RubinBrown metric, whatever. I mean, I had kind of blown all of those out of the water.").

    a. The National Advisory Commission on Criminal Justice Standards and Goals recommends that an attorney carry no more than 150 felonies per year, and no other cases. Alternatively, an attorney may carry 400 non-traffic misdemeanors, 200 juvenile court cases, *or* 200 Mental Health Act cases per attorney per year, and no other cases. This recommendation has been endorsed by the American Council of Chief Defenders and adopted as a legal limit on workload caps by several states, including New York. Ex. H at ¶¶ 142-91.[7]

[7] In recent years, experts in the field have suggested that the National Advisory Commission standards are outdated and fail to account for the added complexities that have been infused into criminal defense practice over the last 40 years. As such, commentators have argued that the caseload recommendations allow for far too many cases. *See* Norman Lefstein, Securing Reasonable Caseloads: Ethics and Law in Public Defense 43–48 (2011).

b. A 2015 report by Texas A&M University recommended that a public defender carry no more than 77 Felony 1, 105 Felony 2, 144 Felony 3, 174 State Jail Felony, 216 Misdemeanor A, *or* 236 Misdemeanor B cases. Ex. H at ¶ 186.

16. Over the past 25 years, report after report has found that MSPD's workloads are too high to allow for constitutionally adequate representation. *See e.g.,* The Spangenberg Group, A Report on the Operation of the Missouri State Public Defender (1993); The Spangenberg Group, Assessment of the Missouri Public Defender System Final Report (Oct. 26, 2005); The Missouri Senate Interim Committee, Report of Senate Interim Committee on the Missouri State Public Defender System (January 2007); The Spangenberg Group & Center for Justice, Law and Society at George Mason University, Assessment of the Missouri State Public Defender System (Oct. 2009); National Juvenile Defender Center, Missouri: Justice Rationed (Spring 2013); American Bar Association and RubinBrown, The Missouri Project (2014); U.S. Department of Justice, Civil Rights Division, Investigation of the St. Louis County Family Court, St. Louis, Missouri (July 31, 2015).

17. The "watershed moment" came in 2014, with the release of The Missouri Project, a report drafted by the American Bar Association's Standing Committee on Legal Aid and Indigent Defendants and RubinBrown, a certified public accounting firm. Ex. R.

18. The Missouri Project had two components. First, every attorney employed by MSPD entered time into an MSPD database during the 25-week period. Missouri Project at 16. Time was recorded across eight different types of cases and 19 different types of tasks. Ex. R at 14-15.

19. Second, the study used a well-respected and often-duplicated forecasting process, known as the Delphi method, in order to provide a consensus estimate on the amount of time defense counsel should expect to spend on a case in order to provide representation in accordance

with prevailing professional norms. Ex. R at 17-21; Ex. E at 142:18-143:7. The method combined multiple surveys and in-person focus groups with both private and public criminal defense lawyers across the State (including public defenders). *Id.* Ultimately, the researchers were able to compare the estimates from the Delphi study to the actual hours logged by public defenders during the 25-week period in question. Ex.R at 17-21.

20. The methodology used in The Missouri Project has been widely recognized and replicated. The Texas legislature mandated a similarly structured study be conducted in that State. *See* http://www.tidc.texas.gov/media/31818/150122_weightedcl_final.pdf. The president of the American Bar Association said, "It can now be more reliably demonstrated than ever before that for decades the American legal profession has been rendering an enormous disservice to indigent defendants and to the criminal justice system in a way that can no longer be tolerated." *Id.*

21. The results of The Missouri Project were startling. In 97 percent of cases, MSPD attorneys spent fewer (sometimes far fewer) hours than the Delphi panel agreed were necessary to provide minimally adequate representation. Dkt. 1, Exh. 1 (Complaint), Exh. 10 at 2-4.

22. The panel of expert criminal defense attorneys estimated that, to provide adequate counsel, a lawyer would need to spend the following number of hours on each phase of a case of a given type:

	Client Communication[1]	Discovery/Investigation[2]	Case Preparation[3]	**Total**
Murder/Homicide	34.6	33.5	38.5	**106.6**
AB Felony	13.1	18.3	16.2	**47.6**
CD Felony	6.3	8.4	10.3	**25.0**
Sex Felony	22.5	17.8	23.6	**63.8**
Misdemeanor	3.5	4.1	4.1	**11.7**
Juvenile	5.4	6.8	7.3	**19.5**
Appellate/PCR	20.3	31.5	44.7	**96.5**
Probation Violation	2.9	2.6	4.2	**9.8**

23. By contrast, MSPD attorneys spent the following number of hours on each phase of a case of a given type:

	Client Communication[1]	Discovery/Investigation[2]	Case Preparation[3]	**Total**
Murder/Homicide	14.8	33.5	36.2	**84.5**
AB Felony	3.0	2.1	3.6	**8.7**
CD Felony	1.8	0.8	1.7	**4.4**
Sex Felony	6.0	7.3	12.4	**25.6**
Misdemeanor	0.9	0.4	0.9	**2.3**
Juvenile	1.4	1.0	2.1	**4.6**
Appellate/PCR	3.1	7.5	19.6	**30.3**
Probation Violation	0.7	0.2	0.5	**1.4**

Given current workloads, if MSPD were to spend the number of hours per case required to provide adequate assistance per the Missouri Project study, and even assuming every attorney spends 2,080 hours per year just investigating and preparing cases (and no time on, for instance, administrative tasks), MSPD would need a total of 347 additional attorneys to provide representation consistent with the prevailing professional norms in Missouri. Ex. S (Missouri Public Defender Commission, Budget Request Fiscal Year 2019) at 4.

24. According to the Missouri Project estimates of how many hours each case type minimally requires, every district office in Missouri is far over capacity. Ex. B; Ex. T (Missouri Public Defender Commission, Fiscal Year 2018, Draft Legislative Budget Request, Sept. 21, 2016 (Lear Dep. Ex. 33)) at 14. The district offices are operating at between 153 and 340 percent of their capacity. Ex. B. The average MSPD lawyer is operating at 248.5 percent of her capacity. *Id.*

25. Per the Missouri Project numbers, an individual attorney in a given office might be operating at as much as 500 percent of her capacity, and lawyers are often operating at between 300 and 400 percent of their capacity. Ex. C at 73:2-9; Ex. U (Missouri Public Defender

Commission, Fiscal Year 2018, Approved – October 25, 2017, Supplemental Legislative Budget Request, Oct. 25, 2017 (Hackathorn Dep. Ex. 50)) at 7.

26. The Missouri Project estimates are borne out by the real-life experiences of district defenders across the state. District defenders testified that their offices were well over capacity—at least as over capacity as The Missouri Project numbers suggested. *E.g.*, Ex. C at 124:20-125:10; Ex. M at 50:23-52:16 ("sure feels like a lot more than that" when told his office was operating at 253 percent capacity); Ex. L at 34:21-35:8; Ex. II at 34:7-36:5, 47:4-48:8 (agreement with Missouri Project conclusions based on 45 years of experience with public defender system); Ex. Y (Reynolds Dep) at 43:2-45:18; Ex. E at 63:2-7; Ex. A at 159:24-160:9; Ex. L at 35:21-36:8, 188:4-19. Most of the district defenders estimated that they would need to roughly double their current legal staff to effectively handle their workloads. Ex. M at 21:3-12; Ex. C at 131:10-14; Ex. A at 146:7-21; Ex. E at 71:9-22.

27. Using the time estimates given by the Missouri Project study and assuming that MSPD attorneys are able to spend 2,080 hours per year on case-related tasks to calculate the above capacity numbers likely far underestimates how overloaded MSPD district offices are:

    a. First, the Missouri Project numbers do not account for administrative tasks, which could constitute a sizable fraction of a public defender's day, and they assume no attorney (not even the district defenders) spends any time on supervising other attorneys. Ex. A at 63:9-25; Ex. E at 64:1-17; Ex. J at 40:22-43:10; Ex. Y at 27:11-21, 162:4-24, 169:5-12.

    b. Second, a 2,080-hour year assumes no vacation time, no medical leave, no training, and no time spent on non-case duties. Ex. F at 45:15-46:8.

c. That's even though MSPD attorneys, as state employees, are entitled to three weeks per year of vacation time, plus paid holidays. Ex. E at 64:10-12; Missouri State Public Defender, Benefits, http://www.publicdefender.mo.gov/employment/benefits.htm (accessed Feb. 7, 2018).

d. Estimates more in line with what public defenders would be expected to spend on case-related tasks range from 1,662 hours per year (the estimate used by a study for the Massachusetts Committee for Public Counsel Services) to 1,800 hours (one expert's opinion). Ex. H at ⁋⁋ 192-94.

e. Third, the panel of criminal defense attorneys were told to assume "adequate support staff." Ex. R at 39. As several district defenders testified, MSPD does not have adequate support staffing. *E.g.*, Ex. L at 97:10-21, 99:5-22 (insufficient number of investigators and insufficient administrative staff); Ex. E at 71:23-72:19 (office needs at least double the number of investigators to have sufficient support); Ex. C at 132:3-21, 125:4-13 (office needs triple number of investigators and double the support staff); Ex. M at 24:11-21, 25:16-26:13, 27:1-19, 33:3-34:24 (insufficient support staff, including investigators, legal assistants and clerks); Ex. J at 35:6-39:8; Ex. K at 39:22-43:9; Ex. Y at 24:4-23, 29:25-30:19.

f. Fourth, the estimates do not account for MSPD's high turnover rate. For instance, the Area 25 district office's capacity was calculated assuming 14 attorneys; in 2017, 10 of those attorneys were replaced, and each required a ramp-up time until they were carrying a full workload. Ex. E at 64:18-66:1.

g. Fifth, the Missouri Project estimates for each case type struck many MSPD attorneys as too low.

i. To take one example, the Columbia Police Department mandates body camera usage for its police officers. Assuming three officers go out to respond to an average misdemeanor assault, and it takes one hour to clear the case, simply watching the body camera footage should take a reasonable attorney three hours in that type of case. Ex. N at 24:2-16. But the Delphi panel accorded only 4.1 hours to review of discovery and investigation in a misdemeanor case.

ii. The expert panel also gave a time per case estimate assuming one charge—an A/B felony, for instance—and did not account for the fact that many cases feature four, five, or six counts, each of which may require independent investigation. Ex. L at 179:3-180:7.

iii. Finally, District Defender Crowell testified that he was among the least experienced individuals in the Delphi group. Ex. E at 155:9-156:3. Accordingly, the Delphi group's recommendations reflected the time that an experienced attorney would spend on a particular task.

iv. But the MSPD attorneys—on average, less experienced than Crowell, *see infra*, ⁋⁋ 101-13—would, if anything, require more time per case task than Crowell and his more experienced colleagues.

28. MSPD attorneys must also travel extensively, due to the geographic size of their districts. Ex. H at ⁋⁋ 7, 185, 218-20; Ex. C at 22:4-7, 31:3-18; Ex. E at 38:16-39:4; Ex. M at 14:19-15:4, 18:25-19:6; Ex. I at 15:12-16:12.

29. Until recently, MSPD's policy on handling conflicts exacerbated the travel problem: Where two indigent co-defendants were appointed counsel in one district, an MSPD attorney from a second district would represent one of the co-defendants, to avoid a conflict of interest. Ex. G at 21:5-24.

    a. This necessitated extensive travel not only within geographically large districts, but across several such districts. *Id.*

    b. Although MSPD currently receives funding to send such cases to private conflict counsel for a flat fee (exclusive of mileage and litigation costs), such funding has been inconsistent and was withheld for two legislative cycles recently. *Id.*; Ex. F at 19:10-15; Ex. V (Elmer Dep. Day 1) at 21:24-22:5; Ex. J at 12:12-13:11 (does not expect funding to be renewed next fiscal year).

    c. Flat fees range from $375 for a misdemeanor to $10,000 for a first-degree murder case, with an average of $700 per case—nearly twice the amount MSPD spends on each case. Ex. F at 19:10-15; Ex. V at 17:8-16, 76:15-22.

30. Two factors govern MSPD's workloads. The first is the number of prosecutions in Missouri, which determines how many cases MSPD must handle. Missouri has the eighth highest number of prosecutions per capita of any State in the country. Ex. D (unnumbered page, A Message from the Director). The number of prosecutions is to some extent correlated with the number of prosecutors in a given office. Ex. C at 131:2-9.

31. The second is the funding allocated to MSPD, which in turn governs how many attorneys MSPD can hire.

32. In FY17, a total of $42.9 million was allocated to the MSPD, of which $39.4 million was released to the office ($3.5 million was withheld by Governor Nixon). Ex. D at 8.

33. That budget covers salaries, conflict counsel (private attorneys who take on cases where MSPD is representing a codefendant), statewide expenses, litigation expenses (such as expert witness payments, depositions, and so on), and local offices' operating expenses. Ex. F at 16:12-17:13.

34. In total, MSPD spends $325.13 per case in the Trial Division. Ex. D at 13.

35. In FY15, MSPD was 49th out of 50 States in the per capita funding it receives for indigent defense. Ex. W (Missouri State Public Defender System – By the Numbers) at 1.

36. MSPD stretches every dollar it receives, saving money in every conceivable way so as to hire as many MSPD attorneys as possible. Ex. F at 105:20-108:11.

37. MSPD salaries are very low, starting at $39,708, even though many of its lawyers graduate with significant student debt. Ex. D at 7.

    a. A lawyer with 20 years' experience may make only $63,912. Ex. A at 31:2-32:1 ("They could have tried a hundred murder cases, and we'll still pay them $65,000 a year or whatever it is."); Ex. X (Letter from Michael Barrett, Missouri Public Defender, to Hon. Eric Greitens, Governor of Missouri, Mar. 15, 2017) at 1.

    b. MSPD attorney salaries are so low that they lead to high turnover rates, as attorneys quit because they cannot afford to remain public defenders. Ex. II (Lear Dep. Day 2) at 16:13-18, 17:4-8, 24:7-27:24, 29:23-24, 70:8-15; *see also infra*, ¶¶ 101-13.

    c. For comparison, an elected prosecuting attorney in Missouri is required by state statute to earn $136,402; a District Defender, of equivalent stature in the public defender's office, will earn $79,601. Ex. D at 7.

    d. Given the number of hours MSPD attorneys usually work, one district defender calculated that the salary amounted to $15.00 per hour. Ex. E at 159:6-160:18.

38. The public defenders are incredibly dedicated and resilient. Ex. I at 23:23-24:13; Ex. M at 57:25-58:5. They often work nights and weekends without overtime pay. Ex. L at 32:5-15; Ex. A at 235:22-236:13; Ex. N at 21:8-22. An "alarming percentage" of MSPD's attorneys routinely forfeit their vacation time in order to do more work on cases. Ex. X; Ex. L at 32:5-15. And MSPD has chosen not to extend paid parental leave to its attorneys, because so doing would further exacerbate an "impossible workload burden." Ex. X.

39. MSPD also limits the amount it spends on contracting with private conflict counsel—its rates are so low as to be "kind of a joke." Ex. E at 93:9-15.

40. MSPD keeps its operating expenses to a shoestring.

    a. MSPD's Internet bandwidth is so low that attorneys cannot download and view police videos. Ex. G at 50:5-11.

    b. Many district offices are so loathe to buy new furniture that their chairs and other equipment are filthy from years of overuse. Ex. F at. 107:14-17.

41. MSPD is sometimes forced to save money in ways that harm its clients.

    a. For instance, attorneys are often encouraged to find an expert who is located nearby or who charges less, rather than the best expert for a given case. Ex. C at 47:12-24; Ex. L at 59:11-23.

    b. Sometimes, attorneys, anxious to conserve limited dollars, are encouraged to take depositions only when an investigator cannot interview a witness. Ex. A at 211:25-213:16.

42. As MSPD's comptroller summarized: "You know, we're running with copy machines that are ten years old. We're running with laptops that are seven years old. We hold a lot of things together with spit and glue just to make them last longer. I think public defender

mentality is that if it's—if it's not total trash, make do with it. I mean, I'm appalled when I go to some of the offices and they're sitting in chairs that really I want to towel before I sit down. They're that nasty." Ex. F at 107:4-17.

43. Since every office and every lawyer is incredibly overextended, reallocating resources among the 33 MSPD districts would be akin to "rearranging the deck chairs on the Titanic." *State ex re. Mo. Pub. Defender Comm. v. Waters*, 370 S.W.3d 592, 599 n.10 (Mo. 2012); *see also* Ex. A at 102:11-103:2 ("Every office is underwater; it's just a matter of how far underwater they are.").

THANKS TO THEIR HIGH WORKLOADS, MSPD ATTORNEYS ARE UNABLE TO ADVOCATE FOR EACH DEFENDANT IN THE MANNER THAT PREVAILING PROFESSIONAL NORMS REQUIRE.

44. Expert testimony establishes that MSPD attorneys routinely represent defendants in a manner that is not professionally competent. Plaintiffs' experts—whose testimony was undisputed—found that MSPD attorneys:

    a. Work "in circumstances such that even where counsel is nominally available, the likelihood that any lawyer, even a fully competent one," could provide effective assistance is small. Ex. H at ⁋ 5; *see also* Ex. E at 61:2-20; Ex. A at 85:1-21 ("[R]ight now, my knowledge of criminal law on your average day is generally useless because I don't have time to -- I don't have time to pursue it."). They consistently fail to subject the cases against indigent defendants to "meaningful adversarial testing," and their workloads make it impossible to provide constitutionally effective assistance of counsel. Ex. H at ⁋⁋ 6, 131.

b. Operate under an actual and perpetual "conflict of interest because [t]hey can only provide competent representation to some of their existing defendants by neglecting other defendants." Ex. O at 32.

c. Are unable to comply with a variety of professional rules, including MSPD's own guidelines, the American Bar Association standards, ethical norms, and Missouri's Rules of Professional Conduct, violations of which can result in disbarment. Ex. H at ¶¶ 210, 370-71, 396, 428.

d. Admit their inability to consistently provide professionally appropriate representation to defendants. Ex. H at ¶¶ 72, 76-79, 84, 92 (citing letters from district defenders and MSPD publications); Ex. S ("Unfortunately, the Missouri State Public Defender is not currently able to meet many of these standards because it is staffed to handle only a percentage of the total workload assigned to it this last year.").

e. Do not devote enough time to interview defendants, do not conduct necessary investigations, do not prepare sufficiently for hearings and trials, do not conduct sufficient legal research, and do not prepare adequately for hearings. Ex. H at ¶ 212.

45. In short, MSPD attorneys do not consistently provide effective assistance of counsel as required by the Constitution. Ex. O at 31; *see also* Ex. K at 174:12-24.

46. These failures stem directly from MSPD's high workloads and not from any operational inefficiencies. Ex. O at 31 (failures "stem from the MSPD's systemic deficiencies, which in turn result in Missouri public defenders having insufficient time, too many cases, too few resources, too much travel, and too little supervision to comply with their own Guidelines, the American Bar Association (ABA) Standards, ethical norms, or the Missouri and U.S. Constitutions"); Ex. H at ¶¶ 7, 131 (failures have numerous "structural and systemic causes,"

primarily "inadequate and inconsistent representation funding" and "excessive workloads"); *see also* Ex. E at 60:21-61:1; Ex. C at 74:25-75:3; Ex. M at 35:6-16, 54:2-20, 162:5-8; Ex. I at 77:17-21; Ex. A at 104:3-19.

47. The undisputed facts documented below buttress Plaintiffs' experts' conclusions that MSPD's high workloads have had a devastating impact on MSPD's ability to represent indigent defendants across the State.

MSPD Attorneys Are Forced to Triage Cases, Pitting One Defendant's Interests Against Another's.

48. The most immediate consequence of these high workloads is that MSPD attorneys must choose which defendants will receive constitutionally adequate counsel. MSPD attorneys around the State agree that, for them and for other attorneys in their offices, providing the constitutional minimum to one defendant means that another defendant will receive constitutionally deficient representation. Ex. H at ⁋⁋ 174 (MSPD attorneys must "pick and choose" which cases they will spend time on), 198-209; Ex. E at 22:25-23:5, 120:18-121 ("[W]hen you're prioritizing, you're cutting corners"; triage occurs "every day"); Ex. C at 103:11-16 ("doing less on one case so they can do enough on another . . . happens every day"); Ex. M at 177:1-15, 177:22-179:25, 206:3-207:3, 209:9-14; Ex. J at 83:16-85:12, 85:19-86:10 (describing triage as "shortcuts"); Ex. K at 55:1-4; Ex. N at 44:5-9; Ex. I at 44:3-18, 79:20-80:23.

49. Choosing which defendants' cases to pursue fully at the expense of other defendants' cases creates a conflict of interest and is in violation of the ABA and Missouri Rules of Professional Conduct. Ex. O at 32; Ex. H at ⁋⁋ 146, 206-08; *see also* Ex. E at 30:25-31:7, 91:1-18 ("[E]verything you do is sacrificing time for another client"; requests that waitlist

cases be assigned to conflict counsel because accepting these cases would violate ethical rules); Ex. C at 85:3-4; Ex. PP (Missouri State Public Defender Commission, Notice Pursuant to 18 CSR 10-4.010 of Pending Certification of Public Defender Limited Availability, Dec. 20, 2017 (Hackathorn Dep Ex. 52)) at 1 (every attorney in office has workload that creates conflict of interest with existing defendants "because they are forced to choose effective representation of one defendant to the detriment of other defendants"); Ex. K at 55:1-4; Ex. A at 88:4-9; Ex. I at 44:3-18, 79:20-80:23; Ex. BB (Motion to Withdraw Due to Excessive Caseload, *Woodham v. Missouri*, No. SD35211, Nov. 6, 2017).

50. Attorneys "triage" their cases—that is, decide which clients will receive constitutionally adequate assistance at any given moment—in different ways.

    a. In some offices, attorneys focus on preparing cases that are going to trial, while entirely ignoring their other cases in the meantime. Ex. C at 58:18-59:2, 59:3-60:1, 103:6-10; Ex. E at 120:4-17; Ex. H at ¶ 293 (attorneys must choose between preparing for trial and conducting regular jail visits).

    b. In other offices, defendants charged with more serious crimes, like rape and murder, are "neglected"—"the defendants don't get visited, discovery doesn't get reviewed"—in favor of defendants charged with low-level felonies. Ex. Y at 31:1-32:6.

    c. And in still other offices, district defenders, in an effort to avoid violating their ethical obligations by assigning line attorneys more cases than those attorneys can competently handle, take on enormous workloads, even though they will not be able to do any work on the vast majority of those cases. Ex. A at 74:4-12, 103:21-104:2, 140:3-24 ("As between all of us practicing ineffectively or just me, I'd rather it just

be me."); *see also* Ex. E at 12:9-15; Ex. M at 44:1-21 (caseload of 400, ranging from speeding cases to murder cases; not realistic to give to other attorneys in office because of inexperience); Ex. I at 48:4-10, 59:15-60:18, 74:14-75:3.

51. Though every office handles their case overload differently—there are no rules or policies about how to triage cases, *see* Ex. M at 207:4-209:14 ("[b]y definition, triage is without any rules, so there's no policies")—every office must cut corners as to some defendants' cases if they want to ensure that other defendants receive adequate representation. This "Catch 22" puts MSPD attorneys in the untenable position of robbing Peter to pay Paul, stealing hours they should spend on one defendant's case for another defendant's. *E.g.*, Ex. A at 170:6-171:14; Ex. E at 120:18-121:1; Ex. M at 177:1-15, 206:3-209:8.

52. As one of Plaintiffs' experts noted, the use of the word "triage" to describe day-to-day practice in Missouri is "jarring"—"triage" is a word more appropriately reserved for the battlefield than for the constitutional guarantee of the assistance of counsel. Ex. H at ⁋⁋ 206, 208-09; *see also* Ex. M at 177:22-179:25 (comparing triage in office to "a MASH unit").

53. MSPD attorneys have been engaging in these sorts of triage efforts for decades. Ex. AA (The Spangenberg Group & Center for Justice, Law and Society at George Mason University, Assessment of the Missouri State Public Defender System, Oct. 2009) at 8 (2009 report that high workloads "require[] public defenders to divvy effective legal representation to a narrowing group of clients" and individual public defenders are "forced to choose among clients as to who will receive effective legal assistance"). More recently, several attorneys and offices, rather than violate their ethical duties to avoid conflicts of interest, have filed motions to withdraw from cases, turned down new cases, or reported themselves to the Office of the Chief Disciplinary Counsel, the agency of the Missouri Supreme Court charged

with investigating misconduct by lawyers. Ex. A at 165:4-17 (self-reported to Office); Ex. K at 117:16-118:18 (self-reported to Office); Ex. BB; Ex. CC (Letter from Justin Carver, Missouri Public Defender, to Office of the Chief Disciplinary Counsel, Oct. 30, 2017); *see also infra*, ¶¶ 124-54.

54. MSPD is not forced to triage because attorneys are inefficient. Ex. O at 32 (former Air Force officer and MSPD attorney explained that applying efficiency skills learned in military service did not make a dent in workload). Instead, triaging is a product of multiplication: By any measure, MSPD attorneys have more cases than they can provide minimally adequate assistance on, so even the most efficient attorney would have to triage cases with MSPD's workload. *See supra*, ¶¶ 11-43, 48-54.

MSPD's High Workloads Prevent MSPD Attorneys from Performing Even the Most Basic Tasks of Legal Representation.

55. As both Plaintiffs' experts and MSPD attorneys from around the State testified, MSPD attorneys are routinely unable to engage in the basic functions of representation, lacking the time to communicate with defendants, investigate cases, review pretrial discovery, or file motions. They negotiate and advise defendants on pleas with virtually no information about their clients or cases, and on the rare occasions when they go to trial, they are unable to adequately prepare. They are unable to even be present at key stages of the trial process, let alone get ready for those key stages. Coupled with a lack of training and supervision, and massively high turnover, these failings ensure that indigent defendants do not receive representation that accords with prevailing professional norms. In each instance, deficits in representation exist across the class and are directly traceable to the high workloads.

56. **Defendant Communication:** MSPD attorneys and expert witnesses agree that public defenders in Missouri are unable to communicate with their clients to the extent each case necessitates. Ex. H at ¶¶ 94, 291-301; Ex. E at 22:10-23:5, 27:20-28:9, 28:17-20, 76:14-77:4; Ex. C at 23:9-24:5, 35:22-24, 132:22-133:4; Ex. M at 81:5-11, 82:25-83:3, 83:12-16; Ex. K at 61:5-62:3; Ex. A. at 78:22-79:11, 183:9-24; Ex. Y at 62:11-13; Ex. J at 83:2-8.

57. Indigent defendants routinely go many days after they are assigned a public defender without meeting their attorney.

    a. MSPD's guidelines state that each attorney should meet with her assigned defendant within seven days if the defendant is in custody—a number that one district defender noted was significantly higher than what he would want were he being represented. Ex. E at 76:14-77:4 ("The idea that I could be sitting in jail for seven days and not be – not see an attorney, that's crazy. That's absolutely crazy, but that's what we have accepted as okay."); Ex. V (Elmer Dep. Day 1) at 102:1-11.

    b. Nevertheless, MSPD attorneys routinely violate the seven-day rule, waiting longer than a week to meet with most of their clients. Ex. C at 26:14-24; Ex. E at 76:14-77:4; Ex. H at ¶ 294 (rarely saw within 7-10 days).

    c. Many MSPD attorneys do not meet with defendants prior to key preliminary hearings. Ex. C at 19:21-20:4.

    d. In some cases, more than a month will lapse before an MSPD attorney finally meets her client. Ex. Y at 58:6-12 (six weeks); Ex. DD (Appraisal Form for Dawn Calvin, Nov. 7, 2016 (Hackathorn Dep. Ex. 48)) at 1 (102 days).

    e. Sometimes, these initial meetings take place in or just outside of a courtroom right before a hearing. Ex. E at 22:10-24; Ex. I at 37:22-38:13; *see also* Ex. M at 69:9-

72:14 (because more hearings are occurring by video, attorneys lose even in-court opportunities to communicate with clients).

f. In some counties, no initial meeting ever takes place if a defendant is not in custody. Ex. C at 18:1-13.

58. After the initial meeting, MSPD attorneys are unable to communicate with their clients with any degree of regularity.

a. Although MSPD's guidelines require attorneys to meet with their clients every 30 days, very few attorneys in the MSPD system are able to do so. Ex. C at 26:10-24; Ex. EE (Email from Joel Elmer to Service List, Oct. 13, 2002 (Petsch Dep. Ex. 1)); Ex. Y at 59:18-60:9 (difficult to meet even every 60 days); Ex. E at 76:14-77:4; Ex. H at ¶¶ 295, 301; Ex. V at 111:7-16.

b. Many offices have decreased their expectations, such that attorneys are required to meet with their clients less frequently than every 30 days, but MSPD attorneys still have trouble complying. Ex. C at 14:13-15:1, 37:10-22; Ex. Y at 164:22-165:13.

c. Gaps of between three and 13 months between communications are routine, and in egregious cases, a defendant may wait three or four years with no word from her attorney. Ex. FF (Performance & Issues Entry Form, Mar. 2, 2017 (Hackathorn Dep. Ex. 49)) at 1; Ex. C at 37:23-38:4; Ex. Y at 87:8-88:3, 88:13-89:24; Ex. A at 71:25-72:23, 74:13-76:19, 77:12-78:21 (one indigent defendant sat in jail for three years with no contact from attorney; another sat in jail for four years with only one attorney contact, then had his case dismissed after five years and nine months of custody).

59. Even when MSPD attorneys do communicate with their clients, they are not always able to do so confidentially.

a. Sometimes, MSPD attorneys are forced to talk to their clients in courthouses or courtrooms. Ex. Y at 88:13-89:24; Ex. E at 22:10-24.

b. Sometimes, MSPD attorneys must visit their clients in jails that do not have private, soundproof rooms. Ex. E at 24:25-26:4 (visitation rooms in Phelps and Dent counties are private only if both parties whisper; in Pulaski County, visitation is by phone, which may be recorded); Ex. L at 44:12-45:18 (one jail has visitation rooms where either defendant or attorney can be heard; another places a correctional officer within earshot of attorney-client conversation); Ex. O at 23.

60. Perhaps as a result, MSPD attorneys' communications with their defendants tend to be perfunctory.

a. Though experts recommend at least one hour for an initial interview with a new client, MSPD attorneys rarely spend that time (and, in fact, would not have time to do such an interview with each defendant even if they did nothing else). Ex. H at ¶¶ 91, 94 (noting that MSPD attorneys spend, on average, only .9 hours in total on defendant communication, including an initial interview, in a misdemeanor case); Ex. E at 27:20-28:9; Ex. DD at 2; Ex. M at 102:8-104:11.

b. Conversations are often snatched in the back hallway of a courthouse or the back of a courtroom. Ex. E at 22:10-24; Ex. I at 37:22-38:13; *see also* Ex. M at 69:9-72:14 (because more hearings are occurring by video, attorneys lose even in-court opportunities to communicate with clients).

c. Even those courthouse conversations may not be with the same attorney each time; because MSPD attorneys frequently cover each others' pretrial appearances, a

defendant's appointed lawyer may not meet her until shortly before trial. Ex. H at ¶ 296.

d. One former MSPD attorney noted that, in private practice, he will spend more time on a free consultation for someone who is not yet his client than he spent at MSPD on interviews with his actual clients. Ex. H at ¶ 298.

e. Qualifying contacts—actual, substantive conversations that do not take place in a courtroom—do not occur in all MSPD cases. Ex. E at 28:13-20 (qualifying contacts in only 25 percent of cases); *see* Ex. C at 36:21-37:1 (defining "qualifying contact").

61. These deficits in defendant communication are largely due to MSPD attorneys' workloads. Ex. Y at 165:7-13; Ex. E at 27:5-28:9, 76:14-77:4; Ex. J at 47:9-51:5, 83:2-8; Ex. A at 71:25-72:23.

62. Because many defendants are incarcerated, a single visit takes far longer than if a defendant were able to come to the MSPD office to meet with her attorney.

a. MSPD attorneys must work around jails' and prisons' limited hours of operation. Ex. Y at 63:16-64:6; Ex. C at 23:8-24:5.

b. In some cases, the only confidential spaces available are difficult to schedule. Ex. C at 22:10-20; Ex. M at 102:8-104:11.

63. MSPD attorneys' inability to communicate consistently with defendants negatively impacts those defendants' cases because MSPD attorneys are unable to build trusting relationships and therefore cannot get information that may be crucial to making informed decisions about how to litigate a defendant's case. Ex. C at 132:22-133:13; Ex. K at 62:4-12; Ex. A at 71:25-72:23, 77:12-78:21; Ex. Y at 59:17-60:9, 62:2-64:6; Ex. H at ¶¶ 291-301; Ex. I at 81:22-82:21, 83:2-8.

64. **Investigation:** Across the State, MSPD attorneys confirm that only a fraction of their cases receive any investigation at all, let alone meaningful investigation. Ex. E at 28:21-29:22 (attorneys in district conduct adequate investigation in less than 25 percent of cases); Ex. Y at 69:13-71:23; Ex. C at 41:17-24, 48:3-6 (attorneys in district investigate in "around maybe ten percent" of cases); Ex. K at 69:14-71:3; Ex. O at 28-30; Ex. H at ¶¶ 15, 305-315 (MSPD attorneys "rarely investigate the facts in their cases"); Ex. Y at 59:17-71:5; Ex. I at 83:9-15.

65. Misdemeanors and low-level felonies rarely receive *any* investigation, and virtually all investigation ceases when defendants show any willingness to plead guilty. Ex. O at 28-29; Ex. K at 88:9-18, 93:5-19. *See also* Ex. B, at 23-24 (finding that MSPD attorneys spend only 0.4 hours on all investigation and discovery for misdemeanor cases, 0.2 hours for probation violations, and 0.8 hours for C/D felonies, in each case less than one-tenth of the recommended number of hours; spend 2.1 hours, less than one-eighth the recommended time, on investigation and discovery in A/B felonies; and spend less than half the recommended time on discovery and investigation in sex felonies and juvenile cases).

66. Ultimately, MSPD attorneys rely largely on the prosecution's version of events to shape their defense strategy and rarely have the time or resources to call that recitation of the facts into question. Ex. N at 14:17-15:3 ("We rely almost entirely on police reports and body cam videos that are provided to us to conduct an investigation or, at least, to steer it in the way we want it to go."); Ex. L at 54:21-55:3 (MSPD identifies witnesses not mentioned in police report in only 25 percent of cases that go to trial).

67. Experts confirm that MSPD's slapdash investigatory efforts are well below prevailing professional norms. Ex. O at 28-30; Ex. H at ¶¶ 305-315.

68. MSPD attorneys rarely have time to even identify what investigation needs to be done.

a. Attorneys do not have enough time to talk in any depth with their clients, meaning that defendants are unable to supply leads regarding key witnesses and evidence. *Supra*, ⁋⁋ 56-63; Ex. Y at 173:23-174:8.

b. They do not have the bandwidth to issue spot and identify evidence that ought to be collected. Ex. E at 23:6-24:9, 28:25-29:15.

c. Sometimes, they are too busy to even supply enough detail to request the necessary investigation from staff investigators. Ex. Y at 173:23-174:8.

69. Even when MSPD attorneys can identify what investigation needs doing, they are rarely able to actually conduct that investigation. Ex. A at 73:17-23("[E]ven when I can get to talk to a client, commonly, I will identify work that needs to be done on the case, investigation, things to pursue. Actually doing it is a whole other matter.").

a. Witnesses—even witnesses specifically identified by the defendant, and even complaining witnesses—routinely go uninterviewed. Ex. L at 54:21-55:3 (complaining witness interviewed 30 percent of time; other witnesses, less than 30 percent); Ex. C at 42:18-43:14; Ex. N at 14:17-15:3; Ex. K at 64:13-65:7; Ex. M at 84:19-85:21; Ex. GG (Performance & Issues Entry Form, Mar. 13, 2017); Ex. Y at 59:17-71:5.

b. Crime scenes are rarely visited. Ex. L at 54:18-20 (crime scene visited in fewer than 20 percent of cases); Ex. K at 67:16-68:9; Ex. N at 14:17-15:3; Ex. M at 84:19-85:21; Ex. Y at 59:17-71:5; Ex. O at 29.

c. Depositions, to which defendants are entitled by right in Missouri, are rarely taken, even when the case demands it; in particular, this means police conduct is rarely questioned. Ex. M at 87:20-90:7; Ex. K at 65:8-67:14; Ex. H at ⁋⁋ 281, 314-15 (one

former MSPD attorney "can count on one hand" the number of depositions she took in 3.5 years); Ex. O at 30; Ex. A at 243:3-25; Ex. C at 47:25-48:6 (depositions in roughly 10 percent of cases); Ex. L at 56:18-23, 195:24-196:21.

d. And mitigating evidence is virtually ignored, even though such evidence may make the difference between probation and a long term in prison. Ex. O at 30; Ex. N at 28:4-29:3; Ex. E at 55:15-57:18 (consulted with mitigation expert twice in career).

70. On the rare occasion where an MSPD attorney is both able to identify the need for investigation and has the time to perform the requisite investigation, the investigation is often too late to be of use. Ex. O at 29.

a. Surveillance videos, for example, are often deleted before attorneys can secure and review them. Ex. Y at 29:7-22; Ex. A at 121:16-123:9.

b. Witnesses become less credible the later they are interviewed. Ex. M at 87:7-19. Depositions are most effective when a witness' memory is fresh, but MSPD attorneys rarely have time to do depositions until a month or two before a trial date. Ex. C at 48:7-19; Ex. Y at 67:14-68:11.

c. Sometimes, witnesses become unavailable before they can be interviewed. *E.g.*, Ex. I at 92:16-93:5.

d. Physical evidence, such as blood, can deteriorate to the point where it is no longer testable or becomes stale. Ex. A at 121:16-123:9; Ex. N at 50:1-3.

e. And sometimes, a witness is interviewed too late to be called at trial—with devastating consequences. Ex. H at ⁋ 286 (describing incident where MSPD attorney did not interview alibi witness until morning of trial and was not allowed to call witness; defendant sentenced to life without parole).

71. Attorneys also do not have the requisite support staff to whom they can delegate investigative tasks. Ex. J at 35:6-39:8; Ex. Y at 21:17-22, 22:18-20, 27:22-29:6, 171:9-14; Ex. H at ⁋⁋ 309-310. Across the State, attorneys must either "get in line" to utilize investigators, Ex. M at 27:1-19, 33:4-34:24, or else the office's policy limits those cases on which investigators are able to work, Ex. Y at 171:9-14.

72. In Plaintiffs' expert's undisputed opinion, the rate of expert usage at MSPD is "far too low." Ex. H at ⁋⁋ 316, 323-336; *see also* Ex. L at 195:24-196:21; Ex. V at 37:6-38:11 (availability of funds affects expert witness usage).

73. Because MSPD attorneys are unable to identify key investigative points or conduct investigation early in a case, they are also unable to utilize expert witnesses, because they do not recognize the utility of an expert until too late in a case, because they do not have the time to find an expert or to gather salient evidence to present to an expert witness, or simply because they do not have the travel time to work with an expert. Ex. M at 28:9-15, 28:23-29:6, 213:11-214:10; Ex. C at 45:12-23 (no expert request except in most complicated cases); Ex. A at 185:19-186:7, 244:7-20, 245:2-5; Ex. E at 34:17-35:9; Ex. J at 89:6-19; Ex. K at 71:22-73:7, 74:11-19; Ex. H at ⁋⁋ 283, 318-321.

74. **Discovery Review:** Expert witnesses who have reviewed the evidence and public defenders around the State agree that MSPD attorneys are unable to review discovery to the extent each case requires and that this inability is directly traceable to a lack of time. Ex. A at 185:6-18; Ex. L at 61:22-62:15; Ex. H at ⁋⁋ 200, 212, 251, 280, 427; Ex. O at 29; Ex. M at 93:21-94:1; Ex. Y at 186:23-188:25.

75. In some offices, attorneys are not able to file even basic requests for discovery in a timely fashion. *See, e.g.*, Ex. C at 54:22-56:1, Ex. FF at 2.

76. Even in offices where discovery is routinely requested, attorneys are sometimes unable to file follow-up motions to obtain missing documents, generally limiting their discovery practice to a "one-time, formal boilerplate request." Ex. O at 29; *see* Ex. E at 31:11-13 (discovery-related motions are "rarely" filed).

77. Even when attorneys obtain complete discovery, they are rarely able to review it in any depth, let alone to issue-spot and track evidentiary leads in a way that would allow development of a robust defense. Ex. C at 43:18-45:3 (95-99 percent of the time, pretrial discovery in misdemeanor or probation violation cases is being reviewed on the day of the hearing; C or D stealing or tampering offenses are given "one quick reading and that's about it"); Ex. L at 60:24-61:9 (attorneys do not have time and resources to obtain and review discovery in the manner each case requires).

78. And even when discovery is reviewed carefully, it is often not reviewed until late in the life cycle of a case, too late to file suppression motions, for instance, or to use the discovery as a basis for a trial defense. Ex. A at 118:12-18 ("On my desk, I've got a stack of CDs and DVDs that have been sitting there for a couple of weeks; haven't looked at them, don't know what's in them. Not going to have a chance to look at them anytime soon. I mean, any of the substantive legal work that I should be doing, right now, there isn't time to get it done."); Ex. Y at 73:6-20 (attorneys worry they plead defendants to charges without adequately reviewed discovery); Ex. O at 29 (conversely, attorneys who wait to fully review discovery before pleading defendants often consign defendants to unnecessary jail time); Ex. K at 79:6-82:4 (suppression motions may not get filed because review of discovery that could reveal suppression issues is untimely); Ex. L at 146:14, 147:4-23 (MSPD attorneys must routinely continue cases because they have not reviewed discovery); Ex. H at ¶¶ 319, 321 (discovery

materials are often reviewed on "the eve of trial" and don't allow MSPD attorneys time to hire an expert witness).

79. Legal Research and Motions Practice: Experts and district defenders around the State agree that MSPD attorneys should be doing far more legal research and filing far more pretrial motions than their workload currently allows. Ex. C at 50:24-51:13, 52:20-53:10 (attorneys in district file pretrial motions in only 10 percent of cases); Ex. FF at 2; Ex. M at 106:20-108:9; Ex. A at 186:8-22; Ex. H at ⁋⁋ 302-04.

80. Where pretrial motions are filed, they are usually boilerplate motions with little case-specific information or motions that rely on an attorney's experience, rather than legal research. Ex. C at 50:24-51:13, 52:20-53:10; Ex. E at 40:5-41:1.

81. Time constraints are the primary reason so few pretrial motions are filed. Ex. C at 51:6-13; Ex. E at 40:22-41:1, 42:18-28; Ex. M at 106:20-108:9; Ex. K at 79:6-82:4.

- **a.** Because MSPD attorneys don't have time to investigate cases or review discovery, they often do not learn of the facts that should trigger, for instance, a motion to suppress. Ex. H at ⁋⁋ 305-306, 310-15.
- **b.** Even where MSPD attorneys identify the need for a pretrial motion, they sometimes do not have time to draft the motion. Ex. H at ⁋⁋ 302-04.
- **c.** And even where MSPD attorneys are able to draft motions, they frequently do not have time to do the legal or factual research to support such motions. Ex. C at 50:24-51:13, 52:20-53:10.

82. Plea Negotiations and Counseling: MSPD attorneys are unable to either negotiate pleas or counsel defendants on whether to accept pleas in the manner each case demands. Ex. C at 60:17-20, 61:24-62:2; Ex. E at 49:23-51:19; Ex. A at 187:7-21; Ex. H at ⁋ 8; Ex. O at 27.

83. A defendant's plea offer will often improve if an attorney investigates a case, helps the defendant obtain pretrial release, asks a social worker to assess sentencing alternatives, and communicates adequately with a defendant—all tasks MSPD attorneys rarely have time to do. Ex. A at 187:22-188:13; Ex. H at ¶ 16; Ex. O at 29.

84. First, because MSPD attorneys have not spoken with defendants about their cases and have not adequately investigated those cases, they have very little leverage and give prosecutors very little reason to fear going to trial. Ex. C at 61:24-62:2; Ex. H at ¶¶ 97, 279; Ex. Y at 145:6-21.

85. Defendants who remain in custody have even less leverage, as they must remain behind bars until trial, meaning that a failure to get a defendant out of custody may result in her taking an inappropriately harsh plea deal. Ex. H at ¶¶ 8, 168, 272; Ex. I at 92:16-93:5 ("[E]motionally, it's not good for the clients to have these cases hanging over their heads for long periods of time.").

86. Second, absent sufficient information about a case, a trusting relationship with a defendant, and the time to talk a defendant through the consequences of a plea, plea counseling is ineffective; high workloads foreclose MSPD attorneys from having any of those three prerequisites. Ex. C at 24:6-25:17, 60:17-20 ("The majority of our clients are uneducated. A lot of them have difficulty reading and writing. Many of them have mental health issues. It takes so much more time to explain complex legal matters to them. Sometimes you need to reexplain, reexplain, and reexplain to them, and they deserve that kind of attention and they do not – they do not get it."); Ex. H at ¶¶ 94, 136, 313; Ex. O at 6, 24, 30.

a. In particular, MSPD attorneys do not have the time to identify and make sure their clients understand the collateral consequences of a plea deal. Ex. N at 49:7-25; Ex. C at 24:6-25:17; Ex. O at 27, 30.

b. Because MSPD attorneys do not have time to acquire immigration expertise, consult with immigration experts, or even identify which of their clients may have immigration status concerns, MSPD attorneys frequently cannot adequately counsel defendants as to the immigration consequences of a plea agreement. Ex. C at 63:23-64:11; Ex. E at 53:8-55:11; Ex. A at 187:22-188:13, 188:20-24; Ex. H at ¶ 97.

87. This deficient representation during plea agreements is compounded by the fact that MSPD attorneys must plead out the vast majority of their cases, as they do not have the bandwidth to take many cases to trial. Ex. N at 49:7-25; Ex. H at ¶¶ 14, 287-90; Ex. C at 56:2-57:2, 122:16-123:4; Ex. E at 40:1-44:16; Ex. J at 90:13-19, 92:1-16; Ex. K at 82:5-19. One percent of MSPD's cases go to trial, as compared to six percent of state-court cases nationwide. Ex. G at 43:13-18; *Missouri v. Frye*, 132 S. Ct. 1399, 1407 (2012).

88. Preparation for trial and hearings: As a result of high workloads, MSPD attorneys are unable to prepare for trials and hearings in the manner those court appearances warrant. Ex. C at 57:3-12; Ex. E at 46:21-47:1 ("not enough hours in the day"); Ex. K at 83:23-84:1; Ex. M at 116:6-117:10 (there may be outlier trials for which an attorney is prepared, but that preparation comes at the detriment of all other defendants); Ex. A at 186:23-187:6.

89. The sheer number of cases that MSPD attorneys must prepare for trials or other hearings—even if those cases wind up in plea agreements before the court appearance—would alone foreclose adequate preparation. Ex. L at 69:2-21, 92:12-19 (prepared 20 felony cases for trial

and tried 18); Ex. H at ⁋ 203 (one MSPD defender's eight weeks of back-to-back jury trials required extensive triage.).

90. On top of the cases that are set for trials or hearings, of course, MSPD attorneys must juggle hundreds of other court appearances and client meetings, meaning that one or the other will get neglected. Ex. C at 57:3-12; Ex. M at 116:6-117:10; Ex. L at 69:2-21.

91. MSPD attorneys attempt to ameliorate this dilemma by taking continuance after continuance; at a certain point, however, continuance motions become ineffective, as MSPD attorneys worry about the time expenditure of preparing a continuance motion or about how much longer they can shortchange their other cases. Ex. M at 100:6-101:10; Ex. N at 30:19, 30:23-31:17; Ex. E at 37:17-38:15.

92. MSPD attorneys spend very limited time preparing a direct and cross examination, an opening and closing statement, or voir dire. Ex. E at 47:2-18.

93. However little time they spend preparing themselves for trial, MSPD attorneys spend even less time preparing their clients for trial, sometimes preparing a defendant to testify in just one conversation. Ex. C at 58:5-17.

94. Even with adequate time to prepare before a trial or hearing, however, MSPD's cases suffer from pretrial investigative deficits:

a. By the time MSPD attorneys are preparing for trial, they should have completed all their investigation and depositions. Ex. E at 47:2-18. But because of their caseloads, they are unlikely to have done so. *See infra*, ⁋⁋ 64-73.

b. And the deficits in investigation described *supra* mean that MSPD attorneys are hamstrung at trial—they can't do an effective cross-examination because they haven't

gathered impeachment evidence, or they must overcome inadmissible and prejudicial evidence because they haven't filed motions to suppress in time. Ex. O at 30.

95. In some districts, these failures of preparation are still more acute in less serious cases. Ex. C at 79:22-80:5 (for misdemeanor and probation violation defendants, no "real attention"; "basically a warm body in there making an off-the-cuff argument").

96. **Absence at Key Stages:** Public defenders in Missouri are routinely absent during important stages of their clients' proceedings. Ex. H at ⁋ 8; Ex. J at 54:25-55:25; Ex. E at 18:10-18, 19:10-20; Ex. M at 64:21-66:25.

97. MSPD attorneys often are not appointed until after a defendant is brought before a judge for the first time. They miss counsel status hearings, bond hearings, and arraignments. Ex. J at 54:25-55:25; Ex. L at 51:7-18; Ex. E at 18:10-18, 19:10-20; Ex. J at 52:10-53:5; Ex. K at 49:24-52:9; Ex. A at 182:3-183:4; Ex. H at ⁋⁋ 271-76.

98. The consequences of being unrepresented at these initial appearances can be significant for defendants:

    a. Sometimes, defendants waive defenses available to them, such as the right to a change of venue or the right to remain silent. Ex. M at 64:21-66:25; Ex. E at 18:18-19:20.

    b. Even where a defense is not waived as a procedural matter, a defense may be effectively waived by the passage of time, as witnesses disappear and memories go stale before an attorney is appointed to a case. *E.g.*, Ex. M at 64:21-66:25; Ex. A at 79:1-80:24, 81:13-17, 82:8-14; Ex. N at 50:1-3; Ex. I at 89:16-90:5.

c. In egregious cases, defendants will even plead guilty before seeing an attorney—a phenomenon that has become more common since the implementation of waitlists. *See infra*, ⁋⁋ 124-54; Ex. E at 18:18-19:20; Ex. A at 123:20-124:11.

d. Since the institution of the waitlists, defendants sometimes must attend court hearings before an attorney is assigned to their case. *Infra*, ⁋⁋ 124-54; Ex. C at 92:23-93:7.

e. Defendants will sometimes say things in open court that they should not have and that will hamstring their case at a later date. Ex. E at 14:24-15:11.

f. Without an attorney to advocate for them, defendants are often detained pre-trial or face exorbitant bond requirements. Although such detention could theoretically be remedied in some cases by a bond reduction motion, MSPD attorneys rarely have time to seek such a remedy, thanks to their high caseloads, and even where they do seek such a remedy, they don't have time to paint a full picture about a client's flight risk by interviewing family members, gathering records, and so on. Instead, MSPD attorneys often just make "very quick off-the-cuff arguments" and "just a paragraph that kind of references the law." Ex. C at 133:14-134:14; Ex. E at 44:17-45:20, 46:11-47:18; Ex. M at 76:25-77:3, 78:18-79:5; Ex. J at 56:1-58:3.

99. Even after an MSPD attorney is appointed to a case, she may not have time to attend all of the important proceedings that comprise a criminal case.

a. In some districts, attorneys do not attend all psychiatric evaluations. Ex. M at 142:11-13.

b. In other districts, attorneys do not attend crucial interviews that will produce sentencing recommendations. Ex. M at 145:14-147:24; Ex. L at 73:5-20.

c. In juvenile cases, MSPD attorneys do not attend lineups, and MSPD attorneys are not assigned counsel for the period between certification of a juvenile as an adult and their first appearance, even though that time period is crucial for investigation. Ex. JJ (Johnson Dep.) at 129:25-130:16.

100. In order to continue moving caseloads, judges sometimes force whole categories of defendants to proceed without counsel at any phase of their trial. In Cole County, for instance, there is an unwritten rule that criminal nonsupport cases—for which a defendant might face between four and seven years in prison—do not get assigned counsel because the judges are wary of further overburdening MSPD. Ex. A at 51:10-52:3, 59:13-60:22, 60:23-61:2.

101. **Turnover, Training, and Supervision:** MSPD has unusually high turnover that is due primarily to massive caseloads and low salaries. Ex. II at 16:13-18, 17:4-8, 29:23-24 (exit interviews always focus on caseloads and salary); Ex. V at 92:13-93:5; Ex. Y at 136:3-15; Ex. M at 21:24-22:4 ("Every day that no one leaves is a good day."); Ex. J at 15:23-17:12 (lose one attorney out of eight every nine months); Ex. D at 7; Ex. I at 62:23-63:7 (four out of five line attorneys have changed recently); Ex. A at 26:17-19, 27:5-12, 27:21-28:3 (five out of seven left within last year).

102. The upshot is that many district offices within MSPD are staffed primarily with inexperienced attorneys. *E.g.*, Ex. L at 83:6-23 (half of lawyers in office have been practicing law one year or less); Ex. E at 66:2-16 (a "senior" lawyer would be one with a year of experience and would be expected to mentor more junior lawyers); Ex. Y at 135:12-21 (between five and seven of 20 attorneys in district are new hires); Ex. E at 13:17-14:6,

64:23-65:3 (eight or nine attorneys in district have less than one year of experience; office has made 10 new hires in last 18 months).

103. Turnover has gotten worse in recent years. Ex. E at 68:21-69:6; Ex. Y at 136:3-4; Ex. A at 25:2-3.

104. Many MSPD attorneys leave the office to become prosecutors, because they are burnt out from being public defenders and crave a job where they are respected and can control their caseloads. One district defender even said that he feels like he is training young MSPD attorneys to become prosecutors and hopefully become "a little more human in the process." Ex. E at 144:13-23; 69:7-70:18, 159:6-160:18 ("You don't get paid very well for what you do and you lose that fire that you had when you were in law school about wanting to help people or fight injustice or defend the constitution or whatever it was that motivated you to become a public defender in this first place."); Ex. A at 27:5-12.

105. The consequences of an attorney's departure for members of the Plaintiff class are legion.

a. The departing attorney's cases must be reassigned to others within the district, each of whom is likely already overwhelmed with her own cases. *Id.*; Ex. M at 23:5-13; Ex. K at 21:24-22:4; Ex. N at 40:14; Ex. A at 28:16-29:4, 82:1-7 ("train wreck" when multiple lawyers leave office and cases must be redistributed); Ex. E at 106:3-108:4.

b. Many cases—particularly serious cases—are thus handled by four and five attorneys sequentially, as the original attorneys assigned to the case leave; this kind of turnover makes it virtually impossible to build a trusting client relationship. Ex. E at 106:3-108:4; Ex. A at 28:16-29:4, 29:5-23, 34:3-9.

c. Every time an attorney leaves MSPD, the next attorney assigned to a case must get up to speed on the case, further delaying progress. Ex. E at 106:3-108:4; Ex. I at 64:8-

15; Ex. A at 29:5-23 ("[Y]ou know, frankly, if it were my kid who kept getting a new lawyer every two or three months and the lawyer says, Look, hey, give me some time; I've got to get up to speed. You know, I'll look at the thing, I'll come talk to your child in jail, and they get up to speed, and they go talk to the child in jail, and then they leave, and then the case gets reassigned -- I mean, if that had been my child, I would be furious.").

d. In addition, the replacement attorney must duplicate all the work that the departing attorney performed, further stretching the office's bandwidth. Ex. A at 29:24-30:12.

e. Several attorneys, including the district defenders themselves, must take time out of their schedules to interview and hire replacement attorneys, further reducing the number of hours spent on actual case work. Ex. E at 106:3-108:4.

f. Positions often remain open for many weeks or months, which means that MSPD must operate with even less manpower and must lower its standards to make new hires. Ex. C at 12:4-14; Ex. E at 106:3-108:4, 108:24-109:8, 121:24-123:7, 124:25-125:15; Ex. L at 95:5-19; Ex. V at 79:7-14.

106. Although MSPD attorneys are often inexperienced, they are frequently placed on cases that call for more seasoned attorneys, with negative consequences for their clients.

a. Because there are so few experienced lawyers, inexperienced lawyers are often assigned complex rape and murder cases. Ex. A at 86:9-87:17; Ex. L at 95:15-96:7.

b. Inexperienced lawyers have very little leverage in plea negotiations, in part because they do not know what would qualify as a good plea and in part because prosecutors know that these new attorneys are afraid to go to trial. Ex. E at 56:21-58:4.

c. An inexperienced lawyer is less likely to identify a key issue—such as a motion to suppress—in a case. Ex. L at 66:8-15.

107. Even the most passionate, committed, and experienced in MSPD's ranks are considering leaving public defense. Ex. A at 85:22-86:8 ("2017 has certainly made me consider other employment options. Yeah. I mean, I'm not – I'm certainly not practicing the way I want to be. My clients are given the short end of the stick. It's not fair to them. I would not want me as a lawyer right now. And – I'm not sure how long I'm going to do this. Give me a rational caseload, I'll retire with the agency. 200 cases, I don't know how much longer ...")

108. The frequent turnover in MSPD's ranks is exacerbated by a lack of training and supervision.

109. MSPD attorneys have a difficult time carving out the hours for formal training, so much of the job entails learning on the job (and therefore at the expense of actual clients). Ex. E at 66:2-68:1; Ex. M at 90:8-91:5, 139:7-13.

110. MSPD attorneys must ramp up quickly, rapidly going from a low initial caseload to a caseload fit for a far more seasoned attorney. Ex. Y at 17:14-18:1; Ex. A at 46:16-47:6.

111. Even the most talented attorneys come in with a knowledge deficit about how the system works—which courtrooms are which, how to handle procedural issues, and so forth. Ex. E at 66:24-68:1.

112. In part because there are very few senior attorneys and in part because the district defenders do not have the bandwidth to do so, new attorneys receive very little mentorship or supervision. Ex. C at 80:17-20; Ex. M at 47:7-17; Ex. K at 23:9-24:21, 28:1-15; Ex. E at 66:2-68:12.

113. Finally, it is difficult to justify the investment in training, since constant turnover means that as soon as a new attorney is trained, it's time to train another. Ex. E at 66:24-68:1; Ex. A at 28:16-29:4.

114. **Juveniles:** MSPD also represents juvenile defendants in both juvenile and criminal proceedings, pursuant to Missouri Revised Statutes § 211.211, which provides indigent youth with the right to court-appointed counsel "prior to the filing of a petition" and "for all stages of the proceedings" thereafter. In Fiscal Year 2017, MSPD was appointed to represent juveniles in 1,556 cases, including violent, non-violent, and status offenses. Ex. D at 20.

115. As recently as 2013, the National Juvenile Defender Center (NJDC) deployed dozens of experts in Missouri to study its juvenile court system and assess the extent and quality of representation being provided to children in the State. Ex. KK (National Juvenile Defender Center, Missouri: Justice Rationed, Spring 2013 (Johnson Dep. Ex. 22)). The NJDC Report concluded that, after "endur[ing] at least two decades of crushing caseloads and inadequate resources to provide its mandated services," Missouri's juvenile indigent defense system is "broken" and is improperly "forced to ration services." *Id.* at 7.

116. Moreover, like their adult counterparts, juveniles accused of crimes in Missouri often go unrepresented at critical stages of their cases. Ex. JJ at 80:12-81:5 (describing lack of representation for juveniles in co-defendant cases in the days/weeks following initial detention hearing). The report concluded that nearly 60 percent of court-involved children in Missouri go without a public defender entirely. NJDC Report at 35. MSPD's Director of Juvenile Defense and Policy testified that she did not disagree with any of NJDC's findings. Ex. JJ at 32:18-22.

117. Several districts do not have any attorneys with specialized training in juvenile proceedings. *E.g.*, Ex. E at 53:10-16; Ex. K at 108:22-109:5 (decision to close juvenile office was based solely on money).

118. Many of the same time constraints that hamstring MSPD attorneys in representing adults also hamper their ability to represent juveniles; these issues are exacerbated by the facts that, first, juveniles who are "certified" (tried as adults) are often placed in custody quite far away from the MSPD office that represents them, and second, communicating with juvenile clients requires more time. Ex. E at 59:17-60:20; Ex. M at 154:6-23, 155:1-24.

THIS INABILITY TO ADVOCATE FOR DEFENDANTS HAS DRAMATIC CONSEQUENCES ON THE OUTCOMES OF CASES

119. Perhaps unsurprisingly, expert witnesses and MSPD attorneys around the State agree that these deficits in representation have a dramatic impact on the outcomes of cases, routinely resulting in MSPD attorneys overlooking evidence, legal theories, or witnesses and defendants taking pleas to harsher sentences or more serious charges or missing a chance at exoneration as a result. Ex. H at ¶¶ 187, 190; Ex. J at 96:1-9; Ex. K at 191:18-192:1.

120. Deficits in representation at every stage of the process often turn out to be outcome-determinative. For example:

a. MSPD's absence at an initial appearance may mean that a defendant will make a damning statement, hamstringing a defense going forward. Ex. E at 18:15-19:20; Ex. K at 52:10-53:7.

b. Defendants also lose their opportunity to move to change judges or venues because they do not have counsel to guide them. Ex. E at 19:8-20, 19:24-20:15.

c. When an MSPD attorney is unable to get her client out on bond and the defendant is detained pretrial, the defendant is much less likely to fight her charges and more likely to quickly take a plea, even if the defendant could have secured a better plea deal had she been willing to wait. Ex. E at 44:11-16 ("[T]he jails are miserable . . . [T]hey don't even treat [defendants] like people. So all that - their whole being is how do I get out of this situation. What's the fastest route to get me out of custody. If that's pleading guilty, they'll plead guilty."); Ex. I at 93:23-94:4.

d. An inability to consistently communicate with defendants forecloses a trusting relationship between a defendant and her attorney, meaning that a defendant is unlikely to rely on an attorney's advice about, for instance, whether to take a plea; brief communications often mean that defendants—particularly those with mental health issues or difficulties reading or writing—do not fully understand the consequences of their decisions to plead guilty. Ex. C at 79:22-80:5, 24:6-23, 38:9-39:2, 39:16-24; Ex. E at 23:6-24:9.

e. Because they do not have time to investigate the foundations of an indictment, MSPD attorneys lose the opportunity to dismiss cases early in their proceedings. Ex. E at 41:10-42:5.

f. When MSPD attorneys are unable to investigate their cases or file suppression motions, they lose leverage with prosecutors in plea negotiations and cannot present a robust defense at trial. Ex. O at 29-30; Ex. A at 185:6-18, 186:8-22.

g. When MSPD attorneys must rely on boilerplate motions, judges often recognize that the motions plead no case-specific information and are disinclined to grant relief. Ex. C at 53:3-10.

h. In cases that end in pleas—the vast majority of MSPD's cases—MSPD attorneys could have negotiated better plea deals had they come with "ammunition," such as exonerating evidence, legal defenses, or successful motions or had the plea negotiations not taken weeks (or months or years) to get underway, leaving defendants too anxious to hold out for a better offer. Ex. Y at 145:6-146:22, 149:9-150:12, 223:18-224:2 ("[s]everal times a month per attorney," he is told that a lawyer is uncomfortable with a guilty plea but defendant cannot wait in jail long enough for attorney to work up a case); Ex. O at 29-30.

i. In the few cases that go to trial, MSPD attorneys often realize that their case is missing a key component—a deposition of an important witness, for instance—too late to do anything about it, resulting in a diminished chance that a defendant will be acquitted. Ex. E at 30:5-31:7; Ex. K at 69:25-70:5.

j. Defendants will often get better outcomes where attorneys are able to prepare for sentencing, including investigating sentencing alternatives. *See, e.g.*, Ex. K at 84:2-85:12; Ex. E at 55:15-56:20; Ex. I at 97:5-21; Ex. A at 117:16-118:18 (ability to coordinate treatment programs that might allow clients to reduce time in custody is "virtually zero").

121. MSPD attorneys must routinely ask for continuances and other allowances for delay, because they are unable to consistently prepare cases in a timely fashion, often leaving their clients to wait further in pretrial detention. That reliance often backfires at the further

expense of defendants. Ex. H at ⁋ 286 (defendant sentenced to life without parole because overburdened MSPD attorney identified alibi witness too late to be allowed to call witness at trial); Ex. E at 36:10-37:8 (did not receive continuance to secure mental health expert on PTSD; as a result, defendant was convicted of statutory rape).

122. MSPD attorneys describe natural experiments—time periods during which for, whatever reason, they are able to fully work up a case—that prove the obvious: Cases where attorneys do some work see better outcomes for defendants. For instance, one office that has placed new defendants on a waiting list to more fully serve existing defendants has seen an uptick in depositions and motions and, correspondingly, better outcomes for defendants. Ex. E at 32:11-33:6, 42:18-25; Ex. QQ (Affidavits of Current and Former Public Defenders, Oct. 31, 2017 (Carver Dep Ex. 26.)). In that same district, attorneys have begun filing motions to dismiss indictments, to good effect. Ex. E at 41:2-42:25.

123. Finally, the inordinate wait times for cases to get any attention from their assigned MSPD attorney—wait times that have only increased with the implementation of wait lists around the State, *see infra*, ⁋⁋ 124-54—often lead to worse outcomes because defendants are willing to bargain away a better result in order to leave jail. Some feel pressured to plead guilty well before MSPD attorneys can complete an investigation or discovery; others will waive their right to counsel in order to move proceedings along, and in some cases, desperate defendants will even negotiate their own plea deals, obviously resulting in worse pleas than those that an MSPD attorney with the benefit of time to investigate the case might produce. Ex. C at 95:12-96:9; Ex. A at 66:6-68:23; Ex. C at 79:22-80:5; Ex. L at 63:13-65:2.

MISSOURI'S INDIGENT DEFENSE DEFICITS HAVE REACHED A CRISIS POINT.

124. On September 12, 2017, the Missouri Supreme Court issued an order in the matter of *In re Hinkebein*, affirming the recommendations of the state Disciplinary Hearing Panel and finding that Karl William Hinkebein, a senior attorney for the Appellate/PCR Division of the Missouri Public Defender Office, violated Rules 4-1.3 and 4-1.4(a) of the Rules of Professional Conduct and should be disciplined, including by suspending Mr. Hinkebein's law license indefinitely.[8] Order, *In re Hinkebein*, SC96089 (Mo. Sept. 12, 2017).

125. Specifically, the Disciplinary Hearing Panel determined that, in the course of his representation of several different indigent defendants, Mr. Hinkebein failed to keep his clients adequately informed about their cases, in violation of Missouri Rule of Professional Conduct 4-1.4(a) and failed to act with reasonable diligence and promptness in the representation of his clients, in violation of Missouri Rule of Professional Conduct Rule 4-1.3. *See* Ex. Z (Disciplinary Hearing Panel Decision, *In re Hinkebein*, No. DHP-16-004, (Mo. Nov. 2, 2016)).

126. Among other things, the Panel found that, with respect to at least six of his former clients, Mr. Hinkebein had gone months—sometimes years—without communicating with them; missed critical filing deadlines; and failed to file significant motions and other documents on behalf of his clients. *Id.* at ¶¶ 13-121.

127. Notably, the Panel reached its conclusions notwithstanding Mr. Hinkebein's contention that his inability to remain in consistent contact with his clients, and his failure to take timely action on their behalf, were the result of ongoing health problems between 2010 and 2014, *id.* at ¶¶ 147-148, and, more significantly, his overwhelming workload. *Id.* at ¶¶ 151-152.

[8] The Court ultimately stayed the suspension and placed Mr. Hinkebein on probation for one year.

128. Mr. Hinkebein noted that he had approximately 110 cases on his docket at the time of the disciplinary hearing, while his supervisor admitted that he was forced to assign an unreasonable number of cases to Mr. Hinkebein in light of the office's heavy workload. *Id.* at ⁋⁋ 152, 160.

129. MSPD senior staff testified that a number of studies had already found that the state's public defense system is saddled with more cases than it can "ethically, reasonably, or effectively handle," *id.*at 161. Nevertheless, the court found that Mr. Hinkebein violated his ethical obligations to his clients and deserved to be disciplined as a result.

130. In the wake of the *Hinkebein* decision, MSPD district offices across Missouri were thrown into a state of uncertainty and panic, as public defenders sought guidance from their supervisors, the courts, and the Office of Chief Disciplinary Counsel to determine the implications for their own careers. *See* Ex. V at 99:6-14 ("Alarm, fear. Attorneys quitting…"); Ex. C at 81:7-13; Ex. E 77:14-20; Ex. M at 172:25-173:10; Ex. J at 66:9-69:17; Ex. K at 117:15-118:18, 138:15-140:16.

131. Indeed, public defenders in MSPD district offices around the state, who, like their colleague, Mr. Hinkebein, are laboring under crushing workloads and, as a result, are providing similarly deficient representation to their clients, expressed profound concern about their own professional lives following the *Hinkebein* decision. *Id.*

132. In the days and weeks that followed, public defenders in a number of districts informed their supervisors that they were overwhelmed by their current workloads, and could not ethically continue to take on additional cases. Ex. E at 77:14-20; Ex. C at 81:14-82:3; Ex. J at 66:9-69:17; Ex. K at 114:22-115:15, 117:16-118:18; Ex. I at 46:17-22, 90:22-91:6, 126:12-127:4.

133. Some defenders have resigned, or have expressed their intent to resign, from their positions if they continue to be unable to do their jobs in a way that complies with their ethical and constitutional obligations. Ex. A at 167:13-169:11; Ex. E at 95:24-96:14; Ex. M at 173:3-10.

134. Beginning in late September 2017, MSPD District Defenders in a number of jurisdictions took steps, formal and informal, to inform the courts in their respective areas that their offices could no longer continue to accept appointments, unless and until their workloads diminish.

135. Those steps included sending letters to the applicable judges alerting them that MSPD attorneys do not have the capacity to accept any more cases, Ex. LL (Email from Rod Hackathorn, District Defender, to Hon. Thomas Mountjoy, Hon. David Jones & Hon. Calvin Holden, Oct. 10, 2017 (Hackathorn Dep. Ex. 53)) (informing judges of waitlist); Ex. E at 77:21-78:5; Ex. MM (Letter from Anthony Cardarella, District Defender, to Hon. Janet Sutton, Hon, James Van Amburg & Hon. Thomas Chapman, Oct. 2, 2017 (Cardarella Dep. Ex. 15)); Ex. M at 168:20-169:13; Ex. K at 134:18-21, and filing motions to withdraw from certain cases or for writs of prohibition preventing judges from continuing to appoint MSPD attorneys to additional cases. Ex. BB.; Ex. NN (Petition for Writ of Prohibition and Suggestions in Support, *State ex rel. Petsch v. Hon. Patrick W. Campbell*, (Mo. Ct. App. Oct. 25, 2017) (Petsch Dep. Ex. 7)); Ex. BB; Ex. E at 104:19-105:4; Ex. A at 109:3-110:25, 123:20-124:11; Ex. HH (Draft Motion to Withdraw Due to Excessive Caseload (Crowell Dep. Ex. 54)).

136. Indeed, the MSPD administration provided templates and model motions for public defenders to use in the event that they needed to refuse cases going forward or seek

withdrawal from any current cases. Ex. OO (Draft Suggestions in Support of Writ of Prohibition and/or Mandamus); Ex. K at 125:1-126:4.

137. On October 11, 2017, Area 35 District Defender Leslie Hazel and Defendant Michael Barrett, in his capacity as MSPD Director, filed a Petition for Writ of Prohibition in the Missouri Court of Appeals to prevent the further appointment of MSPD attorneys in the 35th Judicial Circuit.

a. The Relators noted that District Defender Hazel had informed the circuit court on September 28, 2017, that "'[i]n light of the recent OCDC recommendation that a public defender's license be suspended due to his alleged failure to comply with the Rules of Professional Conduct,' and after consulting with the individual attorneys in her office regarding workload, case type, experience level and other work requirements, 'every attorney in the Area 35 Public Defender's Office, including myself, is currently unable to accept additional cases while also providing ethical, effective and competent representation to our existing defendants'" Hazel Pet. for Writ of Prohibition ¶ 7.

b. The Relators further noted that Ms. Hazel had made clear to the circuit court that continuing to accept appointments in light of the current workload crisis would force public defenders to violate, or risk violating, the Rules of Professional Conduct, including Rules 4-1.1 (competence), 4-1.3 (diligence), 4-1.4 (communication), and 4-1.7 (conflict of interest), as well as the Sixth Amendment right to effective assistance of counsel. *Id.* at ¶ 10.

c. The circuit court was unmoved and appointed the public defender's office to additional cases. *Id.* at ¶ 15.

d. Following the appointments, Defendant Barrett wrote a letter to the court further objecting to the appointments, also citing the relevant Rules of Professional Conduct, and informed the court that the MSPD intended to file a writ to prohibit the appointments. *Id.* at ¶ 16.

e. The petition was ultimately denied by both the Missouri Court of Appeals and the Missouri Supreme Court. Ex. UU (Denial, *State ex rel. Hazel and Barrett v. Hon. Robert Mayer*, No. SC96736 (Mo. Oct. 17, 2017) and Order, *State ex rel. Hazel and Barrett v. Hon. Robert Mayer*, No. SD35176 (Mo. Ct. App. Oct. 13, 2017)).

138. But perhaps most disturbing was the decision made by numerous District Defenders to begin placing indigent defendants on waiting lists.

139. District Defenders across the state communicated with the criminal court judges in their districts to inform them of the implications of the *Hinkebein* decision and the MSPD's intention to begin refusing cases and establishing waiting lists for indigent defendants whose cases have been assigned to MSPD attorneys—all in a desperate effort to comply with both the criminal courts' orders appointing them to represent new defendants *and* the Missouri Supreme Court's finding that attorneys are ethically required to refuse representation if they do not have the capacity to provide an adequate defense. Ex. C at 81:8-82:3, 85:14-86:7; Ex. PP; Ex. B; Ex. M at 181:4-183:12; 183:13-17, 184:4-9; Ex. J at 69:24-70:1; Ex. K at 126:5-8; Ex. N at 44:20-45:23, 66:9-24; Ex. I at 90:6-15; Ex. A at 105:1-108:24.

140. The waiting lists in the various districts statewide include hundreds, if not thousands, of individuals, Ex. C at 86:8-23; Ex. E at 79:7-11; Ex. J at 77:9-15; Ex. K at 127:9-15; Ex. N at 45:9-10, many of whom have been charged with serious felonies and will remain in pretrial detention, without access to counsel, until an MSPD attorney is available to provide

constitutionally sufficient representation. Ex. E at 81:22-82:17; Ex. J at 79:4-10; Ex. K at 127:19-128:6.

141. The waiting lists in some districts are still growing and will continue to do so as workloads continue to rise. Ex. C at 91:7-11; Ex. E at 127:21-128:10.

142. Moreover, because their criminal cases are proceeding notwithstanding the fact that they have been placed on a waiting list, some indigent defendants have been required to appear before the court without counsel. Ex. C at 92:23-93:7.

143. District defenders also noted that continuing to add cases to their already overwhelming workloads would constitute an inherent conflict of interest since any significant time or resources a public defender spends on one case further limits that defender's ability to devote the necessary time and resources to other cases. Ex. K at 55:1-4; Ex. E at 91:12-18, 120:4-121:1; Ex. PP at 1; Ex. M at 177:1-15; Ex. N at 44:5-9. This is particularly true given the "triage" nature of MSPD representation. Ex. J at 83:16-85:12.

144. In response to the complaints from district defenders, a number of courts urged the MSPD to simply comply with Mo. Rev. Stat. § 600.063 if they believed that an attorney's individual workload was too high. Ex. E at 101:22-102:9, 102:20-103:7; Ex. M at 232:7-13. Sec. 600.063 states, in relevant part:

> Upon approval by the director or the commission, any district defender may file a motion to request a conference to discuss caseload issues *involving any individual public defender or defenders, but not the entire office*, with the presiding judge of any circuit court served by the district office. The motion shall state the reasons why the individual public defender or public defenders will be unable to provide effective assistance of counsel due to caseload concerns.

Mo. Rev. Stat. § 600.063 (emphasis added).

145. As the language of the statute suggests, § 600.063 is not designed to address systemic deficiencies in the delivery of indigent defense services. A number of district defenders nonetheless have filed motions seeking a meeting with the relevant judges, pursuant to § 600.063, but noted that the workload problem in their office goes well beyond that of any one attorney. Ex. RR (Motion Requesting Conference to Discuss Caseload Issues, *In re Area 16 Public Defender Office*, No. 1716-MC13258 (Mo. Cir. Ct., Nov. 1, 2017) (Petsch Dep. Ex.. 8)); Ex. E at 101:22-102:9, 102:20-103:7, 103:11-104:4; Ex. M at 232:7-13, 233:18-235:24.

146. Because § 600.063 was crafted specifically to address workload complaints by individual attorneys, however, the courts, by and large, have refused to engage with the district defenders with respect to the alleged systemic problem. Ex. K at 137:2-138:14; Ex. J at 75:16-77:6; Ex. E at 101:22-102:16.

147. Despite the objections articulated by district defenders through their informal communications with the court, as well as through formal legal filings, and notwithstanding their acknowledgment that a workload problem exists, at least with respect to particular attorneys, Ex. E at 101:22-102:16, criminal court judges around the state continue to appoint MSPD attorneys—including the district defenders themselves—to additional cases. Ex. SS (Email from Christopher Piatt, Assistant Public Defender, to Michael Barrett, Missouri Public Defender, Nov. 20, 2017); Ex. E at 118:7-120:3; Ex. A at 82:25-83:11.

148. This has made it even more difficult for district defenders to supervise their less experienced attorneys and further exacerbates the workload problem for all involved. Ex. J at 64:12-20.

149. One judge suggested that MSPD attorneys continue to take cases, but string their clients along by taking many continuances. Ex. A at 126:14-127:1.

150. Another judge recommended that MSPD attorneys no longer wait to receive complete discovery before pleading clients and that a "pro se docket" of felony charges be implemented. Ex. TT (Finding and Order, *In re Area 25 Public Defender Office,* No. 17PH-CV02226 (Mo. Cir. Ct., Jan. 11, 2018)).

151. Indeed, in light of the courts' insistence that she continue to represent indigent defendants under the current circumstances, District Defender Ruth Petsch took the extraordinary step of self-reporting to the Office of Chief Disciplinary Counsel, noting that she was in violation of not only the ethical rules governing representation of defendants, but also the rules governing her responsibilities as an attorney supervisor. Ex. K at 139:3-140:16.

152. District Defender Justin Carver also chose to self-report since he continues to receive appointments (over his objection) despite his admission that he is "definitely not providing competent representation" to all 213 of the defendants he currently represents. Ex. A at 165:4-17.

153. According to a number of district defenders, courts are not appointing members of the private bar in any significant number in an effort to help alleviate the workload problem, and there are few lawyers in the rural parts of Missouri with the capacity to take on pro bono appointments. Ex. A at 83:12-84:19, 113:4-114:24; Ex. E at 84:12-24, 99:6-9, 99:17-20, 105:9-106:2.

154. Particularly following the fallout from the *Hinkebein* decision, district defenders from across the state have acknowledged that, under the circumstances, the public defenders in

their offices—including themselves—are unable to provide constitutionally sufficient representation to their clients. Ex. A at 189:15-190:11; Ex. K at 113:2-15.

III. SUMMARY JUDGMENT STANDARD

This Court should grant summary judgment to Plaintiffs because, viewing the uncontroverted evidence in the light most favorable to Defendants, there is no genuine issue of material fact and Plaintiffs are entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a); *see also Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986); *Grey v. City of Oak Grove*, 396 F.3d 1031, 1034 (8th Cir. 2005).

IV. ARGUMENT

The uncontroverted facts amassed from documents, depositions, and expert analysis demonstrate, as MSPD's own director has admitted, that Defendants are continually violating Plaintiffs' right to counsel. Ex. G at 98:19-99:2. Plaintiffs' uncontroverted evidence show a violation of their right to counsel in at least five different ways, any one of which would be sufficient to entitle Plaintiffs to summary judgment on their constitutional claims:

First, the evidence shows that substantial structural limitations ensure that even the most competent attorney could not provide adequate representation and that the State's cases are not subjected to adversarial testing; as this Court noted in denying State Defendants'[9] motion to dismiss, courts around the country have held that such a showing is sufficient to prove a Sixth Amendment violation on a systemwide basis. § IV.A; Dkt. 69, at 36.

Second, Defendants cannot and do not dispute that MSPD attorneys operate under an actual and perpetual conflict of interest, pitting each client's interest in constitutionally adequate

[9] Plaintiffs will refer to Governor Greitens and the State of Missouri as "State Defendants" and to MSPD Director Michael Barrett and the MSPD Commissioners as "MSPD Defendants."

representation against other defendants', such that an hour spent on one case is an hour further from effective representation on another—a Sixth Amendment violation no matter the consequences for the outcome of a defendant's case. § IV.B.

Third, per the uncontroverted facts in this case, MSPD attorneys perform their duties at a standard well below prevailing professional norms. § IV.C.

Fourth, Plaintiffs are entitled to injunctive relief on their claims to prevent the high risk of a conviction or a plea deal that might have been staved off or mitigated by constitutionally competent counsel. § IV.D.

And finally, the uncontroverted evidence shows that indigent defendants around the State are routinely being denied the prompt appointment of counsel, going unrepresented during crucial periods of their case, and, in some cases, never receiving counsel at all—actual deprivations of the right to counsel that cannot be remedied without lowering workloads at MSPD. § IV.E[10]

Any one of these theories, standing alone, would entitle Plaintiffs to relief. That relief must be prospective and systemwide. § IV.F. This Court has rejected State Defendants' assertions in prior filings that any relief under the Sixth Amendment must come from the framework set out in *Strickland v. Washington*, 466 U.S. 668 (1984), and therefore is not available on a classwide basis or before conviction. Dkt. 69, at 34-36. As this Court explained, "In fact, it is 'well settled' that the Sixth Amendment right to counsel is broader than the question of whether a court must retrospectively set aside a judgment due to ineffective

[10] MSPD's representation of juveniles deprives them of their right to counsel for the same reason that its representation of adults is constitutionally deficient. *In re Gault*, 387 U.S. 1, 36 (1967) ("no material difference" in constitutional requirements for representation of adults and juveniles).

assistance of counsel." *Id.* at 34 (quoting *State ex rel. Mo. Pub. Def. Comm'n v. Waters*, 370 S.W. 3d 592, 607 (Mo. 2012)). The right is "affirmative and prospective," and "*Strickland* is inapplicable when systemic deficiencies in the provision of public defense are at issue." *Id.* at 34 (quoting *Waters*, 370 S.W.3d, at 607, and *Tucker v. State*, 394 P.3d 54, 62 (Idaho 2017)).

Plaintiffs also seek summary judgment as to their claims under the Due Process Clause of the Federal Constitution; Article I, sections 10 and 18(a) of the Missouri Constitution; Mo. Rev. Stat. §§ 600.042, 600.048, 211.061, 211.211; and Mo. R. Juv. P. 126.01.[11] As explained in § IV.G, Plaintiffs are entitled to summary judgment on these claims for the same reasons they are entitled to summary judgment on their Sixth Amendment claim.

A. THE UNCONTROVERTED EVIDENCE DEMONSTRATES THAT MISSOURI'S PUBLIC DEFENDERS ARE SO HAMSTRUNG BY THEIR WORKLOADS THAT THEY ARE UNABLE TO MEANINGFULLY SERVE AS AN ADVERSARY TO THE STATE, CONSTRUCTIVELY DEPRIVING PLAINTIFFS OF COUNSEL.

The Sixth Amendment treats a lawyer so hamstrung by circumstances as to be unable to meaningfully advocate as no lawyer at all. Accordingly, criminal defendants "constructively" denied counsel, like defendants literally denied counsel, need not make any showing of "prejudice" to prove a Sixth Amendment claim. Courts from New York to Florida to Washington have recognized such constructive denials on a system-wide basis. The uncontroverted facts about MSPD attorneys—their sporadic communication with defendants, the frequency with which they must rely on the State's version of events, the pressure they feel to plead out as many defendants as quickly as possible, and the enormous workloads at the root of all those deficiencies—establish that defendants assigned to MSPD, including Plaintiffs and the

[11] Plaintiffs previously consented to the Court's dismissal of their claims under Mo. Rev. Stat. §§ 600.048, 600.042, 211.211, and 211.061 and under Mo. R. Juv. P. 126.01 against Governor Greitens. Dkt. 69, at 47.

putative class they represent, are constructively denied counsel as a result of MSPD's massive workloads.

The United States Supreme Court has long recognized that formal appointment alone does not mean that an accused is receiving the right to counsel. Even where counsel in name accompanies a defendant through the criminal process, a defendant may be "constructively" denied the right to counsel. For instance, in *Powell v. Alabama*, 287 U.S. 45, 58 (1932), a lawyer assigned the morning of trial was not considered to be counsel within the meaning of the Sixth Amendment. In *Avery v. Alabama*, 308 U.S. 444, 446 (1940), an attorney denied the opportunity "to confer, to consult with the accused and to prepare his defense" was "a sham." And in *United States v. Cronic*, 466 U.S. 648, 654 (1984), the Supreme Court listed circumstances that would amount to constructive denial of counsel. As relevant here, the Supreme Court offered as examples cases in which "counsel entirely fails to subject the prosecution's case to meaningful adversarial testing" and where "although counsel is available to assist the accused during trial, the likelihood that any lawyer, even a fully competent one, could provide effective assistance" is miniscule. *Id.* at 659-60.

Crucially, a claim of constructive denial of counsel is conceptually distinct from a *Strickland* claim of ineffective assistance of counsel. The former alleges *no* representation—a lawyer in name only—while the latter alleges specific errors in the course of representation. *See Roe v. Flores-Ortega*, 528 U.S. 470, 483 (2000); *Penson v. Ohio*, 488 U.S. 75, 88 (1988). Where counsel is constructively absent—as when counsel is actually absent—no showing of prejudice is required. *See Cronic*, 466 U.S. at 659 n. 25 ("The Court has uniformly found constitutional error without any showing of prejudice when counsel was either totally absent, or prevented from assisting the accused during a critical stage of the proceeding."). There is therefore no reason

that a completed prosecution is necessary for a defendant to make out a constructive denial of counsel claim—the claim requires no showing of prejudice, so there can be no argument that it must be raised post-conviction.

Courts around the country have acknowledged that, upon a proper evidentiary showing, indigent defendants are entitled to relief for system-wide claims of constructive denial of counsel. *See, e.g.*, *Tucker v. Idaho*, No. 43922, 2017 Opinion No. 38, 394 P.3d 54 (Idaho Apr. 28, 2017); *Kuren v. Luzerne County*, 146 A.3d 715 (Pa. 2016); *Wilbur v. City of Mount Vernon*, 989 F. Supp. 2d 1122 (W.D. Wash. 2013); *Hurrell-Harring v. State*, 930 N.E.2d 217, 222 (N.Y. 2010); *Luckey v. Harris*, 860 F.2d 1012, 1018 (11th Cir. 1988). Although these cases vary in their particulars, each identified two general conditions for a finding of constructive denial of counsel: first, "on a system-wide basis, the traditional markers of representation" are absent or significantly compromised; and second, "substantial structural limitations" cause that absence or limitation. *Tucker v. Idaho* Amicus Brief by the United States, at 25, available at https://www.justice.gov/opa/file/850831/download (synthesizing existing case law).

The undisputed facts of this case make clear that Plaintiffs are being constructively denied their right to counsel. As in *Powell*, a defendant's MSPD attorney may not have "any opportunity to acquaint himself with the facts or law of the case"—though MSPD attorneys are not assigned cases on the morning of trial, they admit to going to trial with little to no preparation and, in the vast majority of cases, to advising defendants to plead guilty without having done any meaningful investigation or significant legal research. *Powell*, 287 U.S. at 59. As contemplated by *Avery*, MSPD attorneys are denied the opportunity to "confer, to consult with the accused and to prepare his defense"—communication between MSPD attorneys and their defendants is late, limited, and infrequent. *Avery*, 308 U.S., at 446.

Indeed, Plaintiffs have demonstrated that the situation in Missouri is analogous to two of the examples of constructive deprivation of counsel given in *Cronic*. First, MSPD attorneys routinely "entirely fail[] to subject the prosecution's case to meaningful adversarial testing," as Plaintiffs' experts concluded, without dispute; MSPD attorneys must rely on police reports to at best shape and at worst substitute for their own research and investigation. *Cronic*, 466 U.S., at 659-60. MSPD attorneys routinely plead defendants guilty without having conducted any witness interviews, engaged in any legal research, or even reviewed the discovery in the case. *Supra*, ¶¶ 64-87. And second, extraordinarily high workloads make it exceedingly unlikely that "any lawyer, even a fully competent one, could provide effective assistance" to her clients; Plaintiffs' experts testified as much, and district defenders—MSPD's most experienced attorneys and the "fully competent" attorneys contemplated by *Cronic*—testified without dispute that they were exceedingly unlikely to be able to provide effective assistance of counsel as a result of their enormous workloads. *Supra*, ¶¶ 44-47.

Missouri's uncontrovertibly dysfunctional indigent defense system also resembles the systems identified by other courts around the country as amounting to a constructive denial of counsel. As one expert put it, a judge in one case where relief was granted for the constructive denial of counsel "could have been describing" MSPD's misdemeanor practice when he wrote that "[t]here is almost no evidence that [the public defenders] conducted investigations in any of their thousands of cases, nor is there any suggestion that they did legal analysis regarding the elements of the crime charged or possible defenses or that they discussed such issues with their defendants" and that "[i]n general, counsel presumed that the police officers had done their jobs correctly and negotiated a plea bargain based on that assumption." Ex. H at ¶ 97 (quoting *Wilbur v. City of Mount Vernon*, 989 F. Supp. 2d 1122, 1124 (W.D. Wash. 2013)).

The United States Department of Justice has endorsed prospective relief on the basis of a constructive denial of counsel in several amicus briefs and has identified two indicia necessary to make out such a claim: an absence of traditional markers of representation and substantial structural limitations. *See Tucker v. Idaho*, Amicus Brief by the United States, at 25. Both are hallmarks of MSPD's representation. As to the first, MSPD attorneys are rarely able to communicate with their clients; their conversations are sporadic, non-substantive, brief, and often less-than-confidential. *Supra*, ¶¶ 56-63; *see Kuren*, 146 A.3d, at 730 (identifying "timely and confidential communication with defendant" as a traditional marker of representation); *Wilbur*, 989 F. Supp. 2d, at 1124 (noting "[a]lmost complete absence of opportunities for the accused to confer with counsel"); *Hurrell-Harring*, 930 N.E.2d, at 224 (constructive denial of counsel where counsel was uncommunicative). Attorneys for indigent defendants interview witnesses in only a fraction of their cases, interview all witnesses identified by a defendant or a police report in still fewer, and identify new witnesses in fewer still. *Supra*, ¶¶ 64-73; *Kuren*, 146 A.3d, at 744 ("appropriate investigation" is hallmark of representation); *Wilbur*, 989 F. Supp. 2d, at 1124 ("no evidence of investigation"); *Hurrell-Harring*, 930 N.E. 2d, at 224 (counsel makes "virtually no efforts on behalf of nominal defendants"). There is little evidence of legal analysis and "substantive hearings and trials are rare." *Wilbur*, 989 F. Supp. 2d, at 1124; *supra*, ¶¶ 79-95. And Missouri's indigent defense system encourages quick pleas, made without full investigation or counseling. *Supra*, ¶¶ 79-87; *Wilbur*, 98 F. Supp. 2d, at 1124 (system "amount[s] to little more than a 'meet and plead' system).

As to the second indicator identified by the Department of Justice, MSPD has been laboring under "substantial structural limitations" for decades. Report after report, from outside entities, respected accounting firms, professional associations, and MSPD itself, has chronicled

MSPD's lack of resources. *Supra*, ¶¶ 11-43. Workloads exceed national recommendations by two- and threefold. *Id*. MSPD attorneys, both current and former, noted that resource constraints were the single biggest determinant of how they approached cases. *Supra*, ¶¶ 55-118. And given the ratio of indigent defendants to public defenders, there simply aren't enough hours in the day for MSPD attorneys to subject the accusations against their clients to meaningful adversarial testing. *Supra*, ¶¶ 44-47.

In short, there is no dispute that the conditions of MSPD's representation indicate a complete breakdown of the adversarial system and are analogous to those identified by other courts as indicia of a constructive denial of counsel.

B. THERE IS NO DISPUTE THAT MSPD ATTORNEYS LABOR UNDER AN ACTUAL AND PERPETUAL CONFLICT OF INTEREST, CONSTANTLY TRIAGING CASES AND TAKING TIME FROM ONE DEFENDANT TO REPRESENT ANOTHER.

Given the ongoing scarcity of time and resources at MSPD attorneys' disposal, providing constitutionally adequate representation to one defendant of necessity requires foregoing constitutionally adequate representation to others. Such a conflict of interest violates the Sixth Amendment whether or not there is any showing of prejudice. *See Holloway v. Arkansas*, 435 U.S. 475, 484 (1978) (Sixth Amendment violation whether conflict had any impact on outcome of case).

The Sixth Amendment guarantee of the assistance of counsel is a guarantee of "untrammeled and unimpaired" loyalty; representation by an attorney "struggl[ing] to serve two masters" amounts to a denial of counsel for purposes of the Sixth Amendment. *Glasser v. United States*, 315 U.S. 60, 70, 75 (1942). In other words, an attorney forced to choose between the interests of two clients—codefendants with conflicting defenses, for instance, or a current and a former client—is no attorney at all as far as the Constitution is concerned.

Such a conflict of interest is created by constitutionally intolerable workloads. Where an attorney is unable to provide constitutionally adequate representation to all her clients, her clients' interest are in opposition: doing the constitutional minimum for one defendant necessarily takes time that could be spent providing the constitutional minimum to another. *Public Defender, Eleventh Judicial Circuit of Fla. v. State*, 115 So. 3d 261, 267 (Fla. 2013); s*ee also People v. Roberts*, 321 P.3d 581, 589 (Colo. App. 2013) (finding defense counsel's workload was sufficiently excessive to "allow the trial court to determine that a potential conflict of interest existed"); *State ex rel. Missouri Public Defender Comm'n v. Waters*, 370 S.W. 3d 592, 609 (Mo. 2012) (accepting too many appointments is a violation of ethical rules and the Sixth Amendment); *In re Edward S.*, 92 Cal. Rptr. 3d 725, 746-47 (Cal. Ct. App. 2009) ("[A] conflict of interest is inevitably created when a public defender is compelled by his or her excessive caseload to choose between the rights of the various indigent defendants he or she is representing."); *United States ex rel. Green v. Washington*, 917 F. Supp. 1238, 1275 (N.D. Il. 1996) ("[C]onflicts of interest are necessarily created as a surfeit of clients compete for the scarce resources of available attorney time and attention."); Missouri Supreme Court Rule 4-1.7(a)(2) (conflict of interest where "there is a significant risk that the representation of one or more defendants will be materially limited by the lawyer's responsibilities to another defendant [or] a former defendant").

The undisputed facts show that MSPD attorneys operate under just such constraints, routinely pitting the constitutional demands of each defendant against several others. *Supra*, ¶¶ 48-54. As the uncontested expert testimony in this case indicates, the triage required by MSPD's workloads creates a potential and actual conflict of interest. *Id.* Although MSPD offices around the State juggle those constraints in different ways—some neglect all their defendants except the

ones going to trial, others prioritize their less serious felony cases over their more serious cases, and still others overload the managing district defenders so that other attorneys can adequately attend to their cases—all offices must triage across defendants and cases, picking and choosing which defendants receive something approaching constitutionally adequate representation. *Id.*

Where, as here, a conflict of interest is raised before trial and conviction, no showing of prejudice is necessary to make out a Sixth Amendment violation. *Holloway*, 435 U.S. at487. Once a conflict of interest is established, prejudice is presumed, and courts need not undertake "nice calculations as to the amount of prejudice arising from its denial." *Glasser*, 315 U.S. at 76. Establishing prejudice would, after all, be impossible: In a conflict of interest case, "the evil … is in what the advocate finds himself compelled to *refrain* from doing." *Holloway*, 435 U.S., at 490. While "it may be possible in some cases to identify from the record the prejudice resulting from an attorney's failure to undertake certain trial tasks," to "judge intelligently the impact of a conflict on the attorney's [total] representation of a client," including such matters as potential plea negotiations, "would be virtually impossible." *Id.*, at 490-491. Because every member of Plaintiffs' putative class , by definition, has yet to have their cases resolved, proof of MSPD attorneys' conflicts of interest is enough to prove that Plaintiffs' Sixth Amendment rights are being violated.

Even if Plaintiffs had not raised their claims prior to the resolution of their cases—which they have—the Sixth Amendment still would not require a showing of prejudice. Rather, a defendant alleging a Sixth Amendment violation need only show that a conflict of interest "actually affected the adequacy of his representation"—it needn't have rendered representation constitutionally deficient under the *Strickland* standard, and it needn't affect the outcome of the

case. *Cuyler v. Sullivan*, 446 U.S. 335, 349-50 (1980).[12] Here, defender after defender testified without dispute that the conflict of interest affects every aspect of their representation. They give short shrift to some cases because they are trying to investigate others, advise defendants to accept plea deals because they know they will have to go to trial on other defendants' cases, prepare for some defendants' hearings at the expense of visiting other defendants, and make decisions about which witnesses to interview in one case on the basis of how much time they must allocate to their other cases. *Supra*, ¶¶ 48-54. Plaintiffs' conflicting interests, in other words, "actually affect[] the adequacy of [their] representation."

There is no dispute, in sum, that members of Plaintiffs' class have not received their Sixth Amendment due because their attorneys' loyalties are hopelessly divided.

C. PLAINTIFFS HAVE PRODUCED UNCONTROVERTED EVIDENCE OF SPECIFIC DEFICITS IN REPRESENTATION THAT RENDER MSPD ATTORNEYS' REPRESENTATION UNREASONABLE UNDER PREVAILING PROFESSIONAL NORMS.

In order to *overturn* a conviction under the Sixth Amendment, a defendant must show, first, deficient performance—that "counsel's representation fell below an objective standard of reasonableness . . . under prevailing professional norms"—and, second, prejudice—that the "deficient performance prejudiced the defense." *Strickland*, 466 U.S. at 688. But *before* a defendant is convicted, she must only show the former (deficient performance) to make out a Sixth

[12] Although the Supreme Court and other courts have found that this rule does not apply to every possible conflict of interest, courts agree that *Cuyler* supplies the appropriate standard at least where the conflict arises between the interest of two co-defendants rather than in part from the self-interest of an attorney. *See Beets v. Scott*, 65 F.3d 1258, 1265 (5th Cir. 1995). So, for instance, *Cuyler* would not govern a case where defense counsel advised defendant on the conduct giving rise to the charge, *see Covey v. United States*, 377 F.3d 903, 907 (8th Cir. 2004), because the potential conflict of interest is between the defendant's interest and the defense attorney's self-interest, but it would apply to cases of multiple or serial representation, *see Caban v. United States*, 281 F.3d 778, 782 (8th Cir. 2002), because the conflict of interest in such cases is between two defendants. Here, MSPD attorneys face a conflict of interest between multiple defendants—time spent on one defendant's case is time not spent on another's—and *Cuyler* governs.

Amendment violation, which Plaintiffs have done along every possible measure of prevailing professional norms.

Strickland's "prejudice" prong is designed to measure whether counsel's deficient performance would "warrant *setting aside* the judgment of a criminal proceeding" and to identify principles that "should apply in federal collateral proceedings as they do on direct appeal or in motions for a new trial"—in post-conviction contexts, in other words. *Strickland*, 466 U.S. at 691, 697 (emphasis added). The considerations limiting relief where a defendant seeks to overturn a conviction—concerns for finality and judicial economy—simply do not apply when prospective relief is sought. *Luckey*, 860 F.2d at 1017.

In that sense, the Sixth Amendment resembles every other trial-related constitutional right. A court may require proof that the deprivation of the right had an impact on the outcome of a trial in order to grant the remedy of vacating a conviction, but vindicating the constitutional right *before* trial simply requires proof that the constitutional minimum is not being met. Thus, a defendant seeking to *overturn* her conviction on the ground that her constitutional right to a speedy trial was violated typically must demonstrate prejudice, *see Barker v. Wingo*, 407 U.S. 514, 530 (1972), while a defendant suing prospectively to obtain a speedier trial need not, *see Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 488 (1973). A defendant may file a § 1983 suit to demand a judicial determination of probable cause prior to detention even if that illegal detention would not void a subsequent conviction. *See Gerstein v. Pugh*, 420 U.S. 103, 119 (1975). And a defendant filing a pre-trial motion to suppress evidence or confront a witness need not show that inclusion of the evidence or a lack of cross-examination would result in conviction, even though such a showing would be required after conviction. *Compare United States v. Green*, 835 F.3d 844, 853 (8th Cir. 2016) *and United States v. Love*, 329 F.3d 981, 985-86 (8th Cir. 2003) *with*

United States v. Swift, 720 F. Supp. 2d 1048, 1058-60 (E.D. Ark. 2010) *and United States v. Gonzalez-Marichal*, 317 F. Supp. 2d 1200, 1203 (S.D. Cal. 2004). Since other rights relating to criminal trials can be enforced prospectively, without a showing of prejudice, the Sixth Amendment right to the effective assistance of counsel—"by far the most pervasive" of "all the rights that an accused person has," *Cronic*, 466 U.S. at 654—can as well. *See Luckey*, 860 F.2d at 1017.

To require a showing of prejudice for every Sixth Amendment claim would also mean that defendants whose evidence of guilt is overwhelming would have no entitlement to the effective assistance of counsel. After all, such defendants will never be able to show "a reasonable probability that if counsel had performed adequately, the result would have been different"—overwhelming evidence of guilt may guarantee a conviction even if counsel performs spectacularly. But "*Gideon*'s guarantee to the assistance of counsel does not turn upon a defendant's guilt or innocence, and neither can the availability of a remedy for its denial." *Hurrell-Harring*, 930 N.E.2d at 227. No court could have assigned David Washington subpar counsel because he had confessed to the murders at issue in *Strickland*, and no one argued that Clarence Gideon's Sixth Amendment right was meaningless because he had surely broken into that pool hall. Although a showing of prejudice may be necessary to overturn a conviction after the fact, a Sixth Amendment violation is complete the moment a defendant is deprived of constitutionally adequate counsel, whether or not that deprivation affects the outcome of her case.

The second prong of the *Strickland* test, then, simply does not apply to a Sixth Amendment claim raised *before trial*. Instead, the only question in a prospective deprivation-of-counsel claim is whether Plaintiffs have demonstrated the first prong—that the representation provided by MSPD

attorneys is unreasonable in light of prevailing professional norms. Here, Plaintiffs have shown that, from the moment they are appointed to a case, MSPD attorneys are unable to operate within the "range of competence demanded of attorneys in criminal cases." *Strickland*, 466 U.S. at 687.

As a starting point, Plaintiffs presented undisputed evidence from The Missouri Project study showing that MSPD attorneys spend far fewer hours per case—and far fewer hours per case task—than prevailing professional norms dictate. Using a process known as the "Delphi process," the study surveyed both private practitioners and public defenders in Missouri to pinpoint the amount of time defense counsel would need to spend on a particular case or task to comport with prevailing professional norms. Ex. R at 18.

The results are stark: On virtually every case type and task, MSPD attorneys spend a fraction of the time that actual practitioners estimated would be necessary to litigate a case according to the prevailing professional norms in Missouri. According to actual Missouri practitioners, who reached a consensus estimate using a forecasting method that Defendants have not challenged and that has been endorsed by the only experts who have provided opinions in this case, MSPD attorneys put in between 10 and 25 percent of the time they would need to prepare a C/D felony (1.7 hours versus 10.3), an A/B felony (8.7 hours versus 47.6 hours), a misdemeanor (2.3 hours versus 11.7 hours), or a juvenile offense (4.6 hours versus 19.5 hours) according to prevailing professional norms. *Id.* at 24. MSPD attorneys spend less than one-tenth the time that prevailing professional norms would dictate on investigating C/D felonies and misdemeanors. And prevailing professional norms require spending more than double the amount of time MSPD attorneys spend on crucial tasks in certain types of cases, such as communicating with defendants in murder or homicide cases (14.8 versus 34.6), investigating sex felony cases (25.6 versus 63.8 hours), or preparing juvenile cases for trial (2.1 versus 7.3). *Id.*

As further detailed *supra*, ¶¶ 11-43, according to the only measurement of prevailing professional norms supplied in this case—what actual practicing professionals tell us is the prevailing norm—MSPD attorneys spend a fraction of the time on each case type and task as that case requires. Short of being between two and ten times as efficient as the average attorney, MSPD attorneys cannot possibly live up to the prevailing professional norms on their cases, in light of the vast gaps between the time spent by MSPD attorneys working up a case and the time it would take to work up a case according to prevailing professional norms.

Moreover, three experts in the prevailing professional norms for public defenders have opined, without dispute, that MSPD's handling of cases is below objectively reasonable standards. As further detailed *supra*, ¶¶ 44-47, Plaintiffs' experts have opined that MSPD attorneys' workloads "make it impossible to provide constitutionally effective assistance of counsel"; allow "competent representation to some of their existing defendants by neglecting other defendants"; and foreclose necessary investigations, sufficient preparation for hearings and trials, and sufficient legal research. Defendants have challenged neither the qualifications of Plaintiffs' experts nor their conclusions about prevailing professional norms and the gap between those prevailing professional norms and the assistance of counsel provided in Missouri. The State Defendants have also failed to identify any experts of their own or any alternative to the data and conclusions produced by The Missouri Project.

Finally, "although they are 'only guides,' and not 'inexorable commands,'" codified standards of professional practice "may be valuable measures of the prevailing professional norms of effective representation." *Padilla v. Kentucky*, 559 U.S. 356 (2010); *see also Frye*, 132 S. Ct, at 1408. As Plaintiffs' experts concluded, MSPD attorneys are unable to comply with their own guidelines, with the ABA standards, and with the Model and Missouri Rules of Professional

Conduct. *Supra*, ¶¶ 44-47. And this failure to comply is not as a result of strategic decisionmaking, but rather because of time and workload constraints. *See id*.

For instance, the ABA Criminal Justice Standard 4-4.1 (cited in *Strickland* itself) holds that the prevailing professional norms include a "duty to investigate in all cases," a duty that is "not terminated by factors such as the apparent force of the prosecution's evidence" or "a defendant's expressed desire to plead guilty." As documented *supra*, ¶¶ 64-73, MSPD attorneys routinely stop investigation once a defendant expresses a willingness to plead. *Cf.* Criminal Justice Standards 4-6.2(d) (Am. Bar Ass'n 1980) ("CJS Standards") (attorney should not advise guilty plea without adequate investigation). MSPD attorneys are routinely unable to interview key witnesses, even witnesses identified by their client. Courts are in agreement on an "almost absolute duty to investigate known (and readily available) sources of exculpatory evidence that would be consistent with the defendant's explanation of his innocence." LaFave, Criminal Procedure § 11.10(c) & nn.205-09 (collecting cases); *White v. Roper*, 416 F.3d 728 (8th Cir. 2005) (deficient performance where lawyer did not interview or call key witness and conducted only "superficial" investigation); Ex. P at Situation 3 (a lawyer too busy to interview an alibi witness "should not have accepted the case"); CJS Standard 4-4.3(c). They do not use expert witnesses, investigate sentencing alternatives, or take depositions nearly often enough. CJS Standards 4-4.1(d), 4-3.2; Ex. P at Situation 4, 7.

Various professional standards also require sufficient consultation with defendants, which includes "adequate and available space for confidential defendant communication," keeping the defendant "informed and advised" about representation, building "a relationship of trust and confidence immediately upon retention," and consulting with defendants before important hearings. CJS Standards 4-3.1(a), (e), 4-3.9; Ex. P at Situation 1, 9 ("too busy" is not a sufficient

justification for a prolonged failure to communicate). Plaintiffs' uncontroverted evidence shows that MSPD attorneys routinely lapse in living up to this professional norm, often communicating with defendants in unsecured spaces, failing to update defendants for months at a time, meeting with the defendant for the first time far too late to build any rapport, and lacking the time to talk with defendants before important hearings. *Supra*, ⁋⁋ 56-63. As part of their general failure to communicate with defendants the way prevailing professional norms dictate, MSPD attorneys are not able to counsel their clients about plea bargains, a process which requires an explanation of the strengths and weaknesses of the defendant's case and a discussion of legal options and collateral consequences. Ex. P at Situation 12; CJS Standards 4-3.3(c), 4-5.4, 4-5.5, 4-6.2(d). Glaringly, MSPD attorneys often neglect to advise their clients of the immigration consequences of a potential plea agreement, thereby directly violating the Supreme Court's ruling in *Padilla*, 559 U.S. at 357, which held that "[t]he weight of prevailing professional norms supports the view that counsel must advise her client regarding the risk of deportation."

MSPD attorneys' pretrial practice fails to live up to the prevailing professional norms in myriad other ways. MSPD attorneys have a duty to request and review discovery as soon as practicable. *See* CJS Standard 4-3.7 (emphasizing "promptness" in reviewing pretrial discovery); *Kimmelman v. Morrison*, 477 U.S. 365 (1986) (not reviewing discovery until after deadline for filing motions to suppress was constitutionally ineffective performance). Yet MSPD attorneys often wait to review discovery until shortly before trial. *Supra*, ⁋⁋ 74-78. MSPD attorneys routinely fail to perform basic legal research or present affirmative defenses even where there is clear and supportive law. When they do file motions, they are often generic, boilerplate motions, which are "almost always (if not always)" inconsistent with satisfying the duty of competence. Ex. P at Situation 8; *see also* Ex. P at Situation 6; CJS Standards 4-1.5, 4-

8.1 (post-trial motions); *United States v. Coutentos*, 651 F.3d 809 (8th Cir. 2011); *United States v. Jones*, 403 F.3d 604 (8th Cir. 2005).

MSPD attorneys' preparation for and handling of court appearances and trials similarly is well below prevailing professional norms. The prevailing professional norms for court appearances and trials require having the same attorney handle all (or most) court appearances, adequately preparing for all court proceedings, and being prepared to make legal arguments on everything from jury issues to post-trial motions. *See, e.g.*, CJS Standards 4-4.6(a)-(b), 4-7.3, 4-8.1. A failure to object to key testimony, to impermissible judicial conduct, or to flawed jury instructions, or a failure to adequately prepare to examine or cross-examine a witness (for instance, by failing to amass impeaching evidence) all are unreasonable. *See Gabaree v. Steele*, 792 F.3d 991(8th Cir. 2015); *Paulson v. Newton Corr. Facility, Warden*, 773 F.3d 901 (8th Cir. 2014); *United States v. Orr*, 636 F.3d 944 (8th Cir. 2011); *Green v. Norris*, 394 F.3d 1027 (8th Cir. 2005); *Reagan v. Norris*, 365 F.3d 616 (8th Cir. 2004). In other words, in a situation where someone has done "almost nothing" until a few days before a felony trial, it is "hard to imagine a situation" where the lawyer could deliver adequate assistance of counsel. Ex. P Situation 10. Yet MSPD attorneys of necessity go to trial without more than a few days of preparation. *Supra*, ¶¶ 88-95.

Similarly, professional standards lay out guidelines for sentencing proceedings—namely, that attorneys should investigate sentencing alternatives and prepare for sentencing early in their representation of a defendant. CJS Standards 4-3.2, 4-8.3(a). A failure to do the factual investigation and research necessary to advocate for a sentencing alternative is a failure to live up to the prevailing professional norms. Ex. P Situation 11. Yet MSPD attorneys are unable to investigate sentencing alternatives, don't have time to do *any* work "early in their

representation," let alone begin preparing for sentencing, and often cannot present more than boilerplate arguments at sentencing. *Supra*, ¶¶ 88-95.

To take one final example, excessive delay alone can violate professional norms. The Rules of Professional Conduct require attorneys to act "with reasonable promptness in representing a defendant," and an attorney who seeks multiple continuances simply because she has no time to work on a case, or a lawyer who forfeits the opportunity to make certain arguments on her client's behalf because she waited too long to investigate is by definition acting unreasonably. Rules of Professional Conduct 1.3(c); Ex. P at Situation 5; *Marcrum v. Luebbers*, 509 F.3d 489 (8th Cir. 2007). MSPD attorneys rely on continuances to manage their massive workloads, meaning they place their clients' cases at the mercy of a judge's discretion; when a continuance is denied, the consequences for the defendant are dire. *Supra*, ¶¶ 64-73, 88-95. Such delays also require defendants to wait to receive any assistance from MSPD attorneys, even while they sit in jail. In the meantime, key evidence is lost, memories fade, and attorneys lose valuable time to make legal arguments. *Supra* ¶¶ 64-73.

Finally, as noted above, the Missouri Supreme Court recently upheld the finding of its Disciplinary Hearing Panel, which had determined that the conduct of at least one MSPD attorney, Karl Hinkebein, had fallen below prevailing professional norms and suspended his bar license as a result. *Supra*, ¶¶ 124-54. As documented *supra*, *id.*, MSPD attorneys from around the State worry about suffering the same fate as Mr. Hinkebein—and think their representation is just as deficient as his was. In addition to the uncontroverted evidence adduced from the only expert witnesses in this case, the Missouri Project study, and the facts surrounding representation, the *Hinkebein* decision makes clear that the state's highest court believes that neglecting to visit clients, filing boilerplate motions, and missing critical deadlines constitute

inadequate representation—missteps that many of MSPD's attorneys believe that they, too, are making.

Plaintiffs have thus shown deficient performance—an "abdication—not an exercise—of [] professional judgment"—the entirety of the showing they must make to prove a Sixth Amendment violation prior to conviction. *See McQueen v. Swenson*, 498 F.2d 207, 216 (8th Cir. 1974).

D. BECAUSE PLAINTIFFS SEEK ONLY INJUNCTIVE RELIEF, THEY NEED ONLY SHOW A RISK OF PREJUDICE, WHICH THE UNCONTROVERTED EVIDENCE EASILY ESTABLISHES.

The purpose of prospective relief is, of course, to "prevent future violations." *United States v. W.T. Grant Co.*, 345 U.S. 629, 633 (1953); *Forest Park II v. Hadley*, 336 F.3d 724, 731 (8th Cir. 2003) (courts must consider only the *threat* of irreparable harm—not actual harm—to issue a permanent injunction). That's why a prisoner "need not await a tragic event" to receive an injunction against unsafe prison conditions, *see Helling v. McKinney*, 509 U.S. 25, 33 (1993); an injunction may issue preventing law enforcement officers from illegally stopping plaintiffs in the future, whether or not the plaintiffs have yet been stopped, *see de Jesus Ortega Melendres v. Arpaio*, 695 F.3d 990, 998-99 (9th Cir. 2012); and a court can prevent a stranger from entering private property even if no trespass has yet occurred, *see Roe v. Operation Rescue*, 919 F.2d 857, 864-65 (3d Cir. 1990).

Because an injunction "can be utilized even without a showing of past wrongs"—to prevent an unlawful act that is "about to be committed"—Plaintiffs need only show that that their Sixth Amendment rights will be violated imminently, not that those rights have already been violated. *See United States v. Laerdal Mfg. Corp.*, 73 F.3d 852, 855 (9th Cir. 1995). "Because the petitioners are seeking redress for the ongoing violation of their fundamental constitutional right that affects the manner in which the criminal case against them will be prosecuted and defended, it is enough

that they have shown a violation of that right that may likely result in irremediable harm if not corrected." *See Lavallee v. Justices in Hampden Superior Court*, 812 N.E.2d 895, 905 (Mass. 2004).

Thus, even assuming Plaintiffs' Sixth Amendment rights have not yet been violated,[13] Plaintiffs are *still* entitled to summary judgment. Rather than waiting for their Sixth Amendment rights to be violated, they need only show a *likely* violation of their constitutional rights—that is, that there is a risk that MSPD attorneys' deficient performance will prejudice their cases.

The uncontroverted evidence demonstrates that Plaintiffs face an imminent risk of prejudice in the form of a worse plea offer, a foregone trial, or a botched trial that results in a longer sentence, among other possibilities. For the 98 percent of MSPD defendants who plead guilty, prejudice amounts to "a reasonable probability that the end result of the criminal process would have been more favorable by reason of a plea to a lesser charge or a sentence of less prison time." *Frye*, 132 S. Ct at 1409. And for the small fraction of MSPD defendants who go to trial or face a sentencing court, prejudice means "reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Strickland*, 466 U.S. at 694.

It is virtually self-evident that Plaintiffs represented by attorneys handling double or triple the recommended workload will see worse outcomes, and Plaintiffs have also amassed uncontroverted evidence to that effect. *Supra*, ¶¶ 119-23. MSPD attorneys, overloaded by cases, aren't in a position to adequately negotiate pleas for their defendants. They don't have the investigative or legal research bandwidth to identify defenses that might put pressure on the

[13] But note that, first, as explained *supra*, § III.C, prejudice is not necessary to make out a Sixth Amendment violation, and, second, Plaintiffs have already suffered the requisite prejudice thanks to the excessive pretrial detention and delay attributable to MSPD's excessive workloads.

prosecution. Because defendants must wait so long to get any attention from their MSPD attorneys, they have less leverage in plea negotiations than a defendant represented by a constitutionally adequate attorney, as they are often more desperate to leave custody by the time an offer is on the table. And given that MSPD attorneys prepare for trials and sentencing proceedings in a fraction of the time recommended by experts in the field, their clients risk being convicted of a more serious offense or facing a longer sentence. *Supra*, ¶¶ 88-95.

Because Plaintiffs seek merely prospective relief, the risk of a longer sentence or more serious charge as a result of MSPD attorneys' deficient performance is sufficient to entitle Plaintiffs to summary judgment on their Sixth Amendment claim.

E. DEFENDANTS DO NOT DISPUTE THAT SOME PLAINTIFFS ARE DENIED COUNSEL ALTOGETHER AT CRITICAL STAGES AND THAT THESE DEPRIVATIONS CANNOT BE RECTIFIED WITHOUT REDUCTIONS IN WORKLOADS.

The current state of affairs in Missouri also violates the Sixth Amendment because MSPD attorneys are entirely absent for crucial portions of defendants' representation. First, thanks to the MSPD attorneys' general overload and the recent institution of "waitlists" to receive counsel, defendants around the State languish in jail for weeks or months after they are arraigned but before any attorney begins work on their case, in blatant contravention of the guarantees of the Sixth Amendment. Second, MSPD attorneys are not present during critical stages of the pretrial process. And third, in at least one district, an entire category of defendants are processed through the system with no attorney at all, at any point.

There are currently thousands of indigent defendants across Missouri who have been charged with a crime, held in custody and brought before the court, all without access to an attorney. Though MSPD's recent "waitlists" have formalized this deprivation of counsel, systemwide delays in beginning work on a defendant's case mean that many more defendants are delayed in receiving counsel than appear on waitlists. *See Lavallee*, 812 N.E.2d at 903

(designating a case to a public defender office not sufficient under Sixth Amendment; office must actually assign an individual attorney to work on case).

When cases lie dormant for months before public defenders actually begin work on them—whether defendants are formally on a waitlist or not—it becomes virtually impossible for a defendant to receive a fair trial. A significant number of defendants have pled guilty without ever receiving legal representation, preferring to start serving a sentence than to wait weeks or months for someone to take even a perfunctory look at their case. *Supra* ¶ 98(c). Other defendants have been forced to appear in court, where they could waive important rights or make damning admissions, without counsel present to advise them. *Supra*, ¶¶ 96-100. Moreover, witnesses move, memories are lost, and physical evidence deteriorates before a public defender turns attention to a case. *Lavallee*, 812 N.E.2d, at 903-04 ("The effects of the passage of time on memory or the preservation of physical evidence are so familiar that the importance of prompt pretrial preparation cannot be overstated.").

These waitlists violate the Sixth Amendment in at least four ways, any one of which would suffice to entitle Plaintiffs to relief. First, because some defendants do not receive the assistance of counsel at all for weeks or months after being arraigned, they remain in custody for longer than they otherwise would, and a Sixth Amendment violation has occurred even without any further harm to their case. *Gonzalez v. Comm'r of Corr.*, 68 A.3d 624, 637, 655 n.9 (Conn. 2013).

Second, the time immediately after arraignment constitutes a "critical stage." For Sixth Amendment purposes, a "critical stage" is any portion of a criminal proceeding where the "substantial rights of the criminal accused may be affected." *Mempa v. Rhay*, 389 U.S. 128, 134 (1967). Plea bargaining, post-arraignment lineups, psychiatric evaluations, pretrial hearings at

which bail is set, voir dire, sentencing and, of course, the trial itself are all such "critical stages." *See Missouri v. Frye*, 132 S. Ct. 1399, 1406 (2012); *Estelle v. Smith*, 451 U.S. 454, 470-71 (1981); *Gardner v. Florida*, 430 U.S. 349, 358 (1977); *White v. Luebbers*, 307 F.3d 722, 729 (8th Cir. 2002); *Smith v. Lockhart*, 923 F.2d 1314, 1319-20 (8th Cir. 1991). Where counsel has been denied to a defendant at a critical stage, no showing of prejudice is necessary. *Malcolm v. Houston*, 518 F.3d 624, 627 (8th Cir. 2008). Here, the time period immediately following arraignment is such a critical stage, because the substantial rights of the accused are affected—if investigation is not done during this time, crucial evidence and testimony can be lost, hamstringing the defendant throughout the trial process. *See Lavallee*, 812 N.E.2d at 904. The deprivation of counsel during this time violates the Sixth Amendment, with or without a showing of prejudice.

Third, during the time they are unrepresented, defendants are routinely forced to attend court proceedings without counsel; because they may waive constitutional rights or make incriminating statements at such proceedings, these proceedings qualify as critical stages, and having no counsel at such proceedings violates the Sixth Amendment. *Supra*, ¶¶ 96-100; *see Sigler v. Bird*, 354 F.2d 694, 697 (8th Cir. 1966) (any proceeding at which defendant may make statement that will impair defense at a later date is a critical stage).

And fourth, the Sixth Amendment requires appointment within a "reasonable time after attachment to allow for adequate representation at any critical stage before trial, as well as the trial itself." *Rothgery v. Gillespie Cty., Tex.*, 554 U.S. 191, 212 (2008).[14] Waiting weeks to receive an attorney—or months for an attorney to even begin work on a case—does not amount

[14] A claim that counsel has not been appointed within a reasonable time does not require a showing of prejudice. *See, e.g., Farrow v. Lipetzky*, 637 F. App'x 986, 988 (9th Cir. 2016), *cert denied*, 137 S. Ct. 82 (2016).

to such a "reasonable time." *See Lavallee*, 812 N.E.2d at 234-37 (accepting petitioners' argument that "the designation of a case to" public defender is not the same as "actual assignment of an individual attorney to represent each petitioner" for purposes of the Constitution).

Moreover, as a result of the waitlists and other delays in receiving the assistance of counsel, some indigent defendants are forced to negotiate and accept guilty pleas without the benefit of counsel. *Supra*, ¶ 98(c). The plea bargaining process is a critical stage of the criminal proceeding—"plea bargains have become so central to the administration of the criminal justice system that defense counsel have responsibilities in the plea bargain process, responsibilities that must be met to render the adequate assistance of counsel that the Sixth Amendment requires in the criminal process at critical stages." *Frye*, 132 S. Ct. at 1407; *McClain v. Swenson*, 435 F.2d 327, 332 (8th Cir 1970). Defendants forced to negotiate pleas pro se, as a result either of being placed on waitlists or the standard delays that result from MSPD's ongoing crush of cases, must face a critical stage in the criminal proceeding without the guiding hand of counsel, a violation of the Sixth Amendment even absent prejudice.

Missouri's indigent defendants face other critical stages without counsel as well. For instance, MSPD's clients sometimes must undergo psychiatric examinations without any representation—a critical stage of the criminal process, since competency is often determined at these evaluations. *Supra*, ¶¶ 96-100; *Estelle*, 451 U.S. at 470-71; *Raymond v. Weber*, 552 F.3d 680, 684 (8th Cir. 2009). Some defendants are not accompanied by counsel when they attend the interview used to recommend a sentence in their case, another stage that can prove outcome-determinative. *Supra*, ¶¶ 96-100. MSPD defendants rarely have representation at initial appearances, during which bail is set and there is an opportunity to dismiss charges, yet another

critical stage. *Supra*, ¶¶ 96-100; *Lockhart*, 923 F.2d at 1319-20. And many clients are deprived of the ability to communicate confidentially with their attorneys. *Supra*, ¶¶ 56-63; *Geders v. United States*, 425 U.S. 80, 92 (1976).

Finally, some categories of defendants do not receive counsel at all, at any point, despite meeting Missouri's indigency requirements and despite facing actual prison time. For instance, in Cole County, an informal administrative order dictates that defendants facing criminal nonsupport cases—who could face four years in custody (seven years if they have a prior felony conviction)—will not receive counsel. Ex. A at 51:10-55:19. Other defendants are told that if they want to exercise their right to trial, they must either hire a private lawyer or represent themselves. Ex. A at 59:13-60:22. If the Sixth Amendment is to have any meaning, this Court must find that these defendants' rights have been violated and construct relief that will remedy this ongoing deprivation.

Because Defendants have disputed none of the evidence showing that members of the Plaintiffs' putative class are not appointed counsel within a reasonable time after arraignment, are deprived of counsel at critical stages before trial, and, in at least one category of cases in one district, go without counsel altogether, Plaintiffs are entitled to summary judgment on their Sixth Amendment claim.

F. THE SIXTH AMENDMENT MUST ALLOW FOR PROSPECTIVE RELIEF.

Every court to consider the question—including the Missouri Supreme Court—has held that the Sixth Amendment can be violated—and relief accorded—even before a defendant is convicted. *See, e.g.*, *Luckey v. Harris*, 860 F.2d 1012 (11th Cir. 1988); *Wilbur v. City of Mount Vernon*, 989 F. Supp. 2d 1122 (W.D. Wash. 2013); *Tucker v. Idaho*, 394 P.3d 54 (Idaho 2017); *Simmons v. State Pub. Def.*, 791 N.W.2d 69 (Iowa 2010); *State v. Peart*, 621 So. 2d 780 (La.

1993); *Lavallee v. Justices In Hampden Superior Court*, 812 N.E. 2d 895 (Mass. 2004); *State v. Young*, 172 P.3d 138 (N.M. 2007); *Hurrell-Harring v. State*, 930 N.E.2d 217 (N.Y. 2010); *New York Lawyers' Ass'n v. State*, 763 N.Y.S.2d 397 (N.Y. Sup. Ct. 2003); *Kuren v. Luzerne County*, 146 A.3d 715 (Pa. 2016); *State ex rel. Missouri Public Defender Comm'n v. Waters*, 370 S.W. 3d 592, 607 (Mo. 2012) ("The constitutional right to effective counsel … is a prospective right….").[15]

Yet State Defendants' motion to dismiss claimed that the Sixth Amendment right to counsel could only be raised after a defendant was convicted. On the State's theory of the Sixth Amendment, courts must sit idly by and watch constitutionally ineffective counsel hamstring defendants' cases. Only *after* a conviction or guilty plea can a court intervene, and then only to overturn a conviction, and only on a showing of prejudice. Per the State, the Sixth Amendment's *only* role is to provide a mechanism for overturning convictions. But the Sixth Amendment guarantees each defendant "the Assistance of Counsel for his defence," not "the right to overturn a conviction upon a showing of prejudice." It is thus unsurprising that "[n]o case suggests that a court analyze whether the Sixth Amendment right to counsel has been preserved at all critical stages only by retrospectively determining that the lack of such counsel deprived a defendant of a fair trial"; "[t]o the contrary," as this Court has recognized, it is "well settled that the Sixth Amendment right to counsel is broader than the question of whether a court must retrospectively

[15] Prospective challenges to state indigent defense systems cannot be litigated in federal court because of the doctrine of *Younger* abstention, unless, as in this case, defendants remove the case from state court, thereby waiving *Younger* abstention. *See Luckey v. Miller*, 976 F.2d 673, 677-79 (11th Cir. 1992). And systemwide, prospective challenges to the federal indigent defense system are rare, as federal public defender organizations tend to be better funded and enjoy lower caseloads than their state counterparts. As a result, very few federal courts have weighed in on the question; the few that have confirm a prospective Sixth Amendment right.

set aside a judgment due to ineffective assistance of counsel." Dkt. 69, at 34 (quoting *Waters*, 370 S.W.3d at 607 (internal quotations omitted)).

The quotations cited by the State Defendants in their motion to dismiss for the proposition that the Sixth Amendment cannot be violated until after conviction—that Plaintiffs must prove *Strickland*'s "prejudice" prong—are inapposite dicta. In *Lockhart v. Fretwell*, 506 U.S. 364, 369 n.2 (1993), a criminal defense attorney failed to make an objection that, under then-governing Arkansas caselaw, would have prevented a conviction. Later, the Arkansas case in question was overturned. The Supreme Court held that the defendant's conviction should not be overturned *even though* the defendant satisfied *Strickland*'s prejudice prong: It was undisputed in that case that the outcome of a trial would have been different had counsel made the objection in question; the question in that case was whether such proof that the defendant was convicted because of counsel's errors was *sufficient* to prove a Sixth Amendment violation, not whether such proof was *necessary*. *Id.* at 368, 369-70. *Fretwell* thus demonstrates that the sine qua non of a Sixth Amendment violation is not whether a petitioner was convicted as a result of an attorney's incompetence, but rather what effect an attorney's conduct had on "the reliability of the trial process," conviction or no. *Id.* at 369.

The State Defendants also quoted *United States v. Gonzalez-Lopez*, 548 U.S. 140 (2006), a case in which the Supreme Court held the defendant need not establish prejudice to make out the kind of Sixth Amendment violation at issue in that case. In that case, the Court stated that "the violation of [the right to effective assistance of counsel] *generally* requires a defendant to establish prejudice." *Id.* at 146 (emphasis added). But this is not the "general[]" case, in which a defendant is seeking to overturn a conviction. And *Gonzalez-Lopez* says nothing about the rare case of systemwide, prospective relief.

Finally, *United States v. Lee*, 715 F.3d 215 (8th Cir. 2013), dealt with a post-conviction *Strickland* challenge. Defense counsel struck jurors on account of their race; despite the difficulty of making such a showing, the Eighth Circuit held the defendant must show—as in virtually every case where a defendant is seeking to overturn an already imposed conviction—a reasonable probability that the outcome of the trial may have been different. Here, of course, Plaintiffs are not seeking to overturn any already imposed convictions.

Dicta in a case where a showing of prejudice was insufficient (*Fretwell*), in a case finding a Sixth Amendment violation with no showing of prejudice (*Gonzalez-Lopez*), and in a case straightforwardly applying *Strickland* post-conviction (*Lee*) have no bearing on whether Plaintiffs can raise a Sixth Amendment claim prospectively or whether Plaintiffs have raised claims for the actual or constructive denial of counsel. As explained *supra*, § IV.A-E, there are many Sixth Amendment violations that do not require a showing of prejudice, and Plaintiffs have demonstrated a Sixth Amendment violation in at least five different ways.

G. PLAINTIFFS ARE ENTITLED TO SUMMARY JUDGMENT ON THEIR CLAIMS UNDER THE DUE PROCESS CLAUSE, THE MISSOURI CONSTITUTION, AND VARIOUS MISSOURI STATUTES.

In addition to their Sixth Amendment claim, the uncontroverted evidence amassed by Plaintiffs proves that Defendants have violated others of Plaintiffs' constitutional and statutory rights.

Due Process Clause: The Due Process Clause provides additional protection of the right to counsel for both juveniles and adults. As to juveniles: *In re Gault*, 387 U.S. 1 (1967), held that juveniles accused of crimes in delinquency proceedings must be afforded the same rights as adults, including the right to counsel. Juvenile delinquency cases require, at minimum, the same amount of time and resources to defend as do criminal cases. In fact, representing children accused of crimes often demands *more* attention than a normal criminal case due to the

defendant's age, relative lack of mental capacity, and the specialized nature of juvenile proceedings. *See* National Juvenile Defender Center, *National Juvenile Defense Standards*, 9 (2013). The Supreme Court in *In Re Gault* held that defense counsel's representation in a juvenile delinquency case should be the same as it would be in a traditional criminal case. *See In re Gault*, 387 U.S. at 36 (finding that "there is no material difference" between representation for adult and juvenile proceedings). Juveniles require their attorney's assistance, and by extension, their attorney's time and resources, "at every step in the proceedings" to examine the facts and develop potential defenses on behalf of the juvenile. *Id.* (quoting *Powell v. Alabama*, 287 U.S. 45, 69 (1932)). The defendant's age does not change the nature of the attorney-client relationship. *See* Model Rules of Prof'l Conduct R. 1.14(a) (Am. Bar Ass'n 2017) (even if the defendant's mental and decision-making capacity is diminished, "as far as reasonably possible, [attorneys shall] maintain a *normal* client-lawyer relationship with the client" (emphasis added)). A normal relationship should be maintained for "children as young as five or six years of age, and certainly those of ten or twelve." Model Rules of Prof'l Conduct R. 1.14(a) cmt. 1. Moreover, due to the "diminished capacity" of juvenile defendants and unique nature of the proceedings, delinquency representation often requires more specialized training and knowledge than criminal cases, particularly among attorneys who do not represent children on a regular basis. Among other things, attorneys must understand adolescent development to effectively interview and communicate complex legal principles to juveniles in an age-appropriate manner. *See National Juvenile Defense Standards*, 22 (2013). Additionally, defense counsel must specialize in, or at least be familiar with, juvenile case terminology, procedures, statutes, and relevant case law. *Id.* (citing Model Rules of Prof'l Conduct R. 2.1 (2010)).

Finally, it is worth noting that, to the extent that juveniles are represented by public defenders in transfer proceedings, where the court determines whether the juvenile should be tried as an adult, the stakes of such proceedings are exceedingly high and therefore require extra attention. *See Kent v. United States*, 383 U.S. 541, 553-54 (1966) (holding that a juvenile transfer proceeding is a "critically important" action and that the proceedings must satisfy basic due process and fairness requirements). As a result, representing children in transfer proceedings can be particularly demanding on an attorney's time. The undisputed facts regarding the violations of adult Plaintiffs' Sixth Amendment rights therefore also establish a violation of the Due Process rights of juvenile Plaintiffs, because the representation of juveniles requires, if anything, more time and care.

In addition, the Due Process Clause provides residual protection to adult criminal defendants in criminal justice and related proceedings. *See Powell v. Alabama*, 287 U.S. 45 (1932); *Gagnon v. Scarpelli*, 411 U.S. 799 (1973); *Evitts v. Lucey*, 469 U.S. 387 (1985). For the same reasons that MSPD's representation of indigent defendants violates the Sixth Amendment, it also violates the Due Process Clause.

Missouri Constitution*:* The Missouri Constitution provides "[t]hat in criminal prosecutions the accused shall have the right to appear and defend, in person and by counsel." MO. Const. art. I, §18(a). Missouri's courts have interpreted § 18(a) to require the same things as the Sixth Amendment of the United State Constitution, namely appropriate investigation, preparation and presentation of each defendant's case. *See State ex rel. Missouri Pub. Def. Comm'n v. Pratte*, 298 S.W.3d 870, 874 & n.4 (Mo. 2009). Providing representation of counsel to indigent defendants is "a duty which constitutionally is the burden of the State." *State v. Green*, 470 S.W.2d 571, 573 (Mo. 1971) (internal citation omitted). For the same reasons

Plaintiffs are entitled to summary judgment on their Sixth Amendment claim, therefore, they are also entitled to summary judgment on their claim under Article I, section 18(a) of the Missouri Constitution.

The Missouri Constitution also provides, nearly identically to the Fourteenth Amendment to the United States Constitution, "[t]hat no person shall be deprived of life, liberty or property without due process of law." MO. Const. art. I, §10. Under section 10, the State of Missouri is required to ensure that all indigent defendants in criminal or juvenile delinquency proceedings receive meaningful and effective legal representation. Courts analyze constitutionality under section 10 of the Missouri Constitution the same way they analyze federal Fourteenth Amendment claims. *State v. Nathan*, 522 S.W.3d 881, 882 (Mo. 2017). The same uncontroverted facts that make out Plaintiffs' federal Due Process Clause claim therefore establish Plaintiffs claim to relief under Article I, Section 10 of the Missouri Constitution.

Missouri Criminal Codes: Mo. Rev. Stat. §§ 600.042, 600.048: Mo. Rev. Stat. section 600.042 provides in relevant part, "[t]he director and defenders shall provide legal services to an eligible person . . . [f]or whom the federal constitution or the state constitution requires the appointment of counsel." Mo. Rev. Stat. § 600.042(4)(5). "A person who is charged or detained in any case listed in section 600.042 or who appears in court without counsel at any stage of a case, or any other person on behalf of such person, may request that legal representation be furnished to him or her by the state." Mo. Rev. Stat. § 600.048(2). "[T]he public defender system was a response to [the Missouri Supreme Court's] opinion in *State v. Green*, 470 S.W.2d 571 (Mo. 1971) that it was the duty of the State to provide legal services to an indigent accused of crime, so that § 600.042.3, taken in terms of that antecedent history and its own context, indicates that it is intended to require a public defender *in the guilt determination stages of*

prosecution." *State ex rel. O'Brien v. Ely*, 718 S.W.2d 177, 180 (Mo. Ct. App. 1986) (citing *State ex rel. Marshall v. Blauer*, 709 S.W.2d 111, 112 (Mo. 1986)).

The legislative intent behind the statutes is clear by their plain language; the statutes were meant to codify criminal defendants' constitutional right to effective assistance of counsel. *Stiers v. Dir. of Revenue*, 477 S.W.3d 611, 615 (Mo. 2016) ("When interpreting a statute, the primary goal is to give effect to legislative intent as reflected in the plain language of the statute.") (citation omitted). For the same reasons that Defendants' conduct has violated the Sixth Amendment of the United States Constitution, it has also violated the statutory codifications of the right to counsel under Mo. Rev. Stat. sections 600.042 and 600.048.

Missouri Criminal Codes and Juvenile Codes: Mo. Rev. Stat. §§ 211.061, 211.211; Mo. R. Juv. P. 126.01: Juveniles are entitled to appointed counsel if they cannot afford an attorney. *In re Gault*, 387 U.S. at 42. Missouri's criminal code and juvenile codes codify this right. Mo. Rev. Stat. section 211.061 states in relevant part that when a juvenile is subject to a detention hearing, "[n]otice of the date, time and place of a detention hearing, and of the right to counsel, shall be given to the juvenile and his or her custodian in person, by telephone, or by such other expeditious method as is available." Similarly, under Missouri law, juveniles have a statutory right to counsel in all delinquency proceedings. Mo. Rev. Stat. § 211.211. Section 211.211 also requires the appointment of counsel for the juvenile, if a request is made and the juvenile is indigent. Mo. Rev. Stat. § 211.211.2. *See also In re D.J.M.*, 259 S.W.3d 533, 536 (Mo. 2008) (trial court committed reversible error because it did not appoint counsel for juvenile without a full record supporting waiver of right to counsel). Mo. R. Juv. P. 126.01 requires that juveniles shall be advised, prior to any in-custody interrogation that "the juvenile has the right to an attorney, and if the juvenile is unable to afford an attorney, that one will be provided." Mo. R.

Juv. P. 126.01.2. For the reasons explained *supra*, § IV.A-E, juvenile members of the Plaintiff class are not receiving their constitutionally mandated right to counsel; for that reason, Mo. Rev. Stat. § 211.211 is violated. And because the requirement to advise juveniles of the right to counsel is rendered hollow by the reality that the right will not be honored in Missouri state courts, the uncontroverted evidence shows that Mo. Rev. Stat. §§ 211.061 and Mo. R. Juv. P. 126.01 have been violated as well.

IV. CONCLUSION

For the reasons discussed above, Plaintiffs are entitled to summary judgment on all their claims. This Court should grant Plaintiffs' motion for summary judgment, hold that the Defendants are violating Plaintiffs' constitutional right to counsel, and issue an order requiring that Defendants propose a plan within 30 days to ensure that all indigent criminal defendants in the State of Missouri are provided with constitutionally adequate legal representation.

RESPECTFULLY SUBMITTED this 15th day of February, 2018.

Dated: February 15, 2018

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CERTIFICATE OF SERVICE

I hereby certify that on February 15, 2018, I electronically filed the foregoing with the United States District Court for the Western District of Missouri and a copy was served electronically on all counsel of record through the court's CM/ECF filing system.

/s/Anthony E. Rothert

UNITED SATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
CENTRAL DIVISION

SHONDEL CHURCH, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Case No. 17-04057-CV-C-NKL
	)	
STATE OF MISSOURI, et al.,	)	
	)	
Defendants.	)	

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PLAINTIFFS' SUGGESTIONS IN SUPPORT OF THEIR
MOTION FOR SUMMARY JUDGMENT

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B	Missouri State Public Defender Cumulative Caseload Metrics
C	Videotaped Deposition of Rod Hackathorn Taken on Behalf of the Plaintiffs Dec. 20, 2017
D	Missouri Public Defender Commission, FY 2017 Annual Report
E	Videotaped Deposition of Matthew Crowell Taken on Behalf of the Plaintiffs Dec. 20, 2017
F	Video-Recorded Deposition of Kathleen L. Lear Taken on Behalf of Plaintiffs Oct. 6, 2017
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KK	Sarah Johnson Oct. 6, 2017 Deposition Ex 9, National Juvenile Defender Center, Missouri: Justice Rationed, Spring 2013
LL	Rod Hackathorn Dec. 20, 2017 Deposition Ex 53, Email from Rod Hackathorn, District Defender, to Hon. Thomas Mountjoy, Hon. David Jones & Hon. Calvin Holden, Oct 10, 2017
MM	Anthony Cardarella Dec. 12, 2017 Deposition Ex 15, Letter from Anthony Cardarella, District Defender, to Hon. Janet Sutton, Hon, James Van Amburg & Hon. Thomas Chapman
NN	Ruth Petsch Dec. 5, 2017 Deposition Ex 7, Petition for Writ of Prohibition and Suggestions in Support, Oct. 25, 2017
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Exhibit A

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
CENTRAL DIVISION

SHONDEL CHURCH, et al.,)
)
Plaintiffs,)
)
vs.) Case No.
) 17-04057-CV-C-NKL
)
STATE OF MISSOURI, et al.,)
)
Defendants.)

VIDEOTAPED DEPOSITION OF JUSTIN CARVER
TAKEN ON BEHALF OF THE PLAINTIFFS
DECEMBER 11th, 2017

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Reporter's Note: The original exhibits were attached to the original transcript.

IN THE UNITED STATES DISTRICT COURT
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)
Defendants.)

VIDEOTAPED DEPOSITION OF JUSTIN CARVER, produced, sworn, and examined on the 11th day of December, 2017, between the hours of nine o'clock in the morning and four o'clock in the afternoon of that date at the law offices of ALARIS LITIGATION SERVICES, 2511 Broadway Bluffs, Suite 201, Columbia, Missouri 65201, before LISA BALLALATAK, a Certified Court Reporter within and for the State of Missouri, in a certain cause now pending IN THE UNITED STATES DISTRICT COURT, WESTERN DISTRICT OF MISSOURI, CENTRAL DIVISION, wherein SHONDEL CHURCH, et al. are the Plaintiffs and STATE OF MISSOURI, et al. are the Defendants.

APPEARANCES

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Also present:
Mr. Chris Tobin, Videographer
The Court Reporter:
MS. LISA BALLALATAK, CCR

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(The deposition commenced at 8:59 a.m.)
VIDEOGRAPHER: We're on the record. Today's date is December 12th, 2017, and the time is 8:59 a.m. This is the video-recorded deposition of Justin Carver in the matter of Shondel Church, et al. v. State of Missouri, et al., Case No. 1704057-CV-C-NKL in the United States District Court for the Western District of Missouri, Central Division. This deposition is being held at Alaris Litigation Services at 2511 Broadway Bluffs Drive, Columbia, Missouri. The court reporter's name is Lisa Ballalatak. My name is Chris Tobin. I'm the legal videographer, and we are with Alaris Litigation Services.
Would the attorneys present please state their names for the record.
MR. SCHERZER: Aaron Scherzer for the plaintiffs.
MR. TARTAGLIO: Anthony Tartaglio, also for plaintiffs.
MR. RAMSEY: Steven Alan Ramsey for the State of Missouri and Governor Greitens.
MS. SHIPMA: Jacqueline Shipma for the MSPD defendants.
VIDEOGRAPHER: Would the court reporter

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please swear in the witness.
JUSTIN CARVER,
of lawful age, being produced, sworn, and examined on behalf of the Plaintiffs deposes and says:
EXAMINATION
BY MR. SCHERZER:
Q. Good morning, Mr. Carver.
A. Good morning.
Q. My name is Aaron Scherzer, and, as you know, I represent the plaintiffs in this case. How are you doing?
A. Fine. Thank you.
Q. Other than when we just met in the hallway, have we met previously?
A. Not to my knowledge.
Q. Okay. Have you ever been deposed before?
A. Yes.
Q. And how many times?
A. Just once.
Q. And what kind of case was that?
A. It was a civil case in the late 1990s in the city of Chicago. I was dating a gal who had been -- who had a major, like, jaw reconstructive surgery, was afterwards injured in a vehicle accident, all of which occurred before I knew her.

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My understanding is that the reason that I was sought to be deposed was I could testify to limitations that she might have had as a result of, you know, kind of the injuries in the accident.
Q. Got it. And you haven't been deposed in your role at the MSPD, though?
A. Correct.
Q. Have you testified in any other cases at trial?
A. I don't believe I've testified at trial. I've certainly testified in court a number of times.
Q. Got it. And we'll get to that later. I'm aware of one particular instance we'll certainly talk about later.
A. Okay.
Q. And have you taken depositions yourself?
A. Yes.
Q. Okay. About approximately how many?
A. No idea. More than I can count on my fingers and toes.
Q. Got it. So more than ten or 20?
A. Yes.
Q. Okay. So then you're very familiar with how this works. I'm going to ask you questions relevant to the case. You're required to answer

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truthfully and to the best of your ability. Remember, obviously, that you're here under oath. Does that all --
A. I understand.
Q. -- make sense? Okay.
A. Yes, sir.
Q. As you know, there's a court reporter here transcribing the deposition, so just for ease of the record, and, obviously, there's video as well, please wait until I finish the question, if you can, and -- before you answer, and if you have any questions about my questions, don't hesitate to make that clear. If you need to take a break, obviously, feel free to do so; I just ask that you try to answer the pending question before you do so.
A. Understand.
Q. Your attorney might object -- Ms. Shipma might object. Unless, of course, she instructs you not to answer, you should still go ahead and answer the question. Does that make sense?
A. Yes.
Q. Okay. And, of course, if you need a break at -- like I said, at any time, just let me know, and we can take one.
Okay. So how did you prepare for this

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deposition?
A. I met with Ms. Shipma, and I reviewed the data from my office, in terms of cases -- how many cases did we open, how many cases do we have open now.
Q. Okay. And when -- for how long did you meet with Ms. Shipma?
A. About two hours.
Q. Okay. And you said you reviewed data. What -- in what form were those --
A. Electronic.
Q. Electronic data. Okay. Did you review any other documents?
A. After I had received the notice of depositions and before I met with Ms. Shipma, I reviewed items that I had submitted to Ms. Shipma that I understand were disclosed to the parties as a part of the discovery process.
Q. Got it. Any items in particular that you recall that you reviewed?
A. There was an e-mail thread that was initially an e-mail that I sent to the court late December of 2016 with a couple of responses. There were -- there was a motion for caseload conference. There's a transcript in relationship to that. There

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was a motion to decline representation. There may have been something else. I can't remember. Those are the items that come to my mind.
Q. That's very helpful. And did those documents refresh your recollection about what's transpired?
A. Yes.
Q. And when you say "electronic data," just to return to that, can you just tell me more about that?
A. Sure. All of our case work is conducted in software called Lotus Notes. It's a case management database -- or system, and, you know, within that, say, client Joe Blow, certainly, he'll have all of the pleadings associated with this case, court dates, memos of the case, file action items to the investigator. So there's that -- specific case-related items with regard to specific clients, but then there are also views that I can access that will tell me how many cases does this lawyer have open now? How many cases did we open last year? How many cases did we close last year? There are -- you know, probably guesstimate, two dozen different views that I can access to slice down our case data more specifically. How many per venue, by case

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type.
Q. Got it. And does all of that data pertain to your district or is it statewide?
A. Purely my district.
Q. Okay.
A. There are -- there's kind of a wall setup so that I cannot access data for another district.
Q. Got it.
A. But I can access my district only.
Q. And your understanding is that each district defender has access to the data for his or her district?
A. Correct.
Q. Do other attorneys in your office have access to that data or just the district defender?
A. Everybody in my office has access to the same data.
Q. Got it. Okay.
A. Well -- if I can qualify that.
Q. Sure.
A. There are certain management views that I can see kind of over and above case data that employees would not be able to access, personnel records, things of that kind. But purely in terms of the case data, what I have access to is what my

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employees have access to.
Q. And --
A. Does that make sense?
Q. Yes.
A. Okay.
Q. And is it your understanding that that data, then, is transmitted to the central office from time to time or daily or ...
A. My understanding is that the central office has access to all of it at any given point in time.
Q. Okay.
A. Well, I say that -- some people within the central office have access to it at any given point in time. For example, my supervisor -- my direct supervisor is Ellen Blau. I understand that she is able to access the data from my office for the Columbia trial office for all of the other offices that she supervises. There may be people in our administrative office who don't have access to that information because they don't need it.
Q. Got it.
A. Does that make sense?
Q. Yes. Perfect. Thank you. In terms of the documents that you reviewed, did you bring any

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of those documents or any other documents with you here today?
A. No, sir.
Q. Okay. I want to turn -- I'll just do this slightly out of order, given the documents that we're discussing. I want to turn to what I'm going to mark as Plaintiff's Exhibit 17.
(Deposition Exhibit No. 17 was marked for identification.)
Q. (By Mr. Scherzer) I'll give you a chance to just glance at it. Obviously, not read the whole thing, since it's 60 pages.
A. Yes. I'm with you. Thank you.
Q. Okay. Do you recognize this document?
A. I do.
Q. And what is it?
A. This is the transcript of a -- sort of a part 1 of a case conference hearing that was held in Cole County in November 2017.
Q. Okay. And do you see the date on the middle of the first page?
A. I do. It says November 7.
Q. And the case name is State of Missouri v. Quentin Williams; is that right?
A. Yes, sir.

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Q. And do you see the judge on the top of the page?
A. Yes, sir. Judge Joyce.
Q. Okay. So I want to get much more into detail on this later on -- and, obviously, I haven't asked you background questions first, but I'm asking you about this now for the following reason. Can you turn to page 8- -- see the Bates page numbers on the bottom, page 82. It's Bates 4.
A. Yeah, I'm sorry. I was looking at the -- 82.
Q. Yes.
A. Yes.
Q. So you see there are a number of exhibits --
A. Yes?
Q. -- affidavits and caseload printouts.
A. Yes.
Q. Do you -- I'm asking you about this early on in the deposition on the chance that -- obviously, you don't have it with you. Would someone in your office be able to get this -- these documents before the end of the day, by chance, or -- if not, it's fine.
MS. SHIPMA: Can we go off the record for a second?
MR. SCHERZER: Sure.
VIDEOGRAPHER: The time is 9:11 a.m. We're off the record.
(Discussion off the record.)
VIDEOGRAPHER: The time is 9:13 a.m., and we're back on the record.
Q. (By Mr. Scherzer) Okay. Mr. Carver, by who are you employed?
A. The State of Missouri. Specifically, the Missouri State Public Defender System.
Q. And what's your current title?
A. District defender of Area 19.
Q. And how long have you been in that position?
A. Since the end of September 2014.
Q. Okay. And prior to that, did you serve with the MSPD in another capacity?
A. I did. I was the district defender in the Fulton office, which I think was Area 12, and I was the district defender there -- I started as an assistant public defender in Fulton in 2002 -- either in 2005 or 2006 -- I can't remember -- I was promoted to district defender, and so from that -- 2005 to 2006, up until 2014, I was the district

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defender in Fulton.
Q. Okay. And then in 2014, you switched and became district defender in Area 14?
A. Nineteen.
Q. Nineteen. Sorry.
A. Yes, sir.
Q. And why did you make that switch?
A. The entire time I had been working in Fulton, I lived in Jefferson City and just drove to Fulton, and, you know, the vacancy came open in Jefferson City, and I took the anecdote [sic] of, you know, I could drive five minutes to the office or I could drive 30 minutes to the office. Driving five minutes to the office sounds great. So -- and, you know, as a practical matter, all of the time I had been working in Fulton, if the kid got sick at school, all of that fell on my wife. So for the family dynamic perspective, it would be more helpful to have me in Jefferson City.
Q. Got it. And which counties are included in District 19?
A. Cole County, Miller County, and Moniteau County.
Q. Okay. And what does it mean to be a district defender?

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A. It means that I am the supervisor in that office and that I'm responsible for hiring, for doing in-house training, for, you know, any employee discipline issues. I deal with those in coordination with our human resource office and with general counsel. Invoices, budgets -- you know, there are administrative components to the thing. In addition to that, I'm a lawyer, and, you know, the reality of our caseload situation is, I have to carry a caseload, and so as part of that, I go to court and do my best to work on my cases.

Q. And you mentioned that you report to Ellen Blau; is that correct?

A. Correct.

Q. And what is her title? Do you know?

A. I believe she is -- her official title is the trial division director.

Q. Okay. And she's located in the central office?

A. She -- she supervises the entire state, and so commonly when I call her, she's in her car driving, so -- I know that from time to time, she does work out of the Columbia office. You know, primarily, I think that there's an administrative office in St. Louis -- or there's at least a desk

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that she utilizes in St. Louis, but she spends a lot of time on the road.

Q. And you mentioned some of this previously, but as the district defender, do you have discretionary authority over some things that your line attorneys don't have discretion over, in terms of day-to-day management of the office?

A. Are you talking about, like, you know, how things work within the office and stuff like that?

Q. Uh-huh. Yes.

A. Yes.

Q. Are you familiar with the standard litigation practices in your office?

A. What do you mean?

Q. Are you familiar with either -- with, say, policies and procedures that you've set up or team members in your office have set up for how your office operates and how the line attorneys operate?

A. We don't have, like, any sort of formal policies or procedures that are Area 19 specific.

Q. Okay.

A. You know, there are -- the agency has sort of standards and guidelines that all employees are sort of directed to follow. I have my own, you know, sort of supplementary or additional

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expectations for the lawyers that are not, like, reduced to writing in some sort of formal document. You know what I mean?

Q. Uh-huh. So you communicate those verbally with your line attorneys?

A. Right. Right. Yeah.

Q. Do you do that individually, or are there team meetings?

A. In a variety of formats. I mean, you know -- for example, last week we had an office meeting, and, you know, as a part of that, there's sort of administrative issues that were coming up in the context of Cole County, so I -- we talked about what those issues were, and I gave the lawyers several ways that they can handle the issue. But, ultimately, I didn't mandate that they handle it in any specific manner but gave them, you know, kind of some -- Hey, these are the different ways that you can deal with it. You know, deal with it one way or another, but don't just ignore it.

Q. Got it. Got it. Do you talk to most of the line attorneys in your office every day?

A. No. Part of that is -- you know, right now my caseload is in Miller County, and so I spend -- right now I'm spending a considerable

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amount of time outside of the office going to court in Miller County, going to the Miller County jail, and so there are lawyers who I may see once a week.

Q. Got it. How many days a week do you estimate you're spending in Miller County?

A. Hmm. That's hard to say. I'm going to say one or two, just for court. In addition, there are other things that take me down there, jail visits, things come up, I need to go, so ...

Q. So with court and the jail visits, do you think two or three days a week? Does that seem right?

A. Probably. But it -- you know, certainly, it's going to vary.

Q. It depends.

A. There may be a week where I don't go there at all, but then there may be other weeks where I may be there four times, so -- right. But that's -- two or three is probably a decent rough estimate.

Q. Okay. Does your -- you mentioned the Lotus Notes program for attorney workload.

A. Uh-huh.

Q. Does your office gather statistics about how many hours attorneys spend on various tasks, or did it at any point?

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A. It did. For a considerable period of time, every lawyer in the agency was required to log their time in five-minute increments. And over -- sort of in the time that I've been with the agency, there was a time where we started and we continued it, and then it stopped. And then we started it again, and it continued, and then it stopped. I can't -- I can't recall, you know, when we started, when we stopped; when we started, when we stopped.

Q. Okay. And do you have any knowledge of why you stopped this most recent time?

A. What I was told by Director Barrett was that we had been doing it long enough that we accumulated, you know, a substantial body of data, and if -- what he articulated was, he felt like we have all of the data we need. You know, right now additional data would not be beneficial, and logging the time just gives the lawyers one more thing to do, and, frankly, their time is short. Personally, I was finding it would take me 20 minutes a day to log all of my time, and when you're trying to squeeze every hour out of every day, you know, if you aggregate that, you know, 330 lawyers or whatever we have, you know, 300 working days of the year or whatever, that's a pretty good amount of

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productivity that's lost just typing in data that's really not -- that we're really not getting anything out of -- any additional benefit out of.

Q. Since you'd already logged it for such a long period --

A. Correct.

Q. Got it. And so, in other words, the -- your understanding of the rationale is that it was taking time away from cases and representing clients?

A. Correct.

Q. Okay. Okay. I'll move on away from the background section, just to note that any remaining questions that I ask, unless I indicate otherwise, are about your district and -- rather than the state as a whole. And by "your district," I mean, obviously, District 19, not the Fulton office.

A. Fair enough.

Q. All right.

A. Okay.

Q. So you mentioned that in addition to all of your responsibilities as district defender, you also have your own caseload; is that right?

A. Correct.

Q. And about how many cases a year do you,

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yourself, handle?

A. Off the top of my head, I couldn't tell you how many cases a year. I did look at my caseload yesterday, and I can tell you that as of yesterday, I had 213 open cases.

Q. Okay.

A. And that would include everything from -- I had seven misdemeanor cases that were open, all the way up to one murder case.

Q. Got it.

A. Predominantly, those are felony cases. About 150 are felonies.

Q. 150 felonies, and does that mean 63 misdemeanors, or is there some other category?

A. Probation violation cases. Some of the probation violation cases are probation violations cases on felony charges. There are some misdemeanor cases.

Q. Okay. But you don't have in your head an exact breakdown of the remaining 63 how many are probation violations, how many are misdemeanors?

A. I want to say about 30 to 35 of the 213 are probation violations.

Q. Okay.

A. As of yesterday, I had seven misdemeanor

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cases.

Q. All right.

A. So now I'm trying to do math in my head while we're talking.

Q. Right.

A. So I would say -- I said, you know, sort of initially as a ballpark, 150 would be felony cases. Trying to do the math, about 170, it sounds like, is a better estimate of how many open felonies I have right now.

Q. And is that 213 that you have open as of yesterday, is that atypical of what your caseload has been in the last, say, three months, or does that seem -- does your caseload seem about what it's been for the past three months?

A. A couple of months ago, about September or October, somewhere in there, it had spiked up to 300, and so it's actually been -- it's been a little bit higher, at least within this calendar year. This calendar year has been a complete mess for my office.

Q. And when you say it spiked to 300 cases, was that just for a one-month period or for longer?

A. Yeah, about a month -- about a month, give or take.

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Q. And what was the cause of that spike?
A. We've had an unusual amount of turnover in the Area 19 office in calendar year 2017. We lost -- thus far this year, we've lost five lawyers. In -- you know, we've been hiring replacements as we go. One of the replacement lawyers that I hired, he's Army Reserves. We had him, you know, kind of on staff for two months, and then he got mobilized. And so as of July, he went out on military duty, and we're not expecting him back until July 2018.
So -- and, frankly, even preceding January 2017, we had a lawyer go out on leave in September of 2016. So, I mean, effectively, we've been shorthanded at least one lawyer, sometimes two, since 2016, and so the turnover has substantially contributed to my caseload. The other thing that has contributed to my caseload is -- you know, we've sort of changed how we're doing things in Area 19 in an attempt to manage the caseload of the assistant public defenders. And, you know, you note kind of through the documents that you received in discovery that the -- about the only plan that we could cook up was to communicate the situation to the courts, and if they were going to order the public defenders to represent, what I told the

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judges is, Look, if we're telling you we can't take any more cases and you put us in it anyway, I'm going to assign it to myself and not continue to assign cases to an assistant public defender who has already got too many. And so it -- that has been an additional factor in my caseload sort of spiraling in 2017.
Q. Got it. And you said you had five attorneys leave in the past year. Do you mean in calendar year in 2017?
A. Correct. Yes, sir.
Q. And how many attorneys total -- line attorneys, not counting yourself, does the office have?
A. There's seven line attorneys not counting myself.
Q. So five of the seven left within the past year?
A. Correct.
Q. Okay. Is that -- what was the basis for that turnover?
A. A variety of reasons. The first two to leave in early 2017 both had babies, and Grandma and Grandpa lived in other parts of the state, and so they -- each of those lawyers transferred to public

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defender offices in other parts of the state for family reasons. The lawyer that left in June, I believe it was, retired. He had a good number of years of service in and was eligible to retire, and he did. The lawyers that left more recently in August or September, one went to work for the attorney general's office, another went into private practice. Both -- in spite of the caseload controls that we implemented in January, both remained concerned about their caseload and didn't feel like they were practicing law the way they wanted to, had other opportunities, and took them.
Q. Okay. And that -- do you talk to each of those attorneys -- did you talk to each of those attorneys before they left the office?
A. Yes.
Q. And is that the basis for your knowledge of why they left?
A. Yes.
Q. Okay. Are you concerned by this turnover?
A. Oh, absolutely. Yeah. Absolutely. And the turnover -- you know, the turnover has been a problem with the agency as long as I've been around. And, you know, there's turnover that's just going to happen, that you really can't avoid, but there's

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turnover that absolutely is avoidable. And, you know, the most common reasons lawyers cite in leaving is either pay or caseload or both. And, you know, the problem is, is that there's so many -- there's so many problems. You know, we -- typically, the lawyers that come to the public defender's office are coming with little legal experience, because, frankly, we pay bottom dollar. You know, I've never had a senior partner at a major law firm apply for a job as a public defender. Likewise, I've never had a sitting circuit judge apply for a job as a public defender. It just -- I mean, it's not happened in the entire time I've been doing this, at least in my office. You know, typically, we get people who are looking for some experience. We spend a substantial amount of time and money training those lawyers to get them up to speed as quickly as possible. You know, when they leave and go on to private practice or go into other public service positions or what have you, you know, all of the investment in that lawyer is effectively lost. Also, that lawyer is going to leave behind a block of cases. Those have to get reassigned, typically, within the office, and that causes, then, for the lawyers that remain that are already

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struggling with their caseload, now we're giving them that many more cases. It causes a significant interruption in the representation, in terms of the client relationship.

You know, right now we've got clients who are on their fourth or fifth lawyer. And, you know, from -- you know, frankly, if it were my kid who kept getting a new lawyer every two or three months and the lawyer says, Look, hey, give me some time; I've got to get up to speed. You know, I'll look at the thing, I'll come talk to your child in jail, and they get up to speed, and they go talk to the child in jail, and then they leave, and then the case gets reassigned -- I mean, if that had been my child, I would be furious. And we see that happening, like, over and over and over again. You know, for -- a lot of our clients have distrust in the legal system and have distrust in public defenders, and so we kind of start with the -- you know, sort of with a creditability gap in the eyes of a lot of our clients anyway, and when they have that experience with the public defender's office, they don't have any faith in their representation.

You know, from an efficiency perspective, the new lawyer has to duplicate all of the work that

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was done before. You know, the fact that the old lawyer read the police reports doesn't help the new lawyer; the new lawyer has got to read them all over again. You know, all the videos, they've got to watch them all over again. Got to go meet with the client, talk to them all over again. So there's a significant inefficiency there.

You know, we've had clients who end up saying, To heck with it; I'll just cut a deal with the prosecutor and go to prison pro se. I mean, the turnover is -- it creates significant issues, sort of in a number of different areas. And I spend a ton of time hiring, just -- so ...

Q. Because you're responsible for the hiring for the district office?

A. Correct.

Q. Okay. And that's something you need to do on top of all of your other responsibilities?

A. Right.

Q. Okay. And when you say -- you said the two primary reasons, based on what these folks are telling you for why they leave, is pay and caseload; is that right?

A. Correct.

Q. And I assume that means low pay and high

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caseload?

A. Right.

Q. And you said that your office pays bottom dollar. Are you -- first of all, is the salary for, say, a -- you know, a first-year, lowest level assistant public defender, is that the same across the state, or does it vary office by office?

A. Same statewide.

Q. Okay. And do you know what that rate is?

A. $39,000 a year and change.

Q. Okay. And the -- do you know what the rate is for even the most senior assistant public defender?

A. I want to say -- and I'm just going off memory. This is a ballpark. About 64, 65,000.

Q. Okay.

A. And under our existing sort of structure, you know, once they hit that amount, there's no room for advancement, unless they go into management or, like, the death penalty division or the commitment defense unit.

Q. Okay. So someone could be an attorney for 30 years and still be making --

A. They could have tried a hundred murder cases, and we'll still pay them $65,000 a year or

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whatever it is.

Q. Okay. And then the other thing that you mentioned was that some individual defendants could have four or five lawyers during the course of the case. I understand how that is, but just for the record, could you explain how that is that that happens based on the turnover?

A. Absolutely. So say the client, Bob, is assigned Public Defender No. 1, and Public Defender No. 1 then quits. I'm going to hire a replacement for Public Defender No. 1 and try to find a new lawyer within the office for Client Bob. Client Bob now gets Public Defender 2, whoever that is -- maybe it's the new person; maybe it's somebody else. If No. 2 quits, I got to do it all over again. And so on and so forth.

The other thing that happens is -- at least in the Area 19 office, you know, we try to assign our cases geographically, in that we've got one lawyer that does Moniteau County. Right now the only lawyer getting new Miller County cases is me, and everybody else is getting new cases out of Cole County. And that's an efficiency thing. You know, from a client-relationship perspective, you know, it would be better if Bob had one lawyer in

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Cole, Miller, and Moniteau, in the event that Bob had cases in all three. But, frankly, we're just not able to do that because of the volume of cases that we've brought. So if Bob's got charges in all three counties, Bob is going to have three different public defenders from my office. If two lawyers in Cole County quit, for example, I will seek to hire replacements, but at that point, the question of which lawyer goes to what county is going to be up for grabs, and I may take a lawyer out of Moniteau County, put them in Cole County, and then place the new person in Moniteau County.

It's sort of -- frankly, it depends on a million and one different things, but every now and then, we have to move a lawyer from one jurisdiction to another, and that, then, can interrupt -- I mean, that just -- that will cause an interruption in the relationships for the clients whose lawyer quit, but it's also, then, going to interrupt the cases in which the lawyer was sort of pulled out and transferred back in.

Does that make sense?

Q. No, that makes sense.

A. Okay. Fair enough. I'm not sure if I explained that very well.

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Q. No, no.

A. Okay.

Q. And have you either received directly or heard about complaints from individual defendants, when they -- or their family, when they have re- -- have four or five different attorneys that -- from your office that have been on their cases during the pendency of the case?

A. Absolutely. Yes.

Q. Okay. And just in -- all right. Well, I'll scratch that. I'll move on.

And when someone leaves -- I'm sorry. To go back to what you were saying, about how you divide up based on geography. You said that's for efficiency sake. Can you just explain for the record why that is?

A. Sure. The lawyers and myself spend a considerable amount of time in court, and the court dockets -- the judges in county -- in Cole County, for example, don't coordinate their dockets with themselves very well. They definitely don't coordinate their dockets with judges in Miller County and Moniteau County. And if I assigned cases by client instead of by county, the lawyer would find themselves double- and

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triple-booked on a regular basis, in that I've got to be in Moniteau County at nine o'clock and I've got to be in Cole County at nine o'clock, for example.

Q. Got it. And when someone leaves your office, is their position filled right away?

A. Filled as quickly as I can do anything, but right away, no. I mean, it may take -- you know, understand when a lawyer leaves -- hopefully, we get 30 days' notice. That's what we ask for. Generally -- generally, lawyers have been good about giving it. You know, when -- so I've got to -- as soon as I receive a notice, the first thing I do is request permission to post that vacancy, which, generally, is approved right away. The position will get posted the following Wednesday. We leave it open for two weeks to allow all applicants to apply, and then we start the interview process. And, you know, realistically, as a practical matter, I never have the replacement on board, you know, at -- on the -- on or by the lawyer that's leaving, on or by the next day. Generally, we'll go a couple of weeks or a month before the replacement starts. Sometimes that's because they have to move and relocate; sometimes that's because it takes me

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forever to finish the hiring process. Sometimes that's -- you know, it could be a variety of reasons.

Q. Okay. And during that time -- in between when an attorney has left and when you've hired their replacement, your office is obviously short-staffed; is that correct?

A. Correct.

Q. And who picks up the cases from the attorney who has left in that interim period?

A. Well, prior to January 1, 2017, we would reassign the cases internally as best as we could. As of January 1, 2017, we sort of changed that. What we would do is assign out those cases, to the extent that we could, without making -- without having the individual lawyers take more cases than they could. Invariably, there was always a gap of cases that we could not reassign internally, and on those cases, we would file a motion to decline representation or a motion for caseload conference or whatever.

Q. Okay. And I'll certainly get into much more detail on that --

A. Sure.

Q. -- later on. And even just given the

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logistical delays in posting, do -- putting that aside, do you sometimes have difficulty finding someone to take the position?

A. Absolutely. Yes. Especially this year. Hiring has gotten much more difficult within the public defender's office. The applicant pools are shrinking and the applicants within the pool is less than what it had been in years past.

Q. And you said hiring within the public defender's office. Do you mean your office or statewide or both?

A. Well, that's been my experience in my office, and in talking to other district defenders in other offices, that's what they tell me too.

Q. Got it. And when someone applies, are they applying to Area or District 19, or are they applying to the MSPD system overall?

A. Whichever they like. So on our application for employment, on the bottom of the first page, the applicant is given the opportunity to check geographic regions of preference. So they could check Jefferson City, Columbia, St. Louis, Kansas City, or they could check all, or if they want to go work in West Plains, they could just check the West Plains box. So, I mean, it's sort of

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up to the applicant. And it's my understanding that HR will forward that application to the offices within the geographic preference that are hiring, you know, within the period of time relevant to the application.

Q. And you mentioned there's often difficulty finding applicants and qualified applicants. Do you have a sense of why that is?

A. Well -- yes. I mean, pay, caseload. The legal market has certainly turned around since, you know, the crash in 2008 or whenever it was, and my impression is that the public defender's office is not the pick of most graduates right now. And, you know, there's been a lot of adverse publicity about the public defender's office. You know, I mean, it's sort of in the media that we're declining cases, that we're all overwhelmed, that -- you know, the Hinkebein decision certainly caused quite a stir. So it's an agency that's not getting a lot of positives out there in the community right now.

Q. And so to clarify, it's -- the same reasons that cause -- many of the same reasons that cause your attorneys to leave -- low pay, high caseload -- are the same reasons that you have difficulty recruiting new folks to come to the

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office?

A. That's my impression.

Q. And you said within -- this has gotten much worse within the past year; is that right? In terms of recruiting?

A. Yes. Absolutely.

Q. Okay.

A. Yeah. I mean, it's kind of funny, you know, like, back in 2008, when the economy, you know, completely fell apart, I remember hiring in those times, and everybody wanted to be a public defender. You know, we'd get a hundred applicants for a position, even in Fulton, you know?

Q. Uh-huh.

A. And now the economy has certainly turned around, and, you know, sort of as -- as this year has unfolded and the public defender struggles have sort of become more known in the community, you know, I -- I had fewer applicants for the position that we just filled than the ones that we had even -- even, say, like, in January of this year -- of 2017, so ...

Q. Got it.

A. And there's not been -- in my opinion, there has not been, like, a huge economic swing in

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those intervening months.

Q. Okay. So I want to go back to some basic questions about your office.

A. Uh-huh.

Q. So you have seven attorneys in the office, although one of them is on leave in the Army Reserves; is that right?

A. Correct.

Q. Okay. And you mentioned that there's another -- there was another individual who was on leave, but is that individual back or ...

A. In September of 2016, one of my lawyers went on leave, was scheduled to return in January of 2017. Instead of returning to my office, he actually ended up transferring to another office, and so he left my office.

Q. Okay.

A. That's one of the lawyers that ended up leaving.

Q. Got it. Okay. So you currently have six line attorneys plus yourself in the office?

A. Correct.

Q. With -- plus this individual who is on leave in the Army Reserves?

A. Correct. Tangentially, my investigator

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has been on leave.
Q. Got it. And how many of those -- you mentioned already that you handle felony cases. How many of those six line attorneys handle felony cases?
A. All of them.
Q. Okay. And how many of them handle misdemeanors?
A. I believe all of them do.
Q. How many of those attorneys handle juvenile cases?
A. Just one.
Q. Does that attorney handle only juvenile cases or ...
A. No. Also handles a regular mix of felonies, misdemeanors, probation violations. When I say "regular mix," not serious felonies, though. That lawyer has been practicing -- she passed the February bar, joined us in about June.
Q. Okay. And so she then picked -- immediately picked up all of the juvenile cases that were in the office or ...
A. Right. But, typically, we've got two to three open at any given point in time.
Q. Okay. And that's two or three cases in

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all three -- some in all three counties?
A. Generally, the juvenile cases that we get are in Miller County only. In Cole County, we do not receive a single juvenile case, and the reason for that is that the county actually has a contract with some private lawyers where they pay the private lawyer, you know, like, a reduced rate, and the private lawyer will represent an indigent juvenile. And so as a result, we get zero juvenile cases in Cole County.
Q. And when you say "contract with a private lawyer," are those private lawyers who are at law firms or ...
A. Yes. Yes.
Q. And are those private lawyers who do solely juvenile cases, or it's a mix of -- it's part of their caseload?
A. Generally, it's a mix of whatever. You know, like -- they'll do some family, they'll do some criminal, maybe they'll do a little bit of civil stuff, and then some juvenile appointments.
Q. I'm sorry. When I -- my question earlier wasn't clear. When I said that -- I mean, are these individuals at medium-sized law firms in Jefferson City, or are they solo practitioners at

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smaller law firms?
A. So the one I can think of -- I think he's a solo now. Another one that I can think of is a partner in a firm, but it's a -- you know, it's Jeff City, like, every firm is kind of small, you know what I mean? You know, I would be surprised if the entire firm had five lawyers. Like, I -- I don't think that they have that many people.
Q. Okay. And just to tie up this juvenile piece, when you said there -- there are two or three cases at any given time in Miller County --
A. Correct.
Q. -- is that -- is your sense that that's the total number of juvenile cases in Miller County at any time, or is someone else receiving some of those cases?
A. My sense is that there are probably a bunch of other cases out there that we're not seeing and we're not getting.
Q. Okay.
A. And, likewise, in Moniteau County, I can't think of the juvenile case that we've had out there. Maybe we've had one. Surely at some point they've detained a juvenile. I have no idea what, if any, counsel that juvenile had.

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Q. Okay.
A. And, you know, even in the Cole County world where, you know -- I had a case in Cole County where a 16-year-old had been certified, and I did not do the certification because it was, you know, the appointed lawyer, and the certification hearing was not well done.
Q. Okay. So just speaking about Moniteau County, you're not aware of who, if anyone, is representing the juveniles in that county?
A. Correct.
Q. Okay.
A. I mean, certainly, if a juvenile applied for public defender services and they qualified, we would represent them. I don't recall having received any Moniteau juvenile cases.
Q. And when you say that, you mean since the time that you took over the district defender position in 2014?
A. Correct.
Q. Okay.
A. I mean, there may be one or two out there. I'd have to go back and look, but I can't think of a name or a charge or a face or even the memory of the existence of one of them.

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Q. Okay. Other than yourself, how long has the most experienced attorney in your office been practicing?

A. The most experienced attorney started practicing approximately 2010. And then after that, the next most experienced attorney has been practicing a little over three years.

Q. Okay. And how long has the least experienced attorney in your office been practicing?

A. He started practicing November 13th.

Q. Okay. So less than a month?

A. Correct.

Q. And is that attorney carrying felony cases?

A. Yes.

Q. Okay. Do you -- I'm not holding you to an exact number, but do you have an estimate of how many cases that attorney is handling?

A. He's got about 70 cases open right now. I couldn't tell you off the top of my head how many are felonies or misdemeanors or probation violations.

Q. And are those primarily cases -- new cases that were opened within the past month or cases that he took over from someone else in your office?

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A. Typically, the bulk of them -- say, 50 -- were cases that had been sort of -- that he took over from somebody else who had left or were ones that came in after somebody left and we filed a motion on but then were able to open up when he started. I would say approximately 20 were, like, brand-spanking-new cases that came in after he started.

Q. So those 50 cases -- going to the 50 cases that were already existing in your office, how long after he started did he pick up those -- did he pick up all those 50 -- sorry. Scratch that.

Did he pick up all of those 50 cases at once?

A. Yes.

Q. Okay. And how long after he started did he pick up those cases?

A. We started assigning him cases out of those 50 the very first day. And it probably took a few days for staff to click all of the buttons and make -- you know, do all of the stuff that we have to do to transfer a file, but, effectively, within the first week, he had received all of those 50 cases.

Q. Okay. And, again, this is within his first week of practicing anywhere as a lawyer?

A. Correct.

Q. Okay. And then in the next two or three weeks, since it's only been three or four weeks, he received an additional 20 cases?

A. Correct.

Q. And you have said you're not aware of the exact number of felony cases, which is certainly fine. Do you know if he's receiving -- if he has any cases that are A, B felonies, or is it just --

A. He does have one. And I think it was a situation where he had been assigned the client on a misdemeanor or C and D felony, and then an A or B drug case arose after he had already entered on behalf of the client and did something to engage in the representation. For continuity purposes, we made the decision to assign him to A and B drug case, too.

Q. Are you aware of any other A and B case that he has?

A. No.

Q. Are you concerned about the fact that this brand new attorney has 70 open cases within his first three and a half weeks in the office?

A. Including some felonies?

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Q. Yes.

A. And an A or B drug felony that could incarcerate his client for up to 15 years in prison? Yeah. Absolutely. And, you know, I've got another lawyer -- the lawyer who has three-plus years of experience, and she's got 120 cases. I've got 213. I mean, we're doing the best we can to keep brand new lawyer's caseload down. I'm concerned about his caseload situation. I'm concerned about everybody's caseload situation. And that's about the best that we can do at this particular moment to keep his caseload down. I certainly don't want it to grow any larger. I would like him to have more time under his belt learning how to practice law, but, as I mentioned, things are a mess right now, so ...

Q. Right. So I take it, obviously, if you -- if you could, you would give him -- you would give him many fewer cases to start; is that fair?

A. Yes. Yes.

Q. Okay. But the reason -- you started to say this, but just -- if you could explain the reason you can't do so is because everyone in your office is overloaded; is that right?

A. Everybody is -- I don't believe that there's a single lawyer in my office right now who

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can take more cases. And, you know, all year we've been filing motions to decline representation or a motion to appoint -- we filed motions to appoint a state lawyer who is employed by the Public Service Commission or Department of Revenue or motions to withdraw based on our caseload or motions for caseload conference, and we've received a lot of sympathy and a lot of moral support. And, you know, there are judges who are talking about doing something and contemplating doing something, and at this point, we haven't received significant caseload relief. We've received some.

Judge Joyce in Cole County told us, You're not taking any more criminal nonsupport cases until we can get some representation on these people charged with A and B felony cases first. So for months in Cole County we've not been representing people in criminal nonsupport cases, some of which are felonies.

And, you know, there are other things -- there are sort of smaller things that have been done to try and help us. You know, frankly, it's sort of like -- and I appreciate all of the help that we can get, because I will take all of the help that I can get. You know, you can take an ice cream scoop to

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the iceberg that sank the Titanic, and the ship is still probably going to go down. It might go down slower, I don't know, but that's kind of where we are. I mean, the -- really, what it would take to get our office caseload down to a rational level would be very dramatic, and at this point in time, at least in the legal communities that I run in, we don't have anybody talking about -- or we don't have anybody doing the dramatic relief that would be necessary.

Q. Okay.

A. Interestingly, on the Cole County nonsupport cases, effectively, those litigants are forced to proceed pro se.

VIDEOGRAPHER: Excuse me one moment.

THE WITNESS: Yes, sir.

VIDEOGRAPHER: Can you move your -- could you move your tie over?

THE WITNESS: It's hidden. I apologize.

VIDEOGRAPHER: Yeah. No problem. No problem. Thank you.

THE WITNESS: You're welcome.

Q. (By Mr. Scherzer) What is a criminal nonsupport case?

A. In Missouri, failing to pay child support

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that one is ordered to pay can be dealt with in a couple of different ways. One is in the form of a contempt at proceeding. Alternatively, a person can be charged with a crime of failing to pay child support. There's a misdemeanor offense of failing to pay child support and a felony offense of failing to pay child support. If it's a civil contempt proceeding, under Chapter 600, they're ineligible for public defender services, even though they may have a right to counsel. If it's a criminal proceeding, provided that they meet the financial criteria, they would be eligible for public defender services, certainly; the right to counsel would attach, but at least in Cole County right now, there's sort of this informal administrative order that's not written down on any piece of paper that's basically a judge saying, You guys aren't doing any more criminal nonsupport cases until I tell you otherwise.

Q. And what's the most severe penalty that someone facing a criminal nonsupport case could face?

A. Four years in the department of corrections, if they have no prior felony convictions. If they have prior felony convictions,

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even if they're unrelated, it could carry up to seven years in the department of corrections and a fine or probation or a combination thereof.

Q. And approximately how many criminal nonsupport cases are there in Cole County?

A. I don't know because we're not doing them anymore. I mean -- and I'm not trying to be flip about it or anything.

Q. I understand.

A. Off the top of my head, I can't tell you. But, you know, commonly, the -- you know, typically, in a criminal nonsupport case on a first offense, typically, the state is not requesting and the court is not inclined to place the person in prison. Typically, the judge is going to place the person on probation with the condition that they pay, and so then there are, invariably, on some cases, probation violations related to the person's alleged failure to pay. If you were to combine the criminal nonsupport charges plus the probation violations, there would be a substantial number, but I cannot give you an estimate off the top of my head.

Q. Just to get a ballpark, during the -- do you think there are more than 50 a year in Cole County?

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A. This is a wild ballpark -- and talking only about ones in which my office -- you know, which they requested and received a public defender. Wild ballpark, I would say, in a year, there may be 50 cases that we would do. Some folks in those cases are going to retain private counsel. And, you know, sort of one of the limitations -- at least, when I get a criminal nonsupport case, I can only deal with the criminal side of the case; I can't do anything on the family domestic relations side of the case. So I cannot get in the family case and request a modification of the child support amount, for example, or an alteration of the custody arrangement or any of the stuff, I can only deal with the criminal nonsupport charge. I don't even know if that was responsive to the question, but it was tangential -- a lot of clients because of that, if they can find a way to borrow some money from Mom or whatever, may hire a lawyer on the private side who can do both, kind of, dynamics of the case.

Q. Okay. So when you -- but your wild ballpark -- I'm not holding you to this -- you think there are 50 cases or there would be 50 cases in a given year that would have gone to the public defender --

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A. Correct.

Q. -- that now aren't going to the public defender?

A. Correct. Be it a criminal nonsupport charge or a probation violation on a criminal nonsupport charge.

Q. Got it. Because they're also not doing their probation violations on the criminal nonsupport charges?

A. Correct.

Q. And how much time could someone face, maximum, on the probation violation on the criminal nonsupport charge?

A. It depends on how the probation was set up. If the imposition of the sentence were suspended, the range of punishment on the probation violation is the range of punishment on the underlying charge. So say it's a felony criminal nonsupport charge charged as a first felony offense; the range of punishment would be one day to one year in the county jail or two to four years in the department of corrections or a fine or probation. That would be the range of punishment on the suspended position of the sentence. If the court were to impose a prison sentence but then suspend

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the execution of the sentence and place the person on probation, on a probation violation, the court can't change that three-year sentence. The court could either execute the three-year sentence, continue the probation, continue the probation with additional special conditions, continue the probation with a period of shock detention in the county jail, or there are a couple of other sentencing statutes that the court could implement. The court could place the person in the department of corrections for 120 days, retain jurisdiction for 120 days, then consider releasing them on probation. There are a couple of other squirrely sentencing statutes such as that.

Q. Okay. But, in general, the -- is it correct that individuals facing probation violations on these criminal nonsupport charges could face up to four or seven years, as you described previously?

A. Correct.

Q. Okay. Would it be possible for them to face more than seven years on a probation violation on a criminal nonsupport case?

A. If the imposition of the sentence had been suspended on a criminal nonsupport case -- and is going to be an exceeding rare sentence, but say the

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judge suspended the imposition of sentence on the criminal nonsupport case, but the client had a suspended execution of the sentence in another county or a suspended imposition of sentence in another county -- probation is revoked in the other county, and a five-year sentence is executed in the other county. On the probation violation on the criminal nonsupport, if no sentence has been fixed, if the court suspended the imposition of the sentence, that court could take that four- or seven-year sentence and run it consecutive to the previously imposed sentence, such that four plus five would be nine or seven plus five would be 12. If the court had suspended the execution of the sentence, whether it would be concurrent or consecutive would be driven by what the judge said at the time of sentencing, when the execution was suspended. That is a pretty rare circumstance, but that's the only thing that comes to mind, in terms of whether the court could increase -- have a consequence that carries bigger than seven years. And in no event could -- I mean, the range of punishment fixed by the legislature is up to four or seven, if they're a persistent felony offender, and so the judge can't change that; the only thing that

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the judge could do would be to tack it on and run it consecutive to something else.

Q. Got it. And you said that typically in these cases the defendant is -- first-time felony offender wouldn't be necessarily facing prison time. I assume when you meant "typically," you mean in the cases that your office had taken previously; is that right?

A. Right. Yeah. I mean, usually -- and it's been my experience on criminal nonsupport cases, really, what the prosecutor wants is, they want the person to pay. The prosecutor knows if the prosecutor puts in them in prison, they're not going to be able to pay, and so, typically, in most cases, generally -- this is gross generalization, but, you know, generally, what the state is going to seek to do is request probation with the condition that the person pay such that if down the road they don't pay, then they're in danger of going to prison.

Q. Got it. And to clarify, you -- your office, then, isn't -- wouldn't represent them at this point now, even on that probation violation --

A. Correct.

Q. -- that might occur?

A. Correct.

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Q. Okay.

A. Unless some judge somewhere tells me I'm going to, that's kind of the standing order is, that I'm to not.

Q. And, obviously, you're not aware, since your office now isn't representing, of what's happening -- whether that practice of not seeking prison time initially is still happening for those who are now representing themselves pro se. Is that --

A. I don't have personal knowledge as to whether that practice has changed. My -- I mean, if I had to guess, I would say that it probably has not, but I don't know.

Q. Okay. Are you aware of criminal nonsupport cases that your office had either initially or probation violations of criminal nonsupport cases where the individual was facing time in prison?

A. I can think of a couple of situations -- you know, one, if the person had a prior or prior convictions for criminal nonsupport, you know, then -- you know, if the prosecutor had been dealing with this person for the last 15 years, and they've consistently failed to pay on multiple cases, then

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the prosecutor may be like, Look, we're not going to do probation on this. And in another sort of more rare instance, you know, if the accused wants to go to trial, I've practiced in front of at least one judge who would say, You know, look, never. Only once did he say it on the record, I'm not inclined to grant probation after trial. And so I -- in kind of thinking back in time, I can think of one client who went to trial on a criminal nonsupport charge. The first trial resulted in a hung jury; second trial, he was convicted, court imposed a four-year prison sentence, and he went and served the time.

Q. All right. And if an individual now in Cole County wanted to exercise his or her right to trial, and if they weren't able to afford a private lawyer, your understanding is they would need to represent themselves?

A. Yes.

Q. Okay.

A. I -- if -- I specifically heard the judge doing that docket tell someone, Look, you're not getting an appointed lawyer. You can represent yourself or you can hire someone. And that's me paraphrasing his words, but those were the options that that judge had laid out.

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Q. And that was to an individual, as you said, who was facing either four or perhaps seven years in prison?

A. Correct.

Q. And did the -- did that judge explain the reason for there not being a public defender available to that individual?

A. He's -- I've heard him explain it a couple of different ways. I've heard him say, Well, the public defenders say they're too busy, sort of in a condescending type of manner, or the public defenders just don't want to take your case or the -- you know, but I've also heard him say something to the effect of, you know, the public defenders are not available for new cases. And, again, that's me paraphrasing his words, but I've heard him sort of explain that a couple of different ways.

Q. And so you've been in the courtroom, obviously, when this has happened on at least some of the occasions when this has happened?

A. Correct.

Q. Okay. And when did this -- I know it's not a written policy. When did this practice in Cole County of your office not taking criminal

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nonsupport cases begin?
A. I'm going to say April or May. And the reason that that comes to my mind was, I recall sitting in Judge Joyce's courtroom next to a lawyer who left us in June, and that was when Judge Joyce -- she asked, What are you guys doing here? We said, We're here for the nonsupport. She said, Why are you doing nonsupport when we've got all of these people charged with, like, you know, real felonies, real crimes that we can't get public defender representation on? You guys aren't taking any more nonsupport cases. Because I know that that lawyer left us in about June. I want to say this was in April or May. And so the only way that we would have taken any additional nonsupport cases since then is if Judge Joyce or Judge Schollmeyer told us specifically, I'm now ordering you to take this one. But, generally, as a rule, we are not doing them.
Q. And that was something, it sounds like, suggested and instituted by Judge Joyce?
A. Correct.
Q. And that was -- just to clarify, that was in response to concerns about the -- about the case -- Judge Joyce's concerns about the caseload

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overload in your office?
A. Well -- yes. So it was an overload thing and it was -- you know, we were filing motions to decline representation or to appoint counsel on -- even serious cases, A and B felonies. There were people in jail at that point who we filed these motions on. And, you know, the -- kind of the response of most of our Cole County judges was they said, Well, we're neither going to grant or deny the motion; we're just going to continue it out and hope that your staffing situation resolves.
So there were all of these cases that floated for months and months and months and months, and we weren't entering, but yet then judge saw us, you know, on this nonsupport docket on cases that we had already entered in, and judge told us, Yeah, you're not -- no more of those, so ...
Q. Okay. And in the times that you've been in the courtroom, which sounds like several times, do you recall what -- when a defendant is told he or she doesn't have access to the public defender in this criminal nonsupport case, what they've said in response?
A. A lot of times the prosecutor will go up to them and talk to them and say, Hey, look, I'm

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just looking for probation with the condition that you pay, or the judge may say, Hey, look, why don't you talk to the prosecutor, see if you guys can work something out. Or the judge will just ask the prosecutor in the court, Prosecutor, what's your recommendation? Well, we're looking for probation. And then that -- and then the accused decides to go forward on their own, is sort of how that generally unfolds.
Was that responsive to your question?
Q. Yes. And when you say "decides to go forward on their own," you mean decides if they can't afford an attorney, they don't have a choice, other than to go forward on their own; is that right?
A. Right.
Q. Okay. And you're mostly in court in Miller County; is that right?
A. Yes. Yes.
Q. Okay. So -- and this is happening in Cole County?
A. Yes.
Q. But you can recall several instances, even in the limited time that you're in Cole County court, where you've witnessed an individual in a

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criminal nonsupport being told that they don't have access to a public defender; is that right?
A. Correct. Correct.
Q. All right.
A. And, you know, right now what I'm seeing in Miller County is, I'm filing these motions for caseload conference and -- you know, so cases are sort of dragging on. Also -- and kind of preceding that, I filed motions to withdraw, citing my caseload or motions to decline representation citing my caseload. You know, so clients -- or applicants for public defender services have been in jail for months. Now in Miller County, we're seeing people decide to, just on their own, talk to the prosecutor pro se, strike a deal, and go to prison.
There was a fellow just the other day in Miller County who I represented on a criminal charge and had a probation violation. I entered on the criminal charge way before all of this unfolded. He picked up the probation violation; we filed, you know, a motion of some kind or another. He sat in jail a couple of months. Eventually he decided that he just wanted to go to prison. He talked to the prosecutor on his own, ended up waiving counsel on the probation violation, waived counsel on the

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criminal charge that I was in, went to prison.
There's another fellow -- been in jail for a couple of months in Miller County. We filed the caseload motions. Again, he decided after sitting in jail for a couple of months, I just want to have my probation revoked and go to prison. There's another fellow who appeared in the associate docket within the last week or two, charged with a new offense, and we either filed a motion or told him we were going to file a motion, and he's like -- he just went over and talked to the prosecutor, and they cut a deal, he waived his preliminary hearing, he sat on an arraignment docket for a plea with -- either tomorrow or the 19th.

Q. So I'm going to ask some more questions about that.

A. Sure.

Q. So going back to the first individual you mentioned who you represented on the criminal and then the probation violation. Had you entered appearances on both of those?

A. Only the criminal, not on the probation violation.

Q. Okay. And then that individual engaged in a -- plea negotiations with the prosecutor pro se --

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was that in court that that happened?

A. Yes.

Q. And you or someone from your office was in that courtroom or --

A. Yes, I was.

Q. Okay. Tell me more about the logistics of how that --

A. The gentleman appeared in jail on the probation violation. Again, sort of my announcement to the court was that we either had filed a motion for caseload conference or were filing a motion for caseload conference, and we'd not entered it on the probation violation. And so I asked that that case been set over to some date after what we anticipated the case conference hearing date to be. And -- you know, and at that point on the probation violation, I think he had been in jail for two months on the probation violation. And that's -- and so he -- you know, the judge did, the gentleman sat back down, and he called me back over, and he's like, Look, I want to go to prison on this right now. I'm like, I'm not going to enter my appearance and send you to prison right now. And he expressed that he wanted to waive counsel and wanted to talk to the prosecutor, and so, you know -- I mean, that's --

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you can. I'm not sure -- I don't know that that's a good idea, but that's what he ended up doing. The prosecutor here -- and he, you know, sort of struck this deal in court, they had the case recalled, they added the other criminal case to the docket. He admitted on the probation violation and pled guilty pro se.

Q. All in that same courtroom?

A. Yes.

Q. On that day while you were there?

A. Yes.

Q. And so did he turn to the prosecutor and discuss the -- a plea deal --

A. Yes.

Q. -- at the counsel table or --

A. Well -- I mean, the way that that courtroom is laid out, you know, the table where the prosecutor sits is not far away from where the inmate sits. For example, behind you there's a glass window. If instead of that window there were a wooden half wall, and that's where the jury box was, that's where he was seated. So the prosecutor could turn around and engage with the person right there.

Q. And where were you located in that

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courtroom?

A. Well, I was probably sitting at the other table on the far side of the thing or, you know, up in front of the judge. Once they started talking -- once he told me, Hey, I -- you know, I -- I've changed my mind, I don't really want you right now; I want to talk to the prosecutor on my own. At that point, I stepped out of the thing.

Q. And did he say why it was that he, as you just said, didn't want you right now?

A. My impression was he didn't want to sit in jail for another who knows how many months. In this county, this circuit judge only comes to town every two months, and so -- and that -- and that sort of presents its own issue because say he comes into town on the 1st of July, for example. His next date is going to be September 1. So if on July 2 someone gets arrested on one of his warrants, they're going to sit in jail until September 1, and then he'll bring them up to court, you know, if they want to -- if they'll -- they can apply for a public defender right then. If the case gets set over, it's going to be November 1.

Q. This judge -- is there only one judge in Miller County?

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A. There are now three.
Q. Okay.
A. And the presiding judge is Judge Hayden. You know, so he'll come every other month. New circuit judge is Judge Hamner. He will come on his cases on the months that Judge Hayden is not there. So, for example, if Judge Hayden is July 1, September 1; Judge Hamner will come August 1, October 1. Does that make sense?
Q. Uh-huh.
A. Okay. They within the last couple of years added a third circuit judge to that circuit, and that judge has a docket every month. It'll be towards the end of the month. But depending on who you happen to be on probation in front of -- you know, if you happen to be on probation in front of one of the judges who comes only every other month, that's going to have pretty substantial impact on -- for how long you're incarcerated in the event of a violation.
THE WITNESS: I'm going to need a break at some point, so when you get to a segue --
MR. SCHERZER: We can take a break now.
THE WITNESS: Okay. Thank you.
VIDEOGRAPHER: The time is 10:35 a.m., and

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we are off the record.
(A recess was taken.)
VIDEOGRAPHER: The time is 10:54 a.m. and we're back on the record.
Q. (By Mr. Scherzer) So, Mr. Carver, I just want to go back to that individual that you were just speaking about. Do you know how much time he got in prison as a result of his negotiations with the prosecutor?
A. I do not.
Q. Is that because he was sentenced on a different day other than the day that you were there in court?
A. No. I think he was -- I think he was sentenced that day, but once he resolved to go pro se and it was clear that he was in accord with the arrangement that he and the prosecutor had entered into, I turned my attention to, you know, the other 30-some-odd cases that I had on the docket.
Q. Got it. And you said you had represented him for a couple of months -- or you had entered appearance at least on his behalf a couple of months prior on the criminal case; is that correct?
A. I think that my entry on the criminal case was sometime in 2016. Now, if memory serves, it was

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another one of those cases that I picked up from some other lawyer who picked it up from another lawyer -- I can't recall off the top of my head. But I had been in the criminal case for quite a while. The probation case was much newer.
Q. And you said you picked it up from somebody else. You mean another lawyer in your office?
A. Correct.
Q. Okay. Was that a lawyer -- if you recall, was that a lawyer who had left the office that you picked it up from?
A. Yes.
Q. Okay. And so the probation case-ballpark, not an exact number, do you -- about how old was the probation case? Do you know -- at the time?
A. Ballpark?
Q. Yeah.
A. Two months, maybe a little more.
Q. Okay. And had you been able to visit this individual since he had picked up the probation case?
A. No.
Q. And was that -- and why was that?
A. I am drowning in cases and I'm horribly

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behind on jail visits.
Q. Okay. So given your other -- given your very high caseload, as you've indicated previously, and your responsibilities to those clients, you hadn't been able to visit him in prison?
A. Correct. Correct.
Q. And had you been able to communicate with him in some other fashion other than an in-prison visit?
A. Well, he had been in jail for the two months preceding this very recent court date. I don't believe I visited with him at all during these two months. He had been free for a period of time, and during that period of time that he was free, I had no substantive contact with him himself. Before that, he had been incarcerated, I believe, on the criminal case, and then I did have contact with him -- but it had probably been -- estimate, probably a year since I had substantive private contact with him outside of a courtroom.
Q. Okay.
A. And that's -- frankly, that's not unusual right now for my caseload.
Q. Okay. And during that year, some of which he was incarcerated and some of which he was not, he

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was facing -- what kind of criminal charge was he facing?

A. It was a drug charge. I can't remember if it was a simple possession charge or a possession with the intent to distribute. Simple possession would be a Class C felony that carries up to 7 years in the department of corrections. Possession with the intent at the time relevant to his case would have carried five to 15 years in the department of corrections. That since changed on January 1, 2017, but his case preceded that.

Q. Okay. And so what was happening with his criminal case during that year?

A. There was work that I had identified that I needed to do: Depositions, investigation -- didn't do it.

Q. And that was because of the tremendous caseload that you have discussed previously?

A. Correct. It -- I mean, right now I am -- even when I can get to talk to a client, commonly, I will identify work that needs to be done on the case, investigation, things to pursue. Actually doing it is a whole other matter.

Q. Okay. And is that represented -- is that experience that you're describing, to your

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knowledge, as their supervisor, is that representative of the other attorneys in your office?

A. No. And that's because I'm attempting to control their caseload. But the consequence to me controlling their caseload and the consequence to me telling the judges I'm not going to keep dumping it on an assistant public defender, I'm going to give it to myself. You know, consequence is that my caseload has spiraled out of control. I've got more cases now than anybody in the office by a considerable number.

Q. Prior to the time that you've instituted the case control, which I believe -- that was January 2017?

A. Yes.

Q. Prior to that time, with this experience, that you -- when there were no caseload -- or not these caseload controls for the line attorneys in your office, was the experience you're now describing representative of what was happening with your line attorneys?

A. My line attorneys were experiencing exactly what I'm experiencing. You know, we had -- goodness. There had been a fellow who was

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incarcerated in the Cole County jail, sat there for three years with no contact with his lawyer.

Q. Sorry to interrupt. When you say "his lawyer," do you mean an attorney -- a line attorney from your office?

A. Yes.

Q. Okay.

A. Since that case has been reassigned to me -- and it's probably been a year since I've talked to him -- he's no longer in the Cole County jail; he's in the department of corrections on another matter.

You know, circling back before January 1, 2017, there was a client who was in the Miller County jail for four years, tells us he saw his lawyer once, and I believe him, because there are no notes of any kind in the file. When I look at the file, it would appear that no work was done in those four years. Subsequently, that lawyer left; it was reassigned to another lawyer in my office. That lawyer, after getting in the case and getting involved in the thing -- ultimately, that case ended up being dismissed on a speedy trial violation five years and nine months after the gentleman was incarcerated. You know, it's one of

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these cases where, frankly, the work that my office did -- I would describe it as grossly ineffective, but that's forever going to escape any Strickland Review because there was never any sentence to the department of corrections that was imposed.

There are a significant number of cases like this where clients have just languished for a year or two years without substantive work being done on their case or without any contact with their lawyer, without knowing what's going on with the case. And that was something that was going on, you know, when I took over the Jeff City office at the end of 2014. You know, we've done a variety of things to address that and try to prevent that from happening. You know, right now, I don't believe that that is happening with regard to my individual lawyers and their caseload, but, you know, right now, I'm absolutely not doing what I need to be doing for my clients.

Q. And so going to this individual who spent five years and nine months waiting in jail, what was happening at the court dates, if you -- if you know during that time?

A. What the docket entry says was trial stricken and reset. Nine months later, there'd be

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another docket entry, trial stricken and reset. One of the reasons it was dismissed on a speedy trial violation was the docket entries did not articulate who was requesting a continuance or why, and when the new lawyer took over four years into the case, ultimately, at some point thereafter was reassigned to a different judge as well. The judge that had it at the time of the dismissal had no history with the case and couldn't tell what the continuances were for. But the docket entries were exceedingly sparse.

Q. And you said there are a number of other cases that you can think of just off the top of your head that are similar in nature, in terms of what happened to individual defendants?

A. There was another client in the Miller County jail when I took over the Jeff City office at the end of 2014 who had been in jail for 16 months, never talked with his lawyer. You know -- even right now, you know, circling back to kind of my personal experience -- yesterday I was in the office trying to put files together for my Tuesday docket in Miller County, because I've got to have somebody cover because I'm tied up with something else. You know, in going through those, most of the cases, I

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had not talked with the client. There was one that I found where the client had been in jail at least two months, maybe more, maybe three or four on a probation violation matter. I've never been able to get to the jail to see her. So the note that I wrote to my lawyer is, Please tell the judge I'm wildly ineffective. I don't know what's going to happen with it. You know, right now, just sort of understanding my schedule and stuff like that, the best time I found to get to the Miller County jail to meet with clients is on a Sunday, you know? But you can only see so many people in one day, and, you know, when you've got dozens and dozens and dozens of people that are there, you are not going to be able to meet with them all in a day. And if you go back in another two weeks, you can meet with more of them, but, you know, I've got clients scattered in Miller County jail and most of the major correctional settings and other county jails. There's -- I'm working as much overtime as I can, but I can't keep up.

Q. And so just to -- without -- you've given some helpful details about some of these stories. Without going into more detail about any of them, you mentioned that this is representative -- the

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couple examples you've just given about long periods of time with no work and no client contact is representative of what your office is -- what attorneys in your office were forced to do in the years prior to when you instituted this caseload control; is that right?

A. Correct.

Q. And it's now representative of what you're forced to do on your own cases, given the number of cases you've taken on; is that right?

A. Correct.

Q. And you mentioned that your office -- you described your office in that case and in these similar cases as grossly ineffective. And is that because of the caseload that your line attorneys are experiencing or were experiencing prior to the caseload controls?

A. Yes. I mean, I don't know how you could describe a guy sitting in jail for four years with no work being done on the case. I mean, I don't know how else you can describe that. It was a serious case. That client deserved representation.

Q. And effective -- what you're describing is that client just wasn't receiving any representation at all?

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A. Nope.

Q. And that was because of the case overload that your line attorneys were facing?

A. Yes.

Q. And that's representative of other cases in your office prior to the caseload controls?

A. We had other cases not as dramatic, not four years old, but we had other cases where clients sat in jail for 12 months or more not having talked to their client -- not having talked to their lawyer.

Q. And that individual that you were mentioning previously, the individual with the five years and nine months, do you recall what charge or charges he was facing?

A. Sodomy, rape, assault one of an infant -- I can't recall if it was charged to statutory or forceable sodomy, but those were the charges. And sort of the charges evolved. At one point the assault was dismissed voluntarily. Since the assault has been -- so it was the -- the rape, sodomy that were dismissed on speedy trial violations. Since the assault has been refiled and that case is now pending.

Q. And that's because the assault had been

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voluntarily dismissed in the interim or what?
A. Yes. And I -- and I understand -- and -- yes. Yes.
Q. And so what class of offense are those sodomy, rape -- what class of offense is that?
A. This gentleman is charged with unclassified ones that could carry an unlimited number of years. A million years would be a permissible sentence or life -- times two, because there was one of each. I think it was one rape, one sodomy. Maybe it was two sodomies. Facing significant charges.
Q. Facing up to his entire life in prison?
A. Correct. Yes.
Q. And didn't -- effectively didn't have any representation for five years?
A. For at least four.
Q. At least four.
A. At least four. And then that lawyer left and it got reassigned. And, actually, the lawyer that it was reassigned to then did eventually get into the thing and start doing good substantive work. When I say "eventually," you know, 2017 was a bad year for my specific office. The year that the initial counsel left was 2014. That was another bad

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year for my office. I can think of at least three lawyers off the top of my head who left the Area 19 public defender's office right about the same time. And so all of those cases -- you know, when I came in at the end of 2014, it was a train wreck. Everybody had 2- or 300 cases each, and it took forever to dig out from under that.
Q. And so the other cases that you were speaking of prior to the caseload controls, that your line attorneys had similar experiences with clients going long stretches without any work being done on their cases, that wasn't confined to just one attorney in your office?
A. It was not.
Q. Was that, to your knowledge, every attorney in the office or most attorneys?
A. It was -- there were several lawyers who I -- I saw that happened.
Q. Okay. Have you told other -- you mentioned that you instructed your -- one of the attorneys in your office who is covering for you tomorrow to tell the judge that you were wildly ineffective on that case due to your other caseload?
A. Uh-huh.
Q. Have you told other judges that you have

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been ineffective on cases due to your caseload?
A. I've been telling my judges that consistently all year as my caseload has grown. And, you know, generally, they express sympathy and tell me to do the best I can, and I do, but, you know, at least in Miller County, I've been articulating that on a regular basis, you know, Judge, I can't possibly take more cases; I'm not doing a good job with the cases I've got. I'm not talking to my clients now; don't give me more, and, consistently, I'm ordered in over my objection.
Q. And what do the judges say, if anything, about the rationale for ordering you in, despite you telling them that you would be ineffectively representing that client?
A. That -- they've sort of expressed different things at different times. You know, the -- one of the judges there has expressed that he doesn't feel like he has any other good options. He feels like it's not the responsibility of the private bar, and that the private bar did not make this mess and -- I've asked him to appoint state-employed lawyers. You know, pick on some someone from the department of revenue, legislative research. His concern there is that he's got to

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make sure that they're competent, and if you appoint a tax lawyer on a case, they aren't going to know anything about the criminal side of it. They aren't going to know anything about criminal law. My response to that is, Judge, if the person can read the file and take the time to talk to the client, they've got a leg up over me now. I can do all of the criminal law in the world, but I don't have time to work the case.
At other points in time, he said, Well, I'm not going to implement that remedy because that's going to be bad for the agency or it's going to cause you more problems or the legislature will never find you. At other points in times he's said, Really, the remedy is legislative; it's not judicial, and that tends to be a commonality. I mean, other judges have expressed to me that, you know, Look, I don't have the tools to solve this mess. Really, it's the legislature.
Q. Okay. And just going to the -- to that -- to the tax lawyer that you were speaking of or someone from -- you know, as an example, if you had to actually -- if you had time to adequately work on your cases, presumably -- or do you agree with the judge that you would be more effective for that

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criminal defendant since you have long practiced criminal law and are experienced in criminal law?

A. I think I would have a head start -- understanding I've been practicing now criminal law 15 years, I would certainly have a head start over a lawyer who has not touched anything criminal law-related since criminal law class in law school, okay? Yes. But that sort of assumes a rational caseload. I mean, right now, you can know everything that there is to know about criminal law, but when you've got more than 200 cases, it's not going to do you any good, because you're not going to have time to talk to the clients, you're not going to have time to do the legal research, to file the motions, to visit the investigation, to visit the crime scene, to go look at the physical evidence, to effectively advise the client. I mean, you know, right now, my knowledge of criminal law on your average day is generally useless because I don't have time to -- I don't have time to pursue it.

Q. And how does that make you feel as someone who has been practicing for -- for 15 years, criminal law?

A. 2017 has certainly made me consider other

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employment options. Yeah. I mean, I'm not -- I'm certainly not practicing the way I want to be. My clients are given the short end of the stick. It's not fair to them. I would not want me as a lawyer right now. And -- I'm not sure how long I'm going to do this. Give me a rational caseload, I'll retire with the agency. 200 cases, I don't know how much longer ...

Q. And to follow up on that, you're -- you've taken on all of those cases in order to protect your line attorneys from the massive overloads that they were facing prior to your taking on all of those extra cases?

A. Yeah. And, you know, sort of what they'd expressed to me if I didn't, they were all going to quit. And, historically, what we've done in the public defender's office is the district defender has a reduced caseload -- typically, significantly reduced because of the management responsibilities, and we're going to flood the assistant public defender with an impossible number of cases, and we'll tell them to swim. And what I've seen in my time is that invariably we burn out lawyers and they quit. Part of the thought process behind this strategy was sort of -- it was an attempt to allow

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my five lawyers -- or my -- sorry -- seven lawyers to practice ethically in hopes that it would stop the bleeding and prevent some of the rampant turnover. You know, I can't -- I can't build anything in terms of a well-functioning office if the foundation is always being taken out from underneath me. I've got to find a way to retain lawyers so that can I teach them how to try complicated cases and do a good job of it. You know, we've got murder cases, we've got rape cases, we've got complex cases where the client deserves a lawyer with significant experience. You know, right now I'm assigning murder cases to lawyers who have been practicing for two or three years. If I can't find a way to retain the lawyers I've got, then I'm going to be assigning murder cases to a lawyer that's been practicing less than a year.

Q. And you're assigning it that way because the second senior line attorney has been practicing for two years? Is that --

A. Right. I've got one that's been practicing since 2010, but the second most senior lawyer has got three years under their belt.

Q. And you said that your hope is that after you instituted the caseload controls in January of

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2017, that your lawyers would be able to practice ethically.

A. Uh-huh.

Q. Is your opinion that prior to those caseload controls being implemented, your attorneys were not being able to practice according to their ethical responsibilities?

A. Well, I mean, that's -- they told me they felt like they were not. And when they brought that concern to my attention, yeah, we took a number of steps to deal with it. You know, and, frankly, when I took over the course in 2014, it was clear that there were problems then. How much of it was a caseload issue as compared to a -- you know, we've got positions we need to field issue, as compared to we're taking cases that we shouldn't be taking. That, it took some time for me to sort things out. It kind of was my impression when I took over in 2014 that there were a number of things going on, and so we -- we hired to fill the vacant positions, and that certainly helped. But that was one of the reasons that we were not -- not handling cases that we ought to be.

We also changed how we screened applications for public defender services. As a

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result, that did reduce our caseload, and that certainly helped. You know, and even after that, it struck me that there was still a problem then, and so at different points in time, I was in contact with our management and was allocated some money to contract out some of the cases. At another point in time, when that didn't do the trick, I was allocated an additional staff member, and that certainly helped. And when all of those things did not prove effective, you know, that was kind of when the lawyers came to me at the end of 2016 and said, Hey, this is a problem.

Q. And so even after you tightened the requirements for indigency determinations and got an additional step and the other things you've described, the problems still persisted in your office in terms of caseload?

A. Correct. Our head was still underwater; it was just less so.

Q. Okay. I'd like to show you what I'll mark as exhibit-- Plaintiff's Exhibit 18.

(Deposition Exhibit No. 18 was marked for identification.)

Q. (By Mr. Scherzer) Let me know when you've had a chance to glance at this.

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A. Okay. I'm familiar with it.

Q. Okay. Do you recognize this?

A. Yes.

Q. And what is it?

A. This is an e-mail thread that started with an e-mail that I sent to the courts and the prosecutors December 29, 2016, with follow-up responses from some of the various parties.

Q. And I believe this -- when you say -- earlier, when we were discussing which documents you reviewed, you said you reviewed an e-mail chain from December of 2016. Is this the e-mail chain that you were referring to that you recently reviewed?

A. Yes.

Q. All right.

A. Tangentially, prior to this e-mail, I had a number of other e-mails from me to the court starting the end of 2014 telling them what was going on with our caseload and staffing situation. I did not save any of those e-mails, and, to my knowledge, they're long gone. Like, when I received the discovery request from Ms. Shipma, I went back through to look for them. I deleted them quite some time ago, but I will tell you there were a number of -- this -- the December 29 e-mail is not the

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first time I communicated our caseload staffing problems to the courts.

Q. Okay. So you believe you sent similar e-mails for at least the two years prior to this e-mail?

A. Yes.

Q. Okay. And to the -- to the judges and prosecutors in District 19?

A. Yes.

Q. Okay. I'd like to turn to -- and looking again at the Bates numbers in the bottom middle of the page to 39421.

A. Yes.

Q. Okay. Can you read out for us the first -- I guess it's two paragraphs -- starting with, "I wish had I better news."

A. Sure.

"I wish I had better news. The struggles of the public defender office remain. Every single one of my lawyers has expressed to me that their caseload is too high and that they cannot effectively handle the cases that they have. I have lawyers threatening to quit if I don't get their caseloads down to a level where they can be effective. Director Barrett tells me that the

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agency turnover is now at 22 percent. I agree that my lawyers are all overloaded. As they are all overloaded, I can't reassign cases from one lawyer to another to fix the problem. Ethically, I can't ignore the problem, and neither can my lawyers. As a practical matter, if I don't deal with the problem, my lawyers will find their own solution by finding new employment. I have to do something to get my lawyers' caseloads down to a level where they can be effective."

Q. Okay. And I want to just track back to the two -- the "to" line on this e-mail. Can you just tell me who these individuals are in this "to" Line?

A. Sure. Stan Moore was a circuit judge in the 26th Judicial Circuit that serves Miller, Moniteau Counties, also Camden, Laclede, and Morgan Counties. Judge Moore has since retired. Kenneth Hayden is the presiding judge of the 26th Circuit. Jon Kaltenbronn is associate court judge in Miller County. At the time, those were the only judges serving my part of the 26th Circuit in Miller County. Later in that header you see Peggy Richardson. She was, at the time, the associate judge in Moniteau County. She has since

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been made third circuit judge in the 26th Judicial Circuit. Judge Joyce is a circuit judge in the 19th Judicial Circuit, which is Cole County. Judge Beetem, circuit judge, Cole County. Thomas Sodergren, associate judge in Cole County. Dan Green is a circuit judge in Cole County. Judge Schollmeyer is an associate judge in Osage County. He comes to Cole County on some special judge cases and criminal nonsupport cases. Markrichardson@colcopa.com, he is the elected prosecutor of Cole County. Benjamin Winfrey, the elected prosecutor of Miller county. The e-mail address prosecutor@moniteaucounty.org is the e-mail address that the elected prosecutor Shane Healea uses for Case.net notifications and filings and stuff like that, so I use that as an e-mail for him. His last name, to my knowledge, is H-a-e-l-a-e [sic] -- or H-e-a-l-e-a -- I can't remember which.

Q. (By Mr. Scherzer) And -- sorry. Just shifting over on the page prior to that, 39420. There's a "from," and is that your e-mail address?

A. That is -- I'm looking --

Q. Sorry. The bottom of 39420.

A. Bottom of 39420. There's a from Judge Richardson to myself cc'ing in the other

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people who were in on that thread.

Q. Oh, I'm sorry. The very, very bottom.

A. Oh, I apologize. Yes, I see that.

Q. That just tracked over that page, but this is obviously an e-mail that you sent to all of these individuals?

A. Yes.

Q. Is that effectively every judge and head prosecutor in the relevant counties that you represent individuals in?

A. Yes. With the sole exception of if there was some random case that happened to have a special judge out of some random county that I wasn't aware, they were not included on this e-mail. But these were the judges who we would have seen for 99.5 percent of our cases.

Q. Okay.

A. Perhaps all of them.

Q. And so in that -- now we're returning to the body of the e-mail. The second sentence saying, "The struggles of the public defender office remain." And was that referring to the other e-mail that you sent previously indicating case overloads and problems in your office?

A. Yes.

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Q. Okay. And you mentioned this previously, but what precipitated this particular e-mail, if anything?

A. The December 29, 2016, e-mail was precipitated by a number of lawyers walking into my office and saying, in very colorful language, we've got too many cases, and if you don't stop giving us this many cases, we're all going to quit.

Q. And how many of your attorneys, if you recall, came into your office and said that?

A. Three, perhaps, four.

Q. So at -- half or more than half of the attorneys in your office?

A. About half.

Q. Okay. And was that something that you had heard from them previously -- not that -- that they had -- sorry. Scratch that.

Was the fact that they had too many cases something that you heard from the line attorneys in your office previously?

A. Well, certainly, when it started in 2014, everybody expressed that they had too many cases. And, you know, at that point, like I said, there were a number of things going on, and so we tried to deal with each of the things to get the caseloads

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down, and we did. And, understand, all of these things sort of unfolded over time. You know, from 2014 to 2016, we made significant progress in reducing the caseload of every single one of the lawyers. You know -- so we were certainly -- so, yes. I mean, as a part of all of this, there was kind of a dialogue of, you know, we've got too many cases. Well, I -- you know, these are the things that we're doing to deal with it. But we did not have sort of the formal caseload restriction until the time period surrounding this e-mail.

I don't know if that was responsive to your question. I'm sorry. Did that answer --

Q. Yeah.

A. I mean, certainly, between 2014 and 2016, lawyers complained to me about their caseload; we were doing other things to address it that weren't necessarily in this e-mail.

Q. Okay. But, obviously, at least from your line attorneys' perspective, you hadn't addressed the problem because half of them -- or more than half of them said they were going to quit if something further wasn't done?

A. Right. It had not -- certainly had not fully addressed the problem. It was not as bad as

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it was in 2014, but it was not where it needed to be either.

Q. Okay. And then can you just read the -- just the first sentence of the paragraph that begins, "As an agency."

A. "As an agency, the public defender's office has tried everything it can think of to get its caseload under control."

Q. Okay. And I -- and in that -- you're referring to the steps that you have taken previously in your district office?

A. Over and above that. So the public defender's office, in the time I've been with the agency, we've gone to the legislature and asked nicely for more money and gone to the governor and asked nicely for more money and we've gone to the Supreme Court and asked to be exempted from time standards and we've gone to the Supreme Court and asked for caseload controls and we've passed an administrative rule, and that was challenged in court, and then we passed another administrative rule. And then we -- there was -- you know, there was a statute that was passed. And, you know, there was the Senate interim committee that got together to study the thing. We've been studied by the

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Spangenberg Group at least twice in the time we've been here. We had RubinBrown come in and study us because the legislature said, Give us the Missouri specific standard; give us some data; we need something other than your professional judgment. So we did the work; we got the data. And, you know, at least as an agency, you know, in terms of having had court hearings, having gone to the Supreme Court, having gone to the legislature, having gone to the governor -- I mean, you know, this is something that we've been dealing with for -- as long as I've been around. And so that sentence was really more intended to be a reference to all of the things that the -- the agency has done in the preceding decade, plus to try to deal with the caseload problem.

Q. Okay. And, obviously, you indicated that your -- you, in your capacity as district defender in Area 19, had also taken a number of steps to try to address the caseload problem as well?

A. Yes. And, actually, it -- you know, further down in that paragraph there's a sentence that begins with, "Internally, I have done everything I can think of." And that's -- you know, that's sort of a reference to me telling them, Hey, look, I've done everything I can do, too. You know,

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it's not ...

Q. Okay. And then just in the paragraph above that, it -- there's a reference to the Jeff City office, which I assume is the Area 19 --

A. Yes.

Q. -- office's current caseload is about 250 percent of its capacity.

A. Yes.

Q. And that's from the ABA RubinBrown study; is that right?

A. Yes.

Q. Okay. So then in the paragraph beginning with, "Starting in January," towards the bottom of that page -- can you -- can you read out that paragraph?

A. Sure.

"Starting in January, when I receive a qualifying application for public defender service, I will do one of two things. If the applicant is in jail, I will assign the applicant a lawyer immediately until all of my lawyers have become overloaded. If the applicant is not in jail, I will hold the application until the end of the month. If I have available lawyers at the end of the month, I will assign it to one of my lawyers. If I don't

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have available lawyers, I will be filing a motion to appoint a lawyer who is employed by the State of Missouri, such as a lawyer for DNR or the PSC, et cetera. After all, it is the state's responsibility to provide counsel for those who cannot afford it; it is not the responsibility of the private bar. In the event that the motion is overruled, we will not refuse to provide representation. Instead, I will exercise my discretion to assign the case to myself. I will not assign additional cases to an already overburdened assistant public defender. If qualifying cases continue to come into my office at the same rate, my personal caseload will increase significantly. I am not Superman, and I know I can't do it all. I could be forced to file continuance motions and/or motions to withdraw. The immediate impact on your courts will be that when an applicant is not in custody, I will not be able to give you an immediate answer as to whether that person qualifies. Obviously, this impacts the administration of your courts and the handling of your dockets. This presents an inconvenience for the courts and the applicants. For that reason, I feel that you deserve a heads up. Nonetheless, as a supervisory lawyer, I have a specific ethical

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obligation to monitor and control the caseloads of my assistants. I simply can't keep assigning my lawyer cases at the rate that I have been assigning them."

Q. Okay. And then can you read that -- just the last sentence on that -- the last two sentences, sorry, on that page?

A. Sure.

"It seems worth mentioning that I don't really love this plan. Frankly, I don't know what else to do."

Q. And so you've described some or previously what you are thinking when you sent this e-mail, but anything else you haven't said previously about your feelings about this e-mail or why it is you felt the need to send it?

A. Well, there are sort of a number of things that precipitated it. You know, the immediate spark was the lawyers walking into my office. Preceding that, in September of 2016, there was a management meeting that all of the district defenders in the state went to, along with senior management, and at least previously -- preceding this September 2016 management meeting, the directive that we had received as a line district defender was that, you

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know, we're going to -- that management will sort of figure out the strategy for dealing with caseload going forward; don't you all go rogue and do your own things; we want to do this on a statewide basis to be consistent. The upshot of the message from the September 2016 management meeting was, as I took it to be, we've exhausted all of our options; we don't know what else to do; we now wish to empower local offices to come up with their own solution to the situation.

When, you know, the lawyers came into my office and said, Hey, you keep giving us all of these cases, we're all going to quit, the first thing I did was contacted senior management -- well, I -- we called a meeting, we talked about it, and then I contacted senior management, and there was an additional meeting in the Jefferson City office preceding that September 29 e-mail where we kicked around a number of different options. And, frankly, my impression of the thing was nobody had any great options. Nobody -- I mean, really, this is something we've been dealing with for forever. The state public defender system doesn't have more lawyers in their back pocket that they can reallocate to Jefferson City. Every office is

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underwater; it's just a matter of how far underwater they are. Not hearing -- in this, sort of, meeting with the local office, the assistant public defenders, and with senior management, not hearing any other solution that would really get my lawyer's caseloads down, this was sort of the decision that I made following the meeting -- well, the solution, frankly, kind of stinks, but I don't know what else to do.

And so that was sort of what had preceded this e-mail to the courts. My fear was -- one of the options that we talked about in the meeting was lawyers on an individual caseload just litigating their caseload, filing motions to decline or motions to withdraw or what have you. You know, my impression was none of those were going to get granted, and it wasn't going to bring the lawyers any effective caseload relief, and then they'd all end up just quitting, and then -- you know? It wouldn't fix the problem.

The thought was, at least with this remedy, at least the assistant public defenders can practice consistent with the rules of professional conduct, or at least they have a fair shake of doing it, or we can all not, so. As between all of us

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practicing ineffectively or just me, I'd rather it just be me.

Q. So prior to January 2017, before you instituted these caseload controls, your opinion was that the rest of the attorneys in your office were practicing ineffectively?

A. Yes. In talking to him, I felt like they had too many cases, and so we had to -- and it -- you know, it wasn't a thing on their part. I think that it was -- even in spite of all of the things that we had done internally, in spite of all of the things that the agency had done since, you know, 2004 or whenever, they still had too many cases, and I had to address it; I had to do something to deal with it. And so immediately, come January 1, we put everybody on sort of a caseload diet where we limited the number of incoming cases every month, and when we believed they could not take additional cases, we cut them off.

Q. Okay. And what happened to it? Obviously, you didn't -- sorry. I'll rephrase.

Was your office -- sorry. I'll rephrase again.

What happened to the other cases that you would have previously been receiving in your office?

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A. We filed motions to decline representation or motions to appoint a state lawyer or -- the motion was sort of an evolving thing over time, but, ultimately, it was some sort of motion to appoint somebody else, a motion to decline representation, or, Judge, you've got other options, too: You can take jail off the table or you can let the person -- let the accused out of jail or you can continue the case or -- I can't remember all of the remedies that were in there. It was kind of a kitchen sink. Some of the affected applicants ultimately were able to retain counsel. Some of the affected applicants waived counsel and proceeded on their own. Some of the affected applicants we were able to get into their case at a later point in time.

Q. When you say "get into their case at a later point in time," what -- can you tell me what that means?

A. Enter an appearance, assign them a lawyer, and initiate representation.

Q. Sorry. My question wasn't clear. And what would happen in the interim before you entered an appearance?

A. Probably nothing. I'd certainly -- we would not engage in representation.

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Q. Okay. And was there a waiting list of individuals waiting for representation from your office?

A. Well, we'd had applicants who had applied, and we'd filed a motion to decline or a motion to appoint somebody or what have you. I've gone round and round with people as to whether that would be -- whether you call in a wait list or not -- I mean, I don't know what you want to call it, but what was happening, was some people would apply, and we could not take their case, so we would file a motion. Sometimes we'd be able to get into it later; sometimes the issue would sort of become moot from my perspective, in that they may hire a lawyer. But that was what was going on.

Q. Or it could become moot in some sense that they -- if they represented themselves, having waited too long, in their opinion, for a public defender to be assigned?

A. It would no longer be -- I mean, we would no longer have to get in the case, if the case was then closed.

Q. Right.

A. It would not become moot from a perspective of, you know, was this person deprived

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of their right to counsel. So it sort of depends on -- yeah.

Q. Right. Right. And do you have any sense of how many -- in how many cases you've filed one of these motions to decline representation or appoint another attorney?

A. In various formats, whether it's a motion to decline representation or a motion to decline representation and appoint a state lawyer -- or now we're filing motions for caseload conference. There have been literally hundreds. As of yesterday, we had filed 120 about -- approximately -- caseload conference motions that were pending. And those -- so these are people who meet the financial criteria for public defender and have an eligible case, but instead of entering, we filed a motion for caseload conference.

Q. Okay. So 120 motions for caseload conferences and more than 100 motions for -- to decline representation or less than 100?

A. More than 1500. The motions to decline representation or the motions to decline representation and appoint a state lawyer, I would estimate, ballpark, between 2- and 300 motions we've filed.

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Q. Okay. Is there any other broad -- so there's 2- and 300 of those motions; 120ish of the caseload conference motions. Any other broad category of motions you've filed in a similar event, or does that cover the waterfront, pretty much?

A. On my existing cases, we filed a number of motions to withdraw from representation based on caseload after we have entered. Does that make sense?

Q. Uh-huh.

A. Okay.

Q. And you said "my cases." You mean cases where you, yourself, were appointed -- or have entered appearances in, not other attorneys in your office?

A. Correct.

Q. And those were clients that you were already representing that you filed a motion to withdraw due to your excessive caseloads?

A. There were motions that I entered previously. Following the entry, I received all of these additional appointments that were over my objection, and so then I sought to withdraw from cases that I had already entered into.

Q. And move to withdraw and appoint a private

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attorney or move to withdraw and provide remedy as the court sees fit or ...

A. Appoint a private lawyer, appoint a state lawyer, take jail off the jail. I mean, it's a kitchen sink of proposed remedy.

Q. Okay. And in those motions to withdraw, approximately how many, ballpark, of those motions to withdraw have you filed?

A. I'm not sure off the top of my head. I really don't know.

Q. Okay. Do you think more than 30?

A. Yes.

Q. All right. More than 50, do you think?

A. Fifty is a good starting guesstimate. One of the things I've got on my staff's to-do list is go back and file them on all of the cases that I've not previously filed one on. So depending on when they can get that done, you know, they may be filing more as we speak. I don't know.

Q. When you say "all of the cases," do you mean each and every one of your 213 cases?

A. Except for ones that I had just been appointed on within the last month or two, yes. And, you know, my approach with that is going to be -- you know, I don't -- the situation being what

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it is, I'm never going to convince one of my judges that I should not have a caseload. And, frankly, I should probably have some small caseload. I would never expect my courts to let me out of every single one of my cases, but I do think that I -- at this point, my caseload being what it is, I think I'm obliged to seek leave to withdraw from all of my cases, and if that motion were granted as to 211 of my cases, I might not need to pursue it on the last two, but, you know, as a practical matter, I filed that motion a number of times; I've not successfully had it be granted ever, so I'm not anticipating that it be granted on any of my -- in any of the future cases in which I file it.

Q. And is the basis for that motion -- because I don't think we have one of those here, but is the basis for that saying that in that motion it's due to my excessive caseload?

A. Yes.

Q. Okay. And so since you either have or are planning to file it, essentially, in every one of your cases, that includes cases that you have done substantive work on for however -- for months or perhaps years?

A. Yes.

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Q. Okay. And, obviously, since you've already described it, you understand that that's deleterious to the clients in that case, but you have no choice, given your excessive caseload?

A. Absolutely. But, you know, frankly, it would be deleterious to the client to have their lawyer switched around a year into a case, for example, and be assigned someone who knows nothing about it. What I am telling my courts right now, Judge, if you put me in this case, my representation is going to be deleterious to this client. I cannot do this client justice right now. I am not doing justice on my existing cases. I'm not doing the work that I ought to be doing. And it's not a willful thing. I'm working overtime. I can't keep up. There are only so many hours in the day.

Q. And you're describing, for example, going to jail visits on Sundays and the like.

A. Yes.

Q. You're working on the weekends, as well, but you can't handle 213 cases?

A. I cannot.

Q. And that's in addition to the numerous responsibilities you have as a district defender and that we've discussed previously, in terms of running

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the office and hiring and budget and administration and supervision?

A. Correct.

Q. Okay. And just to tie up that last piece about supervisor, in addition to all of the administrative tasks you have, you're also responsible for supervising and training the line attorneys in your office; is that right?

A. Yes. Some of whom are brand-spanking-new to the practice of law. Like I said, I've got one lawyer that's been practicing less than a month. I've got another lawyer who took the February bar, got the results in April or May or whenever, and started with us over the summer, and she's a very good lawyer. She is very new to the practice of law, and I should be spending much more time training those two lawyers and the other lawyers that I have.

Q. Are there other supervisors in the office who are responsible for supervising those two younger attorneys?

A. I'm the only supervisor in the Area 19 office. We do have -- from time to time, there's some informal mentoring that goes on. More experienced lawyers will help the lesser -- not the

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lesser but the more junior lawyers. As I mentioned, my most experienced lawyers really aren't that experienced.

Q. Right. Okay. So just to sum up this -- these motions, there are about -- just doing -- not asking to do heavy math here, but if there are about 2- to 300 motions to decline and/or appoint counsel, and there's 120-plus motions to -- for a caseload conference, and there are 50-ish motions to withdraw, my rough calculations are it's close to 500 cases in which you've moved in one fashion or another to either get out -- not take a case or to withdraw from a case that you or your office is currently -- or would otherwise be representing a defendant?

A. That sounds about right.

Q. In fact, that number -- once your staff gets around to filing a motion to withdraw in the other 163 cases that you have is going to be 6- or 700 cases?

A. Absolutely.

Q. Okay. And so, broadly speaking -- we can talk about some specific examples, but what is happening in those 500, soon to be 6- to 700 cases that you've moved to decline or withdraw from in

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some fashion?

A. On the cases in which we'd filed the motion to decline, most of those, as in all but a small number, either the courts ordered us -- denied the motion to decline and ordered us to represent. If we were ordered to do so, we did. Now, you know, my representation at this point is exceedingly limited. I mean -- you know? The -- let's see. There are motions for caseload conference that are sort of out there that are pending. You know, there's a hearing in Miller County on December 22. Most -- so what -- I mean, those are sort of out there and they're floating.

The motions to decline representation, generally, those have either been assigned somebody from my office or some have become moot, either in that the individual goes pro se or that they retain a private lawyer. I can think of a couple of cases in which, in response to that motion, a judge did appoint a private lawyer. As I'm sitting here thinking about it, I can think of three private lawyers in Cole County who were appointed in response to motions that we filed, one of who was my wife.

Q. And where does your wife work -- not

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location, sorry, but what's her -- what firm or organization does she work for?

A. Her firm is Carver & Michael in Jefferson City, Missouri.

Q. Okay. And was that appointment upon her request or was --

A. No.

Q. Okay. And do you think that -- was that a coincidence or -- as one of three lawyers not a coincidence?

A. I don't have personal knowledge as to the judge's thought process behind that.

Q. Okay.

A. We could speculate.

Q. Yes. Fair enough. Okay.

Have any attorneys from the state -- you mentioned one of the options was appointing someone who is employed by the State of Missouri. To your knowledge, has anyone employed by the State of Missouri been appointed as a result of these motions?

A. Not to my knowledge.

Q. Okay. So other than the three private attorneys, no other attorneys, to your knowledge, have been appointed --

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A. Correct.

Q. -- as a result of these motions?

A. Correct. Judge Joyce is contemplating appointing private counsel but has been contemplating that for many months. Preceding the conference with her, if you can give me something that says I can do it, I'll do it. I did provide her a proposed order in May or June, and she did not make any appointments.

Q. Okay. And in those -- in the cases where you or your office is entering appearances over an objection, are you then engaging in active representation of those clients or simply entering an appearance and waiting until your office has some time to actually work on those cases?

A. Well -- I mean, if we're ordered to represent, we're going to do the level best that we can. I mean, understand right now my level best, I would rate as pretty terrible. The -- there are times where we've been ordered by the court to enter, and I've entered, but I really haven't been able to do anything with the case. And as another lawyer in my office was able to take on additional cases, I would then reassign that case to the lawyer that was actually able to work on the thing. So

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that, I know -- that has happened, certainly, a number of times. Other times, you know, in -- for example, in Miller County, I'm the only lawyer taking new cases in Miller County, so I'm simply not going to be reassigning it to anybody else. If I'm ordered to represent over my objection, I will file an entry; I will do the best I can, but, you know -- I mean, right now, active representation, a client may sit in jail for two months before I can get down to see them. I mean, I don't consider that active representation. It's not a willful refusal thing on my part; it's -- if you look at the list of people that I need to see and their corresponding court dates, I -- you know, it -- it's going to take forever for me to get to people.

Q. And as you described, it's not just meeting with your clients; it's also doing all of the investigative work that would be needed on any individual case. You're unable to do that either?

A. Oh, absolutely. Or legal research or filing motions or -- you know, there's so many things. In Miller County, our judges tend to fix fairly high bonds, but they will consider, like, a furlough for treatment, so if your client wants to go to in-patient treatment for drugs or alcohol or

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what have you -- which is fine, except that my ability to coordinate that is -- I mean, it's virtually zero. Basically, I dedicate it to a staff member who has got other responsibilities, and she does the best that she can. That's -- you know, there are clients who have simply asked the family to do it because their family will do it faster. Even when they get a furlough, there have been dates that they have not been able to get to simply because I can't get a motion in front of the judge that fast. You know, getting and reviewing full discovery. On my desk, I've got a stack of CDs and DVDs that have been sitting there for a couple of weeks; haven't looked at them, don't know what's on them. Not going to have a chance to look at them anytime soon. I mean, any of the substantive legal work that I should be doing, right now, there isn't time to get it done.

Q. And that's the -- what are the effects of continuances and delays and cases on the individual defendants and their cases?

A. Well -- I mean, if they're in jail -- we're already seeing in Miller County people saying, Forget it, I don't want a public defender; I'll just go to prison pro se; I'll just represent myself. If

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they don't take that approach, then they sit in jail that much longer until I can get around to doing the work that needs to be done. Miller County is one of the counties that will impose payment of a board bill as a condition of probation. So every day that they sit in jail, they're getting a bill for 38 bucks a day. And if they sit in jail for six months because it takes me that long to work on the case, that's -- $38 times 180 days, that's going to be added to their board bill, and, of course, my clients are completely destitute. If they're free -- well, whether they're free or whether they're in jail -- you know, a lot of times our clients, their life -- their whole life is on hold because of the criminal charges that they're facing. Obviously, if they're in jail, they're at risk of losing their housing, their car is likely to get repo'd, they may lose custody of their kids, they're likely to lose their job. When the landlord goes and evicts them, they're just going to throw all of their stuff out in the street; there's no one to pick it up you know; it's all going to get taken. So when a client, after sitting in jail four to six to 12 months or whatever, and they come out and they have absolutely nothing, I think they're much more

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likely to get back into trouble and reoffend, and it makes it that much harder for them -- if they're granted probation, it's going to make it that much harder to succeed on probation. You know, if they're not in custody, a lot of times -- again, the case has dramatic effect on them in that -- you know, in Missouri, everything is -- all of our court records are all in Case.net; it's on the Internet. You know, a lot of employers have caught on to that, and when an employer sees that guy has got a charge for possession of a controlled substance, that is going to impact the accused's employment prospects, even though they're presumed innocent while they're going to court on the charge. You know, right now drug tests at the crime lab are taking -- I don't know -- eight to 12 months for the drug test to get complete. You know, you set a trial in Miller County right now, the trial is going to be in the summer of 2018. And, you know, you throw in an overloaded public defender in all of this, you know, for our client -- I mean, just that pending charge, for it to go on that long, 18 months, has a horrible dramatic effect. I mean, it can affect the custody of their kids; it can affect -- may get kicked out of public housing, if they're in public housing; it

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may affect their job. You know -- and they've got to show up for all of these court dates. In some counties, they require bond supervision. So in addition to showing up to court dates, they may have to show up at a private probation office every week and pay a supervision fee and -- you know, obviously, if transportation is hard, it's going to be difficult to do that. Man -- I mean, you know, the -- you know, the consequences that are -- there's a huge list of the consequences, whether you're in jail or not, you know, just because of the delay associated with the public defender's office.

So I don't even know if I -- I started talking, and then I lost track of your original question. I apologize.

Q. No, no. That's -- so those are all tremendous personal consequences that these individuals can face, and then the other piece I'm hoping you can speak to is what consequences it has for their legal case continuance of months or years, in terms of the evidence and witnesses and all of those things.

A. Well, if it takes me two months to get the client in the county jail, and there's a video recording that they think is important to their case

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from the quickie store or from Walmart or from what have you, you know, most businesses only hold onto those videos for so long. If I don't contact them, you know, shortly after the thing, it may be erased and rerecorded over. So there's certainly the possibility that, you know, material evidence on the case could be lost. I've got a case right now where it's a very important part of the case that blood be tested. Preceding the -- I -- well, let me back up to the beginning.

It's a serious charge. I had to find an expert -- took me forever because of my schedule and because there's a shortage in this specialty, but you put the two together, it took me six months to find an expert on the case, possibly longer. And then in talking to the expert, we identified, Hey, there's blood that needs to be tested, then we had to find a lab to test it. The lab that we found to test it, by the time I got done playing phone tag with the people I needed to talk to, told me, You know what, at this point, blood is going to be too old; can't test it. As the thing stands now, we think we have found another lab who can work with the sample and then run the test that we need to be run, but, frankly, if for some reason they get into

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it and they find that they're going to be unable to do that, we're going to be up the creek without a paddle. That is a very important part of this case, but we have no ability to get any additional samples. I mean, that -- you know, just over and above the legal consequences of witnesses going into the wind or video being lost. You know, this one client, if the blood is too old to test, it's going to be a real problem in the case.

Q. And what charge is that individual facing?

A. Murder.

Q. You mentioned individual -- the other thing that is a result of these continuances and delays these individuals deciding to take plea deals pro se and go to prison rather than waiting longer for representation. It sounds like you're aware of multiple cases where that's happened.

A. Yes. Yes.

Q. Okay.

A. And even in Miller County now, we're seeing some applicants -- some people come into court, and in lieu of filling out a public defender application, they say, Judge, I just want to represent myself. So even before I'm filing a caseload conference motion in some cases, people are

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saying, You know what, I'm not even going to go there.

Q. And is that because they've heard about the delays in public defender representation?

A. Most of the Miller County jail has received from me a motion to withdraw citing my caseload, a motion to decline representation citing my caseload, or a motion for caseload conference, and there's been a good amount of media about the thing. So between all of those sources, they're certainly aware of the situation.

Q. And do these individuals representing themselves and/or negotiating plea deals pro se to go to prison, does that raise sixth-amendment concerns for you as a public defender?

A. Oh, absolutely. And, frankly, the cases where I'm in them and representing people now.

Q. And that all stems from the case and work overload that you and your office is facing?

A. Yes.

MR. SCHERZER: Do you want to take a break for a little while?

THE WITNESS: We can. And can I see if the affidavits came in, if you'd like.

MR. SCHERZER: Okay.

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VIDEOGRAPHER: The time is 12:21 p.m. and we're off the record.
(A lunch recess was taken.)
VIDEOGRAPHER: The time is 1:03 p.m. and we're back on the record.
Q. (By Mr. Scherzer) Mr. Carver, I want to just return to Plaintiff's Exhibit 18 that we had been discussing, and we'll move through it quickly because we have a lot more to discuss, but if you could turn to that page 39420 that we were looking at previously, and let me know when you've gotten there.
A. Okay.
Q. So that e-mail that you had been referencing previously, the e-mail from Judge Richardson to you, the bottom of that page, do you see that e-mail?
A. From Judge Richardson to me?
Q. Yes.
A. Yes.
Q. Which is dated December 29th, 2016, at 10:16 a.m.?
A. Yes.
Q. And the subject, again, is Re: Public defender struggles; is that right?

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A. Yes.
Q. And it looks like it's in response to the e-mail that we had been reading earlier? It's her response to your e-mail?
A. Yes.
Q. Okay. And, in fact, she wrote back right away because you sent that e-mail at 9:54 a.m., and she responded 22 minutes later; is that right?
A. Yes. That's about right.
Q. Okay. So just if you could read the sentence that begins sort of on the four or five lines up from the bottom, the sentence, "We all know that."
A. "We all know that on any given jury week, there is no way the public defender can prepare for the number of cases that get set, so at least for me, continuances will be pretty freely given."
Q. Okay. So it seems like the response -- and I won't ask you to read the whole e-mail into the record, given the time, but the response from Judge Richardson, is it fair to sum up, was, I agree you're too busy and -- but I want you to at least file appearances, and I'll give you as many continuances as you need? Is that a fair summary of her response?

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A. Yes.
Q. Okay. And we've discussed already the problems that can result as a result of all of those continuances, but --
A. Right.
Q. -- worst -- you know, the best of the worst possible worlds, perhaps?
A. Right.
Q. Okay. And then just turning to the e-mail above that on that same page, 39420.
A. Yes.
Q. Which, I guess, if you turn to the page before, 39419, you see at the bottom, that looks like it's from Ben Winfrey?
A. Yes.
Q. And can you remind us who Ben Winfrey is?
A. The Miller County prosecutor.
Q. And it's addressed -- it's addressed to many or all of the same individuals who were on your initial e-mail?
A. Yes.
Q. And it was sent -- if you're looking at 39419, that same day, December 29, 2016?
A. Yes.
Q. Okay. And can you read the second

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paragraph, "I do not -- " or sorry -- can you read the first clause, "In a related vein"?
A. "In a related vein of woe is us, the Miller County prosecutor's office regrets to announce the resignation of assistant prosecutor Derek K, who has been granted a very gracious offer by the Morgan County prosecuting attorney to vastly improve his situation in a county with less crime than Miller.
Q. And can you read the next paragraph?
A. Sure.
"I do not have an ABA-designated study. The ABA does not care enough to perform a study about whether the prosecution is adequately funded to perform its official duties as the minister of justice. Nonetheless, this prosecutor has determined, based upon my expert opinion and anecdotal evidence, that my office is at approximately 100,000 percent, our recommended carrying capacity by any standard. Please keep this in mind as we venture out together in the new year, and please be understanding of the state's own limitations in counties other than Morgan."
Q. Okay. And then if you could turn to 39419, a page prior to that, there's another e-mail

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from Ben Winfrey just to you later in the day that same day, six or seven hours later, where he says he was joking and says I was not mocking or minimizing your problem, we have both asked to do more with less; is that right?

A. Yes.

Q. Okay. And then if you could turn to 39416. The bottom of that page, it looks like there's an e-mail from Judge Schollmeyer to Ashley Lute?

A. Yes.

Q. And it looks like just above that it says Ashley Lute is associate circuit judge's secretary; is that right?

A. Yes. I mean, I think officially she's one of the court clerks, but she serves as his secretary.

Q. Okay. And she forwarded that e-mail, also, to you on December 29th at 4:26; is that right?

A. Yes.

Q. And so, essentially, it looks like -- oh, I see. Sorry. Because on -- just -- on 39417, it looks like you ended up writing to Ashley Lute because your e-mail to the judge directly bounced

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back; is that right?

A. Correct.

Q. Do you see that sort of at the top?

A. Yes.

Q. So then, essentially, this e-mail from Judge Schollmeyer was to you, just passed through Ashley Lute; right?

A. Correct.

Q. Okay. And he said -- can you read us what he said -- his short e-mail?

A. "I'm not going to appoint your office in Class A DWRs, if they're eligible for reinstatement, until I see that they aren't going to get reinstated."

"DWR" is -- tangentially, it's driving while revoked.

Q. Okay.

A. "Also, at the first of the year, first-offense stealing will have no possibility of jail, so I can't appoint. These things might help a little."

Q. Okay. And so when he says -- so is that referring to -- there was some statutory change in January 2017 about first -- the first offense for stealing; is that right?

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A. That's how I read that, yes.

Q. Okay. And are you aware of that particular statutory change or ...

A. In memory serves, I think it's just under a certain dollar amount.

Q. Okay.

A. I think it's less than 150 bucks.

Q. Okay. And so when he says, "I can't appoint," what is he referring to?

A. So when he says -- if it's -- if there is no risk of incarceration -- you know, there's certain statutes that say you can get a fine only under Chapter 600; they are not -- persons charged with that are not eligible for a public defender.

Q. Okay. If they're not -- if there's no possibility of jail time, they're ineligible for a public defender?

A. Correct.

Q. Okay.

A. Tangentially -- I don't mean to interrupt -- I just got a text from my office indicating they tried to send an e-mail to the staff up front, so I don't know if someone wants to step out and check on that or not.

MR. SCHERZER: Sure. Yeah. We can take a

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two-second break to do that.

VIDEOGRAPHER: The time is 1:12 p.m., and we're off the record.

(A recess was taken.)

VIDEOGRAPHER: The time is 1:16 p.m., and we're back on the record.

Q. (By Mr. Scherzer) Okay. And then just the last e-mail in this chain, if you don't mind, Mr. Carver, that starts on that page 39415. At the bottom of that page -- sorry. When I said the first e-mail, the first e-mail, if you look at the top, is an e-mail from you to Ms. Shipma in October of this year forwarding this e-mail chain; is that right?

A. Yes.

Q. Okay. But the second e-mail and the first one, you know, in this chain from -- in 2016, is this e-mail from -- at the bottom of the page on 39415 from Daniel Green to you?

A. Yes.

Q. And can you remind us who Daniel Green is?

A. Circuit judge in Cole County.

Q. Okay. And if you turn to the -- to 39416 at the top of the page, can you just read a few sentences that start with, "At any rate" on the second line there? "At any rate I would ..."

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A. "At any rate, I would go so far as to suggest you figure out the maximum number of active cases for your folks, and we call these green cases. The rest we call red. When the case comes on the docket, and I ask you what action, you respond with, This is a red case, and we continue for 90 days, or, This is a green case, and we set it accordingly."

Q. Okay. And is that -- has that been happening, the green or red or some similar type of code word?

A. No.

Q. Okay. But what Judge Green is suggesting here is -- was, at least, that you set up two classes of cases, one class of which you would just continue, perhaps, ad infinitum, but at least for 90 day clips at a time?

A. Correct.

Q. All right. I'm done with that exhibit for now. I want to turn now to 8286.

(Deposition Exhibit No. 19 was marked for identification.)

Q. (By Mr. Scherzer) So, Mr. Carver, I'm showing you what's been marked as Exhibit 19. Let me know when you've had a chance to glance at it.

A. Yes.

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Q. Okay. Do you recognize this?

A. Yes.

Q. And what is it?

A. This is an e-mail thread. The substantive e-mail would appear on Bates stamp 39414, which is an e-mail I'd sent to the courts in October of this year, and it wasn't addressed to all of the judges that I practice in front of, but it was addressed to those who had been continuing to order us to represent, even after we had been telling them we're drowning and we can't take more cases.

Q. Got it. So just to that subset of judges who were ordering you to continue representing, despite your concerns about your ability to effectively represent those clients they were ordering you to represent?

A. Correct.

Q. Okay. And can you read us that e-mail on 39414?

A. Sure.

"As you know, I have been filing motions to appoint counsel for some time. In the event those motions are overruled, I'm now sending notice of the court's order to my supervisors with the request that they respond. I simply do not have any ability to assign these cases internally within my office. Frankly, I don't know what my supervisors will tell you. They don't have extra lawyers on hand to take additional cases, and I'm told that they are receiving notices of appointment from local public defender offices all over the state. I assume it may take some time to receive a response. Your patience is much appreciated. If you do not receive any response after you have ordered the public defender to provide representation, feel free to let me know. Tangentially, I will remind you under State ex rel. Robinson v. Franklin, the court cannot appoint specific public defenders; the court can only order the agency to provide representation. As always --"

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It's supposed to say "feel free," but there's a typographical error --

"-- feel free to get in touch with questions or concerns. Thanks, Justin."

Q. And what, if any, response did you receive as a result of this e-mail?

A. From the courts? None.

Q. Okay.

A. I sent a number of cases to my supervisor, Ellen Blau, and I think that she asked -- I cc'd in other members of senior management on it. Sometime later I got a call from Ms. Blau saying, Don't do that anymore. We don't have any lawyers to give these -- to assign these cases to.

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Q. Don't do what anymore? Sorry.

A. Send the cases to the administrative office with the request that they provide representation.

Q. Okay. So, initially, she told you to send those -- to copy other individuals after you had sent it, but eventually came back to you and saying sending these cases to us is frivolous because we have no one to take them?

A. Correct.

Q. And what did she suggest that you do instead?

A. Have evidentiary hearings on my motions to decline representation or motions to withdraw.

Q. Okay. And have you been able to have those hearings?

A. Yes.

Q. Okay.

A. And I've had zero success.

Q. Okay. So tell us about that, if you could.

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A. Sure. There was -- I can think of two right now off of the top of my head, evidentiary hearings on motions to decline representation and/or motions to withdraw representation. One was in Miller County in front of Judge Kaltenbronn where we took up a number of cases simultaneously, as in -- when I say "a number," I mean more than a dozen, maybe two dozen -- cases in which essentially the same issues was there, and I testified as to my caseload and what I was able to do and what I was not able to do. The judge overruled all of the motions and ordered me to remain in the case or enter into the case as the case may be. Likewise, there was another hearing on a conflict case in Laclede County in front of Judge Richardson where, again, I testified and the judge ordered the public defender to represent.

Q. Okay. So -- and those are the only two evidentiary hearings that you've had?

A. That I can think of off of the top of my head. There may have been more -- I want to say there was at least one more in circuit court in Miller County. I can't recall for sure for sure. We've also had the case conference hearings in Cole County. We had a hearing on motions to -- for

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the caseload conference in Miller County, and the conference is scheduled in Miller County.

Q. Okay. And what, if any, reasons or rationales did the judges in these evidentiary hearings give for denying your motions?

A. In the Lebanon -- in the Laclede County case -- I use Lebanon and Laclede County interchangeably.

Q. Right.

A. In the Laclede County case, the judge said, Well, I'm not ordering you to take it, Mr. Carver; I'm just ordering the public defender to take it. If your office can't do it, find another public defender from another public defender office. I talked to my boss, who told me there aren't any other public defenders in any other public defender offices that -- they're all overloaded, and because of the division of labor, the case was my office's case. It had initially started -- the reason it was my case was it initially started in Miller County, and the venue was changed to Laclede County, sort of the administrative division of labor is it gets assigned to the office in the county where the case started. You know, in -- with regard to some of the other things that courts have told me over time,

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basically, the same things I told you to before. You know, Judge Kaltenbronn in response to the motion -- the evidentiary hearing basically said, You know, look the real remedy is not judicial; the real remedy is legislative. And he didn't feel like he had any good options other than appointing the public defender, was sort of what he articulated.

Q. I'd like to just -- to close this loop here, just return to Plaintiff's Exhibit 18 for one second. When you have that in front of you, that's the eight-page chain of e-mails.

A. Okay.

Q. On -- and going back to 39421 -- sorry. I wanted to do this before the break, but I will just come back to it quickly now.

The four lines up from the bottom says -- you read this earlier -- that, "Nonetheless, as a supervisory lawyer, I have a specific ethical obligation to monitor and control the caseloads of my assistants."

A. Yes.

Q. "I simply can't keep assigning my lawyers cases at the rate that I have been assigning them."

A. Yes.

Q. Can you just tell us a little bit more

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about that special ethical obligation that you have as a supervisor?

A. I'm obliged to make sure that all of my lawyers practice consistent with Rule 4 of the Missouri Supreme Court Rules. One of those rules specifically, if you look at Comment 2 relating to diligence, says that a lawyer's caseload must be controlled so that they can practice each case competently. Over and above that, if you look at the rule relating to competence, competence is knowledge and skill, but it's also preparation. It's a conjunctive test. It's not sufficient -- you are not competent if you have only knowledge and skill but you do not do the preparation to provide competent representation within the meaning of Rule 4. You have to have the knowledge, the skill, and the preparation. So those are just some -- sort of some of the obligations that come to mind as you ask that question.

Q. So that's over and above your ethical responsibilities to your own cases, you have these additional ethical responsibilities as a supervisor?

A. I have to make sure my lawyers are being ethical in their practice as well.

Q. Okay. And are the rules that you're

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referring to 4-1.3 is diligence -- is that --
A. That sounds correct.
Q. -- correct? Okay. And then 4-5.1 is responsibilities of partners, managers, and supervisory lawyers?
A. That sounds correct, yes.
Q. And does that -- does that rule say something to the effect of a lawyer having direct supervisory authority over another lawyer shall make reasonable efforts to ensure that the other lawyer conforms to the rules of professional conduct?
A. Yes.
Q. Okay. And, in fact -- well, I'll just -- let me just submit this quickly so I don't force you to try to guess on what the ...
(Deposition Exhibit No. 20 was marked for identification.)
A. Yes.
Q. (By Mr. Scherzer) Do you recognize what I put in front of you as Exhibit 20?
A. Yes.
Q. And this is Rule 4-5.1?
A. Yes.
Q. And do you see Letters -- C under that?
A. Yes.

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Q. And it says, "A lawyer shall be responsible for another lawyer's violation of the rules of professional conduct if, one, the lawyer orders or with knowledge of the specific conduct ratifies the conduct involved"?
A. Yes.
Q. Okay. And is that one of the things that you're talking about, about your special ethical responsibilities as a supervisor?
A. Yes.
Q. Okay. So, indeed, you could be ethically responsible for the conduct of your line attorneys if you either order or even ratify their conduct conducting ineffective for unethical representation of the defendants your office is assigned to represent; is that right?
A. Yes.
Q. Okay. I'd like to mark this as Plaintiff's Exhibit 21.
(Deposition Exhibit No. 21 was marked for identification.)
Q. (By Mr. Scherzer) Have you seen this document before, Mr. Carver?
A. It looks like there's some formatting errors that may have occurred --

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Q. Yes.
A. -- when the thing was printed.
Q. Yes.
A. Setting aside those formatting errors, this would be appear to be a supplemental budget request relating to the public defender's office. I presume I have seen this at some point in time. I mean ...
Q. And it's okay if not. I'm asking you about one specific page, which I'll refer to you.
A. Okay.
Q. But it does say -- although, yes, this is something in the file that has occurred, but on the front it says, "Supplemental --" what looks like "Supplemental Legislative Budget Request."
A. Yes.
Q. Is that right?
A. Yes.
Q. Approved October 25th, 2017? Is that right?
A. Yes.
Q. And it says, "Michael Barrett, director." Underneath it has the Missouri State Public Defender commission seal?
A. Yes.

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Q. Okay. So I just want to turn to the last page of that document, 38976.
A. Okay.
Q. And it says, "State Public Defender Cumulative caseload Metric Fiscal Year 2017" on the top. Do you see that?
A. Yes.
Q. And it says, "Start date, July 1st, 2016, end date June 30th, 2017"?
A. Yes.
Q. Okay. And do you see it -- it looks like the 33 districts or areas in the Missouri State Public Defender System are listed here in rows.
A. Yes.
Q. And they're ranked 1 to 33 in the far right-hand column?
A. Yes.
Q. And this is a percent of capacity chart for the 33 area offices of the Missouri public defender system? Is that a fair --
A. Yes.
Q. -- statement?
A. Yes. Based on the RubinBrown metric.
Q. Based on the RubinBrown metric. Okay. And so it has attorney time and capacity, and then

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in that second-to-last column, it has percent of capacity; is that right?
A. Yes.
Q. And do you see Area 19, Jefferson City, in this chart?
A. I do.
Q. Okay. And if you go across -- it says, "Percent of capacity, 210.3 percent"?
A. Yes.
Q. And can you tell us what that means, to your understanding?
A. That would mean that we would have 210 percent of open cases as compared to the number of lawyers to handle those cases, and that 210 percent presumes that the office is fully staffed with all of its lawyers, and as of June 30, 2017, we were not. We had actually been shorthanded for all of calendar year 2017. And so that -- you know, if you based our percentage based on the number of lawyers we had on hand, it would change and it would probably increase, but what that number would be, I couldn't tell you off the top of my head.
Q. And it would certainly increase because you have six on staff instead of seven?

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A. Agreed.
Q. So it would increase one-tenth or one-sixth or whatever.
A. However that math works out.
Q. Some complicated fraction.
A. Right.
Q. Okay. And so, effectively, it would be fair to say what this means is that your office would be twice as many attorneys as it currently is even authorized for -- much less has, but is even authorized for in order to adequately represent the defendants to whom it's been assigned to represent?
A. At least twice, yes.
Q. Okay. And is that consistent with your experience and understanding, having worked in the system for 15 years and been in charge of this office for three-plus years?
A. Yes.
Q. That your evaluation is you would need twice as many lawyers?
A. Yes.
Q. And then do you see on that last column where I mention before the rank Jefferson City -- can you tell us what rank Jefferson City is?
A. Twenty-eight.

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Q. Okay. So that's -- and you see at the bottom here there are 33 areas or districts in the MSPD system; is that right?
A. Yes.
Q. So your -- so for fiscal year 2017, your office was 28th out of 33 offices; is that correct?
A. Yes. Yes.
Q. Okay. So even with this 210 percent overload and all of the problems that you've been identifying, 27 of the 33 offices have a greater numerical overload than your office; is that correct?
A. That's correct.
Q. And, perhaps, that -- might that explain Ellen Blau's response that -- and your previous acknowledgment there aren't other attorneys to come in and -- as knights in shining armor to represent these individuals in your district?
A. That's correct.
Q. Okay. I'd like to turn quickly to what I'm going to mark as Plaintiff's Exhibit 22.
(Deposition Exhibit No. 22 was marked for identification.)
A. Yes.
Q. Do you recognize this document?

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A. Yes.
Q. What is it?
A. This is a report of the Senate interim committee following a series of hearings at the state capitol.
Q. A series of hearings on?
A. Public defender caseload, staffing status of the public defender's office.
Q. Okay. And do you see the date on the bottom of this cover page?
A. The report was prepared, according to the cover page, in January of 2007. The hearings were in the summer of 2006.
Q. And do you recall these hearings?
A. I do.
Q. Okay. And is that because you testified at at least one of them?
A. Yes.
Q. Okay. So if you go to -- well, if you look very briefly at 18328.
A. Yes.
Q. Do you see that? Is it says, "Summary of the August 25th meeting."
A. Yes.
Q. And it talks about August 25th, 2006.

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A. Yes.
Q. And if you turn to 18330.
A. Yes.
Q. Which looks like it's describing that same meeting.
A. Yes.
Q. Do you see your name there?
A. I do. It lists me as an assistant public defender. My memory is that I was the district defender at the time.
Q. Right. And actually the first line does say, "As a supervising attorney in his office."
A. Uh-huh.
Q. So that was when you were -- you testified as the district defender in the Fulton office; is that right?
A. Yes.
Q. And this was 11 -- almost 11 and a half years ago; is that right?
A. Yes.
Q. Okay. And can you read the first sentence under your name?
A. "As the supervising attorney in his office, Mr. Carver's testimony focused on the difficulties of maintaining his own heavy caseload

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while attempting to mentor, supervise, and evaluate the other attorneys in his office."
Q. Okay. So fair to say this is a problem that you testified to the Senate about yourself 11 and a half years ago?
A. Correct.
Q. Okay. And much the same problem that you're describing today?
A. Yes.
Q. You're laughing, and I don't blame you. Why is it that you're laughing?
A. It's -- it has been a problem that has persisted the entire time I've been in the public defender's office. And it's not funny. It's been going on for forever.
Q. Okay. And you've testified to the Senate -- I mean, other individuals here testifying as well, but you, yourself, testified to the Senate about this 11 and a half years ago?
A. Yes.
Q. And, if anything, would you say -- has the problem gotten better or worse since that time?
A. You know, one of the results -- so one of the results of the Senate interim committee is that they did raise the salaries some, which certainly

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helped. And I think they did allocate us an additional number of lawyers or support staff statewide. You know, I don't know -- the little bit that the Senate interim committee did -- it's sort of a Band-Aid on a gushing wound that did not fix the problem. There was probably -- there was certainly some help that came out of the Senate interim committee. Now, whether the additional resources that we got out of that process, whether that has kept pace with sort of the change in our caseload, that, I couldn't speak to. And, frankly, whether the pay raises now would keep pace with inflation, that, I couldn't speak to either. We're still struggling with the same problems we had back then, I mean, is sort of the short summary. This did not fix or end the problem by any means; it just placed a Band-Aid on a very serious wound.
Q. Okay. And at the end of that first paragraph under your name, it says, "Last year office closed 1,664 cases, including 298 cases closed by Mr. Carver."
A. Yes.
Q. And what does that mean? Just -- can you tell us what the "298 cases closed by you" means.
A. That means I pled or tried some or

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something -- there was some dismissals, but that would be the number of cases that I would have closed that year.
Q. Okay. And then on the -- can you just read the second paragraph of that testimony?
A. Sure.
"Mr. Carver expressed the frustration of trying to balance management and representing clients. If he focuses on his own cases and does not supervise the new attorneys, clients suffer from their inexperience. If he focuses on management issues, his own clients do not receive proper representation; however, Mr. Carver expressed that proper management and feedback are essential elements that would help with attorney retention and improved performance."
Q. Okay. And do you still agree with those sentiments today?
A. Absolutely.
Q. And, in fact, is that the same sort of internal conflict that you face as a supervisor, trying to do what's best for your clients and for your attorneys and the clients that those attorneys represent that you're facing every day now in Area 19?

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A. Yes.
Q. Okay. And, again, this is something you testified to the Senate about 11 and a half years ago; is that right?
A. Yes.
Q. Okay. All right. I'd like to turn to what I'll mark as Exhibit 23.
(Deposition Exhibit No. 23 was marked for identification.)
Q. (By Mr. Scherzer) Plaintiff's Exhibit 23, do you recognize this document?
A. Yes.
Q. What is it?
A. This would be one form of the motions to decline representation and to -- you know, to appoint counsel that I spoke of earlier.
Q. Okay. I know this looks like it was in a particular case, the case of State of Missouri v. Quentin Williams; is that right?
A. Yes.
Q. And who drafted this -- who wrote and filed this motion?
A. I did. Much of it I borrowed from something somebody else did previously, but I did this, and I also did all of the other motions I've

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been alluding to earlier.
Q. Okay. And can you read just the first -- well, the first sentence but just until the -- until 451, so the one, two, three, four -- the first five and a half lines?
A. Yes.
"Comes now Justin Carver, district defender of Area 19 of the Missouri State public Defender System, and informs the court that he has found the defendant to be indigent but that he has no lawyers able to take this case, as every lawyer in the Area 19 office is already overloaded with cases and cannot accept additional cases without violating the Missouri Rules of Professional Conduct 4-1.1, 4-1.3, 4-1.4, 4-1.7, 4-1.16(a), and 4-5.1."
Q. Okay. And, essentially, you asked the court to decline -- to allow you to decline representation and to appoint a lawyer employed by the State of Missouri or some other remedy to get the person adequate representation?
A. Yes.
Q. And what was the result of that motion?
A. It was neither granted nor denied. Mr. Williams is the gentleman who we had a case conference on in Cole County sometime after this

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motion was filed. After the first hearing on the case conference and before the second, one of the lawyers in my office was able to take additional cases, and so Mr. Williams' case was assigned to the lawyer who then entered and began representation.
Q. Okay. And we'll get to that a little bit more in a minute, that conference.
So was this -- is this essentially a -- this motion -- because you mentioned you filed hundreds of these types of motions, is this, then, what became a form motion that you filed in several different cases?
A. It was a template that we set up in the computer, and any time that the situation arose where we needed it, we just pulled up the template and used it.
Q. And was this the filings of this kind of motion -- the motions that you mentioned filing in early 2017; is that right?
A. Yes.
Q. Okay.
A. And through middle 2017.
Q. Right.
A. Up until Hazel v. Meyer, the writ decision was decided by the Missouri Supreme Court, then we

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switched to the case conference motions.
Q. Okay. I'll show you one of those motions. I'm marking this as Plaintiff's Exhibit 24.
(Deposition Exhibit No. 24 was marked for identification.)
Q. (By Mr. Scherzer) And do you recognize this -- what I've marked as Plaintiff's Exhibit 24?
A. Yes.
Q. And what is it?
A. This was a motion requesting conference to discuss caseload issues that was filed on behalf -- on Mr. Williams' case.
Q. Okay. And so that's the -- this is the motion that you -- the type of motion that you mentioned previously that you're now filing instead of this motion to decline representation; is that right?
A. Correct. My memory is that, also, in conjunction with this memory on Mr. Williams' case, there were suggestions and support that was filed. After his case went to conference, we took the motion requesting conference and the suggestions and condensed them into one big giant motion requesting conference that we've been using since.
Q. Okay. And I'll show you what's been --

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what I'll mark as Plaintiff's Exhibit 25.
(Deposition Exhibit No. 25 was marked for identification.)
Q. (By Mr. Scherzer) And do you recognize this document?
A. I do. This was the suggestions and support.
Q. The one that you were just referring to?
A. Yes.
Q. And this has now become a form that you're now attaching to Plaintiff's Exhibit 24, the motions, and filing in many of your new cases?
A. We've condensed Exhibits 24 and 25 into one big giant filing and using the one big giant filing.
Q. And, again, are you filing this in every new case or just in the cases that -- once you've allocated however many cases your attorneys can take at any given time, then in each additional case after that, you're filing this motion?
A. We're filing it only in the additional cases that we feel that we cannot ethically take.
Q. Okay. And you're determining that -- which cases you -- when you've reached that point at any given moment by consulting with the attorneys in

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your office?
A. Right. So the system that we have set up internally is when support staff assigns out cases to a lawyer, Bob, they're going to track how many of which case type they've assigned to Bob, you know, as they assign out cases, and they're going to put that information in a spreadsheet that has all of the RubinBrown numbers built into it. When the lawyer gets to 100 percent of their RubinBrown capacity or just slightly above, 102 percent, what have you, that triggers an e-mail from support staff to me and to the lawyer, Hey, Lawyer Bob is at 103 percent of capacity or what have you. I then either talk or e-mail with the lawyer, and, generally, the conversation is, Hey, can you take more cases and still provide ethical, competent representation on all of your cases, or no? And if the lawyer says, Man, I think I can take one or two more, I'm probably going to give the lawyer one or two more, as long as they're providing me a rational reason for believing so. If they say No, I absolutely cannot take additional cases, then we cut them off and do not assign any additional cases, at least until the start of the next month.
Q. And just quickly, if you could, tell me

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about the other nonattorney staff in your office. You mention support staff -- at one point, you mentioned an investigator. If you could just tell me what additional staff there is other than attorneys in your office.
A. I have three support staff members. One, the official job title is office support assistant. I have two legal assistants. In addition to those three support staff members, there is one investigator.
Q. Okay. And that investigator was on leave but is now back from leave?
A. Went out October 1 or very early October and is due to come back on January 2, I think, is the date he comes back.
Q. Okay. And so currently in the office, you don't have any investigator?
A. Right now we have a legal assistant who had other responsibilities who is attempting to fill that gap and to serve subpoenas and visit crime scenes and do evidence views and that kind, and -- yes. Our investigator is out, so we're trying to cover that with other support staff right now.
Q. Okay. And so you mentioned the RubinBrown numbers, but it sounds like -- the system you have

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set up is the RubinBrown numbers, but, also -- not just a strict adherence to those numbers, but, also, based on your own experience, having done this for 15 years, and your attorneys' experience with their own caseloads, coming up to a holistic evaluation of going to the absolute maximum that someone could take and still provide ethical representation. Is that fair?
A. Yes.
Q. Okay. And you mentioned in this motion and suggestions Rule 4 for the rules of professional conduct, and you mentioned that a couple of times in this deposition. And is it your understanding that that rule governs public defenders -- you and the other public defenders in your office, just as it governs every other attorney in the state of Missouri?
A. Yes.
Q. Okay. And so if you could turn -- so what we were just looking at, Plaintiff's Exhibit 25, the suggestions and support, and page 151.
A. Yes.
Q. And if you could just read that -- the main -- the first paragraph under Roman Numeral 3.
A. Yes. The title heading is, "Area 19

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attorneys must be permitted to assert and rely upon the rules of professional conduct." The body of the paragraph reads:

"There is no exception in the rules of professional conduct, Rule 4, for public defender attorneys." And it's got the citations.

"To the contrary, as the American Bar Association has aptly noted, there is an implicit premise that governments, which establish and fund providers of public defense, never intended that the lawyers who furnish the representation would be asked to do so if it meant violating the ethical duties pursuant to professional conduct rules." And then there's a citation.

"For this reason public defenders are risking their own professional lives when appointed to an excessive number of cases." Citation.

Q. Okay. And those -- the last two sentences you read, the "due to the contrary" sentence and the "for this reason sentence," those are, in fact, just full, direct quotes from the Waters case from the Missouri Supreme Court; is that right?

A. Correct.

Q. Okay. And is this consistent with your understanding --

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A. Yes.

Q. -- of what rules and responsibilities govern you and the attorneys in your office?

A. Yes.

Q. And I want to focus strictly on that last sentence, the "For this reason, public defenders are risking their own professional lives when appointed to an excessive number of cases." Do you agree with that sentiment expressed by the Missouri Supreme Court?

A. Yeah. Everybody in the public defender's office that has too many cases is very concerned about their professional licensure at this point.

Q. And is that something you've heard from the attorneys in your office?

A. Yes.

Q. And from attorneys in other offices around the state with whom you've spoken?

A. Yes.

Q. And is that something you're concerned about yourself for your own professional license?

A. Maybe I should be. I feel like I've done everything I could realistically do at this point. I mean, when I read the rules, it says, if you've got too many cases, move to decline, I've done

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that -- or move to withdraw, and I've done that. You know, we're doing the Chapter 600 conferences as well. And -- you know, and I self-reported because I've got too many cases, and I know it. You know -- and -- you know, every time I've been ordered to take a case, I've done it. And, like I said, I'm working overtime. I'm doing the best I can. So I don't know. I mean, I feel like I have done what the rules require me to do when I've got too many cases, but I also feel like because I've -- I feel like I've tried to take action early before a lot of people I knew in other offices were doing anything to address the thing. I feel like I'm probably in a better situation so far as my professional licensure is concerned.

Q. Okay. But despite the fact that you've moved to decline and withdraw on hundreds of your own cases, in addition to hundreds of cases for the office, you've been ordered to appear in many of those cases; is that right?

A. Yes.

Q. And so, therefore, you end up with the 213-plus cases that you mentioned earlier?

A. Correct.

Q. And you have said you don't feel like

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you're able to ethically represent many of those individuals who are -- who you've currently entered appearance for; is that right?

A. I'm definitely not providing competent representation to those 213 clients.

Q. Despite your every intention and best effort to do so?

A. Correct.

Q. And despite the fact that you're a 15-year veteran of the Missouri State Public Defender System?

A. Correct.

Q. And, therefore, are -- obviously, by virtue of that, have much more experience than anyone -- twice as much experience as anyone else in your office, five times as much experience as the second-most experienced person -- you know, the third most -- second-most experienced line defender in your office; is that correct?

A. Correct.

Q. And whatever 12 times 15 -- you know, almost 100 times more experience than the individual who started November 13th and already has 78 cases?

A. I'll trust your math on that. I don't know.

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Q. Yeah. Much, much more experience than he does and many of the people in your office?
A. Correct.
Q. And you mentioned you self-reported. Can you tell me about that?
A. At some point a few months ago it became clear to me that I felt like I had done everything I could think to do to address this situation, and yet my caseload was not in compliance with what I felt like it ought to be with any of our ABA, NAC standards, RubinBrown metric, whatever. I mean, I had kind of blown all of those out of the water. And, bottom line, I was not providing competent, ethical representation, in spite of the fact I've been telling my courts that I am not providing competent, ethical representation; please don't put me on another case. So I self-reported to OCDC.
Q. How did you do so?
A. I just sent them a fax.
Q. You sent them a fax?
A. Yeah.
Q. Okay. All right.
MR. SCHERZER: I'd like, if possible, Jackie, at some point, if we could get that.
Q. (By Mr. Scherzer) And what's the -- do you know what, if anything, have you heard about that self-reporting?

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A. I've heard nothing.
Q. Do you know what the process is for -- the ordinary process for such a report?
A. No.
Q. And you said OCDC. Can you just tell us what that is?
A. Office of the Chief Disciplinary Counsel.
Q. Was that the same office that prosecuted Karl -- I don't know if "prosecute" is the right word, but brought the case against Karl Hinkebein?
A. Yes.
Q. And is that the Hinkebein decision that you referenced earlier; is that right?
A. Yes.
Q. And can you just tell us briefly what your understanding of that case is?
A. Sure. There was a Missouri public defender who had clients pursue complaint or complaints relating to lack of client contact and misfiling deadlines. And as I understand, there had been at least one complaint or a series of complaints in the past. OCDC began an investigation and pursued -- you used the word "prosecution," and

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I can't think of any word better, but it's not a criminal prosecution, but took action against Mr. Hinkebein's license. It ended up going to the Missouri Supreme Court, and the Missouri Supreme Court put Mr. Hinkebein on probation.
Q. Okay. And is that a case that everyone in your office is aware of?
A. Yes.
Q. And it sounds like you've had discussions with other individuals in the MSPD about that case as well.
A. Yes.
Q. Okay. And has that caused other attorneys in your office to be concerned about their own license and possible ethical cases against them?
A. Yes. In fact, it was after that decision that came down I had two lawyers leave. And I asked them point-blank, What, if any, impact did the Hinkebein decision have on your decision to leave? One described it as a consideration; the other described it as the straw that broke the camel's back. Tangentially, you had asked me earlier about how courts have responded to my -- the various motions that I've filed. I had an additional thought. One of my judges in Miller County told me

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that the right remedy is for me to quit.
Q. And did he or she explain how that would possibly be a remedy for either you or your clients?
A. His thought was that that would be a remedy for me because then I would not have a caseload problem.
Q. Okay. And what is your opinion about what repercussions that would have for the other individuals in your office and the clients that you and they represent?
A. Well, you know, the -- it means the clients, eventually, at some point, when someone hired a replacement for me, they would get another lawyer; it might be their fifth or their sixth at that point. I mean, I think that -- you know, and at that point, the experience level of the lawyers in my office would be cut pretty dramatically.
Q. And you mentioned, nonetheless, despite your -- the concerns that you have for not only your colleagues and the individuals you supervise, but your and their clients that you're considering doing that at some point because of the -- of the tremendous caseload and overwhelming caseload that you're experiencing?
A. Yes.

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Q. And if it weren't for that overwhelming caseload, is that something that you would be considering otherwise? Would you be consider quitting or resigning?

A. No. I love -- I love the mission. I love my clients. I like doing the work that we do. I'm in a convenient place in that my wife gets paid like a real lawyer, and so I -- you know, I don't have to go make more money somewhere else. The only thing that I think would drive me away would be the caseload.

Q. Okay. All right. I want to just turn back quickly to Plaintiff's Exhibit 17, which is that transcript that we talked about at the very beginning of the deposition.

A. Yes.

Q. Do you remember that? And so that is a transcript of this hearing -- the Quentin Williams caseload hearing; is that right?

A. Yes.

Q. Okay. And if you could turn to page 125. -- or excuse me -- the very bottom of 124.

A. Yes.

Q. Can you just read starting three lines up, "if I'm appointed on Mr. Williams' case -- " down to

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the end of that paragraph.

A. Yes.

Q. And by -- onto the end of that paragraph, I mean, on 125.

A. Understood.

"If I'm appointed on Mr. Williams' case, I'm caught in a Catch-22, in that I can't -- I can't frankly represent him, too, with all of the people that I've already got. And if I assign it to a junior lawyer, who I believe already has too many cases as I can possibly give them, then I'm going to be violating my responsibilities as a supervisor. So I'm kind of caught in a Catch-22, Judge. I'm either going to force the lawyer to take the case, which would violate my responsibilities as a supervisor, and cause them to violate their responsibilities under the court rules, or I can just take it myself, and then it's just me."

Q. Okay. And so the Catch-22 you're describing -- and are you still -- this was months ago, but are you -- I suspect I know the answer to this, but are you still feeling like you're in -- you're still experiencing that Catch-22?

A. Absolutely. It's a question of which ethical rule that I'm going to end up breaking: One

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that applies to me as an individual lawyer or one that applies to my responsibilities as a supervisor.

Q. And fair to say that your current belief is that you have -- that is, in fact, the nature of a Catch-22: You have no other choice. Either you can violate your own ethical responsibilities as a lawyer to your own clients, or you can violate your ethical responsibilities as a supervisor by assigning that case to the other individuals in your office; is that right?

A. Correct.

Q. You don't have any other option that would fully comply with your ethical responsibilities?

A. Correct.

Q. Okay. And so tell -- I guess, then, quickly, while we're doing this --

MR. SCHERZER: Can we go off the record for one second?

VIDEOGRAPHER: The time is 2:15 p.m., and we're off the record.

(A recess was taken.)

(Deposition Exhibit No. 26 was marked for identification.)

VIDEOGRAPHER: The time is 2:20 p.m., and we're back on the record.

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Q. (By Mr. Scherzer) So, Mr. Carver, I'm showing you what's been marked as Plaintiff's Exhibit 26. Do you recognize that?

A. Yes. These would be -- contained within Exhibit 26 are the various exhibits that I submitted to the court in relation to the case conference hearing on Mr. Quentin Williams' case.

Q. And we unfortunately don't have time to go through in this any detail, but fair to say, if you turn to Plaintiff's Exhibit 17, back to the transcript again --

A. Yes.

Q. -- and look at the second page of that, which is 82 --

A. Yes.

Q. -- Bates stamp 82.

A. Yes.

Q. And there's an exhibit index there with Exhibits A through H.

A. Yes.

Q. Fair to say that Exhibit 26 is -- are those one, two, three, four, five, six, seven -- eight exhibits that you submitted at the caseload conference?

A. Yes.

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Q. Okay. And, in short, those -- that was the affidavits were and are affidavits that attorneys, current and former, in your office prepared and you submitted on their behalf about their caseload and other related issues?

A. Yes.

Q. And the caseload printout is a printout of cases that you -- well, tell us what that caseload printout is so I don't characterize it inaccurately.

A. That was a printout of cases that I had open at the time. You'll see on the top of it and then in the body of it there are -- you know, on the top it's got 224, and it's crossed out, and it's written 220, and then there's a couple, you know, of people who are crossed off of the list. Very shortly before the case conference, I had closed those cases, but staff hadn't mechanically closed them in the computer. So when I submitted what's marked Exhibit H, I sort of did it with the caveat that it says 224 but my current caseloads is 220 because I know those four cases had been closed.

Q. So at that time, you had 220 cases?

A. Correct.

Q. So fair to say that Exhibit H, the caseload printout, is a printout of every open or

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active case on your docket; is that right?

A. As of 11/7/17, yes.

Q. Okay. Great. Since that's the only one -- you're done looking at it. Since that's the only copy, do you mind if I take a gander at it?

A. Oh, sorry.

Q. I'll move on to other things, but ...

So turning to Exhibit 17, the transcript of the caseload conference.

A. Yes.

Q. If you could turn to 137.

A. Yes.

Q. And do you see in the middle of that page there's a long quote -- two-sentence statement from the court?

A. Yes.

Q. And the court, again, is -- was which judge?

A. Judge Joyce.

Q. Okay. And can you just read that -- those three sentences.

A. Yes. So it starts on Line 10.

"The Court: I'm going to take it.

Counsel, you are all aware that we're trying to work with the public defender and that

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their caseloads are such that they can't provide competent representation. So I'm going to find that they cannot be asked to take cases that would violate the -- more importantly, the clients' right to effective assistance of counsel. So I'm going to make that finding."

Q. Okay. So what's your understanding of what the judge found there?

A. That our caseloads are such that we cannot take additional cases and provide competent representation, and so she's going to make a finding to that effect.

Q. Okay. And what's the result been of that finding?

A. So we had a second hearing on the case conference, and by then our situation had changed some because we had hired at least one more lawyer, maybe two -- I can't remember off the top of my head, but we were able to assign a significant number of cases that had been awaiting counsel to counsel -- including Mr. Williams. At the time of the November 7 hearing, Mr. Williams had been in the Cole County jail for five or six months. Between the November 7 hearing and the subsequent hearing, we were able to enter on his cases, and almost all

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of the other cases who -- people who are confined in the Cole County jail. There was still a substantial block of 71 cases that we didn't know what to do with. We didn't have a lawyer who could possibly take those cases, too, or we couldn't divide those cases up any more. In Phase 2 of the conference, the judge asked me to submit that list to her and to Mr. Richardson, the prosecutor, and they were going to take a look at it to figure out what, if anything, they could do; take jail off the table, appoint a private lawyer, what have you. I submitted that list to the court and to Mr. Richardson. I have not received any sort of response one way or another as to what the court intended to do with those 71 cases.

Q. And so those 71 cases are 71 individuals who qualify for public defender services?

A. There are 71 cases. Some individuals had more than one case.

Q. And how many of those individuals, if you know, are or were in custody?

A. Of the 71, I think, maybe one or two.

Q. Got it.

A. And I think at this point, if they were in custody, they probably have been assigned out by

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now.
Q. Okay. And to be clear, on some of those cases that are being assigned, you aren't -- you -- I guess, primarily, you -- you aren't able to -- well, as we've termed, conduct active representation for a period of, at least, months before starting on the case?
A. I am not voluntarily entering on anything, and I haven't been for months. The only way I'm getting in a case is if the court orders me to take a case. With Cole County cases, you know, what we're doing is at the start of every month, support staff is going to open up and assign as many cases as they can, you know, starting with in-custody clients first, and then if we can't assign more, then we start filing motions.
Q. Okay. And I just want to turn back quickly to -- just for one second to Plaintiff's Exhibit 26, which I'll pass back to you. In Exhibit H, the case level report that you mentioned previously in that Exhibit 26.
A. Yes.
Q. So that's -- that caseload report, your caseload is broken down in there by type of case A and B felony, murders, drug felony, et cetera; is

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that right?
A. Yes.
Q. And it lists a number of -- next to those categories, it lists a number for each of those categories. Fair to say that's the number of cases in each of those categories there was at that time, at least on your docket?
A. Yes. Except, you know, as corrected.
Q. As corrected by the court?
A. Yes.
Q. Okay. And then it has a date next to that.
A. Yes.
Q. Can you tell me what that date is? I mean, what that date --
A. I believe that that is the date when the case was opened in our system.
Q. And when is a case opened in your system? Is that opened at the first appearance or the first appearance that you enter an appearance?
A. So when we receive an application for public defender services -- well, it's -- things have been -- things are a little weird now, so this is going to be kind of complicated to explain. I'm going to do the best I can. You know, like, for

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example, right now, in Miller County, on my cases, when a person wants a public defender to represent them, they're going to fill out a formal application for a public defender. I'll take that to the responsible staff member, they'll review the application, they'll check Case.net, and they sometimes will have to call the applicant back or call a bondsman or ask some basic questions to figure out if the person meets the criteria for a public defender. Once support staff makes the determination that the applicant qualifies, you know, if we had an available lawyer, we'd just open up a case file, file an entry of appearance, and ask for discovery. You know, right now, it's not quite working like that. On my cases in Miller County right now, instead of filing an entry and a request for discovery, I'm filing a motion for caseload conference or, previously, a motion to decline representation or something along those lines.
On Cole County and Moniteau County cases, it's a little bit different, in that if we've got a lawyer we can assign to the thing, you know, right away, certainly, we will. If we're not able to, then we would be filing a motion for caseload conference.

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Q. I have one more exhibit, and then some questions, and then we'll be finished. The last exhibit -- I believe we're up to Exhibit 27.
(Deposition Exhibit No. 27 was marked for identification.)
Q. (By Mr. Scherzer) Do you recognize this --
A. Yes.
Q. -- document? And what is it?
A. These would be -- there was a brief period of time when we couldn't take cases, I was sort of sending them to the administrative office, and this would be the e-mails associated with the cases that we had sort of attempted to send.
Q. And if you could turn to Bates stamp 14, the last page. And so just to clarify, this is -- is this the set of -- or at least a set of the e-mails that you've mentioned earlier that you had sent to Ellen Blau, and then she eventually responded that there was not going to be any magical help coming from another office?
A. Correct.
Q. Okay. And so it looks like there were -- who is Kalie Campbell?
A. She is the office support assistant in Area 19.

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Q. Okay. And it looks like in these previous pages, she sent a -- sort of a form e-mail saying the Area 19 office is overloaded and cannot possibly accept additional cases without violating our ethical obligations?

A. Yes. That was language that I typed up and sent to her and asked that she paste into the body of an e-mail when sending the cases to the Columbia administrative office.

Q. Okay. So these were all -- it looks like -- and for attachment reasons, those individual e-mails didn't go through. And then at the end here on 14, those e-mail sent October 12th, 2017 at 3:01 p.m., she sent a number of -- it looks like 11 cases with that line, the Area 19 office is overloaded and cannot possibly accept additional cases without violating our ethical obligations?

A. Yes.

Q. And that was, as you said, language that instructed her to send?

A. Yes.

Q. And the response from the central office was, We don't have any way of handling these cases from anyone outside your office; your office is going to have to try to take other steps to try to

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remedy this situation?

A. Yes.

Q. Okay. I just want to go quickly to initial hearings, when someone is first brought before the judge.

A. Yes.

Q. Is your office present at those -- does your office enter an appearance and represent individuals at those hearings?

A. Generally, no.

Q. Okay. And is it at those hearings that bond is set, generally?

A. Generally, in most cases, there will be some bond that has been fixed before that hearing. Certainly, that hearing would be an opportunity to seek reduction of bond, if we were there. But, generally, we are not there.

Q. And why is it that you're not there?

A. The -- we simply -- I mean, at the end of the day, what it boils down to is, we simply do not have enough people to even think about stationing them in a courtroom, you know, in the event that somebody had gotten arrested, you know, the night before or, you know, whatever. I mean, we -- there just simply aren't people -- we don't have that kind

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of time.

Q. Okay. Given your -- given the caseload issues that we've discussed at length today?

A. Correct.

Q. Okay. All right. I'll just run through and try to be as quick as I can. Just some summation questions about many of the things we've discussed today.

In your opinion, do you have the time and resources to communicate with clients in the manner that each case requires?

A. Absolutely not.

Q. In your opinion -- and speaking now about the time prior to when you instituted these caseload controls that caused your own caseload to jump so dramatically, in your opinion, do the attorneys in your office -- did the attorneys in your office at that time, in 2016, let's say, have the time and resources to communicate with clients in the manner that each case required?

A. In 2016, I do not.

Q. You do not believe they did have that time?

A. Correct.

Q. In your opinion today, do you have the

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time and resources to investigate each case of your cases in the manner that it requires?

A. No.

Q. And in 2016, before you instituted these caseload controls that caused your own caseload to spike so dramatically, did the attorneys in your office have the time and resources to investigate each case in the manner it required?

A. No. Complicating all of this is, we have one investigator. So in addition to the lawyer -- being short staffed on lawyers, we're also short investigators.

Q. Okay. And you've mentioned this previously, but without getting into specifics or compromising attorney-client privilege, can you think of a time when your representation of a client was hampered by a lack of time to investigate the case?

A. Yes.

Q. And, again, same question in 2016, without getting -- for the attorneys in your office, without compromising attorney-client privilege, can you think of a time when the representation of a client by an attorney in your office was hampered by a lack of time to investigate a case?

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A. I'm confident that it happened. I couldn't -- I mean, as I'm sitting here now, I couldn't think of a case, even in my mind, without speaking the name, which -- but, yes. Understanding the caseload we were carrying in 2016, yes.

Q. Okay. In your opinion, do you have the time and resources to obtain and review discovery in the manner each case requires?

A. No.

Q. In 2016, for the attorneys in your office, did they have the time and resources to obtain and review discovery in the manner each case requires?

A. No.

Q. Speaking of your caseload, can you, without getting into specifics, think of a time when your representation of a client was hampered by a lack of time to obtain and review discovery?

A. Yes.

Q. In your opinion, do you have the time and resources to consult with experts in the manner each case requires?

A. No.

Q. In 2016, speaking of the attorneys in your office, did they have the time and resources to consult with experts in the manner each case

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requires?

A. No.

Q. Without getting into specifics, and you mentioned one already, can you think of a time when your representation of a client was hampered by a lack of time to consult with an expert?

A. Yes.

Q. In your opinion, do you have the time and resources to file and research pretrial motions in the manner each case requires?

A. No.

Q. In your opinion, speaking about 2016, before you instituted these caseload controls, did the attorneys in your office have the time and resources to research and file pretrial motions in the manner each case requires?

A. They did not.

Q. Without getting into specifics, can you think of a time when your representation of a client was hampered by a lack of time to research and file pretrial motions?

A. Yes.

Q. In your opinion, getting to the -- do you have the time and resources to adequately prepare for trial?

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A. No.

Q. In your opinion, speaking about 2016, before the caseload controls, did the attorneys in your office have the time and resources to adequately prepare for trial?

A. No.

Q. Okay. In your opinion, do you have the time and resources to adequately negotiate plea deals and counsel your clients on whether or not to accept a plea deal?

A. No.

Q. In your opinion, speaking about 2016, did the attorneys in your office have the time and resources to negotiate plea deals and counsel your clients on whether or not to accept a plea deal?

A. No.

Q. Without getting into specifics, can you think of a time when you could have gotten your client a better plea deal with more time and appropriate resources?

A. Yes.

Q. In your opinion, do you have the time and resources to adequately advise your clients on the immigration consequences of the decisions they make about their criminal cases?

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A. I -- well, I don't feel, generally, I have enough time to counsel my clients. I'm trying to think of a situation in which I felt I didn't have time to discuss an immigration issue. I'm not thinking of one, but, you know, to be able to think of one, I have to be aware of the issue, and to be aware of the issue, I really need to talk to my client.

And as I mentioned earlier, my client contact right now is atrocious. I've got people who have been in jail for two months. Somewhere there's probably an immigration issue. So I'm thinking out loud in response to your question.

Q. Understood.

A. And now I've lost track of your initial question. I apologize.

Q. No. I think that -- I think you've answered it.

A. Okay.

Q. Is it reasonable to say you very well may not even be aware of an immigration consequence because of your inability, due to your caseload, to even contact or regularly speak with your clients?

A. Correct.

Q. And you mentioned Mr. Williams. You said

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he had been in jail for five or six months. Had you been able to speak with him in that time?

A. I had talked with him very quickly over the phone a couple of times to explain the case conference motion and our inability to assign him a lawyer. I certainly engaged in no substantive legal representation, and, to my knowledge, nobody from the office did either.

Q. For at least five and, perhaps, six or more months that he had been waiting for representation?

A. Correct.

Q. Okay. In your -- just some -- a few -- three or four final questions.

In your opinion, can the attorneys -- if you had not instituted the caseload controls, could the attorneys in your office adequately represent all of the clients on their docket?

A. No.

Q. And that's true no matter how experienced that lawyer might be?

A. Correct.

Q. In your opinion, now that you have instituted the caseload controls and have 213 open cases yourself, could any attorney adequately

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represent clients, given the constraints you're facing?

A. No. Not on these cases. There's some very serious cases in these 213.

Q. And, again, that's 213 cases, in addition to the numerous administrative, supervisory, hiring, budgeting, training --

A. Correct.

Q. -- requirements that you have as the district defender?

A. Yes.

Q. Okay. Is there anything else you think we should know regarding your ability or the ability of your office to provide effective representation?

A. I can't think of anything.

Q. Okay.

MR. SCHERZER: Thank you very much for your testimony here today. That's all I have for now.

CROSS-EXAMINATION

BY MR. RAMSEY:

Q. Would you like to take a break at this point, or would you like to push on through?

A. I'm okay. If you ...

Q. I'm okay as well.

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A. Okay. I'll stop you if I need a break.

Q. Excellent. Please do.

Again, my name is Steven Alan Ramsey, and I represent the state of Missouri and Governor Greitens in this matter. I will attempt not to interrupt you --

A. Okay.

Q. -- while you are answering my questions. If I do, the reason will be twofold: One is simply because I'm impatient, which I apologize for in advance, but the second is because you're answering a question that I did not ask.

A. Okay.

Q. To begin, going back to your background, did you start at the Missouri State Public Defender System right out of law school, or did you have a job prior to joining the public defender system?

A. I worked at a private firm.

Q. Okay. What firm was that?

A. Mariea -- M-a-r-i-e-a -- & Sigmund -- S-i-g-m-u-n-d -- in Jefferson City, Missouri.

Q. About how long were you there?

A. One year.

Q. One year. And then did you hold any other positions before that after law school?

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A. No.

Q. Did you go straight from undergrad into law school?

A. Yes.

Q. What did you study in undergrad? What was your major?

A. I majored in international business with a minor in Spanish.

Q. Turning to your preparation -- not necessarily for this deposition, but in regard to the workload and the caseload concerns. So what I'm gathering is you've talked to a number of judges.

A. Yes.

Q. Have you spoken to organizations as well?

A. So there was -- let's see. In Jefferson City there was sort of a community forum -- on a completely different issue. In the context of that issue, public defender caseloads did come up. I've certainly spoken with a number of different media organizations. Those are the two things that come to mind in response to your question, but I -- were those responsive to what you asked?

Q. Yes.

A. Okay. Okay.

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Q. And I understand it's a very broad question --
A. Right. Right.
Q. -- being with the system for 15 years. So say in the past year or so -- a couple of years, what members of the press or what press organizations -- pardon me -- have you spoken to, if you can recollect?
A. KOMU, KRCG, the Jefferson City News Tribune. There have been a couple of different student reporters majoring in journalism who were affiliated with one of the major news sources, but I can't remember the names of these students or the media source that they were affiliated with. I may have spoken to the Lake Expo. One of the students was associated with KBIA. I know I've talked to a reporter with the Columbia Tribune, but I can't remember if it was about caseloads or something else. There's an Ozark radio. That's all I can remember off of the top of my head.
Q. I failed to mention this, but a number of my questions will be twofold.
A. Okay.
Q. Not those beginning ones, but when we get into more or less your role as the district

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defender, one, it's in your personal experience, your personal caseload, and then the second question will be regarding the attorneys that you supervise and the staff that you supervise. So that bifurcation will be present almost throughout the course of this line of questioning.
A. Okay.
Q. Do you have a sense at this point in time how many cases --
A. I didn't mean to interrupt you. You can finish the question if you want, but I had an additional thought about your earlier question.
Q. Please.
A. You asked me about organizations I had spoken to. The Senate interim committee, the Spangenberg Group. Very distinctly, I remember meeting with them in 2009. I don't recall if I spoke with them in 2005. I don't know if you would consider -- yeah, I suppose it was an organization. When RubinBrown was developing their protocol, I was one of the panel members involved in that process.
I don't know if that was responsive to your question; I'm just still trying to think of other organizations.
Q. It was responsive.

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A. Okay.
Q. At this point in time, do you have a sense for how many cases total your district has opened in 2017?
A. Yes. As of yesterday, I believe it was 1,788.
Q. Do you have a sense for how many -- let me rephrase.
Do you have a sense for the percentage of criminal cases that arise in Cole, Miller, and Moniteau Counties that the public defender system takes in, as opposed to the private bar?
A. Ballpark, probably we have about 80 percent of the cases, but that's a very rough approximation.
Q. Sure. It could be more --
A. It could be more; it could be less.
Q. -- and it could be less?
A. Yup.
Q. Have you noticed any trends in how your district defend cases? And what I mean by that, have you noticed that, say, in 2005, you would take maybe two depositions versus 2017, where per case you're taking, I don't know, five depositions. Have you seen an increase in depositions?

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A. I really don't know. I would have to go back and play with some numbers. I couldn't tell you off of the top of my head.
Q. Would your answer be the same for the usage of experts?
A. I couldn't tell you off of the top of my head.
Q. Would your answer be the same for the amount of plea deals that the -- you see come through your office?
A. It's hard to speak to that, and there are a couple of reasons why: One was is I was in a different office in 2005, and -- plea deals are very jurisdictional, you know? One elected prosecutor is going to decide he's going to get very tough on crime; you may get more trials. I would have a hard time speaking to that.
Q. And that's more than fine. As we proceed, if you simply can't answer, that's fine?
A. If I think of something, I'll pause you, if that's all right.
Q. Sounds good.
A. All right.
Q. Sitting here today, how would you define a case or a matter within your system?

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A. Sure. I would define a proceeding under one case number as a case. So, for example, Case 123, I have eight counts of wildly unrelated things all filed under one case number, I would call that one case. If under Case No. 125, I have a probation violation -- even if the issues are going to overlap the primary case, I would count that probation violation as a second case, in large part because even if the issues overlap, the issues may be slightly different, and there's going to be additional court dates, additional things I need to do, different legal issues, so on and so forth.

Q. Would that same logic -- so let's say the case is 127 --

A. Yes.

Q. -- and that case went from an associate circuit into a circuit. When they receive that new number, would that be a separate case as well?

A. I would count that as one continuous case.

Q. Okay.

A. The only change in the number in that hypothetical would be they add the 01 on the end. We would consider that the same case.

Q. And would the same hold true if additional files were charged onto that original case?

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A. Yes. So say my Case No. 123, pretend I'm initially charged with stealing. It goes to the grand jury, and the grand jury indicts me for robbery, armed criminal action, everything under the sun, and stealing all out of the same incident, I would still consider that one case.

Q. And when you're saying you would consider it, it would be considered like that in your district and in how you allocate cases as one case versus another case?

A. Correct.

Q. Okay. Now --

A. Now, hypothetically speaking, pretend I'm charged in associate court. That case is then dismissed and refiled -- or I'm charged in circuit court and it's dismissed and refiled and it's refiled under a new case number out of the same incident, I would call that a second case.

Q. Understood. Now, as the district defender, you have the task of allocating how cases are distributed amongst your staff?

A. Yes.

Q. And you do not shift that responsibility onto any other of your staff members?

A. Well, I give my -- the staff that assigns

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the case I give her my directions, in terms of how I want her to do it. She manually does it, kind of within the parameters that I have given her.

Q. And would that be your office assistant or would that be one of your legal assistants?

A. That would be one of the legal assistants.

Q. And are those directions written down anywhere? I know you testified earlier as to geographic location playing a large role.

A. Uh-huh.

Q. Are there any other, I guess, considerations that go into which cases are assigned where? I know you mentioned, as well, that your least experienced attorney has about 70. So I imagine experience plays into that role as well.

A. Yes.

Q. What other factors, if any?

A. You know, certainly, the case type. The lawyer that's been practicing law for 29 days, I would not assign him a murder, rape, robbery, kidnapping, complex case with DNA or -- you know, something along those lines. So, you know, there's that kind of component to the thing, how much experience does the lawyer have as compared to the case? For example, in Cole County, we've got a

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couple of lawyers who have got, you know, two or three years under their belt in experience. As far as I'm concerned, for the more serious cases, those are going to be the lawyers that I'm going to look to, as compared to the lawyer that's been practicing for six months. For that kind of core group of the three more experienced lawyers, you know, we try to assign the bigger cases roughly equitably so that we don't have one lawyer with all of the murder cases, for example.

Was that responsive?

Q. It was.

A. Okay. Thank you.

Q. Are there any policies or procedures, aside from your instructions to this legal assistant to inform your district how cases are distributed, or is it simply your directions to that legal assistant that would do that? So said another way, are there any actual policies and procedures just flat out?

A. Like, written down on a piece of paper?

Q. Uh-huh.

A. Typically, it's a -- me walking over to her and saying, Hey, let's do this different or something like that.

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Q. Sure. Just curious, are any public defenders within your district, including yourself, ever on a 24/7-hour duty, if you will?

A. In terms of getting phone calls from courts or judges come to the court in the middle of the night, we need to arraign somebody --

Q. Never heard of that, but --

A. Okay.

Q. Sure.

A. Okay.

Q. Along with that hypothetical, is there anyone assigned for 24/7-hour-type duty or responsibilities?

A. No. And I -- no. And, you know, like in my jurisdiction, we don't have nighttime, weekend arrangements. I've heard that's a thing, like, in big cities. I don't know. I mean, if something came up in the middle of the night, I assume it would be me that dealt with it.

Q. Referring to the standard operating procedure, if you will, that was referenced before, I thought I heard there was no such thing as a standard operating procedure at the district level but there was -- or that there are general policies at the statewide level. Was that your testimony?

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A. For my district?

Q. For your district, yes.

A. I don't -- now, I can't speak to other offices. My understanding is that some may have some formal policies of some kind or another. In my district, we don't have any formal written policies, procedures, things.

Q. Turning a bit to your district's determination of indigence.

A. Yes.

Q. Who makes that determination in your office? Is it your legal assistants or every single attorney?

A. Right now it's the legal assistant, and that's sort of changed over time.

Q. You mentioned the change in your screening procedure --

A. Correct.

Q. -- from, I guess, what it was before to what it is now.

A. Correct.

Q. Would you describe what it was like before --

A. Yes.

Q. -- and then also describe the transition you made and what it's like now.

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A. Yes. My -- and this is me sort of paraphrasing or -- but my -- as I understand, my predecessor took the approach of, if you're asking for a public defender, you probably need one; so you're probably going to qualify. And, you know, when I took over the office at the end of 2014 -- you know, when I looked at the written pieces of paper, the application for public defender services, you know, I'd look at the things and I'd see -- it looked to me like it might be incomplete, or we would have information indicating that the client had posted a significant bond or several significant bonds or that they'd had a really expensive private lawyer on another case or something of that kind. And I felt like we were entering on cases that -- where the applicant was outside of the guidelines that we're required to follow under the code of state regulations.

And so one of the things I did when I took over that office was totally altered administratively the process that we go through when we receive an application for public defender services, and we sort of changed who does the screening over time. You know, at the time, it was

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the office support assistant -- she's actually not with us anymore -- and then for a while, it was some of the lawyers, and now it's all centralized into the legal assistant. Now -- you know, what we're doing is trying to be much more conservative in approving applications for public defender services to the extent humanly possible. We try and do some due diligence, such as by checking in Case.net before we enter to see if, in fact, the fancy-pants private lawyer had been in on this case or a big, ginormous bond had been posted. That's something we would rather know ahead of time, you know, than find out after we enter. And it may be that there's some sort of innocent explanation behind the thing.

You know, I've got one client back in the day that went to high school with the bondsman. Well, I mean, he paid him, like, next to nothing on a really big bond. Okay. I understand that the money he paid to the bondman wasn't going to be enough to hire a lawyer. Generally, though, that's not the case. And one of the things that we're required to look at is the accused's ability to post a bond. That is a consideration in determining indigence.

Q. So presently that diligence is on the

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shoulders of your legal assistants, the two that you have?

A. Correct. And -- you know, it's kind of one of those things with -- sort of the expectation is, if the lawyer receives information that would be relevant. You know, like there are times when I'm in court and I hear something that is relevant, and I'll throw that on the face of the application so that that gets communicated back to the legal assistant. But, generally, by and large, an overwhelming bulk of the cases, the due diligence is being done by the legal assistants.

Q. Sitting here today in your district, do you have a sense for how often applications for public defender services are denied?

A. I don't know off the top of my head. Certainly, they're denied at a much higher rate now than they were in 2014.

Q. So if I understand your testimony correctly, caseloads and workloads have always been high since you've been with the public defender system?

A. Yes. And they've fluctuated. Some points higher than others, but, yes.

Q. And -- go ahead.

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A. I was going to say, with one exception, if you don't mind. There was a period of time in 2012 where one of the administrative rules was in effect, and courts were fine with it. And so there was, I want to say, six months where our caseloads were all controlled -- everybody in the office. And I finally got to that point -- you know, kind of at the tail end of that six-month window where -- Oh, my God, I can see the light of day, I can actually work on all of my cases, not just throw a stack of them in the file drawer. And then very quickly that whole regime kind of fell apart and caseloads when through the roof again.

When I look back at my time in the public defender's office, you know, the tail end of that six-month period when we had a caseload control environment, that was like the one time when I felt like everybody was -- everybody was able to do everything.

Q. Do you have a sense for how many cases you had on your docket, if you will, at that point in time?

A. Oh, I couldn't tell you off the top of my head now. Sorry. It's been a few years. Sorry.

Q. No worries.

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And you were a district defender in the Fulton office before coming down to Jefferson City?

A. Correct.

Q. While you've been in the Jefferson City office, if you will, what have you done, as far as additional trainings -- and you already mentioned that there are no real formal policies that you've kind of, I guess, promulgated, for lack of a better word. Have you established any type of trainings at the local level in your district to deal with workload and caseload concerns?

A. Well, in terms of training for workload and caseload concerns, you know, right now, we're trying to manage all of the lawyers caseloads. I mean, so, really, the training that consists of sort of them seeing the bigger picture, but, you know, kind of the theory behind this process that I've come up with is, this should remove the individual lawyers from being assigned 200 or more cases simultaneously. At least for the assistant public defenders, it has; it's just been me that has taken a pinch, so ...

Q. Speaking of, what is the threshold for the attorneys that you supervise, in terms of they are working at a reasonable level -- I think you said --

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according the RubinBrown study, is that 80 cases or is that 100 cases, or at what level do you prevent them from receiving more cases?

A. Well -- so how many cases they can get sort of depends on the complexity of the case because a driving on a suspended misdemeanor case is not as complicated as a murder case, for example. And -- you know, and if you get down, like, into the weeds of, like, the RubinBrown metric, you'll see that, and it's sort of expanded. You know, sex cases are more complicated than drug cases, which are less complicated than regular run-of-the-mill felony cases. And so -- you know, like I've mentioned, you know, what we're doing is at the start of every month, assigning out that lawyer as many cases as we think they can possibly take. How many that is is going to vary, depending on the case type. Like, for example, if you take -- and my math is a little bit shaky, so don't hold me to specific numbers, but the RubinBrown metric is based on 2080 hours a year -- 40 hours a week for 52 weeks of the year. If you divide that by 12, you get about, what, 170-something, 180-something hours. If I were to assign a lawyer a murder case, that's going to put them at or slightly above that RubinBrown

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metric.
On the other hand, if I give them -- and, again, my math is a little bit -- don't hold me to the specific numbers. Potentially, I could give them 27 misdemeanor traffic cases, which -- this is a really long way of saying the number of cases they may get is going to vary depending on the complexity of the thing, and so there's not a hard and fast, I'm going to cut you off at 70 cases --
Q. Sure. It depends.
A. Because it depends. And I apologize. That was probably a longer explanation than you needed.
Q. No worries. So the -- I'll ask the same question a different way.
A. Okay.
Q. The lawyer with the least experience currently has around 70 cases?
A. Correct.
Q. Do you have a sense for the average or the most aside from yourself?
A. The most aside from myself as of yesterday was 127. The average is, I'm going to say, about 80 or 90ish. And I didn't, like, you know, actually sit down and average that out before answering that

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question, but that's -- I'm trying to give you a ballpark.
Q. Now, with the references to the RubinBrown report and with your participation in the RubinBrown report, you have a background in business?
A. Yes.
Q. And you are an attorney?
A. Yes.
Q. Do you have any independent experience or expertise as a statistician?
A. I took a stats class in college --
Q. So you know what standard deviation is, but that's --
A. It's been -- don't even ask me to describe that right now, sir.
I have not taken any follow-up stats classes since college, and I do not wish to take additional stats classes now.
Q. So to be clear, you do not have any prior --
A. Correct.
Q. Okay.
A. And I would not consider myself an expert in statistics based on one stats class 20 years ago.
Q. Now, the conversations concerning the -- I

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believe you testified that five attorneys have left your office this year.
A. Yes.
Q. Within 2017?
A. Yes.
Q. And two of them had children?
A. Yes.
Q. And they transferred to different offices?
A. Yes.
Q. One of them retired?
A. Yes.
Q. And then the other two, they moved -- well, I guess, one moved into private practice?
A. Yes.
Q. And the other also moved into private practice? What did that fifth person --
A. Went to the attorney general's office.
Q. Went to the attorney general's office. Have you ever been refused a deposition that you have requested personally while you've been with the Missouri public defender system?
A. No. I've been told I needed to better justify why I wanted to the deposition, but then when I did, I was authorized to take it.
Q. And have you ever denied -- ultimately

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denied a request from an attorney you supervised to take a deposition?
A. If I can walk that back -- I take that back. There were instances in which before Ellen Blau -- I've had a number of supervisors over the years. One of my supervisors was Peter Sterling. As I'm sitting here thinking about it, there were some times in which he -- so there was a deposition request that I had made. He contacted me and said, You know, look, can't your investigator do this? Well, my answer was, I think my investigator could do this, but the context of the thing with what I'm trying to do in the case, I think what would be more effective would be a deposition, and his response was, Look, if your investigator can do it, then your investigator needs to go do it. And sort of for a period of time in his tenure, up until he retired, sort of what he kind of told everybody was, Look, from here on out, if you want a deposition, it better be because your investigator cannot do it. And there could be a variety of reasons why your investigator might not be able to do it. Some witnesses simply refuse to talk to us voluntarily, and the only way that we can talk to them is if we subpoena them to a deposition.

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Other times there are just situations that really do not hold themself well to a deposition. Interviewing a six-year-old on a child sex case by the investigator without the lawyer present -- in my opinion, the better practice would be for the lawyer to take a deposition if they need to interview the youth.

Q. And have any of those times been specifically because there were not funds to fund the deposition, or, at least, was that ever a reason given?

A. That was never given to me as a reason, like, as in, We don't have money for this right now. What was given to me was a, We need to conserve the few dollars that we have, which is a slightly different concern.

Q. Are there any policies or procedures that you have in your district or that you are aware of within the system that you've utilized to limit the total amount of dollars available for any particular deposition? Said in a succinct way, are there any limiting factors in terms of how many dollars can be spent on a particular deposition?

A. In terms of, like, a formal policy?

Q. Yes.

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A. Okay. I'm not aware of any rule that says you cannot spend more than, you know, $5,000 for depositions on a felony case, for example. The -- you know, when I request money from my supervisor for authorization to extend funds for depositions, you know, I've got to list the witnesses that I wish to depose, why I wish to depose them, and then provide kind of a cost estimate based on what I think the length of the depositions to be. And so, like, each -- I've got to justify the ultimate dollar amount that I've asked for. But to my knowledge, there's not necessarily, like, a cap on what that dollar amount might be.

Was that responsive?

Q. It was.

A. Okay.

Q. And forgive me if you've already answered this question --

A. Okay.

Q. I'm a little bit confused whether or not we've answered this question or not --

A. Okay.

Q. -- but have you ever denied an attorney that you supervise funds for a deposition?

A. I suspect that I probably have at some

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point in time, but I -- as I'm sitting here now, I certainly could not cite to you a case or the rationale. I -- it would be -- probably, it would -- it would have been a very rare instance.

Q. Do you have a sense for how many of the depositions that you have taken or any of the attorneys that you supervise have taken that have been out of state?

A. Can I answer the first part?

Q. Sure.

A. Okay. In my 15 years, I can think of a case that caused me to go to Florida for depositions. I can think of -- and it was a child witness on a child sex allegation, so, like, a phone deposition I didn't think would work well. I can think of another case where I went to Arkansas and Colorado for depositions. The Colorado deposition, likewise, an alleged victim of a child sex offense or a -- or something of that kind. In terms of me personally going out of state for depositions, those are the only two times I can think of.

The other part of your question was lawyers in my office, so let me kind of wrap my head around that for a second, if I can, please. I know one of my lawyers recently went to Texas for a

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deposition. On another case, Wisconsin or Michigan -- some place north and some place cold -- and those are the only ones I can think of off of the top of my head.

Q. And with those, is there -- is the procedure similar, or are there some different procedures for how one goes about getting an out-of-state deposition approved?

A. For me, my procedure is, the lawyer better have a really good reason to spend the time and the money. That's not a formal written policy, but that's a -- but that's a -- you better really want it. And so, typically, what it would involve is me talking to the lawyer beforehand and having them justify it to me before I click the button that says approved.

Q. How about funds for experts? Have you ever been personally denied a request to utilize expert testimony or consult an expert at your time at the Missouri State Public Defender System?

A. I can't think of a situation in which I had been -- in which I had -- in which it had been told to me, Look, no, that's totally off limits. There have been times where I've been told, No, you need to find a cheaper expert or someone closer so

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there's less travel, or instead of paying someone to do this computer forensic stuff, how about we have our IT department look at it? But, generally, one way or the other, I was able to get whatever information needed -- I cannot think of a situation in which there was an outright refusal.

Q. Can you think of a situation where you as a supervisor denied a request for expert testimony from an employee that you supervised?

A. I cannot think of such a situation.

Q. Are there any written policies or procedures governing how much money can be spent upon a particular expert, or is it all discretionary?

A. There is -- I don't know if it's written down anywhere or not. It may be in an e-mail or it may be -- I don't know if it's a policy or something. I don't know. But there's a preference for if you take two experts of comparable quality, pick the cheaper one. You know, likewise, for example, in the deposition context, the expectation is that we use the state contract to go with the low cost provider.

And now I've forgotten your initial question. I'm sorry, sir.

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Q. No worries. I think I forgot my initial question as well.

Well, the initial question was if you had ever denied expert testimony -- the funds for expert testimony to an attorney that you supervise, I think, was along the lines.

A. I don't think -- I cannot think of a time in which I had. Oh, and then I think you asked me about policy.

Q. Oh. Whether there was any policy or procedure limiting how much may can be spent on a particular expert.

A. Correct.

Q. Yeah.

A. I'm not aware of a policy saying X is the cutoff.

Q. Sure.

A. But sort of, again, the expectation is that we go with the cheapest -- with the experience and expertise necessary.

Q. Turning to trial --

A. Yes.

Q. -- generally, for a second. Do you have a sense of how many trials your district tried to completion, if you will, within the past calendar

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year or so?

A. I'd have to look at some numbers. So let me -- I'd have to give you a wild ballpark.

Q. A wild ballpark is fine.

A. About ten, give or take. And it sort of fluctuated over time. In years past, sometimes we try more, sometimes we try less; it just -- it tends to -- for the last 12 months, ten is a reasonable guess.

Q. And when there is a trial, is it -- if there are no policies or procedures, is it the custom of your district to send multiple assistant public defenders to that trial? Said another way, do you send a number of second chairs or third chairs, or how do you go about assigning coverage for trials?

A. There will be a second chair. Sometimes it's an active second chair that -- and I'm talking jury trials; I'm not talking bench trials. On a jury trial, there will be a second chair. Sometimes it's an active second chair who takes parts of the cases. You know, I'm going to cross these witnesses, I'll direct this witness, I'll do closing, you do open -- you know, something along those lines. Other times it's a passive second

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chair whose basic role is to take notes, be a gopher, you know, sometimes serve as a buffer between the client and the lawyer trying the case, just kind of depends. There is never any sort of -- right now there is not any sort of third chair unless there's, like, an unpaid intern, so -- trying to get some experience or something like that. But, usually -- you know, frankly, in the Cole County courthouse, the courtrooms are set up so there's not room for that extra person at the table anyway, so ...

Long answer to a short question. I apologize.

Q. No worries.

A. There's always going to be some sort of second chair.

Q. Turning to plea deals.

A. Yes.

Q. What is the earliest in your district an assistant public defender can counsel their client to accept a plea deal?

A. I have no hard rule on that, and so -- you know, hypothetically speaking, the lawyer can plead the client as quickly as the client wants that to happen, provided that the lawyer has done what due

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diligence is reasonable in the context of the case. You know, so -- I mean, hypothetically speaking, in terms of my policies and my expectation, if a lawyer gets in on a case on Monday, has full discovery on Tuesday, meets with the client in jail on Tuesday or at the office on Tuesday, does whatever works needs to happen, and the client is adamant that may want to plead guilty in the near future, as long as the lawyer has met with the client, done what the lawyer needs to do, in terms of case preparation, or if the client says, Look, we've talked about doing XYZ, 123, I don't want you to do XYZ, 123, I want to go ahead and do this today. You know, I'm not going to criticize the lawyer, provided that the client is fully counseled, sort of, as to the consequences of the thing.

At some point when you get to a segue, if I could take a break, that would be great.

MR. RAMSEY: Let's go off the record.

THE WITNESS: Okay.

VIDEOGRAPHER: The time is 3:35 p.m., and we're off the record.

(A recess was taken.)

VIDEOGRAPHER: The time is 3:45 p.m., and we're back on the record.

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Q. (By Mr. Ramsey) Turning to probation revocation proceedings. I believe the RubinBrown report gives some amount of time that it thinks is necessary to complete those. I don't know if it's nine hours or however many hours there are. In your experience, what needs to happen, specifically, to adequately prepare for a probation revocation hearing?

A. The lawyer needs to review not just incident probation violation reports but other historical probation violation reports. If there's a sentencing assessment report, the lawyer needs to review that as well. In addition -- and have copies and be familiar with the things. In addition, the lawyer needs to meet with the client. In my office, there's an intake form that we expect every lawyer to complete with every client, ask basic questions about their personal situation, about their legal situation, citizenship status, alcohol drug issues, physical mental health issues, things of that kind. And that is rock bottom, bare minimum, but depending on the issues that exist with regard to the probation violation, how it is the client is alleged to have violated probation and what the issues are in the client's sort of personal life and their

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legal situation. Invariably, there's going to be follow-up activity that should happen, and what that follow-up activity is going to be is just going to vary dramatically depending on, you know, are we talking about a probation violation where the allegation is that the client failed to pay, you know, restitution or is it a -- the client has been kicked out of treatment or is it going to be, you know, some other violation. There may be witnesses that may need to be interviewed. There is -- certainly, the bond should be addressed as quickly as humanly possible, you know, and kind of -- those strike me as sort of, like, the bare minimum. What exists beyond that would just depend on the nature of the case and the client situation.

Q. Turning to timekeeping, I understood your testimony to be that at one point in time -- at least one point in time, there was a period where you and your district that you were working in were tracking time by five-minute increments or by task, if you will. When was the last time you can remember keeping track of time like that?

A. At some point when I was in the Area 19 office. We were tracking time when I came to that office. At some point in my tenure there, we

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stopped. It would have been, if memory serves, before January 1, 2017, but when between January 1, 2017 and September 2014, somewhere in there.

Q. And when you were tracking time -- well, strike that.

Currently, is the extent of your timekeeping tracking, if you will, the I work ten hours per day or I work 12 hours per day?

A. Yes.

Q. At any point during the actual tracking of time in the five-minute increments was there ever a person assigned to manage or oversee that timekeeping process?

A. The district defender in each office.

Q. And so to the extent that you were tasked with maintaining or overseeing that task, were you ever provided any additional training in timekeeping?

A. Yes.

Q. Where did that training come from?

A. It -- there was -- and I -- I can't recall if it was in the first time that we time logged or the second time that we time logged, but somewhere in there -- it was at our annual management meeting, there was a presentation on that topic. There may

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have been additional presentations on that topic. In addition, there is a database -- we call it the MSPD help database. It provides instructions on how to do a million and one different things, open a case, close a case, but there was also a number of tutorials on how to do time logging.

Q. Switching gears a bit, when you were testifying concerning the nonsupport matters, whether it's being held in contempt or was a misdemeanor or -- I don't know if you mentioned that it could also be a felony, but in that scheme of conversation and testimony, I believe you testified that the judge had ultimately said that she was going to stop appointing your district to represent in those matters. Am I understanding that correctly?

A. Judge Joyce told us we are not to be entering on criminal nonsupport cases anymore until such time as our caseload situation resolves.

Q. Could you help me understand, I guess, the difference between you all -- someone applying to your office independently, being directed to by the court, and the court directing you not to accept any particular type of case? I'm trying to understand, I guess, perhaps, your understanding of the judge's

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power to tell you and your district not to accept those cases.

A. So under the Waters decision, the trial courts have sort of inherit authority to control or manage my caseload in a way that I cannot, and so when Judge Joyce told me, Hey, you know, you guys don't take any more criminal nonsupport cases until all of this gets fixed, I sort of took that to be the judge -- you know, she didn't specify the Waters name, but I kind of took that to be her exercising her inherent authority to tell me to stay out of that class of cases.

Q. And sitting here today, is it your understanding that If someone applied that was in that realm of cases and you accepted that, that would be going against that order or that directive from the judge?

A. Correct.

Q. Okay.

A. What we would do is we would file a denial for public defender services saying we've been told not to take criminal nonsupport cases.

Q. I'm going to start jumping all over the place a little bit, and I apologize for that.

Concerning the caseloads, specifically,

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the cases that have been continued for one reason or another for years on end, do you have a custom -- and I presume -- I'm starting to assume that there's not a policy or procedure, but do you have some type of a custom of first-in, first-out or some way to get the cases that have been on your dockets longer out the door faster?

A. I don't have a policy in that regard. I mean, you know, generally, the longer the case is on the judge's docket, the more the judge is going to push to resolve that case.

Q. Is it your understanding that you were the first -- you were either the first or one of the first district defenders to start exercising control or asking for different mechanisms to control your caseload and workload well before the Hinkebein decision, in terms of -- I think you had mentioned it was January 1 of this year that you started really, I guess, pushing the envelope, so to speak.

A. Yes.

Q. And in your decision to do so, why did you decide to proceed as you did, as opposed to -- I don't know what the other district defenders were doing, and I'm not asking you to testify on their behalf, but what led you to act, I guess, is my

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question.

A. Well, I mean, essentially, what -- sort of the things that I articulated earlier --

Q. As in your attorneys coming to you in a conservative effort?

A. That was the immediate spark.

Q. Uh-huh.

A. Also, I had done everything administratively I could think of to make our office more efficient. And, sort of, in a number of different ways, I had hit my boss up for money a couple of different times, a couple of different ways, and she told me pretty clearly that the well was dry, and we had been, you know, sort of -- there was that September 2016 meeting where, basically, senior management said, Hey, we're now shifting gears, and we're going to allow the local offices to kind of chart your own course, and then all of my lawyers came to me and said, You better find a different course. So there was kind of a confluence of things.

Q. Is it fair to characterize your testimony as after you started to work with the criminal justice system, whether that be the judges or the prosecutors, that you saw marked improvement in that

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time, in terms of caseload and workload concerns, whether that was from January 1 up until the Hinkebein decision -- or whatever span we're talking about. Is that fair to characterize that while you were working together with the system, your caseload improved?

A. I don't know that I would characterize it that way. If you go from 2014 to December 29, 2016, you know, the things that I was doing -- I was asking for help, you know, routinely from the judges, but, you know, as you can see from the e-mail thread, you know, the help was, frankly, very small. Well, the statute changed so, I won't put you in this small case type anymore. You know, really, most of the things that I was doing between 2014 and 2016 was trying to run my ship as efficiently and cleanly as possible. And when it was clear that I couldn't, you know, make it any leaner, more efficient, couldn't be any stricter on applications, that was sort of when I told the courts, Hey, look, this is what we've got to do.

Q. Turning generally to the Chapter 600.063 conferences and the motions that you filed, did you receive broad authority to file those motions whenever you felt you had to, or have you asked for

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permission from upper management every time you were going to file one of those motions?

A. I had received authority, and then the content of the conversation, I understood that to be, pursue it as you need to. I did not understand it to be, But call me every time before you file an individual motion. I'm pretty sure my boss doesn't want that.

Q. Would you turn with me to Exhibit 21 on Plaintiff's Exhibit 21.

A. Certainly. Yes.

Q. Now, the various typos and other issues have been noted in this document previously. Is that your understand that from earlier testimony?

A. Yes.

Q. So you've never seen a document that quite looks like this --

A. I would have --

Q. -- in terms of -- well, you've never seen this exact document with the typos noted.

A. I would have seen it in a format that did not have the typos or the formatting issues or whatever you call them.

Q. And with that, you were referred to this last page, Bates stamp 38976, I believe; is that

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correct?

A. Yes.

Q. And so on there, could you tell me how cases initiated or defined on that graph?

A. Yes. When -- in any case management software, when staff goes through to administratively click the buttons to create a case and open it, that, then, as I understand, will -- it is sort of what triggers that case is initiated.

Q. Two steps back. Did you have any hand in creating this particular graph?

A. No.

Q. And are you familiar with any of the, for lack of a better word, metadata that's underlying the graph, if you will?

A. You lost me, I apologize.

Q. Are you -- do you understand, I guess, all of the various components of this graph?

A. I don't understand -- I don't -- well -- it's been a while since I got down in the weeds of the RubinBrown thing. I understand some of it, probably not all of it.

Q. Okay.

MR. RAMSEY: I think that's going to conclude my line of questioning.

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MS. SHIPMA: I have a few questions, Just.

CROSS-EXAMINATION

BY MS. SHIPMA:

Q. I think I'll go backwards, just to make it interesting.

Mr. Ramsey asked you about kind of the numbers that you were using to determine when your attorneys have a reasonable caseload, and you talked about how that varied on the case type. Are there other factors that go into that determination of what an individual attorney can carry as a reasonable caseload?

A. Their experience level as well. You know, a lawyer with 30 days of experience could not carry the same caseload as a lawyer whose got eight years of experience in criminal defense, all else being equal. And when I say -- that lawyer with 30 days of experience would need a need a smaller caseload, in terms of volume but also in complexity.

Q. Do you talk to the attorneys about what they feel they can ethically handle?

A. Yes.

Q. And do you take that into consideration when you're deciding whether they're available to take more cases?

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A. Yes.
Q. You talked about there was a time in 2012 when there was an administrative rule in effect and you felt like toward the end of, sort of, the six-month period, you were starting, I think you said, to see the light at the end of the tunnel. I think that was maybe the --
A. Yes.
Q. -- phrase that you used. What caused that six-month period to end, if you know?
A. What I was told was that members of the legislature had communicated to our director, You-all need to pull the plug on this, or we're going to privatize the system. And so -- and there were a whole lot of other things that were taking place at the same time. Bob McCullough was the prosecutor in St. Louis County; he was going to sue. There was an audit report criticizing alliance on the National Advisory Counsel standard or guideline. And so as I understand, senior management kind of, when faced with this sort of battery of problems, decided that they were no longer going to implement the administrative rule or the -- you know, the caseload metric or whatever you want to call it at that point in time.

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Q. Is that administrative rule still in existence, if you know?
A. I can't recall.
Q. Okay.
A. We've had a couple of them. Some of them have been struck down.
Q. Let's go back to your process for determining indigency?
A. Yes.
Q. And let's talk about prior to this year, when you've been doing this different experiment with the caseloads.
What would happen when you deny an applicant's request for public defender services?
A. Prior to January 1, the only reason we would deny an applicant would be because it was an ineligible case or they did not meet the financial criteria for a public defender. When we were going to deny an applicant, there's a written denial that we would file setting out the reason or reasons, as the case may be. We would mail a copy of that denial to that applicant, file the denial with the court, and that would be that. If the applicant chose to appeal that decision to the court, certainly, they could. Sometimes people do,

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sometimes they just ask for more time to hire a lawyer, other times they go pro se.
Q. Did you ever find that applicants you had denied became PD clients anyway?
A. Yes.
Q. And how would that happen?
A. It could be because down the road they would reapply and convince us that their situation at the time of the new application was such that we should be entering. They had been working, now they lost their job, for example, or if they appealed our denial to the court and the court ordered us to represent, then we would do so.
Q. Did you ever experience a situation where there wasn't an appeal but the defendant just repeatedly appeared without counsel and the judge would appoint us in that situation?
A. Yes.
Q. Is it typical for the attorneys in your office to work weekends?
A. It certainly happens, yes.
Q. So while they may not be assigned a 24/7 work assignment, there is work occurring beyond the normal nine to five, Monday through Friday, as far as the attorneys in the public defender system go?

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A. Absolutely.
Q. Would you say that happens rarely?
A. Consistently, my lawyers are working overtime.
Q. And not really true overtime because they are exempt under the Fair Labor Standards Act; is that correct.
A. Correct.
Q. Sorry. My labor law -- employment law attorney.
A. We don't pay them for the time that they work in excess of the 40 hours a week that they perpetually work.
Q. And I believe Mr. Ramsey also asked you about the number of plea deals that come through the office.
A. Yes.
Q. Are most of the cases pled out?
A. Yes.
Q. So you would have almost as many plea deals coming into the office as the number of cases that are coming into the office; is that correct?
A. Generally, in all but the rarest of cases, there is a plea offer.
Q. And so there would be an increase in the

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number of plea deals coming into the office based on the number of the cases that are coming into the office; is that correct?
A. Right. If our caseload rises, so would our incoming plea offers.
Q. I want to take you back to Exhibit 21 just for a moment. And I know that you just testified that you did not participate in any way in the preparation of the chart that's shown on Bates 38976, but you did testify about some of it earlier, and I just want to point out -- or I just want to make sure I understand one point.
You were talking earlier about there being 33 offices in the Missouri State Public Defender System.
A. In the trial division.
Q. The trial division, that's correct. So these first lines deal with the trial division only; is that correct?
A. Correct.
Q. There are other divisions, as well, within MSPD?
A. Correct.
Q. And some of those are shown on here, the appellant PCR division; is that correct?

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A. Correct.
Q. And I think you also mentioned earlier capital division?
A. Correct.
Q. And a CD -- Civil --
A. Commitment Defense Unit.
Q. -- Commitment Defense Unit. Thank you. Yes. That's another division; is that correct?
A. Yes.
Q. In your opinion, have you -- has the quality of representation changed for the clients of your attorneys since you've implemented this caseload control --
A. Yes.
Q. -- in 2017?
A. Yes.
Q. And how has that quality changed?
A. My lawyers have more time to talk to the clients, more time to do the legal research, to file the motions, to do the depositions. I think that the quality of the legal services they are providing has increased.
Q. Okay. Given an appropriate caseload, an attorney with an appropriate caseload, in your opinion, is it better for criminal defendants to

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have a lawyer experienced in criminal law like you, or just any old lawyer will do?
A. Can you repeat that?
Q. Yeah. Given a reasonable caseload --
A. Okay.
Q. -- is it better for a criminal defendant to have someone who is experienced in criminal law like you, or just any old lawyer from the public service commission or the department of natural resources?
A. Definitely better for the accused to have a lawyer who is trained in criminal law and proficient, as compared to some other random lawyer who doesn't know anything about it.
Q. Okay.
MS. SHIPMA: That's all of the questions I have.
REDIRECT EXAMINATION
BY MR. SCHERZER:
Q. I have just a few.
A. Absolutely.
Q. Do you need a break?
A. No.
Q. Okay. It won't be long.
Just -- I'll pick up right where

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Ms. Shipma left off.
In additional -- of course, given a reasonable caseload, would you also say -- and you said -- assuming that it's better for someone to have -- it's better for a criminal defendant to have an attorney who is experienced in criminal law, is it also better for the criminal defendant to have an attorney who works with other criminal lawyers and is supervised by someone who is experienced in criminal law?
A. Yes.
Q. And not only experienced in criminal law but also has training in criminal law?
A. Yes.
Q. And has someone who they -- in their office, colleagues and supervisors, who they can ask for advice and support based on their experience in criminal law?
A. Yes.
Q. And if you actually had resources for investigators and experts and the like, someone who has access to investigators and experts and, perhaps, social workers as well.
A. Yes.
Q. Okay. And -- okay. Move on from that.

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Is it fair to say -- so you've talked about two periods where there's strict caseload limits; one for this six-month period in 2012 and one now -- you've sort of created this, fair to say, sort of, pilot project in your office where you're causing yourself to be ineffective in a -- in an effort to try to save your line attorneys.

A. Correct.

Q. Is it fair to say, with those strict caseloads limits in place, you and your attorneys are or would be able to provide something at least approaching effective representation for your criminal defendants?

A. Yes.

Q. And without those caseload -- strict caseload limits, as was the case for your attorneys in, say, 2016 and for you in 2017, you aren't able -- you and your attorneys aren't able to provide that effective representation?

A. Correct.

Q. Okay. You talked about 1,788 cases, is that right, that you have open in your --

A. Yes.

Q. Okay. That you have opened in Area 19?

A. No. That we opened thus far in calendar,

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not open now.

Q. Do you know how many are open now?

A. About 750.

Q. 750. Okay. Just a few more questions.

Mr. Ramsey was asking you about depositions and whether those were denied -- whether those had been denied, and you talked about some examples where they were. Could one of the reasons for denying a deposition -- that you were denied a deposition or that your -- Ellen Blau or the other supervisors in the central were denying a deposition be time, as well as money? In other words, that you -- it's not necessarily the cost of the deposition but time you're taking away from -- you or your attorneys are taking away from other cases?

A. I've never had that offered as a reason for denying the deposition. And, you know, generally, my lawyers and myself self-screen that out. I mean, I don't have time to waste. I'm not going to ask for a deposition that I think is going to be fruitless, and my lawyers are in the same both.

Q. Got it. Okay. That was getting to exactly what I was asking.

A. Okay.

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Q. You're jumping ahead, so --

A. Sorry.

Q. No, no, no. That's perfect.

So in other words, you don't even ask for depositions in many of the cases you might otherwise -- you don't even -- you wouldn't necessarily have to ask, but -- because you're the district defender, but you don't even consider doing depositions in many of the cases you would like to because you don't possibly -- you couldn't possibly have the time to do so; is that right?

A. Agreed. I would love to do more depositions than what I'm actually doing, and I think there are cases in which it would be helpful. It's a time limitation, not a money limitation.

Q. And is that the same -- it sounds like you were saying that's the same for your line attorneys as well. There are numerous cases that they would like to be doing depositions in but do not, simply because they don't have the time?

A. They may have more time now, but at least historically, that has absolutely been a limitation.

Q. And they might have time now because of the strict caseload limits that you've imposed?

A. Correct.

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Q. All right. And because, of course, any time spent taking -- a day spent taking a deposition is an entire day away from the other 212 cases that you have or the other numerous cases that your line attorneys have?

A. Correct.

Q. And for experts, it -- is -- could part of the reason that experts are used less frequently be a similar reason, that it takes lots of time to find the right expert, to talk to that expert, to gather the resources needed to have a fruitful expert report, and, thus, that's also time that would ideally be available to you and your attorneys but isn't, and, therefore, you don't make expert requests?

A. Absolutely. And the youthfulness and general inexperience of the lawyers in my office. If they don't know to ask for an expert, they won't ask for an expert. And I won't know that the need is there, necessarily.

Q. So is it fair to say that your office should be -- in an ideal world, should be taking depositions in many more cases than it currently does?

A. I think so. Certainly on my cases now,

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absolutely, yes.
Q. And also fair to say that your office should be use experts much more frequently than it does?
A. Yes.
Q. Okay. I just have two more questions. Just going back to the five people who left your office in 2017, two for family reasons, two quit for caseload and money reasons, and then you mentioned one retired. Was one -- was part of the reason that he or she retired for the same caseload and money reasons, or was he just retiring?
A. What he articulated to me was that he sat down and did the math, and he could get paid the same to work or not work, and so he said, I'll take the same amount of money to not work, and, you know, if I do some private stuff on the side, I'll be money ahead for less work.
Q. Got it. And did he express at that time any frustration with the caseload or his other recent experience with -- as a public defender at the time he retired?
A. He did not express.
Q. Okay. Just one last question about the criminal nonsupport cases, those -- you estimated

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are there about 50 criminal nonsupport cases that might come up over the course of the year. The judge's decision to say that you cannot or should not enter appearances in any of those cases, has that significantly reduced, in any meaningful way, your -- the caseload of your office?
A. Well, I mean, at least for my individual assistant public defenders -- I mean, no, because if they couldn't have taken those cases, I was not going to assign them to them. You know what I mean?
Q. Uh-huh.
A. And, you know, in the context of 1,788 cases a year, you know, 50 is -- frankly, it's sort of a drop in the bucket, at least in terms of the bigger impact, you know, kind of office wide.
Q. Especially, presumably, because the point of these 50 is there should be 50 of the easiest, shortest cases they have. It's not 50 murder cases that are being taken away or 50 A, B felony, it's --
A. Right. You're talking about either misdemeanors or probation violations or low-level felonies.
Q. Not to say they're not serious, but, presumably, that you would be spending less time on them than you would be on a murder case.

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A. Correct.
MR. SCHERZER: And that's all of the questions I have.
VIDEOGRAPHER: The time is 4:21 p.m., and we're off the record.
(The deposition concluded at 4:21 p.m.)

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CERTIFICATE OF REPORTER

I, Lisa Ballalatak, a Certified Court Reporter for the State of Missouri, do hereby certify that the witness whose testimony appears in the foregoing deposition was duly sworn by me; the testimony of said witness was taken by me to the best of my ability and thereafter reduced to typewriting under my direction; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition was taken, and further that I am not a relative or employee of any attorney or counsel employed by the parties thereto, nor financially or otherwise interested in the outcome of the action.

_____
Lisa Ballalatak
Missouri Supreme Court
Certified Court Reporter

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ALARIS LITIGATION SERVICES

December 28, 2017

MS. JACQUELINE D. SHIPMA
MISSOURI STATE PUBLIC DEFENDER SYSTEM
1000 W Nifong Boulevard, Suite 100
Columbia, Missouri 65203

IN RE: SHONDEL CHURCH, et al. v. STATE OF MISSOURI, et al.

Dear Ms. Shipma,

Please find enclosed your copies of the deposition of JUSTIN CARVER taken on December 11, 2017 in the above-referenced case. Also enclosed is the original signature page and errata sheets.

Please have the witness read your copy of the transcript, indicate any changes and/or corrections desired on the errata sheets, and sign the signature page before a notary public.

Please return the errata sheets and notarized signature page within 30 days to our office at 711 N 11th Street, St. Louis, MO 63101 for filing.

Sincerely,

LISA BALLALATAK, CCR

39564

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ERRATA SHEET

Witness Name: JUSTIN CARVER
Case Name: SHONDEL CHURCH, et al. v. STATE OF MISSOURI, et al.
Date Taken: DECEMBER 11, 2017

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Witness Signature: _____

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STATE OF _____)

COUNTY OF _____)

I, JUSTIN CARVER, do hereby certify:

That I have read the foregoing deposition;

That I have made such changes in form and/or substance to the within deposition as might be necessary to render the same true and correct;

That having made such changes thereon, I hereby subscribe my name to the deposition.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this _____ day of _____, 20___, at _____.

_____
JUSTIN CARVER

_____
NOTARY PUBLIC

My Commission Expires:

A

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Exhibit B

Mo. State Public Defender Cumulative Caseload Metrics

Last 3 months Cumulative

Start Date 1/1/2017

End Date 3/31/2017

* Withdrawn/Conflict cases closed in the same month they were opened

Area	Area Name	# Attys	Cases Initiated	Minus Cases w/drawn	Net New Cases	Net Case Units (RB)	Attorney Court Time (Estimated)**	Attorney Travel Time (Estimated)**	Workload (Units + Ct Time + Travel)	Capacity	Percent of Capacity	Rank
35	Kennett	6	511	70	441	9,798.10	557.17	251.12	10,606.39	3,120	339.9%	1
11	St. Charles	7	554	28	526	10,874.90	685.73	126.07	11,686.70	3,640	321.1%	2
15	Sedalia	7	617	81	536	10,687.60	616.81	278.95	11,583.36	3,640	318.2%	3
17	Harrisonville	8	618	42	576	11,707.10	951.48	348.32	13,006.90	4,160	312.7%	4
32	Jackson	11	815	90	725	16,139.30	1,058.48	450.23	17,648.01	5,720	308.5%	5
44	Ava	4	314	33	281	5,864.30	265.02	165.01	6,294.33	2,080	302.6%	6
20	Union	5	439	55	384	7,314.80	355.19	117.31	7,787.30	2,600	299.5%	7
26	Lebanon	7	620	81	539	9,939.80	627.33	289.73	10,856.86	3,640	298.3%	8
39	Monett	7	533	67	466	9,958.30	595.79	297.06	10,851.15	3,640	298.1%	9
31	Springfield	20	1,450	54	1,396	28,195.00	2,287.25	364.64	30,846.89	10,400	296.6%	10
37	West Plains	5	344	61	283	6,826.40	489.40	123.89	7,439.68	2,600	286.1%	11
10	Hannibal	5	407	54	353	6,577.90	434.96	278.98	7,291.84	2,600	280.5%	12
23	Hillsboro	6	496	58	438	8,207.40	454.54	29.29	8,691.23	3,120	278.6%	13
25	Rolla	14	1,016	92	924	18,603.70	1,111.08	406.40	20,121.18	7,280	276.4%	14
36	Poplar Bluff	8	494	39	455	9,399.20	1,680.73	384.32	11,464.25	4,160	275.6%	15
7	Liberty	12	840	50	790	14,904.40	1,301.25	477.53	16,683.18	6,240	267.4%	16
30	Bolivar	7	444	62	382	8,365.70	901.29	339.63	9,606.62	3,640	263.9%	17
21	St. Louis County	20	1,197	79	1,118	24,560.90	2,743.67	47.64	27,352.21	10,400	263.0%	18
13	Columbia	13	877	91	786	15,678.90	1,261.27	343.84	17,284.01	6,760	255.7%	19
24	Farmington	10	599	39	560	11,877.20	920.50	399.07	13,196.77	5,200	253.8%	20
5	St. Joseph	7	517	36	481	8,178.50	709.86	44.76	8,933.12	3,640	245.4%	21
14	Moberly	6	374	36	338	6,725.90	524.38	369.12	7,619.39	3,120	244.2%	22
28	Nevada	5	368	53	315	5,297.20	473.02	145.14	5,915.36	2,600	227.5%	23
4	Maryville	3	185	33	152	3,076.50	205.48	197.76	3,479.74	1,560	223.1%	24
12	Fulton	7	394	31	363	7,089.50	781.38	238.69	8,109.56	3,640	222.8%	25
43	Chillicothe	9	517	53	464	9,149.20	548.69	719.58	10,417.47	4,680	222.6%	26
45	Troy	5	266	23	243	5,114.00	524.08	107.97	5,746.05	2,600	221.0%	27
34	Portageville	5	305	85	220	4,992.60	428.19	164.44	5,585.23	2,600	214.8%	28
29	Carthage	15	821	112	709	15,305.50	1,028.46	372.81	16,706.76	7,800	214.2%	29
16	Kansas City	35	1,199	68	1,131	31,102.20	3,815.33	326.84	35,244.37	18,200	193.7%	30
2	Kirksville	3	161	39	122	2,410.30	250.50	156.92	2,817.72	1,560	180.6%	31
22	St. Louis City	30	1,054	90	964	23,160.80	2,794.81	328.46	26,284.07	15,600	168.5%	32
19	Jefferson City	8	310	36	274	5,552.10	637.02	200.77	6,389.89	4,160	153.6%	33
TRIAL DIVISION TOTAL		320	19,656	1,921	17,735	372,635.20	32,020.13	8,892.28	413,547.60	166,400	248.5%	
68	St. Louis B Appellate/PCR	6	120	8	112	10,808.00	78.04	52.91	10,938.95	3,120	350.6%	1
67	Columbia PCR	6	107	3	104	9,746.50	92.69	143.21	9,982.40	3,120	319.9%	2
51	St. Louis A Appellate/PCR	6	101	6	95	8,974.50	118.33	125.29	9,218.12	3,120	295.5%	3
69	Kansas City B Appellate/PCR	4	68	7	61	5,693.50	35.50	39.24	5,768.24	2,080	277.3%	4
52	Kansas City A Appellate/PCR	3	42	3	39	3,667.00	37.69	65.79	3,770.48	1,560	241.7%	5
50	Columbia Appellate	7.0	71	6	65	5,693.50	26.71	45.52	5,765.72	3,640	158.4%	6
Ap/PCR DIVISION TOTAL		32.0	509	33	476	44,583.00	388.96	471.96	45,443.92	16,640	273.1%	

** Court time estimated using fiscal year 2016 time log data. Travel time estimated using fiscal year 2016 expense report data.

Exhibit C

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
CENTRAL DIVISION

SHONDEL CHURCH, et al,)
)
Plaintiffs,)
)
vs.) Case No. 17-04057-CV-C-NKL
)
STATE OF MISSOURI, et al,)
)
Defendants.)
)
)
)
)

VIDEOTAPED DEPOSITION OF ROD HACKATHORN
TAKEN ON BEHALF OF THE PLAINTIFFS
DECEMBER 20, 2017

I N D E X

WITNESS: Rod Hackathorn
Direct Examination 6
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Redirect Examination 131

E X H I B I T S

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Exhibit 48 27
Exhibit 49 34
Exhibit 50 120
Exhibit 51 76
Exhibit 52 76
Exhibit 53 82

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
CENTRAL DIVISION

SHONDEL CHURCH, et al,)
)
Plaintiffs,)
)
vs.) Case No. 17-04057-CV-C-NKL
)
STATE OF MISSOURI, et al,)
)
Defendants.)
)
)
)
)

VIDEOTAPED DEPOSITION OF ROD HACKATHORN, produced, sworn, and examined on December 20, 2017, between the hours of 9:00 o'clock in the forenoon and 1:00 o'clock in the afternoon of that day, at Alaris Litigation Services, 2422 East Madrid Street, Springfield, Missouri 65084, before Jenna Petree, in a certain cause now pending UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF MISSOURI CENTRAL DIVISION, wherein SHONDEL CHURCH, et al are the Plaintiffs, and STATE OF MISSOURI, et al are the Defendants.

A P P E A R A N C E S

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573-449-0561
The Videographer:
Bethany Scutti - Alaris Litigation Services

THE VIDEOGRAPHER: We are on the record. Today's date is December 20, 2017 and the time is 8:57 a.m. This is the video recorded deposition of Rod Hackathorn in the matter of Shondel Church et al. versus State of Missouri et al, Case No. 17-04057-CV-C-NKL in the U.S. District Court for the Western District of Missouri, Central Division.

This deposition is being held at Alaris Litigation Services, 2422 East Madrid Street, Springfield, Missouri 65804.

The reporter's name, Jenna Petree. My name is Bethany Scutti. I'm the legal videographer. We are with Alaris Litigation Services.

Would the attorneys please introduce themselves.

MR. SHAHABIAN: Matt Shahabian from Orrick for the plaintiffs.

MS. PRASAD: Anjali Prasad from Orrick for the plaintiffs.

MR. RAMSEY: Steven Alan Ramsey. I'm for the State of Missouri and Governor Greitens.

MS. SHIPMA: Jacqueline Shipma for the MSPD defendants.

THE VIDEOGRAPHER: Would the court reporter please swear in the witness.

IT IS HEREBY STIPULATED AND AGREED, by and between counsel for the Plaintiffs and counsel for the Defendants, that the deposition of ROD HACKATHORN may be taken in shorthand by Jenna Petree, and afterwards transcribed into typewriting; and the signature of the witness is expressly reserved.

* * * * *

ROD HACKATHORN,

of lawful age, produced, sworn, and examined on behalf of the Plaintiffs, deposes and says:

QUESTIONS BY MR. SHAHABIAN:

Q Could you please introduce yourself for the record?

A My name is Rod Hackathorn.

Q Good morning, Mr. Hackathorn. How are you?

A I'm good. How are you?

Q Good. I'm Matt Shahabian. I'm one of the plaintiff -- counsel for the plaintiffs. And I wanted to thank you for taking the time to answer some questions today.

A Certainly.

Q Have you ever been deposed before?

A Don't believe I've ever been deposed.

Q So, let's go over some ground rules how this deposition will proceed. So there is a court reporter here

who will be transcribing the deposition. So because she'll be writing everything down, you'll need to answer with verbal responses to every question; shaking your head won't get picked up on the record, even though it will get picked up in the video. So yes or no, complete sentence is fine, but nonverbal responses won't work.

A I understand.

Q Wait for me to finish the question before you begin the answer. It's a little more difficult for the court reporter if we are talking over each other. Either your counsel or counsel for the State may have objections to my questions. Unless you're instructed not to answer the question, you should still answer even if there is an objection. If you don't understand any of my questions, please let me know. I will try to rephrase and make it more comprehensible, and if you need a break at any time, just let me know. The only rule is you can't have a break if there is a question pending. So after you answer the question, if you would like a break, just let me know.

A Okay.

Q Anything unclear about my instructions?

A Not at all.

Q What did you to prepare for this deposition today?

A I did meet last week with Jacqueline Shipma.

Q And is that counsel present here today?

A Yes.

Q Did you review any documents in preparation for the deposition?

A I didn't necessarily review any documents. I reviewed some of our data that's on the computer.

Q What kind of data did you review?

A I looked back at our numbers concerning cases that had been initiated over the last couple of fiscal years and where we were at in the number of cases -- excuse me -- number of cases that we had initiated so far this year.

Q Did you review anything else in preparation for this deposition?

A I don't think.

Q Did you talk to anybody else in preparation for this deposition?

A No.

Q Could you please tell us your title?

A My title is district defender.

Q Is that a general title or is that specific to a particular region?

A It's a specific title. It's a -- it pertains to the managing attorney of a trial office or any of our appellate offices.

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Q And who are you employed by?
A The Missouri State Public Defender System.
Q What trial offices do you cover as district defender?
A I supervise the Springfield Area 31 trial office.
Q Is Springfield the only geographic locality covered by Area 31?
A No. Our office is located in Springfield, Missouri, but we handle Greene, Christian, and Taney counties.
Q And those three counties make up area 31?
A Yes, sir.
Q How long have you been district defender?
A Right -- well, come January 1, I believe it will be 15 years.
Q Congratulations.
A Thank you.
Q Could you briefly describe your employment history prior to becoming district defender?
A Well, I started with the Missouri State Public Defender System right out of law school. And I have actually been with the Springfield office the entire time, of course starting as an assistant public defender.
Q When did you graduate law school?

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A 1997.
Q Have you ever been recognized professionally for your accomplishments as an attorney?
A I did receive an award from the Missouri Bar, the Charles East Shaw award. Actually, I'm sorry, that's the Missouri Association of Criminal Defense Lawyers, I received an award from them.
Q Were you ever named one of the ten best lawyers in Missouri?
A I don't believe so, no.
Q I'm showing you, I will ask the court reporter to mark this exhibit. We'll call it Hackathorn 1.
MS. SHIPMA: We left off at Exhibit 46 was the last one we used.
MR. SHAHABIAN: Okay. So let's call it Exhibit 47. Thank you, Jackie.
MS. SHIPMA: Your welcome.
(EXHIBIT NO. 47 WAS MARKED FOR IDENTIFICATION BY THE COURT REPORTER.)
A Sorry, if you bear with me a minute.
Q Please take your time.
A Pretty small print you got there.
Q I apologize for the print. These internet documents don't always print the best. If you can just take a minute and review this document and let me know when you've had a chance.

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A It appears I stand corrected. It's been a while back but, yes, apparently I was named one of the ten best lawyers.
Q Does this refresh your recollection at all?
A It does.
Q You were named one of the ten best lawyers in Missouri?
A Yes, sir.
Q You can put that aside. So what are your responsibilities as district defender?
A Just all the various duties?
Q General duties.
A Okay. It involves supervising the attorneys. So I spend a lot of time with them talking about their cases, especially the newer attorneys, and make sure that things are getting done that need to be done. Even the more experienced attorneys, I help them brainstorm on issues of complex cases. I'm responsible for approving time sheets, expense reports, expense requests to get money to hire experts and that sort of thing. I sign off on all the bills. I'm responsible for the hiring. Any personnel matters that arise, in a large office like ours, there is inevitably conflict between a couple people every now and then and we have to get involved with that. I assign all

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of the felony cases and review the probable cause statements for potential conflicts. I'm probably missing something, but that's the bulk of it.
Q Okay. How many people are employed by the area 31 offices?
A Counting myself, if we are at full staff, it would be 22 attorneys and I have eight support staff and then one part-time support staff person.
Q What do you mean if you would be at full staff?
A Over the last few years, it seems like the bulk of the time we are not at full staff. We always -- it seems like we have an open position. Right now I have three open attorney positions.
Q Why are there open positions as opposed to being at full staff?
A Well, for the three that we have open right now, I had two attorneys that resigned over the last few months, and the third position is actually a position that has been granted to us by the director. I don't know where that money comes from or, you know, if that came at the expense of another office, but I know our office has always had higher numbers than a lot of other offices in the state as far as the number of cases that we handle so we were given an additional position.

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Q So you said full staff would be 22 attorneys, but there are currently 19 attorneys in the office; is that right?

A That would be correct.

Q And on average what is the experience level of an attorney in your office?

A We have fared pretty well over the last several years as far as turnover on attorneys. So we do have quite a few attorneys who have are either what we call APD 3 or APD 4, which is our top two assistant public defender positions. Right now, I think we only have three attorneys that have only maybe a year of experience or less.

Q Do you report to anybody as district defender?

A Yes.

Q Who do you report to?

A My direct supervisor would be Ellen Blau. She is our trial division director.

Q Where does she work?

A All over the state. She's constantly on the move.

Q Would it be fair to say she's in the central office for the state defender?

A Yes.

Q What directions do you receive from Ellen Blau

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or anybody else in the central office about how to run your office?

A Well, we have our guidelines for representation. We have our Employee Handbook that states a lot of our MSPD policies. I mean, that's pretty much. Then I can -- whenever there are issues as to how to handle situations, then I go to her or Michael Barrett, who is our director.

Q Do you -- is it fair to say you have a lot of discretion over how the attorneys in your office handle their cases?

A I think that's fair to say.

Q Is there anything that you lack discretion over in terms of how cases are handled?

A Well, as far as how cases are handled, we should be going by our guidelines for representation. But depending on how overworked I guess an office is, there some discretion there on, I guess for lack of a better term, fudge some of the expectations. And so I do have some discretion there and I have had to at times, especially with contact with clients, our expectation is that they would see their clients with, you know, that are incarcerated at least every month. That gets almost impossible to do with the number of cases we've had over the last few years, so I've had to decrease that

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expectation and go to more like 45 to 60 days.

Q And we'll come back to client contact in a bit. Just starting with a more general picture of the office; what is the current workload based on your review of the data?

A Right at this moment in time, most of our attorneys are hovering right around hundred cases open.

Q Would you say that in your experience that's above average, that's typical, or that's below average?

A That is below average.

Q How far below average?

A Ordinarily, a typical caseload would be anywhere from 150 to 200 cases.

Q Why is the caseload so much lower below average right now?

A Over last three months we have been waitlisting a lot of potential clients who would qualify for our services and because of that, the numbers have went down.

Q So when you say the average caseload is about hundred cases, that's not including indigent defendants who would qualify for representation by your office but are on a waitlist?

A Correct.

Q How are cases assigned to defenders in your

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office?

A Ordinarily -- now things have changed over the last three months because of the whole waitlist issue -- but ordinarily cases would be assigned by -- I have some attorneys that are assigned specifically to Taney County. I have some attorneys that are assigned specifically to Christian County, and then in Greene County because it's so much larger and we have many more courts. We have actually four associate courts, we split up our Greene County attorneys where they receive -- they are assigned to a specific associate court and they received all of our cases that arise out of that division and then they follow them on through to circuit court. Misdemeanors and probation violations, I gave -- I give basically a list to our clerks of who to assign those to and as they come in, they rotate through that list and assign those out. All felony cases are given to either me or the deputy district defender. Because we split up the attorneys as far as who assigns cases to who, our deputy district defender assigns the felonies out to attorneys in Taney County and half of the attorneys in Greene County; and then I assign the felonies out for Christian County and half of the attorneys in Greene County.

Q Who is this deputy district director?

A Chris Hatley.

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Q Roughly how much of your time would you say is spent on administrative tasks?
A At least 75 to 80 percent.
Q Do you have your own caseload in addition to your administrative responsibilities?
A I do, but it's a much lower caseload than what our assistant public defenders handle.
Q How many case do you handle roughly per year?
A On average -- I couldn't tell you exactly by year -- but on average I usually have around 25 to 30 open cases at a time.
Q And what kinds of cases do you typically handle?
A I only assign myself felony cases. Now if that client also has a pending misdemeanor or probation violation, I will take that as well, but they would have some pending felony. I try to give myself some sort of variation, but I have murder. I try to take a lot of complex cases, sex cases, murder case, but also some of the lower grade C,D grade felonies.
Q Could you walk-through typically how a public defender approaches a new case that they are brought on, a felony-level case?
A Well, they would usually start by having that initial meeting with the client.

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Q Where would that take place?
A Well, that would depend. If the client is incarcerated, it would take place at the jail. If they are not incarcerated, that meeting sometimes doesn't take place at all because the client -- well, we basically have to rely on the clients to contact us to schedule a meeting. We just don't have the time track people down. A lot of times that initial contact information we get on the application changes quickly. So even if we tried to contact them at that address or that phone number, a lot of times it's not good anymore. So for the most part that initial meeting is really usually with incarcerated clients.
Q So in a criminal process, when does that initial meeting occur? Is it before arraignment? Before initial appearance?
A Ideally, it happens within a week of them getting the file. That doesn't always happen because a lot of times they are in court every day of the week. But definitely we try to make sure that it happens prior to the preliminary hearing. You asked about arraignment; I will just say most of the time in the counties we handle, especially in Greene County on felonies, they will have been arraigned before we are ever in the case.
Q Are there any negative consequences to arraigning defendants before counsel is assigned?

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A I'm sorry, could you ask that question again?
Q Sure. Are there negative consequences to defendants having an arraignment before they are assigned counsel?
A There certainly can be. They can say things that they shouldn't be saying in open court. But I can't give you an example of where that's necessarily come back to haunt one of our clients.
Q And you mentioned that the goal is to get counsel to meet the client before the preliminary hearing; why is that the goal?
A Well, at the preliminary hearing, although we would rarely ever have our clients testify at a prelim, we do want to have some idea of what our clients have to say about the situation before we go into a hearing because also, a lot of times we don't have any discovery before we go into a preliminary hearing. The only thing we have to base off what we are going to prepare is what our clients have to say.
Q And is -- are there cases where you're not able to meet with the client before the preliminary hearing?
A Like I said, especially with those that aren't incarcerated, yeah, that happens a lot. You know, we try

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to rush and have a quick meeting out in the hall if they are not incarcerated and they haven't scheduled an appointment beforehand, but those are rushed and they are not very meaningful conversations. With those in custody, I think for the most part, we succeed in seeing them before the preliminary hearing.
Q What happens after the preliminary hearing? Actually, strike that. What happens at the preliminary hearing?
A Well, when one of attorneys comes in for a preliminary hearing, first thing they would do is check to see if the State is prepared. Do they have the witnesses that they need to proceed. If they don't, then the next step is we are asking for the case to be dismissed. If they do have the witnesses that they need, then the next thing we do is ask if there is any kind of offer on the case. If there is an offer, with then meet with the client. Let them relay that offer to them. Then the attorney and the client would discuss whether or not to have the preliminary hearing or whether they should waive the preliminary hearing based upon that offer.
Q In your experience do you have adequate time to prepare for a preliminary hearings?
A That's hard to say. I think probably for our complex cases, no; for others, probably. I mean,

considering.

Q Why would it differ?

A Because just the lack of time available and it takes more time to prepare for any stage of proceeding on a complex case and time is a precious commodity that we have very little of in the public defender business.

Q What typically happens after the preliminary hearing?

A Well, if the State has been able to either -- if we have waived the preliminary hearing or the if State has shown probable cause then the case would proceed on to circuit court for arraignment.

Q I'm going to step back from the criminal process for a minute. Let's go back to client contact. You mentioned that in your experience it's typically easier to contact clients who are incarcerated. Where does that client contact take place?

A Can you be more specific?

Q Where does the first time meeting with an incarcerated client take place?

A Well, it would take place at the jail and we have meeting rooms at the jail. Now, that -- for Greene County, that's always the case that it would take place at the jail, that first meeting. And it's easy to have that first -- easier to have that first meeting with them

because they are almost always at our Greene County jail prior to the preliminary hearing. Now, later on, that gets more difficult and that's not always the case because the Greene County jail is -- well, we are told it's overcrowded. So inmates get farmed out to counties sometimes two hours away. But generally speaking, prior to the preliminary hearing, they are here. Christian and Taney County; Taney County, it's easier. Yeah, they are always there in the jail. There are meeting rooms there. It's easy to see them. Christian County has been a very difficult place to get our jail visits done. They had one small meeting room at that jail that really wasn't very private. It was difficult to communicate with the clients. They -- I had a meeting with the sheriff. They had two rooms over at the courthouse that they cleaned out and made available for our attorneys to visit privately with clients, but we have to rely on a bailiff being available. So if courts going on in every one of the courtrooms, they can't do a visit. And if the rooms are being used, they can't have a visit. So it does get difficult there.

Q So you mentioned the rooms aren't that private in Christian County?

A The one over at the jail --

Q At the jail.

A -- wasn't, yes.

Q Are the rooms in which you meet clients in Greene and Taney counties confidential?

A Yes.

Q In your opinion, do you have the time you need to effectively communicate with your clients throughout their cases?

A No.

Q Why do you say that?

A Client communication is an area where we have constant downfall. And as a supervisor, I get the majority of the complaint letters I get from clients all stems from lack of communication. Once again, most of our attorneys, they are in court Monday through Friday. As best as I try to assign cases and try to work out some sort of system where they will have a day in the office or a day to go to the jail. Inevitably with the number of judges courts we have here, it seems like they are in court everyday no matter what we do. We have worked with the jails to try to extend visiting hours and we have had some success with that. It used to be in Greene County they had visiting hours only from 8:00 to 11:00 in the morning and then 1:00 to 4:00 in the afternoon. So all the times they were in court, it made it impossible. We have gotten that extended now all the way from 8:00 solidly through 6:00 p.m. So they are able to, you know, during lunch or later in the

afternoon or right after they get out of court go and do some of those visits. But even at that, when you have got the majority of your clients are incarcerated, you just can't get them all seen every month. So, yeah, no, there is not enough time to communicate with folks.

Q What are the negative consequences of not having enough time to communicate with your clients?

A First and foremost a poor attorney-client relationship. It suffers right off the bat. Other problems is being able to properly prepare the case. To be able to know, you know, what's the right avenue to take. Is this a case we need to negotiate. Is this a case we need to take to trial. Being able to reasonably explain matters to your clients so that they can make an informed decision about things about whether to plead or whether to take an offer. Whether -- if they are going to trial, whether or not to testify. The majority of our clients are uneducated. A lot of them have difficulty reading and writing. Many of them have mental health issues. It takes so much more time to explain complex legal matters to them. Sometimes yes need to reexplain, reexplain, and reexplain to them and they deserve that kind of attention and they do not -- they do not get it.

Q Without getting into specifics or compromising attorney-client privilege, can you think of a time when a

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representation of a client in your office was hampered by lack of communication?

A Yeah.

Q Could you elaborate being as vague as you feel necessary to protect the privilege?

A I mean, there is just -- it's -- there are numerous. I'm trying to be general and it stems more from me knowing through the letters I get from clients and then having to talk with the attorneys and understanding. You know, sometimes there have been issues where clients have pled guilty and not fully understood what was in the plea agreement. Not understood the conditions that were going to be on them. Not understanding some of the collateral consequences of that plea. Especially with sex offenses; if that's not fully explained to them, they are devastated when they find out some of the things that go along with pleading to a sex offense.

Q What are some of those collateral consequences?

A Well, now would be lifetime supervision, lifetime GPS monitoring, registering as a sex offender for the rest of your life.

Q I'm handing you a copy of an exhibit that was previously marked Petsch Exhibit 1. I'm not going to remark that. Can you just take a minute and look that over?

A Sure.

Q Do you recognize this document?

A No.

Q Can you tell me what it appears to be?

A It appears to be an e-mail that was sent out by Joel Elmer to -- I'm assuming all of what would have been at the time the assistant public defenders in the Kansas City trial office.

Q And do you see the first sentence in that e-mail?

A Yes.

Q Could you read it for the record?

A "As you know, you are to have contact with trial caseload clients within seven days of assignment and thereafter at least every 30 days."

Q Does that statement reflect your understanding of client contact guidelines in the MSPD?

A Yes.

Q Is that still the guideline?

A Yes.

Q And in your opinion, are attorneys in your office able to meet those guidelines routinely?

A More often than not, no.

Q I'm handing you a document that I'm going to ask the court reporter to mark Exhibit 48. Can you just take a minute to look that over.

A Sure. Did you want me to review the whole thing or just the client counseling section?

Q Just the client counseling section is fine.

A Okay.

Q Do you recognize this document?

A Yes.

Q What is it?

A It is a performance evaluation form that we use for promotions. This one was written out by me concerning an employee named Dawn Calvin.

Q Who is Dawn Calvin?

A Dawn Calvin is an assistant public defender with the Springfield trial office.

Q At the time you prepared this document, how long had she been a public defender?

A This would have been for her promotion to APD 2, so she would have been with us a year.

Q Could you read for the record the box starting "comments" or it says, "in reviewing her files."

A Yes. "In reviewing her files, it appeared that for the six months or so Dawn did quite well at staying close to guidelines for client contact with her incarcerated clients. During that time, she was being assigned misdemeanors and PV's only in Greene County. When she was added to the C,D felony rotation and her caseload began to rise, as well as her number of incarcerated clients, she encountered more difficulty in keeping up with client contact. The worse instance of this I saw was a case where initial contact at the jail did not occur until 102 days. There were short visits before court appearances at court. Also, it was noted in that file that she attempted a jail visit 30 days in, but client had been sent to another facility due to overcrowding. Regardless, further attempts should have been made to visit client sooner. When I met with Dawn to discuss this, she agreed this is an area she needs to improve on. She brought with her a list of her incarcerated clients she had created that she was now using to keep track of their last visit and when another was needed. She currently has 34 clients in custody. We also talked about maintaining control during client meetings. She usually lets the client talk as long as they want at every meeting, which means most of her jail visits are 45 minutes or longer each which make it difficult to get more people seen. For out-of-custody clients, she briefly meets with them at their first court dates and ask them to call and schedule an office visit. For the half or so that do, Dawn lets the clerks know when she is available and they schedule those appointments. For

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the half or so that don't call, Dawn tries to reach out to them by phone. There were notes in several of her files detailing contact with the client's family members."

Q So going back to the beginning of this comment box, you note that Ms. Calvin was able to maintain client contact when she was assigned misdemeanors and PV's only in Greene County; is it that accurate?

A Yes.

Q You say that changed once she was added to the C,D felony rotation and her caseload began to rise. Why would that make it more difficult for a defender to maintain client contact?

A Misdemeanors and probation violations -- well, I should say just misdemeanors. Misdemeanors, most of those clients are out of custody. Once you get into C, D felony rotation, much more -- many more of your clients are actually going to be incarcerated. Also, you're going to be in court more often once you're added to felony rotation because going to the felony rotation doesn't mean she stopped getting misdemeanors and probation violations. She was still getting those. It's just now she was added into that rotation. So more court appearances, less time to get over to the jail, more clients who are in jail. So it does make it more difficult. I believe when we started Dawn out -- being a larger office we can do this sometimes -- we

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started her out basically at a zero caseload and she was able to build it up. So, yeah, once we got into the C,D felony rotation, it made it much more difficult because also the number of cases she was handling was going up as well.

Q So once she reached a caseload more typical of attorneys in your office, it became difficult for her to maintain client contact?

A Correct.

Q You noted in this comment box that the worse instance of this I saw was a case where initial contact at the jail did not occur until 102 days. Would you describe that as aberrational, occasional, routine?

A 102 days would be aberrational, especially for initial contact client. Let me add that.

Q What was the reason for the 102 days before the initial contact, if you know?

A This may have been -- I don't recall off the top of my head, but considering something else I added there right after that. This may have been one of those rare instances where the jail had shipped them out to another facility right away once they were incarcerated.

Q And you noted that later in this box it says, "Also it noted in that file she attempted jail visit 30 days in but client had been sent to another facility due to

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overcrowding."

A Yes.

Q Is that what you mentioned before that in Christian County, clients are sent to other jails or is that frequent in any jail?

A It's mainly actually in Greene County. Now, I will say Christian County just started doing that.

Q Okay.

A But I think the majority of clients that they are farming out they are actually sending down to the Taney County jail which is a jail, you know, it's a county that we cover so it's not as difficult to see them. But it does add for an increased trip for those attorneys that are assigned to Christian County because Taney County is further away.

Q How far away is it?

A Round trip to Forsythe from our office here is, I believe, 94 miles

Q And would you say that based on what you have written here it looks like Ms. Calvin went to the jail and learned that her client had been moved somewhere else?

A Yes.

Q Does that happen frequently when clients are moved?

A Used to happen all the time. Anymore, it

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seems because of that, our attorneys have -- we have been asking the jail to send us a census each morning, which they do. So our attorneys have now been looking at that census before they go over to the jail to see if they are actually there or not or if they have been sent somewhere else.

Q Is that census always accurate?

A For the most part, yeah.

Q Looking to the second page of this document. You wrote that you talked with Dawn about maintaining control during client meetings. She usually lets the client talk as long as they want at every meeting, which means most of her jail visits are 45 minutes or longer each which make it's difficult to get more people seen. So is it fair to say based on this that you talked about in order for Ms. Calvin to talk with more of her clients, she would reduce the amount of time she was spending talking to each of her clients?

A Yes, but that conversation was focused on making sure that the client stayed focused on talking about the case as opposed to going off on a tangent and just wanting to talk about their family and whatever else. Making sure they stayed focused so that those meetings did get shorter, yes.

Q And your ultimate recommendation on this

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client counseling factor you had checked the box "ie", which is improvement expected; is that accurate?

A Yes.

Q So you expected Ms. Calvin to improve her contact with clients?

A I do.

Q How is Ms. Calvin's performance otherwise?

A Very good.

Q Was she promoted to the next level?

A Yes.

Q Would you say her inability to meet your expectations on client contact was caused by any lack in skills in her as an attorney?

A Well, because I put improvement expected I would have to say to some degree, yes. She was a brand new attorney. So there was ways that she could improve in that area despite all of the obstacles we have being a public defender. So to some degree, yes, but she has made strides to improve in that area.

Q Would you say to any degree this was due to factors not in her control?

A Yes. There were some factors that were beyond her control.

Q What would those factors be?

A Once again, clients that get farmed out making

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it more difficult to get them seen. As her caseload increased, having the time to get over to the jail to see those clients; that sort of thing.

Q What about her caseload?

A Yeah. As the number of cases increased as well, yes.

Q So I'm handing you a document that I'll ask our court reporter to mark Exhibit 49. If you could just take a minute and review that.

A Sure. Okay.

Q Do you recognize this document?

A Yes.

Q What it is?

A This would be an entry out of our employee performance log. It would have been created by my Deputy District Defender Chris Hatley concerning an assistant public defender for Paul Duchscherer.

Q Have you seen this document before?

A I reviewed it after briefly after Mr. Hatley wrote it.

Q Who is Paul Duchscherer?

A He is an APD IVin the Springfield office.

Q What is an APD IV?

A That is our highest level of promotion for an assistant public defender.

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Q How long has he been employed at the MSPD?

A Paul, I think he's been with us right at between 15 and 16 years.

Q So it's fair to say he's an experienced attorney?

A Yes.

Q And if you look at the first paragraph "Under description of event or issue, " it says "We are conducting performance reviews of all the APD IV's in our office starting with those who have been in that position the longest. Paul is one of our longest tenured fours. Our predominate concern in conducting these reviews are client contact unless we have noticed performance related issues in other areas." Is that statement consistent with your understanding of the purpose of this review with Mr. Duchscherer?

A Yes.

Q Why was the predominant concern in doing review of APD IV's client contact?

A Once somebody is promoted to APD IV, really there is no evaluation that ever occur for the most part, at least that are required. And knowing that client contact is one of our biggest problems, once again we see it all the time in complaint letters from clients. I wanted to address that with some of our attorneys who had

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not been evaluated in a very long time and making sure that they were seeing their clients as they should be as best as they could possibly be seeing them.

Q If you look at the next full paragraph under "counseling." The first sentence says, "In the file reviews I did, there were gaps of 3 months, 3 months, 5 months, 6 months, 6 months, 8 months, and even 13 months between qualifying contacts." Do you see that?

A Yes.

Q What does that mean?

A That would mean as Chris reviewed Paul's files, he was looking to see the documented contact in the file. Using our guidelines that the initial contact in seven days and the follow-up contact at least once every 30 days; there were gaps longer than that. That's why he is taking note over there. So this would mean -- this would not necessarily mean this all occurred in one file -- but of the files he reviewed, this was at least gaps between visits at the jail for that particular client of that amount of months that he's listed there.

Q What is a qualifying contact?

A A qualifying contact would actually be a sit down visit over at the jail. Not a quick, here is what's going to happen in court right when they are brought over to the courthouse or a letter. It's a face-to-face sit

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down at the jail contact.

Q The next sentence says, "I discussed with David that this method simply is not working and is in opposition to our guidelines for representation." Would you agree with that statement.

A I would agree except that he made a mistake there and put David a couple times in here. I don't know why he had David on the mind, but it should be Paul. But other than that, yes, the gist of that I agree with it.

Q The next sentence says, "I also told him that given the huge caseloads we understood that every 30 days may not be attainable." What does that mean?

A This goes back to something I had said to you earlier where we kind of -- especially for promotion purposes, we kind of fudged those numbers a little bit. And our expectations really for promotion and such as been had to stretch out beyond that 30 days because we know we can't always actually get over there. We expect better than some of these gaps that he's mentioned up here, but we're not oblivious to the fact that you can't -- might not be able to see every one of your incarcerated clients every 30 days.

Q Would you say that the issues noted in this review of Paul applied to other APD IV's or just Paul?

A No, it applied to others. We haven't went

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through all of our APD IV reviews yet. But on another one that I have done, yes, I have seen similar.

Q Similar?

A Types of gaps, yes.

Q And in response to this, Paul suggested that he could do every 60-day client meetings or could likely do that; do you see that?

A Yes.

Q Is there a disadvantage in representing a client in going from meeting once every 30 days to once every 60 days?

A Yes.

Q What disadvantages would there be?

A Once again, I think it hurts your attorney-client relationship. If they are not seeing you, if you're not responding to their letters, they don't trust you. A lot of our clients we already start out with a level of distrust because, you know, it gets around hey, they are paid by the state. They're in cahoots with the prosecution. So we already start out with a lot of times with distrust. You can't build trust if you're seeing people every 60 days. It also hurts in your ability to once again properly inform your client about the decisions that they have to make, some life-changing decisions. It hurts in your ability to properly prepare the case. It

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hurts in your ability to negotiate with the prosecutor. It hurts in a lot of ways.

Q You started with trust; why is trust important in the attorney-client relationship in defending an indigent client?

A Well, because there are times when there is a right road and there is a wrong road on a case and how you should proceed. If the client doesn't trust you about which way you need to go, they might make the wrong choice and it will affect them forever.

Q And how would developing more trust aid in picking the right road?

A Because if they trust the attorney, then they are more likely to listen to them about what the attorney thinks they should do in a case.

Q Can you think of a time where a client not trusting you or someone in your office hampered your office's ability to provide effective -- an effective defense?

A Well, I can think of times where I have seen people plead to an offer I didn't think that they should take or I thought maybe they should go to trial, but because there is a lack of trust, they wanted to go with the guarantee in writing.

Q Turning back to this document, if you go to

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the next paragraph it says, "Christian County is a bit odd when it comes to client contact. The jail is an absolute hellhole and they do everything they can to discourage attorney-client meetings." Can you elaborate on what that means?

A Well, once again, I didn't write this.

Q Right.

A But this goes back to I think earlier we were discussing the jail situations in the different counties. This would have -- this would have -- yeah, this was written prior to the meeting I had with the sheriff in Christian County where they changed it where they have those two rooms now available over at the courthouse for us to visit. Yeah, prior to that, it was so difficult to get clients seen there. Yeah, if you went over to the jail -- and I experienced this myself -- where you go over to the jail itself to try to see a client and because they are so apparently understaffed there, you just wait out in the lobby. You know, they would come. They would ask you for your bar card. Then they would just disappear and you would sit there for a half an hour or 45 minutes just waiting on somebody to come back so you could tell them who you needed to see. Then you go into this little room that's right off the lobby that, once again, is not very private. Anybody sitting in the lobby can hear everything

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that's being said and there was only the one room there. It's a little metal stool for the attorney to sit on for -- and same way on the other side through the glass for the client. It was difficult to hear through the glass each other; there was no phone. It was very problematic.

Q Are there still difficulties in meeting clients in jail, either in Christian County or other counties in Area 31?

A Yes. As I stated earlier in Christian County, although they have made some accommodations to make things better so that we can see clients, I mean there is still problems. Like a bailiff not being available because court is in session to bring a client over. If the two rooms -- there is only two rooms -- and if they are filled up, you are out of luck. You can't see somebody. So, yeah, there is still issues.

Q You can put that document to the side for now, but we will come back to it in a bit. You mentioned earlier that lack of time can affect the ability to prepare the case. In what fraction of cases do you typically do a pretrial investigation?

A I would say -- we talked about this recently at a management meeting -- I think we average right around maybe 10 percent.

Q In your opinion, does your office have the

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time and resources to investigate each case in the manner required?

A I've got two investigators in my office. Right now they are able to get everything done that's asked of them. Sometimes they need a little extra time. We have had to continue some cases because they didn't have enough time to look into something. Once again, that's only because we are only looking into only 10 percent of our cases. If we were to truly investigate all of our cases, no. I don't have the support staff for that at all.

Q Do you think your -- if your office had the time they would be investigating more than 10 percent of the cases?

A Yes.

Q In your opinion what would be a better percentage or what -- strike that. In your opinion, what percentage of cases should be investigated to be providing -- strike that. Let's move on. Can you think of a time where a specific case was hampered because of the -- strike that. Without getting into specifics or compromising privilege, can you think of a time where your representation of a client was hampered by the lack of time to investigate a case?

A Well, I mean we've had situations where we weren't been able to track down all of the witnesses that

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our client has told us about. So we have had that issue before. Once again, this is just going as to investigation?

Q Yes.

A I mean, that would be the main thing I could think of.

Q So due to lack of time, you can think of cases where not every potential witness has been contacted?

A Yes.

Q In your opinion, should attorneys generally be contacting every potential witness in preparing defense?

A Especially the witnesses that our client is telling us about that are potential defense witnesses, absolutely.

Q How frequently do you request discovery from the State?

A We request it on every case.

Q In your opinion, do the attorneys in your office have time to effectively review that discovery?

A Depends on the type of case. If we are talking about a misdemeanor or probation violation, almost never. I would say 95 to 99 percent of the time, that's being looked at on the day of the hearing or the trial or the day before at best.

Q And for those misdemeanors and probation

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violations cases, is jail a potential consequence of a conviction or plea?

A Absolutely.

Q What about felony cases?

A Felony cases, I think that gets reviewed much more. And once again, depending on the complexity of the case or the severity of the case, it gets more time. That's the real problem here is, you know, I think at least in our office, I think people that are charged with crimes where they're facing potential life sentence, they get a lot of attorney time and their cases are really looked into and looked through. But to do that on all of those cases because we handle a lot of A and B felonies, a lot of people that are charged as prior and persistent offenders; in doing that, it leaves little to no time for all of those folks that are charged with a lower grade felony or those charged with PV's or misdemeanors.

Q So you would separate the ability to review discovery in A and B felonies from C and D felonies?

A I would say so, yes.

Q Do you think attorneys in your office have sufficient time to review discovery in C and D felony cases?

A Once again, it depends on the type of case because there are C and D sex offenses I think that more

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time is definitely spent on those. But if you're talking about a C or D stealing or tampering; it's probably given one quick reading and that's about it.

Q How frequently do attorneys in your office gather information to evaluate whether an expert would be necessary in the case?

A Can you ask that again?

Q Sure. How frequently do attorneys in your office determine whether an expert would be necessary in a case?

A What do you mean by how often?

Q Let me rephrase. Do you think the attorneys in your office have adequate time to consider retaining and using experts in cases where they would be necessary?

A Well, on the complex cases, yes; other cases, no, generally not.

Q What kinds of cases would there not be sufficient time?

A Well, certainly if you were thinking of using an expert on a misdemeanor, I never see that at all or any kind of request there. Once again, a C or D felony that's not a sex case; I see it very rarely there too, request for funds for experts.

Q Can you think of a C or D felony where expert testimony could have been useful or necessary and wasn't

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requested?

A I can't tell you an example of -- no, I can't. But I can tell you for instance like a low grade felony DWI, I have -- hardly ever do I get request for funds for an expert on something like that. But in the one or two times I have actually gotten those request and I have approved it, it's been to the client's benefit. It worked out well for them.

Q Why would expert evidence be useful in the DWI case?

A Well, it was a DWI I had pertained to an accident and it was -- both of them were. It was as to whether or not the intoxication actually played any role in it whatsoever.

Q How is an expert approved for a particular case? What is the process for that?

A When the attorney determines that they need to use an expert or think they need to use an expert; first, they will determine what expert they want to use. Sometimes that's done by going through our -- we have an expert witness database; or, also, sometimes they will go on our -- we have a discussion database and they will go on there and ask other public defenders around the state, you know, who have you used for this type of situation. Once they have determined who they want to use, they will

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contact that person to determine what the cost will be. And then they will fill out what we call an E-request and that will list the expert, the cost, the anticipated start date of the service, and then the reason for the request. That will be sent to me for approval. If it's under $500.00, then once I've approved it, that's it. If it's over $500.00, then once I've approved it, it goes on up to either Ellen Blau or Marshall Plane for approval.

Q Are there any cases you can think of where an expense request was rejected?

A Yes.

Q What would be the reason an expense request is rejected?

A More often than not it's rejected usually because the attorney maybe has not picked the right kind of expert and we need to talk about, you know, who maybe might be a better expert to use. That might be because of the specialty of the expert or sometimes it's because of the cost of the expert. Maybe there is somebody closer or that -- or doesn't charge such a high price that might be the better person to use.

Q So cost is a factor in determining which experts to use?

A It can be, yes.

Q How often do attorneys in your office take

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depositions in cases?

A You know, I would say we probably -- and this -- I'm just ball parking it here, but I would guess it probably corresponds pretty close to our percentage that we investigate. So I would say around 10 percent of the cases.

Q Do you think attorneys in your office have sufficient time to take depositions in cases where it would be necessary?

A It gets difficult to get those scheduled. I'll tell you, most of the time those depositions are done within a month or two months out from a trial date.

Q What would be the advantage of doing a deposition more than a month or two before trial?

A Well, people's memories fail. So closer in time sometimes is better, depending on who that witness is, whether you really want a fresh memory or not. And also whether or not you can even locate a witness too. Sometimes witnesses disappear on you.

Q This might be difficult to answer given -- knowing the absence of the negative, but can you think of a case where a deposition was not taken in a case where it would have been useful to have taken one?

A Nothing comes to mind right off the bat.

Q Do you have translators on staff in your

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office?
A No.
Q What do you do when a client doesn't speak English.
A We have to hire a translator.
Q How do you hire a translator?
A It's similar to the way we do with the experts. Our attorney has to fill out an expense request and I have to approve it.
Q Are there difficulties in communicating with clients who do not speak English?
A Sure.
Q Are any of those difficulties related to the time it takes to find a translator?
A Not the time that it takes to find the translator, but then the time to be able to coordinate your schedule with that translator and get over to the jail, and the increased time of that jail visit because it's going to take twice as long as an ordinary jail visit.
Q Roughly, what percentage of your clients do not speak English?
A I don't have any idea.
Q You mentioned earlier that occasionally attorneys in your office seek continuances. Could you elaborate a little more on why an attorney would seek a

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continuance in a case?
A Usually it's because they're not prepared.
Q Why wouldn't they be prepared?
A Because they haven't had time to prepare.
Q Do attorneys in your district regularly seek continuances?
A Regularly? It happens a lot. It would happen more frequently in our areas, our jurisdictions, if judges pushed harder for cases to go to trial quickly, but they don't. It's not uncommon for us to get a trial date set a year out from the first pretrial conference. So -- and very often, that's not the No. 1 case on that jury trial week; there would be 30 or 40 other cases. So it might not even go that month when it's set that far out. So we would have to ask for them a lot more than we do, but because of how cases proceed here, we don't have to ask for them as much as they might have to elsewhere.
Q Are there negative consequences in representing a client to pushing the trial out further with a continuance or due to scheduling?
A Well, if the client is out of custody they usually don't mind at all; but when they are in custody, yeah, absolutely. You have extended their jail stay.
Q How frequently do attorneys in your office file pretrial motions?

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A I'd say we could probably fall around that 10 percent number. Depending on what -- I mean, bond request and such are filed, you know, formerly. But as far as a significant pretrial motion, like a motion to suppress, yeah, I would say around 10 percent.
Q In your opinion should there be more suppression motions -- or more pretrial motions like suppression motions filed in cases in your district?
A Yes.
Q Why aren't more being filed?
A Once again, I think it's a matter of time and number of cases and being able to properly look through everything and prepare.
Q Can you think of a time where a case in your office could have benefited from filing a pretrial motion but a lack of time to prepare hampered the ability to file?
A That would be one of those things where unless I read every case's discovery in our office, there is just no way for me to answer that.
Q Sure. If you could turn back to the Exhibit 49 the Paul Duchscherer evaluation.
A Yes.
Q If you flip to the second page.
A Yes.
Q And as you previously noted, the evaluation

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flips between David and Paul at some points, but I will read it as it's written here. It says, "David wishes he had more time available for creative motion practice. His caseload and busy court schedule usually only allow for the doctoring of our boilerplate motions. He also only has time to prepare and submit suggestions in support when specifically requested by the judge." So would you say that that wish to have more time available for creative motion practice is unique to Paul or David or is that something that applies more generally in your office?
A No, I would say that applies to most of the folks in our office. I've got at least a couple of attorneys that they do a lot more of the suggestions. They do a lot more writing of writs and such, but I mean, they are working all the time. I mean, I get to the office early and, you know, they beat me there. They put in a lot of hours to do that.
Q What time do you get into the office?
A I generally get in around 7:00 a.m.
Q The second sentence referring to the doctoring of our boilerplate motions; do you know what that means?
A Yeah. We have a motion database that we keep and for things like -- there is things like motions to suppress on there. A lot of our attorneys rely -- a lot of them rely strictly on that and there is little variation or

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case-specific information that gets put into those. They just get filed.

Q In your opinion, does that hamper the ability to effectively defend clients?

A Well, it probably puts a judge on notice that you haven't really maybe looked into it as much as you should. I think if you've got more case-specific like on a motion to suppress, you've also educated the judge before you ever come in for the hearing at all. I think that's beneficial to the client.

Q It says, "In addition to the boilerplate motion," it also says, "he only has time to prepare and submit suggestions in support when specifically requested by the judge." Do you know what that means?

A Yes. Sometimes judges when you file a Motion to Suppress or something similar, sometimes the judges will ask for written suggestions from both the State and the defense. At least one of our attorneys I can think of likes to request -- whether or not -- this is one of the ones I was talking about a little bit ago -- request to file suggestions regardless of whether the judge has asked for it or not. And what Chris is writing here about Paul is that, you know, he just doesn't have the time to do that at all as far as requesting to do that unless the judge has specifically ordered it.

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Q Why would an attorney want a request to file suggestions even if the judge doesn't ask for them?

A Gives you one more whack at it in explaining why the judge should rule in your favor.

Q The next sentence says, "I noticed while doing the file reviews that the request for discovery was either filed late or not at all in several cases." Do you know what that means?

A Yes.

Q What does that mean in your opinion?

A Well, that means a request for discovery in a felony case should always be filed within 20 days from arraignment, circuit court arraignment. We have a method set up in the office where our office assistants will actually file those for the attorneys. They just have to get the arraignment paperwork to her to get that filed and that wasn't done here.

Q And when you say they have to be filed, is that an internal guideline or is that a court rule?

A It's Supreme Court rule as to when that needs to be filed.

Q What are the consequences of filing a late request for discovery?

A Well, potentially if some discovery was not turned over and you found out about it after the fact, the

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court could possibly not grant you relief on that. For instance, say somebody went to trial, lost, and during their appeal there was this discovery that you didn't get all the reports. The appellate court might say too bad so sad. You didn't file your discovery request.

Q Is it -- in your opinion, is Paul the only attorney in your office to have filed late discovery request?

A Ever, no. I mean, but once again, I mean, the way our office is set up, they don't have to file it themselves if they'll just follow the procedure I have set up in the office.

Q Why would someone not follow the procedure?

A Once again, it goes to lack of time and just -- Paul was assigned to Christian County as it states there. They would have -- at that time, they would had three Law Days a month. It would not be unusual for them to be there on those Law Days from like 9:00 a.m. until 10:00 at night. And so then you come back in on Friday and there would be -- there is another court date on Friday for the changes of judge. Once again, just as things get going, the number of arraignments that he was handling, it's possible he just forgot to get some into the basket for our office assistant to get done because he was trying to take care of all these other things he was trying to

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take care of.

Q How often do cases go to trial in your office?

A Not as often as they should, but I can't give you an exact number of how many jury trials we have had over like the last year or so. I don't know.

Q Why do you say they don't go to trial as often as they should?

A I just know we don't go to trial as often as I think we should. For the number of cases that come through our office, yeah, there should be more. There should be more trials.

Q In your opinion, why aren't there more trials?

A Once again, I think it goes to having the time to prepare.

Q If these cases -- if not enough cases are going to trial, is it because they are being delayed or is it because they are being resolved through guilty pleas or other methods?

A I think a lot of times they are guilty pleas.

Q So in your opinion, there are cases that should -- you can think of cases that should be going to trial, but are being resolved through guilty pleas?

A I'm just talking statistically. I can't think of an exact case where -- because if I knew of an exact case, I would talk with that attorney and say no, we need

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to go trial. I just know statistically we have very few trials for the number of cases that we have.

Q In your opinion, do attorneys in your office have sufficient time to prepare for trial?

A No.

Q Why not?

A Once again, being in court five days a week, to trying -- when they are not in court to get some of these jail visits done that I'm hampering them about they need to go get done, office appointments for those clients that are out of custody. It just doesn't leave a lot of time.

Q Has an attorney in your office ever waived an opening or closing argument at trial?

A I can't think of anybody that's ever waived a closing argument. I believe we had an instance at least once there is one time I can think of where they held off on their opening until the State had rested, but yes.

Q What goes into preparing for trial?

A Well, as we have talked about before, utilizing your investigator to track down any possible defense witnesses, speak to them, look through and see if first of all if there are also any pretrial motions that need to be filed, depositions of the State's witnesses possibly, preparing your client for the trial, deciding

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whether or not they are going to testify. If they are going to testify, prepare them for that and for the potential cross examination. Preparing your opening, your closing, your directs, your crosses, preparing voir dire.

Q In your opinion, do attorneys in your office have time -- adequate time to talk with their clients about testifying and about preparing to testify?

A Excuse me. When you've hit that point of, yes, this is definitely going to be a trial, you know, those cases do get more of our attorney's time and attention. So those conversations I know definitely get had. They do have that conversation with them about whether or not to testify and they usually have at least one conversation with them trying to prep them for that and the cross. But it's usually, I would say probably just one conversation. If they needed more to really talk about it, they probably don't get that.

Q So in your opinion -- strike that. When an attorney in office -- in your office is preparing for trial, would you say they have adequate time to continue effective representation on their other cases?

A No.

Q Why not?

A Again, in properly trying to prepare for a trial, it comes at the cost of effective representation for

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all their other clients at that time, at least in that period of time in that they are prepping.

Q Can you be more specific in how preparing for trial in one case detracts from the ability to represent clients in other cases?

A Well, you have got to find that time to do those depositions that we talked about. You have got to have time to talk with your investigator about what she has been able to -- who she has been able to locate and what those statements are. If those statements are good, asking your investigator to have those witnesses come in, you know, to the office and talk. So you have got to find time for all of this. That means you're not focusing on your other cases and -- because if you're not prepared for trial, you're always on the go for all of these other things you're supposed to be doing for everybody else. So a lot of times our attorneys will cover each other cases when you're prepping. So you basically tune everybody else out. You know that your fellow attorneys in the office will cover your cases for you. If they are covering for you, it's not like you're prepping what needs to be done on those court dates. You're basically just telling that attorney go and tell the judge I'm prepping for trial and punt them and so they just get reset. Nothing is getting done on those cases at all. And also other clients aren't

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getting seen at the jail too.

Q So when you say other attorneys in your office cover cases when one attorney is on trial, that's mainly for court appearances and to push those cases down the road?

A Correct.

Q How much time do you spend working on case before you advise a client on whether to take a guilty plea?

A Me personally?

Q Yes, you personally.

A I try to spend a significant amount. I can't give you an exact amount of time because every case is different on how much time you really need to do. But once again, I mean, I have a reduced caseload. It's much more difficult for our assistant public defenders in that area.

Q Do you think your assistant public defenders have sufficient time to advise their clients on pleading guilty?

A Not all the time, no.

Q What are -- what steps do attorneys in your office take to negotiate pleas for clients?

A The average negotiation, I would say, for most cases -- once again, we are not talking about the complex cases -- I would say most negotiation occurs right on the

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date that potentially the client is going to plead guilty. That's when most of the negotiation occurs.

Q How are plea offers communicated to clients?

A Could you be more specific?

Q So if an assistant public defender negotiates a plea or is informed of a plea offer by the DA's office, how would they communicate that to their client?

A Well, I mean, if it's occurring in court, they would take them into a conference room -- take their client into a conference room and let them know what that offer is and, you know, have a brief conversation about the ins and outs of that offer and ask them, you know, the client if they have any questions about it. If it occurs outside of the courtroom and the client is incarcerated, we would go over to the jail and let the client know. If they are out of custody, we would try to make contact with the client. That's, as I stated earlier, it's not always easy to do, and relay that offer.

Q Without getting into specifics of particular cases, can you think of times where a client could have gotten a better plea deal if the attorney had -- if your attorney had more time or resources to work on that case?

A I can't think of an example, no.

Q In your opinion do attorneys in your office generally have sufficient time to negotiate plea deals?

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A No, because like I said, I think most of them are taking place on the date of disposition.

Q Are you aware of cases in your area where defendants plead guilty pro se?

A Ask that again, please.

Q Are you aware of cases in your area where defendants plead guilty pro se, without the advice of counsel?

A Yes.

Q What kinds of cases would that occur?

A It happens a lot on misdemeanor cases.

Q Would those defendants be eligible for representation by the MSPD?

A Sometimes.

Q Why would someone who is eligible for representation by your office plead guilty without the advice of counsel?

A Well, right now they might do that because they know they would be on a waitlist and it could be a very long time before they got an attorney anyways. Before we started the waitlist, I'm not sure why someone would do that other than they think they can just expedite it and get it done quickly.

Q At any point did your office have an agreement with the prosecutor's office that they would not take cases where there was no jail time involved in the plea agreement?

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A An agreement with the State that we would not take cases -- we already don't. Unless jail time is a possibility, we don't take any of those cases.

Q Let me be more specific. A case where -- are you aware of any cases where jail time is a theoretical possibility, but the State agreed not to seek jail time and so your office did not enter an appearance in the case?

A There has. Especially we went through some issues of trying to reduce caseload back in 2012 and there were a lot of meetings I went to with judges and prosecutors. And I know that was one of the things that we had talked about that if the State would agree to waive jail time on some misdemeanors, that would keep us out of the case and help reduce caseload, yes.

Q You said there were conversations; do you know if that actually occurred in 2012?

A I believe it did happen to some degree.

Q Are there any immigration specialists in your office?

A No.

Q In your opinion, do attorneys in your office have adequate time to advise your clients on the immigration consequences or decisions they make in their criminal cases?

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A No. In fact, I just had an attorney come into my office just the other day on an immigration issue because none of us are immigration experts. We have had in the past some who were who would agree to pro bono would allow us to call them and kind of pick their brain on some of these topics. But the name and number that we had given -- this particular attorney we would call, apparently had never gotten with her. So this was causing some stress on how to counsel this client because she didn't know what to tell them.

Q Do attorneys in your office receive adequate training on immigration consequences?

A I believe there have been some tracks. I think there have been some classes on that at some of our statewide training.

Q But there are no immigration specialist who work in your office?

A No.

MR. SHAHABIAN: I think this is good time to take a break. Let's go off the record.

THE VIDEOGRAPHER: Going off the record. The time is 10:33. This ends Media 1.

(A recess was taken.)

THE VIDEOGRAPHER: Going back on the record.

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The time is 10:43 a.m. This begins Media 2.
Q (By Mr. Shahabian) Welcome back, Mr. Hackathorn.
A Thank you.
Q I wanted to turn to some of the more administrative tasks you handle. Are you responsible for the management of the budget of your office?
A We have an office budget but, I mean, that's -- no. For the most part, we are told how much money we have for certain things. But if that money runs short, I just give a call to our comptroller and she is the one that moves the money around and makes sure everything is covered.
Q Sounds good. How do you handle -- is there anyone in your office who is dedicated to handling juvenile cases?
A We did up until about four or five months ago.
Q What changed?
A We had a meeting, a couple of meetings, with the presiding judge here in Greene County; that's the only area that we were currently doing juvenile cases in. And because of our caseload issues, the county had agreed that they would use some of their surplus to hire attorneys to handle those cases from now on. Unless it was going to be a certification, in which case they would send the case to

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us.
Q So when you say the county, you mean Greene County handles non-certification juvenile cases right now?
A They contract out those cases, yes.
Q How does it work in Taney and Christian Counties?
A We have never really been involved in juvenile in those two counties. I believe those two counties have always kind of done something similar as to what Greene County is doing now, just contracting out with private attorneys in those areas.
Q Do you know any of the attorneys who those cases are contracting out to?
A I know some of them here. I don't know necessarily who is getting it in Christian and Taney.
Q Who are some of the attorneys who work on those cases here?
A I believe, I'm not 100 percent, but I believe some of them are going to some attorneys who had previously worked in our office and are now private practice.
Q And so presently, is there anyone in your office who specializes in juvenile cases?
A So right at this moment is there? No, there is not.
Q And just to be clear, in Greene County you're

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still handling certifications?
A Since we came to this agreement, there has not been a certification case that they have sent our way. So we have kind of gotten out of the juvenile business completely for the time being.
Q Do you expect that to stay that way?
A I don't expect anything. You never know. As budgets change, it could be, you know, next year, we find ourselves back taking juvenile cases again. For the time being, this is how it is.
Q When your office was handling juvenile cases, were all of those cases being handled by the specialist you mentioned who has left?
A Well, I guess I wouldn't necessarily call her a specialist. We had one attorney who was assigned to juvenile cases. But to say that she was a specialist would be a misnomer. I mean, she was -- that was just a caseload that she was given.
Q Did she have any particular expertise in juvenile matters?
A No.
Q Did she have any specialized training in handling juvenile cases?
A No.
Q Did she carry a non-juvenile caseload in

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addition to her juvenile caseload?
A Yes.
Q Do you recall roughly what percentage of cases was juvenile versus non-juvenile?
A I would say out of her 120 or so open cases that she had back then, I think around 30 or so would have been juvenile cases.
Q And what kinds of juvenile cases would she handle?
A Any that came our way.
Q So not just certifications?
A Correct. Now during the time that she was handling juvenile, I don't recall that we got any certification cases. Now those I do treat a little bit differently. Depending on -- usually, I mean if they are going to certify a juvenile, it's a very serious case. So that would likely be assigned to somebody who handles more complex cases, not necessarily her.
Q So she would -- would she handle detention case -- hearings?
A Yes.
Q And she would advocate for informal adjustment?
A I believe so, yes.
Q If your office were to resume handling

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juvenile cases in Greene County, would you expect that they would be assigned to someone similar who is not a specialist in juvenile matters?

A Yes. The way that assignment was usually handled in our office, our attorneys basically took a one-year term at handling the juvenile matters. When their year was up, that assignment would go to somebody else.

Q And are the cases that the county is contracting out cases where juveniles would otherwise be eligible for representation by the MSPD?

A Yes.

Q How did your office make indigency determinations in juvenile cases?

A We really didn't. If the court referred them, we took it.

Q So court referrals were how juvenile cases came to your office?

A Correct.

Q I'm handing you an exhibit that I will ask our court reporter to mark as Plaintiff's 50. We fixed the format on this.

MS. SHIPMA: Yeah, it was marked yesterday too on a fixed format.

MR. SHAHABIAN: Oh, it was?

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MS. SHIPMA: Yeah.

MR. SHAHABIAN: Oh, okay.

Q Do you recognize this document?

A Yes. This is the budget request that is prepared by our comptroller.

Q Could you turn to the last page of this document?

A Okay.

Q Do you recognize this spreadsheet?

A It appears to be a caseload metric worksheet ordering the various MSPD offices by percentage of capacity --

Q Have you seen --

A -- and how far over they are percentage of capacity.

Q Have you seen this particular spreadsheet before?

A Yeah. This is -- budget request is sent out to all the district defenders and I do look at it when it's received by my office. I do receive also various versions of this before in the past.

Q And you see at the top it says, "Cumulative Caseload Metrics Fiscal Year 2017"?

A Yes.

Q And then it says, "Start date July 1, 2016; end date June 30, 2017"?

A Yes.

Q So is your understanding that these caseload metrics are for the entire fiscal year 2017?

A It appears to be so, yes.

Q I know the font is quite small, but do you see Area 31 Springfield?

A I do.

Q And what rank is it assigned in all the areas for workload capacity?

A If I followed it over correctly I believe ninth.

Q Do you have an understanding of how the MSPD determines workload capacity?

A Well, I didn't prepare this worksheet, but I believe it's done using the RubinBrown Standard and the waited caseload standard.

Q What is your understanding of what the RubinBrown standard is?

A I couldn't go into you in any depth as to how they came to those waited caseloads. I can just tell you I have used it, even within the office. You know, various types of cases are given various weights as to how much time it potentially takes to prepare that case. So, you know, A,B felony is weighted heavier than a misdemeanor by

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a long shot. Then that's compared up with the number of hours available -- that an attorney has available to work on all of their cases. Then that gets you your percentage of how far over capacity you are.

Q You said you use the RubinBrown metrics in your office; how do you use them?

A I use them every so often just to see where my attorneys are at as far as how far over capacity they are.

Q Roughly what percentage of your attorneys are over 100 percent of their capacity?

A Right at this moment in time, I would say probably all but one. We still have one attorney who is still kind of working up her caseload.

Q How long ago did that attorney start?

A She started in September.

Q So she does not yet have a full caseload?

A Probably not one that gets her over 100 percent of capacity yet.

Q According to this spreadsheet it says the Springfield office is 277.5 percent of capacity for fiscal year '17. I'm not going to ask you to give an opinion on whether you agree with how that number was calculated, but would you agree roughly that your attorney was -- I'm sorry, that your office was well over capacity for fiscal year 2017?

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A Yes.
Q Why would you agree with that?
A Because just as I have done it for individual attorneys, not for the whole office as a whole, I know that in times past where we've had some attorneys that were at 300 percent or 400 percent. I had one attorney at one point in time that was at 500 percent. So, yeah, you average it out for the whole office. I would say, yes, our office as a whole has definitely been over capacity.
Q And separate from the percentages and your understanding, for example the attorney who you said was 500 percent over capacity, what would that mean in terms of their day-to-day ability to provide adequate defense to their clients?
A It's not adequate defense for probably any of his clients at that point in time. I mean, you're just treading water. Just cases getting continued and continued, pretrial conference after pretrial conference. I know for sure because during that time period for that particular attorney too I was getting a lot of complaint letters about I haven't seen him in ages because he didn't have the time to get over to the jail.
Q What do you do when you receive a complaint letter about an attorney?
A First thing I usually do is I will meet with

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the attorney and ask them about when their last client contact was. Talk a little bit about how in depth that conversation was. If the contact hadn't been an extreme amount of time ago, we'll just talk about when they can get over then the next time to see them and we'll kind of set a deadline for them to get over and see that client and then I generally just leave it at. Then I follow-up with them to make sure that contact was done. If I think there is more issues there than what the attorney is saying, I might also pull the file and actually do a file review to see how many contacts there has been with the client.
Q In your opinion, so you -- in your opinion, are the issues in your office's ability to effectively represent clients -- strike that. In your opinion, could any attorney, no matter how expert, adequately represent clients given the constraints facing lawyers in your office?
A Depending on what point they are in and how long they have been with the office, if it's one of the attorneys that is just starting out and growing their caseload, yes, they can initially.
Q Why can they initially?
A Because their number of cases is much lower than everybody else's.
Q Could an attorney carrying an average or full

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caseload in your office?
A Effectively represent every one of those clients, no.
Q Can attorneys refuse cases that have been assigned to your office?
A Up until about a few months ago, no.
Q Let's start with up until a few months ago; had attorneys tried to refuse cases prior to that point?
A No, I never had an attorney come to me and refuse a case.
Q Has your office up -- and still focusing on the period prior to a few months ago -- has your office refused to take cases at any point during your tenure?
A We did have a period I referenced, I think it was around 2012, where it was per a MSPD rule that had been promulgated that we had attempted to refuse cases to try to reduce caseload.
Q How did that rule work?
A Excuse me?
Q How did that rule work, that MSPD rule that you referenced?
A I don't remember the exact reading of the rule at this point in time. Too much water has passed under the bridge.
Q Who did you tell that you would be -- you know

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what, let's just get the exhibit. Can I get 14 and 15. So I'm handing you a document that I will ask the court reporter to mark Plaintiff's 51 and Plaintiff's 52. Do you recognize these documents, Mr. Hackathorn?
A They look vaguely familiar.
Q What do they appear to be to you?
A These were notices that were sent out by our director at the time, Marty Robinson, to the presiding judges in both 38th and the 31st circuit putting them on notice that our office had exceeded our maximum caseload standard for three consecutive calendar months. I believe that was to then trigger -- triggered meetings with them to try to reduce caseload. And if not, then we potentially refused cases as best my memory recalls.
Q Do you remember whether there were meetings that occurred after you sent these notices?
A Yes.
Q What happened at those meetings?
A A lot of talk. Nothing that would necessarily have resulted in any real caseload relief for our attorneys.
Q Do you recall the Missouri Supreme Court's decision in Waters?
A Yes.
Q Were you a party in that case?

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A I was.
Q You were a plaintiff in that case?
A I believe so, yes.
Q Could you briefly state your recollection of what the Waters case was about?
A Well, my role in the Waters case all took place right up front. After that, it was out of my hands. I went down with my attorneys who were assigned to Christian County that day after we decided we were going to start refusing cases and just to try to take some of the heat off of them and let the judge vent at me. And we -- one of the cases that I refused representation on was the crux of the Waters case because he then went ahead and ordered us in to it and that's what the Waters case was about. I can't remember the young man's name even now who was the poor defendant that was caught in the middle of all of that.
Q But it's fair to say that the case was about your office's ability to refuse case assignments?
A Yes.
Q Do you recall how the Waters case was resolved?
A The Waters case ultimately said that the rule could be followed.
Q How did attorneys in your office respond to

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the Waters rule -- to the Waters ruling?
A Initially pretty well.
Q What do you mean?
A Initially, it looked like we had won and that might ultimately result in some real caseload relief.
Q Why do you say initially?
A Well, things kind of went south after that.
Q How did they go south?
A Well, they went south in that legislature tried to basically disband the public defender system. That ended up not happening, thankfully. And then there were some -- there was some laws that were passed that basically did away with the Waters case. Basically saying that if we wanted caseload relief, we had to go through the Statute of 600.063 and basically request pretty please to the courts that they would give us some relief. And it had to be done as an office by the district defender of each office on an individual attorney basis. I couldn't even go for the office as a whole to the judge. I had to go attorney, by attorney, by attorney and demonstrate that they were overloaded before any relief could potentially, theoretically, be granted.
Q Did you attempt to go down that road and ask for relief for individual attorneys?
A I did not.

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Q Why not?
A Well, for one, for my particular office, we had kind of been ground zero on this whole thing prior to the Waters case. As I said, I went to meetings. I went to those meetings and I talked with judges and I talked with prosecutors and it resulted in really nothing. I didn't expect anything to have changed. Also, I didn't like the standard being different for our attorneys than for any other attorney that's out there. And that's kind of what's going on now.
Q And by what's going on now, are you referring to the Hinkebein decision and what's followed from that decision?
A Correct, yes. You know, our position is that the ethical rules, and certainly by the Hinkebein decision, it shows, I mean, that ethical rules apply equally to our attorneys as they do for any other attorney in this state. Their license is just as much in jeopardy as anybody else. The fact that they should have to jump through more hoops to reduce their caseload than anyone else when their license is just as much in jeopardy seems ridiculous.
Q What is your understanding of what the ethical rules require in terms of accepting cases?
A Well, one of the ethical rules concerns competence. And are we competently representing all of our

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clients when you have 150 to 200 cases, no. As I said before, you know, some of these misdemeanors clients, probation violation clients, they are not getting any real attention. Basically a warm body in there making an off the cuff argument. That's not competent representation. There is a rule on diligence as I've also discussed earlier. A lot of these cases where the client wants a trial and they are sitting in jail, they'll easily sit in jail a year or more to go to trial. That's not diligent representation. Communication; we have talked a lot of about communication. There is an ethical rule on that. We have always failed in that when we have such a high caseload on two fronts: One, keeping the client up-to-date; and then on the other front of making sure that they are reasonably -- legal matters are reasonably explained to them so that they can make informed decisions. And then also, I failed on the ethical rule that pertains to me as a supervising attorney in making some reasonable effort to ensure that those other rules are complied with by those under my supervision.
Q Given your understanding of the ethical rules -- actually, let's take a step back. What is your understanding of what happened in the Hinkebein case?
A My understanding is that some deadlines were missed by Mr. Hinkebein and a complaint was filed against

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him. He -- as part of his defense when they were going to suspend his license, he stated that had too many cases and was basically told, to some degree, too bad. That you either needed to quit or you needed to go to your supervisor and say something about this huge caseload, which he had not done.

Q How did attorneys in Area 31 react to the Hinkebein decision?

A They were worried. They were worried. They knew that they have a lot of cases too. That they weren't doing everything in every case that maybe they should be doing. You know, just like any attorney, they worked hard to get that license. So there was concern.

Q Did you take any formal actions in response to the Hinkebein decision?

A Not right away. We had a statewide management meeting, I think a few weeks after the Hinkebein decision. After that management meeting, I did. I went back and I had individual meetings with all of the attorneys in my office to make sure what I thought was true was in fact true and that the attorneys in fact agreed with me on that and that they were overloaded, that they had too many cases to follow the ethical rules other than, like I said, potentially the one attorney who had just started. And then based upon that, I sent notice to all of our presiding

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judges letting them know that we were going to have to start waitlisting some of these clients so I could reduce caseload.

Q I'm handing you a document that I will ask our court reporter to mark as Plaintiff's 52 -- sorry, 53. Do you recognize this document?

A I do.

Q What is it?

A This is that notice that I said that I sent to all the presiding judges letting them know that we were going to have to start waitlisting some clients.

Q What was the response from -- who did you send this to?

A I sent this to Judge Thomas Mountjoy, who is a presiding judge for the 31st Circuit. I sent it to -- well, actually, I'm incorrect on that. I thought I had only sent it to the presiding judges. I actually sent it to every judge that we have cases in front of in all three of our circuits.

Q Did you receive a response from the judges in response to this letter?

A I believe I received a response only from one judge.

Q Do you remember which judge?

A That would be Judge Laura Johnson, the

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presiding judge for the 38th Circuit.

Q What was Judge Johnson's response?

A Her response at that point right after this notice was to request a meeting with me, the prosecutor, and the other judges in her circuit.

Q Did that meeting take place?

A It did.

Q What happened at that meeting?

A Well, initially I thought that the meeting, based upon the request she sent, was to discuss possibly ways that the court could reduce caseload and maybe make sure that people weren't on a waitlist or weren't on a waitlist for very long. When I got to the meeting, it did not turn out to be that. It turned out to be more of a complaint session about what we were doing, what the public defender system was doing. And then also once the prosecutor had made mention of 600.063, Judge Johnson didn't seem much interested in doing anything else as far as accommodating our attorneys and trying to reduce caseload. Simply said, well, that's what you should be doing is going through .063.

Q And what would going through .063 have required differently from the letter that you sent to Judge Johnson and the other judges?

A That would have -- if you go strictly by what

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.063 says, that would have to -- to some degree nobody really knows because it's not really been done -- but it's a matter of giving some sort of notice to the court on each and every individual attorney who I have assigned to that circuit. And then arranging some sort of meeting, whether that be on the record or not; I don't think that's necessarily clear either. To some degree, the prosecutor being put on notice and whether or not they participate is still a question as well. And then some decision being made by the judge, based upon evidence I guess I would present, on each of those attorneys whether or not they are truly overloaded.

Q Did judges other than Judge Johnson react to this letter, either formerly or informally?

A Surprisingly, no.

Q So you've received no response to this letter from judges other than Judge Johnson?

A No.

Q And this letter was sent October 10, 2017?

A That's correct.

Q You stated in this letter that each of the attorneys under your supervision said that their current individual caseloads created a conflict of interest with existing clients because they are forced to choose effective representation of one client to the detriment of

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other clients?
A Correct.
Q Is that still the case in Area 31?
A Yes.
Q Have you received any reactions from the local bar in your district in response to either Hinkebein or to this e-mail?
A Informally, I have had, yes, members of the private bar talk to me and say, you know, they understood, you know, why we are doing what we are doing. And I've even had a couple say to me that, you know, they would be willing to take a couple of pro bono cases to try to help us out, but.
Q You mentioned that your office created a waiting list for clients, potential clients, where you would otherwise take representation. Could you explain more how that waiting list works?
A We have separate a waiting list for each jurisdiction; one for Taney county, one for Christian, and one for Greene. Ideally, what I wanted to do with that waitlist was have it prioritized with those who are in custody and have been on the waiting list the longest; when I had attorneys who became available to take cases, that those would be the ones that would come off the list first. It hasn't necessarily worked that way. We now have a color

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coded waitlist based upon how outraged the judge is and whether they are to the point of ordering us into the case or not. So when I have ones that are lighted up in red by our clerks where we have been ordered into the case, those are the ones that are coming off the waitlist first. They are not necessarily the ones that are in custody or been in custody the longest.
Q Roughly, how many people are on the waitlist in each of these counties?
A The last I think yesterday I looked at that and I think the Greene County list was -- it was somewhere around two -- somewhere between 220 or 250 people were on the wait list for Greene County. Off the top of my head, I don't recall how many are on the waitlist for Christian and Greene.
Q And Taney County?
A I'm sorry, for Christian and Taney, I don't recall. For Greene, it's somewhere between 220 and 250.
Q Do you know roughly what percentage of those people are incarcerated?
A I don't.
Q Are some of those people incarcerated?
A Oh, yes.
Q You mention that you have prioritized where -- based on judge outrage; have judges ordered your office to

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represent indigent defendants over your objections?
A Yes.
Q I'm going to hand you a document that's already been marked Petsch Exhibit 5. And while we are doing this, I'll also hand you a document that I'll ask our court reporter to mark Plaintiff's 54.
A Okay.
Q Have you seen these documents before?
A Yes.
Q What are they?
A The one marked Exhibit 5 Petsch is an example of a writ that could be done if a judge was trying to order us into a case, I believe. This was provided on our -- what do you call it? The legislative database or not -- litigation database as something available for us to file. And then Exhibit 54 here was an example of a motion to withdraw due to excessive caseload that our attorneys could file on their individual cases as well. That was also in the litigation database.
Q So let's start with Petsch Exhibit 5. Why would the litigation database have a form writ specifically for objecting to appointments by judges?
A Well, I think rightfully so, we had anticipated that not all judges, and probably the majority of judges, were not just simply going to go along with the

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waitlist idea and would be ordering us into cases and so this was made available for that situation when it arose.
Q Have attorneys in your office used this writ?
A We have not.
Q Why not?
A Because before we could, I believe another jurisdiction or two, or another trial office or two had tried it and to no avail. It was -- it wasn't heard basically.
Q Turning to the other Exhibit 54.
A Yes.
Q Why would the MSPD have a form motion to withdraw?
A This was done -- well, for two reasons as I understand it. One would be as an avenue for the individual attorneys to try to reduce caseloads themselves to try to withdraw out of some of their cases. And two, it was thought that by also filing these motions, even if the judge denied it, it might give them some protection from the Office of Chief Disciplinary Counsel if a complaint was filed on them in that particular case.
Q Do you know if any attorneys in your office have filed a motion to withdraw due to excessive caseload?
A I'm pretty sure none of them have.
Q Do you know why not?

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A It was one of those things where they've already got all of these cases and they already knew they were going to be denied anyways -- or pretty well figured they would all be denied. And so if it was just a matter of protecting themselves, they just figured it wasn't worth they time. They needed to focus on their cases and preparing their cases.

Q How have your public defenders handled cases where judges are ordering the MSPD appointed over their objection?

A Well, our entry that we file in those particular cases states that it is an entry over objection. But other than that, I'm not sure.

Q Are they assigned -- so if a judge appoints -- orders your appointment in a case now, you're entering -- attorneys in your office are entering appearances over objection?

A Our office is doing that for them, yes. We don't have any judges that -- well, they're not necessarily ordering individual attorneys in my office into particular cases. We had one judge who was ordering me into a particular group of cases because I hadn't assigned them yet. But once I did assign them, you know, she was fine with whoever they were assigned to. But, yeah, once a judge has ordered us into a case, I'm kind of treating it

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like I did before. I'll look through it and see if there is a conflict and if there is not, I assign it out to whoever is assigned to that county or that particular division.

Q So I want to go back to the e-mail you sent to the judges that's Exhibit 53.

A Okay.

Q And the last full paragraph on the first page, it says" Until one or more of the attorneys in our office are able to fully comply with their ethical obligations under the Rules of Professional Conduct, we will no longer be immediately entering into cases in which a defendant is qualified." At this point, are there any attorneys in your office who are able to fully comply with their ethical obligations and enter into new cases?

A Since I sent this, we have had a couple who had got to the point to where we could start actually just regularly entering them into cases, yes.

Q Why were they able to reach the point where they could enter into new cases?

A Because I had stopped assigning them cases for a couple of months. And also these were attorneys who were already -- because they were newer and didn't have the tremendously built up caseloads some of our more long-term attorneys have had.

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Q Do you know on average, I know the waitlist hasn't been around for very long, do you know roughly on average how many people are coming off the waitlist and getting assigned counsel?

A I don't. I couldn't give you an exact on that.

Q Has the waitlist grown since you have started it? Stayed steady? Reduced in number?

A It continues to grow. It's not like we're taking them off at such a rate that it's decreased at all. It grows faster than I can take cases off of it.

Q How do you inform indigent defendants that they've been placed on this waitlist?

A When they fill out their application, as far as in Christian and Taney counties, when they fill out their application, they are informed in person because we have people down there when they fill out the applications. In Greene County if they come into the office to fill out the application, then we inform them when they come in and fill that out. For those in custody in Greene County, we don't always -- we are not always there in person when they fill out the application; it gets sent to us. So a lot of those potential clients are informed by letter.

Q What does the letter say?

A I don't recall off the top of my head exactly

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what I put in that letter.

Q Do you recall, you know, roughly or generally what it said?

A Roughly it's that due to, you know, excessive caseloads we don't have an attorney available at the moment but as soon as we have one available, we'll try to get to them as soon as possible. And there is language about they will be put on a waitlist until then. There is also obviously language that they qualify for our services.

Q Do you know of any reaction from people on the waiting list to being placed on the waiting list?

A Yeah.

Q What reactions?

A Well, I have been getting letters, especially from some of our folks that are, you know, they are sitting in custody, you know, basically begging and pleading can you give me some idea exactly how much longer am I going to have to wait for an attorney. Those who are out of custody, I have gotten some phone calls from. You know, I've got another court date coming up. The judge really wanted me to have an attorney. What am I supposed do. Yeah, so I'm hearing from people.

Q So people on the waiting list, their cases still progress? They are not on a suspense docket?

A Yeah, no. They still have court dates that

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come around.
Q And they are expected to appear at those court dates without counsel?
A Well, the judge would prefer they were appearing with counsel at the point that he or she has referred them to us. But, yeah, they are appearing without counsel.
Q Are courts in your area appointing private attorneys to represent indigent -- excuse me, indigent defendants in non-conflict cases?
A I can't recall any of our judges doing that, no.
Q How do you handle conflict cases?
A Now all of our contract -- all of our conflict cases are contracted out to private counsel.
Q Was that always the case?
A It was not.
Q When did it change?
A It changed at the beginning of this fiscal year, so July -- July 1.
Q What was the system prior to July 1?
A Prior to that, for what we call first-level conflicts, we had offices that we would basically cover for each other. So we had five counties that we don't handle primarily, but if the offices that did handle those cases

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-- or those counties primarily had a personal conflict, they would send those cases to us. And then there are offices that would handle our three counties for our conflicts. We had five conflict counties. We have Dade, Dallas, Webster, Stone, and Polk counties.
Q Did handling conflict cases internally impact your attorney's ability to handle their other cases?
A It did. I mean, they were great time consuming things because they -- you wouldn't have a large number of conflict cases, but they would often take several days, a month because you would have to drive to those counties, sit there through sometimes the whole Law Days for those cases. Then you also had to go to those counties to do your jail visits. So a small number of clients was getting a large percentage of the time.
Q Do you know whether the system that you have to handle conflict cases after July 1 is permanent?
A As long as the money holds out. I know that our director would like to make it permanent, but the money has to be there.
Q If the money is not there, do you expect to go back to the prior system of conflict counties?
A I do.
Q Have you heard of the Missouri Coalition for the Right to Counsel?

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A I can't say that I have.
Q Have you heard of any pro bono programs to handle indigent defense cases outside of the MSPD?
A For criminal cases?
Q For criminal cases.
A No.
Q What kinds of cases are on the waiting list right now?
A All kinds. We even had a murder case on the waitlist for a little bit. So it's everything from misdemeanor up to murder.
Q What are the negative effects on indigent defendants for being put on a waitlist?
A Well, there could be a lot of detrimental effects of being on the waitlist. One, you still have these court appearances that you've talked about where they are without counsel and that's the potential for them to say something in court that they shouldn't say. We have had -- we have been in court and seen some folks who were incarcerated who have waived counsel, just so that they could potentially get out of jail or work out something with the prosecutor and represented themselves. And I'm sure that they did not get an outcome they would have had had they had counsel.
Q So you're aware of indigent defendants who

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waived their right to counsel after being put on the waitlist?
A I am.
Q Do you know roughly how many people have done that?
A I don't.
Q Were those cases where jail time was a possibility?
A Yes.
Q Do you know if those cases resulted in jail time?
A I don't know what ultimate outcome came of those cases.
Q You mentioned earlier that two attorneys recently resigned from your office. Do you know why they resigned?
A I'm not exactly sure about one, but I am pretty sure about the other. The one I'm sure about it kind of came out of -- well, it definitely came out of the situation we were having in Christian County ever since we started the waitlist and that judge's reaction and the difficulty they were having in court because of that; kind of the tension that was coming out of that. Also, I don't believe he cared for MSPD's response in that particular situation. To be more specific, I think he thought that a

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complaint should have been filed immediately against that judge by MSPD.

Q What was the judge's reaction that triggered this?

A Well, because we were having difficulties in that area and she did not seem to want to work with us. She was ordering us into more cases than any other judge was ordering us into. I had taken steps to try on my own to clear up a little bit of our attorney's time. In Christian County, a situation that had been occurring was even on Law Days, even when our attorneys were done with their cases, they were asked by the court to stay in court and wait until the end of the day and then she would bring up inmates that we were not representing yet but would probably qualify for our services and our attorneys would take those applications in court and then bring them back to the office. In order to try to clear up some time for them, I informed Judge Johnson that I would no longer have them waiting around until the end of the day to take those applications. If she wanted to send a list of referrals, I would send a support staff member to take those applications, but I wanted our attorneys to leave court after their cases were completed so that they could work on their cases or maybe do jail visits or office appointments; that sort of thing. She did not take well to that

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decision. It had been circulated around to our attorneys, not necessarily from Judge Johnson, but from people that worked for her, such as the bailiffs, that they were going to be basically ordered to stay there. Then on a particular Law Day where this all kind of came to a head, she did order them to stay in court even though I told them they needed to come back to the office and had even -- from what I'm told by our attorneys -- that bailiffs were even stationed at the exits of the courtroom to keep them from leaving.

Q How did the attorney who resigned react to that?

A On that particular day?

Q To you.

A To me? Well, he wrecked me on that day. He called me and asked what should we do and I told them to go ahead and leave. They were followed out of the courthouse by bailiff saying, "You're not free to go. You're not free to go. We are going to get you." They actually had a jury trial that following week scheduled in front of that judge. So our trial division director, Ellen Blau, came down and both of us went and sat in that Monday just to see if there was going to be any retaliation against our attorneys for leaving. There was not. Fortunately, nothing was done to them. But his reaction from that point forward was wanting

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an immediate complaint filed against her and there wasn't one, so.

Q How long had that attorney been working at your office?

A He had been with our office for at least, I'd say ten to twelve years I think. He had been with the system longer. He actually transferred from another MSPD office when he came to us.

Q Who was it?

A His name is Morris Mettler.

Q How many attorneys were in the courtroom the day that bailiffs were stationed outside and they were told to fill out these forms?

A Only two of our three attorneys were in the courtroom that day. The third one had a doctor's appointment, so she wasn't there.

Q How many attorneys total are assigned to the Christian County Courthouse?

A Three.

MR. SHAHABIAN: This is a good time to go off the record and take a break.

THE VIDEOGRAPHER: Going off the record. The time is 11:43 a.m. This ends Media 2.

(A recess was taken.)

THE VIDEOGRAPHER: Going back on the record.

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The time is 11:55 a.m. This begins Media 3

Q Thanks for sticking around, Mr. Hackathorn.

A Certainly.

Q Basic question, just for my edification, what is a Law Day?

A In more rural counties, Christian and Taney County, it's a day that the circuit court has to pretty much cake care of anything that the circuit court does on its cases, you know, whether it be pleas or pretrial conference, or anything other than a trial; bail request, bond reduction request and that sort of thing. All of those are generally taken up on a Law Day.

Q How often is there a Law Day?

A Well, that's changed, but only recently. It used to be that each of those counties had three Law Days a month.

Q You mentioned that recently the Greene County agreed to contract out juvenile cases; do you know who in the county is responsible for that?

A I don't.

Q Do you know what office in the county is responsible for that?

A I don't.

Q How are you made aware of that change?

A Well, we initiated the change. We made the

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request. We contacted the presiding judge, Tom Mountjoy, and asked if that could be done to try to reduce caseload and they agreed that they could do that.

Q I want to go back to you mentioned the day where Judge Johnson ordered your attorneys to stay in court to take new indigency applications. You mentioned the reaction of one of your attorneys. I was wondering what was the reaction of the other attorney who was present, if you know?

A The reaction was that she upset by it.

Q Did she say anything to you?

A Well, yeah. I mean, I had more than one conversation with her about what had occurred and, you know, how we were -- how she was feeling about it, yeah, and talking about how to deal with this going forward.

Q What did she say?

A I'm not sure what you're asking me. I mean, I stated she was upset. I mean, I can't give you verbatim exactly what she said. I'm sorry. Are you asking me what she said occurred or how she felt about it?

Q How she felt about it?

A Yeah, I mean, she just said that she was upset.

Q Was there a complaint filed against Judge Johnson?

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A I don't know whether Mr. Barrett has filed a complaint or not. I know that there was a discussion with him about doing that.

Q In your office there was that discussion?

A Yes.

Q Why did your office not file a complaint?

A Well, initially I was going to file a complaint but then we had conversation with Mr. Barrett about whether or not that should come from him and the conversation kind of went that direction that he would do that. Then, ultimately, Mr. Mettler, the attorney that resigned, sent an e-mail to Mr. Barrett that -- I can't remember exactly how it was phrased -- but it was -- it was blunt as to thinking he needed to get that done and get it done right away and that I think kind of ended that as far as the complaint getting filed.

Q Do you know of any -- can you recall any specific reactions by judges, other than Judge Johnson, to attorneys from your office declining appointments?

A Any negative reactions?

Q Or positive.

A Well, not to me directly and not necessarily to our attorneys directly. It's just, you know, in the docket entries of -- I had mentioned earlier Judge Palmetto was the judge. She was the one that after a couple of

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docket entries of re-referring us and re-referring us, you know, specifically said she is expecting District Defender Rod Hackathorn to enter his appearance by such and such date, which I considered a negative reaction, but, no, nothing other than that.

Q If your attorneys spent the time they thought necessary to zealously prepare a client's case, say a case that was going to trial, what in your opinion would happen to that attorney's other clients?

A They get ignored.

Q Are there times where attorneys in your office have to triage cases doing less on one case so they can do enough on another?

A Happens all the time.

Q How frequently would you say?

A It happens every day.

Q Is there anything else you think we should know regarding the ability of your office to provide effective representation to your clients?

A Not that I can think of.

MR. SHAHABIAN: I have no further questions of this time.

QUESTIONS BY MR. RAMSEY:

Q Good afternoon.

A Good afternoon.

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Q Again, my name is Steven Alan Ramsey. I represent Governor Greitens and the State of Missouri. I also have a handful of questions for you. But at any time, please if at any time, you need a break, please let me know and we can take a break immediately.

A Okay.

Q All right. Going back to your background: You came straight from law school into the Missouri State Public Defender System; did I hear you correctly?

A That's correct.

Q And before that, did you go straight from undergrad into law school?

A I had a one-year gap between undergrad and law school.

Q And what did you do at that gap year?

A I worked very briefly at JCPenney.

Q Okay. And undergrad, what was your degree or degrees in?

A Sociology.

Q Also concerning some of the preparation, not necessarily for this deposition, but just your conversations concerning caseload and workload concerns. I understand this is a very general question because this has been an ongoing issue for sometime; who all have you spoken to within the past few years concerning a workload and

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caseload concern? I take it the private members of the bar was one group. You have spoken to judges at some point. Have you had any conversations with none for profit organizations or the press?

A No.

Q Sitting here today, do you have a sense of how many cases total your office has open right now?

A Has open right at this moment?

Q Yes, sir.

A I believe we have somewhere around 2,300 open cases.

Q Do you have a sense for how many criminal cases are filed total within the area that your district covers?

A Over what period? I'm not sure I understand your question.

Q Over the past year or so. So say there are 100 total cases; how many of those total cases are coming to the public defender system versus the system at large?

A I don't know.

Q A related question but slightly different is how you define a case or a matter in your system?

A A case is a -- goes by case number. It's not by charge. It's however many charges may be in that case. It's still a case no matter how many charges may be in that

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related to that particular case number.

Q Now if we could turn very briefly to Plaintiff's Exhibit 48, that's the appraisal form.

A Okay.

Q I'm looking at the third page Bates Stamped 15898.

A Okay.

Q Do you see that very last line below the graph or the grid?

A Yes.

Q Would you read that out loud for the record?

A "Attached is a breakdown of Dawn's open caseload. She admits it is a bit inflated as there are several recently disposed of cases that need to be closed."

Q How does your office go about deciding when a case is closed?

A A case is closed whenever our representation has ended, whether that be because the defendant has been sentenced or the case has been dismissed or they've had a trial and won or they've had a trial and lost and we've send it onto an appellate's office.

Q And do you have a sense for when those cases are closed, when they are reflected in the system; is that an immediate thing?

A It is not. The attorney, after they have

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finished their representation, needs to bring that file into our main area where our clerks are at and there is a cabinet for them. Then our clerks go through that every week and try to get those files closed.

Q This is a larger picture question: Has your office seen a dramatic increase in the amount of criminal cases filed in this region --

A Yes.

Q -- than in recent years?

A I'm sorry, yes, absolutely we have.

Q Do you have a sense why that has occurred?

A Our prosecutor's office, especially here in Greene County, they got some additional funding and were able to increase their numbers. From what I understand from our prosecuting attorney, Mr. Patterson, they were able to work through a backload of cases that they said still needed to be filed. Now that's according to him; I don't know. But I know it's around that time that he added people to his staff that our numbers shot up.

Q And if you don't know the answer to this, it's completely fine, but has the population of the Springfield area dramatically increased as well during this time period?

A Our whole general area of Greene, Christian, and Taney; the population has increased significantly down

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here more than I think any other part of the state.

Q Turning to the makeup of your current office. So at full staff there are 22 attorneys; is that correct?

A At full staff, yes.

Q At full staff. But currently there are 19 attorneys including yourself?

A That's correct.

Q And you had mentioned that there are eight support staff or eight full-time support staff?

A That's correct as well.

Q And I think you testified that at least two of those are investigators?

A Yes.

Q What are the other six? How does that breakdown go?

A Sure. We have three office support assistants and then we have three legal assistants.

Q And you also have the one part-time support staff position?

A Yes.

Q What is that position?

A It doesn't really have a title. She is actually a retired clerk from our office and she just comes in to help do some of those things like getting files closed in the system and that sort of thing.

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Q Now you mentioned that the -- there are two documents, at least if I'm understanding you correctly, that are similar guiding principles for representation. One being the guidelines for representation and the second one being the Employee Handbook if I understand your testimony correctly?

A I think I refer to the Employee Handbook more as when the question was things that guide me and my administrative duties.

Q I see. Have you supplemented either of those documents with local rules or local policies that you, as a district defender, have discretion to, I guess, enforce or create?

A There is a small handful of local written office policies that we have, yes.

Q Are any of those policies related to workload or caseload concerns or controlling mechanisms?

A I don't believe so. I think they are all relating to more as just how we function as an office and that sort of thing.

Q Turning to your office's determination for indigency. I think I understood your testimony to suggest that in juvenile matters when your office was representing juveniles, that was merely a court-appointed function. So your office didn't have an independent indigency

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determination mechanism?

A There is a form. But pretty much if a juvenile was referred, we took the case. But there is a form for that.

Q Okay. And that form is that a form that you all still reviewed before the ultimate acceptance; or once the court appointed the MSPD, representation you all accepted it?

A We still went through the motions of having that application filled out, but for the most part it was meaningless.

Q So turning to non-juvenile matters. Who makes the determination for whether or not an individual is eligible for services?

A That depends on where the application is taken at. At lot of times with Christian and Taney counties, that determination is made by our attorneys. In Greene County, more often than not, it is made by support staff.

Q And does your office have any independent checks or verification? Or do you all simply refer to or rely upon the application itself?

A Unfortunately, we mostly have to rely on the application itself. I just don't have the support staff needed to try to verify the information that's in that application.

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Q Sitting here today, do you have a sense for how often your office rejects applications for services?

A It happens, but I couldn't tell you percentage-wise how often it occurs.

Q So it happens often? Sparingly? Or even that?

A Well, I'd say it happens at least probably once a week or so. Anything that's a close call, especially with the support staff, I have them come to me to make the ultimate determination.

Q Are you aware of any situations or examples -- and you don't have to go into any details if you are -- of where you accepted representation, but subsequently to that, something occurred; for instance a large bond was posted in a separate case or a private attorney was hired in a second case or something to the effect that you all questioned the person's indigency status and proceeded to withdraw or I guess modify representation?

A Yes.

Q Does that happen frequently or it happens sparingly?

A That probably happens more sparingly, but it certainly does happen.

Q Has your -- I guess emphasis is maybe not the right word -- but your breakdown of administrative task

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versus your actual caseload that you carry -- I believe the numbers were around 75 to 25 percent -- has that always been the case since you have been the district defender?

A No.

Q Could you explain that evolution, if you will? Did you start off having more cases? Did you start off having less cases? And why have you gotten to this point?

A I started off having more cases. As this area has continued to grow and the caseloads have increased more and more and more, other offices around the state have lost positions and we have gained positions. There were far fewer people in my office when I started as district defender than there are now. So the administrative duties have increased a lot.

Q So would you say that it is a function of simply just having more cases and more work to do that your administrative tasks have grown? Or have you found that there is a benefit to you being more of a supervisor and a mentor to the attorneys in your office?

A I think it's a little of both.

Q Concerning your supervision of attorneys: How often would you say you're having mentor-like conversations with the various attorneys in your office?

A Every day. Every day there is somebody in my office and we are talking about some of their cases. So it

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happens a lot.
Q And the various motions, I believe you had testified that there is a motion bank or a draft bank somewhere within your system that your attorneys pick and choose from in their every day representation?
A Yes.
Q Is that something that's local to your office and that's something that you have created as a district defender? Or how did that bank, I guess, become effective or come into existence?
A There is actually both. We have one that's local and that kind of boilerplate motions that we have drafted individually within our office and saved for other people to use. Then there is one that I believe is on for the entire state can access.
Q Do you have a sense -- this is taking two steps back -- if you supervise your attorneys more so than any of the other district defenders that you know of in their various districts? Do you have a sense if your supervision is more or less than them or?
A I couldn't speak to what other district defenders are doing.
Q You testified earlier that -- I don't know if it was every jail or whether it was in Greene County or Christine County or Taney County sends you a census. I

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don't know if it was every day, but that process; is that correct? They send you a census from time to time?
A Greene County sends us one every morning. Christian County sends us one -- I'm not sure if it's every morning; it might be once a week. Taney County, I'm not exactly sure about.
Q Has that always been the case or did that come about because of conversations that you or your predecessor had in this role?
A That came about by me requesting to get those.
Q Why did you request that you receive those census reports or files?
A Well, with Greene County -- off the top my head I can't remember why I ended up requesting it for Christian County. It's been a while back. But Greene County it came about for a couple of reasons. One, back when I first requested it, they liked for us to come with our sheets ready for who we wanted to see and that let us know what pod they were in and what cell number so we could fill out the form. Also let us know if they were in segregation. It let us know also by the census of what they were being held on. So if, for instance, we wanted to file a bond reduction request, we could look there and see, well, is that going to do us doing any good. Maybe there is a hold on them for the Feds or maybe there is a

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municipal warrant. We can check that as well. And now, like I said, you know, it's also being used to see whether or not they are even here or whether Greene County has farmed them out to another jail due to overcrowding.
Q What other -- concessions is not the right word -- but what other results or tools have been created similar to receiving that census report, either every day or every week, to help manage caseload and workload concerns?
A I'm not sure I understand what you're asking me.
Q So would you say that receiving that census report, if it's every morning or every week, helps you know before you get to the jail whether or not someone is there and so on and so forth?
A Yes.
Q Could that also be considered a timesaving mechanism as well so you don't have to drive to courthouse or to the jail cell to find out if they are there or not?
A It is a timesaving measure, yes.
Q So my question is if that came about because you requested it and it was -- I don't know if it's a concession or it's an agreement that was made -- are there other similar cost-saving mechanisms due to your initiative or your conversation that you've had with judges or the

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prosecutors in the state, generally?
A It's not having to do juvenile cases in Greene County anymore would be one. Other than that, we haven't really been able to come to a meeting of the minds of anything else that the court or the prosecutor's office could do to help reduce caseload or save time.
Q During some of the conversations that you have had -- and now I'm jumping around and I apologize for that -- conversations you've had with the prosecutors and judges where I believe you testified that some of those meetings had become I guess complaints against you and the Missouri Public Defender System; were there some things that were brought up in some of those meetings, or any of those meetings, that were suggestions by any of those other parties in how you all could improve your workload or caseload concerns?
A Well, outside of that meeting that I referred to with Judge Johnson that was, you know, within the last few months; the other meetings that I was referring to took place years ago and I don't recall.
Q Turning to the performance review, and I actually don't believe I'm going to need to look at the actual exhibit, but how often do you perform performance reviews on the APD III's and IV's?
A Well, the APD III's would get reviewed a

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couple of years after they made APD III because then they would be eligible for potential APD IV promotion. APD IV, that's just something that just kind of fell through the cracks for a very long time and that's why I initiated here recently that we needed to go through all of our APD IV's and do file reviews and performance evaluations to see where they were at.

Q I will apologize, I lied when I said I wasn't going to turn to the exhibit. Turning to Plaintiff's Exhibit 49 now.

A I lost it somewhere here in the shuffle. Got it.

Q So my understanding from your testimony earlier was that this particular public defender was having issues meeting the standardized expectation of meeting with clients every 30 days or having those face-to-face conversations every 30 days; is that accurate?

A That's what is written here, yes.

Q And that first full paragraph under client counseling, four lines from the bottom, could you read -- or I guess that second to last sentence starting with "we get."

A "We get almost never get a client complaint about lack of contact concerning Paul, which tells me he is keeping good contact with his clients and that he has a

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good relationship with them."

Q Is it possible to not meet the 30-day face-to-face requirement and to maintain good contact and good relationships with potential clients or I guess with actual clients?

A Well, once again, I didn't write this, my deputy district defender did. I think what he's getting across here is that when he is meeting with his clients, he is giving them a good amount of devoted time. You know, file focused or case focused and is doing his best to -- given the constraints that we had in Christian County, that he is doing about as good as he could do. But I would still say you certainly need recurring client contact to have a good attorney-client relationship and to comply with the ethical rules.

Q So to be clear, this 30-day expectation with face-to-face meeting is your testimony that you think that is a requirement to meet that ethical rule or guideline of sorts?

A Well, that's MSPD guideline. It's certainly not mentioned in the ethical rule itself. And I think my personal opinion is that's probably a pretty generous amount of time even at that 30 days and we are not meeting that.

Q Turning away from that particular line of

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questioning, these complaints that you receive as a district defender; is that a system that you set-up where clients -- either current clients or former clients -- are sending you complaints about their various representations? Or talk me through how that process works at least in your district?

A How those complaints get to me?

Q Yes, sir.

A Well, if it's an incarcerated client, I have been doing this long enough know that it's known in all of the counties that we cover that I supervise that office. So there really doesn't seem to need a processing place. They write me. They write me specifically. If somebody is out of custody and they call and they are complaining, you know, my staff is instructed to send those calls either to me or the deputy district defender.

Q And are those complaints or those letters maintained in a database that you have? Or is it maintained in the central office? Do you send it up to upper management or how does that work?

A It doesn't get up to upper management unless we've got a real performance problem with that attorney that I have not been able to correct. Other than that, these letters go into the client's file and that's where the letters stay.

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Q Continuing to, I believe it was marked as Plaintiff's Exhibit 50, I believe. It's the Missouri State Public Defender System Fiscal Year Report.

A Yes.

Q I'm going to be looking at that last page when you get to it.

A Okay.

Q Do I understand your testimony earlier to suggest that you did not have a hand in creating this document?

A That's correct.

Q And you also do not have a, I guess, an understanding of the underlying data inputs that went into creating any of these various metrics?

A That's fair to say.

Q Okay. Turning to expert testimony. You had mentioned that cost may be a factor in whether or not a particular expert is utilized or allowed to be utilized by an assistant public defender; is that correct?

A Whether they would be allowed to utilize that specific expert or maybe there might be one that is more cost effective, yes.

Q Have you in your practice ever been denied an expert solely because there was not enough funds to pay for that expert?

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A No.
Q Have you ever denied someone that you supervise in the public defender system as a district defender an expert testimony because there were solely just not funds available?
A No.
Q For depositions, would your answers be the same? Have you ever been denied funds for a deposition that you wanted to take?
A No.
Q Have you ever denied a deposition request from an attorney that you supervise because there were not enough funds available?
A No.
Q Speaking about the budget. You had testified earlier, if I understood you correctly, that when certain, I guess line items for lack of a better phrase, or certain categories are depleted, you would call the comptroller and hey, say this fund is either close to running dry or it's dry. We need more funds for this. What are some examples of like the categories where areas would run out?
A The only area that that has ever actually really happened that I can think of is with our travel expenses.
Q And how are the travel expenses policed for

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lack of a better word?
A I wouldn't say that they are policed. The attorneys do fill out an expense report at the end of each month as to the mileage they are claiming. I do go through that and I have them put on there why they went to a location. Not just that they went to a location, what case they went there for and why they went there and I verify that. I go through and look at those expense reports. But, you know, ahead of time, nothing but after the fact, that's what I do.
Q You mentioned that you don't go to -- or you or your office don't go to trial as much as you possibly should; is that a correct --
A As much as I think we probably should be, yes, correct.
Q And I remember you saying you don't have a sense of how many trials you tried within your office within the past year. Can you remember one case that has been tried within the past year?
A Yes.
Q Can you recollect five cases that have been tried within the past year?
A Yes.
Q How about ten?
A Now you're getting close I'd say.

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Q And are those trials -- are we only talking about jury trials or are we talking about jury and bench trials?
A I'm just talking about jury trials.
Q At this point in time, is your office tracking time in five minute-increments?
A No.
Q Is your office tracking time by tasks or by cases?
A No.
Q Is the extent of your timekeeping process right now the hours worked per day or per pay period?
A Yes.
Q Okay. Do you have a sense of when the last period of time was -- not the system at large, but your particular district -- was tracking time in that, I guess, more billable hours type of situation?
A I don't recall the exact date. It seems like it's been around a year or so ago.
Q Turning to the conversation concerning the example of the late discovery request and how you have a process set up in your office to ensure that doesn't happen in terms of the attorneys not having to file that themselves, there being a process that's helps them usher that process along. Is that something that you help create

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to be a timesaving mechanism or is that something that came from some other location?
A No, it's something we created for our office to try to save a little bit of our attorney's time.
Q Have you found that helps?
A I think it does. I don't know. I haven't polled the attorneys to find out.
Q Are there other examples where you have put in place processes like that to save time within your district?
A Similar sort of things in trying to utilize support staff as much as we possibly can. But once again I don't have near the amount of support staff I would need to take all of the administrative and clerical task off of the attorneys hands, but we try as best we can.
Q Have you as a district defender created or put on any type of internal trainings for your assistant public defenders to help with their caseload or workload concerns?
A Not internal trainings, no.
Q And sitting here today, there were a number of statements made concerning, if I understood you correctly, concerning your office being short-staffed or needing more resources to do -- to provide effective caseload representation or your office needing more resources. My question is, is that assessment based essentially solely on

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the RubinBrown report or numbers that -- I will stop there. Is that based solely on the RubinBrown report?

A No.

Q What else is that based upon?

A It's based upon my own observation of what attorneys are able to do and not able to do. My own experience before I was even a district defender as an assistant public defender with a caseload like they have knowing that I was wasn't able to get everything done. No, it's not strictly based off of the RubinBrown numbers.

Q Have you compared your caseload and workload concerns to say comparable public defender districts in other states?

A I leave that to other people.

Q Okay. If I understood your testimony correctly, you testified -- I don't know to say that it is the appropriate word, but the Section 600.063 creates additional barriers to public defenders that are not in place for other attorneys; is that pretty accurate?

A That's correct.

Q So with that, that thought process or that feeling or however you want to describe that; instead of filing that Chapter 600 motion, you decided to proceed via letters of communication with the applicable judges in your district?

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A Yes.

Q And the waitlist that was created; was that created based upon the conversations you had after the Hinkebein decision? After that meeting where all the district defenders and upper management got together, or is that something you decided upon, I guess, in isolation or by yourself?

A If you're asking me if we were instructed to create a waitlist at that management meeting, no we weren't. A lot of various responses were discussed at that management meeting. But basically because this is not a MSPD policy thing, it's an individual attorney thing, the responses were going to be varied around the state and so that's how we chose to proceed here.

Q Have you ever been judicially determined to have provided ineffective assistance of counsel?

A I don't believe so.

Q Has an attorney that you supervise ever been judicially determined to have provided ineffective assistance of counsel?

A I'm fairly certain, yes, but I'm not 100 percent on that.

MR. RAMSEY: I have no further questions.

MS. SHIPMA: I have a few questions for you, Rod.

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QUESTIONS BY MS. SHIPMA:

Q Did I understand you earlier to say that there are many times that your attorneys go to preliminary hearings without having received discovery?

A Yes, that happens.

Q And why does that happen?

A Well, for one the rules don't provide that the State has to provide that prior to the preliminary hearing. In fact, we filed that request for discovery and it's timely only after the case has reached circuit court. Now, with our relationship with certain prosecutor's offices, they do sometimes provide that to us upon our e-mailed request. They will get it to us ahead of time, but not always.

Q Regarding the complaint letters that you get from clients regarding your attorneys, how frequently do you receive complaints letters?

A Every week.

Q Multiple times a week?

A Usually.

Q Multiple letters a week?

A Yes.

Q How long might a completed case remain open in the case management system before it's closed in your office?

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A Well, that -- it used to be way longer than I would have wanted. I mean, they would be in there sometimes for weeks before they would get closed in the system. With the additional part-time person that we have been able to add on -- I think Sharon came back on part-time right around maybe the start of the fiscal year around July -- we were able to catch up on that. And another part that was holding us back on getting those cases closed in the system is that's one of those things that the attorneys would back burner getting those files up there to be closed because they were done with it. They needed to move on to other stuff and they figured that's just an administrative task that could wait. Especially with doing these waitlists though, I made it clear to the attorneys that that's something that they needed to give a priority to. I wanted our numbers to be much more accurate and they have done a much better job, especially over the last three or four months, of getting those cases up there to close.

Q How long do you think now, since the beginning of the fiscal year and since the waitlist, how long do they remain open now?

A Within a week I'd say they are being closed in the system.

Q And prior to your getting the part-time

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person, you said sometimes it might be weeks. Would it be more than a month?

A I'd say it probably happened sometimes, yes.

Q Do you know if that happened with any type of frequency on a regular basis?

A Sometimes, yes. Also depending on certain attorneys too. Some back-burnered that task more than others.

Q Would it be more than two months?

A I'm not sure. I would hope not, but it's possible.

Q I guess anything is possible. Do you believe that there are clients that your attorneys represent who aren't indigent pursuant to our regulations?

A I'm sorry, ask that again.

Q Do you believe that there are clients that your attorneys are representing that don't meet the indigent standards set forth in the regulations?

A I suspect that.

Q Do you think that happens frequently?

A No.

Q Do you think that weeding those out would cause a significant decrease in your caseload?

A Certainly not significant, no.

Q Does Greene County house federal prisoners?

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A They do.

Q Is that the reason for their jail overcrowding; do you know?

A I would say it certainly contributes to it.

Q Explain why they would do that?

A Well, they get reimbursed for federal prisoners and the rate they get reimbursed for federal prisoners outweighs the cost of housing the state prisoners elsewhere, so they still end up making money.

Q I want to show you -- refer you back to Exhibit 53. That was the e-mail that you sent to the judges on October 10. Do you have that in front of you?

A Yes, it's right here.

Q Was it solely your concerns regarding the process in Section 600.063 that caused you to write this letter rather than filing an .063 motion?

A Well, it was my concerns about our attorneys saying that they all agreed that they were violating the ethical rule is the only reason why I wrote that letter.

Q So it wasn't just because you didn't like .063 that you wrote this letter instead of filing an .063?

A That's correct.

MS. SHIPMA: That's all.

MR. SHAHABIAN: Just a few more follow-up questions.

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QUESTIONS BY MR. SHAHABIAN:

Q You mentioned during Mr. Ramsey's examination that the Greene County prosecutor's office added more staff, more attorneys. Do you know roughly how many attorneys were added?

A I don't.

Q But caseloads went up after more staff were added to the local prosecutors office?

A Yeah, they went up pretty dramatically.

Q In your opinion, how many more attorneys would you need to get caseloads to manageable standards in light of existing caseloads?

A I would probably need about double the number of attorneys I have right now.

Q You mentioned that you don't have enough support staff to prevent your attorneys from spending significant time on administrative task. Roughly how much time would you say assistant public defenders in your office spend on administrative caseload task versus attorney task?

A I couldn't give you any kind of guess as to percentage. I just know they do have to do a lot of that.

Q Do you have a rough estimate of how many more support staff you would need to free up attorney time spent on administrative caseload task?

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A Support staff, I would need more than double easily.

Q What kind of support staff would you need?

A I would need far more office support assistants to do the calendaring and all the e-filing and all that sort of thing; all those clerical tasks. In a perfect world where I also had the additional attorneys and they were focusing on all of their cases as they should be, I would need more investigators too.

Q And you have two investigators currently?

A That's correct.

Q Do you have a sense of how many more investigators you would need to provide adequate investigative assistance?

A In this hypothetical where we had more attorneys and they were focusing on all of their cases; more than double number of investigators.

Q Would triple be enough?

A I don't know. In this hypothetical fantasy world, I don't know how to live yet. So, yeah, I would say probably triple.

Q You mentioned in response to questioning from Ms. Shipma that you receive complaints from clients every week, multiple complaints a week. What are the most typical kinds of complaints you receive?

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A The No. 1 complaint across the board is lack of communication. That predominates. I'd say, if I'm just ball parking, I'd say 90 percent of the complaint letters I get is just that; I haven't heard from my attorney.

Q Do the complaints offer more specific reasons why they want to talk to their attorneys other than I haven't heard from them?

A Yes. They will mention things like, you know, has there been any talk of an offer from the State. When is bond reduction request going to get filed. All kinds of questions, I mean, you know, that they have about their case that they want answered and only their attorney can really answer that for them.

Q You mentioned bond reduction request. Do you think attorneys in your office have adequate time to file bond reduction motions?

A File, yes. Properly prepare for, no.

Q Why not properly prepare for?

A Because I have seen the bond reduction request. I know -- they haven't spent enough time, not just with their client, but also maybe interviewing the client's family, finding out more about the background of their client, maybe getting some records, school records, military records; that sort of thing. That sort of thing is not done. Generally these bond reduction arguments are

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very quick off-the-cuff arguments and they are not done as elaborately as they should be to paint a full picture for the judge as to whether or not this person is a flight risk -- excuse me -- or danger to the community.

Q Mr. Ramsey asked you if you had any experience or if you knew of any cases from your office where someone was found to have provided ineffective assistance of counsel. In your experience -- and not just limited to attorneys in your office -- do excessive caseloads contribute to cases where attorneys are unable to be provide effective assistance and are adjudicated to have not provided effective assistance?

A Yes.

MR. SHAHABIAN: I have no further questions.

MR. RAMSEY: Just two.

QUESTIONS BY MR. RAMSEY:

Q Have you ever gotten to a point in a filing or in preparing for a particular trial where you have felt 100 percent ready and prepared to do whatever it is that you were about to do?

A Hundred percent?

Q Hundred percent.

A No.

MR. RAMSEY: No further questions.

MR. SHAHABIAN: Thank you, Mr. Hackathorn.

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THE VIDEOGRAPHER: This concludes the videotaped deposition of Rod Hackathorn at 12:52 p.m. We are off the record.

(Deposition concluded at 12:52 p.m.)

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CERTIFICATE OF REPORTER

STATE OF MISSOURI)
) ss.
COUNTY OF GREENE)

I, Jenna Petree, do hereby certify that the witness whose testimony appears in the foregoing deposition was taken by me to the best of my ability and thereafter reduced to typewriting under my direction; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition was taken, and further that I am not a relative or employee of any attorney or counsel employed by the parties thereto, nor financially or otherwise interested in the outcome of the action.

Court Reporter

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Exhibit D

State of Missouri

Public Defender Commission

"Thou shalt not ration justice."
Judge Learned Hand

Fiscal Year 2017
Annual Report

The Right to Counsel and the State Public Defender System in Missouri

Michael Barrett, Director, Missouri State Public Defender
Joel Elmer, Deputy Director
Greg Mermelstein, Deputy Director
Kathleen Lear, Comptroller

Http://www.publicdefender.mo.gov

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103 N Gadsden St, Tallahassee, FL 32301
www.f pda.org

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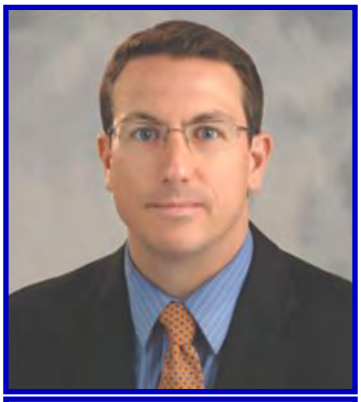
A Message from the Director….



Michael Barrett
State Public Defender

The foremost principles embodied in the U.S. Cons. tution are individual liberty and equal rights under the law. These essential guarantees, embedded in the Bill of Rights, is what binds us as Americans. Throughout our lives, we may come to know varied degrees of advancement, education, and wealth, but it is equality under the law and freedom that makes us uniquely American.

As lawyers for the poor, it is up to us to make certain that access to justice for all Missourians remains paramount. The Sixth Amendment to the U.S. Constitution, made applicable to the states through the 14th Amendment, makes it the State of Missouri's obligation to provide counsel to poor persons before the government deprives him or her of their liberty. The State seeks to meet this obligation through the establishment and operation of the Missouri State Public Defender System (MSPD).

Regrettably, the systematic underfunding of MSPD by the state has led to an artif cial increase in the state's prison system, making Missouri 8th highest in the rate at which it incarcerates its citizens. Missouri leads the country in the increase in its incarceration of women. Approximately 50% of those in prison are incarcerated for a non-violent offense. This is not demonstrative of a state that values liberty, human dignity, and small government.

It is not always about guilt or innocence. Oftentimes, the public defender works to come up with an alternative plan to incarceration when someone can be managed more effectively in the community, saving taxpayers millions and helping the client stay connected to both family and their employer in order to re-establish him or herself as a contributing member of society. These efforts are often aimed at addressing the very issue that is precipitating the alleged misconduct, such as alcoholism, drug addiction, or a mental health issue.

As Director of the Missouri State Public Defender System, it is my honor to not only advocate on behalf of the tens of thousands of Missourians represented by MSPD each year, but also on behalf of the hundreds of attorneys and support staff who work every day to protect liberty and ensure equality under the law.

Missouri Public Defenders:
Who We Are & What We Do…

What is the Missouri Public Defender System?

The Missouri State Public Defender System [MSPD] is a statewide system that provides legal representa. on to poor persons who are accused or convicted of state crimes in Missouri's trial, appellate, and Supreme courts. Carrying out these functions fulf lls the state's obligation to provide the right to counsel under the state and U.S. Constitutions to those who cannot afford it.

MSPD is an independent department of state government, located within, but not supervised by, the judicial branch. Instead, it is governed by a seven-member Public Defender Commission, each of whom is appointed by the governor. Commissioners serve six year terms and no more than four may be of the same political party. The Director of the Missouri State Public Defender System, Michael Barrett and Deputy Director, Joel Elmer, are appointed by the Public Defender Commission.

Who qualifies for a public defender?

The standard to qualify for public defender representation is a creature of both statute and rule that includes a number of objective and discretionary factors to determine whether someone can afford an attorney. The rule promulgated by the Public Defender Commission would deem someone eligible if their income was less than 100% of the Federal Poverty Guidelines. Other factors are also considered such as debt, assets, ability to post bond, public assistance, and dependents. If MSPD determines that an applicant is not indigent, he or she has the right to appeal to the court for an independent review of their eligibility.

Who works for MSPD?

MSPD employs 597 employees, 384 of whom are attorneys. The department is divided into a Trial Division, an Appellate/ Post-Conviction Division, and a Capital Division, each of which is described in greater detail on pages 15, 54, and 59, respectively.

Other staff includes investigators, capital mitigation specialists, paralegals, legal assistants and clerks. An operations staff provides centralized information technology support, f scal, and human resources services to the 44 district offices located around the state, as well as managing MSPD's contracting of conf ict cases to private counsel, which is described in more detail on page 63.

Mission Statement

The mission of the Missouri State Public Defender System is to provide high quality, zealous advocacy for indigent people who are accused of crime in the State of Missouri.

The lawyers, administrative staff, and support staff of the Public Defender System will ensure that this advocacy is not compromised.

To provide this uncompromised advocacy, the Missouri State Defender System will supply each client with a high-quality, competent, ardent defense team at every stage of the process in which public defenders are necessary.

THE MISSOURI PUBLIC DEFENDER COMMISSION

H. Riley Bock
Chair

H. Riley Bock, Chair—A f . h-generation attorney, Riley Bock is a life-long resident of New Madrid, MO, a graduate of the University of Missouri, and a former Captain in the Missouri National Guard. He served as the New Madrid County elected Prosecuting Attorney for four terms while also maintaining a small civil practice representing a number of county and regional public entities. After retirement, Mr. Bock served as the New Madrid County Public Administrator for f ve years and taught American History, English Composition, and Literature at the New Madrid County Central High School. He has also served on a number of boards and commissions, including The State Historical Society of Missouri, the Trail of Tears National Advisory Board, the Board of Directors for Camp Marymount, The Optimist Club, and the New Madrid Historical Museum. He is currently the president of the Three Rivers College Foundation Trust and serves as both volunteer and chair of the Higgerson School Historical Site, a one-room school that once served the Higgerson Landing community along the Mississippi River. Mr. Bock was appointed to the Public Defender Commission in January, 2014, and is in his f rst term as Chair.

Charles R. Jackson—One of Missouri's f rst African-American highway patrolmen, Charles Jackson spent 30 years in law enforcement. During that time, he rose to serve as the Captain and Commanding Officer of Troop F, the Patrol's Director of Public Information, and Director of the State Traffic Division before topping off his career with a gubernatorial appointment to serve as Missouri's Director of the Department of Public Safety. In that role, he oversaw 15,000 employees and administered a $600 million budget spanning Missouri's Highway Patrol, Water Patrol, Capitol Police, State Fire Marshall, Alcohol and Tobacco Control Division, Veteran's Commission, Gaming Commission, the State Emergency Management Agency, and the Missouri National Guard. He also developed Missouri's statewide "Amber Alert" system and was granted national security secret clearance from the Department of Homeland Security. A graduate of the FBI National Academy and the U.S. Army War College as well as Lincoln University, Mr. Jackson is a past President of the Association of Retired Missouri State Employees and served on Advisory Boards to both Fulton State Hospital and the University of MO School of Social Work. He currently resides in Jefferson City, MO and is the founder and current pastor of The Guiding Light Missionary Baptist Church of Christ in Fulton, MO. Mr. Jackson was appointed to the Public Defender Commission in July, 2014, and is in his f rst term as Vice Chair.

Charles R. Jackson
Vice Chair

THE MISSOURI PUBLIC DEFENDER COMMISSION

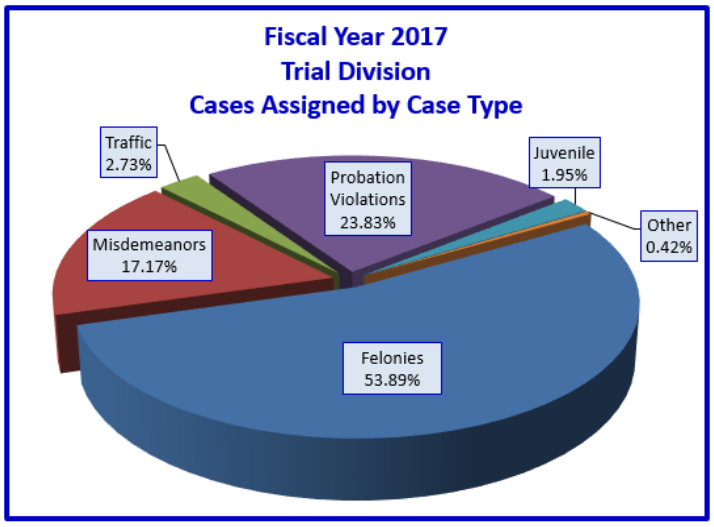
Craig Chval
Secretary

Craig Chval—A graduate of the University of Notre Dame and Illinois Institute of Technology/Chicago-Kent College of Law, Craig Chval is Associate General Counsel for Veterans United Home Loans in Columbia, MO. He began his practice of law as a civil trial associate in Chicago, before joining the prosecuting attorney's office in Illinois' second-largest county of DuPage, where he became chief of the gang crimes prosecution unit. He went on to serve as Special Counsel and Criminal Justice Policy Advisor to the Illinois Attorney General, and staffed the Governor's Commission on Street Gangs, ultimately becoming the f rst executive director of the Illinois Gang Prevention Center, which developed and implemented pilot gang-prevention programs across Illinois. In 2002, he accepted a position with the National Association of Attorneys General in Washington, D.C., where he reviewed and developed legislative proposals for Congress and assisted in the development of cybercrime training for prosecuting attorneys. When his wife accepted a faculty position at the University of Missouri, he joined the Office of the Missouri Attorney General. There he led a unit specializing in the investigation and prosecution of computer-related crimes. A founding member of the National Steering Committee for the FBI's Regional Computer Forensic Laboratory program, he became a well-known author and presenter on topics pertaining to cybercrime, electronic discovery, and data management and security. Upon leaving the Attorney General's Office, he co-founded the Chval Law Group in Columbia, MO specializing in legal issues pertaining to computer security. In 2011, he made the move to Veterans United. Mr. Chval was appointed to the Public Defender Commission in July, 2014, and is in his f rst term as Secretary.

A. Crista Hogan
Member

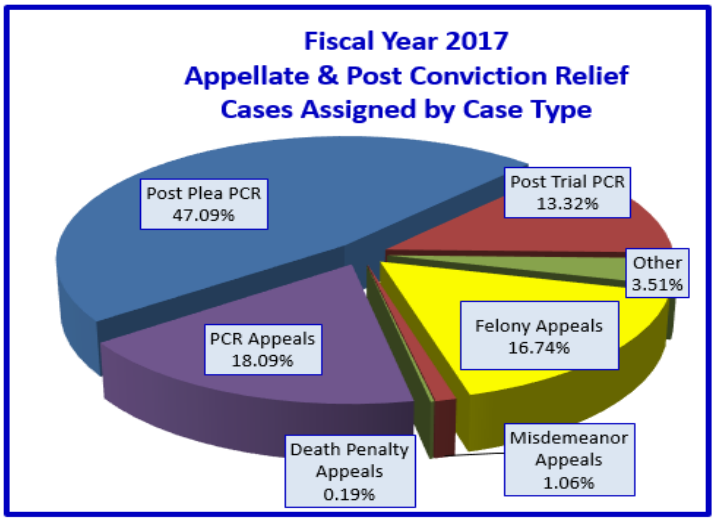
A. Crista Hogan – Named one of Springf eld's 20 Most Inf uential Women by the Springf eld Business Journal, Crista Hogan is the Executive Director of the Springf eld Metropolitan Bar Association. Prior to accepting that appointment in 2001, Crista served as Vice President of Hogan Land Title Company and as Corporate Counsel for O'Reilly Automotive. She also owned and operated RCT Realty, as well as maintaining a solo legal practice for three years, where she specialized in real estate, estate planning and probate. She taught Managerial Economics and Personal Effectiveness as an adjunct professor in Webster University's M.B.A. program and served on Webster University's Advisory Board. She is a past President of the Springf eld Junior League, PAGE (Parents and Advocates of Gifted Education), and the Kitchen Foundation, as well as former Chair of the Greene County Young Republicans. She has served on the Board of Directors for the Ozarks Literacy Council, Habitat for Humanity, T.A.R.G.E.T., and the National Alliance for the Mentally Ill, and was appointed by Governor Blunt to the Hispanic Business Trade and Culture Commission. She is the recipient of a Luminary Award from the National Association of Bar Executives and a Community Leader Award from the Daughters of the American Revolution. Ms. Hogan holds degrees from George Washington University and Tulsa University and is a graduate of the Greater Ozarks Leadership Development Program. She was appointed to the Public Defender Commission in July, 2014

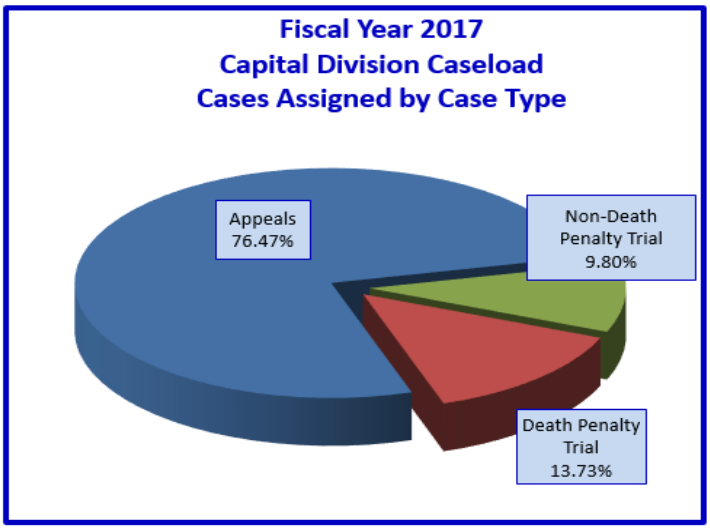
Correspondence to the Public Defender Commission may be sent to:
Public Defender Commission
231 East Capitol
Jefferson City, MO 65101



Trial Division	
# of Offices	33
Cases Carried Forward into Fiscal Year 2017	30,611
# of Assigned Cases	79,714
# of Attorney FTE	320.00

Appellate/PCR Division	
# of Offices	6
Cases Carried Forward into Fiscal Year 2017 (Does not include those waiting opinions)	2,177
# of Assigned Cases	2,079
# of Attorney FTE	39.00





Capital Division	
# of Offices	3
Cases Carried Forward into Fiscal Year 2017	92
# of Assigned Cases	51
# of Attorney FTE	16.00

Missouri State Public Defender System

Cases Assigned by Case Type

Fiscal Year	Murder 1st	Other Homicide	Felony	Murder + Felony Caseload	Misdemeanor	Juvenile	PCR	Other	Probation Violation	Appeals	Total Opened	Total Closed
FY17	179	195	45,364	45,738	16,487	1,617	1,264	458	19,405	843	85,812	78,629
FY16	187	138	42,276	42,601	16,121	1,677	829	204	18,557	766	80,755	71,934
FY15	167	148	37,879	38,194	14,853	1,831	916	174	16,831	799	73,598	71,464
FY14	129	138	38,554	38,821	15,228	1,830	939	166	17,460	752	75,196	72,197
FY13	152	207	38,785	39,144	16,692	1,670	986	238	18,477	792	77,999	79,985
FY12	121	197	38,551	38,869	20,948	1,923	1,212	159	20,320	966	84,397	81,871
FY11	148	149	35,753	36,050	22,767	1,893	1,088	119	20,066	913	82,896	80,137
FY10	161	164	34,781	35,106	24,768	2,393	1,141	131	20,147	930	84,616	81,346
FY09	121	180	33,226	33,527	25,181	2,513	1,264	181	19,518	898	83,082	81,704
FY08	158	154	34,766	35,078	26,098	2,715	1,061	182	19,555	716	85,405	85,116
FY07	174	161	35,109	35,444	27,816	3,380	828	129	19,157	743	87,497	85,133
FY06	138	146	35,339	35,623	28,227	3,676	838	46	19,412	710	88,532	83,260
FY05	156	124	33,282	33,562	28,931	3,881	937	120	20,012	688	88,131	87,180
FY04	154	140	34,422	34,716	28,018	4,258	807	98	20,263	756	88,916	86,356
FY03	195	114	35,425	35,734	25,807	4,147	806	103	18,479	832	85,908	81,059
FY02	163	132	33,183	33,478	25,147	3,918	802	64	18,047	750	82,206	77,165
FY01	182	125	29,934	30,241	22,903	4,488	711	82	17,663	698	76,786	73,438
FY00	147	109	28,019	28,275	24,119	4,998	763	76	16,768	739	75,738	69,591
FY99	182	108	28,892	29,182	23,721	4,629	797	112	14,488	809	73,738	74,570
FY98	196	87	31,591	31,874	24,676	4,270	674	138	14,141	689	76,462	74,495
FY97	169	79	29,663	29,911	21,912	4,075	513	156	13,437	839	70,843	67,870
FY96	175	88	30,198	30,461	23,069	3,612	707	178	11,444	1,038	70,509	70,664
FY95	256	109	27,688	28,053	17,696	3,916	719	165	9,362	1,138	61,049	61,710
FY94	255	152	25,338	25,745	17,852	3,374	682	201	8,225	1,017	57,096	52,453
FY93	301	136	24,402	24,839	15,883	3,146	766	249	7,301	872	53,056	52,363
FY92	282	37	25,458	25,777	19,974	3,372	1,129	167	5,321	569	56,309	55,651
FY91	193	63	21,304	21,560	13,941	2,713	588	169	5,051	820	44,842	49,038
FY90	227	109	23,336	23,672	14,627	3,300	732	369	5,834	1,094	49,628	46,425
FY89	193	149	20,838	21,180	12,902	3,298	1,342	418	5,074	1,243	45,457	42,532
FY88	202	161	20,640	21,003	12,427	3,455	1,006	470	4,475	920	43,756	40,117
FY87	199	145	19,254	19,598	11,736	3,564	755	443	4,308	728	41,132	37,081
FY86	166	175	17,042	17,383	10,602	3,328	612	611	3,815	608	36,959	34,491
FY85	152	172	15,397	15,721	9,126	3,500	543	522	3,293	632	33,337	32,410
FY84	176	175	15,048	15,399	9,256	3,058	534	499	2,878	506	32,130	31,730

Missouri Public Defender
Caseload Relief Efforts Timeline

2005	MO Bar Task Force on the Public Defender was created in response to years of increasing caseload and turnover rates with no corresponding increase in staffing
2006	American Bar Association Ethics Advisory Opinion on Public Defender Caseload; Senate Interim Committee on the Public Defender
	MO Bar Volunteer Attorney Program Instituted
	Mo Personnel Advisory Board report shows MO PD salaries approximately 35% lower than comparable positions in surrounding states
2007	Exploration of Court Operating Rule to Limit Public Defender Appointment
	$1.15M to contract case overload was added to PD budget by Legislature
2008	PD Commission enacts administrative rule regarding excessive caseload.
	Springfield Metropolitan Bar Association initiates volunteer attorney project
	Western District Court of Appeals rules Public Defenders enjoy no immunity from malpractice liability lawsuits by virtue of being state employees
2009	Mo Legislature adopts and Governor vetoes – caseload Limit legislation
	Legislature authorizes conversion of contracting funds to hire 12 new attorneys
	Second MO Bar study completed
	US Attorney General cites MO as an example of a broken indigent defense system
	Mo Supreme Court rules Public Defenders can refuse excess cases, but not by type of case
2010	MSPD receives $250,000 in additional funds to hire support staff.
	Notice of impending defender unavailability given to 22 Judicial Circuits.
	First Public Defender Offices refuese new cases. Litigation ensues.
2011	MSPD receives an additional $250,000 to hire support staff
	Office closures to new cases on hold pending outcome of writ litigation
2012	MSPD receives $441,941 in additional contracting funds
	Missouri Supreme Court Rules Judge erred in overriding Public Defender's notice of unavailability for additional cases
2013	MSPD begins limiting availability of offices to take on new cases under new Supreme Court ruling. 25 Judicial Circuits adopted administrative orders to triage cases.
	Auditor releases audit critical of PD reliance on "unsupported" national caseload standards for determining office closures to new cases.
	Legislation enacted that voids the Public Defender Commission's excessive caseload rule and establishes a new procedure that requires judicial approval for public defenders to turn away excess cases.
	National Juvenile Defender Center Assessment of Missouri reveals significant deficiencies in juvenile defense representation.
2014	$700,000 of contracting funds moved from MSPD to OSCA for pilot projects. OSCA declines to spend funds citing conflict of interest.
	RubinBrown completes ABA funded MSPD Workload Study. The Missouri Project.
2015	MSPD receives $3.4 million from General Assembly for contracting out conflicts to Private Attorneys. Vetoed by the Governor. Veto override by the General Assembly. Funds withheld by Governor.
2016	General Revenue Appropriations Core Cut by $3.47 million
2017	$4.5 million added to General Revenue Appropriations - $3.5 million withheld by the Governor
2018	$3.5 million core restoration. Plus $1 million added to added to General Revenue. Net result is $4.5 M additional GR funds available. No Withholdings

Missouri Public Defenders:
Salary Information

Assistant Public Defender Starting Salaries	
Assistant Public Defender I	$39,708
Assistant Public Defender II	$46,992
Assistant Public Defender III	$52,116
Assistant Public Defender IV	$69,528

Providing effec. ve assistance of counsel in each case demands a well-trained, highly experienced corps of dedicated attorneys and support staff. However, excessive caseloads and low salaries lead to a high turnover rate among attorney staff, which makes fulf lling this important mission difficult, if not impossible. After MSPD began hitting turnover rates of 20-22% in the mid-2000's, repositioning salary adjustments were enacted to bring salaries to the levels shown above. The fact that just these small changes were enough to make MSPD's attorney turnover drop several signif cant percentage points -- though still among the highest turnover classif cations in state government – is proof that most public defenders do want to remain in public service if at all possible. However, staggering student debt loans ($60,000—$200,000) make it extremely difficult for even those who are passionate about public interest work to continue with MSPD if they want to also make loan payments and provide for their families.

The recession that hit in 2008 was actually much more effective in reducing attorney turnover. Private law f rms stopped hiring and senior attorneys on the verge of setting up their own private practice put plans on hold, given the state of the economy. This combination gave MSPD a temporary reprieve from the revolving door, dropping turnover as low as 7.5%; but the reprieve was only temporary. The underlying factors that have perennially caused high attorney turnover continue. Missouri's public defenders still struggle with staggering student loan debt and much lower salaries than what other government lawyers receive. Caseloads are still overwhelming and lawyers still enjoy no immunity from either civil liability or disciplinary action for their failures to handle that caseload effectively, no matter how impossible that task might be.

The District Defenders who head each of MSPD's District offices around the state are equally far behind their counterparts, both within the Missouri criminal justice system and in the f eld of public defense nationally. Missouri's full time elected prosecuting attorneys are required by state statute to be paid the same as an Associate Circuit Judge, $136,402. By comparison their Public Defender counterparts are paid an average of a mere $79,601. This level of pay inequity between the defense and prosecution sides of the criminal justice system is neither equitable nor sustainable.

Public Defender Appropriations

General Revenue: Missouri State Public Defender (MSPD) funding is almost en. rely from state general revenue. It comes in three appropriations:

Personal Service: Used to pay the salaries of all MSPD employees.

Expense & Equipment: Used to pay the overhead costs of operations, such as office supplies and equipment, employee travel expenses, and rent and utilities for the statewide offices.

Litigation & Contracting Expenses: Used to pay the cost of contracting cases out to private counsel and litigation expenses on both MSPD cases and those cases contracted out to private counsel. Litigation expenses include the cost of experts, depositions, transcripts, exhibits, independent testing of evidence, etc.

Legal Defense and Defender Fund: This appropriation is not money given to MSPD but the authorization to spend money collected by MSPD up to the ceiling of the appropriation. The collections associated with this fund are the result of Section 600.090 RSMo, which requires public defenders to collect fees from clients receiving public defender service. Fees are deposited into the Legal Defense and Defender Fund and used to fund all public defender training as well as pay for such miscellaneous expenditures as computer lines, WestLaw, bar dues for the system's 376 attorneys, etc. In FY17 MSPD collected $1.417 million through client payments.

The personal service component of the LDDF appropriation authorizes MSPD to pay the salaries of two employees, the system's Director of Training and the Training Assistant, out of the moneys collected rather than through the general revenue personal service appropriation.

Debt Offset Escrow Fund: This is not an appropriation of actual money, but an authorization for MSPD to collect funds through the state's debt offset program. Under this program, taxpayers due a refund of state income tax who owe a debt to the state may have their refund intercepted and used to pay down the debt instead. MSPD participates in this program to collect payments on the fees described above. The money collected through this program is not in addition to the LDDF collections, but a subset thereof.

Grants: Another 'permission' appropriation, rather than actual money appropriation, this authorizes MSPD to collect up to $125,000 in grants from the federal government or other sources. The last time MSPD collected a federal grant was in the mid-1990's to help start-up an Alternative Sentencing Program of social workers to develop client-specif c sentencing plans as a way to reduce recidivism. That program proved successful and was picked up and funded by the state after the federal grant expired. Unfortunately, the growing caseload crisis and attorney shortage this past decade required MSPD to dismantle the program in order to turn the social worker FTE into more attorney positions.

Actual Funding: In all, in FY17, MSPD received a total of $42.914 million ($39,414,146 released) from the combination of general revenue ($41,497,581, of which $3,500,000 was withheld and not released by Governor Nixon) and actual collections under the LDDF program ($1,416,566).

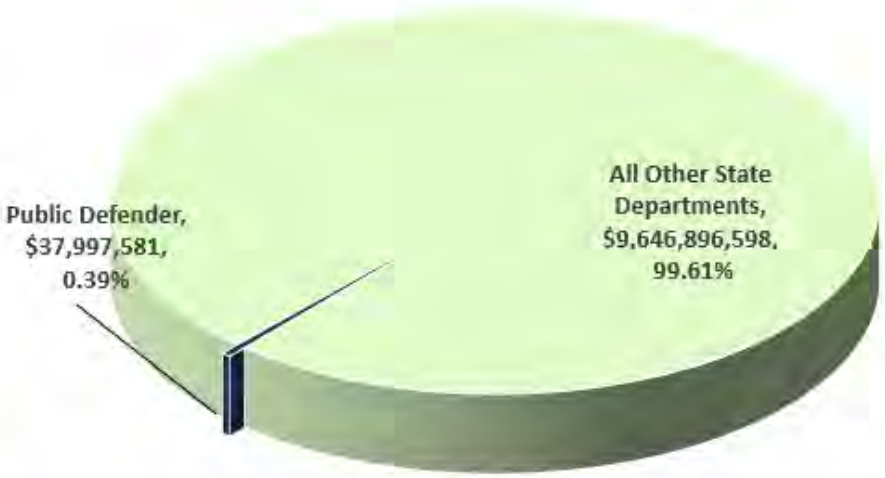
State Public Defender General Revenue Appropriations

Fiscal Year	Total Amount	Total FTE
1994	$13,770,464	410.38
1995	$15,744,183	424.38
1996	$18,480,875	437.88
1997	$22,354,019	478.38
1998	$22,935,946	507.13
1999	$26,918,367	527.38
2000	$28,473,301	548.88
2001	$29,713,513	556.13
2002	$29,808,922	556.13
2003	$29,808,922	556.13
2004	$28,111,874	558.13
2005	$28,463,282	558.13
2006	$28,463,282	558.13
2007	$30,493,582	558.13
2008	$32,680,606	558.13
2009	$34,069,815	558.13
2010	$34,207,100	570.13
2011	$34,707,100	570.13
2012	$34,707,100	585.13
2013	$36,321,545	585.13
2014	$35,290,793	585.13
2015*	$39,739,909	585.13
2016	$36,422,010	585.13
2017**	$41,947,581	597.13

* $2,972,238 Withheld by the Governor and Not Released

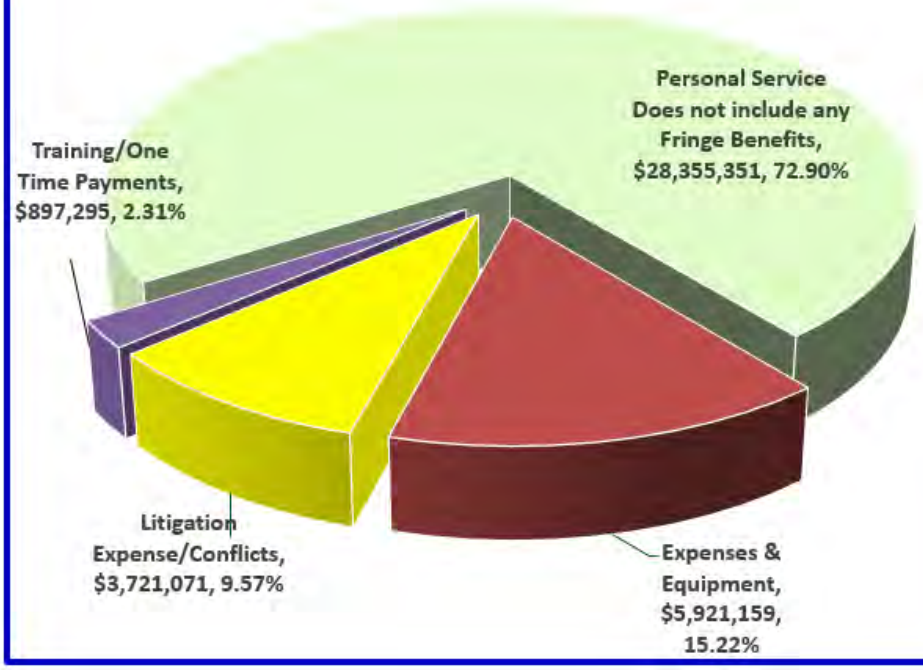
* *$3,500,000 Withheld by the Governor and Not Released

Fiscal Year 2017
Total State of Missouri
General Revenue Appropriations

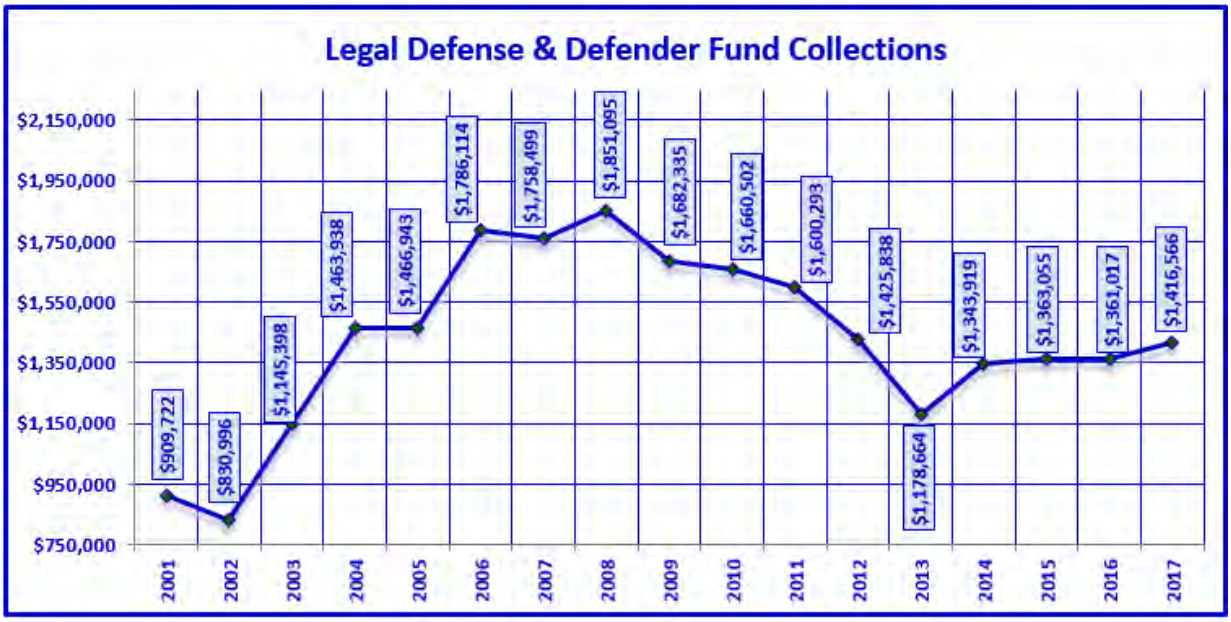


Note: Public Defender General Revenue Appropriation is less than 1/2 of 1% of the State's General Revenue Appropriations.

Fiscal Year 2017
Public Defender Expenditures



Collections from clients for the indigent defense services provided to them are generally collected through two revenue streams. Approximately 40% of collections comes through state income tax refund intercepts by the Department of Revenue. The remainder is generally collected by courts who collect payments of the Public Defender fees along with court costs at the close of a case.



HOUSE BILL NO 2012

98TH GENERAL ASSEMBLY

Fiscal Year 2017

Section 12.400. To the Office of the State Public Defender

For the purpose of funding the State Public Defender System

Personal Service and/or Expense and Equipment Personal Service $29,875,223 – E & E $7,901,287	$37,776,510
For payment of expenses as provided by Chapter 600, RSMo, associated with the defense of violent crimes and/or the contracting of criminal representation with entities outside of the Missouri State Public Defender System	$3,721,071
From General Revenue Fund	$41,497,581
For expenses authorized by the Public Defender Commission as provided by Section 600.090, RSMo	
Personal Service	$135,187
Expense and Equipment	$2,850,756
From Legal Defense and Defender Fund	$2,985,943
For refunds set-off against debts as required by RSMo 143.786, From Debt Offset Escrow Fund	$1,200,000
For all grants and contributions of funds from the federal government or from any other source which may be deposited in the State Treasury for the use of the Office of the State Public Defender From Federal Funds	$125,000
Total (Not to exceed 597.13 F.T.E.)	$45,808,524

The average direct cost of all cases disposed by the State Public Defender (including Death Penalty Representation) in Fiscal Year 2017 was $396.52. The Trial Division Average was just $325.31.

Total costs include personal service, travel, supplies, expert witnesses, copier costs, postage, voice/ data communications and some building costs.

Fiscal Year 2017
Trial Division Average Cost Per Case

District	Location	Total Costs	FY17 Cases Assigned	Cost Per Assignment	FY17 Cases Disposed	Cost Per Disposition
2	Kirksville	308,598	667	$462.67	672	$459.22
4	Maryville	276,260	716	$385.84	708	$390.20
5	St. Joseph	575,364	1,987	$289.56	1,983	$290.15
7	Liberty	924,185	3,232	$285.95	3,056	$302.42
10	Hannibal	463,893	1,600	$289.93	1,450	$319.93
11	St. Charles	625,529	2,211	$282.92	2,046	$305.73
12	Fulton	467,274	1,834	$254.78	1,871	$249.75
13	Columbia	1,049,211	3,456	$303.59	3,515	$298.50
14	Moberly	475,649	1,547	$307.47	1,497	$317.74
15	Sedalia	527,020	2,324	$226.77	2,287	$230.44
16	Kansas City	2,628,123	4,928	$533.30	4,155	$632.52
17	Harrisonville	661,094	2,606	$253.68	2,417	$273.52
19	Jefferson City	591,162	1,762	$335.51	1,806	$327.33
20	Union	474,069	1,497	$316.68	1,420	$333.85
21	St. Louis County	1,427,669	4,722	$302.34	4,446	$321.11
22	St. Louis City	2,185,268	4,262	$512.73	4,108	$531.95
23	Hillsboro	503,105	1,900	$264.79	1,840	$273.43
24	Farmington	752,165	2,921	$257.50	2,832	$265.60
25	Rolla	1,049,838	3,762	$279.06	3,592	$292.27
26	Lebanon	600,081	2,434	$246.54	2,411	$248.89
28	Nevada	422,730	1,574	$268.57	1,464	$288.75
29	Carthage	1,190,533	3,488	$341.32	3,348	$355.60
30	Bolivar	538,429	1,837	$293.10	1,864	$288.86
31	Springfield	1,559,678	6,055	$257.59	5,984	$260.64
32	Jackson	817,558	3,124	$261.70	2,931	$278.93
34	Portageville	339,260	1,240	$273.60	1,277	$265.67
35	Kennett	434,167	2,076	$209.14	2,015	$215.47
36	Poplar Bluff	541,727	2,144	$252.67	2,087	$259.57
37	West Plains	409,740	1,343	$305.09	1,400	$292.67
39	Monett	576,080	2,205	$261.26	2,163	$266.33
43	Chillicothe	762,705	1,991	$383.08	1,913	$398.70
44	Ava	358,550	1,242	$288.69	1,173	$305.67
45	Troy	451,842	1,027	$439.96	1,021	$442.55
	Trial Division Totals	24,968,555	79,714	$313.23	76,752	$325.31

Cost variances between offices o. en occur due to the range of conf ict county assignments.

Fiscal Year 2017
Commitment Defense Unit Average Cost Per Case

District	Location	Total Costs	FY17 Cases Assigned	Cost Per Assignment	FY17 Cases Disposed	Cost Per Disposition
71	Civil Commitment Unit	$406,393	30	$13,546.42	24	$16,933.03

Fiscal Year 2017
Appellate Division Average Cost Per Case

District	Location	Total Costs	FY17 Cases Assigned	Cost Per Assignment	FY17 Cases Disposed	Cost Per Disposition
50	Columbia Appellate	704,138	379	$1,857.88	361	$1,950.52
51	St. Louis Appellate	704,233	424	$1,660.93	432	$1,630.17
52	Kansas City Appellate	409,560	174	$2,353.79	156	$2,625.39
67	Appellate/PCR Central A	784,133	502	$1,562.02	460	$1,704.64
68	Appellate/PCR Eastern B	361,685	358	$1,010.29	262	$1,380.48
69	Appellate/PCR Western B	292,272	242	$1,207.74	145	$2,015.67
	Appellate Division Totals	$3,256,021	2,079	$1,566.15	1,816	$1,792.96

Fiscal Year 2017
Capital Division Average Cost Per Case

District	Location	Total Costs	FY17 Cases Assigned	Cost Per Assignment	FY17 Cases Disposed	Cost Per Disposition
53	Columbia Capital	$916,335	2	$458,167.70	3	$305,445.13
54	St. Louis Capital	$918,588	6	$153,097.99	8	$114,823.49
55	Kansas City Capital	$703,151	4	$175,787.68	3	$234,383.57
		$2,538,074	12	$211,506.17	14	$181,291.00

Missouri Public Defenders:
Trial Division

These are the trial lawyers, the ones Missouri's indigent defendants first turn to upon being arrested and charged with a crime. The lawyers usually enter on their cases at or soon after a defendant's first appearance in associate circuit court following an arrest and will continue representing the defendant through the entire associate and circuit court process – up to and including any plea or trial and, if convicted, the sentencing hearing. The division consists of 33 district trial offices providing representation in 94.5% of the cases that make up the system's caseload.

MSPD's Trial Division attorneys handle every type of state criminal case in which the law includes a possible jail sentence among the penalty options for the court to consider -- from traffic offenses, conservation, and 'Minor in Possession of Alcohol' offenses up to and including non-capital murder cases. (Capital Murder cases are handled by the MSPD Capital Division.) The Trial Division also provides representation in petitions for release from the Department of Mental Health which is discussed further below.

A MSPD Trial Division Attorney's practice will generally include:

- bond hearings for those defendants who are confined pre-trial and seeking release, which can include verifying a place to stay, finding a sponsor the court is likely to trust, verifying an employer will take them back to work, etc.;
- preliminary hearings;
- tracking down and reviewing all of the state's discovery – police reports, lab reports, witness statements, hospital records, etc.;
- interviewing or deposing the key state's witnesses;
- locating and interviewing potential defense witnesses;
- tracking down records and evidence that may help establish the defendant's innocence;
- visiting crime scenes or re-enacting a described crime to see if the real thing matches up with what witnesses described;
- reviewing the results and original notes and data from forensic tests conducted by the state, determining whether an independent analysis by an expert who doesn't work for the state is warranted, and if so, finding that expert and arranging for the testing of the evidence;
- making initial assessments of the defendant's ability to understand the legal proceedings and, when the defendant exhibits developmental or mental disabilities, arranging for an expert to evaluate the defendant to make that determination;
- researching the law applicable to the defendant's case and litigating motions where it appears the defendant has not been properly charged, the law has not been followed, or the state is seeking to put on evidence of questionable admissibility or reliability;
- negotiating plea agreements with the prosecutor, as well as locating and litigating for sentencing options that could effectively address the problems that resulted in the defendant getting into trouble in the first place and thus reduce the likelihood of recidivism; or

- if the case is one that goes to a trial, conducting that trial, before either a judge or jury, as well as being present and advising the client concerning all the court appearances a defendant will be required to make as his case progresses through the criminal justice system;
- and of course meeting with and advising the client, and perhaps the client's family members if the client requests it, throughout each of the above processes.

As the above list indicates, an attorney's appearance in court on behalf of a defendant is a very small portion of the work they must do on a case. When they have too many cases, some of these steps are skipped or fall by the way side. The state's evidence is taken at face value, assumed by all to be accurate and mistakes fall through the cracks, uncaught and uncorrected. The result is that individual defendants and justice as a whole suffers.

Types of Cases Handled by the Trial Division

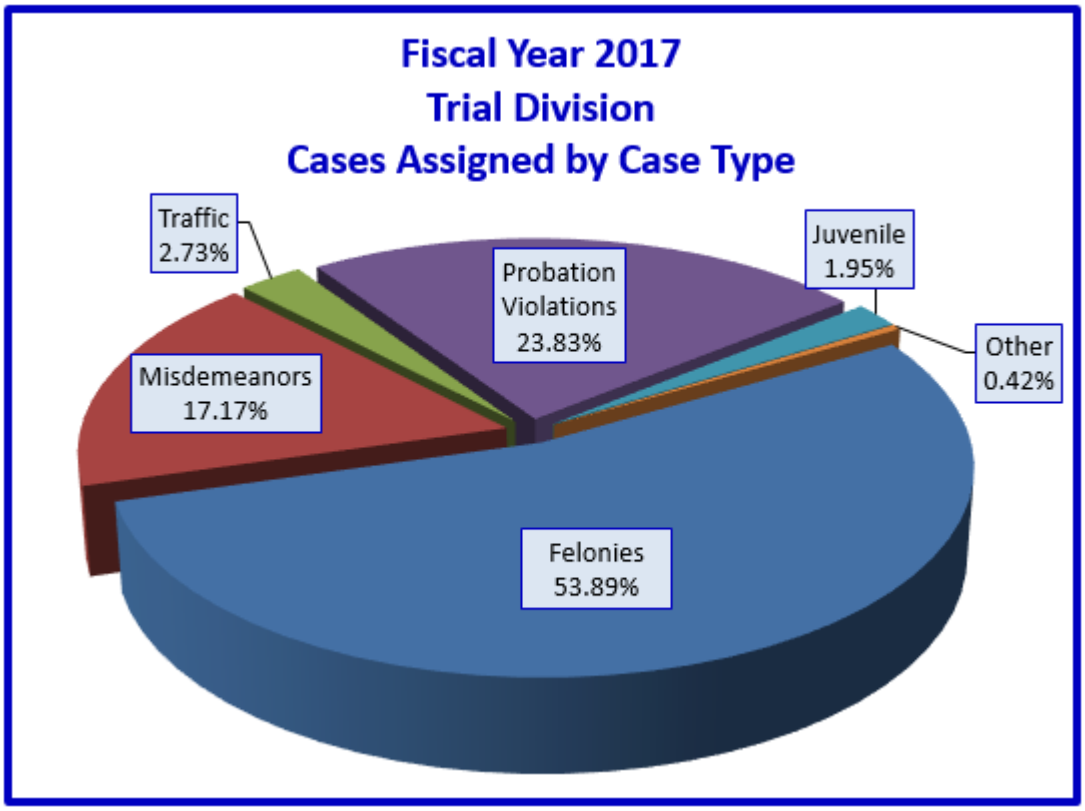
FELONY OFFENSES: As the pie chart on the following page shows, 52.24% of the Trial Division caseload in FY15 was made up of felony offenses. These are charges which carry penitentiary time, ranging from one to four years of imprisonment for the lowest level felonies up to life in prison without the possibility of probation or parole for the most serious offenses.

MISDEMEANOR OFFENSES: Misdemeanor offenses are those which carry jail time as a possible sentence, but any jail time imposed would be served in the county jail rather than the state's penitentiary. The maximum sentence on the highest level misdemeanor offenses is one year incarceration.

JUVENILE CASES: Missouri's juvenile courts have jurisdiction over anyone under the age of 17 who is accused of committing an offense that would be a crime if that person were an adult. They also have jurisdiction over various 'status offenses' – things that apply only to juveniles and not to adults. Examples of these would be Truancy and Incorrigibility. Some Missouri courts appoint private attorneys for juveniles who cannot hire their own attorneys, but a number of counties, particularly those in the urban areas with more signif cant juvenile caseloads, continue to rely on the public defender to provide defense representation to these children.

PROBATION VIOLATION CASES: These are cases in which the defendant has already been through the court system on an underlying charge and placed on probation. The new case arises from the allegation that the defendant has in some way violated the conditions of his/her probation. Violations can arise from new criminal behavior, whether or not any criminal charges were f led; so an arrest alone can be grounds for a probation violation. A defendant may also face a violation proceeding for what are known as technical violations, which are violations of conditions put in place at the time of the probation. These can include such things as failing a drug test, failure to report to the probation officer as instructed, failure to complete an ordered treatment or education program, etc.

PETITIONS FOR RELEASE: Another type of civil commitment in which the public defender is involved are those following a f nding of Not Guilty by Reason of Insanity [NGRI]. A defendant found to be NGRI is automatically committed to the Department of Mental Health for treatment. Petitions for Release are the requests by those so committed to now be released from the Department of Mental Health. Some who have already been released from the mental institution on a conditional release are asking to be unconditionally released, free of the ongoing supervision and conditions of the Department of Mental Health. The issue in both such petitions is whether the defendant's mental illness is sufficiently under control that he or she no longer poses a threat to themselves or to others. These petitions are litigated before a judge, rather than a jury.



FAQ: Why does MSPD count probation violations as separate cases when the courts and prosecutors do not?

It is the practice of Missouri's prosecutors and courts to hold open the original case out of which probation arose, for the duration of the probationary period. As a result, they then treat probation violations as simply another proceeding within the original case.

By contrast, it is the practice of MSPD and the defense bar as a whole to close out a case once the defendant is placed on probation. Neither group of defense attorneys, private or public, is willing or able to commit to continuing to represent, counsel, or maintain contact with that client over the course of his / her probation (which on a felony case can last up to f ve years) as would be ethically required of them as defense counsel if they maintained these as open cases for the duration of the probationary period.

If a probation violation is later f led, private defense attorneys generally expect a separate retainer in order to represent the defendant on that probation violation. This is why MSPD winds up with many probation violation cases in which the defendant had private counsel on the underlying charge. The defendant cannot come up

with the additional money to pay the private attorney to handle the new probation violation matter. By the same token, MSPD is seldom in a position to re-assign to the defendant the same attorney who handled the underlying charge in his case. In either situation, therefore, a new attorney-client relationship must be established just as in any other new case.

Any evidence of a probation violation is gathered and reported to the court and prosecutor by the probation officer. The review of that evidence, investigation of its accuracy, the review of the law that applies to the circumstances of this revocation proceeding and the investigation into and presentation to the judge of other sentencing alternatives in lieu of revocation is the obligation of defense counsel. If done correctly, this is very comparable to the work that is required in any other criminal case and therefore MSPD counts it as a case in its own right.

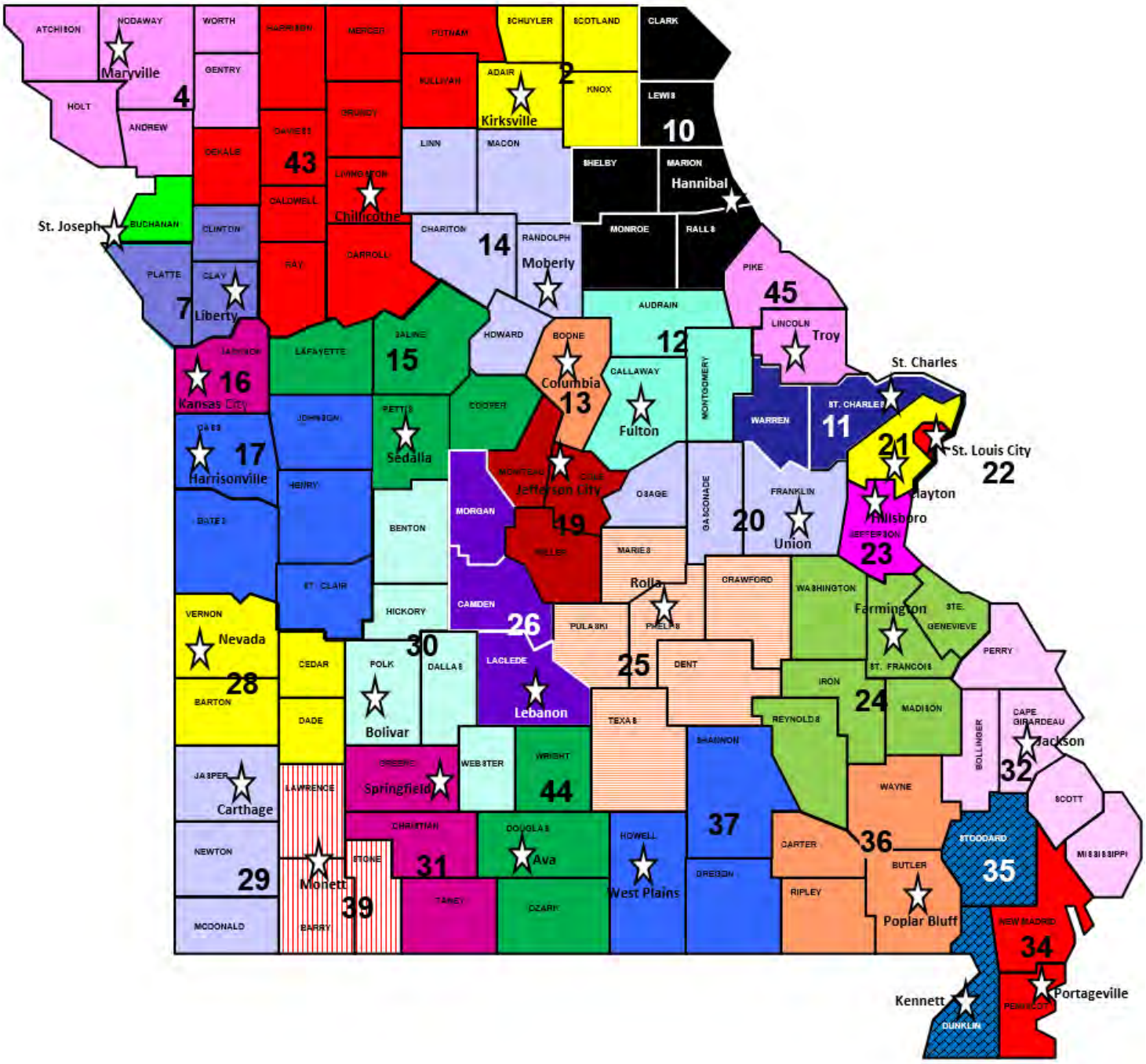
COUNTY VS CIRCUIT SYSTEMS

Missouri's 33 trial offices provide defense representation to indigent defendants in all of Missouri's 114 counties plus the City of St. Louis. Some of the urban offices serve only one county, but most of the offices serving rural counties are responsible for several counties. The office with the largest geographic spread is District 43, located in Chillicothe, which serves eleven counties. Most offices, however, cover between three and f ve counties.

Currently, the geographic areas covered by defender offices do not coincide with Missouri's judicial circuits, even though the district numbers assigned to each office will often be the same as that of one of the judicial circuits the office serves. For example, one public defender office may serve only two of the three counties in a particular judicial circuit, while also providing service in two counties from an adjoining judicial circuit.

This arrangement will be changing as the result of legislation enacted in the Spring of 2013. HB215 requires that the Missouri Public Defender Commission, which is responsible for determining where public defender offices are established and their boundaries of service, begin the move toward making public defender districts congruent with judicial circuits. A plan for implementing that change was submitted to the Legislature on December 2015 and f nal implementation of the revised districts is to be completed by December 31, 2021. Under the legislation, one district office may serve more than one judicial circuit, but circuits may not be split between more than one district office.

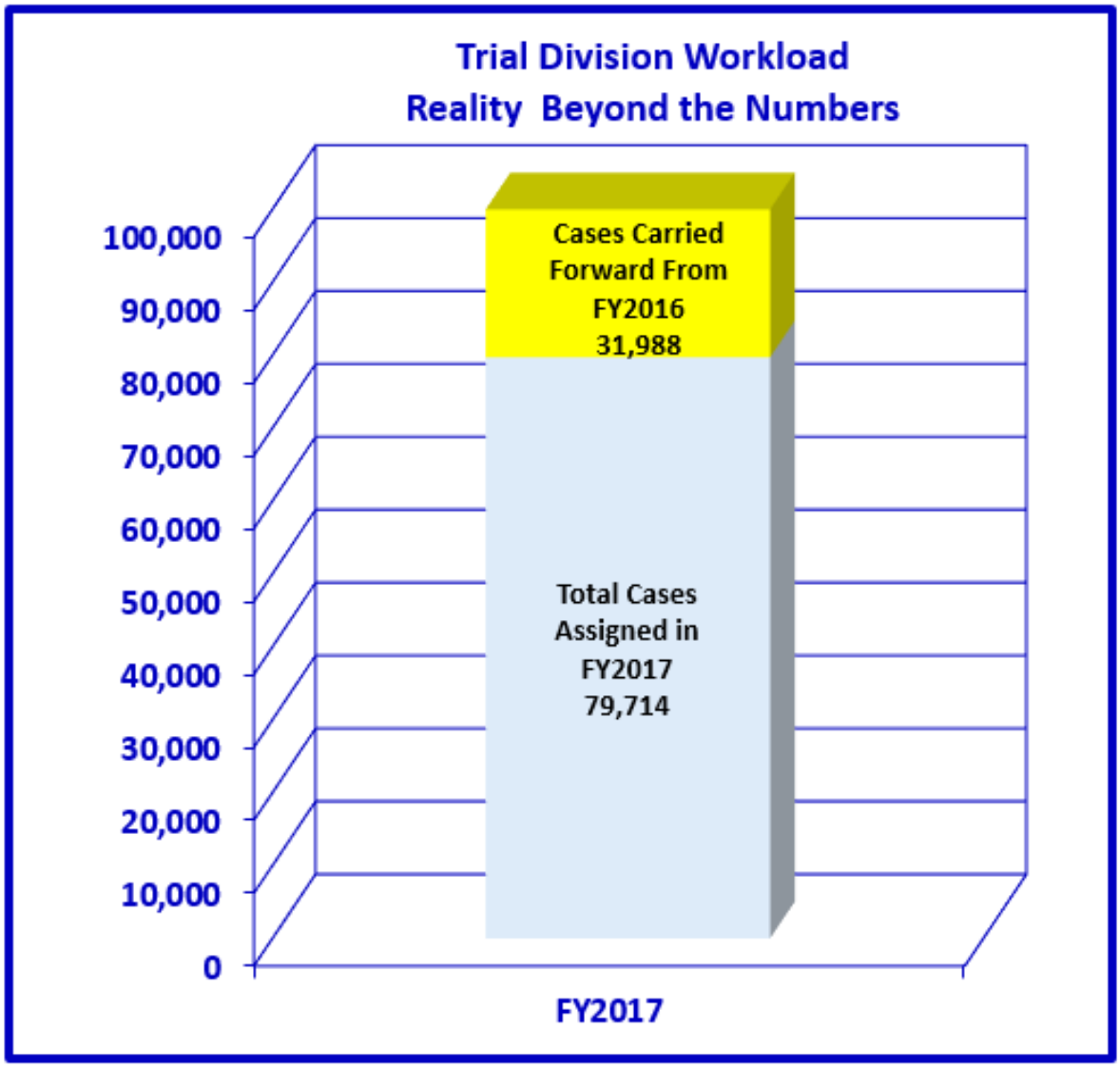
Public Defender Trial Division
District Map
Fiscal Year 2017



June 30, 2017

Fiscal Year 2017
- Trial Division -
Cases by Case Type

Case Type	Description	Opened Cases	Closed Cases
15	Murder - 1st Degree	161	148
20	Other Homicide	173	142
30D	A - B Felony Drug	2,065	2,300
30F	A - B Felony Other	4,284	4,174
30X	A - B Felony Sex	685	630
35D	C - D Felony Drug	12,189	10,716
35F	C - D Felony Other	23,095	22,132
35X	C - D Felony Sex	308	279
45M	Misdemeanor	13,689	13,946
45T	Misd. - Traffic	2,175	2,010
50N	Juvenile Non-violent	780	815
50S	Juvenile Status	156	94
50V	Juvenile Violent	620	650
60	Mental Health Release Petitions	9	16
65F	Probation Violation - Felony	15,487	15,075
65M	Probation Violation - Misd.	3,511	3,501
75	Special Writ	246	46
82	Appeal - Other	3	3
99	Unknown	78	75
		79,714	76,752



MSPD tracks both assigned and disposed of cases for each f scal year. Those two numbers are generally not tracking the same cases. Many cases take more than a year from assignment to disposition and many more do not fall neatly, start to f nish, within a single f scal year. The above chart ref ects the reality that no lawyer begins the f scal year with an empty f le drawer. At the start of FY2017, Missouri's Trial Division public defenders had over 31,988 pending cases already on their desks, to which another 79,714 new cases were assigned over the course of the f scal year for a total of 111,702 cases to be handled by 320 Trial Division Attorneys. This represents an average of 350 cases per attorney per year.

In Fiscal Year 2017, each attorney would receive 183 new felony cases to be added to the 73 felonies already on their desk. This is a total of 256 felonies per Trial Division attorney per f scal year.

MISSOURI STATE PUBLIC DEFENDER SYSTEM
Trial Division Offices

Area 2 -- Adair, Knox, Schuyler, Scotland Counties
Kevin Locke, District Defender
905 E. George
Kirksville, MO 63501
660-785-2445 FAX: 660-785-2449

Area 4 -- Andrew, Atchison, Gentry, Holt, Nodaway, Worth Counties
Michelle Davidson, District Defender
305 North Market
Maryville, MO 64468
660-582-3545 FAX: 660-562-3398

Area 5 -- Buchanan County
Sue Rinne, District Defender
120 South 5th Street, 2nd Floor
St. Joseph, MO 64501
816-387-2026 FAX: 816-387-2786

Area 7 – Clay, Clinton, Platte Counties
Anthony Cardarella, District Defender
234 West Shrader
Liberty, Missouri 64068
816-792-5394 FAX: 816-792-8267

Area 10 -- Clark, Lewis, Marion, Monroe, Ralls, Shelby Counties
Todd Schulze, District Defender
201 North Third Street
Hannibal, MO 63401
573-248-2430 FAX: 573-248-2432

Area 11 -- St. Charles, Warren Counties
Mike Sato, District Defender
300 N. Second Street, Suite 264
St. Charles, MO 63301
636-949-7300 FAX: 636-949-7301

Area 12 -- Audrain, Callaway, Montgomery Counties
Mary Jo Smith, District Defender
2800 Cardinal Drive
Suite B
Fulton, MO 65251
573-592-4155 FAX: 573-642-9528

Area 13 -- Boone County, Cooper Counties
David Wallis, District Defender
601 E. Walnut
Columbia, MO 65201
573-882-9701 FAX: 573-882-9147

Area 14 -- Chariton, Howard, Linn, Macon, Randolph Counties
Ed Guinn, District Defender
3029 County Road 1325
Moberly, MO 65270
660-263-7665 FAX: 660-263-2479

Area 15 -- Lafayette, Pettis, Saline Counties
Max Mitchell, District Defender
1807 West Broadway
Sedalia, MO 65301
660-530-5550 FAX: 660-530-5545

Area 16 -- Jackson County
Ruth Petsch, District Defender
Oak Tower, 20th Floor
324 E. 11th Street
Kansas City, MO 64106-2417
816-889-2099 FAX: 816-889-2999

As of August 1, 2017

MISSOURI STATE PUBLIC DEFENDER SYSTEM
Trial Division Offices

Area 17 -- Bates, Cass, Henry, Johnson, St. Clair Counties
Jeffrey Mar. n, District Defender
502 Westchester Avenue
Harrisonville, MO 64701
816-380-3160 FAX: 816-380-7844

Area 19 -- Cole, Miller, Moniteau Counties
Justin Carver, District Defender
210 Adams Street
Jefferson City, MO 65101
573-526-3266 FAX: 573-526-1115

Area 20 -- Franklin, Gasconade, Osage Counties
Lisa Preddy, District Defender
300 East Main Street
Union, MO 63084
636-583-5197 FAX: 636-583-1740

Area 21 -- St. Louis County
Stephen Reynolds, District Defender
100 S. Central, 2nd Floor
Clayton, MO 63105
314-615-4778 FAX: 314-615-0128

Area 22 -- St. Louis City
Mary Fox, District Defender
Mel Carnahan Courthouse
1114 Market Street, Suite 602
St. Louis, MO 63101
314-340-7625 FAX: 314-340-7595

Area 23 -- Jefferson County
Courtney Goodwin, District Defender
P.O. Box 156
116 Main Street
Hillsboro, Missouri 63050
636-789-5254 FAX: 636-789-5267

Area 24 -- Iron, Madison, Reynolds, St. Francois, Ste. Genevieve, Washington Counties
Wayne Williams, District Defender
Liberty Hall Professional Building
400 N. Washington Street, Suite #232
Farmington, MO 63640
573-218-7080 FAX: 573-218-7082

Area 25 -- Crawford, Dent, Maries, Phelps, Pulaski, Texas Counties
Matthew Crowell, District Defender
901 Pine, Suite 200
Rolla, MO 65401
573-368-2260 FAX: 573-364-7976

Area 26 -- Camden, Laclede, Morgan Counties
Karie Comstock, District Defender
288 Harwood
Lebanon, MO 65536
417-532-6886 FAX: 417-532-6894

Area 28 -- Barton, Cedar, Dade, Vernon Counties
Renee GotviAgehya, District Defender
329 C North Barrett
Nevada, MO 64772
417-448-1140 FAX: 417-448-1143

Area 29 -- Jasper, McDonald, Newton Counties
Darren Wallace, District Defender
115 Lincoln Street
Carthage, MO 64836
417-359-8489 FAX: 417-359-8490

As of August 1, 2017

MISSOURI STATE PUBLIC DEFENDER SYSTEM
Trial Division Offices

Area 30 -- Benton, Dallas, Hickory, Polk, Webster Counties
Dewayne Perry, District Defender
1901 South Wommack, Suite B
Bolivar, Missouri 65613
417-777-8544 FAX: 417-777-3082

Area 31 -- Christian, Greene, Taney Counties
Rodney Hackathorn, District Defender
630 North Robberson
Springf eld, MO 65806
417-895-6740 FAX: 417-895-6780

Area 32 -- Bollinger, Cape Girardeau, Mississippi, Perry, Scott Counties
Christopher Davis, District Defender
215 North High Street
Jackson, MO 63755
573-243-3949 FAX: 573-243-1613

Area 34 -- New Madrid, Pemiscot Counties
Susan Warren, District Defender
48 East State Highway 162
Portageville, MO 63873
573-379-9308 FAX 573-379-9309

Area 35 -- Dunklin, Stoddard Counties
Leslie Hazel, District Defender
P.O. Box 648
1087 Commerce Drive
Kennett, MO 63857
573-888-0604 FAX: 573-888-0614

Area 36 -- Butler, Carter, Ripley, Wayne Counties
Steven Lynxwiler, District Defender
948 Lester Street
Poplar Bluff, MO 63901
573-840-9775 FAX: 573-840-9773

Area 37 -- Howell, Oregon, Shannon Counties
Bethany Turner, District Defender
1314 Webster Street
West Plains, MO 65775
417-257-7224 FAX: 417-257-7692

Area 39 -- Barry, Lawrence, Stone Counties
Pamela Musgrave, District Defender
P.O. Box 685
305 Dairy
Monett, MO 65708-0685
417-235-8828 FAX: 417-235-5140

Area 43 -- Caldwell, Carroll, Daviess, DeKalb, Grundy, Harrison, Livingston, Mercer, Putnam, Ray, Sullivan Counties
Kelly Miller, District Defender
500 Youssef
Chillicothe, MO 64601
660-646-3343 FAX: 660-646-4228

Area 44 -- Douglas, Ozark, Wright Counties
Kate Welborn, District Defender
P.O. Box 951
404 East Washington Street
Ava, MO 65608
417-683-5418 FAX: 417-683-5820

Area 45 -- Lincoln, Pike Counties
Tom Crocco, District Defender
240 West College
Troy, MO 63379
636-528-5084 FAX: 636-528-5086

As of August 1, 2017

Fiscal Year 2017
Trial Division Cases
Assigned and Disposed

District #	District Name	Cases Assigned	Cases Disposed
2	Kirksville	667	672
4	Maryville	716	708
5	St. Joseph	1,987	1,983
7	Liberty	3,232	3,056
10	Hannibal	1,600	1,450
11	St. Charles	2,211	2,046
12	Fulton	1,834	1,871
13	Columbia	3,456	3,515
14	Moberly	1,547	1,497
15	Sedalia	2,324	2,287
16	Kansas City	4,928	4,155
17	Harrisonville	2,606	2,417
19	Jefferson City	1,762	1,806
20	Union	1,497	1,420
21	St. Louis County	4,722	4,446
22	St. Louis City	4,262	4,108
23	Hillsboro	1,900	1,840
24	Farmington	2,921	2,832
25	Rolla	3,762	3,592
26	Lebanon	2,434	2,411
28	Nevada	1,574	1,464
29	Carthage	3,488	3,348
30	Bolivar	1,837	1,864
31	Springfield	6,055	5,984
32	Jackson	3,124	2,931
34	Portageville	1,240	1,277
35	Kennett	2,076	2,015
36	Poplar Bluff	2,144	2,087
37	West Plains	1,343	1,400
39	Monett	2,205	2,163
43	Chillicothe	1,991	1,913
44	Ava	1,242	1,173
45	Troy	1,027	1,021
Trial Division Totals		79,714	76,752

Cases Assigned and Disposed – By District
Fiscal Year 2010 to Fiscal Year 2017

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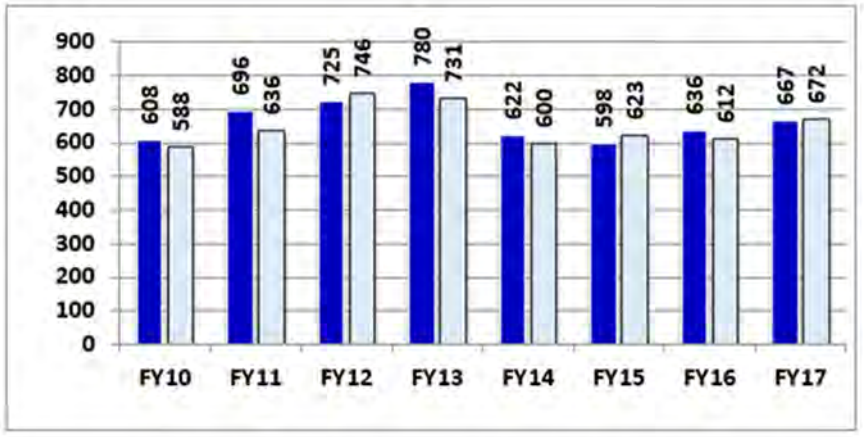
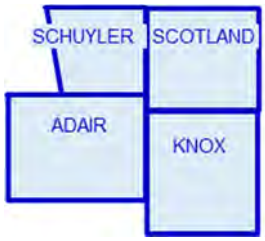
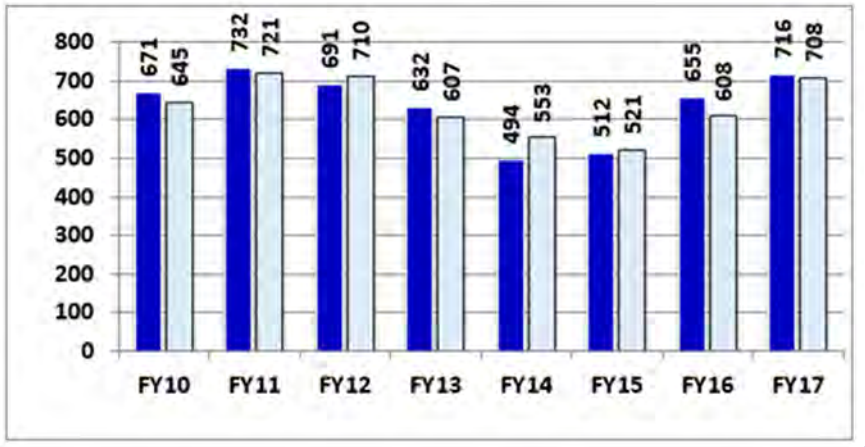
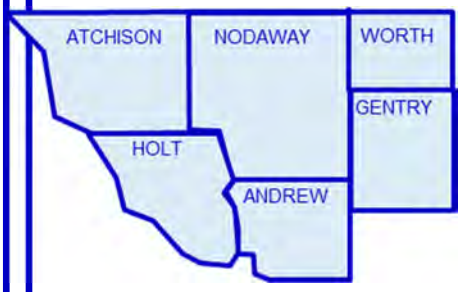


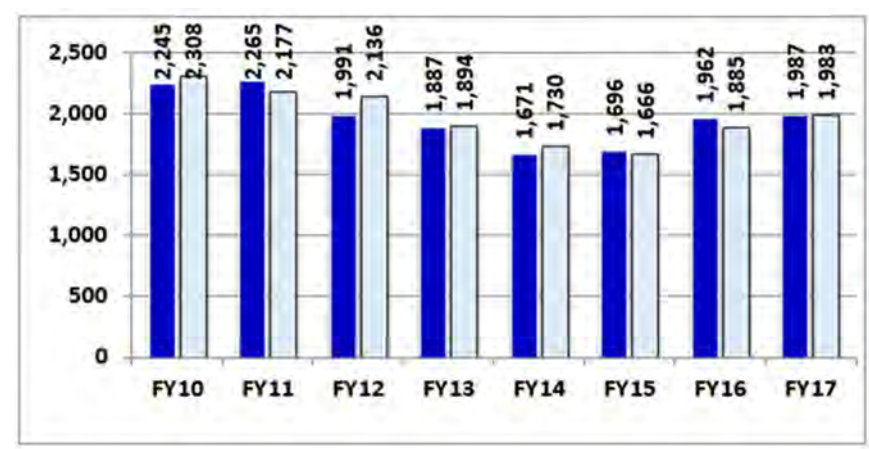
District 2—Kirksville





District 4—Maryville





District 5—St. Joseph

Cases Assigned and Disposed – By District
Fiscal Year 2010 to Fiscal Year 2017

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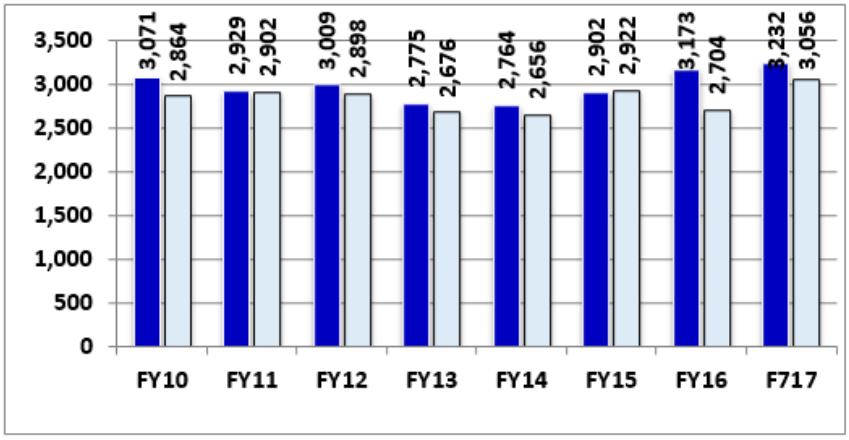
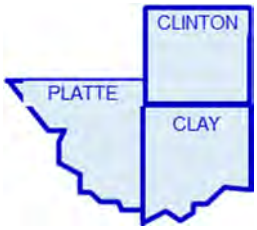
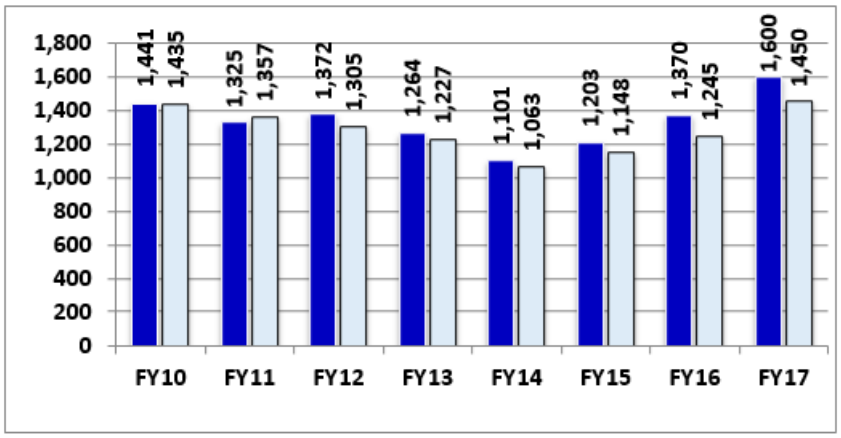
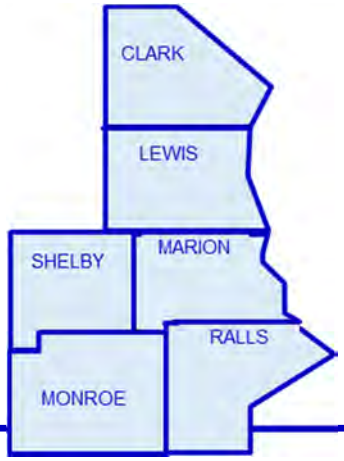


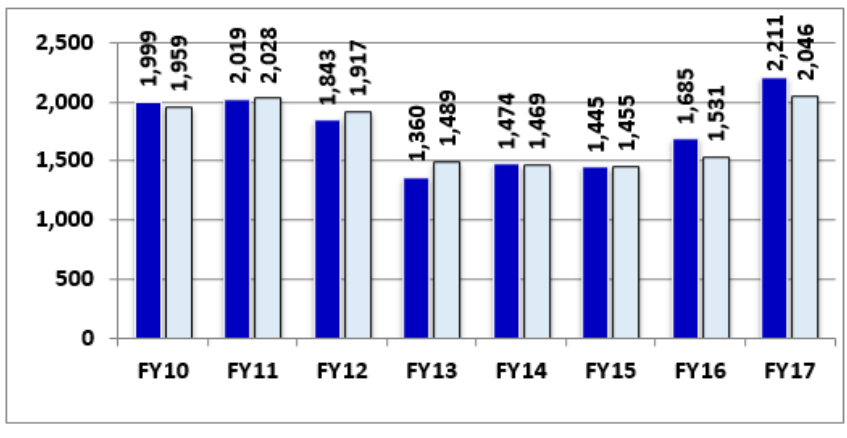
District 7—Liberty





District 10—Hannibal





District 11—St. Charles

Cases Assigned and Disposed – By District
Fiscal Year 2010 to Fiscal Year 2017

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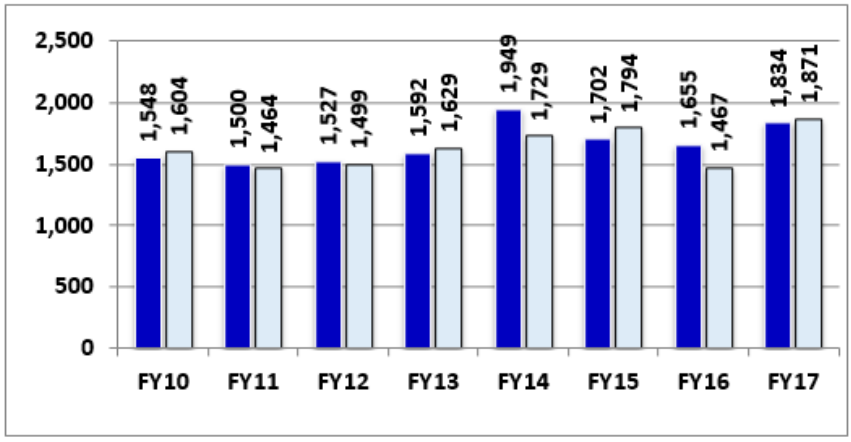
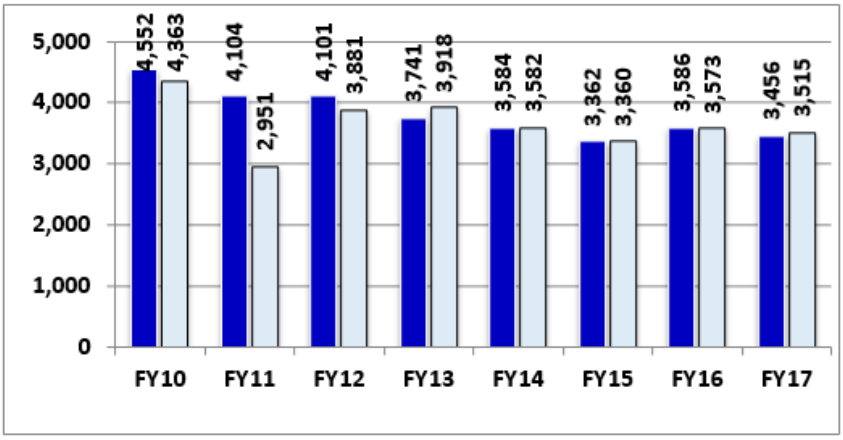
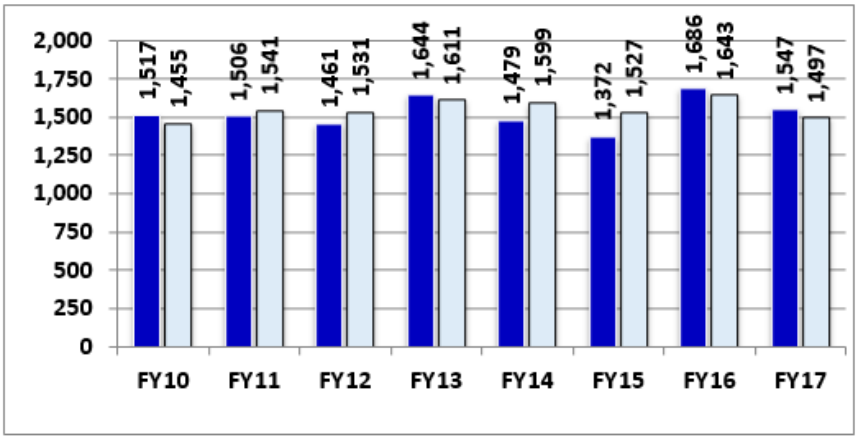


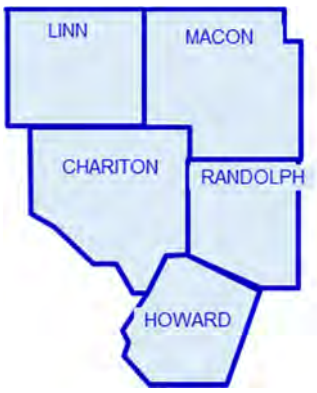
District 12—Fulton



District 13—Columbia



District 14—Moberly



Cases Assigned and Disposed – By District
Fiscal Year 2010 to Fiscal Year 2017

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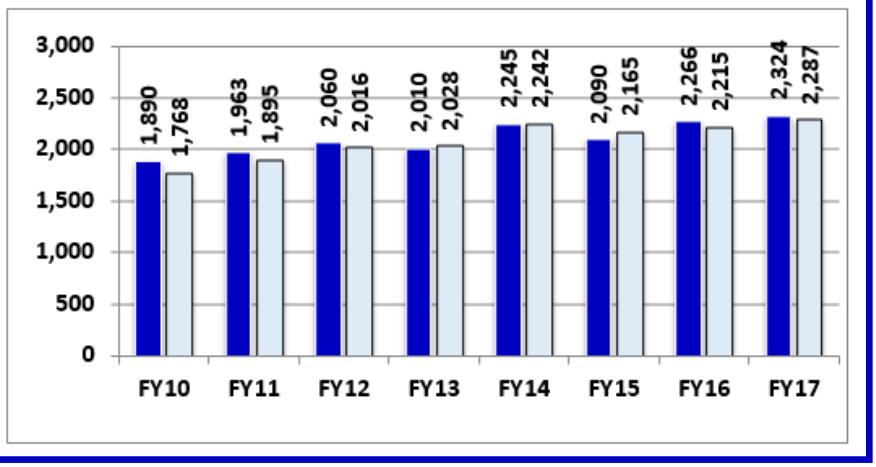
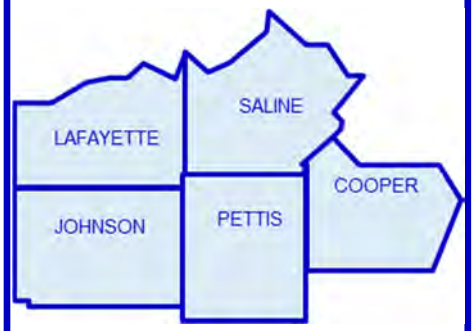
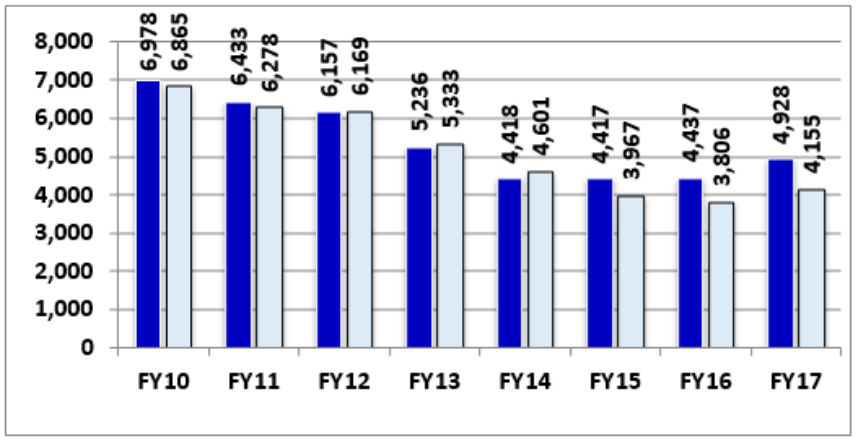
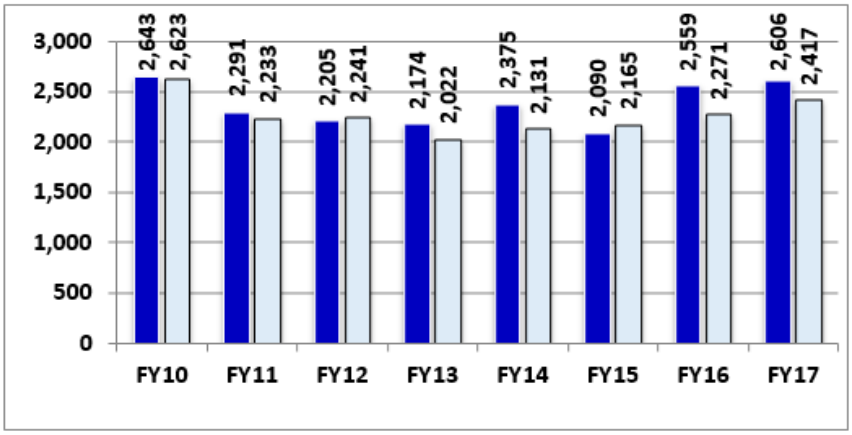


District 15—Sedalia

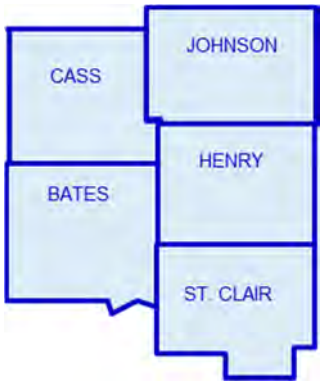




District 16—Kansas City



District 17—Harrisonville



Cases Assigned and Disposed – By District
Fiscal Year 2010 to Fiscal Year 2017

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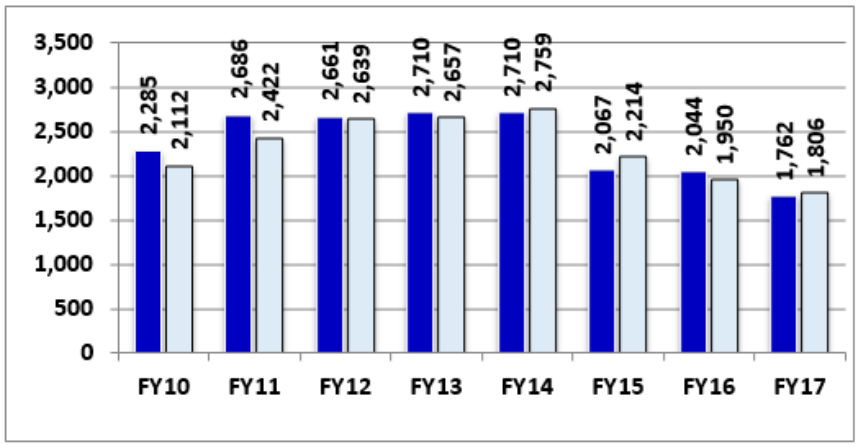
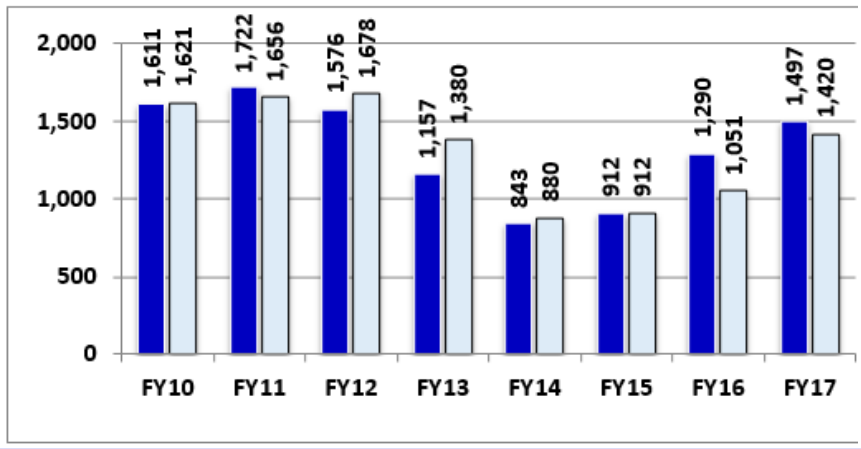
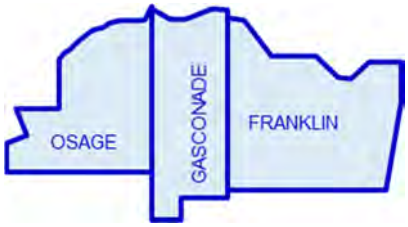
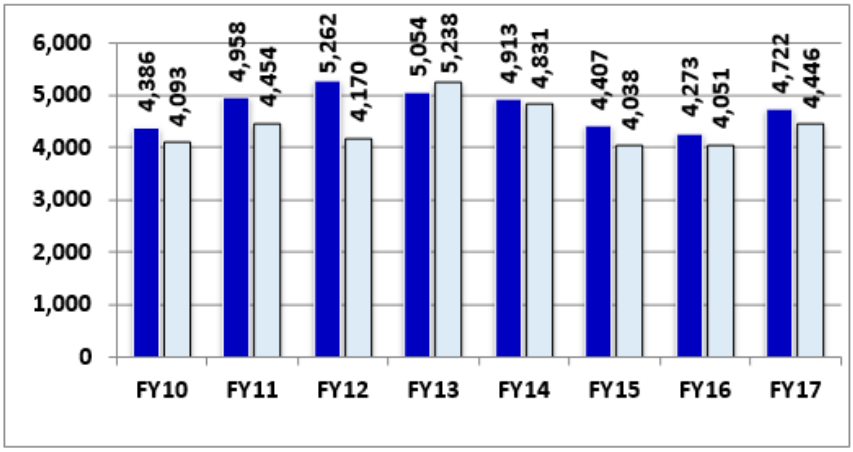


District 19—Jefferson City



District 20—Union





District 21—St. Louis County

Cases Assigned and Disposed – By District
Fiscal Year 2010 to Fiscal Year 2017

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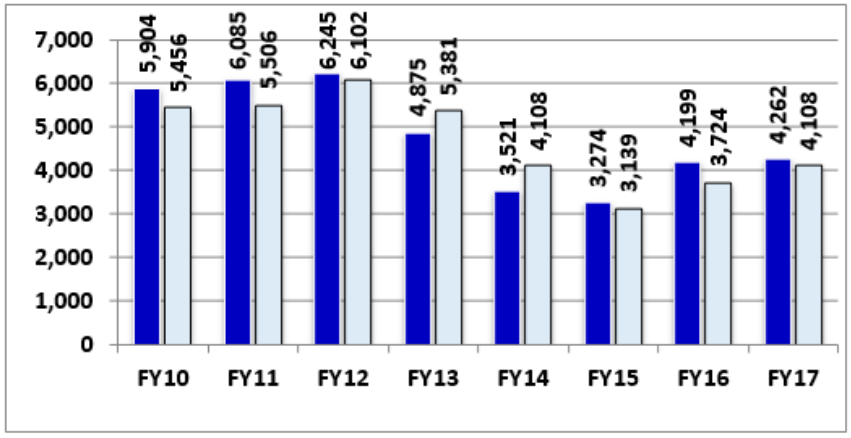
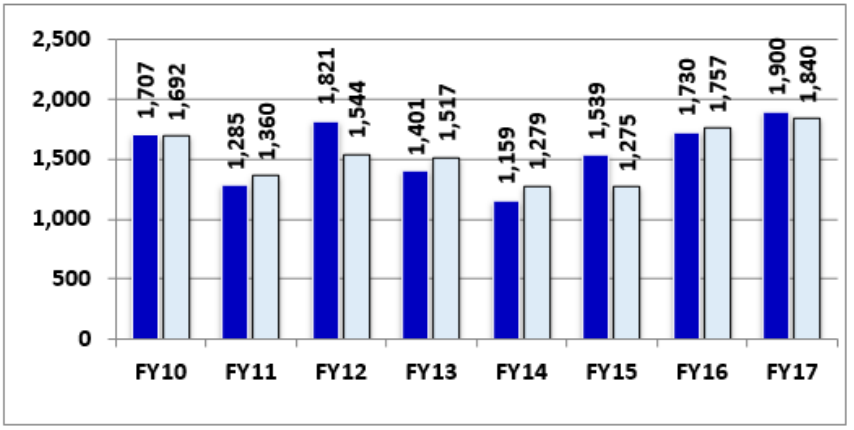
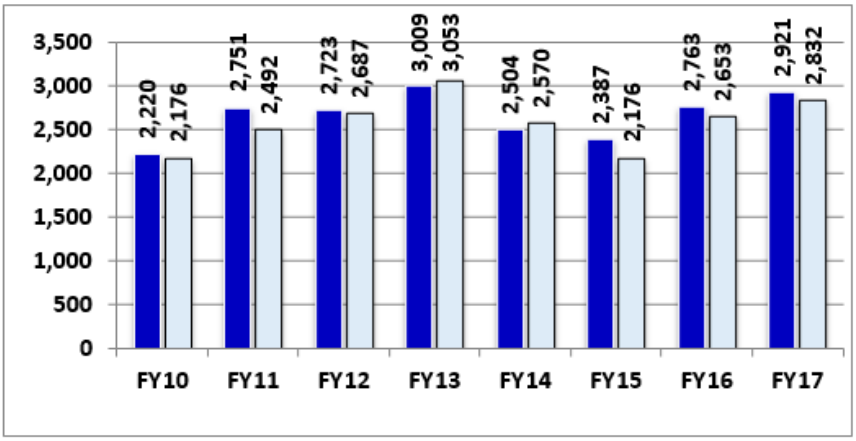


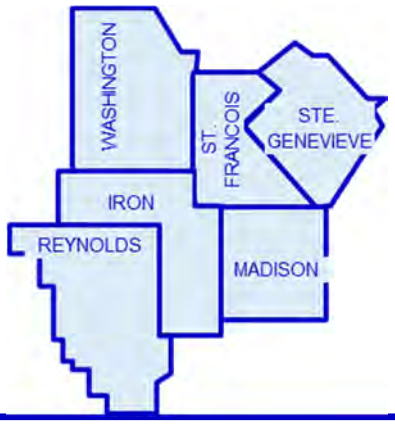
District 22—St. Louis City



District 23—Hillsboro



District 24—Farmington



Cases Assigned and Disposed – By District
Fiscal Year 2010 to Fiscal Year 2017

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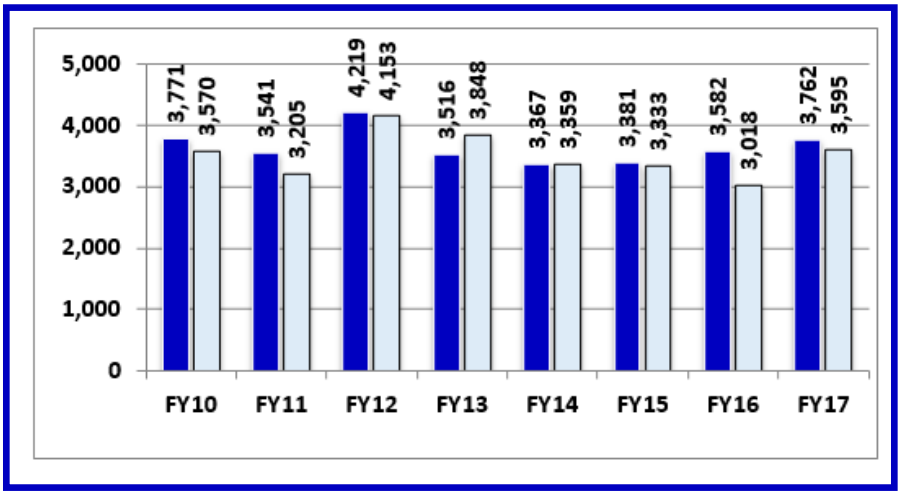
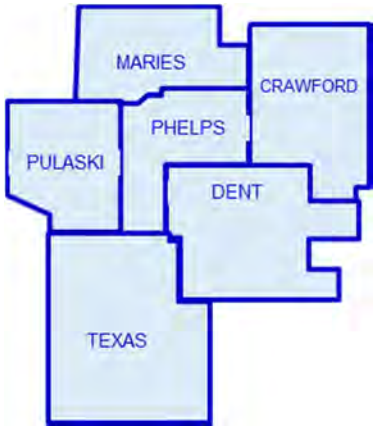
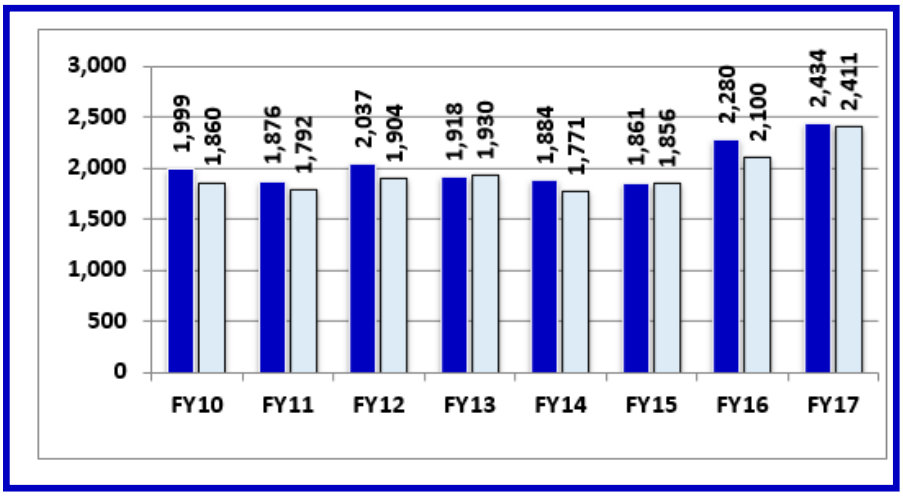
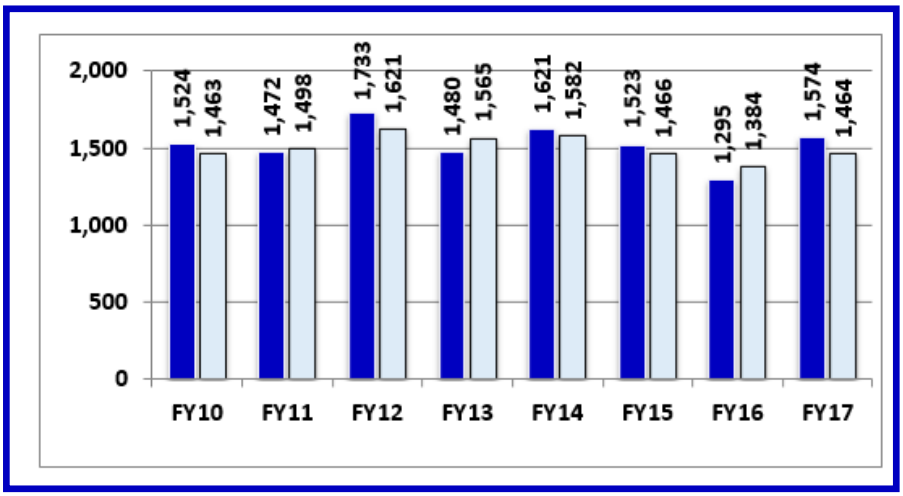


District 25—Rolla





District 26—Lebanon



District 28—Nevada

Cases Assigned and Disposed – By District
Fiscal Year 2010 to Fiscal Year 2017

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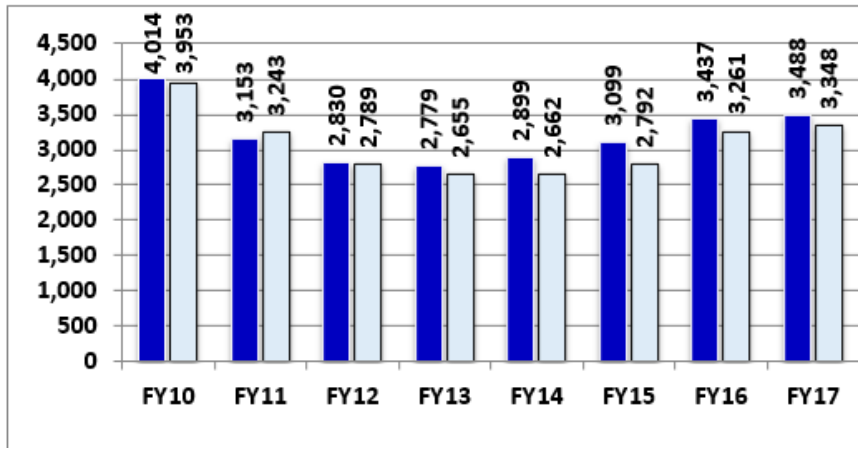
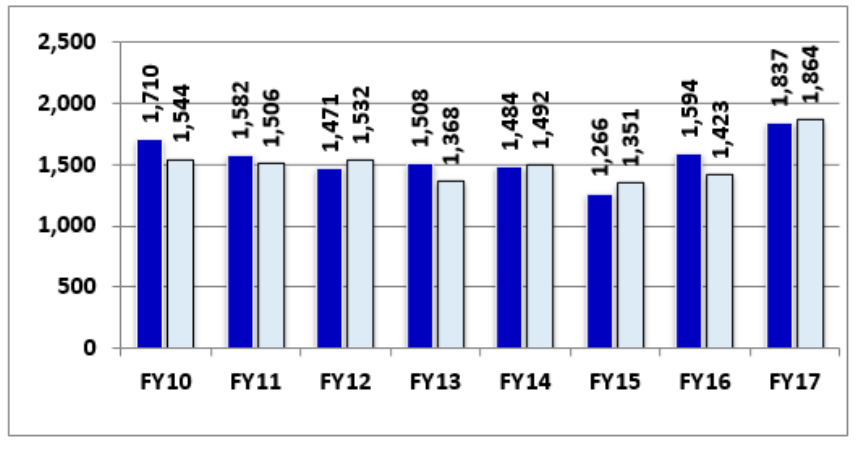
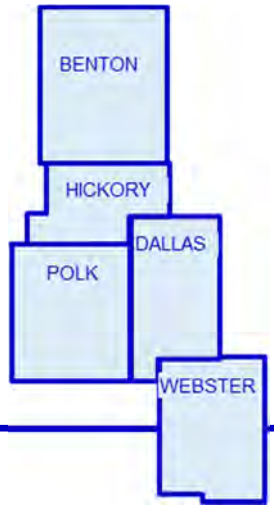
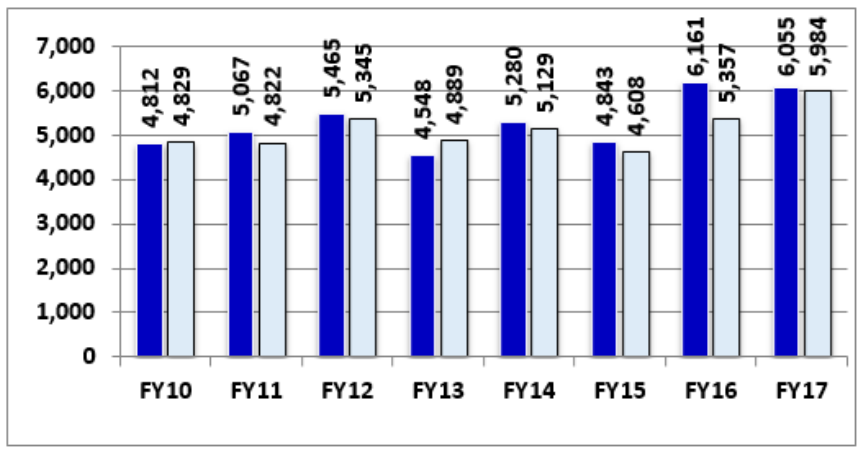


District 29—Carthage

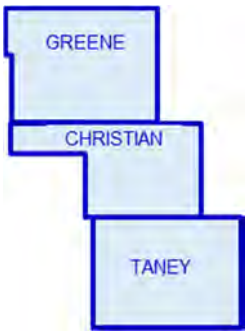


District 30—Bolivar





District 31—- Springf eld



Cases Assigned and Disposed – By District
Fiscal Year 2010 to Fiscal Year 2017

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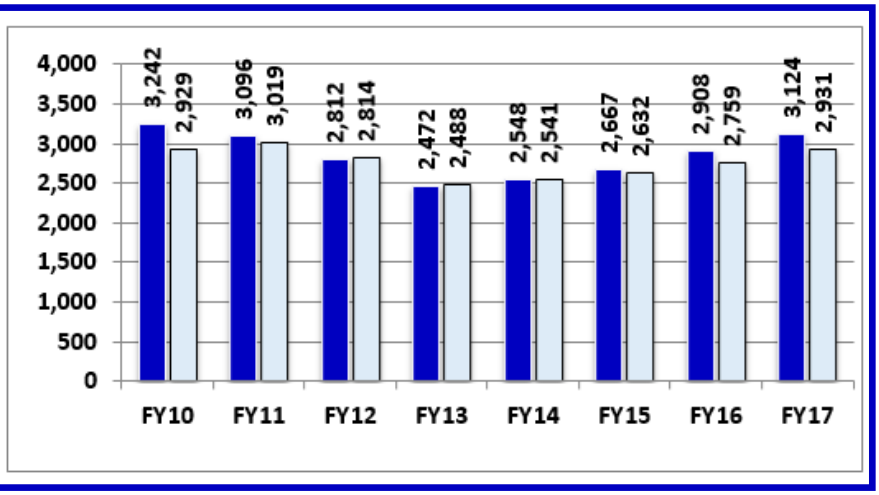
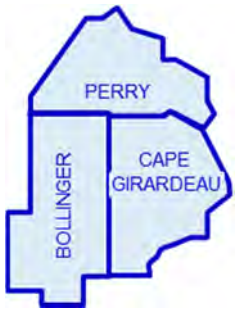
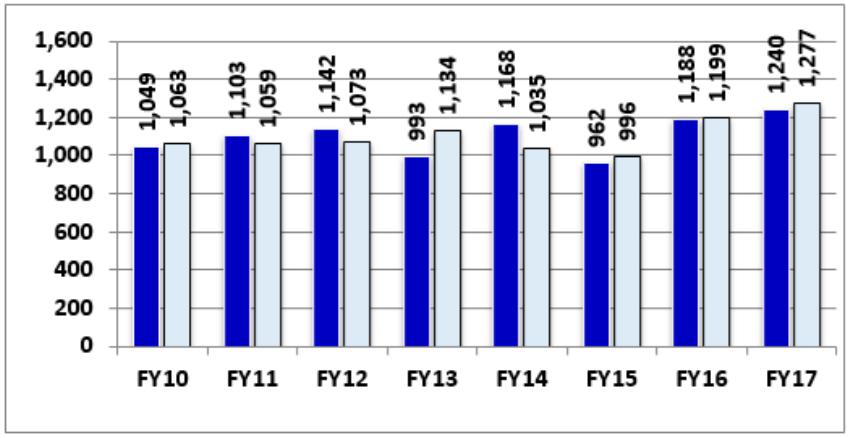
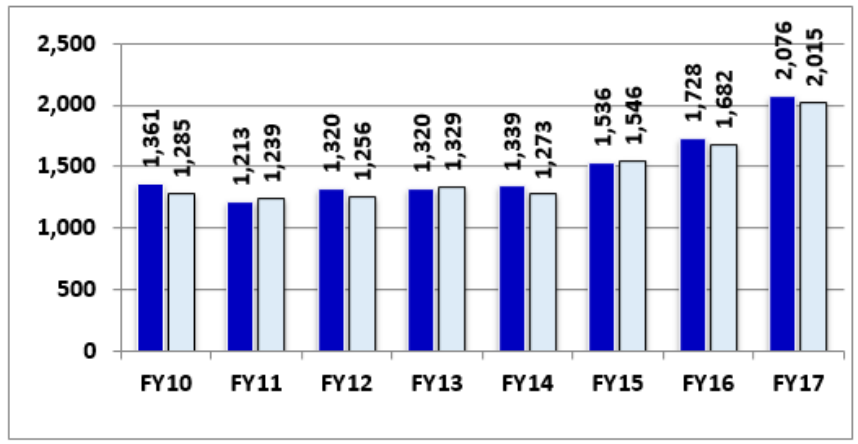


District 32—Jackson





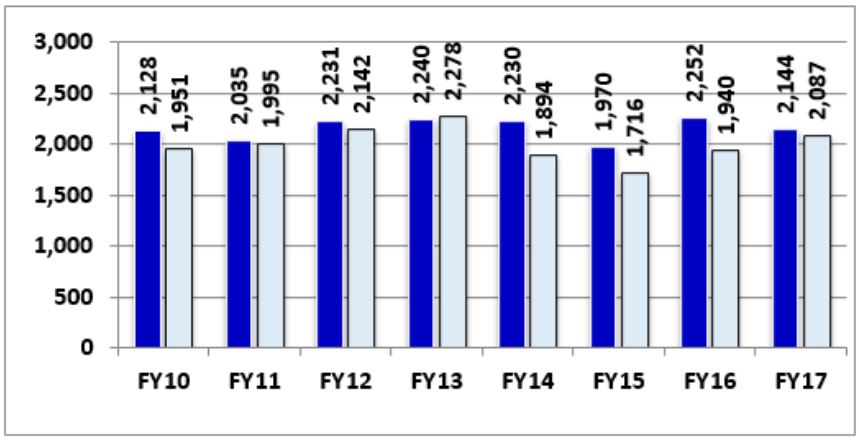
District 34—Portageville



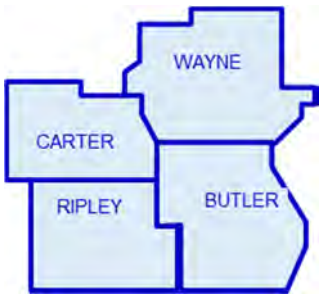
District 35—Kenne.

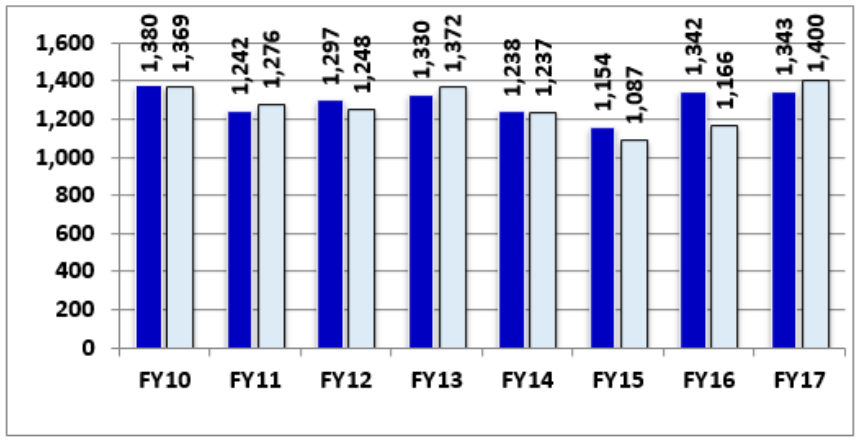
Cases Assigned and Disposed – By District
Fiscal Year 2010 to Fiscal Year 2017

Opened Closed

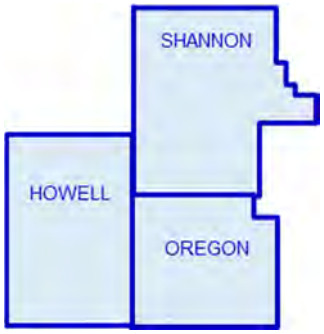


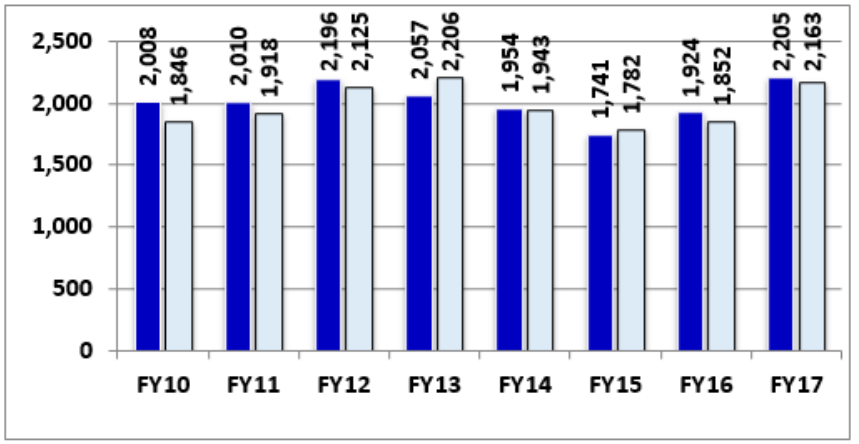
District 36—Poplar Bluff





District 37—West Plains

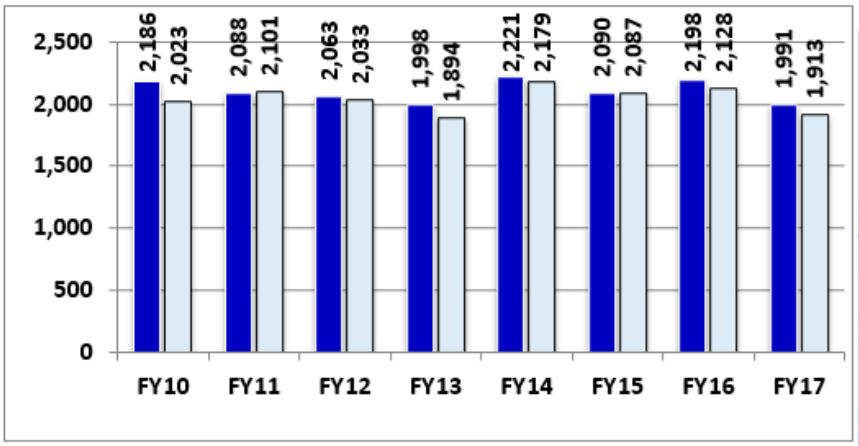




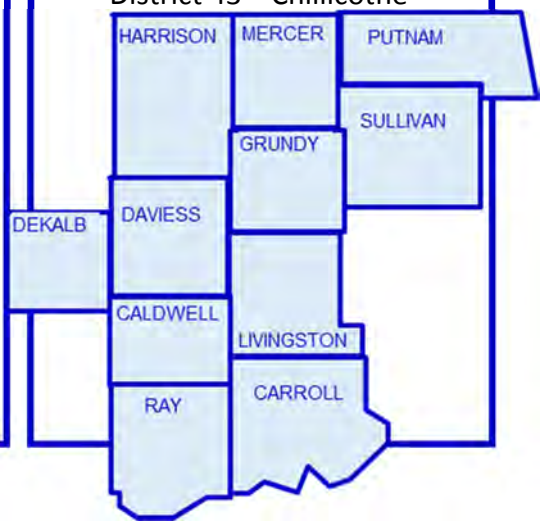
District 39—Monett

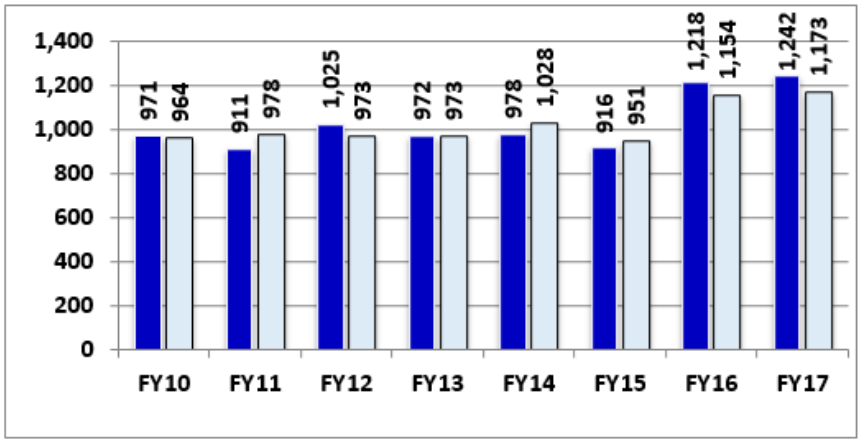
Cases Assigned and Disposed – By District
Fiscal Year 2010 to Fiscal Year 2017

Opened Closed

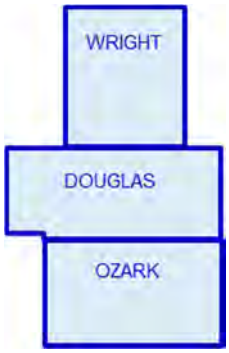


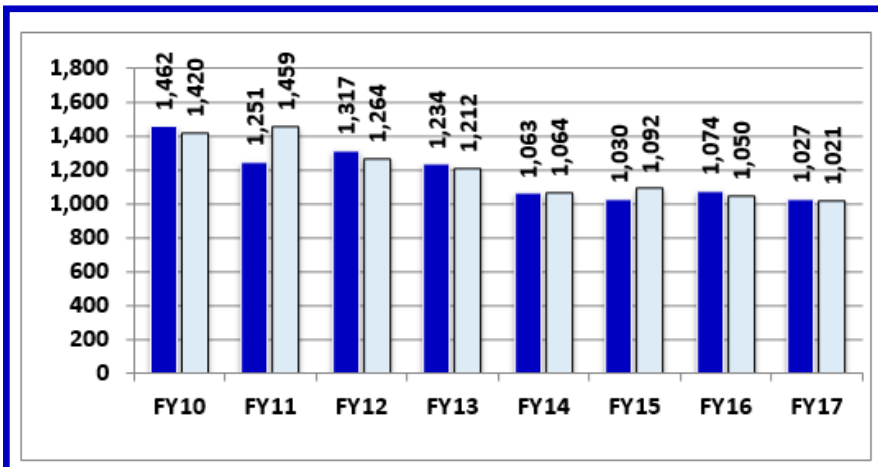
District 43—Chillicothe





District 44—Ava



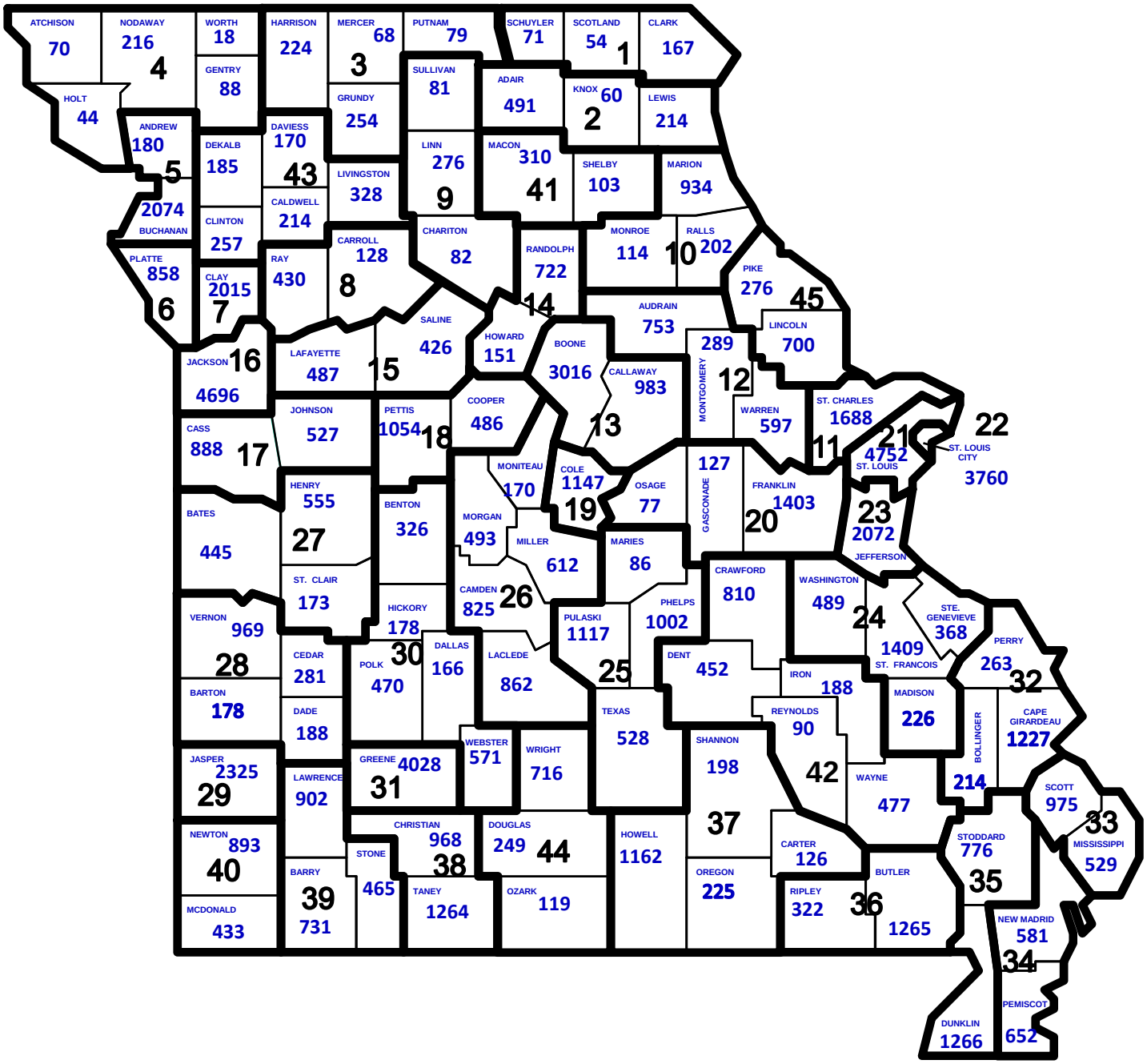


District 45—Troy

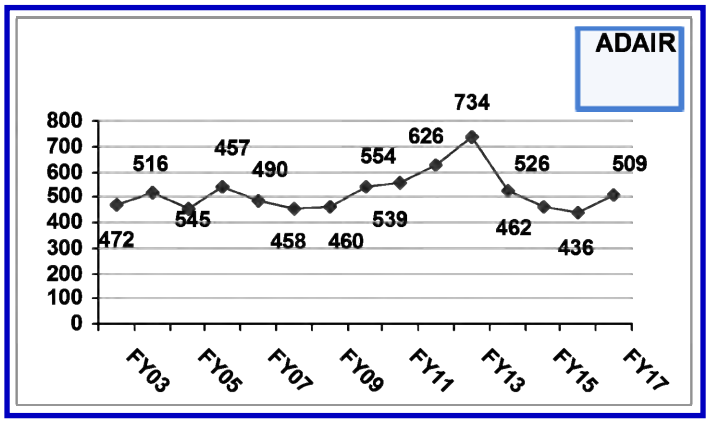
Fiscal Year 2017
Trial Division
Opened and Closed by County

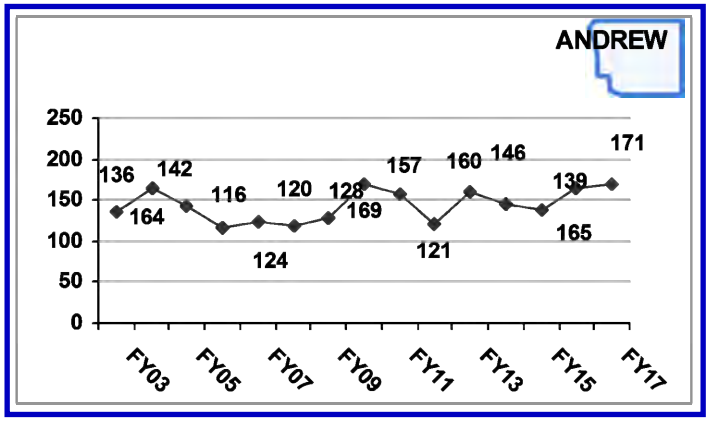
County	Opened	Closed	County	Opened	Closed	County	Opened	Closed
ADAIR	491	509	GREENE	4,028	4,103	OZARK	119	165
ANDREW	180	171	GRUNDY	254	245	PEMISCOT	652	641
ATCHISON	70	65	HARRISON	224	221	PERRY	263	266
AUDRAIN	753	788	HENRY	555	529	PETTIS	1,054	1,044
BARRY	731	744	HICKORY	178	184	PHELPS	1,002	911
BARTON	178	196	HOLT	44	40	PIKE	276	265
BATES	445	423	HOWARD	151	163	PLATTE	858	724
BENTON	326	342	HOWELL	1,162	1,101	POLK	470	479
BOLLINGER	214	203	IRON	188	145	PULASKI	1,117	1,119
BOONE	3,016	3,067	JACKSON	4,696	4,165	PUTNAM	79	71
BUCHANAN	2,074	2,070	JASPER	2,325	2,299	RALLS	202	143
BUTLER	1,265	1,233	JEFFERSON	2,072	1,967	RANDOLPH	722	713
CALDWELL	214	215	JOHNSON	527	491	RAY	430	378
CALLAWAY	983	969	KNOX	60	59	REYNOLDS	90	105
CAMDEN	825	787	LACLEDE	862	881	RIPLEY	322	340
CAPE GIRARDEAU	1,227	1,087	LAFAYETTE	487	483	SALINE	426	383
CARROLL	128	123	LAWRENCE	902	804	SCHUYLER	71	71
CARTER	126	130	LEWIS	214	197	SCOTLAND	54	52
CASS	888	757	LINCOLN	700	692	SCOTT	975	928
CEDAR	281	245	LINN	276	238	SHANNON	198	167
CHARITON	82	86	LIVINGSTON	328	308	SHELBY	103	110
CHRISTIAN	968	861	MACON	310	290	ST. CHARLES	1,688	1,486
CLARK	167	171	MADISON	226	240	ST. CLAIR	173	175
CLAY	2,015	1,940	MARIES	86	79	ST. FRANCOIS	1,409	1,376
CLINTON	257	230	MARION	934	838	ST. LOUIS CITY	3,760	3,669
COLE	1,147	1,230	MCDONALD	433	386	ST. LOUIS COUNTY	4,752	4,463
COOPER	486	488	MERCER	68	80	STE. GENEVIEVE	368	313
CRAWFORD	810	729	MILLER	612	618	STODDARD	776	758
DADE	188	156	MISSISSIPPI	529	510	STONE	465	485
DALLAS	166	152	MONITEAU	170	133	SULLIVAN	81	73
DAVIESS	170	177	MONROE	114	115	TANEY	1,264	1,248
DEKALB	185	171	MONTGOMERY	289	293	TEXAS	528	549
DENT	452	463	MORGAN	493	461	VERNON	969	935
DOUGLAS	249	275	NEW MADRID	581	592	WARREN	597	612
DUNKLIN	1,266	1,236	NEWTON	893	830	WASHINGTON	489	480
FRANKLIN	1,403	1,285	NODAWAY	216	217	WAYNE	477	480
GASCONADE	127	129	OREGON	225	248	WEBSTER	571	572
GENTRY	88	90	OSAGE	77	86	WORTH	18	19
						WRIGHT	716	660
							79,714	**76,752**

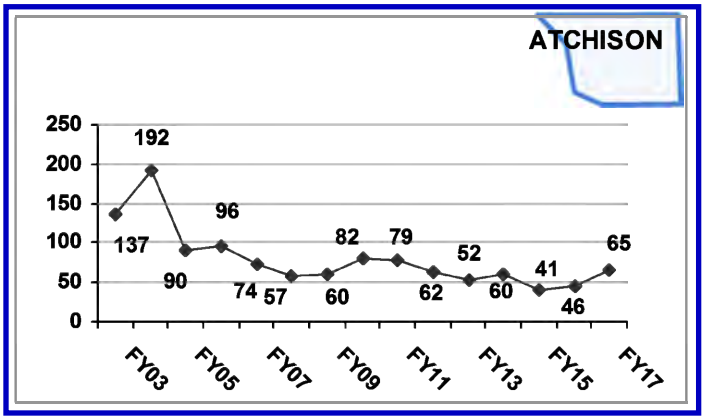
Missouri's Judicial Circuits
Showing Fiscal Year 2017
Public Defender
Trial Division Assigned Caseloads

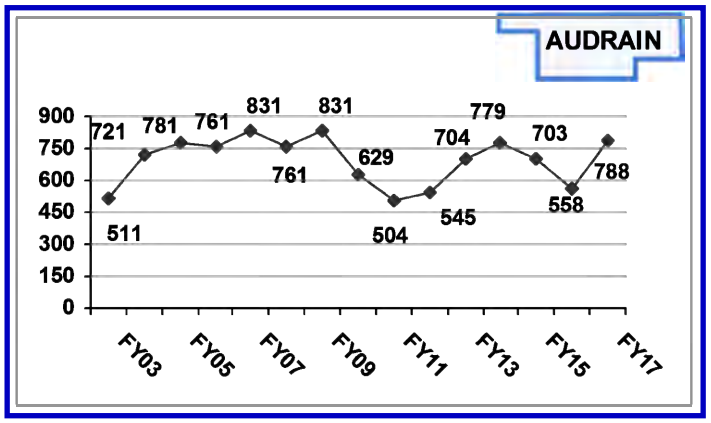


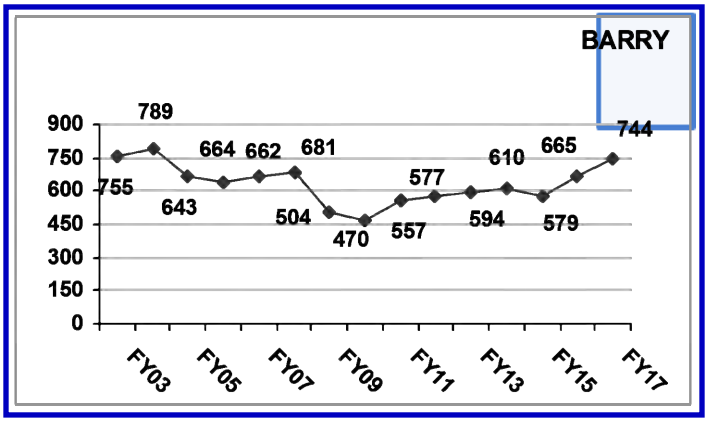
15 YEAR COMPARISON—TRIAL DIVISION CASELOAD—
CLOSED CASES BY COUNTY

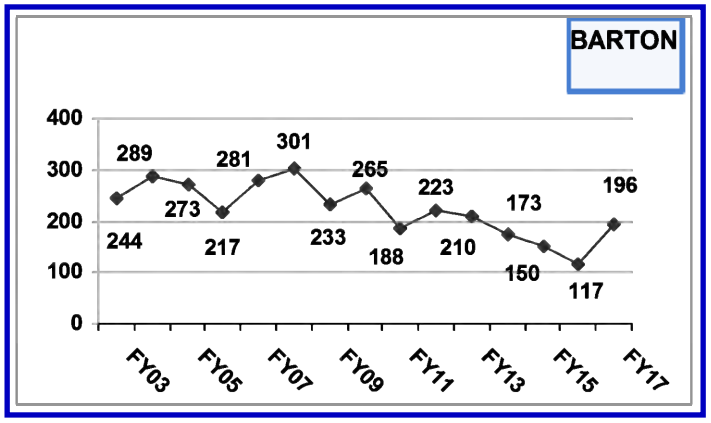


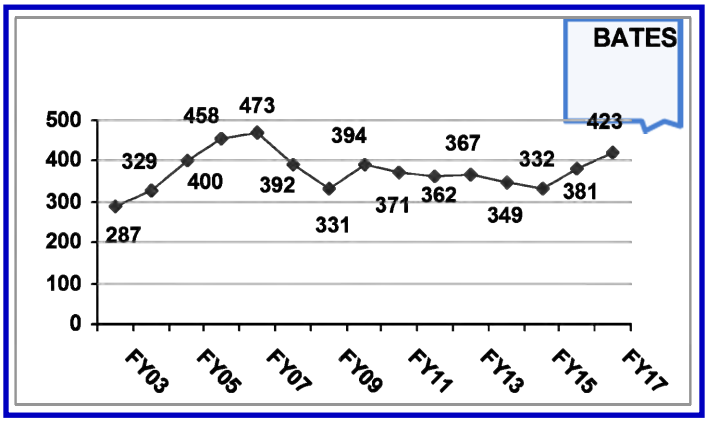


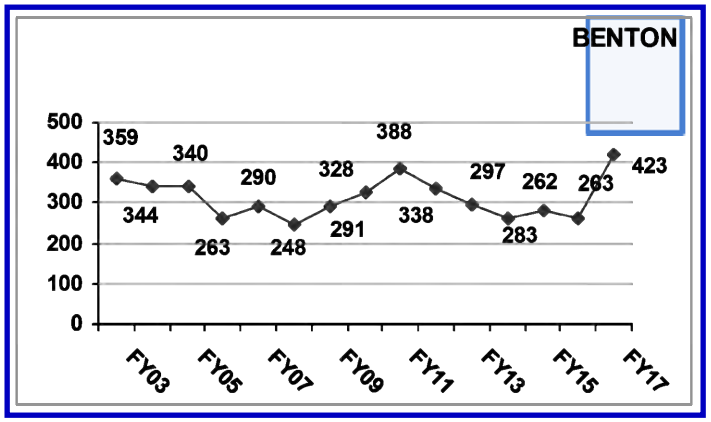




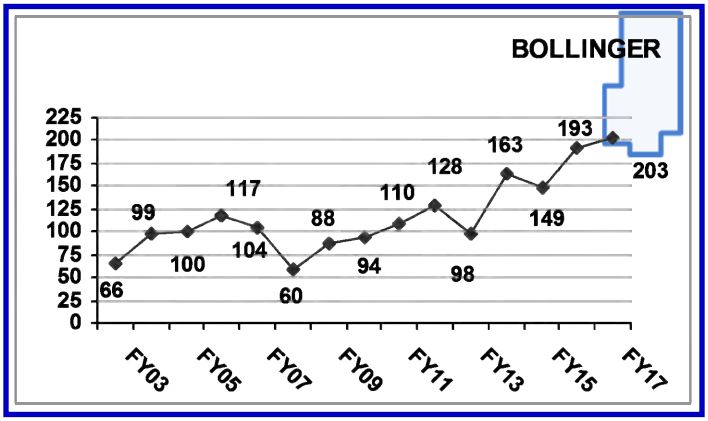


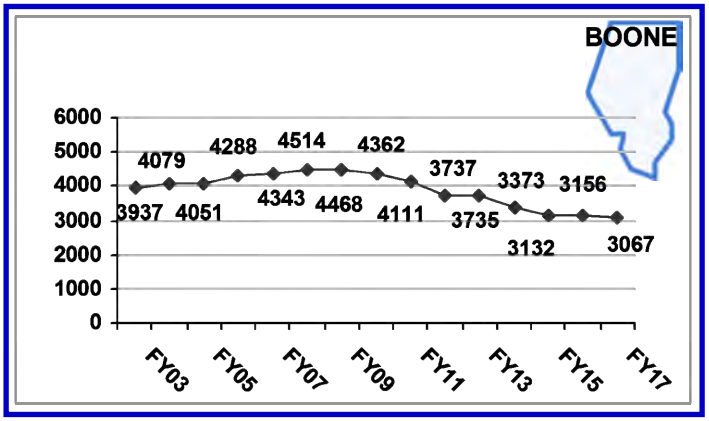


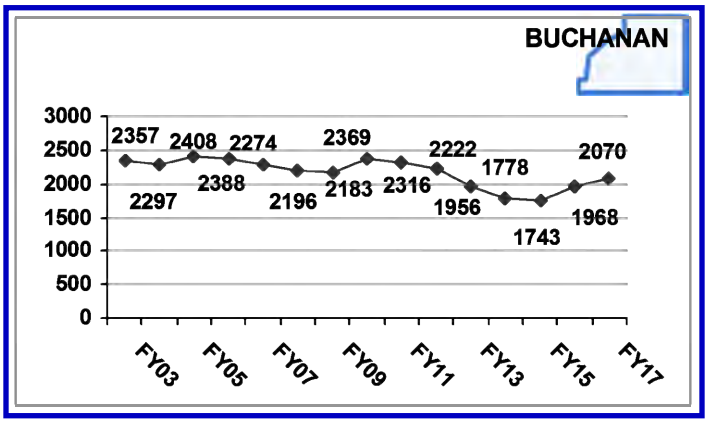


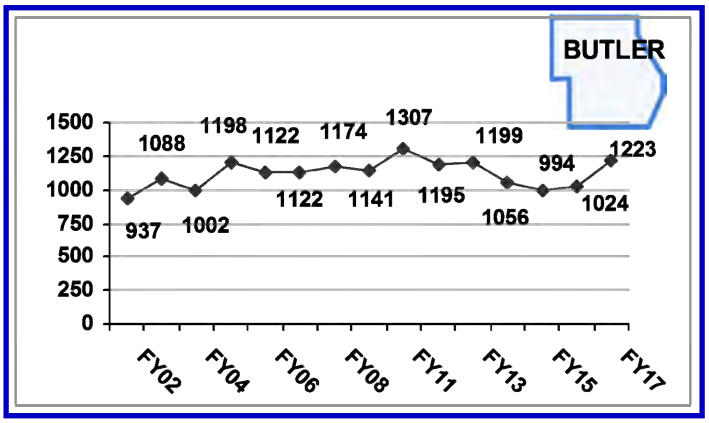


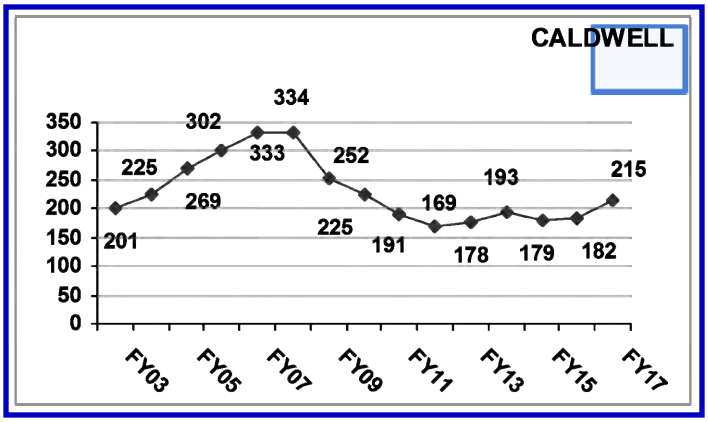
15 YEAR COMPARISON—TRIAL DIVISION CASELOAD—
CLOSED CASES BY COUNTY

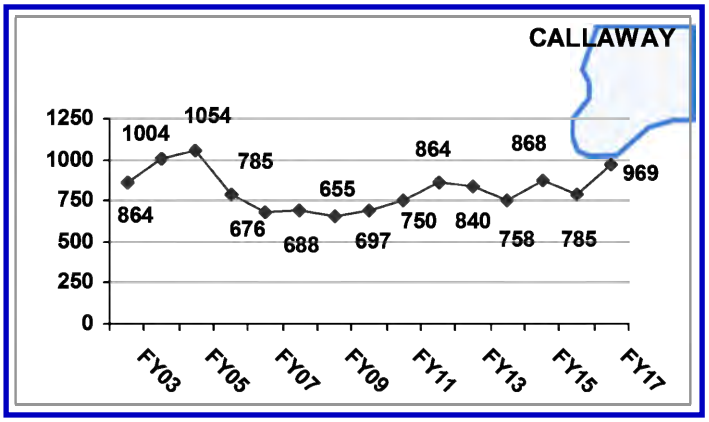


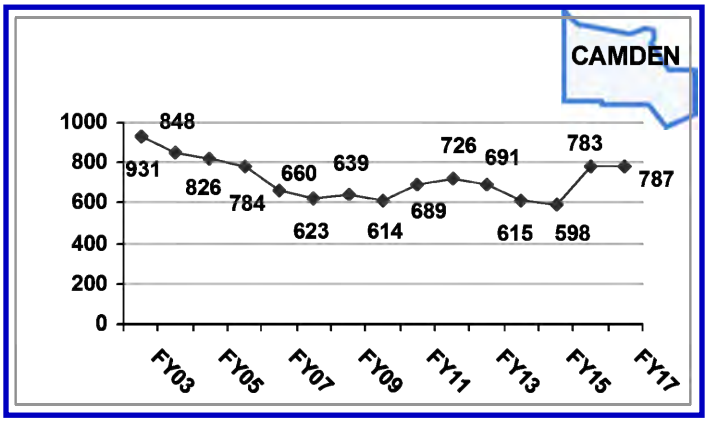


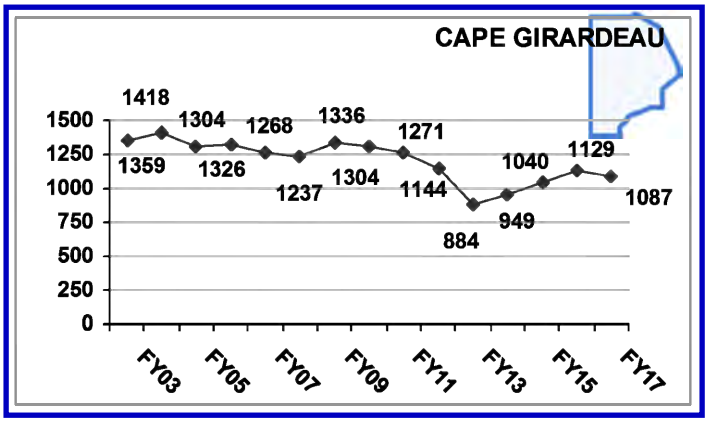




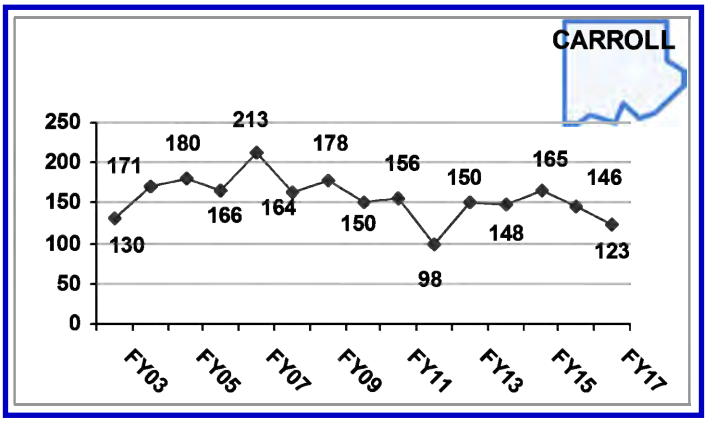


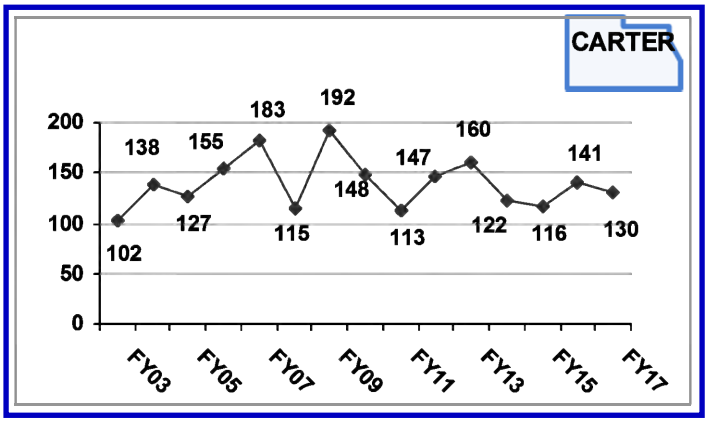


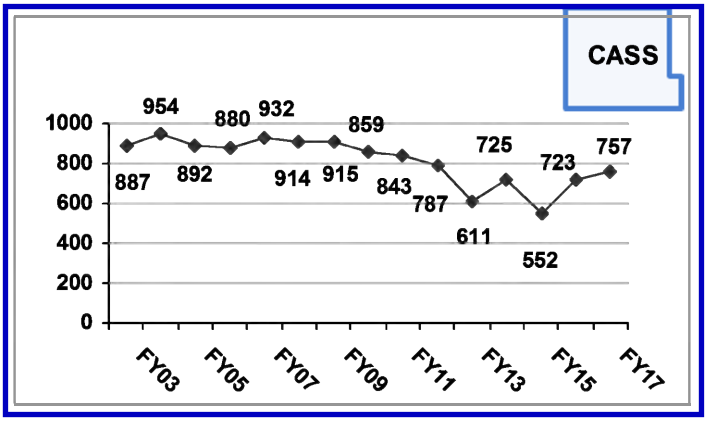


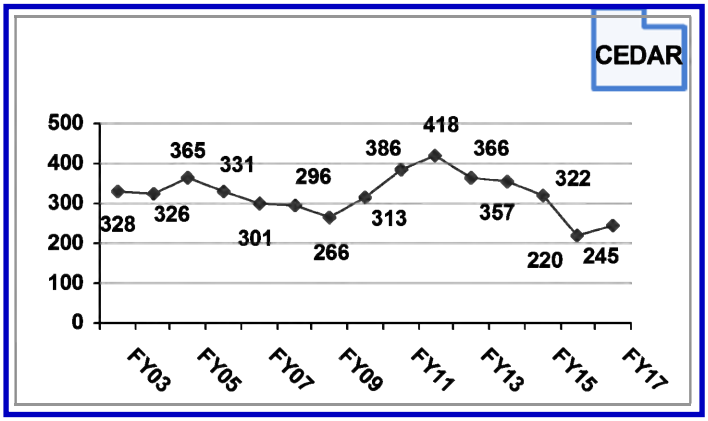


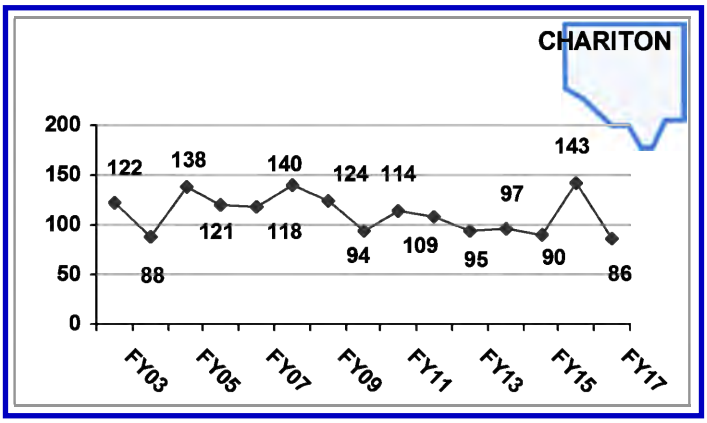
15 YEAR COMPARISON—TRIAL DIVISION CASELOAD—
CLOSED CASES BY COUNTY

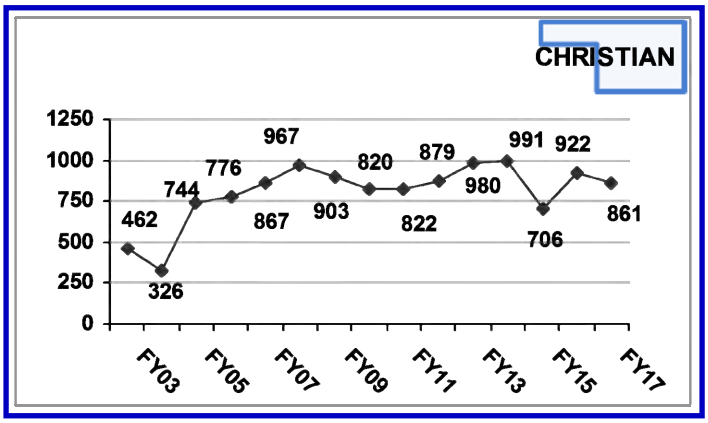


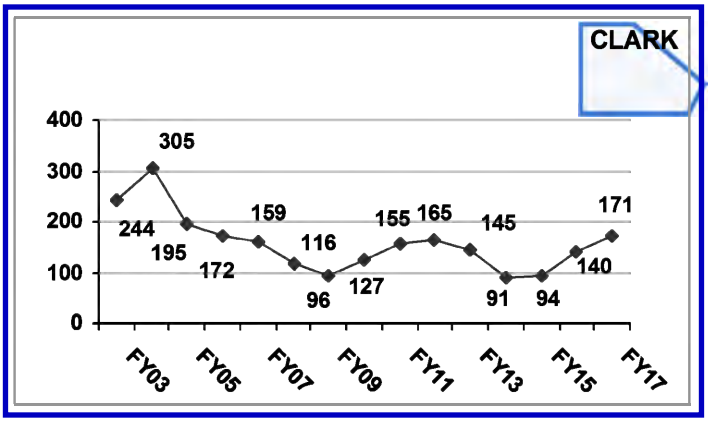


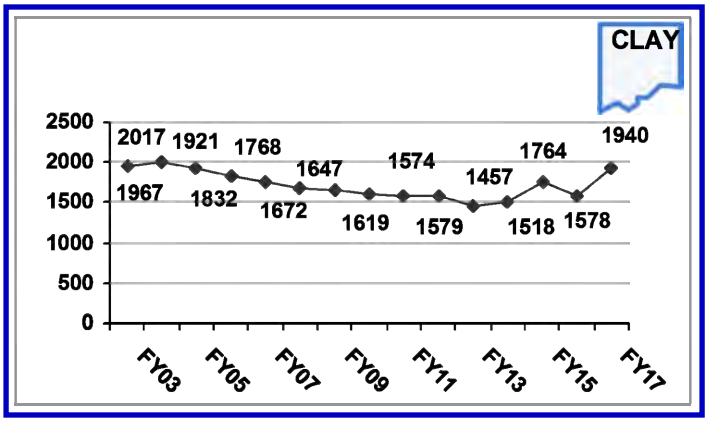




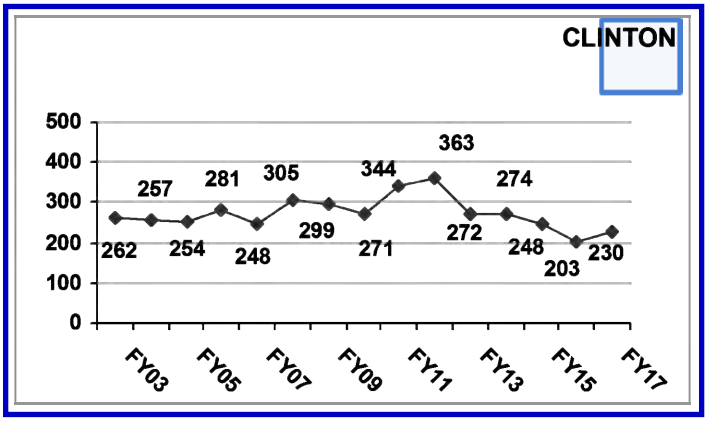


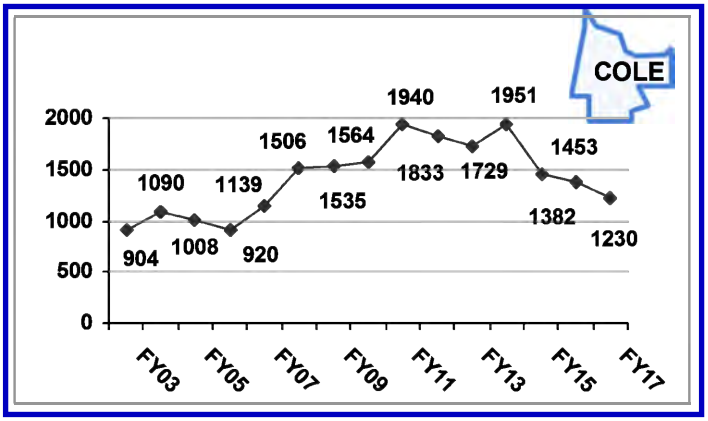


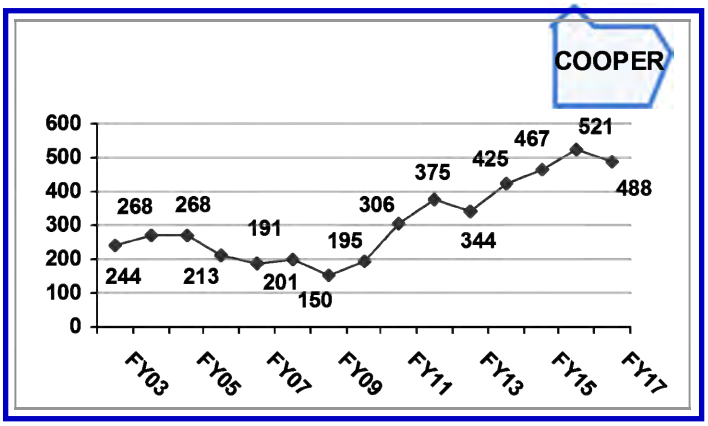


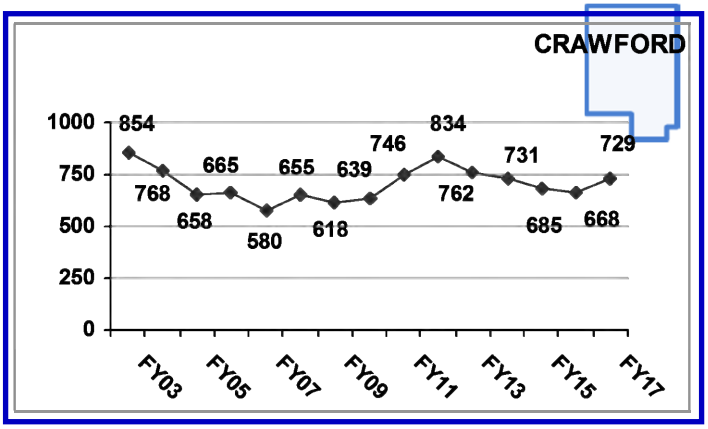


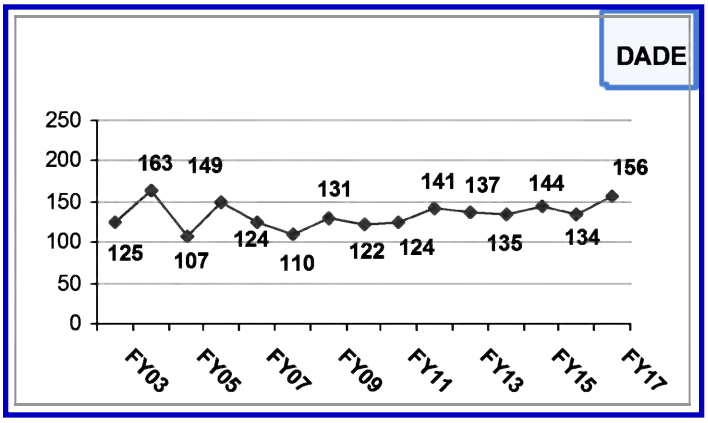
15 YEAR COMPARISON—TRIAL DIVISION CASELOAD—
CLOSED CASES BY COUNTY

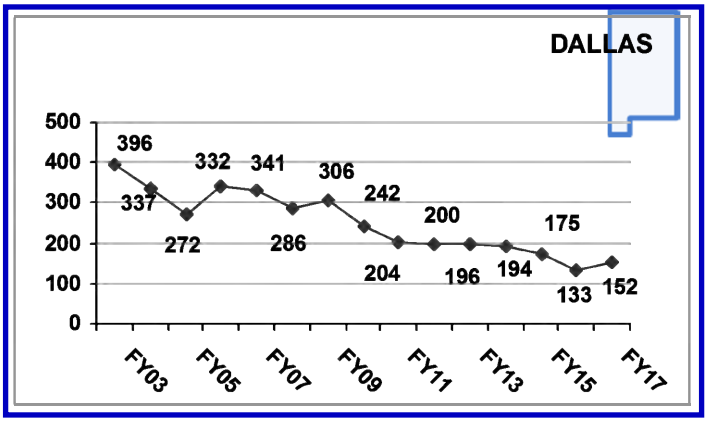


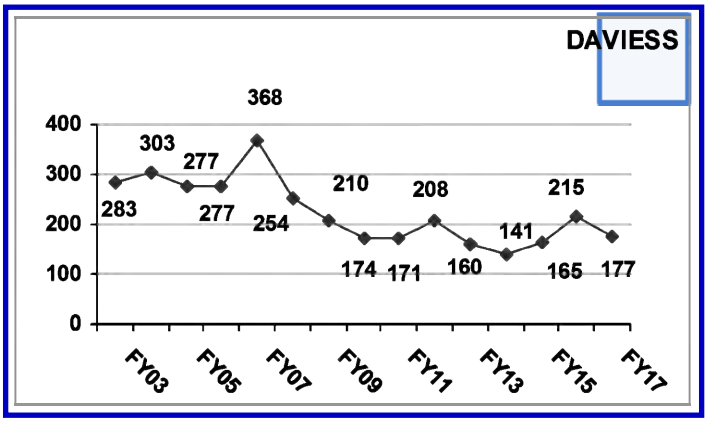


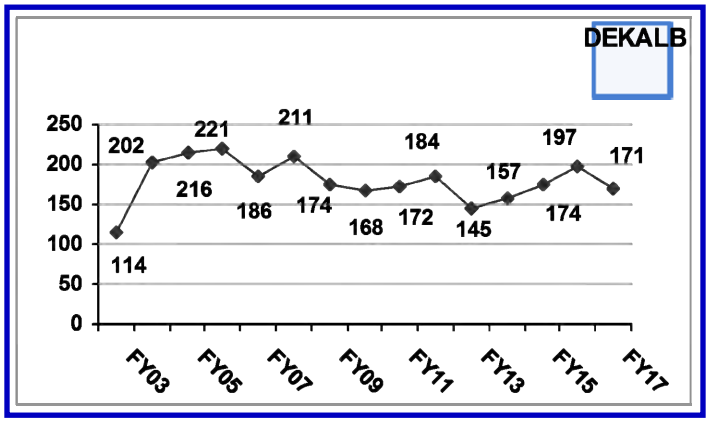




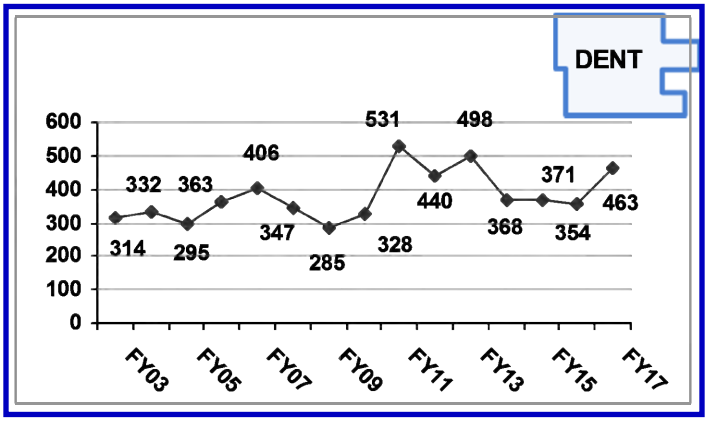


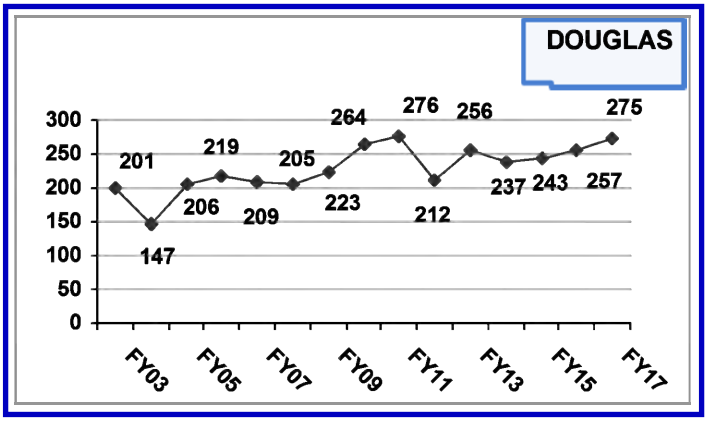


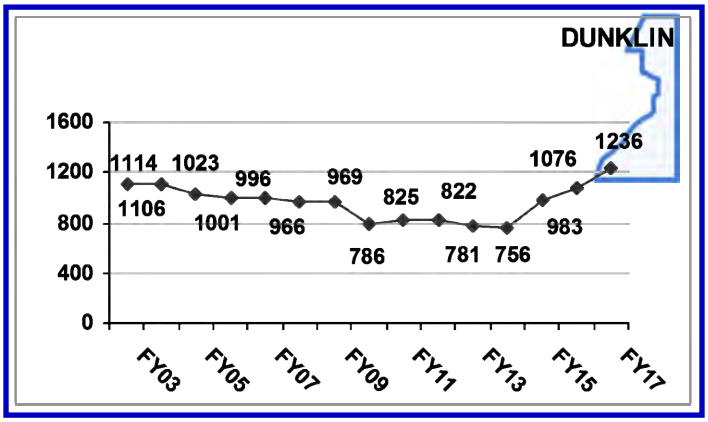


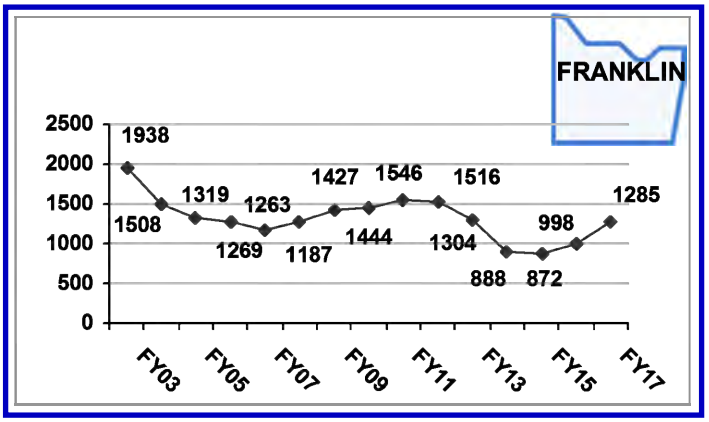


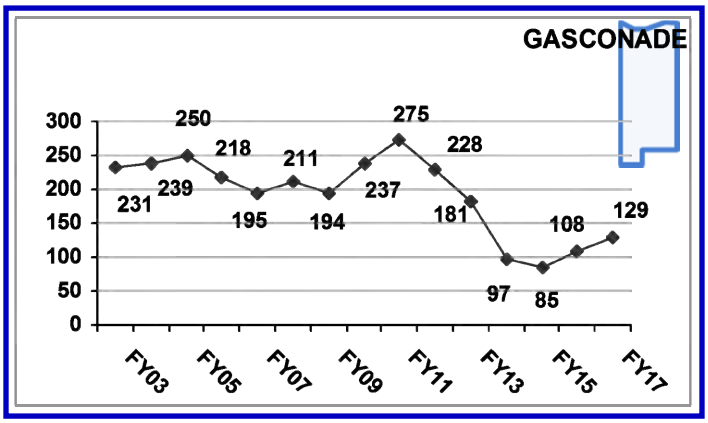
15 YEAR COMPARISON—TRIAL DIVISION CASELOAD—
CLOSED CASES BY COUNTY

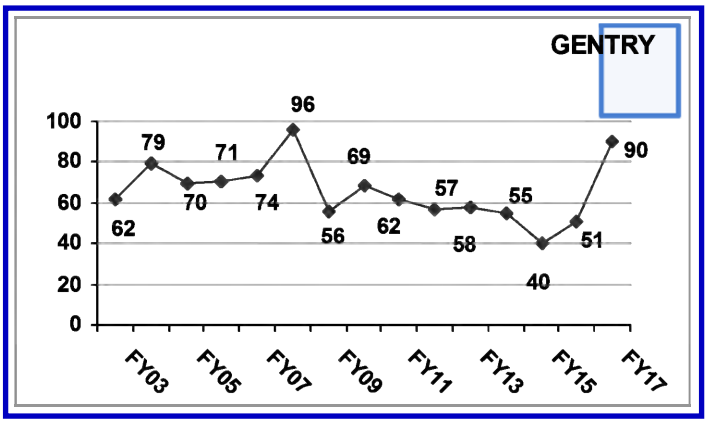


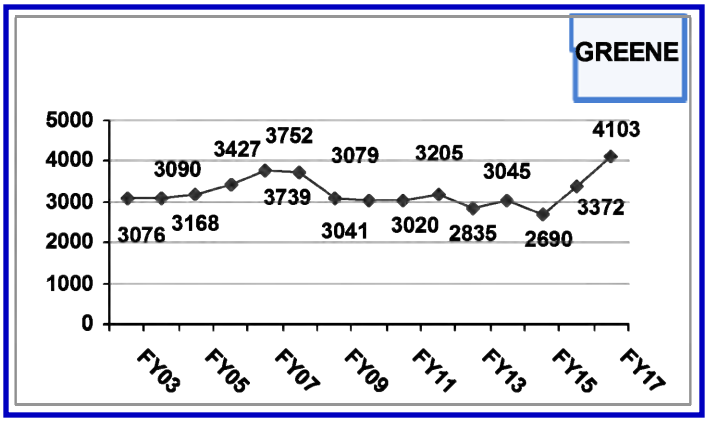


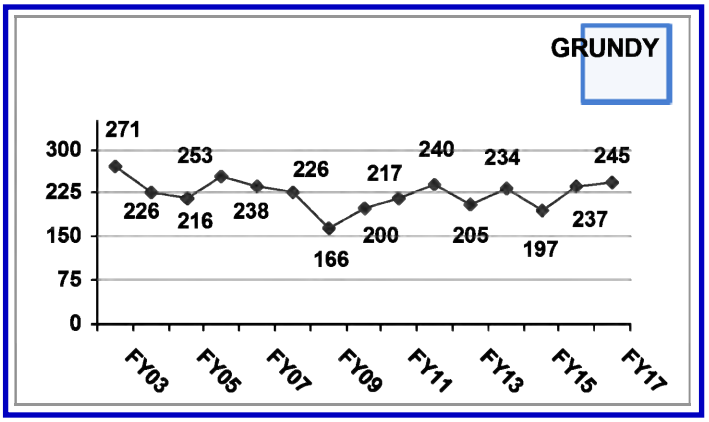




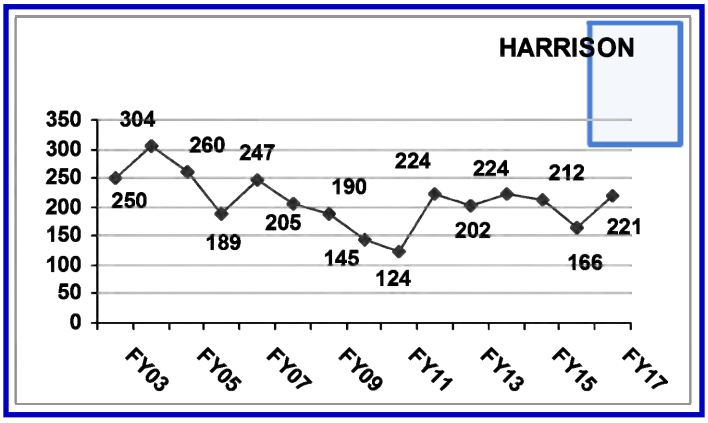


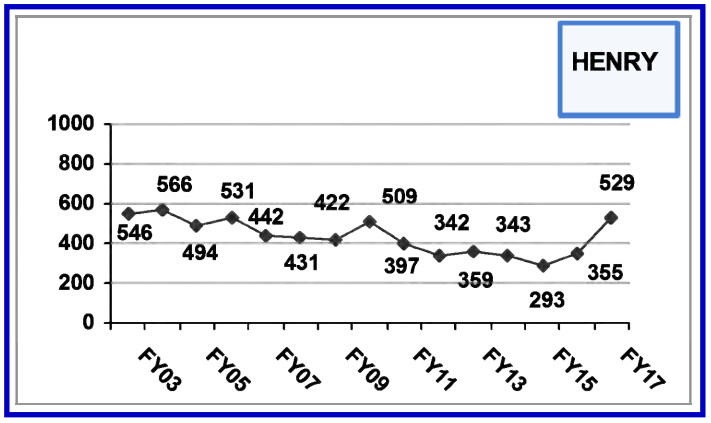


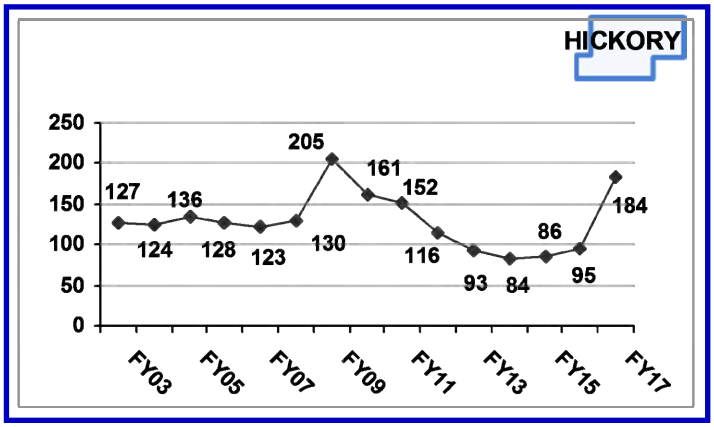


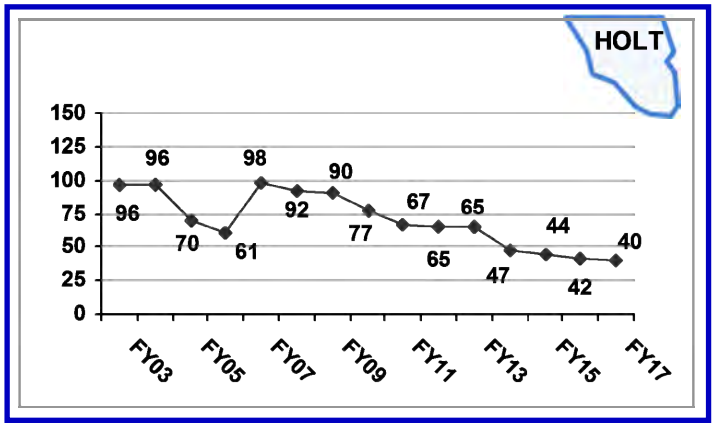


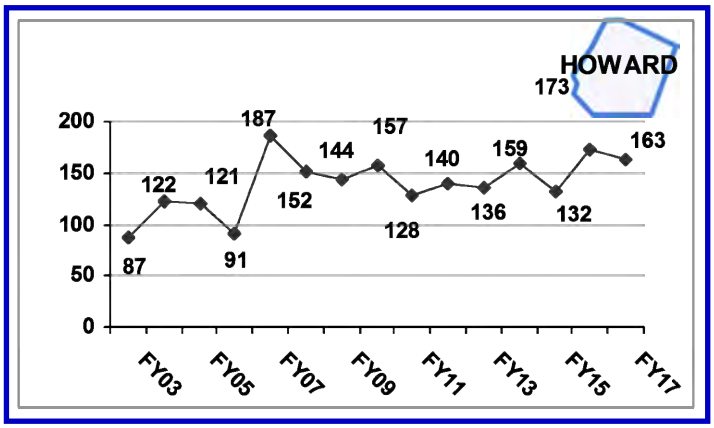
15 YEAR COMPARISON—TRIAL DIVISION CASELOAD—
CLOSED CASES BY COUNTY

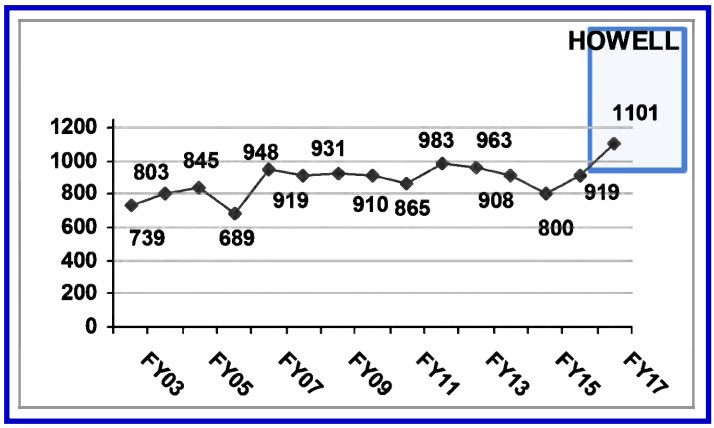


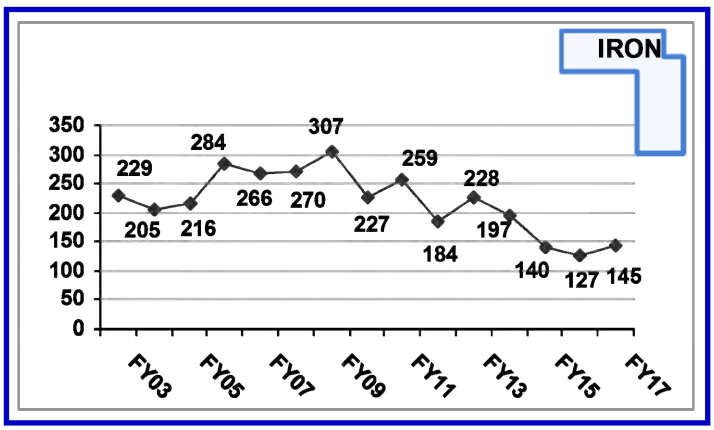


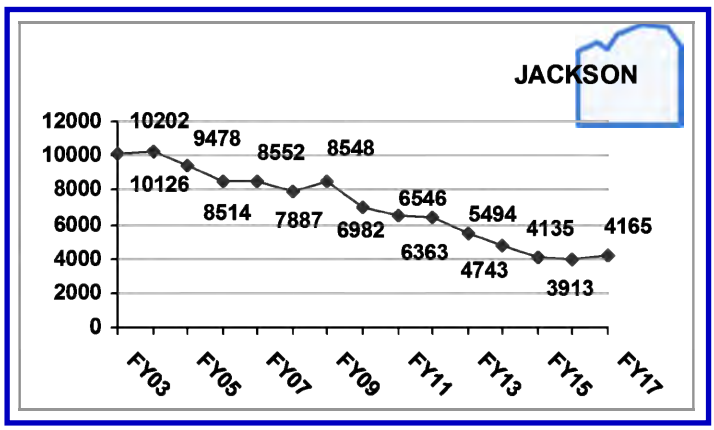




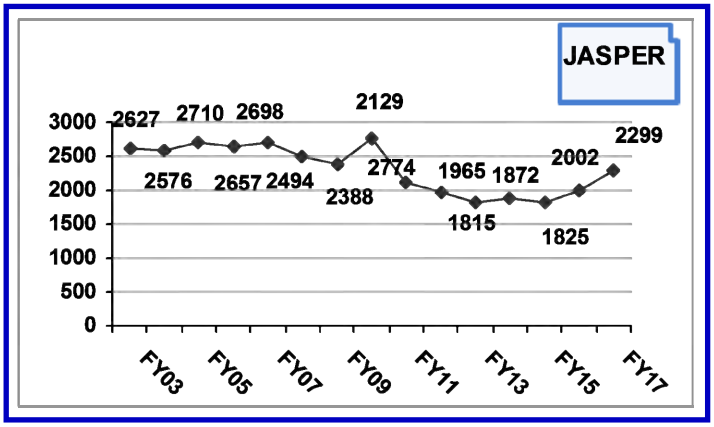


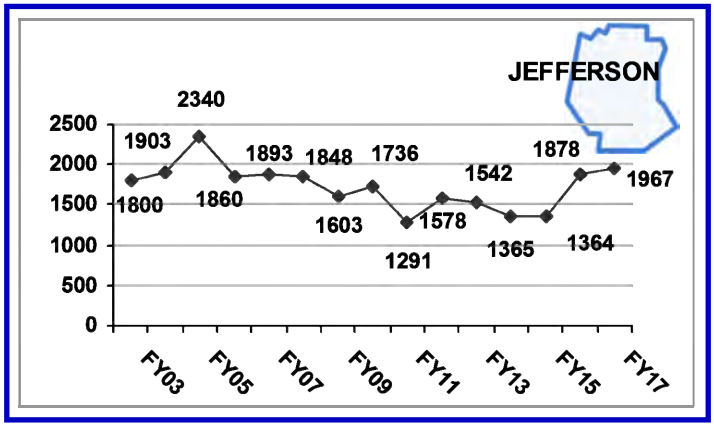


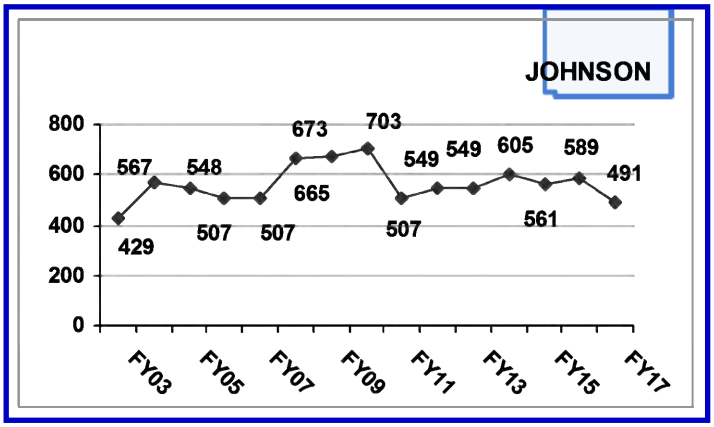


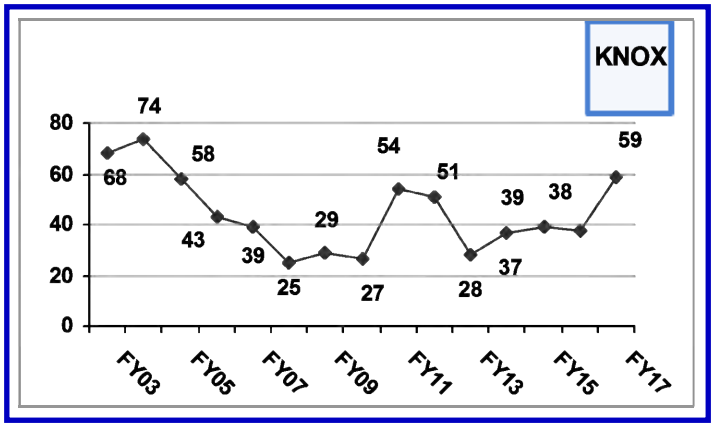


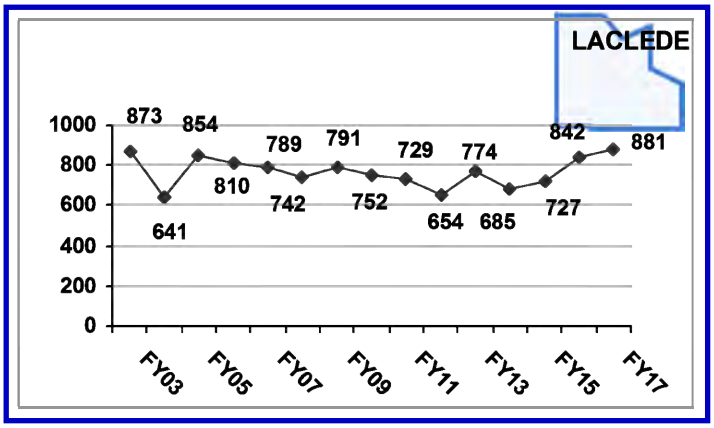
15 YEAR COMPARISON—TRIAL DIVISION CASELOAD—
CLOSED CASES BY COUNTY

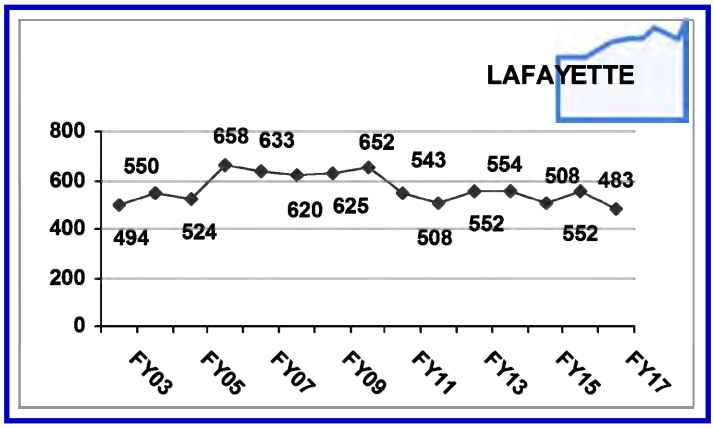


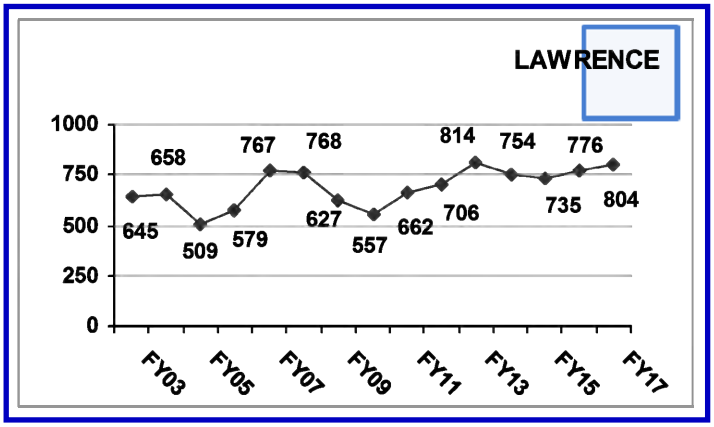


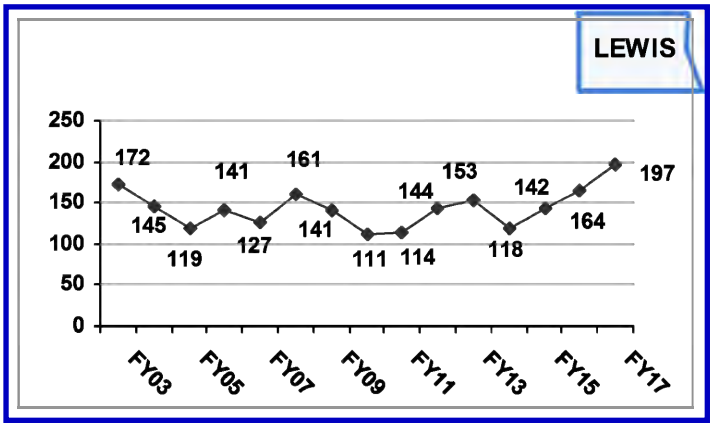




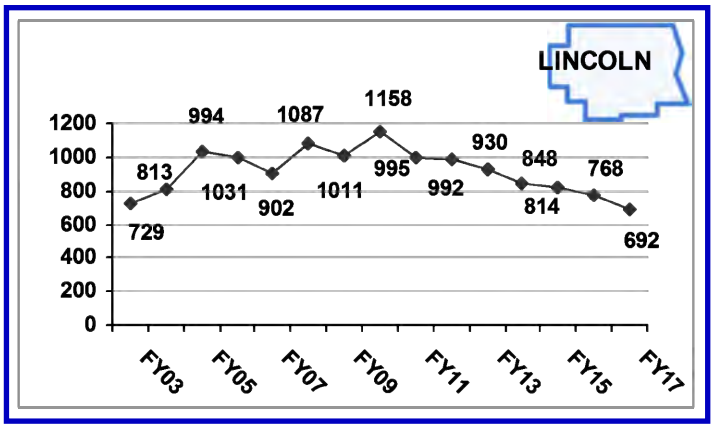


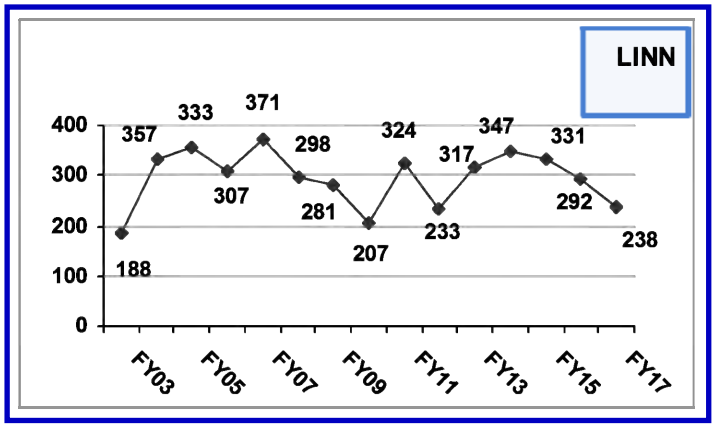


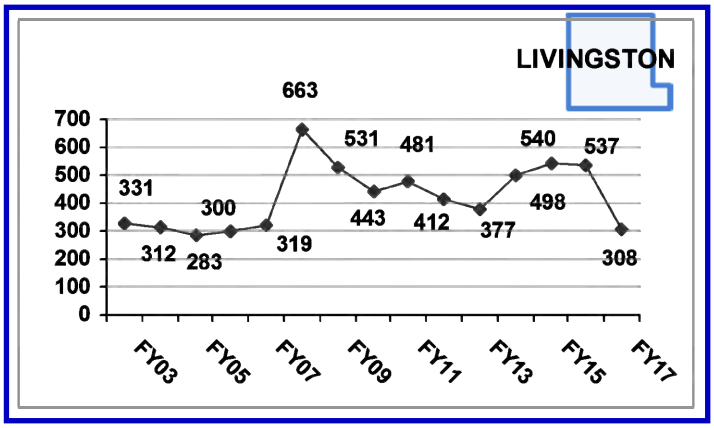


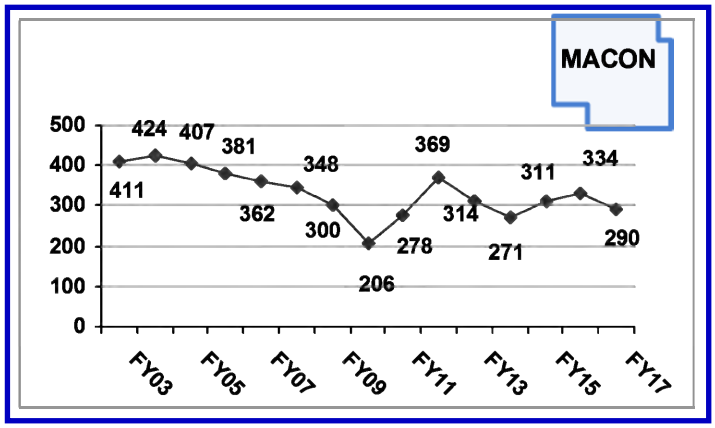


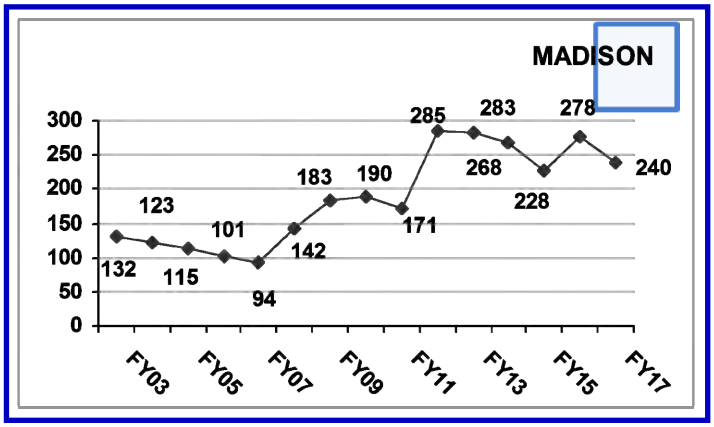
15 YEAR COMPARISON—TRIAL DIVISION CASELOAD—
CLOSED CASES BY COUNTY

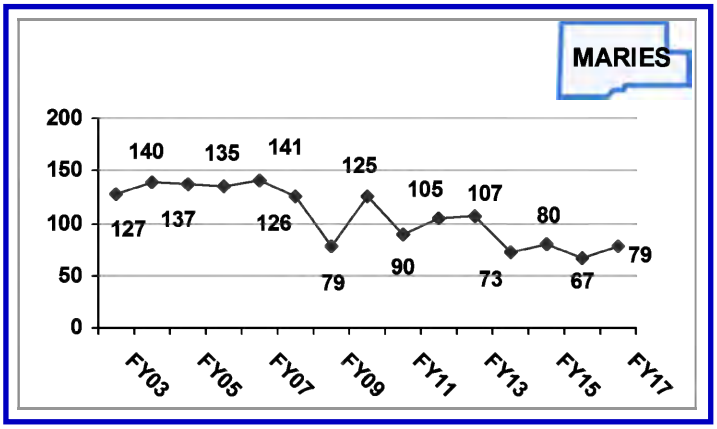


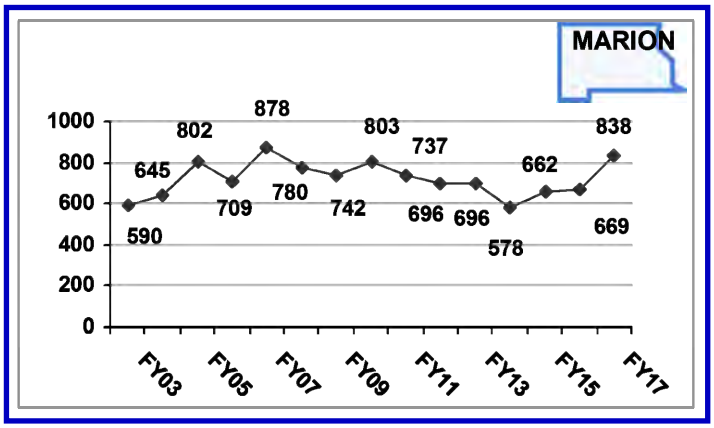


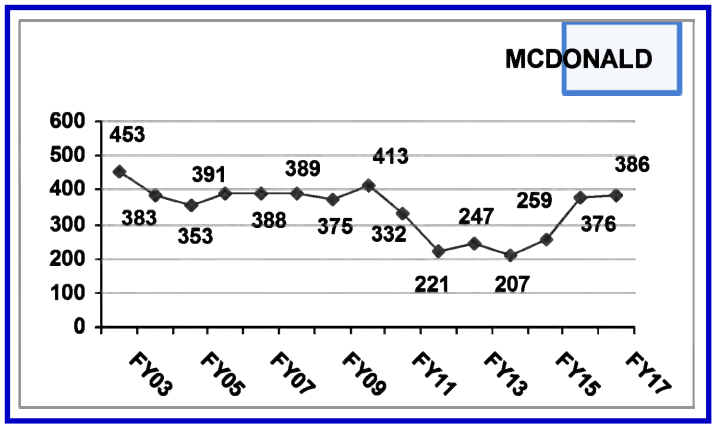




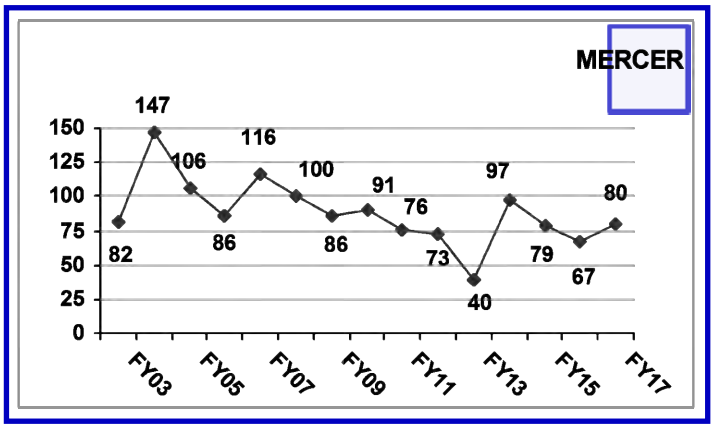


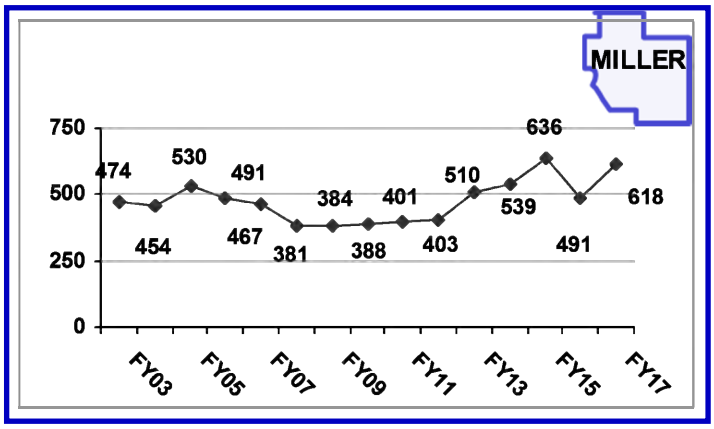


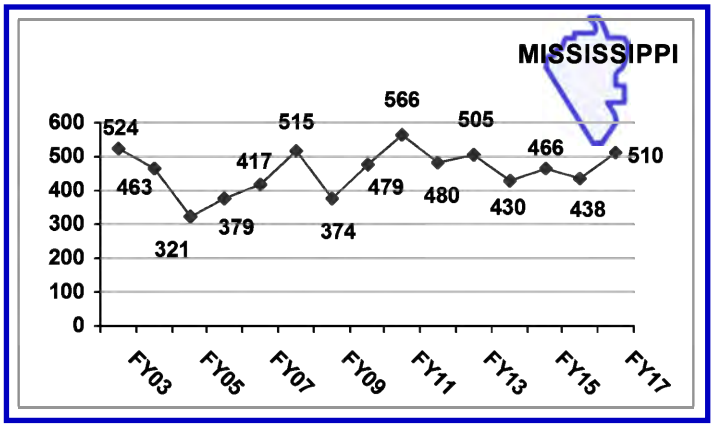


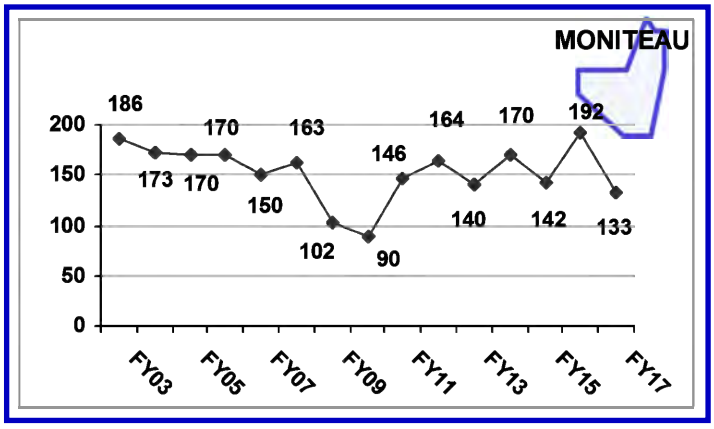


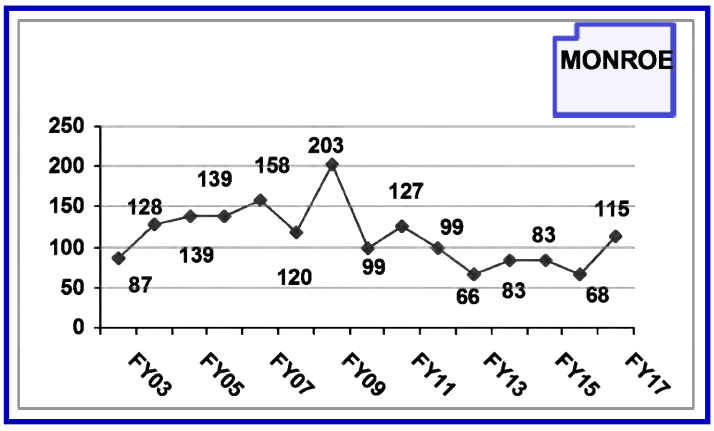
15 YEAR COMPARISON—TRIAL DIVISION CASELOAD—
CLOSED CASES BY COUNTY

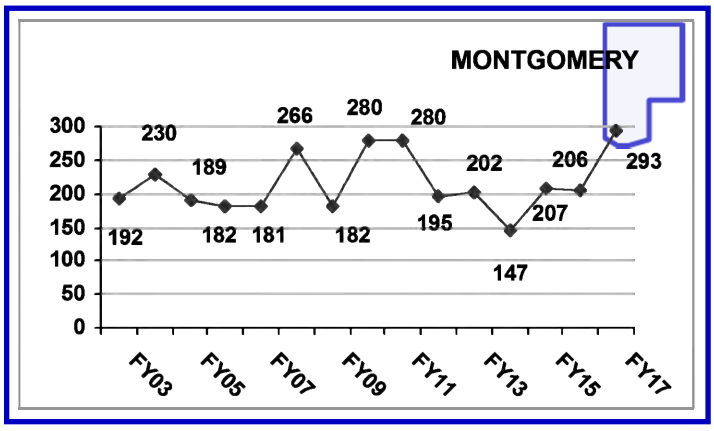


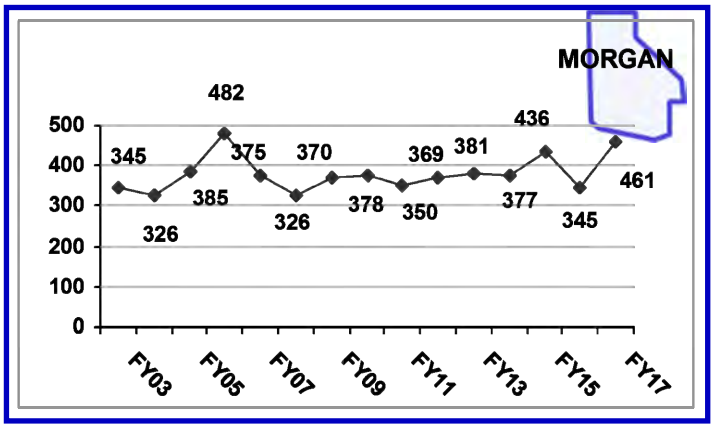


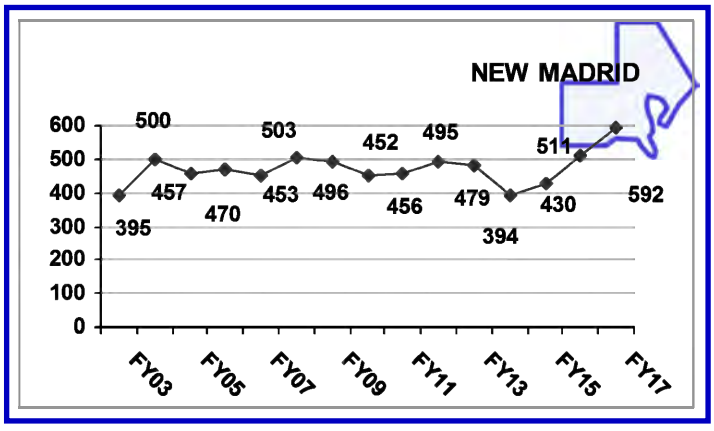




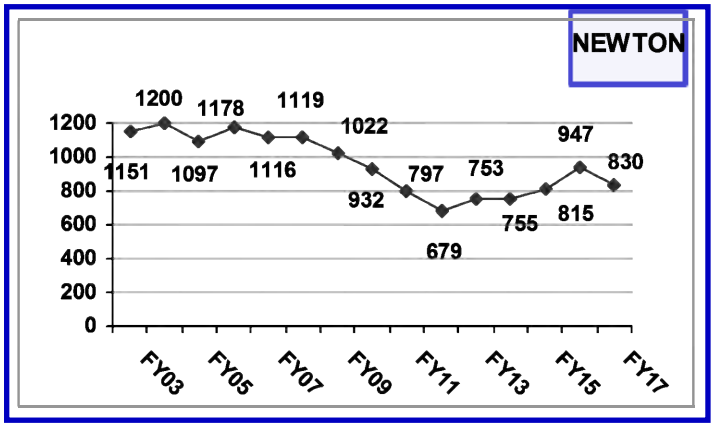


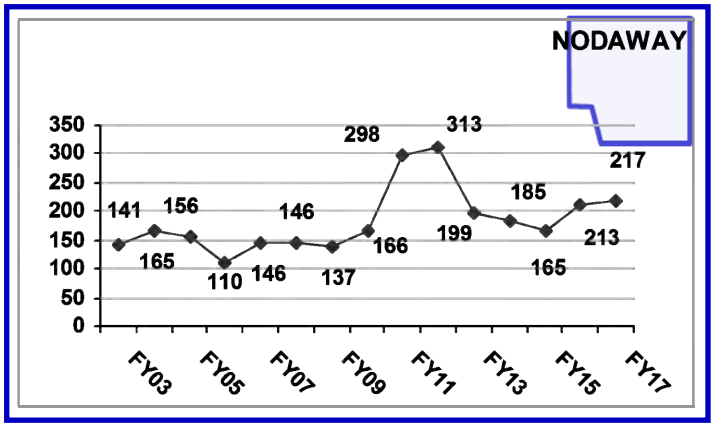


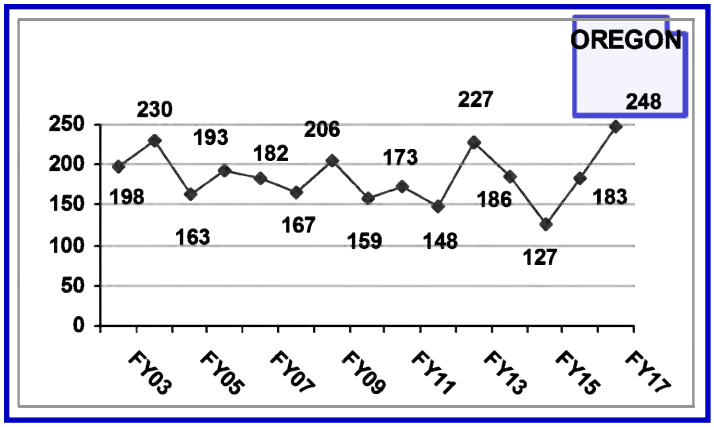


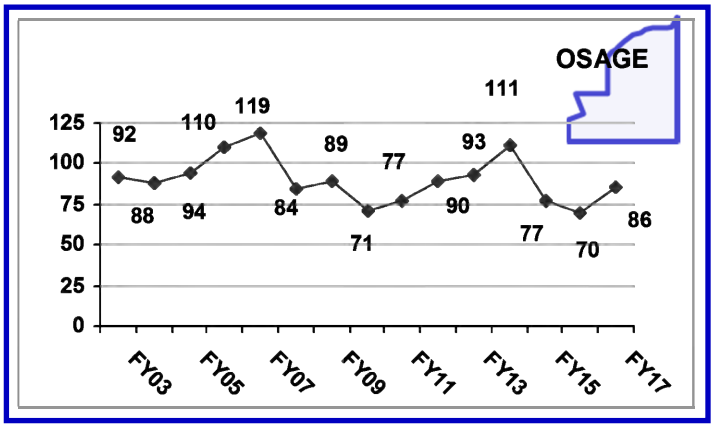


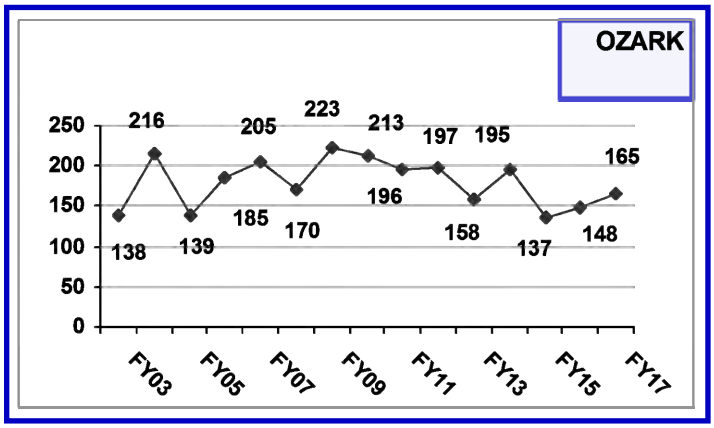
15 YEAR COMPARISON—TRIAL DIVISION CASELOAD—
CLOSED CASES BY COUNTY

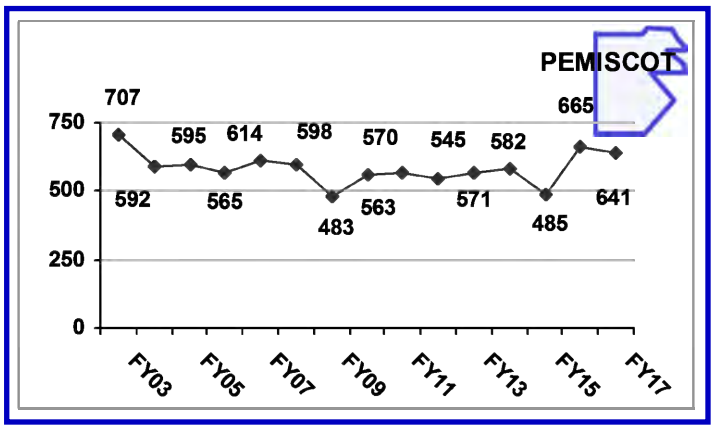


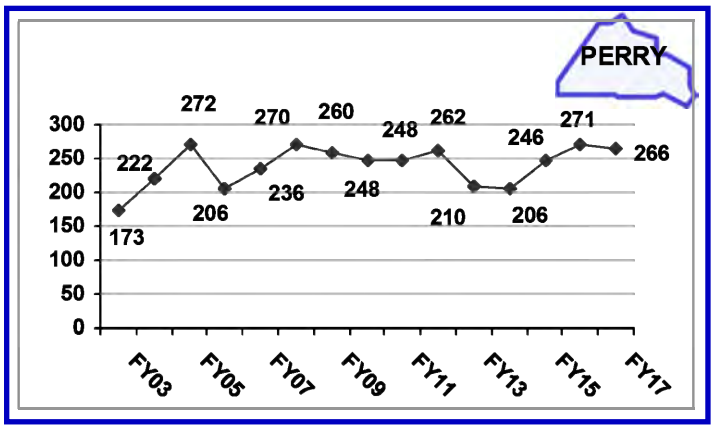


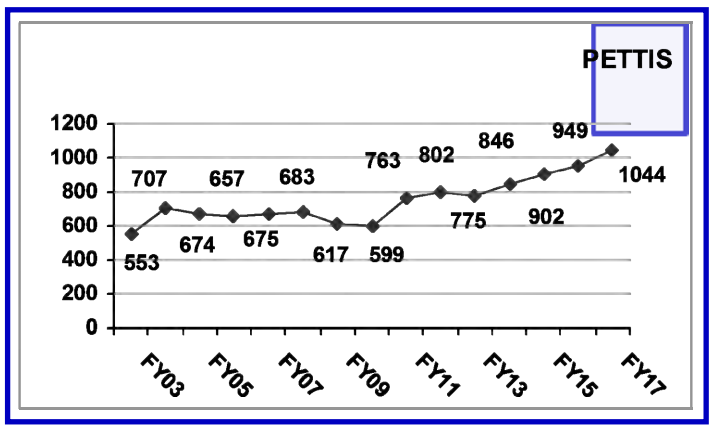




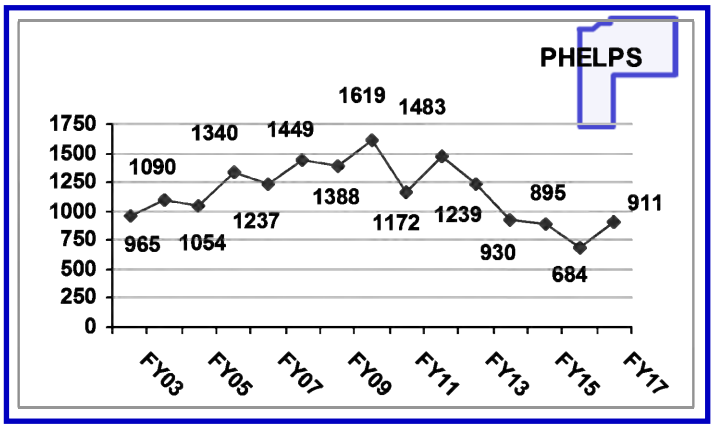


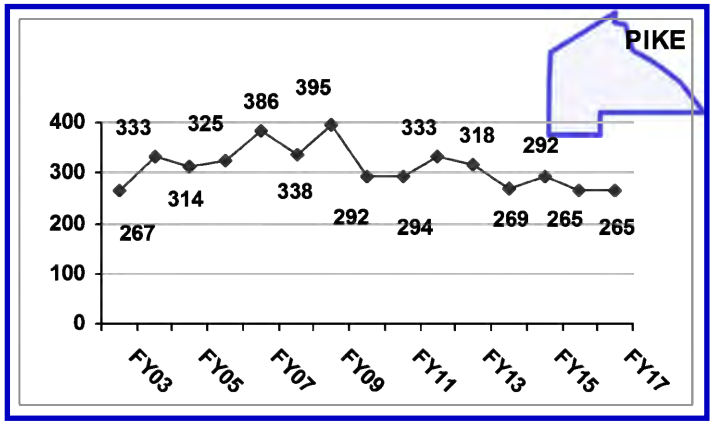


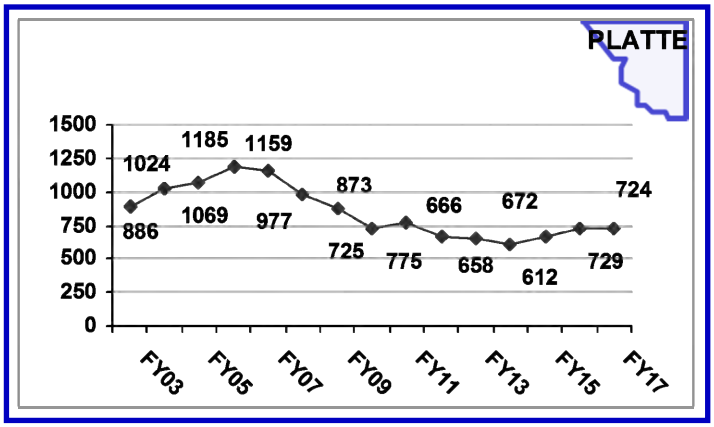


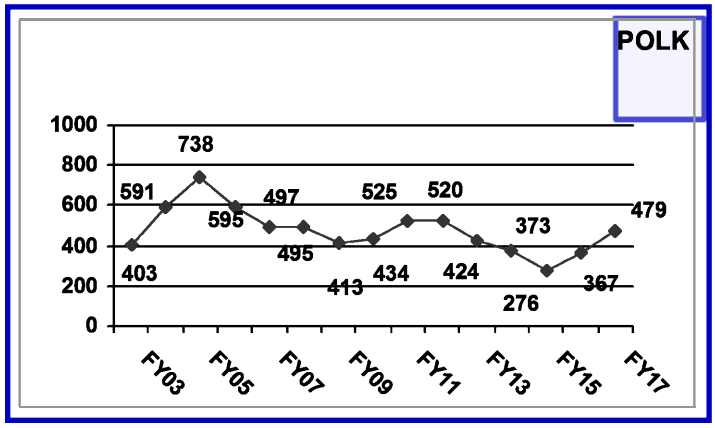


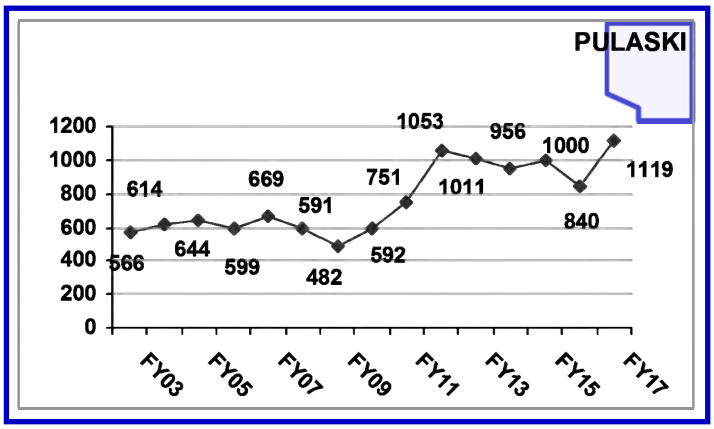
15 YEAR COMPARISON—TRIAL DIVISION CASELOAD—
CLOSED CASES BY COUNTY

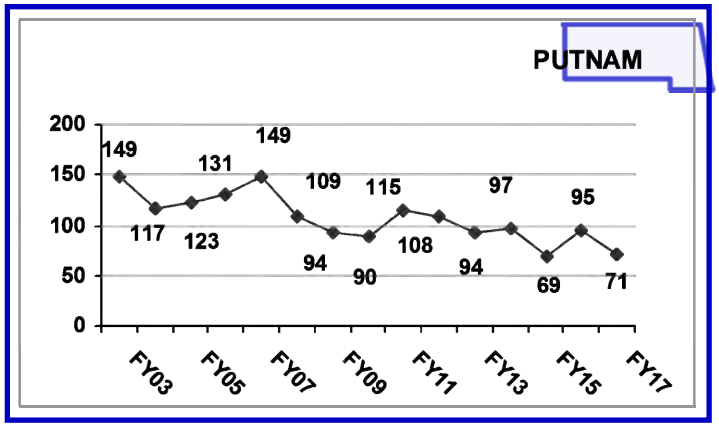


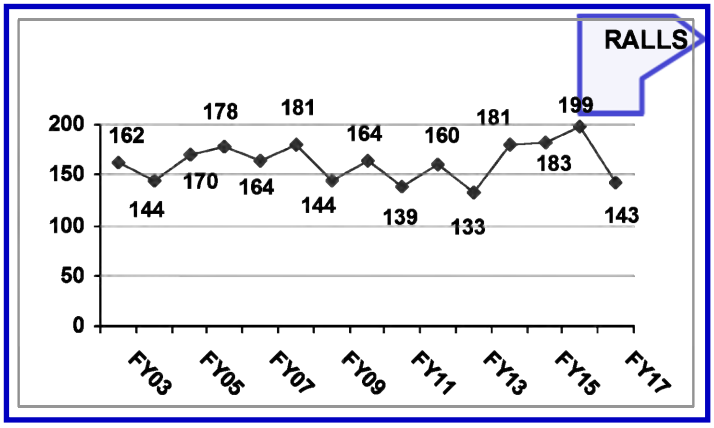


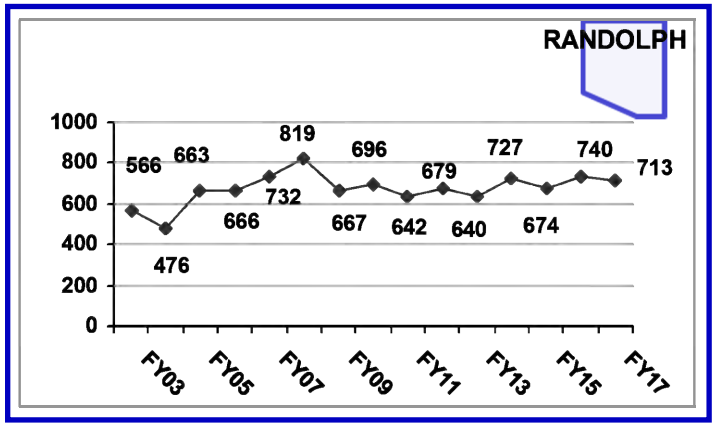




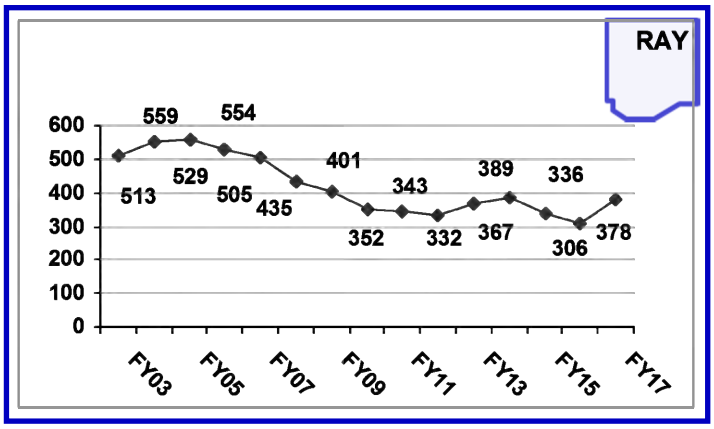


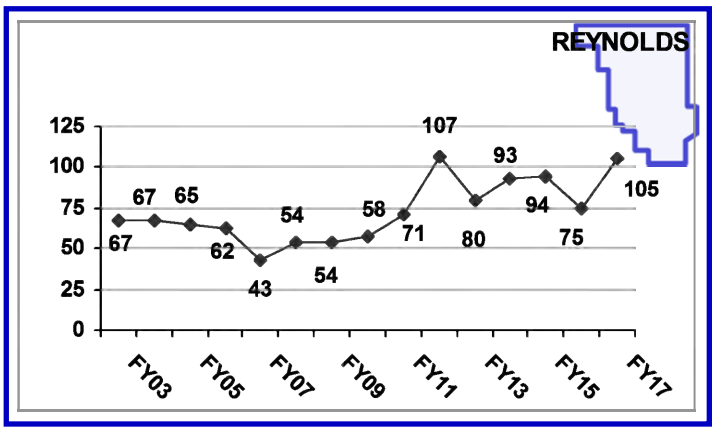


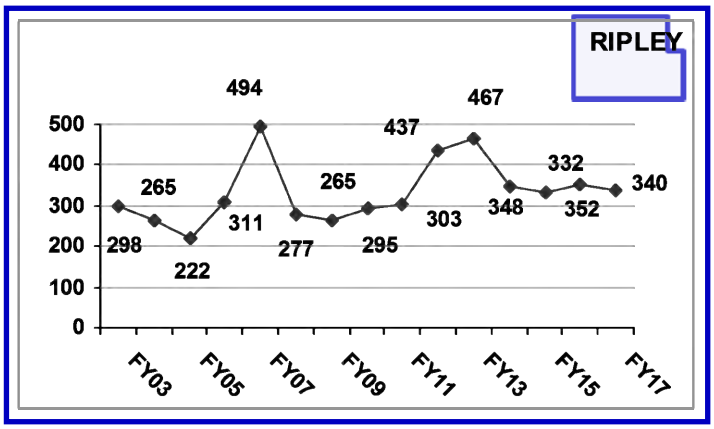


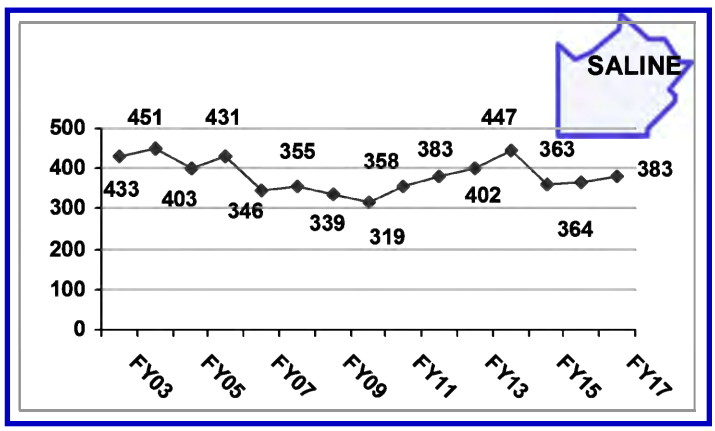


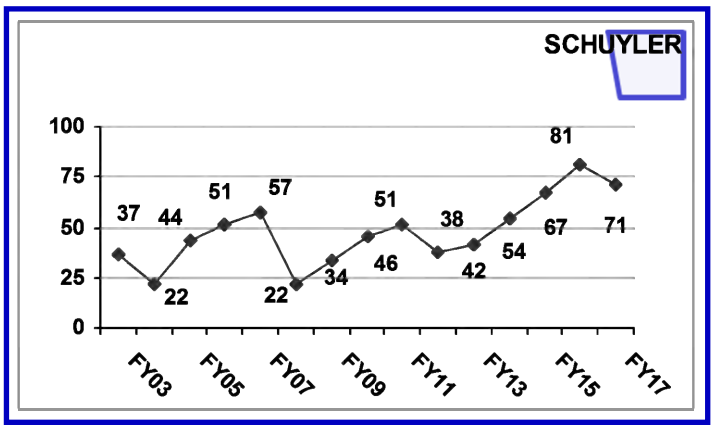
15 YEAR COMPARISON—TRIAL DIVISION CASELOAD—
CLOSED CASES BY COUNTY

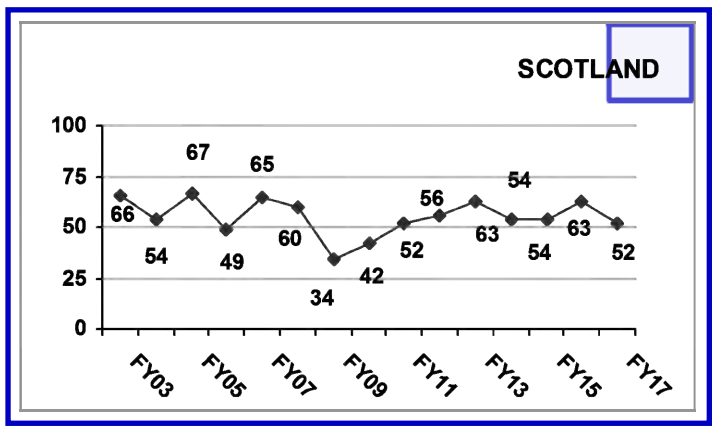


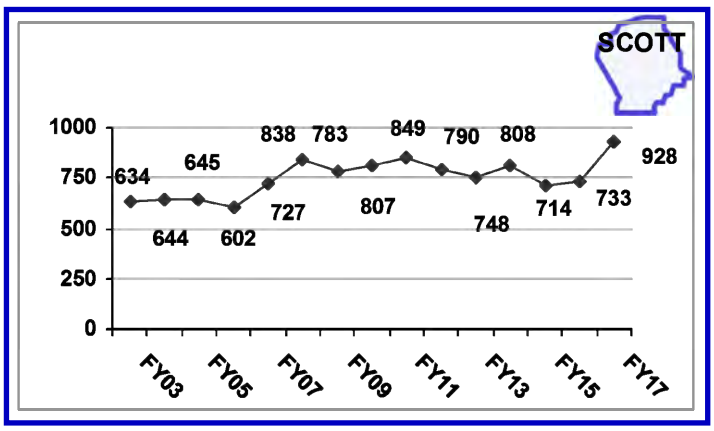


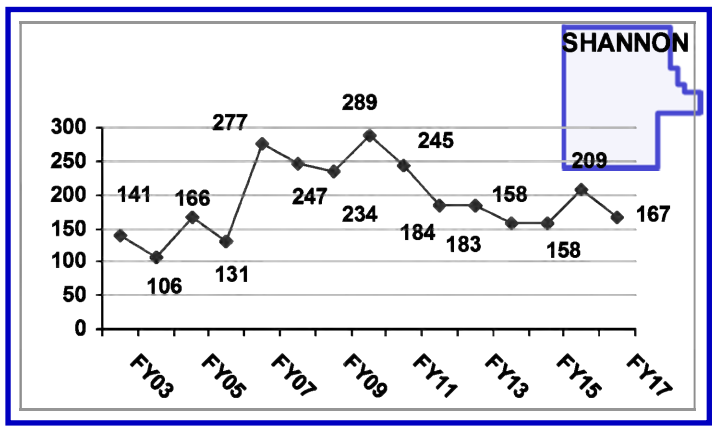




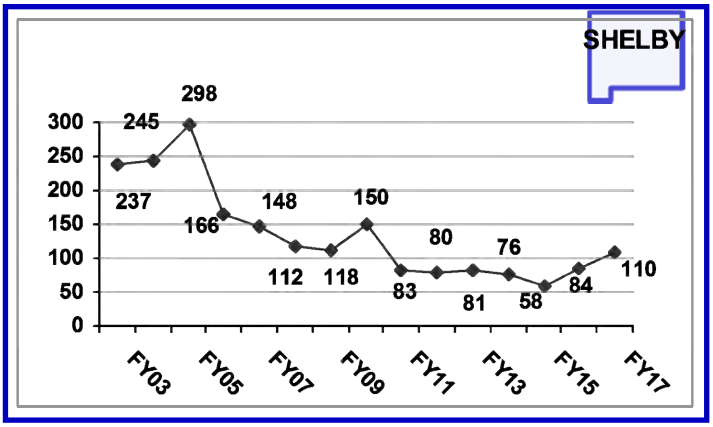


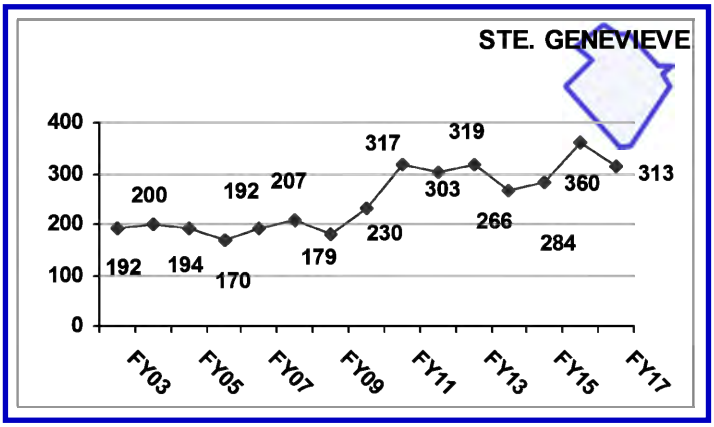


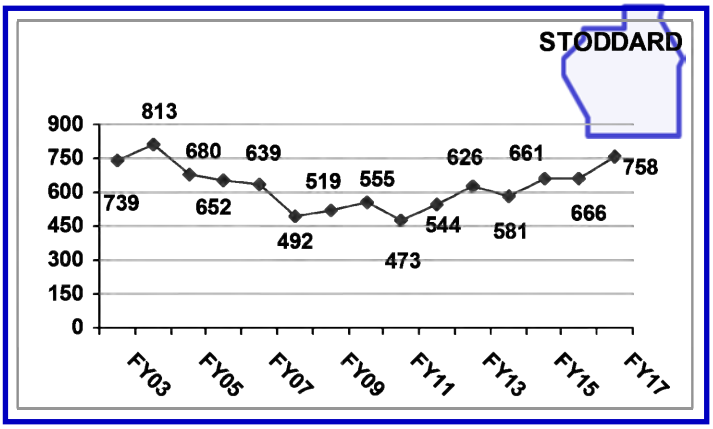


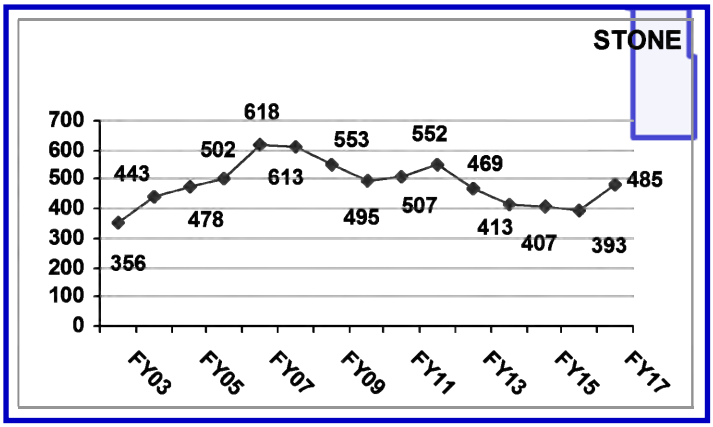


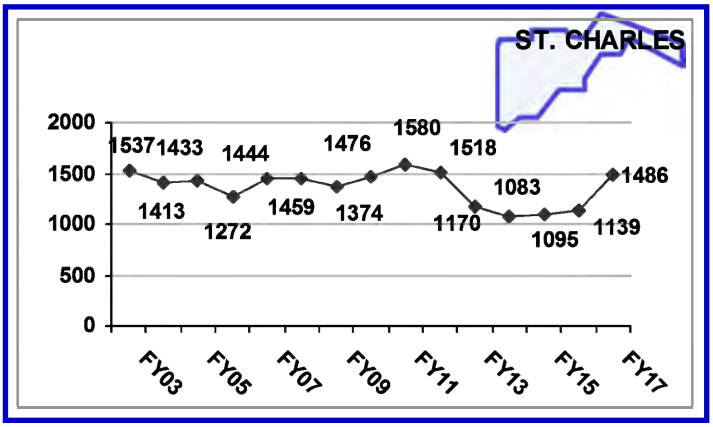
15 YEAR COMPARISON—TRIAL DIVISION CASELOAD—
CLOSED CASES BY COUNTY

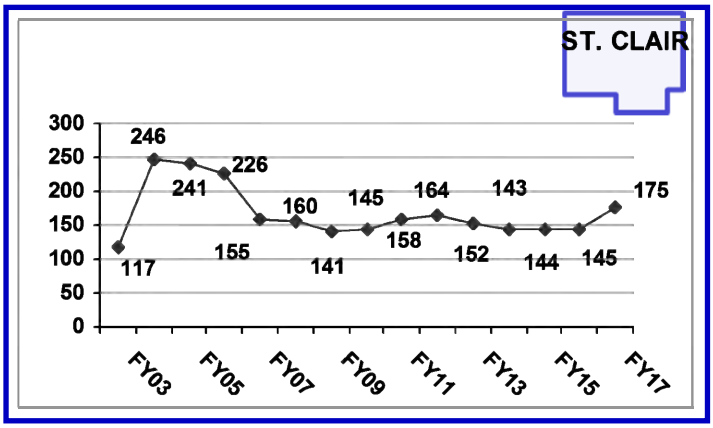


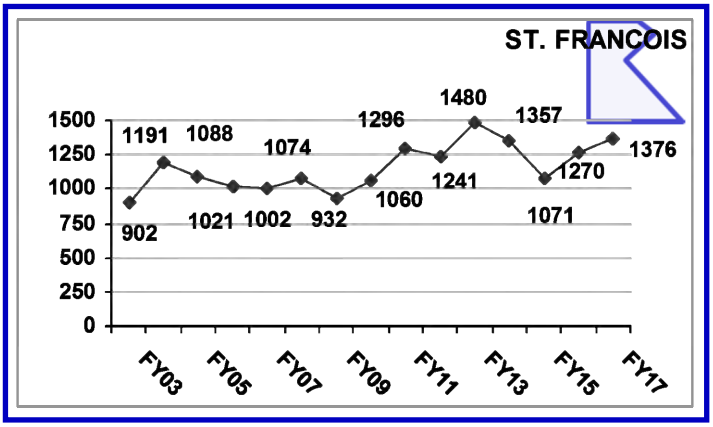


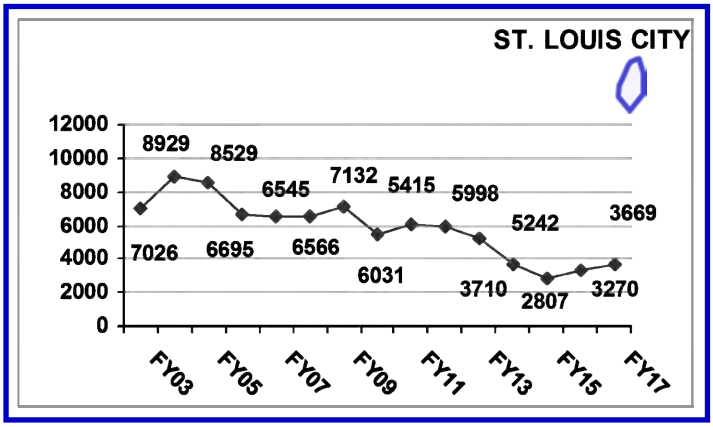




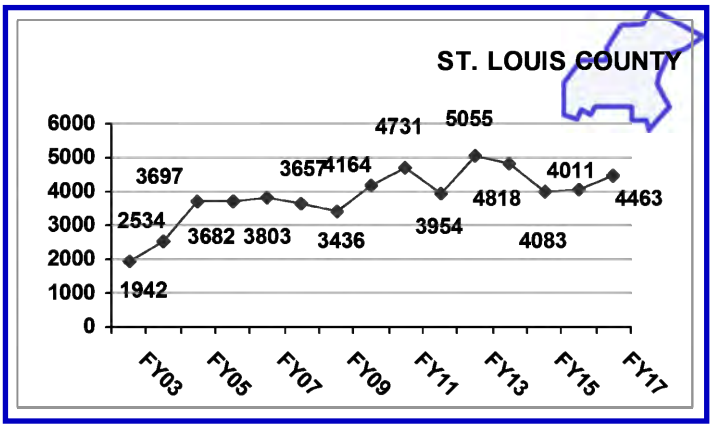


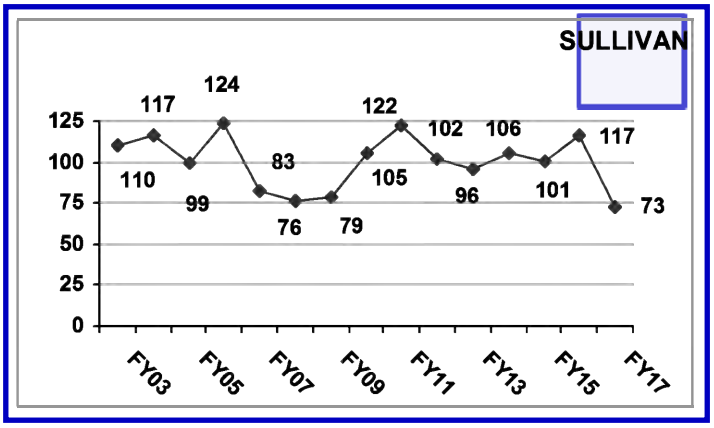


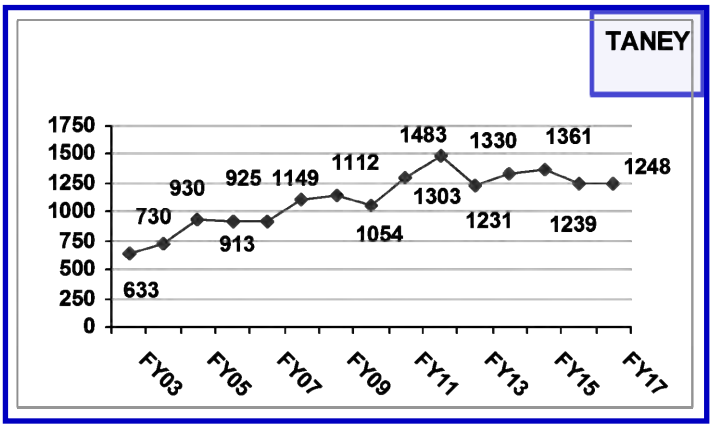


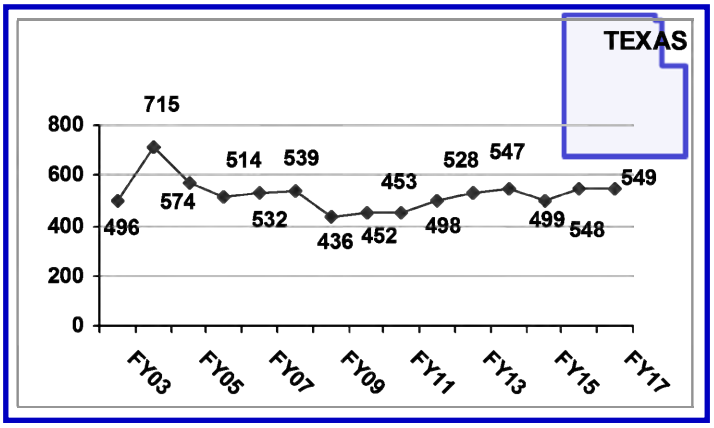


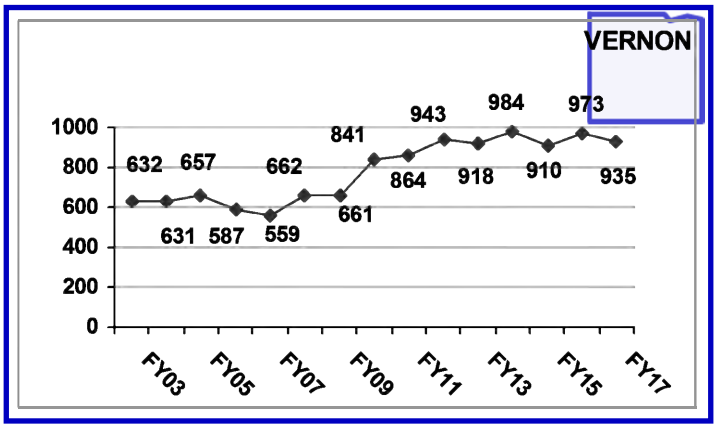
15 YEAR COMPARISON—TRIAL DIVISION CASELOAD—
CLOSED CASES BY COUNTY

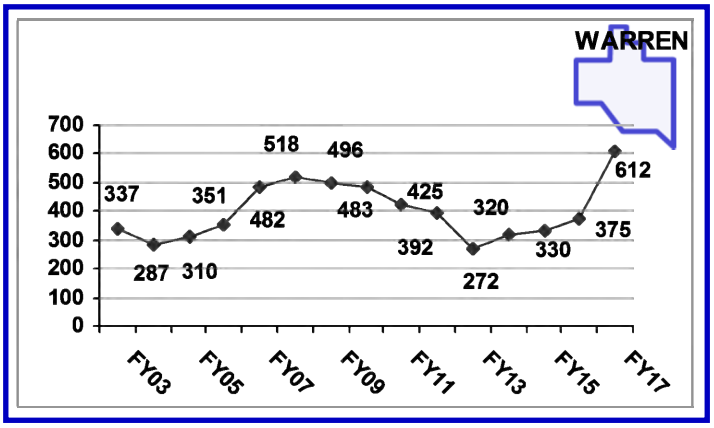


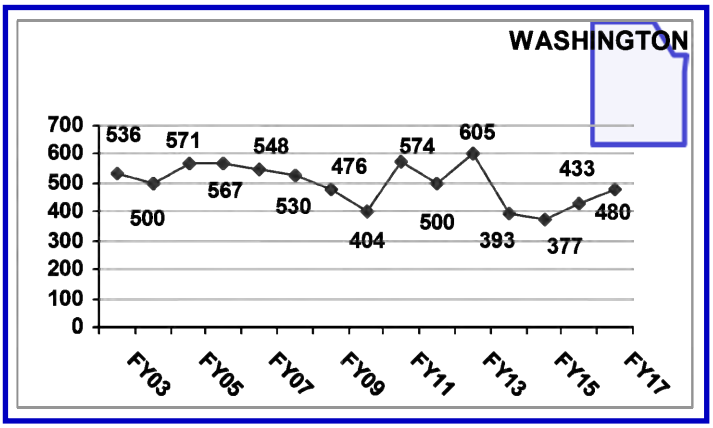


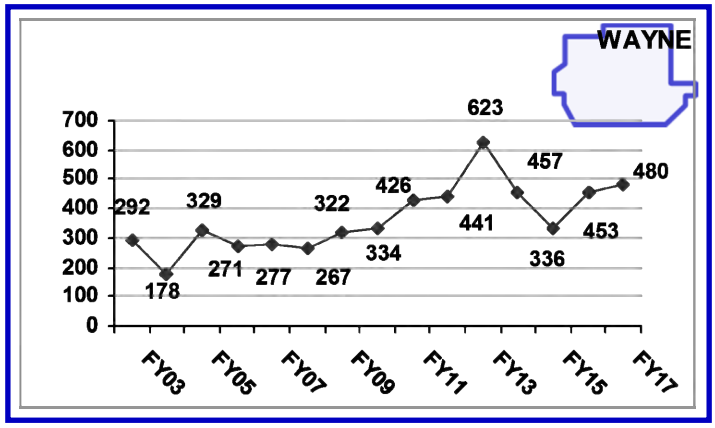




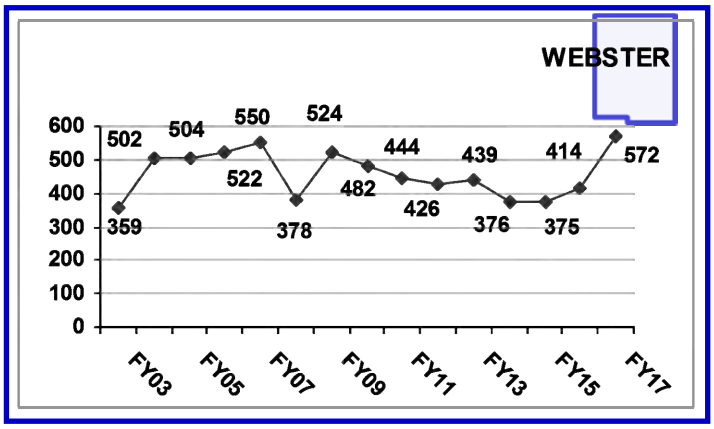


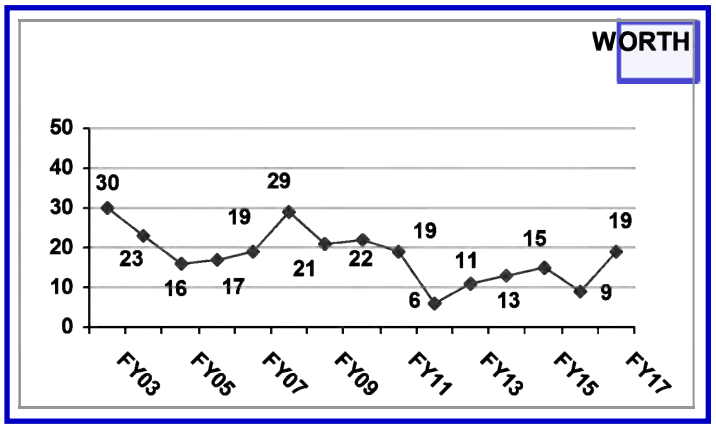


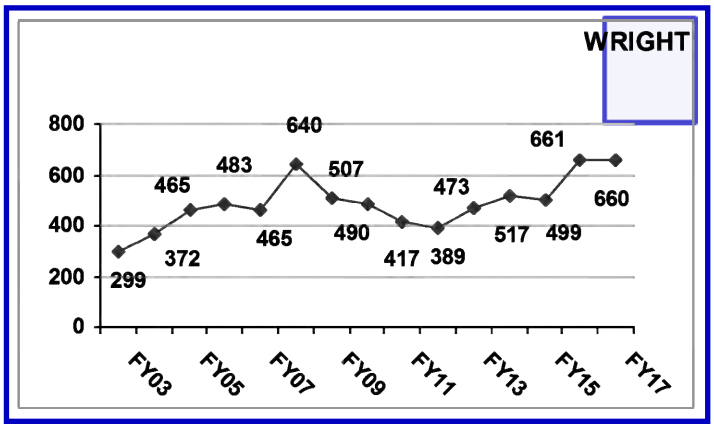




15 YEAR COMPARISON—TRIAL DIVISION CASELOAD—
CLOSED CASES BY COUNTY







Public Defender
Appellate/Post Conviction Relief Division

MSPD's Appellate/PCR Division consists of six offices, with two offices located in St. Louis, two in Columbia, and two in Kansas City. In St. Louis and Kansas City, both offices do both appeals and PCR's and handle conf ict cases for one another. Having a second office down the hall avoids having to transfer conf ict cases to an a. orney on the other side of the state. In Columbia, one office handles exclusively appeals and the other office handles exclusively post-conviction cases.

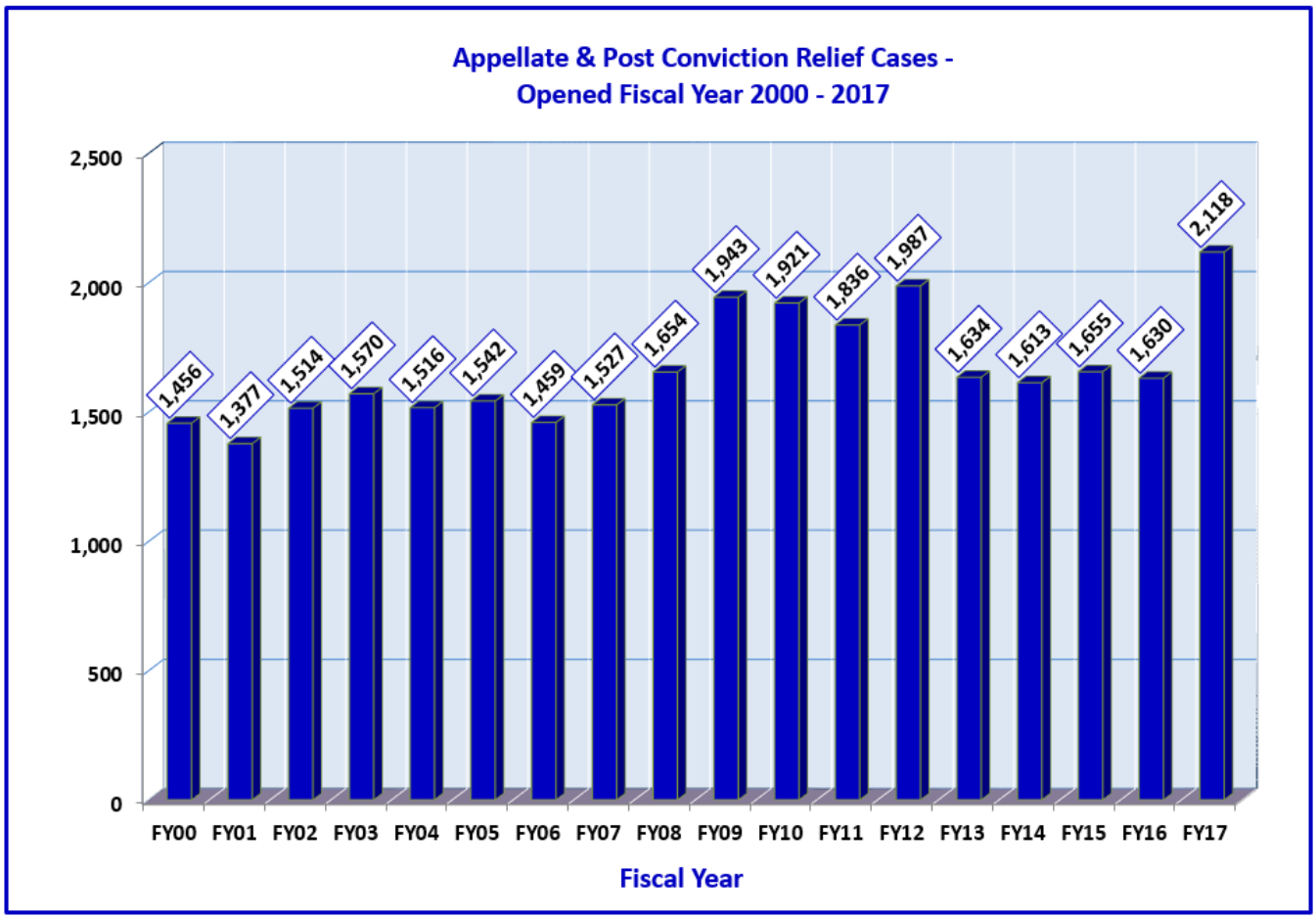
Appeals: Direct appeals are the f rst step in seeking to set aside or overturn a conviction after a trial. The process involves asking the Court of Appeals and /or the Missouri Supreme Court, to review and grant relief because of mistakes made by the trial court. The attorneys review the trial transcript, the trial court f le, all the legal documents, and evidence introduced in the case and then present to the appellate courts, through written briefs and oral argument, the errors that were made in the lower court and the law supporting relief. MSPD's appellate attorneys handle cases in the Eastern, Western, and Southern Districts and in both the Missouri and U.S. Supreme Court.

Post-conviction Cases: Post-Conviction cases (or PCR's) are collateral attacks on a conviction after the appellate process has been exhausted, and can include challenges to the legitimacy of the appellate process in a case as well as the trial court proceedings. Unlike an appeal, which can only follow a trial, a PCR can also be f led after a guilty plea. These proceedings are conducted in the circuit courts in all 114 counties across the state and the City of St. Louis and include capital as well as non-capital cases.

In a post-conviction case, the focus is on constitutional violations that could not be corrected at the appellate level. For example, if an attorney fails to object at the right time at a trial, the trial court's mistake is not preserved for appeal and the appellate court will usually not review it. However, through a PCR proceeding , a court can examine the attorney's failure to make the right objection and the likelihood the defendant would have gotten relief on appeal had the attorney done it correctly. If the court in the PCR hearing f nds that, but for the attorney's ineffectiveness, the defendant likely would have had a different result, relief may be granted.

Attorneys handling PCR cases must do much of the same work as their appellate counterparts -- reviewing the trial transcript, the trial court f le, all the legal documents, and evidence introduced in the case; but instead of then writing briefs and doing oral arguments for the appellate court, they draft motions to set aside the conviction and conduct evidentiary hearings at the circuit court level. To prepare for these, the PCR attorneys must f gure out what the trial attorney should have done, but didn't, and then do it themselves. This can include a fair amount of case re-investigation, such as locating and presenting witnesses the trial attorney failed to locate or present, presenting the testimony of an expert the trial attorney failed to obtain, or putting on new evidence of innocence that was never provided by the state prior to trial. If a post-conviction claim is denied at the lower court level, there is a right to an appeal of that denial.

Private Attorney Cases: In addition to the direct appeals and post-conviction matters arising out of cases initially handled at the trial level by public defenders, our Appellate/PCR attorneys get many cases from the private bar. It is frequently the case that the money to pay counsel has run out by the time a trial is complete and the appellate and post-conviction processes therefore fall back to the public defender.



MISSOURI STATE PUBLIC DEFENDER SYSTEM
Appellate Division

Appellate Central District 50
Ellen Flo. man, District Defender
Woodrail Centre
1000 West Nifong—Building 7, Suite 100
Columbia, MO 65203
573-777-9977 FAX: 573-777-9974

PCR Central District 67
Art Allen, District Defender
Woodrail Centre
1000 West Nifong—Building 7, Suite 100
Columbia, MO 65203
573-777-9977 FAX: 573-777-9973

Appellate/PCR Eastern District 51 (A)
Kristina Olson, District Defender
1010 Market Street—Suite 1100
St. Louis, MO 63103
314-340-7662 FAX: 314-340-7685

Appellate/PCR Eastern District 68 (B)
Renee Robinson, District Defender
1010 Market Street—Suite 1100
St. Louis, MO 63103
314-340-7662 FAX: 314-421-7685

Appellate/PCR Western District 52 (A)
Susan Hogan, District Defender
920 Main Street, Suite 500
Kansas City, MO 64105
816-889-7699 FAX: 816-889-2001

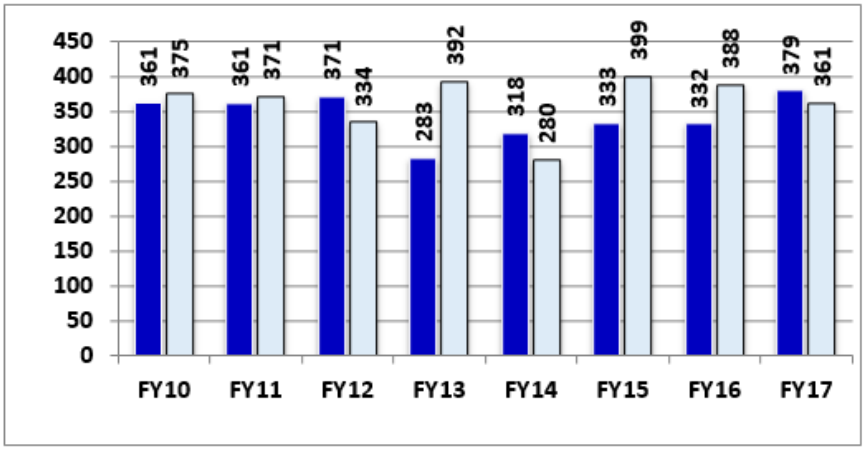
Appellate/PCR Western District 69 (B)
Damien de Loyola, District Defender
920 Main Street, Suite 500
Kansas City, MO 64105
816-889-7699 FAX: 816-889-2001

As of August 15, 2017

Fiscal Year 2017
APPELLATE DIVISION CASELOAD
Cases Opened and Closed

	Central		Eastern		Western		Totals
	Columbia		St. Louis		Kansas City		
	Area 50	Area 67	Area 51	Area 68	Area 52	Area 69	
Death Penalty							
Opened	3				1		**4**
Closed	1	3					**4**
Felony Appeals							
Opened	224		39	38	20	27	**348**
Closed	241		59	38	40	38	**416**
Misdemeanor Appeals							
Opened	20		1		1		**22**
Closed	18		3				**21**
Juvenile Appeals							
Opened							**0**
Closed							**0**
Post Plea PCR							
Opened		391	213	175	77	123	**979**
Closed		310	181	97	54	71	**713**
Post Trial PCR							
Opened		91	53	56	35	42	**277**
Closed		102	64	48	24	14	**252**
PCR Appeals							
Opened	103	13	97	88	39	36	**376**
Closed	81	39	104	80	36	16	**356**
Other (DNA, 29.07, 29.13, Rule 87, State's Appeals, 29.27, Writs, CDUs, etc)							
Opened	29	7	21	1	1	14	**73**
Closed	20	6	21	3	2	2	**54**
Appellate Division Totals							
Opened	**379**	**502**	**424**	**358**	**174**	**242**	**2,079**
Closed	**361**	**460**	**432**	**266**	**156**	**141**	**1,816**
Totals							
Opened	**881**		**782**		**416**		**2,079**
Closed	**821**		**698**		**297**		**1,816**
	Central		Eastern		Western		
	Columbia		St. Louis		Kansas City		

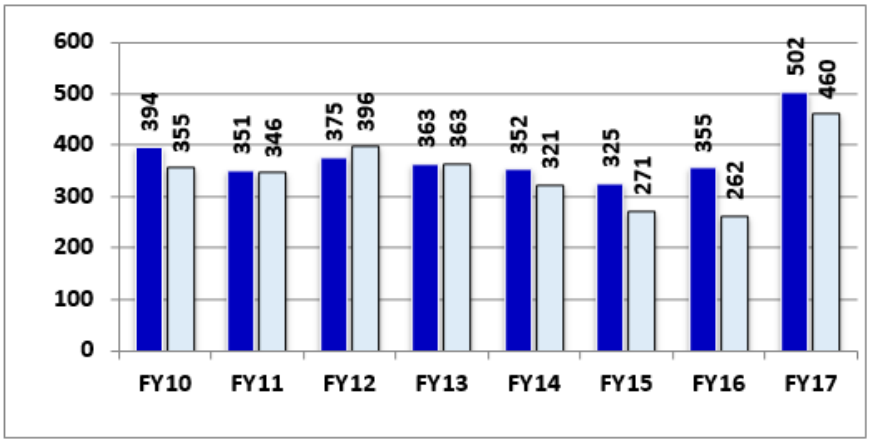
Cases Opened and Closed – By District
Fiscal Year 2010 to Fiscal Year 2017



District 50

Columbia

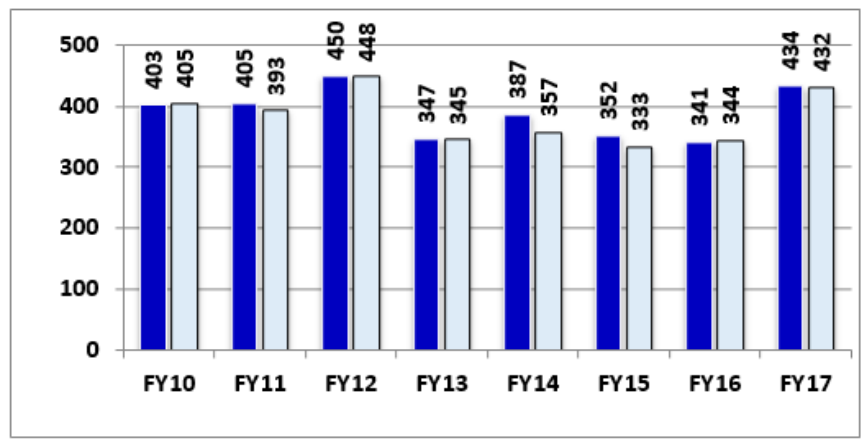
Central Appellate



District 67

Columbia

Central Post Conviction



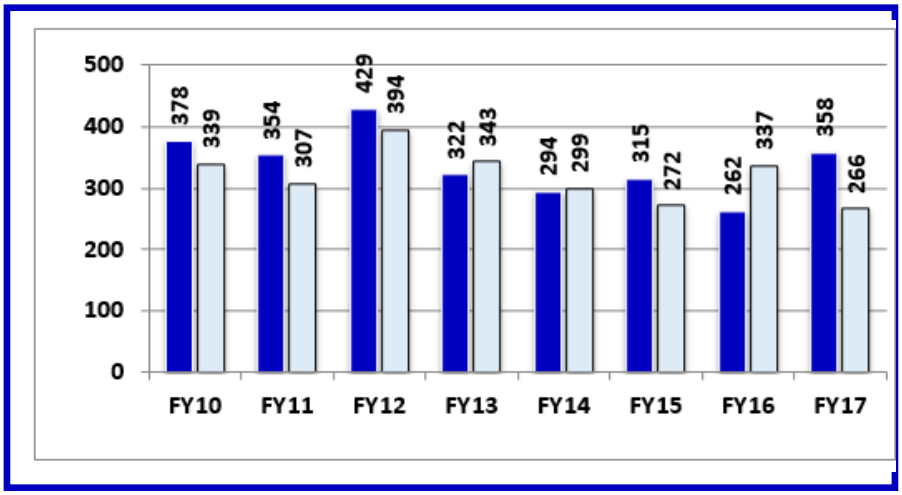
District 51

St. Louis

Eastern Appellate/
Post Conviction A

Cases Opened and Closed – By District
Fiscal Year 2010 to Fiscal Year 2017

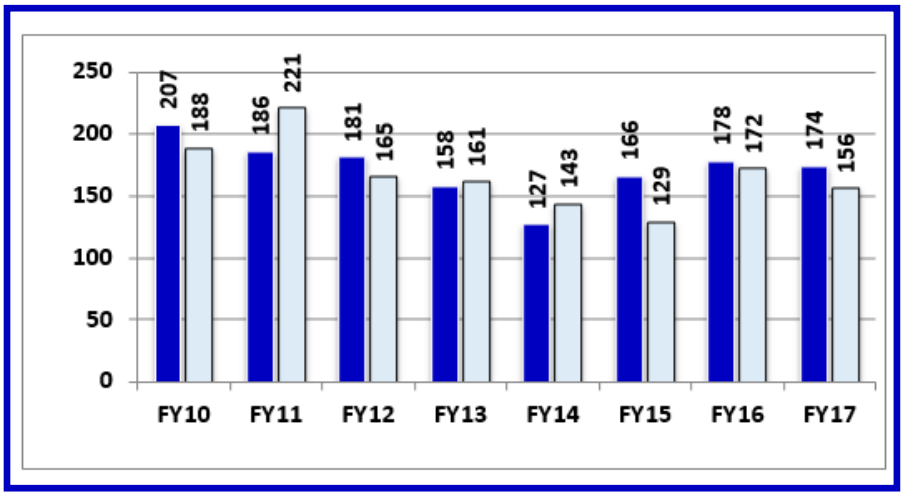
Opened Closed



District 68

St. Louis

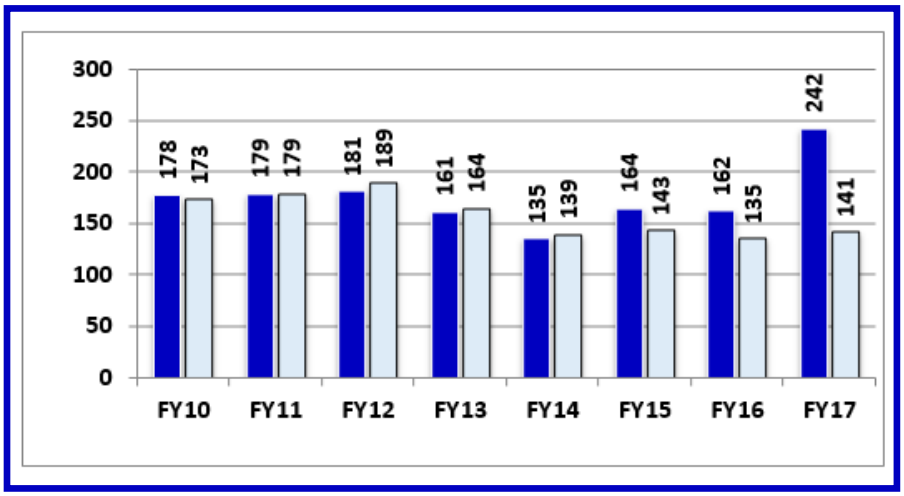
Eastern Appellate/
Post Conviction B



District 52

Kansas City

Western Appellate/
Post Conviction A



District 69

Kansas City

Western Appellate/
Post Conviction B

Missouri Public Defenders
Capital Division

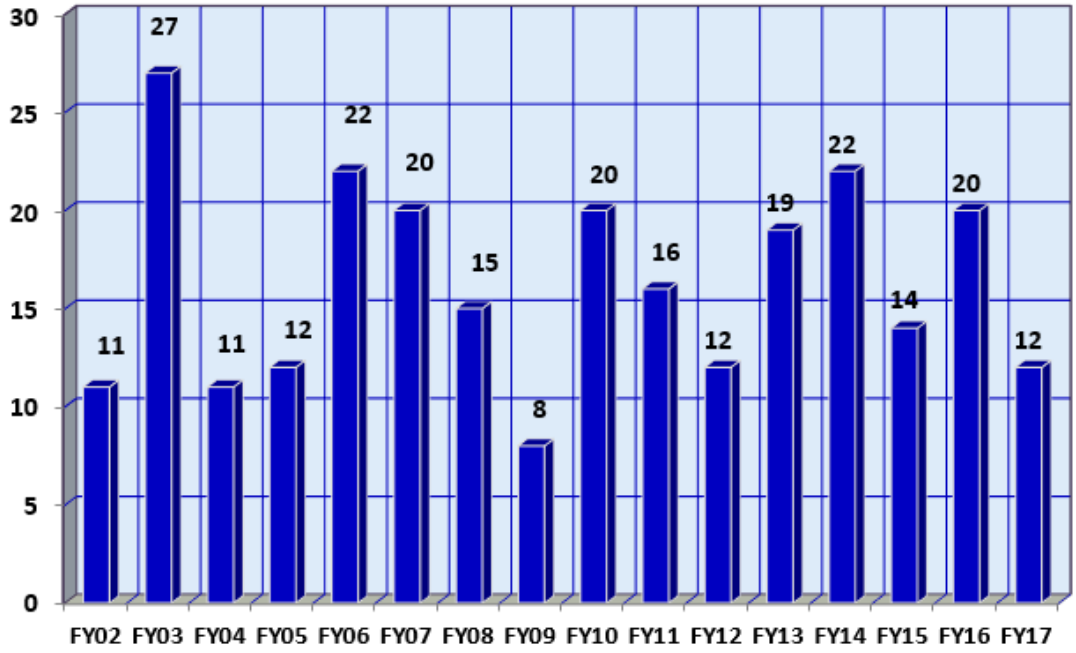
MSPD's Capital Division provides defense representa. on in f rst degree murder cases in which the state is seeking the death penalty, as well as for juveniles facing the possibility of life without parole in non-capital murder f rst degree cases. They also handle direct appeals in cases in which a sentence of death has been imposed. If their caseloads permit, they may occasionally also take on a non-capital murder case from an overloaded trial office.

The division consists of three offices, one in St. Louis, one in Columbia, and one in Kansas City. Because of the complexity of death penalty cases, attorneys handling capital cases are limited to no more than six open capital cases at a time. Two attorneys, an investigator, and a mitigation specialist are assigned to each case.

Fiscal Year 2017
CAPITAL DIVISION
Caseload

	FY16 Carryover into FY2017	Assigned	Disposed	Current June 30, 2017
Central Office - Columbia				
Death Penalty Trial Cases		1	1	14
Non- Death Penalty Trial Cases		1	2	
Juvenile Murder 1st				
Miller Cases			5	
Appeals - Death Penalty		2	1	35
Appeals Other		26	9	
Juvenile Appeals		2		
Totals	16	32	18	49
Eastern Office - St. Louis City				
Death Penalty Trial Cases		4	2	22
Non- Death Penalty Trial Cases		2	7	
Juvenile Murder 1st				
Miller Cases				
Appeals - Death Penalty				
Appeals Other				
Totals	27	6	9	22
Western Office - Kansas City				
Death Penalty Trial Cases		2	1	15
Non- Death Penalty Trial Cases		2	1	
Juvenile Murder 1st				
Miller Cases				
Appeals - Death Penalty				7
Appeals - Other		9	8	
Totals	14	13	10	22
Total Capital Division				
Death Penalty Trial Cases		7	4	51
Non- Death Penalty Trial Cases		5	10	0
Juvenile Murder 1st				0
Miller Cases				0
Appeals - Death Penalty		2	1	42
Appeals - Other		35	17	0
Juvenile Appeals				0
Division Totals	**57**	**51**	**37**	**93**

New Death Penalty Capital Cases
By Fiscal Year



MISSOURI STATE PUBLIC DEFENDER SYSTEM
Capital Division

Central District
Donald Catlett, District Defender
Woodrail Centre
1000 West Nifong—Building 7, Suite 100
Columbia, MO 65203
573-777-9977 FAX: 573-777-9963

Eastern District
Sharon Turlington, District Defender
1010 Market Street—Suite 1100
St. Louis, MO 63103
314-340-7662 FAX: 314-340-7666

Western District
Thomas Jacquinot, District Defender
920 Main Street, Suite 500
Kansas City, MO 64105
816-889-7699 Fax: 816-889-2001

As of August 15, 2017

Missouri Public Defenders
Commitment Defense Unit

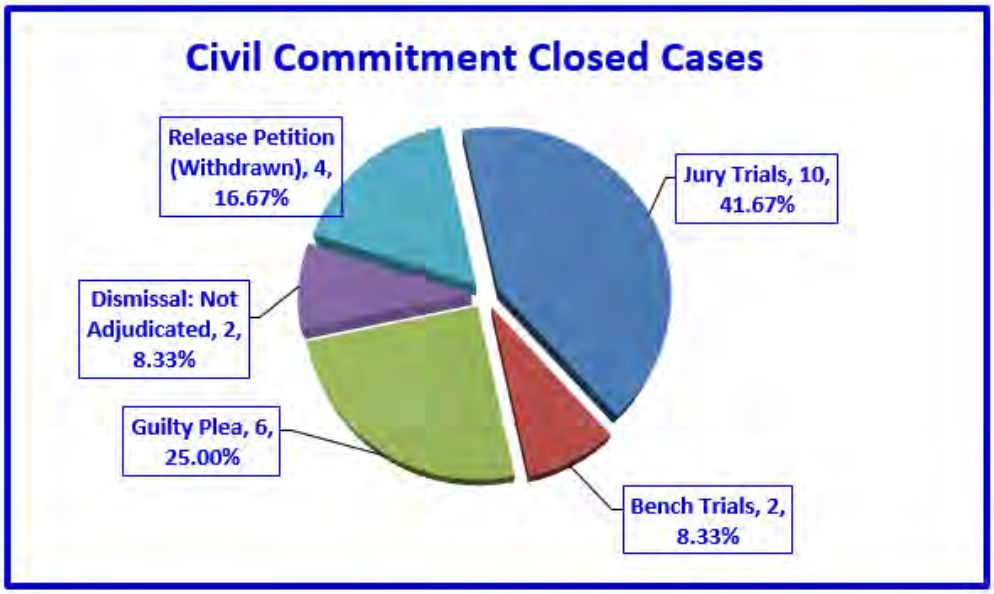
MSPD's Civil Commitment Defense Unit was created 2003 in response to Missouri's adop. on of new 'Sexually Violent Predator' civil commitment laws. After a person convicted of certain sexual offenses has completed his prison sentence, the state may seek to have him adjudicated as a 'sexually violent predator' and have him civilly committed to the state's Sex Offender Rehabilitation and Treatment Services institution. The public defenders working in MSPD's Civil Commitment Defense Unit [CDU] provide defense representation to these defendants during both their initial commitment hearing and jury trial and thereafter, to determine whether he or she remains a danger to the community.

At the time this program was created, MSPD received two additional attorneys to handle the anticipated increase in workload from these new commitment proceedings. Today, MSPD has had to pull three more lawyers from the overloaded Trial Division to help handle the growing CDU caseload.

Fiscal Year 2017
Commitment Defense Unit
Caseload Statistics

	FY16 Carryover into FY17	# of Cases Assigned in FY2017
Petitions for Commitment		18
Petitions for Release		12
Total Opened for 2017	67	30

		# of Cases Closed in FY2017
Jury Trials		10
Bench Trials		2
Guilty Plea		6
Dismissal: Not Adjudicated		2
Release Petition (Withdrawn)		4
Total Closed for 2017		24



MISSOURI STATE PUBLIC DEFENDER SYSTEM

Civil Commitment Unit

COMMITMENT DEFENSE UNIT

Amy Clay, District Defender
1010 Market Street, Suite 1100
St. Louis, MO 63101
314-340-7662 FAX: 314-340-7666

As of August 10, 2017

Missouri Public Defender
Case Contracting

Historically, MSPD has contracted approximately 5 percent of its annual caseload to private a. orneys. In Fiscal Year 2017 4.59% of MSPD's caseload was contracted. Contracted cases generally fall into one of two categories:

(1) **Conflicts:** The majority of the cases contracted out to private attorneys are second and third-level conf ict cases. A conf ict case is one in which the local defender office ethically cannot provide representation – usually because they already represent a co-defendant or perhaps a witness in the same case. In that circumstance, the local office sends the client they cannot represent to one of the next nearest defender offices for representation. These are called f rst-level conf ict cases. Where there are more than just two individuals needing representation who are involved in a conf ict, (i.e. second and third level conf icts), representation of the additional clients is more likely to be provided by private panel attorneys, who are paid to provide representation on a case-by-case basis. This is more practical and efficient than assigning these clients to yet other defender offices which are even further away from the county in which the case is being heard.

(2) **Caseload Relief:** Occasionally, MSPD is able to use vacancy savings to contract out excess cases to private counsel to give especially overloaded or short-staffed offices some workload relief. Funds for these kinds of contracts are not sufficient to solve the work overload, but when available, can provide some relief in especially pressurized offices.

Private criminal defense practitioners can apply to be a panel attorney for MSPD, designating both the counties in which they practice and the types of cases for which they are qualif ed. Once accepted onto the Panel, they are asked to enter into a Panel Attorney Memorandum of Agreement with MSPD, after which they will be placed in the rotation to receive case assignments in their areas of availability. More information for those interested in participating in MSPD's Panel Attorney Program can be found at http://publicdefender.mo.gov/contracts/MSPD_Contracting.html.

Fee Schedule for Contracting

MSPD utilizes a modif ed f at fee rate for contract cases. This is a base fee corresponding to the type of case with provisions for additional payment if the case should go to trial. The base fee may also be negotiated upward if the case is a particularly complex one or has special circumstances that may require work above and beyond the norm for its case type or if we are unable to locate a qualif ed attorney who will take the case at the rate on the schedule, as does sometimes happen. The typical contract fee schedule used by MSPD in FY16 is shown below:

Missouri State Public Defender
Private Counsel
Fee Schedule

Case Type	Description	Contract Rates
15	Murder 1st Degree	$10,000
62	Sexual Predator Trial	$8,000
20	Other Homicide	$6,000
30D	AB Felony Drug	$750
30F	AB Felony Other	$1,500
30X	AB Felony Sex	$2,000
35D	CDE Felony Drug	$750
35F	CDE Felony Other	$750
35X	CDE Felony Sex	$1,500
45M	Misdemeanor	$375
45T	Misdemeanor - Traffic	$375
50N	Juvenile - Non Violent	$500
50S	Juvenile - Status	$500
50V	Juvenile - Violent	$750
65F	Probation Violation - Felony	$375
65M	Probation Violation - Misdemeanor	$375
110F	Direct Appeals - Felony	$3,750
110S	Direct Appeal - Misdemeanor	$3,750
124A	Rule 24.035 Appeal	$500
124M	Rule 24.035 Motion	$500
129A	Rule 29.15 Appeal	$1,875
129M	Rule 29.15 Motion	$1,000

Note: MSPD will pay additional compensation in cases resolved by:
Trials
Jury Trial $1,500 for the first day and $750 for each additional day
Bench Trial $750 per day - prorated
Appeals
Rule 29.15 Evidentiary Hearing $500
Rule 24.035 Evidentiary Hearing $250

Litigation expenses (expert witness fees and travel costs, depositions, transcripts, case investigation, etc) are not included in the attorney's fee. Those types of expenditures are approved separately and must each be submitted to MSPD for approval by MSPD's Deputy Director prior to being incurred.

In FY17, MSPD contracted approximately 4.59% of its total caseload to the private bar. In FY17, MSPD expended $2,788,745 contracting out 3,938 cases, at an average cost per case of $708.16.

During the 2014 Legislative Session, the legislature truly agreed to and f nally passed $3,472,238 to permit MSPD to contract out ALL of its conf ict cases, including f rst-level conf icts, to private counsel as part of its FY2015 budget. The Governor line item vetoed these additional funds. During the Legislative Veto Session, this line item veto was overridden by the General Assembly and the funds were added to MSPD's core budget. During FY2015, the Governor released only $500,000 of these funds. In Fiscal Year 2016, MSPD Appropriations Core was cut by the $3,472,238. In Fiscal Year 2017, $4,500,000 was added to MSPD's budget. The Governor is withheld $3,500,000 of these funds. Note: In Fiscal Year 2018, the Legislature restored MSPD"S Core Budget and added an additional $1M for conf icts and other operating expenses.

FISCAL YEAR 2017
NUMBER OF CASES TO PRIVATE COUNSEL
BY DISTRICT AND COUNTY

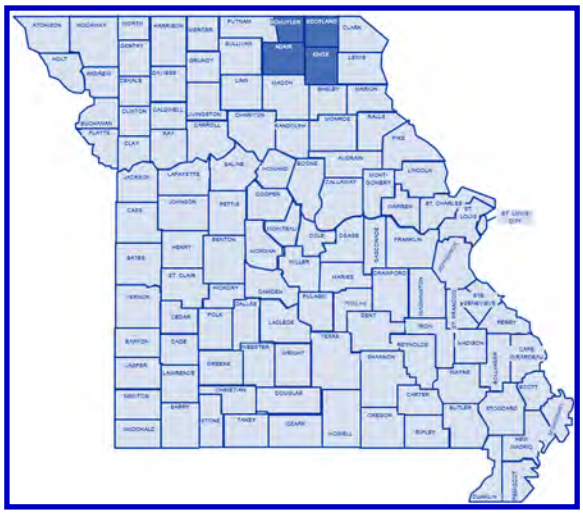
County	District #	Total	District Totals
ADAIR	02	38	
CLARK	02	6	
KNOX	02	3	
LEWIS	02	4	
MACON	02	3	
MERCER	02	1	
SCHUYLER	02	8	
SCOTLAND	02	3	
SULLIVAN	02	1	
			67
ANDREW	04	5	
ATCHISON	04	10	
BUCHANAN	04	13	
GENTRY	04	2	
HARRISON	04	2	
HOLT	04	6	
NODAWAY	04	6	
			44
ANDREW	05	1	
BUCHANAN	05	35	
GENTRY	05	2	
NODAWAY	05	1	
			39
CLAY	07	55	
CLINTON	07	5	
HARRISON	07	1	
JACKSON	07	2	
PLATTE	07	9	
RAY	07	5	
			77
CLARK	10	12	
KNOX	10	3	
LEWIS	10	14	
MARION	10	43	
MONROE	10	8	
PIKE	10	11	
RALLS	10	5	
SCHUYLER	10	2	
SHELBY	10	3	
			101
LINCOLN	11	4	
ST. CHARLES	11	20	
ST. LOUIS CITY	11	1	
ST. LOUIS COUNTY	11	4	
WARREN	11	27	
			56
AUDRAIN	12	40	
CALLAWAY	12	48	
MONTGOMERY	12	5	
			93
AUDRAIN	13	17	
BOONE	13	375	
CALLAWAY	13	14	
COLE	13	11	
COOPER	13	5	
PETTIS	13	2	
RANDOLPH	13	3	
			427
ADAIR	14	4	
LINN	14	7	
LIVINGSTON	14	3	
MACON	14	4	
MONROE	14	1	
RANDOLPH	14	5	
			24
BENTON	15	1	
CARROLL	15	1	
COOPER	15	15	
HOWARD	15		
LAFAYETTE	15	18	
PETTIS	15	49	
SALINE	15	8	
			92
CASS	16	4	
JACKSON	16	26	
			30

County	District #	Total	District Totals
BATES	17	10	
CASS	17	3	
CLAY	17	1	
HENRY	17	68	
JACKSON	17	4	
JOHNSON	17	74	
ST. CLAIR	17	3	
VERNON	17	13	
			176
COLE	19	18	
MILLER	19	20	
MONITEAU		2	
			40
FRANKLIN	20	65	
GASCONADE	20	22	
OSAGE	20	13	
WARREN	20	10	
			110
ST. LOUIS COUNTY	21	14	
ST. LOUIS CITY	21	2	
			16
FRANKLIN	22	16	
JEFFERSON	22	4	
ST. CHARLES	22	1	
ST. FRANCOIS	22	5	
ST. LOUIS CITY	22	21	
			47
JEFFERSON	23	35	
			35
BOLLINGER	24	1	
CAPE GIRARDEAU	24	2	
CRAWFORD	24	2	
DENT	24	2	
IRON	24	25	
MADISON	24	4	
ST. FRANCOIS	24	81	
STE. GENEVIEVE	24	5	
WASHINGTON	24	57	
WAYNE	24	1	
			180
CRAWFORD	25	24	
DENT	25	9	
MARIES	25	19	
PHELPS	25	97	
PULASKI	25	90	
TEXAS	25	58	
			297
CAMDEN	26	112	
HICKORY	26	5	
LACLEDE	26	120	
MILLER	26	9	
MORGAN	26	92	
PHELPS	26	1	
PULASKI	26	10	
WRIGHT	26	5	
			354
BARTON	28	8	
BATES	28	6	
CEDAR	28	24	
DADE	28	7	
VERNON	28	33	
			78
BARRY	29	22	
BARTON	29	2	
JASPER	29	101	
LAWRENCE	29	7	
MCDONALD	29	6	
NEWTON	29	214	
			352
BENTON	30	11	
DALLAS	30	5	
GREENE	30	39	
HICKORY	30	11	
POLK	30	5	
WEBSTER	30	20	
			91

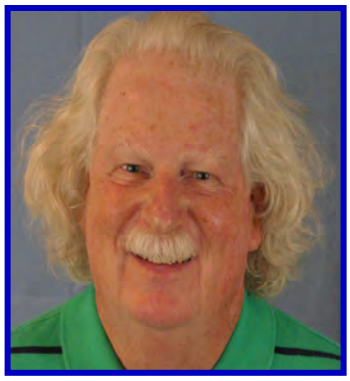
County	District #	Total	District Totals
CHRISTIAN	31	67	
DALLAS	31	2	
GREENE	31	40	
POLK	31	9	
STONE	31	4	
TANEY	31	14	
WEBSTER	31	7	
			143
BOLLINGER	32	2	
BUTLER	32	10	
CAPE GIRARDEAU	32	36	
MISSISSIPPI	32	41	
NEW MADRID	32	4	
PERRY	32	8	
SCOTT	32	51	
STODDARD	32	7	
			159
DUNKLIN	34	43	
MISSISSIPPI	34	21	
NEW MADRID	34	24	
PEMISCOT	34	26	
			114
BUTLER	35	5	
DUNKLIN	35	44	
PEMISCOT	35	20	
STODDARD	35	36	
			105
BUTLER	36	17	
CARTER	36	1	
OREGON	36	11	
RIPLEY	36	38	
SCOTT	36	15	
SHANNON	36	5	
WAYNE	36	20	
			107
DOUGLAS	37	5	
HOWELL	37	69	
OREGON	37	12	
SHANNON	37	3	
TEXAS	37	1	
			90
BARRY	39	42	
JASPER	39	38	
LAWRENCE	39	55	
MCDONALD	39	1	
STONE	39	11	
			147
CALDWELL	43	2	
CARROLL	43	2	
DAVIESS	43	1	
DEKALB	43	6	
GRUNDY	43	1	
HARRISON	43	3	
LINN	43	2	
LIVINGSTON	43	3	
PUTNAM	43	3	
RAY	43	12	
SULLIVAN	43	3	
			38
CHRISTIAN	44	12	
DOUGLAS	44	14	
OZARK	44	2	
TANEY	44	9	
WRIGHT	44	23	
			60
LINCOLN	45	12	
MARION	45	22	
PIKE	45	5	
RALLS	45	1	
			40
APPELLATE		109	
			109
		3,938	**3,938**

Fiscal Year 2017
CONFLICT and CONTRACT ASSIGNMENTS
- By Case Type -

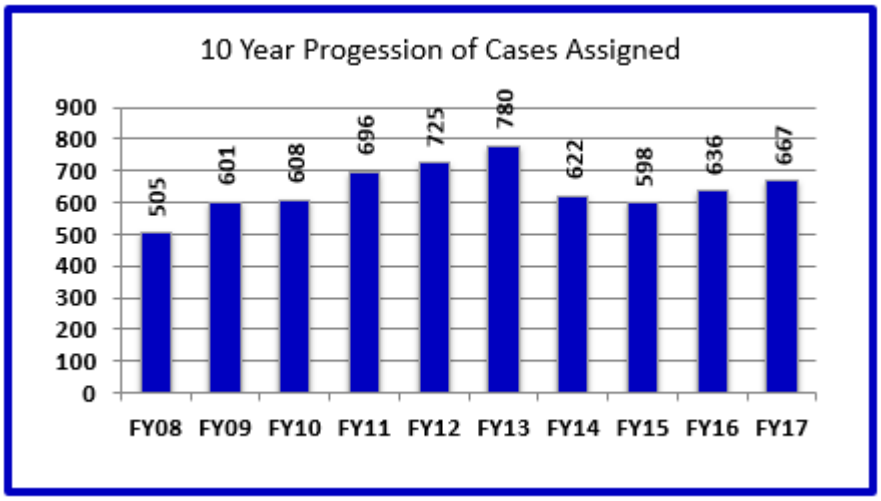
Code	Case Type Description	# of Conflict Cases Contracted	# of Overload Cases Contracted	Missouri Colition for the Right to Cousel	Total
110F	Direct Appeal - Felony		61	2	63
110I	Direct Appeal - Interlocutory				0
110J	Direct Appeal - Juvenile				0
110S	Direct Appeal - Misdemeanor		1		1
124A	Rule 24.035 Appeal - PCR Appeal				0
124M	Rule 24.035 Motion - Post Plea PCR		4		4
124SA	Rule 24.035 Appeal - State's Appeal				0
129A	Rule 29.15 Appeal - PCR Appeal		2		2
129M	Rule 29.15 Motion - Post Trial PCR	2	2		4
161a	CDU Appeal	1			1
175T	Writ Trial				0
10	Murder 1 - Death Penalty				0
15	Murder 1 - Non-Death Penalty	5	3	1	9
20	Other Homicide	15	6		21
30D	A - B Felony Drug	202	24		226
30F	A - B Felony Other	250	28	19	297
30X	A - B Felony Sex	24	1	1	26
35D	C - D - E Felony Drug	663	183	4	850
35F	C - D - E Felony Other	1036	276	17	1329
35X	C - D - E Felony Sex	9	1		10
45M	Misdemeanor (other than Traffic)	415	147	1	563
45T	Misd. - Traffic (RSMo. 301-307)	47	13		60
50N	Juvenile Non-violent (all other)	36	4		40
50S	Juvenile Status	2			2
50V	Juvenile Violent (crimes against persons)	17			17
62	Sexual Predator Trial				0
65F	Probation Violation - Felony	245	60	1	306
65M	Probation Violation - Misdemeanor	78	23		101
99	None	5	1		6
		3052	**840**	**46**	
	Total Private Counsel Conflict & Contract Assignments				**3938**

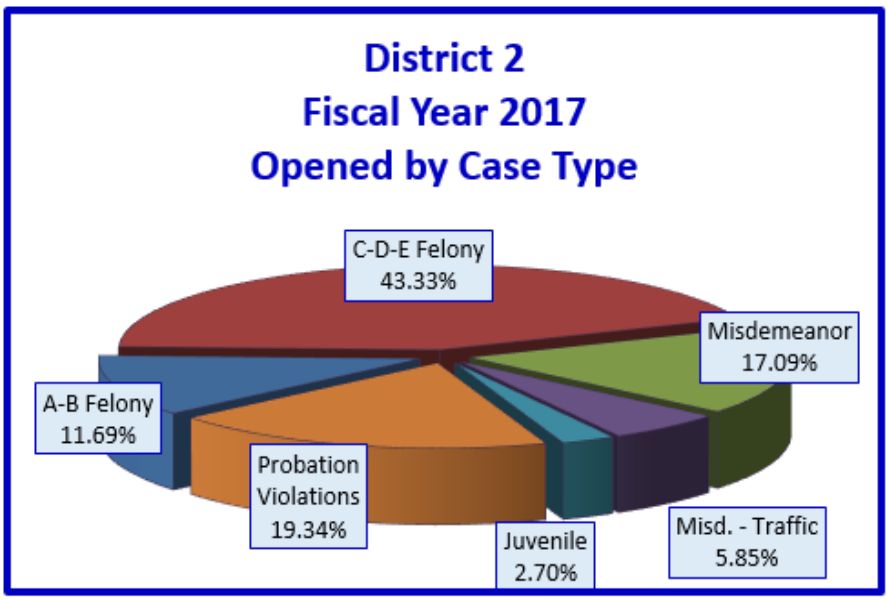


District 2
Public Defender's Office
905 East George
Kirksville, MO 63501
660-785-2445

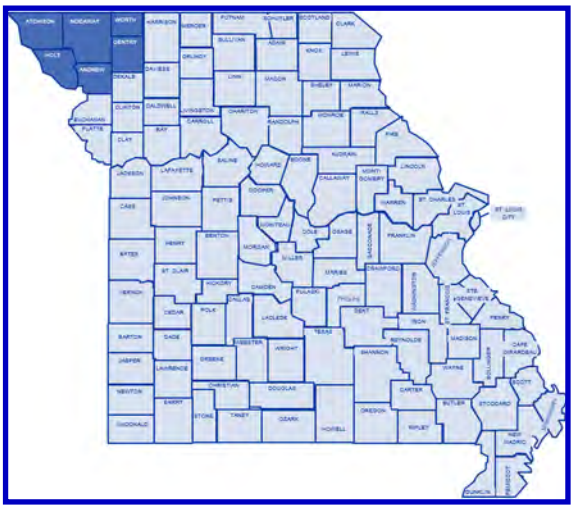


Kevin Locke
District Defender



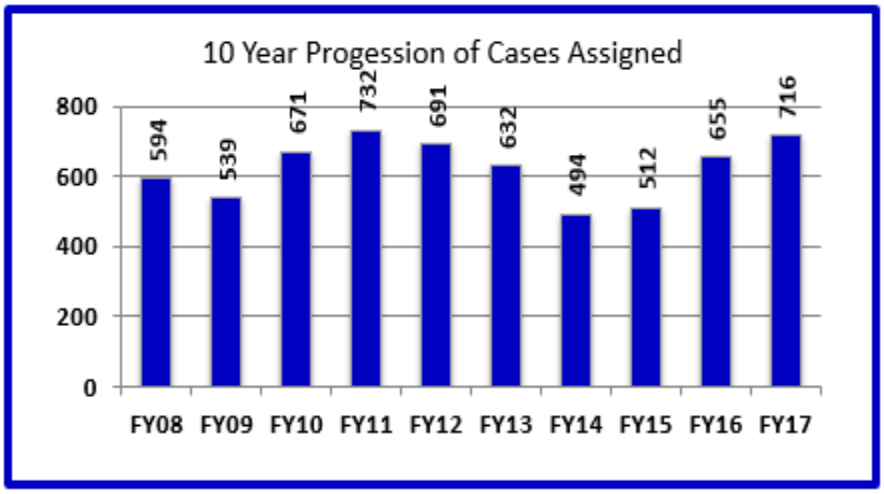


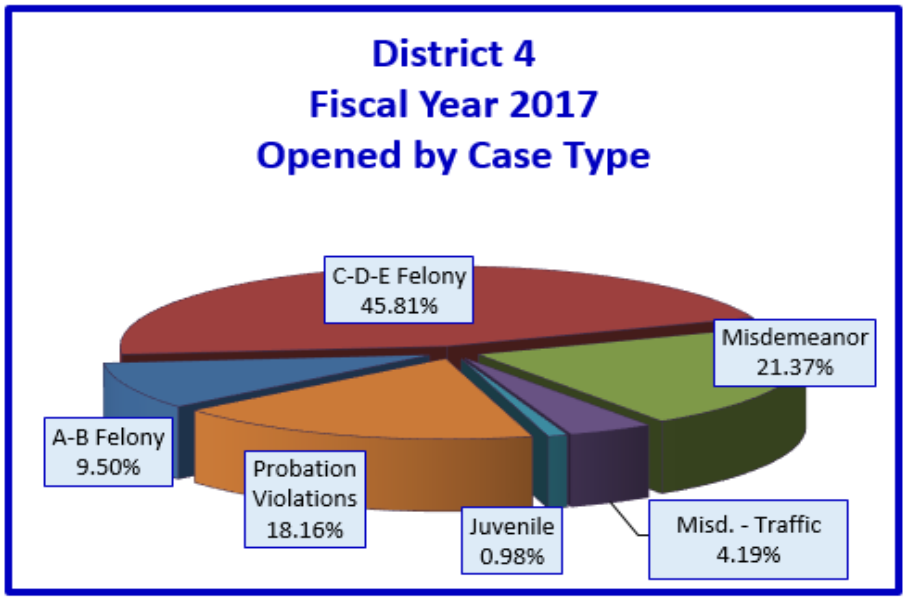
FY2017 Cases Assigned By Case Type	
A - B Felony Drug	39
A - B Felony Other	33
A - B Felony Sex	6
C - D - E Felony Drug	110
C - D - E Felony Other	174
C - D - E Felony Sex	5
Misdemeanor	114
Misd. - Traffic	39
Juvenile Non-Violent	15
Juvenile Status	1
Juvenile Violent	2
Probation Violation - Felony	113
Probation Violation - Misd.	16
Total	667



District 4
Public Defender's Office
305 North Market
Maryville, MO 64468
660-582-3545

Michelle Davidson
District Defender

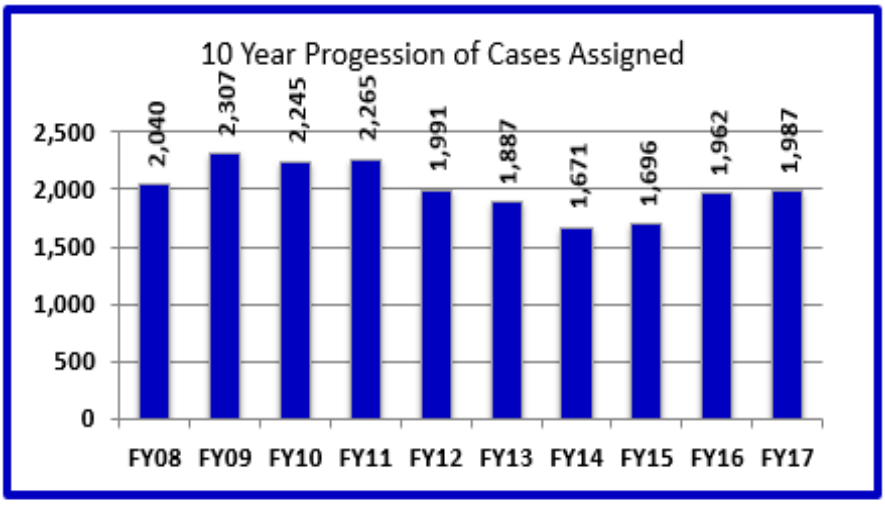


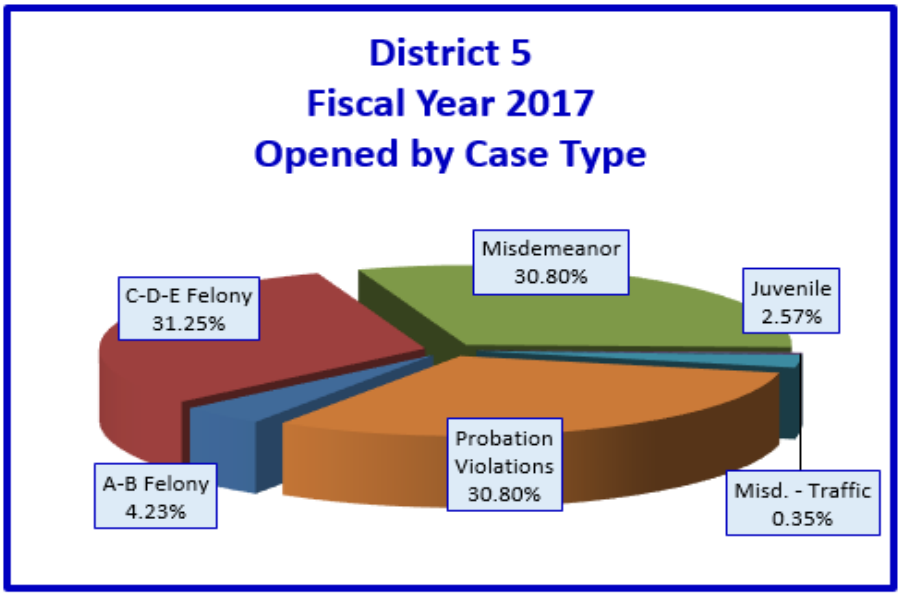


FY2017 Cases Assigned By Case Type	
A - B Felony Drug	25
A - B Felony Other	38
A - B Felony Sex	5
C - D - E Felony Drug	110
C - D - E Felony Other	213
C - D - E Felony Sex	5
Misdemeanor	153
Misd. - Traffic	30
Juvenile Non-Violent	4
Juvenile Status	-
Juvenile Violent	3
Probation Violation - Felony	111
Probation Violation - Misd.	19
Total	716

District 5
Public Defender's Office
120 S. 5th Street, 2nd Floor
St. Joseph, MO 64501
816-387-2026

Sue Rinne
District Defender

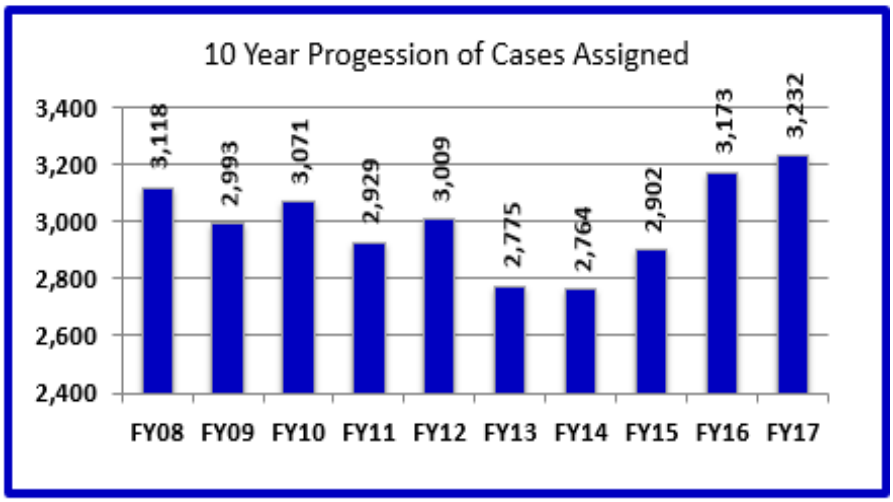


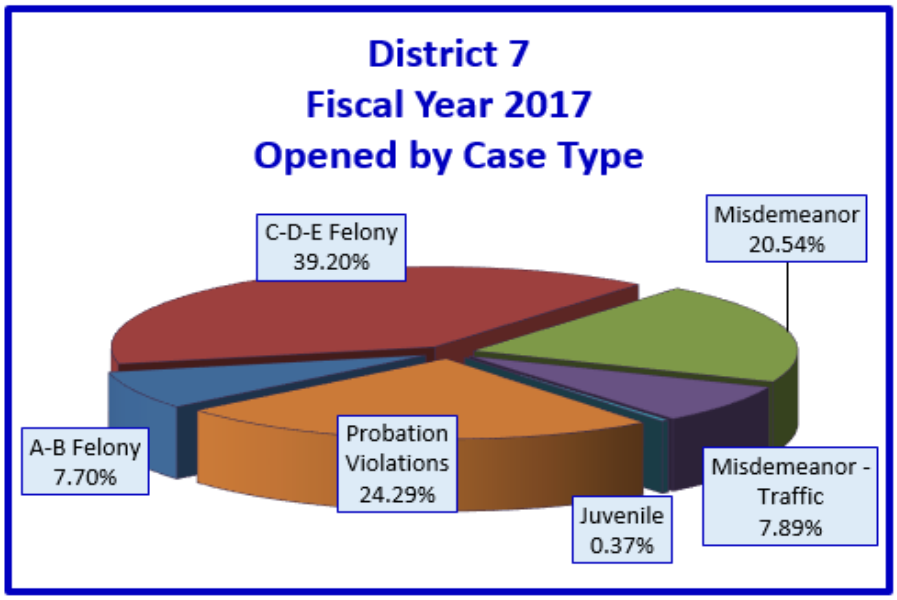


FY2017 Cases Assigned By Case Type	
A - B Felony Drug	35
A - B Felony Other	33
A - B Felony Sex	16
C - D Felony Drug	125
C - D Felony Other	491
C - D Felony Sex	5
Misdemeanor	612
Misd. - Traffic	7
Juvenile Non-Violent	23
Juvenile Status	20
Juvenile Violent	8
Probation Violation - Felony	433
Probation Violation - Misd.	179
Total	1,987

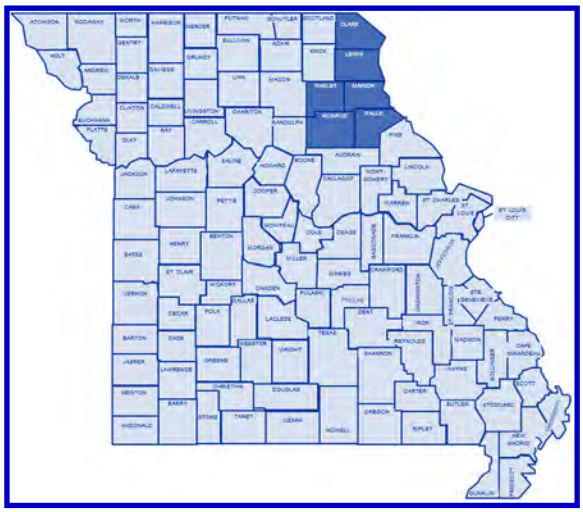
District 7
Public Defender's Office
234 West Shrader
Liberty, MO 64068
816-792-5394

Anthony Cardarella
District Defender



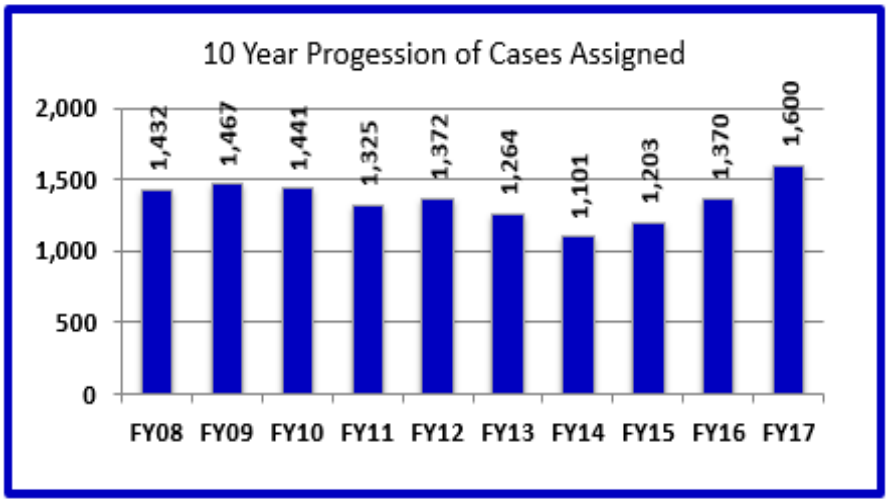


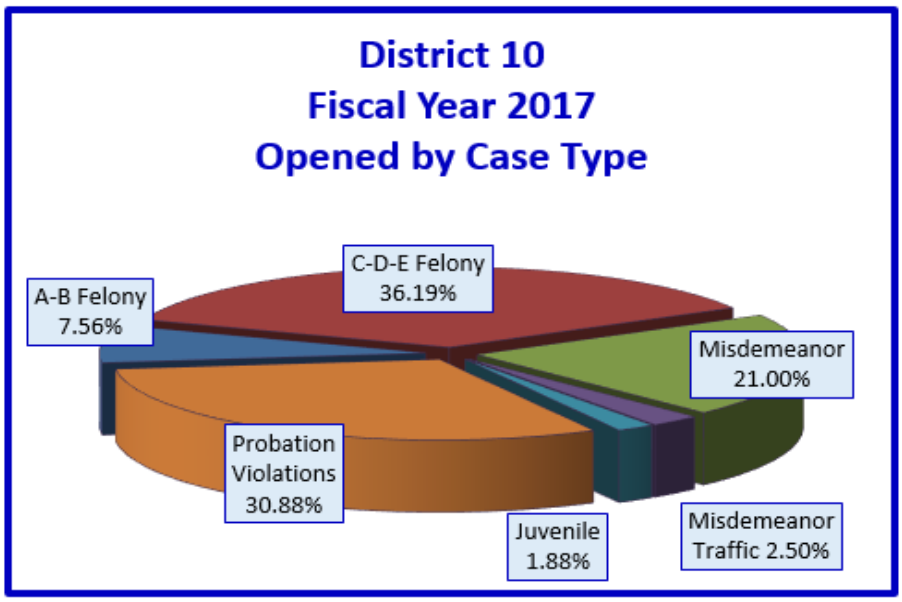
FY2017 Cases Assigned By Case Type	
A - B Felony Drug	46
A - B Felony Other	184
A - B Felony Sex	19
C - D - E Felony Drug	483
C - D - E Felony Other	768
C - D - E Felony Sex	16
Misdemeanor	664
Misd. - Traffic	255
Juvenile Non-Violent	3
Juvenile Status	5
Juvenile Violent	4
Probation Violation - Felony	481
Probation Violation - Misd.	304
Total	3,232



District 10
Public Defender's Office
201 North Third Street
Hannibal, MO 63401
573-248-2430

Todd Schulze
District Defender

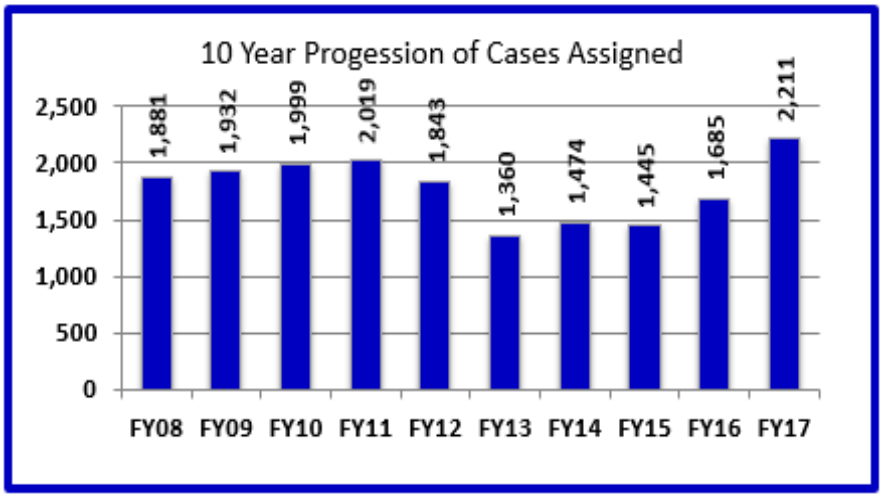


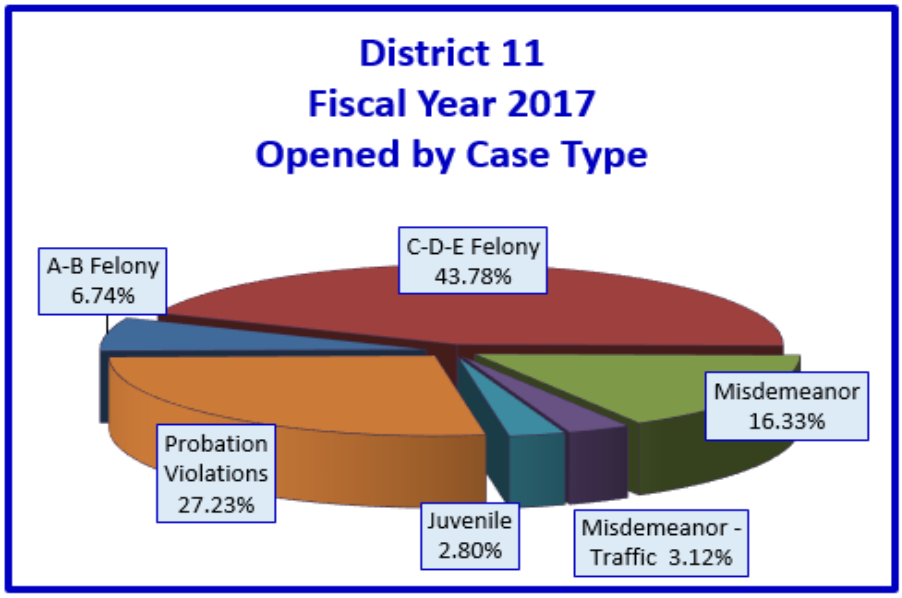


FY2017 Cases Assigned By Case Type	
A - B Felony Drug	67
A - B Felony Other	41
A - B Felony Sex	13
C - D - E Felony Drug	272
C - D - E Felony Other	294
C - D - E Felony Sex	13
Misdemeanor	336
Misd. - Traffic	40
Juvenile Non-Violent	15
Juvenile Status	8
Juvenile Violent	7
Probation Violation - Felony	371
Probation Violation - Misd.	123
Total	1,600

District 11
Public Defender's Office
300 N. 2nd Street,
Suite 264
St. Charles, MO 63301
636-949-7300

Mike Sato
District Defender

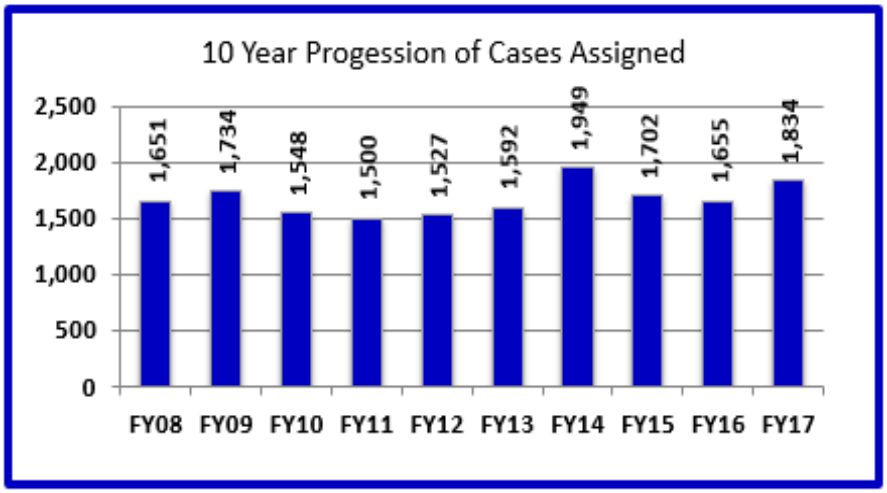


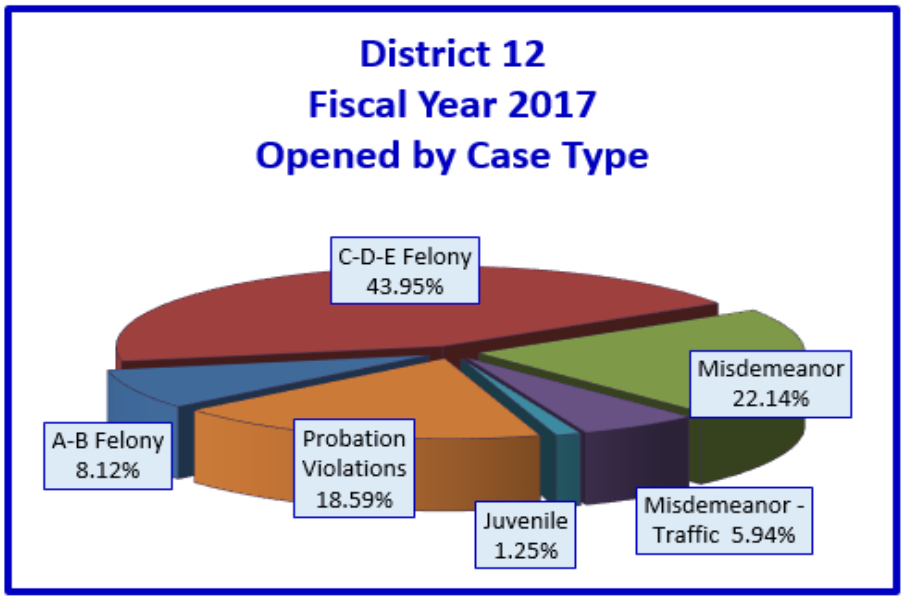


FY2017 Cases Assigned By Case Type	
A - B Felony Drug	31
A - B Felony Other	104
A - B Felony Sex	14
C - D - E Felony Drug	310
C - D - E Felony Other	656
C - D - E Felony Sex	2
Misdemeanor	361
Misd. - Traffic	69
Juvenile Non-Violent	33
Juvenile Status	1
Juvenile Violent	28
Probation Violation - Felony	498
Probation Violation - Misd.	104
Total	2,211

District 12
Public Defender's Office
2800 Cardinal Dr., Suite B
Fulton, MO 65251
573-592-4155

Mary Joe Smith
District Defender

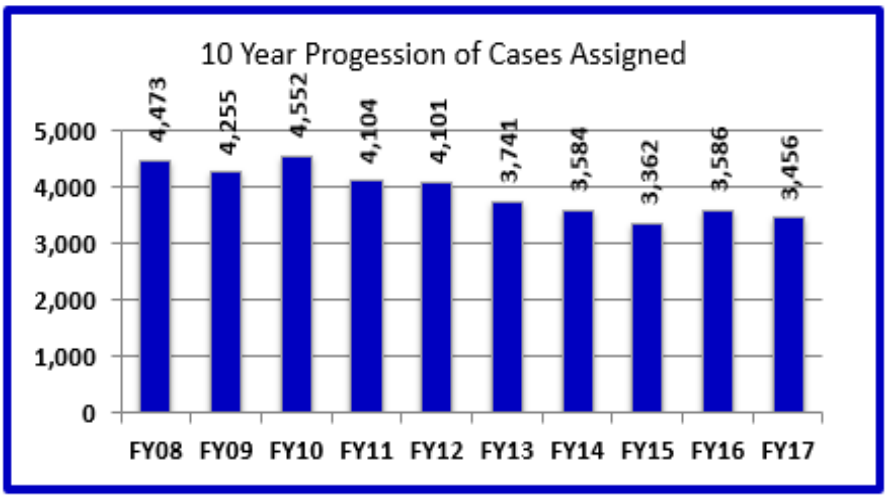


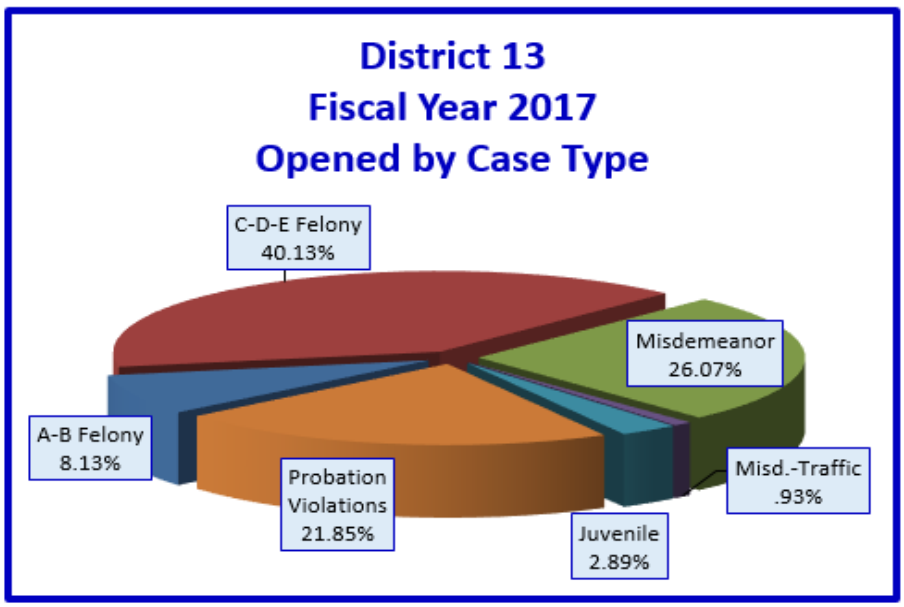


FY2017 Cases Assigned By Case Type	
A - B Felony Drug	43
A - B Felony Other	94
A - B Felony Sex	12
C - D - E Felony Drug	261
C - D - E Felony Other	540
C - D - E Felony Sex	5
Misdemeanor	406
Misd. - Traffic	109
Juvenile Non-Violent	11
Juvenile Status	1
Juvenile Violent	11
Probation Violation - Felony	283
Probation Violation - Misd.	58
Total	1,834

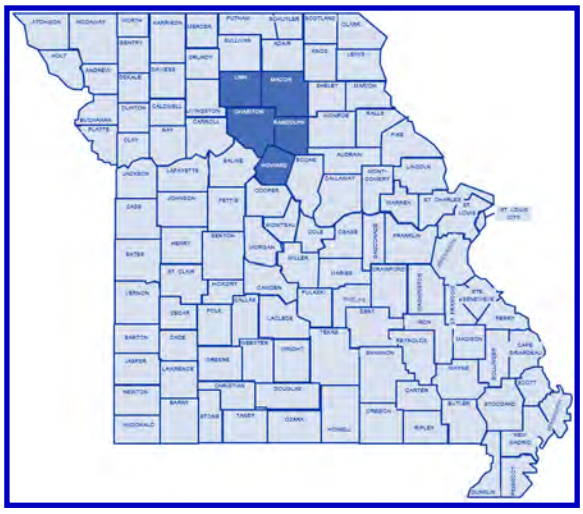
District 13
Public Defender's Office
601 East Walnut
Columbia, MO 65201
573-447-8087

David Wallis
District Defender



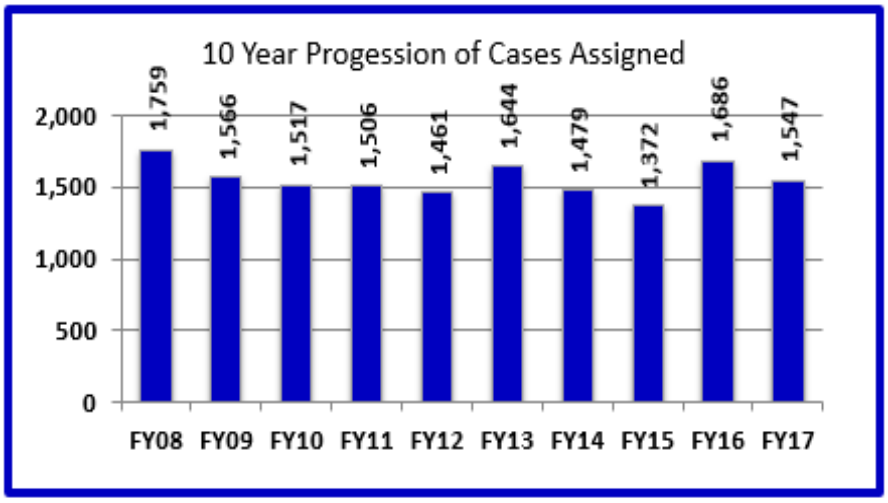


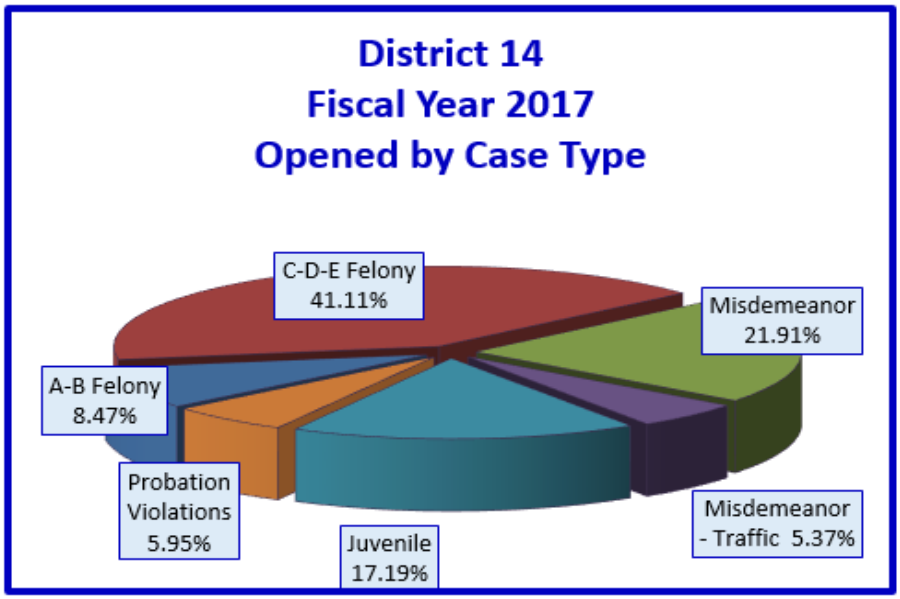
FY2017 Cases Assigned By Case Type	
A - B Felony Drug	78
A - B Felony Other	190
A - B Felony Sex	13
C - D - E Felony Drug	363
C - D - E Felony Other	1,017
C - D - E Felony Sex	7
Misdemeanor	901
Misd. - Traffic	32
Juvenile Non-Violent	67
Juvenile Status	-
Juvenile Violent	33
Probation Violation - Felony	494
Probation Violation - Misd.	261
Total	3,456



District 14
Public Defender's Office
3029 County Road 1325
Moberly, MO 65270
660-263-7665

Ed Guinn
District Defender

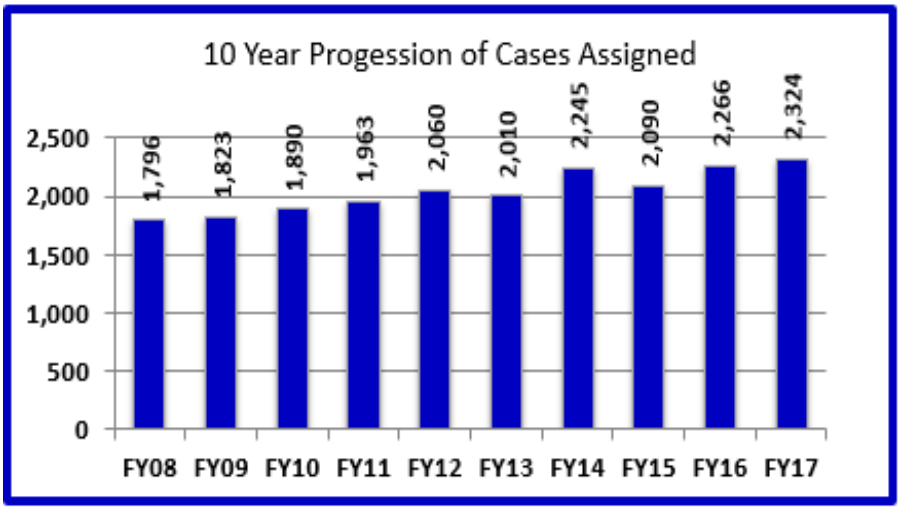


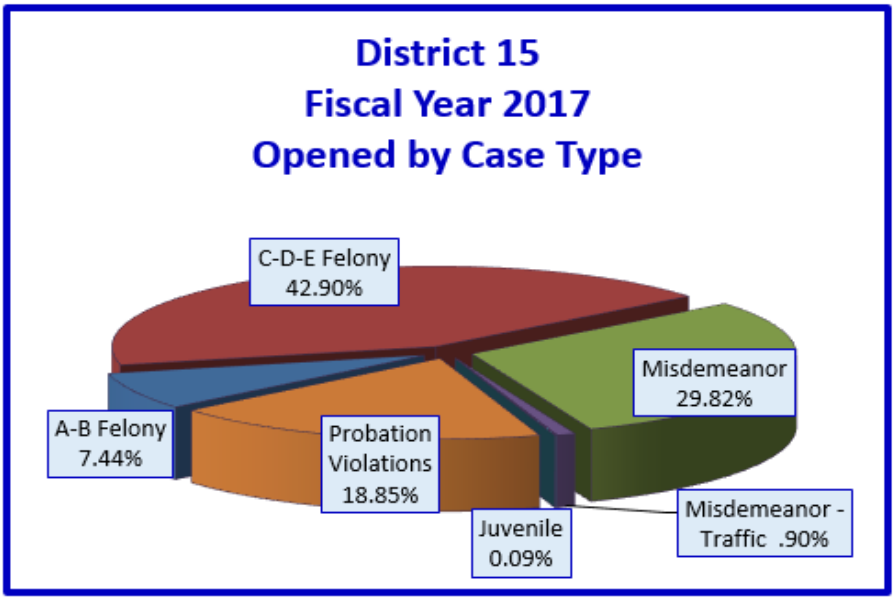


FY2017 Cases Assigned By Case Type	
A - B Felony Drug	60
A - B Felony Other	57
A - B Felony Sex	14
C - D - E Felony Drug	215
C - D - E Felony Other	408
C - D - E Felony Sex	13
Misdemeanor	339
Misd. - Traffic	83
Juvenile Non-Violent	6
Juvenile Status	15
Juvenile Violent	245
Probation Violation - Felony	92
Probation Violation - Misd.	
Total	1,547

District 15
Public Defender's Office
110 South Limit
Sedalia, MO 65301
660-530-5550

Max Mitchell
District Defender

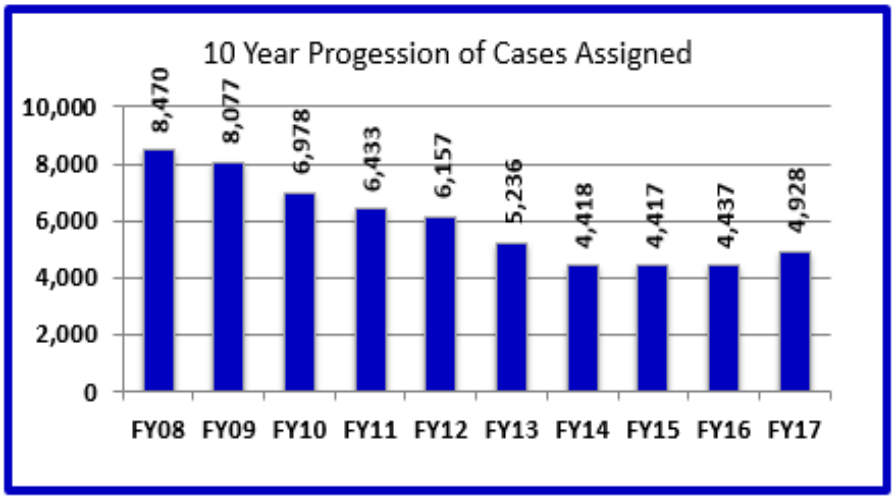


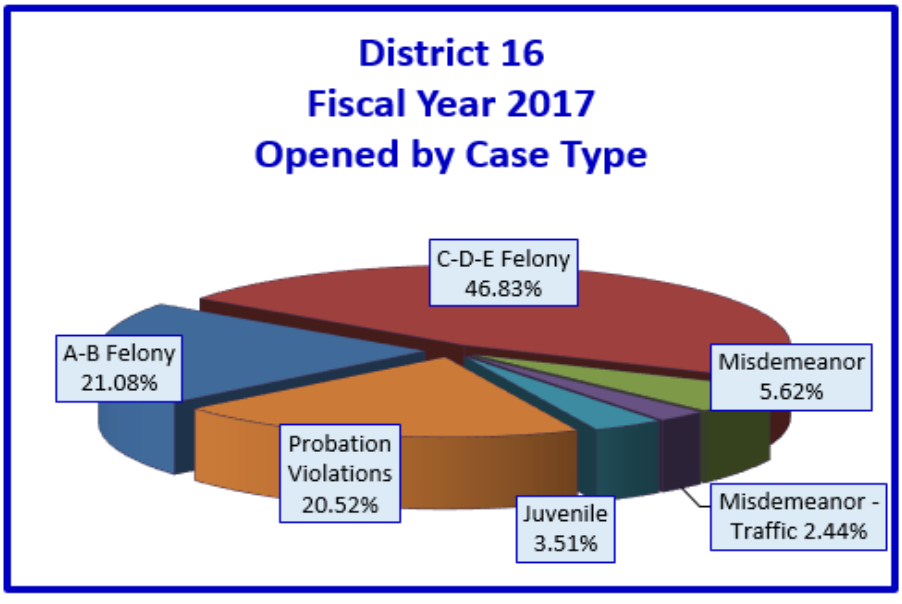


FY2017 Cases Assigned By Case Type	
A - B Felony Drug	66
A - B Felony Other	94
A - B Felony Sex	13
C - D - E Felony Drug	321
C - D - E Felony Other	668
C - D - E Felony Sex	8
Misdemeanor	693
Misd. - Traffic	21
Juvenile Non-Violent	2
Juvenile Status	
Juvenile Violent	
Probation Violation - Felony	354
Probation Violation - Misd.	84
Total	2,324

District 16
Public Defender's Office
Oak Tower—20th Floor
324 East 11th Street
Kansas City, MO 64106
816-889-2099

Ruth Petsch
District Defender

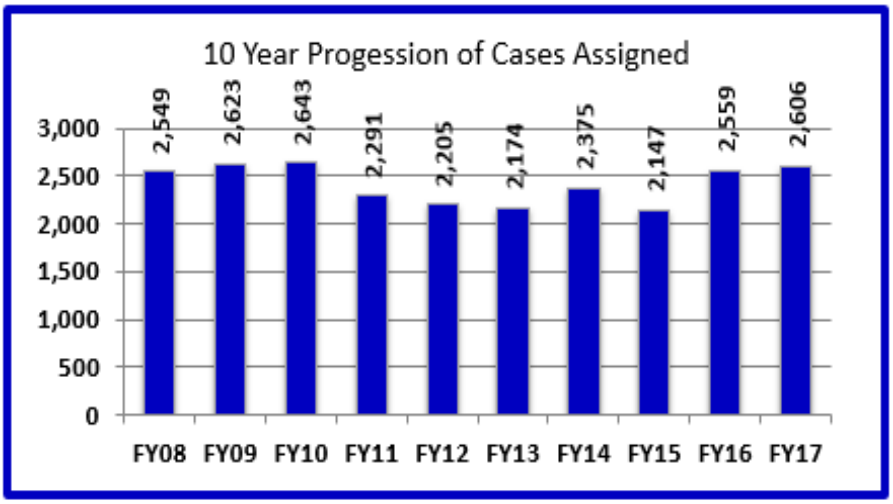


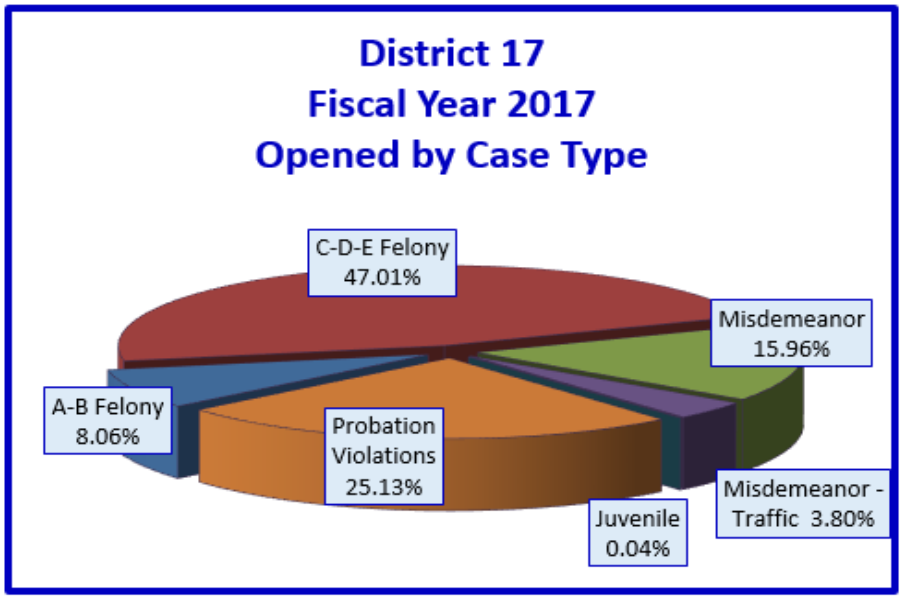


FY2017 Cases Assigned By Case Type	
A - B Felony Drug	92
A - B Felony Other	868
A - B Felony Sex	79
C - D - E Felony Drug	958
C - D - E Felony Other	1,342
C - D - E Felony Sex	8
Misdemeanor	277
Misd. - Traffic	120
Juvenile Non-Violent	71
Juvenile Status	5
Juvenile Violent	97
Probation Violation - Felony	867
Probation Violation - Misd.	144
Total	4,928

District 17
Public Defender's Office
502 Westchester Avenue
Harrisonville, MO 64701
816-380-3160

Jeffrey Martin
District Defender

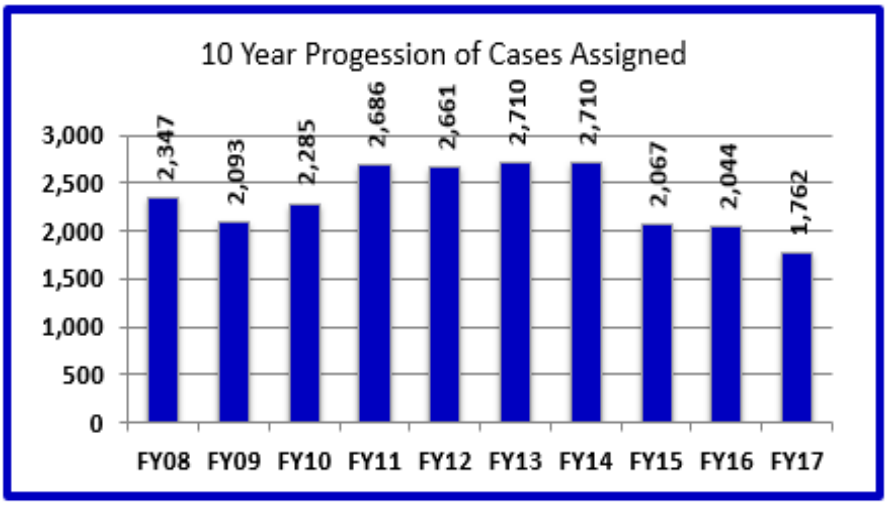


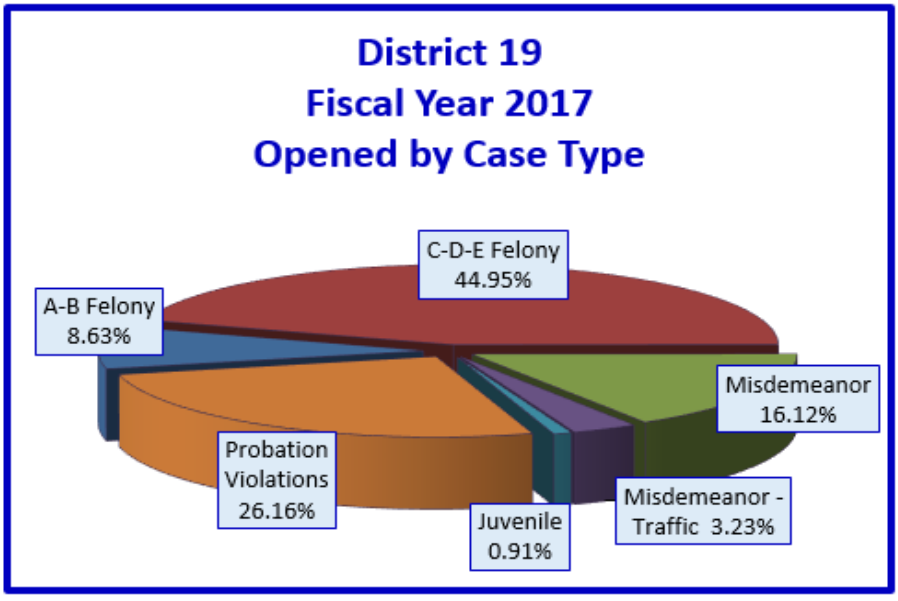


FY2017 Cases Assigned By Case Type	
A - B Felony Drug	47
A - B Felony Other	127
A - B Felony Sex	36
C - D - E Felony Drug	425
C - D - E Felony Other	789
C - D - E Felony Sex	11
Misdemeanor	416
Misd. - Traffic	99
Juvenile Non-Violent	1
Juvenile Status	
Juvenile Violent	
Probation Violation - Felony	576
Probation Violation - Misd.	79
Total	2,606

District 19
Public Defender's Office
210 Adams Street
Jefferson City, MO 65101
573-526-3266

Justin Carver
District Defender

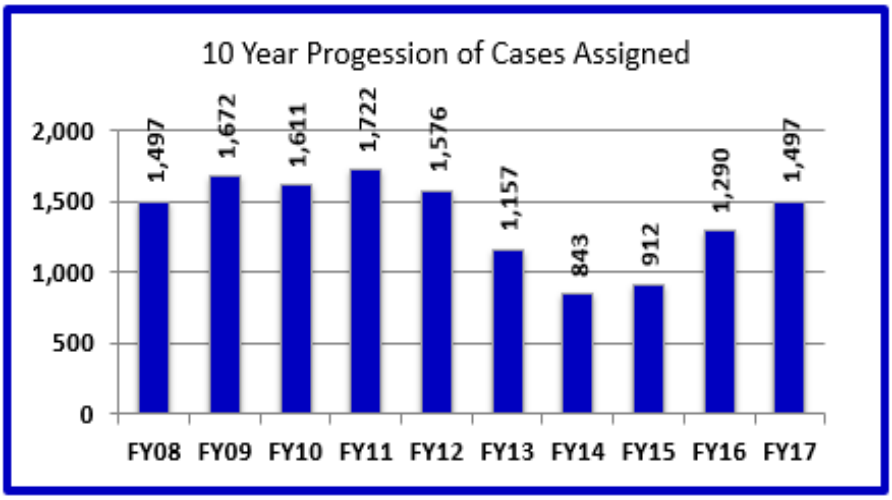


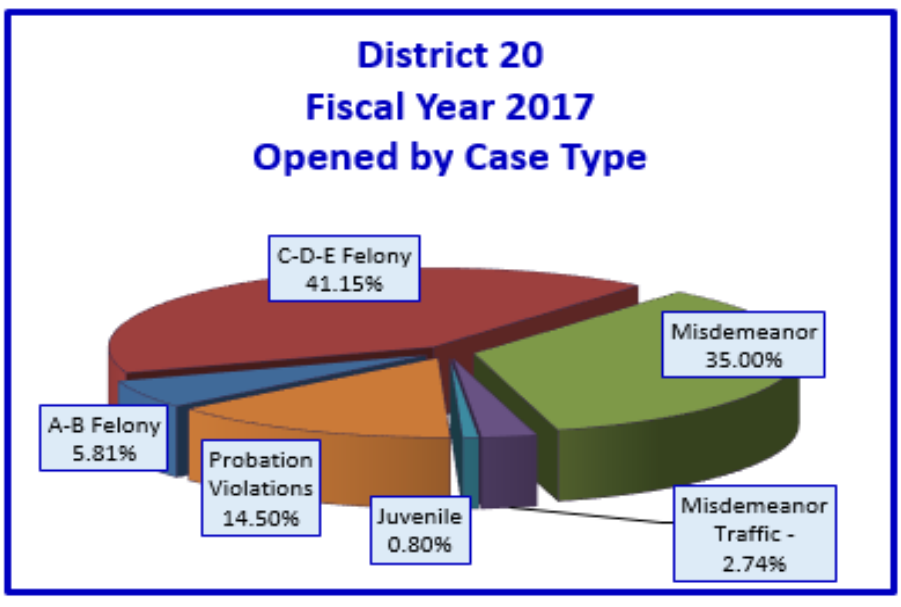


FY2017 Cases Assigned By Case Type	
A - B Felony Drug	42
A - B Felony Other	102
A - B Felony Sex	8
C - D - E Felony Drug	322
C - D - E Felony Other	467
C - D - E Felony Sex	3
Misdemeanor	284
Misd. - Traffic	57
Juvenile Non-Violent	11
Juvenile Status	
Juvenile Violent	5
Probation Violation - Felony	424
Probation Violation - Misd.	37
Total	1,762

District 20
Public Defender's Office
300 East Main Street
Union, MO 63084
636-583-5197

Lisa Preddy
District Defender

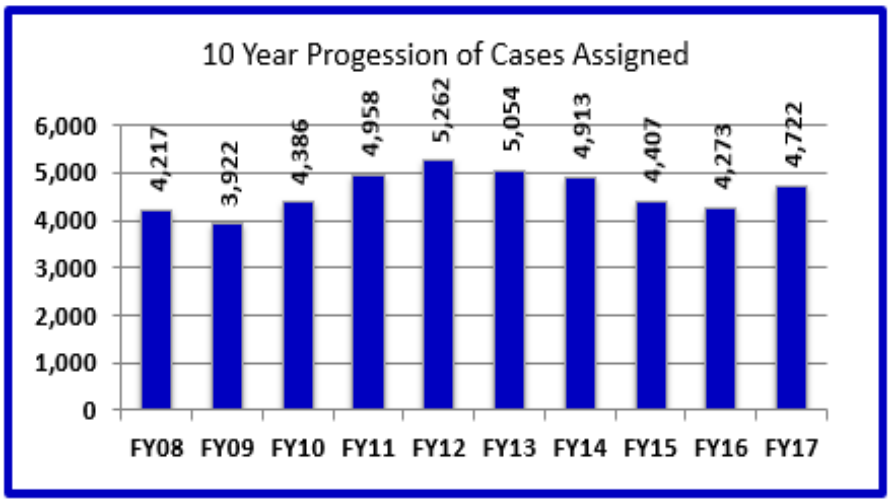


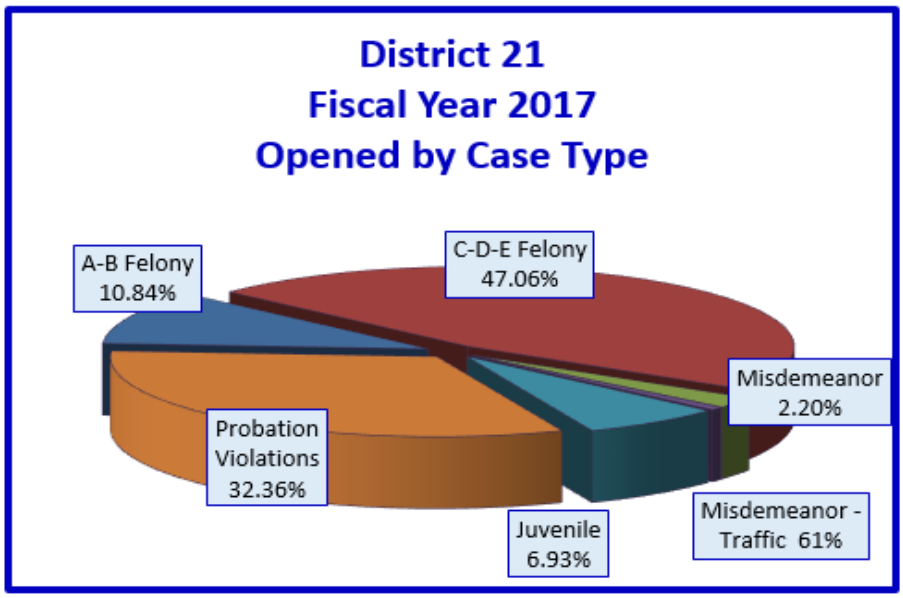


FY2017 Cases Assigned By Case Type	
A - B Felony Drug	31
A - B Felony Other	51
A - B Felony Sex	5
C - D - E Felony Drug	215
C - D - E Felony Other	397
C - D - E Felony Sex	4
Misdemeanor	524
Misd. - Traffic	41
Juvenile Non-Violent	9
Juvenile Status	
Juvenile Violent	3
Probation Violation - Felony	151
Probation Violation - Misd.	66
Total	1,497

District 21
Public Defender's Office
100 S. Central, 2nd Floor
Clayton, MO 63105
314-615-4778

Stephen Reynolds
District Defender

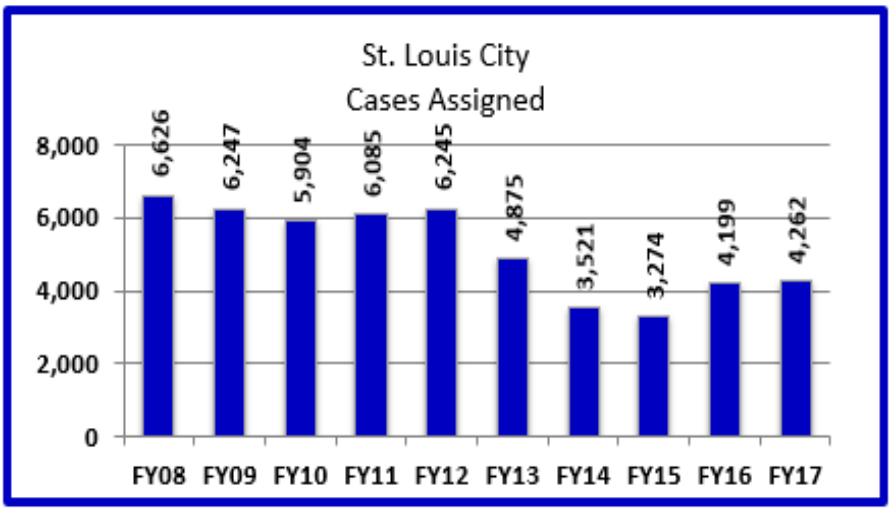


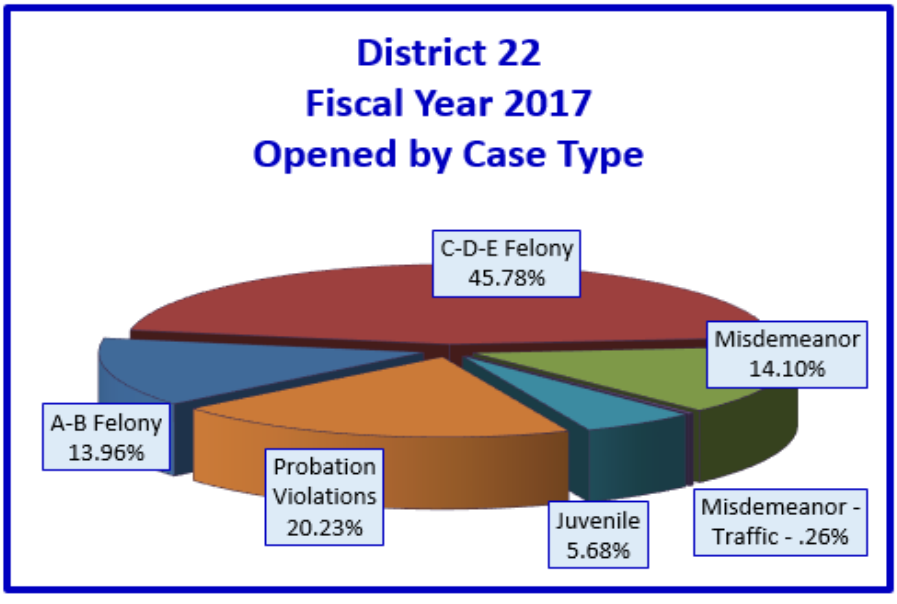


FY2017 Cases Assigned By Case Type	
A - B Felony Drug	56
A - B Felony Other	425
A - B Felony Sex	31
C - D - E Felony Drug	594
C - D - E Felony Other	1,602
C - D - E Felony Sex	26
Misdemeanor	104
Misd. - Traffic	29
Juvenile Non-Violent	124
Juvenile Status	91
Juvenile Violent	112
Probation Violation - Felony	1,504
Probation Violation - Misd.	24
Total	4,722

District 22
Public Defender's Office
Mel Carnahan Courthouse
1114 Market St., Suite 602
St. Louis, MO 63101
314-340-7625

Mary Fox
District Defender

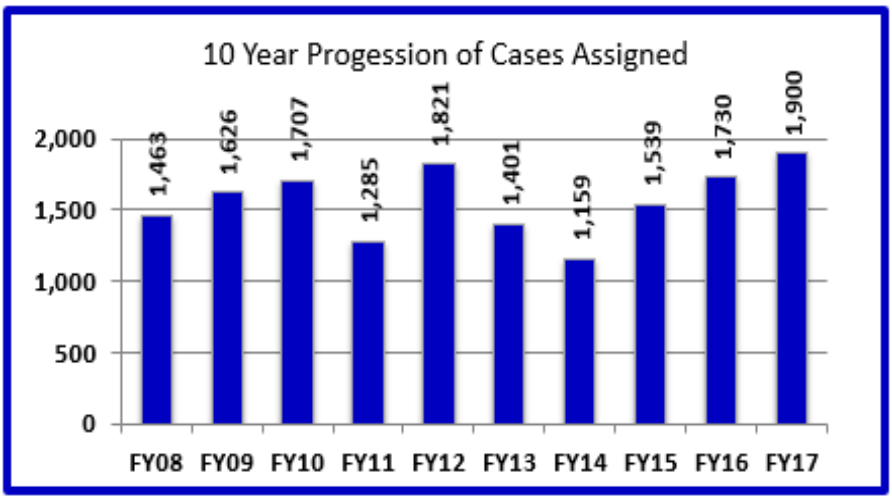


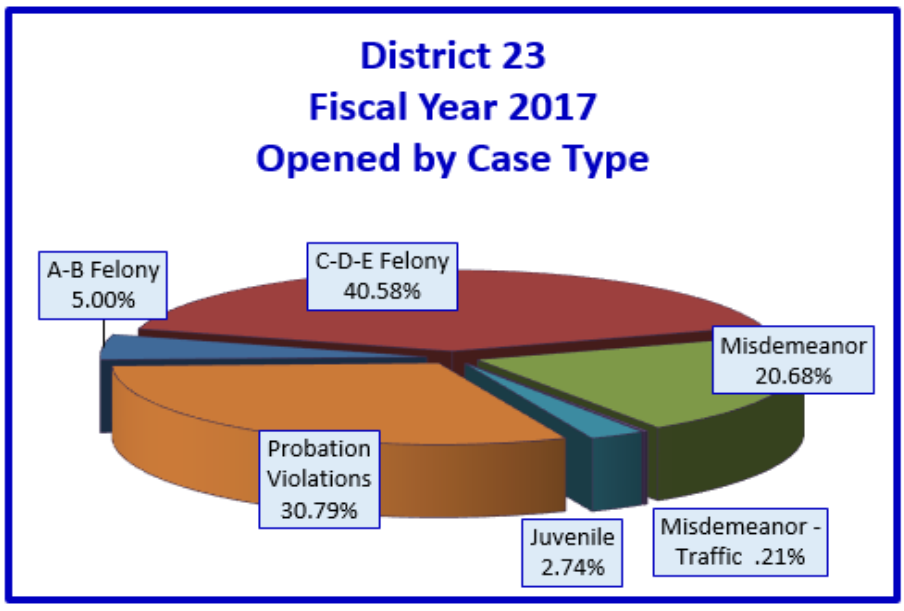


FY2017 Cases Assigned By Case Type	
A - B Felony Drug	71
A - B Felony Other	477
A - B Felony Sex	47
C - D - E Felony Drug	637
C - D - E Felony Other	1,303
C - D - E Felony Sex	11
Misdemeanor	601
Misd. - Traffic	11
Juvenile Non-Violent	140
Juvenile Status	
Juvenile Violent	102
Probation Violation - Felony	815
Probation Violation - Misd.	47
Total	4,262

District 23
Public Defender's Office
PO Box 156
116 Main Street
Hillsboro, MO 63050
636-789-5254

Courtney Goodwin
District Defender

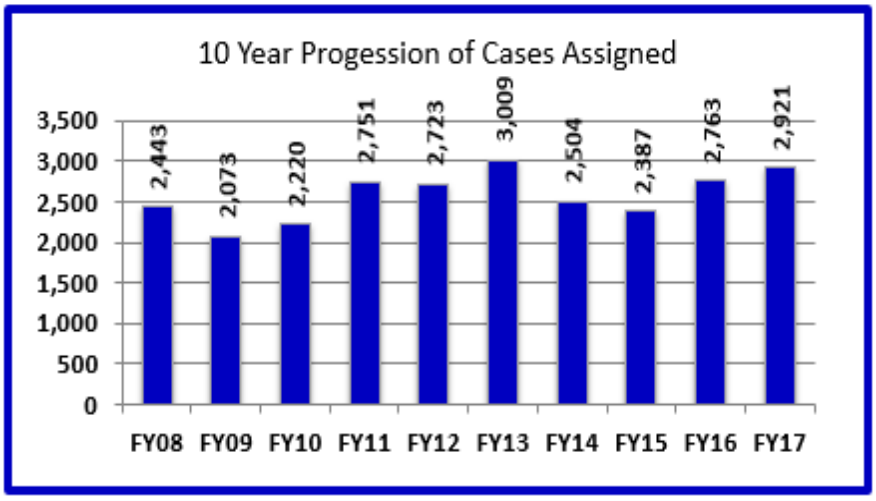


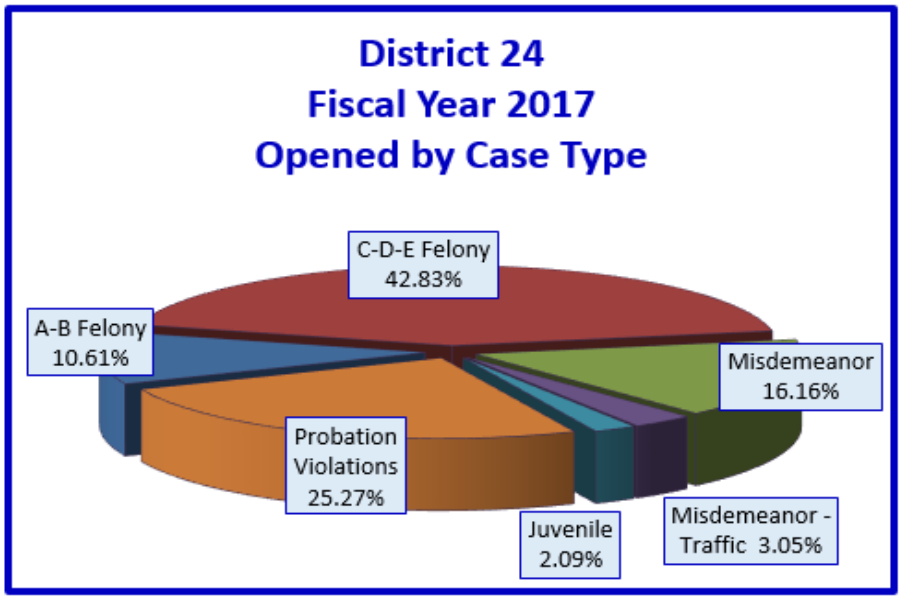


FY2017 Cases Assigned By Case Type	
A - B Felony Drug	25
A - B Felony Other	55
A - B Felony Sex	15
C - D - E Felony Drug	422
C - D - E Felony Other	349
C - D - E Felony Sex	
Misdemeanor	393
Misd. - Traffic	4
Juvenile Non-Violent	34
Juvenile Status	
Juvenile Violent	18
Probation Violation - Felony	466
Probation Violation - Misd.	119
Total	1,900

District 24
Public Defender's Office
Liberty Hall Building
400 N. Washington Street
Farmington, MO 63640
573-218-7080

Wayne Williams
District Defender

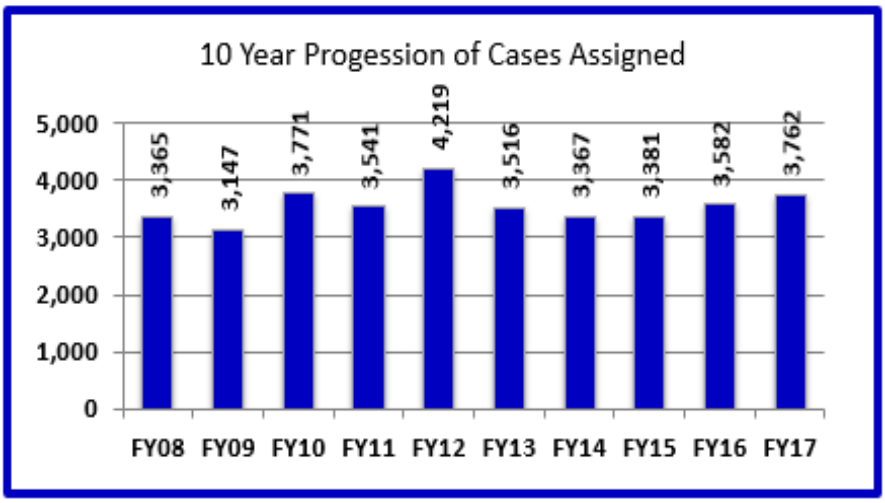


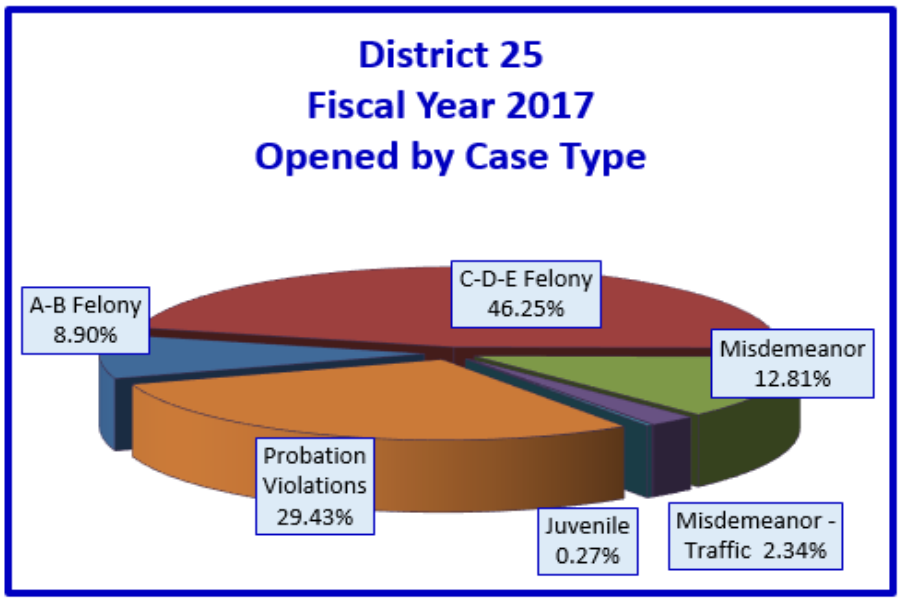


FY2017 Cases Assigned By Case Type	
A - B Felony Drug	105
A - B Felony Other	177
A - B Felony Sex	28
C - D - E Felony Drug	445
C - D - E Felony Other	796
C - D - E Felony Sex	10
Misdemeanor	472
Misd. - Traffic	89
Juvenile Non-Violent	28
Juvenile Status	
Juvenile Violent	33
Probation Violation - Felony	651
Probation Violation - Misd.	87
Total	2,921

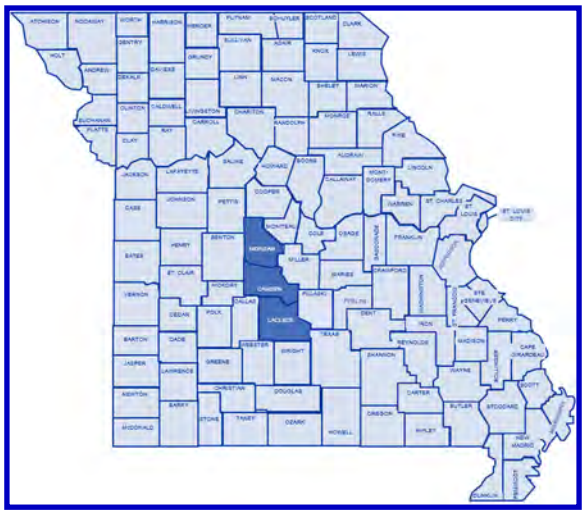
District 25
Public Defender's Office
901 North Pine
Suite 200
Rolla, MO 65401
573-368-2260

Matthew Crowell
District Defender



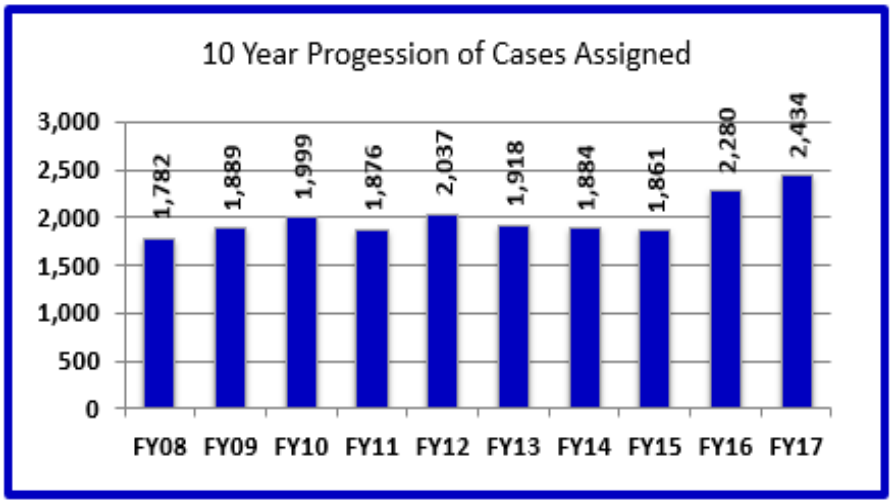


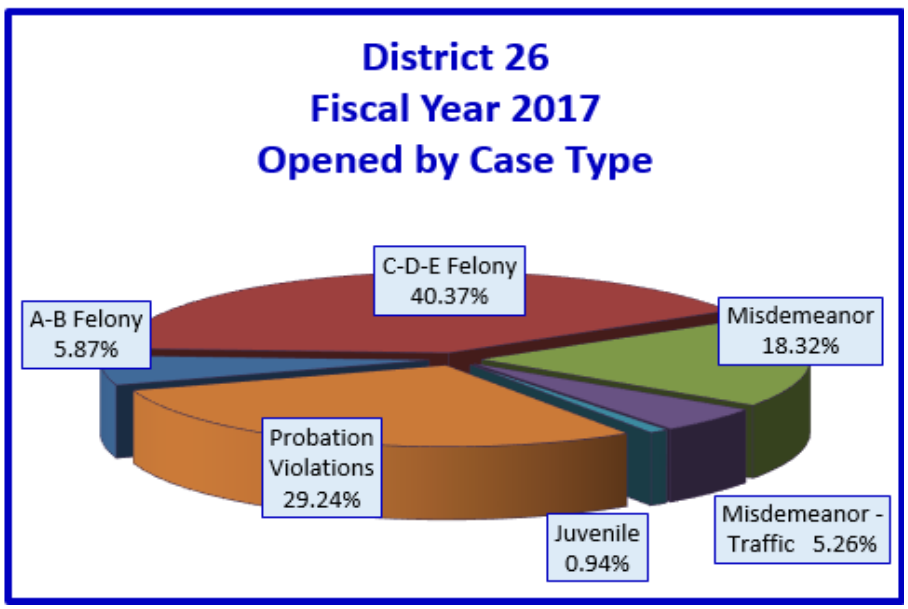
FY2017 Cases Assigned By Case Type	
A - B Felony Drug	108
A - B Felony Other	200
A - B Felony Sex	27
C - D - E Felony Drug	726
C - D - E Felony Other	1,001
C - D - E Felony Sex	13
Misdemeanor	482
Misd. - Traffic	88
Juvenile Non-Violent	7
Juvenile Status	
Juvenile Violent	3
Probation Violation - Felony	965
Probation Violation - Misd.	142
Total	3,762



District 26
Public Defender's Office
288 Harwood
Lebanon, MO 65536
417-532-6886

Karie Comstock
District Defender

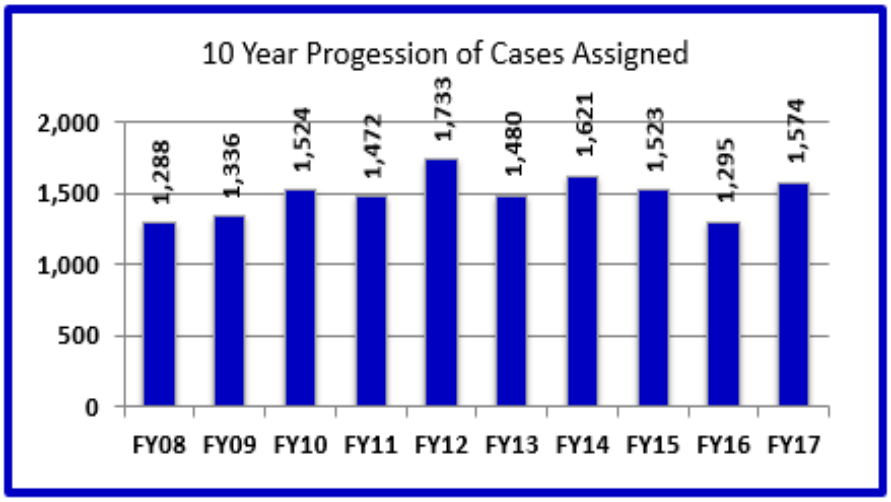


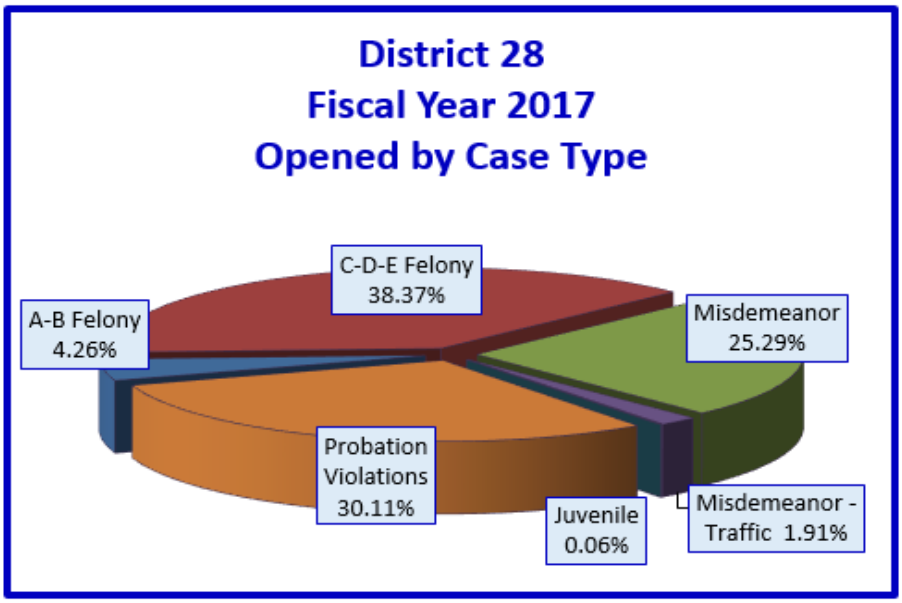


FY2017 Cases Assigned By Case Type	
A - B Felony Drug	39
A - B Felony Other	82
A - B Felony Sex	22
C - D - E Felony Drug	412
C - D - E Felony Other	560
C - D - E Felony Sex	11
Misdemeanor	446
Misd. - Traffic	128
Juvenile Non-Violent	14
Juvenile Status	1
Juvenile Violent	8
Probation Violation - Felony	546
Probation Violation - Misd.	166
Total	2,435

District 28
Public Defender's Office
329 C North Barrett
Nevada, MO 64772
417-448-1140

Renee GotviAgehya
District Defender

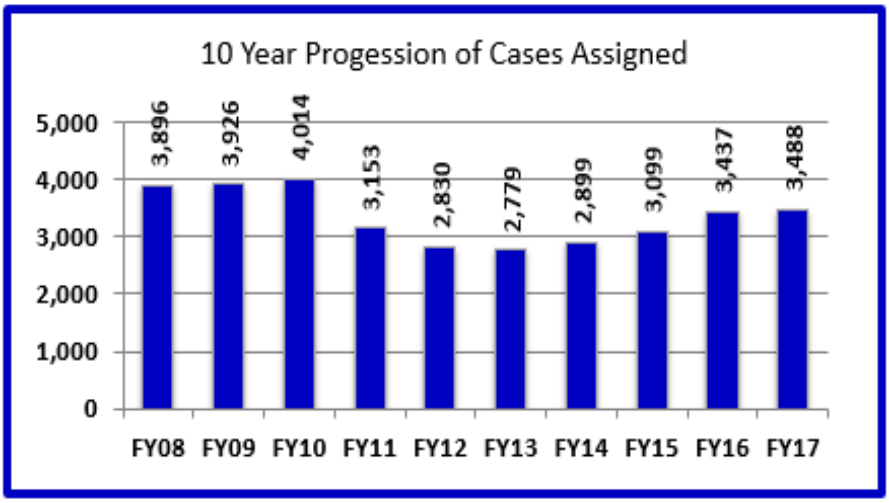


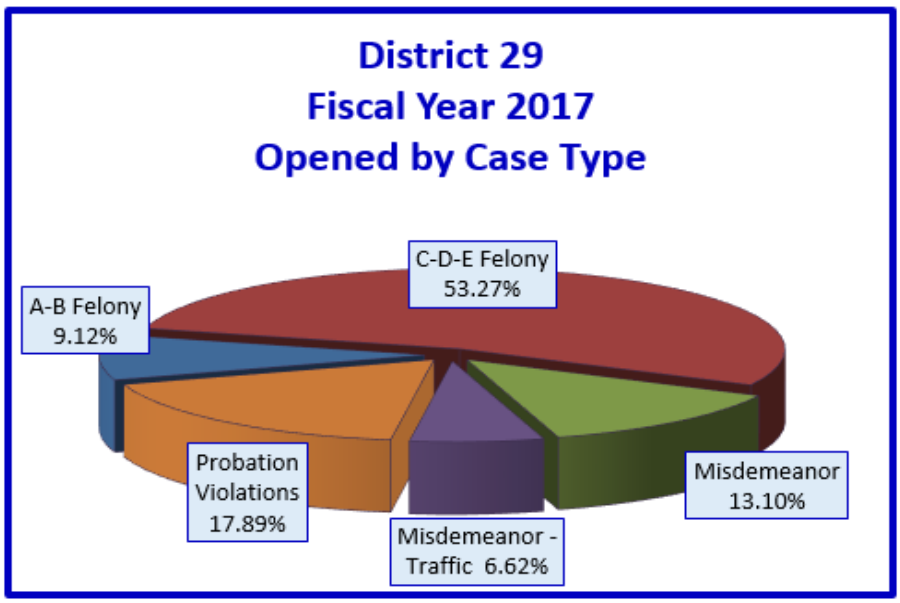


FY2017 Cases Assigned By Case Type	
A - B Felony Drug	22
A - B Felony Other	34
A - B Felony Sex	11
C - D - E Felony Drug	190
C - D - E Felony Other	401
C - D - E Felony Sex	13
Misdemeanor	398
Misd. - Traffic	30
Juvenile Non-Violent	
Juvenile Status	1
Juvenile Violent	
Probation Violation - Felony	400
Probation Violation - Misd.	74
Total	1,574

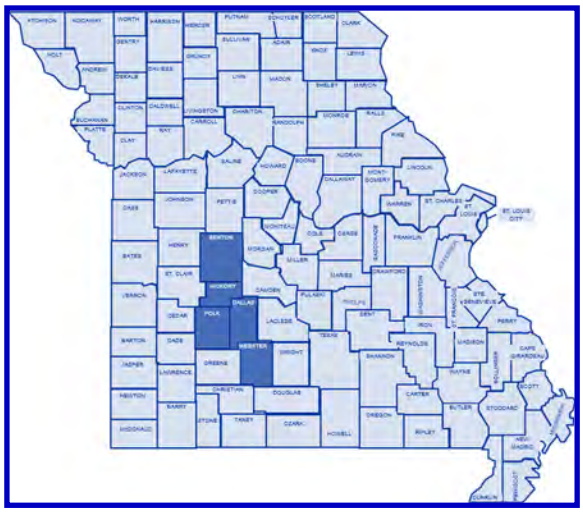
District 29
Public Defender's Office
115 Lincoln Street
Carthage, MO 64836
417-359-8489

Darren Wallace
District Defender



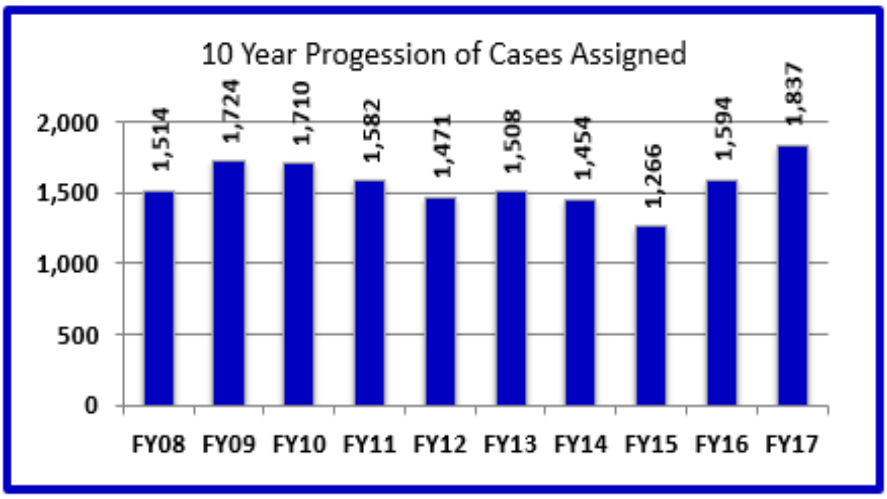


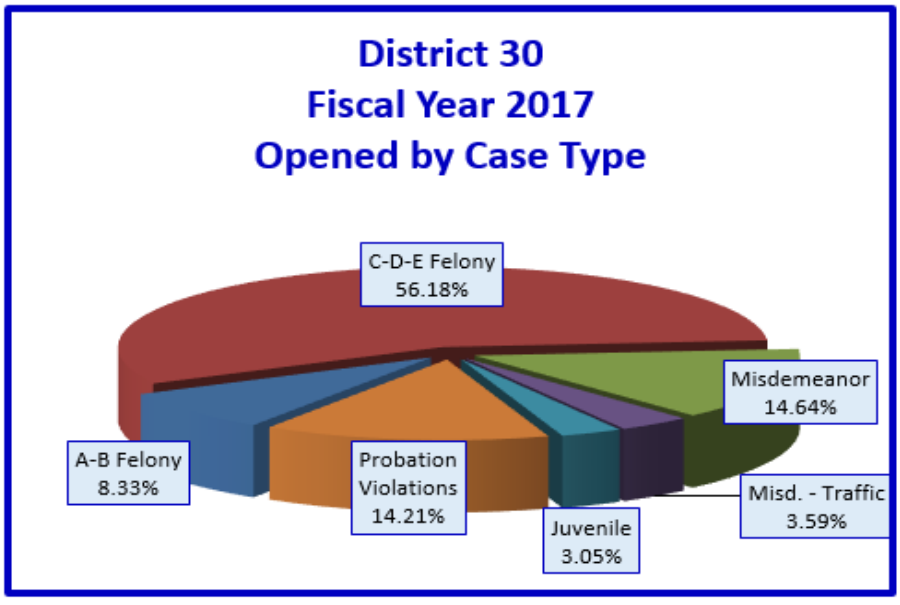
FY2017 Cases Assigned By Case Type	
A - B Felony Drug	91
A - B Felony Other	192
A - B Felony Sex	35
C - D - E Felony Drug	661
C - D - E Felony Other	1,183
C - D - E Felony Sex	14
Misdemeanor	457
Misd. - Traffic	231
Juvenile Non-Violent	
Juvenile Status	
Juvenile Violent	
Probation Violation - Felony	509
Probation Violation - Misd.	115
Total	3,488



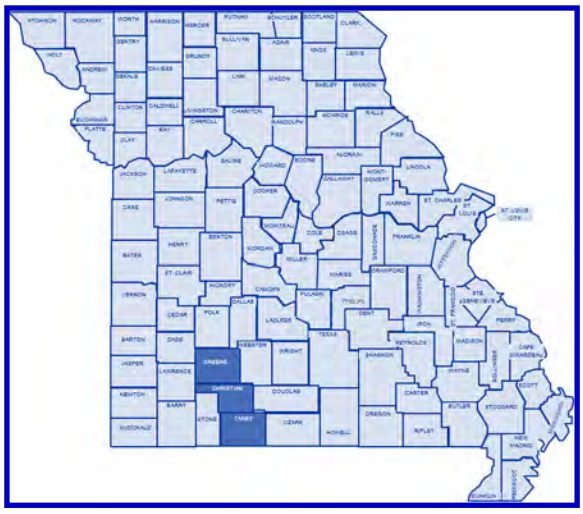
District 30
Public Defender's Office
1901 South Wommack
Suite B
Bolivar, MO 65613
417-777-8544

Dewayne Perry
District Defender



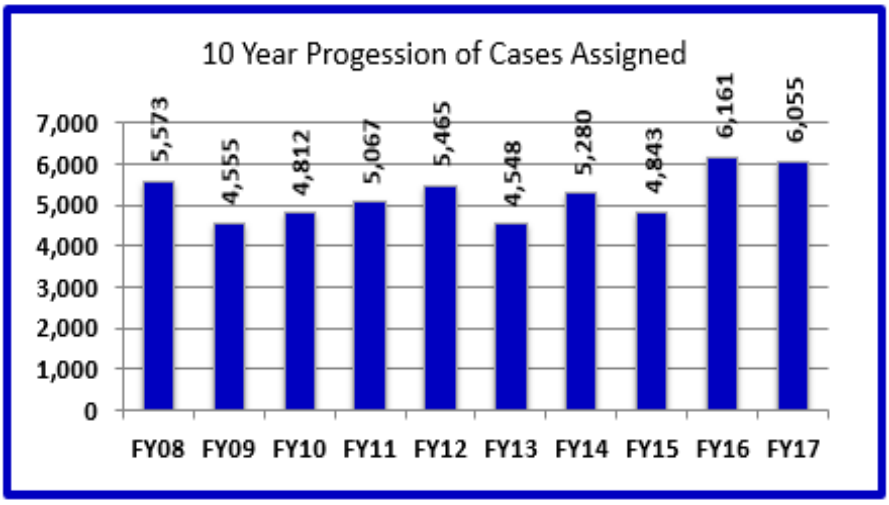


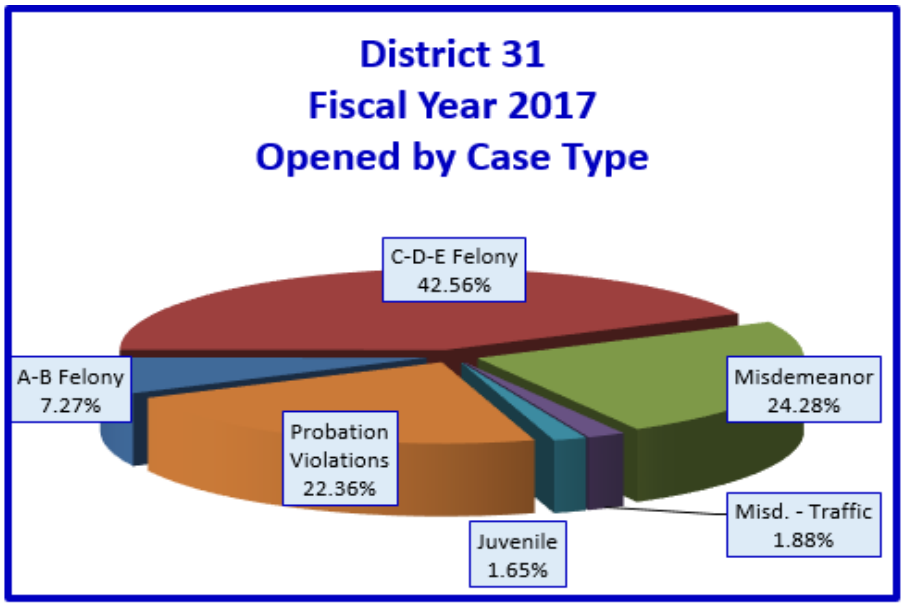
FY2017 Cases Assigned By Case Type	
A - B Felony Drug	50
A - B Felony Other	81
A - B Felony Sex	22
C - D - E Felony Drug	307
C - D - E Felony Other	705
C - D - E Felony Sex	20
Misdemeanor	269
Misd. - Traffic	66
Juvenile Non-Violent	33
Juvenile Status	
Juvenile Violent	23
Probation Violation - Felony	245
Probation Violation - Misd.	16
Total	1,837



District 31
Public Defender's Office
630 North Robberson
Springfield, MO 65806
417-895-6740

Rodney Hackathorn
District Defender

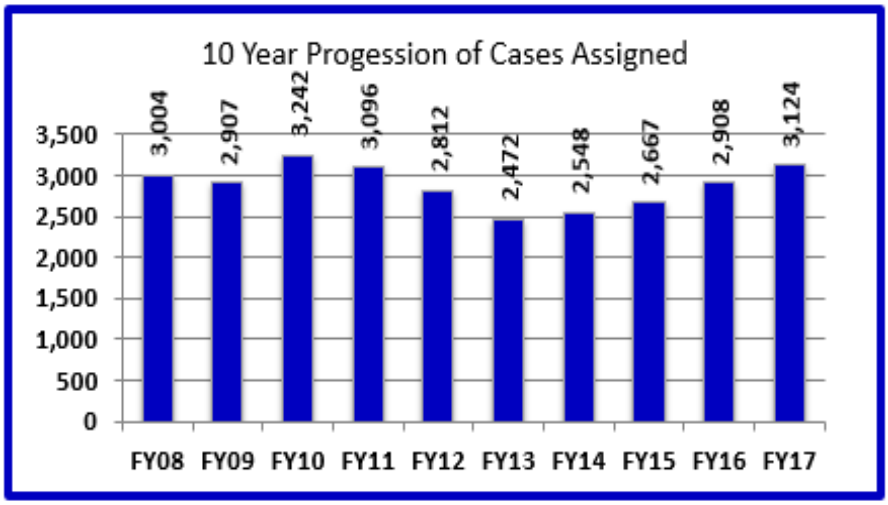


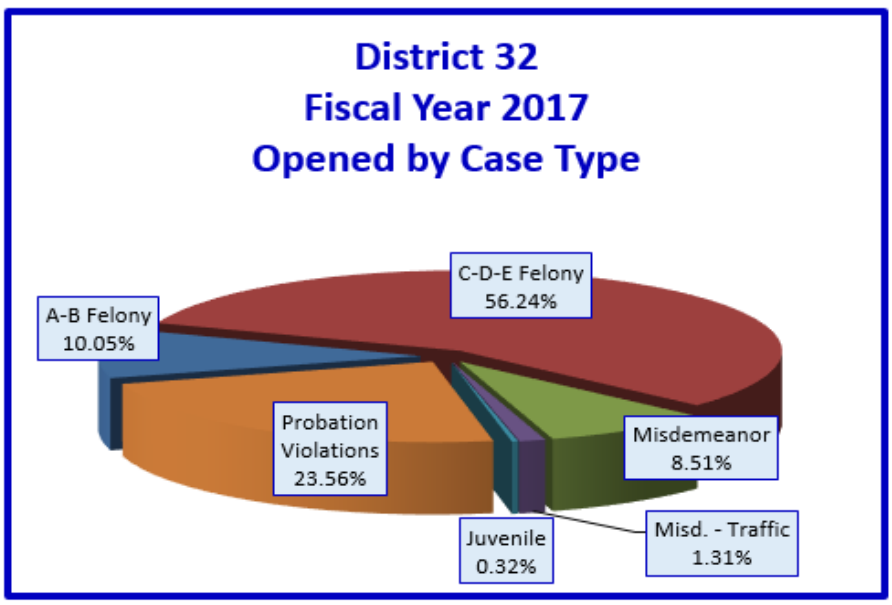


FY2017 Cases Assigned By Case Type	
A - B Felony Drug	94
A - B Felony Other	281
A - B Felony Sex	65
C - D - E Felony Drug	587
C - D - E Felony Other	1,961
C - D - E Felony Sex	29
Misdemeanor	1,470
Misd. - Traffic	114
Juvenile Non-Violent	35
Juvenile Status	
Juvenile Violent	65
Probation Violation - Felony	1,000
Probation Violation - Misd.	354
Total	6,055

District 32
Public Defender's Office
215 North High Street
Jackson, MO 63755
573-243-3949

Christopher Davis
District Defender

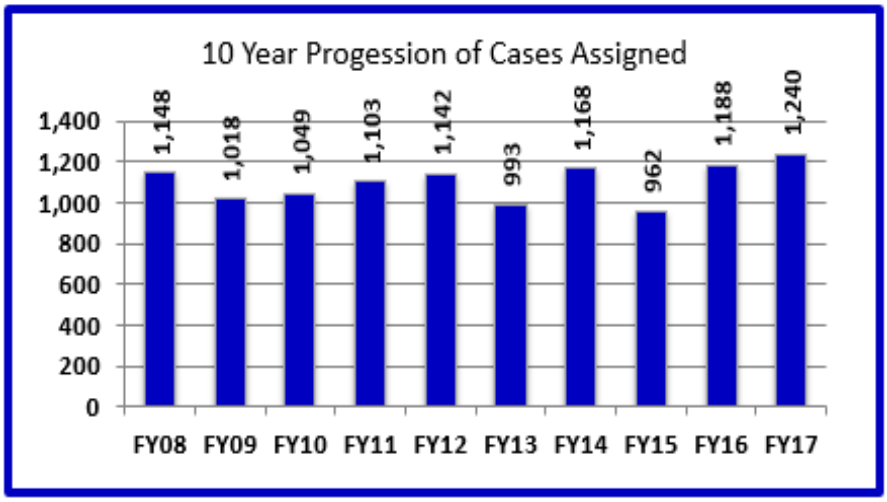


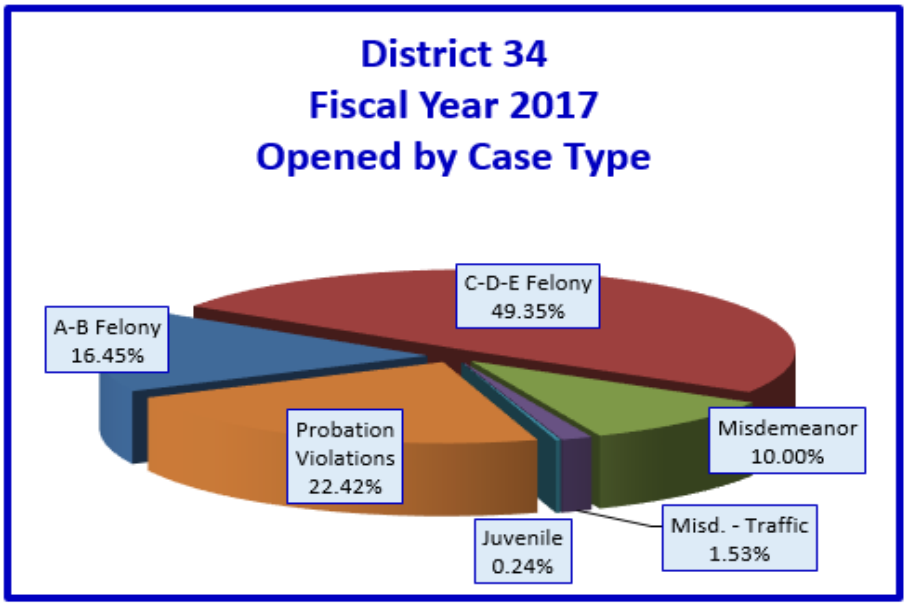


FY2017 Cases Assigned By Case Type	
A - B Felony Drug	104
A - B Felony Other	193
A - B Felony Sex	17
C - D - E Felony Drug	632
C - D - E Felony Other	1,121
C - D - E Felony Sex	4
Misdemeanor	266
Misd. - Traffic	41
Juvenile Non-Violent	7
Juvenile Status	
Juvenile Violent	3
Probation Violation - Felony	545
Probation Violation - Misd.	191
Total	3,124

District 34
Public Defender's Office
48 East State Highway 162
Portageville, MO 63873
573-379-9308

Susan Warren
District Defender

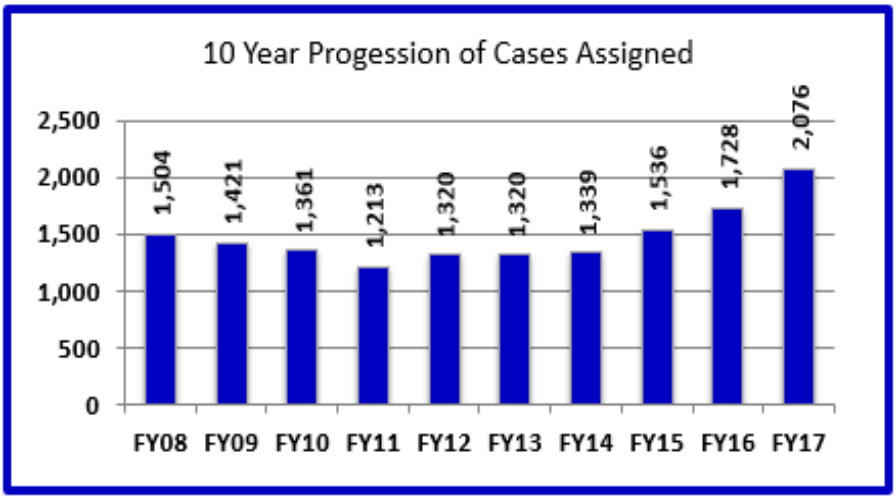


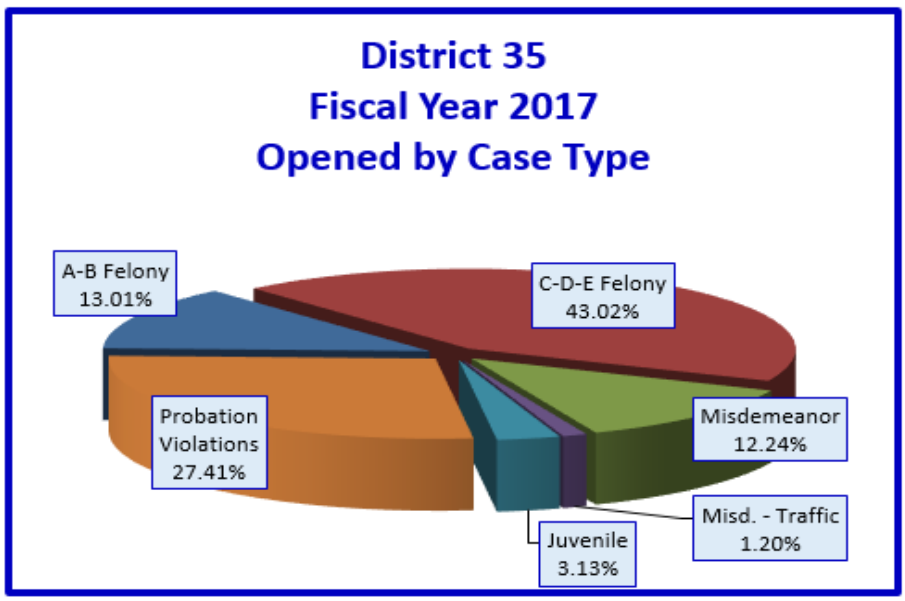


FY2017 Cases Assigned By Case Type	
A - B Felony Drug	63
A - B Felony Other	127
A - B Felony Sex	14
C - D - E Felony Drug	178
C - D - E Felony Other	432
C - D - E Felony Sex	2
Misdemeanor	124
Misd. - Traffic	19
Juvenile Non-Violent	2
Juvenile Status	
Juvenile Violent	1
Probation Violation - Felony	255
Probation Violation - Misd.	23
Total	1,240

District 35
Public Defender's Office
PO Box 648
1087 Commerce Drive
Kennett, MO 63857
573-888-0604

Leslie Hazel
District Defender

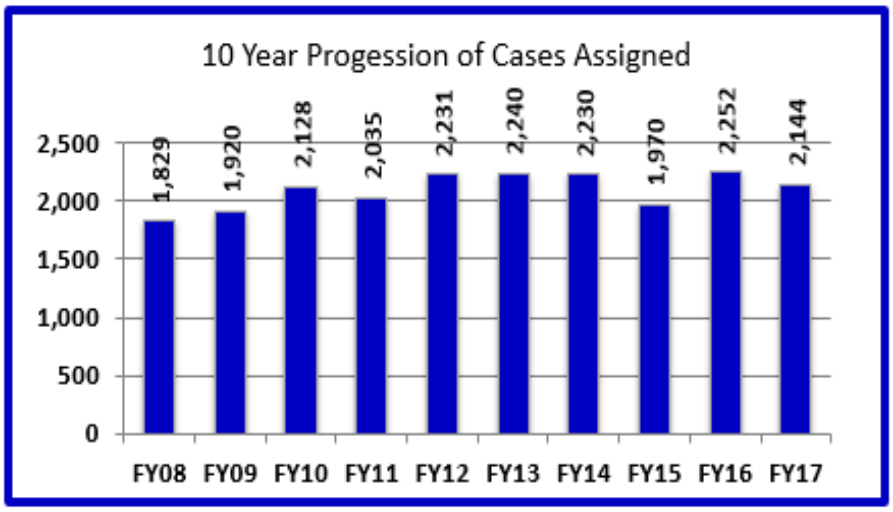


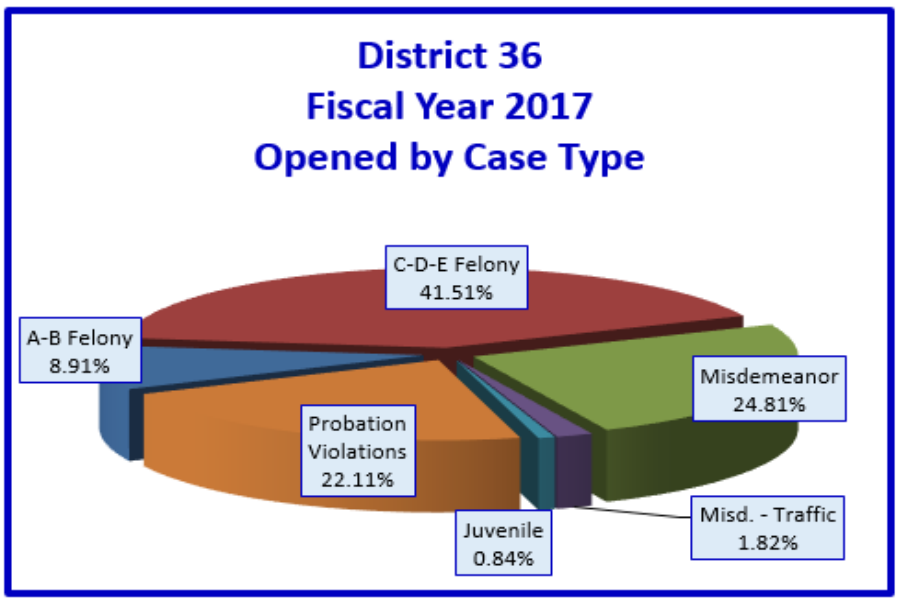


FY2017 Cases Assigned By Case Type	
A - B Felony Drug	124
A - B Felony Other	137
A - B Felony Sex	9
C - D - E Felony Drug	327
C - D - E Felony Other	557
C - D - E Felony Sex	9
Misdemeanor	254
Misd. - Traffic	25
Juvenile Non-Violent	39
Juvenile Status	
Juvenile Violent	26
Probation Violation - Felony	471
Probation Violation - Misd.	98
Total	2,076

District 36
Public Defender's Office
948 Lester Street
Poplar Bluff, MO 63901
573-840-9775

Steven Lynxwiler
District Defender

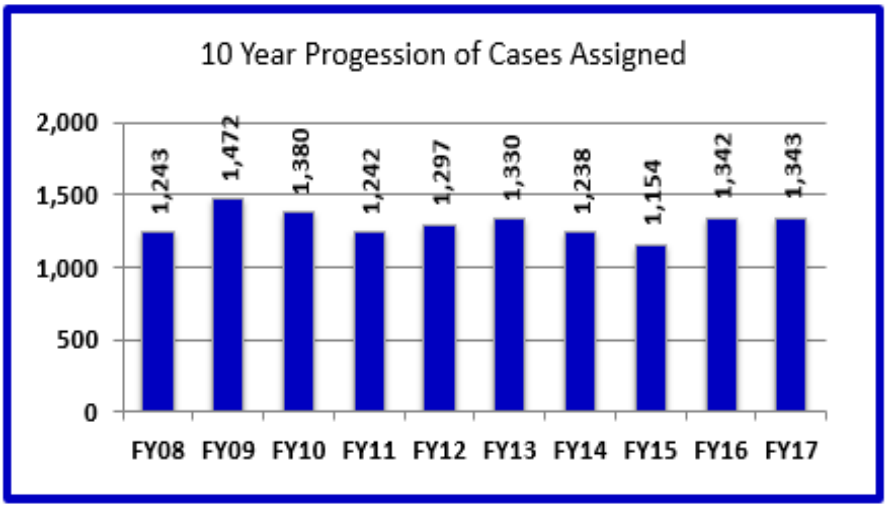


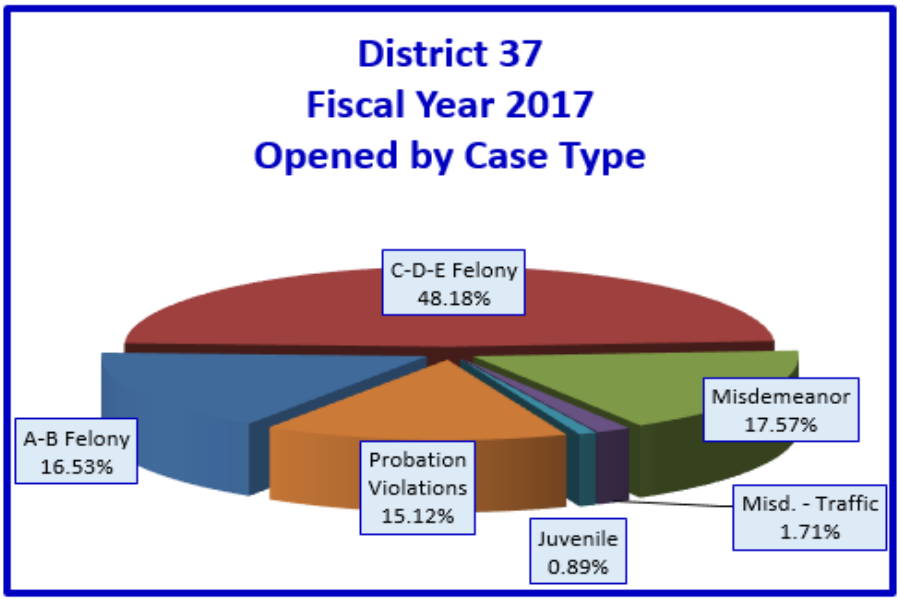


FY2017 Cases Assigned By Case Type	
A - B Felony Drug	91
A - B Felony Other	88
A - B Felony Sex	12
C - D - E Felony Drug	311
C - D - E Felony Other	575
C - D - E Felony Sex	4
Misdemeanor	532
Misd. - Traffic	39
Juvenile Non-Violent	14
Juvenile Status	
Juvenile Violent	4
Probation Violation - Felony	343
Probation Violation - Misd.	131
Total	2,144

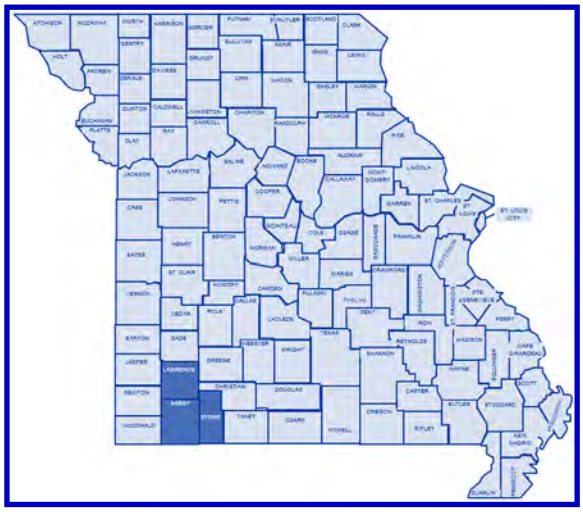
District 37
Public Defender's Office
1314 Webster Street
West Plains, MO 65775
417-257-7224

Bethany Turner
District Defenderr



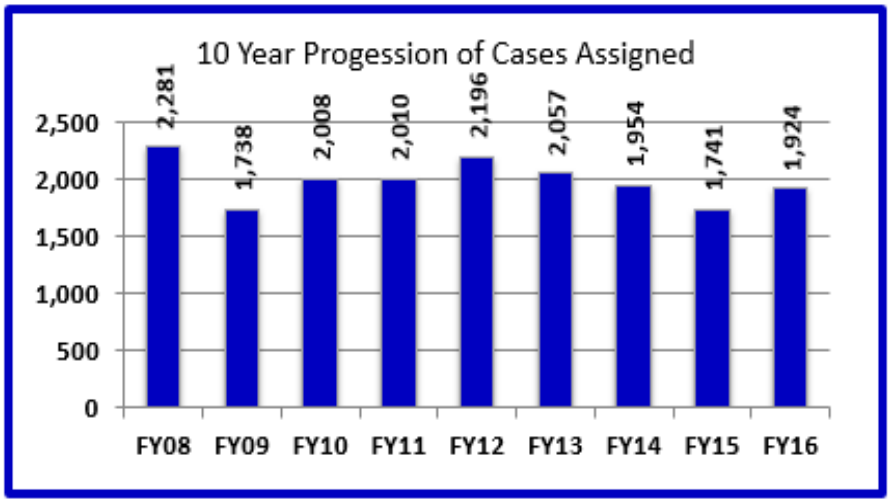


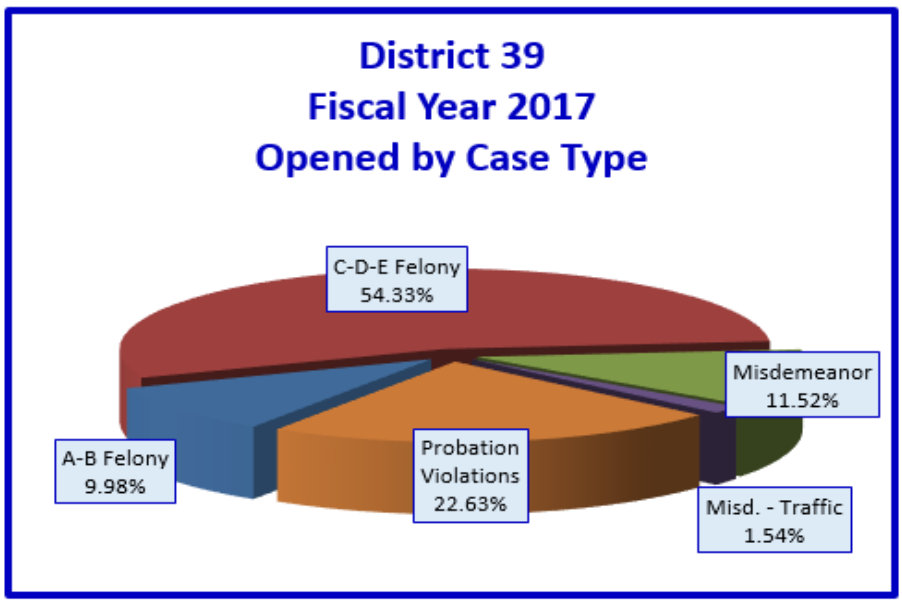
FY2017 Cases Assigned By Case Type	
A - B Felony Drug	123
A - B Felony Other	85
A - B Felony Sex	14
C - D - E Felony Drug	210
C - D - E Felony Other	435
C - D - E Felony Sex	2
Misdemeanor	236
Misd. - Traffic	23
Juvenile Non-Violent	4
Juvenile Status	
Juvenile Violent	8
Probation Violation - Felony	167
Probation Violation - Misd.	36
Total	1,343



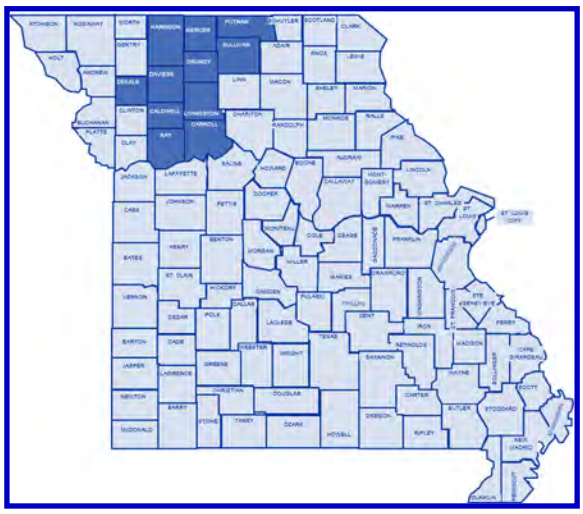
District 39
Public Defender's Office
PO Box 685
305 Dairy
Monett, MO 65708
417-235-8828

Pamela Musgrave
District Defender



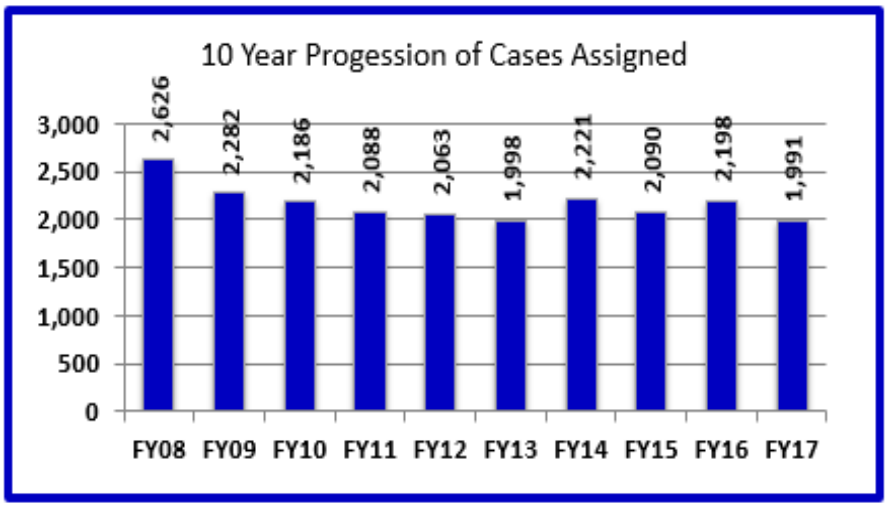


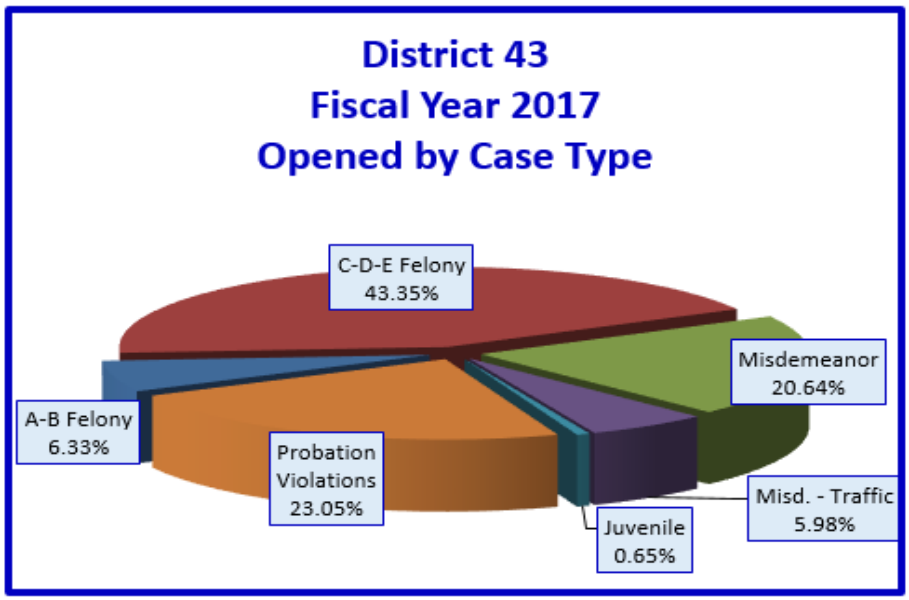
FY2017 Cases Assigned By Case Type	
A - B Felony Drug	65
A - B Felony Other	132
A - B Felony Sex	23
C - D - E Felony Drug	403
C - D - E Felony Other	790
C - D - E Felony Sex	5
Misdemeanor	254
Misd. - Traffic	34
Juvenile Non-Violent	
Juvenile Status	
Juvenile Violent	
Probation Violation - Felony	444
Probation Violation - Misd.	55
Total	2,205



District 43
Public Defender's Office
500 Youssef
Chillicothe, MO 64601
660-646-3343

Kelly Miller
District Defender

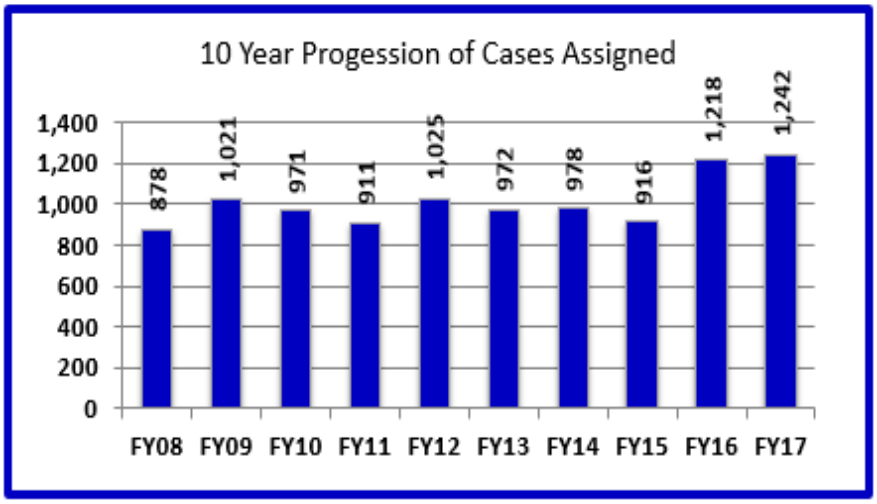


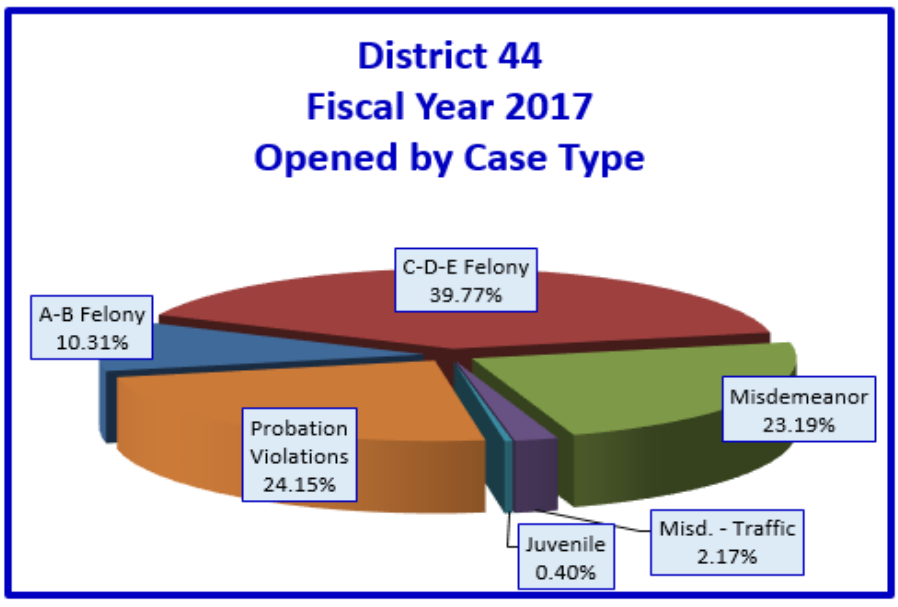


FY2017 Cases Assigned By Case Type	
A - B Felony Drug	37
A - B Felony Other	72
A - B Felony Sex	17
C - D - E Felony Drug	293
C - D - E Felony Other	552
C - D - E Felony Sex	18
Misdemeanor	411
Misd. - Traffic	119
Juvenile Non-Violent	2
Juvenile Status	7
Juvenile Violent	4
Probation Violation - Felony	324
Probation Violation - Misd.	135
Total	1,991

District 44
Public Defender's Office
PO Box 951
404 Washington
Ava, MO 65608
417-683-5418

Kate Welborn
District Defender

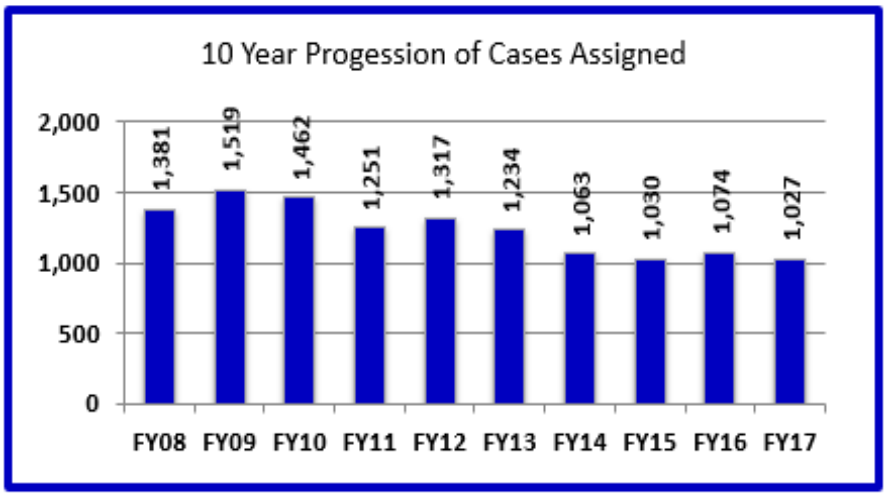


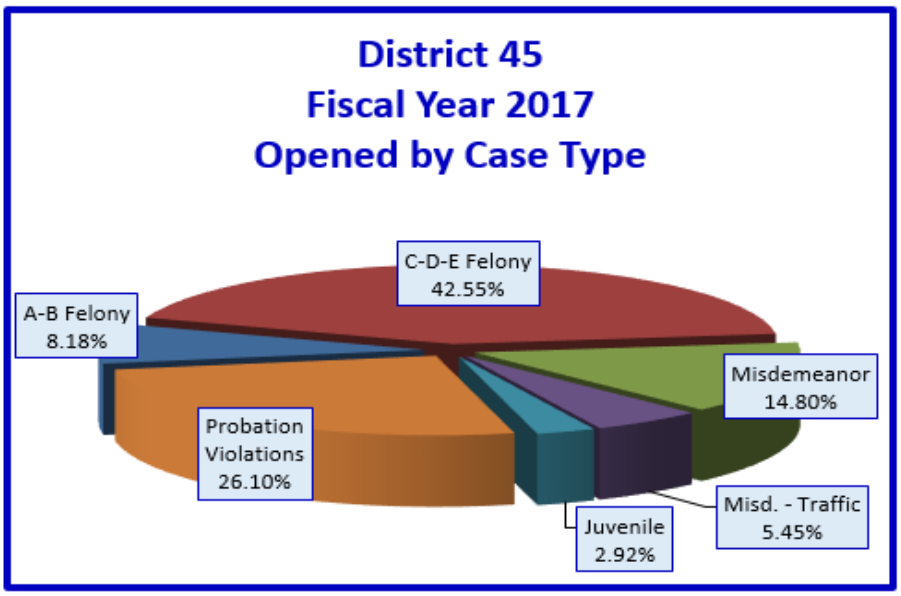


FY2017 Cases Assigned By Case Type	
A - B Felony Drug	66
A - B Felony Other	56
A - B Felony Sex	6
C - D - E Felony Drug	184
C - D - E Felony Other	301
C - D - E Felony Sex	9
Misdemeanor	288
Misd. - Traffic	27
Juvenile Non-Violent	4
Juvenile Status	
Juvenile Violent	1
Probation Violation - Felony	223
Probation Violation - Misd.	77
Total	1,242

District 45
Public Defender's Office
240 West College
Troy, MO 63379
636-528-5084

Tom Crocco
District Defender

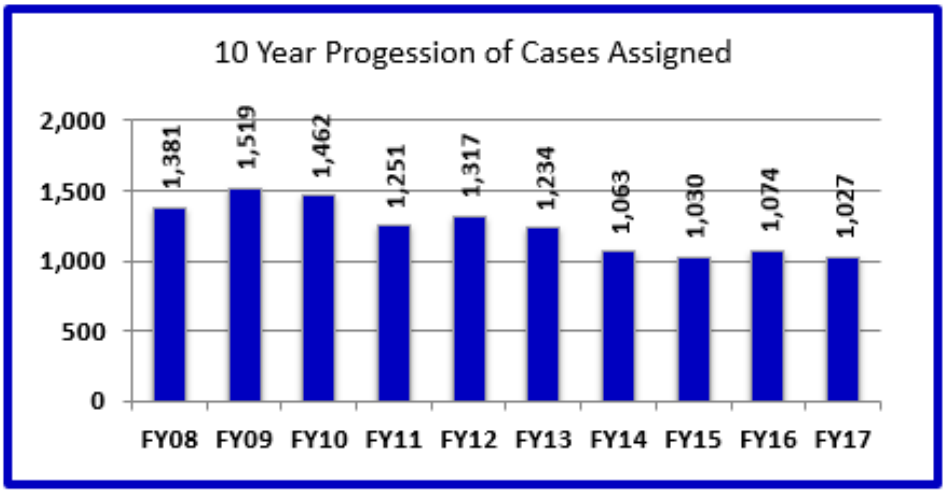


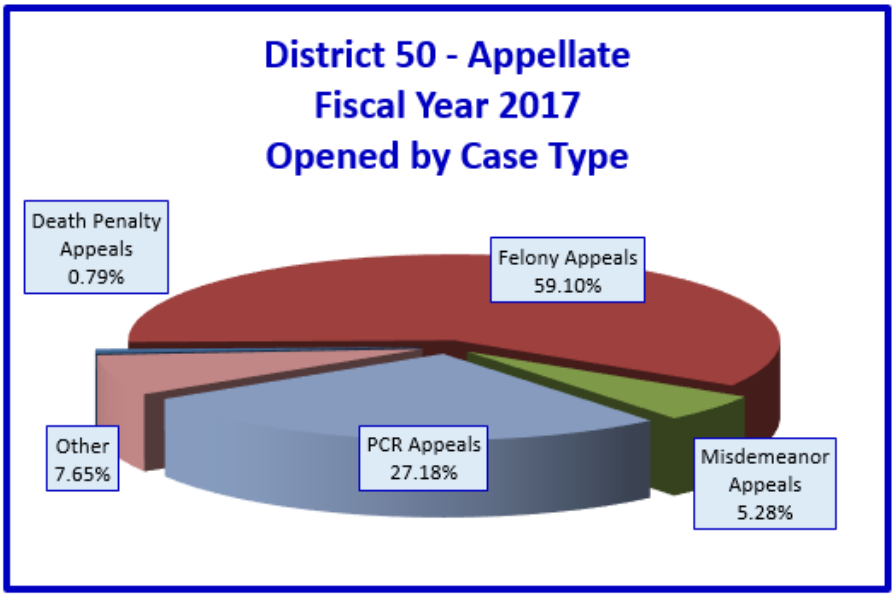


FY2017 Cases Assigned By Case Type	
A - B Felony Drug	29
A - B Felony Other	38
A - B Felony Sex	17
C - D - E Felony Drug	180
C - D - E Felony Other	253
C - D - E Felony Sex	4
Misdemeanor	152
Misd. - Traffic	56
Juvenile Non-Violent	22
Juvenile Status	
Juvenile Violent	8
Probation Violation - Felony	213
Probation Violation - Misd.	55
Total	1,027

District 50
Central Appellate
Public Defender's Office
100 West Nifong—Bldg 7
Suite 100
Columbia, MO 65203
573-777-9977

Ellen Flottman
District Defender

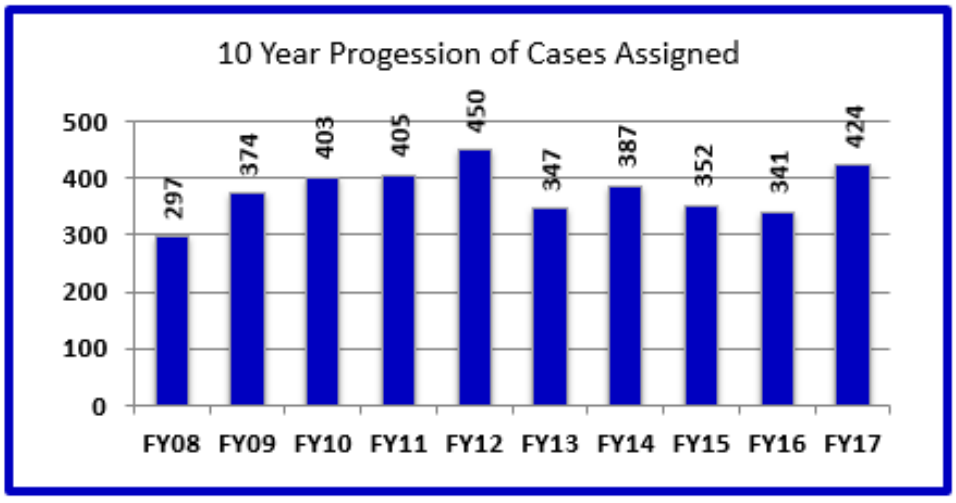


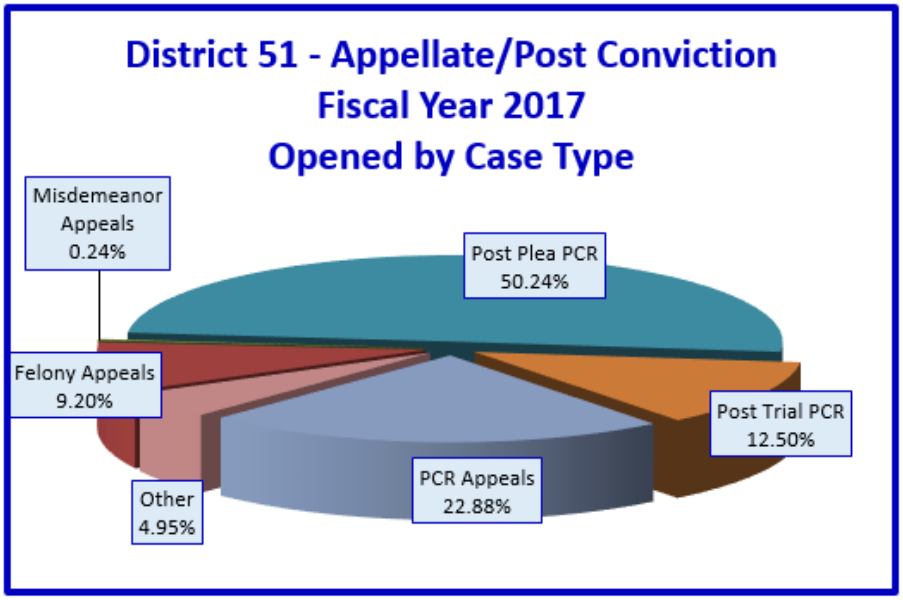


FY2017 Cases Assigned By Case Type	
Death Penalty Appeals	3
Felony Appeals	224
Misdemeanor Appeals	20
Juvenile Appeals	-
Post Plea PCR	-
Post Trial PCR	-
PCR Appeals	103
Other	29
Total	379

District 51
Eastern Appellate/Post Conviction A
Public Defender's Office
1010 Market Street
Suite 1100
St. Louis, MO 63101
314-340-7662

Kristina Olson
District Defender

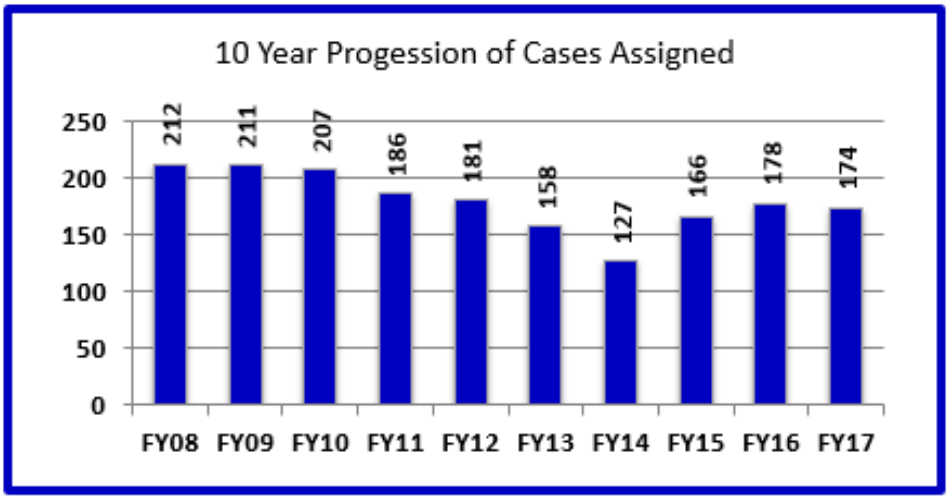


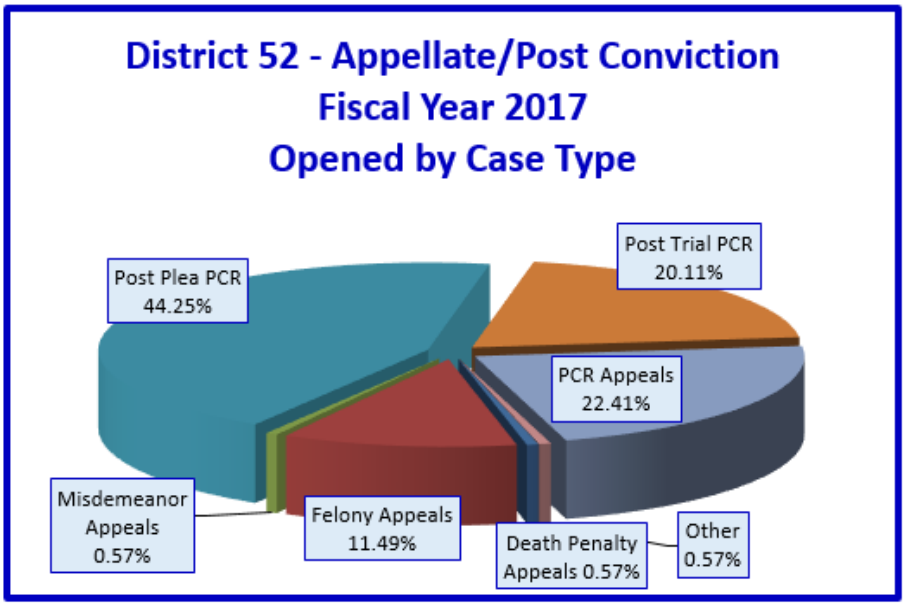


FY2017 Cases Assigned By Case Type	
Death Penalty Appeals	
Felony Appeals	39
Misdemeanor Appeals	1
Juvenile Appeals	
Post Plea PCR	213
Post Trial PCR	53
PCR Appeals	97
Other	21
Total	424

District 52
Western Appellate/Post Conviction A
Public Defender's Office
920 Main Street
Suite 500
Kansas City, MO 64105
816-889-7699

Susan Hogan
District Defender





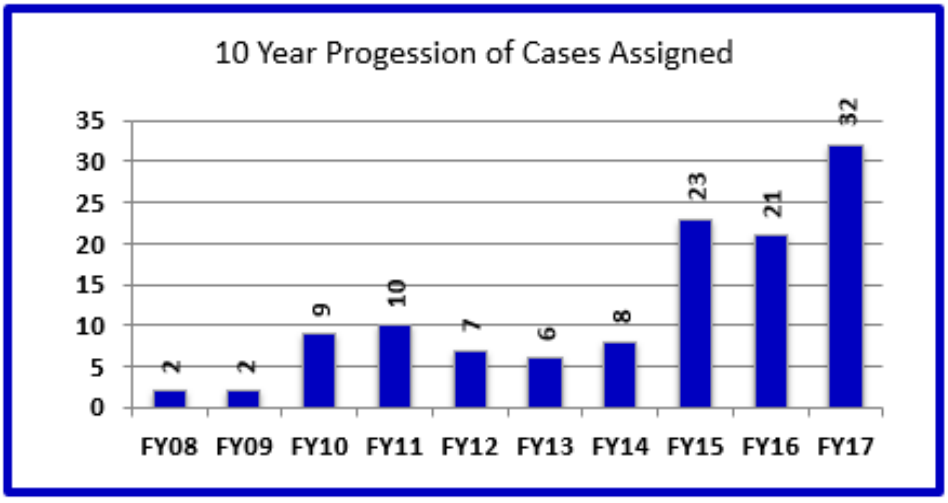
FY2017 Cases Assigned By Case Type	
Death Penalty Appeals	1
Felony Appeals	20
Misdemeanor Appeals	1
Juvenile Appeals	
Post Plea PCR	77
Post Trial PCR	35
PCR Appeals	39
Other	1
Total	174

District 53
Central Capital
Public Defender's Office
100 West Nifong—Bldg 7
Suite 100
Columbia, MO 65203
573-777-9977

Donald Catlett
District Defender

Fiscal Year 2017
CENTRAL CAPITAL
Caseload

	FY16 Carryover into FY2017	Assigned	Disposed	Current June 30, 2017
Central Office - Columbia				
Death Penalty Trial Cases		1	1	14
Non- Death Penalty Trial Cases		1	2	
Juvenile Murder 1st				
Miller Cases			5	
Appeals - Death Penalty		2	1	35
Appeals Other		26	9	
Juvenile Appeals		2		
Totals	16	32	18	49

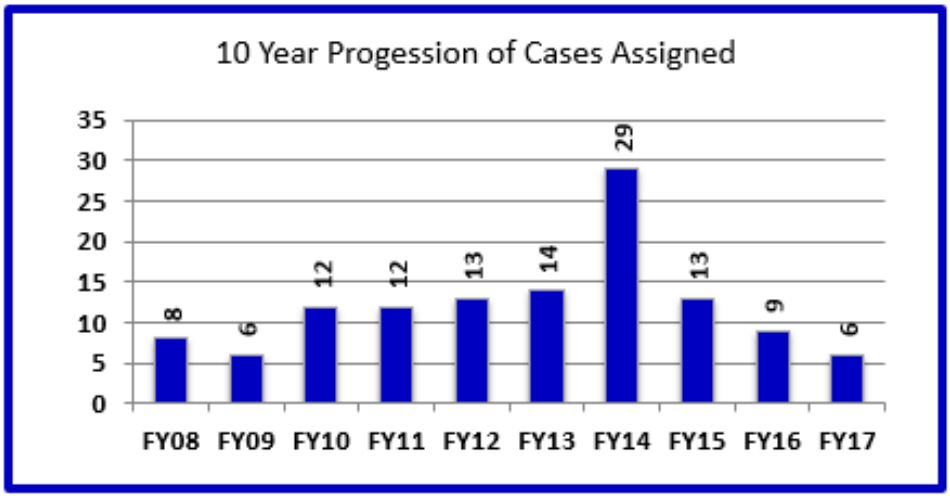


District 54
Eastern Capital
Public Defender's Office
1010 Market Street
Suite 1100
St. Louis, MO 63101
314-340-7662

Sharon Turlington
District Defender

Fiscal Year 2017
EASTERN CAPITAL
Caseload

	FY16 Carryover into FY2017	Assigned	Disposed	Current June 30, 2017
Eastern Office - St. Louis City				
Death Penalty Trial Cases		4	2	22
Non- Death Penalty Trial Cases		2	7	
Juvenile Murder 1st				
Miller Cases				
Appeals - Death Penalty				
Appeals Other				
Totals	27	6	9	22

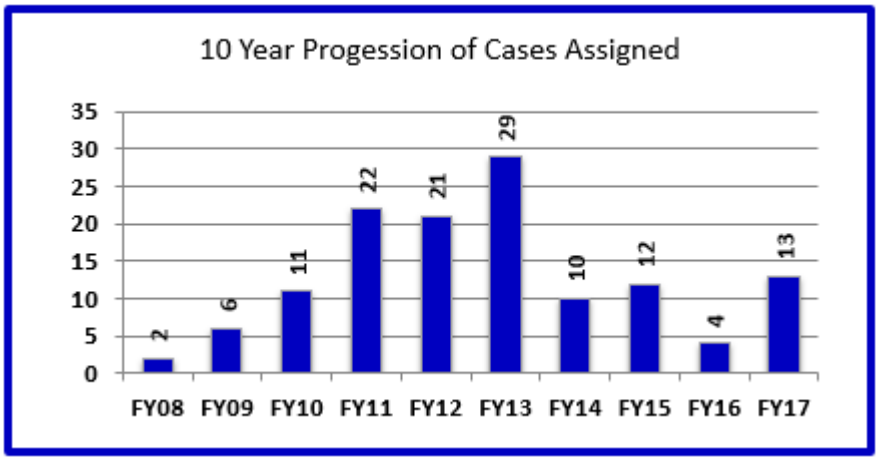


District 55
Western Capital
Public Defender's Office
920 Main Street
Suite 500
Kansas City, MO 64105
816-889-7699

Tom Jacquinot
District Defender

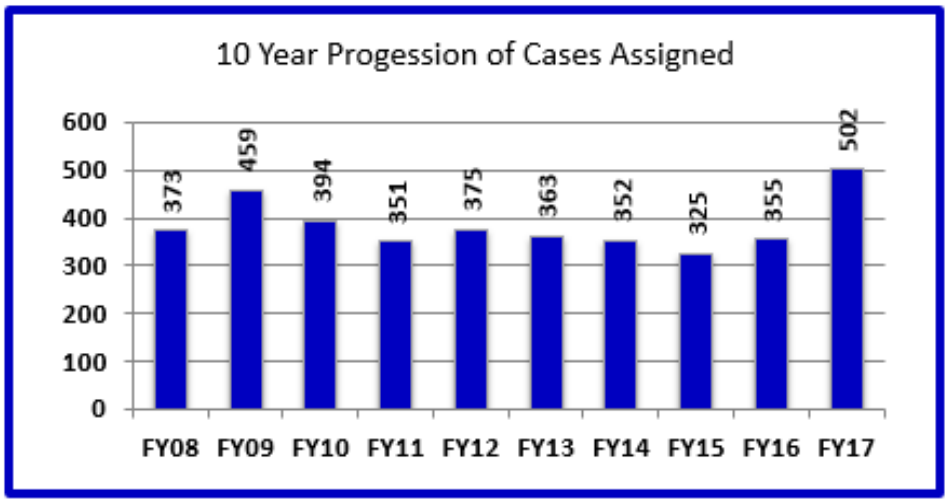
Fiscal Year 2017
WESTERN CAPITAL
Caseload

	FY16 Carryover into FY2017	Assigned	Disposed	Current June 30, 2017
Western Office - Kansas City				
Death Penalty Trial Cases		2	1	15
Non- Death Penalty Trial Cases		2	1	
Juvenile Murder 1st				
Miller Cases				
Appeals - Death Penalty				7
Appeals - Other		9	8	
Totals	14	13	10	22

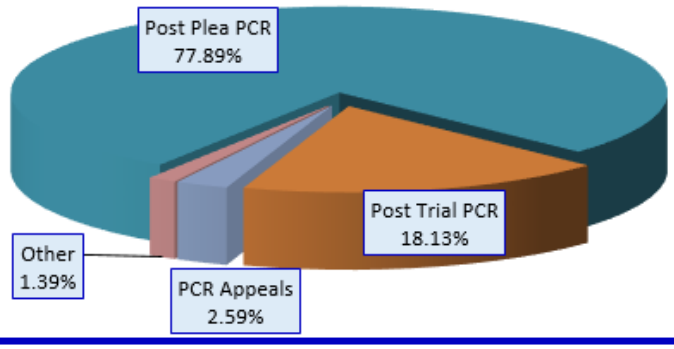


District 67
Central Post Conviction
Public Defender's Office
100 West Nifong—Bldg 7
Suite 100
Columbia, MO 65203
573-777-9977

Art Allen
District Defender



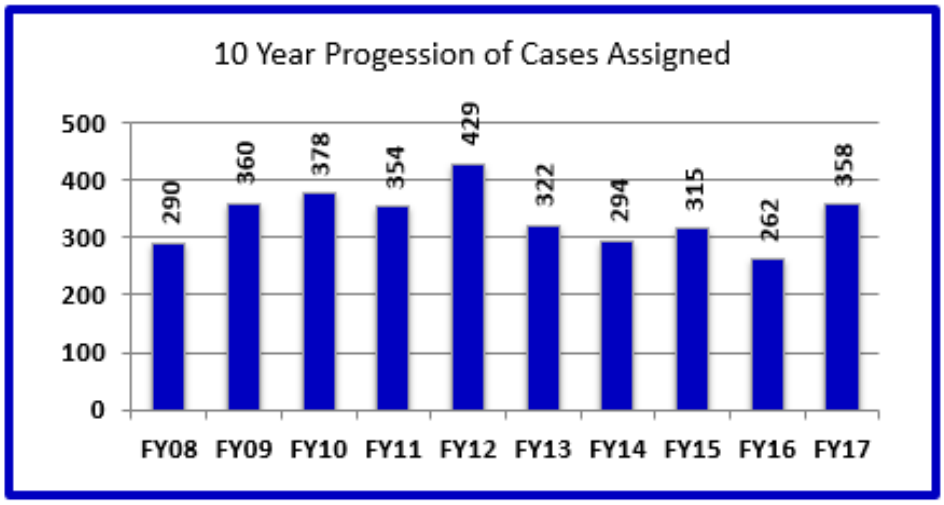
District 67 - Appellate/Post Conviction
Fiscal Year 2017
Opened by Case Type

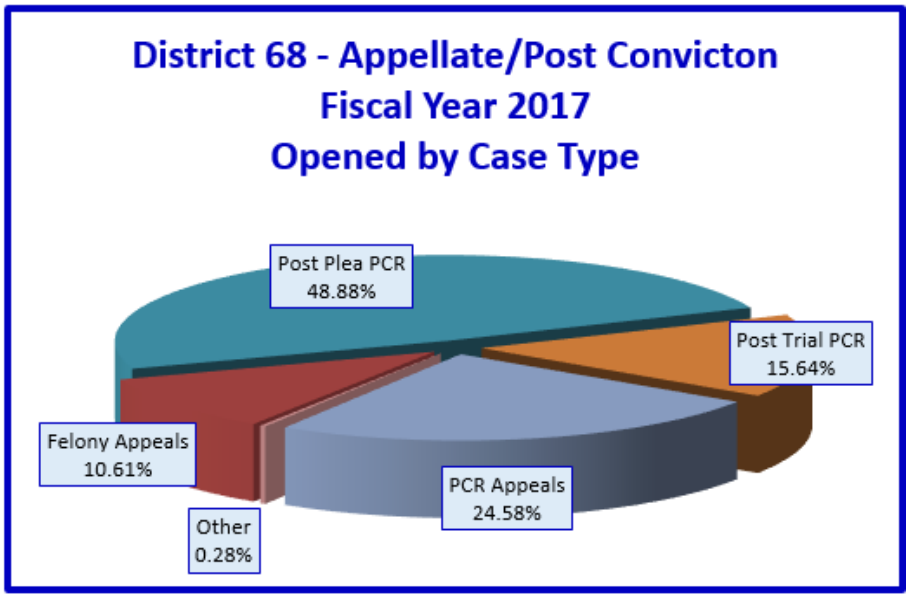


FY2017 Cases Assigned By Case Type	
Death Penalty Appeals	
Felony Appeals	
Misdemeanor Appeals	
Juvenile Appeals	
Post Plea PCR	391
Post Trial PCR	91
PCR Appeals	13
Other	7
Total	502

District 68
Eastern Appellate/
Post Conviction B
Public Defender's Office
1010 Market Street
Suite 1100
St. Louis, MO 63101
314-340-7662

G. Renee Robinson
District Defender

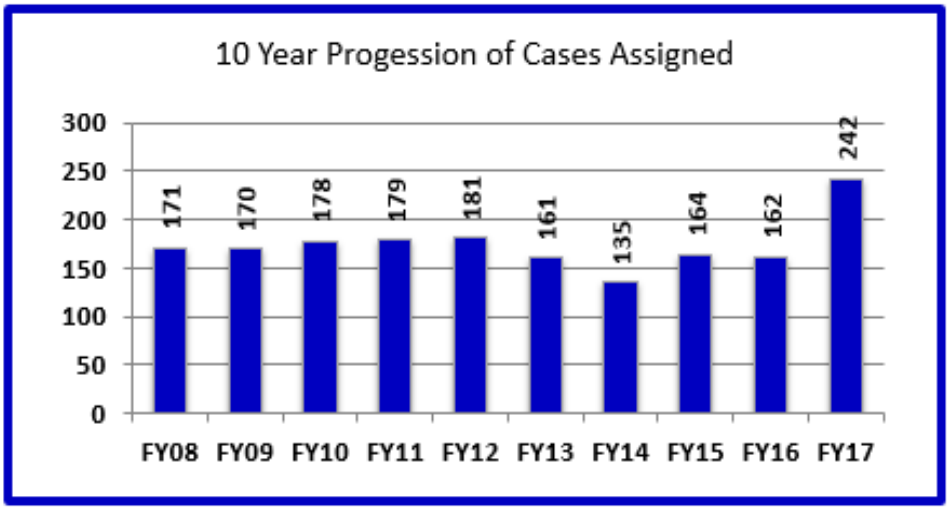


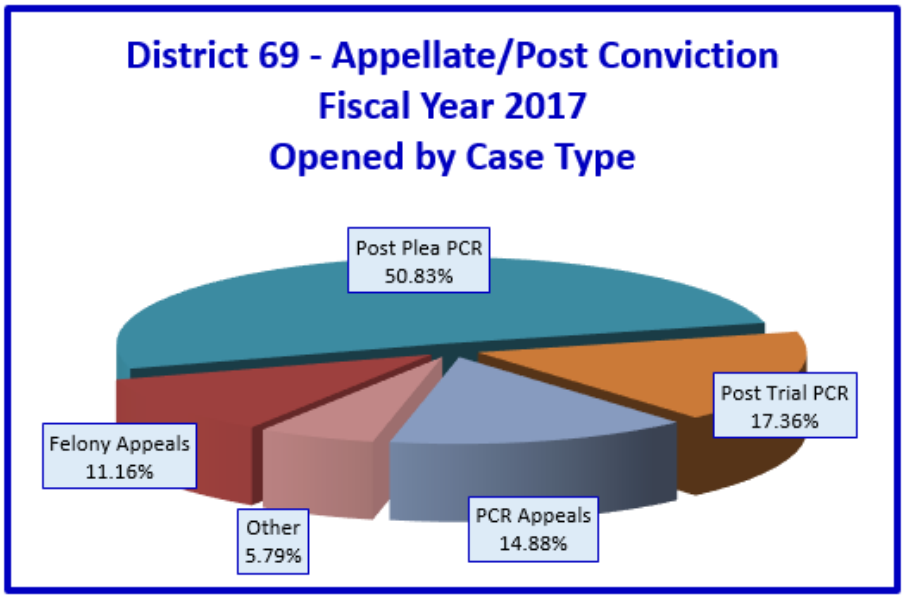


FY2017 Cases Assigned By Case Type	
Death Penalty Appeals	
Felony Appeals	38
Misdemeanor Appeals	
Juvenile Appeals	
Post Plea PCR	175
Post Trial PCR	56
PCR Appeals	88
Other	1
Total	358

District 69
Western Appellate/
Post Conviction B
Public Defender's Office
920 Main Street
Suite 500
Kansas City, MO 64105
816-889-7699

Damien de Loyola
District Defender





FY2017 Cases Assigned By Case Type	
Death Penalty Appeals	
Felony Appeals	27
Misdemeanor Appeals	
Juvenile Appeals	
Post Plea PCR	123
Post Trial PCR	42
PCR Appeals	36
Other	14
Total	242

District 71
Commitment Defense Unit
Public Defender's Office
1010 Market Street
Suite 1100
St. Louis, MO 63101
314-340-7662

District Defender
Amy Clay

Fiscal Year 2017
Commitment Defense Unit
Caseload Statistics

	FY16 Carryover into FY17	# of Cases Assigned in FY2017
Petitions for Commitment		18
Petitions for Release		12
Total Opened for 2017	67	30

		# of Cases Closed in FY2017
Jury Trials		10
Bench Trials		2
Guilty Plea		6
Dismissal: Not Adjudicated		2
Release Petition (Withdrawn)		4
Total Closed for 2017		24

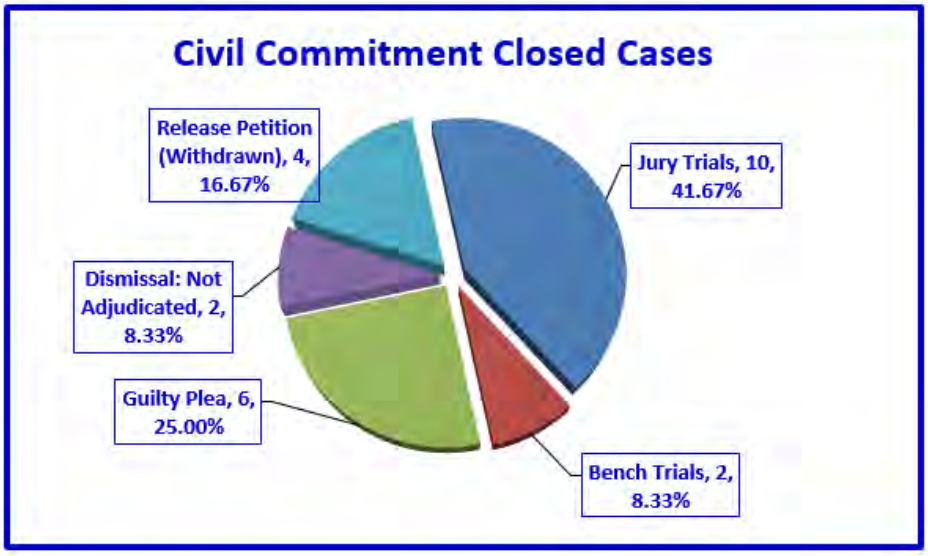


Exhibit E

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
CENTRAL DIVISION

SHONDEL CHURCH, et al,)
)
Plaintiffs,)
)
vs.) Case No. 17-04057-CV-C-NKL
)
STATE OF MISSOURI, et al,)
)
Defendants.)
)
)
)
)

VIDEOTAPED DEPOSITION OF MATTHEW CROWELL
TAKEN ON BEHALF OF THE PLAINTIFFS
DECEMBER 20, 2017

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UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
CENTRAL DIVISION

SHONDEL CHURCH, et al,)
)
Plaintiffs,)
)
vs.) Case No. 17-04057-CV-C-NKL
)
STATE OF MISSOURI, et al,)
)
Defendants.)
)
)
)
)

VIDEOTAPED DEPOSITION OF MATTHEW CROWELL, produced, sworn, and examined on December 20, 2017, between the hours of 1:30 o'clock in the afternoon and 6:00 o'clock in the afternoon of that day, at Alaris Litigation Services, 2422 East Madrid Street, Springfield, Missouri 65084, before Jenna Petree, in a certain cause now pending UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF MISSOURI CENTRAL DIVISION, wherein SHONDEL CHURCH, et al are the Plaintiffs, and STATE OF MISSOURI, et al are the Defendants.

APPEARANCES

For the Plaintiffs:
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Alaris Litigation Services
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Columbia, MO 65201
573-449-0561

The Videographer:
Bethany Scutti - Alaris Litigation Services

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THE VIDEOGRAPHER: We are on the record. Today's date is December 20, 2017 and the time is 1:36 p.m. This is the video recorded deposition of Matthew Crowell in the matter of Shondel Church, et al versus State of Missouri, et al, Case No. 17-04057-CV-C-NKL in the U.S. District Court for the Western District of Missouri, Central Division.

This deposition is being held at Alaris Litigation Services, 2422 East Madrid street, Springfield, Missouri 65804. The reporter's name, Jenna Petree. My name is Bethany Scutti. I'm the legal videographer. We are with Alaris Litigation Services.

Would the attorney present please introduce themselves.

MR. SHAHABIAN: Matt Shahabian for the plaintiffs.

MS. PRASAD: Anjali Prasad for the plaintiffs.

MR. RAMSEY: Steven Alan Ramsey for the State of Missouri and Governor Greitens.

MS. SHIPMA: Jacqueline Shipma for the MSDP defendants.

THE VIDEOGRAPHER: Will the court reporter please swear in the witness.

IT IS HEREBY STIPULATED AND AGREED, by and between counsel for the Plaintiffs and counsel for the

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Defendants, that the deposition of MATTHEW CROWELL may be taken in shorthand by Jenna Petree, and afterwards transcribed into typewriting; and the signature of the witness is expressly reserved.

* * * * *

MATTHEW CROWELL,

of lawful age, produced, sworn, and examined on behalf of the Plaintiffs, deposes and says:

THE VIDEOGRAPHER: You may proceed.

QUESTIONS BY MR. SHAHABIAN:

Q Good afternoon, Mr. Crowell.

A Good afternoon.

Q Thanks for taking the time to be here. My name is Matt Shahabian. I'm an attorney for the plaintiffs. Before we get started, have you ever been deposed before?

A No.

Q Okay. So I will start by laying out the ground rules basically how the deposition will work so we are all on the same page. So there is a court reporter here who is transcribing the deposition, as well as a video court reporter. Because we have a transcript, I would ask that you answer questions with verbal responses; yes, no, or whatever you want to elaborate. A head nod or shake of your head isn't going to get picked up by the transcript.

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Wait for me to finish the question before you begin your answer. It's more difficult for the court reporter to transcribe if we are talking over each other. Your counsel or counsel for the State defendants may have objections to some of my questions. Unless your counsel instructs you not to answer my question, you should answer even if there is an objection lodged. If you don't understand one of my questions, just tell me and I will rephrase the question and hopefully make it clear. We can take breaks whenever you like. So if you need a break, restroom, or just to catch your breath; just let me know. The only rule is you can't take a break when there is a question pending. I just ask that you finish the answer to the question that's pending and then we can take a break. Sound good?

A Sounds great.

Q So what did you do prepare for this deposition today?

A I met with Jackie Shipma, my general counsel, and we discussed kind of what to expect.

Q Did you review any documents?

A I don't believe we did. I don't recall reviewing any documents.

Q Did you review any other data or materials in preparation for this deposition?

A No.

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Q Did you talk to anybody besides Ms. Shipma in preparation for this deposition?

A I told other people I would be here, but I didn't talk to anybody else about preparing for today's deposition.

Q And how many times did you meet with Ms. Shipma in preparation?

A Just once.

Q What do you do for a living?

A I'm the district defender for the Area 25 office of the public defender. In that capacity, I function as the supervising attorney and I also represent clients charged with criminal offenses.

Q What is Area 25?

A Area 25 is a branch of Missouri State Public Defender Office. It encompasses six counties in the state of Missouri including Phelps, Pulaski, Maries, Texas, Crawford, and Dent counties.

Q How long have you been the district defender for Area 25?

A I believe I'm going on my third year.

Q What did you do before you were the district defender?

A I was the deputy district defender.

Q Also in Area 25?

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A Yes.
Q How long were you the deputy district defender?
A Two years.
Q Could you describe your employment experience aside from being defender and deputy district defender?
A I was assistant public defender prior to that for approximately five years. Do you want me to go beyond that?
Q Let's keep going.
A Okay. Prior to that I was a law student. In law school and in college I worked at Sonic Drive-In both in Harrisonville, Missouri and in Kirksville, Missouri where I attended school. That position I was an assistant manager of the restaurant.
Q When did you graduate law school?
A 2008.
Q Did you have any legal internships during law school?
A I did. I worked as an intern for Harrisonville Missouri's public defender office. I don't remember the area. I also -- I guess I also did an internship with Christopher Bird that was paid, so.
Q What is Christopher Bird?
A He was a solo practitioner in the Kansas City

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area. He did mainly civil law, civil litigation. He was briefly with the law firm of Hazelton and Laner when I went to work for him, but I had no affiliation with them.
Q So moving back to your employment at MSPD; what is your responsibilities -- what are your responsibilities as the district defender?
A My responsibilities as the district defender are to manage the attorneys in the office and the support staff to ensure that clients that we represent receive the best representation possible based upon the MSPD guidelines and also to represent clients.
Q What are the MSPD guidelines?
A They are the -- I guess they're not really -- well, they are rules by which we represent our clients. They are somewhat aspirational in the sense that, you know, I think they anticipate adequate resources, but they are quite voluminous, so I don't know specifically what you're asking. I don't know --
Q Just generally.
A Generally speak, they are the guidelines that dictate how we are to represent our clients.
Q And so is it fair to say that you have administrative tasks, supervisory tasks, and your own caseload as the district defender?
A That's correct.

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Q Roughly how much of your time is spent on administrative tasks?
A It varies. Recently, maybe 10 percent because of ongoing caseload issues. Probably prior to the Hinkebein decision, I was probably closer to 30 to 40 percent maybe.
Q And what kind of tasks would you put into the administrative task bucket?
A Hiring, firing, making sure that people are doing their time sheets, that they are coming to work. I would probably throw in that bucket the training and time spent with the younger attorneys, newer attorneys, and getting them up to speed.
Q How much of your time would you say you spend on the supervisory portion of your docket, so-to-speak?
A So out of that 10 percent?
Q So would you put your supervisory responsibilities in the administrative component? Or would you -- I think one way to go back and this may be my fault for being unclear, but I had split it into three buckets; administrative, supervisory, and your caseload. Would you say it's more accurate to put supervisory in the administrative bucket?
A Yeah, I guess I have trouble distinguishing between the two.

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Q That's fine.
A Administrative in my mind is what administrative tasks do I have to do like my own time sheets, my own expense report and following-up on e-mails and that sort of thing. Supervisory is when I'm monitoring the attorneys and staff doing those things. And so that's how I distinguish between the two. I would spend probably --
Q So let me ask it this way: What percentage of your time would you say is spent doing both administrative and supervisory tasks?
A Currently probably 10 to 15 percent. But, again, if I include training in that and supervising new attorneys, it's much higher. It's probably 50 to 60, maybe even 70 percent of my time spent helping new attorneys.
Q So you would say helping new attorneys including training, could be anywhere from 40 to 50 percent of your time?
A Or much more than that depending on the day.
Q How many attorneys are in your office?
A Including me, 14.
Q And how many non-attorney employees do you have?
A Six-and-a-half.
Q What are their responsibilities?

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A The non-attorneys?
Q Yes.
A I have two investigators. Their job is to assist the attorneys in investigating the case and collecting evidence and interviewing witnesses, subpoena witnesses. I have two legal assistants. Their job is to -- similar to investigators. They do a lot of the same sort of things, but also they assist in filing motions, preparing motions; kind of the more administrative tasks that an attorney might be responsible for. They also are responsible for assisting in jail visits and in court. And at court they would do things like do intakes for potential new clients, meet with the defendants and their families. Then I have two-and-a-half clerical positions. Their jobs are primarily to answer the phone, maintaining the office supplies, ordering; that sort of thing.
Q What would you say the average experience level of the attorneys in your office is?
A Maybe a year. I have one attorney in my office with 15 years experience. I'm the next highest; I have nine years under me. The next highest is an attorney and I think he has six years and then it drops off from there.
Q And by drops off from there, would you say more or less than two years?

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A I have one attorney that has I believe three years of experience and another attorney with four or five years experience, but I think a year of that was prior to being criminal defense. Then almost every other attorney after that is less than two. In fact every other attorney after that is less than two.
Q How many attorneys in your office have one year of experience or less?
A You put me on the spot.
Q Roughly, I won't hold you to it.
A I would saw eight or nine attorneys.
Q How do you assign cases that come into your office to those attorneys?
A To the new attorneys?
Q To any of the attorneys in the office.
A The cases are primarily assigned by county. So the attorneys are assigned to a particular county and the cases that come into that county would go to those attorneys. That's traditionally what we have done. More recently, because of my concern over attorney's caseloads, I have been -- the cases have been coming in. When the judge orders us into the case, I have been entering those cases. And then through discussions with attorneys and reviewing their caseload and that sort of thing, I would then assign cases to the attorneys based on their workload.

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Q Would you say you, as the district defender, you have a lot of discretion in the day-to-day management of your office?
A No.
Q Why not?
A Well, I don't have any control over the resources. That really controls how you manage your office. So the resources that are given to me, I have to distribute between six counties. I can't really control, you know, much about what how those resources are spent because they are so limited.
Q And so you're not responsible for setting the budget for your office?
A My office has a budget. It is not set by me. It is set by our main office in Columbia. I do have some control over some items in that budget. So I could refuse to order certain types of pens. I could deny what we call a local E-request. So if somebody wanted to spend less than $500.00 on something, I could say you're not going to do that. But realistically I don't have much control over it because those are things that we need and we have to do.
Q How big is the current caseload in your area?
A Right now I would say roughly our office is handling about a 1,000 cases.
Q And on average how many cases does each

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attorney in your office carry?
A Typically somewhere between 100 and 150. Right now it's a little bit lower, again, because we have been waitlisting and I have taken on more cases because of the appointments.
Q How many cases are on your docket currently?
A On my personal?
Q Yes.
A Last I checked it was 133.
Q And that's a case docket you carry in addition to your administrative and supervisory responsibilities?
A That's correct.
Q Are there any local policies, formal or informal, that you have set as district defender that, you know, are not imposed by the central office?
A I have decided to waitlist cases or clients; that was not imposed. I'm sure there are other minor policies, but that's a big one. I mean, that's just me deciding to -- not refuse clients, but delay us entering into their cases.
Q I certainly want to talk about that, but I may just -- I'm not ignoring you. We'll push it off until a little later in the deposition. You said there are about 1,000 cases in your office right now. Would you say that that is typical, above average, below average in your

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experience as director -- district defender and deputy district defender?

A I would say it's slightly below average.

Q What would the average be around?

A In a year's time we typically handle like I think last fiscal year we handled 3,700 cases. I think by this point last year, we were a couple hundred cases ahead of where we are. It's lower because of the waitlist. So I think right now we have -- and I know you said you wanted to get into this later.

Q Please answer completely.

A -- to show you where we are at, the reason I think we are about 200 behind last year is because the numbers last year show we were about 200 ahead. But also there are roughly 200 people on our waitlist.

Q So when you say a 1,000 cases -- and I may have misunderstood -- when you say a 1,000 cases, you're not counting cases on the waitlist?

A Right. If we were to open those cases today, we would be roughly 1,200.

Q Okay. Could you describe generally after an indigent defendant is arrested, at what point in the criminal process is your office contacted to represent them?

A It depends on the individual defendant. So if

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they were arrested and they are sitting in jail, all the jails in my area provide applications to them. All they have to do is fill out the application and it gets faxed or we pick it up. So the delay in receiving applications in that sense, if they were to file it the minute they got into the jail would probably be, we would receive it within a day or two, typically. If they are not in custody, if they are released on a summons, we probably wouldn't get an application from them for quite some time.

Q Are there any stages in the criminal process that occur in courts in your area prior to you entering -- your office entering an appearance?

A There would be counsel status hearing, bond appearance hearings. In some courts, arraignments.

Q So in some courts in your area, arraignments can occur for indigent defendants who have not yet been appointed counsel?

A Yes, happens all the time.

Q Are you aware of any negative consequences that can happen to clients in that situation -- or not to clients, to indigent defendants in that situation?

A Certainly. I think a lot of indigent clients in that situation sometimes they pled guilty without the advice of counsel and they don't understand the consequences. In some courts that can have very serious

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consequences. A lot of times they will say things about their innocence or guilt that probably they shouldn't be saying in open court. If they had an attorney, the attorney could at least advise them to remain silent. I don't think the courts do a very good -- the courts try to keep them quiet, but it's just not the same as having an attorney there, so.

Q Could defendants waive constitutional rights during any of these hearings?

A Yes, they do. They often, I think, waive their right to an attorney. They waive their right to remain silent. I just had one that came to mind. Often times -- I don't know if it's necessarily a constitutional right -- but they with inadvertently waive their right to change of venue or change of judge because of the time beginning, you know, when they go to arraignment, that starts their window of opportunity to change judge or change venue. If they don't have an attorney at that stage, obviously they may not have one ten days down the road, so they will waive that right as well.

Q And that may be an inadvertent waiver, but it happens as a result of the criminal process continuing without counsel?

A It's inadvertent. I think some judges purposely avoid having counsel in cases to facilitate that.

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Q What makes you say that?

A In some of our counties, judges -- we would change judge routinely off of a particular judge because of the way they treat our clients, their dispositions, their bonds; that sort of thing. So it was always in our client's interest to change judge. Well, judges would get annoyed with that, or at least in my belief they would get annoyed. So they would stop appointing counsel or having us be present at court dates so that way they could go ahead and arraign the individual and then they would set a court date beyond the ten-day window. So I can't say that, yes, they were being vindictive or something, but it certainly appeared based on their actions and what they were doing, they were trying to circumvent our ability to change judge or venue.

Q And in a case like that where the defendant is arraigned without counsel, at what point after that would your office come into the case?

A Well, again, if they are in jail, you know, it's really kind of up to the client to take -- or the defendant to take action to get us an application. At some point, the courts become a little more active. After they have been sitting for about a month, they will often bring them up to the courtroom while we are there so we will give them an application and have them fill it out. If they

aren't in custody, then usually it will be the courtroom center where they will come to their next court date, we will be present. The judge will ask them have they applied for the public defender. Most of the time that will be a negative and so they will say go see the public defender. They are right over there and they will give you an application. So that decision is made in court.

Q When you are appointed to represent clients prior to an arraignment taking place, what steps would attorneys -- would you or attorneys in your office take to prepare for arraignments or other preliminary hearings?

A Generally speaking the main thing you would do is meet with the client. In almost all of our counties we are not getting discovery prior to arraignment in circuit court. So this would be an associate court when we normally get in a case. So the main thing you would do is meet with the client, beyond that not much else I think happens.

Q What sort of information would you try to ask a client in order to be able to effectively advocate for them?

A Well, we have a whole intake sheet that we encourage the attorneys to use that covers pretty much all the basis that we believe are important. So it guess through their education, their physical mental health

problems, kind of their story of the case. You know, are they a citizen. Are there any immigration issues we need to be aware of. Is there any evidence that exists or witnesses that exists that we need to get a hold of, you know, as soon as possible so the information doesn't become stale or the witness disappears; that sort of thing. It has a whole host of things. I encourage the attorneys to use it because like me here today, I may not remember everything single thing that I need to cover.

Q In your opinion, do you have the time and resources to communicate with your clients in the manner that each case requires?

A No.

Q Why do you say that?

A Because I have way too many clients to communicate in an effective manner. Most of my communication with my clients occurs on the day of court. It occurs in a back hallway of a courtroom or, you know, in the back of the courtroom in a less than ideal attorney-client confident -- confidential setting. We try to maintain confidentiality as best as possible. I'm not saying I don't do jail visits and I'm not saying I don't meet with clients in my office, but when you have 130 clients continuously and growing, it's just not possible. If I were to spend one hour with every client, I would

spend every three weeks just meeting with clients. And I have to spend most of my time in court. A large time in the office doing day-to-day office duties. I spend a great deal of time on the road. So obviously, you know, when you're prioritizing, you're cutting corners.

Q Why is it important to your ability to effectively represent clients to have adequate time to communicate with them?

A Well, if the goal is client-centered representation and if your goal is to try to get your client what they want, all right, it's difficult to know what they want or they don't even know what they want initially. They may say I want probation or I may want this, but they don't understand the criminal process. You have to explain that to them. They don't understand how the case progresses. They don't understand what evidence may be relevant, what evidence we need to obtain, what witnesses we can call. There is a whole host of things that you get from meeting with a client. Probably one of the most important things you get from meeting with the clients on a more than irregular basis is you get their trust. You don't get anywhere in a case without a client's trust because if they don't trust you they are not going to open up to you about, you know, the evidence in a case, what they really want. Often times, it's very adversarial

proceeding with the client because the client think you work for the State or you don't care about them and, you know, I don't blame them because it's reflected in the amount of time we spend with them. So there is a whole host of things that go with, you know, meeting with the client and spending time with them. Especially more than, you know, the 10 or 15 minutes or so that we spend with a client. Probably the bulk of the time you spend with the client is when you're talking about a plea deal.

Q And when you're talking to client about a plea deal, does that typically take place in the courthouse or at a jail visit?

A I try to do that at a jail visit because it generally requires more than, you know, ten minutes and you want to give them time to think about it before they actually have to do it. That being said, there is the initial conversation at the jail. They are brought to court, you know, the next day or a week later; whenever it may be. At that point, that's when, you know, there may have been some renegotiations or second thoughts and I think you want to have a conversation the day of as well. But that, again, ideally that would be in a confidential setting where you have more time, but it's typically in the back of a courtroom.

Q When you do a jail visit are those done in

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confidential settings?

A It varies based upon the jail. In our most populated jail in Phelps County, they have two rooms. One room is a bond -- we call it the bond room. It used to be just a wall with a glass window. Because they didn't like the attorneys using the actual attorney room, they decided to build this sheetrock wall around the bond window and to provide us some sort of privacy. The problem is, is not insulated and it's not or soundproof. So if you're talking to your client, anything you say if you talk at a normal voice, like I think I am now, it can be heard in the waiting area. So that's a big problem in Phelps County. In Texas County, we have a confidential room. In Pulaski County we -- -- they have a phone that you pick up and there is a glass wall. When you pick up the phone it tells you this is being recorded. They tell us it's not, but, you know, it's hard. Again, when we are talking about a client trusting us and wanting to open up to us and that's the first thing they hear, it really impedes, I think, that safety that they feel that they would have if they could actually have some sort of contact visit. Prior to that, it was a broom closet that we met in but apparently somebody hid a shive in that room so they wouldn't let us use that anymore. They said it was for our safety. In Dent County, there is no real confidential area. They put

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you down in the jail. You know, again, if you talk at a whisper maybe. Crawford County, you have a confidential area and in Maries County there is a confidential area. So about 50/50 there is confidence.

Q If you had more time to communicate with your clients, do you think you would be able to secure a confidential locations for them to talk to you?

A Yes.

Q Why do you think that?

A Because in most counties if you have the time and you arrange it, you can get a conference room or you can get some sort of other arrangement worked out where you can actually meet with a client in a confidential setting. So in Phelps County, I have no problem if I request to have a conference room. And I say I have no problem because I don't ask very often. I suspect if I ask very frequently that that would end very quickly because they have to station a guard outside the door. That's a similar thing in Pulaski County. If we ask, they will bring our clients up to a conference room and they will station a bailiff outside the door so that we can have a confidential meeting. Again, there are just ways that we can -- through motion practice, through simple request, we can get those things. But we don't ask very often so that's why I think we can get them when we ask.

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Q But if you had more time, do you think you would be able to ask more?

A I would make it a much bigger issue if I had more time, so yes.

Q So far we have been talking primarily about your caseload. In your opinion, do you think the attorneys in your office have sufficient time and resources to communicate effectively with their clients?

A It's gotten better in the last couple of months since I started waitlisting. The average attorney caseload I think I said was 100 to 150. We are probably down to more like 75 now. So it's gotten better. Again, with my attorney experience, they really need I think somebody with them more often than not until they get more experienced to meet with those clients and they don't have somebody with them. There is not the time for that. So I still think their caseload is too high and they are not able to meet with their clients as much as possible, but it's getting better.

Q Prior to initiating the waiting list, do you think they had adequate time and resources to communicate effectively with their clients?

A No.

Q Why not?

A Because, again, they had way too many clients.

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There -- like I said, even if you were to spend an hour with every client it becomes impossible. To meet a client at almost any of our jails, you're waiting. You go to the jail and you wait to meet with the client. So one client, even if you only have a quick thing to say to them, it's probably going to take about an hour for one client. So you might be able to see eight clients in a day, you know. So it's not really -- you just can't do it with that many clients.

Q On average, how often would you say you are able to meet with your clients, with each client?

A Well, would you include court appearances?

Q Let's leave out court appearances. Let me ask you this first: Would a court appearance be considered a qualifying contact as that term is used in the MSPD?

A No.

Q On average how often would you say you're able to have a qualifying contact with one of your clients?

A I'm probably being generous if I said 25 percent of the time.

Q In what percentage of your cases do you conduct what you believe to be an adequate pretrial investigation?

A Less than 25 percent.

Q What would constitute an adequate pretrial

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investigation in your opinion?
A It depends on the case, but obviously meeting with the client, investigating their leads; in many cases depositions. In every case a scene view and an evidence view. Consulting with experts in appropriate cases, potentially hiring experts for toxicology and things like that in the proper case. Interviewing favorable witnesses and reaching out to favorable witnesses. Gathering evidence that might exist, like surveillance or that sort of thing. So it really kind of depends on the case, but, you know, all of those things should be evaluated in every case.
Q Why aren't you able to do that in 100 of percent of your cases?
A There is not enough hours in the day.
Q In your opinion, are the attorneys -- separate from your caseload -- are the attorneys in your office able to do the kinds of pretrial investigation that you think cases typically require?
A No.
Q Why not?
A They don't have enough time.
Q Without getting into specifics or I certainly don't want you to waive attorney-client privilege, can you think of a time where your representation of a case was

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hampered by a lack of time to investigate a case?
A Yes.
Q Can you speak vaguely about such a circumstance?
A Sure. So we just had a trial yesterday. One of the witnesses that was called was a key witness for the State. I inherited this case from an attorney who left, who inherited it from an attorney who left, who inherited it from an attorney who left, who inherited from the original attorney. Depositions had been done of two of the witnesses, none of the others. It became only apparent to me during the trial that probably this witness should have been deposed. But that's -- would I have deposed him if I had the adequate time, I think I would have but I couldn't even make that analysis because of the time constraints. And so I think this client's case maybe was impacted by the lack of investigation.
Q And so to break that down, in your opinion you lacked sufficient time to even determine whether a deposition would have been useful or necessary in this prior to trial?
A That's correct.
Q And you realized that at trial?
A That is correct.
Q And sitting here today knowing that ideally

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this witness would have been deposed, you're not sure if even had you known that you would have had the time to do a deposition?
A I certainly would have tried, but I don't -- everything you do is sacrificing time for another client. So would I have fit it in somehow, possibly, but that would be sacrificing time spent on another case.
Q How frequently do you request discovery from the state in your cases?
A Every case.
Q How frequently do you file discovery related motions?
A Rarely.
Q In your opinion, do you have the time and resources to obtain and review discovery in the manner each case requires?
A I can say that I do not plead clients or go to trial without obtaining discovery. Now, whether that's complete is another question, but I always obtain discovery. I always file a discovery request. I always obtain at least some basic discovery. If I believe there is something missing I will always do an informal request and that's why I don't file a whole lot of motions, but I have a decent amount of experience. I would guess, you know, based on how the questions are going -- and sorry if

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I'm wrong -- but I would assume the next question is what about your attorneys. Again, based on the age of my staff and the experience level, I don't think most of them even understand what might be in a case. So they may receive discovery and sometimes discovery is nothing more than a probable cause statement and the indictment or the information. I would say many of my attorneys at that point don't even know what they are missing to ask for it or to file a supplemental request for discovery or motion to compel.
Q In your opinion, if you or your attorneys had more time to spend on a particular case, would that assist in the ability of your younger attorneys to understand when discovery is missing and when they should be going back for more discovery?
A Absolutely.
Q Why do you say that?
A Because I have seen the impact that the waitlist and relieving some stress off the attorneys has had. I have seen many more motions filed. I have seen a lot more evidentiary hearings. I have had a lot more complaints from the prosecutors about the number of depositions they've had to do. And these are new attorneys who are doing these really exciting things and making good challenges to cases and getting good results for clients

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that prior to this, I mean, we weren't seeing. They weren't able to do it. They weren't doing it. The unfortunate part of that is, I think is that they don't really have somebody who can really mentor them along because now I am too overworked and I don't really have the staff or the experienced attorneys to fill in that gap.

Q How frequently do you determine whether an expert witness would be necessary in a particular case?

A Every case where I feel like one is needed. I guess I don't understand your question.

Q It's a bad question. How often do you use an expert witness in your cases?

A If it's a mental health issue, it's pretty frequent. So if I look at a case and I believe there is some sort of mental health issue that's needs to be evaluated, I will nearly always reach out to hire an expert.

Q And by mental health issue do you mean for competency?

A Primarily competency because certainly we would -- it's kind of a two-step process. You would have them evaluated first for competency. If they are currently competent, then you would have them look at could it be NGRI.

Q I'm sorry what would it -- it could be?

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A Not guilty by reason of insanity. Typically you're not going to have an expert get into NGRI unless the client is competent. Most of the time, you know, if you believe they are not competent that ends up being correct.

Q Outside of competency and insanity issues, do you use experts for other cases?

A Yes. In fact, let me just on competency and NGRI we would also -- one of the reasons I would also want it in those situations is for mitigation purposes. Even if I think they might be competent or even if I don't know and they come back competent, an expert would be great to explain some of the reasons why they may have done what they did even though they are completely functional. I also use experts, you know, a whole host of experts: fingerprint experts, blood experts, canine experts, field sobriety test experts.

Q Does your caseload or lack of time impact your ability to work with experts where you think it's necessary?

A Yes.

Q How does it do -- how is it impacted?

A One of the most difficult things about getting an expert in my area is locating one. I'm in a rural jurisdiction. There are no experts in my little area, so we always have to go to St. Louis or some other urban area

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and then get them to come to us, which is difficult. So that's a big factor that impedes the ability to hire experts. So you spend a lot of time trying to track them down. That's one of the big factors. It takes lot of time to hire an expert. I think I've lost track where the question was going.

Q That is definitely an answer to question, but I'll ask it again in case there is anything else. In addition to the time spent locating and retaining an expert, does your caseload and lack of time impact your ability to work with an expert or use an expert effectively in your cases?

A Yes.

Q How?

A Because we don't have the time to devote to a case, we don't have the time to get experts early enough. It's not uncommon where we end up being forced by the courts to proceed even though we have informed them they with are trying to locate an expert. And even though I do blame the courts, it usually is later in the process when we get around to actually evaluating the case. So you get a case and you may not be able to evaluate it until a week before trial at which point you start scrambling. You know, as I mentioned earlier it takes a lot of time to find an expert. Experts have dates that they are available and

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not available. Usually that's not going to be within the timeframe that we have. So it's our delay or our inability to prepare a case early on that causes us to miss the opportunity to having an expert later.

Q And would you say your difficulties in retaining and utilizing experts effectively apply not only to your cases but also the cases of attorneys in your office?

A Yes.

Q Without going into specifics or compromising privilege, can you think of a time where your representation of a client was hampered by a lack of time to effectively use an expert?

A Yes.

Q Are you comfortable providing any further details on a case in, you know, vague, general terms?

A So yes. We had a case recently where we needed an expert to evaluate a client regarding PTSD. She was charged with statutory rape and one of our theory of defense was she was actually the victim of the rape. So the assailant was this young man who was 17 or -- 16 or 17. He was a football player. He was a big guy. So we were saying because of her PTSD that is what she confessed to. She was confessing to being a victim when she was younger. So we had consulted with an expert and we're trying to get

him in the case, but we had anticipated getting a continuance. Again, this is kind of a late preparation and we were denied the continuance. So because we didn't have the time to devote to the case because our expert couldn't get involved soon enough, we did not have the expert for the trial. We'll have him for mitigation, but it hurt our theory I think or it hurt the ability to present that theory to the jury.

Q Is funding a constraint on your ability to hirer or retain outside services in cases where you think it's necessary?

A I have never been denied a request for funds. At least I may have initially been denied because I -- they needed more explanation. Whenever I needed an expert, I have always been provided the resources to obtain the expert.

Q Do attorneys in your area frequently request continuances?

A Yes.

Q Why is that?

A Because they are not ready for whatever the case may be.

Q Why wouldn't they be ready for whatever the next hearing may be?

A Because they haven't had adequate time. Well,

there is two reasons. One is the judges have time standards that they religiously follow that are ridiculous and don't take into consideration the individual case. So, you know, cases get from the date of arraignment to the date of trial is three months on any case. So that's a big part of the reason that I don't think any attorney, even one that is not overworked, could be ready in the amount of time that's given. But even if judges who are more lenient and who are more understanding of the workload issues, we still have to ask for continuances in those cases because, again, you just can't get the work done in the time allotted. It doesn't matter if you're given a month or a year because in the interim you're handling hundreds of cases and you just kind of keep shoveling everything down the road.

Q You mentioned travel earlier. How much time do you spend traveling for case related?

A It varies based on the county you're in. So our furthest county is about 50 miles. It's about an hour drive to get to court or to do a jail visit; that's our furthest. The closest is to our office is Phelps County. It's maybe a mile and maybe about seven or eight minute drive. We do -- because we have a prison in our jurisdiction and the cases that occur within that prison, the criminal cases, typically take two to three years to

where they actually get charged. And by that time usually those defendants have moved to different facilities across the state. And so in those instances, the travel time could be anywhere from four to five hours to an hour.

Q Roughly what percentage of your current docket are cases coming out of the prison?

A It's relatively small. I think at any given time we have 20 to 30 cases out of the prison, but those are very time consuming cases.

Q What kinds of cases are those?

A They are usually committing violence on an inmate or committing violence on a prison guard.

Q Has time spent on travel been an issue for attorneys in your office in terms of their ability to effectively represent their clients?

A I believe so.

Q Why do you say that?

A Well, it's part of the whole picture. All but one county in my six counties requires significant travel time. So every other county is at least a 30-minute drive. So if you're going to go to court or you're going to go to jail, an hour of your day is gone just sitting in your car on the road at a minimum unless you're in Phelps County. So the impact is pretty high especially when most attorneys have court five days a week or are expected to see their

clients. If you're going to Texas County, which is an hour one way, every day two hours a day, you know, ten hours a week, gone. So over a day, you know, of their time is wasted driving.

Q On average how frequently do you file suppression motions?

A Not very often. As needed. I don't handle a lot of low level -- well, I used to not handle a lot of the drug cases and that's typically where you see the most suppression issues.

Q In your opinion, do you have sufficient time to investigate when suppression motion may be needed?

A Most suppression issues I file are based off of my experience. They are not based upon research. So the research follows the filing of the motion. So, again, that's something different between I think a more senior attorney versus a newer attorney. A newer attorney sees a traffic stop and they have to research is there a case on point and then they learn that as they grow as an attorney. Ideally, I would spend more time doing legal research but that's a luxury that we don't have.

Q Do you think the attorneys in your office have adequate time to research and file suppression motions?

A No.

Q Why do you say that?

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A They don't have the time.
Q Are there other kinds of pretrial motions that you typically file?
A So if the case is actually trial bound, typically we would file motions in limine, various kinds of things on what the case needed. More recently we have been filing motions to dismiss due to probable cause issues, which has been kind of a new thing that we have been attacking.
Q Why have you newly been filing motions to dismiss?
A One, the attorneys have time to actually litigate these issues. One of the problems that we have is that in many jurisdictions they have gone to indictments. So we don't have a preliminary hearing to determine probable cause. We have a grand jury determining probable cause. The joke is a grand jury would indict a ham sandwich. Everybody kind of hears that and it's true. So we have to be creative in how we try to dispose of these cases and be efficient so that they don't end up going to trial. The biggest examples of these are assaults and domestic assaults. Most of those cases are never going to go to trial because the victim is never going to corporate or the victim said it didn't happen or something to that effect. So we have challenged -- the only way we have

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figured out how is to, you know, getting the victim in on a challenging the probable cause saying there is no probable cause because the victim said it didn't happen. And if the law enforcement or the prosecutor brought the victim into the grand jury, the grand jury would have indicted.
Q And that is a motion that requires time in your opinion?
A Yes. I mean, you have to first you have to meet with the client and kind of get a feel for the circumstances of the case. Then you have -- if they inform you that this didn't happen or he or she doesn't want to pursue it or whatever the case may be, then you have to investigate that claim and contact the witnesses and speak with them and you have to get them subpoenaed to come to court. And then you actually have to have a hearing and present the evidence to the court and make an argument as to why it should be dismissed.
Q Does lack of time or resources impact your attorneys ability to prepare and file these motions?
A Absolutely, which is why we never saw any up until the last two months.
Q When you say up until the last two months, you're referring to the waiting list reducing caseloads for your other attorneys?
A That's correct.

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Q How often do you take cases to trial?
A I would say one percent of the cases maybe go to trial, if that.
Q Do you think enough of your cases are going to trial?
A No.
Q Why not?
A When you have the time to dedicate to a case, it always gets better -- well, almost always gets better. You know, you begin to poke holes in the State's evidence. You begin to find your own evidence. You consult with experts. The case gets better. The prosecutor gets tired, they don't want to move forward with it. You know, so going, you know, forcing a case to go to trial and being able to prepare it like you should for trial, you know, ultimately ends up getting to trial. The other thing that will help, you know, the more effort you put into a case, more likely you're able to get your client out on bond. If your clients out on bond, they are more likely to go to trial. So that's another thing that if you have time, you can litigate the bond and get them out of jail. If they are not in jail, they are just like just get me out of here. I don't care, I'll plead to whatever. That's the kind of thing you see a lot.
Q So I want to just unpack that a little more.

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A Okay.
Q Why do clients who are out on bond -- why are clients out on bond more likely to go to trial?
A Because even though their freedom is still impacted by the fact they have criminal charges pending against them, they have their freedom. They are out of custody. They are able to be with family and friends and they are able to work and they are able to kind of maintain some normal life even though they have to occasionally appear in court even though they have this charge hanging over them. When they are in jail, the jails are miserable. They're overcrowded. They mistreat these people. They don't even treat them like people. So all that -- their whole being is how do I get out of this situation. What's the fastest route to get me out of custody. If that's pleading guilty, they'll pled guilty.
Q Just lost my train of thought for a second, sorry. Do you have adequate time to prepare and file bond motions?
A No.
Q Why not?
A Filing bond motions, I mean, it's one thing -- I file bond motions in most cases, but it's just a paragraph that kind of references the law. To file a bond motion that actually has impact, is to actually investigate

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the facts of the case and your client's history. You want to know things like where does your client live, how long has he lived there, does he have transportation, does he have family in the area, does he have a criminal history that is maybe not what the prosecutor says it is. You know, what are the strengths and weaknesses of the State's case. Maybe it's not as strong, so there should be more lenience given. Those are the things I would want to put in my motion. And then I would also want to get witnesses to come to court to testify about the virtues of my client. Maybe the alleged victim if it's, again, the domestic case where she or he is saying it didn't happen. That takes a lot of time and that is again something we don't have a lot of. So you sacrifice that a lot of times to get the case ready for trial or, quite honestly, you don't even really have time to even consider it because, again, you have 15 minutes maybe with the client. You file your basic motion. You make your basic argument to the court and, you know, the court has their predetermined bonds that they just throw out there.

Q What are the predetermined bonds?

A Well, it varies by the judge. But in my jurisdictions for most lower-level felonies, it's going to be 25,000. For B and A felonies and unclassified felonies, it's going to be probably somewhere between $100,000.00 to

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$1 million. The most extreme examples in one county the judge will set drug cases usually at $500,000, even misdemeanor marijuana, which is fine only. So it varies, but the minimum typically on felonies is going to be $25,000.00 across the spectrum.

Q And just to make sure I understand right, there are misdemeanor marijuana cases in your area where defendants are held on $500,000.00 bonds?

A It happens and they are fined only to begin with.

Q In your opinion if you had adequate time and resources would that assist in your ability to advocate for bond reductions?

A Yes.

Q In your opinion, do the attorneys in your office have adequate time to prepare and advocate for bond motions and bond reductions?

A No.

Q Why not?

A Lack of resources.

Q So coming back to trials. In your opinion, do you have sufficient time and resources to adequately prepare for trial?

A No.

Q Why not?

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A There are not enough hours in the day.

Q What are the kinds of things that you would want to do to effectively prepare for trial?

A Well, the first thing would be to meet with the client, go through what we have already kind of talked about. I would want to make sure that I have evaluated the State's discovery. That I had done my own independent investigation. That I had evaluated the necessity of experts. That I had done depositions in most cases of the main witnesses for the State. That I had prepped my witnesses for their cross exam and direct examinations. That I have adequately prepared my client for knowing what the trial process is and whether or not he wants judge or jury or jury or judge sentencing, whether or not he or she wants to testify. I would want to make sure that I spent ample time preparing my direct and cross examinations. That I spend time preparing an open and closing argument, my voir dire.

Q Without violating privilege or getting too deep into specifics, can you think of a time where your representation of a client was hampered by a lack of time to prepare for trial?

A Yes.

Q Could you give vague generalities and the kinds of things that you were unable to prepare for?

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A Well, again I gave the example of the trial I had yesterday. I had a trial last Monday and that trial ate up a bulk of the time. I finished that -- well, the prosecutor dismissed it during the trial. The next day I spent the day in court. The next day, I spent the day at a district defender meeting. The next day I spent the day in court. The next day I spent I believe -- I'm trying to think that would have been Friday, not sure what I did Friday. I spent Saturday with my family for Christmas event. I spend Sunday prepping this trial. I spent Monday in court; that was supposed to be the start of the trial. It got -- we didn't have enough jurors show up, so we had to reset to yesterday. So from the time of the last trial, a week later to this trial, I wasn't able really to prepare at all except for Sunday. So what I ended up doing, knowing that was going to happen, I assigned the case. I remained second chair, but I assigned it to an attorney in my office to basically be able to prep it. The only reason that attorney was able to kind of do it -- and this was a stat rape first, so unclassified felony where the range of punishment is ten years to life or 30, was because he is leaving our office at the end of the week. So we haven't given him any new cases in the last month. But he has less than a year and half experience, so he did a great job. But, again, I mean, is somebody who is looking at life in

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prison, should they have an attorney as their first chair who only has a year -- little over a year experience. And the only reason I gave it to him was because I just couldn't do it.

MR. SHAHABIAN: I think now is a good time to go off the record and take a break. Say five minutes.

MS. SHIPMA: Matt, what did you do Friday?

A Oh, right.

MS. SHIPMA: You spent Friday with me.

A That's why I couldn't remember.

THE VIDEOGRAPHER: We are going off the record. The time is 2:41 p.m. This ends Media 1.

(A recess was taken.)

THE VIDEOGRAPHER: Going back on the record. The time is 2:49 p.m. This begins Media 2.

Q (By Mr. Shahabian) Thanks for coming back, Mr. Crowell.

A You're welcome.

Q I would like to turn to guilty pleas. How do you typically approach a case where a client is considering a plea offer?

A So the offer has already been conveyed?

Q Well, let's take a step back. How do you approach a case where the case may result in a guilty plea?

A If it looks like that's the direction the case

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is going, I would first I want to consult with the client to make sure that I'm reading that correctly. Then if that's correct, I would go to the prosecutor, obtain an offer, take that offer back to the client and begin the negotiation process. Well, I guess the negotiation process really begins the first time you approach the prosecutor, but. So from there, once the offer has been conveyed and potentially accepted by the client, that pretty much ends the guilty plea process. But if the client refuses the offer, that then again you do negotiations.

Q Do you have adequate time and resources to negotiate and consult with your client for guilty pleas?

A I think in order to adequately consult with the client about a guilty plea you have to have already done all the work. So it's not a simple answer as yes or no because it would assume that you've already investigated the case. You have interviewed the witnesses. You have done everything that an attorney should do in the case to be competent. So if I were competent in my representation, then yes.

Q Do you think you -- you said if you were competent in the representation, your answer would be yes. In your experience, are you able to do all of those things that you think are necessary to provide adequate advice on a guilty plea?

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A Sometimes, but rarely.

Q Why do you say rarely?

A Because most of the time we are rushing through the case. And I think any time, you know, an attorney shouldn't be rushing through a case. You should be taking the time the case deserves and the client deserves. But because we rush, we are inevitably going to miss things, potentially. So it's hard to know. I mean, there are some cases where you're rushed and it's fine, but I think that's the exception not the norm.

Q In your opinion, do the attorneys in your office have adequate time and resources to prepare their cases to the point where they can advise and negotiate effectively for guilty pleas?

A No.

Q Why not?

A Most of them don't have the experience to know whether or not a client should plea or not to a particular case.

Q Why is experience important to determining whether to plea?

A Because you have to know whether or not that case and the facts of that case if you pushed it to trial, you would get a different outcome. The other factor is an inexperienced attorney is at a great disadvantage of

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negotiation with the prosecutor. If they've never tried a case, the prosecutor can use that to their advantage. It's a scary thing to try a case for the first time. And so I think a lot of young attorneys will oversell a plea deal because they don't -- they are afraid of a trial or they are afraid they will screw something up. So rather than take that risk and put forth that effort, they kind of force the plea deal. That being said, if they had the time or if they had a mentor or somebody who could help them long the way, I think that prevents a lot of that.

Q So in your opinion even for cases with inexperienced lawyers, having more time and more resources would assist in their ability to effectively advocate and negotiate guilty pleas?

A Yes. And one of the resources I think that is missing a lot of times is to have a mentorship at least in my office. I can't speak for other places.

Q Without getting into specifics or compromising privilege, can you think of a time where a client may have received a better plea deal had you or one of your attorneys had more time to devote to the case?

A Hard to say because you don't know that they would have.

Q Fair.

A I can say that I have intervened in cases

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where I felt the client wasn't getting the best offer because the prosecutors are taking advantage of the inexperience of my younger attorneys. I can -- there are many instances where I have been able to get better deals.

Q In your opinion, if they had more time and resources would you have to intervene as frequently?

A No.

Q I'm going to hand you a document that I'll ask the court reporter to mark Plaintiff's Exhibit 55 -- never mind. Are any of your attorney's specialist at immigration law?

A No.

Q Do you or your attorneys have training in immigration consequences of criminal convictions?

A I have had very minimal training and I suspect probably my APD IV has had training, minimal training.

Q What steps do attorneys in your office take to evaluate the immigration consequences a client may be facing?

A In my office we don't have a lot of immigrants. We always -- like I mentioned the intake sheet. One of the things the questions that we ask as part of the intake is are you a U.S. citizen, were you born in the United States. That's also a question on the Acknowledgment of Rights form that we have to use for

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guilty pleas; are you a U.S. citizen. It is very rare to get someone who is not a U.S. citizen in my jurisdiction. If we get somebody who is not a U.S. citizen, we would generally, I would advise the attorney to consult with an expert outside of our office. So I think, I don't remember their name, but MSPD used to and may still have an attorney out of St. Louis that is a specialist in immigration law. If they didn't or if that person no longer is there or that position no longer exists, then I would advise my attorneys to consult a private attorney. But that being said, it is rare that we get an immigrant.

Q Are you aware of any cases where a lack of time or resources hindered the ability to advise a client on immigration consequences?

A Yes.

Q Can you recall generally what the circumstances of that case were?

A I can and let me preface it by I'm not a 100 percent sure they were an immigrant but I know they were Spanish speaking. So any time you get somebody that English is not their first language, you know, you need to decide whether or not to bring in a translator. That creates a lot of problems in terms of, again time is always an issue. So that takes a lot more time when you have to go through a translator. So I suspect, even though not

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consciously, but certainly subconsciously you're going to limit the number of visits you do because of the time. But I know in that particular instance I'm not hundred percent sure it was an immigrant or not but I remember because they were Spanish speaking, that there was a lot of issues getting a translator to come to the rural part, rural county, Crawford county. The attorney, because of their schedule, had great difficulty in arranging times that would work for everyone. Court was a major issue getting a translator to sit next to the attorney and that sort of thing.

Q So the caseload and time constraints affect the ability to obtain outside resources like translators?

A Yes.

Q Do your attorneys ever consult with social workers for sentencing or other aspects of their cases?

A I can tell you in my practice, I have consulted with a sentencing mitigation specialist twice.

Q In your opinion, if you had adequate time and resources would you consult with a sentencing mitigation expert more frequently?

A If I had the resources, I would do it in every case where I did not have a plea agreement.

Q Why would you do it in every case?

A Because I have seen the impact it has. Part

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of what those mitigation specialist can do is they know the resources available. They know the right questions to ask. They can do a lot more than I know how to do. Part of that is they have the time. So I suppose if I had unlimited time, I probably wouldn't need one very often because I could do it myself. But when I have consulted with them it's amazing what they can do and the way it impacts the outcome of the sentencing hearing. Things that I just couldn't do it on my own. The other issue is, again, because of their experience and their knowledge, they can take an issue that we have in a rural areas where there is no halfway homes. We don't even have a homeless shelter in any of my counties. We don't have any real good treatment programs. There is none of that. So it's very difficult for us to find those facilities and get our clients into them to help assist them with, you know, better outcomes in their case and hopefully rehabilitation, drug counseling, and that sort of thing. Those mitigating specialist, again, they know the whole state and they know other states and they can provide those resources.

Q And those mitigation specialist are not MSPD employees?

A I think there used to be mitigation specialists. I never known them and when I have used them in the past they are private individuals.

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Q Do other attorneys in your office use mitigation specialists for sentencing?
A I think I have approved one request that's because there has only been one request.
Q In your opinion, do resource and time constraints impact your attorneys ability to use resources like mitigation sentencing consultants?
A Yes. Again, I would use them all the time if I had the ability and the time to do it. The younger attorneys, I don't think they know what they are or that they even are a possibility.
Q If you had the time would you advise, and if your attorneys had the time, would you advise them to be using sentencing mitigation specialists?
A Absolutely.
Q How does your office handle juvenile cases?
A Just like any other.
Q What kind of juvenile cases do you receive?
A We don't receive very many. I think there is kind of a reluctance by the juvenile division to encourage the use of attorneys in our area. They do not like us to get involved so they find ways to avoid getting us involved.
Q How can they avoid getting the MSPD involved in the juvenile --

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A I don't know if they still do this, but it was about a year ago or so they were telling the juveniles that if they could take the deal or they could get an attorney, but if they got an attorney it would be worse for them.
Q And would these deals involve detention?
A I think typically the way it works -- and this is just from anecdotal type evidence -- is typically it's going to be probation first. Then it's going to be detention if probation fails. We almost never get involved at the probation level. If we get involved, it's to stand there as they go to detention. And then we also do certification hearing.
Q Are there any attorneys in your office who specialize in juvenile proceedings?
A No.
Q Do any attorneys in your office have specialized training or have any training in juvenile proceeding?
A Minimal.
Q How do you assign juvenile cases to attorneys in your office?
A Generally speaking I assign them to the experienced attorneys. So myself, my deputy district defender and two other attorneys.
Q Why do you assign them to the more experienced attorneys?

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A Because what's at stake. So generally speaking, we're only getting involved if it's a certification hearing. If it's just a detention hearing, you know, I might assign that to someone else. But the certification hearing, because of the severity and what's at risk for that young person, I want it to go to an experienced attorney.
Q And for the record, what is at risk for a juvenile?
A Well, if they are being certified, it means they are going to be removed from the juvenile system and tried as an adult in the adult court.
Q How often does your office handle a certification hearing?
A A couple a year.
Q Does your caseload or lack of resources impact your office's ability to effectively represent juveniles in certification hearings?
A Yes.
Q How?
A Well, like I said, we treat them like any other case other than I try to assign them to more senior attorneys, but the time constraints still apply to those cases. The other issue when you're dealing with

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certification is generally the children are going to be in DYS custody at that point. So they are going to be held pending the hearing. That generally means that they are going to be shipped to some far corner of the state and so it's very difficult to have communication with them. And with a juvenile, they require, in some instances, a lot more face-to-face time because of their development. And so it ends up taking a great deal of time to meet with the client more regularly than say somebody who is, you know, on their fourth or fifth felony who has been through the system and they understand it. So that impacts the ability to represent them because, again, we just don't have the time or resources to meet with them on a regular basis. The charges are usually very severe. So we are usually dealing with murder or rape or something to that effect. Same challenges with those; you just don't have the resources to devote, you know, a hundred hours or whatever it takes to handle a murder case. You do your best with what you got, but at the end of the day you're probably not doing enough.
Q In your opinion, can the attorneys in your office currently adequately represent all of the clients on their docket?
A No.
Q Why not?

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A There is too many.
Q In your opinion, could any attorney, no matter how expert, adequately represent clients given the constraints facing lawyers in your office?
A No, there is -- well, no.
Q Why not?
A The idea that you could handle 150 felonies or 150 misdemeanors at one point in time effectively, I think if you have experience and you know what you can do in those cases and the impacts that you can have if you devote the time necessary to those; I think any experienced attorney would say that's not possible. There are attorneys certainly who say I can do it. But I think if you got down to it and we talked about the guidelines; if you went through the guidelines and said well, have you done everything that's in the guidelines, I don't think that's possible. I don't know what the number would be, but I can tell you that the numbers in my office I don't think it would be possible for even the best attorney to handle the caseload.
Q I'm going to hand you an exhibit that's previously been marked Plaintiff 50. If you can just take a second and flip through that. Do you recognize this document?
A I recognize what's contained -- well, I

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recognize most of it. I don't recognize -- individually, I don't recognize the document itself.
Q Could you flip to the last page?
A Yes.
Q Do you recognize this page?
A I do.
Q What is it?
A It is the caseload metrics for the system and it appears to be for the period of July 2016 to June 30, 2017. So I guess fiscal year 2017.
Q Do you see Area 25 on here?
A I do.
Q What rank is it listed on this document? I think it's over on the right-hand side.
A We are ranked it appears to be 17th.
Q What percentage -- what does it say on this document for percentage of capacity for Area 25?
A It says 252.2 percent.
Q Do you have an understanding of what that percentage reflects?
A My understanding is it reflects the amount we are over capacity. So if we had adequate staff -- and I believe it's based on the RubinBrown Missouri Project -- if we had adequate staff -- or we are 252.2 percent over the amount of cases we should have based on that analysis by

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RubinBrown.
Q Setting aside the RubinBrown metrics, I'm not asking you to give me an exact percentage of how far over capacity you are, but roughly would you say this accurately reflects that your office is over capacity?
A It reflects my office is over capacity, but I don't think it's completely accurate.
Q Why not?
A Well, it expects or I think it takes into consideration that I have 14 attorneys and 14 attorneys is what I would have if I'm fully staffed. In the last year I have had to hire ten attorneys, so I have had -- I don't know what percent over -- I'm constantly hiring. In fact, I have an interview with an attorney tomorrow afternoon -- yeah, tomorrow afternoon for an opening. The other thing I think that the RubinBrown numbers, why I think it may be actually a little low based on that, is because I think it takes into account experienced attorneys that you know what you're doing. Again, most of my attorneys are brand new. So they don't necessarily know what they are doing. So I have to spend a lot of time with them and the other experienced attorneys are spending a lot of time with them and that's time they are not actually spending on their cases. So I think that is probably also not reflected in the 252.2 percent.

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Q And so in your opinion this is a more conservatives estimate of the overwork in your office than you think would be fairly reflected?
A I do. And it's conservative also because it doesn't take into account, at least my understanding is it doesn't take into account administrative tasks and training. It also expects that you're working 50 -- yeah, 50 weeks out of the year, which, you know, my attorneys probably do. I have attorneys that lose time every year. But we get three weeks of vacation and so, it doesn't take into account that. It doesn't take into account the fact we get, I think, 11 or 12 paid holidays. So I mean, from that standpoint -- again, I'm not expecting my attorneys to complain about that, but nevertheless, it reflects 50 weeks of work, which, you know, as a state employee that's a little offensive. We don't expect other state employees to work on their weeks off or their days off, so.
Q And to unpack a bit of what you said; so you pointed out that this anticipates 14 attorneys. You're referring to the column right next to area named "Rolla" that says number of attorneys 14?
A Yes.
Q And you said for the time period that this covers is fiscal year '17, you have hired 11 new attorneys if I heard correctly?

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A In the last 18 months, I think we have hired ten new attorneys and I believe we will be hiring our eleventh hopefully soon, if we can find somebody.

Q What goes into training the new attorneys that you're hired -- that you have been hiring?

A Well, MSPD as a system has training for new attorneys. A week-long trial skills program that teaches the basics of how to try a case. A week-long what we call New Defender Workshop, which kinds of teaches them the basics of how to meet with the client, how to do your deposition, how to do kind of the more nuts and bolts day-to-day operations. We also do a new employee orientation, which is a day where they basically get their sexual harassment training and kind of familiarized with the -- our case management system and our HR division and that sort of thing. So a new attorney is going to spend two weeks in learning how to do litigation, a day in kind of learning, you know, not to be sexual harassing people and that sort of thing. And then we also have a requirement that the first three years of employment they go to our spring training, which is your more typical CLE training where you would have -- there is different breakout type sessions that cover different things depending on what the attorney feels they need to work on, so there is three more days. So two weeks and four days as

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a system.

Q What about the training that you do in your office?

A The training that we do is really more hands-on. I mean, we used -- we have tried several times to implement more in-house training but getting people to find time to do that is almost impossible. We have done some and, you know, I usually will sit down with the new attorneys and go through some of the basics with them. We try to pair new attorneys with more senior attorneys, but that is beginning to fail because a senior attorney in my office is someone with maybe a year experience. It's basically it's the last person remaining, not so much the most experienced attorney. So I have several attorneys who are training new attorneys who have less than a year experience, but it's hands-on in my office.

Q And could you remind me roughly what percentage of your time is spent training or supervising new attorneys?

A I think I said somewhere between -- I can't remember, either 40, 50, 60, 70. The more I think about it, the more I think is more time really. It's the bulk of my time is spent with new attorneys.

Q What do you do to train and supervise new attorneys?

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A When attorneys -- so in my office I maintain sort of an open door where I encourage attorneys to come to me with questions. So a lot of it is hey, I have got this case and we kind of walk through the case together. And throughout that process you kind of identify areas where okay you need to meet with this client in seven days and every 30 days and kind of go through what the requirements of the system are with them. That's the bulk of it. Like I said, it's kind of hands-on just walking through the cases that they have.

Q Why is that important for new attorneys?

A New attorneys have a great deal of difficulty issue spotting. They also have a great deal of difficulty knowing the procedure and the process. You know, law school doesn't teach you how court goes in the 25th Judicial Circuit. It may teach you civil procedure and criminal procedure, but that doesn't mean anything when you step into a courtroom. And so a lot of the questions are really basic questions about like, you know, where is court or how do I get to the jail or what's the pass code to get back in chambers to talk to the judge. I mean, it's that basic with these new attorneys. And then as, you know, usually, you know, that first year the questions start to get more advanced and we start to work on case specific, suppression issues and things like that and then we start

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over because they leave.

Q Does your existing caseload impact your ability to mentor and supervise other attorneys in your office?

A It does. I mean, that's the difficulty trying to find the balance. What time do I spend on my cases versus what time do I spend on theirs. And so when I'm in the office I try to make myself available to help the new attorneys because my goal is to get them trained and get them where they can be independent because that's going to be the most value to me. What that means though is that I'm spending more time outside typical office hours working on my own cases.

Q You mentioned you have hired a lot of new attorneys recently. Is that typical in your experience?

A I think MSPD has always had high turnover. My office has gotten progressively worse and the pools of candidates have gotten worse. So now it's not only do we have the high turnover, but the candidates we are getting are not as good.

Q Why do you think that turnover has gotten higher?

A I think the recession had a great impact on the quality of candidates and the amount of time they stick around, but that no longer is an issue so we have seen

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people getting hired out more frequently. I think there is also maybe fewer graduates. I don't know what the issue is, but we have a high turnover. And in addition, the prosecutor's offices, they continue to grow and so I train attorneys to go become prosecutor's. Not intentionally, but that's the effect.

Q So attorneys from your office have left to join the prosecutors office?

A Yes.

Q Why were their reasons for leaving and join the prosecutors office?

A Well, the one that's leaving at the end of the week is becoming a prosecutor. He is leaving because he is tired -- this is what he told me yesterday -- he is tired of taking the cases home with him at night. He didn't mean working on them at night; he meant the fact that he knew he had a client sitting in jail that he hadn't seen who is just kind of wasting away in jail. It wears on these new attorneys. Well, it wears on every attorney I think when you know that you have clients. You have people because these aren't just cases, these aren't just numbers, these are people. When you can't do the things to help them that you know you should be able to do, I think that really wears people down over time and you get burned out. That's what he tells me. I believe him. I think a lot of the

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people that we hire are passionate about this. They really do believe there is injustice and they want to help the clients. There is other realities too though. He is leaving the job with us where he's making $39,000.00 a year and he's going to get paid $45,000.00 a year, at least I believe. He's also going to have freedom. He can control his caseload. He can't control it with us. He's also going to get respect. So he's going to be able to, you know, get respect from not only the judges and other prosecutors but the people in the community because nobody likes a public defender. So I think all those things kind of come together and it's very difficult to want to do this job long-term when nobody has any respect for what you do. You don't get paid very well for what you do and you lose that fire that you had when you were in law school about wanting to help people or fight injustice or, you know, defend the Constitution or whatever it was that motivated you to become a public defender in the first place.

Q Would you say the reasons that this attorney gave you or that you think may have motivated him are particular to him or do they apply to other attorneys who have left your office recently? Let me ask it in a more basic way: What have other attorneys told you are the reasons for why they have left the office?

A It's almost universally the same. One

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attorney left after in court the judge -- he asked for a continuance. The judge said no, I'm not giving it to you. You're never ready. He said that in open court. And so that was kind of the last straw for that attorney that he was berated in court and told he was never ready, when it's true, but it's not his fault. So he put in his notice three weeks later when he became a prosecutor and he loves his job now.

Q In your opinion, how many more attorneys would you need to bring caseloads down to levels where you could adequately represent your clients?

A It a difficult question to answer because I have never been in a system where we had adequate attorneys. So I think my judgment is colored by the fact that, you know, when I started I had 200 cases and I handled them or I thought I handled them well it turns out that's probably not true. So what do you go off of? There is the RubinBrown Missouri Project, there is the NACS standards, there is my own personal views. I will say this, I think realistically if I'm going to do the things that I want to do, if I'm going to meet the guidelines I would need double.

Q How many additional investigators would you need to support your attorneys in being able to effectively represent their clients?

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A I currently have two. Again, it's hard to say because if my attorneys were able to do more and get more invested in their case and do more work, they would certainly be requesting more. Right now, my investigators only have time to serve subpoenas. So I would say we would need at least double, so four, but probably more than that. But again, it's hard to know.

Q How do you supervise your new attorneys as they manage their ongoing cases?

A So we track caseload through our internal database called Lotus Notes. That's the predominate way that I would keep an eye on their caseload because it lists it out for me. I also have regular conversations with the attorneys to determine, you know, are they comfortable with where they are at, do they think they can handle more. This has been a more recent development based on the waitlisting. Prior to that, it was just as the cases came into your county, you take them and, you know, their caseload may be 200 cases, it may be 100. It just depends.

Q So let's turn to how things have changed recently. Are you familiar with the Hinkebein decision?

A I am.

Q What is your understanding of what happened in that case?

A My understanding is that Mr. Hinkebein, he was

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being sanctioned -- or that the Office of Chief Disciplinary Council was moving to sanction him because he was unable to meet the requirements that were set forth in his particular case. I don't remember the exact details of what it is was, but I think he missed some deadlines and filings or something to that effect. And that the OCDC had decided to file a complaint against him and that he was eventually sanctioned by the Supreme Court and put on probation. The defense in that case was that he had cancer or that he had a medical condition and that he had a caseload that was far in excessive of any reasonably caseload and that he believed he would be fired if he didn't handle it. So that's kind of my general understanding. I have listened to the oral arguments. But beyond that, I don't know Mr. Hinkebein personally. I don't know any of the parties.

Q Did that decision have an impact on attorneys in your office?

A Yes.

Q What was that impact?

A Well, in terms of myself and my deputy, it made our job miserable. Before that, you know, we got by. But we thought we were -- we thought at a minimum, you know, we thought Strickland v. Washington was the standard. We thought we were at least meeting that standard that, you

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know, we were providing -- if we did that, we were providing ethical representation even though it wasn't the representation we thought clients deserved. When Hinkebein happened, we realized that there was this gap between what is ineffective assistance of counsel and ethical representation and that Strickland is ineffective assistance of counsel, but you can still be unethically representing your clients if you're following that standard. So we realized all along we have been unethical. That's what Hinkebein told us that we were unethical attorneys because of the conflicts of interest that we had between our clients when we took on additional clients. So that was very -- that was an eyeopener I should say. It brought to attention the problem in a different light. And it was kind of scary in the sense that, you know, with Hinkebein they looked back I think three or four years and how many clients had I represented in, you know, the last three or four years, hundreds, and what have I messed up. So it really bothered us because it also said in the ethical rules that as a supervisor, I have a responsibility to the people I supervise to ensure their caseloads are maintained in an ethical manner. That's why we started waitlisting. I know of attorneys who have decided Hinkebein is kind of the last straw who have left. I can't say anybody in my office has left for that reason, but I

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certainly think it's impacted their decision at least in a couple of instances.

Q When you said that you'd previously been viewing it through the Strickland standard; in your opinion what was the Strickland standard prior to Hinkebein? I'm not trying to put you on the spot.

A I think the idea in Strickland is that you do some basic things. I don't remember the opinion verbatim. I don't have that kind of memory. My understanding basically was like, look, if you're going to represent someone, you meet with them. You get discovery before you plead them and you review that discovery. You do some basic things that we expect attorneys to do in every case. But I never viewed it as something where, okay, if I can't get to this client today because I have client "x" because of client "y" that that was an issue. It was just what we had to do. Ultimately, you know, we would do the bear minimum, get the discovery and meet with the client. So that was kind of my view of Strickland.

Q So in your view, Hinkebein, by focusing on the ethical rules, brought into view things like conflicts of interest between existing clients; is that fair to say?

A Well, not only that, it brought in, you know, I think we always try to be -- we always tried to meet the diligence, communication, and that sort of thing. The

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rules for Missouri Supreme Court Rules IV says you have to do. But it was always kind of like -- at least in my mind -- there was always some understanding, we'll we're public defenders so there is going to be some leeway given because everybody understands that we are overworked. That we have too many cases and that if they didn't feel that way, then something would change. But when Hinkebein came along, they said you have too many cases and you have to be proactive in doing something about it or you'll lose your job. So that -- that's what really brought to attention those ethical rules that said look these aren't just aspirational. These apply to public defenders too. So we have a duty of diligence, which means we have to be prompt. We have a duty of communication, which I think our guidelines are ridiculous in that regard. You have to meet with a client within seven days if they are in custody, you know, and every 30 days thereafter. That's not the representation I would want for myself, but that's our guideline.

Q You would want more communication than that?

A I would certainly want more than that. The idea that I could be sitting in jail for seven days and not be -- not see an attorney, that's crazy. That's absolutely crazy, but that's what we have accepted as okay. In my office, it's probably rare that we get -- that we meet that

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deadline. I mean, I think all the attorneys try really hard to be diligent in that respect and to communicate with their clients as best they can. But, again, it's not just possible with the number of clients that we have. And then the other issue that's come up as a supervisor as I have to look at competency. Are my attorneys competent. I can't give a brand new attorney a murder first unless I really hover over them and supervise them. And so we have a huge problem in my office of competency. You know, I have a bunch of new attorneys who don't know what they are doing. And so as their supervisor, I have to manage their caseload appropriately and make sure that they are doing the things that that case requires.

Q Did any attorneys in your office talk to you about the Hinkebein decision or how it affected their ability to do their jobs?

A I met with every attorney in my office after the Hinkebein decision to talk with them about their caseload and every one of them indicated that they could not ethically handle the caseload they had.

Q What did you do after meeting with the attorneys in your office about Hinkebein?

A That's when I began a waitlist. So I sent an e-mail to all the judges basically stating that because of our workload, because of the fact that my attorneys can't

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ethically represent the clients that they have, I'm going to be begin waitlisting clients. We are not going to refuse them, but we are only going to be able to handle the ones that we can at any given time and still be following the rules of professional conduct.

Q I'm going to hand you a document that we're going to ask the court reporter to mark Exhibit 55. Do are you recognize this document?

A I do.

Q What is it?

A It is the letter that I sent to the judges after I met with the attorneys in my office regarding their caseload and workload.

Q So you've referenced a waitlist both in this document and in your deposition testimony today. Could you explain what you mean by creating a waitlist?

A So when we receive an application from a potential client, normally we would enter our appearance in that case and begin, you know, file a request for discovery or whatever work needed to be done. Once I implemented the waitlist, the way that worked was when we would receive the application we would notify the court and say we have received the application, this person either qualifies or they don't. If they qualify, they would go on our waitlist. Basically what that is we create an Excel sheet

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that had each county and the judge and had different columns for what information we thought was pertinent for the judges to have. We would send that out on a daily basis just to let the courts and the prosecutors know these are the people that have applied. These are the people that qualify and this is where they are at on our waitlist.

Q How many people are on that waitlist?

A Currently?

Q Currently.

A I don't know currently off the top of my head. Last time I looked it was over 200.

Q Since you began the waitlist has that number grown, stayed steady or dropped?

A Well, the waitlist started with zero. We did not add anybody to it who we already represented. So, you know, as of September 29 or maybe probably really October 1, I don't remember the first day we would have actually sent it out, you know, there would have been two or three people. It's just continually grown. Cases have come off. So as I have regular meetings with the attorneys and as they inform me that they are able to take more cases and as I review their caseload and as I believe they are able to take more cases, I assign cases to them. I may be getting beyond the scope of your question, so if you want me to continue I will, but --

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Q Feel free.

A So the judges throughout this process the ones that have -- there has been some judges that have given it some credibility and have kind of followed it. Those judges requested that I prioritize by people in jail because I don't believe I can create a priority list. I think there is case law that suggest that I can't pick types of cases. The judges ask can you please take people off the list that are in jail first; so we have done that. Some judges basically said that the waitlist was in violation of 600.062 and 600.063. Those judges have been ordering myself and the public defender system into the cases. We originally filed a writ of prohibition to the court of appeals and the Supreme Court. It was denied. It was sent back because they said we need to do 600.063. So some of the cases are not included in that 200 because they have been open to me. And that's a separate category on the waitlist. Again, I have roughly 30 or 40 cases before the waitlist; now I have 130.

Q So when you testified earlier that you have 130 cases on your docket, that includes cases that otherwise would have been on this waitlist but where judges have ordered you to appear over objection?

A Yes.

Q And have you been treating those cases

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separately from the other cases on your docket?
A No. Except to the extent that because the judge has specifically ordered me into them, I have prioritize them when I assign cases out because it's my interpretation that if a judge specifically orders me in a case, it must be a priority. So when new attorneys have case availability, I give them those cases first, whether they are in jail or not. In terms of handling the cases differently than the cases I had prior to this, it's kind of difficult to answer that. I don't -- I mean, I'm given deadlines by the court and court dates. So if a case is on for a hearing, I don't really have the luxury of saying well, I'm going to push it aside and just handle my original 30. The same ethical rules apply to those cases where the judge I believe has ordered me in. I think the judge is violating the rule by appointing me knowing I can't handle it, but I can't challenge it because the Supreme Court has said file 600.063.
Q Before you were being ordered into these cases, you said your docket was roughly 30 cases?
A It ranged between 30 and 50.
Q What kinds of cases are on the waitlist?
A All kinds.
Q Murder cases?
A I don't think there is currently a murder.

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There was and then the judge ordered us in.
Q A, B felony case?
A Yes. There are definitely A,B. They are robbery first. There are serious cases on there.
Q And you said that some of the people on the waiting list are currently in custody?
A Yes.
Q Do you know roughly how many people?
A Probably close to maybe 50 percent. In Crawford County, one of our counties that was probably the most overloaded, we created the waitlist. No cases have come off that waitlist except for two or three where the judge has specifically ordered us in. So there is a lot of people in jail in that county who are on the waitlist. So that kind of probably increases the average. The other counties we have been able to pull people out of jail and get them off the waitlist a little faster.
Q Have you received any reaction from people who are on the waitlist?
A Yes. I have a stack of letters of -- I would call them complaint letters, but I don't know that that's really the right word. They are saying, you know, I need an attorney or you're my attorney, how come I haven't seen you; that kind of thing. But that pile just grows, it doesn't every shrink.

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Q For the people who are on the waitlist, what happens to their criminal cases while they are on that waitlist?
A Most of them, the judges have been passing counsel status hearings.
Q Do you know of any people on the waitlist who have pleaded guilty without counsel?
A I don't know any specific examples. I'm sure it's happened. A lot of the judges are reluctant to do anything with the case since they have applied for the public defender and we have indicated to the court they qualify. So the judges -- I think most judges are reluctant to do anything with them. But I know or at least I'm fairly confident that in at least a couple of circumstances people have pled guilty.
Q What circumstances were those?
A Well, the circumstances would be the county that they were in. So Texas County, I would guess that a number of those people who were in jail, especially on lower-level charges like misdemeanors and probably low-level felonies, the prosecutor probably got them to plead because it was probably the promise of probation.
Q And you said probably because you have no personal knowledge of those cases?
A Right. And I have just seen this happen in

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Texas County, so I know it happens and I wouldn't be surprised if people on the waitlist. One of the weaknesses of the waitlist is that it would expect, or at least I would expect that we would go through and evaluate it from time to time to make sure that these people haven't hired counsel or pled. I haven't really had the luxury to reevaluate it. So 200 cases on the waitlist or 200 clients on the waitlist, you know, it may be slightly less because some of those people have maybe they have hired counsel or maybe they have pled, but I have no way to -- well, I have a way to do it, but I don't have the time to do it.
Q How have judges in your area responded to this letter that you e-mailed them?
A Well, most of them ignored it. We met with all the judges. So I sent this letter and then we then met with all of them to talk with them about it. One of them threatened or made a veiled threat of holding me in contempt. A couple of them were in agreement that something needed to be done and they actually, I think, made attempts to assist us and that would have been the 42nd Judicial Circuit. So they did things like basically abided by the waitlist. They didn't order us in any cases. They made some minor attempts to appoint private counsel. But that's the exception, so.
Q What do you mean when you say minor attempts

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to appoint private counsel?
A Well, if there is -- I know of at least one instance where a private attorney was in the courtroom and it was a probation matter and we had indicated this particular person was on the waitlist. The judge looks around and sees this private attorney and says to the attorney, "Welcome to court today. I'm appointing you in this case."
Q Do you know who that attorney was?
A Yes.
Q Did they have prior criminal experience?
A Yes.
Q Do you have any supervision over that case that otherwise would have been assigned to the MSPD?
A No.
Q So I'm going to hand you another document that we'll mark -- we'll ask the court reporter to mark Exhibit 56. Do you recognize this document?
A I do.
Q What is it?
A Again, it's the correspondence I sent to the judges. I think it's -- well, at least the first two pages are the same document that was Exhibit 55, I believe.
Q What about the rest of this exhibit?
A This was correspondence with one of the

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judges -- well, it looks like it's e-mails that I sent in regards to the waitlist and the caseload issues in general. There is an e-mail I sent to one of the prosecuting attorneys and then correspondence between one of the circuit judges and one of the attorneys who is no longer in my office.
Q Let's -- I think this is how it's produced but I think as you indicated it's a few different e-mail threads. So let's start on the second to last page that's Bates Stamped and dated 39446.
A Okay.
Q What e-mail does this appear to be to you?
A This was an email that I sent to Kevin Hillman kind of letting him -- updating him on what we were doing regarding the waitlist.
Q Who is Kevin Hillman?
A He is the elected prosecutor of Pulaski County.
Q Why were you sending the e-mail to Kevin Hillman about the waitlist?
A I think -- I'm having difficulty remembering because I had a lot of conversations. We met with Mr. Hillman and talked with him about the issue. I think at this point in time there was a document circulating amongst the prosecutors that was an objection to the waitlist and

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it was saying that we were violating 600.063 and 600.062. And so I think he was asking, you know, was this something going on. Were we being ordered to do this or was I doing this on my own. I said no, this is coming my attorneys and me and not Columbia.
Q And by Columbia, you mean the central MSPD office?
A Right.
Q So your understanding is he had expressed concern that this was an order coming from the MSPD central office?
A Right.
Q And you were explaining to him that this was the decision your office and your attorneys had made?
A Right. Because we had -- I think one of my attorneys had told him that this was coming from Columbia, and I just think they didn't understand who was actually creating the waitlist. It had nothing to do with Columbia. I didn't ask for permission. I don't even think I notified -- I probably sent them a copy of it. I don't think I said hey Jackie is it okay that I do this. I'm pretty sure I just did it.
Q Do you see in here a reference to a meeting with Judge Long and Judge Hedrick?
A Hedrick.

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Q Hedrick.
A Yes.
Q It says you were planning to go to meet with them. Do you know if that meeting took place?
A It took place with Judge Long, not with Judge Hedrick. I don't think Judge Hedrick was available that day. He -- honestly, I don't know that we actually ever met with Judge Hedrick now that I think about it. He is the family court judge and the civil judge and he doesn't really handle criminal cases except for maybe a few change of judges. Judge Long is the main judge for criminal cases in Pulaski County. Sorry.
Q No go ahead.
A That meeting with Judge Long did occur.
Q What happened at that meeting?
A The judge in chambers acknowledged more or less that yeah, you guys got a problem. But like most judges, they are not really able to do anything about it or at least they feel like they can't and that it's our problem, not theirs. He kind of had a let's wait and see approach to the waitlist. It was a cordial meeting. One of the prosecutors was there. I don't remember if Kevin was there. I know Brice Crowly and one of the assistant prosecutors was at that meeting in chambers. We just kind of outlined where we were at and why we were there and how

we got there. This judge, Judge Long, it wasn't long before he adopted the policy of appointing me, so he's one of the judges who disregarded the waitlist.

Q If you look at the prior two pages ending in Bates Stamped 44 and 45, what does this e-mail chain appear to refer to you?

A This was in reference to Michael Jacobs, an attorney who was in my office at the time, but who got hired as the district defender of our Troy office. And Mr. Jacobs when he got that position, I told him that I would not be reassigning his cases to another attorney in my office because I didn't believe I had any attorney who could take those cases until we got somebody to replace him. And so this is kind of -- this was his attempt to see if he could get the judges to let him out of those cases. Judge Hickle would not let him out without another attorney entering.

Q And if you turn back to Bates -- the prior page ending in Bates Stamp 43 I think that e-mail from you, does it appear that e-mail from you to Judge Hickle is also part of this e-mail chain?

A Yes.

Q So this e-mail says that you would be happy to meet with Judge Hickle to discuss Mr. Jacobs cases. You indicated that Judge Hickle would not allow him to simply

withdraw from those cases. So what was the result of this exchange?

A Mr. Jacobs still has one or maybe two cases. When I -- after -- I could not keep Michael Jacobs in Rolla. That became very clear. I could not -- he could not keep the cases and be the district defender in Troy. It's just not logistically possible.

Q How far is Troy from Rolla?

A It's maybe 150-miles. It's over a two-hour drive. Michael was handling Texas County, which is another 50-miles, an hour down the road. So it would be over three hours for him to go to court and meet with clients one way. What happened as a result of that is that again the judge would not let Michael out, which I was okay with because I didn't have anybody to give the cases to. But through discussions with our director, trial division director and our contract, our deputy director, Joel Elmer and Ellen Blau, they were able to find some money to provide to my office to contract out cases and so we were able to contract out about half of Michael's cases. The other half he disposed of over the course of the month or so that he knew he would be leaving. I took a few of his cases, the ones that we wouldn't be able to contract out. Then, like I said, he's left with maybe one or two cases, a murder first and a couple others. I don't remember what they are.

Q Why don't you try to contract out more cases given the waitlist?

A I send every single case that I have been ordered to enter since I began the waitlist, I have sent a conflict form, our standard conflict form, and it's been filled in with the case information, kind of the court dates, the client. I send every one of those to Joel Elmer, our deputy director, who is in charge of contracts saying it's a conflict. Every one of those have been denied. I have -- I don't have a budget within my own office to contract out conflicts.

Q When you have indicated that they have been conflicts, in what sense are they conflicts?

A I may get the rule wrong, but I think it's 4-1.16 or 17. In the sense that by taking that representation, that is going to take away time that I need to spend on my other clients. I can't represent them both because of the time constraints.

Q You said that these request were denied. Were you given any other explanation for why they wouldn't be contracted out?

A I think realistically -- well, there is a number of reasons I suspect and this would be speculation because I don't think Joel Elmer ever gave me anything more than denied. But I do know this, that you know, the

contract budget of MSPD is limited. But probably more importantly, in my geographic area, that we are have very few panel attorneys. The panel attorneys we have handle a huge caseload of ours. I don't know how many cases we contract out a year, but I would guess it's probably at least 200. My understanding that our conflict division attempts to keep these attorneys at a reasonable level. What level that is, I don't know, but they won't give them 400 cases. You know, they are not going to give them ten murders. They are going to try and make sure clients receive adequate representation. I lost my train of thought.

Q That's all right.

A I don't remember what it was. The other thing they try to do is that, again, you have to have an attorney who is competent in handling a case and private attorneys, generally speaking, they don't have an advantage of having a system of attorneys. There is a lot of solo practitioners in our area. So for example, this murder first case that Michael Jacobs had to keep, we really wanted to contract it out. But the only attorneys that would be competent to handle it refused to take it. So even if we had $10,000.00 to pay someone to take it, because that's that rate for a murder first, nobody wanted it. So even if theoretically, you know, we have the money,

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but nobody wants to handle our cases.
Q In your opinion why do you think nobody wanted to handle it?
A Because of the time it takes. In fact, one of the attorneys I actually e-mailed because I thought he might be interested said he doesn't have the time to invest in it. That would it take way too much time and it would be better handled by a public defender who has the time.
Q Do you think the payment schedule for conflict cases impacts the ability to refer cases out?
A Well, certainly. I mean, if we were offering $30,000.00 for a murder first, you'd probably more people would be inclined to take it, but $10,000.00 for a murder first is kind of a joke. I mean, I wouldn't want it as a private attorney.
Q Why?
A That's way too much work. I mean, the fact that, you know, this person is facing potential of a death sentence, you know, that's a case where you generally probably don't want to leave any stone unturned to ensure they get the best representation possible because of the finality in the outcome. So the hours you would spend, you know, there is no limit. You know, murder first where they are none death take tons of time, probably, you know well over hundred hours easy when you take a death penalty case.

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So I'm not going to take a case and get paid pennies on the dollar. So I think our capital division, I don't know but they have limits on how many they handle and I think it's six at a time or six a year or something like that. So if that's their limit, if you're a private attorney, you got to pay the bills.
Q So the capital division doesn't handle necessarily every capital case in the MSPD system in your understanding?
A No, they handle every capital case, but not every murder first goes capital. So every murder first has the ability if the prosecutor chooses to file aggravators and go death, they can do so. This particular case I'm talking about right now the prosecutor has not filed aggravators and has not sought the death penalty. Although yesterday he indicated he wanted this guy to get the needle, so that may change. If that changes, it will go to our capital division but right now it remains ours.
Q So a case could proceed to trial without aggravators and remain with a trial division area until aggravators are filed, then it switches to the capital division?
A Right. And we handle several murder first at any given time where they are none death.
Q When is the latest a prosecutor can file

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aggravators, if you know?
A I don't know but I know I had a prosecutor on a defendant murder first case say this last week that he could file up to the day of trial.
Q Do you recognize this document?
A Yes.
Q What is it?
A It is an e-mail I sent to our trial director Ellen Blau, regarding some of my concern with how things were moving.
Q Why did you send her this e-mail?
A I think I already said that this job has become miserable. This was kind of in response to that to say we need resources. We need something to happen. I can only do so much. So to the extent that my office is short of resources, I'm asking Ellen Blau, or whoever above me to give me resources to address this problem. That's the same as me sending the conflict forms to Joel Elmer, the deputy director. It is an attempt to say I can't represent these people. Please give me some help. I'm really thinking in this particular case, I'm telling Ellen I'm seriously thinking of quitting. You know, figure something out so I can keep doing this work.
Q Why were you seriously thinking of quitting?
A Because I want to do a good job. I want to be

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able to represent my clients. I want my attorneys to be able to represent their clients to the best of their ability. I want these clients to get their fair -- to get justice, whatever that may be. When the files continue to pile up and people continue to sit in jail and you're not doing anything about it and can't do anything about it, it leads you to start thinking about alternatives like why do I do this. Why do I continue to try to fight this injustice when nobody seems to care. Maybe I'm wrong. Maybe all that this really needs is a suit to stand up next to this person. Anyway, you begin to question why it is you do what you do and why do you put up with it everyday. I can get a job somewhere else and in fact I did start looking for other work.
Q What led you to join the MSPD in the first place?
A Well, like I said, I did the two internships in law school. I did the public defender internship. I did a civil internship. I certainly liked the money aspect of the civil, but I enjoy the public defender practice and I prefer rural area. So I didn't really want to live in a city. So between those two things, I really liked the idea of being a public defender.
Q In this e-mail, you said, "The words of Zell Fisher ring louder to me every day." Do you recall what

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you were referring to?

A Yes. In the Hinkebein decision, Zell Fisher, he's on the Supreme Court. He basically said -- I never get it right, but he said something along the lines like "Sometimes you do something" -- I don't remember exactly but sometimes you take a different job and that's what I'm referring to is the take a different job. If I can't provide ethical representation; if I can't do the things that I'm required to do as a lawyer that I swore to do when I took the oath and that I just signed my bar form the other day to get my new bar card, you know, and I had to reaffirm the oath. If I can't live by that doing this job, then maybe it's time to look at taking a different job because I don't want to be suspended. I don't want to lose my license. But probably more importantly, again, I think Hinkebein opened my eyes to the fact that I haven't been providing ethical representation.

Q Do you think the lawyers in your office are able to provide ethical representation?

A No.

Q I'm going to show you another set of e-mails I'll ask the court reporter to mark as Plaintiff's 58. If you just take a minute and review this document.

A Okay.

Q What does it appear to be to you?

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A This -- back when we initiated the waitlist, we received -- or I received this response from Judge Pearson, the presiding judge in the 42nd circuit. He was very concerned that people would be sitting in jail and would not receive an attorney early enough in the process. And so he had requested that we arrange a meeting to discuss what can be done. I think Judge Pearson recognized there was a problem and was trying to find ways to address the problem and so this was the back and forth to try to get together and meet.

Q Did you meet with Judge Pearson?

A I did. We had a meeting with Judge Pearson and Judge Bernstein and the assistant prosecutor of Crawford County.

Q How did that meeting go?

A We received a muted favorable reception from the judges. Again, Judge Pearson I think he will acknowledge and he has. He has provided a 600.063 order and I think he said something along the lines like they aren't able to provide effective representation. So he acknowledges that, but he want us to provide solutions to that problem and he was asking us at the meeting what solutions do we have.

Q Did you have solutions to offer him?

A We did. You know, we asked him to allow us to

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waitlist. We asked him to appoint private attorneys and we asked for him to be lenient on continuances with people out of custody.

Q Did he allow you to use the waitlist?

A He did.

Q Has he appointed private counsel in cases?

A I don't believe he has. But the associate judges in the 42nd; one associate judge has and the other circuit judge has.

Q Do you have an understanding of how the private bar has reacted to being appointed cases?

A Well, they do not like being appointed. I have only spoken to one who was appointed and he just kind of joked about it. But also in that same conversation, he liked the waitlist because it was generating clients for him.

Q Do you know roughly how many cases in your area have been referred to private attorneys that are -- that would otherwise be on your waitlist?

A I think two.

Q And has Judge Pearson or other judges in Texas County been granting continuances to people or been more lenient with continuances, I believe is what you said?

A I don't think we have got to the point where we have asked for continuances on cases that are cases that

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we have been appointed that were on the waitlist because we really haven't been appointed to very many cases. The 42nd Circuit, the judges there, it's a very relaxed circuit. So cases kind of sit forever. I mean, so at this point with these being brand new cases, they are probably getting set for trial a year from now. So it's not really something where you're saying we need anything continued. You know, time will tell.

Q Are there judicial circuits other than the ones we have talked about through these documents that I haven't mentioned that you're responsible believe for?

A The only two circuits we are responsible for are 25th and the 42nd.

Q So I'm going to show you a document that's previously been marked Petsch Exhibit 5. Do you recognize this document?

A I'm sure I have seen it, but I don't.

Q What does it appear to be to you?

A Well, it's a suggestions for a writ of prohibition that looks like it was drafted I'm guessing probably by Greg Mermelstein to be used when a court appoints us.

Q You mentioned earlier that you had filed a writ to try to object to an appointment by judges in your area. Did that writ look similar to this motion or was it

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different?
A I'm sure it was similar. We did not receive any assistance from our offices, our main office in Columbia, in doing our writ. We did that on our own.
Q And that writ was denied?
A It was denied at the Court of Appeals and the Supreme Court.
Q Have you filed any other writ since that writ was denied by the Supreme Court?
A The Supreme Court, although they did not issue an opinion, they checked a box that said due to 600.063 hearing because they did not deny it with prejudice. So they hinted at that we could re-file it after we do 600.063.
Q What is a 600.063 hearing?
A Well, 600.063 is a statute whereby it is our remedy when we believe that we have too many cases, we are supposed to file a motion with the court to ask the court to review our caseload. Not of all of attorneys, but just of one or some for the court to determine whether or not one, we are over worked; and two, if so, what remedies.
Q Have you filed any 600.063 motions?
A Yes.
Q How many?
A Two.

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Q What was the result of the filing of those motions?
A I filed one in the 42nd Circuit and one in the 25th Circuit. In the 42nd Circuit we had a hearing. That was with Judge Pearson. He -- I don't know if grant is the right word, but he issued an Order basically saying that yes, he believed that the attorneys that I had suggested in the motion could not handle effectively their cases and he listed out a number of remedies that mirrored the statute.
Q What are those remedies?
A That the judge can waitlist. That he can be lenient with continuances. That he can appoint private counsel. That he can -- those are the three I remember. I believe there is maybe six, five or six. I don't remember what the other ones are. But he basically listed those out as potential remedies.
Q What happened in the other judicial circuit?
A The other circuit the judge has scheduled a hearing for Wednesday of next week.
Q Why did you first send the e-mail saying that you were creating a waitlist before filing a 600.063 motion?
A Well, as I expected, the 600.063 motion would not provide relief and it doesn't allow us to address an entire office, so it didn't really seem like there was a

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whole lot of point in following the statute in that particular instance. So I created a waitlist. I believe it's 600.062 says we cannot refuse cases. It was never my intention to refuse representing any client; that we would represent all of them. It just meant we would represent them as an attorney was available, so that was the purpose of the waitlist. So that's why I went that route.
Q I'm going to show you a document that's previously been marked Exhibit 54 -- or actually you can put that aside for one second. Finishing on 600.063; you mentioned that 600.063 doesn't apply office-wide. What was the scope of the Order that Judge Pearson entered for 600.063?
A It applied to -- in my mind it applies to Crawford and Dent County only and the attorneys in those counties. So I don't -- it's again, it's a difficult statute to understand and even though it's short, it's not technically difficult, but application-wise it was written by a legislature who doesn't really understand know court proceedings and how things happen. So they didn't even really tell you how to file it or, you know, do you file it in an individual case. I did it by just e-mailing the judge and said here is my motion. But I think Ruth filed it in a case and I don't know that neither way is wrong necessarily. So I don't know at this point whether it

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applies only to the three attorneys that I have in Crawford and Dent County. Does it apply to the counties? I don't know. Does it apply to other attorneys if they transfer in? Time will tell.
Q If you could look at Exhibit 54 now. Do you recognize this document?
A I do.
Q What is it?
A It is a suggested motion to withdraw that was created by, I believe, Greg Mermelstein to provide some guidance should an attorney feel that they cannot meet the demands of their caseload.
Q Why would an attorney in the MSPD use this document?
A Well, because I think probably every attorney in MSPD has an excessive caseload and probably should be moving to withdraw on cases because they are unable to provide ethical representation.
Q Have any attorneys in your area moved to withdraw from existing cases?
A One has.
Q Who is that?
A Me. I actually filed this -- I believe this motion. It's a lot of work. I spent a lot of time putting it together and it was summarily denied.

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Q There was no hearing over the motion?
A The court called it up and I said, "Judge, I filed a motion." You know, we had a little discussion on it, but that was -- that was it.
Q Do you know of any other MSPD attorneys that have filed similar motions?
A No one in my office I believe has filed this motion.
Q Do you know what the Missouri Coalition for the Right to Counsel is?
A I do not.
Q Are you aware of any pro bono programs that have been created to take criminal cases that would otherwise be handled by the MSPD?
A Yes. It may be that, I just don't remember the name. My understanding is that in St. Louis and Kansas City that some of the law firms there have agreed to take cases to help train their young attorneys in litigation.
Q But those programs are limited to, in your understanding, Kansas City and St. Louis?
A I don't think they are limited to that but in rural Missouri there are not law firms that have excess capability, I think, to take on cases like that pro bono.
Q So there are no, as far as you're aware, pro bono programs or representation in counties that your area

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covers?
A There are certainly no programs.
Q We talked earlier about the high rate of turnover in your office. What kinds of problems are caused by high turnover rate?
A Clients go through multiple attorneys. Every time an attorney gets a case, they have to get up to speed on a case and that takes a lot of time. So cases take much longer than they should to get to some disposition. It creates training problems. I mean, the biggest impact of the constant turnover is that, you know, it's a huge time waste to get attorneys up to speed. And then the other issue is when I'm hiring attorneys, I lose, you know, a day every time I have to do interviews.
Q How are cases transitioned when someone leaves the office?
A Traditionally, when somebody would leave the office, typically at that point they are handling more serious cases. So those cases would probably have to be given to an experienced attorney, the higher level felonies. So you would shift the caseload. So the person leaving cases would then go to next most senior attorney and that attorney would then shift their cases to the incoming attorney.
Q Does that affect the ability of attorneys in

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your office to provide effective representation?
A Yes.
Q How?
A Well, ideally, a client would have I think horizontal -- or vertical representation. So they have the same attorney from the date that, you know, they are charged when they first get their attorney through trial or plea. I think that goes -- that's for a whole host of reasons that I have already talked about like, you know, developing trust, understanding the case, you know, what discovery is needed, what experts are needed, why certain things have happened. You know, the memory that you get from doing a preliminary hearing or something just knowing whether a witness is credible or not. There is a whole host of things. Every time you transfer a new attorney into the case, that's lost and they don't have that same frame of reference that the other attorney had. And so you lose that every time and I think you just lose more and more every time you change attorneys. But also the client's right. I mean, the clients have a right to a speedy trial. And, you know, even if we are not asserting it, the idea that most clients that I have, you know, if they are in custody will be custody if they go to trial for a year or more, awaiting trial is in large part of a function of the fact that they have gone through four or

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five different attorneys by the time it gets to trial. And the only reason it's getting to trial is because now it's my case because the judge refuses to grant any further continuances and I cannot give it to a brand new attorney.
Q You said four or five attorneys for a single case; how common is it for a case in your office to be transferred to four or five attorneys over the life of the case?
A On the more serious cases, that's probably the norm. On the -- misdemeanor or C, D, E felonies that don't take a year. You know, if it's a case that only takes six months, you're probably going to have the same attorney. You know, you might go through two attorneys. But on like, you know, murder, rape, unclassified felonies, you are going to have four or five until it gets to me.
Q How long does it take you to fill a position after somebody leaves your office?
A Historically it would take a month to a month-and-a-half. Right now we have an opening. I had four applicants that were qualified. And when I say qualified, it used to mean that they at least had a license. Now qualified means that they are capable of getting a license.
Q By capable of getting a license, do you mean they are recent law school graduates who haven't passed the

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bar yet?
A The last person I hired, he had a license out of Oklahoma, so he had to get a temporary license and he has to take the bar in February. The two people prior to that were Rule 13. So they were law clerks in my office until they -- and I hired them in August. So they were basically practicing under my supervision up until October when they got their results.
Q And in terms of the available attorney positions that you have to fill, did those attorneys still count against those slots even though they were unable to practice --
A Yes.
Q -- by themselves?
A Yes.
MR. SHAHABIAN: I think now is a good time for a break. Go off the record.
THE VIDEOGRAPHER: Going off the record. The time is 4:25 p.m. This ends Media 2.
(A recess was taken.)
THE VIDEOGRAPHER: Going back on the record. The time is 4:34 p.m. This beings Media 3.
Q (By Mr. Shahabian) Thank you for sticking around, Mr. Crowell.
A You're welcome.

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Q I wanted to just touch on a few -- we are going to jump a little bit and clean up a few random things. So I want to show you a document that I will ask our court reporter to mark Plaintiff's 59. Do you recognize this document?
A I can see that I received it at some point, but I don't have an independent recollection of it.
Q What does it appear to be to you?
A An e-mail chain between Chad Picker, who would have been the district defender of my office at that and I would have been the deputy district defender, regarding judges appointing us.
Q And if you look on the second page of the document ending in Bates Stamp 59, do you see there is an e-mail from Ellen Blau that asks you to look at a spreadsheet and explain why the numbers of cases coded as judge determining indigency are above average in your area as compared to the rest of the MSPD?
A Yes, I see that.
Q What does she mean -- do you know what she means by a case coded as the judge determining indigency?
A Yes. So whenever -- whenever we receive an application we make a determination of whether or not they qualify for our services. If they qualify, it would be coded as -- I'm not sure what it would be coded as, but it

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would basically be that we entered the case because they met our qualifications. What this is saying is that we denied them for some reason and so we had a determination made by the judge that we needed to enter the case.
Q So these are cases where your office denied an indigency determination, but over your denial the judge independently determined the defendant to be indigent and appointed the MSPD to represent them?
A Yes.
Q And if you turn to the first page ending in Bates Stamp 58. Do you see the e-mail from Chad Picker?
A Yes, I do.
Q He says, "Ellen, it is part of the HB215 agreement with the judges to help with our caseload. If the indigent PV and misdemeanor cases cannot be resolved with the PA, judge, and defendant we are appointed." Do you have an understanding of what he's referring to in this e-mail?
A I do.
Q Could you explain what your understanding is?
A So I don't remember the year, but I believe it was sometime after the Waters decision. The legislature came out with House Bill 215, which basically kind of clarified the cases we could enter. Chad and I met with the judges and it was agreed that we would only enter into

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misdemeanors or probation violations if we were specifically ordered into the issue. So a lot of the cases probably why our numbers looked higher than the rest of the state was because of that agreement that the judges made with us.
Q Do you know what Mr. Picker is referring to when he says "if the indigent PV and misdemeanor cases cannot be resolved with the PA, judge, and defendant"?
A Yes. What that refers to is in a misdemeanor or probation violation, that's what PV means, it's expected in the 25th and 42nd circuit that prior to appointment of public defender in a case, that the judge -- well, that the prosecutor is going to meet with the defendant and say here is my offer in your case. So, for example, let's say it's a misdemeanor DWI. The prosecutor would meet the with the defendant and say my offer to you is a suspended imposition of sentence, you know, if you want it, you can take it; if you don't, you know, whatever. So if they agree, if the defendant takes that offer, then he would plead and that would be the end of it. If the defendant doesn't plead or does not want the offer, then the judge would consider whether or not he needs to appoint us, assuming they qualify.
Q Was jail time a possibility in these cases?
A Yes.

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Q And so to be clear, at this point prosecutors would meet with defendants who potentially qualified for MSPD representation but had not been appointed counsel?

A Right.

Q In your understanding, were those meetings -- in those meetings, did the defendants have other counsel?

A They would not have had counsel.

Q So they would meet with the prosecutors pro se?

A Yes.

Q And they would be offered sentences -- deals on charges that potentially implicated jail time?

A Yes.

Q Do you know if the deals offered included jail time as a possibility?

A I would say most of them had jail time as a possibility.

Q What kinds of sentences -- sentences would be imposed in those cases?

A I think generally speaking these agreements that are made and are still done on these misdemeanors cases are SIS probations and SES probations. So the defendant, if they accept the offer, they're going to be placed on probation. So jail time is a possibility, but only if they violate the probation. So that's what I think

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most of these were. Now, it does happen where a person maybe is in custody and the prosecutor said my offer is ten days, credit for time served or ten days or whatever, and the defendant may choose to take that. In the probation violation cases, those are misdemeanors and felonies. So the prosecutor would tell the defendant what their offer is for them to admit it, to the violation. And if the defendant wants it, then same sort of scenario, but obviously at that point since it's a probation violation, we are not talking fine only probation. That doesn't happen, at least not that I have ever seen. So we are always talking jail or prison time.

Q And it's only if the defendant doesn't agree to whatever the plea offer is that your office would be appointed in those cases?

A In most of those cases.

Q In what cases would you not be appointed?

A Sometimes judges, rightfully so, don't feel comfortable with this arrangement. It's usually on felonies and so they just kind of do away with this agreement, this kind of loose agreement. They say I'm appointing the public defender assuming we have already notified the court that they qualify. To give you an example, I had email yesterday where the prosecutor had offered an individual probation. The client or the

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defendant wanted to accept that offer and the judge refused it because he wanted the person to be represented so and he ordered me in case.

Q So these kind -- these agreements are still in effect today?

A Yes. Well, in most of my counties. We stopped doing it in Texas County because the judge there routinely violated the spirit of the agreement, which was that they would not seek jail time, and the judge routinely gives very lengthy jail sentences. So we just said, you know, don't feel -- we're not comfortable with that anymore.

Q I'm not sure I understand. Could you explain how the judge would impose jail sentences in these cases where the negotiations involved probation or the idea of no jail time?

A So obviously the judge does not have to accept any agreed-to disposition between a prosecutor and a defendant. The prosecutor in Texas County, he would say I'm offering you probation. Let's say the DWI example; the defendant is like I will take it. And so he pleads and the judge says okay, that's great. I know you want probation, but I'm not inclined to do that. So do you want to proceed? And, you know, often because these people aren't represented, they don't understand as the judge, as he's

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smiling at them telling them telling them do you want to proceed, they think he's going to be lenient and he gives them a six-month sentence in jail. So that happened once or twice and we realized, okay, this is not what we had intended. So in Texas County, we -- because it's clear that the judge is seeking jail time even if the prosecutor is not, we just enter the cases.

Q Why did your office enter into these agreements?

A I think at the time it was our belief that that's what House Bill 215 required. We had hoped that it would reduce caseload and so that we could focus on the more serious cases, the felonies. This rule, although it's still in effect, it really only applies anymore to the probation violations. In a couple counties, some misdemeanors still kind of go along this way. But for the most part because everybody was violating it and people were going to jail, it became quite clear that constitutional rights were being violated and we decided that I think the courts basically decided that we need attorneys in these cases. Because nobody wants to say that jail time is off the table except for us; we would be okay with that, but none of the parties that matter in this situation.

Q What were the downsides -- and I think you

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mentioned some of them already -- but what were the downsides for defendants who were charged with the kinds of cases that were implicated by this agreement?

A I think probably one of the biggest downside -- I mean, I think a lot of times prosecutors really were trying to be fair and give the offer that they would have given regardless. But I know of situations where it doesn't really matter if the offer is what the offer would have been to the attorney if there is a suppression issue. If there is some other mitigation that the prosecutor should be aware of, especially with the younger or the mentally challenged clients. So there is some serious disadvantages to this policy of allowing defendants to plead in misdemeanors, or any case without an attorney, to advise them of their rights and advise them of collateral consequences. A lot of people pled guilty to those cases and, you know, you see them today and, like, maybe it's a marijuana charge and that's impacted them somehow. In my little neck of the woods, maybe they pled to a misdemeanor domestic assault and they go to get their hunting permit and they can no longer own a firearm or possess a firearm, so they can't hunt. They may not seem like a big deal to someone who lives in a city, but in rural Missouri, that's huge. That's huge. So, you know, there are collateral consequences even with misdemeanors

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that I think the prosecutors weren't advising these people of, nor should they, but it was an impact of these people not having representation. And on top of that, I think a lot of them went on probation and then later on we're dealing with probation violations where jail time became a real possibility.

Q You mentioned that judges in your area have been appointing you to cases on the waiting list over your objection. Have they appointed any other attorneys in your district -- in your area besides you?

A You mean other public defenders?

Q Other public defenders.

A Just today. They started doing that today. Well, one did.

Q Who -- I know you have been here, but do you know who was appointed?

A Yes.

Q Who was that?

A Brandon Schwartze and Tom Moser.

Q And who are they?

A Brandon Schwartze is an APD III in my office and Tom Moser is an APD I.

Q An APD III is a more experienced attorney?

A Yes. Brandon, I think he has three years maybe four; somewhere in there.

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Q APD I would be a first-year attorney?

A Yes.

Q Do you have any understanding of why a judge would appoint someone other than you into these cases?

A I have a hunch.

Q What is your hunch?

A So yesterday I got an e-mail from the prosecuting attorney of Pulaski County saying the jail was rioting. And I think he was -- not literally, but the people in jail were getting upset because they did not have attorneys or attorneys had not entered their case, or maybe I'm in their case and I haven't been by to see them because I have too many cases. And so the -- I think he was very concerned about the situation in jail and the sheriff had contacted the prosecutor and said we have to do something about the people in jail. So the prosecutor told me that he was going to tell the judge today that this has become a big problem. So my hunch is that he talked to the judge and the judge probably is aware of the fact that I'm not actually appointing -- or entering attorneys in my office unless they are able to take more cases and I'm the one entering. And, you know, unfortunately I'm not able to provide the representation that these people deserve and so the judge, you know, he's not a fool. He's an intelligent person. He probably thinks, okay, well I will appoint

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individual attorneys because now these people will probably get faster representation or he can order them to go see them or do whatever the judge feels is appropriate.

Q If you spent the time you thought necessary to effectively prepare one of your client's cases, say one that was going to trial; what would happen to your other clients?

A Nothing.

Q What do you mean by nothing?

A Well, nothing is happening in their cases that's what I mean. They get pushed aside.

Q Do you think the same would happen for other attorneys in your office if they were able to focus on a particular case, complex case, and give it the time that it deserved?

A With their current caseload, yes, I still think that would happen. It does happen.

Q Are there times you have to triage cases doing less on one to do more on others?

A Every day.

Q Do other attorneys in your office have to triage their caseloads?

A Yes.

Q Doing less on one so they can be more effective on others?

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A Yes.
Q Is there anything else you think we should know about your office's ability or difficulty in providing effective representation to people eligible for representation?
A I think we have covered a lot of it. But I would say the problem is getting worse as people continue to leave and as the quality of candidates we get continues to decline. One of the complaints that we haven't talked about but that's made, and Judge Pearson put this in his Order, is that the resources in the system are not spread equally. I don't know if that's true or not. I don't know what's going on in other offices. My experience has been that everybody thinks that their office is the worst and really it sounds like when I meet with other attorneys, we are all equally bad. So I can only speak to my office. But in my office, if things don't change things are only going to get worse. And we are not gonna -- I say that like it's not -- we're not going to maintain the bad representation we provided. It is getting worse. Our caseloads are going up and the quality of our attorneys is going down and the ability to train them and mentor them is decreasing.
Q Why do you think it will continue to get worse?

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A Because the experience level of the attorneys continues to go down and we used to be able to get some really quality candidates. I have been very lucky in the people I have been able to hire in the last year. But every week we get a list of new openings and every week it seems it grows and, you know, every couple of months I have an opening. And every time there is an opening, there is fewer and fewer candidates and the ones that are there are really, quite honestly, terrible.
Q What do you mean by terrible?
A There are people I would never consider hiring for a position but that I'm considering now because there is nobody else.
Q Why wouldn't you consider them for a position?
A Well, for one, I generally would want somebody who is already licensed in the state of Missouri. So that would be -- most of the people I consider now don't even have a license. It's hard to say specifics but, you know, when you do a lot of interviews you begin to, you know, notice things about the person. Are they able to -- do you believe, you know, you're making kind of instant judgments about people, but do you believe they can handle your jurisdiction. Can they stand up to judges. Do they care about, you know, what we do and our mission or are they just looking for a job because, you know, private practice

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hasn't worked out for them and, you know, this provides a steady income. I think we are seeing the few applicants I have, either they don't have licenses or they are the people who couldn't cut it in private practice and are looking for a paycheck. They really don't have any drive to do what this job requires. They, just like I said, looking for a paycheck; a steady paycheck.
MR. SHAHABIAN: Thank you, Mr. Crowell. I have no further questions at this time.
QUESTIONS BY MR. RAMSEY:
Q Good evening.
A Evening. Is it evening already?
Q It's getting close, five minutes away.
Q Again, my name is Steven Ramsey and I represent the State of Missouri and Governor Eric Greitens. I have a handful of questions. If at any time, again, if you need a break, just let me know and we can take that break but I will try to power on through. To begin, to fill in a few of the gaps that I may have missed or may have not been asked. You came straight from undergrad into law school; is that correct?
A Yes.
Q What were your degrees in in undergrad?
A I had a political science degree.
Q And you have been with the public defender

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system since around 2008; is that correct?
A I got hired in the fall of 2008.
Q And within the past year or two or so, or as far as you can remember, who all have you spoken to concerning workload and caseload concerns? I presume judges from your earlier testimony. I presume some members of the private bar from earlier testimony. Have you spoken to nonprofit organizations or the press?
A Nonprofit, I'm not sure they are nonprofit, but I would say I have spoken to commissioners and I have spoken to city councilmen and I have spoken to the New York Times.
Q And by commissioners you mean county commissioners?
A Yes. Part of our funding comes from the commissioners. They provide the rent and utilities for our office. So I have spoke to them, you know, about our facilities and, you know, of course I talked to them about some of the problems we are facing.
Q And concerning the amount of expertise and the level of experience that you testified earlier to; when you started was in the heart of the recession or the beginning of the recession, 2008 or so?
A Yeah. I mean, yes.
Q And would it be fair to say that as the

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economy has improved, the quality of your candidates has decreased?

A I can't speak to what the quality of candidates were when I was hired up until, you know, I didn't get into management, I think until, 2013 or '14. I can't remember which. I think I was a good candidate. But no, I would say this, the people that I started with and that I saw for the first four or five years and my first couple of years in management were excellent candidates and went on to do great things. We used to have -- it wasn't uncommon to 20 or 30 applicants to kind of go through to determine who we were going to interview. We used to be able to screen out people. There is no screening anymore because if we screen, we wouldn't have any candidates. So, yes, the quality has gone down, but also the number.

Q And so the period of time since you have been in management has been relatively brief in terms of the quality candidates coming in and out of the door?

A Well, I can say yes. I mean, it's been about four years, but I can say I have seen a change over the four years.

Q Sitting here today how would you define a case as it's relatable to your district?

A A case is a client who has a criminal charge.

Q And how does a case become closed within your

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system -- or in your district? Pardon me.

A We close our cases based upon on the conclusion of the case. So whether that's through a guilty plea or if we go to trial after sentencing. When we close out a case -- so the only exception to that is when we have a client who goes up on a 120, so 559.115 or some other 120. We close the file at that time but we enter the hearing date for the 559 review because if the client is not going to get released, we will represent them at that hearing.

Q And for the record, what is a 559 review?

A So when a client, you know, when a client is sent to prison sometimes the court retains jurisdiction under Section 559.115 RSMo. Basically the client goes up. He does 120-days shock. He may get treatment; he may not in the Department of Corrections. As long as his behavior is good, he typically will get released, but that's up to the judge who sentenced him. So it allows the court to retain jurisdiction for that 120 days. The hearing would be if -- the only time there is a hearing if the defendant does something inappropriate or violates the rules of the 120. While in the prison, they are entitled to a hearing and we would represent them at that hearing, which is a farce, but we still do it.

Q Now am I correct in understanding your

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previous testimony to suggest that before Hinkebein, the decision, Missouri Supreme Court decision, you dedicated a substantially more amount of time to supervising and administrative tasks versus after Hinkebein?

A Yes. I mean, before Hinkebein, I was -- I allowed attorneys in the office to have much higher caseloads. So, again, the average case -- the highest caseload in my office was somewhere around 200 and the lowest would have been probably 120, maybe a little lower depending on how new they were. Since Hinkebein, I decided that I could no longer allow attorneys to have such caseloads. So that's the purpose of the waitlist and then not entering the attorneys on the case but entering myself.

Q And am I understanding your testimony to be that before Hinkebein when the caseloads were substantially larger, there was an issue effective assistance of counsel there and even after your caseload control mechanisms of waitlist in place that there is still a dramatic issue that's getting worse as opposed to -- I will stop there, yeah.

A Well, you said it's getting worse. I would say it's getting worse for me and I would say that if we -- as the judges become -- or as the waitlist fades away and as we go back to business as usual, as that seems to be what's probably going to happen despite my best efforts.

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The caseload is going to get worse because, generally speaking, over the last, you know, twenty years or so there has been a steady increase in the number of cases across our jurisdiction and across Missouri. So I suspect the numbers, even if the plateau they are still extremely high, but I don't see that happening. But more importantly, and I think as it impacts my office, is the constant turnover that I have and the lack of experience that I have and the quality of candidates that I'm able to hire; those are the things that are going to make it continue to get worse.

Q You testified about an intake sheet. And I believe it was in the conversation of bond arguments and ascertaining whether or not there was a strong argument to argue for reduction of bond. Are there other, I guess one pagers, that would help train or alert your newer attorneys to the expectations of various levels of representation?

A I know I have seen different, you know, checklist-type things throughout my career as a public defender that various people use. So they probably exist. The intake sheet we use is actually I think three or four pages because there is so much information that you really need to get in that initial interview. I can't remember everything and so this just -- even me with experience, I would use this sheet. Are there other sheets that we could probably give to attorneys, yes, but sometimes it's only as

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good as the, you know, the user. And if user doesn't know what the words mean, like for example, you asked what's a 559. If I put on there, you know, 559 and they have no idea what that is, it's not going to be any use to them.

Q So you testified -- and I think the phrase you used was something to the effect of younger or newer attorneys don't know what they don't know or something along those lines. In what ways as their district defender have you gone about educating or training them to teach them what they don't know?

A Well, I try to lead by example. So, you know, when they are in court, I show by example. I would also tried to educate them when they are in court. When they bring cases to me, I would talk to them about the things they need to be doing. The guidelines I make sure usually on their first day or first day or two, I would make sure they have a copy of the guidelines and that they have gone through them. The guidelines give some guidance on how to work up a case. It's not really a how-to guide, but it does -- it gives you an idea. There is also an attorney workbook, a new attorney workbook, that I think was created by Wayne Williams in I think it's the 24th -- Area 24 Office of Public Defender. I give them a copy of that and that is kind of a how-to guide of how to work a case through the judicial system. So those would be the main

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ways. That and I guess I would pair them -- I try to pair them with a more senior attorney.

Q Have you noticed any trends in the cases that you're seeing and how they are being represented? What I mean by that are you taking more depositions now than say at the beginning of your tenure as district defender? Are you personally or attorneys that you supervise?

A So you're asking me as my tenure as a district defender not as a public defender?

Q Correct.

A I don't think the number of depositions I have had has. It's probably decreased for me personally. For my attorneys and in what timeframe are you looking at?

Q It can be within the past year or past two years. You have been district defender for around three years; is that correct?

A Yes. And then I was a deputy for two before that.

Q Yeah. Well, within the three years that you have been the district defender and if you have that's more than five, I'm just trying to get a sense.

A So I would say that it was pretty even throughout that period until the last couple of months and there has been an uptake in the number of depositions being taken.

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Q How about the usage of experts?

A So with experts I would distinguish between mental health experts and other experts. The reason I do that is because I think they kind of cover two different areas. Mental health experts I'd say has been pretty level. Other experts, it's almost nonexistent. And that's, I guess, that's also stayed about the same.

Q And did I understand you correctly in that the way you assign your cases in your district is one by geography in terms of what counties the various assistant public defenders are in, but also by expertise or experience?

A Yes. So we would not -- I would not want to give a serious case to a new attorney.

Q And is the assignment totally done by yourself or do you, I guess, field that out to the deputy director or someone else within your office?

A Right now, there is kind of a mixed system. So I have one APD IV, that attorney has, like I said, 15 years experience. He is in one county and he's handling every case that comes into that county, which is at any given time 150 cases. So that -- every case that comes into Dent County, he gets. In all the other counties, since I have waitlisted, all the cases that are open to me, are being assigned out by me. And so I would determine

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what cases they should get based upon the priorities that the judge has already determined, which is basically are they in custody or not. The cases that I don't assign out, they come into my clerks and my clerks are tasked or I delegate the authority to them to kind of make that determination of whether or not the murder should go to this APD or this APD. Generally speaking, when a serious case comes in, they are going to let me know and I'm going to give them some feedback.

Q And when you say your clerks, are you using legal assistants or your clerical staff?

A Clerical staff.

Q And how many trials, say within the past year, has your -- have you yourself tried or your office tried? So that's a two-prong question.

A In the last year, I have probably tried maybe a half dozen. I say my office -- and it's a rough guess, but I would say probably maybe 20. That might be a little high, 15 to 20.

Q And are these jury cases?

A Yes.

Q Do you have a sense for how many bench trials are tried every year in your district?

A Maybe half a dozen. There is not a lot of incentive to do a bench trial.

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Q Turning to your offices determination of indigency; who makes that determination in your office?

A It varies. So my clerical staff, if it comes into the office from our front window or over the fax machine, they are going to do it. If it's in court, it's typically going to be -- if the legal assistant is there, it's going to be the legal assistant. A lot of our counties, you know, there are one or two attorneys and we only have two legal assistants, so there is not really enough to send a legal assistant every time. So if it's just an attorney, then the attorney in court will make that determination.

Q Do you have any external or independent controls or verification procedures in place to verify whether or not someone is actually eligible for services or do you rely mostly on that application itself?

A Well, they are required by law to be truthful on the application, but that's obviously, you know, open to interpretation whether they are being truthful or not. It's rare that we would do an independent verification, but here is what we do. So when I get an application and I encourage everyone in my office to do this, if they put all zeros for income and, you know, everything is zero or if they write, you know, no income and whatever; I asked them follow-up questions. I do do follow-up with them. Like

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where do you live? How do you get by with no money? How do you eat? You know, I ask them those types of questions. Did you drive a car to court today? I lean on the side of denying. So, you know, generally speaking, if they posted bond, I'm going to deny them because, you know, I have to be a steward of taxpayer money and I think that at least some of these people might be able to hire counsel. I don't know. So that's kind of where -- we don't do independent verification. I have done it. I do it in rare cases, especially as the case moves forward. To give you an example, I had a case where an individual was appointed -- we were appointed. He posted a $100,000.00 bond. He was on GPS monitoring and paying for that somehow every day. As we were developing the case he kept telling me he owned the property that the alleged victim was living on. So once I finally got record of that, I filed a motion to withdraw based on the fact that he owned property. It was denied. We do -- where it's apparent that there may be some discrepancy with the application, we will investigate.

Q Do you have a sense of how often you reject applicants? And I understand your testimony earlier to be that even when you reject them, the court still sometimes appoints them. But how often would you say you reject applications?

A Well, most of our applicants are truly

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indigent, so it's not -- I don't know what percent. Like I said, when I'm in court and they are not in custody, it's pretty common to reject because, generally speaking, they have posted bond. But I don't know. I don't have a percentage or I don't have a number. Most of the people in jail are going to qualify.

Q And did I understand your testimony earlier to be that you had never been denied an expert that you thought you needed on the sole basis of funds?

A I have always gotten whatever expert I believe I needed. I may have had to have some additional discussion with the person -- the people that hold the purse strings. But generally speaking, I can't think of an incident where they out right denied me.

Q Have you ever denied an attorney that you supervised funds that you had discretion for or prevented them from moving onto the upper management?

A I have.

Q And have you done that for the sole basis of funds or for the similar reason that you were denied earlier?

A I would deny them because I would want -- again newer attorneys don't understand a lot of times when it's appropriate to do a deposition. So if they send a request and say I would like to depose this witness and I

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asked them well, who is that witness and it turns out it's a witness for them, for the defendant. Well, I would deny that request because that's foolish. Go interview them. They are a favorable witnesses. But generally speaking, the types of money that I control are for medical records. I can control that. I can say you can't get the medical records. I don't think I have ever denied that. Clothing for clients for trial, you know, Good Will, Wal-Mart; I approved those. I approve deposition request if it's under $500.00. I generally approve those except for what I was just talking about where they don't really understand when they can send an investigator out to interview. That's the -- those are the main things I have control over in my local budget.

Q Have you ever ran out of funds in your local budget and requested more for any of those various categories that you just listed?

A I don't believe I have. I will say this, I probably will this year because of the number of deposition request. In the past, there used to be a policy in my office for whatever reason that we were encouraged to -- not by Columbia, I don't think but by the former district defender to exceed $500.00 on a deposition request. That was so that the money would come out of the different budget than our local budget for fear of running out of

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money out of the local budget. I have never done that since I have been district defender. I have always used the local budget and I don't think I have ever ran out. At least Kathy Leer, my comptroller, has never notified me of such. We have ran out of postage before, but we got more money for that.

Q And when that happens, did you just request like hey, we are out of postage we need "x" amount more?

A Yeah.

Q When your attorneys go to trial or when you go to trial, do you normally send your attorneys with a second chair or third chair or do they try cases by themselves?

A I don't think I have ever had a third chair. Generally, the practice in my office is that when you go to trial that the deputy district defender or myself should be a second chair. For my trials, personally, I will often bring along a second chair, but there are cases where I don't. It just depends on the case. There is a few reasons for that. The main reason is, again, these attorneys don't have any experience. It's often their first trial and so I want to make sure that they don't miss anything important. They make the proper objections, that the record is preserved; that sort of thing. But -- and then with the experienced attorneys, I usually have a second chair who is, again, you know they are learning. So

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they go and they learn kind of how to do a trial. Generally speaking, we make them do portions of the trial like, you know, the instruction conference or, you know, maybe they cross a witness. So that's where they get their experience by second chairing.

Q And there was some conversation concerning continuances. My question is if there are any policies or customs within your local district that would be akin to a first in first out or this case has been on our docket for two-and-a- half years and we need to expedite this. Is there any controlling policy to expedite those cases that have been lingering?

A Well, the judges. I mean, they -- personal to my office or to the jurisdiction?

Q Personal to your office?

A When -- sort of. And the reason I say sort of is after a client has gone through so many attorneys, eventually it ends up on my desk because I know we can't push it any further for the client's sake but also because the courts aren't going to push it any further. The courts don't seem too interested in really protecting the client's rights. They are more interested in moving cases. So when it comes to that point where I can no longer pass it and I know the judge is going to make it go to trial, it goes to me.

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Q Would that be after the third attorney?

A Typically, yes.

Q As on the side, do the attorneys that you supervise have laptops so when they are at their law days and they were waiting or if they are waiting to meet with a client where they can work remotely or is it all done back at the district office?

A The attorneys have laptops and they take them to court where there is WiFi. So we have basically three courts that have WiFi; three that do not. The laptop is useless where there is no WiFi. We can't access our network. The courts that have WiFi is sporadic and we borrow the prosecutor's WiFi in two of the three. So if they are new and they don't have the relationship with the prosecutor, they also don't have access to WiFi. But where there is WiFi, they do take their laptops. They do -- I mean, there is only so much you can do when you're in court and you're constantly being called up by the judge. But yeah, they do. None of the jails have WiFi. So the we don't -- the only time a laptop goes to a jail usually is if we are showing a video or some other discovery, pictures or things like that.

Q And does every attorney in your office have a laptop?

A Yes.

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Q Turning to your district's timekeeping history, if you will. Currently is your office tracking time in five-minute increments?

A No.

Q Currently is your office tracking time by tasks or by case?

A No. We stopped tracking time, I believe last year when Michael Barrett indicating we could stop.

Q And so currently the extent of your time keeping is how many hours per day or per case session --

A Sure.

Q -- your attorneys have worked?

A That's correct.

Q Did you ever receive training on how to effectively track your time when you were tracking your time in the five-minute increments?

A I don't know that we had. I remember at our spring training there was. It seems like Peter Sterling, then our general counsel, gave us training, but it's been a long time and I don't remember. I remember their being confusion over how to categorize time because there was some areas that overlap, so they changed I think some of the categories over time. But once the RubinBrown stuff came about, it became very -- they narrowed the categories. It was pretty clear, I think, from that point forward.

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Q Turning to that I want to draw your attention to Plaintiff's Exhibit marked 50. I believe it's the Missouri State Public Defender system Fiscal Year Budget Request.

A Okay.

Q Now you had testified earlier that you felt that some of these numbers or potentially all of these numbers were fairly conservative; is that correct?

A For Rolla, I don't know about the rest.

Q For Rolla.

A Yeah.

Q Are you familiar or did you have any hand in the creation of the underlying RubinBrown data?

A Yes.

Q What was the extent of that?

A Well, I was the timekeeper. I was also part of the Delphi Group.

Q And do you have any history aside from your, I guess law degree or undergraduate degree, concerning statistics or sociology?

A No.

Q Is it your understanding that the capacity in some of the hours per assigned task, if you will, were averages under the RubinBrown study?

A It's my understanding they are all averages.

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Q So --

A Are you talking about the categories like, murder, C, D?

Q Yes

A Yes, those were all averages.

Q And your contention earlier is that they may or may not have taken into account the differences of experience of various attorneys?

A I don't know for sure how RubinBrown calculated, but it wouldn't be a very useful number if it didn't say that you understood how to actually handle a case. Maybe not that you can handle every case, but that you have some basic criminal experience. Like I don't think that these numbers are like well, if you're any attorney, if you are a tax attorney these percentage applies to you because obviously it's going to take you a lot more time than it is someone like a public defender.

Q And this is -- this or these are your assumptions sitting here looking at the numbers?

A No, not really. I mean, because the Delphi Group was both public defenders and criminal defense attorneys. It was not private attorneys -- or private civil attorneys or other government attorneys. So the averages that they came up with were averages for experienced -- because they were all experienced criminal

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defense attorneys, either private or public defender. So I can't imagine -- I know personally when I was there and we were coming up with averages, I was thinking in my practice how much time would this case take. That was what we were instructed. To you personally, how much time would you or if you had the ideal amount of time, how much time would you spend.

Q And that was your experience as a member of the Delphi Group that put data into the ultimate RubinBrown study?

A I don't understand the question.

Q Said another way; you're speaking from your experience of being a firsthand participant in the study itself?

A Yes.

Q But you didn't ultimately have a hand in the collection of the data after the fact -- after the fact? Pardon me.

A I think the data was collected when we were the Delphi Group. They gave us the averages and the numbers in the group and as the Delphi panel, we adjusted those based upon our experience.

Q That was after each round?

A Yes. But I don't sit here and say that I understand the statistics and the whole Delphi process. I

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was just part of it.

Q I see. Turning to the individual attorneys who have left your office. Did you conduct exit interviews for each one of them?

A Informally. Our HR division conducts the exit interviews, so I try not to interfere with that process.

Q The HR department for your district or for your system at large? Or a different question is do you have a HR, a local HR person within your district?

A We have two HR employees at least my understanding, maybe three if you count Ms. Shipma, for the entire MSPD. I don't have anybody local in my office.

Q So the extent of your knowledge of why people were leaving was based on the informal conversations you had with them prior to their departure?

A Well and after.

Q And after.

A They are still around most of them. They are just prosecutors.

Q So you still see them?

A I go against them now. So I train them to become prosecutors and hopefully they become a little more human in the process.

Q Turning to the waitlist: My understanding from your testimony was that this was not something that

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came down from central office, rather it was something that you had made a decision upon after speaking with the attorneys in your office and your deputy director; is that accurate?

A Yes. My office -- our offices in Columbia had nothing to do with my decision to waitlist.

Q And that had mixed results across the judges?

A Yes.

Q Within your area. Here is a question concerning the letter that you -- or the e-mail that you wrote to upper management concerning your potential departure from the Missouri State Public Defender System. Would you say or how would you describe your relationship with upper management?

A I think it's good. It was a little tumultuous before I became district defender. When I became district defender, I had to supervise two prior district defenders. One that had been removed from the district defender position. Well, both had been removed from their position and I had to supervise them. So there was very much an anti-Columbia feel to the office. Since that time, I think they have been very helpful. Very supportive. Since I have started waitlisting and I have been harassing them on a regular basis for resources, I have become much more familiar with them. I get phone calls more often for

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better or worse.

Q Would you say that you are or have been 100 percent satisfied with the support from upper management in terms of addressing this workload or caseload alleged crisis?

A No, it's not 100 percent.

Q In what ways do you think they have come up short, if you will?

A Well, I have sent a lot of conflicts to them and they have not resolved them. I need more resources, they have not provided them. They may not have them or have the resources, but that's not really my concern. I don't really care. I just want the resources. I feel that Rolla and my office has been left to fend for ourselves in some instances. Especially when I see that, you know, in the Kansas City office that Rick Petsch had Greg Mermelstein help her on a writ. So that bothers me because a writ is very time consuming process. Now to be fair, I didn't ask for help, but nevertheless. So, but I will say this every time I have asked for assistance or I have reached out to them, they have gotten back to me. They have responded. It's not always a response I like, but they are available. And I don't really have any major complaints. I think based in reality, like I said, I want more resources. I need more resources. That's my common

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complaint, but they don't have the purse strings, so-to-speak.

Q Turning to two exhibits. One is Petsch 5 and one is Plaintiff's Exhibit marked 54.

A Got them.

Q Did you -- looking at Petsch 5 first. Did you utilize this template when you drafted your writ or did you create it from scratch?

A We did not -- I don't know that we had access to this at the time. Greg Mermelstein prepared a lot of -- I think this it was Greg Mermelstein -- prepared a lot of guidance material. Not necessarily writs, but I mean I think, like I said, I think he prepared Exhibit 54. He prepared a power point that he provided after the management conference we had back in late September that had a lot of the, you know, case law summarized and that sort of thing. But we did not have a template that we followed in our writ. We did it on our own.

Q This was -- these documents to your understanding were created after the Hinkebein decision and after, I guess, the meeting with the various district defenders and upper management?

A I'm sure that this Exhibit 5 was created after. I don't know when Greg prepared the rest of this. It just -- he brought it to our attention at the management

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meeting. You know, I think we have a database that he puts motions on and these were all added at some point. I don't know when.

Q Throughout your testimony, if I understood you correctly, a reason that you or your office have been unable to do various tasks is because you lack resources and the time to accomplish those tasks; is that a fair assessment?

A Yes.

Q What tasks, if any, have you been able to complete to a reasonable degree, whether it was before or after the waitlist was instituted?

A Nothing as it related to the clients. We get our time sheets turned in, expense reports; administrative things. I would say that nothing that matters.

Q And I hate to toss a potential hypo at you. This isn't law school. But let's say you only had two cases and one case was coming up for trial, would your preparation for that one case going to trial hinder your representation of that other case, hypothetically speaking?

A Well, now you got me thinking like a law student. The answer is no. I mean, does it have the potential, yes. If one was set for trial on Monday and one was set for trial on Tuesday obviously the one on Monday is going to affect the one on Tuesday. But this isn't -- what

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we are talking about is not something where we are saying well, yeah, theoretically you could spend, you know, 100 hours on every case. You know, you could turn over every stone. I mean, you really got to look to the rule of what is being diligent? What is being competent? What is communication? Those are the things you have to look at and are we able to do that with our current caseload and the answer is no.

Q So your understanding and response to the question is not in a two case situation?

A Right.

Q Not currently at the level that you are representing cases, which I believe you said you have average about 75 cases for the attorneys that you're supervising right now?

A I would say probably somewhere around there, yeah.

Q So it's not two. It's also not 75 -- or I mean, I'm sorry, two would be fine, 75 is not fine?

A Yes. And of course it's not as simple as saying a number because the reality is, you know, maybe it would be okay if it were 75 misdemeanors, maybe. You know, but our caseload is not predominately misdemeanors. It is predominantly felonies. And a serious felony -- maybe two capital cases would be too much. I don't know. I don't do

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capital cases. But you can't -- it's hard to say what the right number would be because it varies depending the type of case, their experience level. There are so many factors that go in. That's why I don't use -- when I talk to my attorneys, I don't say you're over 50 cases, you're overworked. I would say something along the lines like, you know, your caseload is at 50. Do you feel that you can handle additional cases, if so let me know. And then the other thing I would look at is, okay, well they are 50 misdemeanors. They can handle another ten. Or whatever, I'm just throwing out numbers. But if it's 50 A, B felonies, you know, that's a big caseload in my opinion and those cases where you're looking at up to 15 years or life. Those people deserve -- they don't deserve better representation, but they take more time.

Q Even with them -- would you agree that even with then those higher felonies, if you will, so let's say a Class A, that there are different time requirements depending on the particulars of that particular case?

A Each case is unique, so I can't tell you that if I got one indictment on a Class A felony and another indictment on a Class A felony, they are not -- I'm not saying that's ten hours on each one or whatever. One client may say I want to plead. Let's try to get this done as quickly as possible. I'm guilty and the evidence is

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very strong against them. The other may be more iffy or -- you know, there is so many different permutations that you can think of that I really can't give you an answer on that. I don't know how much time an A felony is going to take until you finish the case.

Q Sure. Have you ever been judicially determined to have provided ineffective assistance of counsel?

A No.

Q Has an attorney that you have supervised been judicially determined to provide ineffective assistance of counsel?

A Not since I have been supervising.

Q Almost there. So you started off in responding to the Hinkebein decision with various letters and reaching out to the various judges that you work with in your district. You also sought a writ, which was denied by the Southern District Court of Appeals or are you in the Eastern District?

A Southern.

Q Southern. And that was also denied by the Supreme Court of Missouri; is that correct?

A That's correct.

Q And then you decided to file two chapter 600.063 motions?

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A I filed -- well first what I did after the writ was denied by the Supreme Court, I filed -- I don't know what you call it, but I call it a notice of 600.062 to the judge saying my whole office is overworked. I can't do 600.063, so I'm going to waitlist basically. Then I had a conversation with the presiding judge of the 26th Circuit, John Beger and he said look, if you want any relief at all, you've got to do 600.063 because that's the only way I can consider your waitlist. So based on that conversation, I went ahead that same day I filed a .063 in each circuit.

Q I just want to be clear that it was in the 42nd Circuit that relief was granted?

A Yes.

Q And in the 25th Circuit, it's pending for Wednesday?

A Yes.

MR. RAMSEY: No further questions.

MS. SHIPMA: I just have one -- well, one topic.

QUESTIONS BY MS. SHIPMA:

Q I think that I heard you say earlier that if you have a case where client has a 120, did you say that you close the file? So the system shows it closed but you schedule -- you're nodding your head. So do you close the case file; is that correct?

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A Yes.
Q But you schedule the hearing date on the calendar?
A Yes.
Q Then if it needs to go to hearing, you reopen the case; is that correct?
A I don't know that we reopen it. I mean, it would not be -- you would not see an additional case in our database. Like it would not be like okay, now we have a new case number. The file would stay closed. We would just take that closed file with us to court and say hi, Judge, I'm here representing so and so.
Q So those 120 cases aren't showing out there as open files on your system for that period of four months that the client is in treatment?
A That's correct.
MS. SHIPMA: Nothing further.
MR. SHAHABIAN: I just have a few follow-up questions. I will try not to be too much longer.
QUESTIONS BY MR. SHAHABIAN:
Q You mentioned in response to questions from the State that you thought the waitlist would fade away. What did you mean by that?
A You know, we are trying to be optimistic and hope that something changes and that the clients we

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represent get the representation they deserve. So you do things to facilitate that process, like waitlisting. But as you progress and as the courts deny your relief and as you fail to get any relief from upper management and as the court slowly chip away at what you have done by appointing you and as of today appointing individual attorneys in violation of the Supreme Court -- Missouri Supreme Court precedent; you see it fading. You know, what's a waitlist if it doesn't really matter if the judge is just going to appoint you anyway. You're just wasting time on a waitlist. So that's what I meant by fading is that the things that we are doing to show or to try to reduce our workload so that we can be ethical; nobody seems to care about. They don't really care that we are saying that we are unable to provide ethical representation. Probably more importantly, they don't really care whether or not a defendant receives representation at all. They just know that they have to have an attorney sitting there next to him to process him or her. So that's what I mean by fading is that at the end of the day, I think Hinkebein should have been a wake-up call to everyone that something needed to change, but it didn't wake anybody up.
Q You mentioned an attorney workbook. I'm going to hand you a document. I'm just curious if this is the workbook you're referring to. I'll ask the court reporter

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to mark it Plaintiff's 60. Do you recognize this document?
A I do.
Q What is it?
A It is the workbook that we provide to new attorneys.
Q Is that the document you're referring to during State's examination?
A It is.
Q You can put that aside. I was just making sure I understood what was going on. You mentioned that you were a member of the Delphi Group. Could you explain what that was and what your role was?
A So the way I understood the process of the whole RubinBrown study was that first they did a timekeeping -- well, first they had to identify categories to keep track of time. Once they identified those categories, they then asked the attorneys in the system to keep track of their time. I wasn't part of any of that. I just kept track of my time. Once they had enough time or they had the time that they needed to kind of reflect what we were spending our time on, they brought together a group -- and I don't remember how many of us there were, maybe 30, but it was half public defenders, half private attorneys and I don't know how they selected them, but anyway. They were all experienced attorneys. In fact, I

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was probably one of the less experienced in the panel and I had been around for maybe five years. We all came together several times, spent the day going through the averages of the times that they've collected, including the outliers. They asked us in the group, they said, "Do you think that the average is right or do you think it's low or do you think it's high? How should we adjust it? So we would adjust it however the group believed it should go up or down. And then if I remember correctly, we would go back and they would send another survey out and say like here is the new high; here is the new low and that sort of thing. Anyway, after we did that several times, that came up with -- that's how they came up the number to reflect the amount of time on average that an attorney should expect to spend on those case types.
Q And by -- when you refer to experienced private attorneys, were those attorneys experienced in criminal cases?
A Yes. Exclusively.
Q Exclusively in criminal cases?
A And they may have done other -- they may have had other practice, but they were brought in because they were criminal defense attorneys.
Q And when you were responding to questions from the State on hypothetical, you mentioned that you don't

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just look at the number of cases that an attorney has because the complexity of the case, such as whether it's a misdemeanor or an A, B felony affects the impact that that case has on an attorney's workload. Is your understanding that the metrics the RubinBrown study was attempting to establish to adjust for differences in the complexity of cases?

A Yes. They were meant to be averages taking into consideration some cases are going to take a lot of time and some cases aren't going to take as much time. So you try to come up with some number that reflects how much time, on average, you would spend on a particular case.

Q And when you say a particular case, you mean a particular kind of case, like an A, B felony?

A Yes. Based on the case types within the RubinBrown.

Q Do you remember what those case types were roughly?

A Murder, sex cases, C -- or A, B felonies, C,D felonies, misdemeanors, probation violations, appeals, and I think special sex cases like -- I can't.

Q That's fine.

A Yes, special sex cases, the civil ones.

Q If you could turn back to Plaintiff's 57. That's the e-mail you sent to upper management. You were

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discussing in the State's examination your request to upper management and responses from them and your relationship with them. If you would look at the first page of Exhibit 57. Do you see where Ellen Blau says, "I'm including Michael, Joel, Leon, Greg, and Jackie in your e-mail." She also says, "I will give you a call on Monday." Do you see where it says that?

A Yes, I do.

Q Did you speak with Ellen after sending her this e-mail?

A I'm sure I did.

Q Do you recall what if anything upper management told you in response to this e-mail?

A I know I have had several conversations with Ellen and Michael kind of related to this. They are, you know, they are concerned. They are supportive. They always let me know they'll do whatever they can for me. Obviously, the resource issue is really what this boils down to and that there is just not the resources available. In fact, Michael has even indicated to me in conversations, you know, when I say look I need more attorneys. He has indicated, he's like well, what if I gave you another spot. Could you fill it? Implying that he might give me another spot and the answer is no. I had to tell him no and I hated doing it because I would love another attorney spot,

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but we don't -- we didn't have -- we don't have the applicants.

Q So you wouldn't be able to fill that attorney spot because you don't have qualified applicants for it?

A Right.

Q What in your opinion would be ways to get more qualified applications?

A Well, I can think about what keeps people around. That's -- people generally don't become public defenders to get rich. They become public defenders because they want to make a difference and they want to help the least fortunate in society; those charged with crimes. When they are not able to do that and it's quite apparent that we are not able to do that, it's just -- you are not going to attract those people. I don't know where they go, but they go somewhere else. A lot of -- they go to the prosecutor's office. I have several friends that were public defenders that are now at the Attorney General's office. They don't stick around and they don't apply. In my area, you know, obviously money is an issue; $39,000.00 is a low -- you're not going to attract very many people when you're only making $39,000.00 a year and you're expected to work upwards of 60 hours a week or more. That's outrageous. You're -- I don't know if -- you're barely making $15.00 an hour. People make more than that

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working at restaurants and, you know, doing tasks that don't weigh on their mind all night long. That they can't sleep at night because they feel bad that their client is sitting in jail and they could have done more if they had only worked longer. So pay is a factor. The hours is a big factor. The lack of respect; nobody wants to be a public defender. It's not like it's a prestigious position. You know, if you want to be a judge some day, you're not going to be a public defender; you're going to be a prosecutor. All of the judges in my neck of the woods were prosecutors. They weren't public defenders. So there is a prestige issue. You know, some people overcome that. I don't necessarily care but for a lot of young people, you know it's difficult. There is not just a lot of pros to being a public defender. If you don't have the drive, you're not going to be able to do it. Even if you have the drive, we will stamp it out of you pretty quickly when you realize you can't do the work that you want to do.

MR. SHAHABIAN: I have no further questions.

THE VIDEOGRAPHER: This concludes the videotaped deposition of Matthew Crowell at 5:53 p.m. We are off the record.

(Deposition concluded at 5:53 p.m.)

CERTIFICATE OF REPORTER

STATE OF MISSOURI)
) ss.
COUNTY OF GREENE)

I, Jenna Petree, do hereby certify that the witness whose testimony appears in the foregoing deposition was taken by me to the best of my ability and thereafter reduced to typewriting under my direction; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition was taken, and further that I am not a relative or employee of any attorney or counsel employed by the parties thereto, nor financially or otherwise interested in the outcome of the action.

Court Reporter

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Exhibit F

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI
CENTRAL DIVISION

SHONDEL CHURCH, et al.,)
)
Plaintiffs,)
)
vs.) Case No.
) 17-04057-CV-C-NKL
STATE OF MISSOURI, et al.,)
)
Defendants.)

VIDEO-RECORDED DEPOSITION OF KATHLEEN L. LEAR
TAKEN ON BEHALF OF THE PLAINTIFFS
OCTOBER 6, 2017

(Starting time of the deposition: 1:36 p.m.)

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(The original exhibits were retained by the court reporter to be attached to the original and copies of the transcript.)

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI
CENTRAL DIVISION

SHONDEL CHURCH, et al.,)
)
Plaintiffs,)
)
vs.) Case No.
) 17-04057-CV-C-NKL
STATE OF MISSOURI, et al.,)
)
Defendants.)

VIDEO-RECORDED DEPOSITION OF KATHLEEN L. LEAR, produced, sworn and examined on October 6, 2017, between the hours of one o'clock in the afternoon and four o'clock in the afternoon of that day, at the ACLU of Missouri Foundation, Suite 1130, 906 Olive Street, St. Louis, Missouri 63101 before William L. DeVries, a Certified Court Reporter (MO), Registered Diplomate Reporter, and Certified Realtime Reporter, in a certain cause now pending in the United States District Court, Western District of Missouri, Central Division, between SHONDEL CHURCH, et al., Plaintiffs, vs. STATE OF MISSOURI, et al., Defendants; on behalf of the Plaintiffs.

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IT IS HEREBY STIPULATED AND AGREED by and between counsel for the Plaintiffs and counsel for the Defendants that this deposition may be taken in shorthand by William L. DeVries, RDR/CRR, a Certified Court Reporter and Certified Shorthand Reporter, and afterwards transcribed into typewriting; and the signature of the witness is expressly reserved.

* * * * *

KATHLEEN L. LEAR,

of lawful age, produced, sworn and examined on behalf of the Plaintiffs, deposes and says:

(Starting time of the deposition: 1:36 p.m.)

VIDEOGRAPHER: We're on the record. Today's date is October 6th 2017 and the time is approximately 1:36 p.m. This is the video-recorded deposition of Kathleen L. Lear in the matter of Shondel Church, et al., versus State of Missouri, et al., Case Number 17-04057-CV-C-NKL, in the United States District Court for the Western District of Missouri, Central Division.

This deposition is being held at ACLU of Missouri Foundation in St. Louis, Missouri. The reporter's name is Bill DeVries. My name is John Niehaus. I'm the legal videographer. We are with

Midwest Litigation Services.

Will counsel please introduce yourself for the record?

MS. ANAND: Easha Anand for the plaintiffs.

MS. QUINN: Mae Quinn, plaintiffs.

MR. MOORE: Justin Moore for state of Missouri and Governor Greitens.

MS. SHIPMA: Jacqueline Shipma for the public defenders.

THE WITNESS: Kathleen Lear, public defender.

VIDEOGRAPHER: Will you please swear in the witness?

COURT REPORTER: Do you swear or affirm that the testimony you are about to give in this proceeding will be the truth, the whole truth, and nothing but the truth?

THE WITNESS: I do.

EXAMINATION

QUESTIONS BY MS. ANAND:

Q. So thank you very much for being here today.

A. You're welcome.

Q. I'm Easha Anand. I represent the

plaintiffs. Have you ever been deposed before?

A. No.

Q. Okay. So I'm going to just go over a couple of ground rules that may seem obvious, but -- so I'm going to ask you some questions relative to this case and you are going to answer truthfully to the best of your ability. Feel free to tell me you don't know. I don't really know what a comptroller is so I may ask some things that are outside your area of expertise.

A. Okay.

Q. But it's just as though you're under oath and testifying in court. Do you understand?

A. I do.

Q. This deposition can go no more than seven hours. It will be a lot less, but please feel free to ask for a break if you need one.

A. Okay.

Q. The -- the only request is that if I ask a question, you answer before the break. There may be objections from either Ms. Shipma or Mr. Moore, but except in a few very limited circumstances you're still going to answer the question even if there's an objection on the table. And Ms. Shipma will instruct you if you're not to

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answer the question. Got it?
A. Uh-huh.
Q. Okay. And then the last point is just a style one. So tell -- you know, just let me know if you don't understand, if you have trouble, you know, hearing me or are confused. Let me ask kind of the whole question before you answer so we've got a clean record and answer out loud, so no nodding, shaking your head, shrugging so the court reporter can say. Does that all make sense?
A. That makes sense.
Q. Okay. So are you aware that you were identified by your attorney as one of the MSPD employees designated to provide testimony under Rule 30(b)(6)?
A. Yes.
Q. Okay. I'm going to show you the deposition notice, which has previously been marked as Plaintiff's Exhibit Number 1.
(Exhibit 1, Previously marked exhibit.)
Q. (By Ms. Anand) Take a second and just look through it. Okay. And on -- if -- if you look -- I'm going to have you hold on to it for one more second --
A. Okay.

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Q. -- so I can just get this all on. If you look at the list of topics, you're aware that you've been identified to talk about that very last topic?
A. Uh-huh.
Q. Is that right?
A. Yes.
Q. Okay. And you understand that your testimony is on behalf of MSPD, so you're representing MSPD in this?
A. I do.
Q. Okay. Okay. So how did you prepare for this deposition today?
A. I reviewed the documents that I provided, that were requested by your attorneys, I guess.
Q. By us, that's right.
A. Uh-huh.
Q. Did you consult with anyone?
A. Just Jacquie.
Q. Okay. And --
A. Just my attorney.
Q. Just your attorney, that's right. And did you bring any documents with you here today?
A. A few.

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Q. Okay. Do you want to hand them over to me now?
A. Not really.
Q. I'll give you --
A. I brought work product.
Q. Oh, I see.
A. Yeah.
Q. Okay. My apologies.
A. Okay.
Q. Okay. So -- and just so I'm -- I'm clear, those are notes for yourself?
A. That is correct.
Q. Okay. Understood. Sorry. I didn't mean to --
A. No, that's okay.
Q. I didn't mean to steal those from you.
A. No.
Q. Okay. So let's just start with the basics. Tell me your job title and kind of what your role entails.
A. My job title is the comptroller for the Missouri State Public Defender System. I've held this position for 35 years, so --
Q. Congratulations.
A. -- a long time. I -- I do a lot of

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things for the public defender. We're a small enough agency that the comptroller does facilities management, does budget hearings with the director, prepares fiscal notes, monitors expenditures, prepares budgets, reports to the commission, public defender commission. Kind of whatever needs to be done.
Q. I see. Does one of your roles involve any kind of auditing?
A. More internal auditing than external auditing. So auditing of our agency, I would say yes. External auditing, absolutely not.
Q. Got it. Okay. And has your title been comptroller for the full 35 years?
A. It -- it has.
Q. And what was your job before that?
A. I was the deputy comptroller for the Office of the State Courts Administrator.
Q. Got it.
A. And prior to that I was the grants manager for the Supreme Court.
Q. Got it. And can you just tell me a little bit about your educational history?
A. I graduated from the University of Missouri -- I'm glad that fell here -- University of

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Missouri at Columbia in 1974 with a degree in accounting.

Q. Good. Okay. Okay. So I want to kind of talk about both kind of the allocation of resources piece and then about where you get your funding from piece. So starting with the kind of allocation of resources. Who decides how your funding gets allocated?

A. Our -- yeah, if you're speaking of our internal budget.

Q. That's right.

A. Our internal budget is approved by the state public defender commission at their June meeting --

Q. Okay.

A. -- typically at their June meeting for the year coming up. So we operate on a July 1 to June 30th fiscal year, so approximately the middle of June of 2016 they approve the 2017 budget. So in the middle of June just past, June 2017 they approved the operating budget for fiscal year '18.

Q. Okay. I'm sure I'm going to get the fiscal years and the actual years confused, so you'll try to correct me, I'll try to keep track of it.

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A. Okay. Thank you.

Q. So -- and in terms of the role that the commission plays, can you tell me a little bit about are they developing the budget, are you handing them something and they're signing off on it, what's the general process?

A. The general process is after meetings with the division directors of the Missouri State Public Defender System, we prepare an internal budget draft that is presented to the commission. It has all the payroll information. It has all the expense and equipment information. It has all of the budget information necessary to operate for the fiscal year, and the commission reviews it. I present it in significant detail to the commission. They have questions and then they either vote to approve or change, which they do occasionally or adjust, and then move to approve and adopt the budget. So right now we're operating on the fiscal year '18 budget.

Q. Okay. And when you say -- you said we consult with the -- with the district and division directors. You and who else is involved in that process?

A. Me and the division directors of the

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Missouri State Public Defender System.

Q. Got it. And is there anyone besides -- anyone else outside the Missouri state public defender who is involved in developing this internal budget?

A. No. Other than the commission of course.

Q. Other than the commission. Got it.

A. Uh-huh.

Q. And who sets -- you -- you mentioned one of the big line items obviously is payroll. Who kind of sets the pay structure?

A. Again, the commission sets the pay structure. We try to mirror other state agencies as closely as we can.

Q. Okay. But there's no kind of statutory or other constraint?

A. No, absolutely not.

Q. Okay. So what is the approximate annual budget for fiscal year 2018?

A. That's why I brought my notes. May I refer to them?

Q. Please. Go ahead.

A. It is approximately -- well, I might as well tell you the exact.

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Q. I appreciate it.

A. The general oper -- the general revenue budget for the Missouri State Public Defender System in 2017, we're going to talk about 2017, was $37,997,456.

MR. MOORE: I'm sorry, what was that number again?

THE WITNESS: 37,997,000, general revenue dollars.

MR. MOORE: Thanks.

THE WITNESS: Okay. Sure.

Q. (By Ms. Anand) And then I just want to talk just to have a kind of high level overview, what are the kind of buckets of things that money needs to go towards? You mentioned payroll.

A. Payroll is a huge -- is the largest bucket by far.

Q. Okay.

A. The other buckets it goes to is the operation of the local offices, the local public defender offices. The other things that it goes toward is contract counsel and litigation expenses. We also have a bucket that I call statewide expenses. That is things that we pay on a statewide basis rather than an individual office basis. So

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those are the -- the large buckets that we pay out of.

Q. Okay. And so I'm just going to kind of take them one by one and make sure I understand what they entail.

A. Okay.

Q. So when you say operation of local offices, so -- so we've got bucket number one is payroll. Bucket number two, operation of local offices. What -- what falls under that?

A. Local travel, office supplies, postage, copy machine maintenance, any cleaning of the local office, toilet paper.

Q. Yeah.

A. Those types of things are included in the local office budgets.

Q. And what about the facility itself?

A. The facilities, the local district defender offices by statute are provided to us by the counties that each office supports.

Q. Got it.

A. That's 600.040.

Q. Okay. Thank you. And what about kind of the other sorts of overhead like electricity or air conditioning or those sorts of things?

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A. It actually varies office by office. Many of the leases are all inclusive, which means that the county provides everything, utilities, even cleaning services in the larger offices. In the smaller offices we generally pay for the cleaning services and occasionally in one or two offices we pay for some of the utilities.

Q. Okay.

A. Kind of depends on what kind of lease the counties are able to negotiate.

Q. Got it. Okay. So then the third bucket you mentioned is contract counsel. So tell me about what kind of falls in that bucket.

A. That bucket is for conflicts of cases, conflict cases that arise at the local office level. They're transferred to the state office level and then they're farmed out to local private attorneys.

Q. Okay. And is that the only situation in which you're using contract counsel?

A. It is with -- for conflicts.

Q. For conflicts is the only --

A. Uh-huh.

Q. -- case? Okay. And then in terms of paying contract counsel, what does the payment structure look like?

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A. Can I refer to my notes, please?

Q. Please. Yeah. You don't have to ask permission to refer to your notes.

A. Okay.

Q. And I'm sorry again for trying to steal them from you.

A. I can't -- I can't remember all these numbers off the top of my head.

Q. Of course.

A. Our fee schedule is again set by the commission, and it ranges from $375 for a misdemeanor to $10,000 for a murder first degree.

Q. Okay.

A. And it has a wide range in-between that.

Q. Okay. And that's -- that's sort of all inclusive?

A. It is not. Contract counsel can bill for mileage and litigation cost.

Q. Okay. And what would -- what would be a litigation cost they get billed for?

A. Deposition.

Q. To take an example at random.

A. Yeah. A deposition. Any type of DNA analysis, a mental health exam, things like that.

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Q. And what if they -- it's just going to take them a lot longer than the average misdemeanor, it's going to go to trial, something like that, can they -- can they bill you separately for that?

A. They can come back and ask for additional funds for a trial.

Q. Got it. And what is -- is there a set schedule for trials as well?

A. There is, and I don't know that number off the top of my head. It's in the documentation provided to you.

Q. I'm sure it is. Okay. So they -- they can ask for additional money for -- for a trial.

A. Uh-huh.

Q. What if they just came back to you and said, you know, this case actually took me 400 hours even though it's just a misdemeanor? Do you have any kind of contingent to pay them more for their time?

A. That's really not something I approve. That would be something that Mr. Elmer would approve, the division director --

Q. Got it. Okay.

A. -- deputy director.

Q. Got it. Okay. So let's move on to

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bucket number four, the litigation expenses bucket.
A. Okay.
Q. So tell me what things fall -- fall in that litigation expenses bucket.
A. Again, that's not something that I necessarily approve, but we do -- we have worked together to come up with categories --
Q. Okay.
A. -- so that we can keep track of those types of expenses.
Q. Okay.
A. So the categories include adolescent brain development.
Q. Okay.
A. Autopsies.
Q. Uh-huh.
A. Copies, depositions, DNA experts, forensic experts of any type, immigration counsel, interpretive services. I mean, a lot of mental health things regarding mitigation. The other things include copies of records, copies of transcripts. Those are what we consider litigation costs.
Q. And how do you kind of ballpark that for the year?

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A. We know what the budget is and basically whatever is left is budgeted toward litigation cost.
Q. Got it. So -- so in your mind, these other buckets are sort of fixed costs?
A. Right.
Q. And then the leftover is what you got to cover all the litigation expenses?
A. That's correct. That's correct.
Q. Okay. And are those allocated on a district-by-district or division-by-division basis or does an individual attorney say in this case I need something?
A. An individual attorney says in this case I need this.
Q. Okay. And all the attorneys in the whole MSPD are trying to pull money out of this one litigation expenses bucket?
A. Correct.
Q. Okay. Okay. The final category you talked about the statewide expenses.
A. Uh-huh.
Q. What are some of the examples of those?
A. Again, may --
Q. Please. Please.

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A. I prepared.
Q. Yes, you did.
A. I did. The things included in statewide are parking for the local offices. For instance, parking in St. Louis city is very expensive. Kansas City is expensive. So parking is a statewide cost.
Q. Uh-huh.
A. Printing of forms, printing of forms that are used by everyone, indigency determinations, lien forms, things like that are included in statewide. Any one-time purchases that happens over the years is included in statewide --
Q. Okay.
A. -- such as a copy machine replacement or a PC replacement, whether it is a shredder that we have to have now. Things like that are included in statewide. If we would have to purchase any type of system like a new telephone system, which we had to do last year, that's included in statewide.
Shipping, like UPS, shipping transcripts, shipping equipment, shipping laptops back and forth, backup tapes, the shipping is included. Any advertising is included under statewide for position replacements. Missouri bar

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dues is included under statewide. So that's -- that's statewide.
Q. Got it.
A. Those are the statewide costs.
Q. And again, that's sort of again the kind of fixed bucket you don't have a ton of choice in as compared to the litigation expenses where that's sort of the leftover?
A. I consider that direct cost. Those statewides are direct cost.
Q. Okay. When you say direct cost, what do you mean?
A. Parking. The same list.
Q. Got it.
A. It's -- it's something that's fixed.
Q. Got it. Okay. Thank you. I'm unfamiliar enough with some of the financial terminology that I may have to ask you some silly questions.
A. No problem.
MS. ANAND: Okay. So I'm going to show you what I'm going to mark as Plaintiff's Exhibit Number 30. Am I getting the numbering right? Okay.
(WHEREIN, Exhibit 30, FY17 Financial performance report, was marked for identification.)

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Q. (By Ms. Anand) Okay. So can you tell me what this document is?

A. I call this a performance report basically, but it's a financial performance report, has nothing to do with the valuations or anything like that. But what it is is a listing of all of the moneys appropriated to the Missouri State Public Defender System by appropriation, and then how much was expended as of May 18th -- May 19th, 2017, what's balance left in that fund, and what percentage has been expended for all funds --

Q. Got it.

A. -- appropriated to the state public defender system for 2017.

Q. Got it. So this is kind of how you keep track of whether you're on track for the year basically?

A. This is a summary of that information, correct.

Q. Okay. So I just want to ask you about a couple lines in this document.

A. Okay.

Q. So do you see where kind of in the -- in the left-hand column the first line says expended does not include encumbrances?

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A. Correct.

Q. Tell me what that means.

A. I'm trying to come up with a short answer. The office of administration has a statewide accounting management system called SAM. And SAM for most state agencies requires that large expenditures be encumbered for the year. For instance, if I was paying off a lease, I would encumber the entire lease at the beginning of the year and then reduce that encumbrance each time I paid it.

Q. I see.

A. And there are no encumbrances under any of these.

Q. Got it. Okay. That makes sense. Okay. And then the first kind of category it looks like is legal services. What falls into the legal services category?

A. Legal services is the title of the appropriation as appropriated by the legislature and signed by the governor. It's House Bill 12.

Q. Okay.

A. And if you look at House Bill 12, legal services for the purpose of funding the state public defender system. It's that broad.

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Q. Oh, wow. Okay. You really are prepared, huh?

A. I try.

Q. And then it's a little bit cut off in this Excel spreadsheet, but it looks like the next bucket --

(Court reporter interruption.)

Q. (By Ms. Anand) -- cut off in this Excel spreadsheet, but it looks like the next bucket says something like expense and equipment?

A. It does.

Q. And is that -- that's the name of a separate fund?

A. It -- it's a separate appropriation.

Q. Okay.

A. It's separated by the office of administration.

Q. Okay.

A. It's not separated by the legislature nor the governor.

Q. Got it.

A. The office of administration takes that legal services and divides it into personal service and E and E.

Q. Okay.

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A. Expense and equipment. I'm sorry.

Q. Nope, that makes total sense. Okay. And then how about the -- the next highlighted bucket, which is homicide/conflict money, what is that?

A. Litigation cost.

Q. Okay.

A. And conflict funds. They're in one appropriation there.

Q. And that's again an appropriation by the -- it's separately appropriated by the legislature?

A. Yes, as a part of House Bill 12.

Q. Okay. Got it. Okay. And then how about personal service?

A. Further down?

Q. Uh-huh.

A. The only difference between that personal service and the personal service above is the funding source. On that funding source is the legal defense and defender fund.

Q. Got it. I had skipped a line. Thank you.

A. Uh-huh.

Q. So the legal -- so tell me what the

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legal defense and defender fund is.

A. The legal defense and defender fund is also established by our statute.

Q. Okay.

A. By statute we are required to charge our clients fees and the fees that we collect are put into the legal defense and defender fund. The dollar figures shown there, the total of the 135,187 and the 23 -- the 2,850,756, the total there is spending authority. We can spend up to that amount should we collect it. We have never collected it.

Q. Do you ever collect anywhere close to that amount?

A. Last year was a million 300,000.

Q. Got it. And when -- when there's a note at the bottom that says no lapse, what does that mean?

A. Up until last year, any moneys left in that fund at the end of a fiscal year greater than 150,000 by statute was subject to a biannual sweep by the legislature, took money out of funds that wasn't general revenue and said, whoops, now your general revenue in public defender, you don't have any authority to spend it anymore.

Q. Huh. Okay.

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A. So last year legislation went through that changed that and any moneys left in our fund at that biannual sweep date are left alone.

Q. So you can kind of roll over --

A. Yes.

Q. -- amounts for that --

A. It provides for much greater management ability. The money is also used for training purposes and to have money available all year rather than at the end of the year just makes for better management.

Q. That makes sense. And then a couple lines down from that you've got other funds. What is kind of in the other funds bucket?

A. As you can -- the other funds is debt offset, another long story. The debt offset fund is a revolving fund that is established by the office of administration. What it is used for is we are participants in the debt offset -- debt offset program, sorry, which means if you are a prior Missouri state public defender client and you have an outstanding fee owed to the public defender, and should you be getting a Missouri state income tax refund --

Q. Okay.

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A. -- we take it.

Q. Oh.

A. And it goes into the debt offset fund, and that is a statewide fund and then the public defender system takes their share out of that.

Q. I see. Okay. And then how about that last bucket which is labeled federal?

A. As you can see, we don't have any expenditures there, nor did we get any federal funding in 2017. Again, that is appropriation authority to spend up to that amount should those funds become available. It's -- and we didn't have any.

Q. And have you historically gotten federal funding?

A. I think the last time we had federal funding, I don't know the exact date, but I'm guessing around 1994.

Q. Okay. I see. That's helpful. So I want to now turn --

A. You want this back?

Q. You can actually hang on to that. You -- you get a copy of all these for now.

A. Okay.

Q. And there's some chance as we tried to

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organize my questions, but there's a couple documents, particularly the kind of proposed budget to the legislature and the governor we'll refer to it at a couple different points, so I'll just ask you to hang on to it so you can flip back.

A. Okay.

Q. Okay. So I guess now I want to just ask you a little bit about the breakdown of that payroll. How -- what are the categories of employees that you hire? So there's attorneys. What are some of the other kinds of --

A. There are multiple kinds of attorneys.

Q. Okay. That's fair.

A. There's assistant public defenders.

Q. Okay.

A. There's district defenders.

Q. Okay.

A. There's paralegals, there's investigators, there's mitigation specialists, and there are secretaries. That's basically the types of employees that we have. In addition, I think there are seven and a half computer people, something to that effect.

Q. Got it. Got it. I'm just going to show you --

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A. This is part of -- that's a page out of the internal budget.
MS. ANAND: Got it. Okay. I'm going to show you what I'm marking as Plaintiff's Exhibit 31 just so we have it for reference.
(WHEREIN, Exhibit 31, FY2017 Payroll Summary, was marked for identification.)
THE WITNESS: Thank you.
Q. (By Ms. Anand) So tell us again now that you officially have it what this document is.
A. Uh-huh. It's part of the internal operating budget that's prepared for the commission at the beginning of every year that we discussed. They approve it approximately the middle of June the year -- for the coming-up fiscal year. This is a summary of a snapshot of payroll.
Q. Okay.
A. So this is -- if it was in the book I'd know the date. As of that specific date how many of those staff were allocated and what did I think it was going to cost --
Q. Uh-huh.
A. -- in 2017 to fund those positions.
Q. Got it. And can you tell me what the difference is between the two columns labeled FTE?

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A. There's -- it's really only one column of FTE. It's -- it allowed me to break out the assistant public defenders by their different classes.
Q. Oh, I see.
A. And I -- then I can total in that column.
Q. Got it. Okay.
A. Uh-huh.
Q. That -- that was -- that should have been obvious to me.
A. There was 335.5 total assistant public defenders.
Q. I see. Okay.
A. And 43 district defenders.
Q. And this reflects at -- you know, at the -- at the time it was created this was everyone who was working for MSPD, everyone would be on here?
A. It's all of the positions that were allocated on that day.
Q. Okay.
A. It may have been some vacant positions there, but we knew they were going to be filled.
Q. Got it. And if -- if you didn't know for sure that a vacant position was going to be

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filled, would it be on this sheet or no?
A. We hope all vacant positions are going to be filled.
Q. Got it. Okay. And then at the very bottom it says (quote as read):
In addition to budgeted positions, there are 6.12 over --
(Court reporter interruption.)
Q. (By Ms. Anand) At the very bottom we've got (quote as read):
In addition to budgeted positions, there are 6.12 overstaff positions. What are overstaff positions?
A. It means although there isn't an FTE -- do you know what FTE is?
Q. Full-time employee?
A. No, full-time equivalent.
Q. Equivalent, I'm sorry.
A. You're close. I guess I'm not supposed to ask the question.
Q. No, please. That was great. That was very helpful.
A. Okay. So it's full-time equivalent. In addition to those that are authorized by the legislature because we know there will be vacancies

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during the year we allocated 6.12 overstaff -- overstaff positions --
Q. Uh-huh.
A. -- and so I know from history that we're going to have more than 6.12 full-time equivalent positions available to give. So we over budget. So the office may get an additional attorney, but with no FTE associated with that -- that position just because we know we have that much turnover.
Q. I see. So you know someone is probably going to leave office X, so you give office X an extra person at the start of the year?
A. It really doesn't matter because it's one total.
Q. Got it.
A. So if I know an office is -- if we know. It's not my decision. If we know, if MSPD knows there is an office that's struggling with caseload, we can allocate an overstaff to that office.
Q. Okay. And at any given time how does the number of FTEs you're budgeting for or that you've been allocated compare to how many I guess FTEs you actually have; that is how many vacancies

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are there typically at a given time?
A. That information is provided to you in a document and it's part of the legislative budget request.
Q. Excellent. Okay. Well, let me give that to you so we can refer to that going forward.
A. The 27 -- it'd be the 2018 legislative budget that I would need to look at. Not that one.
MS. SHIPMA: They may not have -- they may not have that one.
Q. (By Ms. Anand) So this is the legislative budget request and --
A. That's not -- that was prepared for the commission, yes.
Q. Got it. Okay. So let me just ask you then really quickly so that I know what to hand you for the next couple rounds of questions.
A. That's what I need right there.
Q. This is it? Okay. Thank you.
A. Uh-huh. Is that the '18 or '17?
Q. This is '17.
A. Okay. So that will give me the information for 2016, which will be comparable.
Q. Okay. Got it.
(WHEREIN, Exhibit 32, FY17 Public

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defender legislative budget request, was marked for identification.)
Q. (By Ms. Anand) So I'm handing you what's being marked as Plaintiff's Exhibit 32.
A. Okay.
Q. So before we kind of dive into these documents, can you tell me first -- first tell me what this document is and then I also want to ask you what the other one was before we keep going. So what is this document, number 32?
A. Number 32 is the Missouri state public defender legislative budget request, which includes the governor's recommendations for fiscal year '17.
Q. Okay. And what does that mean?
A. This is what we're asking the legislature for.
Q. Got it. And what is the difference between that and a document labeled -- and the document labeled the -- the draft legislative budget request?
A. The document you're showing me there is what is provided to the commission for their approval. It mirrors the numbers in here. It's just a much shorter, much more concise version of it.

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MS. ANAND: Okay. And I'm going to get that admitted as Exhibit 33, the document that Ms. Lear was just referring to just so we have everything you would need to reference.
(WHEREIN, Exhibit 33, FY17 Public defender legislative budget request, was marked for identification.)
THE WITNESS: Thank you.
MS. ANAND: Of course. Thank you.
Q. (By Ms. Anand) Okay. Now that you've got Exhibits 32 and 33 in front of you, can -- can you tell me roughly how many of the FTEs that are allocated are actually filled by people working full-time? Thank you.
A. On page 17 of Exhibit 32 --
Q. Uh-huh.
A. -- it shows you that our total allocated FTE for 2017 was 585.13.
Q. Okay.
MR. MOORE: I'm sorry, what page are you referring to?
THE WITNESS: Page 17.
MR. MOORE: Page 17, thanks.
Q. (By Ms. Anand) So there's a couple different numbers. It also says page 1 of 11; is

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that right?
A. Yes. So we are allocated 585.13. This shows you what was totally expended if you want for FY16. In the FY16 column it was 585 -- well, it shows you the FY15 expended was 580.62. And so that's pretty representative of how it goes on a general year. We were five short of having it all the FTE. It just ...
Q. Can you tell me why you are typically five short?
A. It's the method in which FTE are calculated. An FTE is 2,080 hours no matter who, what, when, or where, whether it be annually taken, annual paid off or hours worked. So that all goes into calculating your FTE as expended.
Q. I see. And so when you say that there -- when you say that you're five short of the FTE number, does that mean you're actually five employees short or -- I see. Okay.
A. Not necessarily. What that means is we're five times 2,080 short of meeting our total authorized FTE hours.
Q. Got it. So it could be a vacancy in a position, but it could also be someone got sick and took leave or something like that?

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A. It could be.
Q. I see. Okay. Can you just -- while I have you in this report, the next page, page 18, in response to question number one you've written that (quote as read):
The office of state public defender is requesting full flexibility in our legal services appropriation.
What does that mean?
A. It means that we can transfer money from one appropriation line to another appropriation line. If you refer back to your Exhibit 30, the first two yellow boxes on the left-hand side of the paper is actually appropriated by the legislature and signed by the governor as one appropriation.
The office of administration splits that out into personal service and the expense and equipment. Therefore, they also allow us to move money back and forth between those two appropriations, and that's the hundred percent flexibility that we're requesting on page 12 of -- or 18 of the budget book.
Q. Got it. And does that apply to also for example the homicide and conflict moneys bucket?
A. No, it does not.

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Q. Okay.
A. Just between legal services.
Q. I see. Okay. And does that mean that you can -- as far as the legislature is concerned, you can move money across districts?
A. Yes.
Q. Yes, okay. And how about across kinds of expenses, so you could spend more --
A. Yes.
Q. -- on equipment and less on payroll in a given year?
A. Yes.
(Court reporter interruption.)
Q. (By Ms. Anand) More on equipment and less on payroll in a given year, for example. And that is all subject to approval by the commission, not by the legislature; is that correct?
A. I'm not clear on your question.
Q. So the -- the amount of money you're spending on a given district or amount of money you're spending on a particular kind of expense, like equipment versus payroll, that kind of internal budgeting goes through the commission, it's not something the legislature has to approve?
A. It's through management. The commission -- once it approves the internal operating budget, the information they receive on a quarterly basis is this Exhibit 30.

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Q. Got it. Okay. That makes sense. Okay. So now I want to kind of go through how the decision is made to allocate funds on a district or division level. So I guess my first question is when you're looking at this pot of money, how do you decide how many people are going to be employed by a given division or a given district? How do you decide how to allocate staff?
A. The allocation of staff is really not my decision.
Q. Okay.
A. But what is -- is done is based on caseload, how many people do we need and how can we allocate what we have.
Q. And do individual districts request funds for themselves or put together a budget proposal?
A. No.
Q. Do each of the divisions do that, the trial versus appellate versus --
A. No.
Q. Okay. And do you supervise at all how the districts spend their money, so that is do you tell them I'm allocating this money and I want you to hire one paralegal and one attorney?
A. Yes.
Q. Okay. Got it. Okay. So I want to go back to the -- the legislative budget request draft -- yeah, there you go. I believe that's Exhibit 33; is that correct?
A. Uh-huh. Correct.
Q. Okay. So on page 14 of that you've got a chart entitled State Public Defender Cumulative caseload Metrics; is that right? So there's a couple different numbers in the bottom corner, but it's this small two-digit one. Okay, you got it?
A. Uh-huh.
Q. Who puts this together?
A. On page 14?
Q. Uh-huh.
A. That's put together by our IT staff.
Q. Got it. And are you familiar with kind of the methodology or how they're doing these calculations?
A. A little.
MS. SHIPMA: Can I just tell you that that was -- this -- a very similar exhibit was used

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I believe in Joel Elmer's deposition.
MS. ANAND: Yeah.
MS. SHIPMA: And he went through that, so --
MS. ANAND: Yeah, yeah. I just wanted to --
MS. SHIPMA: Yeah. I just wanted you to know that it's explained somewhere if she can't do it.
MS. ANAND: Right. Right.
Q. (By Ms. Anand) So I'm going to ask you a couple specific questions, but you may -- you may not know the answer so just let me know.
A. Okay.
Q. My first question is when you're calculating capacity there, do you know if you are looking at the full 2,080 hours of each employee?
A. Of attorneys, yes.
Q. Of attorneys, yes. And so that wouldn't take into account say if an attorney had vacation time?
A. No.
Q. Sick days?
A. No.
Q. Attending conferences?

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A. No.
Q. Attending trainings?
A. No.
Q. Doing any kind of noncasework?
A. 2,080.
Q. Got it. Okay. Does that number include the district director's time?
A. Yes.
Q. Okay. So this is assuming every single attorney, whether they're supervisor or not, is spending every minute of their full-time work on cases?
A. Yes.
Q. Okay. Got it. And then in terms of the workload numbers that you're looking at, does that include -- is that based solely on the RubinBrown numbers plus the log to travel in court time?
A. I'm not sure of that answer. I believe so, yes.
Q. Okay. And do you know if it makes a distinction by say type of client or complexity of the case or anything like that?
A. It does take into consideration the type of case, yes.

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Q. That's right. And -- and by that you mean misdemeanor versus --
A. Yeah. The entire breakdown is on page 15 there.
Q. Got it. Okay.
A. They each have different weights on page 15 of the same document.
Q. Got it. Okay. Okay. So now I want to turn to the kind of encumbrance process that you had described -- I'm sorry, the litigation expenses process.
A. Okay.
Q. So when an attorney is working on a case and says I need a litigation expense, what is their process? What do they do?
A. As part of our caseload database there's a button they push that says I need -- I need money basically.
Q. Uh-huh.
A. And they fill out the form. It's routed appropriately.
Q. Uh-huh.
A. So if I'm a local district defender in the Kennett office, it's routed to my district defender who provides approvals.

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Q. Uh-huh.
A. Provides an opportunity to chat with that attorney about that case.
Q. Uh-huh.
A. And then it's routed through the division director for final approval.
Q. Got it. And -- and what happens if you run out of money in that fund?
A. I don't know. We haven't.
Q. And what are some of the practices you use to make sure that you don't run out of money in that fund?
A. The full flexibility. That's the only reason we haven't run out of money.
Q. And where do you typically sort of pull the money from to make that --
A. Vacancy savings.
Q. I see. Okay.
A. That's why we have five extra FTE.
Q. I see. Okay. And I just want to make sure I'm -- I'm kind of covering the full suite of things that would be in that -- in that bucket. So we said experts would be under litigation expenses?
A. True.
Q. What about kind of if you wanted to get

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evidence independently tested, like the state did a DNA test and you wanted someone else to do --
A. That would be part of it.
Q. Okay. How about if you wanted to hire -- you wanted to consult with a social worker?
A. Yes.
Q. Okay. I think you mentioned interpreters; is that right?
A. Yes.
Q. Okay. Now, how does -- how does investigators work? I know that we've got -- you've got some staff investigators. If someone wanted to hire an outside investigator, would that be out of the litigation expenses bucket?
A. It would be.
Q. Okay. You mentioned depositions?
A. Yes.
Q. Did you mention consulting with an immigration firm?
A. Yes.
Q. Okay. What about going to -- if you needed to travel for a case?
A. Yes.
Q. Okay.
A. It would -- it would come out of

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this -- the litigation cost.
Q. Okay. What if an attorney wanted to attend a training of some kind, where would that come from?
A. It comes from our training fund.
Q. Okay.
A. Which is separate from litigation cost.
Q. Got it. Okay. And all those expenses I listed, those are coming out of your litigation expense fund, not the kind of -- a court or other outside fund?
A. That's true.
Q. Okay. Let's say a lawyer said I just need more lawyers on this case, it's really like a four-person case, not a one-person or two-person case. Is that something they could ask -- use the same process to request more manpower?
A. I assume they could. I don't believe they ever have.
Q. Got it. Okay. Are there any other kind of categories of litigation expenses you've seen that I haven't listed? I know that you said that --
A. Crime scene photos.
Q. Crime scene photos, okay. And you

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mentioned transcripts as the other one, right?
A. Transcripts and records. Records are extremely expensive.
Q. And when you say records, what do you mean?
A. Hospital records, doctor records, records, yeah.
Q. Got it. Okay. And do either the assistant public defenders or the district directors get guidance from you or anyone else in management about kind of making this money last till the end of the year?
A. I think we do a very good job on being frugal with our funds. If we see something that we think we could do for less cost, we'll discuss that with the attorney and see if we can move forward that way. An example might be copying a large document. Maybe we could do that in-house at another office that has a better machine --
Q. Uh-huh.
A. -- rather than shipping it out to Kinko's that's going to cost you $0.50 a page. So things like that we try to get involved in saving as much money we can. Same thing goes for travel.
Q. Got it. And how about some of these

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other categories of kind of outside consultants, like experts or interpreters? Are there ways in which you're able to save money on those sorts of things?
A. Yes. We've gotten very serious with court reporters in making sure that we're getting paid -- that they're charging us a state rate and -- and only booking those court reporters that are charging us a fair price rather than the more expensive price if we can.
Now, of course, there's times when they're not available and we have to go with a more expensive person, but we try very hard to be as frugal as we can because we know the money is limited.
Q. And do you have a sense of how often someone who makes a request for say an expert is -- is turned -- turned down or said no to?
A. Very, very, very, very, very seldom. Mostly if there was something that happened, it would be adjusted or amended and not denied.
Q. And what do you mean by adjusted or amended?
A. I can do it locally cheaper, not taking it to Kinko's. So that would be an adjusted one.

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Q. Got it.
A. Or I can fly that person in on Southwest rather than Delta for $200 less.
Q. Got it.
A. So those are the types of things we'll amend, but I would say there's very few denials, very few. Less than -- less than, I don't know, a quarter of a percent --
Q. Got it.
A. -- I mean, over the years.
MS. ANAND: Okay. So I want to show you -- now I want to show you an e-mail that I'm going to mark as Plaintiff's Exhibit 34.
(WHEREIN, Exhibit 34, 5-3-16 Lear e-mail, was marked for identification.)
THE WITNESS: Okay.
Q. (By Ms. Anand) Okay. So can you tell me first -- this is an e-mail from you; is that right?
A. It is, yeah.
Q. And it's to Tony Roberts. Who is Tony Roberts?
A. Tony Roberts is our budget analyst within the office of administration division of budget and planning.

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Q. Got it. And so tell me what you were kind of conveying to him in this e-mail.
A. I'm -- I'm trying to remember the -- the time frame that this is involving. So it would be the end of fiscal year 2016, and that is the year -- well, I think I was just trying to tell him where we stood at the end of a fiscal year.
Q. Yeah.
A. It sounds to me like he may have asked a question, I was responding to it, how many vacant positions do you have. So I was trying to tell him that answer, and also trying to -- to make sure that he didn't think he could take those 41 vacancies away from us.
Q. Got it. And so what did you explain to him why the positions were vacant?
A. Because we were trying to meet the demands of the litigation cost.
Q. And then do you mind reading for me the last sentence of that full paragraph?
A. (Quote as read):
We are balancing MSPD's budget at the expense of our employees and our clients.
Q. Can you just tell me a little bit about

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why you felt like that was true?
A. Because we were holding positions open to meet litigation cost demands in 2016. We knew we were going to be approximately a million dollars short in litigation costs that year, and in order to meet the demands of our caseload and the cases that were open and pending and we knew how many bills were -- I knew projecting how many dollars of bills were coming in, I knew how many positions to hold open to come up with that amount of money.
And I felt that we balance the budgets at the expense of our employees by making those people that are still working for us work that much harder and that much longer to meet the demands of the caseload.
Q. And you also wrote you are balancing MSPD's budget at the expense of our clients. What did you mean by that?
A. Because they don't have as many attorneys to work for them.
Q. All right. So now I want to turn back to this draft legislative budget request, which I believe it's number 33.
A. Yes. Got it.
Q. Okay. I was hoping I could go through

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page 11 of that with you. So it's labeled Constitutionally Mandated Representation.
A. Okay.
Q. Do you know who prepared this text?
A. It's a combination of folks, myself and the director.
Q. Okay. So -- and please take a minute if you need to kind of skim it. What does that $22 million number represent?
A. It's the calculation found on page 16.
Q. You said page 16?
A. Yes, the bottom of page 16 is $22,600,000, same as the 22,600,000.
Q. Got it. And so that's the amount of money you thought would be necessary in order to have attorneys meeting the kind of constitutionally mandated caseload caps more or less?
A. That's correct.
Q. Okay. And why did you put that in the -- in the request?
A. That's a hard question to answer. Can you ask it a different way, not why?
Q. Sure. I guess what I'm wondering is did you expect to get $22 million?
A. I was very hopeful we'd get

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$22 million. The $22 million is a result -- it's a calculated result --

Q. Uh-huh.

A. -- of the numbers on page 15. It all ties together.

Q. Uh-huh.

A. It's a summary of the RubinBrown metrics applied to our caseload of 2016, the prior year. So it's not even a current year. You apply those metrics to a prior year. You multiply those -- you take away all the early withdrawals, everybody that got out early, and all of the conflicts come out, both to the sister office and from the office that was giving it. So you subtract conflicts twice.

Q. Okay.

A. You subtract the early withdrawals and you come up with a net adjusted caseload by case type. And then you --

(Court reporter interruption.)

A. Type. And you apply the RubinBrown metrics how many hours does it take to do that type of case to that result.

Q. (By Ms. Anand) Okay.

A. When you multiply them together you get

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the total number of hours needed to do our caseload from the prior fiscal year. You take those numbers, that a million $242,000 -- hours, a million 242,000 hours, you add to that travel time and court time, and you come up with the total number of hours needed to do our 2016 caseload using RubinBrown metrics. That total is a million I think it says 413,000 hours divided by 2,080.

That gives you the number of attorneys you need to do that assuming that every attorney works every day, no leave, no long-term disability, nothing, no annual leave, no sick leave, 2,080, everybody works 2,080, that's how many attorneys you need. Subtract that from the attorneys you got, that gives you the number that you -- the additional number of new attorneys that you require.

Q. And that's about how many?

A. 333.

Q. Got it. And so it's fair to say at this point you don't have nearly enough attorneys to devote enough time to meet the RubinBrown standard?

A. That's true.

Q. So what happens as a result, that is how is -- how is this time allocated? Are you -- are individual attorneys triaging cases, are you

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saying give enough time to these sorts of cases and not these, is it totally discretionary?

A. That's not -- that's not a question I can answer.

Q. Totally fine.

MR. MOORE: Can we take a quick bathroom break? Is that cool? Real quick, like couple minutes.

MS. ANAND: Sure.

VIDEOGRAPHER: We're going off the record at approximately 2:32 p.m.

(WHEREIN, a recess was taken.)

VIDEOGRAPHER: We're back on the record at approximately 2:40 p.m.

MS. ANAND: Okay. So I'm going to show you another document that's called a cost per case work sheet, and I'm going to label this one -- are we on 35? So this is going to be labeled Plaintiff's Exhibit 35.

(WHEREIN, Exhibit 35, FY15 Cost per case worksheet, was marked for identification.)

THE WITNESS: Thank you.

Q. (By Ms. Anand) Okay. So it's got a front and a back, and if you can just flip through it and then tell me what this document is.

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A. It's FY15 cost per casework sheet.

Q. And what is a cost per casework sheet? What are you trying to figure out?

A. Trying to figure out by office what was the total cost -- the average cost of a case that was disposed in this office.

Q. Okay. And when you -- when you're trying to figure out the cost, what numbers are you calculating in there? What counts toward the cost per case?

A. It's delineated in the spreadsheet here. We're including personal service, the district expenses, we're including some statewide professional cost, and that's your total expense and equipment and gets you total cost per district when you add it across.

Q. Got it. And when you say the total personal service, is that payroll?

A. Yes, it is.

Q. Okay. Got it. Now, we talked before about the fact that the sort of funds you have available are finite and may not be enough to devote as many resources toward each case as RubinBrown, for example, would require. So I just want to confirm, I just want to make sure I understand. All

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the lawyers are -- there's a finite sum of money that is being spent on all the cases?

A. That's correct.

Q. And so more money spent on one case means less money for another or more time spent on one case means less time spent on another?

A. I can't answer that.

MS. ANAND: Okay. Okay. I have another e-mail.

(WHEREIN, Exhibit 36, 8-17-15 e-mail chain, was marked for identification.)

Q. (By Ms. Anand) Okay. I'm going to show you what I am marking as Plaintiff's Exhibit Number 36. So first -- oh, I'm sorry. Do you recognize the folks who are on this e-mail? Do you know who they are?

A. Yes, I do.

Q. Okay. Do you mind just walking me through, who is Dan Haug -- Haug?

A. It's Haug.

Q. Haug, apologies.

A. He at that time was the acting budget and planning director, the director of budget and planning.

Q. And --

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A. For the office of administration under the -- under the governor's office.

Q. Got it. Judy Eggen?

A. She's a support person under Dan Haug -- Haug.

Q. Okay. And then Kyle Rieman?

A. It's Kyle Rieman, and --

Q. Rieman.

A. -- Kyle was our budget analyst at that time.

Q. Our budget analyst meaning he's the one who's responsible for coordinating with the --

A. He -- he was the budget analyst who worked for Tony Roberts and Tony Roberts is a budget ana -- senior budget analyst at the office of administration division of budget and planning under the governor.

Q. Got it. Thank you.

A. Uh-huh.

Q. So what's the request that Kyle is making?

A. I don't know. This is the first time I've seen this.

Q. Got it.

A. It appears to me that he's ask -- he's

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telling someone that I've requested to move money from the fourth quarter to the first quarter because we ran short of funds in the first quarter. Oh, it doesn't say that, I'm sorry. To move money from the first quarter to the fourth -- from the fourth quarter to the first quarter.

Q. Got it. And do you have any recollection of doing that?

A. Sure.

Q. Yeah. And why would you have done that?

A. Because we were out of funds. Yeah. At the beginning of a fiscal year there are many things that hit at one time. What the office of administration does is divide those funds up into four equal parts. So it's -- it's reasonable to assume that if you're going to pay lots of things in the first quarter, you wouldn't have enough money and you would move money from the fourth quarter to the first quarter to meet your demands there. So some things would hit at the first of the year and you wouldn't see them again.

Q. Got it.

A. So that's why you would want it loaded heavily on the front end.

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Q. Got it. I see. That makes sense. Okay. Okay. So I actually want to shift gears to talk a little bit about -- we've been talking so far about once you get the money kind of how you're spending it and allocating it. I want to shift gears to the kind of how you get the money piece.

A. Okay.

Q. So kind of walk me through the process. What are kind of the determinants of how much money you get and who is involved in making that decision?

A. So we already kind of talked about a draft budget proposal is prepared and presented to the public defender commission for the coming-up fiscal year. This is not the internal budget, but rather the draft budget that is Exhibit --

Q. 32 maybe, 33?

A. It's the skinny one.

Q. 33.

A. 33. That's -- Exhibit 33 is prepared for the Missouri state public defender commission, and in -- at their September meeting it's presented to them and approved by -- approved or changed or adjusted by the public defender commission at which time I take this little document that's, you know, 12 pages or whatever and put it in the format that's

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required by budget and planning.
Q. And budget and planning is?
A. Budget and planning under the office of administration under the governor.
Q. Got it.
A. Which is Exhibit 32. So I take that 12-page document and turn it into a fif -- an 80-, 100-page document --
Q. Okay.
A. -- because of all of the forms and the format that they want their budget request in. They require the same of all departments. So it's prepared. It's due to the governor by statute October 1st. We take it to the -- to the governor's office. We take copies to the House and copies to the Senate at the same time to deliver to the House, the Senate, and the governor on October 1st. So what happens after that is really not my concern.
But sometime soon the director and I will go meet with Mr. Haug and Tony Roberts. And the new budget analyst, Kyle Rieman is no longer there, I believe her name is Angela, we will go meet with them and say here's our FY19 budget. This is what we're asking for and this is why. They do that with all departments of the state.

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Once we meet with them, until the governor makes his recommendations generally nothing else happens. He usually makes his recommendations mid January, January 16th to 21st, somewhere around in that time frame. Once the governor makes his recommendations for the funding, this is for all departments, not just for the public defender, then House appropriation hearings begin.
So you go to the House appropriations committee and you present your budget. They make their recommendations to the House budget committee. House budget committee finalizes their budget. About the time the House is finished the Senate starts the same process except for they only have a budget committee, they don't have an appropriations committee.
Q. Okay.
A. So once the House and the Senate budget committees are complete, they -- there may be three budgets. There may be the governor's rec, there may be the House, and there may be the Senate. So there could be three different recommendations as for the state public defender's budget.
So what happens next is that there is a conference committee appointed from members of the House and from members of the Senate. It's a small group of people. They get together and say whether they're going to take the House recommendation or the Senate recommendation. They can't do anything else. They can't go in-between.

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They can't compromise. They just say House or Senate. House or Senate. So once the House or -- once they make their recommendation to the conference committee it goes back to the floor of the House and back to the floor of the Senate and they come -- truly agree to it and finally pass versions of appropriation bills. And those appropriation bills go to the governor for his signature or veto. Even after all of that work the governor can veto -- line item veto any budget back to his original recommendation.
Q. Is there anything else the governor can do with the -- with that budget in terms of altering it besides the line item veto or the veto of the whole thing?
A. Not at that point.
Q. Okay. Are you familiar with the term withholding funds?
A. Yes.
Q. Okay. So can you tell me a little bit about that and when that happens?
A. So once the governor even signs his budget --
Q. Okay.
A. -- he can, and has, withhold funds from agencies based on his determination of a shortage of revenue. And he ...
Q. And has he done that in recent memory?
A. Yes.
Q. And when and do you recall the amount?
A. The first time that the Missouri State Public Defender System ever had any funds withheld was in 2012.
Q. Okay. And do you remember what the total budget was and how much you actually got that was not withheld?
A. I know how much was withheld, let's go that direction.
Q. How much was that? Let's do that.
A. Okay. In 20 -- in fiscal year 2011, $250,000 of the appropriated amount was withheld and not released.
Q. And when you say withheld and not released, that means you never got the money, it wasn't that you got it later?

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A. It was appropriated by the House and the Senate and approved by the governor, but the governor withheld 250,000 and we could not spend it.

Q. Okay. So in your internal budgeting, all the spreadsheets we were looking at, that kind of max. number was not the appropriation number, it was the appropriation number minus the withheld number?

A. That's correct.

Q. Okay. Got it. Does the MSPD commission have a role after they sign off on your -- this draft proposal you're giving to the governor? Are they involved at all in talking to any of the folks who you talked to in the House, the Senate, or the governor office lobbying in any way?

A. Occasionally.

Q. And can you tell me a little bit of what that looks like?

A. The makeup of the commission has changed over the years, so it kind of changes with the makeup of the commission.

Q. Got it. Okay. I was hoping you could kind of walk me through -- presumably the number you request from the governor changes from year to year; is that accurate?

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A. That is correct.

Q. And what are some of the determinants of what -- what changes that number?

A. Well, first of all, caseload drives most everything.

Q. Okay.

A. And as caseload changes year to year, you know, you never have the same number of misdemeanors and the same number of felony sex cases or whatever. The makeup of the individual cases change. So as you apply the RubinBrown metrics to the new number, therefore that number would change. So if you have more cases --

Q. More FTE?

A. -- more FTE. You have fewer cases, which hasn't happened in the recent past, fewer FTE. In addition, the other things driving our budget request this year is turnover, significant turnover in our attorney staff. So compensation, comparable compensation is a big item.

Q. And when you say significant turnover, do you have a sense for -- for how high we're talking?

A. That -- I do, but I think that was talked about previously. It's around 25 percent in our attorney staff right now.

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Q. Okay. And it was also discussed, there's some cost beyond -- there's some additional cost when there's turnover?

A. That's true.

Q. Why are there additional costs?

A. Training is a huge -- is huge. Just getting somebody up -- a seat in the seat basically and then getting them up to speed to be able to handle their own caseload independently is a huge cost. Plus we spend significant money just providing offsite training to new attorneys. We have a new attorney training workshop that we require new attorneys to go to, so --

Q. And has turnover -- was turnover higher last year than it had been in previous years?

A. Yes.

Q. And in general has the trend been increasing?

A. Yes, and that's part of your ...

Q. Exhibit 33 again. I think page 18 may be turnover is what my cheat sheet says.

A. Yes.

Q. Okay. And this is turnover for attorneys. Would you say turnover for support staff and investigators is comparable, higher, lower?

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A. It's lower. Because in my opinion, and this is just my opinion, I think that a state job as an investigator or secretary in a rural area of Missouri is a good job, and people tend to stay for a long period of time. On the other hand, when you're paying attorneys less than $40,000 they're not going to stay for a long period of time with the caseload and the types of cases they have to provide representation in.

Q. So you mentioned one of the things you're doing to try to reduce turnover is increase salaries. Makes sense.

A. We're asking.

Q. And are -- are there any other measures you're trying to take to reduce turnover?

A. That's not my answer.

Q. Yeah, of course. And when someone leaves, is there -- do you have any ability to fill their spot with some sort of temporary replacement or something of that or the position is just vacant until you can find someone willing to take it?

A. It's vacant until we find someone willing to take it. A temporary attorney gets in a case and gets out of a case, it doesn't really do a

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lot of good.
Q. Yeah. That makes sense. And if the -- we talked about this a little bit --
A. Uh-huh.
Q. -- in the past, but is it generally pretty easy to replace folks in these vacancies?
A. Absolutely not. It depends on the location again. The metropolitan areas are relatively easy to find an attorney to take the position initially. The rural areas, I think we've had three positions in Poplar Bluff that are vacant until filled, and they just stay vacant until we can find somebody to fill them.
Q. And is that because -- why is that, why do you -- why do you think rural areas have a harder time?
A. The rural areas are tough. Generally speaking, young attorneys don't want to live in a rural area. That's my opinion.
Q. And have you ever moved funds around to fill those spots that are remaining vacant for some amount of time; that is have you ever said we'll pay a higher salary in Poplar Bluff than you will in --
A. We do not pay a differential.
Q. Got it. Okay. I want to backtrack

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just a little bit to the withholding question.
A. Okay.
Q. So you mentioned in 2012 there was $250,000 withheld. What about in 2013?
A. Okay. 2012 was the first time.
Q. In your -- in your entire tenure?
A. In my entire tenure.
Q. Okay.
A. And I've been with the public defender since it was a public defender.
Q. Right.
A. So 2012 was the first time that any governor had withheld any funds from the public defender system. Since 2012 -- in 2015 -- 2015 was quite a story because we had -- back to my story where the House and the Senate approved one budget, they took it to the governor, the governor vetoed back down to his original recommendation.
Q. And can you just tell me those -- those numbers if you have them off your -- on --
A. I don't.
Q. Okay. That's all right.
A. He vetoed it back to his -- to his original recommendation. Then there was a veto override session where the House and the Senate

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overrode the governor's veto of those funds. The veto override was $3,472,238. This is in -- in fiscal year 2015.
Q. Uh-huh.
A. Then even though the House and the Senate voted to override the governor's veto, the governor then withheld $2,972,238 of that money. So he released 500,000 of the 3,472,000, even though there was a veto override done. That was in 2015. In 2017, which is the year just finished, June 30th, 2017, the governor withheld $3,500,000, of which 542,880 was quote from the personal service budget and 2,957,120 thousand -- 120 dollars was from the expense and equipment budget. Because of a hundred percent flexibility it really didn't matter which fund he withheld -- which appropriation he held it from, but he withheld $3.5 million.
Q. And I know the money is fungible, so this may be a tough question to answer, but what would you have used that 3.5 million for?
MS. SHIPMA: Can I -- I want to object there --
MS. ANAND: Sure.
MS. SHIPMA: -- because this is subject to litigation that's currently ongoing.

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MS. ANAND: That's right.
MS. SHIPMA: And so I really don't want her to get in --
MS. ANAND: Too deep in the weeds on that?
MS. SHIPMA: -- yes, on this, and that's -- that's part of the -- that's part of the issue there is what -- what the money would have been used for.
MS. ANAND: Understood. Okay. Question withdrawn. Thank you.
MS. SHIPMA: You can see our filings.
Q. (By Ms. Anand) Okay. I'm going to backtrack even further.
A. Okay.
Q. We talked about federal funding.
A. Okay.
Q. And you had mentioned that you haven't gotten any since the nineties?
A. That is true.
Q. Why -- do you know why that is?
A. I don't.
Q. If you did get federal funding, would that supplement the amount of money you're getting from the state?

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A. It could by the tune of $125,000 because that's the total of our spending authority for our federal money.

Q. When you say that's the total of your spending authority, what's that mean?

A. It's the amount that's appropriated in House Bill 12 for federal funds and that's all you can spend.

Q. Okay. Do any districts or divisions have any other sources of revenue other than the state funding we've discussed?

A. No.

Q. Could they?

A. No.

Q. Could they apply for grants or privately fund-raise?

A. No.

Q. No, okay.

A. You -- no.

Q. And -- and why is that?

A. Sorry.

Q. No, this is great.

A. You -- you have to have spend -- to be able to spend money there has to be two things.

Q. Okay.

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A. You have to have House bill that creates your spending authority, and you have to have the cash to spend it. And if you don't have the House bill, you can't have the cash.

Q. Got it.

A. If you have the cash and you don't have the House bill, you can't have the cash.

Q. Okay. And I'm getting -- I'm getting close to the end.

A. Okay.

Q. I think we have like 15 minutes left. There's like two more big topics.

A. Okay.

Q. One of the topics I want to talk to you about is the Code 49 program. Are you familiar with that?

A. Okay. Yes.

Q. Can you just tell me a little bit about what that is?

A. I can tell you what it is although it's not my program. I just monitor the funds.

Q. Got it.

A. So Code 49 is conflict cases being moved from the local public defender offices to private counsel and paid out of our contract money.

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Q. Okay. So I have a couple of -- we heard a little bit about the program in more detail on Wednesday. I have a couple specific questions --

A. Okay.

Q. -- that you may know the answer to. So the first one is let's say a case goes to conflict counsel, you're paying private counsel for it, and private counsel withdraws for whatever reason. What happens to the funds that you gave that person?

A. We actually keep track of the money that we gave that person and try to give them a like case so that he -- and not pay him for that case.

Q. Got it.

A. So it's -- that's what we do.

Q. And let's say that it's someone who just is leaving the program altogether.

(Court reporter interruption.)

Q. (By Ms. Anand) Program altogether, the panel altogether.

A. We would attempt to get the money back from the panel attorney.

Q. Okay. And if you get the money back, does it go back into your fund or --

A. It goes back to general revenue. The state public defender would not be able to spend it

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again.

Q. And you don't -- do you have any mechanism to kind of claw back those funds?

A. Not at all.

Q. Got it. Okay. The second question I have -- so second specific question on the Code 49 program, we heard that if you have room in the budget you'll do overload contracting of nonconflict cases. What does that mean?

A. To -- to me it may mean something than it does to other folks.

Q. Okay.

A. And to me caseload overload is a conflict. So although it may be defined a little differently, overload is a conflict. So if we have money available, those overload cases could also be contracted out as conflicts.

Q. And when you say overload is a conflict, what do you mean by that?

A. I have a new -- a word. I call it a compency overload. Compency conflict.

MS. ANAND: Okay. My third question is -- I had it come from this fact sheet called MSPD Case Contracting by the Numbers and I'm going to label this one Plaintiff's Exhibit 36 -- 37. I'm

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going to label this one Plaintiff's Exhibit 37.
(WHEREIN, Exhibit 37, MSPD Case Contracting by the Numbers, was marked for identification.)
Q. (By Ms. Anand) So I just wanted to look at the -- the second graph on this where you've got the MSPD case contracting budget. And I was just trying to figure out what -- what the force to savings number is. What does that represent?
A. Trying to figure out what year I'm looking at.
Q. I think this is fiscal year 20 --
A. '15.
Q. No, it's not 2015, though, because we've got fiscal year 2017 on the chart, right?
A. Where?
Q. So if you look at the second chart you've got -- I'm sorry. The font is real small.
A. Okay. Here is -- here is the thing. This is budgeted numbers.
Q. Okay.
A. And because we knew we were going to be short again in litigation cost, rather than spending all the money on contracts, he set aside a million five to help us with litigation cost. So it was

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forced contract savings for litigation cost.
Q. And when you say he set it aside?
A. Division director Joel Elmer.
Q. And so -- go ahead.
A. And -- no, that's it.
Q. What I was going to ask you is so you have a set number of cases that are conflicted, right? There's a certain number of defendants where you can't -- MSPD can't represent them both?
A. True.
Q. So where do those savings come from? Were you just not paying the -- the panel attorneys?
A. Probably from overload.
Q. Got it, okay.
A. Not con -- not actual conflicts, but overload.
Q. Okay. One final bucket. This is for the -- my hodgepodge questions and then I'm going to consult with Mae and then I might be able to turn you over.
A. Okay. Sure.
Q. Okay. So question one. Did you have any involvement in implementing the RubinBrown study tracking the time of MSPD attorneys; that is were you involved in helping set that up, were you

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involved in administering at all the time tracking piece of it?
A. No.
Q. Okay. Question number two, do you -- does MSPD -- strike that.
Do retirement benefits and insurance for MSPD's FTEs come out of the MSPD budget?
A. No, it does not.
Q. And why is that?
A. It comes out of House Bill 12 -- 5. It comes out of the office administrations budget. As does all state employees.
Q. Got it. We've been reading in the news recently about some districts potentially turning away cases. How does that affect your job with budgeting; that is how do you account for that in your budgeting?
A. I don't think I can answer that question yet.
Q. Okay.
A. I mean, this is just starting to happen and I don't know how it's going to affect the budget.
Q. Okay. And has this happened before in your 35 years of MSPD?

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A. No. Not turning away cases.
(WHEREIN, Exhibit 38, 6-29-15 e-mail chain, was marked for identification.)
Q. (By Ms. Anand) I'm going to show you what's been -- what I'm marking as Plaintiff's Exhibit 38.
A. Thank you.
Q. Thank you. So I want to focus on the last e-mail in the thread from Kyle Rieman to Tony Roberts, and I want to take a look at his bullet point list under public defender.
A. Okay.
Q. So first could you just read out the five bullet points?
A. (Quote as read):
Caseload issues, lack of resources, juvenile representation issue, lack of resources, legal defense and defender fund collection issues, conflict cases, lack of resources and criminal code impact.
Q. So where -- what to your mind are those five bullet points?
A. First time I've seen this, okay? Caseload issues, that's my first decision item.

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What year is this? 2016 legislative budget -- 2017 legislative budget request probably. First decision item was not enough people, which we've been talking about. That's probably the 333 attorneys that we asked for.

So I believe what -- what Kyle is doing here for Tony Roberts is just giving him bullet points of his budgets, he handled these four budgets for the state, and he's giving the highlights of what he thinks are the big issues for each one of his departments. So caseload was number one for public defender, lack of resources. Again, RubinBrown metrics applied to caseload, that type of thing.

Juvenile representation I believe in 2017 I know we did, and 2017 we asked to reopen our juvenile advocacy offices in both St. Louis and Kansas City. That was our second decision item that year. We weren't able to do it because, again, a lack of resources. The third thing, and I -- and I know that this is a Kyle thing and not a public defender thing is he -- and I know Kyle personally.

Kyle isn't happy with the way the legal defense and defender fund works in that the -- the debt offset system, the way that it was working, he

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wanted to change it, and this is his way to say, hey, I'd like to change that.

Q. And how did he want to change it?

A. I'm not a hundred percent sure that it is working yet. In fact, I know it's not working yet, but he did change it this year in that remember I talked about the debt escrow fund that was available in 2017, that first exhibit you gave me, 30, where the money came from the Department of Revenue. Missouri state income tax refund intercepts went into this big escrow fund and then the agencies would pull the money out of the escrow fund. And he wanted to change that so that the money would come directly from the Department of Revenue as a transfer to the public defender system rather than making it a circular route through the escrow fund. Does that make sense?

Q. Okay.

A. Okay. So that's what that one is. The third one is conflict cases, lack of resources. Again, even if -- this was to allow us to get out of all conflict cases and not have sister offices that do conflict cases. It's very inefficient to have an attorney run to a neighboring county to represent one client; rather, it's much more efficient to --

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to contract those out.

So we wanted to contract out all conflict cases. It would require additional funds. And that's what that is on that bullet point. And the third I think criminal code impact, it wasn't anything that we did in particular, but the Missouri state criminal code was revamped in 2016.

Q. And -- so those are not issues if I'm understanding you right that you had necessarily flagged for Kyle, those are just the issues he thinks are the --

A. Yeah, that's the ones he flagged.

Q. Got it. Okay.

A. I don't -- I don't remember which budget year this is. I think it would be 2017 based on the date of this memo.

MS. ANAND: Okay. So I'm actually done with you, believe it or not. Well, for now. We may have to come back to me. Do you guys want to do a five-minute break before we get started?

MR. MOORE: Yeah, that's cool. We can take a break.

VIDEOGRAPHER: We're going off the record at approximately 3:15 p.m.

(WHEREIN, a recess was taken.)

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VIDEOGRAPHER: We're back on the record at approximately 3:20 p.m.

EXAMINATION

QUESTIONS BY MR. MOORE:

Q. Hi.

A. Hi.

Q. My name is Justin. I'm here for the State of Missouri and for Governor Greitens. I'm going to be asking you some follow-up questions here today. And you understand you're still under oath?

A. Yes, I do.

Q. Okay. Very good. So I'd like to refer first to Exhibit 30, that's the first exhibit that we looked at. And I'll be frank with you. I am not a math person, I'm not an accountant, so some of my questions might seem kind of silly. Just please be patient with me.

A. I will be.

Q. Very good. So you have Exhibit 30 in front of you there?

A. Yes.

Q. Okay. So I see a few different columns on this exhibit, appropriated versus expended and then a balance, right? And at the far right it says percentage expended?

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A. Correct.
Q. Okay. So in the balance column would that be like money left over at the end of the year that was not spent in the budget?
A. No, because this is dated May 19th, 2017. It's not the end of the fiscal year.
Q. Okay. So has there ever been a time whenever you get to the end of the year and there's still money left over in the budget that has not been spent?
A. The answer to that question is absolutely not. I spend every penny.
Q. Okay. Has there ever been a time where there was no money left and you had to actually exceed the funds that you were allotted and you owed people money?
A. We -- no.
Q. Okay. Was there ever a time that you couldn't make payroll for your public defenders?
A. No.
Q. Or you were unable to pay vendors like court reporters and things of that nature?
A. No.
Q. Tell me a little bit more about this federal funding. So I understand that you have not

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apparently got any since the nineties; is that right?
A. That's correct.
Q. Tell me about like I guess the process of obtaining those funds if you know.
A. I don't know because we don't have any. Haven't had anything for a long time. Back in the nineties it was the Department of Justice moneys, and we applied for those funds through the Department of Public Safety. I believe the last grant that we had was for -- I don't even remember, maybe a drug court attorney.
Q. So just to understand the process I guess, would it be the public defender office seeking a grant with themselves, they write it up or it sounds like maybe it goes through Department of Public Safety instead?
A. It would be done at the state level, not an individual office level.
Q. Okay.
A. And it would come from the director's office, it would be under the director's signature.
Q. Okay. So would that be a process that you would personally be involved in or have knowledge of or would that be for some other --

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A. I imagine it would be me.
Q. Okay. But you -- you have not made such a petition or sought such a grant in -- since like the nineties, I guess?
A. There hasn't been any money available.
Q. Okay. And how do you know there was no money available?
A. The Department of Public Safety informs us.
Q. Okay. So do they kind of generate a report or something telling you, hey, for this year there's not -- there's no federal moneys available so there's no use making a request or how does that work?
A. It would probably go the other way rather than that way, where they would tell you there's money available. They probably wouldn't tell you there wasn't money available, but rather they would say money is available for public defenders.
Q. Okay. And that would be -- so the Department of Public Safety would just kind of inform you each year that there were funds available if there were any?
A. That would be on them.

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Q. Okay. And so the public defender's office to your knowledge doesn't like ask them, hey, how about this year, any money for us?
A. No.
Q. Okay. Apologize. There's quite a lot of exhibits here --
A. That's okay.
Q. -- so I'm going to be shuffling around a bit. So I'd like to refer to Exhibit 34.
A. Okay.
Q. And that's the e-mail that apparently was sent by you to Tony Roberts --
A. Okay.
Q. -- in 2016. Just let me know when you have that in front of you.
A. Okay.
Q. Okay. Very good. So you were asked to review the last sentence of the first paragraph and it says (quote as read):
We are balancing MSPD's budget at the expense of our employees and clients. Right?
A. Correct.
Q. So do you know whether you had any personal knowledge about what was happening with the

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employees and clients at that time?
A. I don't have any contact with clients.
Q. Okay. How about any personal knowledge of what was happening with the employees at that time, do you know if you had that knowledge?
A. Just general knowledge that our folks are overworked and if you take away a person then you're going to be more overworked.
Q. Okay. So you were just kind of looking at it from like a --
A. An overall viewpoint.
Q. An overall bird's eye viewpoint; you didn't have any specific knowledge at this time about instances where your clients or employees were being disadvantaged; is that right?
A. That's correct.
Q. Okay. Now this, the RubinBrown report has been talked about a couple times, and are you familiar with that report?
A. I am.
Q. So I guess backing up a little bit, your educational background is in accounting, right?
A. That's correct.
Q. Do you have any educational background in statistical analysis of any kind?

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A. Just classes in college which was a really long time ago.
Q. Right. Okay. But you've never, for example, like generated your own statistical analysis of a population of people and drawn inferences or conclusions based on those statistics, right?
A. A long time ago.
Q. Okay.
A. In the seventies.
Q. Okay. So for the RubinBrown report, for example, have you analyzed their methodology or anything of that nature?
A. I read it.
Q. Okay. And so as to their methodology and the data they collected, have you had any way of independently verifying --
A. I have not.
Q. Okay. But my understanding is that this RubinBrown report was incorporated into the way that you drafted the budget --
A. That's correct.
Q. -- is that right? And so did you pretty much just take whatever they had reported and just kind of as -- like at face value and then used

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that to extrapolate out your budget?
A. That's correct.
Q. But there's no like independent verification as to whether this report was accurate?
A. It is about the seventh report that's been done on the public defender system. So it's -- it's accurate, but I have no independent verification of it, no.
Q. Okay. So I did have a question about these off-campus trainings for public defenders.
A. Uh-huh.
Q. And I think you said that it was like a huge expense or like a large expense, right?
A. It's expensive.
Q. So what -- what is involved with these off-campus trainings exactly? Do they like go to a conference center somewhere or what -- if you know?
A. Well, we do have statewide training where people come in from all of the districts statewide. And we present training where there's experts on different matters to -- to talk to the group of people, whether it be management or new attorneys or support staff.
Q. Okay. And are these usually held -- I guess my question is where are they usually held?

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A. They're statewide. I mean, anywhere. It could be anywhere from -- from Springfield to St. Louis to Columbia to Jeff City. I mean, we hold them at different places. We bid out the -- the cost.
Q. Okay. Are they ever held like at the public defender offices in those locations so like --
A. There's some local training done, yes.
Q. But for the -- for the off-campus trainings, have those ever been moved like on campus instead?
A. No. Our offices are tiny, tiny, tiny.
Q. Okay. So it's like a space issue you're saying?
A. Well, it's partially a space issue, plus you want to -- you do have local training to deal with local issues, but then you want to have a larger training session so that you're sending the same message to everyone.
Q. Okay. So has anyone ever looked into, you know, trying to manage this large expense that you mention here by, for example, using teleconferencing software to, you know -- you know, send these speakers out to each of the individual

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branch offices?
A. Right now that would be a huge problem. We don't have sig -- significant WAN to do that.
Q. I'm sorry, significant WAN?
A. Wide area network.
Q. Okay.
A. Our Internet is incredibly slow. It would bring it to its knees.
Q. Okay. Sounds like a technological limitation you're saying as to the teleconference center?
A. That's not the only reason. There's huge value to getting folks together.
Q. Okay. And so what kind of value, like -- go ahead.
A. Just camaraderie. I mean, you -- you're doing the same job as the next person. You share experiences, you share tips and tricks.
Q. Uh-huh.
A. You learn a lot from the folks that you're with.
Q. Okay. Sounds fair enough. Do you know if anybody has ever like explored -- in the sense that it is a large expense, explored different options for these trainings?

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A. Yes, we do some videoconferencing, but we make sure it's a roomful of people looking at one screen.
Q. Okay. There was a discussion earlier about pay differentials for I guess what you would say less desirable areas of the state, more rural areas where you I think said, you know, attorneys just don't want to be, right?
A. (Witness indicates head motion.)
Q. I'm sorry, for the record you have to say like yes or no.
A. Yes. I said that.
Q. Sorry.
A. I was waiting for the question.
Q. All right. And so I guess my question is so why is there no pay differential? Why isn't that something the public defender does?
A. I don't know the answer to that.
Q. Okay. I mean, is this something that they --
A. I don't think any state agency pays differential for location.
Q. Okay. Do you know if there's any been -- ever been anyone who's explored that option? Have you for yourself ever explored that option?

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A. No.
Q. Is there a reason it's never really been explored?
A. Not that I'm aware of.
Q. One of my last questions is about the seeking of grants by public defender or the different offices. I think you had said that unless there's a House bill, you don't get to spend the money, right?
A. You have to have the spending authority to be able to spend the cash.
Q. So what would happen if you sought out and received a grant of some kind, but didn't have the House bill?
A. You wouldn't be able to spend it.
Q. What would happen to it, do you know?
A. You'd have to forfeit it. You -- I don't know why you would ask for it if you couldn't spend it.
Q. And is it something that's happened in the past before?
A. No.
Q. Okay. And has there ever been a time when you have received a request to have more attorneys put on file where you have had to tell

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someone that you can't do that because of budgetary reasons?
A. No.
MS. SHIPMA: Well, wait. I'm going to -- do you even understand that question?
A. Do you mean have multiple people on one case?
MR. MOORE: Well, she provided an answer.
Q. (By Mr. Moore) I mean, if you -- if the question was unclear, I can rephrase it.
A. Please rephrase it.
Q. Okay. So I think earlier there was some discussion about, you know, these people requesting more attorneys for cases and whether that would be a possibility. Do you recall that question being asked of you?
A. It was in terms of expert witnesses.
Q. Expert witnesses. I mean, I think my original question stands, right? So I mean, has there ever been a request for additional attorneys on particular cases where you've had to say no, we can't do that for budgetary reasons? Has that ever happened?
A. I don't think that's a question that I

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can respond to. If a local office had a case that was significant enough that they wanted to assign multiple attorneys to that case, they would be able to do that without any input from the state office.

MR. MOORE: Okay. I'll go through my notes. If you want to go ahead.

MS. SHIPMA: Nope. I'll wait for you.

MR. MOORE: Okay.

Q. (By Mr. Moore) I think earlier you had said that it's very, very seldom that there are any denials for experts, maybe less than one-fourth of a percent; is that right?

A. That's correct.

Q. And is that also true for other like litigation expenses, so for example, requests for like an investigator or you just --

A. That's all lumped together. It's one-quarter of one percent and that's a wild guess.

Q. Okay.

A. But seldom are there denials.

Q. Okay. So that would go for all the -- all litigation expenses?

A. The ones I read off, yes.

Q. Okay.

MR. MOORE: I believe that's all I

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have.

THE WITNESS: Thank you.

MR. MOORE: Thank you.

MS. SHIPMA: I have a couple of questions.

EXAMINATION

QUESTIONS BY MS. SHIPMA:

Q. Kathy, are -- is a request for additional attorneys to work on a case ever made through an E request?

A. No.

Q. That's for outside experts; is that correct?

A. Yes, that's correct. Outside experts.

Q. And -- and that outside expert has not been defined to include more attorneys?

A. That's correct.

Q. If someone needs more attorneys, that would be filled by the current staff that we have?

A. It would be filled by current staff.

Q. And that would be something that the district defender would --

A. They could make that determination at the district defender level.

Q. Okay. Would you look at Exhibit 34,

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please?

A. Sure.

Q. That's the e-mail from you to Tony Roberts on May 3rd, 2016.

A. Got you.

Q. Okay. Would you look at your fifth sentence and read that out loud, please? It starts as no additional funding.

A. Thank you. (Quote as read):

As no additional funding has been made available for litigation cost in nearly ten years in order to meet the projected $1.5 million shortage, vacated positions are being held open until the end of the fiscal year.

Q. Okay. And then read your last sentence of the e-mail.

A. (Quote as read):

There are currently 41 positions either vacant or will be vacant prior to the end of the fiscal year.

Q. Can you explain what was going on? Why were there 41 positions vacant?

A. Because as people left, either resigned, terminated, just left their position,

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those positions were not filled in order to save the money to transfer to expense and equipment so we could pay our litigation cost invoices as they came in and not hold them until a next fiscal year.

Q. Now, read the last sentence of that first paragraph.

A. (Quote as read):

We're balancing MSPD's budget at the expense of our employees and clients.

Q. Now, can you give me some -- an example of how you were balancing MSPD's budget at the expense of your employees?

A. They weren't given the positions that were allocated to that office because that money was being used for litigation cost. So therefore if there are five attorneys in that office, one leaves, now therefore -- so those four take those cases that are coming in the door. So therefore they're -- we're balancing the budget on their backs.

Q. And can you give me now an example of how you were balancing MSPD's budget at the expense of our clients?

A. It would be the same thing. So if there are four -- five attorneys are in that office, there's a hundred cases to be handled, one guy

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leaves, instead of handling 20 now you're handling 25. So your client gets less time.

Q. Okay. I think that there was a question about -- looking at Exhibit 30.

A. Okay.

Q. I don't know that this really has anything to do with Exhibit 30, it was just when the -- the question was asked in relationship to this, has there ever been a time when you reached the end of the year and there was a balance in the fund, and I believe you said you spend every penny or something to that effect; is that correct?

A. I do. I actually --

Q. And that's okay. We don't need any other exhibits.

A. Okay.

Q. I just needed to refresh you about your answer to that question.

A. Okay.

Q. And then the question was also asked if something along the lines of has -- has there ever been a time when you ended the year owing money that you weren't able to pay from that year's appropriation and I believe your answer to that was no, that hasn't happened?

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A. That hasn't happened. There -- there are cases where just in the general scope of things you're going to have bills for three to four weeks that are pending at the beginning of a fiscal year. I mean, that happens on a routine basis.

Q. Right.

A. The same as it is with your own personal finances. You don't -- you can't pay the bills the day they came in without -- with the approvals that are necessary and the -- and the double-checks that are necessary before invoices are paid.

Q. Okay.

A. So there's routinely a small group of bills that always are going to be paid out of the next fiscal year.

Q. Okay.

A. Which that's routine.

Q. And I believe state law provides for that; is that correct?

A. Yeah, state provides for that.

Q. Now, what I want to ask you, has there ever been a time that the MSPD has had to forego things that they needed during a year so as not to end the year owing money because the money wasn't

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available?

A. I think that happens almost every year.

Q. Can you give me an example?

A. You know, we're running with copy machines that are ten years old. We're running with laptops that are seven years old. We hold a lot of things together with spit and glue just to make them last longer.

I think public defender mentality is that if it's -- if it's not total trash, make do with it. I mean, I'm appalled when I go to some of the offices and they're sitting in chairs that really I want a towel before I sit down.

They're that nasty. Particularly, you know, clients come in with children and the chairs are soiled, the chairs aren't replaced. And that's routinely happened statewide.

Q. And so it's not necessarily the case that because you don't end the year in the red that you've had plenty of money to do everything that the system needed to do; is that correct?

A. That's a hundred percent correct.

Q. And in fact, we just spoke a moment ago about you saved -- you held 41 positions open so that you could end the year in the black; is that

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correct?

A. Yes.

Q. Okay.

A. It was a decision that was made to end the year in the black so we held the positions open.

Q. To pay litigation expenses --

A. Pay litigation.

Q. -- over the -- over employing more people?

A. Right.

MS. SHIPMA: Thank you.

FURTHER EXAMINATION

QUESTIONS BY MS. ANAND:

Q. I just have a couple -- couple quick questions --

A. Okay. Sure.

Q. -- and we might be done. Okay. I just have a couple minor follow-up things. First, Ms. Shipma referred to an E request. What is that?

A. It's a good question. It's -- we call it E number database --

Q. Okay.

A. -- and it's where you ask for money for litigation cost. So we -- we kind of went through that a little bit with your previous questioning.

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Within our caseload database there's a button attorneys can push, and then they fill out the form and it's routed to the appropriate people for approvals. So that's the E number. Once that -- that form is submitted for approval and funding, a number is assigned to it and it's the E number.

Q. Got it. Okay. Thanks. That's very helpful.

A. You're welcome.

Q. I -- I thought that was it, but I just wanted to make sure that they're not dumped to litigation expense.

A. Terminology.

Q. My next question is do folks in the public defender system generally know that if the number of litigation expenses are high for a given year there's going to be less hiring, positions are going to be hold -- held vacant, is that something that public defenders know?

MR. MOORE: I'll object to foundation and speculation. Subject to that, you can respond.

Q. (By Ms. Shipma) Go ahead.

A. Okay. I think it depends on their seniority --

Q. Okay.

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A. -- you know. If it's a brand-new assistant public defender they may not have any idea, but if it's someone who's seasoned and been around a while, they've seen what, you know, 41 positions being held open does. So they -- they do know. The seasoned ones do. Maybe not the youngest of -- of our employees. Not -- youngest is not a good word. Newest.

Q. (By Ms. Anand) And who do you sort of officially talk to or to whom do you officially convey the information that hey, we're holding 41 positions open this year? Is it something you talk to only management about, is it something that you broadcast to the whole office?

A. It's broadcast pretty wide. Obviously I tell budget and planning --

Q. Uh-huh.

A. -- you've got documentation of that. We tell the commission. The local offices are well aware that they had to have approval. They always have to have approvals, but approvals were being withheld to fill positions. So they would say, yeah, we can fill it in six weeks or two months, but not now.

Q. Okay. Mr. Moore asked you a little bit about the off-site conferences.

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A. Yes.

Q. How many of those are there in a year?

A. It varies from year to year. It's -- those off-site conferences are paid with the legal defense and defender fund, not with general revenue money. I'd say routinely -- I don't know the answer. I would have to look. I can come up with it if you need it.

Q. And -- and just to remind me, the money in the legal defense and defender fund is not fungible with, for example, the legal services fund, you can't transfer money across those two?

A. That is true.

Q. Okay. And then I just have two questions from reviewing my notes. One is you mentioned right up front that you do internal but not external auditing. Can you just explain the difference for me? I realized I don't really know.

A. Okay. An internal audit is when -- I guess there's kind of two parts to an internal audit. To me an internal audit is when I go to an office, I make sure that there really is a seat in a -- a real seat in the seat. Make sure we're not paying any ghost employees. So that's the first

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part of it.

I go out, I do a physical audit of equipment sometimes. So that's part of my internal audit function. I make sure what we say we have is there. I make sure that people that we're paying are real people and not ghosts. I -- I look at the furniture and things to that effect to make sure that they're in operating order. So that's my internal type of audit.

The second piece of that internal audit is that I look at every expenditure that we make, be it for a deposition or a travel expense or ink pens. Those -- I don't actually see every bill, but I can go and pull any bills I want to review at any time. But I also get a report that's more than that thick every quarter and go through it line by line and make sure that those expenses are appropriate to be paid out of our appropriation.

Q. Got it. And when you say you don't do external auditing, what does that mean?

A. An external audit would be when -- when I would go to the jail or something to that effect.

Q. Got it.

A. I wouldn't do anything outside of the public defender system nor would we have an external

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auditor come in.
Q. Got it. And then final question, I just wanted to make sure I got your answer on the federal money correct. That $125,000, that is money that the legislature has appropriated, so if you hypothetically got that it would be on top of your budget?
A. That's not exactly correct.
Q. Okay.
A. The $125,000 is spending authority.
Q. Okay.
A. So that is included in our budget. We have that spending authority, but we don't have the cash. So remember we said we needed two things to have -- be able to pay a bill, have to have the spending authority and the cash. So all those things at the top of that page, we generally have both, but the federal money, we don't have any federal money to spend so we can't spend it.
Q. I see. Okay. That makes sense.
A. Okay.
MR. MOORE: I just have like two questions to follow up on.
MS. ANAND: Ready.
MR. MOORE: So are you guys --

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MS. ANAND: I'm done. Go ahead.
FURTHER EXAMINATION
QUESTIONS BY MR. MOORE:
Q. Okay. So looking back at Exhibit 34, that's the e-mail, I think that you had been taken through a couple more sentences in that e-mail, one of which was a projected shortage, right, the 1.5 million shortage?
A. Yeah.
Q. So this e-mail was from 2016; is that right?
A. The end of fiscal year 2016, correct.
Q. Okay. And do you know when the RubinBrown report came out?
A. I don't, not off the top of my head.
Q. Okay. Have you been given a copy of Exhibit 26 by chance?
A. No.
Q. I guess I'll just ask this question first.
A. Is that the Missouri report?
Q. Yeah. But this is a more general question, I'll just ask and see if you know. As -- as to that 1.5 million shortage projection, do you know if as part of that projection you considered

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and included the RubinBrown figures?
A. No. That's all litigation cost.
Q. So when you say in order to meet the 1.5 million shortage, it's just as to litigation cost?
A. That's correct.
Q. Right? And so there's no consideration of like the RubinBrown --
A. No.
Q. -- numbers for litigation costs?
A. No. RubinBrown is just caseload-driven.
Q. Okay. And so for the last line when it says currently there are 40 positions either vacant or will be vacant, you know, so as -- as to the will be vacant part, I guess does that mean that you had already received notices people were leaving --
A. That is true.
Q. -- or is it like a projection as to --
A. No. I had received the notices folks were leaving.
Q. Okay.
A. Generally speaking we get good notice from our folks before they leave, particularly attorneys.

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Q. Okay. And do you have any knowledge as to, you know, what the caseloads were in 2016 for public defenders?
A. That would be part of the documentation we provided. The annual report for 2016 has all of those numbers in it.
Q. And you think that you were looking at those numbers whenever you wrote this e-mail, if you know?
A. Probably not because 2016 wasn't over yet.
MR. MOORE: Okay. Okay. That's all I have. Thank you.
THE WITNESS: Okay. You're welcome.
VIDEOGRAPHER: We're going off the record at approximately 3:51 p.m.
(WHEREIN, the deposition was concluded at 3:51 p.m.)

CERTIFICATE OF REPORTER

I, William L. DeVries, a Certified Court Reporter (MO), Certified Shorthand Reporter (IL), Registered Diplomate Reporter, and a Certified Realtime Reporter, do hereby certify that the witness whose testimony appears in the foregoing deposition was duly sworn by me pursuant to Section 492.010 RSMo; that the testimony of said witness was taken by me to the best of my ability and thereafter reduced to typewriting under my direction; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition was taken, and further that I am not a relative or employee of any attorney or counsel employed by the parties thereto, nor financially or otherwise interested in the outcome of the action.

_____

Certified Court Reporter
within and for the State of Missouri

MIDWEST LITIGATION SERVICES

October 12, 2017

Ms. Jacqueline Shipma
Missouri State Public Defender
1000 West Nifong
Building 7, Suite 100
Columbia, Missouri 65203

IN RE: SHONDEL CHURCH, et al. vs. STATE OF MISSOURI, et al.

Dear Ms. Shipma,

Please find enclosed your copies of the deposition of KATHLEEN L. LEAR taken on October 6, 2017 in the above-referenced case. Also enclosed is the original signature page and errata sheets.

Please have the witness read your copy of the transcript, indicate any changes and/or corrections desired on the errata sheets, and sign the signature page before a notary public.

Please return the errata sheets and notarized signature page within 30 days to our office at 711 N 11th Street, St. Louis, MO 63101 for filing.

Sincerely,

William L. DeVries, RDR/CRR

Enclosures

ERRATA SHEET

Witness Name: KATHLEEN L. LEAR
Case Name: SHONDEL CHURCH, et al. vs. STATE OF MISSOURI, et al.
Date Taken: OCTOBER 6, 2017

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Reason for change: _____

Witness Signature: _____

STATE OF _____)

COUNTY OF _____)

I, KATHLEEN L. LEAR, do hereby certify:

That I have read the foregoing deposition;

That I have made such changes in form and/or substance to the within deposition as might be necessary to render the same true and correct;

That having made such changes thereon, I hereby subscribe my name to the deposition.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this _____ day of _____, 20___, at _____.

_____
KATHLEEN L. LEAR

_____
NOTARY PUBLIC
My Commission Expires:

A

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Exhibit G

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI
CENTRAL DIVISION

SHONDEL CHURCH, et al.,)
)
Plaintiffs,)
)
vs.) Case No.
) 17-04057-CV-C-NKL
STATE OF MISSOURI, et al.,)
)
Defendants.)

VIDEO-RECORDED DEPOSITION OF MICHAEL K. BARRETT
TAKEN ON BEHALF OF THE PLAINTIFFS
OCTOBER 4, 2017

(Starting time of the deposition: 8:10 a.m.)

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(The original exhibits were retained by the court reporter to be attached to the original and copies of the transcript.)

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI
CENTRAL DIVISION

SHONDEL CHURCH, et al.,)
)
Plaintiffs,)
)
vs.) Case No.
) 17-04057-CV-C-NKL
STATE OF MISSOURI, et al.,)
)
Defendants.)

VIDEO-RECORDED DEPOSITION OF MICHAEL K. BARRETT, produced, sworn and examined on October 4, 2017, between the hours of eight o'clock in the forenoon and one o'clock in the afternoon of that day, at the ACLU of Missouri Foundation, Suite 1130, 906 Olive Street, St. Louis, Missouri 63101, before William L. DeVries, a Certified Court Reporter (MO), Registered Diplomate Reporter, and Certified Realtime Reporter, in a certain cause now pending in the United States District Court, Western District of Missouri, Central Division, between SHONDEL CHURCH, et al., Plaintiffs, vs. STATE OF MISSOURI, et al., Defendants; on behalf of the Plaintiffs.

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IT IS HEREBY STIPULATED AND AGREED by and between counsel for the Plaintiffs and counsel for the Defendants that this deposition may be taken in shorthand by William L. DeVries, RDR/CRR, a Certified Court Reporter and Certified Shorthand Reporter, and afterwards transcribed into typewriting; and the signature of the witness is expressly reserved.

* * * * *

MICHAEL K. BARRETT,

of lawful age, produced, sworn and examined on behalf of the Plaintiffs, deposes and says:

(Starting time of the deposition: 8:10 a.m.)

VIDEOGRAPHER: We're on the record. Today's date is October 4th, 2017, and the time is approximately 8:10 a.m. This is the video-recorded deposition of Michael K. Barrett in the matter of Shondel Church, et al., versus State of Missouri, et al., Case Number 17-04057-CV-C-NKL, in the United States District Court for the Western District of Missouri, Central Division.

This deposition is being held at ACLU of Missouri Foundation in St. Louis, Missouri. The reporter's name is Bill DeVries. My name is John Niehaus. I'm the legal videographer. We are with

Midwest Litigation Services.

Will counsel please introduce yourself for the record?

MR. WILLIAMSON: Jason Williamson for the plaintiffs.

MR. SHAHABIAN: Matt Shahabian for the plaintiffs.

MR. MAUNE: James Maune for the plaintiffs.

MR. RAMSEY: Steven Ramsey for the state.

MR. QUINLAN: Michael Quinlan for the State of Missouri and Governor Greitens.

MS. SHIPMA: Jacqueline Shipma for the public defender defendants.

VIDEOGRAPHER: Can you please swear in the witness?

COURT REPORTER: Do you swear or affirm that the testimony you are about to give in this proceeding will be the truth, the whole truth, and nothing but the truth?

THE WITNESS: I do.

EXAMINATION

QUESTIONS BY MR. WILLIAMSON:

Q. Good morning, Mr. Barrett.

A. Good morning.

Q. My name is Jason Williamson. I represent the plaintiffs in this case. Mr. Barrett, have you ever been deposed before?

A. Never.

Q. So we'll just go over a couple of quick ground rules so that we're on the same page. I'm going to ask you a number of questions that are relevant to this case and you're required to answer those questions truthfully to the best of your ability. Remember that your testimony is under oath. So it is just as if you were testifying in court. Do you understand that?

A. I do.

Q. The deposition today will last no more than seven hours. I do not expect us to need that much time, but we will take breaks as appropriate, and please let me know if you need to take a break for the restroom or -- or any other reason.

VIDEOGRAPHER: One moment.

Q. (By Mr. Williamson) Your attorneys may object to one or more of my questions, but except in limited circumstances you're still required to answer the question truthfully and to the best of your ability. Is that clear?

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A. That's clear.
Q. Okay. And if you don't understand my question or you have trouble hearing me, please just feel free to let me know and I will rephrase or repeat -- repeat the question as necessary, okay?
A. Okay.
Q. When you answer the question, just please make sure to speak clearly and loudly enough for our court reporter, and when you answer please make sure you answer verbally as opposed to nodding your head or shrugging your shoulders, etc. Is that clear?
A. That's clear.
Q. And then finally just if you could allow me to finish answering my question before you answer just so that we can have a -- have a clean record here, make things easier for our court reporter. Okay?
A. Okay.
Q. Mr. Barrett, you are aware that you were identified by your attorneys in this case as one of the Missouri State Public Defender employees designated to provide deposition testimony under Federal Rules of Civil Procedure 30(b)(6); is that correct?

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A. I'm aware.
Q. Okay. And did you receive a copy of that deposition notice?
A. I believe I have, yes.
Q. Okay. Did you have a chance to review it before this deposition?
A. Generally, yes, I did read through it.
(WHEREIN, Exhibit 1, Notice of deposition, was marked for identification.)
MR. WILLIAMSON: Okay. I'm going to hand you a document that is marked Exhibit 1 for identification. Copy to the -- sorry, I only have one. One copy.
MR. QUINLAN: This is one?
Q. (By Mr. Williamson) Is that a copy of the deposition notice that you reviewed?
A. I believe it is.
Q. And you see attachment A there as well?
A. I do.
Q. Okay. My understanding is that you will be prepared to testify today with respect to at least numbers 6 and 13 on attachment A. Is that your understanding?
A. Six. And what was the other one?
Q. Why don't we do this? Can you -- can you read the description of item number six there? I'm sorry, for the record.

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A. Yes.
Q. Can you read it out loud, please?
A. Oh.
Q. Sorry.
A. (Quote as read):
Policies and procedures relating to the circumstances under which and process by which MSPD attorneys are permitted or required to refuse case appointments.
Q. Are you prepared to answer questions related to that subject?
A. Yes.
Q. And can you read the description of item number 13?
A. Number 13. (Quote as read):
Information regarding MSPD budget allocations and expenditures, including the amount or proportion spent on expert witnesses, investigators, and social workers respectively.
Q. And are you prepared to answer that -- questions about that subject?

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A. Yes.
Q. If there are any questions that I ask you that you are not prepared to answer, please feel free to let me know.
A. Okay.
Q. Okay? Mr. Barrett, did you prepare for the deposition today?
A. Yes.
Q. How did you prepare?
A. I reviewed some old budget books. I reviewed a study pulled together by the accounting firm of RubinBrown. I reviewed to some degree our previous year operating budgets.
Q. Did you meet with your attorneys?
A. Yes.
Q. Did you meet with any MSPD district defenders in preparation for the deposition today?
A. No.
Q. Did you meet with any assistant public defenders?
A. Not in preparation for this deposition today.
Q. Okay. Did you meet with any other MSPD staff as part of your preparation?
A. Yes, we -- I talked with deputies.

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Q. Okay. And particular people -- you said deputies that work in your office?
A. Yes.
Q. Who are those individuals?
A. Deputy director Greg Mermelstein. Deputy director Joel Elmer.
Q. Okay. And besides the documents that you've already named, did you review any other documents?
A. No.
Q. Okay. Mr. Barrett, are -- by whom are you employed?
A. State of Missouri, Missouri State Public Defender system.
Q. And what is your official title?
A. I'm the director of the Missouri State Public Defender system.
Q. And how long have you served as director of the Missouri State Public Defender system?
A. I began in this role on or about June 1 of 2015.
Q. And can you describe for us your professional responsibility prior to joining the public defender's office?

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A. Prior to joining the public defender's office?
Q. Correct.
A. Well, I held another position within the system prior to being director. Would you like me to speak to that?
Q. Please.
A. I was for about a period of one year before being appointed as the director, served as general counsel.
Q. And prior to that?
A. I worked for the State Emergency Management Agency.
Q. Okay. How long did you work for that agency?
A. Approximately seven months.
Q. And prior to joining that agency were you working here in Missouri?
A. I was. I was working in the office of the governor.
Q. Okay. And what was your job title in the governor's office?
A. Deputy general counsel.
Q. How long did you hold that position?
A. A little more than two years, including

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a brief stint as deputy chief of staff when there was a vacancy.
Q. And who was the governor when you worked in that office?
A. Jeremiah "Jay" Nixon.
Q. Can you describe your current job responsibilities as director of the state public defender's office?
A. Sure. I have to -- part of my responsibilities is to implement the operating budget. That is pulled together by the comptroller of the public defender system, passed by the general assembly.
I have to allocate resources throughout the state to make sure to the best of our ability that there is lawyers to handle cases that come in through the door in order to fulfill the rights of indigent accused.
I have to make sure that the lawyers under my charge practice within the rules of professional responsibility. I have to make sure that we are following state and federal law as relates to employees.
I have to report out to the Public Defender Commission, who I report to on -- at least

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on a quarterly basis. Those are my general -- I am responsible for hiring and firing decisions.
Q. And when you report to the Public Defender Commission, what kinds of things are you sharing with -- with the commission?
A. Sure. So the general practice is we have a quarterly meeting that is noticed up to the public pursuant to the sunshine law. The -- there's currently -- there's seven positions, three of which are vacant. So there's four active members of the Public Defender Commission.
When we pull together an agenda I propose it to the chair of the commission for his approval. Those things typically include caseload reports, whether cases are going up or down, such things as current operating budget, how we're doing this far into the fiscal year.
Are we ahead, are we behind in terms of projections? Some personnel issues with say for closed session, of course. Other -- other issues that are relevant to that date and time, whether it's our participation in certain initiatives or cases that we're dealing with.
Other issues could be facility reports for the reason that we do not control where our

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offices are. Those are controlled by the jurisdictions that we serve and presents a number of problems.

So we report out on that. Each one of the division directors and deputies will report out. For instance, we have a trial division director. She will report out on what's going on in her division.

Deputy will report out on what's going on in appellate or PCR as well as juvenile cases. These are the types of things that regularly occur on the agenda for commission meetings.

Q. So I want to return to the structure of the public defender's office in a minute, but first you were hired by the Public Defender Commission; is that correct?

A. That is correct.

Q. And what role, if any, does the commission play in the day-to-day operations of your office?

A. They don't play a large role in the day-to-day operations. When there's something going on that -- that I'd like to keep the commission informed on, I will -- if nothing else, a courtesy to the chair, brief him, but they are really

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responsible statutorily for approving the budget, and they have a number of other statutory requirements, such as to do some advocacy for us and our mission, as well as to prove some pay structure within the system.

Q. And is that advocacy with respect to the legislature or the general public or -- or some other --

A. I think it's all-encompassing, but I think the legislature is, if my memory serves me, specifically enumerated in the statute.

Q. Now, is the commission responsible for evaluating your job performance?

A. Well, I can say this. They have -- they hired me and they have the ability to fire me for cause.

Q. Did they conduct any kind of formal evaluations of -- of your work or of the work of the office?

A. I have not received a formal evaluation. They have shared in the past when, you know, we -- they think we are doing something well and when they think we're -- we can improve. So to that extent they share those things during the commission meeting, but I have not received a formal

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evaluation.

Q. You do receive verbal feedback, though, from the commission?

A. Yes.

Q. So let's talk a little bit about the structure of the office which you refer to in your -- one of your previous answers. Can you talk about how the office, the district offices are set up and what their relationship is to the central office?

A. Sure. So we are a statewide system. Not all public defender systems are statewide. And so we have several divisions. Let's start with central management. We have several divisions.

We have a trial division, which represents the lion's share of our cases. We have an appellate PCR division. We have a capital and division that also includes juvenile LWOP cases.

(Court reporter interruption.)

THE WITNESS: I'm sorry, life without parole cases, LWOP. My bad, sorry.

MR. QUINLAN: I'm sorry. I apologize. Can you just start that -- the name of that office again over for me?

A. Sure. My apologies. The last is the

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capital division, which also handles juvenile life without parole cases, and that's because both of those cases, capital and juvenile, LWOP, require mitigation.

So underneath me in the organizational chart you'll -- you'll see those three divisions listed. Within those divisions, as I mentioned, trial division is our largest division.

We have 30 some odd trial division -- offices throughout the state and some areas where there is -- where it is highly populated, for instance, St. Louis or St. Louis County, Greene, or Kansas City. The -- the local office, what's referred to as the area, area, and then a number will handle just one county.

However, in some other areas of the state that are less populated one area office will handle any number of counties. Could be up to nine I think is our maximum. The local office is -- is run or managed by a position called a district defender. District defender is responsible for the local office, including assignment of cases, managing their local office budget, etc.

Q. And there are 114 counties in Missouri?

A. Including -- and then the state -- city

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of St. Louis.
Q. And there are 33 separate areas or district offices?
A. I believe that's correct, yes.
Q. Okay. And can you talk a little bit about how your office handles conflict cases?
A. Yes. So we have -- when there's a conflict -- by way of an example, if there's a robbery, arrest for a robbery involving two defendants in Columbia, for example. Obviously that local office, the Columbia trial office can only represent one individual.
That second defendant would ordinarily be represented by the public defender system if they are indigent, but by another public defender office. Whether it's the Cole County office, the Fulton office, or the Sedalia office.
When we have the funds, we contract out that second defendant to the extent that we are able to to a private lawyer who practices in the jurisdiction where the crime allegedly occurred. This keeps the public defender who -- in that second office from having to drive to another county to represent one, two, or a handful of individuals.
Q. And how often generally speaking is it

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the case that you have the -- the funds to hire contract lawyers as opposed to having lawyers in other districts handle conflict cases?
A. So going back two years to 2015, we were set to receive funds, additional funds to the tune of $3.47 million that was appropriated by the legislature for the purposes of handling these types of conflict cases. I believe this program that we run is called Code 49.
Deputy director Joel Elmer will be able to speak more specifically on that program. At the time we were -- there were several counties in our Code 49 program, but it was not a robust program. I don't know how many counties were in it, but when we were set to receive the 3.47 million, it was for the purposes of putting more counties in Code 49.
That means more counties were going to have their conflict cases contracted out to private counsel. That money, that funding was vetoed. The legislature overrode the veto, but then those funds were withheld.
We did not receive additional funds the second -- the subsequent year for purposes of Code 49 or contracting out conflict cases, but in the last legislative cycle we did receive additional

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funds to essentially contract out all conflict cases to the extent that lawyers, private lawyers are available and willing to take the cases in the state. We are currently in the process of administering that effort.
Q. So as it stands today, do you know how many districts or areas are participating in this Code 49 program?
A. I believe that all of them are.
Q. Okay.
A. It is fluid in that from week to week we have new private lawyers enter the program and withdraw from the program. As I stated, deputy director Joel Elmer will be able to speak more specifically on Code 49.
Q. Okay. And just to be clear, outside of the Code 49 program, when -- when one district is -- or area is responsible for handling conflict cases in -- in other counties, is it true that the -- the districts are assigned specific counties to handle in the event that conflicts arise?
A. Yes. For instance, one office will be responsible for their -- the county in which they sit, and if it's a rural area additional counties, but then above and beyond that as you stated, there

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are additional counties that they are responsible for handling conflict cases in.
Q. And you said that a -- any particular district office could have up to nine I think you said counties that encompass the -- a district?
A. My recollection is the Chillicothe office handles nine counties. I could be mistaken, but that's my recollection is the most number of counties covered by an area office.
Q. Okay. And then those offices will have a number -- multiple counties that they're -- where they're responsible for handling conflicts above and beyond the -- however many counties encompass that district?
A. I believe that's the case, but it varies for each --
Q. Sure.
A. -- office.
Q. Right. Okay. I just want to return for a second to -- I asked you about the commission's role in -- in your office's work. Are there any other state officials outside of the MSPD office that have any kind of authority over the work that you do?
A. I should mention that by statute we are

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an independent department within the judicial branch. So we have some relationship to the judiciary, but the statute also states that we are independent. I receive no operational control from any other entity other than the Public Defender Commission.

Q. Okay. Can you talk a little bit about your -- the MSPD's relationship with the governor's office with respect to budgeting or other operational issues?

A. Yes, I can. It's -- and the person who's most prepared to talk about this is the comptroller Kathy Lear, but sometime in the process for budgeting is MSPD prepares a draft budget request to submit to the Public Defender Commission, which we typically do at the September meeting.

The Public Defender Commission then votes on whether to approve or not approve or make changes to the draft budget request. Once approved, that draft budget request is then submitted to the legislature and to the governor's office.

I believe then the governor's office uses these submittals in order to prepare the -- the recommend -- budget recommendations, the governor's budget recommendations to the legislature.

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Q. Okay. Do you receive any feedback from the governor's office regarding your proposal or do they just receive it and --

A. I have not. In my experience I typically just receive it. I don't think that prevents the governor's office from having conversations, but I have not -- in my experience I have not had conversations.

Q. Okay. Now, is it your responsibility as director to determine how to allocate the funds to the various district offices around the state?

A. Yes.

Q. Okay. How do you go about making those allocation decisions?

A. Well, this is something I task the comptroller with, Kathy Lear, and I believe she looks at prior year cases to pull together a budget. That also includes funding for anticipated travel to the extent that they have to cover -- that office has to cover a number of counties.

She prepares a budget for each office. That then goes to each district defender who administers. And the primary driver of that budget is the caseload. Another factor is the available space, the office space for that office.

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Sometimes the number of cases would suggest to me that an additional position is necessary, but there is no space in that office to put another person.

Q. So in that instance even if you have the funding to hire an additional attorney for that office, you're not able to make that hire?

A. Right. That's one instance. Another instance is approving a position for an office, but being unable to hire a person for that position. For instance, we've had at least one office where we've had a vacancy for a year because of the lack of interest in applicants.

Q. Okay. And do the district offices provide any kind of budget proposals to Kathy Lear or to you, anyone in your office?

A. Not directly to me. That might be a question for Kathy Lear.

Q. I want to ask you just a couple of questions about the district defenders. All of the district defenders ultimately report to you, correct?

A. Well, from the organizational chart and chain of command they would report -- for instance, the trial division, they would report to the trial

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division director.

Q. And the trial division director would then report to you?

A. In the ordinary course she would report to a deputy, but in practice, in practice she typically reports directly to me because the way the work is assigned.

Q. And who is the trial division director?

A. Her name is Ellen Blau. E-L-L-E-N. Blau, B-L-A-U.

Q. Okay. And are you involved at all in the supervision of those district defenders?

A. Not by -- not direct supervision by design of the position. However, I make it a practice to travel to local offices, sit in on staff meetings, listen to concerns. When I learn that there's an issue in an office, I will often directly interact with the management in that office, but not by design, but by practice.

Q. How often are you able to make those -- those kind of visits?

A. It occurs more frequently when the legislature is not in session. There is no normal from week to week. In one week I could visit upwards of three offices. In another week none

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depending where -- what I'm facing in terms of my schedules or to dos, but I try to at least visit an office a week.

Q. And you said you -- you would typically, in terms of deciding what offices to visit, if you're made aware of an issue in a particular office, that may be one that -- that you prioritize; is that right?

A. Yes.

Q. And how -- how would you generally be made aware of -- of an issue that would require your intervention?

A. It can happen any number of ways, but the management of that office may call our central office. We refer to it as Woodrail because that's the name of the office complex, either by call from the local office to Ms. Shipma, our general counsel, or to our human resources department, or vis-à-vis an e-mail from a local office or a phone call directly to me or to Ms. Blau saying there are concerns, or employees sometimes could use a little pep talk, and -- and then I try to make an effort to visit or call in during a -- or -- scheduled staff meeting.

Q. Okay. This may be a question that --

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that should be directed to Ms. Blau, but is it your understanding that district defenders are expected to carry their own caseload?

A. They oftentime -- they -- in all but one circumstance I believe they do. I as director do not impose any requirements on a division -- on a district defender in terms of you must carry a caseload and you must carry caseload that looks -- that has X number of cases.

Because we have small, medium, and large offices they have varied management responsibilities. They also have responsibilities under the rules of professional conduct to oversee the lawyers in their charge.

Given the number of cases their office handles, the number of counties their office handles, whether they have new attorneys or senior attorneys, these are all factors that go into the size of their caseload, but I will say that all the district defenders save one has an active caseload that I'm aware of.

Q. Do you -- do you know which one does not?

A. I believe Kansas City district defender does not. I can't say with a hundred percent

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certainty, but if my recollection serves me, that's the case.

Q. One other funding question. Do the district offices receive any funding whatsoever from any other source besides the -- the central office?

A. I don't believe so. I know that the St. Louis office participates in several grants. I think most of those grants, if not all of them, involve not funds but, for instance, a social worker to help with cases.

The legislature I believe imposes a limit on the number of dollars that we can bring in from outside resources. I believe that's 125,000 or 150,000. I'm not sure.

Kathy Lear would know for sure. But I don't -- I do not think that we receive any outside funds for, say, a private organization or federal government.

Q. And/or local government, county government or --

A. Well, we -- we do receive the office space.

Q. The office space, okay.

A. And I believe in Kansas City we have some involvement in drug court, and I believe the --

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the local jurisdiction may cover that cost or some cost associated with that if I'm not mistaken.

Q. And to be clear, the -- the counties are providing the office space, they're not paying for overhead, or are they?

A. I don't believe they're paying for overhead.

Q. So just the space itself?

A. I -- I believe so. As to electricity, I don't know the answer to that. That's a Kathy Lear question.

Q. Okay.

A. It might -- I will say this. It might vary from jurisdiction to jurisdiction. In some jurisdictions we -- we do not have privity of contract on the -- on the lease, and so we don't always know what the terms are as to who's paying for what. It varies by jurisdiction.

Q. How much discretion do chief -- or district defenders have with respect to setting policy in their respective offices?

A. They have some because each circuit, judicial circuit has its own culture. I'll give you by way of example, if a given circuit starts -- has court earlier than other jurisdictions they could

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amend policies to require attorneys to be there earlier.

We generally require I believe approval before they impose policy, but there are a number of policies that existed in local offices prior to my joining the system. So I'm not always aware of the local policies that are in place, but they have some.

Q. Do they have discretion around how -- how they allocate the funds that are given to them from the central office?

A. I believe that Kathy Lear comes up with a budget for each one of them that is lined out. The -- we have -- Missouri State Public Defender system has a hundred percent flexibility in our budget. It's not commonplace, but it gives us the ability to get through the fiscal year.

I believe the district defender works directly with Kathy Lear in the event that they need to make changes to how their local budget is administered, but there is some flexibility, yes.

Q. And so you said that the public defender's office has 100 percent flexibility say to move funds from here to there as necessary?

A. Yes, we -- I believe Kathy Lear needs

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to get -- provide notification to the office of administration. There is a budget analyst who is assigned to each department in the state and it requires their approval, but yes, we have -- the hundred percent flexibility that we've had is probably our best tool for getting through each year because we can't predict with much accuracy whether litigation expenses for the coming fiscal year will be higher or lower than we anticipated.

It's based on, you know, how quickly cases go to trial, particularly cases that involve a lot of litigation expenses, death penalty cases, sex offender type cases. So we need that flexibility.

Q. And you said that that flexibility is rare among agencies, among state agencies?

A. I believe so. I know the court system has some flexibility, but not as much as we do.

Q. And is it your understanding that the reason that you have that flexibility are for the reasons that you just stated, the uncertainties around caseloads?

A. Yeah. We don't know how many cases are going to come in through the door.

Q. Okay. Back to the district defenders for a second. Is there -- in your understanding, is

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there discretion with respect to staffing, either the number of attorneys or support staff, investigators?

A. That goes through me.

Q. Okay.

A. If they need additional staffing, they will need to make the request. It's not just a question of whether there is money -- money available. In addition to providing funds, the legislature also sets a cap on how many what's called full-time equivalents or FTEs we're able to use. And so we need to make sure that there's a FTE available.

And so if a -- if an office, if an area needs an additional FTE, whether it's an attorney, whether it's a support staff position, to include an investigator, they'll make their case to me. And there's a number of factors that we look at to determine whether it's approved. It's very rare that they get additional staffing.

Q. Do you -- let me back up.

I assume it is the legislature that created these limitations, the FTE limitations?

A. Yes.

Q. Do you -- do you know what the

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rationale was behind those limitations?

A. Well, I think the legislature, it's -- it's their responsibility to control the size of state government, and in addition, the one thing that our budget does not cover is fringe benefits, pension, insurance.

And so if we had the cash and we just added people, that would essentially add obligations on the state. And for that reason I believe that they control additionally the number of FTEs.

Q. Understood. Because employees who are not full-time do not get those fringe benefits?

A. Well, I think there's a threshold for when someone is eligible for benefits. But if I added five people tomorrow, that would be five additional people that the state would have to pay insurance for, pensions for, etc., and so for that reason they control the number of FTEs.

Q. Okay. Do district defenders have discretion with respect to the use of investigators in their office?

A. The use of investigators?

Q. Correct.

A. Yes.

Q. So not just the -- whether or not

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investigators or how many investigators are on staff, but how those investigators are used?

A. Yes.

Q. Yes. And do the district defenders have discretion with respect to when it is appropriate or not to refuse to -- refuse case appointments from a court?

A. Well, it's a bottom-up type thing in that each lawyer is responsible to practice within the rules of professional responsibility or professional conduct. Additionally, managers have responsibilities under the rules of professional conduct as well as it relates to competence, diligence, etc.

(Court reporter interruption.)

A. Competence, diligence, etc.

Q. (By Mr. Williamson) And if an individual lawyer raises a concern about taking additional cases, are they required to take that concern to the district defender?

A. That's my understanding.

Q. And then it's up to the district defender to decide how to proceed?

A. Within the rules of professional conduct, yes.

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Q. Does the district defender have to give that lawyer permission to refuse cases?

A. No. They shouldn't. It's the individual lawyer's obligation. I believe there is some flexibility for the manager to engage the person to make sure that they're working hard, they're working sufficient number of hours, to see if they can do things better, etc., to make sure that they are unable to take additional cases, but ultimately it's my understanding under the rules that that obligation rests on the individual attorney.

Q. And those individual attorneys cannot be fired by the district defender as a result of refusing to take cases?

A. They should not be fired for practicing -- an effort to attempt to practice ethically. If they are -- if they can take more cases and they simply are not pulling their weight, assuming there's room within the rules to -- for additional work, then yes, you can terminate -- you can in turn terminate an employee for not working hard enough, not being diligent in the number -- in the cases that they have.

But I would not authorize a termination

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for someone who says that they are not available because they have -- their caseload is such that they can't take any more work.

Q. And can assistant public defenders only be terminated with your approval?

A. Yes. That's my communication to staff, yeah.

Q. Okay. Is it your understanding that these internal policies within the district offices are -- are all in writing?

A. There might be cultural policies as well that date back to a time that no one can put their finger on, but -- but I know a number of offices have written policies.

Q. And those policies don't necessarily have to be approved by your office or do they?

A. I don't remember communicating a directive on -- that I have to approve all local policies for the simple reason that I've approved very few. One of the ones that I do approve and we do have a policy on that I'm regularly engaged in is when we hire someone, one -- one of the questions we ask is are you able to wind down your existing practice, dispose of your existing cases before joining the public defender system. That is the

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preferred situation.

There are sometimes instances where someone is unable to wind down a case and they will seek approval to bring that case with them, provided that they don't use any MSPD time or resources to work on that case, that they share with us the extent of their representation, and that the scope of that representation does not widen after approval. Those are instances where they will need to get our approval.

Q. Thank you. I want to ask you just a few questions about the assistant public defenders, although I realize you -- you may not have a whole lot of contact with -- with them individually. And we've touched on some of this already. How much discretion are individual assistant public defenders given to determine the best way to represent their client in a particular case?

A. Well, as it relates to me there's a statute. I don't know the number, but it prohibits me from directing a lawyer in any way, shape, or form with respect to their representation of an individual.

So as it relates to the director, I don't have the ability to direct them, just that

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they follow the rules, professional response -- conduct which requires certain things, such as seeing your clients, investigating the case, etc.

Q. Do you know whether that statute prohibits just you from -- from directing those attorneys or does that also include the district defender?

A. My recollection is that it's -- it just states me.

Q. And those assistant public defenders are generally supervised by -- you made reference earlier to a manager in those district offices?

A. Well, in -- in a large office like Kansas City they will be under a team leader. They have a team leader in Kansas City. In some offices that are more medium-sized or even -- and larger will have both a district defender and a deputy district defender.

It's up to them how they divide their responsibilities. So some will break up their staff and have half report to a deputy, half report to the district defender. But it's up to them.

Q. And in terms of what that oversight includes, would we need to talk with individual district defenders to determine the kinds of things

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assistant public defenders are evaluated on? Does that vary from office to office?

A. Yes. I mean, there's -- there's more uniformity when it comes to being approved for promotion.

Q. What kinds of things do you consider in that instance?

A. Well, one of the things is client contact. Do you talk to your client? How often do you see your client? I believe we have a standard of within the first seven days is initial conduct -- contact, and then to the best of my recollection it's every 30 days after.

Q. And -- and that is in your mind the -- the most important criteria?

A. It's one of the few things that we could evaluate from an objective standpoint. And also the rules of professional conduct require, you know, regular contact with your client.

Other things are skills which are more subjective, your ability to handle more serious types of cases, but probably the most objective thing is do you follow office rules and procedures and do you see your client.

Q. Do you consider the number of cases

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taken to trial by an individual attorney?

A. In the trial division we want -- when someone -- there's four different levels for attorneys who are nonmanagement positions. There's assistant public defender I, APD II, APD III, and APD IV.

When you get to the higher levels, three and four, we want to see that you are able to go to trial and have the skills to go to trial because you're in the trial division and -- and we don't want to promote someone to a higher level within the system unless they have trial skills.

This proves sometimes to be a challenge because in some jurisdictions it's the culture or the practice that very few cases actually go to trial. My understanding of our numbers is that in the last two years only one percent of cases of among our total number go to trial.

MR. QUINLAN: I'm sorry, you say one percent?

A. One percent.

Q. (By Mr. Williamson) How do you factor in caseloads in your evaluation of individual public defenders?

A. I'm not sure that I'm aware that we do.

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Q. Okay. And you talked about criteria for -- for promotion. Does that suggest then that assistant public defenders are not promoted just based on number of years in the system or other criteria?

A. I believe the first promotion to APD II is primarily tenure driven. Obviously if you're creating mischief in the office or something like that, that would be at play as well, or not following policies, not showing up on time, not calling in or those things. But it's largely tenure driven and not skill driven. APD III and IV are -- by contrast have both a tenure component as well as a skill component.

MS. SHIPMA: Jason, I'd like to point out Joel Elmer will be able to give you more of the details of this.

MR. WILLIAMSON: Okay. Fair enough.

Q. (By Mr. Williamson) And let me know if this is something that Mr. Elmer can or should speak to. If an assistant public defender has a complaint regarding the size of their caseload, for example, are they encouraged to submit those complaints to the district defender or do those complaints come directly to your office or is it some combination

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of -- of both?
A. I think that takes a number of forms. I mean, it's our most pervasive problem in the system, high caseloads. It's my understanding that APDs throughout the state regularly make mention of the fact that they have too many cases. Not in every instance, of course, when they make mention of their high caseloads is it to me.
It's primarily in their local office. I am fully aware, and when I meet with them it's typically brought up if I don't already concede knowing that it's a concern, and when someone leaves the system if they are willing to subject themselves to a -- an exit interview, it's what is almost always what they cite as the reason for leaving. Not -- may not be the exclusive reason, but it's the driver.
Q. Okay. And is there a formal -- I understand it may not happen formally all the time, but is there a formal complaint process for public defenders?
A. I don't believe there is. We -- in training, I know as part of training we say you -- you need to report certain things to the HR department when there's concerns about harassment or

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discrimination or those types of things, that we say you have to report these type of things, but not as it relates to caseload.
Q. Does your office receive complaints directly from indigent defendants regarding the -- the quality of their representation?
A. Yes, we do. We in addition to calls that the individual -- the indigent defendant often makes to their local office to the attorney who represents them and as well as to the district defender or deputy district defender, we utilize an ombudsman program.
Deputy director Greg Mermelstein is in charge of the ombudsman program, where indigent defendants will call -- will call the Woodrail office, either talking to Marsha Plank or Greg Mermelstein or Greg Mermelstein's assistant Lisa McGee, and we will try to resolve the complaint to the best of our ability.
A lot of times it has to do with not seeing the client for some time, not filing or not following the direction of the client as relates to filing certain motions. We will try to resolve it by Greg calling or e-mailing the specific attorney as well as the district defender for that office.

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Q. And do you have any follow-up correspondence with the indigent defendant involved?
A. That's a question for Greg Mermelstein. I believe we also utilize a database for tracking complaints that come in through the ombudsman program.
Q. So let's talk a little more specifically about the funding that your office has received. What is the -- your current operating budget?
A. The specific number, I don't know. I think -- I believe it's around 40 million. Kathy Lear would know specifics. In terms of my perspective on the budget, I think of it in terms of how many more dollars do I have this year than I did last year.
Q. So can -- can you speak to that?
A. Yeah. So I began in 2015. That legislative cycle we were appropriated additional $3.47 million from the legislature for purposes of having a more robust Code 49 program as I alluded to earlier.
As I also mentioned, that increase in funding was vetoed by the then governor. The legislature overrode that veto, and then the

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governor exercised his withhold authority on that additional funds.
I believe the next year, 2016 calendar year, we were flat. We did not receive an increase, I believe. I believe that's the case. You know, I believe we received an additional million. Might have received an additional million dollars is my recollection.
MR. QUINLAN: Fiscal 2016?
THE WITNESS: I get them confused. That might have been fiscal 2017.
MR. QUINLAN: And that's -- I'm sorry.
THE WITNESS: The fiscal is a little ahead --
MR. QUINLAN: As I understand it, fiscal year runs from July 1st to June 30th.
THE WITNESS: July 1, yeah.
MR. QUINLAN: So -- so 2016 fiscal year would run from July 1st of '15 to July 30th of '16, right?
THE WITNESS: I think that's correct.
MR. QUINLAN: So when you said -- when you started in -- I'm sorry.
MR. WILLIAMSON: No, that's fine.
MR. QUINLAN: When you started in 2015,

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are you talk -- were you talk -- and the 3.74, was that the 2015 or 2016 budget?

THE WITNESS: I think it was the 2016 fiscal year budget.

(Court reporter interruption.)

THE WITNESS: 2016 fiscal year budget.

MR. QUINLAN: I've had to deal with that, so I thought it may help you.

MR. WILLIAMSON: No, I understand.

Q. (By Mr. Williamson) So the $40 million -- roughly $40 million budget that you just mentioned that you're working with now is the -- is the FY18 budget, correct?

A. Yes. Yes. I think it might be a little more than that. Kathy Lear would know, and I think it's in -- might be in our operating budget, but we received an additional $4.5 million.

Now, the $3.5 million as I mentioned that we received in 2015 we never received. We are -- we filed a lawsuit on that and we're still litigating it. But for -- for this fiscal year that we're operating in we have an additional $4.5 million.

We are doing three things with that additional money. We are endeavoring to put every

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county in the state in that Code 49 program to the extent as I mentioned earlier there are private attorneys who are in the panel attorney program willing to take cases.

Separately we are using a set amount of funds to improve our IT infrastructure to include wide area network, which I believe is broadband. The reason we're doing that is we don't have sufficient broadband to download a discovery or, for instance, a police body cam video without disrupting every computer in the -- in the office.

In addition, we are trying to hire ten additional positions. We were given ten positions, ten FTEs in 2015 as a part of that increase, which was made part of our core budget going forward.

Although we were given the FTEs, we were not given -- as I mentioned, we're -- the money that was supposed to be used to fulfill those positions was withheld. This is the first year that we had the money to -- to fill those positions. Not all of those positions have been filled.

Q. Do you attribute the changes to your budgetary needs from year to year to increases in caseload or -- or other factors?

A. I can't -- I -- it would be speculative

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for me to guess as to the motivating factor or factors in the legislature making the decision, but one of the things that I did communicate to them was the increase in caseload that occurred from 2015 to present day.

I think there was a one-year jump of, if memory serves me, 12 percent, bringing us from 74,000 cases a year, rough number, to north of 80,000, I think closer to 82,000 cases.

And then in the subsequent year we received an additional increase to the tune of a few percentage points above and beyond that 12 percent increase. And so any additional funds that we received are in the context of more work having to be done.

Q. Do you have any sense of what is driving the -- the increase in the caseloads?

A. I can't speculate as to -- on that. I would imagine it varies from jurisdiction to jurisdiction. I can by way of one personal experience answer that question. I recently visited our Union office.

Although we had a statewide increase of 12 percent, the Union office jumped off the charts because it had a -- I believe a two-year increase of

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60 percent increase in the number of cases that we received. I went there to try to kind of suss out what was driving it.

I met with the local prosecutor in addition to district defender Lisa Preddy, and he told me that in part he was able to hire two additional prosecutors. If memory serves me, that allowed him to file more cases to include misdemeanor cases that they previously were not able to move forward on.

So I could say that in that jurisdiction, based on the communication that I had with the local prosecutor, that it had something to do with being able to hire additional prosecutors. I can't speculate as to what's driving it in other jurisdictions.

I know in Springfield, which is the office that we had the second highest increase in our caseload, I believe it was around 25 or 26 percent memory serves me, they had recently passed a one percent sales tax for the increase for the purpose of public safety, hiring more law enforcement officers, hiring more prosecutors.

The -- the consensus in the local office from what I've heard from others and my own

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opinion, that this has driven an increase in more filings in that office.

Of course, in both the Union office and the Greene County office or the Springfield office, as well as other offices, we did not receive any corresponding funding to -- to match what was going on in the local jurisdictions beyond the funding that I mentioned earlier.

Q. Based on some of your prior responses, I'm assuming that Kathy Lear would be the best person to talk to about the budget proposal process? Is that fair?

A. Yeah. Yes, I spoke to it a little bit earlier based in terms of the commission approval, then the submission to the governor and the legislature, but in terms of specifics, how she pulls together the numbers that she does, it would be questions related to her.

In terms of what priorities are or in what the overarching budget should look like, I play a role in that. For instance, we had a study done that was completed I believe in 2014 which was an empirical data-driven study called the Missouri Project Report performed by RubinBrown, accounting firm, that established thresholds for how many hours

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we're supposed to spend on given cases by case type.

That -- that report provides some sort of calculation where we could input our current number or the last year's -- the previous fiscal year's cases and by case type, then subtract out the current resources we have, and that would yield how many additional resources we need. That is the primary driver of our budget formation is the RubinBrown calculus.

Q. And is the -- is it your understanding that the legislature has accepted those standards as reasonable?

A. I can't opine on that. I will say two -- two things to that. There was some criticism that preceded my involvement with MSPD as to how these -- how our then numbers were calculated. We received criticism in auditor Schweich's finding about how numbers were pulled together.

In addition, I know that the Senate budget chair at the time had concerns because Missouri was the only state I believe that had two Supreme Court -- state Supreme Court cases that discussed our caseload as well as an auditor finding that challenged or raised some concerns related to our -- our caseload standards at the time.

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The American Bar Association thought that Missouri was the -- the right state to have the first caseload objectively -- objective data-driven caseload study performed in to formulate new data-driven empirically based caseload numbers.

When that report came out, that is the year, the next legislative cycle that we received the increase of 3.47 million. So I will just put those two together to suggest that it held some weight. Separately, part of the budget process is the House will pass -- there's two houses, the House and the Senate.

The House will pass its budget bill first and then it will go to the Senate. Because the number of budget bills and lines on budget bills that the Senate has to review and make decisions on, they will speed up the process by in Senate budget committee looking at, one, the governor's recommendation for each budget request, what the House passed, and what the department requested.

Typically when you sit in on that budget hearing you will hear either House and close, which means the Senate budget committee will go with the House version and then move on to the next, or governor's recommendation and closed, and more

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rarely go with the department request.

This past year the Senate budget committee or Senate appropriations I should say, that's the appropriate name for the committee, did not go with the -- in committee did not go with the House recommendation or the House-passed budget bill for MSPD.

It did not go with the governor's recommendation, but went with the departmental request given that the departmental request was based in large part on the RubinBrown numbers.

You may be able to make -- there might be a tacit acknowledgment that they accepted the numbers, but again, I'd only be speculating as to what's in their -- their minds. After that point because the House and the Senate differed on their positions, it goes to a joint budget committee where they reconcile their differences.

Q. And during this process you advocate at the legislature for that additional funding; is that correct?

A. Yes. I -- I provide testimony both in legislative budget committee hearings and I meet privately with staffers and key members on appropriations in the legislature.

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Q. And have you been asked formally or informally about the RubinBrown study generally or its role in -- in your development of your budget?

A. Yes. It's always a part of my proposal, my written remarks, my -- my oral remarks, as well as individual conversations when -- when I'm asked how did you arrive at this number.

Q. And has anyone ever challenged explicitly or implicitly the -- the legitimacy of those numbers?

A. Yes. Conversations with prosecutors. Again, they will -- I know the comments have been made questioning the report. What the specific concerns are, I don't recall.

Q. You said prosecutors have raised concerns?

A. Yes, I don't remember which ones, but I remember having conversations.

Q. Any legislators raise concerns?

A. Perhaps -- not to me directly, but perhaps.

Q. Okay. And you said it's your job to prioritize your budget or your -- your line items; is that correct?

A. Yeah.

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Q. How do you go about that -- that process?

A. Well, I should say that in addition to generating a number that -- that's based on RubinBrown calculus, there are things that we additionally asked for in our budget. IT is an example.

Also, we do not have a -- an appellate office in the southern district. We have the Southern District Court of Appeals, but we do not have a southern district appellate office. Therefore, our attorneys in our central office or our western appellate office have to drive a long way to handle these types of cases.

Also, we have asked for juvenile advocacy units, which the system previously had, but had to get rid of in order to handle our rising adult caseload. They preceded me.

So we've asked for these types of things in our budget above and beyond what RubinBrown says we need to provide constitutionally competent representation for the number and types of cases that we have.

Q. Is it your understanding that Sarah Johnson will be able to talk about the juvenile advocacy units?

A. I believe so, yes.

Q. Okay.

MS. SHIPMA: And Joel Elmer.

MR. WILLIAMSON: And Joel Elmer.

Q. (By Mr. Williamson) And -- and does the Public Defender Commission play any role in determining priorities within your -- your budget?

A. Well, yeah, we propose the budget to them and they have to approve it, and there will be questions as to, you know, specific things and what's -- what I would -- it's always a question in the legislature of, okay, this is what you say you need, but what would you prioritize?

And in -- recently we have prioritized getting out of conflict cases because it's the most -- it's the thing that we can do to provide relief statewide in addition to make us more efficient because we're -- it reduces our travel time.

Q. At what point in the course of a given prosecution is the public defender's office typically assigned or appointed to represent an indigent defendant?

A. So again, it -- it will vary by

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jurisdiction in terms of how or when an individual receives an application for public defender's services. There are times when they are incarcerated pretrial and receive an application in the jail, and then the jail will by arrangement send us the application.

There are also times when the defendant is in court and will apply and the defendant may be approved or qualify for defender services there or the application may be taken back for clerical staff or someone else to assess the application for services. So it varies.

Q. But in every jurisdiction it is the public defender's office that makes the decision --

A. By statute.

Q. -- with respect to -- okay. And what is the basis for that decision?

A. So it's a little bit complicated. There was both a statute and a rule on this. And the ultimate goal is determine whether they can afford a lawyer for the charges that they are facing, but the calculus for it is -- is a little complex.

We use -- we are one of I believe 21 states that use as an objective component the

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federal poverty guidelines, and I believe the threshold is a hundred percent of the federal poverty guidelines, and they would not qualify, I believe, which means that theoretically because food stamps qualifications I believe is 125 percent, you could qualify theoretically for food stamps and not qualify for our services.

There are additional subjective components. For instance, if the individual bonds out, posts their own bail or bond, and that amount is -- suggests to our office that they have access to resources, for instance if they post a $10,000 bond or a $5,000 bond, we would inquire as to whether that individual has access to other resources, either physical property that can be liquidated to -- to hire an attorney or cash or liquid assets.

There are other things that are considered. For instance, whether the person is employed, whether they are -- how many dependents they have, whether they are receiving government assistance.

I believe if they are both unemployed and receiving governmental assistance, with the exception of disability, I think that's a per se

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quali -- qualified for public defender services. If we make a determination that the person is not indigent, also by statute the person can appeal to the judge who is then in a position to overrule our determination of indigence.

Q. And if -- if a -- if a defendant appeals that decision is there a hearing that's held?

A. I think the statute requires a hearing. I think in practice it's very different from that.

Q. And to the extent that a hearing occurs or that there's some sort of proceeding in front of a court, would the public defender's office appear in that proceeding?

A. I will say that it appears that that's the design, but I don't think it happens that -- I think it happens like that very rarely. I think the judge asks the individual a few questions, there's not a lot of investigation that's done by MSPD for the simple reason that it's not a good use of our time in light of our existing caseload.

And it's our experience that if the individual tells the judge that they can't afford an attorney, then the judge will find indigent and appoint us. So it's just our practice at that point

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to accept the representation. There are -- there are instances where we don't, but commonplace is we accept the appointment.

Q. Okay. To what extent formally or informally does your budget limitation factor in to the decision about whether or not someone is determined to be indigent?

A. It shouldn't. It shouldn't. I will use that to point something out, though. When our commission -- when the Public Defender Commission was made aware of a report that we had -- MSPD had one of the -- if not the most strict standard, and by that I mean you could theoretically qualify for indigent representation in the 49 other states but not in Missouri, they endeavored to review what other states did and consider expanding our eligibility for services.

They decided not to given the fact that we didn't have the resources to handle our existing caseload at the time, but we wanted to make sure that no one would was falling through the cracks. And one of the things that we identified was how bond was used locally to make a determination of indigence.

I'm aware that prior to me and a little

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bit into my tenure there was a per se determination that if you made five -- if you posted $5,000 bond, you did not qualify for public defender services. This had a number of drawbacks as it relates to making sure that people get a lawyer.

One, some judges would post bond just underneath $5,000 for the purposes of making sure they qualify. In other jurisdictions, this rule failed to account for instances where a relative would post bond, but they would not -- that same relative would not be willing to hire counsel.

So it's not a good basis for a determination. And so what we decided was to instruct local offices to use the bond amount as -- as a factor and a reason to make further inquiries as to the person's access to resources.

Q. Okay. And once it has been determined that a particular person does qualify for public defender services, is there a particular person that is then responsible for determining whether there are any conflicts?

A. I -- I think Joel Elmer would be able to speak to that, and I think who makes that determination may depend on staffing of local office.

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Q. And do you have any insight into the process that -- and I imagine it could probably vary from office to office, but the process by which district offices determine which individual public defender will be handling a particular case?

A. Yes, it's -- it's by office. Some offices like the Chillicothe office that I refer to earlier, which covers a number of counties, lawyers are sometimes assigned to a county. In other jurisdictions there may be multiple lawyers assigned to the same county, so it will vary depending on the office who gets what case.

MR. WILLIAMSON: Can we go off the record for one minute?

VIDEOGRAPHER: We're going off the record at approximately 9:37 a.m.

(WHEREIN, a recess was taken.)

VIDEOGRAPHER: We're back on the record at approximately 9:51 a.m.

Q. (By Mr. Williamson) Mr. Barrett, are you familiar with the Missouri Supreme Court case captioned Missouri Public Defender Commission versus Waters?

A. Yes.

Q. What is your general understanding of

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the -- of that case?

A. I get that case and the Pratt case confused. One relates to the promulgation of a rural -- this all preceded me, my time at MSPD, but the promulgation of a rule involving when an office can essentially refuse to accept new cases if that's correct.

Q. And even though the Waters case preceded you, do you have an understanding of what the -- the practical impact of that decision was on -- on your office?

A. Well, my understanding is the promulgation of that rule would provide a mechanism that would allow a local office to essentially not accept or not be available to receive additional cases because a determination had been made that that office has too many cases.

Q. And are you aware of any steps taken by the Missouri legislature to -- to codify the decision in Waters?

A. I don't know if it was to codify. I would frame it as to nullify the -- the rule that was promulgated by enacting a statute that it would appear to me to be -- although I never administered it, more onerous than what was promulgated by MSPD

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prior to my joining the department.

MS. SHIPMA: And again, Greg Mermelstein and Joel Elmer both lived through that time with MSPD, so they can speak in more detail about the specifics.

MR. WILLIAMSON: Okay. That's helpful.

MR. QUINLAN: I -- there's a word that I missed. You said you never utilized the statute.

THE WITNESS: Not during my tenure.

MR. QUINLAN: I'm trying to remember what the word was you used. Do you remember?

THE WITNESS: Administer.

MR. QUINLAN: Administer. Okay. And I apologize.

Q. (By Mr. Williamson) Is it your understanding that your predecessor, Catherine Kelly?

A. Yes.

Q. Was told that if offices continue -- or started to turn down cases that the legislature would attempt to privatize the public defender system?

A. Secondhand coming -- information came to me that a -- that during a time when the office, or at least the Boone County office, utilized the

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rule that was promulgated and affirmed by the Supreme Court a judge by the name of Oxenhandler began appointing.

This stirred up some political backlash in Jefferson City. I was told that a representative from the House of Representatives, I believe it was Kelly who represented at the time Boone County or an area within Boone County, I believe, visited Cat Kelly.

I don't know the specifics of their conversation, but it was told to me that during this conversation the communication was stand down, stop refusing cases, or the legislature will proceed with plans to privatize. I don't know what happened after that, other than the legislature didn't pass the privatization bill, but --

Q. Did you ever have a conversation with Ms. Kelly specifically about this?

A. No. Not regarding details. And not even as to her being visited by representative Kelly on this point, just that in more general terms the decision to reverse course and not refuse cases was tied to concern about privatizing the system.

Q. Did you ever receive a similar warning from anyone?

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A. Yeah, recently as yesterday. I was on a conference call with several judges and a prosecutor and the district defender of my Kennett office. The judge -- the presiding judge --

(Court reporter interruption.)

A. Kennett office, K-E-N-N-E-T-T. Leslie Hazel is the district defender's name. She was following the direction of lawyers in her office that they were not available and she communicated that to the court.

She received I think some hostile treatment locally and I asked to be included on the conversations. The call was had yesterday at three o'clock which Judge Mayer, M-A-Y-E-R, I believe, who I think is the presiding judge.

Judge Satterfield, who I believe is an associate judge. As well as a prosecutor, elected prosecutor named Russ Oliver. I believe he represents Stoddard County.

They -- we talked through what directives I'd given or not given with respect to Ms. Hazel's decision, the events that led to it, what my position was on the law.

During the course -- I think it was at the end of the conversation Russ Oliver made

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comments related to privatization and good luck this legislative session.

And previous to that call it was related to me by a number of employees that Russ Oliver -- and I have no direct knowledge as to whether he did or did not -- was communicating with the Speaker of the House about reviving the privatization bill and was -- and having back channel communications with prosecutors on that subject. I cannot testify about whether that's accurate, just that it was related to me.

Q. We'll come back to -- to that shortly. Did the prospect of case refusal come up during the process of your -- your application for this job?

A. No, I don't think it -- during my interview?

Q. Right.

A. I don't think it came up. I don't recall it.

Q. Was it your understanding as you went through that interview process that the public defender's office was in the midst of a budget crisis at that time?

A. Yes.

Q. And did you talk with members of the

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staff or whoever was interviewing you about that problem?

A. Yeah, the lay of the land at the time within the system, which was my impression of the system, was that turning away cases, whether based on ethical obligations or otherwise, would result in privatization, and that made it all the more dire to try to get as many additional resources as possible.

Q. So is it fair to say that you didn't believe at the time that you took the job that refusing cases was a viable alternative?

A. I remember from day one to now being extremely conflicted because the proverbial rock and a hard place with what I know to be our ethical obligations, including my ethical obligations as a manager in the legal setting to what, you know, provided -- making sure -- doing what I needed to do to make sure that everyone received competent representation pursuant to the Sixth Amendment.

The -- I remember having some understanding of the privatization proposal, and it was my determination that it would -- it would -- it would not be an improvement on the current situation in terms of providing the right to counsel to the indigent accused.

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For that reason I endeavored to improve the -- the system incrementally through making -- trying to secure more funding and then reporting back to the legislature on how I spent that funding and making a case for the benefit to the state of Missouri.

Q. And can you talk a little bit about what -- can you talk a little bit about your understanding of -- of what that privatization proposal entailed?

A. I don't really recall. I think it was a hybrid where MSPD would continue to take certain cases, but other cases would be privatized.

Q. In other words, assigned to private counsel?

A. Yeah. By -- by means that I'm not familiar with, whether it was -- I don't know whether MSPD would contract out those cases, whether it would be done through the court system or office administration. I think -- I don't even know whether that was determined.

MS. SHIPMA: Once again, Joel or Greg would have probably more details on that having been part of those discussions.

Q. (By Mr. Williamson) So I want to talk

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a little bit about the public defender's office, the current case refusal policy. What are the criteria, if there are a specific set of criteria, that would justify a public defender in Missouri refusing to -- to take a particular case?

MS. SHIPMA: Jason, I'm going to object. Just the way you phrased the question, assuming -- assume that there is a case refusal policy.

MR. WILLIAMSON: Okay.

MS. SHIPMA: So --

MR. WILLIAMSON: Let me back up.

Q. (By Mr. Williamson) Does your office maintain a formal case refusal policy?

A. No.

Q. Do you know whether the district offices maintain their own case refusal policy?

A. I do not believe they do.

Q. So separate from any formal or informal policy, what in your mind would justify a public defender choosing to refuse a case appointment?

A. That there's a conflict. Conflict can be achieved I think in two ways. One, whether the -- representing the case to be received in any way conflicts with an obligation to an existing or

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previous client.

There's also a conflict when if a lawyer accepts an additional case and fulfilling the obligation to that new defendant in any way takes away or it deprives the lawyer of competently representing their existing clients because foremost an attorney has an obligation to their existing clients.

Q. And what documentation, if any, would that public defender have to provide, excuse me, in order to demonstrate that such a conflict exists?

A. Other than the rules of professional conduct, nothing that I'm aware of was generated by MSPD.

Q. And how does this generally work in a -- in a particular district. If a -- if an assistant public defender determines that there's a conflict and they feel the need to turn down a case, what happens then?

A. Well, taking the first type of conflicts, when taking -- representing a particular defendant would conflict with the duty to an existing or previous client, they would send it to either another office to represent that individual or to Joel Elmer to contract out pursuant to our

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Code 49. That's the one type of conflict.

The second type, when -- that pertains more to caseload, I believe that it's the lawyer's obligation to refuse to accept that case. I will say that in the aftermath of the -- the refusing to accept cases that turn into a threat of privatization, I'm not aware of any lawyer asserting that, that type of conflict until recently I should say.

Q. Which I'll ask you about shortly. Are there -- you may have answered this, but are there circumstances in your mind under which a public defender in Missouri is required to refuse an appointment?

A. Yes, pursuant to the rules of professional conduct.

Q. But not necessarily pursuant to any policy or directive of the office?

A. None that I created or are aware of.

Q. Okay. Are you aware of any instances either before or during your tenure where public defenders refuse appointment as conflict counsel in other counties?

A. Can you say that again?

Q. You talked earlier about the -- how

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conflict cases are handled in your office and that one district office will be responsible for handling conflict cases --

A. Yes.

Q. -- in other counties. Are you aware of instances where public defenders from that district because of caseload issues have refused to take those conflict cases?

A. As it relates to the counties that they have been assigned as an office to represent --

Q. Correct.

A. -- no, I'm not familiar with that.

Q. Do you have a sense of how such a situation would be handled, which is to say who would be next on the list if that -- if a public defender refused to take a conflict case, how would the court handle it?

A. I think Joel Elmer is in the best position because it gets into second- and third-level conflicts, and Joel Elmer is an expert on that issue.

(WHEREIN, Exhibit 2, 9-11-17 Barrett letter to MSPD attorneys, was marked for identification.)

Q. (By Mr. Williamson) Handing you a

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document marked Exhibit 2 for identification. Do you recognize that document?

A. Yes.

Q. And can you describe what it is?

A. It's a letter that I crafted to be distributed to attorneys throughout the system following oral argument in a disciplinary case before the Missouri Supreme Court related to a MSPD attorney by the name of Karl Hinkebein who practices in our central PCR office or post conviction relief office.

Q. So I'm going to ask you about that disciplinary proceeding in a moment, but can you just talk about what motivated you to write this letter?

A. Sure. During oral argument in the case there -- the Supreme Court made comments related to what the expectations that -- on a lawyer who is in a position where they cannot take too many cases, and suggested that the lawyer, paraphrasing here, has two options.

To essentially tell their manager, assuming their manager is the one assigning the cases, that they are not available, or to resign, leave -- leave that employment. There were

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resignations by a few members -- a few lawyers around that time.

My concern was -- because I know that many, if not most, public defenders were listening or did listen to the oral argument, that there would be a concern that the employer would -- would insist that they take all the cases that came to them as a condition of employment, and that they could be -- I'm speculating.

Their concern might be that they would be expected to take the cases regardless of the condition of their employment. And on the other hand, if they did, that OCDC, the Office of Chief Disciplinary Counsel, would nonetheless hold them accountable for their practice under the rules.

I wanted to provide whatever relief I could that -- that I would not impose as a condition of their employment the acceptance of cases beyond which in their individual determination they felt they couldn't handle or would put them in jeopardy of violating the rules of professional conduct, and that if I did, that it would be their obligation to file a bar complaint against me.

Q. Did you receive any responses to this letter specifically?

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A. I spoke to several offices in the aftermath of this letter to answer questions, provide further guidance, reiterate what I said in the letter in terms of whether someone picked -- I don't remember anyone picking up the phone and calling, but we had a defender management training that district defenders and deputy district defenders attend that was already calendared for the following week or two weeks later, and we provide further guidance as to obligations under the rules for each office, but one of the other communications was that -- that I'm not issuing any directives related to turning away cases, but that they follow the rules of professional conduct.

Q. And that message was relayed at this subsequent meeting that you mention?

A. I think to include this letter, but yes, at that meeting, yes.

Q. Do you recall the date of that meeting by chance?

A. The defender management meeting?

Q. Right.

A. It was last week over the course of three days. Last Tuesday through Thursday. I don't know the dates.

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Q. And you said that there had been some resignations prior to you writing this letter to the staff?

A. Yes. Citing -- resignations that cited caseload and their -- their inability to practice within the -- the rules.

Q. And do you have a sense of how many resignations have occurred since you wrote this letter?

A. I know one manager has communicated to me that she will be leaving the system I believe in November. That's the head of the Union trial office.

Q. And is that the only other that you're aware of?

A. That I'm aware of.

Q. How was this letter communicated to your staff by the way?

A. I believe by e-mail.

Q. By e-mail.

(WHEREIN, Exhibit 3, Judge Crane e-mail response, was marked for identification.)

Q. (By Mr. Williamson) Going to hand you another document marked Exhibit 3 for identification. Do you recognize that document?

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A. Yes, I do.
Q. Can you describe what it is?
A. Yes. It appears to be a communication between district defender of the Columbia trial office David Wallis and his deputy Sarah Aplin to judges in that circuit or Boone County regarding the unavailability of their lawyers to take additional cases.
Q. And this is an e-mail communication?
A. Yes.
Q. Can you tell me the date of that, of this communication?
A. September 27th, 2017.
Q. Do you also see the response from presiding Judge Crane in this document?
A. Yes. And I think the date that I just gave you September 27th, 2017, that appears to be tied to the response from Judge Crane. There doesn't seem to be a date tied to the underlying e-mail from Mr. Wallis.
Q. Can you take a look at the -- the first sentence of the judge's response?
A. Yes. Due to the correspondence received yesterday, September 26. That would indicate that the -- that Mr. Wallis communicated

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or -- or that Judge Crane received the e-mail from Mr. Wallis on the day prior, September 26th.
Q. Do you know whether that communication was sent before or after the district defender management meeting that you mentioned?
A. It's my understanding that it occurred before.
Q. Okay. What is your understanding of the import of -- of this e-mail from Mr. Wallis to the court?
A. I recognize the e-mail. I haven't read it from beginning to end in more than a week, but my understanding of the import is that the attorneys in Mr. Wallis's office had communicated either to him or to Ms. Aplin or both that given their caseloads, types of cases, severity of those cases, complexity of those cases, that they were unable to handle additional assignments.
Q. And were you made aware beforehand of Mr. Wallis's intention to send this e-mail to --
A. No.
Q. -- the court? When did you find out about it?
A. I don't know when I received it, but I remember being aware of it on the Monday which would

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be the day prior. I may have received it earlier, but I -- that's when I remember reviewing it.
Q. And was this decision by Mr. Wallis consistent with the guidance that you provided in your September 11 letter?
A. I believe it was.
Q. To your knowledge, what is the current status of representation in Boone County by the public defender's office?
A. That -- I can't speak to -- I know that we had a meeting with Judge Crane at the end of that week on Friday. Judge Crane made a request to Mr. Wallis that if he could somehow prioritize the in-custody cases, that Judge Crane would appoint lawyers private -- from the private bar on the out-of-custody cases.
With me present Mr. Wallis said that -- that that's going to entirely depend on whether lawyers in his office were available, and the last communication he had with the lawyers in his office that they were unavailable, but that he would go back and sit down with them and discuss their caseloads individually.
As I sit here today, my understanding is that the lawyers in the Boone County office are

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not available and that the -- Judge Crane has been assigning cases to the members of the private bar of Boone County.
MR. QUINLAN: Just if you don't mind, you said in custody and not in custody.
THE WITNESS: Yes. When I say --
MR. QUINLAN: That means they're in pretrial detention?
THE WITNESS: They're in local jail, yes.
MR. QUINLAN: Okay.
Q. (By Mr. Williamson) Do you have any idea how many private attorneys are available to take cases in Boone County?
A. I am not.
Q. Do you have any idea how many have been appointed to this point?
A. I am not.
Q. Do you know how many -- approximately how many additional attorneys would be required in order for area 13 to -- to be able to provide competent representation to all defendants in -- in that district?
A. I do not.
Q. Have you discussed with Mr. Wallis or

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anyone else in Boone County of the possibility of placing indigent defendants on waiting lists until attorneys in that office become available?

A. Yes. Both at the defender management training where we try -- one of the things we did was try to discuss practically and procedurally how we were going to deal with clients who would otherwise come to us.

We discussed with Judge Crane how we would handle it and that we would receive applications and essentially have a waiting list that we would communicate with the court.

Q. And has that -- has that happened?

A. I don't know.

Q. Since this decision was made by Mr. Wallis and the attorneys at his office, are you aware of other district offices that either have already or that intend to begin refusing case appointments?

A. I alluded to earlier conversation or phone conference I had yesterday involving the -- our Kennett trial office. It's my understanding that the Kennett trial office has communicated to the local judges their unavailability. I know the head of our St. Louis city trial office district

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defender Mary Fox has communicated to at least one judge --

MR. QUINLAN: That's city or county?

A. City. I'm not sure whether she has communicated that they are unavailable, but they had discussion with respect to the process in the event they're unavailable.

I know I received calls yesterday from district defender Steven Lynxwiler who covers the Poplar Bluff office, and there -- I believe at least one attorney was unavailable to handle cases, and I believe the counties were Butler and Ripley.

I also received a call yesterday from a deputy district defender in our Jackson office. She was asking for direction on a -- for an attorney who said they were no longer available to take new cases, but a client they had already had had picked up additional charges and wanted direction on that.

So I'm aware of at least one lawyer in that office. Whether they handle a specific county, I don't know who's unavailable. So there are a number of other counties where this is happening.

Q. And do you have a sense at this point of how things have played out in each of those counties?

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A. It has varied. As we discussed -- as I mentioned, Judge Crane has expressed that he either has begun or is going to appoint lawyers. I'm aware of at least one case where a private lawyer was appointed.

In other jurisdictions, to include Kennett, they were making arguments that we needed to do -- or the public defender system -- or at least the Kennett office needed to do additional steps before in their minds this was a legal thing.

The reports that I received from other district defenders were that judges were accepting that there was unavailability, but didn't say whether they were going to appoint private attorneys. So it's -- the response has been varied.

Q. And in Boone County is it your understanding that the private attorneys that are being appointed are not being compensated for that representation?

A. That is my understanding.

Q. Are you aware of any counties, either among the ones that you mentioned or others, where private attorneys are being compensated for taking these cases?

A. I'm not aware.

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Q. Have you had any other interactions with judges in these other counties similar to the interactions that you've had with the -- the -- the court in Kennett county and --

A. No. I haven't. I've -- some local management has expressed to me that judges are in their words not happy, and I -- I said that to give the judge my cell phone number, which I -- one of the things that I reference in this letter is presenting to the presiding judges at the judicial conference, which was part of the Missouri Bar's annual meeting.

I also handed out -- I discussed the Hinkebein matter and the effect it was having on the system, and I provided judges with my cell phone number at that point as well.

Q. Have you gotten any phone calls from judges?

A. No.

Q. And -- and one other question about the private attorneys. Do you as the director of this office see appointment of private counsel as a viable alternative here?

A. No.

Q. Can you say a little bit about why?

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A. I am not aware of whether Judge Crane or any other judge who is contemplating appointing private counsel, whether they are going to appoint someone who is competent to provide representation in the area of criminal defense.

Q. So these private attorneys are not necessarily criminal defense attorneys?

A. The one appointment that I was aware of, one individual in Boone County, worked for a private business I believe as a regulatory attorney, and had no experience in criminal defense matters.

Q. And as far as you know, there is no screening mechanism to determine which private attorneys might be qualified to take these cases and which are not?

A. I'm not aware of any.

(WHEREIN, Exhibit 4, Cumulative caseload metrics spreadsheet, was marked for identification.)

Q. (By Mr. Williamson) Handing you a document marked Exhibit 4, for identification. Do you recognize this document?

A. I recognize what this document represents.

Q. What is the heading at the top of the

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document?

A. Missouri State Public Defender Cumulative Caseload Metrics for the period beginning January 1, 2017 through March 31st, 2017.

Q. Do you know who created this document?

A. I do not. When I request this document, I request it from our IT department.

Q. And how often do you request these sorts of reports?

A. It's -- when -- I request it prior to any time I'm visiting or talking to a local office when I want to be educated on the most up-to-date metrics concerning that office, this is one of the documents that I request.

Q. And do you normally use this document then just for internal purposes?

A. We've shared this document both outside of Woodrail with the local offices, and I'm not shy about sharing it with outside persons or entities to include legislature or others.

Q. So I just want to -- we don't need to go through the numbers necessarily, but I want to just make sure I understand exactly what we're looking at here. So first of all, is it -- is it fair to say that this is a ranking of -- or an

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ordering of counties by the county that's got -- or the area that's got the highest caseload or the highest percentage of -- strike that.

This -- it is an ordering of counties that have the highest percentage -- or that are the furthest beyond their capacity from the highest to lowest, and the county that is at the top of the list is Kennett county, which we talked about a few minutes ago?

A. Yes. I would describe this as a ranking of -- as the most overloaded --

Q. Most overloaded?

A. -- offices using thresholds, workload thresholds established by RubinBrown and made part of the Missouri Project Report.

Q. Okay. So just so that I understand what each column represents, the column that is labeled cases initiated --

(Court reporter interruption.)

Q. (By Mr. Williamson) Cases initiated --

MS. SHIPMA: And Jason, can I just -- you are probably going to get better, more thorough answers from Joel --

MR. WILLIAMSON: Okay.

MS. SHIPMA: -- on this. That's not to

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say that Michael doesn't know what it means --

MR. WILLIAMSON: Right.

MS. SHIPMA: -- but if you want to get into the, you know, nuts and bolts of where that number comes from, what that number is drawn from, what it means, Joel will be the person to best tell you that.

MR. WILLIAMSON: Got it. Okay.

Q. (By Mr. Williamson) Have you shared these reports with the legislature? I know you said you shared --

A. I'm sure I have. I provide packets and materials and charts and supporting documentation. I certainly don't consider this privileged in any way, and I readily share it with whomever I come in contact with when discussing caseloads.

Q. And is it fair to say that this -- this -- these rankings are not static?

A. Right.

Q. And that a county or an area office that in this report is listed as say one of the top ten most overloaded could over the next several months drop down on this list and be replaced by area offices that are currently within the bottom ten let's say?

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A. I don't know if it's that volatile. Certainly an office can move a few spots if the -- volatility would come if -- if someone leaves a position in a given office and I decide to relocate that position to another office you'll have the volatility.

Q. And without getting into the details, is it fair to say that according to this document, during the first three months of 2017 none of the area offices were operating within their capacity?

A. Because none of the offices are within a hundred percent capacity, that is true.

Q. Okay. And tell me if this is a question for -- for Joel, and if so we can -- we can wait and share it with him. If you look at those -- those top ten counties or area offices on this list, are you able to go down this list and tell me which counties you would consider to be more urban areas versus those counties that you would characterize as more rural or less populated?

A. It's a subjective term, but I can -- yes.

Q. Fair enough.

A. I can do that.

Q. That sounds fair. So the Kennett

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office?

A. I would describe the Kennett office as a rural office.

Q. St. Charles?

A. I would describe the St. Charles office as a suburban office.

Q. Sedalia?

A. I would describe the Sedalia office as a rural office.

Q. Harrisonville?

A. I would describe it as a more rural office.

Q. Jackson?

A. I would describe it as a urban office.

Q. Ava?

A. Rural office.

Q. Union?

A. More rural office.

Q. Monett?

A. A rural office.

Q. And Springfield?

A. I would describe that as more of an urban office.

Q. Is it fair to say that the caseload problems that are facing your office are not limited

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to any particular type of office within the system?

A. That's right.

Q. It's a statewide problem?

A. That's right.

Q. And if we look on this -- this same document, Exhibit 4, can you find Boone County? So I guess it would be the Columbia office.

A. Yes.

Q. And where is that located on this list if you can.

MR. QUINLAN: 23. Item 23.

A. According to the caseload metrics report for the period January 1 to March 31st, 2017, it appears that the Columbia trial office ranks 19th in the system -- in the MSPD in terms of caseload or percent of capacity.

Q. (By Mr. Williamson) And do you have any idea where that office falls currently?

A. As I sit here today, no.

Q. I think you may have answered this already, but have you encouraged any district offices to begin refusing cases beyond the September 11 letter?

A. At defender management training we stressed -- I stressed, others stressed that

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everyone has a present obligation under the rules of professional conduct.

To the extent that there's two mechanisms, at least two mechanisms to bring yourself within competent -- or ethical representation, a move to withdraw and in addition to declining to accept new cases, that if someone had -- were presently overloaded and were not in comport with the rules, that they would have an obligation to move to withdraw in existing cases.

Q. And do you -- as it stands right now, do -- how many additional lawyers statewide do you believe would be needed in order for the trial division offices to be able to operate within their capacity?

A. A precise number I do not know, but I know that given the number of cases and the type of cases for the last fiscal year, it was north of -- it was in excess of 300 additional lawyers. According to RubinBrown metrics.

MS. SHIPMA: Can I -- was that additional trial division lawyers or additional lawyers systemwide?

THE WITNESS: I think it was additional lawyers systemwide, but that's a good point. I'm

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not a hundred percent sure on that.
MS. SHIPMA: Because the question was about trial division. That's why I wanted to make sure.
THE WITNESS: Thank you.
MS. SHIPMA: Uh-huh.
MR. QUINLAN: You don't have a number for trial lawyers?
THE WITNESS: Not off the top of my head.
Q. (By Mr. Williamson) And by the way, I'm going to -- and we can ask Joel about this, but do you know whether these -- I see cases initiated here and then new net cases. Do you know whether this includes conflict cases?
MS. SHIPMA: That's a Joel question.
A. That's a Joel question.
Q. (By Mr. Williamson) Okay. Is there anything else that you'd like to share with regard to what you expect going forward with respect to case refusal or generally how your office intends to handle the caseload situation?
A. Well, it's -- my experience over the last week has been that it's fluid. As these issues arise in the local offices, I have been interfacing

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with both the local offices and some of the local judiciary as well as members of the private bar in Boone County.
Sharing both what -- what I know about our obligations and -- but my expectation would be that the lawyers in -- that I'm responsible for overseeing practice within the rules of professional conduct, and if they are unable to provide representation for their existing clients, that they have an obligation under the rules to move to withdraw.
If they cannot accept new cases, to notify their management that that's the case, and I would expect if -- if no one is available for those reasons in a local office that the district defender or the deputy district defender would notify me so that I'm aware what offices in the state are not accepting new cases.
Q. And -- and what in your view is the impact of all of this on indigent defendants in Missouri?
A. I think it's -- it's impacting their rights under the Sixth Amendment to have effective, competent representation that's not conflicted that they're entitled to prior to -- as part of due

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process and prior to their liberty being taken from them.
MR. WILLIAMSON: Just give me one minute.
(WHEREIN, Exhibit 5, Boone County Bar Association October 2017 Newsletter, was marked for identification.)
Q. (By Mr. Williamson) I'm just going to show you one last document. It will be marked as Exhibit 5. Do you recognize this document?
A. I don't. I know it to be the Boone County Bar Association's newsletter. I've received this before, but I did not receive -- I did not read this -- this number or this volume.
Q. Can you turn to page five of this document?
A. I have turned to page five.
Q. And can you read the heading on that page?
A. Letter to BCBA from the director of the Missouri State Public Defender's office.
Q. And this is a roughly two-page letter that purports to have been written by you; is that correct?
A. Yes.

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Q. And did you in fact write this letter?
A. Yes.
Q. And did you send it to the Boone County Bar Association?
A. I sent it to the chair of -- I think the committee is criminal defense committee within the Boone criminal law committee it might be. The individual's name is Jeff Hilbrenner.
Q. Okay. And do you recall when you sent this letter?
A. I don't precisely.
Q. Have you written any similar letters to other officials in other counties around the state?
A. No.
MR. WILLIAMSON: I think I'm done. I don't know whether Mr. Quinlan has questions or whether Ms. Shipma has questions. I will --
THE WITNESS: Can we take a bathroom break?
MR. WILLIAMSON: -- reserve the right to respond to that. Yes, why don't we go off record?
VIDEOGRAPHER: We're going off the record at approximately 10:47 a.m.
(WHEREIN, a recess was taken.)

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VIDEOGRAPHER: We're back on the record at approximately 10:53 a.m.

EXAMINATION

QUESTIONS BY MR. QUINLAN:

Q. Mr. Barrett, I'll reintroduce myself. I'm Michael Quinlan, and I'm the chief of the litigation section for the Missouri Attorney General's office representing the State of Missouri and Governor Greitens. Listening to your testimony this morning it's -- my takeaway is that you view the -- the principal concern in your office statewide is the caseloads?

A. Yes.

Q. Okay. And it's the caseloads that are presenting the concern in your mind as to the constitutional adequacy of representation of indigent defendants that are represented by your office?

A. Yes.

Q. And I know we've spoken before, and I don't want to -- but I think we've -- one of the things we've talked about in other context is that there are two ways to reduce caseloads or reduce -- or to solve the problem of a caseload problem. One you've identified already, I think you said we need

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to have more lawyers in your office?

A. Have I said that before? Is that your question?

Q. Well, you said -- you said you need north of 300 lawyers and you weren't sure whether that was all for trial counsel or statewide?

A. Yes.

Q. But statewide you need more lawyers?

A. That's one way to solve it, yes.

Q. Okay. And then the other one we discussed in the past is to reduce the number of clients by I think we had talked about changing laws to -- to reduce who gets charged with crimes?

A. Conceivably, yes.

Q. And you've kind of experienced that as I understand your testimony today in a couple of counties, I think you said Greene County and Union, in which prosecutors made some changes, added some personnel, were able to bring more cases. So that -- that increased your caseload problem in those jurisdictions, correct?

A. I don't know if that's the only thing that caused those caseloads to go up in that jurisdiction, but I would -- I would say that yes, that's contributed to the caseload increase.

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Q. So if prosecutors would -- in those cases anyway as I understand, that prosecutors have brought more cases in those -- in those counties?

A. Yes.

Q. And by -- by on the same token if they were to bring fewer cases you'd have fewer cases in your caseloads?

A. Mathematically, yes.

Q. Yes. And one of the things that we spent some time talking about this morning is -- well, we can just go right to the issue raised by I think it was the oral argument in -- in the Supreme Court case referred to in Exhibit 2, your -- your letter. Do you have that in front of you? And --

A. I do.

Q. -- what's happening in -- for example, in one particular instance is Boone County, where that office has indicated that they're not going to accept any more cases?

A. You started off talking about the letter and then you went to Boone County.

Q. Right.

A. What's the question?

Q. Well, I think that -- I thought there was a temporal correspondence between when you

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issued the letter and then this e-mail regarding Boone County? But --

A. Yes, there's -- the Boone County action seemed to be subsequent to my letter.

Q. And -- and your letter was basically a reassurance of the assistant public defenders in the system that you're responsible for that they had the freedom -- in fact, I think you said the obligation to turn down cases if they felt their caseloads were too high?

A. That's my understanding of the rules of professional conduct, yes.

Q. I understand. That's my understanding as well. So what we have happening apparently in -- according to is it Judge Crane in Boone County is a partial privatization of the representation of indigent defendants; is that a fair statement?

A. I think it's a fair statement. I don't know to the extent to which Judge Crane has taken action toward that end. As I mentioned earlier, I'm aware of one -- one specific individual who received an appointment.

Q. Well, in Exhibit 3 he says due to the correspondence received today, so on --

MS. SHIPMA: You're referring to

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Exhibit 3 now?
MR. QUINLAN: I'm referring to Exhibit 3, right.
Q. (By Mr. Quinlan) Okay. (Quote as read):
Due to the correspondence received today, September 6 from Boone County public defender Wallis, the Boone County Court will begin effective today at 1:30 p.m. dockets to appoint members of the private bar to represent criminal defendants.
Is that an indication there's at least a partial privatization of the representation of indepen -- indigent defendants in Boone County?
A. It seems to represent what Judge Crane's intent is. I just can't testify as to the extent to which he's carried that out.
Q. He's carried that out. But that is one of the solutions to the caseload problem that your office -- that indigent defendants in Missouri face, isn't it?
A. Can you restate the question, please?
Q. Partial privatization is one solution to the -- the issue or the problem, the concern

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faced by indigent defendant -- indigent defendants in Missouri based on the caseload issues that your office is having?
A. I can't say that that's the case. I don't know whether Judge Crane's actions toward the end that he stated is going to provide adequate or competent representation for these individuals.
Q. But that's not your role, is it?
A. But you asked the question of whether that was a solution.
Q. That's one possible solution, correct?
A. I don't know the answer to that.
Q. Well, if Judge Crane as the chief -- apparently the chief judge of Boone County is able to assure to his satisfaction the satisfaction of the courts the competent nonconflicted representation of indigent defendants through this private appoint -- appointment of private counsel, that would be a -- a solution to the -- the problem you identify in Missouri of -- of indigent defendants having representation?
A. Judge Crane wouldn't to my understanding be an arbiter on the issue of conflicted representation. That would be borne by the individual attorney.

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Q. No, but I'm asking you, though, is -- are you telling me that you don't believe that -- that the courts have the obligation to assure that the defendant has competent nonconflicted representation, whether private or public?
A. I believe that that's part of the court's obligation is that someone has competent nonconflicted representation, yes.
Q. It's part of the court's job is to ensure that each defendant has competent nonconflicted representation whether public or private?
A. I believe that's part of the court's duty.
Q. And that's -- so therefore that's -- that's something that is at least conceptually possible to have competent, nonconflicted representation, whether public or private?
A. I'm not being coy. I'm -- just my knowledge the public defender world is a small world and I'm aware of practices in other states. I'm not aware of any privatization, a state that's privatized that is achieving the ends of -- of competent representation.
Q. And again, that's not your job, that's

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the court's job to achieve that end?
A. Yes.
Q. Okay. So that's not really something you need to worry about?
A. But I don't know whether -- I don't know whether it's possible.
Q. Okay. Well, apparently Judge Crane thinks it is.
A. I can't testify as to what Judge Crane thinks.
Q. I believe your testimony was that you stated -- are you saying that you're not able to say whether partial privatization is a viable option conceptually?
A. To achieve competent representation, I'm not -- I'm not sure there are the number of lawyers in the private bar who practice criminal defense to take these cases competently given the number of cases that exist from year to year, so I can't say that that's a viable option, no.
Q. So if there was a -- if there was a system, say a voucher system in which the state gave a voucher to an indigent defendant and said find a private lawyer or the court appointed them a private lawyer from which they would be paid, are you saying

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that -- that conceptually speaking that it's impossible for that -- those criminal defendants to get competent representation?

A. I won't -- I won't testify as to whether it is possible or impossible. I will say this. We have areas of the state that are lawyer deserts, and one of the -- the things that we employ to get lawyers to certain areas of the court is if they're looking for a job in MSPD and there's not a position available in the office of their preference, we ask them to come to join the system and go to an underutilized area of the state for a period of two years, and that at which point they can be eligible for a transfer into another office. This is a tool that we use to get lawyers to counties where there are otherwise not a lot of -- or any criminal defense lawyers.

Q. Are you suggesting that the only way for indigent defendants in Missouri to get competent legal representation is through your system?

A. I'm not -- I'm not saying that, but I am saying I'm not sure that your suggestion I can state on the record is a viable alternative.

Q. Are you able to say definitively that it is not viable?

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A. Can you make another go at that one?

Q. You just testified that you're not able to say that a -- that conceptually a --

A. I understand.

Q. -- program of partial privatization, what I understand you to be saying is that conceptually you're not able to say, again, conceptually that a -- a system of partial privatization would provide effective assistance of counsel to indigent defendants. Are you able to rule it out categorically?

A. Yes, because I don't have an answer for how you would otherwise get lawyers to certain areas of the state who would be willing to take these cases in the volume that they're coming in because I don't have confidence on that. I can't -- I can't -- I can't -- I can't acknowledge that.

Q. So that's in those areas that you called I think lawyer deserts?

A. Yes.

Q. And those are rural areas?

A. Yes, I would categorize most of them as rural areas.

Q. Are there any urban or suburban areas according to the usage that you made with respect to

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Exhibit 4 that are -- that are deserts?

A. Can you restate the question, please?

Q. Yeah, are there any -- are there any suburban or urban areas as you used those terms in -- in relationship to your questions regarding Exhibit 4 that you would consider to be lawyer deserts?

A. I would not consider any of those areas that I've either previously labeled my term suburban or urban that are lawyer deserts.

Q. And so you would be limiting this con -- this idea of the lawyer desert to only those which you would characterize as rural?

A. No.

Q. Okay. What others besides the rural? Let me ask you this first. Would you consider rural -- are you saying then that not all rural -- let's just start over again, shall we?

Are you saying that not all rural offices are deserts?

A. I think that's true. Can I restate your question so I make sure I understand it?

Q. Sure.

A. Just because a rural -- an area is rural doesn't mean it's a desert.

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Q. You understood my question.

A. Yes.

Q. And so there -- so these -- these lawyer deserts that you refer to are -- are some of, but not all of, the rural offices that you have?

A. I think that's right.

Q. Okay. But with respect to the offices in the state that are not lawyer deserts --

A. Yes.

Q. -- conceptually a program of partial privatization is -- is potentially viable?

A. I don't know -- I don't know -- I don't know whether that's the case. There's other obstacles that I'm aware of.

Q. You can't say one way or the other?

A. I can't -- I don't know -- there's no particulars that you've provided of what privatization looks like for me to make an assessment as to whether it's viable or not.

Q. And I'm trying to be general on purpose --

A. I understand.

Q. -- because what I'm saying is conceptually -- because what we have apparently happening already in Boone County is a form of

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privatization.
A. We don't know whether --
Q. Would you agree with that?
A. We don't know whether that's working.
Q. We don't -- agreed. We don't know that that's working yet, but we don't know that it won't work either, do we?
A. I don't know one way or the other.
Q. You know, I've often referred to this -- this phrase as -- adage necessity is the mother of invention. It could be that the necessity that's created by what's happening with your local office in -- in Boone County could lead to the invention of some -- some solution that could be translated statewide, would you agree?
A. No, I wouldn't agree. I don't -- I don't know the answer to that.
Q. You don't know one way or the other?
A. I don't know one way or the other.
Q. Okay. So you're not able to say whether conceptually speaking -- and as I said before, I'm using that broadly because I think that there are a lot of potential proposals if you will for -- for partial privatization. In fact, I think you use one, don't you? Your Code 49 program is --

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could be characterized as a form of partial privatization, isn't it?
A. Yes, to the extent that we contract with private lawyers to provide services --
Q. When you have conflict, right?
A. When there's a conflict.
Q. Right.
A. We would not label this program as ideal. It's got pluses and minuses.
Q. As all programs do?
A. Yes.
Q. In fact, your -- I mean, the Missouri public defender system is just such a system. It's got pluses and it's got its minuses?
A. As everything does.
Q. And I don't know whether you can answer this question. When I was doing a little bit of preparation, I was looking at the -- the lawsuit paper here, and -- pleading, the complaint in this case. And I know it's not your -- your document, but one of the allegations is is the public -- the public defender system as currently constituted over which you now preside was established in 1989. Is that your understanding?
A. Are you asking me as to what the

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complaint says or whether that is indeed accurate?
Q. Let's go over the facts regardless of what the pleadings are. I'm assuming the pleading is accurate and that, but if you -- if you have a different answer, let's go with that.
A. I -- I would refer you to either Mr. Elmer or Mr. Mermelstein, preferably Mr. Mermelstein. I heard another date, but I can't attest to whether one is accurate or another.
Q. What is the date that you heard?
A. I thought it was earlier in the eighties to be --
Q. But sometime in the 1980s?
A. I believe so.
Q. Okay. The reason I bring that up is because it seems like in paragraph 49 of the complaint, as early as 1993 we were already getting Spangenberg Group reports finding fault with the -- with the way the Missouri public defender system was -- was not providing adequate representation?
MS. SHIPMA: I'm going to -- if you're going to refer him to specific paragraphs in the petition, can we please provide that to him?
MR. QUINLAN: Sure I did.
MS. SHIPMA: He doesn't have that in

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front of him.
MR. QUINLAN: Paragraph 49.
MS. SHIPMA: He doesn't have the petition in front of him.
MR. QUINLAN: I'm happy to show this. I'm going to move on from this. It's really an embellishment of my earlier question.
MR. WILLIAMSON: Are you entering this as an exhibit?
MR. QUINLAN: No, it's on the -- it's a matter of record in the case. So 49 --
MS. SHIPMA: But it's not -- it's not an exhibit to the deposition, so if you need him to refer to it --
MR. QUINLAN: I can just withdraw it. If you don't know whether there was a 1993 Spangenberg report --
MS. SHIPMA: That's not what you asked him. You asked him what paragraph 49 referred to.
MR. QUINLAN: No, I referred -- no, no, no. I referred to paragraph 49 --
MS. SHIPMA: Yes.
MR. QUINLAN: -- and the report that's referred to there.
MS. SHIPMA: So is your question

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whether there was a 1993 Spangenberg report?
Q. (By Mr. Quinlan) Yeah, I can -- are you aware that there was a 1993 Spangenberg report that found fault with a representation being provided to indigent defendants in Missouri --
(Court reporter interruption.)
Q. (By Mr. Quinlan) That found fault with deficiencies in the public defender system as it's currently constituted in Missouri?
A. Counsel, I'm -- I'm familiar -- I'm aware that there's been several Spangenberg reports that study the public defender system. I cannot tell you what years they were. Just that they were over a period of a number of years and they made a number of findings, and I can't specifically state whether that Spangenberg report made that conclusion.
Q. Have you ever seen a Spangenberg report that gave a clean bill of health to the Missouri public defender system?
A. I don't know what you mean by clean bill of health.
Q. That said that they were doing everything right, that they were providing adequate assistance to indigent defendants?

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A. To the extent that I'm familiar with that conclusion, it is my understanding that the Spangenberg report tied that conclusion in some way to the unavailability of resources.
Q. And my question, though, was are you aware of any Spangenberg report which basically said that the -- that the public defender system was functioning properly and appropriately in providing in all respects representation to indigent defendants?
A. Given the number of reports that started in the early eighties with the legislative report, I have to tell you, Counsel, I'm not being coy, they bleed together for me.
Q. Get it.
A. And to the -- my answer is to the extent that I'm aware of deficiencies of the MSPD as pointed out by any number of reports, that that conclusion is always in my memory tied to unavailability of the requisite resources to fulfill the charge of the --
Q. So what you're saying, though, is of these reports and they're -- and they're cataloged in the complaint in this case, the -- the diagnosis of the problem is is that the Missouri public defender system doesn't have enough resources?

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A. That's my understanding of the -- of the general conclusions of each one of these reports over the course of a period beginning in the eighties.
Q. And is it your position as the director of the Missouri public defender's system the only solution to the caseload problem is an increase in funding?
A. No.
Q. What other solutions?
A. Fewer cases.
Q. Fewer cases. And achieving fewer cases, one of the ways of achieving fewer cases within your office is to -- to appoint other attorneys outside of your office to represent those indigent -- indigent defendants, correct?
A. No. No.
Q. That's not one of the solutions to --
A. I'm sorry, I thought you said the solution. My fault.
Q. One solution to reduce the number of cases that come into your office is to have a system by which indigent defendants are appointed an attorney outside of your system?

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A. That's the mechanism we currently utilize to handle conflict cases to the extent to which we are funded to do so.
Q. Right. And so -- right. And so -- and you talked about that. There's -- there's been funding allowed for your office to retain independent private counsel to represent indigent defendants whose case presents a conflict with cases that your office is handling, correct?
A. Notwithstanding the warts of that system, yes.
Q. And what are the warts of that system?
A. There are several. The research that I'm familiar with in the area of defense representation informs me that public defenders do as well as skilled criminal defense practitioners, what I would characterize my words as high dollar practitioners.
But where the results drop off significantly is utilizing what's referred to as flat fee contract lawyers because there's con -- some consensus around the idea that when you give an attorney a flat amount, regardless of the amount of work that they do, it will encourage them to do the least amount of work to receive those funds. For

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that reason the outcomes are not as good than using public defenders.

Q. And are you saying that that creates a distinction between the quality of work that the lawyers in your system provide compared to private lawyers?

A. We haven't measured that, but that's what the -- the research that I'm familiar with shows. I'm also familiar with, although I don't know the states, I believe they're in the western part of the country, at least in two states I believe have determined that flat fee contract lawyers are not appropriate or maybe it's even unconstitutional in capital cases because it encourages the least amount of work for the money received.

Q. So your -- so your position would be that the service that your Missouri public defender system lawyers provide to the indigent defendants entrusted to your service is at least as good if not better than services provided by private counsel at least in a flat fee arena?

A. As a general statement I would say that.

Q. Okay. So -- and is that the basis --

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as I gather what you -- what you said is that that's one of the reasons you don't feel like your -- I should put it this way. That's what you've identified as one of the warts with your Code 49 system?

A. There -- there are at least two others that come to mind.

Q. Okay. But that's one of them?

A. That's one of them.

Q. Okay. And -- and what are the others?

A. Oversight, quality. We provide managerial oversight to the lawyers that we employ. If a lawyer who is part of our panel program, which is the contracting program, the Code 49 program, if they are not meeting with their client, if they are not reviewing the sufficiency of the accusing documentation or asking for discovery, we would not know unless someone in our local office or a judge as -- as occurs from time to time picks up the phone and raises concerns as it relates to that private attorney. So there are quality assurance issues.

Q. And what you're saying -- is it fair, I understand you correctly, what you're saying is that in your office you have supervising attorneys that -- that see to the -- the quality of services being

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provided by your APDs?

A. I will say that at least they endeavor to do that.

Q. They endeavor to do that. And that's one of the -- that's one of the bases in which you believe that the service provided by APDs in your system is superior to that provided by private counsel retained through your Code 49 system?

A. That's -- that's one reason, yes.

Q. Okay. So you've given me two now. You've given me the flat fee issue I think?

A. Yeah.

Q. And then you've given me the supervision.

A. Quality assurance.

Q. And you said there was one other or is there more?

A. Yeah, there's -- there's several others. One other is that if they decide to withdraw, if the private attorney withdraws for any reason, they take another job, they decide that there's a conflict, a lot of times they're not getting along with their client. And --

Q. Which is probably not an infrequent occurrence in the criminal practice?

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A. Not an infrequent occurrence, I concede that point. And judge allows them withdraw, we don't get that money back. And Mr. Elmer can go into more details on that.

Q. In that situation when they withdraw, apart from your not getting the money back then do you -- does your system then provide for the retention of a new counsel for that conflict client?

A. Mr. Elmer would probably be in the best position --

Q. You don't know one way or the other?

A. I have some indication. I can answer to the -- to the extent that I'm able to, but I would refer you to Mr. Elmer to be expert on that question.

Q. And is it -- and -- and again, deferring to Mr. Elmer, but just for my purposes presently, you have contracts with these attorneys?

A. Yes.

Q. Okay. And --

A. Agreements, yes. They're essentially contracts.

Q. Contract. I think you used the word they're contracted attorneys, but that's --

A. Yes, my phraseology.

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Q. Agreements are contracts. That's the way I learned it in law school.

But -- so you -- are these -- are these code 59 -- 49 --

A. 49.

Q. And by the way, what's the origin of that name?

A. When you find out from Mr. Elmer, if you'd let me know, I'd appreciate that.

Q. I will. You can stay and listen if you want. You have -- is it your understanding you have like a stable of attorneys that --

A. Yeah.

Q. -- you have a contract with?

A. Yeah.

Q. And they agree to take a number of cases?

A. Yeah.

Q. And you have a contract rate with them?

A. The contract rate, which I believe is -- I believe is promulgated in a rule is tied to the type of offense, seriousness of the charge, A, B felonies, C, D felonies, sex case, probation violation.

(Court reporter interruption.)

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A. Tied to the severity of the charge. For instance, an A, B felony would -- would yield a higher contract rate than a C, D felony or an E felony.

Q. (By Mr. Quinlan) Do you know what any of those rates are offhand?

A. I don't. Mr. Elmer would.

Q. And is it -- is it -- is it always a fixed fee or is it hourly, do you know?

A. It's a fixed fee, but there is some nuance there.

Q. Okay.

A. I think there's some nuance as it relates to complexity, going to trial, which would -- and that nuance would tie into some discretion by Mr. Elmer.

Q. And if there was a withdrawal from -- from a client, is there a provision in that contract for a recapture of fees paid that were earned?

A. I'd refer you to Mr. Elmer.

Q. Okay. So I think you've -- you've counted three for me, three warts as you characterized them on your -- your Code 49 process. Are there any others?

A. I would say that public defenders

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exclusively do public defense. That is not necessarily the case with the contract attorneys. I would also say that they do not receive the training that we receive, that public defenders receive as part of the MSPD.

Q. Is that -- is that just a way of saying that you have higher-quality lawyers representing the -- the clients in your system?

A. As a general rule, in addition to I have an obligation to train the lawyers and make sure that they can competently handle to the extent that that's a reasonable expectation in cases that they receive.

Q. So that's another distinction between the representation provided by your office and that provided by the Code 49 attorneys, the private placed attorneys?

A. As a general statement.

Q. Okay. So -- now, I want to back up a little bit, though. When you say an attorney withdraws, you identify the problem as not getting a refund of the fee or --

A. The extent that I'm familiar with is we have no way as a department of state government to receive these funds, and it's my understanding --

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and I would refer you to Mr. Elmer for -- for precision on this, that the money reverts back to the state of Missouri, and that Mr. Elmer then must employ other means by which to balance out the till.

Q. He doesn't have the ability as far as you know to go to the office of administration and say funnel that money back to us?

A. I don't know whether there's a legal mechanism for that, but I will testify that that's never -- I don't believe that's ever been done before, and I -- I don't think there's a mechanism in place to do that.

MS. SHIPMA: That would be a Kathy Lear question.

Q. (By Mr. Quinlan) Okay. And is that the only drawback in regard to the withdrawal of private counsel?

A. No.

Q. Okay. What other drawback is there?

A. It presents the question then what happens to the client who has previously been determined to be indigent.

Q. Define --

A. There's oftentimes a push and pull that occurs with the judge who, again, I'd refer you to

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Mr. Elmer, but I'm aware of these instances where the judge would want us to take the case again.

We had this -- something of an elaborate fashion occur recently in Harrisonville where we contracted out a case and the judge took the lawyer off the case and gave the case back to us notwithstanding a conflict occurring.

Q. In that case you would either -- you have -- you still would have available to you, wouldn't you, that you appoint -- you'd assign it to another contract attorney or one in another district office? You'd be able to get coverage in other words for that client?

A. Possibly. It would depend on whether there are other attorneys in the panel, the panel program who have agreed to take clients in that circuit. Sometimes in these lawyer deserts if there's a contract attorney or attorney wants to participate in the program, and they want to participate only as it relates to county A, but we need coverage in county B, we will ask them to cover county B if they want to be in the program as a way to making more lawyers available.

Q. Do you have a method of collecting data on the incidents of that sort of thing happening?

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A. I don't know the answer to that.

Q. Who would?

A. Joel Elmer would be the first person that I would ask about the capabilities on that.

Q. In your view as a -- are -- are you ruling out of order from the beginning any possibility of a partial privatization as a solution to the indigent --

MR. WILLIAMSON: Michael, I'm going to object. This question has been asked and answered --

MR. QUINLAN: I haven't finished it. I haven't finished the question.

MR. WILLIAMSON: -- three times.

MR. QUINLAN: May I?

MR. WILLIAMSON: Sure.

Q. (By Mr. Quinlan) Are you ruling out as taking off the table the possibility of any form of privatization as a partial solution to the -- the plight of indigent defendants in Missouri?

MS. SHIPMA: And this question has been asked and answered at least four times.

MR. QUINLAN: I don't think it's been answered, but --

MS. SHIPMA: He has told you what his

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answer is. Perhaps he hasn't given you the answer you want, but he hasn't -- but he has given you his answer.

MR. QUINLAN: He's either taking it off the table or he's not. And I don't think he's been clear on that.

Q. (By Mr. Quinlan) In your -- in your judgment, is -- is any kind of program of partial privatization off the table?

MS. SHIPMA: And he has answered that. He's told you you're not giving him enough details.

MR. QUINLAN: So are you instructing him not too answer?

MS. SHIPMA: No, I'm making an objection because you've asked the question.

MR. QUINLAN: Then your objection is noted. You may answer.

A. I think we've covered that. We currently employ utilizing to a limited extent private attorneys for the purposes of attempting to carry out our mission.

I've testified that that program, while necessary given our current resources, has a number of deficiencies that in my estimation limit the ability to meet the -- the goals of competent

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representation under the Sixth Amendment.

Q. Then my next question is is it your view that the only solution to the -- and I think it's referred to in the -- the pleading as the crisis of representation for indigent defendants in Missouri, is the only solution to that problem increased funding for your office?

A. No.

Q. What other solutions are there?

A. Fewer cases.

Q. Fewer cases. And how would you recommend that that take place?

A. Prosecutors are more selective in the types of cases they file.

Q. So you want prosecutors to file fewer cases?

A. Ideally, yes, that would be part of the solution.

Q. And is that -- okay. Is that the only mechanism that you would recommend for the decrease of cases in your office?

A. Say that again.

Q. Is that the only mechanism that you recommend, to -- to not file as many -- prosecute as many cases?

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A. Is that the only mechanism I recommend?
Q. Yeah. See, I asked you -- my question was -- my first question was is increasing your funding the only answer to this problem and you said no, and I said what are the others, and you said not filing as many cases.
A. I'm stumped because I just thought -- I thought we were over this earlier.
Q. Okay. Other than prosecutors not filing other cases and increasing your -- what other mechanisms are there that you would recommend to solve the crisis of indigent defense representation in Missouri besides increasing funding for your office?
A. As I sit here, I don't have any other ideas to some other structure or -- or system that could given the number of cases in Missouri, the availability of attorneys who practice criminal law statewide, or in specific jurisdictions, that that's a viable alternative without knowing more specifics.
Q. Well, what more would you need to know?
A. We need to know -- I would need to know a lot more. Where -- where are the attorneys that are raising their hand to take these cases and what are their qualifications and how many cases can they

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take, for instance?
Q. If there was a mechanism to pay private lawyers, there would be -- wouldn't you -- wouldn't you agree with me, there would be lawyers willing to take cases?
A. I can't say that for sure.
Q. Well, that's your experience with the Code 49 cases, isn't it?
A. We have --
Q. Leaving aside the deserts?
A. But there's other things that we have done that I've alluded to earlier. For instance, a lawyer, private lawyer only raises his hand for two counties in a five-county circuit.
Mr. Elmer makes efforts to condition their involvement in the program on receiving cases in all the counties in the circuit. So there's steps that -- that I know that -- that I'm aware of that Mr. Elmer takes to achieve that.
Q. Are there any privatization proposals that you would find acceptable?
MR. WILLIAMSON: Objection.
A. I -- I don't know how to answer that.
Q. (By Mr. Quinlan) Apart from Code 49 because you obviously find that acceptable.

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A. That's not true. I -- I already testified I think on a couple occasions that there are deficiencies related to Code 49 that as director of MSPD gives me serious concern about whether for those individuals their constitutional rights are being upheld.
Q. Are you aware of any indigent defendant that your office has placed in a Code 49 representation who has received ineffective assistance of counsel?
A. I'm aware of quite recently a matter in, I alluded to it, in Harrisonville where a case was scheduled for trial. I'm going to do my best here to give you the facts as I'm aware of them.
That with trial imminent, that is to say the next week or so, according to the judge the private attorney with whom we've contracted the case had not seen his client in some time, had not -- that I'm aware provided discovery to that client, and with trial imminent the judge made the decision to take that lawyer off that case, give the case back to us. The judge made a determination -- oh, I thought it was odd because the case was not disposed of yet that the person was not competent.
Q. So the person that was assigned by your

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office under your Code 49 proceeding was deemed by the trial court to be incompetent?
A. According to the judge.
Q. Okay. And removed him from the case prior to trial?
A. Yes.
Q. And appointed your office to represent the defendant in the trial?
A. Yes. That decision was --
Q. Was the trial continued?
A. I'm not aware. I'm aware that that decision has since been reversed. I think the terminology is ordered vacated perhaps and that Mr. Elmer may know more on that, but that's the -- that's all I know on it.
Q. The order removing the incompetent counsel has been reversed?
A. I believe.
Q. Or the reassignment -- the reassignment to your office has been reversed?
A. I know the reassignment to my office has been reversed. I do not believe that we are in on that case.
Q. Do you know whether or not that defendant has suffered any prejudice as a result of

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the court's removal of the attorney?
A. I don't know if -- I don't think -- I'm not aware that the case has been resolved yet.
Q. Okay. So my question was are you aware of any case in which an attorney appointed by your office pursuant to your Code 49 program has -- has suffered an ineffective assistance of counsel whereby he was or she was prejudiced, wrongfully convicted?
A. I'm not aware one way or the other.
Q. Are you aware more generally in your office in -- either in your tenure or any information you have about issues prior to your tenure whether any public defender has been found to have ineffectively -- rendered ineffective assistance to a defendant?
A. Yes.
Q. In which there's been prejudice, wrongful conviction?
A. These -- these occur --
Q. I don't -- I don't need -- by the way, I don't need you to go through the cases one by one. Just are you aware?
A. Right. Where -- where there's been determination of a wrongful conviction.

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Q. There's been a determination of ineffective assistance of counsel?
A. Not to my knowledge. Mr. Mermelstein may know more on that.
Q. And -- and how far back does your knowledge reach?
A. Well, temporally it would go back between two and three years, but that's not to say that just given that time period that I'd be aware of all instances that occurred during that time period.
Q. And you're talking about your tenure as the -- as the -- both the general counsel and the director?
A. Yes.
Q. Okay. And you've not been informed of incidents of -- of findings of ineffective assistance of counsel by attorneys in your office for anything happening prior to your tenure?
A. No final determinations on that have come to mind, no.
Q. And the ordinary mechanism for -- for determination would be a post-conviction relief proceeding?
A. Right. I believe so. I mean, I -- I

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know that the post-conviction relief units regularly get relief in whatever form they get relief in. It varies. And I'm aware of generally that they receive relief for their clients. The specifics regarding any one of them is not something I keep tabs on.
Q. But -- but does your post-conviction relief office team, function within your office, represent claims of ineffective assistance of counsel by MSPD lawyers?
A. Yes, and I'd refer you to Greg Mermelstein on that. He'll be able to answer those questions.
Q. But they also represent indigent defendants in post-conviction relief cases for indigent defendants not previously represented by the public defender system?
A. I'd refer you to Mr. Mermelstein on that.
Q. But whatever post-conviction relief may -- may be achieved in your office, you're not aware of any of that having ever been achieved because of a finding of ineffective assistance of counsel by a public defender?
A. I'd refer you to Mr. Mermelstein. I'm

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not --
Q. You're not aware, though?
A. I'm not aware.
Q. Okay. Prior to your tenure I guess with the public defender system, I guess as general counsel, what was your -- you were with the governor's office? I believe you said that --
A. The -- the immediate job I had prior to joining general counsel was a tenure at the State Emergency Management Agency.
Q. Okay. I've got that here. And then prior to that you were with the office of the governor, deputy general counsel?
A. Yes.
Q. And a -- a brief stint as -- or you said including as deputy chief of staff?
A. Yes. Brief.
Q. When -- when did you begin in your -- your work with the office of the governor in any role?
A. It lasted for a period between two to three years. The start date.
Q. Year, you can put a year.
A. I can back into it. I think it was '12 to '14, 2012 to 12 -- '14 generally. Generally.

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Q. Okay. And prior to that what did you do?
A. I worked for a period of time at Department of Natural Resources, then the Department of Economic Development.
Q. So natural resources, then prior to that economic development?
A. Yes.
Q. And prior to that what did you do?
A. I was new to the state at that time. I worked previously as the deputy commissioner for criminal justice programs, public safety in the state of New York.
Q. Okay. And did -- and that -- what did you do in that capacity?
A. I ran statewide programs on juvenile justice, reentry, crimes against revenue.
Q. Crimes against what?
A. Revenue.
Q. Tax evasion?
A. You know, frauding workman's comp.
Q. Okay.
A. Not paying your taxes, a restaurant not paying taxes, that stuff.
Q. Okay. I understand. Anything else?

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A. Anything else as to?
Q. In that position.
A. Brief the governor and the deputy secretary for public safety on public safety issues. Was a counselor on efforts to combat crime in New York State and administration of general programs to assist localities in combatting violent crime.
Q. And prior to that what did you do?
A. I -- I worked as an attorney for the New York State general assembly in the majority caucus on the codes committee.
Q. And prior to that?
A. You're killing me here.
Q. I'm trying to get back to law school here. I guess what I'm getting at, is your tenure with the public defender's office your first work experience in the defense of criminal defendants?
A. You just had to go back one job prior and I was a public defender.
Q. Okay.
A. Before joining the New York State general assembly in the codes committee, I worked for the Albany County Public Defender's Office, and I also represented clients, criminal defense clients in private capacity. You were allowed to do both.

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Q. Okay. And how long were you doing that?
A. I think over a period of between two and -- two and three years.
Q. Okay. That's what I was getting back. Sorry to walk you back all the way back like that.
A. And I don't know the precise time period for that.
Q. And I'm not going to hold you to it.
A. Yeah.
Q. We'll ask you for your resumé if we need it.
A. Yeah.
Q. You mentioned that -- I guess you have did you say quarterly meeting of the commission that you attend?
A. Yes.
Q. You report --
A. We calendar out four quarterly meetings a year. In addition, as the need arises we'll have phone calls to discuss matters that require discussing.
Q. And are those proceedings recorded, taken down, minutes?
A. I don't know -- minutes, yes.

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Q. Okay. So minutes for the formal meetings?
A. Yes. Required by the -- the open meetings law, also known as the sunshine law.
Q. Okay. And -- and the phone meetings you have, are those formal meetings for which document --
A. When you say formal, I don't know what you're talking about.
Q. Well, is there a process whereby the commission can meet by telephone rather than in person and carry out its business?
A. Yes. Yes.
Q. And those would also be subject to the same sunshine law requirements for documentation?
A. Yes, appropriate notice is given, etc.
(Court reporter interruption.)
MR. QUINLAN: Requirements for documentation.
THE WITNESS: And I said yes, appropriate notice is required, etc.
MR. QUINLAN: You have two Northeasterners here going at it. We're very fast talkers.
THE WITNESS: I'm making efforts to

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slow down.
Q. (By Mr. Quinlan) You mention -- I just -- some questions I have in my margins from my notes. You indicated that -- that $3.74 million was appropriated. I don't have in my notes what year it was.
I'm not sure that -- I mean, the record will -- will speak for itself on that. That was first vetoed by the governor and then put back into the budget by veto override, and then it was again withheld by the governor?
A. Yeah, I just correct you. It's 3.47 million. Not 74 million.
Q. 47 million, okay.
A. Yes. Yeah, that's my correction. And I believe it was two budget cycles ago.
Q. Okay.
A. So whether you want to use calendar year or fiscal year, it was two years ago.
Q. That's fine. But my question is do you know why the money was ultimately withheld?
A. Well, I know insofar as to state why money was withheld generally, and that's because according to the governor, Nixon, revenues were not coming in as projected. As it relates to the

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specific withhold, pertaining to the public defender system, I can't say.
Q. So you've been in the general counsel's office of the governor. What is your understanding of that, the -- the broader withholding you refer to? What's the origin of that?
A. Revenue.
Q. Right. By what authority does the governor have ability to do that?
MS. SHIPMA: You know, I'm going to object. This is a subject matter of current pending litigation --
MR. QUINLAN: Okay.
MS. SHIPMA: -- to which he is a party and so I don't want him answering. I'm going to instruct him not to answer questions regarding this matter.
MR. QUINLAN: Sure. And any that you find, we can do that. I'm just trying to get some background.
MS. SHIPMA: This is one. Do not believe there is -- we do not believe there is --
(Court reporter interruption.)
MS. SHIPMA: Yes, our contention in the litigation is there is not constitutional

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authority --
MR. QUINLAN: Okay.
MS. SHIPMA: -- for the governor to do that withhold. So any questions regarding his understanding --
MR. QUINLAN: Okay.
MS. SHIPMA: -- of that I'm going to object and instruct him not to answer.
MR. QUINLAN: No, fair enough. And I'm not -- and I'm not trying to invade anything.
Q. (By Mr. Quinlan) So it's your understanding that the -- that what the governor said, what the governor's position was was that he had constitutional authority to make a withholding because revenues did not -- were not sufficient to meet appropriations?
A. I'm trying to state what I believe he thought.
Q. Exactly. That's what I'm asking. I'm not asking to invade --
A. Yeah.
Q. -- anything that's -- would prejudice your litigation. Is that correct then?
A. That -- limited to that, yes.
Q. Yeah, okay. And again, you don't --

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you don't have any specific information about why $3.47 million appropriation for the public defender system was among that?
MS. SHIPMA: I'm going to object to that question. That's the subject matter of our litigation. Michael, I'm going to instruct you not to answer.
THE WITNESS: Okay.
Q. (By Mr. Quinlan) You going to follow your attorney's instruction?
A. Yes.
Q. Okay. Did I understand your testimony correctly that your requested appropriation -- or I should say the appropriation made in the current fiscal year is fully funded, it's not been withheld?
A. Can I just take a step back so I understand your question?
Q. Sure.
A. You're talking about the budget that was pulled together as part of the last legislative budget cycle and is now in operation for the current fiscal year?
Q. Yes.
A. All the money that we were appropriate -- appropriated that can be expended at this point

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in the fiscal year to my understanding has been expended to our department.

Q. Okay. And that's your overall budget?

A. Yeah, I don't know there's a difference between them.

Q. I -- you know, I'm asking you for my benefit because I have Code 49 program in my note.

A. Okay.

Q. But I think my question was broader than that. And that was the question you answered, right?

A. Yes.

Q. So you're -- you're basically -- I understand your answer, okay. You mentioned that the operational control over the public defenders, your office, is held by the commission.

A. No.

Q. Okay. You're -- my note -- and correct -- and my notes say that -- that Missouri public defender system is an independent department within the judicial branch and it's only operationally controlled by the commission. Is that --

A. By the department. By the department.

Q. The department.

A. Not the commission.

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Q. Okay.

A. For instance, if I wanted to move an FTE from one office to the next, that's an operational decision. I take that to be an operational decision. That's not one that I would require commission approval.

Q. I understand. So -- and the -- what is then the authority of the commission?

A. So it's statutory. There's a number of enumerated responsibilities that they have. The one in addition to hiring me and firing, terminating the director, to approve the budget request that goes to the legislature and the governor.

To do some advocacy for the mission of the public defender system, and I believe there's something in there too about the approval of a pay structure for our org. chart.

Q. Okay. But your salary is fixed by statute?

A. Yes. I believe it says not more than what a judge makes. I don't remember whether it's an associate circuit judge or a circuit judge.

Q. But other executives in your department that you hire, they have different -- they can be paid what you and the board determine, commission?

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A. Yes, I think I have say. I think I drive that decision. But as a matter of practice, as a matter of courtesy, I will share and get their approval or I have shared and got their approval in establishing salaries for what I would describe as senior staff, deputy directors, trial division directors.

Q. And you also have -- so just so I understand, you -- you basically are the focus of the operational control department?

A. I would say that's an accurate statement.

Q. Okay. And so you are the one ultimately responsible for the pay scale for your APDs?

A. I think so. I think -- yes, I think that's -- I think that's -- I think we need -- there's some nuance there that I just can't willy-nilly make stuff up. I think we borrow --

Q. Don't I know that from my position.

A. We borrow I think -- I don't know whether it's compulsory or not a structure that OA creates. I don't know whether that's a guideline as I sit here or whether that's mandatory, but that's what we utilize.

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MS. SHIPMA: Kathy Lear can speak --

A. Yeah.

MR. QUINLAN: Understood.

Q. (By Mr. Quinlan) What is the authority, if any, that the Supreme Court has over your office as you're in the judicial department, and my understanding is constitutionally the Supreme Court is the supreme head of the judicial department?

A. Counselor, that's unclear to me. I've never been able to reconcile what it means to be in the -- in the judicial branch but at the same time be independent, the same end achieved by us being a stand-alone. I don't know the answer to that.

Q. Okay. I just want to confirm that you set the salaries for your APDs and your support staff and your organization and -- but you don't have budgetary responsibility for funding their -- their fringe benefits?

A. So if I understand your -- your question, their fringe benefits are not paid for out of my operating budget.

Q. That was my question. Okay.

A. And I believe the same is true for all departments, I believe.

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Q. I don't know. There was some discussion about -- I don't remember whether it was the district offices or the system as a whole, but -- and I'm just going to ask the question. Are there restrictions on the ability of your department to raise funds from sources other than an appropriation by the legislature?

A. I believe there is. Kathy Lear would be expert to answer that question.

Q. So would that -- does that rule out to your understanding private fundraising to fund different programs?

A. I believe it does.

Q. Okay.

A. I know that -- I'm mindful that if there's grant opportunities out there, and there seldom are, that we're somewhat limited as to what we can bring in from outside sources, but again Kathy Lear would be expert on that.

Q. But you -- but you are allowed to collect fees from clients?

A. Yes.

Q. Okay. You have a system for assigning a value to a representation and -- and charging your client for that?

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A. We have -- yes, I believe the amounts are promulgated by rule if I'm not mistaken. I didn't set them. They're -- they're assessed as a fee to clients, yes.

Q. And do you know what the destination is of those fees when they're paid? Do they come in to your budget?

A. Kathy Lear would be expert on that.

Q. All right. And I presume you have a system in place to -- for billing and collections and keeping track of how successful you are in collecting those fees?

A. I -- to the extent that we are successful, I have general understanding of -- of what comes in the door, how it comes in the door, yes, but Kathy Lear would know more.

Q. And Kathy would be --

MS. SHIPMA: Or Joel Elmer would also --

MR. QUINLAN: Okay.

MS. SHIPMA: -- be able to speak to that as well.

Q. (By Mr. Quinlan) And as I understand it, the office space occupied by your defenders in the counties and the district offices is provided by

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the counties?

A. Yeah. Perhaps I should've provided more nuance to that. In the cities I believe -- I think those are provided out of our budget if I'm not mistaken. I'd refer you to Kathy Lear on that.

Q. And I have that in my notes to talk to Kathy Lear about. And did I understand you correctly that the number of FTEs that you have is restricted by the legislature?

A. Yes.

Q. So -- and you mention that you had received an authorization to hire -- to add ten FTEs recently?

A. Two budget cycles ago in the same budget cycle that had that 3.47 million, I believe in that budget cycle we were authorized as part of that 3.47 million for ten additional FTEs. We didn't have the money to -- to hire those positions, but because it was passed by the legislature that becomes part of your core funding for subsequent years.

Q. Okay. So that has been continued, that authorization has continued subsequently?

A. Yes.

Q. And you say you haven't filled all

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those?

A. That is correct.

Q. Have you requested since then additional FTEs for your department through the legislative process?

A. We have submitted our -- our two thousand -- fiscal year 2019 budget proposal, which was approved by the Public Defender Commission at our September Public Defender Commission meeting. That has now been provided to the legislature, the governor's office, and additionally I believe the Supreme Court.

Q. And does that provide for more FTEs beyond the ten of the prior --

A. Yes.

Q. How many?

A. I don't know without looking at it.

Q. More than ten?

A. Yes.

Q. More than 20?

A. Keep going.

Q. More than 300?

A. That would be the number that I would give you.

Q. Okay. So -- so you're asking for what

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you say you need, you expect that that will be trimmed back?

A. I asked for what RubinBrown tells me I need based on the thresholds that they pulled together using evidence-based data.

Q. And that's the RubinBrown report that's specific to Missouri that's attached to the complaint in this case?

A. Yes.

Q. And my recollection is -- and I confess I -- I haven't studied it meticulously. That was based in part on anecdotal information supplied by public defenders as well as some limited initial data from a new hour -- hour keeping system?

A. I think that's partially correct. I'd refer you to Joel Elmer, but I can speak to this. This predated me, but I --

Q. And exactness is not what I'm looking for. Because what I'm asking is my recollection of that report was that the -- the -- there was a timekeeper system that was recently put in place?

A. Yes.

Q. Do you know when that was?

A. It was --

Q. 2015?

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A. It preceded -- since the report came out in '14, it preceded that. So I would say sometime between 2012 and 2014.

Q. Okay. And has there been any subsequent data analysis based on the actual experience and history recorded from your mature use of your hour -- hourly keeping system?

A. I'd refer you to Joel on that one.

Q. Okay. You testified that one of the criteria for evaluating assistant public defenders that's an objective criteria is client contact?

A. Yes.

Q. So do you have a -- a data collection or recordkeeping system that -- that captures those client contacts for the purposes of your evaluation?

A. Yeah, I believe we do. I think that's captured in different ways. For instance, a -- to have a local office to measure that, you can choose to look at a -- some sort of database or pull a file. So you can do it manually or electronically. I think Joel would be able to give you more information on that.

Q. Okay. And in that connection the client contact criteria, is that -- is that something that is promulgated on a district office

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basis or is that systemwide?

A. To the extent -- I don't understand your question. There is not differing standards I don't think.

Q. Well, I think you mentioned something about a visit is expected within first seven days of appointment and then every thirty days thereafter. Is that -- is that criteria one that is -- that is promulgated systemwide?

A. I believe that's a systemwide criteria.

Q. Okay.

A. I'd refer you to Joel Elmer.

Q. Okay. Mentioned that -- I don't remember whether this is a broader historical perspective or just the last year, you said one percent of all cases go to trial. So that means 99 percent plead or are otherwise disposed of?

A. Can I take the first part of your question?

Q. Yes.

A. Yes. It's my understanding that for the last two years, whether fiscal or calendar, that the -- the data that we recorded and was communicated to me, that in each of those years we only went to trial on one percent of our cases. And

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to the second part of your question, the 99 percent would also include such things like dismissals.

Q. Exactly. Okay. Nolle pros and things like that? Yeah. You have to answer out loud.

A. My first -- yes.

Q. And when you use the term caseload in your testimony, you're referring to that phrase as it's used in the RubinBrown report?

A. No.

Q. Do you have a different understanding of caseload than is in the RubinBrown report?

A. Yeah. There's -- there's two different words that I use. Mr. Mermelstein and Mr. Elmer may differ. I use caseload and workload. Caseload would be raw number of cases without taking into account the complexity of the case or the severity of that case, whether it's an A, a B, a felony, or otherwise.

Workload would be a different number. Workload would take those things into account because as part of the RubinBrown process they assigned higher thresholds or more hours required to work on cases of greater severity. For instance, an A -- according to RubinBrown an A felony would require more hours worked generally than a C felony.

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Q. Okay. And I'm -- and I'm just not remembering. My notes show that you said caseloads are most critical concern. Did I --

A. Yeah.

Q. Did I write that down correctly?

A. I think -- I think you did because I think that's what I said. If I could nuance that by saying I'm using caseload as an umbrella term there to include both caseload and workload. The number and severity of -- and seriousness of the cases that are assigned to a given lawyer.

Q. And -- and I gather that the assignment of cases within your office is -- is balanced based on severity so that you may have some lawyers that have -- with less severe cases, who would have more or less severe cases, whereas other lawyers with more severe cases would have fewer cases?

A. That's going to vary by office. There are other things at play. For instance, if it's a rural area, and they have several attorneys but those attorneys handle exclusively a county, they may get both severe --

Q. Right.

A. -- and less severe cases. So it -- it would depend on the jurisdiction.

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Q. Okay. We talked about the ombudsman complaints, and I think you mentioned that there's a database for tracking complaints?

A. Yes. If the complaint comes in through ordinary channels and not the phone is picked up by some other secretary and rerouted in an errant way, formal process is to record the -- or input the data concerning that call into some sort of database.

Q. Okay. So -- and that's a computerized system?

A. Yes. But that would only be calls that come to our office. That would not include calls by a client complaining to the local office.

Q. Or to their lawyer?

A. Or to their lawyer.

Q. Or to their lawyer. Do you have a mechanism for capturing the incidents of those kinds of complaints?

A. I don't believe we do.

Q. Okay. Even -- just practically speaking, I can understand as a practicing attorney you get a complaint from a client, you deal with it, you're not going to doc -- necessarily document that unless it's a letter or something like that, but when the complaint comes above so to speak over the attorney's head to the -- the management -- office management, is there any way of capturing those complaints?

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A. To the former, I think the determination is that the utility of recording it for the sake of recording it is outweighed by the time that it takes to do so. So the latter, if it comes -- the call comes in to our ombudsman program --

Q. Which is centrally located?

A. Which is centrally located. It is part of practice or procedure that we use to record it.

Q. Okay. What you're saying, though -- let me make sure I understand. If I'm a lawyer and I get a complaint from a client, I want to make some documentation that satisfied that complaint, do you know where that happens at the line level in your offices?

A. I don't -- I don't know that it does.

Q. Okay. One way or the other?

A. I don't know that it does one way or the other.

Q. Okay.

A. I would imagine it varies by lawyer.

MR. QUINLAN: All right. I went through my notes and I wrote that $3.47 million number down wrong every time. I'm getting close here. If you don't mind, we take a break. I'll check with Steven and see if we have anything more and wrap it up.

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THE WITNESS: That's fine with me.

VIDEOGRAPHER: We're going off the record at approximately 12:08 p.m.

(WHEREIN, a recess was taken.)

VIDEOGRAPHER: We're back on the record at approximately 12:16 p.m.

MR. QUINLAN: Thank you for the break to consider that. Having done so, we have no further questions.

EXAMINATION

QUESTIONS BY MS. SHIPMA:

Q. I do have a few questions. Okay. Michael, I'll try not to prolong this any more than necessary. Do you have any concept of on average the cost for the public defender system to defend a case?

A. I do have a concept --

Q. And what is that?

A. -- on average. I believe, and I'd refer you to Kathy Lear for a more precise answer,

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but in looking at trial division cases, when you take the number of cases and do some division as it relates to the total amount budgeted for those trial division cases, it comes out to be somewhere between 350 and 365 to the best of my recollection per case, and that includes some overhead.

I think -- I believe it includes litigation expenses as well. But I think there's certain overhead that's not included, but that's my understanding. Somewhere between 350 and $365 per case on average.

Q. And does that include the APD salary or the attorney's salary?

A. I believe it does. I believe it does, but I'd refer you to Kathy Lear for a more precise answer.

Q. And this -- do you -- are you aware of the amount of the fees that are paid -- the fees that are paid to contract counsel for specific types of cases, do you know what the dollar figure is for a misdemeanor, for instance?

A. I'd refer you to Joel Elmer.

Q. Okay. There were some questions about the various different reports that have been done of the public defender system. Are you aware of any

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findings in any of those reports that talk about fundamental problems with the system other than not enough resources?

A. That are not tied to resources?

Q. Right.

A. I am not.

Q. You referred to the fact that we -- that MSPD was given ten additional FTEs a couple of budget cycles ago and that those haven't been filled. What's the reason for not having filled those?

A. Some of them have been filled. Not all of them. The offices that I would provide one of those additional FTEs to are unable at the present day to fulfill their existing FTEs. So I'm holding back on assigning them as of yet.

Q. So there are vacancies in FTEs, not just those ten additional?

A. Correct.

Q. And what -- do you know, do you have a concept of what -- the reason for those vacancies?

A. That there's no person occupying the position.

Q. Do you know why the position is not filled?

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A. Not as to each specific position. I will -- I can say that the comptroller and the HR department has informed me that last year our turnover rate was around 17 percent for the year, and that that has increased and is projected to be upwards of 25 percent for this year.

We do do departure interviews, exit interviews with willing ex-employees, and the common reasons for leaving are that in the opinion of the departing attorney they're not able to do what they need to do for their client and are either leaving because of fear that their law license is in jeopardy or because there is some guilt associated with not being able to do what they need to do for their client. The other reasons that are most typical are salary.

Q. Not enough salary?

A. Salaries are low.

Q. Your duties as director of the public defender system are set by statute, correct?

A. Well, there are duties above and beyond statute, but there are specific duties that I must do, I believe.

Q. Okay. And are you -- I'm not asking you to quote the statute, but are you familiar with

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those duties that the statute sets out in general?

A. In general, yes.

Q. Can you tell me what those are?

A. Yeah. I have statutory obligation -- again, paraphrasing that -- specifics here to make sure that people who are charged with a criminal offense and who are otherwise unable to retain a lawyer receive competent representation by a member of MSPD or an MSPD attorney to ensure due process and -- under the law.

(Court reporter interruption.)

A. I'm sorry. Due process under the law.

Q. (By Ms. Shipma) So it's not only the judge's duty to worry about whether defendants are getting -- indigent accused are getting competent representation, that's something that you're tasked with as well; is that correct?

A. Yes, I would say that that's my primary purpose.

MS. SHIPMA: Thank you. I don't have any further questions.

MR. WILLIAMSON: None for me.

MR. QUINLAN: Just have a couple questions about the -- the FTEs.

FURTHER EXAMINATION

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QUESTIONS BY MR. QUINLAN:

Q. Do you know how many of the ten -- do you know how many of the ten authorized FTEs have remained vacant, have not been utilized?

A. I want to say -- I want to say four.

Q. And each of those four cases, does that relate to an office in which you intended those to go to offices which still have vacancies that haven't been filled?

A. Yes.

Q. So in other words, you have an office that -- that has had one vacancy and you don't want to -- you don't want to assign another FTE to that office, there's just going to be a second vacancy in that office?

A. I don't see the utility in doing that, yes.

Q. Do you see utility in utilizing those FTEs in venues or jurisdictions, offices, districts where you can recruit attorneys and -- and filling those?

A. I do see utility, and there's a second obstacle. And the second obstacle is that next tier of offices that are in most need of an additional person are also those offices where they don't have

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at least space to have another person in them.

So they would -- so the high-need offices would either fall into one of the two categories, either they're unable to recruit or they're able to recruit, but there's no room in the office.

Q. And -- and in those offices where you lack space, have you -- have you made inquiry of the local county to obtain that space?

A. Yeah, it's both the responsibility of the local district defender as well as Kathy Lear, who is the point of contact with the localities regarding facilities.

Q. So have they categorically refused to give you additional space?

A. In every instance I would not say that they have categorically refused. It's complicated from -- from a number of perspectives. One because most cases -- excuse me -- it's an office that handles a number of different counties, although the office would be located in a single county.

Each one of the counties served would contribute a pro rata dollar amount to the cost of that office and would be involved in -- in the decision. A number of instances we're in space

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that's owned by a county and so we're currently in free space, and if we move to a different space it would not be free space and it would be a cost for the county.

Q. Well, in those cases where you don't even have -- not only do you -- why don't you just move that FTE to one -- to another office in the state some -- because according to Exhibit 4 all of your offices have workloads or caseloads multiple levels beyond a hundred percent?

A. And I very well may do that. The beginning of the fiscal year, as you alluded to earlier, was July 1. We're not too far into the fiscal year and I've started off by posting in those offices that were both high need, had the room, and was able to recruit.

I'm now at the point of having to make a decision to utilize those positions notwithstanding they may ultimately go to -- to an office that's not among the top four in need, but as you pointed out, all the offices have a need for those positions.

Q. And as far as the desert areas if you will or the other -- other offices where you're having difficulty recruiting, you mentioned that you

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had a hundred percent flexibility in the use of your funds with -- with approval by OA. Are you aware of any incidents in which you haven't received approval from OA for flexibility -- flexibility move you'd like to make?

A. I'm -- I'm not. That's a Kathy Lear question, and those decisions typically come at the end of the fiscal year as we spend down the lines.

Q. Would it not be within your flexibility to offer salary incentives or other financial incentives for -- for the desert offices in order to get people to work there, something akin to like hazardous duty pay or something like that? Do you understand what I'm saying?

A. We've had that conversation. There's some factors that go into that that create other inequities that I'm fearful of how they would resonate in the system and establishing precedent.

The things that swirl around in my mind, Counselor, is it's my experience painting with a broad brush that although it's difficult to recruit to the rural areas, that when were successful a lot of times in recruiting to rural areas it's because someone has a tie, a family tie to that area, and they stay for much longer.

The reality in more the urban areas, for instance, St. Louis, there's a dearth of -- of lawyers available who are interested in applying, but because of the proximity to other more high-paying legal jobs, they leave more frequently.

So that -- that concept that you mention has interested us. I don't know if it has as I sit here a greater utility in the urban areas or the rural areas given their different dynamics.

MR. QUINLAN: Okay. That's all I have. Off the record.

VIDEOGRAPHER: We're going off record at approximately 12:28 p.m.

COURT REPORTER: Signature of the witness?

MS. SHIPMA: Yes.

COURT REPORTER: And then transcript orders for all the depos today? Full-size, condensed, or E-tran?

MR. QUINLAN: Get an e-mail.

MR. WILLIAMSON: E-mail yes.

MS. SHIPMA: E-mail.

(WHEREIN, the deposition was concluded at 12:28 p.m.)

CERTIFICATE OF REPORTER

I, William L. DeVries, a Certified Court Reporter (MO), Certified Shorthand Reporter (IL), Registered Diplomate Reporter, and a Certified Realtime Reporter, do hereby certify that the witness whose testimony appears in the foregoing deposition was duly sworn by me pursuant to Section 492.010 RSMo; that the testimony of said witness was taken by me to the best of my ability and thereafter reduced to typewriting under my direction; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition was taken, and further that I am not a relative or employee of any attorney or counsel employed by the parties thereto, nor financially or otherwise interested in the outcome of the action.

_____

Certified Court Reporter
within and for the State of Missouri

MIDWEST LITIGATION SERVICES

October 9, 2017

Ms. Jacqueline Shipma
Missouri State Public Defender
Woodrail Center
1000 West Nifong
Building 7, Suite 100
Columbia, Missouri 65203

IN RE: SHONDEL CHURCH, et al. vs. STATE OF MISSOURI, et al.

Dear Ms. Shipma,

Please find enclosed your copies of the deposition of MICHAEL R. BARRETT taken on October 4, 2017 in the above-referenced case. Also enclosed is the original signature page and errata sheets.

Please have the witness read your copy of the transcript, indicate any changes and/or corrections desired on the errata sheets, and sign the signature page before a notary public.

Please return the errata sheets and notarized signature page within 30 days to our office at 711 N 11th Street, St. Louis, MO 63101 for filing.

Sincerely,

William L. DeVries, RDR/CRR

35446

ERRATA SHEET

Witness Name: MICHAEL R. BARRETT
Case Name: SHONDEL CHURCH, et al. vs. STATE OF MISSOURI, et al.
Date Taken: OCTOBER 4, 2017

Page #_____ Line #_____
Should read: _____
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Should read: _____
Reason for change: _____

Witness Signature: _____

STATE OF _____)

COUNTY OF _____)

I, MICHAEL R. BARRETT, do hereby certify:

That I have read the foregoing deposition;

That I have made such changes in form and/or substance to the within deposition as might be necessary to render the same true and correct;

That having made such changes thereon, I hereby subscribe my name to the deposition.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this _____ day of _____, 20___, at _____.

_____

MICHAEL R. BARRETT

_____

NOTARY PUBLIC

My Commission Expires:

A

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Exhibit H

UNITED STATES DISTRICT COURT FOR THE

WESTERN DISTRICT OF MISSOURI

CENTRAL DIVISION

SHONDEL CHURCH, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Case No. 17-04057-CV-C-NKL
	)	
STATE OF MISSOURI, et al.,	)	
	)	
Defendants.	)	

EXPERT REPORT OF ROBERT C. BORUCHOWITZ

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I. INTRODUCTION AND SCOPE OF THE REPORT

1. I was requested to provide an opinion about public defense services in Missouri in the context of the claim by the Plaintiffs in this case that Missouri "has failed to meet its constitutional obligation to provide indigent defendants with meaningful representation."

2. I am Director of The Defender Initiative and Professor from Practice, Seattle University School of Law. I joined the faculty in January 2007. I was Director of The Defender Association in Seattle f**o**r 28 years, and was a staff attorney at that office for nearly five years before that. I have been an expert witness in systemic litigation in New York and Louisiana. A full description of my qualifications appears below at paragraph 18 et. seq.

3. **A list of the materials I have reviewed is attached as Appendix A.** I have also reviewed this Court's ruling on the Defendants' Motions to Dismiss. *Church v. Missouri*, 17-CV-04057-NKL, 2017 WL 3383301 (W.D. Mo. July 24, 2017). I recognize that for purposes of deciding that motion, the Court "accept[ed] the Plaintiffs' factual allegations as true and construe[d] them in the light most favorable to them." *Id.* at *1 n.1. Because this Court's recounting of the history of studies of public defense in Missouri and the funding of public defense is concise and is consistent with my understanding of them, I have cited and relied upon this Court's account at various places in my report.

4. Based on my experience in public defense, my understanding of the relevant constitutional and ethical standards, and my review of the materials in this case, I have been able to reach a conclusion on the systemic ability of the Missouri State Public Defender (MSPD) to fulfill Missouri's constitutional obligation to provide counsel to indigent defendants.

II. OVERVIEW OF OPINIONS

5. In my expert opinion, Missouri's public defenders operate in circumstances such that even where counsel is nominally available, "the likelihood that any lawyer, even a fully competent one, could provide effective assistance is so small," that Plaintiffs are constructively denied counsel in violation of the 6th Amendment. *See United States v. Cronic*, 466 U.S. 648, 659-60 (1984).

6. Missouri's system for providing defense counsel for the poor fails to meet Constitutional and professional standards and creates an unacceptable risk that indigent defendants throughout the State who are charged with crimes carrying a threat of imprisonment will be denied effective representation by counsel. Missouri's public defenders consistently are failing to subject the cases against such defendants to meaningful adversarial testing, and, as a result, the State is failing to meet its foundational constitutional obligation to provide counsel to eligible persons.

7. There are numerous structural and systemic causes for the Missouri public defender system's failure to meet Constitutional and professional standards and statutory requirements: inadequate and inconsistent funding; excessive caseloads; inability to devote the necessary time to each client's case that results in triage representation; a material disparity of resources between prosecution and defense; insufficient supervision and training; insufficient attorney-client communications; and inadequate support from or access to investigators, experts,

social workers and other necessary support personnel; significant travel requirements because of the geographic size of their districts and up until quite recently, the MSPD's conflict counsel policy that required defenders to take cases in other counties; and a wholly ineffective statutory remedy for declining cases for which MSPD defenders have feared reprisals.

8. Public defenders in Missouri regularly fail to provide adequate counsel at every critical stage of the criminal process, including arraignment, particularly where the initial bail amount is set by the court. Further, MSPD attorneys routinely fail to engage in sufficient attorney-client communications to prepare an adequate defense; conduct meaningful factual investigations; engage in necessary motions practice; prepare for and take cases to trial; and utilize the services of expert witnesses and social workers. Because of the pressures of excessive caseload, public defenders in Missouri frequently seek long and repeated continuances that leave their clients in jail, forced to choose either to waive their speedy trial rights or give up their trial and accept plea deals to obtain earlier release.

9. These failures exist in the MPSD's responsibilities to defend indigent clients in adult criminal proceedings and in juvenile proceedings.

10. This Court has outlined the claimed inability of the Missouri Defender system to provide counsel consistently at every critical stage of the criminal process:

> In Missouri, however, attorneys are often unavailable to represent each eligible indigent defendant at every critical stage of the criminal process—including at their arraignment, where bond is determined. Public defenders routinely do not meet their clients until several weeks after the client's arrest and arraignment. As a result, bond determinations, which normally occur at the defendant's initial appearance before the court, are almost always made without the benefit of advocacy from counsel. Unrepresented indigent defendants are therefore often forced to remain in jail simply because they are unable to advocate effectively on their own for release on their own recognizance or a reasonable reduction in their bond amount.

Church v. Missouri, 2017 WL 3383301, at *3.

11. This Court noted that there is a right to counsel at post-arraignment lineups. The complaint, however, alleges that:

> …defendants in Missouri are routinely placed in lineups after arraignment without the benefit of counsel, even though the prejudice that results from an improper lineup cannot be cured later in the criminal process.

Id. at *4

12. This Court described the dilemma faced by clients whose lawyers cannot prepare for their cases:

> …defendants are often forced to choose between either consenting to the continuances, thereby waiving their right to a speedy trial and remaining in jail for an extended period of time, or taking their chances at trial with an attorney who has had little or no time to prepare.

Id.

13. This Court discussed the alleged failures of counsel caused by inadequate resources:

> MSPD attorneys are unable to ensure that those who plead guilty do so knowingly and voluntarily. Excessive pretrial detention—often due to public defenders' inability to represent defendants at bond hearings or their need for repeat continuances—put virtually unbearable pressure on many defendants to plead guilty merely to get out of jail. Many MSPD clients who plead guilty do so without a full understanding of the strengths and weaknesses of their case.

Id. at 4.

14. As discussed more fully below, an indication that the Missouri defenders are not able consistently to subject the state's case to meaningful adversarial testing is that there are few cases that are taken to trial. For example, in 2015, MSPD lawyers tried only 18 cases out of 12,327 total Trial Division misdemeanor cases. July 25, 2016. Letter from Jacqueline Shipma to Jason Williamson (July 25, 2016).

15. Many defenders rarely investigate the facts in their cases. Many defenders do not conduct motion hearings to the extent that they should, and most defenders rarely use expert witnesses.

16. Almost none of the districts use social workers. Although social workers and careful preparation by counsel can significantly improve plea bargaining results and result in better sentences for the defendants, they are rarely available as a resource to MSPD lawyers or their clients.

17. The situation in Missouri has grown to be so serious that the defenders and judges have come to accept routinely and openly a pattern of practice regarding indigent accused persons that falls well below what the Missouri Rules of Professional Conduct require and effectively disregards the ethical responsibilities of both lawyers and judges. The defenders have changed their approach to the excessive caseload in the wake of the recent *Hinkebein* state Supreme Court disciplinary decision. As detailed below, there are a range of problems raising serious ethical concerns.

III. QUALIFICATIONS INCLUDING A LIST OF ALL PUBLICATIONS AUTHORED IN THE PREVIOUS 10 YEARS

18. I am an attorney licensed to practice law in the State of Washington, admitted to practice before the United States District Court for the Western District of Washington, the United States Court of Appeals for the 9th Circuit and the Supreme Court of the United States. I am an inactive member of the California Bar Association. I am certified under the Washington State Superior Court Special Proceedings Rules as qualified to be appointed as counsel in capital appeals and post-conviction proceedings.

19. I graduated from Kenyon College in 1970 with a degree in Political Science and from Northwestern University School of Law in 1973.

20. For 28 years, I served as Director of The Defender Association in Seattle, a non-profit public defender program. In that role, I administered an office of as many as 125 staff, including as many as 90 lawyers. Among my duties as Director, I was responsible for negotiating our contracts with government funders at the city, county and state level, advocating for resources from local government, seeking foundation and other private funding, negotiating building and equipment leases, recruiting and hiring staff, addressing personnel and labor issues, and supervising and participating in training of staff. I also developed a successful proposal for a state capital defense assistance center funded by the Washington Office of Public Defense. I obtained grant funding to begin a Racial Disparity Project in the office.

21. As Director, I was co-counsel in two hearings in King County Superior Court that resulted in increased payments to The Defender Association for work in Wash. Rev. Stat. § 71.09 (i.e., sex offender commitment) cases. Our presentation included an analysis of the staffing requirements for and the financial impact of handling those cases, including extensive discussion of the budget.

22. My office had contracts with local government that had performance guidelines informed by the King County Bar Association Guidelines, Washington Defender Association Standards, Washington State Bar Association Standards, National Legal Aid and Defender Association Performance Guidelines, and Wash. Rev. Stat. § 10.101.

23. As a staff attorney with The Defender Association, I worked in misdemeanor, juvenile, felony, and appellate divisions. While in the appellate division, I was co-counsel on a trial-level capital case.

24. I have represented clients at every level of state and federal courts.

25. I have participated in state and national efforts to develop public defender standards and a model defender services contract, which have been published by the Washington State Bar Association ("WSBA"), the American Bar Association ("ABA"), and the National Legal Aid and Defender Association.

26. For many years, I have been a member of the ABA's Indigent Defense Advisory Group. I have also served on other ABA committees and a working group and on a number of state and local committees, all relating to criminal justice and public defense.

27. I was chairperson of the WSBA Criminal Law Section in 1981-1982 and 1984-1985. For more than ten years, I have served on the WSBA Committee on Public Defense and its successor Council on Public Defense.

28. I have been co-chair of a committee for the Council on Public Defense assigned to review standards and to develop performance guidelines. In that role, I have co-led an effort to amend the WSBA Indigent Defense Standards and to develop defender performance standards. The Council on Public Defense approved both the resulting amended Standards and the Performance Guidelines and recommended that the WSBA Board of Governors endorse them, which it did. The State Supreme Court has incorporated key parts of the WSBA Indigent Defense Standards into court rules.

29. I helped to draft the Washington State law requiring local governments to develop standards for public defense (enacted as Wash. Rev. Stat. § 10.101), initially passed in 1989. The law requires, among other things, that:

> Each county or city . . . shall adopt standards for the delivery of public defense services, whether those services are provided by contract, assigned counsel, or a public defender office. Standards shall include the following: Compensation of counsel, duties and responsibilities of counsel, case load limits and types of cases, responsibility for expert witness fees and other costs associated with representation, administrative expenses, support services, reports of attorney activity and vouchers, training, supervision, monitoring and evaluation of attorneys, substitution of attorneys or assignment of contracts, limitations on private practice of contract attorneys, qualifications of attorneys, disposition of client complaints, cause for termination of contract or removal of attorney, and nondiscrimination.

Wash. Rev. Stat. § 10.101.030.

The law provides that the WSBA Standards "should serve as guidelines to local legislative authorities in adopting standards" under § 10.101.

30. In 1983, I helped to establish The Washington Defender Association (the "WDA") and for 20 years served as its Founding President. During that time, the WDA established staff attorney positions providing technical assistance to defenders throughout the state and developed a legislative advocacy program working with the Washington Association of Criminal Defense Lawyers.

31. In 2007, I led a committee for the American Council of Chief Defenders ("ACCD") that wrote a Statement on Caseloads and Workloads (the "ACCD Statement on Caseloads and Workloads").

32. I currently lead a Washington Council of Public Defense committee that developed proposed Performance Guidelines for Juvenile Defense Representation in

Washington. The Council has adopted the Guidelines and is recommending their adoption by the Washington State Bar Board of Governors and sending them to the Washington Supreme Court.

33. For many years I have been a member of the Washington State Minority and Justice Commission, a commission of the Supreme Court of the state of Washington that is charged with the mission of ensuring that all courts in the state of Washington remain free of bias so that justice may be adjudicated in a neutral and fair manner. I have participated with prosecutors, defenders, and judges in developing successful proposals for amendments to court rules and in presenting training programs.

34. I am a Professor from Practice at the Seattle University School of Law (the "School of Law") where I have been on the faculty since January 2007. I have taught a seminar on Right to Counsel, Law and Lawyering, a Clinic on Right to Counsel, and in the Youth Advocacy Clinic and Criminal Procedure Adjudicative classes. My teaching in the clinics has included classroom training on trial practice and ethical considerations, discussion of related criminal procedure issues, and representation of clients in prosecutions in King County Superior Court, in a misdemeanor appeal in Kittitas County, and in two habeas corpus proceedings in Snohomish County Superior Court (in Washington State).

35. I also serve as the Director of The Defender Initiative at the School of Law. The Initiative's first project was a comprehensive investigation of misdemeanor public defense in the United States conducted with the National Association of Criminal Defense Lawyers ("NACDL"). I was the primary researcher and co-author of a report published by NACDL in 2009 entitled *Minor Crimes, Massive Waste, The Terrible Toll of America's Broken Misdemeanor Courts* that surveyed the law on right to counsel in misdemeanor cases and examined actual representation across the country. For that project, I reviewed recent case law and ethical opinions relating to caseloads and conducted site visits in Pennsylvania, Arizona, and Washington State. The report analyzed issues relating to caseloads, available resources, and the components of effective representation, including use of investigation, training, supervision and compensation. The report discussed diversion of cases and ethical issues. The report has been cited in more than 60 law review and journal articles.

36. In 2009, The Defender Initiative received a grant from the Foundation to Promote an Open Society (the "Foundation") to advocate for increased provision of counsel in Washington's misdemeanor courts. The Foundation provided additional funding for 2010-2011 and 2011-2012, which allowed me to expand the work into Kentucky, New Hampshire, and South Carolina. The Defender Initiative receives grant funding from the U.S. Department of Justice to provide technical assistance on public defense.

37. Working with The Sixth Amendment Center, a sub-awardee from The Defender Initiative, I conducted site visits in a number of Utah counties culminating in a report to the Utah Judicial Council entitled *The Right to Counsel in Utah: An Assessment of Trial-Level Indigent Defense Services* (2015). The Defender Initiative and the Sixth Amendment Center are preparing a similar report for the Mississippi Supreme Court Task Force on Public Defense and the Mississippi Office of the State Public Defender for which I have conducted site visits in a number of Mississippi counties. We also are consulting with the staff of the Michigan Indigent Defense Commission. I recently visited and wrote a short report on the Berrien County,

Michigan, Public Defender office. And I observed hearings and wrote a report about three courts in Michigan. In another project with The Sixth Amendment Center, I helped to research and write a report on compensation for assigned counsel in Wisconsin entitled *Justice Shortchanged, Assigned Counsel Compensation in Wisconsin* (2015). We recently received a grant from the Michigan Indigent Defense Commission to do a study of the Wayne County State Defender office.

38. I have participated in site-visit evaluations of public defender programs for the National Legal Aid and Defender Association in Idaho, Michigan, Louisiana (in Orleans and Avoyelles Parishes), Nevada, and Washington, D.C.

39. I serve as the Public Defense Assessor, City of Edmonds, Washington, January 2016—present. I also consulted for Edmonds in 2015 on the selection of its current public defense provider.

I will include here a list of all other cases in which I testified as an expert at trial or by deposition.

40. I have previously provided expert testimony and/or reports in several actions in state and federal courts relating to the ability of public defenders to provide effective assistance of counsel to indigent defendants.

In 2005, I served as an expert witness in a class action seeking injunctive relief from systemic ineffective assistance of counsel in Grant County, Washington. I provided deposition testimony, and, after depositions and motion hearings, the parties entered into a settlement that established per-attorney caseload limits and other requirements.

In 2009, I submitted an affidavit as an expert witness in support of a summary judgment motion filed by the Kentucky Public Advocate in a declaratory judgment action involving excessive public defender caseloads. I concluded that the defenders had excessive caseloads and inadequate resources. Although the trial court dismissed the lawsuit on ripeness grounds, the Kentucky Governor shortly thereafter announced a new $2 million allocation for public defense.

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. Bowens*, 39 So. 3d 479 (Fla. Dist. Ct. App. 2010), to withdraw because of excessive caseloads. The Florida Supreme Court agreed that the Public Defender had demonstrated cause for withdrawal based on his office's excessive caseloads. *Public Defender v. State*, 115 So. 3d 261, 279 (Fla. 2013). My declaration is available at http://www.pdmiami.com/ExcessiveWorkload/Mo_to_Withdraw_Exhibit_D.pdf.

I was qualified as an expert witness by the New York Supreme Court, Appellate Division, Third Judicial Department in a class action litigation styled as *Hurrell- Harring v. State of New York,* 119 A.D. 3d 1052,1054 (N.Y. App. Div. 2014). In 2014, the parties entered into a settlement that included an agreement by the state of New York to develop caseload standards, provide counsel at all arraignment hearings, and improve the quality of public defense representation in five counties. As part of my work in that case, I

conducted observations and interviews in Suffolk County and Washington County, New York.

In November 2015, I testified (by video) as an expert witness in the Orleans Parish Criminal District Court in support of a motion filed by the Orleans Public Defender to suspend the assignment of new cases. I testified that the defenders' excessive caseloads undercut their ability to provide effective representation to their clients.

In May 2017, I provided an expert witness report on public defense in Louisiana. That report was filed in support of a motion for class certification in *Allen v. Edwards* in court in Baton Rouge Louisiana, in a lawsuit that alleges that Louisiana has failed systemically to provide a constitutionally acceptable public defense system.

In August, 2017, I provided an expert witness report on a question regarding the timing of appointment of public defenders in Contra Costa County, California. That is for litigation in United States District Court.

In October 2017, I testified in a deposition in the Contra Costa County case referenced above.

41. I have also served as an expert witness in cases involving claims by individual defendants of ineffective assistance of counsel.

In 2007, I served as an expert witness regarding effective assistance of counsel on behalf of the defendant in an evidentiary hearing before King County Superior Court in Washington. The Court of Appeals granted the petition to withdraw the guilty plea. *In re Pers. Restraint of Gay*, 142 Wash. App. 1001 (Wash. Ct. App. 2007).

I served as an expert witness regarding effective assistance of counsel on behalf of the defendant in a federal habeas corpus proceeding challenging a persistent offender conviction. *Thorne v. DuCharme*, C97-1280Z (W. D. Wash.) (2001). After my report, the parties stipulated to an order to issue a writ of Habeas Corpus and to direct the Superior Court of the State of Washington to vacate the judgment and conviction in the state trial court.

42. I was invited to and did testify before the United States Senate Judiciary Committee at a hearing on Protecting the Constitutional Right to Counsel for Indigents Charged with Misdemeanors on May 13, 2015. My written testimony is available at https://www.judiciary.senate.gov/download/05-13-15-boruchowitz-testimony.

43. I have spoken at many continuing legal education seminars and public fora, including the following:

Lawsuits, Bail Reform, and Standards--Report on National and State Developments and work of The Defender Initiative, The Defender Initiative Seventh Annual Conference on Public Defense, Seattle University School of Law, March 3, 2017.

Lawyers for Misdemeanors - *When Will Judges Stop Taking Guilty Pleas without Valid Waivers of Counsel*?, The Defender Initiative Sixth Annual Conference on Public Defense, Seattle University School of Law, March 4, 2016.

Invited Witness, Ad Hoc Committee to Review Criminal Justice Program, U.S. District Court, Portland, Oregon, February 3, 2016.

Panelist, "Where's My Attorney? Providing Counsel at Three Stages, First Appearance", National Legal Aid and Defender Association Annual Conference, New Orleans, November 6, 2015.

"National Trends and Their Impact in Washington", Conference on Public Defense, Seattle University School of Law, March 5, 2015.

Moderator, "State Bar Involvement: The Washington Experience", ABA Indigent Defense Summit, Chicago, Illinois, February 8, 2014.

"Washington State - Leading the Way on Public Defense," Conference on Public Defense, Seattle University School of Law, March 7, 2014.

"Development of Standards in Washington State," Harvard Law School Symposium on Gideon's Promise and Peril: Meeting the Mandate for Indigent Defense, October 11, 2013.

Small group leader at the Washington Defender Association's CLE on "Creating Structure to Meet Constitutional Obligations and the Requirements of CrR 3.1" at Sun Mountain, April 25-26, 2013.

"Misdemeanors 41 Years after Argersinger - Guiding Hand of Counsel in the Gateway to Justice." Seattle University, March 8, 2013.

Presenter, "The Right to Counsel: Why It's Important and How It Serves the Interests of all the Stakeholders in the Criminal Justice System." Argersinger Undone - The Challenges in Implementing the Right to Counsel in Misdemeanor Courts in South Carolina, Charleston School of Law, Charleston, South Carolina, June 15, 2012.

Presenter and leader of discussion, "Misdemeanor Roundtable— Compliance with Caseload Limits, Denial of Counsel in Probation Revocation Hearings, and Other Challenges." Washington Defender Association annual conference, Sun Mountain, April 27, 2012.

Organizer and speaker, "Misdemeanor Right to Counsel—When will they ever learn? And how can staff lawyers persuade their supervisors that the issue is worth fighting for?" Defender Initiative's Second Annual Conference on Public Defense, Seattle University, March 2, 2012.

Speaker, "The Right to Counsel: Why It's Important and How It Serves the Interests of all the Stakeholders in the Criminal Justice System and How to save taxpayer money with

misdemeanor diversion programs that safeguard the public, protect the rights of the accused, reduce recidivism and conserve limited resources." Louisville Bar Foundation, Louisville, Kentucky, January 27, 2012.

Speaker, "Using Defender Standards: Reviewing the Washington Experience in a National Context, and Right to Counsel in Misdemeanors--How to Implement Argersinger and Shelton." National Legal Aid and Defender Association Centennial Conference in Washington, D.C., December 8, 2011.

Speaker and facilitator, ABA NATIONAL DEFENDER TRAINING PROGRAM, Indianapolis, Las Vegas, Austin, summer and fall 2011.

44. I have written extensively on subjects relating to public defense, including the following:

"Justice Shortchanged--Assigned Counsel Compensation in Wisconsin", co-author, Sixth Amendment Center, May 2015

"SU Study Assesses Costs of Seeking Death Penalty", King County Bar Bulletin March 2015.

Co-author, AN ANALYSIS OF THE ECONOMIC COSTS OF SEEKING THE DEATH PENALTY IN WASHINGTON STATE, January 2015, available at http://www.law.seattleu.edu/Documents/korematsu/deathpenalty/The_Economic_Costs_of_Seeking_the_Death_Penalty_in_WA_FINAL.pdf.

"Major Public Defense Changes Postponed", King County Bar Bulletin, January 2015.

"Fifty Years after Gideon: It is Long Past Time to Provide Lawyers for Misdemeanor Defendants Who Cannot Afford to Hire Their Own", Seattle Journal for Social Justice, Vol. 11, Issue 3 (2013).

"Division Autonomy Crucial in Defender Restructuring", co-author, King County Bar Bulletin, October 2013.

"The Right to a Lawyer", Louisville (KY) Courier Journal, March 17, 2013.

"50 years later, fulfilling right to counsel", Everett (WA) Herald, with Bob Ferguson, March 18, 2013.

"50 Years after Gideon v. Wainwright...County Plan Would End Nonprofit Defender Program", King County Bar Bulletin, February 2013.

"State Supreme Court Issues Historic Order on Defender Standards", King County Bar Bulletin, September 2012.

"Caseload limits a win for public defenders, clients - and justice", Seattle Times, July 19, 2012.

"Defenders Spread Thin by Budget Crunch", Bar Bulletin, March 2011.

"Diverting and Reclassifying Misdemeanors Could Save $1 Billion per Year: Reducing the Need For and Cost of Appointed Counsel" (American Constitution Society, 2010).

"HJR 4220 goes too far in response to tragic Lakewood police murders", op ed with Neil Fox, Tacoma News Tribune October 27, 2010.

"You (might) have a right to a lawyer...", King County Bar Bulletin, July 2010.

On Public Defenders and Excessive Caseloads, July 10, 2010 as a guest blogger for CrimProf Blog**,** a member of the Law Professor Blogs Network.

"Citizen's Voice: Public defenders underfunded in Tennessee", Knoxville News Sentinel, June 5, 2010.

"The Defender Association Celebrates 40 Years", King County Bar Bulletin, September 2009.

"At 45, Gideon Right to Counsel Remains Elusive", King County Bar Bulletin, March, 2008.

"Right to Counsel Remains Threatened in Washington," Washington Bar News, February, 2007.

Op Ed, "Lawyers for juveniles not automatic", Seattle Post Intelligencer, January 2, 2008.

"Enough is Enough! Defenders Act on Excessive Caseloads", 29 NLADA Cornerstone, Jan-Apr 2008, at 12.

45. I have received the following awards and honors:

Champion of Justice award, Washington Association of Criminal Defense Lawyers (2014).

Certificate of Appreciation, Washington Defender Association, 2014.

Champion of Indigent Defense Award, National Association of Criminal Defense Lawyers (2006) awarded in August, 2007.

Paul Robeson Peace and Justice Award, Mothers for Police Accountability, 2007.

"Super Lawyer," Washington Law and Politics, 2006.

Professionalism Award, Washington State Bar Association, 2004.

Gideon Award, Washington Defender Association, 2004.

Senior Fellow, Open Society Institute, February, 2003, to January,2004.

Friend of the Profession, King County Bar Association, 2000.

William O. Douglas Award, Washington Association of Criminal Defense Lawyers, 1993.

Order of the Coif, University of Washington Law School, 1991.

Civil Libertarian Award, American Civil Liberties Union of Washington, 1990.

Certificate of Appreciation, Washington Association of Criminal Defense Lawyers, 1990.

Reginald Heber Smith Award, National Legal Aid and Defender Association, 1987.

John Henry Wigmore Key, Northwestern University School of Law, 1973.

IV. COMPENSATION

46. I have agreed to be compensated at the rate of $200 per hour for the work in this case including testimony.

V. THE MISSOURI AND UNITED STATES CONSTITUTIONS REQUIRE EFFECTIVE ASSISTANCE OF COUNSEL

47. The Missouri Constitution provides: "in criminal prosecutions the accused shall have the right to appear and defend, in person and by counsel." Mo. Const. art. I, § 18(a).

48. The Missouri Supreme Court has emphasized that "Effective, not just pro forma, representation is required by the Missouri and federal constitutions." *State ex. Rel. Missouri Pub. Def. Comm'n v. Waters*, 370 S.W. 3d 592, 607 (2012).

49. The Sixth Amendment to the United States Constitution provides in part: "In all criminal prosecutions, the accused shall enjoy the right to …have the assistance of counsel for his defense."

50. Counsel must be "reasonably effective". *Strickland v. Washington*, 466 U.S. 668, 687-89 (1984) (citing the "[p]revailing norms of practice as reflected in the American Bar Association standards and the like" as "guides to determining what is reasonable").

51. The United States Supreme Court has made clear that "The right to the effective assistance of counsel is thus the right of the accused to require the prosecution's case to survive the crucible of meaningful adversarial testing." *Cronic*, 466 U.S. at 656.

52. The *Cronic* Court held that there are "some occasions when although counsel is available to assist the accused during trial, the likelihood that any lawyer, even a fully competent one, could provide effective assistance is so small that a presumption of prejudice is appropriate without inquiry into the actual conduct of the trial." 466 U.S. 648, 659-60, 104 S.Ct. 2039, 2047.

VI. RULES OF PROFESSIONAL CONDUCT REQUIRE COMPETENT AND THOROUGH REPRESENTATION

53. Missouri Rule of Professional Conduct RULE 4-1.1: COMPETENCE states:

> A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

Available at https://www.courts.mo.gov/courts/ClerkHandbooksP2RulesOnly.nsf/c0c6ffa99df4993f86256ba50057dcb8/20fd60132de3411886256ca6005211b4?OpenDocument.

54. The Comment to Rule 4-1.1 states in part:

> Thoroughness and Preparation
>
> [5] Competent handling of a particular matter includes inquiry into and analysis of the factual and legal elements of the problem and use of methods and procedures meeting the standards of competent practitioners. It also includes adequate preparation. The required attention and preparation are determined in part by what is at stake; major litigation and complex transactions ordinarily require more extensive treatment than matters of lesser complexity and consequence.

55. Rule of Professional Conduct RULE 4-1.3: DILIGENCE provides: "A lawyer shall act with reasonable diligence and promptness in representing a client." The Comment to the rule states in part: "[2] A lawyer's work load must be controlled so that each matter can be handled competently."

56. Rule of Professional Conduct RULE 4-1.4: COMMUNICATION provides:

> (a) A lawyer shall:
>
> (1) keep the client reasonably informed about the status of the matter;
> (2)promptly comply with reasonable requests for information; and
> (3)consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows the client expects assistance not permitted by the Rules of Professional Conduct or other law.
>
> (b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

57. Because of excessive caseload, Missouri's defenders are not able consistently to meet these ethical obligations articulated in the Missouri Rules of Professional Conduct, including Rules 4-1.1, 4-1.3, 4-1.4, and 4-1.7.

VII. DEVELOPMENTS SINCE THE HINKEBEIN DECISION

58. The Missouri Supreme Court recently suspended a defender who was unable to meet all of his obligations because of an excessive caseload. The Court stayed the suspension and placed the defender on probation. This case, and the defenders' response to it, have increased attention to the structural deficiencies of the Missouri public defender system. The defenders are addressing the ethical issues raised by their excessive caseload. Chief Public Defender Michael Barrett wrote about the ethical obligations of his lawyers and the burdens on them:

> It was during oral argument where the Supreme Court again made itself clear – that there were no carve-out exceptions in the Rules for public defenders, and then stated that defenders have a choice to make when he/she has too many cases: (1) quit; or (2) refuse to accept more cases. Many have chosen the first option. We have a 25% turnover rate and given our starting salary of $39k, there is no line around the block of people looking to join our ranks. We received a number of resignations in the hours following oral argument in that disciplinary case.

Letter to Boone County Bar Association, Boone County Bar Association Newsletter, October 2, 2017, Joel Elmer Deposition, October 4, 2017, Ex. at 5.

59. Mr. Barrett was quoted in a public radio story, discussing the untenable situation he feels his lawyers face:

> If I was a cartoonist for a newspaper, I'd draw a picture of a public defender whose [sic] got two guns pointed at him from either side of their head: On one side, the (Office of Chief Disciplinary Counsel) and the Supreme Court saying, 'I dare you to take that case and I'm going to take your law license.' On the other side is the local court who says, 'I dare you to not take that case. And I'll hold you in contempt.' That's our world right now.

"Many Missouri Public Defenders Decline New Cases After State Supreme Court Disciplines Lawyer", By DAN MARGOLIES, St. Louis Public Radio (October 6, 2017), available at http://news.stlpublicradio.org/post/many-missouri-public-defenders-decline-new-cases-after-state-supreme-court-disciplines-lawyer#stream/0**.**

60. Mr. Barrett reported that some lawyers had resigned from the MSPD after the Supreme Court argument and before his September 11 letter, citing caseload and "their inability to practice within the—the rules." After the letter, a manager announced her November departure. Michael Barrett Deposition, October 4, 2017, at 80.

61. John G. Mermelstein, the MSPD deputy director of specialty practice and resources, has posted for all MSPD attorneys to use

> a sample motion to withdraw from cases due to excessive caseload and a sample letter to – to the Office of Chief Disciplinary Counsel which our attorneys could send to them to report an excessive caseload. I also posted before September 11th the American Bar Association ethical opinion 06441 regarding excessive attorney caseloads. Now, after September 11th I have since posted a sample writ of prohibition and mandamus to allow us to litigate at an appellate level a court's failure to allow us to withdraw from an excessive caseload….

John G. Mermelstein Deposition, October 4, 2017, at 21.

62. As of October 4, 2017, at least several offices and individual lawyers in several counties had indicated their unavailability to take new cases. Barrett Deposition, at 80-81.

63. According to Mr. Mermelstein, in some counties when the defenders indicated their inability to take new cases, "The judges are frankly not reacting positively." Mermelstein Deposition, at 25.

64. According to a public radio story, the district defender in the "Liberty office, says he sent a letter on Monday to judges in Clay, Platte and Clinton counties informing them that his office would no longer accept new cases." **"**Many Missouri Public Defenders Decline New Cases After State Supreme Court Disciplines Lawyer**",** supra.

65. The public radio story reported that Boone County Presiding Judge Kevin Crane "has since appointed more than three dozen" private lawyers to take cases without pay. *Id.*

66. It appears that the lawyers appointed in Boone County are not experienced criminal defense lawyers. Mr. Barrett testified:

> A. I am not aware of whether Judge Crane or any other judge who is contemplating appointing private counsel, whether they are going to appoint someone who is competent to provide representation in the area of criminal defense.
> Q. So these private attorneys are not necessarily criminal defense attorneys?
> A. The one appointment that I was aware of, one individual in Boone County, worked for a private business I believe as a regulatory attorney, and had no experience in criminal defense matters.

Barrett Deposition, at 89.

VIII. THE MSPD HAS ADMITTED IT IS UNABLE CONSISTENTLY TO PROVIDE EFFECTIVE REPRESENTATION TO ITS CLIENTS

67. In a September 11, 2017, letter to MSPD staff, Chief Defender Michael Barrett recognized that public defenders in Missouri continue to be overburdened and encouraged his staff to abide by their ethical obligations to their clients. He told his lawyers:

> … it is a violation of the Rules of Professional Conduct for me or anyone else to impose on you more cases than you can handle within the Rules…. In the event I do, it is part of your sworn obligation to file a bar complaint against me. You simply have to say that you are not available. It is not just what you should say, it is what you are required to say.

Elmer Deposition, Exhibit 2.

Mr. Barrett added:

> Tomorrow I will be addressing the Presiding Judges at the Judicial Conference. I will be making clear that we have too many cases, and that the Supreme Court has made it quite clear that public defenders are risking their own professional lives when appointed to an excessive number of cases.

Id.

68. Mr. Barrett emphasized a statement from the Missouri Supreme Court: ""No exception exists to the ethics rules for lawyers who represent indigent persons." *Id.*, citing *Waters*, supra.

69. Mr. Barrett has explained the ethical conflict caused by excessive caseload:

> There's also a conflict when if a lawyer accepts an additional case and fulfilling the obligation to that new defendant in any way takes away or it deprives the lawyer of competently representing their existing clients because foremost an attorney has an obligation to their existing clients.

Barrett Deposition, at 74.

70. Mr. Barrett explained his purpose in writing the letter to his staff:

> I wanted to provide whatever relief I could that -- that I would not impose as a condition of their employment the acceptance of cases beyond which in their individual determination they felt they couldn't handle or would put them in jeopardy of violating the

> rules of professional conduct, and that if I did, that it would be their obligation to file a bar complaint against me.

Id. at 78.

71. Mr. Barrett testified that he needed more than 300 additional lawyers to meet the caseload needs. *Id.* at 96.

72. On September 26, 2017, District 13 Defender David Wallis and his deputy Sarah Aplin wrote to the Boone County and Cooper County judges that their lawyers were violating ethical rules because of excessive caseloads:

> As of today's date, Ms. Aplin and myself believe every attorney under our supervision is currently violating the Rules of Professional Conduct. Their current individual caseloads create a conflict of interest with existing clients because they are forced to chose effective representation of one client to the detriment of other clients. It is also our belief that assigning any new cases to any individual attorneys would create a conflict of interest because they would have no ability to adequately represent either their current or prospective clients.

Letter from David Wallis to Circuit Judges September 26, 2017.

73. On September 27, 2017, Boone County Presiding Judge Crane wrote an email to the Boone County Bar that the Court would begin assigning criminal cases to the private bar, for an unknown period of time. Email from Judge Crane to Boone County Bar.

74. The President of the Missouri State Bar, Morry Cole, sent a letter to Boone County attorneys in which he recognized "that appointing lawyers without criminal defense experience is not a long-term solution as the appointments are challenging to individual attorneys and may be problematic for defendants and the public." Elmer Deposition, Exhibit 20.

75. Chief Defender Michael Barrett wrote an op-ed in the St. Louis Post Dispatch published September 27, 2017, in which he discussed the problems facing "the tens of thousands of poor people who face incarceration each year" for whom "investigations are far less thorough":

> Defendants go days, sometimes weeks, without talking to an attorney. And if they want their constitutional right to a trial, most are forced to sit in jail and wait until the system gets around to them.

See, Michael Barrett, "A great system of justice — for some", By Michael Barrett, St. Louis Post Dispatch (September 27, 2017), available at http://www.stltoday.com/opinion/columnists/a-great-system-of-justice-for-some/article_bf2ee8c1-2814-5bab-b43c-4a784b45b2b9.html.

76. In a spreadsheet detailing the caseload for MSPD for the first three months of 2017, MSPD reported that its trial division lawyers on average were operating at 248.5% of capacity and its appellate division lawyers at 273.1% of capacity. All of the offices were over capacity. Barrett Deposition, Exhibit 4.

77. In its Legislative Budget Request for FY 2018, the MSPD requested an additional $22,600,965, which it "thought would be necessary in order to have attorneys meeting the kind of constitutionally mandated case load caps more or less." Deposition of Kathleen Lear, October 6, 2017, at 50.

78. That request was based on all the attorneys working 2080 hours a year, no vacations, and 333 additional attorneys would be needed. *Id.*, at 51.

79. In an April 25, 2016, letter to Governor Jay Nixon, the Missouri Public Defender Commission recounted the five studies of MSPD that had concluded that the office "does not have near enough resources to meet its constitutional responsibilities" and cited the most recent study's conclusion that "the system's caseload requires more than 250 new lawyers."

80. In that letter, the Commission noted that MSPD had "not received any additional funding to account for the rising costs of practicing law (e.g., hiring experts) over the past decade." It reported that to address a forecasted deficit by the end of fiscal year 2016, "MSPD was forced in January to place a moratorium on hiring any new staff to fill existing vacancies until the new fiscal year. Forty-one vacancies coupled with a projected 7% increase in cases for 2016 is nothing short of unsustainable."

81. MPDC acknowledged that the combination of inadequate resources, rising costs, and increases in cases "forces Missourians who are too poor to post bail to sit in jail for weeks, months or even years until their cases can be resolved, which too often prompts them to accept a plea simply to secure their release despite the merits of their case." *Id.*

82. In an email dated May 3, 2016, the MSPD Comptroller wrote that the office was holding 41 positions vacant "to have dollars available to transfer to our expense and equipment appropriation", which was "necessary to meet required 2016 case related expenditures." She noted that the vast majority of those costs were required for capital cases and CDU [commitment of sex offender] cases. She added, "We are balancing MSPD's budget at the expense of our employees and clients." Email from Kathleen Lear to Tony Roberts, May 3, 2016.

83. Ms. Lear testified that MSPD knew they were going to be approximately a million dollars short in litigation costs that year, and "in order to meet the demands of our case load and the cases that were open and pending" she knew how many positions they needed to keep vacant. Deposition of Kathleen Lear, October 6, 2017, at 46.

84. The Missouri Public Defender Commission (MPDC) in its Annual Report for fiscal year 2016 admits that it is not able consistently to provide effective representation for its clients. The message from the Director admits that there is a substantial likelihood of wrongful convictions because of the high caseloads carried by each of his attorneys:

> Challenging the government's evidence and presenting a substantial defense for every individual defendant is not only our constitutional obligation, it is necessary to ensure that people are not wrongfully convicted of a crime. Given the high caseloads carried by each MSPD attorney, courts and policymakers must recognize that this is not only a realistic possibility, but a substantial likelihood.

85. In a press release about the MPDC lawsuit challenging the governor's withholding of $3.5 million in caseload relief funding, Riley Bock, Chair of the Public Defender Commission, said, "The Missouri Public Defender System, because of inadequate funding, is beginning to unravel." Press Release, Missouri State Public Defender, (July 13, 2016) , available at http://www.publicdefender.mo.gov/Newsfeed/20160713_PDFilesLegalChallenge.html (last visited October 15, 2017).

86. The July 13, 2016, press release added: "Because MSPD attorneys are well above 200% of caseload capacity, it is nearly impossible to investigate and competently defend each case." *Id.*

87. In the lawsuit about the governor's withholding of funding, the Public Defender Commission claimed:

> …the specific areas which were immediately impacted include, but are not limited to the following: the Office of State Public Defender is unable to proceed with case contracting to reduce caseload to ethically permissible levels, unable to fill vacant attorney positions, limited in its ability to pay litigation costs and unable to provide necessary technology for effective client representation.

First Amended Petition for Declaratory Judgment and Injunctive Relief, CASE NO. 16AC-CC00290, Circuit Court of Cole County, available at http://www.publicdefender.mo.gov/Newsfeed/FIRST%20AMENDED%20PETITION%20FOR%20DECLARATORY%20JUDGMENT%20AND%20INJUNCTIVE%20RELIEF.pdf (last visited August 23, 2017).

88. The FY 2016 MPDC Annual Report at page 8 states:

> Providing effective assistance of counsel in each case demands a well-trained, highly experienced corps of dedicated attorneys and support staff. However, excessive caseloads and low salaries lead to a high turnover rate among attorney staff, which makes fulfilling this important mission difficult, if not impossible.

89. In the FY 2016 Report, Director Barrett analyzed the time records kept by his staff in comparison to the conclusions reached by the 2014 American Bar Association-

commissioned study by the RubinBrown accounting firm of how many hours are needed to provide effective representation in different categories of cases. FY 2016 Report at 17.

90. For example, RubinBrown found that an A/B felony requires 47.6 hours of attorney time, but the MSPD attorneys in 2016 were spending 8.7 hours. All of these hours were exclusive of court time, travel, and administrative tasks.

91. For misdemeanors, RubinBrown found that attorneys should spend 11.7 hours per case, and in 2016, MSPD lawyers were spending only 2.3 hours, of which only .9 hours was for client communication, .4 for discovery and investigation, and .9 for case preparation, which includes research and writing. *Id.*

92. Mr. Barrett wrote:

> The stark discrepancy between what work must be done in the proper defense of constitutional liberty and what is being done with the limited resources at hand reveals that MSPD is in need of 169.50[1] additional attorneys to meet constitutional requirements. *Id*.

93. It is helpful, in understanding why the time the MSPD lawyers are spending is insufficient, to review the list of duties MSPD prescribes for its trial division attorneys:

- bond hearings for those defendants who are confined pre-trial and seeking release, which can include verifying a place to stay, finding a sponsor the court is likely to trust, verifying an employer will take them back to work, etc.;
- preliminary hearings;
- tracking down and reviewing all of the state's discovery - police reports, lab reports, witness statements, hospital records, etc.;
- interviewing or deposing the key state's witnesses;
- locating and interviewing potential defense witnesses;
- tracking down records and evidence that may help establish the defendant's innocence;
- visiting crime scenes or re-enacting a described crime to see if the real thing matches up with what witnesses described;
- reviewing the results and original notes and data from forensic tests conducted by the state, determining whether an independent analysis by an expert who

[1] According to Mr. Barrett's recent deposition testimony, the MSPD is now in need of more than 300 additional attorneys. Michael Barrett deposition October 4, 2017, at 90.

doesn't work for the state is warranted, and if so, finding that expert and arranging for the testing of the evidence;

- making initial assessments of the defendant's ability to understand the legal proceedings and, when the defendant exhibits developmental or mental disabilities, arranging for an expert to evaluate the defendant to make that determination;

- researching the law applicable to the defendant's case and litigating motions where it appears the defendant has not been properly charged, the law has not been followed, or the state is seeking to put on evidence of questionable admissibility or reliability;

- negotiating plea agreements with the prosecutor, as well as locating and litigating for sentencing options that could effectively address the problems that resulted in the defendant getting into trouble in the first place and thus reduce the likelihood of recidivism; or

- if the case is one that goes to a trial, conducting that trial, before either a judge or jury, as well as being present and advising the client concerning all the court appearances a defendant will be required to make as his case progresses through the criminal justice system;

- and of course meeting with and advising the client, and perhaps the client's family members if the client requests it, throughout each of the above processes.

FY 2016 Report at 18-19.

94. In my opinion, an initial client interview generally requires about an hour, longer if the client has mental health issues or needs an interpreter. Discussing possible defenses, identifying witnesses and other avenues of investigation, explaining plea offers from the prosecutor and sentencing options, understanding the client's history and the client's objectives in the case, all require time with the client. Reviewing the police report, developing investigation, preparing and arguing motions, and preparing and conducting trials and any sentencing, add considerably to the time required. In my opinion, having .9 hour to communicate with a client and a total of 2.3 hours for the work on a case is simply not sufficient and does not permit providing effective representation on a consistent basis.

95. MSPD has acknowledged that its lawyers are not meeting the duties MSPD has described. In the FY 2016 Report, at 19, MSPD wrote:

> As the above list indicates, an attorney's appearance in court on behalf of a defendant is a very small portion of the work they must do on a case. When they have too many cases, some of these steps are skipped or fall by the way side. The state's evidence is taken at face value, assumed by all to be accurate and mistakes fall through

> the cracks, uncaught and uncorrected. The result is that individual defendants and justice as a whole suffers.

96. Given the amount of time that Missouri defenders spend on misdemeanor cases, it is clear that they do not have adequate time to communicate with their clients, to investigate cases, to conduct a significant motion practice, to prepare for and go to trial, and to prepare for sentencing by developing alternatives and written material for the court to consider. I discuss below a similar review of the felony and juvenile practice.

97. In his opinion finding that two cities had systematically denied the assistance of counsel to indigent defendants, U.S. District Court Judge Robert Lasnik could have been describing the Missouri Defenders' misdemeanor practice:

> Most interactions occurred in the courtroom: discussions regarding possible defenses, the need for investigation, existing physical or mental health issues, immigration status, client goals, and potential dispositions were, if they occurred at all, perfunctory and/or public. There is almost no evidence that Sybrandy and Witt [the defenders] conducted investigations in any of their thousands of cases, nor is there any suggestion that they did legal analysis regarding the elements of the crime charged or possible defenses or that they discussed such issues with their clients. Substantive hearings and trials during that era were rare. In general, counsel presumed that the police officers had done their jobs correctly and negotiated a plea bargain based on that assumption.

Wilbur v. City of Mount Vernon, 989 F. Supp. 2d 1122, 1124 (W.D. Wash. 2013).

98. In a letter to Governor Nixon, dated August 2, 2016, MPDC Director Michael Barrett recounted that the governor seven years earlier had "acknowledged that MSPD was operating 'under significant stresses' and committed to working with the General Assembly to fix the problem, but never did."

99. Mr. Barrett wrote based on the consumer price index that his current budget had less value than it did in 2009. Because of that, he had to hold open a significant number of vacant positions.

100. In his letter, Mr. Barrett wrote that the governor's action came

> …even after the Civil Rights Division of the Department of Justice found that poor black children are being systematically deprived of their rights in Missouri due in large part to the lack of public defenders. Choosing in the wake of that report to further debilitate the very organization that ensures an equal system of justice only adds to the escalating sentiment that the poor and disenfranchised do not receive a fair shake in Missouri's criminal justice system.

101. In a previous letter to Governor Nixon, dated August 7, 2015, Michael Barrett had noted the conclusions of the DOJ report and asked for "a $10 million supplemental budget to provide adequate resources to the state's public defender system." He wrote:

> In FY 2014, MSPD's trial division alone handled more than 70,000 cases. Given our appropriation for that year, that's an average of just $345 per case. No reasonable person can conclude that $345 is adequate to defend someone charged with a criminal offense.

Letter available at http://www-old.publicdefenders.us/?q=node/862

102. I note that in 2012, the Missouri Court of Appeals found that $100 per hour for an entry level lawyer was a reasonable attorney fee. *Hill v. City of St. Louis*, 371 S.W.3d 66, 81 (Mo. Ct. App. 2012).

103. Mr. Barrett added in his August 7, 2015, letter:

> Just as the DOJ found that the St. Louis County's juvenile caseload is nearly double the widely-accepted standard, 25 of MSPD's 33 trial offices are similarly situated, with the remaining offices so nearly equal in caseload distress that moving FTEs to mitigate the most overburdened offices would equate to reorganizing deck chairs on the Titanic.

Id.

104. In a more recent letter dated March 15, 2017, to current Governor Greitens, explaining why he would not extend parental leave to his employees as the Governor was recommending, Mr. Barrett described the defenders' crushing caseloads and the limited time they could spend on their clients' cases:

> Because of crushing caseloads, MSPD attorneys are only able to spend 8.7 hours on each class A/B felony, where clients often face life in prison, just 4.4 hours on a C/D felony, 2.3 hours for a misdemeanor, and 1.4 hours for a probation violation, which is a driving force behind Missouri's artificially inflated prison population. These dedicated and skilled attorneys for the poor know that for each additional hour they take as leave, it further reduces the amount of time that can be spent on a client's case, thus increasing the rate at which defendants plead guilty so that they can be released from county jail in hopes that their jobs and housing are still in place. Public defenders know that more time off, without expanding the current cadre of public defenders, only increases the chances of a wrongful conviction and enhances the likelihood that a person convicted of a non-violent offense will be sentenced to state prison (47% of Missouri's prison population is incarcerated for a non-violent offense).

March 15, 2017 letter from Michael Barrett to Governor Eric Greitens, available at https://bloximages.chicago2.vip.townnews.com/joplinglobe.com/content/tncms/assets/v3/editorial/9/77/977af4d4-0b49-11e7-b700-cb06fb1ef256/58cc3cb6a2c60.pdf.pdf.

105. Mr. Barrett also noted that "an alarming percentage" of his attorneys do not take the leave to which they are entitled. In 2016, 79 of them forfeited a total of 3431 hours of annual leave. [That is about one week each on average.] He noted that his clients face loss of liberty and excessive fines and fees, "including having to pay for the cost of their pre-trial jail stay because they are too poor to post bond during a time when they are presumed innocent." *Id*.

106. Mr. Barrett wrote that he believed that his attorneys would prefer that he work "to alleviate their impossible caseload burden and deliver them a salary that is worthy of their contribution to the state and its citizens." He noted that the attorneys "are drastically underpaid", with a starting salary of $39,708, and that many have student loans in excess of $100,000. The maximum salary for the most senior attorney classification is $63,912. *Id*.

107. Mr. Barrett noted that the low salary contributes to the high turnover rate among his attorneys, hovering around 20 per cent. MSPD has to spend a disproportionate amount of its budget training new employees. He wrote, "While employees regularly leave for higher pay and better benefits, the number one reason we lose experienced attorneys is because they do not have the time to do what needs to be done on their clients' cases." *Id*.

108. Comptroller Kathleen Lear testified: "…when you're paying attorneys less than $40,000 they're not going to stay for a long period time with the case load and the types of cases they have to provide representation in." Kathleen Lear Deposition, October 6, 2017, at 64.

109. Mr. Barrett wrote that the governor's suggested FY 2018 budget equals only what the legislature passed in CY 2014 and that MSPD's caseload had increased more than 13 per cent since then. March 15, 2017, letter, supra.

110. In his draft budget request document for FY 2018, Defender Director Barrett discussed the five different studies of its workload conducted in the past couple of decades: "Each of these investigations reached the same conclusion: Missouri's public defenders have too many cases and not enough lawyers or support staff to fulfill the state's constitutional obligations."

Fiscal Year 2018 DRAFT Legislative Budget Request, Michael Barrett, Director, Commission Meeting, September 21, 2016 (hereinafter FY 2018 Draft budget request).

111. In the draft budget request, Mr. Barrett applied the ABA case weights to MSPD's caseload and determined that he needed 332.9 additional attorneys to meet the existing caseload. Of those, 311 were for "Constitutionally Mandated Representation" and 11.5 for a requested Juvenile Advocacy team in two District offices. And 10.5 were to replace the positions restricted by Governor Nixon. *Id.*

112. Mr. Barrett, using the ABA case weights, said that his lawyers were operating at 240.1 per cent of capacity. *Id.*, at 14.

113. Mr. Barrett ultimately requested a budget of $70 million. Brian Hauswirth, "Missouri State Public Defender requests $70 million in funding", Missourinet, February 28, 2017, available at http://www.missourinet.com/2017/02/28/missouri-state-public-defender-requests-70-million-in-funding/.

IX. LACK OF FINANCIAL PARITY AND INADEQUATE SALARIES

114. The Missouri Public Defender system does not comply with the American Bar Association principle regarding parity with the prosecution. Principle 8 of the ABA Ten Principles of a Public Defense Delivery System states:

> **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….

115. As the MSPD Commission's annual report states:

> Missouri's full time elected prosecuting attorneys are required by state statute to be paid the same as an Associate Circuit Judge, $136,402. By comparison their Public Defender counterparts are paid an average of a mere $79,601. This level of pay inequity between the defense and prosecution sides of the criminal justice system is neither equitable nor sustainable.

2016 Annual Report at 8.

116. The salaries for line defender attorneys are also significantly lower than those for prosecutors.

117. Salaries for defenders as reported in the 2016 Report were as follows:

Assistant Public Defender Starting Salaries July 1, 2016	
Assistant Public Defender I	$39,708
Assistant Public Defender II	$46,992
Assistant Public Defender III	$52,116
Assistant Public Defender IV	$69,528

118. As of August 19, 2017, the Boone County Prosecutor was advertising an assistant prosecution attorney II position with a salary range of $52,624 – $87,131. Missouri Association of Prosecuting Attorneys, Job Openings at http://www.prosecutors.mo.gov/employment.

119. Greene County was advertising for an assistant prosecutor with a salary of $48,235.20. *Id.*

120. Cape Girardeau County was advertising for an assistant prosecuting Attorney, with a starting salary of $42,000. *Id.*

121. On the same date, the Columbia, Missouri trial defender office was advertising openings as follows:

> **Assistant Public Defender**
>
> Salary:
>
> - APD I: $3,309/month (starting salary)
> - APD II: $3,916/month (eligible for consideration after 1 years' successful service)
> - APD III-IV: $4,343-$5,326/month (eligible for consideration after continued highly successful performance)

Web site at http://www.publicdefender.mo.gov/employment/job_descriptions/apd.htm.

122. Clay County, Missouri, reports having three assistant prosecutor II positions at salaries of more than $60,000, including one of $71,399.9. The prosecuting attorney's salary is listed as $137,744.88.

Web site at https://www.claycountymo.gov/Transparency/Salaries (last visited August 31, 2017).

123. As of September 21, 2016, Mr. Barrett reported having no attorneys at the Assistant Defender Attorney V and VI salary levels. Fiscal Year 2018 Draft Budget Request at 19. He was proposing to add 60 attorneys at level V and 15 at level VI, at salaries of $65,364 and $71,100 respectively. *Id.*

124. As of September 2016, MSPD had 153 attorneys whose salary was below $47,476, the new proposed U.S. Department of Labor threshold regarding overtime exemptions. *Id.*, at 24.

125. The low salaries contribute to high turnover of staff, which, in turn, undercuts the ability of the defenders to provide effective representation. Mr. Barrett wrote in his Fiscal Year 2018 Draft Budget Request that the high turnover rate:

> makes it more likely that innocent persons will be incarcerated, that clients will languish in jail waiting until someone can get to their cases, and that non-violent offenders will be unnecessarily sent to prison, all at an extraordinarily high cost to Missouri's citizens, a much higher cost than what it would take to provide

> salary parity and greater retention for our employees. Every time an attorney leaves, his or her cases are reassigned and an already overloaded attorney adds the case to his or her existing backlog. With MSPD operating at one quarter the support staff needed, it also is critical that MSPD is able to retain the existing investigators, paralegals, legal assistants, mitigation specialists, and other clerical staff.

Fiscal Year 2018 Draft Budget Request at 18.

126. Law graduates often have considerable debt from their law school education. The University of Missouri School of Law notes that "nearly 80% of law school students rely on student loans as their primary source for financing their J.D. The more a student borrows, the longer the debt will have an impact on life after law school." University of Missouri School of Law web page at http://law.missouri.edu/financialaid/.

127. The University of Missouri School of Law tuition and fees for in-state residents are $21,406/87 for the 2017-18 year, and the estimated living expenses are $19,610, for a yearly cost of $41,016.87. University of Missouri School of Law web page at http://law.missouri.edu/financialaid/cost/. The cost of three years of law school can easily exceed $123,000, and many law graduates are carrying undergraduate school debt as well. The MSPD salaries make it difficult for lawyers to accept and maintain positions as defenders.

128. An example of the financial challenges facing the district defenders is District 14. For FY 2016, the MSPD reported spending only $280.92 per assigned case in District 14. FY 2016 Report at 14. This was below the already low state average of $328.15 per case.

129. If the defenders in District 14 averaged 150 felony cases per year, which is the American Council of Chief Defenders recommended caseload limit and far above the limit recommended by the American Bar Association Rubin Brown study, the office would have only $42,138 available per attorney. $42,138 per year is inadequate to fund a fully-functioning defender attorney. The actual starting salary of a defender attorney is $39,708.

130. The financial strain goes beyond salaries to the equipment available to the defenders. Comptroller Kathleen Lear testified:

> You know, we're running with copy machines that are ten years old. We're running with laptops that are seven years old. We hold a lot of things together with spit and glue just to make them last longer. I think public defender mentality is that if it's -- if it's not total trash, make do with it. I'm appalled when I go to some of the offices and they're sitting in chairs that really I want to towel before I sit down. They're that nasty.

Deposition of Kathleen Lear, October 6, 2017, at 98.

X. THE MISSOURI DEFENDERS HAVE EXCESSIVE CASELOADS

131. The local district defenders are carrying caseloads that make it impossible to provide constitutionally required effective assistance of counsel.

132. Mr. Barrett has stated that his lawyers average double the nationally recommended maximum of 150 felony cases per attorney per year. "The ABA has endorsed a maximum caseload of no more than 150 felonies a year per attorney. We are currently more than double that number." Letter to Boone County Bar Association, Boone County Bar Association Newsletter, October 2, 2017, Elmer Deposition, Exhibit 5, at 5.

133. Mr. Barrett testified that the most pervasive problem in the system is high caseloads. Barrett Deposition, at 45.

134. Excessive caseloads are a primary reason why Missouri's defenders quit their jobs. Mr. Barrett testified:

> when someone leaves the system if they are willing to subject themselves to a -- an exit interview, it's what is almost always what they cite as the reason for leaving. Not -- may not be the exclusive reason, but it's the driver.

Barrett Deposition, at 45.

135. Mr. Barrett added:

> …the common reasons for leaving are that in the opinion of the departing attorney they're not able to do what they need to do for their client and are either leaving because of fear that their law license is in jeopardy or because there is some guilt associated with not being able to do what they need to do for their client. The other reasons that are most typical are salary.

Id. at 167.

136. Excessive caseloads prevent defenders from adequately representing their clients. High caseloads prevent lawyers from having enough time to provide effective representation because attorneys are unable to interview clients effectively, conduct investigations, counsel clients about pleas offered at arraignment, and do other necessary preparation. The ABA Criminal Justice Section Defense Function Standard 4-1.3(e) states:

> (e) Defense counsel should not carry a workload that, by reason of its excessive size, interferes with the rendering of quality representation, endangers the client's interest in the speedy disposition of charges, or may lead to the breach of professional obligations.

137. The U.S. District Court in the instant case, in ruling on a motion to dismiss, cited the long history of reports documenting the inadequate resources available to the MSPD, and quoted the 2009 report by The Spangenberg Group.

> TSG concluded that public defender workloads had worsened since its 2005 report and, as a result of those workloads, public defenders were failing to (1) conduct prompt interviews of their clients following arrest, (2) spend sufficient time interviewing and counseling their clients, (3) advocate effectively for pretrial release, (4) conduct thorough investigations of their cases, (5) pursue formal and informal discovery, (6) file appropriate and essential pleadings and motions, (7) conduct necessary legal research, and (8) prepare adequately for pretrial hearings, trial, and sentencing..

Church v. Missouri, 2017 WL 3383301, at *(citation omitted).

138. The Court wrote:

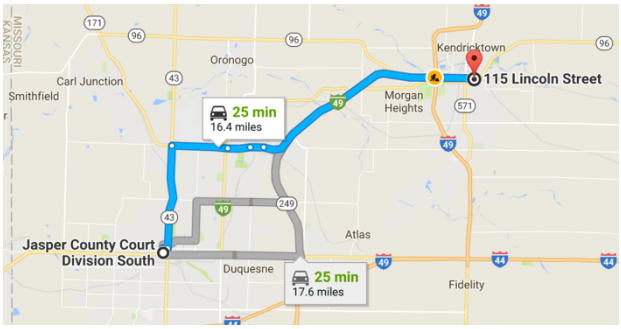
> MSPD Trial Division attorneys were able to devote the minimum required hours to only 2.4% of all A/B felony cases (or 97 out of 4,127 total A/B felony cases) and 1.4% of C/D felony cases (or 311 out of 21,491 total C/D felony cases).

Id. at *3

139. This Court added: "In February 2017, Defendant Barrett testified before the state legislature that MSPD would need 333 more lawyers to provide minimally adequate representation to indigent defendants." *Id.*

140. An example of the excessive workloads that Missouri defenders carry is the schedule of attorney Craig Lowe, counsel for Plaintiff Dorian Samuels. In the period from September 5, 2017, to September 7, 2017, Mr. Lowe had 23 hearings scheduled for 21 clients. [Data gathered from Case Net.] Four hearings were set for Carthage and the rest for Joplin. Four of the hearings were for pre-trial conferences.

141. It is about a 25- minute drive each way from Mr. Lowe's office in Carthage to the courthouse in Joplin.



142. The American Council of Chief Defenders (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 ("NAC")] recommended levels of 150 felonies, 400 non-traffic misdemeanors, 200 juvenile court cases, 200 Mental Health Act cases, or 25 non-capital appeals per attorney per year." 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.

143. "These caseload limits reflect the maximum caseloads for full-time defense attorneys, practicing with adequate support staff, who are providing representation in cases of average complexity in each case type specified." ACCD Resolution, available at http://www.oregon.gov/OPDS/docs/CBS/ACCD%20Caseloads%20Report%20Final.pdf. The maximum number of cases must be reduced when the lawyers have inadequate resources and when they have other obligations in addition to caseload representation, such as supervision or appearing at court calendars representing groups of clients. In addition, caseload numbers should be reduced when there is significant travel time required for the lawyers.

144. The ACCD strongly recommends development of local standards informed by careful case weighting, as was done in the RubinBrown study:

> The ACCD recommends that defenders, contract and assigned counsel, and bar association leaders in each state review local practice conditions and consider developing standards that adjust attorney caseloads when the types and nature of the cases handled warrant it. The increased complexity of practice in many areas will require lower caseload ceilings. The ACCD recommends that each jurisdiction develop caseload standards for practice areas that have expanded or emerged since 1973 and for ones that develop because of new legislation. Case weighting studies must be implemented in a manner which is consistent with accepted performance standards and not simply institutionalize existing substandard practices.

ACCD Statement, supra.

145. The ABA 10 Principles of a Public Defense Delivery System, Principle 5 states:

> **Defense counsel's workload is controlled to permit the rendering of quality representation.** Counsel's workload, including appointed and other work, should never be so large as to interfere with the rendering of quality representation or lead to the breach of ethical obligations, and counsel is obligated to decline appointments above such levels. **National caseload standards should in no event be exceeded, but the concept of workload (i.e., caseload adjusted by factors such as case complexity,**

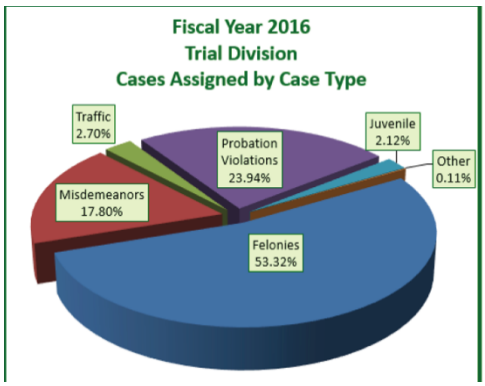
support services, and an attorney's nonrepresentational duties) is a more accurate measurement.

(emphasis added and footnotes omitted).

146. There is the potential for a conflict of interest when a public defender with an excessive caseload decides to accept additional cases because the lawyer will not have time to provide effective representation to all of the clients.

147. MSPD opened 80,755 new cases in FY 2016 with 349.5 attorneys. They needed 332.9 new attorneys to meet the Rubin Brown/ABA standard. Fiscal Year 2018 Draft Budget Request at 15,25.

148. More than half, 53.32 per cent, of the MSPD cases are felonies. FY 2016 Report at 5. The attorneys averaged 231 cases each. Appellate and post-conviction attorneys handled far fewer cases. 53.32 per cent of 231 is 123 felonies. That number of felonies is 82 per cent of a full caseload using the American Council of Chief Defenders recommended maximum caseload. And 123 felonies is far above what the ABA RubinBrown study concluded should be a maximum caseload. An attorney who had 123 felonies and then a mixture of misdemeanor, juvenile, and probation violations cases would have far too many cases.

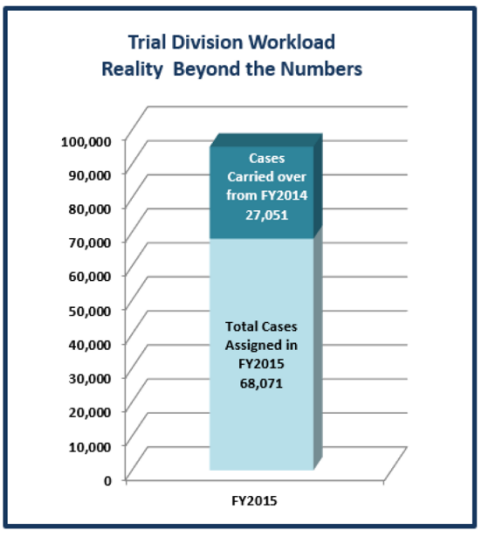


149. The ABA RubinBrown study concluded that A/B felonies require an average of 47.6 attorney hours per case, and C/D felonies 25 hours per case. The Missouri Project, at 21. Even if an attorney had only 123 C/D felonies, that workload would require 3,075 hours per year, at least 50 per cent more than a workable maximum. A lawyer who has a significant number of A/B felonies and has to travel considerable distances would have an even more crushing workload and be even less able to provide effective representation to his/her clients.

48. As outlined below, in my opinion defenders should not "bill" more than 1800 hours a year.

150. According to a recent article in the Columbia Tribune, the Boone County defenders "regularly juggle 100 or more cases at once". Alan Burdziak, "Barrett takes creative approach to public defender system", Columbia Daily Tribune, June 26,2017, available at http://www.columbiatribune.com/news/20170626/barrett-takes-creative-approach-to-public-defender-system.

151. In the 2015 Fiscal Year Report (at 24 and 5), MSPD pointed out that their lawyers carry over significant numbers of cases into the following year. They included these tables:



Trial Division	
# of Offices	33
Cases Carried Forward into Fiscal Year 2015	27,051
# of Assigned Cases	68,071
# of AΣ orney FTE	313.00

152. The trial division attorneys had an average pending caseload of 86.4 at the beginning of the fiscal year and they received an average of 217 new cases. If 52% of those new cases were felonies, that would be an average of 113 new felonies per lawyer, which is 75 % of a full caseload using the ACCD number, leaving only 25% of their time for the remaining 104 misdemeanor and juvenile cases. (In FY 2016, 53.32 per cent of the cases were felonies. FY 2016 Report at 4.)

153. Using the Missouri Project numbers, which concluded that a lawyer needs 25 hours to do a C/D felony, 113 felonies would require at least 2825 hours. In FY 2015, there were 253 homicide cases, 6362 A/B felonies and 28,345 C/D felonies. [FY 2015 Report at 23.] If a lawyer had one murder case (requiring 106 hours), 10 A/B felonies (requiring 476 hours), and 102 C/D felonies (requiring 2550 hours), the yearly requirement would be 3132 hours before even starting the misdemeanor and juvenile and probation violation cases on that workload of 217 new cases. This is an unworkable caseload. More experienced lawyers carrying a heavier mix of homicide and A/B felonies would be under an even more crushing workload.

154. In FY 2016, the office had even more cases carried over and more new cases assigned than in FY 2015. FY 2016 Report at 5. The trial division lawyers had an average of 101 pending cases at the beginning of the fiscal year, and received an average of 243 new cases.

Trial Division	
# of Offices	33
Cases Carried Forward into Fiscal Year 2016	31,738
# of Assigned Cases	76,150
# of Attorney FTE	313.00

155. District 22 Defender Mary Fox, City of St. Louis, discussed the crushing caseload her lawyers carry.

> On average, public defenders in District 22 handle between 80-90 cases per attorney at any given time. While this may be fewer than attorneys in some other districts across the state, almost three-fourths of the cases on the District 22 defenders' dockets are felonies, many of which must be prepared for trial because the prosecutor's office does not provide recommendations for resolution on such cases. This is consistent with the recent trend in District 22 on the whole, where we currently have approximately 2,200 open cases, of which roughly 1,600 are pending adult felonies, 50 are pending juvenile felonies, and 300 are pending felony probation violations. And of those nearly 2,000 felonies, approximately 60 are homicides and an additional roughly 400 are serious (A/B) felonies.

Affidavit of Mary Fox ¶ 8, September 29, 2016.

156. Ms. Fox noted that she has a high turnover of lawyers in her office because of the large caseload:

> The District 22 caseload also increased by 28% since 2015, without a corresponding increase in the number of public defenders hired to handle such cases. In 2015 and 2016, twelve attorneys resigned from the District 22 office. Most of those attorneys identified the personal stress caused by the large caseload as a reason for leaving MSPD.

Id. at ¶ 9.

157. A turnover of 12 lawyers out of 29 practicing staff attorneys in two years, which is a 20.5% annual turnover rate, can be crippling to an office, particularly one that has primarily felony cases and 60 open homicides at one time.

158. Ms. Fox described the impact of this turnover that exacerbates the workload problem:

> The vast majority of my attorneys are recent law school graduates or lawyers with very little previous criminal defense experience, who require ongoing and robust training—training which often cannot be provided in a timely fashion, given our lack of adequate resources.

Id. at ¶ 10.

159. Ms. Fox has considered declining conflict cases in her five conflict counties because of the large caseload.

> The challenge of handling the number of cases opened in District 22 has caused me to consider denying applicants for services in

> misdemeanor cases, even where the defendants are in custody. I have also considered refusing incoming conflict cases because of the need to assign a dedicated attorney to the conflict counties who are then unable to assist in handling the St. Louis City cases.

Id. at ¶ 14

160. District 16 Team Leader Devon Pasley has seven attorneys under her supervision who each carry approximately 90 trial cases at any given time. "This does not include probation violation or appellate cases, which would add anywhere from 15-70 cases to each attorney's caseload count." She added, "Attorneys often meet clients with probation violations for the first time in court and are required to be prepared to resolve it in a short time frame." Affidavit of Devon Pasley, February 7, 2017.

161. District 19 Assistant Public Defender Walter Stokely stated:

> To put it simply, I have more cases than I can deal with. I handle both misdemeanors and serious and complex felonies, such as sexual assaults, in which my clients face the possibility of serving significant time in prison if convicted. I often handle these cases concurrently even though I graduated from law school just four years ago.

Affidavit of Walter Stokely ¶ 4, October 5, 2016.

162. Mr. Stokely added: "I am in court nearly every day, often for extended periods of time, and sometimes all day. This has made it very difficult to research, investigate, and prepare my clients' cases." *Id.* at ¶ 5.

163. Former Kansas City defender Joshua Peter estimated that in 11 years as a defender, he handled more than 8000 cases. Affidavit of Joshua Peter ¶ 2, December 21, 2016.

164. Assistant Defender Ruth Russell, who on the date for which MSPD reported open cases for attorneys had 156 open cases, wrote: "I have been a public defender for almost seven years. I am starting to burn out. I feel like I'm sinking. One of the other attorneys in my office was recently brought to the brink of tears because of the enormous caseload." Affidavit of Ruth Russell ¶ 2, October 27, 2016.

165. On a single date in 2016, some MSPD attorneys had more than 200 open cases, including the following:

7	Bates Nicholas	337
7	Hustead Michael	250
16	McGinnis Patricia	361
17	[illegible]	[illegible]
17	Fry Angela Weatherford	265
17	[illegible]	[illegible]
17	Napier Jr. Norman Craig	209
17	Wasson Alice	244

22	Mahaffey Matthew	252
29	Hatcher John	209
31	Chastain Charlton	221
31	Coulter Daniel	200
31	Egan James	284
31	Markin Shawn	300
31	Sawyer Christina L	405
31	Smith David B.	304
36	Cartwright Adam	239
36	Lynxwiler Steven	230
36	New Katie	237
37	Turner Bethany	217

Spreadsheet attached to July 25, 2016, Letter to Mr. Williamson from Ms. Shipma.

166. The average open caseload of the 351 attorneys was 91.93. *Id.* This is approximately double what a workable caseload would be.

167. A lawyer with 200 open cases who works 40 hours a week on cases every week for a month would have less than one hour per client each month. A lawyer with 300 open cases who works 40 hours a week every week would have about 40 minutes per client per month. With numbers like that, it is inevitable that lawyers go months at a time without meeting with their clients and that they seek continuances because they are not prepared.

168. Defender Director Mr. Barrett was quoted in a news article as saying, "A lawyer can probably only handle 40, maybe 50 cases at any one time." He added, "Our lawyers have three times that amount, and people are taking pleas because they're sitting in local jail waiting for their lawyer to get to them." Matt Ford, "A 'Constitutional Crisis' in Missouri", The Atlantic (March 14, 2017), available at https://www.theatlantic.com/politics/archive/2017/03/missouri-public-defender-crisis/519444/

169. With their excessive caseloads, the Missouri defenders are not able to comply with The MSPD Guidelines for Representation, Trial, Section 10-10-20-60, regarding consultation with clients, which state in part:

> (d) A Public Defender should make every effort to arrange for prompt and timely consultation with the client in an appropriate and private setting. Such consultation should occur within a week after representation of the client is undertaken, and must occur prior to the conduct of any preliminary hearing in the case. The Public Defender should maintain frequent contact with the client and keep the client apprised concerning developments in the case. At a minimum, the Public Defender must have contact with the client once per month during the pendency of the representation.

170. With 91.93 open cases, even if a defender could productively work on cases 160 hours per month every month, which in my opinion is more "billable" hours than attorneys should sustain, the defender would have only 1.74 hours per month per client. If the defender were to meet the requirement of the Guidelines and meet each client once per month, even if the meeting were only half an hour including travel and waiting time, that would leave only 1.24 hour per client to go to court, meet with prosecutors, research and write motions, prepare for hearings, consult with investigators and expert witnesses and supervisors, and otherwise prepare for cases. For the attorneys who had more than 200 open cases, they would have .8 hour available per client, and if they were to see their clients every month even for only half an hour per client, that would leave them about 20 minutes per client for all the rest of their work that month. And if the lawyers took any vacation or sick time or did not work on a holiday that month, they would have even less time.

171. It is no wonder that District 31 clients told an HBO VICE reporter that they had talked to him more than they had talked to their lawyers in a year.

HBO VICE, "Last Line of Defense", June 30, 2017, available at http://www.hbo.com/vice/episodes/05/68-68-last-line-of-defense-and-el-rostro/index.html.

172. The District 31 office did a performance review of their assistant PD IV attorneys in March 2017. In one review of a veteran attorney, the reviewer found "gaps of 3 months, 3 months, 5 months, 6 months, 6 months, 8 months, and even 13 months between qualifying contacts" with clients. The reviewer told the attorney:

> … given the huge caseloads, we understood that every 30 days may not be attainable. I asked him what he felt with his experience was attainable, and he replied that every 60 days could likely be done. I told him I agreed with that and asked him to devise a method to ensure he was seeing his clients at the jail, and contacting those in DOC, every 60 days regardless of whether there had been new developments in the case. He agreed…. For the most part, it appears that he is either visiting with clients within 7 days of receiving the file or, at the very least, visiting with them prior to the first court date. D said he does try hard to make sure

> those initial contacts are done right away not just because of our guideline but also because it helps set a positive tone for the future attorney/client relationship.

Performance Review PD00292 3/2/2017.

173. This performance review demonstrates the untenable situation faced by the District 31 defenders. A veteran attorney had cases in which he had not seen the clients for six months or longer. The supervisors have come to accept that meeting with clients in jail every 60 days is acceptable, even though their guidelines for representation require a meeting every 30 days. They recognize that an early meeting with a new client helps to set a positive tone for the relationship, but they are willing to accept that an early meeting is one within seven days or at least before the first court date. And it appears that there are numerous cases in which there is no activity for three to six months at a time, indicating that the lawyers have done no work on the cases as there are no new developments to discuss with the client, or if they have done work on the case, their clients have not been informed and are not actively participating in their own defense.

174. The HBO reporter interviewed a defender named Brian Delleville after watching him represent 25 clients in about two hours. He asked Mr. Delleville if he had enough time. Mr. Delleville paused and sighed and answered,

> No. In a perfect world it would be best, you know, if I had enough time to meet with each of them well in advance of this hearing rather than those who are out of custody - a lot of times this [court proceeding] is their appointment. Unfortunately you almost have to pick and choose some of the cases you spend the most amount of time on. I'd love to be able to do that on every single case. I don't want to be somebody that's just standing next to somebody."

Id.

175. In his office, Mr. Delleville showed the reporter his piles and drawers of files and said it was "about 200 or so" open cases.

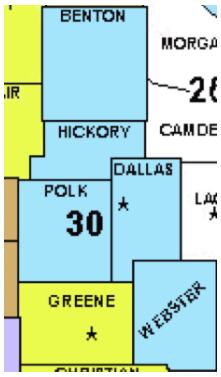
176. The HBO report showed a meeting at Mr. Delleville's defender office led by lead public defender Rod Hackathorn. Mr. Hackathorn told his staff that "everybody was somewhere between 400 to 600 per cent of capacity." *Id.*

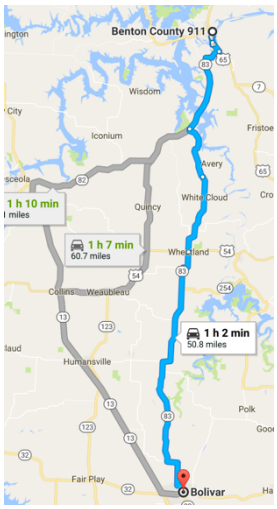
177. On the one date in 2016 for which MSPD provided open caseload information, there were four attorneys in District 31 with more than 200 open cases and another four with open caseloads between 100 and 200.

178. Anna Moench was a defender in District 31 until she resigned in June 2016. She resigned "due mostly to my unmanageable caseload. I was no longer able to provide my clients the kind of representation they deserved. I did not believe I could ethically continue to represent indigent defendants under those circumstances." Affidavit of Anna Moench ¶ 18, December 21, 2016.

179. Ms. Moench stated that her office had a policy of meeting in-custody clients within seven days of being appointed and out-of-custody clients within 30 days. She wrote, "I tried my best to adhere to this policy, but I frequently could not." *Id.* at ¶ 9.

180. Ms. Moench originally worked in the District 30 office. That office covers five counties, as indicated below. The District office in Bolivar is about a one hour drive from the Benton County courthouse, as shown below.





181. Ms. Moench stated that in Bolivar she had an open caseload of between 80 and 100 clients at a time, and that it was difficult to manage because it was spread over multiple counties and it was mostly felony cases. *Id.* at ¶ 4.

182. Ms. Moench said that in the Springfield office in District 31, she had a combination of felonies, misdemeanors, and probation violations and had between 150-200 cases at any given time. *Id.* at ¶ 6.

183. She stated that in Springfield, she spent most of her time "either in court or visiting clients in jail every day." She also "spent a fair amount of time on administrative tasks. This left little time, if any, for legal research and motion practice." *Id.* at 7.

184. Sarah Johnson, director of juvenile defense and policy for the public defender system, testified:

> Q. Have you handled cases of juveniles while you feel like your case load was too high for you to really manage effectively?
> A. Yes.

She added:

> I think that time is a big issue. So doing all of the detention hearings and ensuring that each client receives the effective representation, I think that sometimes the case loads are too high to be doing every single thing that I would like to do.

And she added about the cases that involve possibly sending children to adult court:

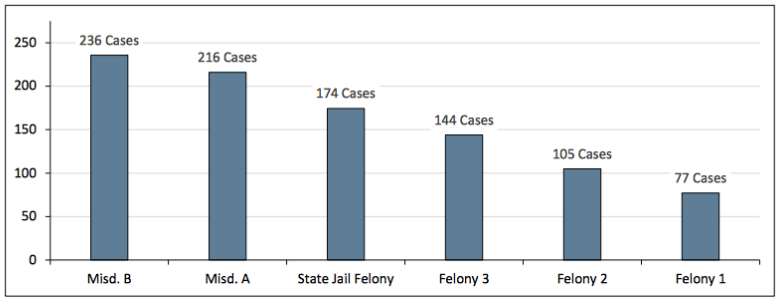
> Q. You don't feel like you met your ethical obligations to your clients with regard to certification procedures?
> A. Not in every case, no.

Sarah Johnson Deposition, October 6, 2017, at 119,134,170.

185. Because the Missouri public defense lawyers do not have adequate support staff, and some of them have long distances to travel between courts and between their offices and the jails incarcerating their clients, their caseload numbers should be lower than the recommended limits. Nevertheless, many districts have caseloads more than double the recommended limits.

186. In a 2015 Texas report, the researchers concluded that, "for the delivery of reasonably effective representation attorneys should carry an annual full-time equivalent caseload of no more than" the numbers in the chart below:

Figure 8-5. Final Recommended Caseload Guidelines for Texas
(Based on Delphi Time Estimates and FY 2014 Trial Rates)



Texas A&M University, Public Policy Research Institute, Guidelines for Indigent Defense Caseloads,(2015) at 34, available at http://tidc.texas.gov/media/31722/150114_WCL-Final_Reduced-file-size.pdf.

XI. EFFECTIVE ADVOCACY WITH REASONABLE CASELOADS CAN MAKE A DIFFERENCE AND CASELOADS CAN BE LIMITED

187. Effective advocacy by lawyers with reasonable caseloads can make a difference. Washington State examples provide insight. For example, in 2011, in Seattle Municipal Court, where caseloads are limited by local law to 380 per lawyer per year, 24.7 percent of charges resulted in guilty findings, whereas in Mount Vernon in the same state, where the lawyer caseloads were in the range of 2,000 per lawyer per year, 50.3 percent resulted in guilty findings.

188. Courts in other states have been successful in reducing public defender caseloads when they were excessive. For example, a court rule in Washington State limits defender caseloads to 400 misdemeanor cases or 150 felony cases per lawyer per year, which is consistent with NAC standards. CrR 3.1 STANDARDS FOR INDIGENT DEFENSE 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. Caseload limits assume a reasonably even distribution of cases throughout the year."

189. Standard 3.3 specifically addresses the need to reduce caseloads 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.

https://www.courts.wa.gov/court_rules/?fa=court_rules.list&group=sup&set=CrR

190. The New York 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 legal service lawyers can provide. 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 200 ("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, Upstate Quality Improvement and Caseload Production, https://www.ils.ny.gov/content/upstate-quality-improvement-and-caseload-reduction.

191. In New York State, the Administrative Rules of the Unified Court System & Uniform Rules of the Trial Courts, Rules of the Chief Administrative Judge have the same maximum caseload numbers as Washington and the ACCD, and they became binding in New York effective April 1, 2014:

> **127.7 Workload of Attorneys and Law Offices Providing Representation to Indigent Clients in Criminal Matters in New York City**

> (a) The number of matters assigned in a calendar year to an attorney appointed to represent County Law in New York City shall not exceed 150 felony cases; or 400 misdemeanor cases; or a proportionate combination of felony and misdemeanor cases (at a ratio of 1:2.66). Where staff attorneys employed by an indigent defense organization within the City of New York are appointed to represent clients in criminal matters pursuant to Article 18-B of the County Law, these limits shall apply as an average per staff attorney within the organization, so that the organization may assign individual staff attorneys cases in excess of the limits to promote the effective representation of clients.
>
> (b) The Chief Administrator of the Courts shall annually, at the time of the preparation and submission of the judiciary budget, review the workload of such organizations and attorneys, and shall take action to promote compliance with this rule. In undertaking such review, the Chief Administrator may consider: (1) differences among categories of cases that comprise the workload of the defense organization; (2) the level of activity required at different phases of the proceeding; (3) local court practice, including the duration of a case; and (4) any other factor the Chief Administrator deems relevant.
>
> (c) These workload indigent clients in criminal matters pursuant to Article 18-B of the standards shall constitute non-binding guidelines between April 1, 2010 and March 31, 2014, and shall be binding effective April 1, 2014.

https://www.nycourts.gov/rules/chiefadmin/127.shtml

192. There is a maximum number of human beings that a lawyer can meet and effectively represent in a year. In my opinion, criminal defense lawyers should not exceed 1,800 hours per year directly representing clients, and a more realistic number is 1,650 hours per year. When a lawyer has 231 cases per year, even at 1800 hours, the lawyer has an average of 7.79 hours available for the work for each client. At a more reasonable year of 1,650 hours, the lawyer with 231 cases has only 7.14 hours per client. This is far below the time required as found by the Missouri Project study.

193. A study for the Massachusetts Committee for Public Counsel Services determined that an appropriate number of hours to spend directly representing clients per year is 1,662 hours:

Case Available Hours			
Description	**Hours**	**Days**	**Total**
Non-weekend days	8	260	2080
Holidays	8	11	88
Training	8	3	24
Annual Conference	8	1	8
Vacation (less than 5 yrs)	8	15	120
Personal	8	5	40
Sick (estimate)	8	5	40
Non case duties	2	49	98
total non case time			418
Available case time			**1662**

Center for Court Innovation, The Committee for Public Counsel Services Answering Gideon's Call Project (2012-DB-BX-0010) Attorney Workload Assessment, October 2014, at https://www.publiccounsel.net/cfo/wp-content/uploads/sites/8/2014/12/Attorney-Workload-Assessment.pdf

194. The Washington Defender Association standards recommend 1,650 hours directly representing clients per year. *See* Washington Defender Association, Standards for Public Defense Services, Standard Three, Commentary. The Office of Management and Budget ("OMB") has advised agencies that of the 2,088 hours attributable on an annual basis to a federal employee, each employee works only 1,744 hours per year, which reflects hours worked after the average amount of annual, sick, holiday, and administrative leave used. Performance of Commercial Activities, OMB Cir. No. A-76 (Revised) (Aug. 1983), at p. IV-8.

195. MSPD itself has calculated that an attorney has 1752 available hours per year to work on client cases. Defender Caseload Standards (2009) at 5.

196. The National Association for Law Placement ("NALP") reported in its May 2006 document, Billable Hours Requirements at Law Firms, NALP Bulletin that "[a]lthough billable hour requirements ranged from 1,400 to 2,400 hours per year in 2004, most offices reporting a minimum require either 1,800 or 1,900 hours (24 percent and 21 percent of offices, respectively)." A more recent report stated: "reporting of billable hours requirements in the 2013-2014 Directory of Legal Employers reveals an average requirement of 1,884 hours per year overall. . . ." *NALP Bulletin*, May 2014, at http://www.nalp.org/0514research. This average is brought higher by the 1,918 hours average of firms with more than 700 lawyers. The average for firms of 100 or fewer lawyers was 1,809 hours.

197. Taking reasonable standards for total hours of representation into account, Missouri defenders cannot, in my opinion, effectively represent their clients while carrying the caseloads currently imposed upon them.

XII. MSPD ROUTINELY PRACTICES TRIAGE TO THE DETRIMENT OF ITS CLIENTS

198. Ms. Moench's experience demonstrates the problems caused by an excessive caseload. She wrote:

> My caseload in Springfield was too much to bear. I was forced to do the bare minimum on many of my clients' cases. I would triage cases by placing misdemeanor and non-felony cases at the bottom of my priority list, regardless of the strength or weakness of the state's evidence in those cases, or the consequences of a misdemeanor conviction for my clients. I simply did not have the time or resources to give each of my cases the attention they deserved.

Moench Affidavit ¶ 8.

199. Former District 15 assistant defender attorney Matthew Gass wrote:

> When I left the Public Defender's office, I had a caseload of 110-120 cases. Lafayette County handles approximately 500 Public Defender-cases each year. On average, I would be assigned over 40 new cases per month.
>
> Before I resigned, I was the only MSPD attorney covering all of Lafayette County. Historically, two attorneys had always served Lafayette County. As of the date of my resignation, I had been the only public defender in the county for approximately seven months.

Affidavit of Matthew Gass ¶ 7-8, October 31, 2016.

200. Mr. Gass also stated:

> I did not have sufficient time to thoroughly review each client's discovery or investigate all of the issues in each case to my satisfaction. I could issue spot but did not have time to do the type of investigating each case and each client deserved. The situation was legal triage; almost without exception, my work was centered on dealing with the biggest crisis at the moment.

Id. at ¶ 16.

201. District 22 Defender Mary Fox also described triage in her office:

> Despite seemingly carrying a lighter workload than other offices across the state, the District 22 office is currently operating 165% above its caseload capacity. This means that we have been forced to triage our cases on a daily basis. Our attorneys are unable to spend an adequate amount of time consulting with clients, researching the relevant law, conducting factual investigation, reviewing discovery, engaging in motion practice, or otherwise litigating each of their cases so that they and their clients can make fully informed decisions as to how best to proceed.

Fox Affidavit ¶ 7.

202. Public Defender Devon Pasley, in the District 16 office, stated that during her time as a staff attorney, she handled misdemeanor and felony cases in juvenile and adult court, maintaining a caseload of approximately 90 cases at any given time. She said, "Because of my caseload, I often had to triage my cases rather than spend the necessary time investigating my cases, communicating with my clients, or otherwise preparing to challenge the state's case against my clients." Affidavit of Devon Pasley, February 7, 2017.

203. Assistant Defender Ruth Russell wrote: "This summer, I was scheduled for eight weeks of back-to-back jury trials. I remember thinking, "when am I going to have time to prep these jury trials? I'm going to have to triage." Nobody should have their cases triaged." Russell Affidavit ¶ 6.

204. District 16 Defender Ruth Petsch stated: "Although our attorneys are doing the best they can with the resources they have, we are unable to consistently provide constitutionally-sufficient representation to our clients." She added:

> The Jackson County office is currently 160% above its caseload capacity, which means we have become a "triage" office, like so many others across the state, and are forced to pick and choose which cases to prioritize and which to put on the back burner. It alsomeans that our attorneys are unable to spend an adequate amount of time researching the relevant law, conducting factual investigation, reviewing discovery, engaging in motion practice, or otherwise litigating each of their cases so that they and their clients can make fully informed decisions as to how best to proceed.

Affidavit of Ruth Petsch ¶ 6, October 3, 2016.

205. Ms. Petsch was quoted in a National Public Radio story about public defense in Missouri.

> MOXLEY: Ruth Petsch, a public defender in Kansas City, says the job can already be overwhelming.
> RUTH PETSCH: I think that's a real fear for people in my office. I didn't find that witness, or I didn't find that information. And I'm pushed to trial 'cause this is the date, and I don't - I'm not going to do the job I should do.

Elle Moxley, "Overwhelmed Mo. Public Defender Office Appoints Governor To Handle A Case", National Public Radio (August 4, 2016), available at **http://www.npr.org/2016/08/04/488722448/overwhelmed-mo-public-defender-office-appoints-governor-to-handle-a-case**.

206. The use of the word "triage" as applied to defender clients is jarring, and in my opinion, results from the recognition by the Defenders that their workloads are too high to provide adequate representation to indigent clients.

207. For example, the Florida Supreme Court identified the public defender's office's high caseload as resulting in a practice of "'triage' with the clients who are in custody or who face the most serious charges getting priority to the detriment of other clients." *Public Defender v. State*, 115 So. 3d 261, 274 (Fla. 2013) (footnotes omitted). The court called this "a damning indictment of the poor quality of trial representation that is being afforded indigent defendants by the Public Defender." Id.

208. "Triage" has connotations better suited to a battlefield or an emergency room. The dictionary definition of triage is:

> *Noun*
> 1. the process of sorting victims, as of a battle or disaster, to determine medical priority in order to increase the number of survivors.
> 2. the determination of priorities for action in an emergency.
> *Adjective*
> 3. of, pertaining to, or performing the task of triage: *a triage officer.*
> *Verb* (used with object)
> 4. to act on or in by triage: *to triage a crisis.*

Dictionary.com Unabridged, Based on the Random House Dictionary, 2013.

209. In my opinion, defenders should not liken their work to sorting victims in a disaster or an emergency room. A more appropriate medical analogy would be an internal medicine doctor greeting each patient individually and assessing their medical needs in a private, quiet room that inspires the patient's confidence in the doctor, rather than the fear that a person would have on a battlefield or surrounded by noise and chaos in an emergency room.

XIII. MSPD DOES NOT COMPLY WITH ABA GUIDELINES ON EXCESSIVE WORKLOADS

210. MSPD fails to follow the ABA Eight Guidelines of Public Defense Related to Excessive Workloads (2009), available at https://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls_sclaid_def_eight_guidelines_of_public_defense.authcheckdam.pdf.

211. Guideline 1 states: "The Public Defense Provider avoids excessive lawyer workloads and the adverse impact that such workloads have on providing quality legal representation to all clients." The Guideline then lists a series of tasks lawyers should provide. Because this list is useful to understanding the deficiencies of the MSPD and because it is similar to MSPD's own performance guidelines, I reproduce it here:

> In determining whether these objectives are being achieved, the Provider considers whether the performance obligations of lawyers who represent indigent clients are being fulfilled, such as:

- Whether sufficient time is devoted to interviewing and counseling clients;
- Whether prompt interviews are conducted of detained clients and of those who are released from custody;
- Whether pretrial release of incarcerated clients is sought;
- Whether representation is continuously provided by the same lawyer from initial court appearance through trial, sentencing, or dismissal;
- Whether necessary investigations are conducted;
- Whether formal and informal discovery from the prosecution is pursued;
- Whether sufficient legal research is undertaken;
- Whether sufficient preparations are made for pretrial hearings and trials; and
- Whether sufficient preparations are made for hearings at which clients are sentenced.

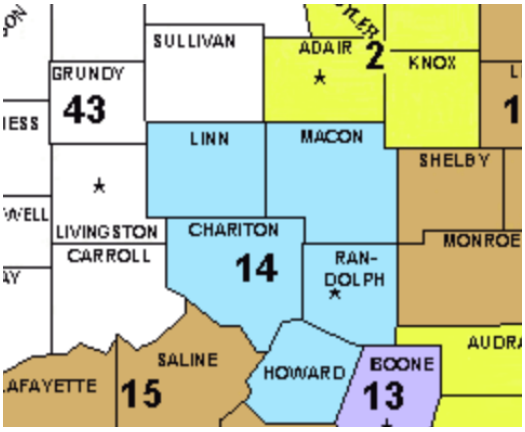
212. Based on the information I have reviewed, MSPD lawyers routinely do not devote enough time to interviewing and counseling clients; they routinely do not promptly interview their clients; they often do not conduct necessary investigations; they often do not pursue discovery; they often do not prepare sufficiently for hearings and trials; they often do not do sufficient legal research; and they often do not prepare adequately for hearings.

XIV. GEOGRAPHICAL CHALLENGES UNDERCUT DEFENDERS' ABILITY TO PROVIDE EFFECTIVE REPRESENTATION

213. An example of the problems caused when one district office has to provide representation in multiple counties is the challenge facing District 14. According to the MSPD FY 2016 Report (at 40), the office opened 1705 cases in FY 2016 in those five counties.

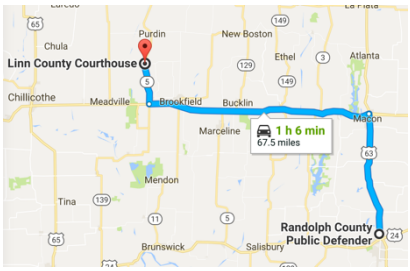
214. As of April 2016, MPDC reported having only five attorneys in District 14. They reported one investigator and two other support staff. It is my understanding that in the past year they have had as many as seven attorneys in that District, including the chief defender.

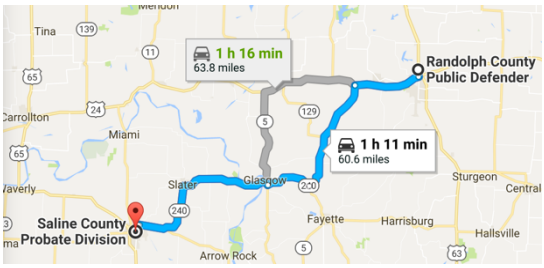
215. I am placing below a portion of the MPDC map of the districts, showing District 14's five counties. The map also shows some of the adjacent counties in which the Defender had conflict cases.



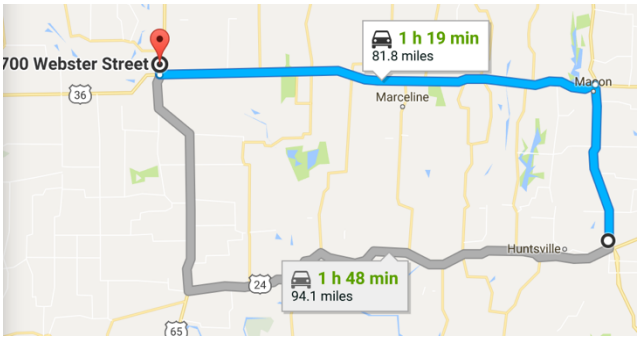
Map available at http://www.publicdefender.mo.gov/about/map_of_districts.htm (last visited August 23, 2017).

The District's office is in Moberly, Missouri. The Linn County courthouse is in Linneus, which is 67.5 miles from the Defender office. It is more than 60 miles to the Saline County court in a different direction.





216. The District 14 office also handles conflict cases in Livingston, Shelby, and Adair Counties. The Livingston County Court is more than an hour drive from the Defender office.

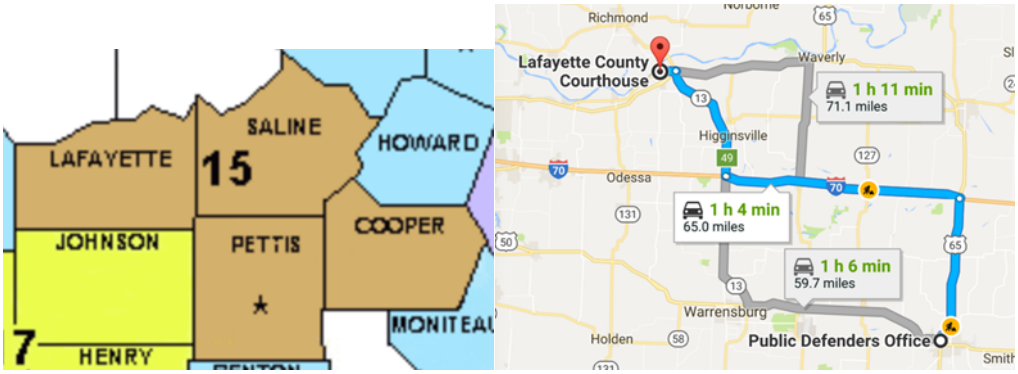


217. In the nine counties covered in some way by District 14, MPDC for FY 2016 reported 51 cases being sent to the private bar in conflict cases. FY 2016 Report at 67. Keeping track of those cases and the quality of the representation is an extra burden for the chief Defender who already has too much to do.

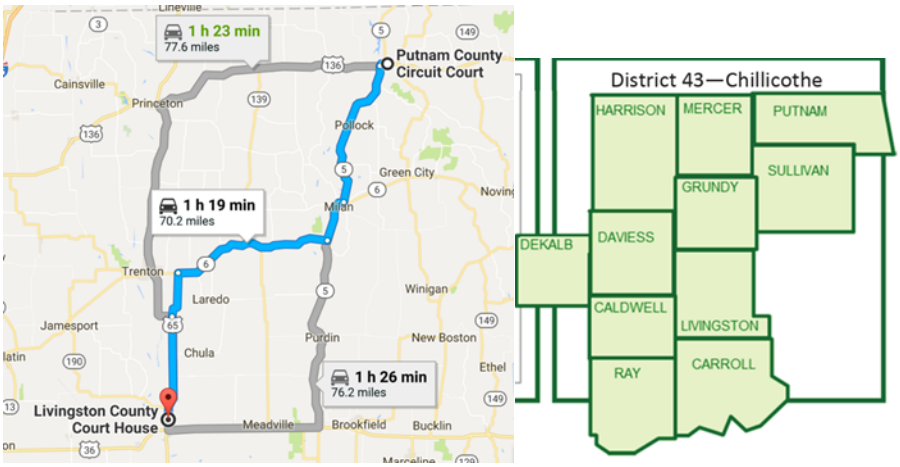
218. Former Defender Matthew Gass reported that "District 15 had been understaffed for some time due to a hiring freeze because of budget issues. Our office was supposed to have

seven attorneys, but during the summer of 2016, we were working with just four attorneys to serve all four counties." Affidavit of Matthew Gass October 31 ¶ 10, 2016. He wrote: "Because the area where I worked was in rural Missouri, I spent a great deal of my time traveling to court, to three separate county jail facilities to see clients, and to my office in Sedalia." *Id.*

219. I am including here a map of District 15 and a map showing the driving time of more than one hour each way from the Defender Office to the court in Lafayette County.



220. District 43 has eleven counties. I am including here a map from the FY 2016 Report at p. 39. In FY 2016 the office opened 2,198 cases. In April 2016, the office listed nine attorneys, one investigator, and four other support personnel on staff. The District office is in Chillicothe, in Livingston County. Depending on the route, it is about 70 miles and about a one hour, 20 minutes' drive one-way between the courthouses in Livingston and Putnam Counties. To have one investigator to cover 2,198 cases in 11 counties over that kind of distance means that only a tiny fraction of the cases can be investigated effectively.



221. The post-conviction attorneys also are seriously affected by the need to travel. Mr. Mermelstein testified:

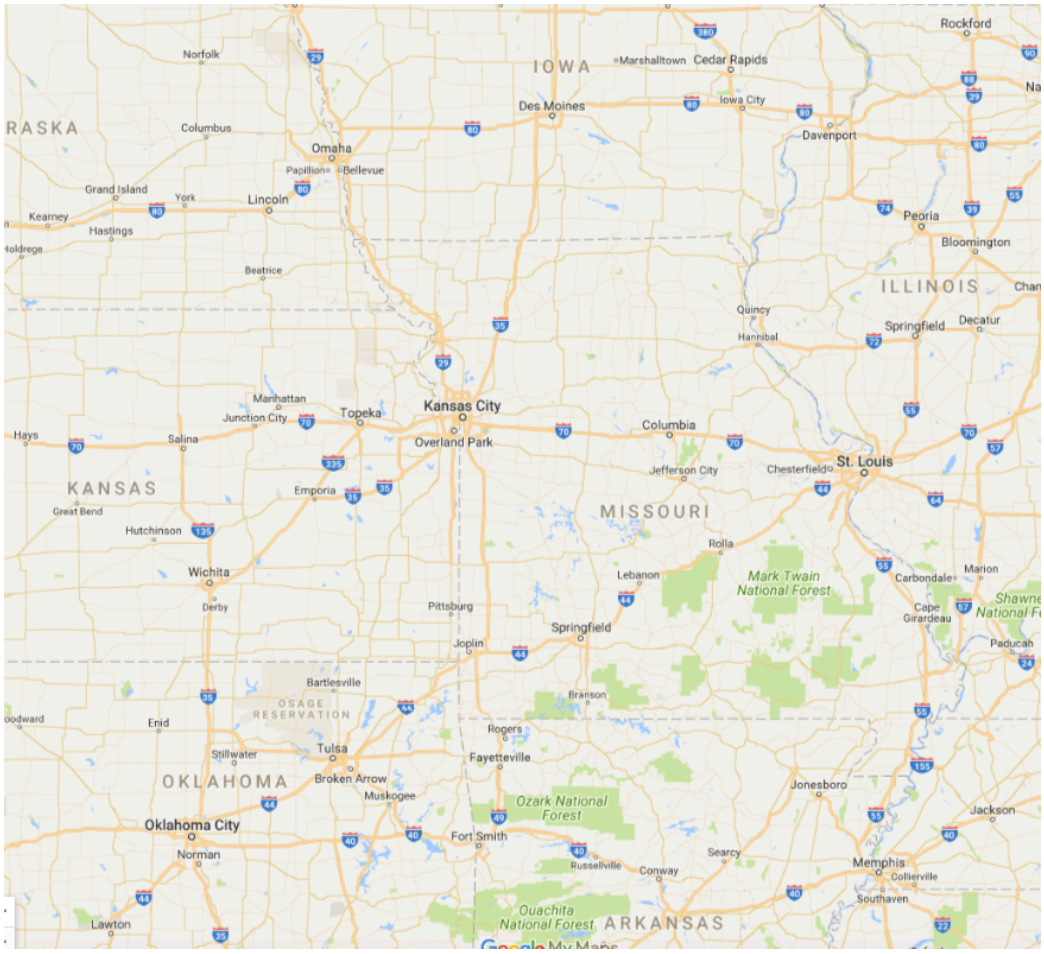
> So our Columbia attorneys have to drive literally from Iowa -- the Iowa border to the Arkansas border and like over to the Oklahoma border and over to the Illinois border. Our St. Louis office covers cases mostly from St. Louis south all the way to, again, Arkansas,

so they cover all the Mississippi River counties kind of from St. Louis to Arkansas.

And our Kansas City office covers the counties from Iowa sort of down to a little bit south of Kansas City. So they travel that western Missouri border quite a bit. There's lots of driving if you're an appellate post-conviction attorney.

Mermelstein Deposition at 43.

For reference, I am placing here a portion of a Google map of the region.



XV. MSPD'S CONFLICTS POLICY PRESENTS MULTIPLE PROBLEMS

222. The Missouri Supreme Court recently reaffirmed that "the right to unconflicted counsel is an essential aspect of the Sixth Amendment right to counsel…." *DePriest v. State*, 510 S.W.3d 331, 339 (Mo. 2017). The Court, in vacating a denial of motions for post-conviction relief for a brother and sister who had been represented by the same lawyer at their guilty pleas, wrote:

> A *potential* conflict of interest nearly always exists when one counsel represents two or more criminal defendants facing charges arising out of the same facts and circumstances. … " '[A]n actual, relevant conflict of interests [arises] if, during the course of the [concurrent] representation, the defendants' interests do diverge with respect to a material factual or legal issue or to a course of action.' "

Id. at 338(citation omitted).

223. MSPD Director Barrett has explained that his office was assigning the first conflict of interest in a case to other district defenders and additional ones to private counsel. He recognizes that this is not a cost-effective approach

> because it pulls lawyers out of their primary jurisdictions and requires them to drive significant distances to appear in court, conduct investigations, witness interviews and depositions, visit their clients in jail, all in a distant county. It is not uncommon for each trip to take a day of the attorney's time to deal with one or two cases. Instead, economies of scale suggest it is more cost-effective and efficient to contract all trial level conflict cases to local attorneys in the private bar and allow the defender offices to concentrate on effectively representing the cases that arise within the counties they are designated to serve.

FY 2018 Draft Budget Request at 8.

224. In fiscal year 2016, MSPD attorneys had to handle more than 7000 conflict cases, including 24 first degree murder cases, in other districts than their own. *Id.* at 10.

225. As of July 1, 2017, MSPD is no longer assigning first level conflict cases to their staff attorneys, but sending them to conflict panel counsel. Deposition of Joel Elmer, at 9. Because this is a new policy, I will outline below problems caused by the former policy, as well as problems that remain with how the conflict panel is administered.

226. There are issues with the way MSPD administers the conflict panel. There is no substantive assessment of the ability of the lawyers who apply for the panel and no tracking of how many cases they are doing in their private practice. Deposition of Joel Elmer, at 11,15.

227. The conflict panel fee schedule has not been adjusted in years, it is a fixed fee, and requests for extraordinary compensation are rare and often denied. Deposition of Joel Elmer, at 16.

Description	Contract Guideline
Murder 1st Degree	$10,000
Sexual Predator Trial	$8,000
Other Homicide	$6,000
AB Felony Drug	$750
AB Felony Other	$1,500
AB Felony Sex	$2,000
CD Felony Drug	$750
CD Felony Other	$750
CD Felony Sex	$1,500
Misdemeanor	$375
Juvenile - Non Violent	$500
Juvenile - Violent	$750
Probation Violation	$375
PCR Rule 24.035 Motion	$500
PCR Rule 24.035 Evidentiary Hearing	$250
PCR Rule 24.035 Appeal	$500
PCR Rule 29.15 Motion	$1,000
PCR Rule 29.15 Evidentiary Hearing	$500
PCR Rule 29.15 Appeal	$1,875
Direct Appeal	$3,750

228. The compensation rates are "ridiculously low" according to the attorneys who have commented about them. *Id.* at 24.

229. This is the fee schedule, produced in Elmer Deposition, Exhibit 7.

230. Director Barrett described one of the problems with a flat fee compensation plan: "there's con -- some consensus around the idea that when you give an attorney a flat amount regardless of the amount of work that they do, it will encourage them to do the least amount of work to receive those funds." Barrett Deposition, at 120.

231. District 22 Defender Mary Fox reports that conflict cases have undercut her main office's representation.

> The fact that District 22 defenders are required to cover conflict cases in surrounding counties only makes the workload that much more unreasonable. It is especially problematic for our office since I have assigned four of my more senior attorneys to the conflict cases, given the complexity of such cases.

Fox Affidavit ¶ 13.

232. MPDC reported that for Boone County in District 13, it sent 324 conflict cases to private counsel. FY 2016 Report at 67. In April 2016 MPDC reported having 13 trial lawyers, one investigator, and five support staff in District 13. For FY 2016, MSPD reported Boone County as having opened 3093 cases. FY 2016 Report at 40. That would leave 2769 cases for the staff defender attorneys, an average of 214 per attorney.

233. Districts other than 13 would have benefited from sending more conflicts cases to the private bar.

234. In addition to the logistical challenges, there are other issues presented by the former MSPD approach to conflicts, that is, having neighboring districts take cases for their colleagues. One is that lawyers are transferred from one district to the other periodically. It is unclear what kind of "walls" are established to make sure that they have no involvement with cases from their previous district that may present conflicts of interest.

235. More systemically, Director Barrett oversees the entire MSPD, and theoretically could be in a position of consulting with lawyers or their supervisors about cases in which confidential information would need to be revealed to him. Such a situation could involve personnel issues concerning how a case is handled or even strategy in the case. Those issues may not be readily identified when the conflicts case is first assigned to the neighboring district.

XVI. THE STATUTORY PROVISION FOR SEEKING APPROVAL TO DECLINE CASES IS UNWORKABLE

236. This Court has explained what the Plaintiffs report happened after the *Waters* decision when defenders tried to limit their caseloads.

> …[P]ublic defenders who attempted to turn away cases faced resistance from prosecutors, judges, and legislators. In some circuits, cases that were turned away were assigned to non–MSPD attorneys with no criminal defense experience who were not compensated for their time.
>
> The then-head of MSPD was told that if local offices continued to turn away cases, the legislature would pass a bill to privatize the entire system.

Church v. Missouri, 2017 WL 3383301, at *3.

237. Missouri's Legislature passed the following law after the *Waters*, supra, decision:

> 600.062. Acceptance of cases
>
> Notwithstanding the provisions of sections 600.017 and 600.042 to the contrary, neither the director nor the commission shall have the authority to limit the availability of a district office or any division director, district defender, deputy district defender, or assistant public defender to accept cases based on a determination that the office has exceeded a caseload standard. The director, commission, any division director, district defender, deputy district defender, or assistant public defender may not refuse to provide representation required under this chapter without prior approval from a court of competent jurisdiction.

238. District Defender Cardarella pointed out one reason why this statutory process is not workable:

> According to recent legislation here in Missouri, public defenders can go to a judge and request case relief based on reaching an ethical limit. However, since we do not know how many active cases our attorneys have, this form of relief has become an impractical remedy.

Cardarella Affidavit ¶ 11, December 1, 2016.

239. Former Kansas City Team Leader Joshua Peter stated:

> In my office, we did not have the option of refusing cases. While attorneys could complain about their caseloads and not get assigned new cases for a while, this was not a real solution. These cases would simply be assigned to another overworked attorney.
>
> Everyone's caseload in the office was simply too much to handle.

Peter Affidavit ¶ 14-15.

240. As this Court has pointed out, "Since the legislature's enactment of 600.602, no MSPD office has refused cases in any consistent or systematic way." *Church v. Missouri*, 2017 WL 3383301, at *3.

241. Mr. Barrett described what happened when his office attempted to respond to the *Waters* decision by declining cases:

> And so the system acted in 2012 and started to not accept every case that came in the door. The response was political backlash. Efforts to blow up the system were made and so MSPD attorneys stood down, the risk to their licenses notwithstanding.

Letter to Boone County Bar Association, Boone County Bar Association Newsletter, October 2, 2017, Elmer Deposition, Exhibit 5, at 5

242. Mr. Barrett added: "That said, the lawyers in MSPD are boxed in – on the one hand, if we accept every case that comes in the door, OCDC and the Court have told us that our licenses are in jeopardy; however, if we do NOT accept every case, our jobs are in jeopardy." *Id.*

243. Mr. Barrett understood from conversations with his predecessor, Cat Kelly, that her "decision to reverse course and not refuse cases was tied to concern about privatizing the system." Barrett Deposition, at 68.

244. An elected prosecutor recently conveyed an implied threat to Mr. Barrett in a telephone conversation about defenders declining new cases: "Russ Oliver made comments related to privatization and good luck this legislative session." *Id.*, at 69-70.

245. Because of his determination that privatization would not improve the provision of the right to counsel, Mr. Barrett said, "I endeavored to improve the -- the system

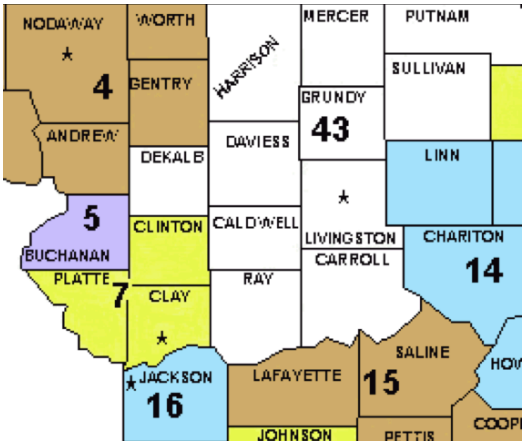
incrementally through making -- trying to secure more funding and then reporting back to the legislature on how I spent that funding and making a case for the benefit to the State of Missouri." *Id.*, at 72.

246. While he acknowledges that individual lawyers have an obligation to refuse to accept cases when their caseload is too high, Mr. Barrett testified: "I will say that in the aftermath of the -- the refusing to accept cases that turn into a threat of privatization, I'm not aware of any lawyer asserting that, that type of conflict until recently I should say." *Id.*, at 75.

XVII. EFFECTS OF EXCESSIVE CASELOAD AND LACK OF RESOURCES

A. **District 7, Site of Plaintiff Bowman's Case, Is Committing Malpractice Every Day**

247. District 7 has excessive caseloads and had to represent clients in 12 counties.



District 7 includes three primary counties and at least until July 1, 2017, was covering conflicts in nine more, including Caldwell, Cass, Davies, DeKalb, Grundy, Harrison, Jackson, Lafayette, and Ray. Affidavit of Anthony Cardarella, December 1, 2016 ¶ 1.

248. District 7 Director Anthony Cardarella stated:

> Unfortunately, I do not believe that my office is providing quality representation to our indigent clients. In fact, I believe that, despite our best efforts, my office is committing malpractice every single day and has been for well over a decade.

Id. at ¶ 8

249. In December 2016, Mr. Cardarella had an active caseload of 224 cases, including two criminal dockets. *Id.* He also was responsible for supervising the entire office, which had 12 attorneys, two investigators, one legal assistant, and four clerks. *Id.* This is an impossible workload. As outlined below, a supervisor with ten or more attorneys should not carry a caseload.

250. In 2015, Mr. Cardarella was assigned 186 cases. Spreadsheet attached to July 25, 2016 Letter to Mr. Williamson from Ms. Shipma.

251. Mr. Cardarella said of his office, "Our attorneys are overworked and have excessively high caseloads." Cardarella affidavit at ¶ 9.

252. Mr. Cardarella stated: "Because of severe time constraints, our attorneys do not have enough time to write motions or to even inventory, catalogue, or review discovery in a professional and timely manner." *Id.* at ¶ 12.

253. He added:

> Since reviewing discovery in a timely manner is absolutely critical for intelligently approaching any case investigation, very few of our clients actually have their cases thoroughly investigated. In fact, our attorneys are rarely able to analyze their discovery early enough to make important investigative decisions, including which key witnesses to depose and whether or not an expert witness is necessary for the client's defense.

Id. at ¶ 13-14.

254. Because of time constraints, Mr. Cardarella stated, "crime scene visits are virtually non-existent in our office." *Id.* at ¶ 15.

255. Mr. Cardarella is counsel for the plaintiff Viola Bowman, who is charged with murder. Her case, which has been continued multiple times since her arrest in January 2015, was set for trial September 18, 2017. But on September 7, 2017, on an oral motion by the state, the court continued the matter until November 20, 2017, for a discovery hearing. On September 29, 2017, the court issued a certificate for attendance of an out-of-state witness to appear on November 20, 2017.

256. According to CaseNet, attorney Bates appeared for Mr. Cardarella at hearings on August 9, 2017, and August 17, 2017.

257. Ms. Bowman appeared at her arraignment, in custody, January 15, 2015, with no lawyer representing her. She requested a public defender. She had been in jail at that point for eight days.

258. Attorney Cathy Noble appeared for Ms. Bowman on January 22, 1015. Two other attorneys have appeared on the case in the intervening months.

259. Mr. Cardarella filed a notice of appearance and request for discovery for Ms. Bowman January 28, 2015.

260. As far as I can tell from CaseNet, the only motions Mr. Cardarella has filed for Ms. Bowman are for continuances and bond reduction.

261. On September 28, 2016, Mr. Cardarella moved for a continuance, citing his vast duties as Director and a health-related issue. He also stated:

> Undersigned counsel is presently still amidst efforts review the voluminous amount of discovery existing in this case as well as to continue to conduct relevant case investigation - - including the commencement of depositions of key members of law enforcement entrusted with the investigation of this case together with key lay witnesses - - in order to provide the effective assistance of counsel.

Defense Second Application for Continuance, September 28, 2016.

262. Mr. Cardarella had cited the same reasons for a continuance in his prior motion of March 2016:

> 6. Undersigned counsel is presently still amidst efforts review the voluminous amount of discovery existing in this case as well as to continue to conduct relevant case investigation - - including the commencement of depositions of key members of law enforcement entrusted with the investigation of this case together with key lay witnesses - - in order to provide the effective assistance of counsel.

Defendant's Application for Continuance, March 23, 2016.

263. In the March 2016 motion, Mr. Cardarella mentioned his responsibilities as Director as well as his having taken on additional caseload responsibilities in two counties because of the sudden departure of one of his assistant public defenders in early November of 2015. He added that the very recent sudden and unexpected passing of a senior member of his staff had added "an overwhelming burden of stress upon the entire staff." *Id.*

264. These motions for continuance indicate the inability of Mr. Cardarella and his staff to provide effective representation for their clients. Based on the motions, Mr. Cardarella had not begun depositions of key witnesses either in March 2016 or in September 2016, even though he had had the case since January 2015.

265. While the sudden departure of an assistant defender in November 2015 certainly would have put extra burden on him, to have that be a factor four months later in not being prepared for a murder case raises questions about his office's ability to hire replacement staff and to reassign cases internally to provide some relief for Mr. Cardarella. If Mr. Cardarella had not had an existing caseload, it would have been more feasible for him to take on the emergency allocation of cases. But as he already had an excessive caseload in addition to his supervisory responsibilities, he was not able to be prepared for Ms. Bowman's trial. His motions indicate that he had not done significant work on the case in the first ten months that he was representing Ms. Bowman. The recent sudden and unexpected passing of a colleague in March 2016 would have been a sufficient reason for a continuance, but not for a continuance of six months.

266. The situation described by Mr. Cardarella could have supported a motion for caseload relief, but as he stated in his affidavit, he does not know how many cases his lawyers have, making it more difficult to support a motion for caseload relief. It is not clear why he does not know how many cases the lawyers have.

B. The Missouri Defenders Do Not Provide Counsel at Arraignment and Are Limited in Their Ability to Seek Pre-trial Release of Clients

267. There is a right to counsel at critical stages of cases. *Hamilton v. State of Ala.*, 368 U.S. 52, 54, 82 S. Ct. 157, 159, 7 L. Ed. 2d 114 (1961).

268. The United States Supreme Court "has held that the right to counsel guaranteed by the Sixth Amendment applies at the first appearance before a judicial officer at which a defendant is told of the formal accusation against him and restrictions are imposed on his liberty." *Rothgery v. Gillespie Cty., Tex.*, 554 U.S. 191, 194 (2008). (citations omitted.).

269. The United States Supreme Court held that Alabama's preliminary hearing was a critical stage requiring counsel in part because "counsel can also be influential at the preliminary hearing in making effective arguments for the accused on such matters as the necessity for an early psychiatric examination or bail." *Coleman v. Alabama*, 399 U.S. 1, 9, 90 S. Ct. 1999, 2003, 26 L. Ed. 2d 387 (1970).

270. District 19 Assistant Defender Walter Stokely pointed out one of the problems with late appointment of the defenders. He wrote:

> There is a Missouri Supreme Court rule that requires preliminary hearings to be held within one week following arrest. The fact that public defenders are not assigned until clients fill out the indigent paperwork hinders the ability of public defenders to provide adequate and timely pretrial representation. Most often, Defendants are provided the paperwork to seek appointment of a public defender at their first court appearance.

Stokely Affidavit ¶ 10.

271. Mr. Stokely added that he is unable to provide effective advocacy for bail and pretrial release.

> It is very difficult and often impossible to zealously represent people during bail and pretrial release. This is because initial bail determinations are based solely on the prosecutor's recommendation, which happens before people even fill out applications seeking a public defender. Therefore, I am not even appointed to represent these defendants at their bail hearing. After bail is set, a reduction can be difficult to obtain and seeking one takes time away from working on their underlying case.

Id. at ¶ 9.

272. Mr. Stokely pointed out a serious negative impact of not being able to provide effective advocacy for pre-trial release and of having too much work to be able to advocate for system change:

> The difficulties of providing zealous representation at all phases of a trial are compounded in counties like Miller County, which has procedures in place that make the process much more difficult for defendants. For instance, Miller County requires those who post bond to be placed under court supervision. Those who are unable to post bond choose between accepting a plea offer and going to trial. However, the two judges in Miller County have only two jury trial dates every year, so some of these clients must wait in jail for years before their case will go to trial. As a result, a lot of people arrested and charged in Miller County plead guilty to crimes that they tell us they did not commit, but we do not have the capacity or resources to challenge this process.

Id. at ¶ 12.

273. Assistant Defender Ruth Russell also noted challenges in providing effective pre-trial release advocacy:

> It can be difficult to adequately represent clients during the pretrial and bond phase due to procedural restrictions. For example, it takes a week or two to open a case, at which point I am left with just seven days to meet with the client under the MSPD's Guidelines for Representation. However, there is a suggested bail schedule that is often followed and bail is routinely set before I am appointed counsel on a case, after which, courts require ten days' notice for bond modification hearings.

Russell Affidavit ¶ 11.

274. A recent report by the New York Office of Indigent Legal Services provided anecdotal support for the benefits of counsel at the first appearance.

> At arraignment, attorneys are often able to successfully argue for release on recognizance, release under supervision, or lower bail amounts that defendants can pay. …Attorneys generally report that in some cases their ability to argue deficiencies in the accusatory instrument have resulted in immediate dismissal of at least some charges, and hence led to release or lower bails….
>
> Attorneys have reminded us of the significant case implications of being released instead of detained while a case is pending. Research consistently shows that case outcomes are significantly better for defendants who are released.

> …Attorneys have also told us of instances in which their advocacy at arraignment has meant that innocent people are not incarcerated or that clients are not detained because of mistaken information.
>
> …Attorneys told us of several instances in which being at arraignment allowed them to conduct a quick and immediate fact investigation into the case, with positive case outcomes.
>
> …Many attorneys who spoke to ILS about the impact of counsel at arraignment emphasized the positive impact that it has on their ability to build better relationships and communicate more effectively with their clients. At arraignment, attorneys are able to explain the process and proceedings to their clients, prevent clients from making incriminating statements, and assist them in making a favorable impression. From the beginning of the case, clients sense that their attorney is helping them to navigate the court system. Even more importantly, they see the attorney representing their interests and often engaging in zealous advocacy.

Implementing the Counsel at Arraignment Obligations in the *Hurrell-Harring v. The State of New York* Settlement, 2016 Update, available at https://www.ils.ny.gov/files/Hurrell-Harring/Counsel%20At%20Arraignment/Hurrell-Harring%20Updated%20Counsel%20At%20Arraignment%20Plan%20111016.pdf.

275. The Missouri Defenders do not provide counsel at arraignment and are not able to provide the benefits to their clients identified in the New York report. I provide here several examples drawn from Case Net of accused persons appearing alone at arraignment.

a. Plaintiff Dorian Samuels was arraigned without counsel on June 2, 2016. He was in custody and appeared by video. He had been arrested May 31, 2016. His attorney, Craig Lowe, entered a notice of appearance June 8, 2016, and did not appear with him in court until June 15, 2016.

b. James L. Wainwright, Case No. 17AO-CR01041, was arraigned in-custody without counsel on August 17, 2017. His attorney, Craig Lowe, entered a notice of appearance August 25, 2017.

c. Quincy Earl Richards, Case No. 17AP-CR00643, was arraigned without counsel June 12, 2017. He had been arrested June 8, 2017. His attorney, Larry Dale Maples, filed a notice of appearance June 15, 2017. Mr. Maples appeared in court July 11, 2017. On August 1, 2017, attorney Richard King appeared for Mr. Maples. On August 3, 2017, Craig Lowe entered a notice of appearance for Mr. Richards. Mr. Richards was charged with felony possession of marijuana.

276. Without counsel at arraignment, the accused person is not able effectively to advocate for pre-trial release or to challenge the probable cause to detain him or her. A delay of

one or two weeks before counsel meets with the client can result in a variety of harms, including losing evidence and not addressing mental and physical health needs of the client.

C. Because of Excessive Caseload, Defenders Are Unprepared and Seek Multiple Continuances

277. Ms. Moench said that occasionally she would meet her clients for the first time at their preliminary hearing, which sometimes would be several weeks after their arrest and arraignment. "In the meantime, many of my clients would sit in jail, unable to advocate for a reduction in their bond amount." Moench Affidavit ¶ 10.

278. Ms. Moench added, "In addition to sitting in jail longer than necessary, many of my clients risked losing their jobs or had difficulty attending to their significant childcare and healthcare needs. This also put a serious strain on my clients' personal relationships." *Id.* at ¶ 11.

279. Ms. Moench stated: "Because of my heavy workload, I often felt unprepared for trial—sometimes requiring me to seek multiple continuances—and was unable to negotiate a more favorable plea bargain for my clients." *Id.* at ¶ 12.

280. Ms. Moench added: "I only had time to skim discovery on some cases and would have to do so on the eve of many misdemeanor and some felony bench trials." *Id.* at ¶ 13.

281. Ms. Moench wrote: "I rarely had the time to take depositions, even in serious felony cases. I can count on one hand the number of depositions I took in my three and a half years as a public defender." *Id.* at ¶ 14

282. Ms. Moench stated that she "lacked the time and resources to track down witnesses or take other investigatory steps." She added, "I also did not use investigators as often as I should have, since my office had only two investigators for a staff of twenty attorneys. And, for several months in 2015, my office had only one investigator on staff." She said, "Many attorneys in the office, including myself, filed multiple motions for continuances in cases based on a lack of investigatory resources, which left us unprepared to proceed." *Id.* at ¶ 15-16.

283. Ms. Moench also said, "I rarely used expert witnesses in my cases." *Id.* at ¶ 15.

284. Assistant Defender Ruth Russell discussed having regularly to seek continuances even for clients in custody.

> While I was a public defender in District 17, I had approximately 150 to 200 cases on my docket at any given time. I never refused a case because of my caseload, but I had to regularly ask for continuances. This happened even when I had clients in custody. I recently had a close call in a shaken baby case. I almost didn't get a continuance to get a radiologist. If I hadn't, my innocent client would have been convicted and probably received a life sentence.
>
> Russell Affidavit ¶ 3.

285. District 16 Team Leader Devon Pasley reported that her overall workload, including her managerial and administrative responsibilities, "still makes it difficult for me to spend the time necessary to defend my clients effectively." She gave an example of a first-degree sodomy case set for trial in less than two weeks that, "Because of my other professional obligations, I just began to prepare for trial this week." Affidavit of Devon Pasley, February 7, 2017.

286. Ms. Pasley discussed another case in which her lack of time to prepare prevented her from being able to call an alibi witness.

> I recently tried a murder case involving a potential alibi witness. I did not have time to interview the witness prior to trial, but asked one of our investigators to do so. Based on the information gleaned from the investigators interview, I initially chose not to call the witness at trial. After speaking with the witness myself on the morning of trial, however, I realized that the witness's testimony could have been quite helpful to my client. The Judge did not allow me to call the witness due to the late endorsement. My client was convicted and sentenced to life in prison without the possibility of parole.
>
> Affidavit of Devon Pasley.

D. **Because of the Excessive Caseload, Missouri Defenders Rarely Go to Trial**

287. According to an evaluation of a District Defender, "The Sedalia Office tried 6 cases in FY 2014, 10 cases in FY 2015 and only 3 cases in FY 2016." This is an office with seven attorneys. Appraisal of Max Mitchell. That office disposed of 2215 cases in 2016. FY 2016 Report at 28. That district had two counties with the highest rate of sending non-violent felony offenders to prison. Appraisal of Max Mitchell.

288. Director Michael Barrett testified in deposition that in the last two years only one percent of the state defender cases go to trial. Barrett Deposition, at 38.

289. Ms. Moench said, "Almost none of my cases went to jury trial. I have first chaired only two jury trials in the last three years." Moench Affidavit ¶ 17.

290. Former District 15 assistant defender Matthew Gass stated:

> I tried just one case to a jury while working in District 15. The only reason I had time to properly prepare for this trial was because I had just moved over to Lafayette County and my caseload had not yet exceeded a manageable number.
>
> In other cases, I have had to ask for continuances of trial dates because I did not have the time to adequately prepare for trial. While the cases are continued, my clients have to sit in jail. I felt that these requests were in my client's interest at the time because I

> owed a duty to the client to make sure I was thoroughly prepared before taking the case before a jury.
>
> Gass Affidavit ¶ 17-18.

E. Missouri Defenders Are Not Able to Have Adequate Communication With Their Clients

291. In many cases, the defenders do not have timely and confidential communications with their clients and they cannot exercise informed judgment on the type of investigation needed in their cases.

292. This Court described the claimed impact of the excessive workload on client communication:

> Finally, a defendant's right to consult with his attorney is an integral component of the right to assistance of counsel. ... But MSPD attorneys' excessive workloads mean that they are unable to meet with clients on a regular basis. In some instances, MSPD attorneys are only able to have a substantive meeting with a client for the first time a few weeks before trial. Without their clients' input, it is impossible for MSPD attorneys to investigate their clients' cases adequately or properly prepare for trial, plea negotiations, or sentencing. Nor is it possible, under such circumstances, for indigent defendants to participate meaningfully in their own defense.
>
> *Church v. Missouri*, 2017 WL 3383301, at *5 (citation omitted).

293. District 16 Defender Ruth Petsch stated:

> Attorney workloads also make it very difficult for public defenders in Jackson County to maintain consistent contact with clients and their family members, including those in custody. Many attorneys are forced to choose between conducting regular jail visits on the one hand, and preparing for trial or other court proceedings on the other.
>
> Petsch Affidavit ¶ 7.

294. Former Defender attorney Matthew Gass wrote: "MSPD's Guidelines for Representation state that we should meet with a client within seven to ten days of being assigned a case. I tried to do this whenever possible, though I was rarely successful." Gass Affidavit ¶ 12.

295. Assistant Defender Ruth Russell wrote:

> I don't have time to regularly speak with my clients, especially those who are not in custody. I spend a significant amount of time

> in my office returning calls to my clients and their families. Despite this effort, I am often unable to get in touch with each of my clients every 30 days, in violation of MSPD's Guidelines for Representation.
>
> Russell Affidavit ¶ 4.

296. Ms. Russell added:

> Because I spend so much time in court, I often have difficulty establishing the type of relationships with my clients I believe are needed for effective representation. For example, I sometimes cannot meet with a client until a few weeks before their trial because my schedule sometimes prevents me from attending that client's previous pretrial court proceedings. In such instances, I have to rely on other attorneys in my office to appear on behalf of my clients. Clients frequently believe that they don't have good attorneys because they don't hear from their attorneys and assume that their attorneys are not working on their cases.
>
> *Id.* at ¶ 7.

297. Defender Devon Pasley stated:

> One of the most significant implications of our large caseloads is that they make it virtually impossible to maintain regular contact with clients, including those in custody. This lack of consistent communication makes it very difficult to establish a rapport between attorney and client. Because of that lack of rapport, clients often do not trust their lawyer or feel comfortable sharing all pertinent information with them.
>
> Affidavit of Devon Pasley, February 7, 2017.

298. Former Kansas City Team Leader Joshua Peter stated: "I now work in private practice. I have significantly more time with clients than I used to. In fact, I now do free consultations for longer amounts of time than my previous jail visits as a public defender." Affidavit of Joshua Peter, December 21, 2016.

299. District 19 assistant public defender Walter Stokely stated:

> My workload also makes it impossible for me to spend adequate time working on cases, especially serious and complex cases. It is difficult to find the time to communicate with clients or even meet with some clients face-to-face, especially those clients who are being held in facilities several hours away from my office. It is also difficult to find time to conduct investigations, identify and interview witnesses, and meet with experts.

Stokely Affidavit ¶ 6.

300. Mr. Stokely explained the negative consequences of poor communication with clients:

> My workload has made it difficult, and in some cases impossible, to establish trust with my clients. Indeed, many never come to trust me as their advocate in court. This is partly because, due to the lack of resources and burdensome workload, we are not always able to do a good job on their cases and they do not feel as if we are adequately representing them. An inability to establish a trusting relationship makes it very hard to strategize with my clients about their cases.
>
> *Id.* at ¶ 7.

301. The Missouri Defenders are not able consistently to comply with their own office's policy regarding client communication.

F. **Missouri Defenders Have Little Time for Effective Motion Practice**

302. Matthew Gass worked for slightly more than two years as a defender in District 15, until he resigned in September 2016. He wrote: "I spent very little time writing motions, briefs, or working on discovery. I simply did not have time to do this type of work." Gass Affidavit ¶ 6.

303. Mr. Gass added:

> Criminal defense attorneys are often expected to file a variety of different motions in order to protect our client's rights and represent them effectively. In practice, however, I found I rarely had time to prepare and file these motions, or they were routinely generic in form when they were filed. At one litigation training I attended, I left realizing all of the things I could be doing for my clients that I simply did not have the time or resources to do.
>
> *Id.* at ¶ 19.

304. In a performance review of a District 31 defender, the reviewer wrote:

> D wishes he had more time available for creative motion practice. His caseload and busy court schedule usually only allow for the doctoring of our boilerplate motions. He also only has time to prepare and submit suggestions in support when specifically requested by the judge. I noticed while doing the file reviews that the request for discovery was either filed late or not at all in several cases.

Performance Review of PD00292 (2017).

G. MSPD Lawyers Have Inadequate Investigation and Support Resources

305. This Court recited the complaint that most MSPD attorneys are

> unable to analyze the discovery they receive early enough in the proceedings to make important investigative decisions, including which key witnesses to depose and whether or not an expert witness is necessary for the client's defense. … Even when an attorney determines that investigation is necessary, investigators often do not have time to review discovery or gather other background information on the cases that they do investigate.
>
> *Church v. Missouri*, 2017 WL 3383301, at *4.

306. The Court added the complaint that many MSPD attorneys rarely take depositions and MSPD attorneys rarely file suppression motions:

> Time constraints also mean attorneys are often unable to meet with witnesses or take other important investigatory steps to prepare adequately for trial or to negotiate a more favorable plea bargain. Many MSPD attorneys take depositions in just a small fraction of their cases, thus leaving on the table the valuable information that is likely to be gleaned from such depositions. MSPD attorneys are rarely able to file suppression motions because they lack the investigative resources to identify unconstitutional police conduct, the time to review pertinent discovery, and the resources and experience to conduct appropriate legal research. As a result, evidence obtained in violation of the Fourth, Fifth, and Sixth Amendments can be used against defendants at trial or to extract guilty pleas.
>
> *Id.* at *4 .

307. In the MSPD FY 2012 Report at 10, the MSPD noted that a recent survey by the Missouri Office of Prosecution Services "showed that most prosecutor's offices have 1 support staff person for every 1 or 2 attorneys, while some have significantly more support staff than they have attorneys, a ratio more in accordance with the practice of most private law firms."

Report available at http://www.publicdefender.mo.gov/about/FY2012AnnualReport2.pdf.

308. Sarah Johnson testified that she would like to delegate to her legal assistant scanning of large volumes of documents but she has to do the scanning herself because the assistant has so much work to do for other lawyers as well.

Sarah Johnson Deposition at 178.

309. The FY 2012 Report included the following charts that demonstrated the defenders did not have enough investigators or other support staff.

Trial and Appellate Divisions						09/24/20121
	Paralegal	Investigator	Legal Assistant	Secretary	Mitigation Specialist	Totals
Current Support Staff	6.50	56.50	43.00	67.50	3.00	176.50
Ratio of Support Staff to Attorney Staff of 348.50	1 for Every 53+ Attorneys	1 for Every 6+ Attorneys	1 for Every 8+ Attorneys	1 for Every 5+ Attorneys	1 for Every 116+ Attorneys	2 Attorneys to Every Support Staff
Ratio of Support Staff To Caseload 82,575 Trial & Appellate Division Cases	1 for Every 12,703 Cases	1 for Every 1,461 Cases	1 for Every 1,920 Cases	1 for Every 1,223 Cases	1 for Every 27,525 Cases	1 for Every 468 Cases

Trial and Appellate Divisions			
	Investigator	Legal Assistant	Secretary
Appropriate Support Staff for 348.50 Trial Division & Appellated Division Attorneys	116.00	116.00	116.00
Current Staff	56.50	43.00	67.50
Need	59.50	73.00	48.50

310. MSPD reported that as of April 6, 2016, it had a total of 53 investigators (fewer than in 2012), 45 of whom were assigned to trial offices. Only three district offices, St. Louis City, Clayton, and Kansas City had more than two investigators. 24 trial offices had only one investigator.

311. The defenders are not able to comply consistently with their own policy on investigation:

> Once the Public Defender has obtained information concerning the prosecution's version of the case and discussed the case with the client, the Public Defender should promptly conduct that investigation which he deems appropriate to allow for the fullest possible understanding of the facts, circumstances and merits of the case, as well as any penalty which might be imposed in the event of conviction.
>
> Guidelines for Representation, Pretrial Preparation, Investigation, Section 10-10-50-20 (11/01/92), Approval Date 11/09/2001.

312. District 16 Team Leader Devon Pasley stated:

> Our one investigator and one legal assistant are assigned to assist 8 attorneys with all of their cases. This limits the ability to sufficiently investigate cases and prepare for trial. Attorneys are required to maintain their own files and are responsible for doing much of their own clerical work.

Affidavit of Devon Pasley.

313. 22nd District Defender Mary Fox stated that her lawyers do not fully investigate cases:

> Although our attorneys are doing the best they can with the resources they have, we are unable to consistently provide constitutionally-sufficient representation to our clients. Because of the crushing workloads handled by public defenders in District 22, attorneys have cut corners in their representation. For instance, my attorneys often do not have the time to fully investigate cases, forcing them and their clients to make strategic decisions about how to move forward (including whether to plead guilty) without a full understanding of the nature and strength of the state's case.

Fox Affidavit at ¶ 6.

314. Assistant Public Defender Walter Stokely in Jefferson City stated that he rarely deposes witnesses.

> Missouri public defenders are allowed to depose the state's witnesses prior to trial. I would request depositions in every case if I had the resources and the time. As it stands, I'm rarely able to depose witnesses in my cases. Additionally, depositions cost money, and therefore eat into an already depleted budget.

Stokely Affidavit at ¶ 11.

315. Assistant Defender Ruth Russell does fewer depositions than she used to and fewer than she would like. "Up until a couple of years ago, my usual practice was to depose every witness for a jury trial. Now I only have time to depose around half of the witnesses in any given case. I will do an informal interview with the rest of the witnesses." Russell Affidavit at ¶ 5.

H. **MSPD Does Not Make Adequate Use of Expert Witnesses**

316. In my opinion, the rate of expert usage by Missouri Defenders is far too low.

317. This Court noted this complaint in its July 24, 2017, order:

> Additionally, MSPD attorneys also frequently do not have the time to identify experts or conduct expert consultations. Even when

> MSPD attorneys identify the need for an expert, they are often unable to secure the resources necessary to retain an appropriate expert.

Church v. Missouri, 2017 WL 3383301, at *4.

318. District 22 Defender Mary Fox stated that in St. Louis, the largest city in the state,

> The public defenders in District 22 seek out or retain expert witnesses in a limited number of cases. This is primarily because they are often too inexperienced to comfortably and competently utilize an expert witness to their advantage, or they are unaware of the need for an expert in a given case because they were unable to prepare a defense strategy until the eve of trial.

Fox Affidavit at ¶ 12.

319. District 16 Defender Ruth Petsch stated:

> The Jackson County office is also quite deficient in its use of expert witnesses. This is primarily because defenders, having been unable to review discovery materials in a timely manner, often do not realize the need for an expert witness until almost the eve of trial. This leaves little (if any) time for the attorneys to identify and secure an appropriate expert.

Petsch Affidavit at ¶ 11.

320. Assistant Defender Ruth Russell reported difficulty in obtaining funds for experts:

> Recently, I requested funds from the Missouri State Public Defender central office for a ballistics expert in a murder case I was handling. I anticipated that the expert would spend approximately 20 hours on the case at a rate of $200 per hour. In response to my request, I was asked why I could not simply rely on the testimony of the state's ballistics expert.

Russell Affidavit at ¶ 9.

321. Ms. Russell also noted that delay in discovery affects her ability to obtain experts:

> In my experience, there is a big problem in Missouri in obtaining timely discovery. Sometimes it does not come for months. Attorneys in my office routinely have to file motions to exclude evidence or witnesses because of delays in receiving discovery. In addition, some of the cases have a lot of discovery materials. I have a big stack of discovery that I haven't been able to go through. Due to delays and the amount of information I receive, I

> am often unable to identify and secure expert witnesses until rightbefore a client's trial.

Id. at ¶ 8.

322. Mr. Mermelstein testified that he considers monetary resources in deciding whether to approve expert witness requests:

> Q. Okay. And have you -- have you denied
> 5 requests that you think are reasonable and necessary
> 6 solely based on lack of monetary resources?
> 7 A. Yes.

John Mermelstein Deposition at 34.

323. In its FY 2016 Report (at page 11), MSPD reported spending $3,721,071 on litigation expense and conflicts, which includes expert witnesses. These "expenses include the cost of experts, depositions, transcripts, exhibits, independent testing of evidence, etc." FY 2016 Report at 9.

324. I do not have a breakdown of this expense total, but expert witness expenditures clearly were less than $3,721,071 on the total caseload of 80,755 opened and 71,934 cases closed in FY 2016. FY 2016 Report at 6.

325. 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 on expert witnesses. This was for 2,206 requests for experts in 707 cases. The Defenders were obtaining experts in approximately 11.9 per cent of all their felony cases. The Department estimated that it declined 3-4% 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. The 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.

326. Even if Missouri spent all of its litigation expense budget on expert witnesses, dividing that expenditure by the total number of newly opened cases would yield an average of $46.07 per case.

327. It is critical for defenders to be able to use expert witnesses both to challenge the prosecution's case and to be able to present affirmative defenses. In recent years, it has become increasingly clear that much of the forensic evidence presented by the prosecution may be subject to effective challenge.

328. The National Research Council published a report entitled Strengthening Forensic Science in the United States: A Path Forward (2009), which documented that:

> in some cases, substantive information and testimony based on faulty forensic science analyses may have contributed to wrongful

> convictions of innocent people. This fact has demonstrated the potential danger of giving undue weight to evidence and testimony derived from imperfect testing and analysis. Moreover, imprecise or exaggerated expert testimony has sometimes contributed to the admission of erroneous or misleading evidence.

A Path Forward, at p. 4. [Report is available at https://www.nap.edu/catalog/12589/strengthening-forensic-science-in-the-united-states-a-path-forward.]

329. The Innocence Project has reported: "Misapplication of forensic science is the second most common contributing factor to wrongful convictions, found in nearly half (46%) of DNA exoneration cases." See, Innocence Project web page at http://www.innocenceproject.org/causes/misapplication-forensic-science/.

330. In September 2016, a report by the President's Council of Advisors on Science and Technology indicated the importance of challenging forensic evidence with expert witnesses.

> Starting in 2012, the Department of Justice (DOJ) and FBI undertook an unprecedented review of testimony in more than 3,000 criminal cases involving microscopic hair analysis. Their initial results, released in 2015, showed that FBI examiners had provided scientifically invalid testimony in more than 95 percent of cases where that testimony was used to inculpate a defendant at trial . . . .
>
> PCAST finds that latent fingerprint analysis is a foundationally valid subjective methodology—albeit with a false positive rate that is substantial and is likely to be higher than expected by many jurors based on longstanding claims about the infallibility of fingerprint analysis.

President's Council report at 3 and 9. There have been numerous instances of forensic experts' misconduct, poor performance, or lack of qualifications. *See, e.g.*, Rene Stutzman and Gail Tziperman Lotan, "More than 2,600 Orlando-area lawyers get letters warning about fingerprint expert," Orlando Sentinel, February 6, 2017, available at http://www.orlandosentinel.com/news/breaking-news/os-marco-palacio-fingerpring-investigation-20170206-story.html?ct=t(DNA_Newsletter_144_28_2015); *see also* Tony Plohetski, "2,200 convicted persons to be notified of Austin DNA lab problems", KVUE News, February 9, 2017, available at http://www.mystatesman.com/news/200-convicted-persons-notified-austin-dna-lab-problems/jMMDFsc0HNNKSRU4S9sn4M/?ct=t(DNA_Newsletter_144_28_2015); Report, *Forensic Science in Criminal Courts: Ensuring Scientific Validity of Feature-Comparison Methods* (Sept. 2016).

331. 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].

Eadaoin O'Brien, Niamh Nic Daeid and Sue Black, "Science in the court: pitfalls, challenges and solutions", Philos Trans R Soc Lond B Biol Sciv.370(1674) (August 5, 2015), (footnotes omitted) available at https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4581010/.

332. 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 "a 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) . . . .

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

334. District 22, City of St. Louis, had only one social worker (who also was an attorney) in September 2016, in an office that in fiscal year 2016 was assigned 4,199 cases. Fox Affidavit ¶ 5, Fiscal Year 2016 Annual Report at 28.

335. Sarah Johnson from District 22 testified that there is only one social worker in the City of St. Louis office for 27 attorneys. She testified that all of her juvenile cases would benefit from the assistance of a social worker but she is not able to have that assistance. Sarah Johnson Deposition, October 6, 2017, at 93.

336. Assistant defender Walter Stokely wrote:

> One of the legal assistants in our office has a master's degree in social work and helps clients connect with social support services. Because support staff cannot work more than 40 hours per week, however, I am forced—when I can—to pick up the slack and play the role of social worker in helping people get their licenses

> reinstated, or find housing or addiction treatment facilities, among other things.

Stokely Affidavit ¶ 8.

I. MSPD Suffers From Inadequate Supervision of Its Staff

337. MSPD has recognized the need for effective supervision. In its Public Defender Caseload Standards document dated June 19, 2009, at 5, the Commission wrote:

> MSPD's experience has shown that effective management and supervision within a district office require an average of 1.5 hours per week of supervisor time per employee supervised. E.g., in an office of 3 attorneys and 2 support staff, the District Defender should expect to spend an average of 7.5 hours per week [5 employees x 1.5 hours] on management and supervisory responsibilities.

338. There should be one full-time lawyer supervisor with no caseload for every ten attorneys supervised. *See, e.g.*, the Washington State Bar Association Standards For Indigent Defense Services (2011):

> STANDARD TEN: Supervision
>
> Each agency or firm providing public defense services should provide one full-time supervisor for every ten staff lawyers or one half-time supervisor for every five lawyers. Supervisors should be chosen from among those lawyers in the office qualified under these guidelines to try Class A felonies. Supervisors should serve on a rotating basis, and except when supervising fewer than ten lawyers, should not carry caseloads.

http://www.wsba.org/~/media/Files/Legal%20Community/Committees_Boards_Panels/Council%20on%20Public%20Defense/Standards%20for%20Indigent%20Defense%20Services%20Approved%20by%20BOG%20as%20of%209%2022%2011.ashx.

338. A supervisor who carries a caseload should reduce his or her caseload by the amount of time that is required for supervision. For example, if a supervisor is supervising six attorneys, the supervisor should carry no more than 4/10 of a caseload. National Study Commission on Defense Services Guideline 4.1 includes numerical staffing ratios, e.g., there must be one supervisor for every 10 attorneys, or one part-time supervisor for every 5 attorneys. I interpret this to mean that if there are six attorneys to be supervised, that requires a .6 FTE supervisor.

339. Missouri Rule of Professional Conduct 4-5.1 states in part:

> (b) A lawyer having direct supervisory authority over another lawyer shall make reasonable efforts to ensure that the other lawyer conforms to the Rules of Professional Conduct.

> (c) A lawyer shall be responsible for another lawyer's violation of the Rules of Professional Conduct if:
>
> (1) the lawyer orders or, with knowledge of the specific conduct, ratifies the conduct involved; or
> (2) the lawyer is a partner or has comparable managerial authority in the law firm in which the other lawyer practices, or has direct supervisory authority over the other lawyer, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

339. The ABA Opinion 06-441 makes clear an ethical responsibility for supervisors regarding workload:

> Lawyer supervisors, including heads of public defenders' offices and those within such offices having intermediate managerial responsibilities, must make reasonable efforts to ensure that the other lawyers in the office conform to the Rules of Professional Conduct. To that end, lawyer supervisors must, working closely with the lawyers they supervise, monitor the workload of the supervised lawyers to ensure that the workloads do not exceed a level that may be competently handled by the individual lawyers.

ABA Ethics Opinion 06-441, supra.

340. MSPD and its supervisors, as detailed in this report, understand that the caseloads carried by Missouri defenders do not permit them consistently to conform to the Rules of Professional Conduct and provide competent, diligent representation to their clients and maintain adequate communication with them. While some of the supervisors have made some efforts to comply with the requirements of ABA Ethics Opinion 06-441, more could be done.

341. As outlined above, District 7 Defender Mr. Cardarella at the end of 2016 was responsible for supervising 12 attorneys, two investigators, one legal assistant, and four clerks. In my opinion, he should not have had an assigned caseload. According to the MSPD's own calculations, he should have been spending 28.5 hours per week in management and supervision, which should have reduced his caseload accordingly. Yet he had 224 open cases. There was no way he could provide either effective management and supervision or client representation with that workload.

342. Mr. Cardarella is not alone in the state in having too many cases to be able to supervise his staff. On the day of the snapshot of caseload provided by MSPD, District 32 Director Christopher Davis had 105 open cases. Spreadsheet of open cases April 4, 2016, attached to July 25, 2016 Letter to Mr. Williamson from Ms. Shipma. As of April 2016, MSPD reported that District 32 had 11 attorneys. In my opinion, a District Defender supervising 11 attorneys should have no assigned caseload.

343. District 2 Defender Kevin Locke had 141 open cases. *Id.*

344. District 26 Defender Karie Comstock had 122 open cases. *Id.* As of April 2016, MSPD reported that District 26 had seven attorneys.

345. District 37 Defender Donna Anthony had 86 open cases. *Id.* As of April 2016, MSPD reported that District 37 had four attorneys.

346. District 30 Defender Dewayne Perry had 111 open cases. *Id.* As of April 2016, MSPD reported that District 30 had seven attorneys.

347. District 22 Defender Mary Fox in September 2016 was supervising 30 attorneys and 13 support staff, yet she had six open homicide cases on her own caseload. Ms. Fox stated: "If I was not forced to maintain a docket of cases, I would be able to provide more consistent and in-depth training, mentoring, and supervision for my attorneys. Fox Affidavit ¶ 4.

348. Devon Pasley is a team leader in District 16. In addition to her managerial and administrative duties, and her supervision of seven junior attorneys, she maintains her own caseload of approximately 25 cases, "all of which involve serious felonies or other complex legal issues." She says, "I am required to maintain an active caseload because our office does not employ a sufficient number of trial attorneys to handle the number of cases to which we are assigned." Affidavit of Devon Pasley, February 7, 2017.

349. It appears that there is minimal supervision of the work of the Missouri defender attorneys and while the MSPD Guidelines outline a comprehensive approach to the practice, in reality there are minimal expectations of what the attorneys can do for their clients.

350. The State's failure to provide adequate oversight and supervision of the management of the caseload and to respond to the requests for more attorneys results in the District Defenders violating their ethical obligation to limit caseloads to what the attorneys can reasonably handle. See, RPC 4-5.1.

351. An example of the failure to provide adequate supervision is reflected in the appraisal of Mr. M, District Defender in Area 15.

352. In a December 2016 appraisal of Mr. M's work an MSPD official wrote: "Your approach to the District Defender position is not within the range of other MSPD District Defenders in that there is no identifiable focus on management responsibilities or on caseload." [The appraisal is dated December 2017 but it appears that it was written in December 2016.]

353. While recognizing that his office had a caseload at 236% of capacity, MSPD criticized Mr. M because he did "not regularly review performance" and had "few if any systems or expectations for timely identifying strengths, weaknesses, opportunities and need for intervention and change, and accountability." *Id.*

354. MSPD criticized Mr. M for not having done timely appraisals of staff who could be eligible for promotion. *Id.*

355. MSPD wrote: "…this lack of effective leadership diminishes morale and the ability of the lawyers in the office to do their best work for clients in a collaborative, efficient, client centered environment, focusing on aggressive litigation." *Id.*

356. MSPD noted that Director Barrett had

> let you know that if your lawyers believed they were significantly overworked, it would be an opportunity to invoke the rules on behalf of your lawyers as part of an effort to address their workload. You agreed that your lawyers were in fact overworked, that you would follow up with them about using the rules on their behalf but then you never followed up with Director Barrett.

Id.

357. Noting that the District Defender had long experience in the Trial Lawyer College, MSPD criticized him because he had "no regular, structured case review with individuals or groups within the office using the skills and techniques that" he had learned over the years. *Id.*

358. MSPD criticized the District Defender because "new lawyers are going to handle depositions on serious sex cases alone." In addition, even though he had second chaired seven jury trials in five years, he had not provided written assessments of the lawyers' work. And, "There is no identifiable system in place or expectation so that you ensure that lawyers who try cases in your office are adequately prepared and have 2nd chairs appropriate given the nature of the case and level of experience of the lawyer." *Id.*

359. MSPD criticized the District Defender because "You do not have an identifiable plan or strategy to address some of the systemic issues in your jurisdiction and have made no effort in this area." *Id.*

360. Apparently, the District Defender had been counseled in November 2015 and May 2016 and had made no improvements. *Id.*

361. This appraisal of a District Defender indicates both that that district had weak supervision for a period of years and that MSPD allowed that weakness to continue.

362. In my opinion, the lack of effective supervision in Public Defenders' Offices in Missouri 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." It also raises questions about the supervisors' compliance with Rule 4-5.1 of the Missouri Supreme Court's Rules of Professional Conduct.

J. Missouri's Public Defenders Are Unable Consistently to Meet Their Ethical Obligations

363. The Missouri Supreme Court has emphasized the ethical responsibilities of public defenders:

> This Court's Rules of Professional Conduct also impose on all counsel an "ethical duty to provide effective assistance of counsel to [their] clients." *Pratte,* 298 S.W.3d at 890; *see also* Rules 4–1.1, 4–1.3, 4–1.4., 4-5.1 Counsel violates these rules if she accepts a case that results in a caseload so high that it impairs her ability to provide competent representation, to act with reasonable diligence and to keep the client reasonably informed. *See* Rules 4–1.1, 4–1.3 and 4–1.4.

Waters, supra, 370 S.W. 3d at 607.

364. The Supreme Court emphasized "counsel's ethical obligation not to accept work that counsel does not believe he or she can perform competently." *Id.*

365. The Court held that the Sixth Amendment and ethics rules require that "counsel consider whether accepting an appointment will cause counsel to violate the Sixth Amendment and ethical rules, before determining whether to accept or challenge an appointment." *Id.* at 609.

366. The Court explained that "an attorney's acceptance of a new case violates Rule 4–1.7 if it compromises her ability to continue to provide effective assistance to her other clients." *Id.* at 607

367. The *Waters* Court cited with approval a California case noting that "a conflict of interest is inevitably created when a public defender is compelled by his or her excessive caseload to choose between the rights of the various indigent defendants he or she is representing." *Id.* at 608 (citation omitted).

368. The National Association for Public Defense has recognized that "Excessive workloads in public defense delivery systems are an ethical issue." NAPD Statement on the Necessity of Meaningful Workload Standards for Public Defense Delivery Systems (March 19, 2015), available at http://www.publicdefenders.us/files/NAPD_workload_statement.pdf.

369. The American Bar Association has a formal ethics opinion that lawyers with workloads that prevent competent and diligent representation should not accept new clients.

> All lawyers, including public defenders and other lawyers who, under court appointment or government contract, represent indigent persons charged with criminal offenses, must provide competent and diligent representation. If workload prevents a lawyer from providing competent and diligent representation to existing clients, she must not accept new clients. If the clients are being assigned through a court appointment system, the lawyer should request that the court not make any new appointments. Once the lawyer is representing a client, the lawyer must move to withdraw from representation if she cannot provide competent and diligent representation.

Formal Opinion 06-441 Ethical Obligations of Lawyers Who Represent Indigent Criminal Defendants When Excessive Caseloads Interfere With Competent and Diligent Representation, May 13, 2006, Available at https://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls_sclaid_def_ethics_opinion_defender_caseloads_06_441.authcheckdam.pdf.

370. Missouri defenders, as recounted above, recognize that they have too many cases but, at least until quite recently, they continue to carry them or they resign. Former defender attorney Matthew Gass wrote: "Because of the extremely high volume of cases and shortage of attorneys in District 15, I believe that we were rarely providing the type of quality representation to our clients, as a whole, that they are entitled to." Affidavit of Matthew Gass.

49. Mr. Gass added:

> I joined the public defender's office because I truly care about helping indigent defendants who cannot afford representation. The reality I found was that due to extremely high caseloads, understaffed office, and lack of resources, I was not able to provide the level of representation I believed was my duty to provide. I felt obligated to resign as a result. Since July of 2015, I am the fourth attorney from the District 15 office to resign.

Gass Affidavit ¶ 20.

371. Missouri's public defenders are not able consistently to comply with Missouri Rule of Professional Conduct **4-1.1: COMPETENCE**:

> A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

372. The Commentary to RPC 4-1.1 provides in part:

> [1] In determining whether a lawyer employs the requisite knowledge and skill in a particular matter, relevant factors include the relative complexity and specialized nature of the matter, the lawyer's general experience, the lawyer's training and experience in the field in question, the preparation and study the lawyer is able to give the matter, and whether it is feasible to refer the matter to, or associate or consult with, a lawyer of established competence in the field in question. In many instances, the required proficiency is that of a general practitioner. Expertise in a particular field of law may be required in some circumstances….
>
> [4] A lawyer may accept representation where the requisite level of competence can be achieved by reasonable preparation. This

> applies as well to a lawyer who is appointed as counsel for an unrepresented person. See also Rule 4-6.2.
>
> [5] Competent handling of a particular matter includes inquiry into and analysis of the factual and legal elements of the problem and use of methods and procedures meeting the standards of competent practitioners. It also includes adequate preparation. The required attention and preparation are determined in part by what is at stake; major litigation and complex transactions ordinarily require more extensive treatment than matters of lesser complexity and consequence. An agreement between the lawyer and the client regarding the scope of the representation may limit the matters for which the lawyer is responsible.

373. Missouri's public defenders do not fully comply with Rule of Professional Conduct 4-6.2: ACCEPTING APPOINTMENTS which is referenced in the rule on competence:

> [2] For good cause a lawyer may seek to decline an appointment to represent a person who cannot afford to retain counsel or whose cause is unpopular. **Good cause exists if the lawyer could not handle the matter competently, see Rule 4-1.1,** or if undertaking the representation would result in an improper conflict of interest, for example, when the client or the cause is so repugnant to the lawyer as to be likely to impair the client-lawyer relationship or the lawyer's ability to represent the client. A lawyer may also seek to decline an appointment if acceptance would be unreasonably burdensome, for example, when it would impose a financial sacrifice so great as to be unjust. [Emphasis added.]

374. When lawyers have too many cases to be able to investigate and prepare their cases appropriately, they are not able to comply with the ethical rule on competence.

375. Missouri's public defenders are not able consistently to comply with Missouri RULE of Professional Conduct 4-1.3: DILIGENCE, which provides: "A lawyer shall act with reasonable diligence and promptness in representing a client." The commentary provides in part:

> [2] A lawyer's work load must be controlled so that each matter can be handled competently.
>
> [3] Perhaps no professional shortcoming is more widely resented than procrastination. A client's interests often can be adversely affected by the passage of time or the change of conditions; in extreme instances, as when a lawyer overlooks a statute of limitations, the client's legal position may be destroyed. Even when the client's interests are not affected in substance, however, unreasonable delay can cause a client needless anxiety and undermine confidence in the lawyer's trustworthiness. A lawyer's

> duty to act with reasonable promptness, however, does not preclude the lawyer from agreeing to a reasonable request for a postponement that will not prejudice the lawyer's client.

376. Missouri's public defenders generally do not have a controlled workload that allows them to handle each matter competently.

377. Missouri's public defenders often seek continuances of their clients' cases because they are not prepared. In many cases, these continuances adversely affect their clients and cause their clients needless anxiety and undermine confidence in the lawyer's trustworthiness.

378. On September 7, 2017, the Missouri Supreme Court heard oral arguments on a case involving bar discipline for a public defender who had, according to the chief disciplinary counsel, failed to communicate with six of his clients. As the Supreme Court summary of the case noted, "circuit courts had found Hinkebein had abandoned these clients after failing to file an amended motion for postconviction relief on the clients' behalf, despite having received extensions of time to do so." *In re: Karl William Hinkebein*, Summary Case No.SC96089, formerly available at https://www.courts.mo.gov/file.jsp?id=115188.[2]

379. The Court's summary continued:

> Evidence also was presented that Hinkebein suffers from chronic, severe health problems that detrimentally affected his performance in the time frame in question; has a strong work ethic and a high-quality work product; and was carrying a large workload with little flexibility for the office to refuse to accept cases. In its October 2016 decision, the hearing panel concluded Hinkebein failed to represent his clients diligently, violating Rule 4-1.3, and failed to keep his clients reasonably informed about the status of their cases, violating Rule 4-1.4. The panel recommended he be placed on probation for one year with certain conditions. The chief disciplinary counsel now asks this Court to suspend Hinkebein's law license with no leave to apply for reinstatement for one year; Hinkebein argues a reprimand is the appropriate sanction.

Id.

380. The defender attorney admitted that he violated Rule 4-1.3 in that he did not diligently represent his clients, and that he violated Rule 4-1.4(a) in that he failed to keep his clients reasonably informed about the status of their cases. Respondent's Brief (May 17, 2017), available at https://www.courts.mo.gov/file.jsp?id=115189.

381. The defender's attorney argued for him: "Respondent's violations of the diligence and communications rules are primarily attributable to his severe health problems and excessive

[2] I had read this summary from the Supreme Court's web page. I can no longer find it on their web page.

caseload. Both are factors outside Respondent's control. Respondent had no viable options related to his workload." *Id.* at 8.

382. The attorney noted the defender's supervisor's testimony:

> I made a poor assumption and probably did a very poor job of deadline with that because my impression was -- or else I was turning a blind eye to his ability to continue on. Karl, out of all the people in our office, may be the last person to ask for help. He just doesn't function that way. He is dedicated and has a very good work ethic. It's just his personality. I think I made a poor assumption that he was able to keep up and he wasn't and ultimately things snowballed from there to where we realized there were several cases in trouble.

Id. at 9.

383. The appellate attorney added:

> Respondent does not have the option to reject assignments, unless he has a conflict of interest. If he refused an assignment, he believes he would be fired.
>
> If Respondent had gone to the District Defender and informed him that Respondent was missing deadlines, the District Defender really would not have had any options. Individual public defenders are trapped.

Id. at 10 (citation omitted)

384. The appellate attorney also argued:

> During the time frame in question, MSPD was using the Public Defender Commission Caseload Crisis Protocol as its caseload standard. During the time frame in question, MSPD was over the caseload standard 46 of the 48 months in Area 67. MSPD was taking in more cases than it believed it could handle and this was a period of very high workload.

Id.

385. Appellate counsel also pointed out the extensive travel the defender had to do. *Id.*

386. Appellate counsel emphasized the heavy caseload that the defender carried and recounted the supervisor's experience of assigning him more cases than other attorneys received.

> Respondent testified that he puts his best effort into every case, even though no one would probably know if he did less than his

> best. Respondent is always looking for an edge for his clients and trying to challenge the law and raise claims to the benefit of his clients. As of the date of the hearing, Respondent's caseload was approximately 110, which was higher than anyone else in his office. The District Defender believes that he cheated on his normal approach to caseload parity regarding Respondent and assigned Respondent a heavier caseload because it included a lot of serious cases, based on Respondent's work ethic and willingness to work. Respondent typically works more hours than any other attorney in the office. From 2010 until 2014 when the cases at issue were reassigned, Respondent believes he had an unreasonable number of cases assigned to him.

Id. at 12 (citations omitted)

387. The appellate attorney added: "Respondent was working far beyond what should have been expected of him in an effort to do his best to represent all of his clients, despite his health and unreasonable caseload." *Id.* at 15. The attorney concluded: "Respondent had no intent to violate the rules. Respondent was doing the best he could under impossible circumstances." *Id.* at 21

388. This discipline case presents several problems. First, it appears that at least in part, the defender's struggle with an excessive caseload, (110 open post-conviction cases), resulted in a court finding that he had abandoned his clients, in violation of ethical rules.

389. Second, the defender's supervisor admitted that he did not pay close enough attention to the lawyer's ability to meet his workload obligations. See RPC 4-5.1.

390. Third, the supervisor apparently assigned the defender more cases than his colleagues were receiving.

391. Fourth, the defender thought he would be fired if he declined to accept a case.

392. Fifth, the defender felt trapped by his caseload situation.

393. Sixth, it appears that MSPD and the District in question were taking on more cases than they felt they could effectively handle.

394. This case supports the conclusion that the defenders routinely accept caseloads that they know they cannot effectively represent, that the supervision system is not effective, and that the defenders see no way to address their ethical concerns.

395. This case also supports the conclusion that the defenders are not able to comply with their ethical responsibilities to their clients regarding diligence and communication.

396. This case also supports the conclusions identified elsewhere in this report that the MSPD does not comply with Principles 5 (controlled workload) and 10 (supervision) of the ABA Ten Principles of a Public Defense Delivery System.

397. This case also demonstrates MSPD's failure to follow the ABA Eight Guidelines of Public Defense Related to Excessive Workloads (2009), available at https://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls_sclaid_def_eight_guidelines_of_public_defense.authcheckdam.pdf. I will highlight several of the Guidelines here that apply to this case.

398. Guideline 1 states: "The Public Defense Provider avoids excessive lawyer workloads and the adverse impact that such workloads have on providing quality legal representation to all clients." The Guideline then lists a series of tasks lawyers need to complete for their clients.

399. Guideline 2 states: "The Public Defense Provider has a supervision program that continuously monitors the workloads of its lawyers to assure that all essential tasks on behalf of clients, such as those specified in Guideline 1, are performed."

400. Guideline 3 states: "The Public Defense Provider trains its lawyers in the professional and ethical responsibilities of representing clients, including the duty of lawyers to inform appropriate persons within the Public Defense Provider program when they believe their workload is unreasonable." As it appears the defender in this case thought he would be fired if he declined a case and that bringing his workload issues to the supervisor would have led to no remedy, it appears that MSPD, prior to the Court's decision in this case, had not been training its lawyers on their duty to report unreasonable workload.

401. Because the supervisor was not paying attention to the defender's failure to meet his obligations to his clients, MSPD was not complying with Guideline 4: "Persons in Public Defense Provider programs who have management responsibilities determine, either on their own initiative or in response to workload concerns expressed by their lawyers, whether excessive lawyer workloads are present." See also, RPC 4-5.1.

402. The Missouri Supreme Court suspended Mr. Hinkebein indefinitely but stayed the suspension and placed him on probation for one year. Supreme Court Order, Supreme Court No. SC96089, September 12, 2017, available at https://www.courts.mo.gov/page.jsp?id=117575.

XVIII. THE MSPD IS NOT PROVIDING EFFECTIVE REPRESENTATION TO ITS JUVENILE CLIENTS

403. This Court noted the 2013 report by the National Juvenile Defender Center that "concluded that approximately 60 percent of court-involved children in Missouri do not receive appointed counsel." The Court added:

> The report also noted deficiency in those cases that do include representation similar to those discussed above, specifically regarding lack of representation at detention hearings, lack of investigations, failure to file motions or challenge charges or evidence, and failure to represent clients after disposition during probation review or on appeal.

Church v. Missouri, 2017 WL 3383301, at *5.

404. On July 31, 2015, the United States Department of Justice issued "Investigation of the St. Louis County Family Court St. Louis, Missouri". Available at https://sites.ed.gov/underservedyouth/files/2017/01/Report-Investigation-of-the-St-Louis-County-Family-Court.pdf

405. The Report found that children in delinquency proceedings in St. Louis were denied their due process right to adequate representation, for a variety of reasons including the "staggering caseload of the sole public defender assigned to handle all indigent juvenile delinquency cases in St. Louis County". In addition, there was "an arbitrary system of determining eligibility for public defender representation", and significant gaps in representation between detention hearings and subsequent court appearances." *Id.* at 2.

406. The Justice Department also found equal protection violations, finding that "Black children are subjected to harsher treatment because of their race. *Id.* at 3.

407. The Justice Department wrote that "The MSPD continues to be stretched beyond reasonable capacity" and cited the MSPD 2012 Annual Report that stated: "We now face the situation where there are many more cases than there are lawyers to handle them." *Id.* at 9.

408. As of the date of the Justice Department report, "there continues to be just one public defender assigned to handle all juvenile cases in St. Louis County." *Id.* at 12. It is my understanding that in 2017 there now are two defenders to represent juveniles, including on diversions and on possible certifications to adult court.

409. Sarah Johnson, director of juvenile defense and policy for the MSPD and Deputy District Defender for the city of St. Louis trial office, testified that there are now two "defender type attorneys," one of whom is paid from funds outside of the MSPD budget, in St. Louis County. Deposition of Sarah Johnson, October 6, 2017, at 43.

410. Ms. Johnson testified that some young people who are entitled to counsel are going without counsel in Missouri's juvenile courts. Id at 24.

411. Ms. Johnson testified that for the most part the NJDC Report's conclusions "ring true" today. Deposition at 28.

412. This Court cited the Justice Department report on the deficiencies of the one defender's practice:

> In 2014, that lone defender handled nearly 400 juvenile cases. The DOJ further found that during the same period the public defender's office in St. Louis County appeared to engage in little investigation, resolved 277 of the cases but took only three to trial, filed just seven pretrial motions, never challenged probable cause during detention hearings, never called a defense witness other than, in one instance, the child respondent, and did not hire a single expert witness.

Church v. Missouri, 2017 WL 3383301, at *5 (citation omitted).

413. According to the MSPD FY 2016 Report, statewide the defenders did not open a single juvenile appeal that year and closed only one. FY 2016 Report at 58. The office was assigned 1,677 juvenile cases that year. FY 2016 Report at 6.

414. The state reported 2,615 delinquency and 638 status offense cases—for a total of 3,253 juvenile cases— being filed in FY 2016. Missouri Judicial Report Supplement Fiscal Year 2016 at 161.

415. These statistics suggest two major disturbing conclusions: 1) More than 900 children likely went unrepresented that year and 2) Almost none of the juvenile delinquency cases went to trial, as no appeals were filed.

416. MSPD recognized the need to have a specialized approach to juvenile representation, having established Youth Advocacy Unit attorney positions in St. Louis and Kansas City. MSPD website at http://www.publicdefender.mo.gov/legal/youth_advocacy.htm (last visited August 27,2017). The Unit's attorneys, according to the web page, "participate in a variety of national training opportunities that specifically address the special issues involved in juvenile defense." One can infer that the other districts in the web page did not provide this specialized training. But "Missouri's ongoing budget crisis resulted in the elimination of the MSPD Juvenile Advocacy Units in 2007." MISSOURI: JUSTICE RATIONED, An Assessment of Access to Counsel and Quality of Juvenile Defense Representation in Delinquency Proceedings (Spring 2013), at 25, available at http://njdc.info/wp-content/uploads/2013/11/Missouri-Assessment.pdf

417. According to the web page, the unit had "staff disposition specialists" with master's degrees in social work and counseling who "conduct social investigations and locate available resources to help the client with treatment needs." One can infer that the other districts in the state did not have these disposition specialists available.

418. Mr. Barrett cited the findings of the 2013 National Juvenile Defender Center Report in his Fiscal Year 2018 Draft Budget Request (at 21):

> …children facing criminal or status offenses in Missouri's juvenile justice system frequently do so without the benefit of counsel or without adequate representation through all critical stages. There are significant gaps in both access to and quality of representation provided to youth….

419. Mr. Barrett reported that in 2012 approximately 4000 children went unrepresented in offender cases. *Id.*

420. Mr. Barrett's 2018 draft budget sought $1,055.751 to reinstate the two juvenile units in St. Louis and Kansas City, as well as "one additional attorney in each office to represent juveniles certified to stand trial as an adult and to serve as a statewide juvenile resource attorney to assist local offices across the rest of the state." *Id.*

421. Sarah Johnson testified about the specialized requirements of representing youth:

> Juvenile defense is an absolute specialty. It requires knowledge in adolescent brain development. It requires knowledge in specific laws. It requires knowledge in procedural rules that are different. It requires an ability to work with families to a greater extent in my opinion than in other cases. It also requires a knowledge of disposition resources and it requires an ability to work with and understand children.

Deposition of Sarah Johnson, October 6, 2017, at 18-19.

422. There is minimal training for MSPD attorneys about juvenile practice. In the two training sessions for new attorneys, there is no juvenile specific component. *Id.*, at 50.

423. There is an annual juvenile training session, but it is not mandatory and only a small percentage of MSPD attorneys have attended it. In 2017, 20-25 attorneys attended. *Id.*, at 52.

424. Five MSPD attorneys have attended a juvenile immersion training program organized by Georgetown University and the National Juvenile Defender Center. *Id.*, at 53.

425. Even though Ms. Johnson and St. Louis City defenders seek to be a model for other attorneys doing juvenile public defense in the state, Ms. Johnson is not able to do everything she thinks she needs to do on her cases. *Id.*, at 61.

426. Ms. Johnson gave an example of what she is not always able to do for her clients because she does not have enough time or sufficient support staff:

> Q. Are there things that you would like to do in cases, but are unable to do?
> A. Yes.
> Q. And why are you unable to do things that you would like to do in other cases?
> A. Because of time constraints, because of obligations to other clients and limitation. When you are tasked with a child who is sitting in a detention center, a number of children who are sitting in a detention center, you know, you don't want them to languish.
> 12 Q. Can you give me one example of something that you can think of that goes by the wayside because of time?
> A. I was asked specifically about placement in inpatient or residential facilities.
> My ability to investigate options such as those, I'm not able to do on every single case.
> Q. Why don't you assign that task to someone else to investigate?
> A. Because they -- either the investigator or the social worker who would be doing that is also over loaded.

Sarah Johnson Deposition at 179.

XIX. CONCLUSION

427. This Court has cited with approval the U.S. Department of Justice Statement of Interest in the New York case of *Hurrell-Harring*, the language of which applies to Missouri:

> The United States explained the cognizable obstacles to indigent defense outside of the *Strickland* context:
>
> Substantial structural limitations force even otherwise competent and well-intentioned public defenders into a position where they are, in effect, a lawyer in name only. Such limitations essentially require counsel to represent clients without being able to fulfill their basic obligations to prepare a defense, including investigating the facts of the case, interviewing witnesses, securing discovery, engaging in motions practice, identifying experts when necessary, and subjecting the evidence to adversarial testing.

Church v. Missouri, 2017 WL 3383301, at *19 (citing U.S. Statement of Interest, Case No. 8866–07, Hurrell–Harring v. State, 15 N.Y.3d 8, 904 N.Y.S.2d 296, 930 N.E.2d 217, 227 (2010)).

428. The statement of District 16's Team Leader could apply to most of the practice of Missouri defenders:

> While I am familiar with the MSPD's Guidelines for Representation and support the model of representation that they reflect, the realities of our day-to-day practice in District 16—including having to manage overwhelming workloads—make it very difficult for me and the attorneys I supervise to meet those requirements.

Affidavit of Devon Pasley, February 7, 2017.

429. Since the recent state Supreme Court disciplinary decision in *Hinkebein,* defenders and their supervisors have begun to confront and to challenge their inability to meet their own office's standards and their ethical obligations. Until the caseloads are dramatically reduced and the support resources significantly increased, it is likely the defenders will be unable to provide consistently effective representation to their clients.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Robert C. Boruchowitz Seattle, Washington October 16, 2017

Exhibit I

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
CENTRAL DIVISION

SHONDEL CHURCH, et al.,)
)
Plaintiffs,)
)
vs.) Case No.
) 17-04057-CV-C-NKL
)
STATE OF MISSOURI, et al.,)
)
Defendants.)

VIDEOTAPED DEPOSITION OF EDWARD GUINN
TAKEN ON BEHALF OF THE PLAINTIFFS
DECEMBER 12th, 2017

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Reporter's Note: The original exhibits were attached to the original transcript.

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
CENTRAL DIVISION

SHONDEL CHURCH, et al.,)
)
Plaintiffs,)
)
vs.) Case No.
) 17-04057-CV-C-NKL
)
STATE OF MISSOURI, et al.,)
)
Defendants.)

VIDEOTAPED DEPOSITION OF EDWARD GUINN, produced, sworn, and examined on the 12th day of December, 2017, between the hours of eight o'clock in the morning and twelve o'clock in the afternoon of that date at the law offices of ALARIS LITIGATION SERVICES, 2511 Broadway Bluffs, Suite 201, Columbia, Missouri 65201, before LISA BALLALATAK, a Certified Court Reporter within and for the State of Missouri, in a certain cause now pending IN THE UNITED STATES DISTRICT COURT, WESTERN DISTRICT OF MISSOURI, CENTRAL DIVISION, wherein SHONDEL CHURCH, et al. are the Plaintiffs and STATE OF MISSOURI, et al. are the Defendants.

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Also present:
Mr. Chris Tobin, Videographer
The Court Reporter:
MS. LISA BALLALATAK, CCR

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(The deposition commenced at 8:38 a.m.)
VIDEOGRAPHER: We're on the record. Today's date is December 12, 2017, and the time is 8:38 a.m. This is the deposition of Ed Guinn in the matter of Shondel Church et al. v. State of Missouri, et al., Case No. 1704057-CV-C-NKL in the United States District Court for the Western District of Missouri, Central Division. This deposition is being held at Alaris Litigation Services at 2511 Broadway Bluffs Drive, Columbia, Missouri. The court reporter's name is Lisa Ballalatak. My name is Chris Tobin. I'm the legal videographer. We are with Alaris Litigation Services.
Would the attorneys present please state their name for the record.
MR. SCHERZER: Aaron Scherzer for the plaintiffs.
MR. TARTAGLIO: Anthony Tartaglio also for the plaintiffs.
MR. RAMSEY: Steven Alan Ramsey for the State of Missouri and Governor Greitens.
MS. SHIPMA: Jacqueline Shipma for the MSPD defendants.
VIDEOGRAPHER: Would the court reporter

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please swear in the witness.
EDWARD GUINN,
of lawful age, being produced, sworn, and examined on behalf of the Plaintiffs deposes and says:
DIRECT EXAMINATION
BY MR. SCHERZER:
Q. So, Mr. Guinn, my name is Aaron Scherzer. I represent the plaintiffs in this case. Other than just when I introduced myself five minutes ago, have we ever met before?
A. No.
Q. Have you ever been deposed before?
A. Yes.
Q. How many times?
A. I think twice.
Q. And on what kind of cases?
A. They were civil litigation cases.
Q. Okay. Related to your job at the MSPD or ...
A. No.
Q. Okay. And have you taken depositions yourself?
A. Yes.
Q. About how many, ballpark?
A. More than a hundred.

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Q. Okay. Great. So you're obviously very familiar, then, with the ground rules of depositions and how everything works. I'll just go over it quickly -- not to bore you with things you already know, but just for the record. I'm going to ask you questions relevant to this case; you'll do your best to answer them truthfully and accurately, and remember that, of course, your testimony here is under oath. Does that all make sense?
A. Yes.
Q. There's a court reporter here, obviously, transcribing the deposition. If you could answer verbally rather than with hand gestures or headshakes so the court reporter can record your responses, that would be very helpful. Please just wait for me to finish my question before answering, and I'll, of course, wait for you to finish your answer before asking a follow-up question. Any of the attorneys here may have an objection. Unless they direct you not to answer, please just go ahead and answer the question. Of course, if you don't understand the question that I'm asking, feel free to just let me know that, and I'll rephrase or explain. You can take a break whenever you need it. Just let me know. The only thing I ask is if

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there's a question pending, just answer that question before we take a break.
Does that all make sense?
A. Yes.
Q. Great. How did you prepare for this deposition, Mr. Guinn?
A. I reviewed the case numbers on cases initiated in the last fiscal year and in this fiscal year so that I would have some familiarity with the case numbers that are coming through our office, and that's really about all I looked at. I did meet with counsel to discuss having my deposition taken, but that's all of the preparation I've done.
Q. Okay. When you say with "counsel," you mean with Ms. Shipma?
A. Correct.
Q. Did you bring any documents with you here today?
A. No.
Q. Okay. Mr. Guinn, by whom are you employed?
A. By the Missouri State Public Defender.
Q. And what's your current title?
A. District defender of Area 14.
Q. Okay. And how long have you been in that

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position?
A. Three years.
Q. Okay. Since 2014?
A. Approximately.
Q. Okay. And before that what -- what position did you hold?
A. I was an assistant public defender.
Q. In which office?
A. In the Area 14 office.
Q. In the Area 14? Okay. And when did you join that office?
A. In 2011.
Q. From 2011 to 2014, you were assistant public defender in Area 14, and from 2014 to the present, you're the district defender in that office?
A. Correct.
Q. And before 2011, what was your job?
A. I was a partner in the law firm of Ford Parshall & Baker.
Q. Sorry. Can you spell those last two names?
A. Parshall is P-a-r-s-h-a-l-l, and Baker is B-a-k-e-r.
Q. Okay. And for what time period were

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you --
A. I started working at Ford Parshall & Baker, I believe, in 1992 or '3 and retired from there in 2011.
Q. And were you a partner during that entire time period?
A. Not the entire time period. I -- honestly, today, I couldn't tell you when I became a partner. I'm guessing it would have been 2002 or '3.
Q. Okay. And before you worked -- you were first -- I presume before that, you were an associate?
A. Yes.
Q. And so before you joined Ford Parshall & Baker as an associate in 1992, what job did you have?
A. When I graduated from law school in 1991, I worked for Cullen Klein & Milt Harper, and went from Milt Harper's office to Ford Parshall & Baker. So I was with Cullen & -- I worked as a law clerk while I was in law school, and then was in their office a year, year and a half.
Q. And who are those -- Cullen Klein & Milt Harper, just for the record.

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A. They were lawyers here in Columbia, Missouri.
Q. Got it. Okay. So you worked for them for a year, and then you joined Ford Parshall & Baker as an associate?
A. Correct.
Q. And so then you said you retired in 2011 from Ford Parshall & Baker; is that right?
A. Uh-huh.
Q. And what made you join the Area 14 assistant -- the Area 14 office as an assistant public defender at that time?
A. I did -- I did not like being retired, and I had always wanted to do more public interest type law, and I've always practiced criminal law, so there -- there was an opening, and I applied, and I'm very pleased that I was selected to work there.
Q. So you decided to come out of retirement to become a public defender?
A. I did.
Q. And for how many months were you retired, approximately?
A. I'm guessing maybe four.
Q. Okay. So you realized pretty quickly that you -- retirement wasn't for you?

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A. I had some assistance from my wife in making that decision.
Q. Fair enough. And so -- thank you for explaining that.
So during the time that you were the -- the almost 20 years that you were at Ford Parshall & Baker, you were practicing criminal law?
A. I did criminal law and civil litigation.
Q. Some of each?
A. Yes.
Q. And in terms of the criminal law, was it all kinds of criminal law or anything in particular?
A. I think it would best be described as a general practice in a small town. I would classify Columbia as a small town. I did not do any murder cases -- what I would classify as serious felony offenses. We did do the lower-level felony and misdemeanor offenses.
Q. Got it. Okay. And was all of that work in the state courts in Columbia or was it around the state or ...
A. Civil litigation was all over the state. The criminal representation was primarily in Boone, Randolph, and Cooper County, which would be central Missouri.

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Q. Got it. Okay. So you mentioned you work in the -- or you're the district defender in the Area 14 office. Which counties are included in Area 14?

A. Randolph, Howard, Macon, Linn, and Chariton Counties.

Q. Okay. And that -- well, I'll come back to that in a second.

That covers a fair amount of geographical distance; is that right -- those five counties?

A. Yes.

Q. Okay. And your office represents people in each of those five counties at any given moment; is that correct?

A. Correct.

Q. And are the courthouses in -- is there one -- how many courthouses do the attorneys in your office practice in?

A. Each primary county -- Randolph, Macon, Chariton, Howard, and Linn County, each one of those counties has one courthouse. They're all rural counties. The courthouses are situate at the county seat for each county.

Q. Okay. And where is your office located?

A. Our office is located in Moberly,

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Missouri.

Q. Okay. And the furthest -- what is the furthest courthouse from your office?

A. Well --

Q. Of the five that you practice in.

A. Of the primary counties, Linn County -- the courthouse is located in Linneus. That's approximately a 150-mile round trip from our office.

Q. Got it.

A. There are -- and just to expand slightly, there are additional travel requirements because of changes of venue and conflict representation in other counties. The farthest counties we service, as far as conflicts are concerned, we go to Chillicothe to the west and Kirksville to the north. Chillicothe is an additional approximately 30 miles from Linneus, so it's about a 180-mile round trip, maybe a little more.

Q. And have those conflict cases slowed down as a result of the recent budget allocation for conflict cases?

A. Yes, they have. We still have some cases that are still being resolved, but it has significantly reduced in the last year.

Q. Okay. Prior to this most recent year,

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when there was a specific allocation for conflict cases, what percentage of your docket was conflict cases, approximately?

A. I don't think I -- I can't give you a number because I've never really looked at that number. I can tell you anecdotally that depending on where the conflict came from -- in other words, from Livingston County, you would average approximately five to ten conflict cases all of the time. Adair County would be generally less, maybe five on average.

Q. Okay. So given -- does that geographical distance create additional -- putting aside for the moment the conflict cases but just the geographical distance that your office has to cover that you just described, does that create any obstacles for you or your line attorneys' representation of clients?

A. Well, certainly, it involves more time because of the travel. It does not just include going to court, because the clients themselves live in smaller rural counties -- Linn County, for example. Our clients come from towns of Brookfield and Marceline, who are very small. And, generally, the clients don't have adequate transportation, as a general rule, so it requires that the attorney go

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to -- typically, would go to the courthouse in Linneus or the library in Brookfield to actually meet with clients to try and accommodate their ability to travel and meet with their lawyer. It gets a little more complicated with clients that are in custody because Linn County does not have their own jail facility, so they house our clients and other -- that are in custody in other jails. It may be in Macon or it may be in Keytesville, Missouri, or it can be as far west as Pattonsburg, Missouri, which is about an hour and 45 minutes to two-hour drive from our office.

Q. Okay. And in those -- so you mentioned a few places. The -- even just putting aside for a second the individuals who are in custody, but the individuals who are not in custody and the individual -- the attorneys in your office need to meet with them at -- you mentioned the library or the courthouse. Are there confidential places there where your attorneys can meet with clients?

A. Yes. Yes.

Q. And are there confidential places -- now, turning to those who are in custody, are there confidential places where your attorneys can meet with clients who are in custody in those areas?

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A. The county jails do have confidential meeting areas.

Q. Okay. And just while we're on the topic of client communication, what about phone calls for those who are -- for those of your clients who are incarcerated? Do they have ready access to phone calls to your office?

A. Typically, no. There is -- there are some exceptions to that in a couple of the counties. The typical arrangement in the jails in central Missouri are that they have a pay-to-call system that is not secure; it's recorded by the sheriff's office. It also requires our clients to spend anywhere from $2 to $5 per call for them to call out -- to call our office, if they're in custody, and they simply can't afford that.

Q. And even if they could afford it, it would be a recorded phone call and not a confidential attorney-client communication?

A. That's correct. And most of the facilities that we deal with do not have the ability for us to call in through a secure line to speak with our clients.

Q. Okay. So if for those -- speaking now to those of your clients who are in custody, if your --

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if you or your attorneys want to have confidential communication with them, you need to visit them in prison; you don't have another means of communicating with them?

A. Correct.

Q. Okay. And, obviously, as you described, that requires sometimes quite lengthy travel times in order to make those visits?

A. Depending on where the individual is being held, certainly, there -- it has -- the lawyer has to leave our office and drive to the jail to meet with them.

Q. And it could be for up to a two-hour round trip?

A. That would be the longest drive time.

Q. Okay. So, Mr. Guinn, I want to ask you -- you're a district defender, as you've described. Tell me about your day-to-day responsibilities.

A. Well, I'm responsible for the running of the office, the supervision of the assistant public defenders that are in my office and the office staff. I also carry a caseload, so I have responsibilities of representing clients and meeting and maintaining contact with my clients.

Q. Okay. And I'll come back to your caseload

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in a minute. Can you describe your oversight and supervision of the attorneys in your office, in terms of how frequent it is, what that looks like?

A. Since we are a smaller rural office, we have six total lawyers, including myself. Since we're a smaller office, we have what I would call more of an open-door policy, so far as the attorney's access to me. We're all -- since we're so close in proximity to each other -- I mean, my attorneys come in and ask me questions, you know, as they have them daily -- sometimes more than once daily. We also -- as far as contact with the attorneys, we have staff meetings monthly where we look at cases, talk about cases, we try to have a component of reviewing current decisions that may have come out of the court of appeals and also discussions of problems that they are having either with their caseload numbers or just clients and cases in general.

Q. Got it. So it sounds like at least one of the topics that comes up fairly frequently is caseload and workload is that fair to say?

A. Correct.

Q. And that's both in the monthly meetings and in your individual contact with the

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line attorneys in your office?

A. Yes. I send an e-mail -- or try to send an e-mail out once a week talking to -- you know, asking, Do you have too many cases? Where are you at in the process of -- you know -- and, also, looking at the new applications that are coming in, trying to keep some idea of how many cases each individual -- each lawyer has and, kind of more importantly, what kind of cases they have.

Q. And when you say "what kind of cases," do you mean what class, in terms of seriousness of cases?

A. Yes. I think there -- I think it's important that we keep a handle on the -- how many serious felony offenses each lawyer has in their inventory of cases because of the time that's required to effectively represent someone in a serious felony case.

Q. Got it. And when you say you send an e-mail once a week, do you mean to the other five attorneys in your office?

A. Yes.

Q. Is that a group e-mail or an individual e-mail to each of them?

A. It's a group.

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Q. Okay. And do each of them respond just to you or to everyone?
A. Just -- no. Just to me.
Q. Okay. So you ask them, Just let me know what you're --
A. I ask them to let me know how -- if you've had too many cases, if you need to have some assistance in the current caseload you have, or if you're in a position to be able to take new cases.
Q. And do you ask them, Are you in a position to take new cases, like, say, for this upcoming week or ...
A. Yes.
Q. Okay. And what is typically -- I'm sure, obviously, it depends week by week, since you're sending this every week, but what is typically the response from your attorneys?
A. For the most part, I think the -- well, for the most part, the response is that, I'm okay. From time to time, lawyers will say, you know, I've got a lot on my plate, I need -- you know, I need some -- not be assigned some new cases. It really -- it's not something that you can determine, this is going to happen every week. There are other factors. How many cases are the prosecutors filing?

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I mean, there's -- so it's kind of the dynamic. And it also changes if -- you know, if a murder case comes in the door, that changes how many cases an individual lawyer can take at one time.
Q. Got it. Understood. And if someone says they are unable to take cases for any -- for either the next week or another time period for -- a longer time period, what actions, if any, do you take?
A. Well, we talk to other lawyers. I look at their case numbers, I look at how many cases each person -- each lawyer in our office has. I will ask other lawyers, Are you free to take the case? It sometimes depends on where it is. Since we have multiple counties that are a fairly good distance between courthouses, we can't always assign a case to another lawyer because of conflicting law days and because of the distances, they can't get from one court to another court to cover a case. Then, ultimately, I may take the case, if no one else is available.
Q. So when you said that -- at least a fair amount of the time, your attorneys respond, I'm okay, do you mean that they say, I'm okay to take more cases for this upcoming week? Is that --
A. Well, yes. I mean, that's --

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Q. That's the gist of it?
A. That's the gist of it. Even having them say that, it's not that I don't trust their judgment, but I do look at their numbers because I think it's human nature not to want to admit that you have more than you can handle or more than you can do.
Q. Is it also fair to say -- I mean, since it's such a small office, and it sounds like, you know, a pretty tight-knit office, given the close proximity you mentioned before, that the line attorneys in your office realize that if they say they can't take cases for a given week, that's putting cases on to either you or another attorney in your office?
A. Sure. I understand that.
Q. So there's not some -- if they say, I'm not available to take a case, there's not some knight in shining armor who can come and do something with that case, other than someone in your office. Is that right?
A. Correct.
Q. Okay. Do you think that may be part of the reason why they often say -- or some -- you know, in some frequency say that they are available

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to take at least some more cases for that upcoming time period?
A. I think that the lawyers in my office are very dedicated, and, certainly, they want to do their job and they're very diligent in how they do their job. And, again, as I said, I think it's human nature not to want to say, I can't -- I can't work as hard as someone else. There again, that's why I look at their cases and their case types so that they know that it's not a negative action if a case is assigned to someone else, it's because we're -- we need to do the best for the client -- what's in the client's best interest.
Q. So is it correct, then, that at least some of the time when someone says, I am able to take on some more cases for this week, you look at their caseload and determine that actually they aren't able to in order to provide effective representation for a client?
A. And that would be my opinion, of course.
Q. Right.
A. Because I look at them, and if the combination of the type of cases, the location, and the number of cases are such that I think they need help, I'm going to assign it to someone else.

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Again, that's my -- that's my best judgment of the situation as it is at that time. Again, it's very dynamic, because two or three days later, those numbers may change.

Q. Got it. Understood. And is it correct -- it sounds like you've testified, but just to confirm this for the record, it's correct that at least part of the time, even despite the human nature that you talked about and despite, you know, not wanting to put cases on others in the office, et cetera, that attorneys do write back, at least some of the time, and say, I'm not available to take further cases given my already high caseload at this time?

A. Yes.

Q. Okay. So you mentioned you have five line attorneys in your office other than yourself; is that right?

A. Correct.

Q. And is that the total number of positions -- attorney positions allocated to your office?

A. Yes.

Q. So there's not currently a vacancy in the office?

A. No.

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Q. What other staff do you have in the office other than the five attorneys -- line attorneys, plus yourself?

A. We have an investigator and we have two legal assistants.

Q. And what do the legal assistants do?

A. Open files. They also assist with filing. They do some of the initial e-filings with the court when they're opening cases, and they assist with -- I would call -- since I'm an older lawyer, I would call what were traditionally legal secretarial work. They will schedule depositions, they will call clients to set up appointments, if we ask them to. One of the more important functions is that they assist in getting our clients into drug or alcohol treatment programs. Again, they work at scheduling depositions and -- you know, pretty much most legal secretary functions.

Q. Great. Any other staff in the office other than those individuals that you've already identified?

A. No.

Q. Okay. Given your daily interaction with the other -- with the line attorneys in your office, would you say you're familiar with the standard litigation practices in your office?

A. Yes.

Q. So just for the remainder of the deposition, unless I indicate otherwise, if I'm asking a question, I'm asking it about your practice and the practice of the attorneys in your office in Area 14, rather than the statewide practice of the Missouri Public Defenders. Is that clear?

A. Yes.

Q. Okay. And you mention that you had a caseload. About how many cases do you handle a year?

A. Well, I don't -- I can't answer you how many cases I handle a year. Currently, I have my -- I have 80 cases that I'm representing individuals on. That will vary. I would estimate my average would be 55 to 65.

Q. Got it. So it's -- at least -- so you said 80 cases, so that means 80 open cases?

A. Eighty open cases.

Q. As of yesterday?

A. Yes.

Q. And that's sounds significantly higher than what you -- you said your average is about 55 to 65. Is there a reason for this -- that it's 80 as of yesterday or ...

A. Because -- well, because in about or November of this year, we were looking at the case numbers for individual lawyers. I had a couple of lawyers say, We're maxed out, we need some relief, and so I've -- I took a lot of cases not from them but the new cases that were coming in the door out of Randolph County so that they would be given the opportunity to work through their case numbers and work through their cases without getting more new cases.

Q. Got it. So you said "a couple." Is that two or three?

A. It was two lawyers out of -- it was out of Randolph County, because there had been a big influx of filings.

Q. Got it. And so -- you sorted of mentioned this earlier, but are there certain attorneys in your office who are assigned to each of the five counties that your office covers?

A. Yes.

Q. Okay. And how many attorneys are assigned to Randolph?

A. There are two lawyers that are primarily assigned to Randolph County.

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Q. And so both of those lawyers that you said in October or November of this year said, We can't handle any more cases, at least for the time being?
A. Yes.
Q. And so then you took on -- did you take on all of the additional cases in Randolph County for a time period -- all of the new cases? Sorry.
A. Yes.
Q. Okay. And are you -- has that -- are you still continuing to take on all of the new cases?
A. No.
Q. Okay. For about how long did you take on the new cases, approximately?
A. About a month.
Q. Okay. And then they indicated that they were able to take on some more cases for the time being?
A. Yes.
Q. Okay. And you mentioned you looked at the fiscal year numbers for your office. If you recall, about how many cases from the last fiscal year -- and I'm speaking of fiscal year '17 now, which is July 1st 2016 to June 30th, 2017 -- did your office handle?
A. It was -- well, initiated in that time

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period was something over 1,500.
Q. Okay. And can you explain for the record what "initiated" means?
A. That would be opening a new case -- a new file for an individual.
Q. Okay. And, obviously, you come in on the day -- June 1st -- scratch that -- on the day July 1st, 2016, you don't come in -- your office doesn't come into that day with a caseload of zero, correct, you have all of your cases from -- all of your open cases that were existing on the day prior to that?
A. Yes.
Q. And do you have -- you mentioned, perhaps, that you had looked at an additional year back, is that right or ...
A. I looked at fiscal year '17 and looked at this fiscal -- 2018 fiscal year.
Q. Got it. So the fiscal year to date, the first six-ish months of the fiscal year?
A. Uh-huh. Yes.
Q. And do you recall the numbers for that?
A. I didn't total them up. I can tell you that so far, it's -- the numbers are less compared to the fiscal year of 2017. How much less, I

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honestly can't tell you a number. I'm going to guess 30 percent, maybe, right now.
Q. Got it. Any reason why -- that you know of for why that figure is --
A. Well, I can speculate as to some of the reasons why. Each county has its own prosecutor. The prosecutors file cases at different rates. I can't tell you the why of how it happens. Some prosecutors hold files until the end of the year, or, for some reason, don't file cases until the end of the year, and then you'll get inundated with a lot of new filings.
In Randolph County, there's been a fairly substantial decrease in filings, really, September, October, November, but I -- based on history, I fully expect that to change. Some of that could be attributed to -- the prosecutor of Randolph County has made an application for being a judge, and he's a little bit distracted right now.
Q. Got it. Okay. So you don't think this is some -- from your experience, it doesn't appear that this is some broader trend that's going to relieve the burden on your office?
A. I don't believe so, based on the history of the office.

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Q. Got it. And you had mentioned that the two attorneys in Randolph have gotten an influx of cases. Was that in the time -- but then you also said that in September, October, November in Randolph, there was a decrease. So just when did they get the increase and --
A. Well, it would have -- I won't say it was necessarily an increase, but with their carryover the prior fiscal year, they had just built up a large number of case that needed -- they needed time to work through.
Q. Okay. And when you say -- so you mention that often, for whatever reason, the prosecutors will file a number of cases at the very end of the year. So does that mean that you expect that in the next -- obviously, it's December -- almost the middle of the December, that you expect in the next couple of weeks, there'll be an influx of new cases?
A. I think it's very possible that that could happen, but it -- but it also -- I can't say that with any certainty because -- because it could easily happen later on, too. It depends, really, on the prosecutors.
Q. And what is this -- the election for the judicial seat that you were mentioning earlier?

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A. Well, I think they expect that to be an appointment made before the end of the year.
Q. Got it. Okay. At which time there'll be a new prosecutor in Randolph County, assuming he's appointed?
A. Yes.
Q. How many of the attorneys in your office handle felony cases?
A. All of the attorneys handle felony cases.
Q. And how many of them -- and that's all of the attorneys in -- all six of them -- five line attorneys, plus yourself?
A. Yes.
Q. And how many of them handle misdemeanor cases?
A. All of them handle misdemeanor cases.
Q. And how many of the attorneys handle juvenile cases?
A. All of them do. I have one attorney that -- she likes doing the juvenile work, and I give -- and she wants the opportunity to do juvenile cases as often as she can, and so we've migrated toward, if possible, allowing her to enter into all of the juvenile cases.
Q. But other attorneys in your office still

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have at least some juvenile cases?
A. I think at this time there's only one other lawyer that has a juvenile case that's pending. It's a little different in the rural counties. We don't always get appointed into juvenile cases. It's not a high volume part of our practice, as opposed to some of the larger metropolitan areas, where it's a big part of the practice.
Q. And do you know who does get appointed, if your office is not appointed to those juvenile cases?
A. Many times the court will appoint local lawyers into juvenile cases.
Q. Okay. Other than yourself -- obviously, you've been practicing for almost 30 years -- or 26 years. How long has the -- other than yourself, how long has the most experienced attorney in your office been practicing?
A. Robert Flemming in my office has worked for the state public defenders for 25 years. When Rob started practicing law, I can't tell you -- I'm guessing four or five years before he started with the public defender's office. Then the next two lawyers would have approximately three and a half to

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four years of experience, and then I have two lawyers that have two years of experience.
Q. Got it. So after Robert Fleming, who, obviously, has a couple of decades of experience, the next most experienced attorney -- line attorney in your office has three and a half to four years of experience?
A. Yes.
Q. Got it. Are there any other -- other than yourself, you mentioned you have supervisory responsibilities. Are there any other supervisors in the office -- supervisor attorneys?
A. No.
Q. I just want to talk for a second about initial appearances. Can you describe -- and I know you -- I understand that you represent -- that you represent individuals in five counties, so the practice may differ, but in the line run of cases, what the practice is at initial appearances, in terms of when an individual is arrested, what happens next?
And let me know if that question doesn't make sense, and I can clarify.
A. Well, the question makes sense, but it -- it varies from county to county. I will give -- I

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can give you a general scenarios for a couple of different ways.
In certain counties, an individual when they're arrested and are in -- and they can't post bond, the jails will fax to our office an application for services, and we'll review that application and determine whether or not the individual qualifies. That person may not have a court date for another week, or it could be two weeks before they will actually go in front of the judge, because the rural counties schedule differently. They don't have a -- necessarily have a law day every week. In those counties, we certainly would appear with that individual when they have their next court date.
In other counties that have a higher volume, the jails will either fax us the applications, or when we go to the jail seeing other clients, we will pick up those applications. Again, making the determination as to whether or not they qualify. And in those cases in those counties, generally, they would, depending on what day of the week the individual was arrested, they would go in front of a judge within five or six days.
Q. Got it. Okay.

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And when is bail set, for the most part?
A. At the time that the judge issues a warrant, they will issue a bond -- they will set a bond amount.
Q. At the time the judge issues a warrant for someone's arrest?
A. Yes.
Q. So before they're even arrested?
A. Well, someone could have been arrested on view and brought to jail, and then they'll apply, but, typically, the bonds are set before they go to their first court appearance.
Q. Okay. And are those bonds set, then, before your office represents the individual?
A. Yes.
Q. Okay. And when -- again, in a typical case, understanding that there are some geographical and other differences -- when is your first contact with your clients? When and where does that occur?
A. I'm going say, generally, it would be at their first appearance in court.
Q. Okay. And is that, generally, again -- forgive me for the general question, but, generally, does that contact mean that the communication is occurring at counsel table or in the well of the

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court or something while court is in session -- and court is in session on other cases, not necessarily on that -- on the case --
A. I think that's relatively fair to say, that a lot of communication goes on that way. Some of the courthouses do have available rooms where you can meet with an attorney, but, certainly, it is a brief contact, at best.
Q. Okay. What -- and when you say "brief contact at best" -- sorry -- does that mean that sometimes there's very little contact before that initial appearance?
A. Yes.
Q. The initial time at least -- forget the initial appearance, because you could not have been there for that, but the first time you're appearing --
A. Again, it varies, but I think for the most part, it's fair to say that the first appearance at court -- when you're first having first contact with the client is brief, just because the court is -- the judge is on the bench, the court is moving at that time, and there's not an opportunity to have a lengthy conversation with the client.
Q. Okay. And what -- is it at that first

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hearing -- the first hearing that you're describing now, at least the first time that your office traditionally appears on the case for a client, is that at that hearing that bond reduction applications are made?
A. We would ask for -- we would make an oral application for bond reduction. Depending on what type of case, it may not be heard at that time, but, certainly, for some of the lower-level misdemeanor and felonies, the judges generally will take it up, but -- by oral motion.
Q. Okay. So, obviously, at that time, you and the attorneys in your office haven't had much time to investigate either the details of the case or the background --
A. We would have had no time to investigate the details of the case at that time.
Q. Would you have had time to investigate the background of the individual --
A. No. It would be based on what they were able to tell us and what was on their application.
Q. What they were able to tell you in that brief conversation you described earlier?
A. Correct.
Q. Okay. What resources are available to the

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attorneys in your office for social work help, if any?
A. Well, what we try to do for the clients is, primarily, individuals that express a desire for drug treatment, that we will assist them in making applications for treatment, we will call treatment providers, get people on wait lists to try to get them into either in-patient -- to an in-patient treatment program. And it's primarily only substance abuse, because in Missouri, there's just not any available good sources for mental health treatment.
Q. All right. And in terms of experts, what resources are available for the attorneys in your office?
A. Do you mean, like, for use at trial experts or ...
Q. We can start with that, sure. For use at trial or for use at any stage. My general question is for use at any stage, you know, for pretrial motions or at trial.
A. I mean, we do have access to an expert database that we can look at, if we determine there's a need for an expert in the case to locate experts to hire to use in cases.

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Q. Okay. On average, how frequently do the attorneys in your office file pretrial motions, would you say?
A. I believe we're pretty aggressive on filing motions to dismiss, motions to suppress, and bond reduction motions.
Q. Okay. I want to show you an exhibit which I'll mark Plaintiff's Exhibit 29.
(Deposition Exhibit No. 29 was marked for identification.)
Q. (By Mr. Scherzer) Let me know when you've had a chance to look this over.
A. Yes.
Q. Okay. Do you recognize this exhibit I've marked Plaintiff's Exhibit 29?
A. Yes.
Q. And what is it?
A. It's a letter that I sent out in October to -- this letter is addressed to the circuit judge of Randolph County, Scott Hayes, and it -- and the purpose of the letter was to alert Judge Hayes that we may have issues with the number of cases and accepting new cases in the months to come.
Q. Okay. And is Judge Hayes the only judge in Randolph County?

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A. Well, Judge Hayes is the circuit judge. There is an associate judge. At that time, it was Cynthia Suter in Randolph County, and there's an associate judge in Howard County, Mason Gephardt.
Q. Okay. And you see at the top the letter is dated October 2nd, 2017; is that right?
A. Yes.
Q. And if you turn to the -- looking now at the Bates stamp numbers at the bottom, it's MSPD39410. Do you see that -- the last page of the letter?
A. Yes.
Q. And who is the letter signed by?
A. It's mine -- well, it's my electronic signature.
Q. Your electronic signature. Fair enough. And that's -- under your -- above the caption, "Edward L. Guinn Area 14 District Defender"?
A. Yes.
Q. Okay. And who drafted this letter, if you know?
A. Well, I drafted it. Quite honestly, it was -- another office had sent out a letter that -- here's an example of what we sent out to alert the judges in their circuit, and rather than reinvent

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the wheel, I just redrafted that letter.
Q. So you adapted it for your office, but the general template was one used by another office previously?
A. Yes.
Q. Okay. And do you recall which office that was?
A. I believe that this was the letter that came out of the Boone County Area 13 office.
Q. Okay. All right. So I'd like to refer you, then, to a few portions of the letter, if I might.
So you talk in the first paragraph about -- in the seconds sentence, I'm sure you're aware of the recent action taken by OCDC against a public defender." Do you see?
A. Yes.
Q. And is that referring to the Hinkebein decision?
A. Yes.
Q. And the Hinkebein case -- not just the decision, obviously, since you're talking about OCDC's recommendation, et cetera?
A. Yes.
Q. Okay. And then you see in the second

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paragraph -- can you read the first two sentences in that paragraph for us?
A. "The Supreme Court referenced Rule 4-1.7, which states, in part, that it is a conflict of interest if there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client. MSPD recognizes that while each attorney is employed by the office of the Missouri State Public Defender, it is the individual and personal responsibility of each attorney to comply with the rules of professional conduct."
Q. And, obviously, you -- you know, you sent this letter. I presume you agree with this -- the statements expressed. You still agree with the statements expressed in the first two sentences in that paragraph?
A. I do.
Q. And at the bottom of that page, you'll see that it says, "Attorneys violate those rules --" meaning the rules of professional conduct -- "-- if they accept a case that results in -- " I presume there's an "in missing -- "-- that results in representation to act with reasonable diligence and to keep the client reasonably informed." Do you see

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that?
A. Yes.
Q. Okay. And then if you turn to the -- on the next page -- again, I'm talking now about 39409. Do you see the paragraph in the middle of the page that begins with "As of today's date"?
A. Yes.
Q. Can you just read that paragraph for us?
A. "As of today's date, I believe the attorneys assigned to Randolph County are currently violating the rules of the professional conduct. Their current individual caseloads reflect a conflict of interest with existing clients because they are forced to choose effective representation of one client to the detriment of other clients. I believe assigning any new cases to any individual attorneys would create a conflict of interest because they would have no ability to adequately represent either their current or prospective clients."
Q. Okay. And do you still agree with the sentiments expressed in that letter -- in that paragraph?
A. Well, yes. Again, based on -- this was based on the case levels at that time.

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Q. Got it.
A. The sent -- I mean, the -- and I believe the interpretation of law remains the same.
Q. Okay. And -- so what motivated you to send this letter?
A. Well, primarily, the Hinkebein decision was the primary motivating factor.
Q. And can you tell us your understanding of the Hinkebein case and decision?
A. Well, I suppose in a nutshell, is that the rules of professional responsibility apply to lawyers employed by the state public defender's office, and that we have to comply with those rules, and that it's each individual attorney's obligation to conduct themselves in a way that follows the rules of professional conduct.
Q. Got it. Okay. And so your opinion, based on your many years of experience, at least at the time you sent this letter, was that the attorneys in your office weren't able to ethically take on additional cases?
A. At that time, yes.
Q. Okay. And then if you look at the next paragraph, also still on 39409, the next sentence after the one you read said, "The Randolph County

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Public Defender will no longer be immediately entering into cases in which a defendant has qualified."
A. Correct.
Q. And then a couple of sentences later it says:
"If the perspective client qualifies, I will not assign an attorney until there is an attorney who can assume the representation without violating the rules of professional conduct."
Is that right?
A. Correct.
Q. Okay. And then the next sentence:
"We cannot file an entry with individual attorneys bar number if we and the attorneys know that doing so violates the rules of professional conduct."
Is that right?
A. Correct.
Q. Okay. And I'll just read the rest of the paragraph, actually .
"To be clear, there are not hidden agendas or motivations with regard to this decision. This is simply about ensuring all Area 14 public defenders are able to maintain their license to

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practice law without threat of discipline by OCDC."
Is that right?
A. Correct.
Q. Okay. And so you wanted to ensure that the -- you and the line attorneys in your office for whom you're responsible were not threatened -- that their bar licenses were not threatened by virtue of their representation of additional new clients that they weren't able to represent?
A. Yes.
Q. Okay. And then I want to look at 39410, the next page of that letter. The first full paragraph on that page says:
"We have started an internal wait list for defendants who qualify for representation but who do not yet have an attorney assigned to them."
And then the -- skipping a sentence.
"We will be providing defendants on the wait list with a letter advising them they qualify and that we will notify them as soon as an attorney is available to take their case." Is that right?
A. Yes.
Q. Did your office at any point have such a wait list?
A. We did.

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Q. Okay. Can you tell me about that -- how it was set up, who was on it, and the like? I'll have some follow-up questions, but ...

A. I can't tell you who -- what clients were on it. I can tell you that after this letter was sent out, that as applications came in, they were reviewed to determine eligibility. And the hierarchy for placing people on the list was individuals that were in custody were at the top of the list. Cases where the individuals were not in custody were still on the list, but they had a lower priority, and that's how it was maintained. Also, I was very concerned about individuals that were in custody and moving them off of that wait list as quickly as possible. I quite honestly think that the longest anyone was on the wait list was a little over a week at that time.

Q. Okay. And is that -- was that wait list limited to Randolph County?

A. Yes.

Q. Okay. And does your office still have a wait list?

A. We do not.

Q. Okay. And is that because -- is that at least in part because you took on a number of -- a fair number of additional cases to your own caseload?

A. Yes. And the fact that, as we discussed earlier, the prosecutor in Randolph has not been filing as many cases the last month or so.

Q. Got it. And, again, your opinion, based on your many years, both in this office and practice generally, is that that's a time limited caseload slowdown due to some -- the vagaries of that particular prosecutor's office?

A. I believe, based on the history of how cases come into our office, that this is a temporary slowdown.

Q. Certainly, the prosecutor -- either an individual prosecutor or the head prosecutor in that office hasn't indicated to you that he now believes fewer criminal defendants should be charged and brought to court for any reason?

A. We have not had a discussion like that at all.

Q. And if there's a time when the caseload, as you expect it to, picks up again, is -- are you -- is a wait list something that you are contemplating as a possibility for the future, if and when that occurs?

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A. Yes. I mean, this is a dynamic process. I -- next -- you know, the next time we have a wait list, it may not be Randolph County, it may be another county. Again, it depends on how many cases are filed, what type of cases each attorney has in their inventory of cases, and what their individual -- I mean, this is -- it has to be an individual determination by each lawyer that -- are they meeting their obligations in the representation of their clients?

Q. Okay. And I just -- I would like you to just read one final sentence, if you could, on 39410. It's the sentence in the second-to-last paragraph, "The only ends."

A. "The only ends I am aspiring to achieve is the effective zealous and diligent representation of poor persons by counsel who are not under threat of bar discipline by OCDC."

Q. Okay. Thank you. And what was the response, if any, from the judges or the court system in Randolph County to this letter?

A. I believe it was very positive. Judge Hayes contacted me, and we scheduled a meeting, and Judge Hayes and I met and talked about the caseloads and moving cases through the court and what the court could do to help with the caseloads and -- and it was kind of a far ranging discussion about bonding and aspects of court procedure that might make things more efficient for lawyers to alleviate some of this burden.

Q. And what -- if you can give -- you don't have to give every example, but an example or two of things that were discussed at that time.

A. Well, the judge certainly had ideas of how he wants his court run, and he was -- had -- was making suggestions about how he would schedule cases and utilize other judges to perhaps move dockets, make them more efficient, and that's probably the -- a primary discussion with the judge as to how to make his court more efficient so that lawyers aren't sitting for extended periods of time on long all-day dockets.

Q. And what, if any, was the response of the prosecutor in the prosecutor's office in Randolph County to this letter?

A. There was no conversation with the prosecutor about the letter.

Q. Okay. And you mentioned, again, the waiting list and that you were concerned about moving those in custody off the waiting list as soon

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as possible. I take it, therefore, that there were at least some individuals who were in custody who were on the waiting list for at least some short period of time.

A. Yes.

Q. Okay. I'd like to show you what I'll now mark as Plaintiff's Exhibit 30.

(Deposition Exhibit No. 30 was marked for identification.)

Q. (By Mr. Scherzer) Let me know when you've had a chance to look it over.

A. I have.

Q. And do you recognize this letter?

A. I do.

Q. And what is it?

A. It a letter, again, dated October 2nd that was sent to Judge Fred Tucker in -- who is the circuit judge of Macon County.

Q. Okay. And, again, if we turn to the last page, 39407, there's your electronic signature there; is that right?

A. That's correct.

Q. And, again, over the signature caption of "Edward L. Guinn Area 14 District Defender"?

A. Correct.

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Q. And if you recall, is this letter -- other than substituting in Macon County for Randolph County and similar changes for attorneys and the like, is this, in all substantive respects, otherwise identical to the letter that you sent to Judge Hayes in Randolph County, Plaintiff's Exhibit 29?

A. Yes.

Q. Okay. And you explained before why you were motivated to send the Randolph County letter. I presume, since this was sent on the same day, that similar motivations inspired you to send this letter -- the Macon County letter. Is that fair?

A. Yes. And -- but I suppose I'll have a caveat. When this letter was sent to Macon County, I had not had a discussion with the attorney that's primarily responsible for Macon County to determine his -- whether or not he believed that he was in need of help or in need of case relief.

Q. Okay. I'll show you one additional letter, if I could, which I'll mark Plaintiff's Exhibit 31.

(Deposition Exhibit No. 31 was marked for identification.)

Q. (By Mr. Scherzer) Let me know when you've had a chance to look at that.

A. Yes.

Q. And do you recognize this letter?

A. I do.

Q. And what is it?

A. This is also a letter dated October 2nd, 2017. It was sent to Judge Terry Tschannen, who is the circuit judge of the Ninth Judicial Circuit of Linn -- which is Linn County and Chariton County.

Q. Got it. And, again, other than substituting in Linn County and any related ministerial or logistical changes to account for that, is this letter, in all substantive respects, otherwise identical to Exhibits 29 and 30?

A. It is the same letter, yes.

Q. And, again, it's signed -- if you look at page 39404, it has your electronic signature above the caption, "Edward L. Guinn Area 14 District Defender"; is that right?

A. Yes.

Q. All right. And were the same reasons that motivated you to send the -- Plaintiff's Exhibit 29 to Judge Hayes in Randolph County the reasons that you sent this letter to Judge Tschannen in Linn County?

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A. Yes.

Q. Okay. You mentioned -- forgive me -- that Judge Tschannen covers Linn and Chariton Counties. Do these three letters, given which judges cover which counties, cover all five counties that your office is responsible for?

A. Yes.

Q. Okay. And what, if any, changes -- I guess we can go look back to Plaintiff's Exhibit 30, the letter to Judge Tucker in Macon County. What, if any, changes occurred in your office's practice in Macon County as a result of this letter?

A. There was not a wait list instituted in Macon County because the attorney that was handling that county believed that he was in compliance with the rule. I did meet with Judge Tucker and had the same kind of discussion about what things could the court do to make the court dockets more efficient and to assist in making, I guess, court appearances easier and assist in not necessarily appointing the public defender's office in certain types of cases that weren't, perhaps, necessary for an individual to have a lawyer appointed: Namely, probation cases. Because Judge Tucker acknowledged that he had a bad habit of appointing the public defender's

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office in cases where there really wasn't a constitutional need for a lawyer. He was appointing the public defender's office to assist people -- to use them as a social agency to assist people to get into drug treatment.

Q. Got it. When you say "probation cases," do you mean probation revocation cases?

A. Probation revocation cases, yes.

Q. Okay. And do some of the individuals in probation -- who are facing probation revocation cases face jail time as a result of -- as a possible result of that probation violation?

A. They do. Our discussion with Judge Tucker is that they were -- he acknowledged that there were certain cases he had no intention of sending someone to prison. He wanted the individuals into a drug treatment program, and since he had been a former public defender many years ago, he believed that the public defender's office had an ability to get people into drug treatment much faster than probation and parole officers did.

Q. And was the agreement that you came to with Judge Tucker that your office would not be appointed in any probation revocation cases going forward, or just in a subset of probation revocation

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cases or ...

A. No. There was -- I mean, there was no agreement. The judge indicated to me that he would do his best efforts. If it was, again, an individual that he had no intention of sending to prison, that he would use other avenues to get them into drug treatment and not just always appoint the public defender's office as a stopgap, that he would rely more on probation and parole officers to do what, you know, we believed to be their job, to assist their -- people that are on probation to get into treatment programs.

Q. Okay. Now, turning back to Plaintiff's Exhibit 31, the letter to Judge Tschannen in Linn County -- or responsible for Linn and Chariton Counties. What, if any, changes occurred in your office's practice in those counties as a result of this letter?

A. Really, no changes in our practices. Again, the lawyer that's assigned to that -- to Linn County has indicated that he's able to meet his obligations. That's true to an extent. I have taken some of the serious felony cases from that area, so -- in order to alleviate his case numbers. We did -- I did meet with Judge Tschannen and

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Judge Othic at their request, and, again, the conversation was, What can we do to assist, what can we do in terms of court procedure to help your lawyers -- because they understand the distance that we're traveling -- and we had a discussion about bonds and the court setting bonds and talked about potential changes into their local court practice.

Q. So did -- it sounds like in addition to the cases you've talked about previously that you took in Randolph County to -- because the attorneys there weren't ethically able to take on new cases, you also, then, took on cases -- some serious cases, you mentioned, in Linn County because you -- sorry. That was a long preface.

Was the reason that you took on those additional cases -- serious cases in Linn County because you didn't think that -- in your opinion, that the attorney in Linn County could ethically handle those additional cases?

A. Correct. The attorney that is currently assigned Linn County is two years out of law school, and even though he is working very hard and does a good job, there was an incident back in October in which the prosecutor filed five, what I would call, serious felony, sex crime cases, and that lawyer

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would not be able to work his current caseload and effectively represent five individuals with those type of serious felony charges.

Q. Got it. So as a result, you took on -- how many of those cases did you take on? How many -- of those five that you're speaking of.

A. There's -- I have three of them.

Q. And he took the remaining two?

A. No. The other -- they were conflicted out because there were conflicts in the office.

Q. Got it. And so those were sent to a private attorney?

A. Uh-huh.

Q. So all of the cases of those ones, at least, that you're just speaking of that remained in your office, you took all of them onto your own docket?

A. Yes.

Q. Okay. Any other cases from Linn County that you took on recently that you otherwise would not have?

A. No.

Q. Okay. And where are the bulk of your cases? I mean, you've described that each of the other attorneys sort of have their geographic areas

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of expertise, but -- that they're responsible for. Are your cases limited to a particular geographic area or not?

A. No. I have cases in Randolph, Linn, and Adair County and Shelby County, and that's -- yeah, that's all.

Q. Okay. And I take it, again, you read the -- the letter about Rule 4-1.7, which the Supreme Court referred to in the Hinkebein decision, which talks about a conflict of interest, if there's a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client. Do you recall --

A. Yes.

Q. -- that sentence from your letters? And I take it that was your ethical concern with this attorney in Linn County, that he wouldn't be -- it would be a conflict of interest if he took on those -- these additional serious cases, given his ethical responsibilities to his existing clients?

A. I think that's -- certainly, that is part of it. The other part is, he's a new lawyer, and he will be involved with this case, he will be second chairing, if the cases go to trial, he will be

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involved with the cases, but he could not, I don't believe, ethically represent these individuals because of the combination of inexperience and his case numbers.

Q. Okay. And for the attorneys in Randolph County -- the two attorneys you mentioned who -- for which you took on a number of cases to your own docket because of their ethical concerns about their caseload, was that also because of a conflict of interest rule and other rules of professional conflict that we're talking about here?

A. Yes.

Q. Okay. It sounds like -- because you said that the -- other than -- and I believe his name was -- was his name Mr. Flemming?

A. Rob Flemming, yes.

Q. Rob Flemming. Other than Mr. Flemming, the other four attorneys -- line attorneys in your office, none of them have been there longer than four years; is that right -- or four and a half years, I think you said?

A. Correct.

Q. So in the time that you've been at the Area 14 office, first as an assistant public defender, and now as the district defender, which is

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since 2011, four of the five line attorneys have left the office and been replaced by new attorneys. Is that fair to say?

A. Yes. I was counting the numbers of -- trying to remember who is coming on in that time. We've been very fortunate in that we haven't had a huge turnover in the last two years.

Q. But in the last four years?

A. Yes. There's been four lawyers that have left.

Q. Out of five?

A. Yes.

Q. Okay. And where, if you know, did those attorneys go?

A. One lawyer transferred to the -- what's designated as the SVP unit in the public defender system. One lawyer left to go -- move back to St. Louis to work -- I believe he went to work in the juvenile court in some way in St. Louis. A third lawyer left and went to Springfield to the prosecutor's office, and then a fourth lawyer, she left and moved with her husband to be to Milwaukee -- no, Detroit, and she works in the state juvenile system. It's the Division -- it's kind of like the Missouri State Public Defender, but she

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represents juvenile clients.

Q. Got it. Okay. And what effect on clients, if any, is there when there's turnover in the office and the individuals -- the line attorneys who are working in the office on that -- on the previous individual's clients, what effect, if any, is there?

A. Well, I think -- it's never good to have a change in representation in the course of the representation of a client. It makes the clients uneasy, it -- you know, a new lawyer has to spend time familiarizing themselves, and so it -- more than anything, it just adds time. If it's an individual that's in custody, that means they stay, potentially, in custody longer. I think ultimately there's not a negative impact but for the increase in time and the increase in workload on the other lawyers in the office.

Q. Got it. Okay. How many of your -- approximately what percentage of cases in your office are resolved by plea deals or agreements?

A. I'm going to estimate that it's probably at least 90 percent.

Q. Okay. Do you know how many trials your office did in the -- say the last fiscal year --

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fiscal year '17?
A. I believe there was ten.
Q. Approximately.
A. Yeah.
Q. Okay. And remind me, again, if you could of the -- you said the total case number was about 15- --
A. It was -- it's over 1,500. I want to say it was 1,560, somewhere around that number.
Q. Okay. So without getting into heavy math here --
A. The bench trials -- I can't tell you how many bench trials were done because I don't really look at those.
Q. Got it.
A. There would have been some number of bench trials done also.
Q. As an estimate, do you think more than 50 bench trials?
A. I don't think it would be that high. I don't think that trials -- it isn't always the measure of what happens in the life of cases. There's a -- you know, there's a substantial number of cases that are dismissed. I mean, they all don't -- all cases aren't pled out, is what I'm

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getting to. But all of them are not tried, either, because you do have dismissals, you have alternate dispositions, and I don't keep track of dismissals. At that time -- I don't keep track of dismissals or deferred prosecutions, those type of dispositions.
Q. Got it. Okay. And, typically, when in the life of a case would your office file motions? Would it be closer to the eve of trial or early in the case, or does it depend?
A. It certainly depends on what motions you're talking about. Bond reduction motions are filed early on in the case. Suppression motions, something of that sort would be filed -- they might be filed prior to preliminary hearings, or they might be filed after preliminary hearings. Motions to dismiss, though -- there's not truly a motion to dismiss provided for in the rules -- are filed, typically, after preliminary hearings.
So it's -- it's an ongoing process. I can't give you a hard and fast rule because every case is so fact dependent.
Q. Got it. That's fair. What steps, if any, do you take -- do you or the attorneys in your office take to evaluate the immigration consequences a client might be facing as a result of a criminal

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prosecution recommendation?
A. That's part of our intake when we meet with a client, is we always ask if they are a United States citizen or if they can tell us what their immigration status is. If we have clients -- and we do from time to time, though our area is not -- doesn't have a large population of immigrants, but when we do have that issue arise, there are resources within the state public defender system that we can access to evaluate that person's status and how these -- our particular case that we're representing them on will affect their immigration status up to -- ultimately, if necessary, trying to get them counsel to represent them regarding their immigration status with INS.
Q. Got it. Okay. Have any -- just jumping around for one second, have any private attorneys been -- other than in conflict cases like you've described, have there been any private attorneys appointed to represent clients who -- appointed by the courts in the five counties that you work in -- any private attorneys been appointed to represent individuals who are otherwise qualified to -- qualified for public defender services?
A. No.

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Q. Okay.
MR. SCHERZER: I think actually -- should we take -- I'm going to pull up another couple of exhibits, but should we take a break for a couple of minutes -- five minutes?
VIDEOGRAPHER: The time is 10:08 a.m., and we're off the record.
(A recess was taken.)
VIDEOGRAPHER: The time is 10:19 a.m., and we're back on the record.
Q. (By Mr. Scherzer) Okay. So, Mr. Guinn, I'm going to show you what's been previously marked as Plaintiff's Exhibit 21, which is this -- we're laughing because the cover page to -- there's some corruption in the files, and the cover page is a little messed up. I guess I'll show you the cover page.
So if you could, at the top of the page, do you see this seal starting in the middle of the page -- or the top third of the page, I guess, to be fair?
A. Yes.
Q. And does that say "Missouri State Public Defender Commission"?
A. Yes.

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Q. And then underneath it, it says, "Fiscal year 2018"; is that right?
A. Yes.
Q. And it says, "Approved, October 25th, 2017"?
A. Yes.
Q. And then there's a star, but it looks like it's saying, "Supplemental Legislative Letter Request. Is that right?
A. Yes.
Q. Okay. And underneath it says, "Michael Barrett, Director, Commission Meeting October 25, 2017"?
A. Yes.
Q. Prepared by Kathleen Lear, comptroller?
A. Yes.
Q. And that is all on page 38970; is that right?
A. Yes.
Q. And then if you don't mind turning to page 38976, if you could -- the last page of that exhibit. And do you -- maybe not this particular chart, but do you -- have you seen a chart that looks like this for the 33 areas or districts in the Missouri State Public Defender System previously?

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A. I have seen it, yes.
Q. Okay. And do you -- and do you see at the top it says, "State public Defender Cumulative Caseload Metrics, Fiscal Year 2017"?
A. Yes.
Q. And then start date, July 1st, 2016, just below that?
A. Yes.
Q. And end date June 30th, 2017?
A. Yes.
Q. And do you see -- sort of in the lower third of the page, you see Area 14, Moberly?
A. Yes.
Q. And it says number of attorneys, six in the next column?
A. Yes.
Q. And number of case initiated, 1,547 -- 1,547?
A. Yes.
Q. And then it says, "Minus cases withdrawn." What does that mean, if you know?
A. I don't know.
Q. Okay. And then it says, "Net new cases, 1,367." Is that right?
A. Yes.

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Q. And then if you go to the percent of capacity, do you see that in the second-to-last column?
A. Yes.
Q. And that says -- or what percentage does it say -- or I can tell you, I guess, because it's a little hard to trace the line. It's 247.5 percent.
A. Yes.
Q. Is that right? Okay. And what does that mean, if you -- if you know?
A. I don't know.
Q. Okay. If I -- so this chart, if I -- if I were to represent to you that this chart is based on the RubinBrown numbers, do you -- do you know what the RubinBrown -- are you familiar with the RubinBrown study?
A. I know there was a RubinBrown study, but outside of just the general knowledge that it occurred, I know nothing else about the RubinBrown study.
Q. Got it. Fair enough. I think I'm done with that for now.
I want to talk, then, about your caseload, and, in particular, the caseload that you have taken on recently in order to try to ensure that your

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line attorneys meet their ethical obligations. You said it was about 80 cases; is that right?
A. Yes.
Q. And that's in addition to the other responsibilities that you have in the office, in terms of supervision, budget, hiring, and the like?
A. Yes.
Q. Is that right? Okay. And you mentioned that it's significantly higher than your caseloads have been previously; is that right?
A. Yes.
Q. And when we say that, is that -- have there been any other times, since you were the district defender, where your caseload was higher than 80 cases, other than this most recent time period that we're talking about?
A. Yes.
Q. And what was that time period?
A. During fiscal year 2017, I had a lawyer that was on Family Medical Leave, and so I took over the Macon County docket for the time period that he was gone, and at that time, I would have had in excess -- you know, had been around the hundred cases, maybe a little more. During times when -- if -- we've been -- I've been fortunate that I've

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not had a large turnover in attorneys, but whenever there is a turnover attorney, at those times, I typically will take over that county until I am able to hire another lawyer.

Q. Got it. Okay. So other than times where you're taking over an additional load, either because of ethical concerns for your line attorneys or because someone has left the office or is on leave, your caseload is typically around 55 or so cases; is that right?

A. Yeah. In that area. I -- my criteria for taking cases has to do with the seriousness of the felony, and sometimes there is -- not so much now, but there used to be a geographic consideration, because I would try to save the assistant public defenders from being tied up driving extended distances, if that was at all possible.

Q. Okay. And when you said not so much now, can you explain that?

A. Because of the funding for conflict attorneys, that has alleviated some of those cases.

Q. So you -- prior to that, which is -- for this fiscal year, 2018, additional funding, prior to that, you took on more than your share of conflict cases?

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A. Well, I don't know that I would describe it as more than my share, but I took conflict cases that required -- that weren't in -- venued in our normal counties or that were not venued close to where an assigned attorney was already practicing.

Q. Got it. Okay. And when -- what percentage, if you know -- or what portion -- of your caseload -- not speaking of your office's caseload but your individual caseload, are serious -- let me ask it this way: Are felony cases versus misdemeanor or other, you know, probation revocation cases? And a ballpark is fine.

A. I'm going to say 90 percent or more.

Q. Okay. So is it fair to say, then, that you -- for your individual caseload -- again, not the caseload of your office but your individual caseload, you take on a higher percentage of the more serious cases than the general percentage for the line attorneys in your office?

A. Yes.

Q. Okay. And it sounds like we've already -- you have already testified to this, that that's because you want to ensure that your line attorneys are able to meet their ethical demand -- the ethical requirements to their other clients and, thus, not

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have many -- you know, too high a number of more serious cases?

A. Correct.

Q. Okay. And do you have any sense of what fraction, portion of your cases -- you said more than 90 percent are felony, but what portion of those are A and B felony or murder or the more serious types of felony charges?

A. Percentage-wise, I don't. I mean, I -- I can tell you how many -- I have -- currently have two murder cases and I have six or seven multi-count A and B -- well, actually, now ten multi-count -- what I would classify as serious felony child sex cases.

Q. Got it. So you're not saying you have ten A and B felonies, you're saying just -- you have two murder cases and ten multi-count child sex cases?

A. Yes.

Q. And, obviously, each of those ten cases is, as you've said, very serious?

A. Yes.

Q. What's the maximum penalty that the individual in those cases is facing, if you know?

A. Life in prison.

Q. Okay. In each of those ten cases?

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A. Well, not in every case, but --

Q. Okay.

A. -- certainly, in the -- as the murder cases are charged right now, there could be a maximum penalty of life. In a couple of the -- of the child sex cases, they're facing -- they could potentially face a life sentence.

Q. Okay. And so that's 12 cases, which is already a significant portion of your docket, but other than those cases, do you have a general sense of how many A, B felonies you have?

A. Well, B felonies, the -- no. In real numbers, I do not. Certainly, the vast majority of my caseload, once you exclude out the serious -- what I would classify as serious felony cases would be drug-related crimes, which could be -- well, typically -- what used to be called a B felony, drug distribution or -- but, primarily, I think a larger majority would be drug-related crimes that have to deal with possession.

Q. Got it. Okay.

And when your caseload spikes, as it has now, to 80 or in previous times where it spiked to, like, as you said, a hundred, what effect, if any, does that have on -- let's start with on your time

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and ability to communicate with your clients.
A. It's a true struggle to maintain communication. My view is that numbers in excess of 80 cases are not sustainable for long-term periods of time, because I believe that you'll -- that the individual lawyer will start falling below the standard of care for representation of clients.
Q. Okay. And that's 80 cases, generally, and, of course, as you've described you have a higher percentage of more serious cases on your docket than is normal?
A. Yes.
Q. Okay. So it sounds, then, like you have serious concerns that you either are at or are approaching a level at which you may not be able to meet your ethical obligations to your clients?
A. My current caseload is not sustainable.
Q. When you say -- sorry.
A. I don't believe that the caseload that I have right now should be carried and still meet the standard of representation.
Q. Okay. So to clarify, if you were to continue carrying this caseload for any lengthy period of time, you would feel like you could not meet your ethical obligations to your clients?

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A. If I -- yes. I would feel that, and I would be put in a position that I would have to self-report --
Q. Okay.
A. -- to the Office of Disciplinary Counsel.
Q. Okay.
A. In all fairness, to the clients.
Q. Understood. And are you aware that others of your colleagues -- other district defenders I'm speaking of now -- have self-reported?
A. I don't know if they have or not. I mean, I suppose that's an option, but I've not talked to any other district defenders or, in fact, talked to anyone else about self-reporting. To me, that's an individual lawyer's obligation to do.
Q. Okay. But it's something that you have at least -- is at least something that you are aware of as a possibility you would need to do, if your caseload continues --
A. If I'm not able to provide effective representation to my clients, I will do that.
Q. Got it. And, as you've indicated already, if your caseload continues as it is currently, at 80 cases, you feel like you will not be able to provide effective representation to your clients?

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A. I believe that that is not a sustainable number, yes.
Q. And tell me about -- let's say -- in the world in which your caseload does continue at 80 cases, tell me about some of the repercussions that that has for -- we talked about client contact. What other repercussions does that have for your clients -- or would that have for your clients? And I can break it down, if that's helpful or ...
A. Well, I can't -- I mean, here -- I can't really give you an answer to that question, but to see that the -- that the -- each individual case is fact dependent. The work that needs to be done and the -- and the representation that the clients are entitled to, that doesn't change. And so what needs to be done on an individual case will vary from person to person to person. While I am -- what I am saying is, that I believe that I -- that as a lawyer, I've got an obligation to provide each client with effective representation. When my case numbers are too high or when any lawyer's case numbers are too high, they do not have the time to physically provide effective representation to every client, and that is -- I believe that's a violation of the rules, and I don't believe that it's

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fundamentally fair to the individual client.
Q. And the rules that you're speaking of --
A. The Missouri Rules of Professional Responsibility.
Q. Okay. Also known -- the Missouri Rules of Professional Conduct, same thing; is that right?
A. Yes.
Q. And, in particular, Rule 4, is that --
A. Correct.
Q. -- fair? And is your understanding that that -- that those rules and Rule 4, in particular -- as well as all the other rules, but including Rule 4 governs public defenders -- district defenders and line defenders, just as it governs other attorneys in Missouri?
A. Well -- and I don't mean to be argumentative, but there is no difference between a public defender and a private lawyer in the State of Missouri as the rules of professional conduct are applied. We have the same rules. And I believe that my opinion is that it is inaccurate to try and say there's one set of rules for public defenders and another set of rules for private attorneys.
Q. Your opinion is that those rules govern you -- the --

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A. It is irrelevant who you are employed by. That you are -- if you are a lawyer licensed in the State of Missouri, the rules of professional responsibility apply to you, and you have an ethical obligation to each client to provide them with effective representation. And if you're unable to do so, then you need to protect the client in any way -- by any means necessary.

Q. And do you have a duty as a supervisor to ensure that your -- under the rules of professional conduct, that your line attorneys are able to meet their ethical obligations to their clients as well?

A. I believe that I do, yes.

Q. Okay. And -- so we were talking about some of the ways that a caseload that's too high can impact your ability to represent your clients, and we talked about client contact, which is, obviously -- or perhaps you could explain why client contact is so important not just to the client but to the actual legal -- the legal case that each client faces. Why is client contact important?

A. Well, client contact is important on several different levels. I mean, first and foremost, if you are representing an individual who is in custody, that person has to have some

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confidence, they have to have some trust in their lawyer, and the only way that you develop a good attorney-client relationship is by having contact with your client. You can't do that -- and I believe it has to be in-person, face-to-face contact. I don't believe that you can do that by written letter, and I don't believe that you can do that by telephone to be effective -- to effectively represent your client.

So, first and foremost, contact, so you can have a positive attorney-client relationship. The other is communicating with your client about all aspects of his case. Explaining to them this complicated court system and the complicated environment of a criminal lawsuit is difficult for people to understand, and it can't -- and, again, I don't believe that it can be done by writing a letter or by telephone, and it takes a series of meetings with individuals before they have some confidence in the system and in their representation.

Q. Okay. And are there also things -- and you touched on this a bit, but there are things that you can learn from the client, not just in terms of what you can explain to them, but that you can learn

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that are critical to their case?

A. Sure. You have to have contact with the clients in order to be able to effectively investigate their cases. The information that you receive from your clients through face-to-face meetings is invaluable, and it takes -- it's always a process. Some clients are more forthcoming, others, it takes more time.

Q. Okay. Is one of the other ways that your representation of clients can be impaired when your caseload approaches an unethical level, that you don't have time to conduct investigation into the facts and circumstances of what the offense charged?

A. I believe that there's a real possibility that that could occur, yes.

Q. And is that something that you're concerned about -- is that one of the things that you're concerned about, if your caseload were to continue at its current level going forward?

A. That is one of the areas that I am concerned with, as I am with the lawyers -- other lawyers in the office as a supervisory position. I mean, the policies of the state public defender's office and the policies within our office is that we investigate cases, that we -- and that there are

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certain minimum standards that I personally impose on my lawyers on how they conduct their investigations and contacts with their client.

Q. Okay. And there have been -- it sounds like there have been times, at least where you -- I mean, you've said already there have been times where you've been concerned that the attorneys in your office were not able to meet their ethical requirements as to their individual caseload, if they were to take on new cases?

A. It is -- yes. And as a supervisor, I am going to do my level best not to put my attorneys in that position. I -- you know, I have young lawyers on my staff, they are starting their careers, and they need an opportunity to practice law and develop those skills and habits so they can be effective lawyers. It takes time to do that, and I am -- my personal opinion is that I'm going to do everything that I can do to make sure that that happens and that they are successful in their career.

Q. Okay. Just give me one second, if you could, Mr. Guinn.

Let's go to Exhibit 20.

I'm showing you, Mr. Guinn what's been marked previously as Exhibit 20. Do you recognize

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that document?
A. Yes.
Q. Okay. And what is it?
A. Well, this would be labeled as Rule 4-5.1, "Responsibility as partners managers and supervisory lawyers."
Q. Okay. And is that one of the rules of professional conduct that we -- one of the portions of Rule 4 of the rules of professional conduct that we were discussing earlier?
A. Yes.
Q. And that, as we have already established, is a rule that governs public defenders, just as it does every other attorney in the State of Missouri?
A. Yes.
Q. And that rule, in particular, applies to you, is that right, because you're a supervisor in the district -- you are the supervisor in the Area 14 office; is that right.
A. Yes.
Q. Could you read Subsection B out loud for us, the sentence there?
A. "A lawyer having direct supervisory authority over another lawyer shall make reasonable efforts to ensure that the lawyer -- other lawyer

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conforms to the rules of professional conduct."
Q. And then if you could, could you read C and -- Subsection C and Subsection C(1), the one underneath C, just those two sentences?
A. "A lawyer shall be responsible for another lawyer's violation of the rules of professional conduct if (1) the lawyer orders, or with knowledge of the specific conduct, ratifies the conduct involved."
Q. Okay. So is it fair to say that -- and so do you believe that this -- is it your opinion that this rule applies to you -- every portion of this rule applies to you as director of -- district defender of --
A. This rule does apply to me as a supervisor of other attorneys.
Q. Okay. And is it fair to say that one of the reasons that you've taken on this additional too high of caseload for yourself is because you're concerned that, otherwise, you would violate your role as a supervisor -- your duties and responsibilities as a supervisor to ensure that your line attorneys comply with the rules of professional conduct?
A. Yes.

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Q. Okay. Is there -- other than giving additional -- you've described this caseload of 80 that you have currently and your concerns that if that continues, you will have to self-report as committing an ethical violation. Other than assigning those cases to -- or new additional cases back to your line attorneys, do you have any other means of meeting the caseload in your counties? And I can rephrase, if that's confusing.
A. No. I think I understand your question. And the answer would be, I would have to assign cases to other lawyers in my office.
Q. Great. Okay. So there -- and so another way of saying it is, there aren't attorneys -- public defender attorneys from outside of your district that could come in and take a good portion of the cases from your office's hands and represent clients in those cases, other than -- you know, an occasional conflict case or something, but in terms of any significant number of cases in your office?
A. I don't believe there is, but that would be a discussion that would have to be with the upper management.
Q. Certainly, you don't have the authority to ask an attorney from another office to come in and

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take those cases?
A. I do not have the authority to send cases to another office.
Q. And are you generally aware of caseload concerns and problems in other district offices in MSPD?
A. Yes.
Q. Okay. So then just circling back to the choice you're faced with, is it fair to say that that choice is -- you can either take on cases for yourself -- additional cases to your own caseload, which cause you to be concerned about violating your ethical responsibilities to your clients, or you can assign those cases to your line attorneys, in which case you're concerned about them violating their ethical obligations to their clients?
A. I think both of those are potential options. Also, what we originally did in Randolph County was putting people on wait lists until case note -- until lawyers were able to work through cases already assigned to them so that they had -- their time would be freed up to take new cases.
Q. Okay. Is there any -- other -- so that's an additional option. Any other option available to

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you on a regular basis, other than those -- taking on too many cases for yourself, giving your line attorneys too many cases, or a wait list that would be available to you in your role as a district defender in Area 14?

A. At this time, I don't know of any other options available.

Q. Okay. And what concerns, if any -- I mean, you mentioned some concerns, especially about folks who are in custody being on a wait list. What concerns, if any -- if you could explain them further -- do you have about putting additional people -- additional defendants who are eligible for public defender services on wait lists to receive those services?

A. Well -- I mean, as far as practical considerations are concerned, the longer that cases lie without representation -- I mean, you run the risk of witnesses favorable to our clients leaving, disappearing. You know, any number of practical things can occur, which would be detrimental to the -- to our client's ability to have a fair trial. It's never good to allow -- you know, for people to go for weeks or months without having anyone working on their case. So I -- that's a big concern to me,

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that we're not meeting our -- the constitutional standard to provide effective representation for people, when we have to put them on a wait list, and they -- if they're having to wait for an extended period of time.

Q. And, obviously, despite that concern, you created a wait list, which was just for a short period of time, presumably -- was that because you felt like you had no other option?

A. Well, I don't believe we had any other option, and I -- again, you know, my -- the two lawyers involved came to me and said, We're at our max right now; we can't take anything new. And I have to represent their evaluation of their situation.

Q. And did they say, We can't take anything new, because if we do, we'll violate our ethical obligations to our clients?

A. I think -- was it phrased in those? Terms? No.

Q. Okay.

A. But that -- I mean, that was our discussion, is how many -- you know, we were -- we looked at how many cases they had, we looked at what type of cases they had going, we looked at what

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their circumstances were in those cases, and there was a discussion as to, Are you really overloaded? And after that discussion, we made the determination that they legitimately did not feel they could meet their ethical obligations with their current case numbers.

Q. And you've described daily interaction with the attorneys in your office. It sounds like you're a hands-on supervisor; is that fair?

A. I believe so, yes.

Q. So in addition to their telling you that they felt like they couldn't ethically take on more cases, did you have an independent knowledge or opinion about their caseload and whether or not they were accurate in their representation about their ability to take on more cases?

A. I looked at their caseload, I looked at the type -- the number -- not just the number but the type of cases they had, and after looking at it and in talking with them, I had to agree that at that time, they shouldn't take on new cases.

Q. So, in other words, you didn't just take their word for it that they were busy -- I mean, you believed them because you knew them and their experience, but you also independent -- you also

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looked at their case numbers and came to a determination that they were correct that they could not ethically take on more cases. Is that fair?

A. Yes. I looked at their inventory of cases and -- I mean, it's -- the protocol is that we -- it's not just the number of cases, it's the type. And, also, I have to look at the age of the cases, that if the case -- if the cases are getting chronological age on them, that they've been -- you know, they're six months, eight months into the cases, I mean, that's a big consideration also.

Q. And you touched on some of this previously, but what is the problem if the case is -- has been going on for six or eight or more months?

A. Well, again -- I mean, there could be any number of -- as a practical matter, I mean, you run the risk of evidence favorable to the client evaporating, you know, witnesses being unavailable. I mean, there's just any number of negative aspects that can happen to the client. And I suppose emotionally it's not good for the clients to have these cases hanging over their heads for long periods of time. They become dissatisfied and it's -- and it's just -- I look at it as if my

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mother or my brother or sister was in the same position. Would I want them to be treated in such a way, that they are waiting for months to have a resolution of their matter? And I have to believe that's not how I would want my family to be treated.

Q. And as part of the concern -- of course, in addition to your general concern about your client's satisfaction -- which, of course, any lawyer would be concerned about it. Is part of the concern, if your -- about the rapport and relationship that you have with your clients, which is necessary to conduct -- to fully advocate on their behalf at pretrial and at trial?

A. Yes.

Q. Okay. And so it sounds like one of the -- is one of the ways that attorneys handle -- attorneys in your office, yourself and the line attorneys, handle caseloads that are quite large, is to seek continuances in order to gather more information and do the investigation necessary to work up the case?

A. Yes.

Q. And your concern is that those continuances can lead to adverse results for your clients or --

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A. I believe that -- I believe that they contribute -- can contribute to negative outcomes for the client.

Q. And it's not that your attorneys are seeking continuances because they feel like it just for fun. I mean, the reason that they're doing so is because their caseload is too high. Is that correct?

A. Well -- yes. I think it's -- you know, certainly, it is a combination of caseload, and, also, it's -- again, this is a dynamic process. When you are trying to prepare a case for trial, there is more to it -- I mean, investigation is one aspect of it, but there are -- you know, there are depositions, there is preparation -- you know, for trial, there's pretrial motions -- there's a whole series of work that needs to be done, and if you have too many cases, you are unable to effectively do all of the steps necessary to effectively represent your client.

Q. Is surveillance video something that is important in a number of your cases? And I'm talking about, like, store video -- you know, videos from store surveillance and the like.

A. I mean, it plays a part in some cases. I

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mean, it's -- the use of video as a police technique, yeah, it's more common now. There are body cams, there is in-car cameras, there are miniaturized cameras that the confidential informants are being given to use. So, yes, video is a very important part of many different kinds of cases.

Q. Okay. Just give me a second here. I want to ask you about lineups, Mr. Guinn, if I could. I know it depends, in part, on the geographic differences in the five counties that you work in, but, typically, are there lineups -- are there in-person lineups held, at least in some cases in your district?

A. Typically, no.

Q. Okay. And so how are identifications done?

A. Normally, photo arrays are given to individuals. I can only recall maybe one instance where -- and it really wasn't even a lineup, it was a sheriff's deputy driving someone by. I mean -- and them looking out the window. They don't do in-person lineups.

Q. Okay. I want to ask you about post trial if I could. In your district -- at what point does

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representation by the trial attorneys in your office end?

A. After -- well -- in a trial context, we would go through trial, through sentencing. We would file a post-trial motion for new trial, and then if those are denied, then the case would -- a notice of appeal would be filed, and that case would be sent to the appellant division.

Q. Okay. And who files the notice of appeal?

A. The trial attorney does.

Q. Okay. And then your office sends the case on to the appellant division; is that right?

A. Yes.

Q. And if there were a motion for a new trial, who would file that motion?

A. The trial attorney.

Q. Okay. I want to talk about sentencing for a minute. Is that something that your office spends time preparing for, sentencing of your clients?

A. In the entire trial sequence, as a general rule, the preparation for a final sentencing is -- probably the least amount of time is spent on that. Most of our cases have a -- sentencing assessment report is ordered by the court, and the individual attorney will go over with the client what to expect

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in the sentencing assessment report phase, but outside of that, it's pretty limited as to the other -- any other work being done to prepare for sentencing.

Q. Would you -- in an ideal world, would you like to spend more time, you and the attorneys in your office, on preparing for sentencing?

A. I think it would be helpful, yes.

Q. And do you think that could have positive results for the sentences that your clients would receive?

A. I think that it would -- there's a great probability that that would help in final sentencings of clients.

Q. And is one of the concerns -- when either your caseload or the caseload of your attorneys gets to this unethical or borderline unethical area that we've been discussing, is one of the concerns that you then have even less time for preparing for sentencing proceedings?

A. I think that's a consideration, yes.

Q. Okay. Now, you talked about the -- your 80 cases, and just returning to that for a second. And you said -- we discussed at length about your concerns, that if that continues, you'll need to

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self-report and you won't be able to ethically represent your clients. And, obviously, that's -- that's despite the fact that you have almost 30 years of experience as a criminal attorney in a law firm setting, and then as -- in a public defender's office; is that right?

A. Yes.

Q. In other words, you're an extraordinarily experienced attorney --

A. Well, I don't know if I would say "extraordinarily," but I am -- I am an experienced attorney, and I think that I -- because of my experience, I do have the ability to look at the cases that are -- that come into our office and that I can make decisions about, Are we being effective in how we are representing our clients?

Q. Got it. And I appreciate that. I'm not trying to -- your humility. I -- in addition to knowing -- for that experience, being that you have a good understanding of what your office is and is not able to ethically handle, is it also fair to say that you, with those almost three decades of experience, you -- individuals with only two years of experience would be able to handle ethically fewer cases than you're able to handle? Is that

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fair to say?

A. I think that's a fair statement, yes.

Q. In other words, if the attorneys in your office who have two to four years of experience, as four of the five line attorneys do, if they had your caseload -- not just the number, as you said, but 80, and many of which are serious cases, you would be even more concerned about their ability to handle that caseload ethically; is that fair?

A. I would be very concerned about their ability to handle a large caseload of serious felony offenses.

Q. Okay. Which is part of the reason you have taken on these additional cases for yourself?

A. That is the reason, yes.

Q. Okay. Do you know -- and it's okay if you don't -- the number of open cases your office has currently? I may have asked that already, so forgive me if I did, but ...

A. And I looked at the number before -- I believe that -- and this is kind of a guess on my part, but I believe that it's around -- it's a little over -- it's around 500, I'm pretty sure.

Q. Okay. So if it's around 500, and you have 80, that means that there are 420, approximately,

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cases split among the other attorneys your office; is that right?

A. Yes.

Q. Which means that each of those attorneys -- if they're divided -- on average, those five attorneys then have 84 or more than 80 cases on their dockets?

A. I would say that's pretty close.

Q. Okay. So even with your taking these additional cases to the level where you're concerned about your own compliance with the ethical rules, the attorneys in your office still have about 80 cases on their own dockets?

A. I think that's pretty close across the board. And understanding that this is a mixture of cases. It's not -- they're not all serious felonies. Primarily, they are felony grade offenses, but there are a mixture of misdemeanor and probation violation cases in those numbers.

Q. And those numbers, the 80-plus cases on each of those attorneys dockets, you know, on average, would actually be significantly higher if the Randolph County -- if there weren't this sort of vague -- what's happening in the Randolph County prosecutor's office?

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A. If -- and I would -- if Randolph County was filing cases at the rate in which has typically historically been done, we would be in a very different situation. We would probably be back to the wait list and looking at ways to handle the volume.

Q. And, again, you -- although you can't predict because you don't charge the cases, you anticipate that that is going to -- that the Randolph County prosecutors are going to pick up cases at some point?

A. I think historically it would -- I would agree that the numbers are going to increase.

Q. Okay.

MR. SCHERZER: Can we go off the record, just take a quick break for a second?

VIDEOGRAPHER: The time is 11:13 a.m., and we are off the record.

(A recess was taken.)

VIDEOGRAPHER: The time is 11:21 a.m., and we're back on the record.

MR. SCHERZER: So thank you very much, Mr. Guinn. That's all of the questions I have for you.

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CROSS-EXAMINATION

BY MR. RAMSEY:

Q. I have a handful of questions. Again, my name is Steven Alan Ramsey, and I represent Governor Greitens and the State of Missouri. I will try not to interrupt you as you're answering various questions. Sometimes I get impatient, so I apologize in advance for that.

Before you attended law school, was there a gap between your undergraduate degree and law school, or did you go straight through?

A. There was a gap.

Q. And what did you do during that gap?

A. I worked for Brady's Columbia Glass and Paint Company.

Q. What type of work was that?

A. I ran construction jobs for Brady's. They were a commercial glass installation company.

Q. And your undergraduate degrees, what was it in?

A. Agriculture economics. I actually did law school and undergrad at the same time.

Q. Wow. I wish they had that nowadays.

Turning to your history of supervision, if you will, as a partner at the firm, I presume you

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supervised a number of attorneys that were in the firm?

A. Actually, I did not. I had my own practice. I did supervise -- I had four legal assistants, so I -- they were who I supervised.

Q. And if I understood your testimony correctly, in your current position as a district defender, you're more of a hands-on supervisor.

A. I think that's fair, yes.

Q. In what ways would you describe yourself as being hands-on? I know you mentioned that you have a very open-door policy in a small office. Are there any other ways that you train or mentor the attorneys that you supervise?

A. We do have monthly staff meetings. In those staff meetings, we look at cases, we talk about -- if they have upcoming trials, where they're at in their trial preparation, and we also try to review what we believe to be important cases that might have come out of the court of appeals. So far as my observations of the lawyers, I think -- it's fortunate that I do have a large number of cases, because I'm in court with most of them at least once or twice a month because we have the same dockets. So I get to have the opportunity to see how

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individual attorneys are handing a specific docket or how their -- kind of how their cases are progressing through a docket.

Q. And if you do not have an answer to this next question, that's fine. Do you have a sense of whether the way you supervise attorneys in your offices differ similar to any district defenders that you know?

A. I don't know.

Q. Turning to the e-mail that you sent -- I believe it was mentioned about once a week -- when did that process begin? Was that alongside the October letters that you sent out, or has that been a process that you've done for some time?

A. The e-mails to the lawyers regarding their caseloads, that started in October.

Q. And it's still going on today -- or currently presently?

A. Yes.

Q. And in your office, are you the one to decide how cases are assigned, or do you give that responsibility to another staff member?

A. Each lawyer is assigned a county. The lawyer that is assigned that county is responsible for reviewing the applications that are presented in

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that county, and then they give those applications to the legal assistant who opens the cases and enters their appearance. The only time that I become involved, generally, in that practice has to do if it's a sex offense or if it's a B felony offense that's a violent felony or a murder, then the attorneys will come and talk to me about the case so that I'm aware of it, and then a decision is made as to who will be assigned that case.

Q. And so if I understood you correctly, your attorneys in the various counties, they're the first line, if you will, in terms of the screening for the applications for public defender services?

A. That's correct. And I will caveat that. There will be times when applications are faxed into the office or people may come into the office, and then the legal assistants will review those. If they have questions, they'll come see me or some other attorney, but since the legal assistants have been trained as to the guides for determining representation, they are allowed to make a determination if we're going to accept a case, and if they don't know, then they will come and ask a lawyer.

Q. Aside from the application itself -- and I

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believe I've seen a second sheet that provides some guidelines on determining indigency. Does your office or do you personally have any type of an independent verification system, or do you, by and large, rely on the application itself?

A. Well, the process we use -- and I guess the short answer is, yes, we rely on the application. The application is reviewed. If it is incomplete, then the client is contacted. If it's -- if it is a situation where they simply just sign their name and sign the application, that will probably be denied, since they've not -- they're not filing out the application completely. If the individual completes the application, primarily, and signs it that they have done so, then I'm going to rely on what they've put in their application, and further investigation is not going to happen, probably.

Q. And do you have a sense for -- this isn't a term of art, but the rejection rate for applicants or the indigency rate -- do you have a sense of how often your office rejects applications?

A. I don't have numbers or percentages. Do we accept -- I can say we accept more applications than we reject. We do reject applications, again,

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primarily based on the criteria that they will either list an asset that takes -- that makes them ineligible or they will list an income that makes them ineligible. And in those situations, we will send a -- a rejection letter, denial letter to that individual advising them that they do have the right to request an indigency hearing with the circuit judge, and many times, people do, and then the judge will make a determination as to whether or not he's going to appoint in some case.

Q. Switching gears slightly, the two attorneys that you have assigned to Randolph County, those two attorneys came to you, whether it was -- it was shortly after the Hinkebein decision, or whenever the date occurred, they came to you and said, Hey, we're really slammed, could you not provide us any more cases.

A. In -- that's not exactly how it happened. I -- I sent an e-mail out to all of the lawyers to say, you know, they've all -- they had all seen the Hinkebein decision, and I said, you know, we need to -- I need to know from you if you are in a position where you don't feel that you can meet the standards of representation, and you need to tell me, and I -- and I -- as part of that e-mail, I

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said, you know, don't do it by this e-mail; you'll come and see me individually. Because I -- I didn't want to be in the position where people didn't feel -- or they felt it would be a negative impact on their employment if they said, Hey, I need some help. And so those lawyers individually came and talked to me.

Q. And was that before or after these letters that were sent to the various judges in your district?

A. I believe that I sent the e-mails pretty close to the same time. So I'm going to say that they were probably -- the letters to the courts were probably sent out first, and then the e-mails were sent -- or contemporaneously. I mean, it was all very close in time, but which came first, I can't tell you.

Q. And so turning to Plaintiff's Exhibits 29, 30, and 31, I'm going to be speaking about them generally. So you sent these letters around the same time you sent the e-mail to your attorneys asking -- or at least in the hindsight of the Hinkebein decision?

A. Correct.

Q. And am I understanding each of these

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letters -- and we can look at them one at a time, if we have to, but at the time you sent these letters, there was a belief by yourself or by the attorneys that you supervise that they were all operating outside of the rules of professional conduct.

A. There was a belief on my part that they were. Quite frankly, I expected every lawyer in my office to come into me and say, I've got a problem. That didn't happen, but didn't change the fact that I still met and talked with them about their caseloads. One of the motivating factors behind this was my belief that there was -- that I was going to have every lawyer in my office contact me, and I believe that my office is a part of the court system and that we've got an obligation to be up front with the judges, and I've always maintained that -- tried to maintain that kind of relationship.

So these letters were sent out to the judges so -- for want of a better way to describe it -- we didn't blindside them that we have a problem. I was very pleased that the judges, for the most part, were pretty positive in their response in wanting to accomplish a couple of goals. I think one is to treat the clients fairly, but, also, to make their courts as efficient as they

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could to try to accommodate.

Q. And you mentioned that you utilize -- I believe it was the Boone County letter as a template of sorts while you were drafting this letter. And I don't have the Boone County letter in front of me, but what would you say were the major changes? Was there a change in tone that you thought was more appropriate for your counties or ...

A. I think there -- and, honestly, I don't remember the Boone County letter either. I think there was a change -- a slight change in tone. I think that there was some aspects of the Boone County letter that just didn't apply to the courts that my office services, so we took it out.

Q. And turning to your relationship with the Randolph prosecutor, was -- am I understanding your testimony correct to suggest that after this letter was sent, there were no conversations with the Randolph prosecuting attorney in relation to this letter or relation to the caseload work concerns?

A. No. And we didn't meet -- if there was any kind of conversation, it certainly would have been in passing. It wasn't something where we were discussing that there was any kind of problem with case levels between the offices or there was no

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discussion about how many cases he was filing -- the prosecutor's office in Randolph County was filing.

Q. Switching gears again, you testified that your office -- you and your office, pardon me, have been fairly aggressive in filing pretrial motions, and I'm curious where that trend comes from, if you will. Is that something that you as a district defender has placed an emphasis on, the pretrial motions, or is it just something that the attorneys are doing on their own?

A. It's me.

Q. Okay. And how have you gone about, I guess, effectuating that custom or that expectation?

A. Early on when a new lawyer -- I mean, I guess it's -- some of it stems from our monthly staff meetings, some of it is generated there. When new lawyers come into our office, certainly, they receive very good training from the state public defender's office, but I have expectations about -- I want them to look at cases and to evaluate that we have a basis for filing a motion to suppress or to do the work necessary to do -- because I believe that's very important in the representation of criminal cases. We win more cases based on motion work than we do on jury trial work. And -- so

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that's where it's come from. I believe that it's a very important aspect of the cases and that that's work that has to be done.

Q. And, again, if you do not have a sense, it's completely fine, but do you have a sense of whether or not your office is more aggressive in pretrial motions than any other district defender's office --

A. Oh, I don't know.

Q. Okay.

A. I don't know that.

Q. Do you have any rules in place or any expectations concerning the earliest point in representation when you or your attorneys that you supervise may counsel a defendant to accept a plea deal?

A. Yes. I mean -- and I have to speak in generality. The general rule is that we don't do -- talk about pleas until we have discovery from the state and that discovery has been reviewed and reviewed with the client, and we're not going to talk about offers until we do that. Sometimes that involves the preliminary hearing. I'm not big on waving preliminary hearings because I think it's an opportunity for the client to hear the evidence,

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it's an opportunity to see the strength of the state's case. So the general rule is, is that we don't talk about doing any pleas prior to receiving discovery in some form. There is times when the clients don't want to do that. There are times when clients have been sitting in jail, and they want to get out, they want to take a deal. We try to avoid those situations, but, ultimately, it is the client's choice. And so I do believe that it's necessary that we at least explain what the deal is, what it means before they actually enter into a plea, so I think that is the exception more than the rule.

Q. And out of the ten or so trials that you could recollect within the last fiscal year that your office has tried, do you have a sense or a policy or custom of never sending an attorney into a trial alone? Said in another way, do you send second chairs to trial?

A. We do, except I'm the one who breaks the rule on that. I don't typically have a second chair with me because I take my -- I do take the investigator with me. Again, it depends on the case, but, yes, all of the other lawyers will always have a second chair.

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Q. Is that the same for bench trials as well?

A. No. Bench trials, typically, they will not have a second chair.

Q. Could you help me understand a bit more of the substantial nature of how many cases are dismissed or ultimately disposed of? I think you testified that a substantial number are dismissed but ...

A. And I do not know statistics on that. It's not something that has been tracked. I think that's going to change in the future, but we just never tracked it before.

Q. Turning briefly to the previously marked Plaintiff's Exhibit 21. I believe it's the Missouri State Public Defender Commission fiscal year report type of -- yeah.

I'm sorry. Did you testify that you had seen this document before?

A. I don't think that was -- I don't think that's what I was asked. They showed me page -- it would be your page 38976 and asked if I had seen that. I had seen this -- a form of this before. I can't tell you that it was from 2017, but I've seen it before.

Q. Okay. And so you've seen information that appears to be like this before?

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A. Yes.

Q. But not necessarily for the time listed?

A. It could have been, I'm just not sure.

Q. And in addition, opposing counsel had you look at a number of the numbers in the Moberly column -- or row, pardon me. Is it my understanding -- did I understand your testimony correctly that you cannot independently verify what, you know, cases initiated means or the percent of capacity is, et cetera?

A. The cases initiated, I understand what that is. The rest of the criteria here, since I don't -- quite honestly, I don't deal with that, so I don't know what that really means. Of the cases initiated by fiscal year, I understand what that is -- I mean, because I look at that quite frequently.

Q. Okay. Now I'm going to shift more into form questions. Those are my free willing questions, if you will, and so I'm going to take probably 20 steps back.

Not in preparation for this deposition, but in terms of conversations you've had concerning caseload or workload concerns, have you spoken to any organizations about those concerns?

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A. You mean outside of the Missouri State Public Defender System?

Q. Yes, sir.

A. No.

Q. And I presume, after reviewing the letters, that you've spoken to a number of judges concerning workload and caseload concerns?

A. Yes.

Q. Have you talked to the press at all?

A. No.

Q. Okay. Do you have any public defenders that are on call 24/7?

A. No.

Q. Have you, while being at the Missouri State Public Defender System, ever been denied a deposition that you felt was necessary for your case due to funding?

A. No.

Q. Have you as a supervisor ever denied a deposition request from one of the attorneys that you supervise on the account of lack of funding?

A. No.

Q. Are the same answers true for expert testimony? Have you ever been denied an expert when

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you thought an expert was necessary for your case?
A. No.
Q. Have you ever denied an expert testimony to one of the attorneys that you supervise that they felt were necessary to their case?
A. Based on funding?
Q. Based on funding.
A. Not based on funding.
Q. Since joining the public defender system, caseloads and workloads have been a persistent concern. Am I understanding your testimony correctly on that front?
A. Yes.
Q. And as a district defender, it's my understanding that you have discretion to implement local policies or local trainings or things to supervise and run your office. Is that also correct?
A. Yes.
Q. Have you instituted any new policy -- any new local policies for your office since becoming the district defender?
A. No. I mean, all of our policies are based off of the policies and procedures manuals that -- from the -- that the state office has put together.

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Any policies in my office, so far as individuals, you know, would be something like, you know, you have to be at work at 8:30, you take -- you know, when you go to lunch, those kind of things, but those aren't written policies because -- I mean, we use the state guidelines as the basis.
Q. And turning to timekeeping. When you were at the private firm, were you under a billable hours type of a system where you would track time, you know, in either five-minute increments or by task or 10-minute increments?
A. Yes.
Q. And so you have some experience with that timekeeping -- or timekeeping to that extent?
A. Yes.
Q. Since being the district defender, it's my understanding that the public defender system has gone through periods of tracking time.
A. Yes.
Q. Aside from yourself, was there anyone else who was tracking or managing how the attorneys were tracking time while you were in the timekeeping periods?
A. I'm not sure how that information was used. When we were tracking time, we -- everyone in

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the office -- I mean, lawyer-wise did track their time. How that information was used after our -- after we tracked the time, I do not know how -- what -- how it was used.
Q. Currently, are you tracking time in five-minute increments?
A. No.
Q. And so the extent of your timekeeping now, is it simply just the -- how many hours an attorney has worked per day, essentially?
A. Yes.
Q. Do you have a sense for when the last period of the five-minute tracking of time occurred? And if you don't, that's more than fine.
A. I can't tell you when we stopped doing that. My recollection is it was, like, December of 2016, but I could be way off. I know we're not doing it now.
Q. Got it. And this is a foundational question I should have asked a long time ago. What is your understanding of how your district and how your office measures a case? And so when I say "a case," what does that entail to you?
A. It's based primarily on the court cases. Each individual -- in other words, an individual, if

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they have three cases -- what I would call three cases, that's because they have three different case numbers assigned to the court, there are three separate cases. So that's when we open a case for -- if an individual has multiple charges filed, then they have multiple cases in my office.
Q. Are you aware of the Chapter 600.063 motion for caseload conference?
A. I'm aware of it. We have not utilized that.
Q. And is there a particular reason why you haven't utilized that, or is the reason because you sent the letters and the issue was resolved shortly thereafter?
A. Well, we haven't -- I don't -- in my opinion, I don't believe we have got to that point where we would do that. I can't predict what the future will bring, but it -- but I did not do that initially because I wanted -- we were trying to handle it, I suppose, informally with the courts.
Q. How many times have you as a district defender been judicially determined to have provided ineffective assistance of counsel?
A. I don't think I have yet.
Q. And do you have a sense for any of the

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attorneys that you've supervised while being a district defender have been judicially determined to have provided ineffective assistance of counsel?

A. I know that Robert Flemming has. I don't believe any -- and none of the other lawyers in my office have had that determination made yet.

Q. And Mr. Flemming was the person who has the most experience aside from yourself?

A. Yes.

Q. You're also tasked with managing the budget overall of your district; is that correct?

A. That's not correct.

Q. That's not correct. Have you ever run out of money that's been -- I don't know if appropriate is using the appropriate word, word but it's been given to your district?

A. I don't know. I have -- I know we track the office budget, and to the best of my recollection, we've never ran over, but I really -- certain items like phones and those type of things -- I mean, I don't have any control over that -- those budget amounts. So I suppose it could be a possibility that those went over budget.

Q. And you've never had to request a supplemental budget to get through the fiscal year?

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A. No. No.

MR. RAMSEY: No further questions.

CROSS-EXAMINATION

BY MS. SHIPMA:

Q. I just have a couple of ...

Ed, so what does your local office budget cover? What items are included in that?

A. Well, telephones, rent, you know, postage. There is a local item for Internet service, there is -- I mean, that budget is compiled by, I believe, Kathy Lear, and that's based on, I think, historical numbers. And most of it is items that I have no -- the local office doesn't have any control over because they're -- I don't want to use the word "fixed expenses," but they -- rent is a number that -- it is what it is, and it doesn't change with the passage of time.

Q. Okay. And with respect to rent, does the county not provide your office space?

A. They do. And I just put -- I'm assuming that the county -- yes. The county pays for it, but I -- you know, I'm assuming that's just part of the overall budget.

Q. Okay. And is there some system whereby funds are transferred to your office from Kathy Lear

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or from the state office?

A. There's not --

Q. Let me ask you -- do you get any cash?

A. No. There's -- no money comes into our office. No funds -- any funds that are expended by our office I -- such as depositions, expert expenses, those type of expenses are reviewed by the attorney that requested them, then reviewed by me and approved, and then those bills are sent to the -- to the -- as I call it, the home office, and they're reviewed by management and then paid out of there. We have -- the local office has no funds with which they pay for anything.

Q. So to ask if you ever run out of funds, you may overspend in an item that's allocated to you, but you don't have any funds, really, to run out of; is that correct?

A. That's a better description than how I described it, yes. We have no funds to run out of.

MS. SHIPMA: Okay. Thanks.

REDIRECT EXAMINATION

BY MR. SCHERZER:

Q. I just have a couple of questions, Mr. Guinn.

In terms of the indigency determinations,

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is it fair to say that time spent -- time that you or your -- the attorneys in your office spend on investigating whether someone has stated their income accurately, as an example, is time that you then couldn't spend on existing client's cases?

A. Yeah. I think that's fair to say. I mean, we do not do extra investigation if a client completely fills out the application because that individual is saying that I have accurately stated and completed this -- the information in the application, so I rely on that.

Q. And because -- just by the nature of time being a finite measure in this world, we -- any time you spend on investigating that is time you could not -- you would not spend on --

A. That's true.

Q. -- case work; is that right?

All right. And is the same true for something like depositions? Say, that time spent -- that time spent taking a deposition in one case is, of course, time that you -- if you have 79 other cases, is time that you then cannot devote to those cases, at least on that particular day when you're doing a deposition. Is that fair?

A. That's true, yes.

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Q. So is that one of the calculations that you need to make -- you and the attorneys in your office need to make when you're thinking about whether to do a day-long deposition, for example, is whether or not that's -- in addition to whether it's good for that client and that case, whether or not you're able to do so without harming the other clients on your caseload or the caseload of your line attorneys?

A. I think it's a factor. And, again, that's why we're looking at these case numbers and how many cases, because we are attempting to avoid the situation where we neglect one client because we have too much work to do on another client.

Q. And you said that you -- when you said that -- I guess that first e-mail to your line attorneys, that you expected that they would come to you and say, We have a problem -- that each of them would come to them, rather than, you know, two out of the five or -- as it turned out, was that expectation that each of them would say they had a problem based on your understanding of their caseload prior to your sending that e-mail?

A. Well, certainly, I'm always concerned about the number of cases they had. I thought that

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I would hear from the other lawyers because of being overwhelmed by the court decision or the -- in the Hinkebein case. I know that they -- the lawyers in my office all read the opinion and were concerned that were they measuring up correctly.

Q. Okay. And that was something that was discussed in the office?

A. Yes. Yes.

Q. Was that directly after the Hinkebein decision?

A. Yes.

Q. Okay. And how do you know that each of them read that -- the decision there?

A. Because I printed it off, and they -- each one of them -- and they had to read it and initial.

Q. Got it. Okay. So you instructed them to do so?

A. Yeah. Because I suppose I was as -- I didn't know anything about the Hinkebein case before that opinion came out, and when I got it and read it, I was quite frankly very concerned about the entire situation, and so that's why -- and I was concerned about the opinion, and I wanted to make sure that all of the lawyers were aware of it.

Q. You were concerned about it because of your own concerns about whether the line attorneys in your office were able to comply were their ethical obligations?

A. Yes.

Q. And how did you hear about the opinion, if you recall?

A. I believe the way I heard about it was by e-mail, either from Greg Mermelstein or Michael Barrett. I don't remember which.

Q. Okay. And when you -- it sounds like when you got that, what you're saying, sort of, shortly after reading that, your immediate concern was, I'm concerned that the attorneys in my office are not complying with their ethical obligations?

A. Yes.

Q. Okay.

MR. SCHERZER: That's all of the questions I have.

VIDEOGRAPHER: The time is 12:02 p.m., and we're off the record.

(The deposition concluded at 12:02 p.m.)

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CERTIFICATE OF REPORTER

I, Lisa Ballalatak, a Certified Court Reporter for the State of Missouri, do hereby certify that the witness whose testimony appears in the foregoing deposition was duly sworn by me; the testimony of said witness was taken by me to the best of my ability and thereafter reduced to typewriting under my direction; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition was taken, and further that I am not a relative or employee of any attorney or counsel employed by the parties thereto, nor financially or otherwise interested in the outcome of the action.

_____

Lisa Ballalatak
Missouri Supreme Court
Certified Court Reporter

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December 28th, 2017
MS. JACQUELINE D. SHIPMA
MISSOURI STATE PUBLIC DEFENDER SYSTEM
1000 W Nifong Boulevard, Suite 100
Columbia, Missouri 65203

SHONDEL CHURCH, et al. v. STATE OF MISSOURI, et al.
Dear Ms. Shipma:
Please find enclosed a copy of the deposition of Edward Guinn, taken on December 12th, 2017, in the above-referenced case. Also enclosed is the original signature page and errata sheet.

Please have the witness read this copy of the transcript, indicate any changes and/or corrections desired on the errata sheet, and sign the signature page before a notary public.
Please return the executed signature page and errata sheet to the Alaris Litigation production department at the addresses listed above within 30 days after receiving the transcript.

Thank you for your attention to this matter.

Sincerely,

Lisa Ballalatak
cc: Mr. Scherzer

ERRATA SHEET

Witness: Edward Guinn
SHONDEL CHURCH, et al. v. STATE OF MISSOURI, et al.
Date Taken: December 12th, 2017
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Reason for change: _____

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Witness Signature: _____

STATE OF)
)
COUNTY OF)
I, Edward Guinn, do hereby certify:
That I have read the foregoing deposition;
That I have made such changes in form and/or substance to the within deposition as might be necessary to render the same true and correct;
That having made such changes thereon, I hereby subscribe my name to the deposition.
I declare, under penalty of perjury, that the foregoing is true and correct.
Executed this _____ day of _____, 20___, at _____.

_____
Notary Public

My commission expires: _____

_____
Edward Guinn

A

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Exhibit J

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
CENTRAL DIVISION

SHONDEL CHURCH, et al.,)
)
Plaintiffs,)
) Case No.
vs.) 17-04057-CV-C-NKL
)
STATE OF MISSOURI, et al.,)
)
Defendants.)

VOLUME I

VIDEO DEPOSITION OF JEFFREY MARTIN

TAKEN ON BEHALF OF THE PLAINTIFFS

December 5, 2017

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(Original exhibit attached to original transcript.)

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
CENTRAL DIVISION

SHONDEL CHURCH, et al.,)
)
Plaintiffs,)
) Case No.
vs.) 17-04057-CV-C-NKL
)
STATE OF MISSOURI, et al.,)
)
Defendants.)

VIDEO DEPOSITION OF JEFFREY MARTIN, produced, sworn and examined on December 5, 2017, at the offices of the American Civil Liberties Union of Missouri Foundation, 406 West 34th Street, Suite 420, Kansas City, Missouri 64111, before Emily S. Hughes, a Certified Court Reporter and Notary Public within and for the State of Missouri, in a certain cause now pending in the United States District Court, Western District of Missouri, between SHONDEL CHURCH, et al., Plaintiffs, vs. STATE OF MISSOURI, et al., Defendants; on behalf of the Plaintiffs.

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IT IS HEREBY STIPULATED AND AGREED by and between counsel for the Plaintiffs and counsel for the Defendants that this deposition may be taken in shorthand by Emily S. Hughes, RPR, CRR, MO CCR #1353, and Missouri Notary Public, and afterwards transcribed into typewriting; and the signature of the witness is expressly reserved.

* * * * *

(Deposition commenced at 2:49 p.m.)

VIDEOGRAPHER: We are on the record. Today's date is December 5, 2017, and the time is 2:49 p.m. This is the video recorded deposition of Jeffrey Martin in the matter of Shondel Church, et al., versus State of Missouri, et al., Case Number 17-04057-CV-C-NKL in the United States District Court for the Western District of Missouri, Central Division. This deposition is being held at the American Civil Liberties Union of Missouri Foundation.

The reporter's name is Emily Hughes. My name is Ryan Gray. I'm the legal videographer. We were with Alaris Litigation Services.

Would the attorneys present please introduce themselves?

MR. WILLIAMSON: Jason Williamson from the ACLU for the plaintiffs.

MR. RAMSEY: Steven Alan Ramsey for the State of Missouri and Governor Greitens.

MS. SHIPMA: Jacqueline Shipma for the Missouri State Public Defender defendants.

VIDEOGRAPHER: Would the court reporter please swear in the witness?

JEFFREY MARTIN,

of lawful age, produced, sworn and examined on behalf of the Plaintiffs, deposes and says:

EXAMINATION

BY MR. WILLIAMSON:

Q. Good afternoon, Mr. Martin.

A. Good afternoon.

Q. My name is Jason Williamson. I am one of the attorneys for the plaintiffs in this case. Have you ever been deposed before?

A. Maybe once or twice.

Q. Do you remember when that was?

A. Oh, no. It would have been during the course of working for the public defender's office.

Q. So in the context of a criminal case?

A. Yes.

Q. Okay. Today, I'm going to ask you a number of questions relevant to the case. You are required to answer those questions truthfully and to the best

of your abilities. Please remember that your testimony here is under oath, so it's just as if you were testifying in court. You understand that?

A. Yes, sir.

Q. And your attorney may object to one or more of my questions, but in limited circumstances, you are still required to answer the question; okay?

A. Sure.

Q. If you don't hear my question or you don't understand my question, just please let me know immediately so that I can repeat or rephrase the question.

And a few things that I wanted to make sure we keep in mind for the benefit of our -- our court reporter: One is to make sure that you're speaking clearly and loudly enough for her to record. I have a feeling that won't be a problem.

A. Not a problem.

Q. Also, make sure that you answer all questions verbally as opposed to using any kind of body movements; okay?

A. Sure.

Q. And I'd like for us to -- to try to let one another finish before we -- we move on, so please, let me finish my question before you answer, even if you

can anticipate the question that's coming. And I'm going to -- to do my best to -- to let you finish your answer before I ask another question; okay?

A. Okay.

Q. Did you prepare for the deposition today?

A. I spoke with Ms. Shipma I think twice. First when she notified me that I was going to be included on the list, and then actually, I think yesterday, she touched base with me to see if I had any questions.

Q. And did you talk with -- talk with anyone else in preparation for the deposition?

A. In preparation, no. I mean, I let, like, my staff and, you know, my wife and a few other people know that I was going to be coming down here but --

Q. Okay.

A. -- not otherwise.

Q. Did you review any documents in preparation for today?

A. I don't know that I reviewed them. I didn't have -- I had a few documents that I had forwarded to Ms. Shipma, which I think were e-mails to me from the Court that I couldn't remember whether I had forwarded them to her, so I wanted to make sure that I had -- that I had done that. I may have re --

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in essence, resent them again, but -- but other than that, there wasn't a bunch of documents that I reviewed or anything like that.

Q. And did you do anything else that you can think of to prepare for today?

A. No.

Q. In all of your spare time?

A. Correct. No.

Q. Who is your current employer?

A. Missouri State Public Defender.

Q. And what is your title?

A. I am the Area 17 district defender.

Q. And how long have you served as district defender?

A. District defender -- I have been the district defender there since '99, I believe, something about like that.

Q. And have you served the with MSPD in any other capacity?

A. I served at -- I mean, I was an assistant public defender prior to becoming the district defender. I've been with MSPD since 1996. I mean, January will -- will be 22 years.

Q. And what other positions did you hold within the office prior to becoming district defender?

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A. I was an assistant public defender until I became district defender.

Q. And did you start as an APD 1?

A. Yes. I -- well, yes. I'm trying to remember. There used to be -- when I first started, there was a designation, APD 1, and APD 1P, and I don't remember which one was first.

Q. Okay.

A. But in essence, I started at what would be the beginning position.

Q. And from there, you -- you moved up the ranks to APD 2, 3, and 4?

A. I became -- I was an APD 3 at the time I became a district defender, so I never actually became an APD 4. I became district defender before that occurred.

Q. Were you an APD also in Area 17?

A. Yes. That's the office I started in, and I've always been there.

Q. Okay. Got it. And did you have any -- did you do any other legal work prior to coming to the MSPD?

A. I worked privately for about three years, I would say. About three years before coming to MSPD.

Q. And was that as a criminal defense attorney?

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A. For the most part, yes.

Q. Did you do other kinds of legal work?

A. I did some. Most of it was, like, municipal court, traffic work, criminal work, did some bankruptcy work, but it was mostly limited to that.

Q. So can you tell me which counties are included in Area 17?

A. Area 17 has primary coverage in two circuits. Those two circuits are the 17th Circuit, which is Cass County and Johnson County, Missouri, and then the 27th Circuit, which is Henry County, Bates County, and Saint Clair County. Our office also covers conflict cases for counties that are -- for the offices basically that are to the north and the south of us, so for the Area 16, the Kansas City office; for the Area 7 office, which is Liberty; and then for the Area 28 office, which is Nevada. We, over the years, have done conflict cases from those offices, so when they have multiple codefendants or conflict witnesses or situations like that, then we would end up getting those conflict cases from those offices.

Q. Now, is your office presently still handling conflict cases?

A. We still have conflict cases assigned in

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our office. We are currently not receiving conflict cases from the Kansas City office or the Liberty office. As far as new conflicts arriving, we have had a few come from the Nevada office, but for the most part, those were getting contracted out as well. They were contracting out the conflict cases here over the last number of months.

Q. And is it your understanding that the public defender's office received additional funding this -- this fiscal year to cover conflict cases?

A. Yes.

Q. But your testimony is that there are still -- notwithstanding that additional funding, there are still conflict cases that are being handled by your office?

A. We were -- we are generally not receiving new conflict cases, but I still have conflict -- I have two attorneys right now that are still -- part of their caseload are conflict cases that they're doing the -- one attorney, that is primarily what he does, our cases from Jackson County and Clay County and Platte County.

Q. But those are all cases that were opened prior to --

A. Previous.

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Q. Do you expect that trend to continue?
A. I would be hopeful, but no. Based on my experience with budgets and the State for the last 22 years, my experience would be that while we had that this year, and we're -- my office is certainly grateful to have had that, I would fully expect that when the next fiscal year rolls around, in all likelihood, that will not be the case, and that I will start getting conflict cases from Jackson County and Clay County and Platte County and Nevada and that sort of thing again.
Q. Okay. How many attorneys do you have on staff right now in your office?
A. Okay. My overall -- my overall staff right now is 12.
Q. 12 attorneys?
A. No. That's -- my overall staff is 12. That includes the office support assistant, which is the person up front that answers phones and opens files and that sort of thing. I have two legal assistants, one investigator, and then there's an eight-attorney staff total. Now, I have been designated another position, attorney position, which I have been trying to fill for the last six months, so I have a position that is open right now.

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Q. Okay. And that -- the eight attorneys includes yourself?
A. Oh, yes. That includes me.
Q. Okay. And you said you have -- there's -- there's funding for an additional attorney?
A. Yes. I would end up with a staff of 13 total.
Q. Okay. How soon would you expect to be able to fill that position?
A. I have offered the position, I believe, at least three times now that I can think of. The first person did not pass the bar -- strike that.
I think four times, because then the next three people have all declined the position, declined the offer to work somewhere else, accept offers somewhere else.
Q. We'll talk in a bit about the -- the Hinkebein decision. But were -- is it your understanding that the -- the decisions to turn down those offers had anything to do with those recent events?
A. As a matter of fact, I can tell you that during my interview process, one of the last questions that I ask people during the interview process is, would you have any -- other than asking them if they have questions for me --

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Q. Uh-huh.
A. -- about various things, I ask them, "Do you have any concerns about joining the public defender's office? Is there anything that would, you know, concern you, or what worries would you have?"
Q. Uh-huh.
A. Every single person that I've interviewed almost to a T, at least one of the questions that they've asked has been about the caseload and what kind of caseload they would have, and you know, what that -- what that looked like. And my impression of that was not from a -- just an interest standpoint of, you know, well, what does my caseload look like? Like, what is my average day look?
Q. Right.
A. There were a number of them, many of them that that question was a specific question that was geared towards, like, how heavy is my caseload going to be the day I start?
Q. And what -- when were those four offers made and what -- and in what time frame?
A. I have been -- the position has been open, I believe, since July, so it has been during that context at that time frame. The person that obviously

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didn't pass the bar I think found out in -- whenever bar results come out. I want to say -- I forget whether it's September or -- but it -- that person found out about bar results. And I should correct one thing. There was one person that we were in -- that I was going to offer the position to that accepted an offer with another office, with actually an MSPD office.
Q. Okay.
A. But then the other people declined the offers. Those offers then took place after -- after making -- after the one person not passing the bar --
Q. Uh-huh.
A. -- then I simply, you know, started checking references on what -- who would have been the next person on my list --
Q. Right.
A. -- moved down from there. If we didn't have applicants that I felt would meet the criteria at -- which I have done, I basically reopened my process and started rescreening applicants and am still doing that now.
Q. What kind of turnover rate do you have in your office? And we can start with turnover rate among the lawyers.

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A. Yeah. Because it has -- it has varied. I'd say on average, I probably lose an attorney somewhere around -- I'd lose one probably once every, if I had to kind of average it out, like, nine -- nine months to a year, somewhere around in there, you know. And -- and that kind of accounts for there's sometimes where I'll have people, and maybe they'll -- I'll be fully staffed for a year and a half and, you know, that sort of thing or, you know, up to two years; and then all of a sudden, I'm down two attorneys. In an office like mine, when you start losing more than one attorney, that becomes a real problem.

Q. Now, to the extent that you can recall this, of the other seven attorneys in your office, what is the range of experience that they have as attorneys, as criminal defense attorneys?

A. Right now -- right now, I have a fairly experienced staff with the exception of one attorney, which is a -- a new hire. I've been able to hire a person, but I had a person leave, so still have the position that I was trying to originally fill is still open. That person is a -- is a brand new licensed attorney. He was just sworn in. Other than him, most of the attorneys in my office are fairly experienced attorneys. Some of them have been at -- with my

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office -- let me think here. One of them has been in -- bee with my office since she started and has been with me probably nine years or so, something like that. The other attorneys that I have have transferred -- many of them have transferred in from another office, so they weren't, like, a direct hire for me as a new attorney.

Q. Okay.

A. They transferred in from somewhere else, but many of them have -- have a pretty good -- I'm blessed to have a number of attorneys that have experience right now. I've had the converse of that.

Q. Uh-huh. What would you say are the primary differences between having experienced attorneys on staff versus young lawyers?

A. Well, having an experienced attorney on staff, the benefit of having an experienced attorney is that if somebody's gone, if someone's sick, if they have to cover a docket, if they have to do something that's out of the ordinary, it -- it's a lot easier for them to do it, to walk into an unfamiliar jurisdiction. Since our office covers so many counties, there would be places that people might have to go that they haven't ever been there before as opposed to working in one courthouse generally. So

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other than figuring out, you know, how to get from point A to point B, for them, you know, it might not be that big of a deal to do. There are other kinds of logistics that they're familiar with that they know, you know, I'm going -- if I'm going to do this, I'm going to probably be deposing, you know, a certain number of people. Here's the kind of case I have. I might need an expert for that, so I need to kind of be planning, you know, what I'm tong to do. Recognizing mental health issues in clients, some of those kinds of things. Experienced attorneys have a better grasp of -- of some of -- some of those things and being able to recognize it or know those things early on as opposed to later on.

Q. Do you -- how long does it generally take for you to fill a position? And I know you've talked about trying to fill this --

A. Uh-huh.

Q. -- sort of new position, but when someone leaves, generally, how long is it between the time that person leaves and the time you're able to replace them?

A. Oh, at best, usually the turnaround is about 90 days or so, at best. And it depends on how it gets fills. Because, for example, like, one of

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those experienced attorneys, if they're transferring from somewhere, if that attorney is transferring from an office that they, themselves, might -- obviously, they're going to be losing someone, if it's a smaller office, they might have to really go through a hiring process before that attorney can leave, because otherwise, it might leave them in a real hole. So I may operate -- because I have more attorneys than they do, I might operate with that hole for a while at my end until they can try to get their situation taken care of. Other times, it's had to do with just the time of year and -- and various other kinds of things. For example, in this round of stuff, I've had nobody apply transfer-wise throughout the entire course of this. All of this has been people that would be new-hire scenarios.

Q. How -- how do you think that this -- that the -- the turnover rate and the difficulty in replacing attorneys who leave impacts your office's ability to provide the kind of representation that you think is necessary for your clients?

A. Well, it creates a number of problems, not the least of which is, people basically are just filling in. They're covering something in some way. And so from a client standpoint, they were talking

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with person A; they're now talking with person B. For some clients, that -- you know, they may be okay with that, and it doesn't bother them. For other clients, it's a -- it -- you have to spend time developing trust with a client in order to be able to talk to them about certain aspects of cases, what the outcomes might be, those kinds of things. So from that standpoint, it creates logistic problems that way.

For us, the other logistic problem that it creates is, we've got a number of counties we go to, and I only have so many people that can do stuff. And court, based on what days you have court and how many people you have, people can't be in two places at once. They also can't -- it inhibits their ability to go the jail and visit clients. It inhibits their ability to do other things that would help them be able to investigate or move a case forward because they're filling those days with other court dates. You know, even if it's just to reset something or to try to get somebody out of jail or whatever it might be, you've taken a day that would have been -- or days that would have been constructive workdays and turned those into another court day. And so you know, while people can go to court and can cover court, that might be all they're doing.

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Q. Can you talk to me a little bit about your day-to-day responsibilities as district defender?

A. Well, I have -- generally, I have two functions. I am the -- as a supervisor of the office, I have all of the managerial duties, so I'm supervising attorneys, supervising other staff, dealing with families and other individuals outside the office that might be calling in or contacting the office, people with general questions that can't be answered by support staff that need to be answered by somebody else. Generally, I would be the person that a number of those things get directed to. Dealing with Courts and jails and other kinds of responsibilities that -- that you have, from a management standpoint.

Q. Uh-huh.

A. I then also, because of our office and staffing, I have my own caseload, and so I have a caseload responsibility like everybody else in my office. And while I've had to reassign that in various ways at various times, that also requires me to go to jails, to be able to go to court, to be able to, you know, deal with my own clients. To be able to work on their cases as well along with the other aspects of the office.

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Q. How does your caseload compare to the caseload of the other attorneys?

A. I've tried at times to do various things with -- with my caseload, in -- in either limiting it, rearranging it. I've tried things to adjust it in various ways, but as a practical matter, my caseload is very comparable to other people in the office. There's no -- there's no good way not to be able -- there's no good way not to be able to do that. It's just an impossibility.

Q. And I assume you mean there's no good way to do that with the current number of attorneys --

A. Correct, right.

Q. -- you have on staff?

A. Right. Everything -- yeah. Everything is in the context of what I -- with what I have right now, there's no way for me to -- me to be able to functionally do that. I -- it would dump enough cases on other attorneys that they wouldn't -- it -- they have too many as it is.

Q. Do you have a sense of how many cases you have right now?

A. How many I, personally, have?

Q. Individually, yeah.

A. If I opened up my laptop and logged on, I

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could tell you exactly, but the exact number, I wouldn't be able to tell you. I would venture to say at any given time right now, I've floated anywhere between 120 and 150 cases.

Q. You, personally?

A. Me personally.

Q. And is -- is that range the same for the other seven attorneys?

A. It is, with the exception of the -- there's two exceptions in that, and -- and I'll explain some with mine as well.

My caseload, I have tried to limit to what would be -- what would be lower class felony cases, and they're primarily in the county that our office is in, is in Cass County, so that way, I'm able to better control being able to go to the jail, being able to go to court, and being able to come back to the office, rather than, in essence, being in court or going to the jail, basically removing me from the office for a day or multiple days.

The youngest -- and I say "youngest." The less -- the least experienced attorney, the newest one that I have, youngest from the standpoint of when he started.

Q. Right.

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A. He's actually the youngest too. He -- his caseload, it primarily consists of -- there's a large number of cases that are misdemeanor, probation violation, he does have lower level C, D, and E felonies, but -- and he doesn't have any upper class felony cases as of yet.

Q. So when you say that you try to limit your caseload to lower level felonies, in Cass County, those are C, D felonies?

A. Yes.

Q. And E felonies?

A. C, D, and E. Yeah. There's a new classification this year now, E felonies, which I still am trying to get ingrained in bread -- in my head. For so long, it was C and D felonies.

Q. Right.

A. And I did -- and you had answered -- and to go back to the question before --

Q. Uh-huh.

A. -- the other attorney from a numbers standpoint that has a lower number is the attorney that does the conflict cases up here in Jackson County and in Clay County, Platte. Part of the reason is because the logistics of the travel with all of those cases, and many of those cases are also very serious

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homicides, multiple count robbery cases, things like that that require him to have different logistics as far as travel and jails and that sort of thing, so his numbers have been solely ris -- restricted in relation to that just because, as a practical matter, he can't do -- he wouldn't be able to do other stuff.

Q. Okay. Is it your testimony that all of your cases -- your personal cases are lower level felonies, or do you also have some misdemeanors?

A. I have -- well, and I also have probation violations in that -- in that context as well. I'm trying to think if I actually have misdemeanor cases. In Cass County, it's a separate misdemeanor docket, so if I have a misdemeanor case on there in my caseload, it would be a random misdemeanor case simply because that person has other cases going on, and I just have that case assigned to me. But on the whole, it's not a misdemeanor caseload that I have assigned myself.

Q. And any particular rationale for that?

A. The rationale for that at the time was I -- I didn't have another attorney to be able to assign to do that, and it -- prior to that, I had myself assigned the smallest county caseload, which was also the county furthest away from the office, and -- which was Saint Clair County. And while in numbers --

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that -- that kept numbers down more, the logistics of the jail and the logistics of my travel constantly had me out of the office where I was not able to effectively deal with other things I needed to deal with like family members who might call in or things like that. The logistics of that had me out of the office -- might have me out of the office for a couple of days as a practical matter, and you weren't able to deal with other things that you needed to be able to deal with. Which it also includes just super -- supervision of the office and being there for the staff and answering questions and implementing policy and things like that, so that's why I -- I had to change that to where it put me in the office, and that was the only way that -- at that time to be able to do it.

Q. And there's no one else in your office who is able to do the kind of supervision that -- that you're responsible for -- for doing?

A. Right.

Q. That's not something you can hand to someone else?

A. No.

Q. Do you all -- do you second chair any cases, trials?

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A. Yes.

Q. How often do you do that?

A. I try to as much as I can, especially with the last -- one of the attorneys -- well, actually, the last two attorneys that left my office were both attorneys that I had hired in the last three years, and one of them had almost no experience, and the other one had a slight bit of private experience, but basically had very little experience as well. I tried to put myself in the position of certainly for people who have first trials or for certain types of cases making myself have available to be able to second chair those individuals, because part of my responsibility as a supervisor and to recommend them in relation to a promotion process is to be able to have observed them demonstrating trial skills. We're a trial office. People, you know, are expected to be able to demonstrate those -- those skills to some degree, and the only way for me to effectively evaluate those is for me to at least be able to observe that, so second chairing was a great way to be able to do -- to do that, because you're involved with all aspects.

Q. How often do you interact with your attorneys on a one-on-one basis for supervision

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purposes?
A. Well, I'm not sure exactly how to answer that. I mean, I interact with them on a daily basis, the attorneys that -- for example, that are there in the office, or if I'm over in -- in court, and they're over in court, I interact with them. I am I think -- I actively try to talk to my attorneys and, you know, find out what's going on with them, what are -- you know, what are their issues, what kind of case problems do they have going on. You know, that being said, there are routinely times where, you know, you might not see somebody for, you know, a week, just because of the way schedules --
Q. Right.
A. -- are. You know, you just don't see them.
Q. Now, are the attorneys in your office subject to performance evaluations?
A. Yes.
Q. How often are those done?
A. The reality of when those are done initially are when they're required. And when I say, "required," when someone starts initially with the public defender's office, there's a time frame that they're going through where you're doing an initial evaluation of their work product and how they're

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doing, and they're with the court and with staff and following policies and things like that. Through the first couple levels of -- of being a -- an assistant public defender, there's some time frames on that, especially with the first promotion process.
After that, the time frames become more -- or at least they had been more suggested, but not -- not like a bright line. In other words, it wasn't a specific time frame. And I can tell you over the -- over the years, when there wasn't a specific time frame of something, it's very easy to go along and do stuff, and wake up one day, and you're three years down the road and, you know, trying to figure out if somebody needs to be evaluated for something. That's -- that's really easy.
Q. And -- and are -- I assume you're the one who's conducting these evaluations?
A. Yes, yeah. I'm the only person that does that --
Q. Right.
A. -- in my office.
Q. And on what criteria are your lawyers evaluated?
A. We have an actual -- there's an evaluation form that goes -- that has a breakdown of different

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areas. Off the top of my head, I don't remember what they are, but there's probably, oh, I don't know, eight or nine or ten of them, something like that, that describe given -- given areas. Like I said, trial skills, for example, is one -- one of those areas, but others will include things as far as, you know, client -- dealing more with things like client contact and client rapport building, providing discovery to clients, those kinds of things. Part -- some of it may involve just your review of their interactions with staff and other members of MSPD and the Courts in general and how to -- you know, how they follow policy, those kinds of things.
We do have a -- MSPD has a guidelines for representation, and the trial division has, you know, guidelines that describe what those things would be that would constitute those areas that you're evaluating, so it would give expectations of certain things that you might do. For example, in pretrial status with your client's case, meeting with your client, discussing any pretrial motion, perhaps pursuing bond issues those -- those kinds of things. All of those things are listed there. You might not do every single thing on a given case or with a given client, but it gives you examples of what those things

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would be.
In my evaluation process, I have to be able to evaluate as best I can how the attorneys perform under those given areas and how they -- you know, how are they -- how they are doing. Some people are better people people -- or they're better with people. You know, some people are much more -- you know, might be more research and litigation oriented type folks, but might have more difficulty interacting with, you know, clients, especially certain clients. They might have, you know, just difficulty sometimes, you know, being able to develop rapport, so it's evaluating those kinds of things.
Q. And when you're doing these evaluations, to what extent do your consider your attorneys' workloads, respective workloads in trying to figure out, you know, how to assess their performance?
A. Well, you have to try to take it into account. I mean, the reality is, if I'm looking at someone's caseload, and the expectation on someone's caseload is that they're supposed to have contact with clients -- you know, try to have contact with clients every 30 days or 31 days, and, you know, specifically, if we have people that are in jail, being able to go and see those people, you know, obviously, if they see

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them at day 42 or day 45, or, you know, day 51, well, that's outside of that guideline. But if I also know that that attorney basically has, you know, a caseload of 150 cases or 217 cases -- which I have two attorneys that have over 200 cases right now -- as a practical matter, I'm not going to penalize that attorney. I don't think it's fair for me to penalize that attorney for some of the things that are beyond their control. They -- they can't -- they can't control how many cases show up in Bates County. The prosecutor controls how many cases show up in Bates County.

Q. How many lawyers do you think you need in your office to -- in order to represent your clients adequate -- in order to represent every client adequately, how many lawyers do you -- do you need?

A. Well, I could easily -- right now, I have eight. In theory, I'll have nine when I get somebody hired. I could easily add -- I could easily add four or five attorneys to that, and they'd be -- they'd be plenty busy. I mean, I -- I have an attorney right now who is in Henry County who has -- who has had the highest caseload in the office, and there's been no way for me to change that. Period. Because it's a lone county. She currently has a homicide case right

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now, along with those over 200 cases, that involves the shooting death of an officer in Clinton.

Q. Uh-huh.

A. Needless to say, could be -- it might end up being a capital case. We don't know that because the prosecutor won't say anything about anything about what he's going to do with it; although, he added another count to the case the other day. So she still has representation in that case. In other words, it hasn't gone to our capital unit or something like that. Now, we try to get help from them and get assistance in some way, but for all practical purposes, she has that case. We have a capital unit that deals solely with those cases.

Q. Uh-huh.

A. That attorney is currently having to deal with that case along with the other 200 and whatever cases that she has.

Q. And why is that as far as you know? I mean, why wasn't the case sent to the capital unit?

A. Because it's not filed as a capital case.

Q. I see.

A. It's a -- it's -- it's just -- right now, it's just a murder 1.

Q. Okay.

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A. And we handle every -- we handle everything from, you know, misdemeanor -- you know, misdemeanors, probation violations, up through homicides, which include murder 1s, unless it gets filed as -- unless they file aggravators to make it a death case.

Q. You also said you have one investigator on staff; correct?

A. Correct.

Q. Is that enough for the eight attorneys that you have on -- on staff?

A. I would say no. I would say that my attorneys wouldn't have a clue as to whether it's enough.

Q. Why do you say that?

A. Because I think that they -- I think because of some of the caseload, they have a hard time figuring how to actually be able to assign stuff to do for an investigator to really go and do what investigators do.

Q. How many cases would you say your investigator is actively working on right now?

A. I don't know. I mean, I -- I mean, I -- I truly don't know. The -- the reason I say that is, cases -- the way our process works is we have -- there's a functionality within our case management

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system called action items. Action items are a way for an attorney to assign a specific type of thing. It could be very, very specific, or it could be a more generalized type of thing, to someone else in the office; generally, that -- an investigator or a legal assistant, perhaps. And that could be everything from getting somebody's letter of incarceration from a couple of different jails because we're trying to establish what jail time they might have, you know, been in jail in working out a deal in a case. But it could also be as general as being able to give an action item to the investigator that says, I want you to review the discovery in this case. Go to talk to the client at the jail. He's got a list of witnesses already he wants you to be able to talk to. Go figure out, you know, who those people are, and then let me know what that is. That's a pretty big item. And you know, like every office, you know, some attorneys are able to make better use of -- some attorneys are better delegators than others.

Q. Are you involved at all in the process of determining which cases get that investigator and which --

A. No.

Q. -- don't?

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A. No. I don't -- I encourage my attorneys to -- whatever you think you need, you ask for it, and then we'll figure out if we can't do it. And/or if my investigator has, you know, multiple different requests coming at the same time, then she will come into my office and say, hey, I -- you know, I've got, you know, these four requests. How do you want me to, you know, organize -- how do you want me to organize this? Because like everything else, sometimes -- you know, sometimes you're able to get to the things. This is part of -- part of the built-in problem. Part of built-in problem is you're not able to effectively go and meet and deal with clients such that you are able to get ahead of investigations. So what happens is, you end up a month out, three weeks out, and then suddenly, you're trying to get -- from a trial, and suddenly, you're trying to get various kinds of investigation done, and maybe you need to get this person served, or we need to go find, you know, whoever it might be that we're trying to find. And then suddenly, you have three attorneys making the same kind of requests all in that time period. That's what creates, you know, that kind of problem. And frankly, there's times where I have my legal assistants able to help with serving subpoenas on

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people and other kinds of stuff, because, you know, frankly, my investigator needs go do other stuff. And my investigator also oftentimes will help people in trial with taking notes and, you know, being able to assist trial-wise, so there's time incorporated with that as well.

Q. What do you -- what do you -- in your opinion, what is the ideal ratio of attorneys to investigators, or what would it be in your office?

A. It would be nice to have an investigator -- frankly, have an investigator working with every two to three attorneys, so if you break that out, that would be -- I mean, in my office, about, at least three investigators, so having a couple more investigators.

One of the issues that we -- that we've had, and I -- and I say, "we've had." For years, I've had -- and I love having a -- the attorneys. I'll take every attorney I can get. But everywhere that we deal with, the court system, the prosecutor's office, their support staff is an inverse flip. So when I go to court or when I deal with someone's office, they have three or four support staff for every attorney that's in that -- in that office. Ours is almost just the opposite. And so you have multiple attorneys

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trying to occupy -- you know, carve out some niche of time with given -- you know, with given support staff. And that's assuming that those people aren't, you know, on some sort of leave, that, you know, people -- that people go on or that people leave or that people are sick or that people that have babies or the people that do other kinds of things that, you know, they're gone for a period of time.

Q. Right. How do you -- assuming it's you -- go about assigning cases to individual attorneys?

A. Cases in my office are primarily assigned two ways. They're assigned first by county. I have three attorneys that they're the only attorney in that county. And then I have the one attorney that all he did was conflicts for a long period of time. He's doing some cases in -- in Cass County as we whittle that down. But the other two large counties I have, Johnson County and Cass County, those two counties each have at least -- Johnson County has two attorneys in it. Cass County has three attorneys operating in it, which includes me. And those, we divide the cases more up by, in essence, case number. And when I say, "case number," it's a way to sort of divide out the cases such that it -- it, for the most part, fairly, you know, evens out. Every now and then, you'll have

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an attorney that'll -- you know, one attorney will have more cases than another attorney, and, you know, vice versa, but the way they assign the cases and stuff there, it's a way to be able to kind of divide that out.

Right now, in Johnson County, the attorney that's the younger attorney has the lower level felony cases over there and misdemeanor cases. The senior attorney I have over there has all the upper level A, B felony cases in Johnson County. The -- that same younger attorney has the misdemeanor only case -- he has a misdemeanor docket in Cass County that he does.

Q. Okay.

A. And then myself and another attorney have divided up the felony -- the felony caseload with the exception of that attorney doing A, B felony cases, which I'm not doing in Cass County, because that -- it -- from a standpoint of trying to make some tradeoff in relation to numbers versus seriousness of cases and that sort of thing, that's the way I've been able to -- to do that.

Q. Okay. Now, in addition to all of these other responsibilities, do you also do any kind of -- do you have to do any kind of administrative work?

A. Oh, yeah. I mean -- I mean, part of

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administrative work is, like I said, review process, because all of those things are form oriented, electric -- you know, elect -- whether they're electronic, they used to be just more handwritten forms, but -- but there's still a form process, administrative process to that.

But I also have the other administration of the office reviewing basically the invoicing that comes in. And when I say "reviewing" it, my office support assistant gathers all that stuff, she opens all the things, she documents all those. But I then have to review those because I'm the one that signs off on all those. I also review everybody's time sheets and everybody's expense reports and have to approve those. And time sheets are time sensitive. You have to approve them within a given time frame because it's through whatever the State processing is. It's called Sam something. I don't know. But -- but in any event, it's their computer system has to -- has to swing through and process it in a given time, so I have to have everybody's time sheets to me for me to be able to approve those within a given time frame. And that's twice -- twice a month that I have to do that.

Q. Do you think your office is in need of more

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administrative staff?

A. Yeah. Support staff, absolutely. I mean -- well, let me back up, when you say "administrative staff," meaning, like, support staff.

Q. Right. Meaning, I think you mentioned you have two legal assistants, and then one --

A. The office support is --

Q. -- office support assistant; right?

A. Correct. The office support assistant -- and I keep trying to remember that name. That designation came in this last year. It used to be what was designated as a clerk typist or a clerk. And generally, I always described it, it was the person up front that basically ran the front end of the office.

Q. Right.

A. That answered the phones, when people came in, and did other kinds of administrative stuff, getting the mail, opening stuff up, processing billing.

The legal assistants work more specifically with the attorneys and go to jails, do intake on clients, and then, like, some of the other things that I was talking about as far as, you know, it's sometimes interviewing family members, sometimes helping set up treatment programs for people, those

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kinds of things.

Do I need more of those people? Yeah. I could -- I could use a whole handful of those -- of those folks, because those people make -- when I don't have those people, then I have attorneys doing all of that. And I consider that an -- while it's important for clients and it's valuable for clients, I consider it an incredible waste of attorney time when they're trying to get, you know, things done for treatment programs to get somebody into a treatment program.

Q. How much time would you say a typical attorney in your office has to spend on administrative tasks, ballpark?

A. Wow. The best answer I can give you is it depends on the county that they're working in and how much legal assistant help they have, and here's why I'll give you that answer.

Q. Okay.

A. Because in our case management system, you, for example, can enter court dates, like, upcoming court dates and things like that; okay?

Q. Right.

A. If you're operating in a scenario where you have a legal assistant sitting there with you, like, sitting there in court, they can enter those court

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dates right then, and that's done; okay? If you're operating in an out county, and you don't have a legal assistant to do that, then you're bringing your caseload back, and sometimes you're doing that, and so that dramatically increases that time frame.

It also increases the time that you spend doing some of those other things I was talking about as far as trying to get people into treatment programs, trying to do other kinds of stuff. If I have an administrative -- if I have a legal assistant sitting in court, and a client appears in court, and we can tell by talking with the judge, the judge would let that client out of jail if we can get that client into an inpatient legal program, I can turn to the legal assistant who's there, and say, "Let's talk with him before he gets out of the room. Let's get some things signed. Let's get some stuff done, and we see about trying to get him into a program." And they can -- and maybe they can talk with family or whoever else might be there that can help facilitate that.

If someone is in an out county, and they don't have that legal assistant there, they're having to get ready to go up on the very next case that's going to get called, because they're the only attorney that's there handling cases, primarily. And so once

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they get done with client A, client B's case is getting ready to get called. Their follow-up with that is going to have to all take place after the fact, which means they have to either do it themselves, or they're going to have to coordinate with a legal assistant in the office to basically say, "Hey, I've got this guy. I need to have this done. Can you help me, you know, get this?"

So, you know, from a time frame standpoint, I don't know that I can really give you a good answer, but that gives you a description of the -- of the differences.

Q. Understood. You mentioned that you right now have somewhere between 150 and 200 -- or 120 and 150 cases. How many cases do you think you handle personally over the course of a year?

A. Oh, I easily end up assigned -- I would easily end up assigned probably over 300 cases over -- over a year time frame.

Q. How --

A. Again, I could -- again, I could -- I -- I could look at my database, and I could tell you the exact number, because I've -- I've got a screenshot that will -- that will tell me over the last 365 days, exactly how many cases I've assigned to me or anyone

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else. But that gives you -- my office, itself, opens anywhere from 2100 to 2600 cases a year. That's, you know, going within that time frame, sometimes down around, you know, 2100, you know, upper, you know, 2,075 or, you know, somewhere like that --

Q. Uh-huh.

A. -- up to 2600 cases in any given year. We obviously conflict other cases out to other offices, so that wouldn't -- you know, while we open that case, that's not a case that we end up assigning in our office, so that would come off of that number some. But generally, we've had conflict cases assigned to us, so that -- that's just --

Q. Uh-huh.

A. That's moving -- it's moving chairs around the -- around the table, you know, in the grand scheme of things. So that number, that's probably, you know, a -- 2400 would be a safe number on any given year between eight attorneys.

Q. And -- and that's -- that number is typical for over the last, what would you say --

A. 20 years.

Q. 20 years. Okay.

A. I mean, like I said, I've -- you know, I could -- I can go back, and I can look at -- look at

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our stuff, and I could tell you, you know, that one year we had 2,100 cases, and another year, we'll have 2700 case. But 2400 is prob -- 2300 is a probably a pretty good average --

Q. Got it.

A. -- over the last couple decades.

Q. Okay. You mentioned contact with clients?

A. Yes.

Q. How often are your -- you and your attorneys supposed to meet with clients, as far as you understand?

A. Supposed to meet with the client within seven days of initially opening the case. Once -- once they've -- you know, when someone has been approved for representation, when we open that case up, they're supposed to get met within seven days of that. On an ongoing basis, supposed to be every 30 -- basically, every 30 days.

Obviously, there's some -- you know, I would consider some exceptions to that. We have clients that are in mental health facilities. We have clients that are out on bond that generally, all you're doing is kind of waiting to see, for example, in a probation case, is the client basically going to keep doing what they're supposed to be doing so the

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case may get set out, you know, a couple, three months? And the idea is they're just supposed to keep things kind of on line, and then they might get continued on probation. So that one, you might not be as -- you know, looking at it and going, I -- you know, I'm worried about someone having, you know, that specific contact every -- you know, every 30 days.

Everybody that's in jail is supposed to get seen at least, in person, at the jail, every 30 days. Which is a different problem.

Q. Is that happening consistently?

A. No. And I can give you reasons for that. That -- that have -- I currently have, at one point -- and this was one of the problems I had when you had asked earlier about caseload. I had assigned myself the Saint Clair County caseload because it was the smallest caseload in the office. And I'm like, it's a small county, has the fewest number of court days, smallest caseload.

That county, as a result of -- that county also houses federal inmates in their jail. Whenever they increase their federal inmate population, because it makes them more money than our clients do, then they ship our clients out to other jails, so my Saint Clair County caseload with clients in jail are

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not in the Saint Clair County jail. They're currently in -- at least at one point, I had clients in four different jails. So when I'm talking about logistics of being able to go see people, it's not that just that you have to go to the Saint Clair County jail in Osceola to go see all of your clients, and you could map that out on one day, and say I'm going to go see all these guys in jail. We'll just schedule the day, and I can go see them, and they'll just bring guys in, and I can talk to all of them. Guys in Saint Clair County, Henry County, Bates County, Vernon County, and Cedar County. So when you start talking about going and seeing people, that then creates, well, now, you've got multiple places to go and multiple logistics problems with that in seeing folks.

They also had the added benefit of, even though they're housed in that county, if the Saint Clair County jail decides to go come get that person for some reason; say they're in Henry County, and Henry County, Clinton, is closer to my office. So actually, if have someone in Clinton, it might be a shorter trip for me to go see them. But the problem is the people in Henry County don't have control of that inmate. That's a Saint Clair County inmate. So if Saint Clair County decides to come get that guy,

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they don't have to notify Henry County. They just drive up there, and they show up at the sally port and they say, "Hey, we need to pick up so and so, and we're going to transport him back, you know, for whatever reason." Okay?

Q. Uh-huh.

A. So if you've planned to go see that individual -- and I know this, and I say this because I've had this happen. You plan to go see that individual, you drive to the Henry County jail, you go there and say, "I'm here to see Jones," and they go, "Well, he's not here." And I'm like, "Well, where is he?" "Well, the people in Saint Clair County came and picked him up, so they transported him back to somewhere else." You have that kind of problem.

I currently have -- and I know this, and I can speak for another office just because I know this: We currently have Greene County inmates in the Johnson County jail. Now, I know you don't know necessarily where Greene County is. Greene County is --

Q. Springfield?

A. -- Springfield, yes. So we have people from Springfield up in Centerview, which is where the Johnson County jail is, which is basically in the

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middle of nowhere besides some railroad tracks. We currently have a number of Greene County inmates on a regular basis up in the Johnson County jail. I can't envision how the people from Springfield go see any of those people.

Q. And do you know -- do you know is that because the jails in Springfield are full?

A. Sure.

Q. Are they -- do you know whether they're housing federal inmates there as well?

A. I have no idea whether they house federal inmates there. I know that, in our current jails, Saint Clair County houses federal inmates, Bates County houses federal inmates. So we have that influx problem routinely with -- with them. Cass County does not house federal inmates, so we don't have that issue with the Cass County jail as far as that's concerned.

Q. How long is the -- if you know, how long is the drive from Johnson County to Springfield?

A. Let me think here. Springfield is a half hour from Warrensburg. Half hour, half hour -- at least an hour and a half to two hours to there, because it's -- I know that both my boys went to school down in Springfield, so I'm just trying to

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adjust where the map is. It's going to at least -- it would at least be an hour and a half at the very least, and it's probably more closer to two.

Q. Okay. So just a -- a couple of procedural questions before we kind of jump into the -- what's happening currently. But after defendants are arrested, the first time they go before the Court is for their initial hearing; correct?

A. Uh-huh.

Q. Are lawyers from your office present for those initial hearings?

A. Generally, no. It depends -- frankly, it just depends on when you get arrested and what county you're in. And -- because if you get arrested close enough to a court date that we would normally be there, then they might just bring them over when we're there in any event, and have their initial appearance that -- you know, that day. Other times, in a number of these counties, they will do an initial appearance, and we're not there. They just do the initial appearance, arraign them on whatever charges they have or probation violation that they have, and then set their case for some court date where it would be the Court's normal docket for whatever -- whatever Court they would be appearing in front of.

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Q. Okay. And so in instances where lawyers from your office are at the initial appearance, it's not because of any proactive steps you've taken. It's just you -- the lawyer happens to be there --

A. The lawyer is there are for the docket.

Q. Okay.

A. Now, we've -- we have had -- and my legal assistants, over the years, we have -- we have attempted to do things proactively to be able to -- you know, they -- they've gone through the jail list. They know who's been recently picked up, especially people that we have represented before that might have, you know, various kinds of things. They will attempt to go see those people prior to the court date in order to be able to at least start the application process. And when I say, "prior to the court date," prior to the court date that gets assigned. So it still may not be, you know, in -- in relation to that other initial appearance date, but in relation to an actual court date where we would be there.

I'll -- and I'll give you a for instance. In Cass County, we have court on -- this Thursdays is the associate docket -- the felony associate docket where people would initially be appearing on new felony charges that they've been arrested on. Some of

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those people may have appeared, you know, yesterday, or they might have, you know, appeared today in front of Judge Rumley had an initial arraignment on what their charge is. Now, the question is what court date do they get set to, to be brought up for a regular court appearance where they would expect that our staff might be there on -- or would be there normally on that docket; okay? So if we know that person's court date -- if we can look at the jail list and see that person's court date is going to be this Thursday, my legal assistant, Julie, will try to go over -- will try to go over to the jail if possible to be able to, you know, get an application, be able to talk to that person to see what we can do about trying to get that person out of jail.

Now, the flip side of that is there's a lot of that that can't take place and doesn't take place, and so -- and it certainly doesn't in, you know, rural counties -- in the more rural counties, because the legal assistants aren't out there, you know, doing that. Then what happens is that person waits until the upcoming court date in order for us to be there in order for us to do the application process at that point in court.

Q. And is -- is bond usually set at that initial hearing?

A. Yes.

Q. Do you know -- and in Area 17, are the judges using bail schedules or --

A. And in fact, let me back up from that a second. In fact, here's what happens when they set their -- they -- the Court may review bond. And I should -- should correct that. The Court may review bond at that initial appearance; although, they generally don't. The bond actually originally gets set when they file the probable cause statement and file the complaint, and they'll make a bond request on that -- on that complaint. And there are various Counties that will -- just based on the nature of it, if it's a C felony charge -- in Bates County, if it's a C felony drug charge, they're going to have a $10,000 bond. That's -- that's what -- that's just what they set their -- set their bonds at.

Q. But does the judge have the authority to alter that bond amount at -- at the initial appearance?

A. If they're interested in doing it.

Q. And there's no lawyer there to advocate for them to do it; correct?

A. Correct. At that -- yes.

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Q. When -- when the -- when -- when your lawyers happen to be there, are they there representing the client at that hearing, or are they just there to be assigned the case if the person qualifies?

A. It -- if our -- our practice has been, and it's the reason I tried to get our legal assistants being able to be proactive and going over to those jails, because the more that we could get ourselves with an application in hand, and more specifically, with bond information in hand for a client, then when the day that they appeared in court, we were in a better position to be able to say, you know, this person has a job. If he'd -- if we could get his bond reduced, here's where he's going to be living, all the usual bond kind of arguments that you would be able to make.

In a number of these places where you don't necessarily have that, it depends upon what I would describe as the Court's patience in relation to whether they're going to listen to that or deal with that on that given day. And frankly, what you're in the position of doing is basically then making what I would describe as the ad hoc bond argument, which is, well, my client is in jail. He doesn't have anything

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else pending anywhere right now. This is a drug charge. Please, let him out. And that -- and you could just fill in the name of you know, client whoever at the top of that, and basically start making that bond argument for most everybody that's in jail. And you just know that the guy who's charged with the multiple count sex case probably isn't going to get anything heard that day. But that's -- that's kind of the nature -- you're not in a situation where you're going to be able to actively say, I'm going to -- I'm going to make sure this guy's employer sends a -- you know, gives a letter or something that just says, "Hey, yeah. If you let the guy out, he's working for me."

Q. Right.

A. Or that some family members specifically show up to say -- like Grandma or Mom to say, "Yes, he's going to be living at my house." And the judge in some of these rural areas, they know those people, they know who they are, so you might be able to get that person out. That doesn't happen at those initial appearances where we're not at at all. And the ones where we are at, our problem is, if we're not able to do that, then yeah, you're not in the position to be able to do that. So at best, you're then trying to

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request the shortest turnaround time that you can for your client in order to then be in the position of being able to try to argue the bond situation.

Q. All right. Do lawyers ever request hearings specifically to deal with bond reduction motions?

A. Yes. The ones that are -- but they're -- there are few, and when I say, "few," the ones that are the -- the full-on bond hearing, written motions, calling witnesses type deal, those are few and generally revolve around situations where you perhaps have, you know, serious cases. They're going to -- under the -- under the Missouri Constitution, the ability to be able to have victims present at those hearings, and oftentimes -- and I know in one county in particular, the State complains every single time we make a request in relation to a bond about being able to notify somebody being there, and this might even be in a -- you know, in a drug case. Like, there isn't anybody to -- to notify in that case, but -- but that -- that's the kind of thing that doesn't generally go on. We're not in a position to be able to -- to do that.

Q. And that's a function primarily of the -- the timing of the appointment?

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A. Yeah. I mean, it's a -- I mean, it's a function primarily of a number of those kinds of things, but that -- but that is a -- that's a -- a huge factor in it, and it's a factor of when the next court dates might be.

Some places are more amenable to listening to -- to oral bond motions. And frankly, I've encouraged -- I've always encouraged every attorney in my office, and I've always done it. It's like, I -- I don't care -- frankly, I don't care what the prosecutor objects to, and I don't care what the judge says they're going to listen to or not listen to. I'm going to make that request for my client regardless, because at least, if nothing else, you're going to deny it -- you're going to have to at least deny it.

Q. Right.

A. And I'm going to make that -- I'm going to make that request. And part of that goes back to what I was talking about in relation to clients to begin with. At least they know that you tried to ask for something. Even if you're not in a good position to do it, you've at least tried to do it.

Q. Are there -- are there ever situations where your office is appointed later than at the initial appearance?

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A. Oh, yeah.

Q. Or is that --

And two questions: One, how often does that happen?

A. It depends, and -- and I say "it depends." It's just -- it occurs for different reasons, and it -- not so much to do with the Court usually as it does with the client. Clients sometimes create scenarios where our involvement ends up being somehow at a later -- just ends up being at a later point. Someone ends up out of -- and -- and this is, you know, for people out of custody. For example, people out of custody, they've posted bond, they don't hire an attorney, they don't hire an attorney, they show up to court three or four times, the judge yells at them and then eventually says, "You go over and talk to those people over there. You know, I'm tired of the fooling around with this." So we end up with those scenarios.

I also end with scenarios where private attorneys have communication issues with their clients where then they request to withdraw from a case. They end up bailing out of a case, and then the judge goes, "Well, who are you going to hire?" And then it's, "Well, I don't have any. All the money I had, I

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spent -- you know, I gave to that deadbeat that, you know, I just fired." And so now, they're filling out an application for our services, so we end up with those situations. That's down the road, you know, from where they originally had something going on.

Q. Okay. You mentioned that there are -- often, there's no lawyer present for the initial appearance. Are there other pretrial proceedings where your lawyers are not able to be present for a client's hearing?

A. No. I mean, our Courts are -- are -- all the Courts that we deal with are -- are good about -- whether or not the client's there, we're there. We have situations where the client may not be there. They're either off at DOC, they may be at some -- you know, some other facility or, you know, some -- and frankly, we've had scenarios where they've had issues transporting people from a given jail, and so then -- you know, then we're, you know, trying to do things without the client there. But -- but I think from a standpoint of other proceedings without attorneys there, all of our judges, I think, have a pretty good concept of the fact that that shouldn't -- that shouldn't happen.

Q. Are there situations where the attorneys --

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where you have to substitute one attorney for the other to make sure someone is present?

A. Oh, sure.

Q. How -- how often does that happen?

A. It's -- well, it's going to happen Monday. It would have happened yesterday, but frankly, I was at home sick. That's the reason it's going to happen next Monday is because one of the attorneys in my office, the one who does conflict work, has to be involved in, I think, Clay County with a judge up there who refuses to do something minus a whole bunch of things, and so we have a case where a client has posted a huge bond that we filed a motion to with -- to withdraw as counsel in the case. That's going to have to actually be heard this next Monday, and I'm going to be there in relation to that, because he's going to be in Clay County.

Q. All right.

A. But that happens on a routine kind of basis. That happens with -- you know, if attorneys are sick and out. It also happens when people are in trial, because oftentimes, I mean, we will try to substitute or try to have people stand in. In particular, if they've got people in jail, if they're in trial, and then there's some other thing that would

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be happening where that attorney would normally be at that docket for that person, and there's something that we could do to be able to try to facilitate getting somebody out, we'll try to do that. Because frankly, I don't want people sitting in jail just because -- just because they've got to sit in jail because the attorney is trying to represent somebody else. That being said, that goes back to what I was talking about earlier in that's great for the attorneys and -- and helping out with other people. That's one more day they don't have to do something because they're doing that.

Q. Okay. I want to skip to -- you're familiar with the recent Hinkebein decision; correct?

A. Yes.

Q. What do you know about the -- the decision -- the implications of that decision?

A. To me, the implications of the decision are that, ethically, my attorneys and myself have been told that they have no -- their caseload is not an excuse for not doing things, and their option, which I remember listening to the arguments in relation to it, a suggestion that the attorney just walk in and quit, which I thought I was kind of -- well, I have a lot of opinions on that, but I'll -- I won't venture into

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those.

But let's just say that -- that basically, what it said -- there are two things that come from that. My attorneys have an obligation themselves to recognize that they can only ethically handle what they believe they can ethically handle; and that's not, like, a magic number or something like that. That's based on their experience, based on their logistics, based on, you know, a number of different things. They look at their caseload and say, "I think this is all that I can do."

It also tells me that I as an -- as a supervisor -- because I have a separate ethical obligation under the rules, under the ethical rules. I as supervisor have an obligation to make sure that that attorney -- that -- that all of my attorneys in my office are not violating ethical rules as a supervising manager, and so it's my duty to also not assign them cases and to tell them, "No, you're not going -- you're not going to take cases."

Q. Prior to the Hinkebein decision, were attorneys in your office permitted to refuse cases if they thought they couldn't ethically handle any more?

A. I don't think anybody knew what that actually meant. I think the reality -- the reality of

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that -- as I said, in January, I'll have been doing this 22 years. I don't know what the -- the day I started -- you ask about reviewing stuff. I remember this number only because I remember it from when I started. I had 166 cases the day I started with the public defender's office. But I -- I haven't known another reality. I don't know that I would be able to -- I don't know whether I would be able to effectively assess that because I'm just one of those people, I'm going to -- you hand me whatever, and I'm going to go in and I'm going -- I'm going to go do it.

Q. Well, you would --

A. That's just -- that -- that's my -- my personality. I've never had -- I've had attorneys come to me over the years stressed out, very stressed out about, you know, either their caseload, the trials they have coming up, that's usually in conjunction with caseload. Whether they're going to be able to go -- whether, basically, they're going to be punished for going on vacations. And when I mean "punished," not by me.

Q. Right.

A. Not by management, but by the caseload, because none of it goes away; it just gets continued. So when you come back, you've got the caseload you

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haven't done plus new caseload.

And so I've never had anybody walk in my office and say -- and cite to me, you know, well, I -- you know, I have this ethical rule that I'm not supposed to do this, and I'm not supposed to do that, and I don't think that I can do that. I don't think they would have known what it was. And frankly, I don't know that I would know what it was.

Q. How did your attorneys respond to the decision?

A. Varying degrees of panic. I think that they -- some of them felt like they've been told something that -- again, to tell people that they should just walk in and quit, these are with people with families, with student loans, with other kinds of obligations that they've put themselves in that everybody does in the course of normal life. And to basically tell somebody, well, your obligation is to basically give up your job, you know, good luck with that. They were -- they -- and then you follow that up with, I think, your stress of the reflection a few days afterwards, which is, now, they suddenly realize that every potential letter that they get, every phone call that they get is potentially the next person that is going to file a Bar complaint that could end up

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with them losing their license, and they've now been actively put on notice, you could lose your license for this. You could get reprimanded, you could get suspended, you could -- what -- whatever. A number of things could happen to you, but the bottom line is you could basically be -- at the very least, become marginally employable, and you might lose your license altogether. And every day you come to the office, you've still got that caseload.

And guess what? When you go to court Wednesday, there's going to be 12 people that are going to fill out applications that are going to want you to represent them, and the Court is going to ask whether those people qualify as indigent, and when you tell them, "yes," then the judge is going to expect that you represent them. And even when I tell the Court, "I don't have an attorney to assign to represent them," the judge says, "Well, I'm appointing the public defender's office to represent them. That's up to you all."

Q. Did you talk with your staff as a whole about the decision or about the implications of the decision?

A. Yes, yeah. I had a staff meeting -- I had a staff meeting -- I arranged a staff meeting the

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Friday -- we found out about the decision while I was actually at a training program, and I got my staff together that Friday when I got back, and I think there was only one attorney that was not going to be able to be there because of a prior court obligation, and that attorney was actually the one that was going to end up leaving my office in any event.

But I got them all together, I printed out what those rules were, and I forwarded them the information in relation to the actual -- the -- the recording of that hearing, and I said, "Here's what's come down. You need to listen to -- everybody in this office should listen to this. Everybody. Not just attorneys; everybody in this office should listen to this. And here's what those rules are. And I want you to know what those are, and I want to you to take that in." And I told them that I was going to be immediately contacting the Courts and that, you know, whatever -- whatever happened from that point forward, this is -- this is the world that we're in.

Q. Did you get questions, concerns from your staff in response to this?

A. Oh, yeah. I mean, their -- I mean their -- you know, some of the questions are basic logistic like, well, what do -- what do I -- you know, what I

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do I do?
Q. Right.
A. I mean, what do I -- what do I tell the judge when I go to court? What -- what -- what do I tell a client when, you know, they fill out an application, and we're getting applications on a daily basis from the jail? Or what do I tell, you know, people's, you know, family when they call in and say, "Hey, you know, so and so got picked up. He's in jail. You know, we need you to be able to get him out. We need you to do whatever." You know, but what do we -- what do we tell those people? So you had logistics questions, and you also had, like I said, the -- what I would describe as the stress/panic questions, which are the ones of, well, wait a minute. You know, I don't -- I don't mean to thinking about me, but what about me? I mean, you know.
Q. Right. The training you mentioned that you were at, this was the management training --
A. Yes.
Q. -- that was -- that was happening at that time?
A. Yep.
Q. Does your office -- so post Hinkebein, did your office establish a waiting list for defendants?

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A. Yes.
Q. And can you talk to me about how that waiting list works?
A. I have two different things going on in the two circuits that I have. The 17th Circuit, which is Cass County and Johnson County, that circuit, a number of yeas ago, when we were going through -- the public defender system was going through caseload litigation, that circuit actually -- and the presiding young judge is there right now, Judge Collins, who's -- who's the PJ, they developed an administrative order in relation to, specifically Cass County. Now, he's taken that over now to Johnson County as well, which is a different animal.
But basically, that administrative order, for lack of a -- a better thing is this: They will take -- they developed a list of private attorneys. The judge went and talked to the private Bar and met with them and said, you know, we're going to need to start assigning some cases to you people. And what they did is they used our fee guidelines, our fee structure as the fee structure for those attorneys. So if you had people posting, you know, a $5 00 cash bond, our fee structure is, I think on a -- you know, on a number of felony cases was $375 or something like

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that. Basically, they were telling -- they were -- they were -- the judges were telling clients -- what we would do is we would approve someone representation-wise. Say we approve them representation-wise as indigent. The judge would say, if you've posted a bond, like one -- like the $400 cash bond or whatever, that bond is going to be assignable to the attorney that I'm going to appoint to represent you. I'm going to appoint Mr. Jones here to represent you, and if that attorney is in court, the judge, you know, will waive them over and -- and assign them the case. If the attorney is not in court, they'll say, "Here's the attorney that is going to get assigned to you. The fee for that attorney is going to be this based on that amount." If they haven't posted a bond, the judge will tell them, "You're going to have to come up with the $375 or whatever to pay attorney so and so as -- as the fee; okay? The -- that attorney is going to be appointed to your case, and they're going to represent you, and that's going to be the fee for them to represent you."
Q. Is that a fee that would have otherwise been --
A. To the public defender.
Q. -- provided to the public defender's

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office?
A. Yes. And I say -- and I say "a fee provided." We don't get any of those -- we're not -- not getting any of those fees up front or any -- anything like that. I mean, we enter cases, we make -- we file a fee notice with the Court saying that, you know, we ultimately are assessing what would be that fee to the individual, and sometimes, those get collected through income tax refunds with the state. Sometimes people send them -- you know, I mean, people will contact us and say, "Hey, you know, can I go ahead and pay that now?" Or, "Can my family pay that," or you know, whatever. We don't premise our representation on -- whether we enter a case based on whether they've paid that. They just know that that's the fee, unless the fee gets waived for some reason.
I have a number of cases that when we assign these cases out -- and when I say "we" assign them, when the Court assigns a private attorney to represent them under that administrative order, then what we do is I -- we -- if we have that open case on a -- on a waiting list in our office, then what we do is we close that case out, and we do not -- I waive the fee in that case, so we collect no -- we -- we

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don't assign any fee to that because that was going go to that private attorney --

Q. Uh-huh.

A. -- okay? Now, the Court is not doing that in all of those cases, but they are assigning some of our cases -- what would be our cases to private attorneys under that administrative order. They're doing it much more in Cass County than they are in Johnson County. That's partly because the associate judges in Cass County are much more proactive in basically doing this, and -- and in essence, following that kind of process.

That's all initiated by client fills out application, and we approve them as indigent, and if they're approved as indigent, then we're advising the Court, this would be an indigent person that we would otherwise represent, and the Court then is doing that under that administrative order.

Q. Now --

A. That's in the 17th Circuit.

(Martin Exhibit 13 was marked for identification.)

Q. And I'm going to hand you what I think is now Exhibit 13. I apologize I don't have extra copies of this. I'll send it across so you can take a look at it.

Is that the administrative order that you're referring to?

A. That looks like exactly it.

Q. Okay.

A. That is correct. And yep, that's signed by Judge Collins.

Q. Now you said that there is a -- a different setup in the other circuit; correct?

MR. WILLIAMSON: Let me --

Q. (By Mr. Williamson) Now, before we get to that other circuit, other than, I guess, talking with the Court about private attorneys who might be able to -- to fill in, did you have any other involvement in developing this order?

A. Well, I did originally. And like I said, this is -- this is basically a renewal of -- with some modifications to it, of the original administrative order that Judge Collins did back a few years back, whenever that was, in being able to -- it's a little bit different version of it.

Q. Uh-huh.

A. We did -- we had a different referral system -- a little bit different referral system that we did back under the original order. There were two

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attorneys, basically, we were dealing with at that point. One of them is actually the prosecutor down there in Cass County now. And that dealt almost exclusively with -- for the most part, misdemeanor cases, probation violations. It didn't have as much other, you know, felony cases involved. This time, there's a larger list of attorneys that -- that they're working with that have agreed to, you know, be able to take some of these -- some of these cases. And so it's not just to two -- two attorneys that you're dealing with.

Q. Okay. And what's happening in the other judicial circuit?

A. Well, in the other circuit, I actually filed our notice for conference requests under Chapter 600. The associate judge in Bates County, which is Judge Hopkins, when she initially found out -- before I had ever filed a notice, but when she found out basically that I had indicated to the attorney heading down there that we're not -- we're going to have to do something about not taking cases, she literally just started assigning attorneys in court. She didn't even -- She didn't have an administrative order. She didn't care about fees or anything. She just started naming attorneys that were

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in court down there on her docket and started assigning cases to them.

In Henry County and in Saint Clair County, that did not happen. The judge in Henry County, Judge Strothmann, basically gave some more time for clients; in other words, kind of what I would describe as tried to give them more time to -- a little bit more time to, you know, maybe hire somebody. Said, "Well, you need to work at, you know, trying to hire someone in some fashion."

But then it wasn't long after that in filing our request that Judge Journey in -- basically saying that based upon the -- my initial notice to them that we weren't going to take cases, Judge Journey said that -- and sent me a notice basically saying that they didn't recognize that, and he was going to order us into cases. And so he created basically a blanket form that is an order form that they simply sign in court, fill in the client's name, case number, and scanned it into their system that says, the, you know, public defender's office under Chapter 600 is being appointed to this case.

I appeared in court. I've entered a few of those cases under objection. I have now advised Judge Strothmann last Friday when I was in court, and

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I advised Judge Journey, who is the circuit judge and is the presiding judge, that I'm not assigning an attorney to any case at this point. And so while he may be assigning cases to the public defender's office in general, I'm not assigning any attorney to any case, and that includes me.

Q. And are those the cases that are then ending up on a wait -- wait list?

A. Yes. I currently have -- when I had looked at it, I think there's about 100 and -- and I say, "on a wait list," there's also Cass County -- I mean, I still have a wait list of people in -- from any of these counties. The -- we currently have about 100 and -- I think when I saw it last, it was around 105 or 110, something like that, people on a wait list.

Q. How many -- do you recall when that wait list was started?

A. We started really being able to -- we've had a couple things in our -- in our case management system to try to be able to track it, and -- but I will say that we started doing that literally October -- it would have been right around whenever I had -- and you may have a copy of the e-mail that I got from -- from -- from Judge Journey indicating his feelings about my notice to them.

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And I'll explain my process. After I got back, and I met with my attorneys, over the weekend, I contacted both of my presiding judges. I called both of them on the phone, and I told them exactly what we were going to do; that I was go I think to stop assigning cases to attorneys, that I felt it was a Rule 4 violation, and that I had obligations under my own supervisory ethical rules not to appoint these cases. Judge Collins asked whether -- and both of them asked whether I was going to be filing something under the Chapter 600. With Judge Collins, because they were trying -- he was trying to reestablish this administrative order, I told him I wouldn't file anything that -- if they were going try to work at doing stuff, I wasn't going to file something there. Judge Journey had no such plan with that, and so I eventually went ahead and filed a Chapter 600 motion, and that's where we stand right now.

Q. Has Judge Journey ruled on that --

A. No.

Q. -- Chapter 600 --

A. He's -- he is -- we have a conference currently verbally scheduled for the 15th, Friday the 15th. He has not sent -- he has not sent an actual order, written order out in relation to it, because I

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filed a number of things in my request. He's going to deny a number of those things, which we'll see where that ends up.

Q. And of -- of those roughly 105 defendants who are on the waiting list, do you know approximately how many of them are in custody?

A. No, I don't.

Q. Some of them are in custody?

A. Oh, yeah. Some of them are definitely in custody. Oh, absolutely.

Q. Okay. And to be clear, the -- the Chapter 600 motion is just an order to schedule a conference; right?

A. Correct.

Q. I mean, there's no -- no conference has happened at this point?

A. No conference. I -- again, I'll look at it in two different -- two different settings. I had a meeting. Judge Collins scheduled for all practical purposes what I would describe as a conference with myself and the two prosecutors from Johnson County and Cass County. This wasn't under me filing a motion or anything like that. This was us having this meeting. Other than talking about some of the things administrative order-wise, I basically sat through

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what I would describe as about three hours of meeting where I had prosecutors lecture me about work habits and whether SIS offers -- whether I expected that offers would get any better than an SIS offer and what -- you know, what did I want. So I've moved on from that. Although, I remember it.

Q. Okay.

A. Judge Journey verbally scheduled this conference initially for the 1st, and then because he hadn't issued his order, when I was in this court with him on Monday -- I want to say November 20 -- the end of November, whatever that Monday was after Thanksgiving.

Q. Uh-huh.

A. 20-something, whatever it was. It was the Monday after Thanksgiving.

Q. 27th?

A. I was in court in front of Judge Journey and was still objecting about cases, and he had -- went ahead to reschedule the hearing for the -- for the 15th. Had also asked whether I had seen the order that Judge Torrence had issued out of Jackson County. I told him that I had seen that order, that I was personally offended by the language in some of that order referring to our caseload situation, I think, as

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a saga of some sort, which I found offensive, and Judge Journey indicated to me that while he agreed with some of the practical aspects of the ruling, as far as what he was going to allow or not, he didn't necessarily agree with the tone of the order. I have yet to see an order. We have a meeting scheduled for the 15th. We'll see what -- what happens at that -- and yes, that is only a conference.

Q. Uh-huh. And are the judges, as far as you know, aware of the fact that you have this -- this waiting list in place?

A. Yes.

Q. When you shared your plans with the two judges prior to actually moving forward with your -- with your -- with your plan, what -- what was their response?

A. Well, like I said, I think Judge Collins has always indicated his intent to kind of reactivate or reinvigorate this -- a modified version of this order that he had. And I think that his -- my impression with it was that he was -- he had indicated he was going to talk to the Bar in both counties and try to get, you know, what cooperation he could out of them.

Judge Journey had indicated to me before

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he, you know, knew what our situation was. He knows the attorneys I have working there, and he knows exactly what their caseloads are and -- because I've reiterated it with him a number of times over a long period of time. The -- his -- he expressed what I would describe as, I think, more frustration with not so much us, but with the local Bar in general just because there are -- there's not going to be as much cooperation -- first of all, there's not as many defense attorneys; and second, there's just not going to be as much cooperation in -- in general in relation to what we would have out there given the numbers of what we have out there.

And there's an added complicated factor in Henry County that revolves entirely around the prosecutor there, which I could go at length, but I won't.

Q. Okay.

COURT REPORTER: If you get to a stopping point, I could just use five.

MR. WILLIAMSON: Why don't we take five right now?

COURT REPORTER: Sure.

VIDEOGRAPHER: Off the record, 4:38 p.m.

(A brief recess was taken.)

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VIDEOGRAPHER: On the record, 4:46 p.m.

Q. (By Mr. Williamson) Mr. Martin, in your opinion, did the attorneys in your office have the time and resources to communicate with their clients in the manner that each case requires?

A. No.

Q. Does that include yourself?

A. Yes.

Q. In your opinion, do the attorneys in your office have the time and recess -- resources to investigate each case in the manner that it requires?

A. No.

Q. Okay. And is it -- does that include you?

A. Yes.

Q. What's the basis for your opinion?

A. Because I think that what we've become good at is shortcuts, and rather than doing the things that you should do, you do the things that expedite things as best as you can expedite them. It's a triage process, and you look at cases, and you go, this is your average drug case, but it's got a few pages of discovery. It's got a lab report. I can go talk to my guy. I can do this or that. Done. And that's the amount of time I'm going to spend on it. And if my guy's sitting in jail, he just wants to get out. And

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if the prosecutor's making a probation offer, he's like, why can't we do that yesterday? I should already be out this afternoon. And nobody -- as a practical matter, nobody is going to turn and tell a client, well -- and especially if they're stuck in jail, "What you need to do is sit in the jail so I can investigate further your case." That -- as a reality, people aren't -- people aren't going to do that. If your client is out of jail, you can have a little bit different discussion with them.

But from my experience with our clients, one of the things that also happens is you're dealing with people that are indigent. They have driver's license problems, they have transportation issues, they have family issues, they have over kinds of things. And the more court dates you set, the more likely it is they're not going appear at some point, and then that runs the risk of them ending up right back in the jail, and then the case that you were trying to look at, they're ready to now -- they just want to be done with it so they can get out of the jail. And that -- you know, that -- that happens in cases.

And you -- when I say "triage," you then start looking at cases that you go, this case is a sex

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case. I know -- I already know in my head I'm going have to depose a number of people. I'm going to be getting school records. I'm going to be getting DFS records. I'm going to be, you know, talking to the people at Children's Mercy, and they don't like to cooperate, so I'm going to have to try to fight getting deposition times with those folks. I know the -- the level of litigation that's going to be involved in that case, and so you just start devoting resources. You go, I got so much time. I can do so much stuff. I'm going to devote this to this, and I'm not going to devote that to that.

Q. So -- and you talked earlier about the -- the level of experience among your attorneys. And you testified that there are things that those attorneys are able to manage that younger attorneys may not be able to; correct?

A. Sure, yes.

Q. And yet, even with that experience, you don't believe that your attorneys are able to cover all of their bases?

A. Yeah. I don't think their -- I -- I don't think that they can do that in the way that they should do that. I think they have to make do with what they have and what you can do. You have -- you

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have what you have. You -- you do what you do with what you have.

Q. So the -- their experience makes them better at triaging --

A. Yes.

Q. -- than younger attorneys?

A. Oh, yeah.

Q. But triaging is not the standard?

A. No. Triaging is not a standard. Triaging is, I recognize -- I better recognize shortcuts.

Q. How often do your attorneys employ experts?

A. All of them do. I would say the vast majority of the experts that we hire -- and I say "vast majority." I don't know that I could put a percentage on it, but I just know from approving the requests for money, the vast majority of the experts revolve around mental health issues, being -- being able to have people evaluated for mental health purposes, competency purposes, sometimes NGRI purposes, but there's a lot that revolves that. Some involving other kinds of issues, but very little that I would describe as the kind of experts that people read about in the news and get all excited about.

Q. Are there cases for which you think experts or an expert would be appropriate where your lawyers

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are not able to retain an expert or don't retain an expert for whatever reason?

A. I -- well, there's two different -- there's two different things there. I have -- I don't think, other than asking them to clarify something that I know somebody further along the management line would want to have clarified to approve the request for the money, something within the actual request, itself, I don't think I've denied anybody's request for anything. I mean, I've basically approved those as long as they've got it structurally the way they should have to be able to get it approved. I think the real question there is, knowing what it is that you need get.

And here's the example of what I was talking earlier: When you're triaging, you're basically saying, I know I'm going to have to put the work into this case first because it's going to require the most logistics, and so I'm going to work on that, and I'll put this off until then because I don't have to. The case that you put off until then now is three weeks before trial, you're deposing witnesses, you find out something that you go, holy crap, I'd really -- I'd like love to have somebody be able to tell me if you can actually do that, you know.

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Maybe I need a guy that could look at X and tell me that. Well, now, they're two weeks out from trial, and they're trying to figure out, can I actually get an expert to be able to do that? And so it -- that's how you run into the problems of, well, maybe I -- you know, can't get an expert, because then, my -- my -- my big sneaking hunch -- because I haven't seen a whole bunch of these kinds of things, my big sneaking hunch is they look at it, they think about it, then they look at the case, then they talk to the guy, then they talk to the prosecutor about maybe a different offer or some other kind of thing, and the reality is they never hire anybody to look at any of it. They basically say, well, I don't know that I'd really be able to do that anyway. I don't know what that would amount to, and so then they -- you've backed yourself into the corner of having to proceed.

Q. Okay.

A. Or you get into a really ugly fight with the Court about, well, I now recognize that I need to have an expert in this case, which the judge may grant that continuance. But now, in essence, what you've told the judge is, I didn't do anything as a practical matter to prepare this case until short enough period of time that now I know I need an expert in this case,

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and now, I'm asking you for time to get the expert; so now, you've lost credibility with your judge in relation to what you do in relation to preparing your case. That -- it's a -- it's a vicious cycle that feeds on itself.

Q. So in light of that testimony, in your opinion, do you believe that the attorneys in your office have the time and resources to consult with experts in the manner that each case requires?

A. I don't think they have the time to be able to do that. I think MSPD tries to encourage and provide the money available to do that as much as they -- as much as they can. And again, I've never had some request that I forwarded turned down, other than the logistics of this -- we need this clearer, or we need something clarified in this request. I think it's just the time that people don't -- they don't have, so they don't do it, or they don't recognize it, so it never gets done.

Q. How often do your attorneys take depositions?

A. It depends on the attorney. There are some attorneys that are pretty active about doing it. There are other attorneys that, you know, take some depositions. But not near as many as what I would

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routinely want. I -- I look at this, and I think anybody should look at this and say, if this was -- if this was me, if this was my kid, and my kid was looking at seven years in prison or ten years or fifteen or however much it is, or being registered on a sex offender list for the rest of their life, I would want somebody to do this. I'd want them to look at everything and be able to figure out what it is that they're doing and know what they're doing before any substantive thing happens that jeopardizes their case, their ability to get something done, and I don't think that they have the time to be able to do that.

Q. Okay. Do you know by chance how many -- roughly, how many of your cases go to trial in a year?

A. Oh, it's less than -- it would be less than five percent, maybe less than one percent. I mean, we have 20 -- we open up 2400 cases, ten percent would be, what, 240? So one percent would be 24. I bet we don't have 24 trials.

Q. Okay.

A. So less than one.

Q. And -- and is that -- what -- what do you think the reason is for that or reasons?

A. Well, I think there's two -- I think there's -- I think there's a couple reasons for that.

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One of the reasons is, as a practical matter in some of these jurisdictions, you're only going to be able to -- there's only so many people. You got one prosecutor, you got one judge, you got one attorney. You're only going to try so many cases, even if they schedule the cases. But as a practical matter, like I said, with the logistics of -- of the way some of these cases work and things you don't find out or things that you -- you're only able to push and pursue because you're able to push and pursue them or maybe research a legal matter or have a suppression hearing that you go, hey, guess what we found out. We finally found out this, and we were able to have a hearing. You force the issue such that the case that should have either, one, never gotten filed or, two, should have been reduced to a misdemeanor or some other thing happen to it a year ago doesn't happen until a week before trial, when you've been able to basically force everybody's hand to be in a situation where they all have to legitimately look at it, and they go, oh, wow, this case sucks, and then they -- you know, and then the case goes away. So some of it are, cases aren't going to go to trial because they actually are forced to a position where they recognize that the case might not really be a good case.

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Q. Right.

A. And they either offer something that makes it go away, or they dismiss it, or something else happens that changes the logistic.

I think as a practical matter too, there's a lot of resources from the standpoint of the time of an attorney in relation to getting a case ready for trial and doing all of those things that you were talking about in relation to investigating, talking to witnesses, doing requests, deposing people, reviewing discovery, all those kinds of things that you go, to realistically do all of that and do all those -- all of those things is an enormous time investment, and the reality is, you know, I think that it'll happen with certain cases, but there's a whole bunch of other cases that it isn't going to happen with.

MR. WILLIAMSON: Okay. Can we go off the record for two minutes?

VIDEOGRAPHER: Off the record, 5:01 p.m.

(A brief recess was taken.)

VIDEOGRAPHER: On the record, 5:03 p.m.

Q. (By Mr. Williamson) What steps, if any, do your attorneys take to evaluate the immigration consequences that a client might be facing?

A. Basically, there -- it's simply a

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questioning process of determining whether someone is a citizen, whether they're a US citizen, or if they have some other immigration implication. I would say that, in our office, we're actually -- no matter how you'd want to look at it, we don't have that many clients in our office that fall into that category, simply because we don't have either the work situations or population areas where you tend to have an immigrant population where you would have a lot of that occurring. We do have it but not -- but not very often, and usually, when we do, it's -- it's pretty self-evident when you start talking with people and -- and you find out pretty quickly that, you know, they don't have -- just through our application process.

Q. Do you think your lawyers have the knowledge and expertise to -- to decipher what the consequences might be based on what the client is telling them?

A. Oh, no. Every time we have it happen, we usually are trying to consult with someone. I mean, they -- usually, they'll find their way into my office and ask me, and then I will tell them that I don't know, and that -- that we need to talk with somebody who does know, and they'll, you know, try to consult with, you know, Counsel. I know that they know

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someone that we actually -- someone in our office that was friends with someone who does that kind of work, and so they actually are able to contact that person and get a lot of good information without having to hire people to -- to do that.

Q. Okay. Does your office handle juvenile cases?

A. Not as a matter of course, no. Now, we do end up with them at times on a conflict basis, usually because -- it used to be that Jackson County and Clay County, for example, had juvenile situations, and when they had conflict situations, then we would end up with sometimes a juvenile out of that.

Q. Okay.

A. Which was always a frightening situation.

Q. So who handles the juvenile cases that come through Area 17?

A. Right now, we don't have any, but generally, it would probably end up being me, simply because I've done it in the past. I don't know that anybody else in our office actually really knows anything about it, and what I know is probably scary, so --

Q. All right. And is that just -- is the volume just a matter of there not being a lot of

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juvenile cases coming through?

A. No. Actually, what happens is -- in both of the circuits that we work in, the Courts there actually have -- they assign private attorneys to represent juveniles in cases, and they almost -- the caseload that -- that arises out there, they are not certifying individuals as adults in cases out there. They just -- they don't --

Q. I see.

A. They don't do that. So we, from that standpoint, have not actively gone in and tried to get into the middle of those. I've had the Court, over the years, contact me at times where we had cases where the Court felt like that might very well happen or that that request might happen.

Q. Uh-huh.

A. Given the nature of the charge, if it was a sex charge or some kind of thing -- I know we had a homicide in Cass County a number of years ago involving a juvenile being involved in the case, and the judge basically contacted me immediately and said, you know, you guys are going to end up in this case; I want you in right from the beginning rather than, you know, later on. But -- but generally, we don't handle them.

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Q. Okay. Okay. In your opinion, generally speaking, can the attorneys in your office adequately represent all -- all of the clients on their dockets?

A. No.

Q. And does that include yourself?

A. Yes.

Q. And that also includes very experienced attorneys; correct?

A. Correct.

MR. WILLIAMSON: That's all I have.

EXAMINATION

BY MR. RAMSEY:

Q. Good afternoon.

A. Hi.

Q. My name is Steven Alan Ramsey, and again, I represent the State of Missouri and Governor Greitens. I have a handful -- a little more than a handful of questions for you if we can get through them.

To begin, do you have a sense of what percentage of criminal cases in the counties that you are over, that you represent -- so you said you brought in about 2400. Do you know total about how many there are?

A. Sure. I -- I don't know what the -- what the overall criminal numbers are, but I can give you

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an idea kind of how our office shapes up. So if you're looking at a place like Saint Clair County, Saint Clair County, we probably handle 90 percent of the criminal caseload out there easily. I mean, there's one or two attorneys that do some defense work, but that's -- that -- it -- it's not many. Bates County and Henry County, there's more defense bar there, but relatively speaking, we still easily -- I would say we probably still easily do 70 to 80 percent of the docket there. When you get to -- and that's probably fairly true with Johnson County as well. Cass County is a little bit different because you -- because we're -- that's near the metro area. You have a lot more defense bar involved. I don't know that I'd -- I don't know that I'd be comfortable giving you a good percentage on that, but there's a lot more defense bar there, and so the -- the overall breakdown of that caseload could be, you know, a lot closer to, you know, say 50 percent of the caseload or something like that, but I -- I -- I wouldn't feel as comfortable about that number as a percentage, but that gives you an idea of how that changes as you come towards -- more towards the metro.

Q. And when you track cases that are in your system, is it done by criminal defendant, or is it

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done by overall charges?

A. When you say, "tracking," meaning how?

Q. Well, so when you look to determine how many cases you have right now, is it viewable in -- by criminal defendant, or is it, you know, there are 36 felony As in this particular type, and so and so forth?

A. It's -- you can -- our -- our case management database actually is really good at being able to separate it out various different ways. I can separate it out by county. I can separate it out by type of case charged, meaning breaking it down by, you know, A, B felony, A, B felony drug, you know, A, B felony sex case, C, D, E felony, C, D, E sex case, I -- I can break them out it that way.

They are entered in our system each -- you can pull cases up by client, and then under that client we'll have every open case that currently -- that client currently has, and it will actually also show you the closed cases as well. But I mean, those aren't active cases. It will also pull up if cases are inactive on those cases, so when we have people go into a warrant status, they fail to appear for court, we put those cases in what's considered an inactive status, and they will show that way in our system as

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well. If they're inactive for over a year, then at that point, we close the case as inactive over a year, because, you know, that person -- something else may have happened with that person.

You can also look it up just by case number as well.

Q. Switching gears a bit, in terms of the determination of indigent -- indigency, pardon me --

A. It's okay.

Q. -- how does that occur within your district?

A. In the areas where I have legal assistants able to operate, then the legal assistants try to do that for the most part. So for example, client -- either they will -- either meeting people at the jail --

And let me back up and -- and answer this way: We get applications by people filling them out in court, filling them out at the jail, faxing or e-mailing them to us, or sometimes we will simply get a letter request from an inmate that is in DOC somewhere that says, "Can you guys help me dispose of my case?" And then we'll send an application to them, and then they'll send it back. So those are the different processes.

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The places where I have legal assistants that can go actively meet with someone, I try to have them do that because it helps get the case open in our system sooner, which allows us to deal with those bonding issues sooner.

In a couple of -- excuse me. In a couple of the counties where attorneys are operating basically without that legal assistant help, the attorneys, themselves are taking the applications, generally in court, and you know, screening -- in essence, screening clients themselves in court.

Q. And when you say, "screening," so they fill out the application, the legal assistant or the attorney will look at that and say, "Oh, yeah, this person, you know, is under the federal poverty guidelines; therefore, they are eligible." Is that essentially the screening process?

A. There -- the screening process has to do with their indigency status, which in -- which can include different things. There are different things that are evidence of. If you have people, for example, that are receiving State benefits, those individuals will qualify. If -- because they've already been determined by the State to be indigent. They're receiving benefits of some -- of some sort,

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you know, either housing benefits or food stamps, those kinds of things, people that are on disability.

If we have -- and then we use the federal poverty guide -- guidelines as a benchmark for people who aren't generally receiving those other benefits. If they say they're employed or not employed. If they are employed, then using that and figuring out, you know, how many people are in the household, you know, as far as dependents that they would have that -- that would count towards that, what other types of things that might impact that.

Our ultimate indigency determination has to do with the ability of that person to be able to acquire representation for themselves, and we don't use that as a basis of, well, they're going to go out and, you know, try to hire the, you know, best legal team in the state or something like that to represent them on a case. What I mean is, is that person might be right near the borderline of, you know, federal, you know, poverty guideline, and maybe they didn't have to post a bond or anything to get out of jail; but because of the nature of the type of case that they have, they're not going to be able to hire somebody anywhere within a 100=mile radius for less than $20,000. That person doesn't have $20,000 to be

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able to do that. We routinely have that happen, for example, in sex cases and things like that, where it's like, those people are going to get quoted numbers, they're not going to be able to hire somebody. It's not going happen. And so we end up -- you know, we end up in those cases.

Q. Does your office essentially take the word of the applicant on the applications? Do you essentially take their word for it in terms of, yes, I'm -- I'm receiving public assistance, et cetera, or is there -- pardon me, I'm sorry.

A. No. That's okay. In essence, if you're asking me whether we investigate people's indigency requests, as a practical matter, I don't have the resources to represent people the way I think we need to represent them. From an indigency standpoint, I do not have the resources or the ability to do active investigations of people as to their indigency status.

But I'll answer also answer this -- this way: I do not -- in my experience, I do not routinely have people coming into court asking for us to represent them and filling out applications for us to represent them that appear to me that they would otherwise be able to go out and hire counsel. They're not pulling up in their Lexus outside, and then

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walking into the courthouse and filling out an application saying, I have nothing, I make nothing, and that's the way this is. That's -- that's not what occurs.

Now, we will oftentimes -- and we do have situations where we have looked at things where people will say something about a house or some other kind of asset that they might have, and we'll look into that. We'll ask the judge to, you know, hold off, set a case over that we're reviewing, you know, the indigency situation. We have situations where people post cash bonds that we will, you know, tell the Court, "This person has posted a cash bond. They would be able to use that to go hire somebody. We're going to decline representing them." I don't know how many people we decline, but we decline representation to, you know, a number of people.

Q. That was my next question, if you had a sense of, like, a rejection rate of how many people are applying and how many people are being rejected.

A. A rate, I don't know. I mean, again, it's probably something that I could find out, but off the top of my head, I don't know what it would be. I know that we decline people for a number of different reasons, which include everything from they're

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currently being represented by a private attorney; although, they still might qualify, even if they're represented by a private attorney because the -- the case they have might be a new matter that's totally different than the kind of matter that they have or much more serious than -- the private attorney may have been representing them on a misdemeanor case, and now, they're charged with multiple felony charges or something like that, they're not going to be able to hire that attorney to represent them in that case. I mean, we -- we have situations like that occur. We -- I'm trying to think if there's anything else I could add to it one way or another.

Q. Well, that -- that's an interesting point, that, if I'm understanding you correctly, a particular criminal defendant may become eligible if there are two or three other cases or maybe one other case that they have where they're spending resources on that, and they may not be able to afford representation in the current case, the case in chief that they're applying for the public for; is that -- am I correct in understanding that situation?

A. Well -- well, let me -- I -- let me clarify what that is. And, first of all, it's not the norm that we have happen. I mean, generally, if people are

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represented by someone, oftentimes, they're trying to talk to that same attorney to represent them in relation to something else they have.

The far more common occurrence, frankly, is just the reverse. What happens is not that we're representing them on one case, and the private attorney is representing them on, you know, one or two other cases. What happens is they get charged in a different case, the private attorney then bails on that case, thereby dumping all of the cases in what would be our direction. And at that point, given the nature of the case that they may have, they may be in custody at that point, so now, they're in jail, they don't have a job, they don't -- they've lost the job maybe that they had, and so they're -- at that point, they are indigent, because they've lost their job, and they're in jail, so that -- I mean, it becomes that kind of circumstance. We don't generally have circumstances where people are -- are doing the reverse.

Q. Am I correct in understanding your testimony currently is that there's no independent control or -- or check on whether someone is indigent or not; but your testimony is suggesting that you don't have people who are applying who have

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significantly more resources than -- that would make them ineligible? Am I understanding that correctly? I know that was a convoluted way of articulating that, and I can break it up if necessary.

A. Well, I think I understand the question that you're trying to ask. I don't believe that our office is approving individuals on a routine basis that wouldn't otherwise qualify as indigent, and I think that we do the things that we can do to try to screen people. They fill out the applications. As part of our intake process, we have a separate sheet that we use that asks about bonding information, where they're going to be living, phone numbers, type -- you know, job, their prior record, other kinds of things, mental health status, stuff like that. Those are things that, when you start asking those things, they will give you more of an indication of the indigence of that individual, because you will find out that they don't have a place to stay or that the place that they're staying at is their cousin's trailer, they don't have a driver's license, they're currently on probation, they currently have other kinds of things going on that you will find that that tells you the other information that you would -- that you would need to have in relation to that -- in relation to

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that person.

I have -- and I've always told the people in my office, and I think everybody in my office has always operated with the -- if they're concerned or suspicious of something, it's like, you know, there -- this guy has applied, but, you know, there's something about, you know, the circumstance, you know, people in my office will come to me, and it's like, yeah. Go ahead and, you know, do what you need to do to look at it, you know, try to check it out, see if there's, you know, something else going on that we need to know about. It's just my experience that we don't have -- we don't have a flood of -- of people coming to us in order -- let's put it this way: I don't have a bunch of people filling out applications in order to be put on a waiting list.

Q. And speaking about that waiting list -- and this will jump around a bit. Is there a legal justification for that, or is that a mechanism that was, I guess, discerned or thought up by particular district defenders?

A. Well, when you say, "a legal justification," I -- my justification is I have ethical rules that I have to comply with as an attorney, and that I'm supposed to require my

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attorneys to comply with. And so as a practical matter, it's just -- it's kind of the reality of what happens. People apply to us. They are indigent. I'm going to tell the Court they're indigent. I'm also going to tell the Court, as I have, "I'm not assigning an attorney to represent this individual because I don't have anyone that I think is available to be able do it because their caseloads are already too large as it is."

As a matter of function, it creates what amounts to a waiting list. And we have explained that to clients, and we've explained it to families who are, you know, frustrated and don't know what that means. And that's usually the first thing they ask, is, "Well, what does that mean?" Well, it means you're going to have to wait until I have someone that I think is available to be able to represent your kid or your husband or your boyfriend or your daughter in a manner that they deserve to be represented.

Q. Am I correct in recalling that you said you -- coming -- this upcoming January will be 20 years in the Missouri public defender system?

A. 22.

Q. 22. I apologize.

A. That's okay.

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Q. In those almost 22 years, has there ever been another time where these wait lists have been utilized, or is that a pure function of the Hinkebein decision and the aftereffects of that?

A. I'm trying to remember from when we had -- there was caseload litigation that went on in the Waters decision, and -- but -- I'm trying to remember whether there was specifically -- we had a functionality to be able to do that, but that was specifically -- it had to do with certification of offices as the overall office. I -- I'm not -- I -- I don't have any kind of certification in relation to my overall office or saying, you know, my office, itself, is like, on some certification list or something like that. I've basically told the judges that I have this number of attorneys in my office, they have these number of cases that have been assigned to them over the last number of months and currently in the course of their representation that I consider them not available, and I'm not going to assign cases to them.

Q. I'll circle back to that in just a bit, or maybe I won't depending on if this ends shortly. Moving towards depositions and discovery --

A. Uh-huh.

Q. -- your testimony, was it that you had

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never personally been denied a request for a deposition in terms of funds or the availability?

A. As far as funding?

Q. Uh-huh.

A. Yeah. I don't -- I don't think that -- I mean, I don't recall times where requests from the funding mechanism have been denied, other than just to try to clarify something, but not as an overall denial of, no, you're not going to get the ability to be able to do it.

Q. And you also testified that you have never -- pardon me. You have never denied a request from those who are -- who you supervise for a deposition?

A. Right. Other -- other than the --

Q. Aside from clarification?

A. Right. Other than the clarification aspect, that's correct.

MR. RAMSEY: Do we need to end?

MR. WILLIAMSON: Five minutes.

MR. RAMSEY: Five minutes. Okay.

Q. (By Mr. Ramsey) And the same for experts in terms of, you have never been denied funds or denied the ability to use an expert that you thought was necessary in a case?

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A. I've never been denied one that I have asked for.

Q. And you have never denied one to someone you were supervising, or in your -- or at your point in the process, you haven't denied anyone that?

A. Right. That they've come and asked for me -- for one or, in essence, filled out the electronic process, that's correct. I'm not -- again, the only reason denial-wise usually has been something in relation to, from the mechanics of it, what they needed to clarify better in the -- in the request, not the general nature of a request, itself.

Q. And is there any limitation on how much -- how much a particular expert can cost? Is there any particular policy in your district that you establish or one that you know of?

A. I don't have a -- I don't have a particular policy. The request in relation to funding is particular to the type of expert you're hiring, what you're hiring them for. They have to indicate -- one of the things that attorneys have to do is indicate a per-hour cost; and generally, the indication is usually something that -- that quantifies how you're going to get to that cost.

I've been a -- I've been doing these for a

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long time, so for example, if I had somebody make a request that said, I need $50,000 in order to hire an expert to determine whether somebody's competent, that isn't going to happen, because I know that I don't need to approve that kind of money to get that to happen. That's -- it -- it would be an extremely out of the ordinary, ridiculous kind of request that I know would not be within the realm of what we would normally need for someone to be able to -- to get that done, the number of hours it would require, the kind of time frame. Even if we -- and -- and for example -- and it's usually amount a lot of mental health experts that we have. But for example, if someone has a long mental health history, and that -- and that expert is going have to go through lots of mental health records, they're going to have to review lots of records in order to be able to ultimately reach the kind of assessment that they need to be able to reach and have the opinion that they're going to need to be able to have in -- in a case, you might request more money for that individual, but that would be any individual, based on being able to do that kind of request. But for example, that kind of request is -- is -- is still not going to be something that I wouldn't recognize as something that -- that you go,

that's within the well -- realm of what this person or anybody would be doing in relation to that kind of -- that kind of evaluation.

Q. Do you maintain a list of experts that can be utilized for your assistant public defenders, or are they expected to kind of do their own research and bring that to you?

A. There are -- well, there are certainly people that we have -- there are people that have been used before for various kinds of expertise, and so oftentimes, individuals, if they're -- it they're wanting to have, for example, a basic competency evaluation done on someone, you might look at a given area of the state and say, well, here's, you know, people that have been used in relation to that circumstance. But, you know, there might be a different circumstance that would be a -- a different kind of expert that maybe you haven't had to deal with before or haven't had to look at before. Sometimes you're contacting other offices. Sometimes you're contacting an office, for example, a capital unit or something like that, which tends to have made use of a -- a number of different experts in different -- differing circumstances. They might know who some of those people are or be able to refer you to someone

for a particular type of -- of request.

My concern, which I expressed earlier, is that oftentimes, I -- I think people don't know -- they wouldn't even know what they would need to look for because they're -- they don't have the time to be able to assess -- even assess that.

MR. WILLIAMSON: Can we go off the record?

VIDEOGRAPHER: Off the record 5:34 p.m.

(Off the record.)

(Deposition suspended at 5:34 p.m.)

CERTIFICATE OF REPORTER

I, Emily S. Hughes, a Certified Court Reporter within and for the State of Missouri, do hereby certify that the witness whose testimony appears in the foregoing deposition was duly sworn by me; that the testimony of said witness was taken by me to the best of my ability and thereafter reduced to typewriting under my direction; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition was taken, and further that I am not a relative or employee of any attorney or counsel employed by the parties thereto, nor financially or otherwise interested in the outcome of the action.

_____

Emily S. Hughes, RPR, CRR, CCR #1353

Alaris Litigation Services
1608 Locust Street
Kansas City, Missouri 64108

December 19, 2017

Ms. Jacqueline Shipma
MISSOURI STATE PUBLIC DEFENDER'S OFFICE
1000 West Nifong
Building 7, Suite 100
Columbia, Missouri 65203
In Re: SHONDEL CHURCH, et al., v.
STATE OF MISSOURI, et al.

Dear Ms. Shipma:

Please find enclosed your copy of the deposition of JEFFREY MARTIN, Volume I, taken on December 5, 2017, in the above-referenced case. Also enclosed is the original signature page and errata sheet.
Please have the witness read your copy of the transcript, indicate any changes and/or corrections desired on the errata sheet, and sign the signature page before a notary public.

Please return the errata sheet and notarized signature page to Alaris Litigation Services for filing prior to trial date.

Thank you for your attention to this matter.

Sincerely,

Emily S. Hughes, RPR, CRR, MO CCR #1353
Enclosures
cc: Mr. Jason D. Williamson

STATE OF)
)
COUNTY OF)

I, JEFFREY MARTIN, do hereby certify:
That I have read the foregoing deposition;
That I have made such changes in form and/or substance to the within deposition as might be necessary to render the same true and correct;
That having made such changes thereon, I hereby subscribe my name to the deposition.
I declare under penalty of perjury that the foregoing is true and correct.

JEFFREY MARTIN

Executed this day of , 2017, at .

Notary Public:
My Commission Expires:

Signature page to: Ms. Jacqueline Shipma

WITNESS ERRATA SHEET
Witness Name: JEFFREY MARTIN, Volume I
Case Name: SHONDEL CHURCH, et al., v. STATE OF MISSOURI, et al.

Date Taken: DECEMBER 5, 2017

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Exhibit K

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
CENTRAL DIVISION

SHONDEL CHURCH, et al.,)
)
Plaintiffs,)
) Case No.
vs.) 17-04057-CV-C-NKL
)
STATE OF MISSOURI, et al.,)
)
Defendants.)

VIDEO DEPOSITION OF RUTH PETSCH
TAKEN ON BEHALF OF THE PLAINTIFFS
December 5, 2017

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UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
CENTRAL DIVISION

SHONDEL CHURCH, et al.,)
)
Plaintiffs,)
) Case No.
vs.) 17-04057-CV-C-NKL
)
STATE OF MISSOURI, et al.,)
)
Defendants.)

VIDEO DEPOSITION OF RUTH PETSCH, produced, sworn and examined on December 5, 2017, at the offices of the American Civil Liberties Union of Missouri Foundation, 406 West 34th Street, Suite 420, Kansas City, Missouri 64111, before Emily S. Hughes, a Certified Court Reporter and Notary Public within and for the State of Missouri, in a certain cause now pending in the United States District Court, Western District of Missouri, between SHONDEL CHURCH, et al., Plaintiffs, vs. STATE OF MISSOURI, et al., Defendants; on behalf of the Plaintiffs.

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IT IS HEREBY STIPULATED AND AGREED by and between counsel for the Plaintiffs and counsel for the Defendants that this deposition may be taken in shorthand by Emily S. Hughes, RPR, CRR, MO CCR #1353, and Missouri Notary Public, and afterwards transcribed into typewriting; and the signature of the witness is expressly reserved.

* * * * *

(Deposition commenced at 9:05 a.m.)

VIDEOGRAPHER: We are on the record. Today's date is December 5, 2017, and the time is 9:05 a.m. This is the video recorded deposition of Ruth Petsch in the matter of Shondel Church, et al., versus State of Missouri, et al., Case Number 17-04057-CV-C-NKL in the United States District Court for the Western District of Missouri, Central Division. This deposition is being held at the American Civil Liberties Union of Missouri Foundation.

The reporter's name is Emily Hughes. My name is Ryan Gray. I'm the legal videographer. We are with Alaris Litigation Services.

Would the attorneys present please introduce themselves?

MR. WILLIAMSON: Jason Williamson, ACLU, for the plaintiffs.

MS. SHIPMA: Jacqueline Shipma for the MSPD defendants.

MR. RAMSEY: Steven Ramsey for the State of Missouri and Governor Greitens.

VIDEOGRAPHER: Would the court reporter please swear in the witness?

RUTH PETSCH,

of lawful age, produced, sworn and examined on behalf of the Plaintiffs, deposes and says:

EXAMINATION

BY MR. WILLIAMSON:

Q. Good morning, Ms. Petsch.

A. Good morning.

Q. How are you?

A. Good.

Q. My name is Jason Williamson. I represent the plaintiffs in this case. Have -- have you ever been deposed before?

A. I don't think I have.

Q. Okay. Well, it's pretty straightforward, but I'm going to ask you a few questions relevant to this case. You're required to answer those questions truthfully and to the best of your ability. Remember that your testimony here is under oath, so it's just as if you were testifying in court. Do you understand

that?

A. Yes.

Q. Your attorney may object to one or more of my questions, but except in limited circumstances, you're still required to answer the question; okay?

A. (Nonverbal response.)

Q. If you do not hear or understand my question, just let me know, and I can ask a -- a better question or rephrase the question; okay?

A. Okay.

Q. And a few things that I think will help our court reporter here today: First of all, when you are answering questions, just be sure to -- to speak clearly and loudly enough for her to hear you. Also make sure you answer each question verbally as opposed to using body movements so that she can record that for the record. And also, I'd like to ask to let one another finish before -- so allow me to finish my question before you answer. I'll do my very best to let you finish your answer before I ask you another question; okay?

A. Okay.

Q. Did you prepare for the deposition today?

A. Yes.

Q. How did you prepare?

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A. Yesterday, I met with Jackie for, you know, 45 minutes, something like that. I read back over some affidavits that my attorneys had written about their case overload, and I looked -- I looked at the time frame, because in speaking with Jackie, I wasn't -- I wasn't sure -- a -- a lot of things have happened recently, and I -- and I wanted to be more clear on the time frame, because it -- if you -- it feels like they happened all at once, so --

Q. And did you -- did you bring any or all of those documents with you today?

A. No.

Q. Okay. Ms. Petsch, by whom are you employed?

A. Missouri State Public Defender.

Q. And what is your current title?

A. I'm the district defender for the Kansas City trial office.

Q. And how long have you served as district defender?

A. I became district defender in, I believe March of '11.

Q. Have you served with the MSPD in any other capacity?

A. Yes. I was assistant public defender. I

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started in January of 1998, and then I held the -- I held -- well, there's different levels of assistant public defender, but I was assistant public defender in one level or another until I became district defender.

Q. Okay. And the Kansas City trial office is part of District 16?

A. Yes. We -- we're all of District 16 for the most part.

Q. And I want to get this right. Do you refer to it as Area 16 or District 16, or are those interchangeable?

A. MSPD calls it Area 16. It is the 16th Judicial Circuit in -- in Kansas City, the circuit matches up with the office. We only cover one county, which is the 16th Judicial Circuit. So they get called a lot of things, but I think internally, we call it Area 16.

Q. So we'll come back to your experience within the Kansas City office, but can you describe your professional experience prior to coming to the Missouri State Public Defender?

A. As far as professional legal experience, I didn't have any. I -- I interned in the Saint Louis City office, and I did some internships while through

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law school, but I graduated law school in 1997, took the bar, and my first legal job was with MSPD.

Q. What did you do prior to law school?

A. Well, I was an undergrad. I mean, I -- I did a lot of catering.

Q. So you went straight from undergrad to law school?

A. Yes.

Q. Now, you mentioned that Area 16 encompasses Kansas City. Are there any other counties that are part of Area 16?

A. Well, we -- Area 16 is strange in that there's two courthouses. There's one in Kansas City; there's one in Independence. So we go to both courthouses. And then I do have some lawyers that are doing some conflicts. That's dying out because we got conflict funds this year, so in some of the surrounding counties like Platte, Clay, Cass, I feel like Clinton. But again, most of that is -- since July 1, most of that, we're cutting back on because those cases are being contracted, but I do have some lawyers who do conflict cases in some of the surrounding counties.

Q. Is it your understanding that your office, going forward, will no longer be required or expected

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to -- to cover conflicts in these other counties?

A. Well, that's my hope. I've been with the system long enough to know that that -- that doesn't always happen. Since July 1, we have gotten a few cases from -- conflict cases mostly because we've had an attorney who already represented that client, and they had another case pop up, and they were sent to us. But yes, my -- my hope would be that my -- my office, every MSPD office is out of the conflict business, and we can focus on the 16th Judicial Circuit.

Q. How much time were your lawyers spending on conflict cases prior to July 1?

A. Well, I had one lawyer, that was his -- his entire job was to do conflicts, and I had a second lawyer who -- who probably 50 to 75 percent of her caseload was conflicts, so if you --

Q. Okay.

A. -- you know, can put that into attorney hours, but I basically had almost two lawyers devoted to doing conflict work.

Q. And were other lawyers doing cases here and there, conflict cases here and there, or were -- or were all the conflict cases being handled by those two attorneys?

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A. With the exception of I rotated -- the conflicts -- the person I have had on conflicts, he -- he's been with us 29 years, so he's been in conflicts, I want to say -- he was doing it when I took over management position, so he's been on conflicts the entire time. I've rotated people in and out, so I might have had one or two other people who had sort of residual cases, but for just -- just ease of use, it was easier to have a consistent person going to the various counties.

Q. Okay. How many attorneys do you currently have on staff in your office?

A. Including myself, 35.

Q. And how many of those 35 handle felony cases?

A. All of them.

Q. How many handle misdemeanors?

A. All of them.

Q. How many handle juvenile cases?

A. I think -- one of my conflict lawyers does not, so I would say -- and I would say myself and my deputy do not handle juvenile cases. I mean, we've handled them, but right now, I would say we -- we don't handle juvenile cases, so 32.

Q. How many of your lawyers handle probation

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revocation cases?

A. Every one.

Q. And how many of them do direct appeals?

A. I have one -- I have one lawyer -- excuse me -- doing work at -- he kind of has a lot of the Bazell cases, which is this -- a case that came down that they did a lot of felony stealings, misdemeanors, so -- and it created a lot of chaos for a while, so he has a -- has a bunch of those, so I have maybe one who's doing that. Direct appeals are generally handled by our appellate office.

Q. Are there any other types of cases that are handled by your office that I haven't named?

A. Again, there's -- there's different levels of post-conviction for that Bazell lawyer, which I -- I couldn't even tell you what they are, but I -- I think that about covers it, yes.

Q. Now, you have -- let me rephrase.

How long has the most experienced lawyer in your office been practicing, as far as you know?

A. 29 years.

Q. Okay. And that's the conflicts --

A. Yes.

Q. -- attorney?

And how long has the least experienced

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attorney in your office been practicing?

A. Since September 18.

Q. And even that attorney is carrying felony cases on his or her caseload?

A. Yes.

Q. Do you make distinctions between A, B felonies and C, D felonies when you're assigning the cases to your lawyers?

A. Yes.

Q. All right. How many investigators do you have on staff right now?

A. Well, currently staffed, I have three. I have -- I'm in the process of hiring a fourth. Full staff, we're at four.

Q. Do you have any social workers on staff?

A. No.

Q. How many paralegals do you have?

A. I don't have any paralegals.

Q. Do you have any legal assistants?

A. I do. I have five.

Q. And what -- what role do they play?

A. The legal assistants, they screen all of the clients who are in custody and a number of out of custody. So they go to the jail. We have an application, you have to qualify for the public

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defender's office, they fill out those. And then they open every file, so that's, you know, a -- right around -- give or take right around 6,000, 5,000 -- 6,000 cases a year, and more applications, because some of those folks are denied or some of those folks hire counsel in the meantime. We'll screen them in jail, and then their family will hire someone. And then there are also -- I have a team structure. I have four teams in the office. They're assigned to a trial team, so they do get requests from attorneys to do things like edit video, show -- there's a tremendous amount of video. Most of our -- all of our discovery comes on disk, and there's a lot of witness interviews. Most cases -- a lot of cases have hours and hours of video between witness interviews and dash cam and the like, so they do a lot of showing videos to clients in the jail.

Q. Along with the attorney, or just the --

A. Usually, just the legal assistant. Attorneys sometimes do that as well, but they -- they don't do it together.

Q. And is that because you just don't have the capacity for them --

A. Right.

Q. -- to do it together?

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A. So yeah. We'd see that as a waste of resources.

Q. Understood.

How many attorneys are on each trial team?

A. Around eight. Everyone is on a team except for myself and my deputy, Joseph Megerman, so everyone else -- and I have team leaders for the teams, but everyone is on a team.

Q. And you said the legal assistants are assigned to a trial team; correct?

A. Yes.

Q. So does that mean that individual lawyers are not -- individual lawyers don't request assistance from the legal assistant, or is that -- or -- or do they?

A. They do.

Q. Okay.

A. They have -- the teams meet, and each of the individual teams sort of allocates the best use of the resources they have. So some teams have attorneys doing requests of legal assistants as part of their team structure, and some of them have set duties for the team, and it does vary -- the time kind of on votes on it and decides what's the best use of resources, so --

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Q. And each team has the discretion to do that?

A. Yes.

Q. You're not involved in that process?

A. Well, if -- if it's something that goes outside the legal assistant job duty entirely, I'd probably have a discussion with them about it, so I -- I will ask the team leaders, what are you having -- what are you having your support staff do, what are you -- you know, how -- how are you best utilizing your team members? And so I have a feel for what each team is doing at a given time or what their game plan is. Sometimes they plan things, and it doesn't come to fruition, but that's -- but that's how they divide it.

Q. Okay. So aside from the 35 attorneys, four investigators, five legal assistants, are there any other staff in your office?

A. Yes. I have -- there's one administrative assistant who acts more like an office manager, and I have four office support assistants.

Q. And the office support assistants do strictly administrative work, clerical work?

A. Yes. They -- they man our phones, they close every file, and they're also assigned to teams

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as well, so some of them write letters for lawyers or mail letters, but yes, all strictly clerical.

Q. Do you have a sense of what the turnover rate is among attorneys in your office?

A. Well, last year, I hired -- I had nine people start out of the 35, so I don't -- I haven't done that math.

Q. Does that mean, were those nine people who replaced nine other people who resigned?

A. Left, yes.

Q. And do you have any opinion as to what the cause of those departures may have been?

A. Well, I -- I can tell -- I do an exit meeting when people depart so I can talk about what -- a lot of people leave for private practice. A lot of -- a lot of people leave to make more money, and then a number of people leave because of the work, the grind.

Q. Is the -- is the turnover rate concerning at all to you?

A. Absolutely. It's -- I do all the hiring, and between attorneys and support staff, I -- I literally don't remember the last time I wasn't engaged in hiring, whether I'm reading resumes or I'm interviewing, or right now, I'm checking references.

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I -- it -- I am constantly doing that. It's a tremendous drain on my time as well as, I have to have a lawyer what is a trainer, so we're sort of constantly training people. And obviously, trial work isn't a -- you don't walk into it easily and naturally. It requires a lot of training and it requires a lot of time and development, so there's -- it's a constant question/answer, constant -- I believe in open door, so I have a constant stream of people at my door. Most of my core work that I do, I do at home.

Q. We'll come back to that --

A. Sure.

Q. -- shortly.

Is the -- when someone leaves your office, do you -- are you generally -- strike that.

When someone leaves your office, how long does it generally take you to fill that position?

A. At least six weeks. It has to post for two weeks. I generally do two rounds of interviews, so you know, you have to give people notice to get there. And I do it as efficiently as possible. One, I fear losing -- I've lost positions before, so I'm always afraid of losing a spot. And two, that workload goes somewhere, so it's really -- I think it's really

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demoralizing for the staff to have people out. When someone leaves, their cases get disbursed, and you know, they -- they feel the pain instantly.

Q. And how do you handle the caseload for that six weeks or however along the intervening period is to make sure that those cases, the -- the lawyer's cases are covered?

A. Well, we reassign the cases immediately, so that means lawyers who thought they had set schedules will now get trial cases dropped in their lap and trial settings dropped in their lap that they weren't anticipating. It's -- there's a lot of things that bug the lawyers, but that really bugs the lawyers.

Q. How do you choose who gets the pleasure of having cases dropped in their lap?

A. So one of the -- and I -- Joseph Megerman does most of the assigning, but I've been the assigner in the office before. Sometimes you look at -- we have the ability to look at people's trial schedules, see and look when people have availability. You will -- obviously, the type of case is important. I'm not going to give new lawyers murder 1. And some of it is, it just has to go somewhere.

Q. Is it fair to say that that is one of the implications of -- of a high turnover rate, that you

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have lawyers taking on -- lawyers who are already very busy taking on additional cases, at least in the interim?

A. Yes.

Q. You mentioned that you are always afraid of losing a spot?

A. Right.

Q. Can you explain what you mean?

A. Well, we -- so the system, you know, we're a statewide system, so there are attorney positions. You know, they look at offices that are overload and positions -- I've -- I -- I think I've lost two, and then gained one. But positions will go to other offices who are considered more overloaded, so you'll lose someone, and then you don't get to fill it. I've lost attorney positions that way, and I've lost support staff positions that way.

Q. Are the majority of the new hires relatively inexperienced lawyers?

A. Yes. I do -- I've -- I've definitely hired transfers. I'm trying to think in the past year if I've hired any transfers. Maybe -- I think maybe two of the nine were transfers; although, one came with no trial experience, so it wasn't -- you know, I mean, it wasn't like going -- the other did come with some

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trial experience, so -- but for the most part, most of my new hires are brand new.

Q. Right out of law school?

A. Yes. Or this is their first legal job. I've hired some people -- I hired a guy who just worked in a start-up for a two years just doing IT stuff, but he wasn't -- it didn't help his legal acumen any.

Q. And when those new lawyers come on board, is there a period of time that they have to spend in training before they are assigned clients?

A. No.

Q. Do they -- do they receive any training as new attorneys in the office?

A. Yes. Well, I have a training person, and -- and she had a baby this summer, so it made for hectic times for the people who started this summer. But -- and then we -- I actually moved her position. She wanted to move positions when she came back. So I have a new training person. He goes to the jail with them, he goes to court dates with them until he's confident that they're able to handle certain types of things. That being said, three people start in September. One person started in August. It would be physically impossible for him to attend every dep --

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every first for all of -- all of that group, so I do have training, and we do work with it, but again, it fluctuates based on training. It's not -- I can't add other trainers. I don't have the resources for that.

Q. So to be clear, the training person is not conducting day-long trainings, for example, for a group of lawyers; this person is shadowing lawyers in -- in their work on a daily basis?

A. Right. Well, he's meeting with them, discussing their cases, he'll go to the jail with them for their first client, you know, sitting in on client interviews, sort of working with them. All of our training is on the job for the most part as far as that goes. I do -- once a month, I do have a -- we call it our second Friday CLE. It's not a real CLE, but it's sort of things that we see that lawyers have issues with, and then it's generally in-house people talking about voir dire, talking about other topics, making a record things like that, to get -- but it's usually over lunch, and it's usually an hour to an hour and a half long.

Q. Is that mandatory for people to attend?

A. It's mandatory -- I make it mandatory for ones and twos, but I mean, if someone is on vacation, I'm not going to hold them. So -- and ones and twos,

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APD 1s and 2s, because I just want them to have that experience, and I'm -- it's open to the whole office, and depending on the topic and the speaker, we have a fair number of people. I will also say the state has statewide training, but that isn't -- I'm not in charge of that.

Q. Are your lawyers required to attend the statewide training?

A. The new lawyers are, yes. And most lawyers want to in some capacity because it gets them their CLE hours, so --

Q. You referenced APDs -- APD 1 and 2s?

A. Uh-huh.

Q. Can you just explain what you mean?

A. So a new hire is an APD 1, and you're an APD 1 -- you're eligible to be promoted after a year of practice and successful performance, and then you become an APD 2.

I write -- I personally write every review in the office, so the attorneys are reviewed, and then they become APD 2s. And you're an APD 2 -- you're not eligible to move up for two years in successful practice including trial practice. We have -- we have a form for it, and I -- I review every -- all reviews are written by me in my office, so most attorneys,

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unless they've not had trial experience or they've had issues that we're working on, move up to ADP 3 at about the three-year mark.

Q. Does every attorney start as an APD 1, or does it depend on your level --

A. Every attorney starts as an APD 1. Oh, well, no. I guess that's not true. There -- if we have experienced people, they can be waived in.

Q. Okay.

A. So I've -- certainly, the transfers -- with transfers, it's easy. They -- they're already at a level, and they transfer at the same level. But I have hired people with experience who were -- their experience was given weight, so they came in as twos. I just had -- I just had a lawyer who had some experience, so they -- they had me promote him six months early. Normally, you'd be eligible at a year, and I promoted him at six months, so there are some concessions made when people have experience.

Q. And can -- can you just sort of name what the other levels of promotion are after AP -- APD 3?

A. Well, there's APD 4.

Q. Okay.

A. So -- and that, again, is another two years -- you have to have at least two years of highly

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successful performance in A and B felony. So for me, my four standard is you should be able to take any type of case. If you got to each of the marks and got promoted in the timliest manner possible, the soonest you could reach that is five years, and that is our -- that's our top level of trial attorney. Obviously, we have management positions, but that is where attorneys top out.

Q. And in order to be a trial team leader, do you have to be an APD 4?

A. No. I -- the trial team leader is sort of my own organizational tool. It's not MSPD. Because it's basically impossible for myself and my deputy to effectively supervise and mentor 33 people. So I do interviews, I have a form, I meet with attorneys. So I've made -- I've definitely made threes team leaders before.

Q. Okay.

A. Obviously, I'd prefer a four, but when you have turnover, sometimes you don't have that many fours or you don't have that many interested fours.

Q. And does -- since it's not tied to any MSPD requirements, is it -- is there any -- is there a salary implication for becoming a team leader?

A. No.

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Q. And just -- I just want to clarify one thing. You mentioned that the -- your -- your trainer shadows the -- the lawyers. So does that mean that that person is really only training one lawyer a day or a couple of lawyers a day?

A. I think it varies. And it depends -- you -- it depends how their -- their court is scheduled, so he -- I think he'll meet with them sort of informally as a group to talk about -- let's talk about offers today. But I would say -- the truth is I -- I don't know. I think there are days when he probably touches base with everybody on the training team, and there are probably days when he doesn't touch base with any of them. It just varies depending on what they have going on and what their needs are.

Q. So you mentioned that, at least at the moment, you're doing a lot of hiring?

A. Yes.

Q. Can you just talk a little bit about your -- your other day-to-day responsibilities as district defender?

A. Along with hiring, I would say I'm constantly promoting with -- with the turnover, I'm constantly, I think I've promoted 15 people this year. The upper level promotions take me 20 to 40 hours to

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write, I think. And an APD 1 is a little shorter, because there's not as much to look into. What else do I do? I -- I'm in charge of approving all encumbrance requests, all requests for depositions. I approve all leave, so that's probably five or six requests a day for leave. I have been carrying two probation violation dockets. I do -- I do the HR for the office, so if -- obviously, we have an HR, but, you know, I have to do whatever claims come in, whatever investigation. I deal directly with the courts, so if there are complaints that way, I'm on -- I have to -- there's meetings set up with the presiding judge, things like that. I do those things.

Q. You mentioned that you also write every review --

A. Yes.

Q. -- for your attorneys?

A. That's part of the promotions, yes.

Q. Oh, part of the promotions process?

A. Uh-huh.

Q. What is the basis for that review? In other words, are you getting reports from supervising attorneys about the other attorneys, or are you doing the initial supervision?

A. So there's a variety of things. I do talk

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to the team leaders about how people are doing, and I do try -- occasionally, I get to second chair somebody in trial. It's not very often, and -- but I do try if someone's in trial to get over there to catch part of their trial so that I can see their trial performance for myself. But I -- I request cases. I go through their cases. I go through their entire caseload. I check all of their client contact, whether they're seeing their clients -- we have a requirement with MSPD that you're supposed to see your client within seven days of receiving a case, as well as monthly contact after that. So for a number of files, I look at every contact. For all of their open cases, I look at first and last contacts. When I look through their files, I look for what kind of motions they're doing, general -- kind of what you'd expect a defense attorney, what -- how you evaluate a defense attorney, what their writing is, and that, for the most part, is kind of the bulk of -- looking through files. And then I do talk to team leaders and anyone who has second chaired. I ask team leaders who second chair trials, because they are -- they are -- I hope that they do a bulk of the second chairing to fill out an evaluation. Some of them are better at that than others in doing that in a timely manner, so sometimes

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it's sitting down with them and asking them about specific trial skills and where people are at.

Q. You mentioned that you do carry your own caseload; correct?

A. Well, I carry a case -- I'm doing only probation violations at the time, so yes. I'm not carrying a trial caseload.

Q. And -- and why only probation cases?

A. Well, probation violations are set at more predictable times, and while they can require -- I mean, I've taken depositions. I've done real work on probation violations. They don't -- it's a more predictable amount of time that you can devote to it than trial cases, which are all over the place, and then you have -- it really, for me, I'm a resource for the office, and then trying to split up what is more valuable, being a resource for the office or my -- my legal obligations to a client when you undertake representation that way is -- especially when you have a trial case, I just -- I tried to keep some cases when I became district defender, and eventually had to assign them out because I wasn't seeing the clients and I wasn't getting any work done on it, so I found that split very difficult. But with probation violations, I can -- plus, they're -- you know, we

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have a lot of divisions, and it means -- I mean, when I have turnover, I don't have enough lawyers to take a division. The -- usually, lawyers have trial assignments, and then they're assigned to a division, and they get all the probation violations that come to that division. But when I run out of lawyers, I'm looking at either doubling up on some lawyers who already have too many cases, or just taking them myself.

Q. How long has it been since you've had a trial docket?

A. I think I -- probably about six months into when I took over, so 2011.

Q. And -- and when you refer to a trial docket, does that include any and all felonies?

A. Yes.

Q. And all misdemeanors?

A. Yes.

Q. Which is to say those cases could go to trial? In other words, you're characterizing -- characterizing them as a trial docket because those are cases that could conceivably go to trial?

A. Yes, correct. And I -- I should -- recently, a number of the Jackson County judges have ordered me to enter on a number of cases, which I have

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done so, so I guess you could say I'm entered on some cases that could go to trial at this point, but I'm also having -- other attorneys are also entering, so --

Q. And we will return to that --

A. Sure.

Q. -- in a bit.

Does the MSPD central office play any role at all in -- in performance evaluations of your lawyers -- of the lawyers in your office?

A. Yes. Well, I write them, and for APD, the one to two is based on my evaluation solely. That doesn't get run by anyone. But all the other evaluations do. So I write an evaluation, and then I send it -- right now, Ellen supervises me, and I think Joel Elmer also, he looks at -- I know he looks at all the fours. We just had a supervisor leave, so some of that is up in the air, but I've always sent it to a supervisor and then gotten feedback about sometimes add something, sometimes -- you know, or this isn't very good client contact. What can you do to motivate this person? Feedback about whether I need to change the review or work with the attorney in some way. So ultimately, I don't approve the promotions to three and four. That's -- I write them, submit them, and

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then get feedback, and that comes from upper management.

Q. And when you refer to "Ellen," that's Ellen Blaugh?

A. Right.

Q. How long does is generally take for the central office to make those ultimate decisions?

A. Of -- it's -- it's varied over the time I've had the position. Of recent, not -- not very long at all; although, I am not afraid to pester people, so I definitely will. Because I'm cognizant of when pay periods hit, so I -- I know if I can get it approved before the next pay period, that means that it will become effective sooner, so I tend to gently hound people to get them to look at it. Because I see my role as I also advocate for the lawyers in my office, and if I have good lawyers, I certainly want to get -- them to get promoted in a timely manner, and I try and advocate for them as much as possible.

Q. When you are evaluating the performance of any of your lawyers, to what extent do you consider their caseload in -- in assessing the quality of their work?

A. Well, it -- it's impossible not to.

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Because as I say, I don't think I have a single lawyer who is meeting their client contact ever. I've never had anyone be 100 percent for -- definitely for certain, and I would say most people have a fair -- a fair number of not seeing clients on time or not seeing them regularly. So I do -- to me, I feel like I have to take that into account. You know, if you have someone with 100 cases, that's very different than if they had 30.

Q. But it's -- there's no particular formula that you can use to --

A. No.

Q. Okay. Do you -- do you manage the budget in your office?

A. Yes.

Q. So you make decisions about how much money goes where?

A. Well, I approve the expenses.

Q. I see.

A. The ultimate budget that's handed to me comes from upper management, so I don't -- I approve expenses within that budget, but I sign off on every staples request we make, every -- and I do sign off on all the trial -- we call them encumbrance requests. Although, some of them, if there above

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$500, if they're on a murder, some of them go -- they're approved by the central office. I approve only my local budget numbers, so -- but I don't -- I mean, I'm given a certain amount of money. I don't -- and I keep it within that.

Q. And how do you make decisions about how to use that -- how to allocate that -- that pool of money that you have to depositions versus experts versus other things that your office may need?

A. Well, most of the depositions and experts come from the central level. And again, my -- my budget, you know, there's a supplies section. I don't get to borrow from supplies to pay for depos. It -- it's already delineated, so -- or if I -- if I have that power, I don't -- I'm unaware of it. I don't do that.

Q. So when you say that the -- so even the pool of money that you're given for your office is already itemized in terms of how much you can spend on what?

A. Yes.

Q. Okay. And it's your understanding that that's how it works for every district?

A. Yes.

Q. Okay. How much discretion do you have in

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setting policy for your office?
A. I feel like I have a fair amount. Although, I'm not -- Joel Elmer was my boss my entire 14 years before I ended up taking his job, so there are district defenders who are more leery about talking to upper management. I am not one of them. So for the most part, when I'm thinking about policy, I want to discuss it with experienced people who -- who have been through it or have ideas about it. So I don't know that I've ever implemented a policy that upper management said, "You shouldn't do that. Reverse that." That's never happened to me. But I have a pretty -- I have a pretty comfortable relationship with upper management. I'm not afraid to call anybody. I'm not afraid to ask advice. They probably say I call them too much.
Q. And -- and in your opinion, why are some district defenders leery of speaking with upper management?
A. Well, I think there's -- I think there are people who think, like, I want to do it on my own. This is all mine. I'm separate. I mean, I think I've always grown up with the concept -- or grown up -- grown up through the law and grown up through the system with the concept that it's -- you know, we're a

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statewide system; that, you know, our goals are that everyone do well, that everything -- you know, I know with Joel and hiring, when he was -- supervised me would say, like, well, let the rural office -- you know, people who are candidates in multiple offices, let the rural offices choose first because it's much harder to fill those spots, and I really -- although, I have a lot of turnover, I generally have big pools, and I'm -- I've not had a pool yet where I've closed it and reopened, that I've found candidates that I thought would be successful in the office. But I do think that there are people who -- they want to run their own thing, and then I think there are people who are -- you know, management wants to push the envelope, wants to serve clients better, and I think when you're already overwhelmed, people see that as sort of a hostile directive to a certain extent. And -- yeah. I mean, we'd have to get deep into management theory.
But some of it is also that, you know, people really -- there are managers who really want their lawyers to like them, so they'll choose friendships with lawyers over they'll choose being client centered, or you know, like, oh, we'll let everyone leave at 2:00, or we'll let -- and I have

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always said, as an office, I'm going to -- and it being a big office, I have to. I have to be really firm about hours. I have to be really firm about how policies go out, and -- and I -- I really think keeping the client in mind -- I think a small office to attract attorneys will sometimes weigh to keep you, I will give you these breaks, and I don't have the option of giving people breaks, because everyone would get a break, so I -- it's complex, and it probably varies office to office.
But I know in general, there's sort of a feeling of -- there can be disconnect. And that's not true -- I mean, I certainly am friends with DDs in rural offices who have no issue. But for me, it's especially easy, because my boss was -- like, Joel was my boss forever, and I'm very -- I was very comfortable being supervised by him before. I'm very comfortable being supervised by him now. And when I have tough times, I can call him, and he's easy to talk to and he -- he's been there. He ran the Kansas City trial office for 20 years, so --
Q. A couple of other budget questions. Generally speaking, you have 35 attorneys in your office. Do you think that's enough?
A. No. No, I don't.

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Q. In your ideal world, how many additional attorneys do you think you would like to have?
A. 15 to 20.
Q. And -- and what's the -- the basis for that number?
A. Well, I think it would get attorneys down to a caseload of the 30 to 40, which I think is really sort of an optimal caseload; and again, it varies depending on type of case. We have a lot of serious cases in this -- in my office, so the -- it -- you know, I -- I don't know if you have a bunch of murders and drive-by shootings and things like that that you should -- you probably shouldn't have more than 25 or 20 -- you know, it's hard to say what that -- exactly what that number is. But when I look at getting people the caseloads, controllable caseloads, that's -- that's a number I would come to.
Q. And you have four investigators on staff. Is that enough?
A. No.
Q. So how many -- how many additional investigators do you think you would need right now for the 35 --
A. For the 35?
Q. -- lawyers? Yes.

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A. That -- I -- I think -- and I -- I don't know about an ideal world. I mean, it would be great to have an investigator per two attorneys.

Q. Okay.

A. Which is a lot more investigators.

Q. What do you -- what would you consider a reasonable caseload for an investigator?

A. Honestly, I -- it's -- that's a hard question, because I've never -- we've never even been a stone's throw away from it. Maybe 50 cases as far as, again, with -- at least the structure I have, investigators, they don't enter on a case when it comes in, so they solely work on attorney requests. So if that structure were the same, which I don't think is an ideal structure, honestly. I think having an investigator assigned to a case with an attorney as they come in would be a more ideal structure. If that were the case, you'd want to keep it to basically the level of where an attorney is at or maybe twice that if they're assigned two attorneys, so maybe 50, 60, cases, but it -- obviously, I have -- right now, we have about 4100 cases that people are entered in, so my attorneys -- or my investigators potentially, when I'm full staff, working on potentially 1,000 cases at the time, which is just -- it's ridiculous.

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Q. If you had the number of investigators that you needed, do you think you would still need your legal assistants?

A. Yes. The legal assistants -- there's a little overlap, but they do a completely different job.

Q. And you have five of them in your office right now?

A. Right.

Q. Is -- is that enough?

A. No.

Q. How many legal assistants do you -- do you think would be ideal?

A. I'd say -- well, fairly similar. I'd say an legal assistant to every two lawyers, maybe three lawyers, something like that.

Q. And could you use any additional clerical staff?

A. Yes. Well, I -- you know, I have an office manager, so I don't -- I don't have an administrative assistant. I don't -- I do all of my own typing. I do all my own faxing. I do all of my own filing. I do all of my administrative work, with the exception of the office manager does -- she does -- she helps with bills, like, she codes bills and gives them to me

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to sign, but she really doesn't provide me any administrative support, and it's not that she's not working.

Q. Right.

A. But it's also -- I feel like the things I have her doing office-wide are more useful than having her for myself, but I -- I don't -- she does -- when I'm hiring, she does -- she does arrange interviews, so she does assist me in that way.

Q. If you had to guess, and I think you alluded to this a little earlier, roughly how much time would you say you spend on administrative work versus substantive legal work?

A. 75 percent. I mean, if you count -- I got to make tables when I write reviews. You know, if -- if I had someone who could -- a lot of what I do when I review people as far as client contact, that doesn't -- that wouldn't necessarily have to be done by me. It's a -- it's a huge chunk.

Q. All right. How many -- approximately, how many cases per year does your office handle?

A. It varies year to year, and I -- that number, I didn't look at. But I feel like we're right around 5,000 cases.

Q. Do you have any sense of roughly what

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percentage of those are felonies?

A. The majority of them are felony. We -- we carry not a lot of misdemeanors. We -- I don't even know if we carry 500 a year.

Q. And I know you mentioned that you're only carrying a couple of probation violation cases right now yourself?

A. Uh-huh.

Q. How many cases would you say you handle per year?

A. Not more than 100. Maybe 80, 90, something like that. It kind of depends on whatever comes up in the division. But that's loose, so please don't --

Q. No. I understand.

A. Don't impeach me with that number. I -- I didn't look at that at all.

Q. So I just wanted to ask you a few questions just about procedure, criminal procedure here. At what point is a defendant generally brought before a judge for the first time after arrest?

A. It's usually within a day or two of arrest. It's usually -- sometimes it's the next day. I mean, the -- our courts do what they call an initial appearance, which -- initial arraignment daily, so every day, they bring in whoever was arrested, and on

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Monday, they bring whoever was arrested over the weekend.

Q. And when does a formal arraignment happen?

A. A formal first arraignment would happen at that first court date.

Q. Okay. And is bail set at that initial hearing?

A. Yes.

Q. Is that -- is bail generally based on a bail schedule?

A. It goes judge to judge. In Jackson County, years ago, a number of people got together and put recommended bail amounts on what's called a blue sheet. It was printed out on blue sheets, and it -- a lot of judges follow that, but that was really just sort of a bunch of people's best guess. In the last couple years, the Court hired some folks to come in and do a risk assessment instrument, which they -- they put in the -- when someone is brought into jail, they put it -- the questions are derived from questions asked at booking at the jail, and some judges are better about following the risk assessment instrument than others. But it really -- individually, I mean, it's completely whatever the judge -- they also have a bond sheet where the

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prosecutor can write whatever they want on it, so --

Q. And the bond sheet is submitted to the Court?

A. Yes. It's filed usually the same time the -- the complaint is, and we'll list priors, and there's usually a recommendation.

Q. Can the bail amount be changed after that point?

A. Yes.

Q. Defendants are entitled to a preliminary hearing; correct?

A. Yes.

Q. If a preliminary hearing occurs, when -- when would it occur?

A. It would occur -- generally, at that initial appearance setting, the judge will set it out for a prelim setting; although, the expectation generally is not that a prelim is going to happen at -- at that time. Clients are unrepresented at that point, so there's often a request for the public defender to screen, which can we do -- sometimes we do in court that day. And then -- so usually the prelim setting is set a couple of weeks out, and then if a client requests a prelim, it's usually set within a month after that, I would say. It kind of -- it

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depends on availability of the Court, and sometimes the state has concerns about their witnesses or when they can bring them in. Again, 99 percent of our cases are grand juried, so the prelim setting is really just sort of a --

Q. I see.

A. -- formal --

Q. So at what point does the indictment occur -- you're saying it goes to the grand jury at some point between that initial hearing and the whatever --

A. No, not usually.

Q. Okay.

A. What happens is you go to your first prelim setting, the State sends us a list of offers. Sometimes there's negotiations; sometimes it -- it can be continued over if you're wanting to engage in a plea agreement early or at that step in the process. And sometimes it gets sent over because we're looking at whether people qualify for a diversion, things like that. But if you have a client who says, "I want a trial no matter what," and you request a prelim at that point, the judge would set it over usually about three weeks, depending on what -- what the -- sometimes a prosecutor will say, "Well, we're going to

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grand jury this." They grand jury every drug case. There's a whole set. They grand jury every sex case, every murder. There are sets of case they always grand jury, and then there's some -- sometimes they'll have a prelim; sometimes they won't. But for the most part, they'll request time and tell the Court they're -- they're going to send it to the grand jury.

Q. Does the timing of the prelim, or at least the date that's set out for the prelim depend at all on whether the person is in custody?

A. I do think there are some judges whose -- who do these -- the associate judges who handle this, I think there are some who -- I think they pretty standardly set it out, but I don't know for that first setting if judges do that or not. I know for continuances, they often won't continue something longer when someone's in custody. That, I don't know.

Q. Okay. Are there any other kinds of pretrial hearings that generally occur in a -- in a criminal case?

A. Like, preindictment or pre --

Q. Let's start with preindictment. Sorry.

A. Okay. We'll start with preindictment. So they have -- the judges will also set things for settlement that we've -- and I'm not sure if she's

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doing this right now, but we've had settlement conferences before they get indicted. So mostly, I think because judges sort of want to clear off the prelim document and sort of group these people that people have indicated might be pleas. And sometimes to give people time -- you know, there are people -- if you -- some people, if they have a DUI, if they get their license back, they might get one deal; they might get another. If they can pay back restitution, they might get one deal; they might get another. Some of it is sometimes giving clients to either make restitution payments, do things like that, get medical records, things that would be persuasive to the prosecutor to change the offer that they are initially giving.

And sometimes the Courts -- historically, they always did. Now, there's -- Missouri has judicial time standards, and most judges won't let anything set beyond three months over an associate. And then if -- you know, a client can waive, have a prelim, be bound over, and -- or be indicted, and then they'll go -- they'll be arraigned, and the judges will often then -- there's -- in that same division where they're doing arraignments, he also has a settlement docket, and he'll set cases sometimes by

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request, and sometimes it's cases the judge just thinks should settle that they will just set, because I have attorneys who get really frustrated about, well, I -- I just wanted to send it to a trial division, and now, I have an extra appearance. So sometimes it's cases they think should settle where they'll put them on a settlement docket before it moves. After that, it would move to circuit court, and that's when you'd have a pretrial. But the first pretrial is usually -- that's where you pick a trial date, which is generally sometimes six months -- we have judges who will set things out nine months to a year for a trial date.

Q. Is that after arraignment?

A. Yes.

Q. Okay. Is it possible for a defendant to plead guilty at their initial appearance?

A. We don't staff it, so I don't know if it -- honestly, I don't know if there are people who -- it's -- I would hope not, because they're all unrepresented. I don't -- I don't know if I've ever seen or heard of a lawyer doing that. Certainly, it better not be my staff.

Q. And -- and is the -- so the -- the defendants are unrepresented at that point. Are the

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public defenders generally in the room at the initial appearance?

A. No.

Q. No?

A. It -- it depends how and when it's done, but no. And if they are, they're not attentive to what's going on because sometimes they'll have an initial appear -- they'll do an initial appearance at the beginning of a prelim docket, but usually, public def -- if public defender's in the room, they are talking to prosecutors, they're talking to their client, they're -- they're not at the bench with clients. Except, on a rare case, you know, if we have a client who picked up a second case, there's sometimes the attorney assigned to his cases will show up.

Q. Do you think it would be helpful to have attorneys at initial appearance -- representing clients at initial appearance?

A. I think it's better for the clients.

Q. Realistically, would your office be able to staff initial appearances?

A. No. I mean, we've tried that, and it is -- when you weigh the attorney time versus -- you know, we weren't really getting bond reductions, we really

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weren't getting those things. That discontinued before I took over supervision. But I -- I've staffed -- as an attorney, I've staffed initial appearances before. But I -- I mean, I think it's an opportunity for bond. I think it's an opportunity for your client to say a bunch of stuff that hurts them. I think there's a lot of potentially negative things that could happen by being upper -- unrepresented at really any court appearance.

Q. So I wanted to ask you a little bit about that. What are some other things that a client could -- could say or do at that initial appearance that could be harmful to them?

A. They could admit facts of what they're charged with, and they do. It's -- all of those -- those judges don't have record -- or they don't have court reporters, but they do -- they tape it, so really, the client could say almost anything. And there is a discussion where they set bond, and clients will say, "Oh, but I could stay with my sister," or there's a discourse that sometimes happen. Sometimes not, and it really depends on the judge. But yeah, there are clients who could admit facts of their case, give up their right to remain silent.

Q. Are -- are there -- that being one of them,

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are there constitutional rights that -- that a defendant could waive in that proceeding?

A. I suspect there are, and again, I haven't witnessed an initial appearance in some time. But yeah. I mean, there -- there are clients who have said, "I did it." There are clients who make all kinds of admissions, which clearly is a problem.

Q. And your office is generally appointed at that initial appearance or -- let me -- let me rephrase that.

A. Well, right now --

Q. Let me rephrase that. At what point in the process is your office generally appointed to the case?

A. So it varies. Before the last two months, which we'll talk about later. Before the last two months, generally, at that hearing, they -- the judge asked the public defender to screen, so we would screen the clients. And prior to the last -- I guess maybe now it's three months, we would -- anyone who qualified, we'd enter on pretty much at -- you know, we'd take the case, open it, and assign it. Because we've had so many concerns about Rule 4, we -- we are not entering until the Court is appointing us.

Q. What is Rule 4?

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A. Rule 4 is -- is the Missouri ethical rule that -- well, there's a series of them. There's .1 dash one. But -- but our main concerns, you know, we've had -- we have an attorney disciplined and -- who's on probation, and he was told that caseload didn't matter. Under the rules, we're supposed to do diligence, which means we're supposed to timely work out these cases, which is impossible if you have 100 cases. Communications, which I've already touched on in my reviews. You know, we're supposed to -- there's no set amount, but you know, is it a reasonable amount and with promptness? Which none of my lawyers are able to go to the jail promptly or respond to most clients' requests in a -- in a prompt manner. So it also covers competence, getting yourself up to speed on the law, getting yourself -- you know, if you get a case that involves shot splatter, you should be able to get yourself up to speed and work on that. Most of my lawyers have cases six, nine months before they're even looking for an expert. There's a whole host of areas that we're falling down under Rule 4.

So we had an attorney disciplined. A number of my attorneys immediately e-mailed me and said, "I can't take more cases. I'm ethically at an overload." Rule 4 also says that if -- you should stop taking cases if you can't -- if you can't handle any more. And in fact, taking on more cases is a conflict of interest for the current clients you have. A lot of my attorneys expressed to me -- and I actually ended up having a meeting with every attorney individually, and we got to a point where we -- everyone said, "I can't take more cases," at which point I wrote the presiding judge and told him I was going to put clients on a postponement list. The ethical rules indicate if -- if you are in a spot where you can't take more cases, that you should postpone representation, which I'm -- I've tried to do. Our courts have not -- are upset about us doing that and have started to appoint us on -- I think we're -- I want to say we're up to 110 appointments.

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Q. Okay. So I have more questions for you about that.

A. Sure.

Q. The -- the -- when you -- when you mentioned screening the cases --

A. Uh-huh.

Q. -- that your office is asked to screen the cases, does that mean that you're making indigency determinations --

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A. Yes.

Q. -- at that point?

A. Right.

Q. Okay. And you're saying that the -- all of the Rule 4 requirements, to your mind, are implicated in making decisions about how many of those cases you can actually handle or -- or how many of those appointments you can actually accept?

A. Right. Well, I -- at this point, I have every lawyer in my office saying they're at capacity for what they can ethically handle. I -- so for me -- I mean, the reason they say they can't handle more cases is because of their ethical obligations under Rule 4. If -- if they enter a case, and they're already at overload, they're in a conflict with their current clients, so I would say by entering a case, I -- I would say that that's when -- at least for the individual attorneys, that's when Rule 4 is -- is -- would be triggered. I may be wrong about that. I'm not the ethics guru, but at least, that's at least the approach that we've taken; that right now, we're not going to enter on cases to keep us from being in an ethical conflict, and you know, possibly looking at issues with our license.

Q. Okay. Just a couple of other procedural

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questions: The -- once you're appointed to -- once your office is appointed to a case, are your attorneys always present for any preliminary hearing if it happens?

A. They're not always present for any -- I guess maybe trial, but aside from that, no. I mean, it's ideal. They try to be. But if someone is in trial, and a prelim is set, the judge is not going to move a preliminary hearing, so they will get coverage from another lawyer.

Q. And if coverage is required, does that usually lead to a continuance, or does -- do those proceedings tend to go forward?

A. If it -- if it's a prelim setting --

Q. Right.

A. -- and the state actually brought their witnesses, it will go forward.

Q. All right. Is the same true for arraignment in circuit court; which is to say, are lawyers present for those arraignments?

A. Not all the time, no.

Q. Okay. Are there times when -- would an arraignment ever go forward without any attorney present?

A. I don't believe so.

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Q. Okay. And it would be the judge that would make the decision to not go forward if there was no attorney?

A. Right. But I -- I would say that, you know, we have -- the arraignment docket has usually 20 people on it or more, and we probably have multiple public defenders present, so likely, if we had a client there whose attorney was somewhere else, they would step in, or attorneys arrange coverage for their cases all the time.

Q. Okay.

COURT REPORTER: If you get to a stopping point --

MR. WILLIAMSON: We can go off the record now.

VIDEOGRAPHER: Off the record, 10:17 a.m.

(A brief recess was taken.)

VIDEOGRAPHER: On the record, 10:27 a.m.

Q. (By Mr. Williamson) Ms. Petsch, I'm going to hand you a document that I'm going to mark as Exhibit 1 for identification.

(Petsch Exhibit 1 was marked for identification.)

Q. Just have a clarifying question.

A. Uh-huh.

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Q. Do you recognize this document?

A. Yes.

Q. And what is it?

A. It's one of the local Kansas City policies from our -- our policies and procedures database.

Q. Okay. And this is an e-mail from Joel Elmer; correct?

A. Uh-huh.

Q. And was this sent to all the district defenders?

A. No. This was when Joel was the district defender in Kansas City. It was sent to the lawyers in the office.

Q. Okay. And this is -- what -- what was the date of this e-mail?

A. The date is October 13 of 2002.

Q. And if you go to the second -- third page of this document --

A. Uh-huh.

Q. -- you'll see a document that is labeled "MSPD Local Office Policy"?

A. Uh-huh.

Q. And what is the effective date of that pol -- at the top there?

A. Oh, five -- is that a -- 6/14 of '06.

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Q. So I -- do you -- what is the -- and -- and what's the date of -- it looks like the same date; correct? Of the -- the e-mail?

A. The e-mail, yes.

Q. Right. Is this -- is this a notice that was sent out when this policy was created, the -- the client contact policy was created, or --

A. Yeah. So in Kansas City, we have our own -- or our own policies and procedures database. The other one looks like it's the MSPD, the statewide policies and procedures database.

Q. Okay.

A. So my guess is Joel sent out that e-mail, added it to our local database, and then it was later added to the -- well, so Joel had sort of been on the forefront, I guess. He -- he'd had his own policies and procedures database before we had a statewide local one, so I think he added it. I'm not sure of the timing of when the local office policy database started, but my guess is that's a discrepancy.

Q. Okay.

A. There was a point when they wanted to move everything off the local servers into a statewide server, I think. Joel really would be the person to ask about the timing of that.

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Q. Okay. Thank you.
Now, you've talked a bit about client contact already.
A. Uh-huh.
Q. And you mentioned that your lawyers are not able to meet with the MSPD requirement of -- not always able to meet the MSPD requirement with respect to client contact; correct?
A. Correct.
Q. When that client contact does occur, where does it usually occur?
A. We have what we called our qualifying contact, so if someone's in jail, it should occur in jail. If you have someone out of custody, it can be by phone, by letter, office meeting.
Q. And are those meetings confidential?
A. They likely should be. I don't -- I -- it's almost impossible to have a confidential meeting at the jail. The jail is not set up in such a way that -- they have some attorney rooms. Some of them are permanently locked. They're difficult to get to. But most of the time, you have a meeting in a room close to this size. The jail has professional visitation, but it's very rare that you're in a professional visitation room alone, so --

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Q. So those conversations tend to be within earshot of other people?
A. Yes.
Q. So without getting into specifics or -- or compromising any attorney-client privilege, are you aware of any situations where the representation of the client by an attorney in your office was -- was hampered by their inability -- the lawyer's inability to communicate consistently with the client?
A. Yes -- well, I -- I mean, it -- a lot of the problem is intangible, so if you're seeing a client regularly, you're building client relationship, they trust you, you -- you come back when you say you're going to come back, you follow through when you say you're going to, and if you're unable to do those things, there's a lot of -- there there's a lot of mistrust with our clients and a government lawyer anyway, so that is always on the table. And most of my attorneys sort of -- well, triage their cases. So they're working on the cases that are coming to trial. They have a whole host of people who have trials nine months out who they're virtually ignoring. You know, they're not seeing consistently. They're calling all the time. And they're focused on the clients that are coming to trial. So they're constantly -- when you

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have clients coming up to trial, you're seeing them more, you're wanting information, you're doing the investigation that you should have been doing all along; and some clients are okay with that, and some clients, you've already broken it. You've broken what should be an attorney-client relationship, and you will probably never repair that. So then you -- your client then won't trust you when you say an offer is good. They won't trust you when you say, I talked to this witness, and they're saying something contrary to what you think you're saying. They just stop believing you, and that happens all the time.
Q. Have you ever had such an experience yourself in -- in any cases that you were handling?
A. It's been a while since I've handled trial cases, so I'm thinking back. Sure, yes. I've definitely had clients who were -- you know, you said you'd be here next week, and it's just sort of fed into that level of distrust.
Q. And you testified earlier that part of why you stopped taking trial cases was that you felt like you couldn't provide the kind of representation that you thought was necessary?
A. Right.
Q. Would that include communication with

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clients?
A. Yes.
Q. Okay.
A. Well, the clients I eventually handed over, I hadn't seen in three or four months, and I -- I really with the best of intentions thought I was going to see them, and then --
Q. And this --
A. -- and everything else filled that time.
Q. And this was an experienced attorney; correct?
A. Yes.
Q. Okay. You just mentioned investigation. I understand this may be a little hard to -- to quantify, so I'll ask you to just do the best you can. But it -- in what fraction or percentage of -- of the cases that come into your office do your attorneys interview all of the necessary witnesses?
A. I -- I really -- it would really be a stab, but --
Q. Would you say --
A. I'm guessing -- I'm guessing people don't interview all the necessary witnesses unless they're going to trial. So last year, we tried 59 cases, so 59 of those however many thousand cases we had, I

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can't even say that they interviewed every necessary witness in those trials. Now, we have a number of trials that either get dismissed or get pled the day of trial, so if I were to presume that they were interviewing every necessary witness, which I can't be 100 percent sure of, you know, that's, like, one percent.

Q. How often do your attorneys depose witnesses?

A. I'm told we depose them more than other offices, but I don't -- I don't think it's more than five percent of our cases.

Q. Is that because attorneys don't have time to depose witnesses?

A. Well, I think it's -- yeah. Part of triage that they don't have time, or by the time -- you know, there's a game that's played, so you talk to the State, and you want them to produce people, and the State says, "Oh, we have these people. We'll produce them." And then you get closer and closer to a trial setting, and then sometimes, they'll say, "Oh, we can't find them. You'll have to do it," and then -- I mean, you have to give them -- you have -- there's a seven-day notice requirement, and if you want paperwork, there's a ten-day notice requirement. You

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you start pushing up to your trial dates. And again, I mean, it's not as if the attorneys are doing nothing while their -- you know, they're in court or -- they're very busy. These dates sneak up on people all the time, yes. And so then they get to a point where -- I mean, strategically, if the State waits, they can control whether you take a depo or not just by the timing of it and if they can sort of -- and I have attorneys who notice it up, but it also means -- noticing up a depo means you have to serve them, so it means you have to find them. Hopefully, the discovery response is adequate. We get a lot of discovery responses that the -- all these witnesses live at the Jackson County Prosecutor's Office, and -- and then it's -- you have to hope that they'll produce folks. So there's a lot of logistics to even getting a person -- having a depo set and getting a person that takes time and energy and advanced notice and advanced preparation.

Q. How important do you think depositions are to a case, criminal case?

A. I would -- given my druthers, I would have deposed every witness in every trial I ever had, and I would encourage every lawyer to do that if they have that possibility.

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Q. Why is that?

A. Because if -- there's no better way to impeach someone if they change their statement, and people change their statements all the time.

Q. Do you think there is sufficient money available for depositions if your lawyers were able to take more of them?

A. That's really an upper level call. I mean, I've not been refused a deposition. I've not -- I've not had an attorney refuse a deposition in my experience in management. I -- I don't -- I -- that would be a -- you know, Kathy Leer question. How many depositions can the -- if everybody took them, how many could the system absorb? I have no idea.

Q. Okay. Got it.

How often would you say that your lawyers visit crime scenes?

A. Not -- I wouldn't say often. I mean, I definitely encourage people to go, and certainly, if they're in trial. But again, like I said, we're trying less than one percent of our cases, and I don't -- I don't know that every lawyer -- when I second chair lawyers, I insist on it. I've drug them out to all kinds of places, but they -- I don't think every lawyer goes to visit a crime scene in every

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trial.

Q. Is that one of the things that you tried to do when you were handling a trial docket?

A. Yes.

Q. Was it difficult to do that on all your cases?

A. On every case, yeah. It was impossible to do on every case. But yes, I -- I definitely -- there's a lot to be learned by going to a crime scene.

Q. To what extent do your lawyers depend on investigators to identify witnesses, for example?

A. Identify them?

Q. Identify -- to -- to find witnesses that are not --

A. Okay.

Q. -- mentioned in the police report.

A. Probably to some -- investigators generally do what is requested. So, you know, if you meet with a client who says, "Here are these witnesses. Find them" -- I mean, I certainly would recommend that investigators talk to the client, because a lot of times, directions are, like, you know, the yellow house down the street from this liquor store or something. But I think -- I -- there are investigators who do, while interviewing a witness,

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uncover that there are other witnesses or there's someone in the house that they would sort of on their own follow through, but I would say that's a very small number.

Q. So do investigators generally talk to -- interview clients without the lawyer present?

A. I don't know about generally. They certainly can -- you know, no lawyer has ever said, you can't -- and I certainly -- when I was busy would say, "Oh, well" -- you know, an investigator would say, "I went here, this didn't work out." And I'm like, "Well, just go and talk to the client yourself and see what they have to say about that."

Q. Okay. So generally speaking, do attorneys in your office have the time and resources to investigate cases in the way that you think is required?

A. No.

Q. And -- and is that opinion based on your personal experience?

A. My personal -- my personal experience as a lawyer and my personal experience of supervising and reviewing and looking at the work that my own lawyers do.

Q. Okay. Again, without getting into any

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specifics, are you aware of cases in which the representation of the client by an attorney in your office was -- was hampered by their inability to investigate a case sufficiently?

A. Yes.

Q. Do you think that happens regularly?

A. Depends what your definition of "regularly" is. I would say -- and if we're just purely talking investigate -- you know, when someone goes to trial, there's -- you know, investigation is an aspect, talking to people, and then there's the prep that comes out of the investigation or getting exhibits that you otherwise wouldn't have. I would say that that happens regularly, that -- that attorneys go to trial not fully prepared.

The investigation aspect of it, I would probably say maybe ten percent, five to ten percent, somewhere in there if I were to give a rough estimate, and that's really just from talking to team leaders to say, like, "Oh, so-and-so hadn't talked to this person." It -- it's more feedback when I have team leaders who are like, I'm second chairing this person in trial, and I'm somewhat alarmed by the -- the lack of level of preparation, both investigation-wise, and sometimes they haven't developed a theory of the case.

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Sometimes they haven't -- you know, they don't have a closing written out. They have -- you know, there's -- there's other areas on that as well.

Q. How frequently do attorneys in your office request discovery from the State?

A. Well, we always file a general request at arraignment time, which is what the rules say, and then I have other -- you know, I have other lawyers who will file further requests. I have lawyers who move for sanctions. I have lawyers who, you know, will ask for a bill of particulars, which I think falls somewhat in line with the discovery request, but probably not to the level -- I mean, there's also a lot of informal, do you have this, do you -- can you get this? And they're, oh, yeah, well, that's -- you didn't get that -- I mean, there's a lot of sort of informal talking with the State about what people do and don't have. But the -- the number of motions to compel, I wouldn't say it's a significant number, but there are definitely lawyers who -- some lawyers who do file them.

Q. Okay. I want to talk just a little bit about expert witnesses, so you testified earlier that -- I believe you testified that often, attorneys don't realize they need an expert until late in the

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case?

A. Right.

Q. How often do you think that occurs? And again, I understand that you can't quantify.

A. Right. Well, it's hard, because usually, you already have to be trial bound. And again, a lot of -- if you knew you needed an expert sooner, more cases might be trial bound. If -- and so this is only the cases that are already trial bound that you'll meet with someone, and you'll talk about -- you'll be looking at the case with them. And I know more than once, I've -- we've continued cases because it's like, well, maybe you need an eyewitnesss ID expert. Maybe -- you know, maybe that's something you should look at.

And with newer attorneys, some of them don't even know that's possible. They're just, I'm going to -- I didn't -- oh, I didn't realize. And then, you know, there's a scramble to find one. Experts are difficult to match up their availability with whatever the care -- Court has already set or getting the Court to set something or continue it to that availability. So I don't know the number we miss because people aren't spotting the issue that it's a possibility. But I've definitely had, in the last

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year, at least two people that I talked to about, as they -- I'm like, "Oh, tell me about your trial case." And as we're talking about it, "Well, have you considered this?" "Oh." It definitely happens. I can only -- and I don't -- it would be more of -- I guess I'd have to talk to my team leaders about how many times they push people toward experts.

Q. And those requests go through the central office?

A. Right. Well, they -- they get prove -- approved at a preliminary level by myself, and then generally, Ellen Blaugh approves most of the -- I think the experts. But there were certain people, we have a -- our training director has done a lot of eyewitness, so there are certain people that you talk to if you have certain issues or are helpful pointing you towards experts.

Q. Do you have a sense of over the course of a year, how many experts are retained by -- by your office, generally?

A. I key -- I keep a spreadsheet, but it -- it also -- it includes all the experts, so it includes court reporters and interpreters and people that we use all the time.

Q. I see.

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A. So I don't -- I couldn't tell you, like, specialized experts. I mean, I could go back and look at the spreadsheet and see when entries were made. But also, I get a lot of requests that people don't actually use the expert, because they'll get an offer, and then they'll plead it without ever ac -- actually engaging and using those funds.

Q. Okay.

A. But true experts, not as many as you would think with the number of cases.

Q. And would you say there are instances where an attorney will decide not to pursue an expert because they just don't have the time?

A. I believe that happens, yes.

Q. And would the failure to retain an expert be included in the -- in the sort of list of things you mentioned that hamper representation by your attorneys?

A. Yes.

Q. You mentioned that you don't have any social workers on staff; correct?

A. Correct.

Q. Are there resources available for attorneys to assist them in -- in locating resources for their clients?

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A. You mean, like, housing and things like that?

Q. Correct.

A. So some of our investigators end up doing -- you know, they'll have a -- a connection at the Salvation Army, they'll have something like that. Years ago, we -- well, we had a alternative sentencing expert, who I believe is a master's in social work, who I don't -- I don't -- I was -- I didn't supervise -- I wasn't the supervisor at the office at the time. I don't think he was technically on staff. He was supposed to be shared by a region, which -- and you could get him to write reports, you know, to make arguments to the judge, and we have nothing like that any more; which for the attorneys that used them, and again, that was a smaller number of people who were aware -- aware and planned ahead to use that resource, they were very disappointed when, money-wise, he got cut.

Q. Okay. You mentioned interpreters. Are interpreters generally provided by the Court?

A. When you're in court.

Q. When you're not in court, do lawyers have access to interpreters in order to communicate with their clients?

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A. We hire them, so yes. I mean, they have to request funds, and they have to set up a meeting, and they have to -- but yes. They do have interpreters, provided you can find an interpreter in the -- I mean, we have some languages where we really struggle to even find an interpreter to communicate.

Q. What's the most common foreign language that you encounter?

A. Spanish.

Q. And what are the other, if you can think of them, the other languages that tend to --

A. Well, in sign language, we have client -- we've definitely hired sign language. Vietnamese, we had a client who -- diga (phonetic). So Kansas City has a pretty -- there's a lot of people from a lot of countries. I had a Korean -- for example, I had a Korean client, and the interpreter we found was really bad, and I lucked out in that I had a law student that summer who was born in Korea and spoke Korean fluently and would tell me how horrible the interpreters were. Because there's interpreters, and then there's certified interpreters, none of whom a lot of the -- they don't understand legal terms. There's a lot of -- so you can hire someone and still have them not be very good. I know for trial dates, the Court was

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plan -- flying in someone from DC and somewhere else so that -- that we had qualified interpreters for those languages, but there's a variety of -- of languages. Spanish, again, is the most prevalent.

Q. Are you aware of any cases where you needed an interpreter, but you weren't able to get one?

A. Well, I think we've always gotten someone to be able to show up. A lot of people have question as to how the interpreter -- whether what they were saying was actually being interpreted or not.

Q. Okay. You said that you -- you can't recall ever having a request for a deposition turned down for money reasons?

A. Not that I recall, no.

Q. Are there other requests that you can recall having been denied for resource reasons?

A. Yes.

Q. What kinds of requests might you get a denial on?

A. So I've been denied on forensic testing because they -- our IT department has gone through different incarcerate -- incarcerations -- different -- different staffings and people with -- so I've had people ask for sort of forensic -- computer forensic stuff or phone forensics, and they've said,

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"use in-house people" or things along those lines. But you have to craft your requests very specifically, so I've definitely had people turned down because they didn't craft it correctly, or they couldn't -- and then I've also had people where -- but in -- in general, I -- my feeling is that MSPD tries to get you the resources that they can, but they are going to try to do it in the most economical way possible, so -- you know, there's a list of court reporters, and we're supposed to call the cheapest one first, which can be really -- my -- my lawyers probably -- one of those things that people complain about -- upper management about because it is -- it can be very time-consuming to go through a list of three people, when you kind of know that this court reporter is always available or something along those lines.

Q. And -- and do attorneys in your office receive any guidance about when it's appropriate to make some sort of expense request, given the budgetary constraints?

A. Well, I encourage people to request -- I -- I don't really factor budget into it. I tell people to request -- if you think it's necessary for a case, I'll tell them to request it.

Q. And have you -- have you noticed any change

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in the -- the -- the rate at which those requests are being approved in -- in recent months?

A. No.

Q. Okay.

A. I don't think so.

Q. Okay. On average, how frequently would you say your attorneys file suppression motions in their cases?

A. I think they file them pretty regularly on cases that are in the process of going to trial. I don't -- there are people who spot suppression issues that they think are sort of definitive for the case, you know, either suppressed, and you have a case -- you have an issue for trial or you don't.

Q. So when you say they're filed -- often filed in cases that are headed for trial, does that mean that the suppression motions are generally not filed early on in the case?

A. Yes.

Q. Okay. And do you think that's because lawyers don't realize early in the case that a suppression motion might be appropriate, or are there other reasons?

A. Yeah. I think sometimes it's a -- they just haven't looked at all the discovery and watched

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all the dash cam. You know, some of it -- I mean, usually, a police report is written in a way that is more positive -- or what the police -- police officer's version of events are. And then to have -- take the time to watch the video and listen to how things are actually said. Because the police officer will just say, "he consented," and then it's like, well, but how was the timing of consent? How did -- you know, sometimes that -- and -- and also sometimes getting air tapes, because that matters too. So those levels of investigation are the details, especially on something like suppression where, is there consent, how did that happen, the time line is very important.

I think attorneys just don't have time to dig into the discovery until they have this pressure of a trial sort of looming on them. I mean, there are judges who set deadlines, as far as suppression motions should be filed by this date, and I -- attorneys will then use that as their deadline if they think they're going that route.

Q. And is -- is the same generally true for other pretrial motions?

A. Yes.

Q. Let me rephrase. Are -- how frequently would you say your attorneys file other pretrial

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motions aside from suppression motions?
A. I'd say the bulk of them are filed in the month of trial or the month before. I mean, there are some exceptions, but those are exceptions.
Q. And when you were handling your own cases, was the same true for you in terms of the timing of filing?
A. Yes.
Q. Again, without getting into any kind of specifics or asking you to -- not asking you to compromise any attorney-client privilege, can you think of any instances where representation by one of your attorneys was -- was hampered by their inability to file necessary motions, pretrial motions?
A. Yes. Well, that's a common client complaint, I mean, when clients call. Clients have a lot of ideas about what you should file. Some of them are on point; some of them are not. But there's a lot of -- and even sometimes bond motions. Filing motions indicates the client as a tangible sort of evidence that you're -- you're fighting that your -- you are lawyering for that client. And if the client is not seeing any of that for months and months, it certainly affects the relationship.
Q. And to the extent that your lawyers are not

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filing necessary pretrial motions, would you say that that's because they don't have the time or resources to make that happen?
A. Yes.
Q. You said that your office took 59 cases to trial last year?
A. Last -- in '16. I think we're -- we're down -- I have two people in trial. I think we're at around 49, 48, something, this year, and that's adult -- I mean, that doesn't include our juvenile trial, which is a bench trial.
Q. Uh-huh.
A. But -- and that's only jury trials. We don't do a lot of bench trials. But 59 in 2016, correct.
Q. And are those mostly A, B felonies?
A. Mostly, but we certainly have tried some C and D, and actually, we get the best results out of C and D felonies, but we don't try very many of them.
Q. How often to you go to trial on misdemeanors?
A. I don't know -- I don't know if we tried a misdemeanor case this year or last year. We had a felony that became a misdemeanor, but I don't -- a standalone misdemeanor -- well, we -- yeah, we had a

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DUI, so maybe one.
Q. Okay. And how about felony sex offenses? How often do those go to trial?
A. More frequently.
Q. Okay. And those are A, B felonies; right?
A. Usually, yeah. I mean, we do have some, you know, child pornography -- there's some stuff that are, but for the most part, they are serious, or in Missouri, they're unclassified, which is --
Q. Okay. To your knowledge, has an attorney in your office ever waived an opening or closing argument?
A. I'm not aware of anyone who has waived a closing argument. I do believe I've had attorneys waive opening argument before. They're supposed to let me know if they're doing that, because I discourage that, but I think there are attorneys who have done that, yes.
Q. Is that something that you ever did when you -- in your -- in your trial practice days?
A. Never. I've never waived an opening or a closing.
Q. So in your opinion, do you believe that the attorneys in your office have the time and resources to prepare adequately for trial?

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A. No.
Q. Do you believe that they have adequate resources and time to prepare for sentencings?
A. No.
Q. What kind of work might go into preparing for a sentencing in an ideal case?
A. An ideal case? Well, I mean, there are sentencing experts. I think bringing in an sentencing expert would be ideal. I mean, I would do that every time if the resources were available and -- and you could do that. I think developing a sentencing memorandum. I know a lot of federal public defenders will do video, which we -- I don't -- I don't have a single lawyer who has ever done that. But also, you know, contacting witnesses that can talk about your client's background, that can bring a different perspective to the jury, getting to them ahead of time, subpoenaing them, having time to really develop what they would actually say.
Q. And how much of that work tends to actually happen on a -- among your -- your lawyers?
A. Very little.
Q. And would you say that there have been instances where an attorney's representation at sentencing was adversely affected by their inability

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to -- to prepare for the sentencing adequately?
A. Yes.
Q. And you believe that some of your clients could have gotten better outcomes had their attorneys been able to prepare?
A. Yeah. Obviously, that's -- that's a prediction, but I think especially when we have jury sentencing, and we have the ability to -- I think you have a lot of opportunity -- a lot of judges kind of will decide this case deserves this, or that deserves that. But when you have jury sentencing, I think those witnesses really matter.
Q. You talked a little bit earlier about guilty pleas or offers for plea deals. How much time would you say your lawyers spend working on a case before advising a client about whether or not to plead guilty?
A. Well, that would vary. But I can tell you, the State e-mails us the offers before prelim, probably sometimes before our attorneys have met with clients. At the prelim docket, the judge will ask on the record what the offer is, so I assume most attorneys are conveying a plea offer their initial meeting. One, because it's there, and they feel some legal obligation. And two, if they don't, and the

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judge springs it on your client for the first time in court, your client is going to think you withheld something. So whether they even -- I mean, they're obligated to convey plea offers, but -- especially in Jackson County, the -- what is the offer is very central to what our Courts expect.
Q. And -- and do the prosecutors e-mail you those orders in all types of cases, or are we talking just felonies?
A. I would say all types -- I mean, they just go through the docket sheet, and they give you a list. Now, some serious case, they'll write "no offer," or something like that. But I mean, they -- they all get personally e-mailed to me, which I then send out to the office. But it's -- it generally -- most types of cases. Some serious -- at a prelim docket, you're probably not going to get a sex case offer, you're probably not going to get a murder offer, things like that. But you're going to get -- the felonies might -- and most misdemeanors, I would -- yeah.
Q. And do you -- is it your understanding that when those offers are conveyed by your lawyers of -- that they are explaining to clients that they have not had a chance to investigate the case up to that point?
A. I would hope that they're doing that, yes.

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Q. Are -- are they instructed to do that, as far as you know?
A. I don't -- I don't know about instructed, but I -- I certainly, you know, don't encourage pressuring your client to plead on a case you've done no work on.
Q. Okay.
A. And I -- I -- I have -- I have what's called a first-time felon policy for -- that attorneys, before they plead someone to a felony who is not already a felon, they have to actually meet with me and talk to me about what work they've done. And the Courts hate it, and the judges complain about me micromanaging and the prosecutors, everybody hates it. Although, for me, I like it. As a manager, I like to see what -- what people are doing and how they're evaluating cases. But I also think becoming a felon is a life-changing event, and it's pretty important. In an ideal world, I'd meet with every lawyer before they plead anyone to any felony to have an idea of what they were doing on cases. I personally don't have time to do that.
Q. Is that --
A. So --
Q. Sorry. Go ahead.

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A. Go ahead. No. That's fine.
Q. Once that initial plea offer is made by the prosecutor's office, do your lawyers tend -- tend to take steps to negotiate plea deals?
A. I don't think they negotiate before having a conversation with the client, but I think negotiation some -- is, at times, done at that level, yes, or that stage.
Q. So assuming they've spoken to the client, there may be some plea negotiation that happens prior to any investigation in the case?
A. Yes. I think that happens a fair amount. I mean, it was one of the reasons I instituted the policy, is that I felt a lot of people were pleading people early on without any sense of -- you know, we have police officers get disciplined all the time. We have witnesses that dis -- without any sense of whether the State could actually make their case.
Q. I'm going to hand you a document that I'm finally marking as Exhibit 2.
(Petsch Exhibit 2 was marked for identification.)
Q. Do you recognize that document?
A. Yes.
Q. What is it?

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A. Well, it's an e-mail -- it's put, again, in Missouri -- or the Kansas City policies and procedures database. E-mail from Leon Munday, who, at the time, was my -- well, let me look at the date. Yes. At the time was my assistant district defender to me, which then one of us posted on the database.

Q. And this is an e-mail about the United States Superior Court decision in Missouri versus Frye?

A. That's correct.

Q. And what was Mr. Munday's ultimate takeaway regarding your office's obligations under Frye?

A. I'm sorry. I'm going to -- I need to read it.

Q. No. Please.

A. Well, he says pretty clearly that he thinks, under Frye, we have the duty to communicate the offers to our clients and to protect the attorney-client privilege unless waived.

Q. Do you recall having any further communications with Mr. Munday about this?

A. Well, it -- when Frye came out, there was a lot of discussion, because the -- the prosecutor started doing Frye hearings, which is having -- reading the offer into the record. And I -- I think

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they were under the impression we weren't conveying offers. I -- I -- I'm not under that impression. Every -- I'm not under the impression that lawyers in my office don't convey offers. But there were, you know, judges who would try to then talk to your client, "Do you understand that's the offer?" Or I'd hear judges say, "Oh, well, your client reacted like they'd never heard it," and things like that. So I know for us, we didn't --

We have judges who try and make records all the time. They want your client to ask -- you know, if they're in trial, and your client doesn't testify, they want your client to answer affirmatively about, do they understand their rights to -- you know, the right to remain silent and their right to -- that they're waiving their right to testify, and sort of fight this fight. The judges spend a lot of time trying to make records where our client are supposed to speak and respond to them, and it's awkward, because if your client loses at trial, they're going to be sentenced by this judge, and then they look like they aren't agreeable, and they look like they're negative, and the judge is really imposing on their rights and really trying to litigate the post-litigation stuff during their trial. And Frye is

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similar in that respect, that judges want to be sure that people know what their offers are.

In Jackson County, we struggle a lot. The judges are very, very concerned with moving cases and people pleading, and the feeling that the client knows their offer. And I don't think it's done out of an interest that a client might miss an offer, because we usually get offers back even the day of trial if we want them. I think it's done out of a desire for efficiency and fewer cases to move through the courts.

So I think in Leon's discussion of this, it's -- you know, went to want to protect our clients from records being made and them being encouraged to speak on the record.

Q. And was this information or guidance disseminated to the -- all the attorneys on staff?

A. I assume it was. In general, when we add something to the policies and procedures database, we send it around and say, "This has been added."

It's a big database, and quite honestly, there's some -- there's some things that are in there that are antiquated that, because I'm too busy, I haven't -- I've cleaned out some things, but there are other things that -- it's, you know, eighth on my list of things that I'd like to update.

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But this isn't -- this is something that would have been sent out to everybody and accessible. Everyone has the ability to look and read this any time they want.

Q. Okay. And was any additional training conducted related to this as far as you know?

A. Well, I -- I do recall discussing Frye at staff meetings, especially when it came out. We have a weekly staff meeting where we kind of discuss what's going on. And when they started doing Frye hearings all the time everywhere in every case, so there was a lot of discussion about Frye popping up and prosecutors doing that.

Q. And are Frye hearings not happening as much now?

A. I think they are. Obviously, when the law came in -- you know, but they'll do a Frye hearing right before trial. They'll do it -- it was happening in basically every case when the law went into effect, so it seemed like more because the ones that were going on weren't current. I think -- I think they happen. Now, obviously, if there are negotiations going on, the prosecutor's is presuming you've -- I don't know, that they'd have a Frye hearing, but I don't -- I know they still happen.

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Q. Okay.
A. But I can't tell you with a great frequency. It's just not brought up. And maybe it it's just not brought up because it's commonplace.
Q. So in your opinion, did the attorneys in your office have the time and resources to negotiate plea deals for your clients with all of the necessary information?
A. Well, I think there's a -- when people get pled early, I think there's a lot of -- there's a lot of -- you don't get video, you don't get dash cam. There's a lot of things that you just don't get. So are there plea deals that happen without all discovery? Absolutely.
Q. Okay. Do you think there have been situations where a client could have gotten a better plea deal had the lawyer had the time to investigate the case first?
A. Absolutely, yeah.
Q. What steps do the attorneys in your office do to evaluate the immigration consequences for clients?
A. So we contract with an immigration lawyer, and he's sort of a flat fee to consult, and then if he's going to do more, it's a different fee. So the

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attorneys have to request funds in order to contract, so I -- I could look -- I mean, I have a spreadsheet. I could count that number of the times we've used that person in the last year. I don't know off the top of my head. There is a means -- and I've had that immigration attorney come to speak at one of our first Friday CLEs, mostly just sort of terrify my lawyers about if -- if you don't call him, even pleas that seem like they wouldn't effect your immigration consequences really can. It's certainly encouraged, and the resource is there.
Q. Have the lawyers in your office received any additional training on immigration consequences?
A. Well, aside from having the immigration attorney come and speak to us, I know there's -- there have been tracks at statewide training that talked about that. I don't know that I've specifically had a sit-down where I've said, so you have a client with -- you know, who isn't is a citizen where -- how does that go, aside from having that attorney come in.
Q. So do you think that, in your opinion, the attorneys in your office have the time and resources to adequately advise clients on immigration consequences?
A. I would say -- I'm sort of split there. I

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think -- I think there are a number of attorneys who are. I think there are some who aren't, and probably time and overload feeds into that.
MS. SHIPMA: Could we go off the record for just a second?
MR. WILLIAMSON: Sure.
VIDEOGRAPHER: Off the record, 11:21 a.m.
(A brief recess was taken.)
VIDEOGRAPHER: On the record, 11:25 a.m.
Q. (By Mr. Williamson) So just one last question on the -- on immigration consequences.
A. Uh-huh.
Q. Are you aware of any cases where, because of the attorney's inability to advise their client about the immigration consequences, that the case resulted in a -- in an adverse consequence for the client with respect to their immigration status?
A. I'm not aware of a case that -- I probably wouldn't -- I mean, once the client is gone, if they get -- or they get picked up by ICE, we generally -- I wouldn't probably know, but I'm not aware of any.
Q. Okay. Are retainers generally placed on your clients -- immigration retainers placed on your clients when they're in custody?
A. Yes.

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Q. Is -- is ICE ever in touch with your office for any reason?
A. No. No, I -- I'm not aware of anyone who has ever talked to an ICE person.
Q. Do indigent defendants in your district ever undergo psychiatric evaluations?
A. Yes.
Q. Does that generally happen after your office has been appointed to the case?
A. Generally. I mean, there are Courts that order evaluations just based on behaviors they see the first time they see them in court. But generally, the bulk of evaluations are done when we're on the case.
Q. Do you -- do you or your lawyers ever request those evaluations?
A. Yes, they do. I mean, we do a number of private evaluations, and honestly, it's my preferred method. I know it's expensive and -- but, you know, clients can say a lot of things, and if it's a court-ordered mental evaluation, it's not -- there's nothing confidential about anything they're saying. So we'd had a rule for a while that we only did private mentals. That has loosened up, I think because of costs. That's not my role, so I -- I can't speak to why that loosened up. So some are done.

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And Jackson County also has sort of an out-of-custody diversion, mental health diversion, so -- and they insist if your client is going to enter into that, then they have to do a court-ordered eval.

The State also has the option of not accepting our private eval, and they can get a second opinion through the Court as well.

So we do request some, and then we do get a number of our clients also evaluated at our -- at our cost.

Q. If -- if a psych evaluation is ordered by the Court prior to your office being appointed, would -- and I -- let me rephrase that.

In a case where you are actually appointed to -- appointed to represent the person, and the Court -- but the Court orders an evaluation, let's say at the initial appearance --

A. Uh-huh.

Q. -- what role, if any, would your lawyers play in that process in -- in that evaluation process? Would -- would your lawyer be at the file -- at the competence -- competency hearing that followed the evaluation?

A. Yes.

Q. Okay.

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A. They would.

Q. Okay. Would they be involved in any other capacity with the evaluation process?

A. Generally not. I mean, if we're doing a private evaluation, sometimes, you know, we set that up, we have a client come -- if they're out of custody, come to the officer. And if we want a private person to go to the jail, we have to write a letter and get clearance for that person to go to the jail. Most of the mental health folks don't want anyone else in the room, so you're not present for the evaluation. And -- and I've -- I've had lawyers try and get -- even if the Court has ordered one, our evaluations are so backed up in Jackson County, that you could likely get a private one done. They use -- they're supposed to get done in 30 days, but then they almost always ask for extensions, so it usually takes more like the 90 days for someone to get a mental health evaluation. And sometimes they'll rush people who the jail have said are -- you know, they think they're actively a danger to themselves or others, something along those limes, but sometimes they'll intervene that way.

And obviously, if it's a private mental, the results are only known to us, so if we want to --

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we have the option of sharing that or not sharing that. If we want to share it or if someone comes back incompetent, you know, we'd file a motion with the Court to -- to have them found incompetent.

Q. Do attorneys in your office attend lineups that include the client?

A. I've never known anyone who did. And generally, I don't think -- generally, lineups are done before we'd get the case, so I don't -- we do have clients who come in as suspects who, I guess there's that potential. They'll say, "The police want to talk to me." In general, we tell them -- our advice is not to talk to the police, so I've never known anyone who has been at a lineup.

Q. Okay. The lineups are not videotaped, are they?

A. I don't -- we very rarely get a live lineup. There's a lot of pictures --

Q. Photos?

A. -- and there's a lot of -- here are two pictures. And there's a lot of driving by the guy as he sits in the cop car and having the witness identify him that way. I actually don't even remember the last lineup -- I don't recall anyone ever having a live lineup.

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Q. Do you -- do your lawyers ever conduct Wade hearings related to these on-the-scene identifications?

A. We don't call it a Wade hearing, but yeah, I mean, they do a motion to suppress the identification and -- and have a hearing along those lines, so -- and that's what we would call it. I assume that's along the lines of what you're --

Q. Correct.

A. -- getting at.

Q. When a client -- and I apologize for jumping around here. I'm trying to make sure we get through everything but --

A. That's fine.

Q. When a presentence investigation report is created for --

A. Uh-huh.

Q. -- a client, does the public defender play any role in that process?

A. Generally, no. I mean, we've had it where we've had clients insist we there. They call it a sentencing assessment report. The person from probation and parole who generally goes and interviews a client, generally, they don't want us there. But I have had attorneys who were able to be there through

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that questioning process. The bulk of them, no.
Q. It's your understanding though that the -- the clients do not have a right to have their attorney there for these interviews?
A. That's a good question. I don't -- I don't know that I've -- sadly, I don't think I've ever thought about. I -- I mean, I think that's what -- when the lawyers are there for the sentencing and assessment report, I think that's what we're advocating, is that they do have a right. I don't know that -- I don't -- honestly, I don't know legally where -- where that stands.
Q. Do you recall ever attending any of those interviews in any of your own cases?
A. No.
Q. Okay. If you have a client who pleads guilty, but then decides that they want to withdraw their plea, what steps do the attorneys -- or are the attorneys in your office directed to -- to take in that instance?
A. Well, I don't know that there's a firm direction one way -- I mean, I think you meet with the client, you talk to them about it, and if -- in general, I think most attorneys try to file a motion to withdraw if -- if that's what the client wants. We

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have a lot of Courts who don't grant it, so --
Q. All right. When your cases do go to trial, is it your understanding that your lawyers will always engage in voir dire?
A. Yes.
Q. Are you aware of any situations in which they have not?
A. No.
Q. Okay.
A. I mean, I'm aware of situations where it wasn't the most -- the best or most effective voir dire, but I've never known an attorney to not ask any questions -- and I assume you're saying ask any questions during voir dire?
Q. Correct.
So at what point does representation by the trial office end officially?
A. Well, that, of course, depends on who you ask. So as far as after a trial, if you win, you win. If you -- if you lose at trial, we're expected to do motion for new trial. In Jackson County, you do motion for new trial, you have sentencing, and we're expected to file the notice of appeal.
Q. Okay.
A. And then after notice of appeal is filed,

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then appellate would resume those duties. After plea, you know, there's some -- we have the Courts right now telling us if we didn't move to withdraw after a plea, that we're on the civil probation violation, which I think is crazy, but some of the Courts are saying that. But we would say it's concluded after the plea.
Now, I would say to my lawyers, if there's some natural -- you know, you have a client call -- like, for example, we had a client who pled, and the judge put him on probation to accompanies, and says, we don't take that type of felony, we can't supervise him, I would say that -- you know, I would expect us to represent that person or file something for them because I think that's a continuation of the representation of the plea. And so there's some -- a little maybe wiggle room in there. But for the most part, after the plea is concluded, we're done.
Q. And you mentioned that your office would file -- or the lawyer from your office would file the notice of appeal; correct?
A. Yes.
Q. So does that mean that that lawyer is responsible for communicating to the defendant that they have a right to appeal the decision?
A. Yes. And we pretty routinely file it. And

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in -- what I always tell the client is that you can talk to the appellate attorney, and if you want to dismiss it, then you can always dismiss it. I can't not -- I can't unfile the -- you know, there's time lines in place for that. So I think maybe two cases, we haven't filed them, and it was because of specific -- you know, the State agreed to not -- to dismiss a case, so the client wasn't on the hook for that any more. There was -- it was for specific reasons that were discussed with the client. Otherwise, we always file it.
Q. Okay.
A. In adult cases. Now, juvenile cases are different.
Q. Excellent segue. I was going to ask you to tell me a bit about how you handle juvenile cases. So do you have attorneys in your office who specialize in juvenile cases?
A. Nope.
Q. Are there trainings that are provided for staff on how to litigate a juvenile delinquency case?
A. So there's statewide training. There's a juvenile statewide training every year, but I probably have one lawyer who goes to it a year. There is -- I've had -- I usually have specific -- so my training

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team leader right now is also my juvenile coordinator, so he's responsible for -- you know, paperwork is sent to him. He's responsible for going to juvenile court and second chairing juvenile trials, things like that, and he does some more informal training.

I've had -- I think at one of our Friday CLEs, I had the juvenile coordinator, who is woman who is not a juvenile coordinator anymore, give a talk on handling maybe certification, things along those lines. So I haven't done a lot of formal training.

And honestly, I think I've handed two juvenile cases in my life. It's an area that I'm not an expert in. We had a separate office for juvenile when I -- when I was a trial attorney most of the time. I don't remember what year they merged, but it was not that -- it was only a couple years before I became district defender, and I've never -- you know, I think I had maybe two juvenile case, so I would say my level of expertise in that area is very low.

Q. Are -- are juvenile cases assigned to your office in the same way that adult cases are assigned?

A. Yeah. Well, they send -- yes.

Q. Okay. And is it your office that makes the indigency determination on juveniles?

A. Yes.

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Q. How many juvenile cases, by the way, would you say your office handles in the course of a -- a year --

A. About 100.

Q. -- of that 5,000?

A. About 100.

Q. About 100. Okay.

A. A pretty low, because I know when -- there was a discussion, should we specialize or not? And given what our caseloads are, I -- I didn't have -- I remember looking at it and saying, I can't justify putting two people solely in juvenile because their caseloads would be so much lower than everyone else's, and one person would never have coverage. It would be a mess. So that number, I do know, because I -- I sort of debated, how do I deal with juvenile.

Q. And when you make a -- an indigency determination for a juvenile, what's the basis for that determination? In other words, are you looking at parent/guardian income? What things are you factoring in?

A. Yes.

Q. Okay.

A. That is -- I mean, we have a sheet on it; although, there is -- you know, if the parent or guardian is an alleged victim, that -- and truth be told, anyone we deny, the Court pretty much always appoints us on anyway regardless of what our income determination is.

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Q. If there's a conflict in a juvenile case, would it be handled in the same way that your other conflicts are handled?

A. Well, historically, yes. Although, recently, no -- or well, historically, no; recently, yes. So it used to be that in juvenile court, there's a lot of firms that, it's kind of their sole pro bono hours or -- so they kind of staff different things in juvenile court for pro bono hours for the firm, so it used to be if we had a conflict, they would assign it to someone at the firm. Recently though, they've started telling us that they want us to assign them, or we want -- they want us to conflict it.

Q. Do you know why that changed as occurred?

A. I -- that, I don't know. The first time Judge Byrne did it -- or actually, the second time he did it, I went and met with him, and he just said, "Well, I think this is better with the public defender." Although, right now, our conflict cases aren't going to public defenders. They're going private counsel. So I've not spoken to him. Given the climate of all the appointments right now, it's -- the judiciary is fairly hostile, so I don't -- I don't know that having a conversation with him would matter. Although, he may be saying now, "I want the public defender to absorb the cost of conflicts in juvenile."

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Q. Okay. Do you have a sense of what attorneys do -- what kind of work attorneys tend to do to prepare for certification proceedings?

A. I -- I mean, I get a sense that they'll look into some background information, arguments along those lines. When had we had a separate juvenile office, they had a social worker, one that was a much -- you know, the ratio was better, and they had a social worker who could prepare reports for the Court. I think I've had maybe one lawyer do that on a certification; hire someone to write a report. We do have hearings, and you know, they follow the law, and they -- they point out why, you know, a certain client shouldn't be certified, but they don't do the legwork that we used to do when there was a separate juvenile office.

Q. And how long ago was that, that the juvenile office closed?

A. I feel like it was '09, '10. I mean, it -- it's -- it was certainly -- I became district defender

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in '11, and it's certainly been closed for some years. I don't remember.

Q. And I'm -- I'm sorry. Do you have a sense of why that decision was made?

A. My understanding was all money.

Q. Okay. I know you said you -- you've only handled a couple of juvenile cases in your career. Do you -- in your opinion, is representing a juvenile in a delinquency case a -- does it require specialized knowledge in -- in juvenile court?

A. Yes. I would -- I think ideally. I know in the cases I got, I found extremely frustrating. I didn't know the language. I didn't know -- I didn't know the outcomes, I didn't know available outcomes, I didn't know alternatives. I found it extremely frustrating, and I felt very inept.

Q. Have you had any complaints from any of your lawyers on your staff now about difficulty representing clients in juvenile court?

A. I've had complaints. Largely, they've circulated -- you know, a juvenile trial is a bench trial, and it moves in about six weeks, so most of the complaints come with, I have to take these cases, it interrupts my schedule that I already have, I -- you know, I -- I haven't had anyone talk about the feeling

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of lack of resources that I did; although, they probably aren't aware. I mean, I saw that they had resources, and then I saw that I was -- I didn't. So some of it is just a lack of awareness of -- sometimes you don't know what you don't know.

Q. In your experience or based on your observations, how do attorneys in your office prepare for detention hearings?

A. Well, usually, they don't get a list of who's on the detention hearing until the day before, and then I think they try -- you know, I think they meet with the clients the same day. Sometimes the day they get the -- the list of who's on it and who's our client, and then they make what arguments they can make. There's -- I don't -- there's not a lot of prep. I don't think witnesses are called, generally.

Q. And without the services of a social worker, what -- what resources are available to the attorneys to identify alternatives to detention for their clients?

A. Almost none. Their own legwork.

Q. Are you aware of how often the attorneys in your office file review -- or detention review motions?

A. I don't know anyone who ever has.

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Q. Are there separate -- or I guess specific diversion options available for juveniles?

A. Yes.

Q. And are there proceedings that occur where a judge is trying to determine whether those alternatives are available, or does -- or appropriate, or does that happen outside of the -- the courtroom?

A. I think generally, they put them into diversion before. Generally, our clients -- occasionally, we get a juvenile put into diversion, but for the most part, I think they try and earmark and select those folks before they were involved, is my understanding.

Q. And once a juvenile is in a diversion program, are they still being represented at that point?

A. No.

Q. So when they -- when a juvenile in a diversion program goes before the Court for a review, would one of your lawyers be present for that hearing?

A. No. I don't know the -- the diversion at juvenile court is fairly new, and actually, when they were forming it, it was when Judge Delmuro was there, so it was probably five or six years ago, and she actually asked the public defender to be involved, and

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I didn't have resources to devote to doing that. So I don't know if they have somebody from a firm that helps run that. I -- I'm inclined to think they do, and whether the people -- the pro bono people from the firms represent the clients, that, I don't know.

Q. Okay. We talked generally earlier about the use of expert witnesses.

A. Uh-huh.

Q. How frequently would you say the attorneys in your office work with experts in juvenile cases?

A. Not very often. I mean, we've -- we've hired specific experts for mental evaluations on some of our juvenile clients, and I feel like I had at least one attorney hire someone for -- for certification. But aside from that, not very often. Like, I don't think we've ever had an eyewitness ID expert or something like that.

Q. Okay. Or even an expert on what it means to be a juvenile?

A. Well, I do -- in the certification, I do think she hired someone who talked about adolescent brain development --

Q. Right.

A. -- and that sort of the thing, but I -- I think that's happened -- well, maybe it's happened

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twice, but I can only think of one time.
Q. Okay. Generally speaking, in your opinion, can the attorneys in your office adequately represent all of the clients on their docket?
A. No.
Q. And what is the basis for your opinion?
A. Well, my own personal experience, my observation -- observation of my lawyers, when I talk to them about cases, when I've second chaired them in trial, when I've talked to their supervisors, as well as just the sheer number. It's -- there aren't enough hours in the day.
Q. And that's true no matter how experienced the lawyer may be?
A. Correct.
Q. All right. So you talked earlier about a lawyer in your office being disciplined?
A. Well, a lawyer in the appellate office.
Q. Appellate?
A. So not a Kansas City lawyer, yes.
Q. And -- and this is Mr. Hinkebein?
A. Yes.
Q. Okay. So -- well, first, can you just say a word about your understanding of the -- the decision in the Hinkebein case?

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A. Well, I know that his -- his ethical violations generally fell under Rule 4, the communication diligence. My understanding from reading the decision was, you know, that he missed deadlines, that he was not communicating with his clients in a timely manner, so diligence, competence, communication, things along those lines. And my understanding is -- I mean, every -- everyone -- every public defender in Missouri, I'm fairly certain, has either red or listened to the comments made by Judge Fisher saying that, you know, why didn't -- one of the things he said is, I mean, I understand he had health problems. I don't know anything about his health problems. But that he also said, I have this big caseload, and it's tough to stay on top of everything, and you know, he said, tell your supervisor you can't take any more cases or quit. I mean, the bottom line, you know, that's what -- what my lawyers repeat is, you know, tell your supervisors you can't take more cases or quit. Or be open to having your law license compromised.
Q. So I'm going to ask you a little bit more about that. But -- so prior to the Hinkebein decision, were attorneys in your office permitted to refuse cases if they thought it was appropriate?

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A. No one really tried. I mean, it -- you were conditioned to such that this is what it is, so no one ever -- I certainly had plenty of lawyers telling me --
Q. Take your time.
A. Telling me they were overwhelmed. But I don't think -- those of us who've done it a while, I mean, you're always overwhelmed, so I don't think anyone ever put it in context of, I'm ethically putting myself in jeopardy, I'm putting my clients in jeopardy. But I -- I mean, I probably can't count the number of people who have cried in my office. I've had people threaten self-harm. I've had people need to leave immediately to take mental health breaks. It's -- it's a horrible thing to watch.
Q. Did anyone in your office just resign as a result of this?
A. Has anyone resigned as a result of Hinkebein?
Q. As far as you know?
A. No. Not yet. No one has resigned as of yet, but I -- I mean, within days of the decision, I got multiple e-mails saying they weren't going to take -- that they ethically -- you know, they're -- they're saying, "Well, Judge Fisher says, tell your

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supervisor, no, and I'm -- I'm going to tell you no." And ultimately, every lawyer got there.
Q. Do you have a sense of what the reaction was of -- from the local Bar outside of the public defender's office?
A. I don't. I don't have much of a reaction. I mean, I think -- I -- it's hard -- you know, we bring up caseload, we don't bring up caseload, everybody is sort of like, public defender is overworked, yeah, yeah, yeah. I don't think -- but it sort of dies down after a while, and I -- I don't know if people assume it got better or things resolved. But the -- I've -- I worked there 20 years in January, and the caseload has always been its own sort of crazy pressure, and it's always been relentless, and it's always -- it's always been one of those things that when people leave, sometimes it's this or that, but they -- you know, often when they're out, they talk about how it's so nice. I don't feel like I have to be 100 places. I don't feel like I dropped a bunch of balls, and just a weird -- you know, like, their own version of post-traumatic stress.
Q. How did the central office respond to -- to this -- to the decision?
A. I mean, I think they made everyone aware of

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it because -- and I know Michael sent out a memo, just talking -- I mean, I think -- well, I mean, I think, one, people were upset that one of their own was facing a lifetime suspension. That's frustrating. And it appeared that the Courts were fairly indifferent. You know, like, knowing budget-wise how much we struggled, and the -- I guess we all assume the Courts know how much we struggled that, you know, we didn't get funding or we did, and the governor withheld it, and that a lot of those issues weren't of our own doing or choosing. It wasn't for want of asking or wanting.

I don't know if I answered your question. I'm sorry.

Q. No. That's helpful.

Would you say that the -- well, did -- did the central office provide any specific guidance about how to move forward as -- you know, either as individual attorneys or as district offices to handle this?

A. Well, they certainly said you -- I don't think there he was a specific, you should do this; you should file this. As we requested things, you know, we certainly -- we said that -- they said that we'd be supported -- supported and that, you know, if we

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wanted to make assertions based on our attorneys -- I.

Mean, honestly, I didn't have a choice. My lawyers were -- were very -- and understandably so. Very adamant that they weren't taking -- I mean, I have people -- you know, they said, if you assign me a case, I'm filing a Bar complaint against you. There -- it wasn't -- for me, there wasn't wiggle room. My attorneys were like, no, I'm not -- I'm not doing that, and I don't think you can make me. So I know for me, when I asserted my office being at a point where we couldn't ethically take more cases, it's because I met with every single lawyer, and they had all been very clear that they were there. Some more adamant than others, but a number of them just -- we don't have to do this. You know, the -- the Supreme Court says I have the same ethical duties as any other lawyer, and I should not have to have this caseload.

Q. We'll talk shortly about the specific steps that your office took. But in your experience, what -- what has been the response from -- from the Courts, generally, in -- in your district?

A. They -- they don't believe it's real. They -- I mean, I've had to -- e-mail exchange with Judge Torrence where he's basically said it's a bunch

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of dicta, and you are either overreacting or you're pulling a stunt. They are condescending. And my lawyers will go to court, and they'll say things like, "Oh, are you going to work today?" Or "Oh, how are you feeling?" It's been largely -- it's been very disappointing. I would say that, that we really -- you know, you practice in front of these judges for a long time, and they tell you what a good job you're doing, and they are -- there's a sense that you have a camaraderie with you, and it's been no -- my understanding -- like, I talked to someone with Missouri Lawyers Weekly, and you know, report it. She'll go to the court and bank meetings, and they've joked about how we're the black knight, and they've cut her arms and legs off and --

Q. Now, you mentioned that you have been in touch with the Court --

A. Uh-huh.

Q. -- in your district. Are you aware of other district officers communicating with the Courts in their districts?

A. Yes.

Q. Have you been in communications with other district offices about how to respond to this?

A. Yes. Well, shortly after Hinkebein came

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out, we had our yearly management conference, so there were a lot of district defenders there, and it was a large part of the discussion about how people were dealing with it. And a multiple -- I mean, asserting this and staying on top of it is a full-time job on top of your full-time job, so -- and we've -- we've made efforts to get caseload relief before through the years, and it -- I mean, it's -- it's exhausting. It it's -- you have all this animosity. You work a ton of hours to litigate all this stuff on top of all the work you're supposed to be doing. So I'm somewhat understanding of district defenders who are like, oh, yeah, my attorneys have 300 case, but they think that's fine. And in my head, I'm like, that's insane. My attorneys have 100 cases, and I think that's insane. So there's -- there is a sort of a wide variety of responses. So I have talked to other district defenders, and I've -- I've talked with -- well, Anthony in Liberty. I've talked with Jeff Martin in Harrisonville.

Justin Carver, because Justin Carver is the only one has had a Chapter 600 hearing; mostly to say, like, "How did your hearing go? What did it entail?" Oh, just questions about, "What evidence did you put on?" Because all of the Chapter 600 hearings under

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Chapter 600.063 had never done -- been done before, so it was sort of uncharted territories. And my -- my judges aren't interested in arguments under Rule 4. They really want everything to be litigated -- well, they say they want everything to be litigated under Chapter 600.063. I've filed two motions, both of which have been denied, so how serious they are about that -- and I can tell you, Jeff City filed the exact same motion. I filed mine first, he filed his. His -- his judge granted part and denied part, and had a hearing. My judge denied it.

Q. Now, the Chapter 600 -- let me back up. You -- you're aware of the Missouri Supreme Court's decision in Waters; correct?

A. Correct.

Q. And you were employed with the MSPD at that time?

A. Yes.

Q. So that -- you were district defender at the time?

A. I think it was 2012. Is that -- yeah. I was the district defender at the time.

Q. Was it your -- what was your understanding of that decision when it came out as it relates to what we're talking about right now and what your

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options were as -- as district defender in refusing cases?

A. I don't -- back in 2012, we weren't -- one, we were at a very low cycle for filings. So we actually -- our office wasn't refusing cases at the time because we weren't numbers-wise there, or we didn't feel we were numbers-wise there. So I -- I was less involved in how Waters went just because my office wasn't -- hadn't been certified. A number of things -- you know, under -- back then, there were certifying offices, and you had to be a percentage overloaded on a certain scale, so -- and we would be over two months and under a month, and you had to be there for three consecutive months, so while that was going on, we hadn't met that. But there was clearly a backing off of talking about caseload and talking about the ethics of caseload, or that's what it felt like.

Q. A backing off, meaning --

A. Well, we were no longer going through -- we weren't certifying offices. I mean, my understanding was that the 063 was created sort of as a response to offices being certified and efforts to stop that, and it seemed to effectively do that.

MR. WILLIAMSON: Can we go off the record for just one minute?

VIDEOGRAPHER: Off the record, 12:08 p.m.

(A brief recess was taken.)

VIDEOGRAPHER: On the record, 12:08 p.m.

(Petsch Exhibit 3 was marked for identification.)

Q. (By Mr. Williamson) I'm going to hand you a document I'm marking Exhibit 3 for identification. Do you recognize that letter?

A. I don't.

Q. Can you take a -- a moment and just review it for me?

Who is the author of that letter?

A. It looks like Bethany Turner.

Q. Do you know Ms. Turner?

A. I mean, I know of her, but I don't know her.

Q. Okay. And do you, having reviewed the -- the letter, do you agree with the sentiments in the letter?

A. Yes.

Q. And are you aware of whether similar letters have been sent by other district defenders to the judges in their districts?

A. I'm aware a number have, yes. It's similar

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to the Boone County letter, which I had read before, so yes, I'm aware that other letters have been sent that are similar.

(Petsch Exhibit 4 was marked for identification.)

Q. I'm going to hand you what's been marked as Exhibit 4 for identification. Do you recognize that?

A. No. I don't believe I've seen the letter, this particular letter.

Q. Is it similar to the letter that you were just reviewing?

A. Yes.

Q. Who is the author of this letter?

A. Pamela Musgrave.

Q. Okay. And Ms. Musgrave is a district defender in Area 39?

A. Yes.

Q. And do you agree with the sentiments in this letter as well?

A. Yes. I mean, obviously, I don't work in Area 39, so I can't is specifically talk to -- but I don't know a single office that doesn't have Rule 4 issues, so --

(Petsch Exhibit 5 was marked for identification.)

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Q. I'm handing you what's been marked Exhibit 5 for identification. What is that document?
A. It is -- it looks like a template for suggestions in support of writ of prohibition and/or mandamus.
Q. Who created this document, as far as you know?
A. I'm assuming Greg Mermelstein did, but I don't know for sure.
Q. And why do you assume that Greg Mermelstein created it?
A. It just looks like Greg's writing, and he has a number of motions. I think this one -- that are available for other lawyers to look at on the website.
Q. And was that -- as far as you know, was that template placed on -- is it -- is it in a database for MSPD?
A. Right. We sort of have a -- a resources -- we have a lot of databases, but one of them is a resources one.
Q. And so any lawyer in the system could go in and access this template?
A. Yes.
Q. Okay. And do you think that's a -- it is a -- has been a helpful resource for lawyers at the

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public defender's office?
A. The database?
Q. The database.
A. Yes.
Q. Has your office created a waiting list for defendants who -- whose cases can't be covered by your lawyers?
A. I call it a postponement list, but yes.
Q. Okay. And -- and how does the postponement list work?
A. We screen people, and then we enter them into a -- we have a client database. It's marked in such a way that we can tell who screened what day. And then as attorneys have come to us to say, "I can take more cases," we take whoever is next on the list. Well, historically. Now, we're being appointed, so we aren't even getting to the list because we have so many appointments coming in, but that was -- that's how we started out, and we did -- I think it took seven days to remove the first person off of the postponement list.
Q. So as of right now, does the postponement list still exist?
A. Yes.
Q. It's just that it's taking longer to get to

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it?
A. I don't think we've gotten to it -- I think we probably took five cases off it in order. Now, a lot of -- almost everyone that we're being appointed on is also on that list, so people are coming off the list; they're just not coming in any certain order. It is not first come, first served any more. It's just however the Courts are appointing us.
Q. And do you know how many people are on the waiting list right now.
A. Not exactly, because people are added every day.
Q. Sure.
A. But the last time I looked, which was last Thursday, I want to say it was about 250 people.
Q. And -- and this was -- when was the -- the list first set up?
A. October 16.
Q. October 16. Okay. Do you have a sense of that roughly 250, how many of those people are in custody?
A. No.
Q. You don't have a sense, or none of them are?
A. Some of them are. I don't have a -- I

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don't know what percentage are in custody of -- because we take applications in custody, and because the law says that we can't -- we have -- we can't -- we can't only accept or reject or promote classes of people. So they're on the list, we're taking it as they come.
Q. And people are coming off the list in order?
A. Yes. Ideally, they were, yes.
Q. So it is -- as far as the Court is concerned, it is of no moment whether the person is in custody or not when determining who's next to come off of the waiting list?
A. Well, they don't -- one, I don't think they even acknowledge my list as anything valid or real or legal, so -- and they're just appointing who they want to appoint, so -- without any regard to what the list is or anything about it.
Q. And from -- from your perspective in putting the list together or maintaining the list, how do you account for if -- if you can at all, the fact that some of -- some of the people on the list -- are on the waiting list, are they prioritized in any way?
A. No.
Q. No?

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And are you -- are you personally sort of administering this list, or is there someone else in your office that's doing that?

A. Joseph Megerman is -- is the list person, yes.

Q. Okay.

A. Well, I mean, we have -- we have a way in the database that's market so that we can see how the list is kept, and then Joseph also has a spreadsheet that he's maintaining of the appointments and as people come off the list. But when people -- when we had the ability to remove people from the list, we didn't have so many appointments coming in, he would look at the list, and then assign the cases.

Q. At this stage, are the Courts in your district appointing private attorneys at all to represent --

A. Not at all. We had one judge who was, and then she was told that she could not do that any more.

Q. Okay. You're familiar with -- well --

(Petsch Exhibit 6 was marked for identification.)

Q. I'm handing you what's been marked Exhibit 6 for identification. Do you recognize that?

A. Yes.

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Q. What is it?

A. This is an e-mail and documents pertaining to assignment of cases through the Missouri Coalition for the Right to Counsel.

Q. And can you -- you're familiar with the -- we'll call it the MCRC?

A. Yes.

Q. Can you describe what the MCRC is?

A. And again, I didn't found -- I -- I'm a cog in -- in the system, but my understanding is it's a nonprofit that's set up to get cases to firms who want to try them. I know I've -- for my part, I've helped get cases to firms. I've participated in two trainings of attorneys from the firms who are -- who -- the firms were taking cases, and those attorneys specifically were taking cases.

Q. Do you know how many firms are involved?

A. I don't. On the Saint Louis side, I have no idea.

Q. Okay.

A. I think on the Kansas City side, I feel like the number of firms that have taken cases from us is probably around a dozen.

Q. And the Kansas City area doesn't only include district -- or Area 16; correct?

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A. I don't know that -- well, I think they've taken some appeals from central. I don't know that any other office has sent cases to the firms aside from mine.

Q. Okay. So --

A. I'm not aware of that.

Q. So is it your sense that the program is really focused on the -- the bigger offices around the state?

A. I -- I -- I think the -- the program is fo -- focused on where -- the firms -- the firms who have agreed to participate are at, and it appears that it is in the -- in the cities, so I think the thought is, we don't want to have these firm lawyers who are taking cases for free to drive to Chillicothe, but I don't have a firm grasp. All I know is when they ask me for cases, I provide them cases.

Q. And what -- what kinds of cases are being assigned to those firms?

A. A variety. Everything from possession to murder.

Q. And this program has been operating for how long?

A. I think the first cases I sent out were in May. I think there was a training either in April or

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May of this year.

Q. And since the program began, approximately how many of your cases have been reassigned to MCRC attorneys?

A. I would say between -- between 15 and 20. I have a couple out right now that are doing conflict checks. So not -- not a huge number.

Q. Is your office involved at all in monitoring that representation?

A. It depends what you -- I -- I don't know that I'd use the word "monitor." I -- I regularly -- I'm a resource for the lawyers. I mean, I have talked to three of them in the last three days, so they regularly call with questions, they want to talk about plea offers, they want to talk about, this is what we do in civil; is there something equivalent in -- in criminal? So some of them communicate more. There's not a requirement, I would say, about how much communication is happening or how much oversight the firms are engaging representation, and I -- I consider myself more as a resource than a monitor, if that makes sense.

Q. And the -- and the firm is making the decision about which individual lawyers are taking these cases; correct?

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A. Yes. But I -- I think we've asked that all the lawyers go to our trainings, so we're meeting and talk -- you know, talking to the lawyers. But yes, the firm -- I mean, I think most of the lawyers are at the mercy of what their firm will or won't let them do --

Q. Right.

A. -- since they're using the firm's resources and working for free.

Q. And aside from the outreach that they may do to you for answers to you for answers to particular questions, the -- the supervision of those attorneys is being done by the firms?

A. Yes.

Q. And so a total of 15 or 20 cases since May; right?

A. Yes.

Q. So has the -- has the -- the MCRC program relieved your district's caseload in any significant way?

A. No.

Q. Okay.

A. And I'll tell you, when I assign cases, I usually -- I've done it with people who are leaving, so I was giving them clients that were already going

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to have a change in attorney anyway because the -- the attorneys were leaving for one reason or another, so -- and it -- most of the firms are wanting trial experience, so it's easier to tell when someone is exiting, when a case a little further along, how they -- but that -- that's been my selection process. So attorneys have enjoyed the fact that they haven't had to absorb those cases that are set for trial fairly soon and would sort of wreak havoc in their schedule, but as far as -- their caseloads aren't significantly lower or anything like that.

Q. Okay. Okay. Almost done.

I -- you talked quite eloquently about, you know, your and your attorneys' response to the Hinkebein decision, generally. I wanted to talk a little bit about the -- the sort of formal steps you took in the wake of that decision.

At what point did you first take action in court to -- to try to deal with the situation?

A. Well, I wrote the letter, I believe, October 13, to Judge Torrence. That following Monday, the 15th, you know, we had an attorney who the judge wanted to appoint a probation violation and have her handle it right there, and she asserted her ethics under Rule 4. He tried to appoint her personally, she

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brought up the case that says he can't appoint her personally, and then he set it for Thursday and sent an order over basically appointing and saying someone must show or something along those lines, and I handled that case. I went to court that day, so that would have been the 18th, I believe.

Q. And -- and you went before the Court?

A. Yes.

Q. And what happened at that hearing?

A. Well, I tried to make a record. I have filed a motion. A number of my lawyers were there to testify about their -- their conflicts under Rule 4. I was not allowed to make a record. I was personally appointed. It was -- it was talked over a fair amount, and -- and then we set it over so I could writ the judge.

Now, at the same time, a district defender had filed work. Leslie Hazel had filed a case that -- a writ that had gone up through I believe the southern district and the Missouri Supreme Court and was denied under the Rule 4, and there's basic instruction on the order saying that we need to file an individual case that's under Chapter -- Chapter 600.036. So our writ didn't encompass that level because we figured Courts would rule on that. It was on that personal

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appointment, which that western district denied.

(Petsch Exhibit 7 was marked for identification.)

Q. So I'm going to hand you what I've marked as Exhibit 7. Is that the writ that you're referring to?

A. Yes.

Q. And you're saying that this was filed -- was it filed before the Hazel decision?

A. (Nonverbal response.)

Q. It was filed after?

A. Correct.

Q. And what was the response to your petition?

A. So this writ was denied, and then I'd already entered under objection, so the case was set the following Thursday. The writ was denied in, I think, an hour's time or something. Something crazy fast for the Court of Appeals, and -- and I represented the client on this case.

Q. So do you recall what -- what you filed next? Did you -- so this was the -- the Nevels case?

A. Uh-huh. Keith Nevels. Well, I represent -- Keith Nevels was a guy who was on probation in the wrong place, so he really wasn't in any jeopardy. The judge just changed the -- the

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company that was monitoring him, and it was continued, so I didn't file anything else on Nevels. And then I think -- well, November 1, I filed a -- a motion under Chapter 600.063 in suggestions and support.

(Petsch Exhibit 8 was marked for identification.)

Q. Handing you Exhibit 8 for identification.

A. Uh-huh.

Q. Is that the motion that you just referred to?

A. Yes.

Q. Okay.

MR. WILLIAMSON: Do you want this, Jackie?

MS. SHIPMA: No. That's fine.

Q. (By Mr. Williamson) And what was the result of that motion?

A. It was denied.

Q. What did you do after that motion was denied?

A. I -- I think a week later, I filed a second motion under Chapter 600.063. I think that was November 8.

Q. And what -- what was the -- what was the difference between that motion and the initial motion you filed?

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A. Well, the judge's denial on the first motion was very -- I'm trying to think of a nice term for it. Scathing. And it was clear he had a lot of issues with my bringing Rule 4 into a Chapter 600 hearing, so I -- I had -- I filed a more bare bones motion, which I assumed was what the Court wanted.

Q. Okay. And how did the Court respond to that second motion?

A. He denied it and accused me of bad faith -- or actually, he found me in bad faith.

Q. Okay. So -- so you sought a conference with the Court on two occasions; both of those requests were denied?

A. Correct.

Q. Did you take any further actions in court at that point?

A. I -- well, the judges were appointing the office on a lot of things, and it was clear from my first hearing in Nevels that if I wasn't going forward, he was going to set a contempt hearing. I -- I've not abandoned any -- I think -- I think our Rule 4 issues are legitimate and concerning. However, the judge -- I also don't want myself or attorneys held in contempt. I don't think that is the route. Even under orders that I think are unlawful or against our ethics, we're going to try and comply with them.

So my office started assigning cases. Fairly quickly after that, I self-reported to the Bar, because I believe it's an ethics violation for me to be assigning cases, and it was at my direction that my deputy was doing that, and -- and then I had some attorneys who were not appearing who -- who actually wanted to be -- my understanding is they wanted to be personally appointed. On one of their non-appearances, the judge issued a show cause order for me as to why I should be not be held in contempt, and we had a hearing on that last -- was that last Monday? I think it was last Monday. It's all happening very quickly, so --

Q. Have you gotten a response?

A. Yeah. She -- she quashed her motion. I -- I got counsel, and she quashed it base -- basically based on specificity, because she didn't name me, personally. And since then, a majority of the judges are now ordering me, personally, into almost every case.

(Petsch Exhibit 9 was marked for identification.)

Q. Okay. I'm handing you Exhibit 9 for identification.

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A. Yes.

Q. Is that the complaint that you just mentioned?

A. Yes. This is my self-report to the Office of Chief Disciplinary Counsel.

Q. And you -- you indicate that you felt some obligation to file this, to -- to self-report?

A. Yes. I'm, in fact, on a regional disciplinary council. I'm a member. But I -- I think by assigning cases to my lawyers, I am in violation of Rule 4. I'm in violation of my supervisory duties. And so if you look at what I write, I -- you can also ask for guidance, so I asked the -- I asked the Office of the Chief Disciplinary Counsel for guidance, because I -- I am not sure what I should be doing here.

Q. And this was filed on November 20?

A. Right.

Q. Okay. Did you -- have you received a response to your --

A. No.

Q. In your experience, how long does it generally take to get a response from --

A. It takes -- well, generally, I'm not the person who receives it. I'm only on a committee, so

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we only get sent the things that come to committee. I don't have a sense of how long that will take.

Q. But this is -- this is the same office that evaluated Mr. Hinkebein's situation?

A. Yes. And went for it and made arguments in front of the Supreme Court on them, yes, correct.

Q. Against Mr. Hinkebein?

A. Right. Against him.

Q. Okay. You -- you attach the letter that you referred to earlier, the October 13, letter to Judge Torrence?

A. Uh-huh.

Q. Did -- did he response by letter to this?

A. Well, by e-mail.

Q. By e-mail?

A. He -- it was a Word document that looks like a letter.

Q. Okay.

A. But he responded by e-mail, and which I attached that -- that --

Q. Okay. So that's the October 17 letter?

A. Correct.

Q. Okay. So as of right now, you -- well, hold on. Let me back up.

You also attached the transcript of a

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hearing where you moved to withdraw from --

A. Yeah. I just really wanted -- I wanted them to see that I really -- he mentioned the contempt, and I wanted the Court to -- or I wanted OCDC to understand that my assignment is not -- is because I -- I have a good faith belief that will be held in contempt. It's only been underlined by the fact that -- I sent -- I sent this in on the 20th, the order that came out. The show cause order came out on the 21st. I had no idea that that would be coming out obviously, but I -- I wanted them to be aware that I'm not just assigning cases because I feel compelled to under penalty of going to jail.

Q. So -- and so do you right now currently still represent Mr. Nevels?

A. I -- I don't think so. I -- we concluded the matter. He was continued on probation. If you ask the Courts, they'll probably think I'll represent him in perpetuity. I have no idea.

Q. And as far as you know, how many cases are you assigned to right now?

A. My myself, personally?

Q. Right.

A. I probably -- open cases, I probably have about 40; although, as an office, we're reassigning

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most of my cases just because, when I go to court, the judges are making records with me about representation, and if it -- it feels like they are trying to set up a contempt hearing. They're not doing that to the rest of my lawyers, which is unfortunate, because I would like to be more helpful, but I don't -- I'm concerned -- and I'm concerned that all of this is affecting clients and representation as well. But I'm also concerned that I -- you know, the judges are all sending the orders to me personally, so the last time I was in court, she said, "Did you receive this order?" I sent it to you personally." It -- it feels -- quite frankly, it feels like a setup. It feels like a setup to have me held in contempt.

Q. Okay. And so as of right now, you're just -- you're waiting for a response to your Bar complaint that you're self--reporting?

A. Yes.

Q. Okay. And continuing to accept those cases as necessary?

A. Yes. I mean, I've -- I've gotten orders that are giving me five days to enter. I'm getting orders that are saying, "Ruth Petsch must enter in fives days." I'm complying with that. I am also

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assigning them to lawyers because --

Q. Right.

A. I -- I'm complying because the Court is ordering me to do it. So -- but like I said before, I have cases where I'm entered, not because I'm really representing those clients, but because the Court is ordering me to do so, and I firmly believe they will hold me in contempt if I do not, so -- and I'm waiting to hear back from the Office of Chief Disciplinary Counsel. That's correct.

Q. Are you doing -- are there any cases where, for whatever reason, you are actually having to do work on the case aside from entering your --

A. Yeah. Well, I mean, I was working -- so I appeared in court last Wednesday. I had multiple probation violation clients that I represented. I have a few, and -- and I have -- for the -- the probation violation docket that I'm shifting over to another attorney, I mean, I had mental done on the guy, I've arranged -- so I'm doing some representation, sort of trying to tie it up.

Q. Okay. But those are -- that's on cases that you already had --

A. Right.

Q. -- on your docket?

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A. Right. I'm not -- I'm not going to undertake -- aside from entering --

Q. Right.

A. -- I've not really been representing any of those folks. I'm just complying with the Court's orders.

Q. And -- and you're being appointed to all manner of cases; right? Not just probation?

A. Yes.

Q. Okay. Is there anything else that you think we should know regarding your ability or your office's ability to provide representation to your clients?

A. Not that I can think of, no.

MR. WILLIAMSON: I know we've covered a lot of ground. All right. I think that's all I have. Thank you.

MR. RAMSEY: Can we go off the record for just a minute?

VIDEOGRAPHER: Off the record, 12:42 p.m.

(Off the record.)

VIDEOGRAPHER: On the record, 12:42 p.m.

EXAMINATION

BY MR. RAMSEY:

Q. Good afternoon.

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A. Good afternoon.

Q. So again, my name is Steven Ramsey, and I represent the State of Missouri and Governor Greitens. I have a number of questions for you. Feel free at any point, if we need a break, let me know, because I know we've been at this for some time.

A. Sure.

Q. I want to go back quite a ways, back to, like, almost 9:00-ish or so and understand the district a bit more.

Right now, do you have a sense of how many criminal cases come in in Jackson County total?

A. No. I mean, there's data on that. I haven't -- I haven't looked at that.

Q. Okay.

A. But I mean, that's achievable data. The courts keep records. I think the prosecutors keep records of filing.

Q. And District 16 encompasses all of Jackson County?

A. Yes.

Q. And there aren't any differences between how your office handles a case that occurs in Kansas City versus Independence; is there's just one concerted district, or are there any, I guess,

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discernible differences?

A. No. I don't -- I don't know that there's -- the prosecutor's office runs differently in both places, but -- as far as how they handle cases and how they go forward. But our representation -- I mean, there may be some reaction to those changes, but, you know, we're --

Q. But the public defender's office that you're covering with your district --

A. Uh-huh.

Q. -- there's no discernible difference between how you would handle a case in Jackson County versus -- or I'm sorry. In Kanas City versus Independence?

A. Right.

Q. Now, this is a question as to your experience: Is there a trend of -- of crimes, of felonies, of misdemeanors that you see very frequently as opposed to crimes of potentially those who are not indigent would commit?

I can clarify that question.

A. Okay.

Q. What types of felonies did -- does your office not see frequently, if there are any?

A. Well, I -- I think there are a bunch. I

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mean, when I talk to rural offices, we don't have -- like, when people will shoot a deer from a car or steal cattle. Things -- we don't have really any of those. I don't -- I mean, it's hard for me say compared with the private Bar. I think if you go prelim dockets, and you look at what types of cases have more private attorneys, because they -- they set up prelim dockets by the type of case, so more private attorneys go to DUI, driving dockets, which kind of makes sense, because if you can afford a car, then you may -- and you're in risk of losing your license, you probably can afford a lawyer. I don't -- I mean, everybody gets charged with stealing. Everybody gets charge -- like, there's a lot of drug crimes. There's a lot of -- and a lot of -- in Jackson County, it's a lot of serious felonies, rob 1s, assault 1s.

Q. Forgive my ignorance. Would the -- the broad category of white collar crimes, would that ever come across your -- your purview?

A. Probably not. I mean, I know that the prosecutor's office had a white collar crime guy who per -- or prosecuted a lot of stealing from unemployment, which didn't feel very white collar to me, but we represent those all the time. I mean, not all the time, but it goes -- it seems to go cyclical

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how -- how many of these they file, but we certainly represent the -- the stealing by omission, as I call it, so stealing from unemployment, stealing food stamps, that sort of -- things along those like lines, but I wouldn't say true white collar. I feel like most white collar crime, at least in Jackson County, goes to the feds.

Q. In your 20-plus years of experience, have you seen a trend in -- in receiving the same types of cases, or has there been a -- an uptick in a particular type of -- of felony, or I guess over the course of your -- your time with the Missouri Public Defender system, how -- what trends have you seen just in terms of the types of cases, if any?

A. Well, I think there's more -- they say the violent crime is up, so I mean, we have a lot of murders. We have a lot more weird Internet-related things than when I -- we didn't really have much Internet when I started. But we've always had robberies. There's a lot that's consistent. The type of -- the type of possession. I mean, when I started years ago, there was a lot of crack, there was a lot of meth; and now, you have a lot more -- I mean, crack and meth are still there, absolutely, but you have a lot more pills, you have a lot more opioid, so there

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have been trends sort of -- the drug crimes definitely trend different ways. I can't think -- I mean, but -- guns -- well, now, we have fewer guns because carrying a concealed weapon is legal, so we have a whole host of gun cases that we routinely tried that aren't prosecuted any more.

Q. Two steps back, I remember you testifying earlier too that you had conversations with Counsel in terms of your preparation for this deposition?

A. Uh-huh.

Q. Have you also been in contact with other individuals or organizations about the -- I guess about the content of this litigation or just caseloads and workloads generally?

A. Not about the content of this litigation. Caseload, workload, absolutely. I mean, there was a fair amount of press surrounding our Rule 4 initiative, and I've had -- I mean, I had counsel represent me at my show cause hearing. I've had multiple firms talk to me about public defender issues as well as things along those lines, but I've -- I've never discussed this particular lawsuit. But there's -- I mean, there's a lot of talk around sort of -- and there's a lot of stuff in the newspaper, so there's a lot of people you run into that talk to you

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about our caseloads.

Q. So it may be difficult because there are so many, but what types of organizations, if you can --

A. Oh, organizations? Well --

Q. Organizations, outlets, firms.

A. I don't know about organizations. German May represented me on my contempt hearing. I've certainly -- I have a lot of friends who are lawyers, so I have friends -- I've talked to people at Husch. I've talked to people at Stinson. I've talked to people at Shook. I've talked to -- I've -- I mean, part of it is I also do MCRC, so I'll drop off files, and then they'll say, "I saw you in the paper," and there's a discussion about what's going on. But as far as I -- it's -- I don't think there's been any -- you know, well, a number of people told me to reach out to the ACLU with regard to my Rule 4 litigation; however, they're currently suing us, so that isn't happening.

MR. WILLIAMSON: No comment.

A. But I don't know what -- like, specific -- I mean, I'm not -- look, I'm a mom of three kids, so I literally work, you know, a dozen to 15 hours a day, and I try to spend time with my kids. I don't -- I'm not a member of a bunch of Bar organizations. I'm not

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a member -- I -- I don't have time for any of it, quite frankly. So I -- yeah. I'm not a member of a bunch of organized groups. I don't -- I don't have time. And it's -- to me, that's one of the things that hurts public defenders more, is that we don't -- we're really isolated, and it's really easy for us to sort of get stuck, because we don't have -- we don't join Bar organizations. Well, a lot of my attorneys can't afford it, but I also -- they don't have the time to do it. They're going to be in trial, or they're going to be in jail, or they're going to be all these other places.

Q. (By Mr. Ramsey) Switching gears a bit in terms of how your office determines whether a particular criminal defendant is indigent --

A. Okay.

Q. -- walk me through that process, if you could.

A. So generally, a legal assistant is going to either meet them over in court, meet them over in jail. We take walk-ins. And really, any attorney in court if asked to screen someone -- I mean, I -- when I'm in court, I screen people all the time. We have an application. We follow the federal poverty guidelines. I mean, our application is on our

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website. It's not at all a secret. And you fill out the application, they qualify or they don't, you mark them indigent, you let them know the determination, and you go back to the office and -- and -- and you either have a file. Right now, you might be on the postponement list, something along those lines. So it's really sort of self-reporting. I mean, a big chunk of our folks are in jail, so they're not working. If they have a home, they're not going to -- it's usually -- there's -- it's usually not very tricky in Jackson County, the poverty. I know rural offices have people who they think are hiding assets. I don't get that sense here. But it's true we don't -- we don't double check, and we don't have the resources to do that, so if someone says they have no assets, I don't run a search of their personal property tax. I don't run a search -- I don't -- that would be 20 minutes we don't have.

Q. So if I'm understanding you correctly, the screening process is the application?

A. Yep.

Q. And you all follow the federal poverty guidelines?

A. Uh-huh.

Q. And if a person says, "Hey, I make under

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those," they will receive representation if you're able?

A. Right. You have to be poor enough to qualify, basically.

Q. And did I hear you correctly that there are no controls for that or there's no monitoring; it's a self-monitoring type of a system?

A. It's -- yes. It's generally self-reporting. I mean, I guess if we suspected someone, we could look at it. I've certainly had clients who have bonded or something happened where I moved to withdraw based on I -- I don't think they apply -- or they don't qualify for us, that we weren't aware of funding or somehow, you know, they made a $20,000 bond, and they have the resources to hire counsel if that happened, but it generally has to sort of come up on us.

Q. Now, this may be difficult to ascertain just sitting here, but do you have a sense of the rejection rate for those who apply? And I know you mentioned that if they fill out the application, they generally come in.

A. Uh-huh.

Q. But is that close to 100 percent, bright line rule, if you're under the federal poverty lines,

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that you're in, that you will receive representation if the system is able?

A. Well, in general, I mean, there's -- Chapter 600 has guidelines on it, so you also take into account assets. You take into account other things. I don't know the number. I mean, I -- there -- we -- we keep the data. I have a -- I have a drawer full of denied applications. We keep those app -- you know, they get archived. They get sent places. So we certainly -- people get denied all the time. Now, that being said, the majority of our denied applications, we are then appointed -- the judge will make their own determination. A client is and allowed to appeal our findings to the Court, and nine times out of ten, even the people we denied become our clients because the judges find them indigent and appoint us anyway.

Q. Now, does that happen at a hearing? Like, do you have an opportunity to say, "Here's why we made this determination," or is that held outside of the courtroom?

A. Sometimes. Sometimes they -- generally, we're there. Sometimes the judges do it when we're not there.

Q. Uh-huh.

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A. They just say, "Were you screened?" And the client says, "Yes, and I was denied." And hen they'll say, "Do you have a house, do you have some" -- in court the other day, somebody's mom stood -- or we don't even know how she was related to the client, and was like, "He doesn't have money." Because he's like, "I'm going to hire someone." She goes, "No, he doesn't have money." And my lawyers were just aghast, because they were like, how -- they don't even who that woman is who is answering his financial questions to have him found indigent, which the judge did. The judges appoint us a lot, and did before -- even before now, where they're appointing us all the time.

Q. So I'm understanding two different tracks here. One is the determination but the Missouri Public Defender's system?

A. Uh-huh.

Q. And then the second is the consideration of, even when we reject some, we'll get appointed there?

A. Yes.

Q. Focusing on the former --

A. Uh-huh.

Q. -- so if I heard you correctly, you all do

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reject applicants, and I think you said all the time.
A. Well, I don't -- I can't tell you what percent, but we definitely do. We have a drawer full of rejected applications.
Q. Okay. So there's -- and if you're unable to, let me know, and I'll just move on.
A. Uh-huh.
Q. Would you peg it at 80 percent approval -- acceptance rate or 90?
A. I would definitely say it's high. I don't know the percentage.
Q. Okay. Okay. Here's a -- a question, and it's related to what goes into the -- the determination. And let me know if this never happens. But say a criminal defendant has multiple cases --
A. Uh-huh.
Q. -- and in -- you know, let's say he has four cases. Out of the three cases, he has private counsel?
A. Right.
Q. On the fourth --
A. Yeah.
Q. -- he wants to have --
A. Uh-huh.
Q. -- a public defender represent him because

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I guess his assets have been --
A. Depleted, yeah, sure.
Q. By funding the former cases. Is that a relevant factor in whether or not the public defender system ascertains whether he would -- reaches that poverty line for -- for representation?
A. I think it's -- people bring it into consideration, but I mean, we used to reject -- anyone who had a private attorney, we rejected outright, and then there was some changes in the law saying we couldn't do that. So we definitely -- well, one, we try to get -- it's -- it's a mess. One, it's legally a mess, just because you're supposed to now -- if there's any plea that's going to happen, you have to consult with that lawyer. But I -- I wouldn't say -- it used to be a very strong factor, and it no longer is.
Q. I see. And that's due to some legal considerations that --
A. Yes.
Q. Same type of question, different scenario. Case and chief is over, and now, we're talking about probation revocation.
A. Uh-huh.
Q. So say someone had private counsel before,

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is that a determination that goes into whether or not they're represented during their --
A. No.
Q. No? Okay.
A. It hasn't been, to my knowledge.
Q. Okay.
A. If people are screening that out -- you know, crazy things happen all the time, but I -- I mean, it -- we can -- it's supposed to be a civil matter. It's supposed to be completely separate. So we screen people in new even if they had a private attorney on the underlying case.
Q. And now, I'm not trying to trick you on this one.
A. Sure.
Q. I'm just trying to understand that if it's a fairly bright line rule for who qualifies for public defender representation, of these various factors, how would they have been taken into consideration?
Said another way, if I fill out the application, and I would normally -- normally would be eligible, but there are these other things going on, when does that -- when do the other things going on come into play in terms of whether you accept or reject a particular candidate?

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A. Well, I think if you qualify under the numbers, you'd probably be accepted --
Q. Okay.
A. -- whether you had a private attorney on another case or not.
Q. Got it. Thank you.
Are there any situations where the public defender system will enter before they have been -- before you all have been -- well, your district, pardon me. In your district, are there situations where you all will enter before being appointed or before a determination is made for indigency?
A. Only if we're forced to enter. I mean, we're going to make a -- an indigency determination before we enter. Juvenile court appoints us all the time without any application ever being taken. And what we try and do is contact them and get an application before we have to make it a legal deal. I mean, a lot of the clients are indigent, and we're certainly not fighting representing qualifying clients. Or we haven't, just like -- now, we are because of our ethics. But before that, we pretty much took everybody, but you have to be qualified. You can't physically open a file in our computer without an application.

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Q. Now, say, the system accepts a particular criminal defendant, and then after the fact, right, a prosecutor -- or it comes to your knowledge that the person may have considerably more assets.

A. Sure.

Q. And I know you alluded to this before. How does that process work? Is that upon -- is that burden upon the individual attorney who is representing the case to say, "This seems a little -- little funny to me," and to make a motion to withdraw, or how does that process work?

A. Right. So if -- if during the course of representation, people become aware that the person has assets or didn't disclose assets, something --

Q. Uh-huh.

A. -- they'll move to withdraw. Or a lot -- what happens most commonly is they make a large bond, which sometimes indicates that, you know, they have disposable income. But we -- we definitely have attorneys move to withdraw in those cases.

Q. Next wave, if you will, after the -- those determinations have been made --

A. Uh-huh.

Q. -- and the cases come to your, I guess your desk, and you're deciding how to -- to divvy them up,

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and I believe you said your deputy takes care of most of that --

A. Uh-huh.

Q. -- that process. Are there any local policies in place for how you divvy them up, or is it more or less discretionary?

A. It's pretty discretionary. I know historically, we can pull up individual caseloads. I do have -- I guess I do. So I have -- my attorneys are on teams, and each team has an on week so that they're not running around like crazy. So there's four teams, so each week, they -- they get a -- assigned the cases that are going to be prelimed during that week. So teams may get some of an overload because it's their on week, and then the next week, it will be a different team's on week. So we do try and do that mostly for the efficiency of the lawyers so that they can -- so that it groups their -- their prelim court dates together during a week out of the month instead of just on any given day.

Q. Concerning your particular office, and I'm speaking specifically, pardon me, of the turnover rate, and I believe you said that nine people had been replaced in 2016?

A. '17.

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Q. 2017. Pardon me.

A. Uh-huh.

Q. Do you have any sense for how you stack up compared to other offices within Missouri that are comparable in size?

A. There's not many offices that are -- I mean, we're the largest -- Kansas City is the largest in the state. I think Saint Louis has maybe four fewer attorneys, and then you go down to, like, 24, so I think Saint Louis has a fairly high turnover rate as well. I know for us, I'm lucky that I get to fill, because we have rural offices who have had positions open for a year that they can't fill, so I'm lucky in that sense. But I don't think I'm -- I mean, I think that 20 to 30 percent is pretty normal. It slowed down a little around, like, 2009 where there weren't any jobs, but aside from that, it's been -- it's been pretty consistent, and on the higher end.

Q. And you had testified earlier as to a number of educated guesses on what you think would be necessary to fill these positions in a sense -- in a way that would be ethical and --

A. Uh-huh.

Q. -- and would be reasonable. Are those determinations -- and I -- I remember you were saying

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that they were based upon your experience.

A. Sure.

Q. Are they based on anything else, like comparable offices in Missouri, private practice across the states, or is this -- or were those guesses your --

A. Well, I haven't -- I guess I'm -- I've not reached out to private attorneys on the number of cases they have. I mean, whenever I talk to the firms about our numbers, they shake their heads. I think it was more, okay, we have -- we're entered on 4100 open cases. If, you know, I want to get that number down to a reasonable -- it was more sort of math. But -- and that's me presuming that 40 cases is a reasonable caseload for people. I -- that's not -- I don't think 40 murders a reasonable caseload for someone, so -- or 40 all serious crimes. So again, take that with the caveat that it depends on the caseload, it depends the level on -- of the level of experience of the attorney, it depends on all of those factors. Yeah. He just said, how many would you like? And I was like, oh, I'll take that. I mean, if you gave me 100 lawyers, I'd be thrilled, but -- and I -- I think they'd all work.

Q. When you receive these cases, just another

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question here, do you track them by the charges that are on a particular case or by criminal defendant?

A. Well, we have multiple views in our system, so I -- most people look up by name or case number, but I can look up by primary charge. I mean, we have a lot of cases with multiple charges, so we usually list the primary charge as the most serious or one of the most serious, and so I can look at the type of case under primary charge. I can search that way. I mean, I could -- I search -- when the Bazell news came out, I searched "stealing," and I think I had 10,000 cases. So there are ways to search other things in the database, if that makes sense. There's a variety of views and search methods.

Q. Now -- so I -- I understand that the system at large has annual trainings for various defenders, and those are mandated upon particular assistant public defenders?

A. Right.

Q. In your office, you had mentioned that there are the additional trainings over the lunchtime period?

A. Uh-huh.

Q. Were any of these additional lunchtime period trainings focused on workload or -- or caseload

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management issues, or any other training for that matter?

A. I don't think I've done an internal caseload management issue. I mean, the statewide training has a variety of tracks just with hundreds of people going. So I do think there are -- I think there have been sessions on keeping yourself organized, relaxation, you know. I mean, there's a variety of people that come and -- and talk in a three-day training. What all of those are, I don't know, but I -- I tend to be more of a law nerd, and I tend to track toward less about self-care and more about where -- where the legal issues, and those would be the tracks that I would go to.

Q. What other areas of focus in your district have you seen fit to train your district defenders -- or pardon me, your assistant public defenders in your district on? And who makes that call? I apologize for interrupting.

A. No. I understand. So sometimes new things -- so, you know, I had one of my lawyers present on Daughbert, because that's a new area of criminal law, and it's a significant shift from Frye to Daughbert. You know, the problem with our statewide trainings is, you know, someone goes to

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trial skills, you can start in October; you may not have trial skills until nine months in. You might have trial in that amount of time. So there's a lot of -- I mean, we do a lot of stuff that is pretty basic. Like, here's impeachment, here's -- or here are the discovery rules, and here's how to enforce them. And because we have -- you know, basically chronic turnover, we're sort of constantly -- you only hit this section, and then some of them are gone, and then new people are in.

Q. Concerning the funds for representation; right? So after you bring someone into the system, and they -- they're eligible, that's a -- is that a flat fee for the criminal defendants?

A. The fee?

Q. Yes, ma'am.

A. That's my understanding, yes.

Q. So it's not a sliding scale of various folks on the various levels of the --

A. Well, the fee is depending on the type of case.

Q. Okay.

A. There used to be more of a sliding skill about whether you took it to trial or not or whether -- but the fee is charged -- yeah. So I think

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an A felony is one thing, a probation violation is one thing. That's my understanding.

Q. Okay. And in juvenile cases, does the parent or guardian pay that or --

A. There's no fee for clients under -- we don't charge clients who cannot enter into a contract.

Q. Turning to the use of funds for depositions and discovery --

A. Uh-huh.

Q. -- and I believe you had mentioned it was the encumbrance for a fund or the encumbrance level?

A. Right.

Q. Are there any policies guiding -- any local district policies guiding how many depositions one may take if they have the time?

A. Well, I don't think there's -- there's a policy on it. I mean, in general, people discuss with their team leader, and they can discuss with me, here are the people. I mean, I've never had a trial where I deposed every single person. I would have liked to, but I also get that there's some witnesses that -- that people would consider less important or less -- you know, that a dep -- deposition is less necessary. So -- and actually, the only time I've ever seen anyone request all the people is when they're unable

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to contact any of them, and they think, the only way I'm going to get to talk to these people is if I subpoena them for deposition because I've not been able to get them to talk to me voluntarily.

Q. In your career up until this point, have you ever been denied a deposition that you wanted to take?

A. No.

Q. Have you ever denied a deposition for one of the attorneys who you supervised that they wanted to take?

A. I -- I have. Not very many. Although, it generally wasn't based -- maybe I've had one or two that were based on, you don't need to do a deposition there. More based on sometimes new attorneys have some sort of farfetched ideas about how things go, and it's more of a, like, are you sure you want to do this? Are you sure this the route you want to get? Or sometimes, are you sure you want to create bad evidence?

Q. Same question, slightly different topic. Have you, personally, ever been denied an expert witness that you felt was necessary for your case?

A. No.

Q. And have you denied an expert to one of the

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attorneys that you supervised that they felt was necessary to their case?

A. No. I don't -- I'm just the mid level approver for that, so I have seen people get denied. However, I generally punt it up if -- if there's something I -- I'm usually a "yes," and then if it gets denied, it's at the -- the higher level.

Q. And do you have a sense for why those were denied? And I know that -- the systemwide question, that's not what I'm asking you. But do you have any personal knowledge for why requests from your office for expert testimony --

A. Uh-huh.

Q. -- were denied in the past?

A. It's usually money.

Q. Money?

A. Well, could you get a cheaper expert, could you get someone who's local, could you -- you know, we think maybe we could do this in-house. But it's all about saving money, or that's been my impression. I'm -- I've -- I don't know everyone that's obviously been denied statewide, but if I had somebody who -- I send back requests all the time to say, this is isn't on point, or this isn't something -- I have people edit -- probably one a day, I have people edit

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encumbrance requests, so denials, like an official denial on the computer would be very rare. Then I do unofficial, "edit this," all the time. Probably daily.

Q. Do you have a sense for if I -- and I know you -- you had mentioned and you had testified earlier that you don't have a -- a ton of misdemeanors that you all --

A. Right.

Q. -- are handling, but is there any limitations for wanting to use an expert in a misdemeanor case as opposed to a felony case?

A. Nope.

Q. Okay.

A. I -- I say, "There are no small cases," and I say that to my lawyers who say, "I don't want misdemeanors." I'm like, it's important -- they're all important to the client.

Q. Step back, the policy procedure, when you want to -- to implement or promulgate is probably the improper word. But when you want to implement a policy in your district --

A. Uh-huh.

Q. -- what goes into that? Is it merely a decision based upon your judgment, and you send an

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e-mail to everyone and say, "Here's the new policy," or walk me through that.

A. Yes. Although, I -- I don't think I've ever implemented a policy with not -- without talking -- like I said, I have a pretty good relationship with upper management, and I appreciate their feedback and their thoughts about how things go. As well as, I don't want to -- I've not memorized every policy, local policy necessarily, and I certainly haven't memorized every MSPD policy, and it's good to know if there's a conflict. But I don't -- I've only -- aside from minor things, we're going to screen this person now, I've probably only implemented three probably major policies in my tenure. And that's first-time felon, vertical representation, I don't even know what the third would be. Maybe this -- the Rule 4. So to say that I'm implementing new policies all the time, I'm not.

Q. I guess my question is: Could you if you wanted to implement --

A. I think I probably could.

Q. Okay. And so those questions when you were reaching out to central -- to central management or upper management, that's just because you have that relationship and you want their input versus having to

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seek approval from them; is that --
A. Right. I think --
Q. Okay.
A. Let me think. I know when we went forward on first-time felon, in fact, my deputy who then became my supervisor tried to make it statewide, and it didn't become a -- a policy statewide. Other people opposed it. So I have a local office policy that didn't succeed statewide.
Q. And would -- could you tell me more about the -- the first time felony policy? And I'll ask about the vertical --
A. Sure.
Q. -- representation in just a moment.
But my understanding was that if someone is going to plead to a felony for the first time, and they're not currently a felon --
A. Uh-huh.
Q. -- they have to have a conversation with you first?
A. Correct.
Q. Is that a -- they have to seek approval? You have to say, "Yes, you may proceed," or is it just a conversation that --
A. Well, I do have to say, "Yes --

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Q. Okay.
A. -- you can proceed." And so I have a conversation. And largely, I ask them what they've investigated. If someone's going to trial, and it's the morning of trial, and the client says, "I want the deal," and we've investigated the case, that is the client's call. What I think we can't do is plead people to felon -- well, really, we shouldn't do it on any case, but first-time felon is the only one I have a policy on that and that I check. We should not be pleading people and saying we're competent counsel when we're not. Representing theirselves as competent counsel and standing there is a problem to me. Have we pled first-time felons that we've done -- not done work on? Well, historically, many. And more recently, yes. Some -- we've had judges order people to plead people, because the client says, "I want it." What -- what we've done, generally, is if a client wants it, and we've done no work, we've asked to move to withdraw and let client plead pro se, which the Courts are really uncomfortable with; although, they're not uncomfortable with us saying we've done nothing on the case, and we're essentially a potted plant.
But that's -- the first-time felon was

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really to keep us from making people felons who don't -- you know, making a decision either to get out of jail or some -- because often, first-time felons get probation office -- offers, and they really want to get out, and getting the protection of a lawyer who's not really a lawyer. You know, we're not meeting any of our ethical standards there either, so --
Q. And then vertical representation, I presume that's from beginning to end --
A. Uh-huh.
Q. -- of a particular case that was produced to you all?
A. Right. When I started, we had docket attorneys -- we had vertical representation on serious cases only, and we had docket attorneys. So if you had a tampering case and, you know, stealing of a car, you would get a separate lawyer at prelim, you'd get a separate lawyer at the -- and "separate" meaning they represented everybody on that docket, so 20 to 30 people. So -- who you were supposed to have read their police reports and have a client relationship with, and that attorney wasn't entering. So you'd get a separate lawyer at prelim, a separate lawyer at the settlement conference, a separate lawyer at

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arraignment, a separate lawyer at the second settlement conference that generally happens, and then the case would be assigned after you got sent to a trial division, which -- so you would have gone through a handful of court dates, probably four months to eight months of representation without a single lawyer entering, very little investigation. Hopefully you got police reports. And so what I did is said, "You're going to assign this person from beginning to end," which is what the ABA guidelines say, and it's really the only sensical way to practice.
Q. Do you have a sense for whether most districts or any districts that you're aware of outside of District 16 follow the vertical representation as opposed to horizontal or --
A. I think all of them do. I mean, in most rural counties, you have one lawyer per county, so whether it be by intention or by convenience, that attorney is going to follow every case in that county from beginning to end. I would -- ours was one of the last offices to have docket attorneys. And that was in 20 -- I mean, we went vertical in 2012, so we've been vertical almost five years.
Q. Returning to experts, and -- and those funds utilized for them, is there a time-keeping or

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time tracking system for the use of experts?
A. I'm not sure the -- that we're tracking their time?
Q. Yes, ma'am.
A. Well, they are supposed to bill by the hour. When we do a request, in the request, we are supposed to put the expert's hourly rate in their estimates of hours. And if they need more hours, we are supposed to do an updated request that talks about approximate hours. The request should have their hourly rate. I mean, if we're talking about testimony, sometimes testimony is a different rate for certain experts, things like that. All of that should be in the request.
Q. And does your office -- or do you maintain a list of potential experts for your attorneys, or is that a burden on the actual attorney to research and find an expert?
A. Well, we have -- we have an expert witness database for experts we have used. Obviously, I don't -- I mean, I wouldn't recommend just pulling any old person off that, because the -- they may not have testified well. But then sometimes, I think you can contact the money people and say, "Who has used these experts?" So you can get in communication with them

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of whether they would be a valuable expert or not.
Q. Was there ever a time -- were you -- were you, personally, ever coerced into utilizing an expert when you thought you did not need one?
A. No.
Q. Have you ever coerced any of your attorneys into utilizing an expert when they thought they didn't need one?
A. I would hope not. I mean, I talk to my lawyers pretty much every appraisal, and almost every time, my suggestions are, you know, look into what experts are out there, because so many of my lawyers use so few experts.
Q. Switching gears again, does your office oversee the collection of funds that are outstanding, or is that a central office mechanism?
A. Fee funds?
Q. Yes.
A. No. I mean, I don't. I -- upper management, I believe, has a system. I don't.
Q. Okay. So the districts do --
A. I personally -- yeah. We don't take checks. We don't -- that would be a nightmare.
Q. In your office currently, are you all tracking time for particular tasks in -- in cases?

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A. Currently, no. Have we for years? Yes.
Q. Did you have a sense for when that began and ended?
A. No. I really don't. I mean, it's been in the last five years, I think. But I don't -- we spent years time tracking. I don't recall the -- I -- not at all.
Q. When you were tracking time -- well, two steps back: As a district defender -- well, before you were district defender, pardon me, and that -- was that 2011?
A. Uh-huh.
Q. Did you track time before that?
A. For periods, yes.
Q. Okay. And in the most recent period after you were district defender, and you were tracking time --
A. Uh-huh.
Q. -- do you know if that was by charge, by case, by criminal defendant, by task?
A. So when you tracked, you went in, and there was case specific and not case specific, and I think there was administrative. So if you were doing work on a particular client's case, you tracked that. If you were waiting in court at a docket, that's hard to

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track to a specific case. If you did administrative tasks sometimes -- some of them could be tracked to a case; some of them could not. So you'd go in, you'd select that, and then under that, you'd select, you know, whether you were doing investigation on a specific case, whether -- I mean, I did a lot of -- I have a lot of -- I mean, a lot of what I do is talk to people about stuff most of my day, so I do a lot of, like, general management that sort of thing. But some of it fairly got specific. I mean, we had to -- we had a special database we went into to track.
Q. Do you recollect if there was any, like, type of time management controller or any type of control or monitoring of how individuals were entering their time?
A. I'm not exactly sure what you mean.
Q. Yeah. Was there a dedicated position in your district in your experience to someone managing the -- the time that people said that they were doing? So in other words, was there any oversight to the timekeeping?
A. No. I -- I mean, if anything, I was always of the opinion my lawyers underreported because timekeeping was fairly arduous, and I don't know many of them said, "Well, I could be working on more cases

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if you didn't make me track time." So I never worried about over-reporting. I did worry about under-reporting because I felt like a lot of my lawyers were doing work that they weren't tracking because they would -- the input took a lot of time.

Q. Do you remember if that time system, that time tracking system -- and forgive me if -- if you answered this already -- if it tracked by a particular charge. So a felony A, I put -- I put in this much work on a felony A versus a felony B as opposed to --

A. I think it did.

Q. -- this criminal defendant?

A. I -- I think -- well, I think you track by client and case number, because you could do it -- you could input it, and you could also go to the client's case, and then hit the button to add hours, and it would then specifically put in that case. Now, if there was multiple counts within a case, that's a -- there's no idea what you could do, but I think you could do it both client and case specific. That's my recollection.

Q. Do you remember if there was ever a training on how to track your time, or was it a -- just something, an e-mail that was sent out that said, "Hey track your time from -- from here on out"?

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A. So I've tracked time multiple times, and I don't -- and because it's -- it's been several years, I don't really remember. I mean, I remember personally with my staff having it on the overhead and saying, "What do you think?" And constantly either looking it up or e-mailing somebody and saying, "What does this count as?" What -- you know, we did this. Does that count as this? Does that count -- how do we track that? There was a lot of resource that way. I don't -- I don't recall -- I don't recall there not being one. I don't recall there being one.

Q. Within similar types of cases, is it fair to suggest that different cases have different needs?

A. Sure, yeah.

Q. So a -- a criminal -- or sorry. A felony A is not a felony A is not a felony A, said another way?

A. Right.

Q. In your personal experience, is it typical for a criminal defendant to only be charged with a single count or a single charge?

A. It happens. You mean a -- one case with one count?

Q. Uh-huh.

A. It happens. I don't know what percentage that would be. It definitely happens in some cases,

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but we also have, you know, cases with 18, 35 counts. We -- I mean, the opposite happens a lot too.

Q. Is it more or less likely for a multiple-count criminal defendant to appear as opposed to a single-count defendant?

A. I feel like in Jackson County, more. But I also think Jackson County prosecutors really consolidate -- consolidate as much as possible, or that's what my attorneys want to believe because they think that their cases are not being counted fairly, but when you have -- and in -- so if you have a robbery, you're going to have an ACH. I mean, if there's a -- like, the ACA is everywhere, especially if there's any sort of gun around, so I feel like more often than not, we have multiple counts. Or you know, a burglary almost always has a stealing, because that's why it's a burglary. There are a lot things that go in pairs.

Q. Turning to the budget and how the budget operates with you as a district defender, I'm recalling that you testified that you -- there are various earmarks for how much money you can utilize for certain things?

A. Uh-huh.

Q. In your experience, have you ever run out

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of funds during a fiscal year and had to ask for supplemental funds from -- from upper management?

A. I've definitely run out of funds, and I've definitely said, "Hey, there's this going on. What do you want me to do?"

Q. And when that occurs, is it in a particular line item, such as by encumbrances or personnel?

A. Yes. Well, usually -- well, I personnel is -- I don't have a personnel budget. That's completely Central.

Q. Okay.

A. So small encumbrances are called local encumbrances, and I've definitely had issues with that. There's certain amount of billing that comes out of travel. Attorneys, investigators, people having to drive. I feel like I've definitely gone over that. There are -- there are some things I have more control over. I mean, If someone has to drive to prison and depose people, and there's a lot of travel going on, I have less control over that than I do over ordering supplies, say, like -- or we will get the cheap pens. So -- but I -- I'm cognizant of it. I mean, I look at it, and January 1, we'll be halfway through the fiscal year, and I'll look at where we're at and how much money we have in a given -- and I -- I

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notice when the new budget -- they send us a spreadsheet, and I always compare it to the old one, so I look at it, and I'm cognizant of areas where we've had problems.

Q. Now, when you send the -- so your supplemental request -- and I'm unsure if that's the appropriate vernacular.

A. Uh-huh.

Q. But would that go to the controller, and she would figure out how to proceed from there, or how involved in you -- how involved are you in that budgetary process after you submit a supplementary -- or supplementary request?

A. Well, it -- it is not that formal of a process. It's more like, oh, I think I'm screwing up. How bad is this going to be? So I've never -- I don't submit a budget. It's more of an allowance to me, you know. They're like, here you go. Here's your chunk of money. Stay within that, and it's more of a, like, I don't -- I'm concerned -- in more of an alert to, like, why is our office spending more money than you thought historically would -- we would, and how will that go. But I -- there is -- I don't have -- I've never done a formal -- formal request for more funding to my office budget.

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Q. How often would you say you run into that type of -- of snag, if you will, in terms of you looking at the -- your numbers and saying, I think we need a little bit more here? Is that an every year thing, or is that a --

A. I would say I -- we pretty much exhaust our budget every year.

Q. Okay.

A. Well, and, I mean, I know centrally they watch it, so if I have an overflow, that will be gone the next budget year, but it won't be -- you know, it will go somewhere.

Q. As the district defender, do you discern any type of difference between cases who are constitutionally mandated to take versus permissive ones?

A. I'm not even sure what a -- what would be permissive. I'd like to know if there was an option. I -- I mean, we -- we take criminal cases we get appointed. At my office, I don't handle -- I mean, all we handle are crimes, so have you -- if there's a permissive one, let me know. I have no idea.

Q. Speaking about the Chapter 600 conference --

A. Uh-huh.

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Q. -- when did you become aware that that particular section existed? Was it upon passage or --

A. I -- I think so. I mean, it seemed to be part of that, which killed -- because at the time, people were certifying offices based on caseload, so -- and again, this is my understanding of it, and if legally, I'm wrong, I'm wrong. But they -- it seemed to pass to undercut that certification, because the certification was -- whole offices were certifying based on these numbers, no one in my office can take a case. In Chapter 600.063, clearly it says it can't be the entire office. I mean, it was clearly designed to sort of undercut that process.

Q. So you had potentially knowledge of the passage from that -- and I believe that was the 2012 --

A. Uh-huh.

Q. -- 2013 area up until present?

A. Right.

Q. Are you familiar with that statute?

A. Pretty -- I mean, I can't recite it to you, but I'm fairly familiar.

Q. Before the two motions that you filed under that Chapter --

A. Uh-huh.

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Q. -- had you -- have you -- had you ever utilized that chapter before or that particular section before?

A. No. And honestly, I -- I'm only filing because the judges want me to. I don't think it's relevant for -- under Rule 4 at all, so I mean, I -- one, I -- I think it's a trick statute that's not meant to really provide us any relief. And two, I don't think it encompasses our duties under Rule 4. The standard is ineffective assistance of counsel, which doesn't talk about the competence, diligence, and I think it's unconstitutional. I think it's -- I think that saying that only public defenders cannot -- cannot put limits on their caseload is -- it's disgusting. I mean, to say that my license isn't any more worthwhile than yours; and somehow, there's a carved exception that allows me to not have caseload control, when every other lawyer has that -- so I'm aware of it, I think -- I don't know. Okay. I'll step off the soap box for you; okay?

Q. Was that a -- a decision that you made to not foresee it under that statute, was that based upon your experience and your understanding of that statute, or were there conversations with other district defenders, with upper management concerning

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whether or not you should you utilize that particular --

A. Well, Chapter 600 says it's based on caseload standards. The assertion I made is based on the rules of professional conduct and my lawyers asserting -- plain reading, it didn't seem to apply. I know the judges -- when I went around, the judges were like, well, we think this is it. And I was like, how does that encompass our concerns under Rule 4? It doesn't meet them at all. So I think I probably had multiple discussions with different -- I think -- I think office-wide, one, it's -- it's -- having filed under it, I didn't even know where to file. It just says, "File something with the circuit court." Well, is it a criminal case? Is it a civil case? It's -- it's a very confusing statute. But where it is clear is that it's based on caseload standards, which is not what I -- I've been asserting under my Rule 4 concerns.

Q. And is that understanding what led you to proceed the writing letters and communicating in other ways outside of that statute?

A. Yes. And I will say, before I sent that letter to Judge Torrence, I met with him personally and said, "Hey, if you have other suggestions, let me

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know." I didn't just send him a letter and be like, "Hey, we don't take cases Monday." I met with him probably a week prior in his chambers and had a discussion to just say, "Hey, I'm -- I'm reaching capacity." The only reason I wasn't at capacity is I had three attorneys who had started the month before, and were like, "No, we still -- we're still fine." I'm like, "Great. We'll assign you" -- I mean, they were getting every case because I had 30 lawyers who said they couldn't take any. So I filed well after a number of offices, because I couldn't intellectually -- I couldn't honestly say that we were at overload until every lawyer said they were there.

Q. What were some of those suggestions that were made by the Court when you went in and had that conversation? Was it, "Hey, write a letter and -- and stop taking cases on" or --

A. No. He didn't say much, other than he said, "I think this is self-inflicted because you have vertical representation. I think that's increasing your caseload." And -- and Judge Torrence tells me that he all the time. He didn't -- he didn't practice -- he practiced in the eighties, and they did -- had docket attorneys, and he felt like -- and that's what the prosecutor's office does, even though

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they don't have the same ethical obligations under Rule 4 I do, and he -- that's what he -- he basically was like, I -- I think you're full of it, and -- was not all that concerned about my lawyers and their ethics. Let's say that. Well, and then he was annoyed. I can't believe Fisher said that. I can't believe -- you know, he was just, you know, talking out of his rear end basically. You know, basically saying that, "No, Fisher said that on the record, and I have to -- you guys are blowing it up into something it shouldn't be, and I don't -- and now, I have to deal with it." He did not offer solutions. Let's say that.

Q. Have you in your career with the public defender system ever been judicially determined to have provided ineffective assistance of counsel?

A. No.

Q. Have any of your attorneys that have worked -- that you have supervised, have they been judicially determined to have provided ineffective assistance of counsel?

A. Yes.

Q. Do you have a sense for how many?

A. No, I don't. I -- I don't know. I don't have a sense for how many. I mean, I -- it's not

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50 percent. I mean, it's probably one a year.

Q. And I apologize, I'm going to be jumping all over the place. I'm going to be doing coverage to complete --

A. Sure.

Q. Earlier, you testified that forensic testing was one of the areas where it was denied a request for --

A. Uh-huh.

Q. -- for an expert. Are there any other examples of, I guess, categories that tend to get rejected?

MS. SHIPMA: And you're talking about from her office; right?

MR. RAMSEY: Yes.

A. Yeah. I don't know statewide, obviously. Well, I've had some experts, specific experts that people wanted that they were like, can you get cheaper? Can you get -- I'm -- I can't think of any right now.

Q. (By Mr. Ramsey) Now, turning to the exhibits very briefly. I'm looking at exhibit that Plaintiffs have marked as 2, and it's entitled, "Duties under Missouri v. Frye"?

A. Uh-huh.

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Q. Do you remember receiving this document, or did you receive this document?
A. I assume I did. It's sent to me. Do I remember receiving it? No. I mean, it was sent to me in, I don't know, 2013; right?
Q. And presumably, the last time you saw this was whenever you had presumably seen it before?
A. Yeah. Or I mean, I may have forwarded it to the office. We may have discussed it at staff meeting. I don't -- I mean, I haven't pulled it out recently.
Q. Turning to Exhibit 3, what's been marked as Plaintiff's Exhibit 3 --
A. Uh-huh.
Q. -- it was already mentioned, but you did not draft this letter, did you?
A. No.
Q. Were you involved in drafting this letter at all?
A. No.
Q. Did you have any knowledge beforehand that this letter was being drafted?
A. No.
Q. Turning to Plaintiff's Exhibit 4, did you have any knowledge that this was being drafted?

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A. No.
Q. Were you involved in the drafting process for this?
A. No.
Q. Were you consulted in any other way in the creation of that document?
A. I don't believe so. I mean, Pamela is someone that I do know who I chat with occasionally, but I don't have any recollection of talking to her about this.
Q. Okay. Turning to Plaintiff's Exhibit 6, so skipping over 5 --
A. Uh-huh.
Q. -- you were not familiar with the Missouri Coalition for the Right to Counsel's decision to draft this letter, were you?
A. The -- this, I'm not as sure. I mean, there was a point when Joel sent something out and asked for input, and I don't know -- honestly, I don't know if this is it or not. But it had to do with counsel. It may have had to do with this letter; it may not have.
Q. Have you had any other conversations with MCRC?
A. Well, MCRC really isn't -- there's -- the

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guy who administrates it is -- he's officed in Saint Louis, and I'm not remembering his name. I don't know if it's in here.
MR. WILLIAMSON: Sherrer?
THE WITNESS: I'm sorry?
MR. WILLIAMSON: Sherrer?
THE WITNESS: Yeah. Michael Sherrer.
A. So Michael occasionally e-mails me just, "How many cases have you sent? What stage are things in?" Shook had their first two trials in the last month, and I think I e-mailed him, you know, their first trial went this way, something along those lines. I don't -- I don't -- it's not -- there's not, like, this corporate entity that reaches out. I mean, the e-mail, itself, is from Joel Elmer, who's our deputy director, so I -- Joel communicates on a regular -- he sends me all his old E-notices almost every other day so -- so I'm not sure -- I -- I guess I don't know what you mean by, "communicate with MCRC."
Q. (By Mr. Ramsey) Sure. I was unclear, but I'll move on.
A. Sure. Okay.
Q. It's not a big --
Shortly after, I believe it was the

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Hinkebein decision --
A. Uh-huh.
Q. -- where the district defenders met and I believe it was some type of a conference --
A. Uh-huh.
Q. -- or a conversation?
Did I understand your testimony correctly to suggest that central office didn't provide a -- a list of, "Here are the three or four different things you can do to manage your -- your caseload or workload concerns"?
A. I wouldn't say -- I mean, they -- I think there was a presentation about what are the coverage of a Rule 4, what are the caseloads, stuff that talks, I -- there wasn't a directive that, you have to do these things and these things. There was -- there's, like, a sample Bar complaint against Michael Barrett if -- you know, if people wanted to do that, but it wasn't -- there wasn't a directive. In 2012, when people were being certified, there was a directive of how you were supposed to do it. You were supposed to meet with judges in a certain way. You're supposed to do these things. Your numbers had to be this level. There wasn't anything like that. But was it a large part of discussions at the management conference?

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Certainly.
Q. And that discussion was amongst the district defenders --
A. Uh-huh. And --
Q. Or was it across --
A. Yeah. There were -- I -- there were presentations on it. There were district defenders that talked about it. We had small groups. I mean, people were very worried and upset about it. People were very concerned, and I was -- I mean, I was -- had -- before I went to the conference, I was getting -- I had multiple e-mails from my lawyers refusing cases, so it wasn't -- there was no way it wasn't going to be talked about.
Q. Again, I apologize for jumping around. I'm focusing on the second Chapter 600 motion that was filed on your behalf or that you filed.
A. Uh-huh.
Q. After that was denied, it's my understanding of your testimony that you did not appeal that particular denial; is that correct?
A. I have not. It was just denied a couple weeks ago, but yes.
MR. RAMSEY: Okay. I believe that's it for me.

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MR. WILLIAMSON: I have two follow-ups. Did you want --
MS. SHIPMA: I have some follow-ups too.
MR. WILLIAMSON: Go.
MS. SHIPMA: But I need to get -- I had Jillian -- or Gillian print out some documents for me --
MR. WILLIAMSON: Oh, okay.
MS. SHIPMA: -- for mine, so do you want to -- I'll just go off the record and go get those.
MR. WILLIAMSON: Sure. That's fine.
VIDEOGRAPHER: Off the record, 1:49 p.m.
(A brief recess was taken.)
VIDEOGRAPHER: On the record, 1:52 p.m.
EXAMINATION
BY MS. SHIPMA:
Q. Okay. Ruth, I have just a few follow-up questions for you.
When Mr. Ramsey was asking you about organizations you've communicated with, I -- I -- did you communicate with NACDL, N-A-C-D-L?
A. I did. Yes, I did. Well, Judge O'Malley asked me to participate a conference call, which I did. Sorry.
Q. And do you know what N-A-C-D-L stands for?

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A. The National Association of Criminal Defense Lawyers.
Q. Okay. All right. I just wanted to make sure that --
A. Yes, thank you.
Q. -- we had that on the record, because I knew you were forgetting that.
A. I was.
Q. And just -- do you know -- and if you don't know this, that's fine. I just want to ask. Do you know if there is -- if -- if failure to be -- to act diligently is the same as ineffective assistance of counsel? Are those the same standards?
A. My understanding is they're very different standards.
Q. And is that the same for not communicating regularly with your client under the ethics rules, is that the same standard as ineffective assistance of counsel?
A. No. They're different standard.
Q. Okay. Thank you.
(Petsch Exhibit 10 was marked for identification.)
Q. Now, I want to hand you what's been marked Exhibit 10. Can you tell me what that is?

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A. It's the first page of the Public Defender 18 CSR10-3.010.
Q. Flip it over.
A. Oh.
Q. It's on the back.
A. Thank you. That makes more sense. Guidelines for Determination of Indigence.
Q. And are you familiar with those?
A. Yeah. Again, I can't recite them, but if I go back to them -- and they're used regularly in my office.
Q. And who promulgates these? Are these created by your office?
A. No. Not by my office.
Q. Do you know who creates those?
A. I assume -- I guess that -- in my head, it was the legislature. I don't know if the commission does that or not.
Q. Okay. So if you don't know the answer to that --
A. I don't.
Q. -- that's fine.
Okay. But you have seen those before?
A. Yes.
Q. And you're familiar with those?

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A. Yes.
Q. And do those contain, as far as you are aware, the factors that are to be considered in determining indigency?
A. Yes.
(Petsch Exhibit 11 was marked for identification.)
Q. Okay. All right. So now, I want to hand you Exhibit 11, and I believe the sticker is on the front page of that one --
A. Okay.
Q. -- so you don't have to turn it over. Can you tell me what that is?
A. This is an application for public defender services and the promise to pay.
Q. And when you were talking earlier about determining indigency and making that determination in court or maybe it comes back to the office, is this the form that you were referring to?
A. Yes.
Q. Okay. Actually, I do want you to look at the back page of this document for just a moment. Do you see the section that's entitled "Acknowledgement and Promise to Pay"?
A. Yes.

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Q. And can you read the first sentence of that to me?
A. "I understand that lying on this application constitutes a crime."
Q. And is there a place for the applicant's signature and date below that?
A. Yes.
Q. So applicants know when they are filling this out that if they don't give correct information, that could result in their being further charged; is that correct?
A. Yes. They should know.
Q. At least they're put on notice of that?
A. Right.
Q. And do you believe that the people who are going over these applications with the defendants point that out to them?
A. Yes. Most of time, they read it to them, and then have them -- I mean, a lot of our clients are in cuffs, so they read the entire application and fill in the answers, and then have them sign.
Q. Okay.
A. They allow them to review it. They don't fill it out in secret or anything, but a lot of it's read.

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(Petsch Exhibit 12 was marked for identification.)
Q. Okay. Now, I'm going to hand you what's been marked Exhibit 12. Can you tell me what that is, please?
A. Instructions for determining indigence.
Q. Have you ever seen this document before?
A. I have.
Q. And what is this document used for?
A. It's basically instructions on how to figure out whether someone -- well, to take an application.
Q. And --
A. Or assistance in doing that.
Q. Is this something that's used internally rather than something that's given to applicants?
A. I don't think -- yeah. I don't -- I -- we do not give this to applicants.
Q. Okay. Look at the second paragraph. Can you read that second paragraph to me?
A. "If the applicant's income level is at or below federal poverty guidelines, there is a presumption of eligibility unless other factors such as assets indicate the ability to hire a private attorney."

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Q. And I apologize. That was my fault. I didn't realize that the paragraph I was intending for you to read doesn't really have a number on it, but it is the second -- if you look --
A. Oh, the second -- oh, not number 2. Sure.
Q. The first paragraph, not number 2. But the second paragraph.
A. "If the applicant is unemployed and receiving public assistance, he or she is eligible for services. No further inquiry need be made. This is true even if the applicant has posted bond."
Q. So that's a bright line; is that correct?
A. Yes.
Q. Now, let's look at paragraph number 2.
A. Okay.
Q. The one that's numbered 2 --
A. Uh-huh.
Q. -- that you read to me before. It -- does that implicate a bright line?
A. Well, it says other factors -- to me, it wouldn't, but I mean, it tells you what factors you can consider. If -- I don't -- I guess I don't -- if -- if you indicate -- call that a bright line or not.
Q. Okay. And then look at the paragraph

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numbered 3. Can you read that?
A. "An income level above federal poverty guidelines gives rise to a presumption of ineligibility" --
(Reporter admonishment.)
THE WITNESS: Sorry.
A. "An income level above federal poverty guidelines gives rise to a presumption of ineligibility unless individual circumstances such as debt level indicates an inability to hire a private attorney."
Q. (By Ms. Shipma) Okay. And I believe that that is also -- as I'm understanding these instructions, the only presumption, the only bright line presumption --
A. Uh-huh.
Q. -- is if you're unemployed and receiving some sort of public assistance, you're automatically eligible for services?
A. Right.
Q. In all other case, even if you're at the federal -- or even if you're at or below the poverty guidelines, you're not automatically presumed eligible for services. You have to look at these other factors; is that correct?

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A. Right.
Q. In your opinion, with your office, do your attorneys represent many people who aren't eligible for services who have the ability to hire private attorneys?
A. No.
Q. So there isn't this rash of -- of eligible -- or of -- of people who are able to hire attorneys snookering the system and getting our attorneys all bogged down in all their cases; is that correct?
A. That's not my understanding. I mean, most of our clients think it's -- they don't -- they think we're really bad lawyers, so if they have the ability to not have us represent them, they try very hard to get out of it.
MS. SHIPMA: Okay. That's all I have.
MR. RAMSEY: I have a very few brief follow-ups, if I can.
MR. WILLIAMSON: I do, but go ahead.
MR. RAMSEY: I can wait.
MR. WILLIAMSON: No. Go ahead.
EXAMINATION
BY MR. RAMSEY:
Q. Very briefly, questions concerning

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Defendant's -- or Plaintiff's 12. Where did this document come from?
A. Well, I think this was sent out, if I recall correctly -- they update the application, and they've updated it many times frequently, as well as how it should be looked at. I think it's been updated twice in the last two years. So I think it was sent out as an assistant, because it -- because some things -- there were other bright line tests that were -- like, it used to be if you maid made a $5,000 bond, you were ineligible. It didn't -- it didn't matter how poor you were or things like that. So with that, there's often sort of assistive documents that are sent out to help -- like, my legal assistants who do the bulk of filling this out, to help them come to the right conclusions, because I still have lawyers who I'm like, no, $5,000 doesn't -- that's not a -- that's not a consideration any more, but it was in our office probably for ten years. And the private attorney that we talked about, like, you -- we used to automatically disqualify people if they had a private attorney, and then that changed.
Q. And this is coming from central office?
A. Yes.
Q. Okay. And then just the second question

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and my last question, and I'll be done.
A. Uh-huh.
Q. Concerning how you would know the financial affluence of a particular defendant, how would know if there's not a control mechanism after the fact, or is that just your sense of -- of who's coming in and out?
A. Yeah. I mean, based on -- I mean, we have a number of people who are homeless who don't have phones that we can't contact. I guess they could lie about it. But we also have people who clearly haven't showered, who are missing teeth, who -- you know, I mean, we have a lot of people who, if you had funds, and you had the kind of funds that you could hold an -- have an attorney, you probably wouldn't be living your the life the way you are. You wouldn't be showing up for court. So I mean, there's some extreme poverty that people just wear.
MR. RAMSEY: I'm done.
MR. WILLIAMSON: Fewer than five minutes.
EXAMINATION
BY MR. WILLIAMSON:
Q. If the public defender's office determines that a person is not eligible for its services, can that decision be appealed by the defendant?
A. Yes.

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Q. To the trial judge?
A. Or to the -- I mean, the associates. Any -- really, any judge they're in front of, and it -- if they want us, it normally is.
Q. And is that the context in which judges end up appointing you, even to cases where you've determined that the person is not eligible?
A. Yes.
Q. Do judges make that determination even when there's not a formal appeal filed by the defendant?
A. Well, they -- they almost never file anything. They -- they walk up to the bunch, "Do you have a lawyer?" "No." "Did you apply for the public defender?" "I did, but they said I don't qualify," and then a lot of times, the judges go right into, "Well, how much money do you make?" "Why can't you afford someone?" It's almost always fewer than ten questions; a lot of times, fewer than five questions. And they almost always appoint us anyway. So I know the last time we were audited, the auditors asked me over and over, "Why did the judge even appoint you?" And I'm like, "I am not the judge. I have no idea." But we get appointed a lot.
Q. And do you ever find or do your lawyers ever find themselves in adversarial proceedings

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against indigent defendants who they then end up representing?
A. It's definitely happened. I mean, I -- personally, I'd move to withdraw. I was allowed to withdraw on a murder where -- we had two murder cases he bonded, and I ended up on the stand with him questioning me for an hour about policies. So it's certainly happened, and it's certainly bad for the relationship. But less so -- and I mean, I would say that our guidelines -- we have fewer bright line rules than we used to, and our guidelines don't -- you know, the bond isn't a rule any more. The private attorney isn't a rule any more, and those things probably provided more of the -- and truth be told, it -- you can say, "I have this," but ultimately, the judge can appoint you anyway. Unless you're going appeal that appointment or you're going to writ the judge on it, there's not much we can do.
Q. And does your office ever take that route of appealing the judge?
A. We writted once. We had an attorney who I think the Friday before trial hired a private attorney, and they ordered us to stay on, and we writted the judge on that, and we were successful in that writ. Mostly because my lawyer is like, I'm --

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now, I'm not ready to try the -- but I don't -- I don't know that we've ever -- I -- I'm sure we have. I just -- in recent history, I don't know the last time we writted a judge on that.
Q. Final thing, you testified earlier that you've never had a request for a deposition denied?
A. I don't -- well, again, tweaked -- me, personally, have a request for a deposition --
Q. So let's start there.
A. I don't -- no. I don't think I've ever personally had a request for a deposition denied.
Q. And -- and you have never outright denied an applicant -- or a request from one of your attorneys for a deposition?
A. No. I mean, I've asked them to edit it, I've asked them to -- more information, to change things, but I've -- I've never just said, "denied" without -- I don't -- the only time -- the only denials I have are usually if they have a request that I've asked them to edit, because I'll have some denials come up in the computer, but it's generally because they then pled the case, didn't spend any money, and they did -- they didn't make the edits in a timely manner, so now, it's moved because the case is done, and I'll deny it. But I haven't -- I don't -- I

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have no memory of ever just outright denying a deposition request.
Q. And you -- and you've -- have personally never been denied an expert request either?
A. Not -- no. Not to my -- I don't ever remember that.
Q. And to your knowledge, none of the lawyers in your office have ever been denied an expert?
A. Well, they've had requests denied. I mentioned that forensic expert. And again, I'm -- things have been denied. It's usually due to cost. Now, the question is, did they then not get another expert that was affordable or something along those lines? And that, I don't know. If it's a flat -- I -- I assume you're saying, flat-out denial; now, I don't have an expert.
Q. Right.
A. That, I'm not as clear on.
Q. Okay. And is it fair to say that -- well, strike that.
You've also testified here today that you believe that your office ideally should be retaining many more experts than it actually does?
A. Yes.
Q. You also testified that your lawyers should

be taking many more depositions than they do?
A. Yes.
Q. Okay. So is it fair to say to that there are certain -- there are a significant number of requests for experts that simply -- that would be appropriate, but that are just not made?
A. Right.
Q. And is it also true that there are a significant number of requests for depositions that would be appropriate, but are not made?
A. Right.
MR. WILLIAMSON: That's all I've got.
VIDEOGRAPHER: Off the record. 2:08 p.m.
MS. SHIPMA: Read and sign.
(Deposition concluded at 2:08 p.m.)

CERTIFICATE OF REPORTER

I, Emily S. Hughes, a Certified Court Reporter within and for the State of Missouri, do hereby certify that the witness whose testimony appears in the foregoing deposition was duly sworn by me; that the testimony of said witness was taken by me to the best of my ability and thereafter reduced to typewriting under my direction; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition was taken, and further that I am not a relative or employee of any attorney or counsel employed by the parties thereto, nor financially or otherwise interested in the outcome of the action.

_____

Emily S. Hughes, RPR, CRR, CCR #1353

Alaris Litigation Services
1608 Locust Street
Kansas City, Missouri 64108

December 19, 2017

Ms. Jacqueline Shipma
MISSOURI STATE PUBLIC DEFENDER'S OFFICE
1000 West Nifong
Building 7, Suite 100
Columbia, Missouri 65203
In Re: SHONDEL CHURCH, et al., v.
STATE OF MISSOURI, et al.

Dear Ms. Shipma:

Please find enclosed your copy of the deposition of RUTH PETSCH taken on December 5, 2017, in the above-referenced case. Also enclosed is the original signature page and errata sheet.
Please have the witness read your copy of the transcript, indicate any changes and/or corrections desired on the errata sheet, and sign the signature page before a notary public.

Please return the errata sheet and notarized signature page to Alaris Litigation Services for filing prior to trial date.

Thank you for your attention to this matter.

Sincerely,

Emily S. Hughes, RPR, CRR, MO CCR #1353
Enclosures
cc: Mr. Jason D. Williamson

STATE OF)
)
COUNTY OF)

I, RUTH PETSCH, do hereby certify:
That I have read the foregoing deposition;
That I have made such changes in form and/or substance to the within deposition as might be necessary to render the same true and correct;
That having made such changes thereon, I hereby subscribe my name to the deposition.
I declare under penalty of perjury that the foregoing is true and correct.

RUTH PETSCH

Executed this day of , 2017, at .

Notary Public:
My Commission Expires:

Signature page to: Ms. Jacqueline Shipma

WITNESS ERRATA SHEET
Witness Name: RUTH PETSCH
Case Name: SHONDEL CHURCH, et al., v.
STATE OF MISSOURI, et al.

Date Taken: DECEMBER 5, 2017

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Witness Signature: _____

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Exhibit L

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
CENTRAL DIVISION

SHONDEL CHURCH, et al.,)
)
Plaintiffs,)
)
vs.) Case No.
) 17-04057-CV-C-NKL
STATE OF MISSOURI, et al.,)
)
Defendants.)

VIDEO-RECORDED DEPOSITION OF MARY FOX
TAKEN ON BEHALF OF THE PLAINTIFFS
DECEMBER 19, 2017

(Starting time of the deposition: 8:57 a.m.)

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(The original exhibits were retained by the court reporter to be attached to the original and copies of the transcript.)

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
CENTRAL DIVISION

SHONDEL CHURCH, et al.,)
)
Plaintiffs,)
)
vs.) Case No.
) 17-04057-CV-C-NKL
STATE OF MISSOURI, et al.,)
)
Defendants.)

VIDEO-RECORDED DEPOSITION OF MARY FOX, produced, sworn and examined on December 19, 2017, between the hours of eight o'clock in the forenoon and two o'clock in the afternoon of that day, at the ACLU of Missouri Foundation, Suite 1130, 906 Olive Street, St. Louis, Missouri 63101, before William L. DeVries, a Certified Court Reporter (MO), Registered Diplomate Reporter, and Certified Realtime Reporter, in a certain cause now pending in the United States District Court, Western District of Missouri, Central Division, between SHONDEL CHURCH, et al., Plaintiffs, vs. STATE OF MISSOURI, et al., Defendants; on behalf of the Plaintiffs.

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IT IS HEREBY STIPULATED AND AGREED by and between counsel for the Plaintiffs and counsel for the Defendants that this deposition may be taken in shorthand by William L. DeVries, RDR/CRR, a Certified Court Reporter and Certified Shorthand Reporter, and afterwards transcribed into typewriting; and the signature of the witness is expressly reserved.

* * * * *

MARY FOX,

of lawful age, produced, sworn and examined on behalf of the Plaintiffs, deposes and says:

(Starting time of the deposition: 8:57 a.m.)

VIDEOGRAPHER: We are now on the record. Today's date is December the 19th, 2017. The time is approximately 8:57 a.m. This is the video-recorded deposition of Mary Fox in the matter of Church, et al., versus the State of Missouri, et al., case number 17-04057-CV-C-NKL, in the United States District Court for the Western District of Missouri.

This deposition is being held at the St. Louis ACLU. The reporter's name is Bill DeVries. My name is David Doell, and I'm the legal videographer. We are here with Alaris Litigation Services.

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Would the attorneys present please introduce yourselves?

MR. MAUNE: James Maune for plaintiffs.

MS. ROSCA: Camille Rosca for plaintiffs.

MR. MOORE: Justin Moore for the Attorney General's Office.

MS. SHIPMA: Jacqueline Shipma for the MSPD defendants.

VIDEOGRAPHER: The court reporter please swear in the witness and we may proceed.

COURT REPORTER: Do you swear or affirm that the testimony you are about to give in this proceeding will be the truth, the whole truth, and nothing but the truth?

THE WITNESS: I do.

EXAMINATION

QUESTIONS BY MR. MAUNE:

Q. Morning, Ms. Fox.

A. Good morning.

Q. Have you had your deposition taken before?

A. I have.

Q. I'll just cover a few basic ground rules. If you could please answer your questions with a verbal response, not with hand gestures or head shakes.

A. Okay.

Q. We'll try and avoid talking over each other. I'll try -- and if you let me try and complete the question before answering, even if you can anticipate the answer, and I'll try not to talk over you by asking another question. Does that sound reasonable?

A. That sounds reasonable.

Q. If you don't understand one of my questions, please let me know and I'll rephrase or be more specific as necessary, and if -- we'll frequently take breaks during this as we need to, and if you could please answer any pending questions prior to the break.

A. All right.

Q. All sound agreeable?

A. Yes.

Q. All right. How did you prepare for this deposition today?

A. I met with Ms. Shipma yesterday.

Q. And who else was present?

A. No one.

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Q. How long did you meet for?
A. Maybe an hour.
Q. Did you review any documents in preparation for this deposition?
A. Not while she was present, but I did look at the case management database.
Q. Okay. Did you bring any of those documents with you today?
A. I did not.
Q. Did any of those documents refresh your recollection in preparation for offering testimony here today?
A. I don't -- I already knew the facts that were in them. I was just looking at the actual numbers.
Q. Besides your counsel, did you speak with anyone else to prepare to testify here today?
A. No.
Q. And can you please state your position?
A. I'm the district defender for the St. Louis City trial office of the Missouri State Public Defender System.
Q. And how long have you held that position?
A. Ten years.

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Q. And what was your position prior to that?
A. Prior to that I was in private practice doing contract work for the St. Louis city juvenile court representing parents who were facing the loss of their children in care and protection cases. And in addition doing some other legal work, mainly around juvenile court.
Q. And how long were you in private practice for?
A. So in that position I was there from 2000 until 2007.
Q. And what was your employment prior to the year 2000?
A. So from 1994 until 2006 I was the traffic commissioner for the 21st Judicial Circuit. That was a part-time job. So part of the time that was all that I was doing and another part of the time I was also handling the contract work.
And then prior to that -- or during that same time I should say I was also serving as a hearing officer for the St. Louis Metropolitan Police Department internal affairs division hearing disciplinary cases for the Board of Police Commissioners.

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Q. And prior to 1994 did you have any other legal jobs?
A. Yes. From nineteen eighty -- 1981 until 1987 I was a assistant public defender initially in the Clayton office and then in 1986 I transferred to the St. Louis City trial office. And prior to that I was an associate at a small civil firm named Kanefield, K-A-N-E-F-I-E-L-D, and Mohme, M-O-H-M-E.
Q. Okay. So you said from -- you testified that 1981 to 1987 you were an assistant public defender in the Clayton office. Did you have any legal jobs prior to 1981?
A. Yes. At Kanefield & Mohme.
Q. Okay. Kanefield & Mohme. And when did you start at Kanefield Mohme?
A. Right after I was sworn in. So October 1980.
Q. Okay. Great.
A. But I was in the Clayton office and the St. Louis City office. From '86 to '87 it was the St. Louis City office.
Q. And when you were at Kanefield & Mohme did you handle criminal defense?
A. No, I did not.

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Q. What type of practice did you maintain?
A. It was civil.
Q. Civil.
A. Small civil actions generally.
Q. Which counties are included in your district? That would be area 22, correct?
A. So the district covers the City of St. Louis.
Q. Okay.
A. Prior to July of 2017 we also handled conflict cases from the surrounding jurisdictions. And we still have many of those conflict cases pending.
Q. And so after July 2017 any new conflict cases are no longer handled by public defenders in the St. Louis City office; is that correct?
A. Unless the new conflict case is for a client that we currently represent in one of those conflict counties, then we get the new case also.
Q. We'll talk about conflicts more later on. How is -- how is your office organized? How many -- we'll start off with how many district public defenders do you have in your office, attorneys?
A. So there are 30 attorneys in the

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office.

Q. Okay. And do you organize by case team or do you have an assistant and -- and how -- are those attorneys broken up into different teams or are they just assigned individual dockets?

A. They are assigned to cases.

Q. Assigned to cases. And do you handle that assignment yourself?

A. I do.

Q. Do -- do you have any -- an assistant district defender in area 22?

A. I do.

Q. And what does -- do you task the assistant district defender with?

A. Currently she is -- it is Sarah Johnson is the deputy district defender.

Q. Okay.

A. And she is also MSPD's director of juvenile justice and policy. So she spends about 50 percent of her time on that responsibility. The other 50 percent of her time is spent training the new attorneys.

Q. Does she maintain a docket of cases?

A. She had a docket prior to assuming this position, and she is still resolving many of those

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cases. The hope is that she will not have a docket once those cases are resolved.

Q. Okay. Do you maintain a docket of cases?

A. I don't maintain a docket, but I have clients who have cases.

Q. Okay. Do you know how many clients who have cases that you handle in any given year on average?

A. I would say it averages anywhere between 15 to 30. Open at one time.

Q. Right.

A. So over the course of a year maybe 20 to 40.

Q. Do all -- so that would leave 28 additional public defenders in your office; is that correct?

A. Correct.

Q. And do all the public defenders handle felony cases?

A. Yes.

Q. And all of them handle misdemeanor cases?

A. Yes.

Q. And how do you assign juvenile cases?

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A. So Sarah Johnson was our juvenile specialist. She's been trained as a juvenile specialist. So we're in the midst of a transition. Prior to her assuming this new position the cases were assigned either to her or to another attorney who had been trained in juvenile.

We're now training an additional group of attorneys and I actually have a meeting today with those who are interested in becoming juvenile practitioners.

Q. So currently aside from Sarah Johnson, are there any attorneys that are specifically designated to handle juvenile cases?

A. Not only juvenile cases. So they would have juvenile cases, but also adult cases.

Q. Okay. And you're anticipating the number of attorneys trained specifically for juvenile cases to increase after further training?

A. Correct.

Q. And -- but you don't anticipate having any of those attorneys exclusively working on juvenile cases, it will be in addition to adult cases, correct?

A. Correct.

Q. Okay. How many of your attorneys

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handle probation revocation cases?

A. All of them.

Q. All of them.

A. Including myself.

Q. How many handle direct appeals?

A. We seldom handle direct appeals. There are times when there is a case that we lose at trial that we choose to keep the appeal ourself. I think we've done that three times in the last year.

Q. So normally in cases that your public defenders have handled, your representation would end after filing the notice of appeal; is that correct?

A. Correct.

Q. And then the appellate division would normally take over the case if it were to continue?

A. Correct.

Q. Correct. Are there any other types of cases that are handled by your office that I have not mentioned?

A. We've filed several writs that have come out of felony cases.

Q. Okay.

A. We have handled some unconditional release cases and we have handled some habeas cases

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as a result of mental health confinement. And then we also have a few cases that we classify them as either witness or possible case where someone comes and applies for services, but a case has not yet been issued.

Q. Okay. Trying to get a feeling for the experience level of the attorneys in your office. How -- how long is the most experienced lawyer in your office been practicing law?

A. So that would be me.

Q. Correct.

A. Since 1980.

Q. And then how about after you, who is the -- I guess the second most experienced?

A. That would be Matthew Waltz, and he has been practicing for 13 years.

Q. And then how long has the least experienced attorney in your office been practicing law?

A. So we have three attorneys who were just licensed in October. Or September. I think they moved it up to September.

Q. And how do the other attorneys fall in? Would you say the majority have more -- the majority of the rest of the attorneys have more or less than

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ten years of experience practicing?

A. Significantly less.

Q. Significantly less. Okay. When you're assigning cases, can you go over how when new cases come in your process for assigning them to the attorneys in area 22?

A. So when an application comes in it goes to a legal assistant.

Q. Okay.

A. And the legal assistant evaluates the application and does a Case.net search to find out more information about that case and about that person. Such as do we already represent them, do we represent a co-defendant, does that case -- that person have another case in which a private attorney is involved?

And then based upon the information in the application and that Case.net search, that legal assistant makes an indigence determination. Once the indigence determination is made, the application as well as the complaint or information or indictment and the Case.net entries is provided to me and then I assign off of a rolling assignment sheet.

Q. Do you base your assignment in part on

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the seriousness of the charges in -- in that case?

A. Yes.

Q. And do you also base your assignment on the experience level of the attorneys in your office that are receiving the case?

A. Yes.

Q. How about paralegals, how many paralegals do you have on staff in area 22?

A. None.

Q. None. How many investigators do you have on staff?

A. Four.

Q. Do the investigators work directly for the attorneys on a rolling basis as needed?

A. The investigators are assigned to cases. So if an attorney requests investigation that is assigned to one of the investigators, and then that investigator remains the investigator for that case for any future investigation.

Q. Are the investigators assigned to the case when the case is opened or is it assigned to the case on an as-needed basis?

A. On an as-needed basis.

Q. Okay.

A. It has to be done by a request from the

Page 20

attorney.

Q. Okay. How many administrative assistants do you have working in area 22?

A. How do you define administrative assistants? So I have them classified in different positions.

Q. Please discuss like how would -- how would your office, an employee that would handle administrative actions, I don't know if that's a clerk or what might have been a legal secretary or assistant --

A. So I have an office manager.

Q. Okay.

A. And then five of our support staff are legal assistants and three are clerks.

Q. Okay. So can you describe the responsibilities for the -- of the office manager?

A. The office manager takes care of all the budgetary issues in terms of approving bills for payment by the office in Columbia, does all the contact with the building in terms of maintenance, keeps track of people's comings and goings, and also does some docket management for our felony docket in circuit court.

Q. And your five support staff, how are

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they assigned? Are they assigned to work on cases?
A. No. They are -- the legal assistants and the clerks all have specific jobs, which include docket management if they're a legal assistant, and then secretarial support to attorneys. And then we have one clerk who does the file closing, the archiving of files and several other responsibilities.
Q. Are the -- who does the initial -- I guess if the right word is screening for indigency requirements, is that one of those five support staffs or three legal clerks?
A. It's one of the legal assistants.
Q. One of the legal assistants, okay. Are there any other employees that we have not mentioned that work in area 22?
A. No. One of our attorneys is classified as a JDMSW.
Q. Okay. What does the abbreviation JDMSW mean?
A. So he is an attorney, but he is also -- has a master's in social work.
Q. Oh.
A. So we transitioned an attorney position to that position so that we would have some social

Page 22

work services within the office.
Q. Does the JDMSW position carry a normal -- well, carry a caseload?
A. He carries the caseload of any of our clients who are currently in treatment or diversion court, as well as he assists the attorneys who are dealing with either mental health issues or mitigation issues for their clients.
Q. Can you describe your day-to-day responsibilities as district defender for area 22?
A. Combination of client contact, case -- personal case management, taking care of the administrative responsibilities in the office of authorizing payment of bills, approving E requests, assigning action items to investigators, speaking with attorneys concerning their cases, and working along with the circuit on circuit-wide issues.
Q. Do you attend trials or I guess observe trials for any of your district defenders for evaluation purposes?
A. I do.
Q. And do you -- are you in charge of approving encumbrance requests?
A. I am.
Q. Do you approve requests for depositions

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for --
A. I do.
Q. Do you approve leave for your office?
A. I do.
Q. I didn't hear mention, do you have a specific position as a human resources manager, or does that fall within your purview as well?
A. We have a human resources manager in Columbia.
Q. Okay.
A. But all of the hiring work that occurs in the local office, the deputy district defender and I do.
Q. Do you draft attorney performance reviews?
A. I do.
Q. And how much time do you spend on administrative tasks versus substantive legal work?
A. Can you define substantive legal work?
Q. So if you're working with clients themselves and their legal issues or working either for yourself, clients that you're handling or clients that your attorneys are handling as opposed to running and administering the office from a budgeting, a scheduling, a hiring, a performance

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review, that would be more administrative.
A. I would estimate 70 percent administrative, 30 percent client or legal.
Q. Do you have some discretion with respect to setting policies in your office?
A. Yes.
Q. What kind of policies do you have discretion in setting?
A. Dress code, coming and going, like office hours. Second chair expectations, things like that.
Q. Are these policies written down and promulgated to your employees or -- or in a -- in a set -- I'm aware that the public defenders office sends things out to the various offices that they want policies they want set. Do you have any subsequent set of policies that get promulgated to the attorneys in your office?
A. There's some local area policies that are available to all of the staff on the computer.
Q. And how are the policies in your office developed?
A. Through experience.
Q. If I use the term vertical representation, do you have an understanding what

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that means?
A. Yes.
Q. And do -- does area 22 currently utilize vertical representation for clients?
A. Yes.
(Exhibit 11, Previously marked exhibit.)
(Exhibit 12, Previously marked exhibit.)
MR. MAUNE: Produce previously introduced exhibits 11 and 12.
MS. SHIPMA: What did you say?
MR. MAUNE: I'm going to produce previously used exhibits that are marked as Petsch Exhibit 11 and -- give you a copy. And then Petsch Exhibit 12. Take a minute to review and let me know when.
THE WITNESS: Okay.
Q. (By Mr. Maune) I'll start with Exhibit 11. Is this the -- a form that area 22 uses to screen potential clients for indigency?
A. We've altered it a little bit.
Q. Can you explain how it was altered?
A. We put a really big arrow where it says applicant signature, and I think wrote something like you must sign here.
Q. Okay.

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A. And then I believe because we receive many of our applications by mail there was information added as to how to return the application to us.
Q. Okay. You've added mailing address for --
A. Yes.
Q. How do potential clients first get ahold of this form to complete if they're seeking representation?
A. So they can download it off the web, off the public website. They can request it from the court or they can request it from a social worker at jail or they can come to the office if they are not in custody and ask for an application.
Q. If the potential clients are in custody, does the jail mail or fax these back to your office for consideration?
A. We pick up mail from the jail daily.
Q. Okay.
A. With no postage requirement.
Q. Okay. And then one of the clerks reviews this form and makes a determination --
A. Yes.
Q. -- whether or not the potential client

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is indigent or not indigent?
A. Correct.
Q. And after this is completed, if they're determined to be indigent, a case would be opened?
A. Yes.
Q. And do you have an estimate of how many forms you receive that the case is determined that the potential client is not indigent or not qualified?
A. I do not have that figure off the top of my head. I would tell you that there are a number of cases that are initially denied for probation violations because the court has not yet made a due process determination, and then the person may eventually be -- the court may eventually make that determination and be accepted, but I do not have a figure for how many are denied.
Q. Does the court determination for due process violation put this determination on hold for determining indigency?
A. The indigence determination is made.
Q. Okay.
A. The eligibility determination is that they're not eligible.
Q. Okay. And do judges in area 22 assign

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your office to represent defendants even in cases where you've made a determination at least as to this form that they're not indigent?
A. They don't assign -- they don't appoint us on anything.
Q. They don't appoint you on anything.
A. We do have an indigence docket in which they consider the appeals of our indigence determination.
Q. And how often -- is it frequent that the indigence docket will determine that the potential defendant is -- is qualified for services from the public defenders office when a determination has been previously made that the potential client is not indigent?
A. So we have the docket about once -- we have it once a month.
Q. Okay.
A. And at each docket approximately five to ten applicants are determined to be eligible that had not previously been determined to be eligible.
Q. And on that docket or hearing of the five to ten that are determined to be eligible, how many were considered, estimate?
A. I don't understand.

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Q. How many -- how many potential cases for that docket are heard where five to ten --
A. Probably ten to 20. So about 50 percent of the cases.
Q. Okay. You previously stated you handle 15 to 30 cases open at any one time; is that correct?
A. Personally?
Q. Personally.
A. Yes.
Q. And are these particular types of cases that you handle?
A. They tend to be. I mean, there's not a preplan that this is the type of case I will get, but I tend to have the cases where there are serious mental health issues and there's questions of whether or not the person is competent to proceed, and because we have so few attorneys with experience I have a large number of homicide cases.
(Exhibit 28, Previously marked exhibit.)
MR. MAUNE: This has previously been introduced as Wallace Exhibit Number 28.
THE WITNESS: Do you want these back?
MR. MAUNE: You can keep them there. Wallace Number 28. Do you have that?

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MS. SHIPMA: Let me see. Yeah.
MR. MOORE: Thanks.
Q. (By Mr. Maune) Have you seen this document before?
A. I have.
Q. And what is this document?
A. The Missouri State Public Defender caseload crisis protocol that was issued in 2007.
Q. Did you participate in this commission study in any way?
A. The 2006 study? No.
Q. I guess you didn't start until 2007.
A. Right.
Q. Okay. On page five, if you can turn to page five, it lists attorney hours available for casework, and it comes up with a figure of 1,752 average available hours per attorney per year. Would you -- do you believe this is an accurate number of attorney hours for the attorneys in area 22?
A. The 2340 or the 1752?
Q. 1752.
A. And what do you mean by accurate?
Q. Do you find that your attorneys spend more or less than 1752 average hours per attorney

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per year on cases?
A. Depends on where the attorney is in their stage. So if it's an attorney who is trying a lot of cases they probably spend more than that. If it's an attorney who is brand-new they might spend close to that.
Q. And so the attorneys -- how long do you think -- back up.
How long do you think attorneys in your office would be prepared or trained to try many cases? How long do you think that process takes?
MR. MOORE: I guess I'll object to the form of the question, but you can go ahead and --
Q. (By Mr. Maune) Yeah.
A. And I'm -- I'm not certain I understand your question.
Q. So from when a new public defender starts as a one, how long before they are significantly trained and ready to handle a significant number of cases where you think they might be exceeding that 1752 number?
A. How long do I think they should be trained before they're significantly ready? About a year to 18 months. How long do they practice before they begin trying cases, often less than that,

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sometimes that amount of time. So we've had attorneys in their first year in the office try five, six, seven jury trials. In their first year of practice also.
Q. And do you find it common for attorneys in your office to work overtime or exceed the 1750 number?
A. Yes.
Q. Do you find it's common for them to work on weekends?
A. Yes.
Q. Do attorneys in your office receive extra compensation for either overtime or working weekends?
A. No.
(Exhibit 21, Previously marked exhibit.)
MR. MAUNE: I'm going to use previously marked Exhibit 21, although we're trying to give the previous copy we used. I'll produce both. Had a typographical -- the printout didn't go well, so it's the same document, but I have a better produced copy.
THE WITNESS: Okay.
MR. MOORE: Is this all the same thing?
MR. MAUNE: Yeah. It should be.

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MR. MOORE: Is this the same thing?
MR. MAUNE: It's the same. It's just the cover.
MR. MOORE: Okay. Oh, I got you. All right.
Q. (By Mr. Maune) Have you seen this document before?
A. Not in the complete form, no.
Q. Do you provide any information that gets incorporated into these reports?
A. Our database does. So we provide -- we put -- input information into the database, which is then used in these reports.
Q. Okay. I'd like to turn to page seven. It says title State Public Defender Cumulative Caseload Metrics Fiscal Year 2017. And -- and if I -- I look at -- there's a column that has District 22 listed, St. Louis City, and it states 30 attorneys. Is that accurate?
A. That's accurate.
Q. And it says -- this is for last fiscal year, right?
A. Yes.
Q. So for fiscal year '17. There were 4262 cases initiated. Does that appear accurate?

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A. It does.
Q. And has a number of new cases and then it comes up with a net case units. Do you see that? It says 89,515?
A. Yes.
Q. Do you know how that number or what -- or what the term net case unit means?
A. I believe it's the number of cases initiated minus the number of cases withdrawn from within the first 30 days times the RubinBrown metric for number of hours per case.
Q. Okay. And then there's a column that says -- it's third to the last, and it says capacity, and it says 62,400. Do you know how that number is calculated?
A. Number of attorneys times a number of hours per year.
Q. And does that number at least seem accurate?
A. Yes.
Q. And finally, it has a number or percentage of capacity and it's 163.5 percent. Does that -- do you understand what that's trying to portray?
A. That we are 163.5 percent of the

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capacity of 62,400 hours.
Q. Do you believe that figure to accurately portray the workload for your office?
MR. MOORE: Just object to the form of the question. I think it's pretty vague. Subject to that, you can respond of course.
A. We're overloaded, so it accurately portrays that, yes.
Q. (By Mr. Maune) Okay. Do you receive reports quarterly that would show the district defender this figure for their particular office?
A. No.
MR. MAUNE: This would be the first new document, so it would be Fox 32. I'm introducing what is identified as Public Defender document Bates number 0039426. It's titled Order Concerning Probation Revocation Hearing.
(WHEREIN, Exhibit 32, Order Concerning Probation Revocation Hearing, was marked for identification by the Court Reporter.)
Q. (By Mr. Maune) Are you familiar with this form?
A. I am.
Q. Can you please explain what it is?
A. We call it the due process order that

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the 22nd Judicial Circuit uses to make a -- to notify us of a determination they have made whether or not the defendant in a probation violation hearing is entitled to counsel.
Q. And did you have a role in creating this -- this form?
A. I did.
Q. And can you briefly explain how the process works for using this form?
A. If a judge has a probationer who he would like to call before him for a violation of his probation conditions, the judge makes a determination based on one of the factors included in this form as to whether or not that probationer needs counsel. And then files this form in the probationer's case and sends it to our office.
Q. And the judge that is filing this form or -- or using this form does so without at least initially the public defender reviewing the form, so the -- so the judge would have the case come in that they have a probation -- or that they want to consider revoking the probation, they would look at the facts of the case, the judge would complete this form, and then what happens to the form after that?
MR. MOORE: Also object to the form of

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the question. I think it's compound and vague. Subject to that, you can respond.

A. So hopefully they send it to us.

Q. (By Mr. Maune) Okay.

A. And if we have an application from that probationer and we have determined that they are indigent, then we would assign an attorney to the case who would enter their appearance.

Q. And you would only assign them an attorney if one of the boxes is checked in the upper portion of the form under label one; is that correct?

A. Correct.

Q. So if -- is it any -- would you only -- would the -- would you assign an attorney if any one of the boxes is checked or could there be multiple boxes checked or -- I mean, I assume it could be that the defendant does not appear to -- capable of speaking effectively and they made a timely or culpable claim. It just has to be one of these; is that correct?

A. It's usually just one, but it can sometimes be more than one.

Q. If -- does -- are there any times that you receive this form from a judge where one of the

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boxes is checked below, but the facts of the case suggest that the person on probation should have an attorney present?

MR. MOORE: Also objection to the form of the question. I think that's vague, argumentative, calls for speculation as well. Subject to that, you can respond.

A. So we wouldn't have contact with that probationer to know that fact. If we are representing the probationer on another case, we may then bring this to the court's attention that we would like them to make a due process determination, but if the person has just a probation revocation, we wouldn't know about it.

Q. (By Mr. Maune) Okay. So you wouldn't -- you wouldn't know about it because you wouldn't have received an indigency request from them yet or --

A. Well, we may have received an indigence request and we would -- if we did not have this form with one of the boxes in number one checked, we would tell the applicant to speak to the judge about whether or not due process requires counsel. And we would initially turn them down, not because they're not indigent, but because they're not eligible.

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Q. On the first line in the first box it says (quote as read):

Defendant is currently on an SIS probation which the court may revoke.

Can you explain what SIS probation is?

A. Suspended imposition of sentence, so the court has not given the person a sentence. There's been no formal sentencing of the probationer.

Q. Okay. And then in the boxes in box two below it has the term SES. (Quote as read):

Defendant has an SES and agrees that he violated his probation.

Can you please explain for the record what SES is?

A. Suspended execution of sentence where the court has imposed a sentence but has not yet executed it. So there would be a term of years or a fine or a term of days which the court has imposed but has not executed.

Q. How did you come up with the different conditions for I guess blocks one and two?

A. I didn't come up with them. Judge Julian Bush and Judge Philip Heagney are the two who actually created the form, and they created the form

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based upon the case law.

Q. Has this form ever been challenged subsequently to its use?

A. No.

Q. And how long have these forms been in use for?

A. The initial one was created in 2012 after the Waters hearing. It was a little bit different at that time because at that time we were also limiting probation violation cases being accepted for other reasons.

Q. And what was area 22's policies prior to the Waters decision?

A. On probation violation cases?

Q. Of probation violation cases.

A. That if the person applied and was indigent, that we would enter an attorney's appearance.

Q. And then subsequent to the Waters decision?

A. Well, it didn't just come from the Waters decision. It came from the change in the statute in terms of what cases were eligible for public defender representation. So when 600 I think it's 046, 042 was changed, then this was consistent

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with that.
Q. To your knowledge, do any other areas use either this form or a version of this form in making decisions regarding probation revocation hearings?
A. I don't know. I know we have provided it to judges in other circuits when we have been asked to handle conflict cases in those circuits that were probation violations.
Q. Has the -- the implementation of these procedures with using this form and the initial determinations reduced attorney workload for area 22 public defenders?
A. So prior to the use of this form we opened approximately a thousand probation violation cases a year. After this form was implemented that number was reduced to about 500. It has slowly crept back up, and I believe now we're on pace to open probably 750 to 800 probation violations a year.
Q. And when the number of probation violation cases that you have opened this year is creeping up, do you have a sense whether that's because more defendants have a right to an attorney and according to this determination or is it just

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the number of cases that the courts are seeing are going up?
MR. MOORE: Just object to the form and also to the foundation, I think calls for speculation, but you can go ahead.
A. I think it's a combination of two things. One is that we've had a substantial number of experienced judges retire and the judges who are newer to the bench would rather have an attorney there, and then also because the number of cases has increased.
Q. (By Mr. Maune) Do you have any way to monitor the outcome for probation revocation hearings for cases in which attorneys are not assigned?
A. No.
(Exhibit 1, Previously marked exhibit.)
MR. MAUNE: I'll introduce what's been previously introduced as Petsch Document 1.
MR. MOORE: Can I get a copy of that probation form, not now necessarily, but at a break or something?
MR. MAUNE: Yeah.
Q. (By Mr. Maune) Have you seen this document before?

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A. No.
Q. Having reviewed the con -- the content of it, does this document specify the minimum client contact times promulgated by the Missouri Public Defenders Office?
A. Yes.
Q. Do you monitor client contact time for the attorneys in area 22?
A. I don't monitor on a daily basis, no. The attorneys are aware of the client contact requirements. When they're reviewed for appraisal I review their -- some of their cases randomly, but I do not look on a daily basis to see if they are meeting this requirement. If I have a complaint from a client about lack of contact, then I would review it.
Q. What do you consider a qualifying contact? And I'll start off with a client that's in custody.
A. Seeing the client in jail.
Q. And how about a client that's out of custody?
A. Seeing the client either in office or for a meeting. Sometimes we go to their home, but generally it would be in the office.

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Q. To the best of your knowledge, do the public defenders in area 22 meet the expectations that are delineated in this memo?
A. No.
Q. And do you have an idea why they cannot meet these limitations?
A. Because the amount of time they spend either in court on cases that are before the court or in preparation for cases that are assigned out to trial or in other client contacts, it's -- it's not possible.
Q. Do the -- for the -- for the clients that are in custody, is there a confidential place in the jails that are in St. Louis city for the attorneys to meet with their clients?
A. There is a place. The jail has deemed it confidential, but it is not confidential.
Q. And to your best of your ability, why is that place not confidential?
A. So we have two jails in the city of St. Louis. One is the St. Louis City Justice Center. And the professional visiting booth there, you can hear what is being said in the booth either outside in the social visiting area or inside in the cell area depending on which side you're on.

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So you can either hear what the defendant is saying or what the attorney is saying. There is also a space for contact visits, but the jail staff has access to those contact visit rooms and can listen in to those contact visit rooms.

In the other jail, which is the St. Louis medium security institution, the -- there are two professional booths that have been there for a significant period of time and directly behind them sits a correctional officer from the jail who can hear everything that is being said, as well as a number of other defendants who are waiting to see their attorney.

That's in the two good booths. In the other booths you're literally talking through cardboard and there can be eight or nine attorneys in there at one time. And so you can hear anything that anybody is saying.

Q. Is there a way for an attorney who is not at the jail to contact a client in custody via a phone?

A. It -- it happens on rare occasion where you can reach their social worker and set up a phone call to the social worker's phone.

Q. The social worker that's in the prison?

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A. The jail social worker, yes.

Q. Okay. Do the clients in custody have an ability to call their attorney from jail the opposite? So one is the attorney calling in and --

A. No.

Q. They don't have any way to contact their attorney?

A. No.

Q. And is that due to cost or just they're prohibited from using any form of communication?

A. The phone system is set up so it will not ring into our office.

Q. So will it ring into -- so will the phone system in the jail ring into other attorney -- private counsel office?

A. Yes.

Q. But it's -- so what you're saying is there's a technical limitation on the phone system that prohibits phone calls from either prison --

A. Jail.

Q. -- either jail in St. Louis city from ringing into the area 22 office?

A. It's not technical. It was done -- I mean, it's done technically, but it was done on purpose.

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Q. And have you communicated this issue with jail supervisor or --

A. We requested it.

Q. Oh, you requested it.

A. Yes.

Q. And what was the purpose of the request?

A. The phones rang nonstop with persons calling in with the exact same question, and it took an entire support staff person's day simply to answer those phone calls, and as a result no other phone calls could get into our office and attorneys could not use the phone system to make calls out because the phones were clogged from the phone calls from the jail. And there was no limitation in the jail as to how often a person could use the phones.

Q. Oh. So the -- there was -- there's no limitation to how many times they could call and keep calling your office, so the phones would -- before the -- the limitation was put in place would literally be ringing off the hook with or clogging all the lines?

A. Yes.

Q. While your support staff try and manage who the calls are going to or deal with the calls?

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A. Correct.

Q. Do you know if any other district defenders have implemented similar procedures?

A. I don't believe so, but I don't know for certain.

Q. If -- if a -- an attorney in your office is calling to reach a client that's incarcerated and it's set up by a social worker, is that phone call confidential?

A. No.

Q. And why not?

A. The social worker is present.

Q. Do you know if anyone else is present during that call?

A. Not to my knowledge.

Q. Do you know if that call is monitored at all by the jail?

A. It's not on the jail monitoring system. It's on the private line -- not a private line, but a jail line.

Q. Okay. Does area 22 have any procedures in place for dealing with immigration consequences for criminal charges for your clients?

A. So we do education on immigration issues on a regular basis, and we have contact with

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Catholic Legal Assistance Ministries, which is located at Saint Louis University Law School, and their immigration attorney provides assistance to us for our clients at no cost.

Q. How would immigration issues arise with dealing with your clients or your attorneys' clients?

A. They could have collateral consequences of deportation.

Q. And how available are these legal assistants or -- are there attorneys at Saint Louis University that help you out?

A. Yes.

Q. How available are they to help?

A. They're pretty good about returning calls, and they've also provided us with an educational document that we have available for the attorneys.

Q. How often do immigration issues arise for your clients?

A. I would probably say less than five percent of the cases.

Q. Do you have any interpreters on staff at the public defenders office?

A. No, not on staff.

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Q. How often do you have a need for interpreters when dealing with your clients?

A. Not that frequently. I do have one attorney who speaks Spanish who is new to the office who I'm attempting to assign some of the Spanish speaking clients to. I would say ten to 15 clients a year are in need of interpreters.

Q. And are there any other languages other than Spanish that you encounter for clients in your office?

A. Bosnian, Vietnamese. We've had some African dialects that have been difficult to find interpreters for. Those are the main ones.

Q. And if you have a client that comes in that speaks Vietnamese, do you -- do the attorneys submit a request to -- to get an interpreter to be able to prepare the case?

A. Yes.

Q. And how often are those requests approved?

A. They're always approved if they're made.

MR. MAUNE: Okay. We've been going about an hour. Good time for a break?

THE WITNESS: Sure.

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MR. MAUNE: All right.

VIDEOGRAPHER: The time is 9:58. We are off the record.

(WHEREIN, a recess was taken.)

VIDEOGRAPHER: The time is 10:09. We are back on the record.

Q. (By Mr. Maune) I'd like to talk about initial hearings for a little bit. At what point is a defendant first brought before a judge?

A. For the initial hearing, which is usually 24 hours after they are booked on a case. It can be longer than that if they're booked on a Friday night or Friday day.

Q. And are they -- if they are indigent, do they have a defendant representing them at this initial hearing?

A. They do not have an attorney at the initial hearing.

Q. Is bail set at this initial hearing in area 22?

A. The bail already is set at the time that the warrant is issued. So when the case is issued it is taken to the judge who is on duty to sign a warrant and to set bail.

Q. And does the judge use a bail schedule?

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A. No. There's no official bail schedule. There is some informal bail schedules for certain crimes.

Q. Can the bail amount be changed after that point?

A. Yes.

Q. And how would that bail amount be changed?

A. By a motion to review the conditions of release.

Q. And is that motion filed after the initial hearing?

A. Yes. If the person had an attorney it could be filed at that point.

Q. Right.

A. So some private counsel make requests at that point.

Q. Can defendants plead guilty at their initial hearing if they're unrepresented?

A. No. They can't plead guilty even if they're represented at their initial hearing.

Q. Okay.

A. Or they could. There just wouldn't be anybody paying attention to it.

Q. Are all these initial hearings live or

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are any done by video?
A. They're all done by video.
Q. They're all done by --
A. With the exception of sometimes if there is someone who is clearly mentally ill the court tries to bring them in to court in person.
Q. Who makes the determination that the client is clearly mental ill?
A. Evidently there's communication between the jail and the court. And it doesn't happen very often.
Q. So at what point after this initial hearing does your office get involved with a case?
A. After we receive an application and determine that the person is indigent.
Q. We'll talk a little bit about discovery. Do you have any sense for the percentage of cases that your attorneys handle in which they interview witnesses?
A. I would guess 25 percent, maybe 30 percent.
Q. Interview the victim or the complaining witness?
A. Are you -- when you say witnesses --
Q. How often -- yeah, how --

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A. -- you're -- you're differentiating from complaining witness?
Q. Right. Initially the witnesses who might be witnesses, but they're not the complaining witness or victim.
A. So witnesses who are not the complaining witness, it's probably less than 30 percent then.
Q. Okay.
A. And then in cases where they're interviewing the complaining witness, I would say it's about 30 percent.
Q. About 30 percent.
A. Of the cases that have complaining witnesses. We have a large number of gun and drug case in which the only witnesses are police officers.
Q. Okay. How often do your attorneys in -- in area 22 visit the crime scene?
A. I would say fewer than 20 percent.
Q. How often do your attorneys and/or investigators identify witnesses not previously mentioned in a police report?
A. In cases overall or in cases that actually go to trial?

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Q. Cases that go to trial?
A. In cases that go to trial, probably 25 percent of those cases.
Q. How often in cases that go to trial do your attorneys or investigators investigate a client's alibi?
A. Whenever one is provided.
Q. How often do attorneys in your office investigate police conduct in cases that go to trial?
A. When you say police conduct, what are you talking about?
Q. If there's any improprieties alleged by the defendant, does your office have the ability to investigate those allegations?
A. So we do depositions of police officers --
Q. Okay.
A. -- who are main witnesses in cases on a pretty regular basis, and file motions to suppress based upon, you know, Fourth Amendment violations, Fifth Amendment violations by those police officers. We do not -- we have not been successful I should say in obtaining internal affairs reports about those officers, but we have attempted.

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Q. How often do your attorneys conduct depositions in cases that go to trial?
A. Oh, the cases that go to trial, I would say 80 to 90 percent. And when you're talking about that 25 to 30 percent, are those for cases that go to trial in terms of talking to the witnesses or complaining witnesses or just in all cases?
Q. Well, if you give both, so in all cases was that less than 30 percent and greater than 30 percent for --
A. Significantly greater than 30 percent in cases that go to trial.
Q. Okay.
A. I would say we don't have a case that goes to trial where there is a nonpolice officer complaining witness where that person has not either been interviewed or deposed.
Q. How often -- in cases that do not go to trial, how often do your attorneys take depositions?
A. We did 300 depositions in fiscal year 2017 and had 150 cases sent out to trial. So percentage wise, I don't know, but about a hundred, 150 depositions in cases that did not go to trial.
Q. And that's out of roughly --
A. Well, it's not out of that number

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because that number includes cases that can't go to a jury trial.

Q. Right. Do you have a sense out of the -- I guess the 4,262 cases that were initiated, what percentage of those are -- can go to a jury trial?

A. So you would subtract probation violations and juvenile cases.

Q. Okay.

A. And then you would also have to subtract the cases where we withdrew before adjudication. And I would guess that those three figures come to 1,200 to 1,500. Probably closer to 1,200. About 3,000 cases left.

Q. Of the cases that go to trial, how often do your attorneys utilize expert witnesses?

A. Not often. We've utilized iden -- eyewitness identification experts and mental health experts. I think we have secured some medical experts and some fingerprint analysis.

Q. When you say not often, is that -- is there a reason why experts are not utilized?

A. They don't add value to the case.

Q. Besides eyewitness identification experts and mental health experts, are there any other types of experts that your attorneys would --

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could utilize on a case?

A. So we've -- we have utilized also medical experts, so in shaken baby cases, for instance, or child death cases. DNA, we've had cases reviewed for DNA analysis. We have had hired experts to look at handwriting.

We've hired experts to look at ballistics and we have hired experts to look at fingerprints. Those are the only ones that come to mind. And then mitigation is another area, which could involve a mental health person or could involve other type of expert.

Q. For a mitigation expert, would that utilize a social worker?

A. A social worker or someone who's in the community, those are used most often in juvenile certification cases or in Miller cases.

Q. Do you have a specific budget for area 22 for the hiring of experts?

A. The system comes up with a budget, but the money then goes through the Columbia office. So it's not a budget that we keep close tabs on. I think there were different budgets. There's one for homicide cases and one for nonhomicide cases.

Q. Do you have to approve the hiring of

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experts for cases?

A. Yes.

Q. Is there a monetary amount or is it for all experts?

A. For all experts. Some of them then require second-level approval if they are over $500 or if it's a homicide case.

Q. And who approves the secondary -- second-level approval for those types of cases?

A. The division director.

Q. Have you had cases where you've requested experts that require secondary approval that were denied for some reason?

A. Yes.

Q. And what were the reasons stated for those denials?

A. Generally they're in the mental health area, and it's usually a request to look for an expert who is not as expensive. There's fortunately -- in St. Louis there's a number of experts available, so we try and use the ones who do not cost as much. And sometimes it's because of a lack of a clear reason for the mental health expert.

Q. Do you have a list of experts for your attorneys to use?

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A. The system has a database of experts.

Q. And who comes up with the experts that are in your system?

A. So once somebody has used somebody they're in the system.

Q. Okay.

A. We've gone beyond what's in the system when there's no one in the system that meets what we need.

Q. Does the system provide any details on the quality of the experts or is it just a --

A. No.

Q. -- contact information?

A. Just contact information.

Q. How frequently do you request -- do your attorneys request discovery from the state in your cases?

A. In a hundred percent of the cases with the exception of probation violations.

Q. How frequently do your attorneys file discovery-related motions?

A. All of the cases other than probation violations.

Q. In your opinion, do your attorneys have the time and resources to obtain and review the

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discovery in the manner each case requires?
A. No.
Q. And what is the reason they don't have the time?
A. The number of cases that they're handling, and in addition so many of the cases now have electronic discovery, such as jail phone calls or cell phone data, both of which are very time-consuming to go through.
Q. Do your attorneys review camera footage from police cameras and police vehicles?
A. If we receive it and if we do not receive it and believe it exists, we -- we have requested it.
Q. Are officers in St. Louis city wearing personal body cameras?
A. I don't think so. We're not getting any -- any data from them.
Q. Okay.
A. There may be a few who are experimenting with it.
Q. At what point in a case would attorneys request the hiring of an expert? How long before trial?
A. Generally once discovery is received

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and reviewed. So it takes a long time for a case to get to trial in the city of St. Louis. So it could be a year before trial. It could be six months before trial.
Q. Do you have a sense how long before trial discovery is received from -- from the state?
A. So it's supposed to be received within ten days of arraignment. Full discovery usually occurs throughout the course of the case.
Q. Do you believe it's the case that your attorneys decide against using an expert because of the time required in working with that expert?
A. I think there are not enough attorneys with experience to understand when an expert could have value to their case.
Q. You previously testified that you have four investigators in your office; is that correct?
A. Correct.
Q. And that those investigators are assigned to cases, but only when requested by the attorneys; is that correct?
A. Correct.
Q. Do you believe that based on your experience that your attorneys have the experience necessary to fully utilize the abilities of their

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investigators?
MR. MOORE: Also object to the form of the question. I think it's kind of vague. Subject to that, you can respond.
A. I think some of the more experienced attorneys do, but we have a large number of inexperienced attorneys in the office, so the majority of the attorneys do not.
Q. (By Mr. Maune) Do you believe you have the -- an adequate number of investigators to handle the cases that are staffed?
A. No.
Q. Do attorneys in your district regularly seek continuances?
A. Yes.
Q. And if so, what do you think is the reason?
A. The general reasons are discovery is incomplete. Defense investigation is ongoing. Competence of defendant is being evaluated or the attorney's trial schedule is such that they do not have time to prepare the case for trial.
Q. Are these continuances often granted by the courts?
A. And I'm sorry, can I add one more?

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Q. Go ahead.
A. The -- the case was recently transferred to the attorney and the attorney has not had time to meet the client. Yes, the continuances are regularly granted.
Q. What is the impact of these continuances on your clients?
A. Our clients are confined a very long period of time before they get their case to trial, and in a large number of the cases that we do take to trial we have success in which the person is either found not guilty or the case is dismissed, yet they've had to sit in jail for one to three years waiting to get their case to trial.
Q. What is the impact on these continuances on the trust the clients have with your attorneys?
A. It diminishes it. And it makes the -- the attorney caseload more complex because if you're going to meet a client every 30 days and the case lasts for six months, that's six visits. If the case lasts for three years, that's 36 visits. With not much happening for most of them.
And there are many cases that proceed to trial that by the time the case goes to trial

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it's the second, third, sometimes fourth attorney assigned to the case.

Q. Talk about traveling. How much time do your attorneys spend in traveling for conflict cases currently?

A. So currently we have three attorneys who handle conflict cases. One of them handles Jefferson County and St. Francois County. So that person spends a significant amount of time traveling to those jurisdictions.

One of the persons handles Franklin County, and again, that's about a 40 to -- minute to an hour drive each way. The third person handles St. Louis County and St. Charles County. So that person travels, but not as frequently because those jurisdictions are closer.

Q. How long does the person who's handling the Jefferson, St. Francois County on average, how long is their travel time?

A. From the city to Jefferson County is about an hour. From the city to St. Francois County is about an hour and a half.

Q. And have all new cases that -- new conflict cases been assigned to contract attorneys since July 1st of 2017?

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A. With the exception of those where we already represent the defendant in another case.

Q. Okay. How often do your attorneys file suppression motions?

A. Generally in any case that is going to trial. And in a small percentage of the cases that do not go to trial.

Q. Are there times that you believe a suppression motion may be warranted, but your attorneys did not have time to investigate or draft such a motion?

A. There are times when I believe it is warranted, but the attorney did not have the experience to realize it was warranted and did not seek out assistance.

Q. How often do your attorneys file other types of pretrial motions?

A. We file discovery motions to compel on a pretty consistent basis. And we file motions to review conditions of bond on a consistent basis. Other motions are as the attorney deems necessary.

Q. Other than we just discussed suppression motions, are there motions that you believe -- pretrial motions that you believe your attorney should be filing but did not have time to

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investigate or draft such a motion?

A. There probably are, yes. I'd have to know the specifics of the case to know what motions.

Q. Regarding such motions, aside from suppression motions do you believe there are motions that your attorneys -- motions that may be warranted by the case, but your attorneys did not have the experience to realize that such motions may be warranted?

A. Yes.

Q. Do you have a sense for how often in area 22 your attorneys take noncapital homicide cases to trial on an annual basis?

A. We probably try ten to 15 homicides a year.

Q. And for A/B felonies, not including homicide?

A. Well, we try 90 -- 90 to a hundred cases per year, and I would say 50 percent of those are homicides or serious felonies and 50 percent are what we would label gun or drug case or misdemeanor. And other jury trials.

Q. And out of those 90 to a hundred cases, do you have an estimate how many are juvenile cases?

A. So juvenile cases don't get a jury

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trial.

Q. Don't get a jury trial.

A. Many of them, however, are 17-year-olds, which in most of the country are juveniles, but in Missouri they're automatically transferred to adult court.

Q. How many juvenile cases per year do your attorneys assist in?

A. I believe about 300 was the fiscal year 2017. It has decreased this year significantly.

Q. Do you have an understanding of why that number has decreased?

A. Juvenile court has stopped issuing as many cases, so we litigated pretty heavily in fiscal year 2017 and many cases resulted in a finding of no guilt or dismissal, so I think they've reevaluated what they issue.

Q. Is that the prosecutor's discretion to bring less cases or is that the court's discretion to --

A. In juvenile court?

Q. In juvenile court.

A. It is -- it is the juvenile officer's discretion. So the juvenile officer is represented by legal counsel who is not the prosecutor for the

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City of St. Louis.

Q. In your opinion, do your attorneys have the time and resources to adequately prepare for trial?

A. They do if that was all they were doing.

Q. What are the other -- what are the other things your attorneys are doing, is it preparing for other cases that are not going to trial?

A. Right. So we have attorneys who on a pretty consistent basis have a trial set every week for a period of five or six weeks. So if they're spending the time they need to prepare those cases for trial, they're not paying attention to any of their other clients.

And when they should be preparing for next week's trial they're in trial this week. So if you just took the number of cases we took to trial and gave us responsibility for those, we would have plenty of time and resources.

Q. If -- how often do you have second-chair attorneys participate in trial?

A. Our policy is first misdemeanor jury trial, first two felony jury trials, first sex

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offense jury trial, and first homicide jury trial. We have not been able to meet that requirement consistently this year because we haven't had enough attorneys who have had trial experience to do those second chairs.

Q. How does your office prioritize having second trial, is it by the seriousness of the charges?

A. You mean how do we prioritize who gets the second chair?

Q. Correct.

A. No. It's generally the place that we are lacking is in the more serious cases. So to get an attorney to second chair a homicide case makes sense that you've tried a homicide case, and we don't have enough attorneys who have done that. So sometimes the second chair has been a person who themselves has never tried a homicide case. And the same -- same issue with sex offenses.

Q. How much time do your attorneys spend working up a case before the attorneys advise a client of whether or not to take a guilty plea?

A. So the attorney should have had an initial meeting with the client, and that would usually be before the attorney had any discovery,

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and then the attorney would have a second meeting with the client after they've received discovery. So that would be the minimal time before a case would be resolved with a plea.

Q. And do you have any local procedures for counseling your attorneys prior to accepting -- to discussing the case with you or a more serious -- experienced attorney in the office before counseling that client on accepting a guilty plea?

A. So the newest attorneys meet with the deputy district defender, and one of the purposes is to discuss their cases that are coming to resolution and get advice on whether or not it's a good resolution.

Q. How are plea offers communicated with your clients?

A. So in our jurisdiction there aren't very many plea offers. Most pleas are open pleas where the range of punishment is available to the court and based upon evidence presented by the state and the defense the court makes a decision. If we receive a plea offer, then they're usually communicated in person. Sometimes through letters.

Q. In your opinion, do your attorneys have the time and resources to adequately negotiate plea

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deals and counsel their clients on whether or not to accept a plea?

A. No. In large part because negotiation has not occurred. So there's literally no one in the office who has experience negotiating plea deals because they've all been open pleas.

Q. Is that -- has that been consistent since you started as the district defender in 2007?

A. Yes. Yeah. There is a new circuit attorney as of this year, and she has informed the court that she intends to move towards pursuing negotiated pleas, but it hasn't happened in her first year in office. But as a result, those attorneys have to prepare a lot more cases for trial in order to be able to determine what's a reasonable resolution.

Q. Do your attorneys request psychiatric evaluations for your clients?

A. Yes.

Q. Are these private evaluations?

A. Sometimes.

Q. Do your attorneys attend lineups?

A. If it is a person that we are already representing and we are informed of it, yes. And if it's in juvenile court, we do.

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Q. Are the lineup's videotaped?
A. No.
Q. Are they live or are they picture?
A. They're live. Usually.
Q. Do your clients ever participate in interviews for presentence investigation reports?
A. Very rarely.
Q. And do attorneys in your office represent clients for such interviews?
A. I think there's been maybe one or two occasions in the ten years I've been there where an attorney participated.
Q. Are there attorneys notified of these proceedings?
A. They're notified that an investigation is going to happen, but not when it is going to happen. So the burden is on the attorney to find out when it's going to happen and to let the investigator know they'd like to be present.
Q. If one of your clients decides to withdraw a plea in the rare cases that pleas are available, what steps do your attorneys take?
A. To withdraw a plea?
Q. Yes.
A. You'd have to demonstrate some manifest

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injustice. So you would have to file a motion to accomplish it.
Q. Would an indigent defendant represented by your office ever withdraw a plea without legal representation?
A. Not that I know of.
Q. Have your attorneys for area 22 ever waived or skipped voir dire during trial?
A. No.
Q. Who will notify a defendant of his or her right to an appeal after trial?
A. The trial counsel.
Q. We've covered a lot of these, so I'm just going through. How are indigency determinations made for juveniles?
A. In juvenile court, the court makes a determination that the child needs counsel and notifies us. We go ahead and enter an appearance and then the attorney will look to see if there is a concern that the child is not indigent, but in the last three years I can't think of any case that we asked to get off of because the child was not indigent. In ten years there's been maybe four or five.
Q. Do you know if they use the parents'

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income to make that determination?
A. In juvenile court in St. Louis city the court's position is that every child is indigent.
Q. Have your attorneys expressed any concerns with representing clients in juvenile court?
A. Can you be more specific?
Q. Have your attorneys expressed any concerns with their experience or training with representing juveniles in juvenile court?
A. No, because we've had a juvenile specialist, and the attorneys who are now being trained are being mentored through the process.
Q. How do your attorneys in your office prepare for detention hearings?
A. Meet the child. We obtain the petition, the probable cause statement, what's called the juvenile summary, and the juvenile detention alternatives score sheet, and make contact with family if able to.
Q. What resources are available to your attorneys to identify alternatives to detention for juvenile clients?
A. I'm not sure what you mean. We generally advocate for release from detention and

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that release would either be to parents' home or to another relative's home. So that would be the investigation that we do.
Q. How do your attorneys in your office prepare to advocate for informal adjustment?
A. We do not handle informal adjustments.
Q. And why is that?
A. They're not eligible under the Chapter 600.
Q. Okay. Are attorneys from your office present at all diversion conferences for juvenile clients?
A. What do you mean by diversion conferences?
Q. Are there -- are there conferences in St. Louis city for diversion from -- diversion programs for juvenile clients?
A. So there was a drug court in juvenile court, so we would have been -- we would have been present at that, had been part of the conversation, disposition of the child's case.
Q. But there's no longer a drug court in St. Louis; is that correct?
A. At the end of the year it's ending.
Q. Do you know why it's ending?

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A. It was a terrible program. No child succeeded and it was a program that was created for adults and didn't work with children who were smoking marijuana.

MR. MAUNE: Talk a little bit about the Missouri Coalition for the Right to Counsel.

(Exhibit 6, Previously marked exhibit.)

Q. (By Mr. Maune) Handing you a document that's been previously marked Petsch Document Number 6. Have you seen this document before?

A. I have.

Q. And what is it?

A. It's the notification of case assignment to a volunteer attorney through the Missouri Coalition for the Right to Counsel.

Q. And can you tell me a little bit about the Missouri Coalition for the Right to Counsel program?

A. So an attorney who was retiring from Armstrong Teasdale I think spoke to the director of the public defender system about providing assistance to the public defender system by involving private attorneys from large civil firms to give the public defender the benefit of additional counsel and to give the firms the benefit

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of getting their associates trial experience. And the Missouri Coalition was formed and we have participated in it since it has been formed.

Q. Do you know how long ago it was formed?

A. The initial training session was in April 2017. So it was formed right about that time. There were meetings about it prior to then, but I think it had to be chartered or --

Q. Do you know how many firms participate in the Missouri Coalition for the Right to Counsel?

A. I do not have the number of firms, no. I think we have about 60 to a hundred attorneys maybe signed up.

Q. Do you know how many cases are referred to pro bono attorneys as part of the Missouri Coalition for the Right to Counsel?

A. So from our office we have referred 36 cases.

Q. And those 36 cases are all since April of 2017?

A. Correct.

Q. Are there particular types of cases that are assigned to the Missouri Coalition for the Right to Counsel?

A. We try to find cases that we believe

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will go towards jury trial, but they've ranged from low level felonies up to homicide cases that we have assigned out.

Q. What type of training is done for the pro bono counsel that are handling these cases?

A. They're -- the public defender system put on a two-day training for the initial group in January -- I mean -- I'm sorry, in April of 2017 in St. Louis.

Then there was another training in October 2017 in Kansas City as well as a half-day training here in St. Louis at the same time. And then there's another training coming up in January. And the training involves the skills necessary to handle a jury trial.

Q. Do you anticipate having to -- strike that.

Who from your office conducts the training?

A. I have participated in the training. Rick Kroger, who was the deputy district defender, participated. Megan Beesley and Erika Wurst and Matthew Mahaffey, who are all assistant public defenders in our office, have been involved in the training.

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Q. Do you anticipate continuing this initial training on an annual basis for private counsel?

A. I don't know if the ones who have already been trained will come back, but I know that there's training for new attorneys in January.

Q. Right. And aside from St. Louis and Kansas City, are any other districts looking to implement a similar program?

A. So St. Louis County also participated in the one --

Q. Okay.

A. -- that St. Louis City was involved in, and then some of the attorneys, the volunteer attorneys took appellate cases. So some of the appellate offices have sent cases to them.

Q. How -- what has been the impact of the MCRC program on attorney caseload for your office?

A. It hasn't had a significant one since we've only sent out 36 cases. The benefit that we have seen, though, is that most of those 36 cases were cases from an attorney who was leaving the office, so that keeps an attorney in the office from inheriting a stale case and having to prepare it in a shorter period of time.

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Q. Have any of the 36 cases that have been assigned to pro bono counsel gone to trial?

A. Yes.

Q. Do you have an idea how many?

A. Two. Two went to trial to a jury verdict. Three went to trial and were dismissed at the time they were sent out to trial.

Q. Are the rest of the cases still pending?

A. No. There are I believe eight or nine cases that either plead or are now participating in diversion court.

Q. How are resources -- I'll be more specific.

How are experts compensated for these types of cases, do those expert -- those requests for funding for experts still go to the public defenders office?

A. I believe they can make that request, but I think there was also a hope that the private firm would take care of that expense when possible.

Q. Do you know if that's occurred to this point?

A. I know the private firms have paid for their own depositions through the assistance of

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Midwest Litigation. I know they have -- they have hired their own investigators in some cases. At times they've asked us to assist them in serving subpoenas or finding witnesses.

And I don't know that anyone has hired an expert witness, although I take that back. I think we had a case recently where a mental health expert was retained by one of the firms to present mitigation evidence, and I believe the firm paid for that.

Q. How about for the use of social workers, do such firms have access to that type of experience?

A. In the case that I'm thinking of where they wanted to present mitigation evidence they spoke with our social worker, and then I think the social worker put them in connection with services in the community.

Q. Okay. And do you monitor the disposition of those cases after they're assigned to the pro bono counsel?

A. At the conclusion of the case they are supposed to send a document back to the contracting office in Columbia who monitors that. But the ones that are in the city of St. Louis, they generally

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tell me what happened.

Q. Do you anticipate the number of cases being assigned to pro bono counsel in area 22 to change over the next several years?

A. I would like to see it increase.

Q. Talk a little bit about training and development of your new attorneys. You said you have several new attorneys in your office. What type of training do those attorneys first receive when they're hired on?

A. So we've hired 15 attorneys in this last year. So 15 of our 30 attorneys have been there one year or less. And when they initially join the office they are placed on what we call the green team because they are the green attorneys, and once a week they meet with the deputy district defender.

The previous deputy district defender was a more informal discussion about cases. The current deputy district defender is trying to create a curriculum so that as attorneys cycle through the office we'll have the curriculum prepared and they'll have access to it.

Q. So these 15 new attorneys that you've hired in the last year, are they all new attorneys

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right out of law school?

A. No. So one of them is a transfer from another office. One is a former prosecutor. One is a former public defender. One worked at Lewis Rice. One had worked in Missouri government, but not really as an attorney. I think more as a policy person.

And the rest would be right out of law school. Some of them did a clerkship for a judge before they came to us, so they may have gone from law school to clerkship to our office. I think that was two of them.

Q. And does the Missouri State Public Defenders Office offer training for new attorneys --

A. Yes.

Q. -- that they go to?

A. Yes.

Q. How often does the Missouri State Public Defenders Office offer that new training for their attorneys?

A. So once a year there's training called new defender training, and once a year there is a trial skills training. There's also a new employee orientation.

And then once a year there's a system

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wide training that the new attorneys would also attend. So in their first year they could attend four trainings. But if you get hired immediately after one of those trainings, you have to wait a year to take it.

Q. If -- if a attorney is hired right after the Missouri State Public Defenders Office has hired new -- or has handled new attorney training, how does that impact your assignment of cases for that attorney over the year till they can get that training?

A. It doesn't. They -- they generally get new cases their first day on the job. Or they get cases that already exist and the previous attorney left are transferred to them their first day on the job.

Q. What are your policies and procedures for -- for supervising these new attorneys that have started in your office?

A. I don't know that we have any formal policies. I mean, other than if they take a case to a jury trial they need a second chair for their first misdemeanor and first two felony trials, first sex and homicide. But hopefully that wouldn't happen in their first year. And they're evaluated

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at the end of that first year.

Q. Do you have any mechanisms for attorneys to raise concerns about their caseloads?

A. Yes.

Q. And can you please describe those mechanisms or policies or procedures that you have?

A. We've met with all of the attorneys in the office and discussed their ethical obligations and informed them of their duty to bring their attention -- to bring to our attention if they believe their caseload is too high. And I also monitor their caseloads on a regular basis to see if I believe there is concerns with it being too high.

Q. Can attorneys refuse cases because they believe their caseload is too high?

A. They could. They have not had to because any attorney who has requested that they not receive new cases, that request has been honored.

Q. And what happens to the case if it was refused by an attorney because their current caseload is too high?

A. It goes to another attorney within the office at this point.

Q. What have -- have there been any changes in policy that you've implemented in light

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of the in re Hinkebein decision?

A. We had individual meetings with every attorney to evaluate their caseloads and to find out from them whether or not they felt their caseload was too high, and if they did, then we added additional information to the case assignment sheet to stop them from receiving any new assignments until that changed.

Q. In your experience, what has been the response from the courts in -- in your district with respect to this decision?

A. I've spoken to the presiding judge who is very empathetic with our position and who wants to make certain that our caseloads remain reasonable. I've spoken to the -- what we call the criminal assignment judge who manages the criminal docket. He's been less empathetic, but is willing to talk if we get to the point where we have to put people on wait list.

Q. Do you currently have a wait list?

A. No.

Q. Have you ever had a wait list in your previous ten years?

A. Back in 2012 we had a wait list, I believe.

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Q. And in 2012 who decided what clients would go on a wait list?

A. I did based upon an administrative order that was issued by the court.

Q. How did clients get off the wait list for representation?

A. I don't remember the specifics of how it worked, but my recollection is that the wait list ended when the public defender system decided to not use the certification protocol. And I believe -- and I would have to double-check this, but I believed we used that indigence docket also as a way for cases to come off the wait list.

Q. Have there been any changes in the number of attorneys in your office that helped alleviate the need for a wait list?

A. We actually took on a heavier caseload during the last several years so that we could free up a position for another office. So in -- when I began in 2007 we handled first-level conflicts for St. Francois County, Jefferson County, and St. Louis County, and second-level conflicts for Franklin County and St. Charles County.

We took on first-level conflicts for Franklin County and St. Charles County, which is

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basically a position. And St. Louis County lost that responsibility. So we didn't change the number of attorneys, but we changed the responsibilities, and I think that happened in 2011 or '12. I think maybe that happened in 2013.

Q. Have you drafted or I guess sent any memoranda to the courts concerning the in re Hinkebein decision?

A. No.

Q. Has there been a reaction to the best of your knowledge from the local bar association in your district regarding this decision?

A. No.

MR. MAUNE: It's a good place for a break.

VIDEOGRAPHER: The time is 11:06. We are off the record.

(WHEREIN, a recess was taken.)

VIDEOGRAPHER: The time is 11:15. We are back on the record.

(Exhibit 5, Previously marked exhibit.)

Q. (By Mr. Maune) I've handed you what's been previously marked as Exhibit Number 5 Cardarella. Can you please take a few minutes to review this document, let me know when you're ready

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to proceed.

A. Okay.

Q. Have you seen this document before?

A. I have -- I believe it's in our litigation, but I'm not positive but I've looked at it. It's in our litigation board.

Q. Do you know what it -- what it is?

A. It is a proposed writ for an attorney who wants to be able to withdraw from a case and the court will not allow them to.

Q. Have any attorneys in area 22 utilized this sample writ?

A. No.

Q. Is this example available for your attorneys to use if required?

A. I believe it's on the litigation board. They -- they know the litigation board exists. I think if we got to the point where one of them wanted to withdraw, it would be going through me as opposed to them as an individual.

Q. Let's talk about turnover in your office for a minute. You said you have 15 new attorneys start in your office as of this year; is that correct?

A. Correct.

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Q. And was that due to 15 openings that happened in your office previous to them starting?

A. Yes.

Q. Is that number of openings in a single year unusual for area 22?

A. It's higher than it has been I believe in ten years, but it's generally between eight and 12 a year.

Q. What do you believe is the cause for this turnover rate?

A. The high workload, the high trial calendar -- or difficult trial calendar in the city of St. Louis. And the low pay.

Q. Can you expand on what you mean by a difficult trial calendar in the city of St. Louis?

A. So our office tries more cases to a jury trial than any other office in the state, and that's consistent with our circuit. Our circuit does that more than any other circuit in the state.

And because there are no plea negotiations, many more cases are prepared for trial and then resolved at the time the case is sent to trial or dismissed by the state at the time that a case is sent to trial.

So in addition to the -- about a

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hundred cases that are sent out to trial and go to trial, there's an additional 60 a year, 50 to 60 a year that are sent out to trial and the state dismisses them after you've spent time preparing the case for trial.

And the way the trial docket is set up, if you are suddenly available and have another case on that trial docket, you could then immediately be sent out on a second case. So we've had attorneys sent out to trial on multiple cases within one week. It's difficult to do that.

Q. Do you have an idea of how -- the highest number of cases a single attorney has had to prepare for in say a given year?

A. I can tell you the highest number of cases that a single attorney has tried in a given year is 18 felonies. But in addition to those 18, that attorney would have prepared probably an additional 20.

Q. In your -- from your previous experience as a public defender I believe in Clayton County; is that correct?

A. In St. Louis County and St. Louis City.

Q. During that time, were there plea arrangements in St. Louis County or St. Louis City?

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A. In St. Louis County there have always been plea negotiations. In St. Louis City plea negotiations ended when Jennifer Joyce became the circuit attorney, and I believe that was 2000. Shortly after she -- she took office.

Q. And has the lack of plea arrangements --

A. I'm sorry, can I correct that? I'm wrong.

Q. Yes, go ahead.

A. She took office in 2000, and pursuant pleas stopped happening after she took office because her recommendations were so high. I think she did not stop making recommendations until 2012 or 2013. But even when there were recommendations, most pleas were -- were open.

Q. So when you say her recommendations were so high, does that mean that the -- the penalties were very high for those crimes?

A. Yes. And higher than the court thought was appropriate.

Q. And what has been the impact on your office from St. Louis City stopping plea negotiations on your attorneys' workload?

A. It means that you -- it is much more

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difficult first of all to gain your client's trust, that they can plead open in front of a judge they have never met and their case has never been in front of before and that you can accurately predict what that judge will do with their case.

So when they're entering a plea of guilty they have to state that they know the court has the full range of punishment in front of them, and the attorney has to be able to counsel them on what they believe the result will be.

And generally we're right, but obviously it requires a lot of trust for someone to believe that you're right in that situation and to decide that a plea is in their best interest.

Q. What are the kind of problems for your office are caused by such a high turnover rate?

A. We don't have enough experienced attorneys to try the serious cases. So I have -- some of those 15 attorneys that were hired this year already have homicide cases assigned to them. I -- this year we had two attorneys we labeled APD2, so that means they had been with the system for more than one year, less than three years, who both tried murder first cases this year.

Now, fortunately both of them obtained

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a not guilty verdict, but that's a lot of -- that's a very serious responsibility to give to an attorney with that little experience.

So we generally have 60 plus homicides pending at any one time. And currently in the office we have five attorneys who have tried a homicide. Six, I'm sorry. Six.

Q. Do you -- do you know where the attorneys who are leaving your office, do they go into private practice?

A. Some go into private criminal practice. Several have gone to civil firms. Some have transferred to other public defender offices and some have left the practice of law.

Q. And when someone -- when an attorney leaves your -- your office, is their position filled right away?

A. We have to go through the hiring process, so it takes probably minimal three months to get filled.

Q. How does your office advertise its open attorney positions?

A. That's done through the HR office in Columbia. I think they use some of those computer websites, but I don't know which ones specifically.

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Q. Has -- has area 22 ever lost positions because they have not been timely filled?

A. No.

Q. Is that a possibility if a position is not filled in a sufficient number of months that the position would be moved to another office?

MR. MOORE: I'll just -- sorry. I'll just object, it calls for speculation, but you can go ahead.

A. Not to my knowledge.

Q. (By Mr. Maune) Since you've been the district defender, are you aware of any cases in which one of -- a court has found that one of indigent defendants have received insufficient --

MR. MOORE: Ineffective.

Q. (By Mr. Maune) -- ineffective assistance of counsel?

A. Yes.

Q. And how often has that occurred?

A. There have been two cases that have come out of my office to -- to my knowledge. One was for lack of investigation and one was for conveying incorrect information.

Q. After the in re Hinkebein decision, have your attorneys expressed concern regarding this

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decision?
A. They've discussed it, yes. They're concerned. They were concerned for Mr. Hinkebein. They were concerned for what it means for themselves.
Q. Is there anything else you think we should know regarding your office's ability -- strike that.
A. Excuse me.
Q. Do you believe you have a sufficient number of investigators?
A. No.
Q. Do you have an idea how -- what the ratio of attorney to investigator should be?
A. No, but I can tell you that trying a hundred plus cases a year, we never have an investigator at the trial. The investigators are continually interviewing and investigating future cases and/or serving subpoenas. So when an attorney goes to trial, they do not have an investigator with them.
Q. So -- so how do the investigators receive feedback from the trial as to the effectiveness of their investigation or --
A. Hope the attorney has enough time to

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send a nice e-mail or to stop by and tell them.
Q. How about administrative staff, do you have sufficient --
A. Excuse me.
Q. Do you have sufficient administrative staff?
A. We are pretty well staffed administratively. And I say that, but -- but at the same time our attorneys still do a lot of their own work. So while our staff, our administrative staff do our initial pleadings, get our discovery, scan the discovery in, anything beyond that, any motion that's created beyond that the attorney is creating it themselves, filing it themselves, sending letters to their clients themselves.
So it's not like any of us have a support staff person who is available to do all of those tasks. So if I'm sending letters to my clients I'm typing them, I'm creating an envelope, I'm placing them in the mail. So I think where I'm just so used to it I don't even realize that we don't have enough administrative staff.
Q. Is there -- is it a -- for the administrators that you do have, is it more of a pool situation that you look for who is available or

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are they assigned to --
A. They're assigned to --
(Court reporter interruption.)
A. -- attorneys.
Q. (By Mr. Maune) And do you know what -- is there -- what the current ratio, I guess, if it's five administrative staff; is that correct?
A. Well, no. It's one, two, three, four -- there's four who are assigned just to attorneys. There are others who have other responsibilities and/or assigned to attorneys. So for instance, the legal assistant who have done our indigence applications is also the secretary for several attorneys.
The legal assistant who manages our front office and handles all the incoming people and phone calls also is assigned to certain attorneys. The legal assistant who handles our juvenile docket also has certain attorneys. So there's only two support staff who do nothing but have attorneys.
Q. So it's roughly -- roughly seven to one, seven attorneys for each assistant, but it's not directly correspondent because some are assigned solely for juvenile?
A. Correct.

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MR. MAUNE: Okay. I should be done. I just want to go off record for a minute and let's make sure I got everything cleaned up and then we'll be done.
VIDEOGRAPHER: The time is 11:30. We are off the record.
(WHEREIN, a recess was taken.)
VIDEOGRAPHER: The time is 11:32. We are back on the record.
MR. MAUNE: I'm handing you -- handing the court reporter a document that's entitled State of Missouri Public Defender Commission Fiscal Year 2017 Annual Report. That will be marked as Plaintiffs' Exhibit Fox 33.
(WHEREIN, Exhibit 33, State of Missouri Public Defender Commission Fiscal Year 2017 Annual Report, was marked for identification by the Court Reporter.)
Q. (By Mr. Maune) Please take a look at it.
A. I have seen it before.
Q. You've seen it before?
A. Yeah.
Q. Okay. If you could turn to page 82 of the report.

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A. Okay.
Q. And I'm looking at the box in the center where it says St. Louis City cases assigned, and it starts with fiscal year '08 and it goes to fiscal year '17. And it looks like it starts with over 6,600 cases assigned in the beginning and then there's a pretty sharp I guess reduction in the number of cases starting in '13 continue -- continuing through '14 and '15, and then beginning to rise again. Do you have an idea why the number of cases sharply went down and then maybe why they're coming up again?
A. So fiscal year '12 was pre-Waters. When Waters came out our circuit had a meeting as Waters directed and the court issued an administrative order to assist with caseload relief. So fiscal year '13 reflects that change -- those changes in part. Part of fiscal year '13 was pre-Waters and part of fiscal year '13 was post-Waters.
So fiscal year '14 and '15 pretty accurately reflect the reduction in caseload as a result of the administrative order, and then fiscal year '16 and '17, it's a combination of we took those additional conflict responsibilities and

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probation violations began to increase and more change in the judges who are handling the misdemeanor cases so that more misdemeanor defendants were coming up and applying for our services.
In fiscal year '14 or '15 there was a misdemeanor judge who appointed private counsel on some of those misdemeanor cases that then in '16 and '17 came to us. So if you look at our case numbers, '14 and '15 pro revs and misdemeanors go down. '16 and '17 they go up.
MR. MAUNE: Okay. I'm handing to the court reporter a document that's an article in the St. Louis Post-Dispatch. It's entitled "Public defenders in Missouri say caseloads have them overworked and discipline has some scared." It will be marked as Fox 34.
(WHEREIN, Exhibit 34, St. Louis Post-Dispatch article, was marked for identification by the Court Reporter.)
MR. MOORE: Do you have another article by chance?
MR. MAUNE: I will get you one.
MS. SHIPMA: We can share.
MR. MAUNE: Yeah.

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THE WITNESS: Okay.
Q. (By Mr. Maune) Have you seen this document before?
A. Not in this form. I saw it when it was in the newspaper.
Q. Okay. Were you interviewed for this article?
A. I was.
Q. And are your statements to the reporter accurately captured?
A. They are. I'm sorry.
Q. As we stand here today I guess a little over a month -- almost a month later, do your opinions remain the same that are portrayed in this article?
A. Yes.
Q. All right. Is there anything else that you think we should know regarding your office's ability or your attorneys' abilities to provide effective representation?
A. Nothing that's coming to mind.
MR. MAUNE: Pass the witness.
EXAMINATION
QUESTIONS BY MR. MOORE:
Q. Very good. So my name is Justin Moore.

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And earlier I said I was for the Attorney General's Office. That's not exactly correct. Can you hear me okay?
So earlier I said I was for the Attorney General's Office. That's not exactly correct. I'm from the Attorney General's Office, but I represent the State of Missouri and the Governor.
So I'm just going to be following up on some of the questioning that's been taking place today. Let's just kind of go through and fill in a little bit of the background information. So if you could please just tell me about your educational background, where did you go to undergrad and then law school?
A. Undergraduate, Saint Louis University. Graduated in 1976 with a degree in urban affairs. And law school, Saint Louis University School of Law, graduated in 1980.
Q. Okay. Are you from the St. Louis area?
A. I am.
Q. Where did you go to high school at?
A. Incarnate Word Academy.
Q. Oh, very good. Private schooler. Very good. Okay. So let me see. And did you go

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straight through high school, undergraduate, law school, or did you take some time off in there to work?

(Court reporter interruption.)

Q. (By Mr. Moore) Did you go straight through education or did you take any time off in-between to work a job or anything of that nature?

A. I worked between college and law school.

Q. And what did you do in-between?

A. Initially I had a job as a writer for a public relations firm. And then I worked as an administrative assistant for LIFE Skills Foundation, which was a social service agency that served developmentally disabled adults.

Q. Okay. And how long did you serve in those roles?

A. So in the public relations firm I believe I was only there maybe three or four months. For LIFE Skills I worked there until I started law school, and then I remained there through my I think -- I think through the second year in law school, and then I took a legal job for the summer after second year.

Q. Okay.

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A. And then stopped third year.

Q. And so do you know like what kind of period of time you took off between undergraduate and law school?

A. A year.

Q. Oh, it's one year. Okay. And you worked at a -- I think you said a private firm of some kind. I'm looking for the name of that firm whenever you first got out of school; is that right?

A. Correct.

Q. What was the name of that firm again?

A. Kanefield & Mohme.

Q. Okay. And what kind of work did they do?

A. Civil.

Q. Just like civil litigation or family stuff or what kind of --

A. It was a little small firm, did a little bit of everything. I -- I can't remember to tell you the truth what I did it was so many years ago.

Q. Okay. How big was that firm?

A. There was Kanefield and Mohme and there was me.

Q. Very good. So outside of that one private firm, have you worked for any other private firms in the St. Louis area or anywhere else?

A. No.

Q. Okay. So during this deposition you kind of expressed some concerns, I guess, about public defender workload and caseload, right?

A. Correct.

Q. Who all have you spoken to other than the people we've already talked about about these concerns?

A. Well, I speak to the attorneys in my office on a pretty regular basis. I've spoken to Mr. Patrick from the Post-Dispatch. I've spoken to management within the public defender system. And I've spoken to the judges within the circuit.

Q. So question for you is how do you define a case or a matter in your system?

A. When the state initiates a proceeding against a person. So if it's -- if it's one count with three co-defendants, it would be three cases. If it's one defendant with three charges, it would be one case.

Q. Okay. So it's kind of like by defendant for each matter?

A. Correct.

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Q. Okay. Is there a situation where one case could become two different cases?

A. It does not generally happen that way.

Q. Okay. Can you think of a situation where it would happen that way?

A. The court could sever and assign a new case number to part of the case, but I've -- I've never seen that happen in ten years. I think the court has the authority to do that.

Q. How about for charges that are filed subsequent to you guys already representing a particular client, would that be a different case or the same case?

A. If it's the same events it's the same case.

Q. Okay.

A. If some new crime happens or new charges occur that have nothing to do with the first case, then that would be a separate case with separate discovery.

Q. Okay. Have you noticed any recent trends in how your district is defending cases, for example, trending towards more depositions, more experts, less plea deals, anything of that nature?

A. We have retained an eyewitness

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identification expert this year in several cases, and I don't think we had ever retained an eyewitness identification expert prior to this time.

The number of trials and number of cases that get resolved by plea have remained relatively consistent. There have been a larger number of cases that have been sent out to trial in which the state has dismissed the case this year.

Q. Any other trends that you've noticed?

A. Nothing I can think of off the top of my head.

Q. Okay. So tell me about this eyewitness ID expert, any particular reason why this person or set of persons is being utilized more than in the past?

A. Because of the change in the law in terms of eyewitness identification. Missouri's case law saying eyewitness identification experts are not allowed in was made in 1988, and that law has changed throughout the states since that time period and as a result we are pursuing that issue.

And the Missouri Supreme Court issued an eyewitness identification instruction which did not previously exist. So the expert testimony is consistent with the eyewitness identification

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instruction.

Q. Okay. So it has to do with the change that took place in the law, not a change to the defenders' budget or anything of that nature; is that right?

A. Correct.

Q. Okay. You talked a little bit about how you guys track cases in the public defenders office. Is there any kind of mechanism, any other mechanism we haven't discussed that you guys would use to track your cases or to monitor your cases?

A. So everything is contained in Lotus, which is our database. From Lotus I sometimes create other spreadsheets. So I have created a travel spreadsheet that shows which cases went to trial and what the verdicts were in more detail than what the Lotus notes show.

So for instance, it may show guilty and not guilty in the Lotus database and in our spreadsheet it might show not guilty of murder first, guilty of trespassing. So it would demonstrate that it was not just a half guilty, half not guilty, but a very successful half guilty, half not guilty.

Q. Very good. And so when you're looking

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at Lotus, what all is included in there is just the case disposition or is there other stuff in Lotus that you can look at?

A. In terms of what?

Q. So as like a case tracking system, so like a live case you would be able to pull up Lotus and look at what's going on or is it simply some kind of mechanism where you can look at statistics on cases that have already been closed?

A. No. It's a case database, so it would show the case, any pleadings filed in the case that were -- where Lotus was used. Letters to the client, notes from the attorney.

Q. And you would be able --

A. Hopefully the discovery would be scanned into the electronic file.

Q. Okay. Sorry to interrupt there.

A. That's all right.

Q. So you'd be able to pull those documents up directly in Lotus if you wanted to, right?

A. Correct.

Q. Are there any public defenders on call 24 hours a day for like emergencies?

A. No.

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Q. So we talked about -- a little bit about determining indigency for defendants, right?

A. Correct.

Q. And is there any mechanism in place to kind of revisit the determination of indigency later on in the case to make sure that, you know, you guys aren't being bamboozled or kind of fooled by defendants who maybe want to get representation but might not be entitled to it?

A. Yes.

Q. And what kind of safeguards are in place for that?

A. So there is section 600.086 that allows counsel to file a motion in front of the court to have the defendant determined to be not indigent. So for instance, one time a client canceled an office appointment because they were going on a cruise, so we filed a motion and asked the court to determine that the person was not indigent because if they could afford a cruise, they could certainly afford private counsel. And the court granted the motion.

Q. Oh, very good. That was a section 600.086?

A. I believe it's 086, yes.

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Q. Okay. Now, you've cited one example of such a motion being filed by your office. Do you happen to know like how many of those motions typically get filed in a year?

A. Very few. Maybe five. And it usually has to do with something much less obvious such as posting a very large bond or hiring a private counsel in another case.

Q. Okay. So your attorneys just kind of keep an eye out for things that stick out to them and if they notice it, then that's when they'll consider filing the motion?

A. They'll come to me and we do all that sort of motions at the indigence docket once a month.

Q. Okay. Do you know if they perform any kind of independent investigation as to the indigency determination other than just kind of things that pop out at them?

A. Well, the legal assistant reviews the application. If the person indicates that they own a house, then she'll go on the assessor's website to see what the value is of the house. If they indicate they own a car, then she'll look for the Blue Book value of their car and take those things

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into consideration.

Q. Okay. And let's say somebody applies and they don't, you know, list that house to raise that red flag, is there still somebody kind of looking into whether they have these assets prior to the determination being made or is it kind of taking at face value whatever they put on the application?

A. If they do not indicate they have a house, we do not do a search to see if they own real estate.

Q. Okay. That would only be if something tips you guys off is when you would do that investigation?

A. If it's brought to our attention, yes.

Q. So we also talked earlier a little bit about the procedure for obtaining discovery and experts in your cases, right? For the record, you have to --

A. Yes.

Q. So have you ever had a request for a deposition been rejected because of financial reasons by the office?

A. No.

Q. And have you ever denied any of your defenders the -- not the right to get a deposition,

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but the request to get a deposition on the basis of like financial reasons?

A. No.

Q. Have you ever heard of that happening for any other public defenders having their request to take a deposition being denied because of financial reasons?

A. I only know it's in my office. I don't know about the other offices. I haven't heard of that, no.

Q. Okay. Are any of your depositions taken outside of the state of Missouri?

A. We have depositions where the witness may be outside of the state of Missouri, but we do it with the attorney here and the court reporter where the witness is via video.

Q. Okay. So that's my next question. So I think --

A. And actually, I misspoke. Via phone.

Q. Via phone?

A. Yeah.

Q. So I think you stated that those depositions do take place sometimes if the witness is out of state, but if it is required it would be done via telephone, right?

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A. That's how we've done it in the past, yes.

Q. Okay.

A. Usually through an agreement with the prosecutor's office.

Q. Okay.

A. I mean, they've agreed to produce the witness out of state if we agree that the attorneys can remain in St. Louis for the deposition.

Q. Okay. Are there any policies or procedures that guide or limit, you know, how many depositions can be taken for a case?

A. No. I mean, there's -- there's policies as to when to take a deposition and what information is necessary.

Q. Uh-huh. But there's no rule like you can only take three depositions per X type of case, right?

A. Not that I'm aware of.

Q. It's pretty much just, you know, do what you have to do to get the case ready for trial, right?

A. Take the depositions that you think are necessary.

Q. And are there any policies mandating a

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certain amount of depositions or investigators be used for certain types of cases?

A. No.

Q. Now, we talked just a little bit about obtaining experts and situations where experts have and have not been approved, right?

A. We talked about experts, yes.

Q. Okay. We can start off there. That's fine.

A. Okay.

Q. I think you said earlier that there have been a couple times where there's like a higher level of review that comes after your approval of using an expert, right?

A. Yes.

Q. And sometimes at that level there has been kind of a second look at which experts are being used because of financial reasons, right?

A. Correct.

Q. Has there ever been a situation where you said we need to have an expert for this case and the people above you said you can't have an expert of any kind for that case?

A. No.

Q. Okay. Because it seems like they have

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tried to just find more fiscally conservative methods or fiscally conservative experts, I guess, but they've never denied you using experts; is that right?

A. I don't recall ever being denied an expert, no.

Q. And have you ever heard of, you know, any other defenders having their request for an expert denied based on financial reasons?

MR. MAUNE: Objection, calls for speculation.

Q. (By Mr. Moore) Just what you've heard of, not speculation.

A. Not that I've heard of.

Q. Okay. And we may have gone over this ground already, but are you aware of any policies or procedures that state like when and how much experts can be appointed or not appointed in cases?

A. Well, they're not appointed. They're -- they're retained by us.

Q. Right.

A. So yes, there are -- there are policies and what information you need to provide to request an expert. Generally we -- before an attorney in the office is going to request an expert, we would

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vet the case and discuss it and discuss what value the expert would bring to the case before they would ever submit any request.

Q. Okay.

A. So by the time they submit an E request we've already pretty much decided that that would bring value to the case.

Q. Okay. So yeah, I guess what is the procedure for requesting an expert, you mentioned an E request?

A. Yes.

Q. So what -- how does that process work from start to finish, I guess?

A. Within the case in Lotus the attorney submits a request stating what -- who they are asking to retain, what the anticipated cost is, and what the reason is that they're asking for the -- to retain the expert.

That's submitted through the database system. I either approve or disapprove, and if I approve and it's over $500, which most experts would be, it then requires division director approval.

Q. And you also mentioned that some kind of conversation would happen before this request goes through, right?

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A. Generally, yes.

Q. Okay. And that would just kind of be like a sit-down meeting with your associates to discuss the case and why it needed an expert?

A. Correct.

Q. Okay. So I think we discussed earlier about when a trial would be and would not be assigned a second-chair attorney by your office.

A. Yes.

Q. Is there like any kind of a rule that you're aware of in your office for a, you know, we must have a second-chair attorney here for these types of cases or is it more like a discretion of management?

A. No. There is a rule, and actually I forgot one category. So you need to have a second chair for first misdemeanor trial, first two felonies. Now mind you if you have your first two felony trials before you have your first misdemeanor trial, then you don't need an expert -- a second chair for your first misdemeanor trial.

Q. Okay.

A. And then a second chair for your first sex case. So case in which it's allegations of sexual assault. And a second chair -- you got me

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stuck on experts. A second chair for your first homicide case.

Q. Okay.

A. And also a second chair for your first juvenile court certification hearing or transfer hearing.

Q. Okay. And that's like an internal policy of the MSPD; is that right?

A. That's a local area 22 policy.

Q. Okay. But that's not based on any like statute or case law or anything of that nature; is that right?

A. It's based upon the -- the public defender requirements of how to run a public defender office and on the ethical obligations to, you know, provide sufficient supervision.

Q. Okay. And so -- so are you saying there's particular ethical rule that discusses like the second chair assignments?

A. No, no, no.

Q. Okay.

A. No.

Q. There's just -- there's a general ethical rule about adequate supervision, and so the public defenders office in attempting to comply with

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that has made their own rule regarding second chairing trials, right?

A. So again, this is my personal office policy. It's not an MSPD policy.

Q. Okay.

A. And it's because we try a large number of cases, and sometimes people would try a lot of drug cases and then suddenly have a homicide case and they would not have a second chair, and there's a significant difference between defending a homicide case and defending a drug case.

Q. Okay. So yeah, this is my misunderstanding of the rule. So this is a rule that you put into place for your district, right?

A. Correct.

Q. It's not a rule that the whole public defender system has in place, right?

A. No.

Q. And as far as you know, that's not a rule that is embodied in any like statute or like specific ethical rule anywhere that you have to second chair these types of cases or anything, right?

A. Correct.

Q. Okay. Do you track your time?

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A. No.

Q. No. Does anybody in your office track their time?

A. No. We track it through time sheets. We don't track it per case.

Q. So tell me specifically what you mean by that.

A. So each employee is to record daily how much time they spent working.

Q. So they just kind of put in a chunk of time like eight hours or something like that, right?

A. Or whatever amount of time they spent working.

Q. Okay. Has there ever been a time when you guys have tracked your time in smaller increments like five minutes or by tenths of an hour or anything like that?

A. Yes.

Q. And when was that?

A. I don't remember when it began. It ended October 1st, 2016.

Q. And there's much celebration I'm sure, right?

A. I actually enjoyed it. It made you feel you had -- you had been productive during the

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day when you could look back and see exactly what you had done.

Q. I've never heard an attorney say that they enjoyed billing by tenths of an hour ever.

A. I wasn't billing. I was only tracking.

Q. Oh, that's the difference I guess then. Okay. Fair enough. So it ended October 2016. Can't really recall when it started, right?

A. Correct.

Q. And I'm guessing that was in connection with some particular like a study that was going on; is that right?

A. Correct.

Q. And which study was that?

A. I couldn't tell you which one it was.

Q. Okay. But in any event, you're not --

A. It was connected to the RubinBrown study.

Q. Okay. Good. But you guys aren't currently tracking your time in those increments anymore, right?

A. No, we are not.

Q. Do you recall like what kind of period of time you had to track your time?

A. If I was going to guess, I would say it

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was 2014 to 2016.
Q. Like a couple years?
A. Yes. And then there was an earlier period of time tracking, but it was before I was with the system.
Q. Okay. Now, prior to that had you had any experience, you know, billing your time in that manner?
A. Back when I was with Kanefield & Mohme.
Q. Back in the day?
A. Yes.
Q. Okay.
A. 1980.
Q. Okay. And so other than those two instances, I guess three, you mentioned another one, any other times when you had to bill your time in that manner?
A. Actually I did when I did termination of parental rights cases in juvenile court. The court would pay per statute by hour. So I did have to track my time in those cases --
Q. Okay.
A. -- in both the trials and appeals.
Q. So I guess tell me a little bit about when you were keeping your time in those increments.

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Whenever you started doing that for the public defender, was there any kind of a training about how you should bill your time. For example, like the way you write the entries or tasks that you bill for and don't bill for?
A. So we -- it was I believe presented at one of our training workshops as to how to use the system.
Q. And so as I understand it, this study was performed by like some third-party researcher; is that correct?
A. What study?
Q. The one that you were tracking your time for, 2014 to 2016?
A. So was the RubinBrown study done by a third-party researcher?
Q. Right.
A. I don't think they were researchers. I think they were accountants.
Q. Okay. But it wasn't done by like -- it wasn't a study that was prepared by the public defender, right?
A. The -- RubinBrown is the person who created the report, but the public defender participated in the input of information.

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Q. Right. And so my question is basically just like who put on the training for how to bill your time, was that a public defender or did some third party put the training on?
A. So the public defender put on the training on how to track your time. We never billed.
Q. Okay. Right. But the public defender had not really tracked their time previously; is that right?
A. No. I think the training was on here are the categories, here's where you click. This is how it will show up in the database. Here's how you can read it if you want to know.
Q. Okay. And if you can recall back to that training, I mean, did they tell you, you know, there's your task that you can't bill for or was it all pretty much just track whatever you're doing and put the time in?
A. It was learn the categories and see if your work that you were doing fits into one of those categories and track it as the category. If it's not in those categories, then it's probably not work because the categories covered everything.
Q. Okay. So have you done anything as a

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district defender to kind of prepare your offices for what I think you testified earlier was kind of a higher caseload?
A. To prepare them for a higher caseload?
Q. Yeah, or to prepare your office, you know, for the -- this high caseload?
A. I'm -- I'm not sure I understand your question.
MS. SHIPMA: I was just like -- don't have the microphone, but I object. I think that question is vague.
Q. (By Mr. Moore) I'll go ahead and strike that one. That was vague.
Have you held any training sessions on managing dockets for your attorneys?
A. So my attorneys don't have dockets. They have cases. So the city of St. Louis court system is set up differently than most of the other courts in the state of Missouri. So we do not have dockets.
Q. And I guess --
A. We have dockets. Just not dockets that you're thinking of.
Q. Change the word dockets to caseload --
(Court reporter interruption.)

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Q. (By Mr. Moore) Do you have any training sessions on -- for your attorneys on how to manage their caseloads?

A. So I mean, most of the training is on how to represent your client and what the law is, so by learning those things you learn how to manage your caseload. I'm just confused. I'm not sure exactly what you're asking me.

Q. So I imagine there are trainings on like the substance of law and sort of pleadings and things that they'll be filing as they represent these defendants, right?

A. Correct.

Q. Is there any training more on the administrative side where you say you're going to have a lot of cases so here's the way that you manage them all? You do this task and this task or you don't do this or that, stuff like that.

A. Okay. I understand now. Thank you. I think it's more informal. We sit down with attorneys when they begin and talk to them about calendaring so that they make certain that they make all their court dates and how to keep track of them.

We explain the trial docket that happens in the city of St. Louis so that they can

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learn when their cases will be right for trial and when they'll be probably able to obtain continuances. And then we work with those who -- who need it on just being more organized.

Q. Okay. Now, do you provide any resources concerning their ability to like deny further cases if the caseload becomes too much at those initial trainings or conversations?

A. So we've always talked at office meetings about if you feel like you have too much, come see us. In an office meeting after the Hinkebein decision came out we let the attorneys know that we were going to be meeting with each of them individually.

We provided them with information on their ethical obligations and on the supervisor's ethical obligations, and then we had individual meetings with every attorney to see how they felt and whether they felt that they were not meeting their ethical obligations.

Q. So did the way that you trained change post-Hinkebein at all or is it pretty much the same that you were doing pre-Hinkebein?

A. More formal post-Hinkebein. Pre-Hinkebein it was -- it was more my watching to

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see if I felt like somebody was slipping behind too far and my taking the initial action and now I think the attorneys are comfortable that they can take that initial step and come and ask for assistance.

Q. Okay. Are you aware of section 600.063?

A. Sure.

Q. And what is that?

A. It's a statute about asking for meeting with the presiding judge concerning caseload.

Q. Okay. Have you ever utilized that particular statute?

A. So I have spoken to the presiding judge about that statute and the way the statute is written, and I don't have it in front of me, but is that the one that talks about an individual attorney?

Q. I believe so, but I -- I think you have the right statute.

A. Okay. So I have told the court that there are times when I have stopped assigning cases to an individual attorney and I have asked the court do they want me to bring that to their attention under 063 or not bring it to their attention unless it becomes an issue that we cannot take any more

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cases in the entire office?

Q. Okay. And so I guess you've never reached that point where the entire office cannot accept more cases; is that right?

A. Correct. Well, I think we reached that point back in 2011 and '12 prior to the Waters decision.

Q. Okay. But you know, since then haven't filed any of these kind of motions 600.063?

A. The circuit put in caseload crisis intervention actions which have remained in effect since 2012, so it's been more informal with the judges of the circuit.

Q. Okay. But you haven't filed any such motion --

A. No, I have not.

Q. -- because it hasn't been necessary, I guess, right? Have you ever been judicially determined to provide ineffective assistance of counsel?

A. Personally? No.

Q. I think you mentioned a couple times where you have had that take place with attorneys in your office -- or your district, right?

A. Correct.

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Q. One time was for lack of investigation and one was for conveying incorrect information?
A. Correct.
Q. So without going into too many details I guess for the lack of investigation case do you recall generally what the -- what kind of investigation was omitted?
A. The attorney did not obtain the dispatch tapes from the police vehicle and the dispatch tapes showed that the police officer's testimony was not credible.
That case had a co-defendant and co-defendant's counsel did obtain those dispatch tapes and the case was I think -- I believe he went to trial and was found not guilty. So at that point the post-conviction attorney filed a post-conviction action raising that point.
Q. And do you recall if the co-defendant was represented by the public defender?
A. Co-defendant was represented by a volunteer attorney who was an associate at Thompson Coburn who was placed in our office for one year.
Q. Placed in your office for a year. What do you mean by that exactly?
A. During the recession, 2008, 2009 when

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the private firms could not afford to bring their associates on --
Q. Ah.
A. -- they placed some of their associates at a lower salary in either judicial positions as clerks or in not-for-profits, and we benefited from having one of those attorneys in our office.
Q. Okay. So this was an attorney who was actually working in your office just like any of your other defenders would have been working in your office with the same resources and access to staff and everything as the other defenders, right?
A. Except that he had a significantly smaller caseload and only handled misdemeanors.
Q. Okay.
A. Because he was only going to be there for one year.
Q. Okay. But it sounded like he was -- you said it was Thompson Coburn, I think?
A. Yes.
Q. He wasn't like at Thompson Coburn's offices working with their staff and their resources on these cases, right?
A. No.
Q. And as far as the attorney who was

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found to have rendered ineffective assistance of counsel, is there -- was there a reason given why these tapes were not obtained, if you can recall?
A. I did not attend the post-conviction hearing, so I can't tell you what he testified to, but I think my recollection is that he just -- it wasn't something that he did in his cases in terms of pretrial investigation.
Q. Just as a matter of course, it wasn't a step that he took for his cases --
A. Correct.
Q. Didn't have anything to do with like a lack of resources or anything for why he didn't obtain those tapes; is that right?
A. I think it was because he had so many cases that it wasn't a step that he took on a regular basis. At that point he would've had a caseload of probably over a hundred cases, most of which would have been felonies.
Q. So is that speculation or do you know for certain that's why he didn't get the -- didn't get the tapes in that case?
A. I don't -- I don't know that it's -- I don't know that it's for certain, but I don't think it's speculation. It's based upon conversations

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with him about the case.
Q. Okay. And how about the other ineffective assistance case involving conveying incorrect information?
A. Correct.
Q. Do you know in a general sense what that had to do with?
MS. SHIPMA: I'm going to object to any kind of recitation of communication between the attorney and the client.
Q. (By Mr. Moore) That's fair enough. I'll just ask, did it have to do with like incorrect legal analysis?
A. Yes.
Q. Okay. And do you know if that had to do with any claimed lack of resources or anything or was it simply just an incorrect legal analysis on an issue?
A. Well, again, that was an attorney who at that time had over a hundred cases, so I don't know exactly why he provided that information.
Q. So you don't know for sure, but nobody has told you that it was because of like a lack of resources or anything, right?
A. Correct.

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Q. So I believe there's a statutory section 600.090.2 that authorizes public defender to file a lien with the court in order to recover payment for their services. Does that sound familiar?

A. Yeah.

MS. SHIPMA: I'm going to object. Do you have a copy of that that you can show her if you're going to ask her to testify about the contents of the statute?

MR. MOORE: No, I don't, but I just asked her if she was familiar with it. I think you said yes, right?

A. I know we can file a lien. Is it in -- is it in 090? That doesn't sound like a statute that I read on a regular basis, and I read a lot of 600 on a regular basis.

Q. (By Mr. Moore) We can forget the specific section by the way.

A. Okay.

Q. The bigger question is whether you're familiar that there is a statute out there --

(Court reporter interruption.)

Q. (By Mr. Moore) Are you aware that there is a statute out there that authorizes the

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public defender to file a lien with a court in order to recover payment for their services?

A. Correct.

Q. Okay. Now, do you file such liens in every case?

A. Yes.

Q. Okay.

A. Unless we opened up the case and then we discover after opening it that a private counsel has entered before we had an opportunity to do any work on the case other than opening it.

Q. And so why would that change whether you filed the lien?

A. Because we didn't do any work on the case.

Q. Oh, okay. Fair enough. Otherwise, you say that you file such a lien on every single case, right?

A. Yes. There's a few circumstances where a person doesn't get a lien, such as they died in the course of the representation or their mental health keeps them from being competent, we do not file liens on those cases. And we do not file liens in the cases of juveniles or applicants with adult cases who are under 18.

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Q. Okay. Now, you stated earlier I think that you have about 30 attorneys or so in your office?

A. Correct.

Q. And are all their caseloads pretty comparable or is there kind of discrepancy or difference between some attorney's caseloads versus other attorney's caseloads?

A. There's a big discrepancy right now because two of the attorneys just started within the last two weeks, three weeks. And four of the attorneys started like maybe a month or so before that.

So their caseloads are building up. And then there are attorneys who have been there longer whose caseloads are larger, and then there's attorneys who have very serious cases. So their case numbers may be lower, but the case severity is higher.

Q. And for the attorneys who work in the more serious cases, what kind of discrepancy would you be looking at as far as caseloads are concerned?

A. Maybe five to ten fewer cases.

Q. Okay. Do you guys ever do limited entries of appearance for defendants in order to

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represent them at bond hearings?

A. No.

Q. And why is that?

A. Because we request bond reductions for our clients with a full entry of appearance.

Q. Okay. I think you testified earlier that there's no wait list currently, right?

A. Correct. Yes.

Q. Can you talk to me a little bit about the procedure for closing cases? How does that go and is there ever a situation where case is pretty much done but stays open?

A. There shouldn't be. So when the case is resolved the attorney puts the file with a closing sheet that we have created with the appropriate disposition code in the closing clerk's box so it may remain open a week or so as he gets through them if there's a large number, but the attorneys are supposed to close them quickly and I monitor their cases.

If their caseload is extremely high I look to see if they have open cases that should be closed. The one exception is the conflict attorneys are often not in the office physically for a period of time, so their cases may close and they don't

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bring them back to the office until they physically get back to the office.

Q. And how long could it be before they show back up to the office to close the file out?

A. Like a week or so.

Q. Okay. Do defenders ever attend trials not as a second chair, but just to kind of spectate, kind of watch the trials?

A. No. They may stop in for a closing argument or we may send a new attorney to observe a voir dire, but they don't just sit around and watch trials, no.

Q. So are there circumstances where a closed case could be reopened?

A. Yes.

Q. What kind of situations would that be?

A. Where it was closed because a private attorney entered and then the private attorney is allowed to withdraw and the court makes a determination that the person is indigent and we accept the case back.

Q. Okay. And so when the case is reopened does it count as a new case or is it just the same case?

A. No, it's the same case.

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Q. Okay. As far as like the statistics or whatever, would it still be counted as a new case that gets opened?

A. No.

Q. So I think earlier we talked about a coalition -- I forget the name of the coalition now. But it's kind of a group of private attorneys who are assisting the public defender on some criminal cases, right?

A. Correct.

Q. What is the name of that coalition?

A. Missouri Coalition for the Right to Counsel.

Q. Okay. Are there any kind of similar groups out there that also provide those kind of services for the public defender and their clients?

A. Not that I'm aware of.

Q. Okay. Have you ever tried to collaborate with the prosecutors in your jurisdiction on, you know, the caseloads and kind of determine if anything can be done in a cooperative manner about caseloads?

A. When we had our Waters meeting in 2012 after the Waters decision, the prosecutors attended and participated.

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Q. Okay. Anything else since then?

A. We've asked them to stop issuing cases that they can't win.

Q. Very good. And anything else other than that?

A. Nothing I can think of.

Q. Okay. So earlier we talked a little bit about how some of your attorneys are kind of inexperienced, I guess; is that right?

A. Are kind of inexperienced?

Q. Inexperienced.

A. Yes.

Q. Right? And as a result of that inexperience they sometimes don't like recognize when to use experts; is that right?

A. Correct.

Q. So it's not that they're being denied experts because of financial reasons, it's simply that they are unable to recognize when they need them, right?

A. Correct.

Q. And so is there any kind of training whenever they start out to help them identify when they would need to consider getting an expert?

A. Yes. So generally the expert that a

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new attorney would see the need for on their cases would be a mental health expert. So there is training to help them identify the signs of a person not being competent to proceed to trial.

Q. And so all the new attorneys receive that training, right?

A. Well, the most recent group hasn't yet. That -- that's part of the problem is that there's always new attorneys and they don't come in in one large group. They trickle in on a regular basis.

Q. And there's just the four annual trainings, I guess, that we discussed earlier?

A. There are some other trainings the training department puts on, but the ones that the new attorneys attend are the two for new attorneys and then the new employee orientation, which I think is more administrative and it's just a day long.

Q. Okay.

A. Like here's how to do your time sheet, here's how to request leave.

Q. Uh-huh.

A. Those sort of things.

Q. Okay. So as far as, you know, training on when to use experts, I mean, is that something that could be done via like a brochure or some kind

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of new attorney packet whenever they each answer them and they kind of leaf through and apprise themselves of the way the cases are kind of run?

A. I don't think a brochure is going to educate an attorney. An attorney just has to gain the experience to be able to evaluate the case and know when it's good.

Q. Okay. And these new attorneys, they could -- they could always come and ask you, you know, if they -- you know, they think an expert would be required, right?

A. Yes, and they often do.

Q. And they could go ask some of the more senior attorneys whether they thought such an expert would be needed as well, right?

A. Right. The issue isn't their ability to go ask. The issue is their ability to recognize that they need to go ask.

Q. Right. And we talked a little bit earlier about continuances in the criminal cases. Do you recall that conversation?

A. Yes.

Q. I think you said that they are often requested and they're regularly granted, right?

A. Correct.

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Q. Now, getting continuances in a case is pretty typical of the legal process, right?

A. Yes.

Q. And do you have any kind of awareness of how private criminal defense attorneys operate?

A. In terms of getting continuances?

Q. Yeah, we'll get to that too, but just generally speaking do you have a general knowledge of how private criminal defense attorneys operate?

A. Generally.

Q. And they ask for continuances too, right?

A. Sure.

Q. And so it's just kind of part of the legal process, not really anything specific to like the public defender, right?

A. Well, except that a large number of our continuances are because we are not yet prepared. We either haven't reviewed the discovery provided to us by the state or haven't had an opportunity to do independent investigation. So those continuance requests generally are related to the fact that the attorneys have too many cases.

Q. But the fact that you're getting a continuance is no different from, you know, any

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other private practice's attorney asking for a continuance, right?

A. So if you look at the docket in the city of St. Louis what you'll find is that towards the top of the docket the old cases are the public defender cases that are heading to trial that they have not yet had time to prepare for trial.

Q. Are you saying --

A. So we're still asking for continuances.

Q. Sorry to interrupt.

A. That's okay.

Q. Are you saying the public defender asks for more continuances than private attorneys or are you just saying that --

A. I can only speak to the city --

(Court reporter interruption.)

Q. (By Mr. Moore) That's okay. You can go ahead.

A. I can only speak to the continuance request that I see in the city of St. Louis, and the private attorney generally asks for a continuance until they are paid and then they resolve the case with a plea of guilty.

Q. Okay.

A. So the continuance request reasons are

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different.

Q. Uh-huh. But the fact of just getting a continuance, you wouldn't say that's atypical of how, you know, cases -- it's not atypical in criminal cases, right?

A. To get a continuance?

Q. Right.

A. No.

Q. And I don't do criminal work, but does the city utilize a rolling docket for the criminal stuff as well?

A. Yes.

Q. Okay. So that's the docket they'll just keep putting up for trial every 30 days and then you'll kind of move your way up the docket, correct?

A. It's a little bit different than the civil -- civil docket.

Q. Okay.

A. So in the criminal docket there's one criminal assignment division. The cases are on a six-week rotation and the motions are heard in the criminal assignment division as opposed to being sent out to the equity divisions.

Q. So you're saying that the same division

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will hear the motions as it administers the docket?
A. Correct.
Q. Okay. So I think civil they split that up?
A. Correct.
Q. Which I -- never mind. Okay. But is the rolling docket every you said 60 days?
A. Every six weeks.
Q. Six weeks, okay.
A. Every six weeks minus any nonjury weeks.
Q. Okay. Now, we discussed earlier, you know, particular motions. And I think there was some speculation about when time or experience would have kept defenders from filing motions. Do you recall that?
A. Yes.
Q. Are you aware of any specific instance where a defender said to you I was unable to file this motion because I didn't have the time or experience to do it?
A. No.
Q. It's just kind of guess -- guessing based on your knowledge of what you believe to be the caseloads and things of that nature, right?

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A. No. I mean, I've had specific instances where I've talked to an attorney about a case after it's resolved and discover there may have been a suppression issue that they didn't litigate. There may have been a speedy trial issue that they didn't litigate or a docket issue that they didn't litigate.
So it's generally because they didn't recognize it as an issue. Or it's because the defendant wanted to just resolve the case with a plea of guilty because they couldn't make bond.
Q. Okay. Not necessarily because they didn't have time or the financial support to file those motions, right?
A. I don't know if time would be the reason. Financial would not be the reason, but it's -- it's more the experience issue.
Q. Okay. And the experience issue has to do with the amount of turnover in the office, I guess; is that right?
A. But the turnover has to do with the caseload. So because people have so many cases and so many cases have to be prepared for trial you can only keep up with that frantic pace for so long and then people move to other jobs.

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Q. That may be true. My question was more just about you said that the reason these motions wouldn't get filed is because they didn't recognize sometimes that they should be filed, right?
A. Correct.
Q. And that would be based on like the experience of the attorney and how some of them are inexperienced and new to the job, right?
A. Correct.
Q. Do you have any awareness of like what turnover is like in private firms or other governmental agencies that employ attorneys?
A. I have no idea.
Q. Do you know whether the amount of turnover in the public defender system is any different than those private firms?
A. I don't know.
Q. So it could be just the same as any other firm, you just don't know for sure; is that right?
A. So most of the criminal defense firms in the city of St. Louis are one-person firms.
Q. Uh-huh. Like --
A. So they don't have turnover amongst themselves.

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Q. Well, and -- like just private firms, so civil included in that, right? Do you have any --
A. So I have no idea what their turnover is.
Q. Okay. I think you were talking earlier about like the amount of juvenile cases that are coming through in the last couple years, right?
A. Yes.
Q. I think you said something like there are less juvenile cases getting filed because public defender was successful in 2017 in winning those cases, right?
A. I think fiscal year 2017 is what I referred to.
Q. Okay. But that's -- that's correct, right?
A. I think that was one of the factors that played into the lack of issuance of cases.
Q. Okay.
A. During that time was the first time we had a juvenile specialist in juvenile court.
Q. Okay. Talk to me a little bit about the open pleas. Is that what they're called?
A. Yes, open pleas are blind pleas.

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Q. Heard a little bit about that. Again, I don't do criminal practice. My understanding is that, correct me if I'm wrong, but you just kind of show up at court and your clients are agreeing to plea guilty, right, but there's not really any plea deal on the table, right? Maybe it's wrong. Just tell me how it works.

A. No, I'm just laughing because you don't just show up in court. I mean, we don't get to the point of where you're in front of a judge for a plea of guilty until you've had communication and counsel with your client and your client has determined that it's in the decision they've made is to enter a plea of guilty to the charge.

So it's more than just showing up. You're not the first person who has used that phrase, and having done them I can assure you it's a lot more than just showing up.

Q. Fair enough. Fair enough. Just tell me how this blind plea stuff works exactly, I guess.

A. So in court -- let's just talk about the in-court procedure.

Q. Okay.

A. You would have notified the court that you want the case assigned to a judge for a plea of

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guilty. The court would assign it to a judge. You would schedule it within a week's time period because they're assigned by weeks.

And then you would appear before the court, and each judge does it differently. Some will meet with you ahead of time and the prosecutor and want to hear the facts of the case and what both sides are asking for. Some will take the bench and start the on-the-record proceedings.

So as the attorney in those cases, you need to be able to navigate what judge the case is going to be in front of and you need to be able to advise your client what the possible outcomes are and what the probable outcome is, and that's the really hard part is advising somebody what the probable outcome is because you can't read a judge's mind. And you may think you know what's going to happen, but you don't always know.

Q. And that -- the whole open plea thing is as a result of a policy by the St. Louis City prosecutor's office; is that correct?

A. It is a result of the recommendations that the circuit attorney's office makes on their cases and their refusal to provide timely recommendations or any recommendations on cases.

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Q. Okay. But the issues with the open pleas and all that sort of thing, that's not as a result of any like lack of funding to the public defender or time of resources. The issues inherent in that process appear to be as a result of this policy by the circuit attorney; is that right?

A. But the result, which is more important in my mind, is that it adds an additional burden to the attorney. So whereas in a different jurisdiction you may be able to say to your client the state is recommending this sentence if you choose to enter a plea of guilty --

Q. Uh-huh.

A. -- would you like it or would you not like it, case resolved, you go to court.

Q. Okay.

A. That what could be 30 to one hour conference now could become two to three or four meetings with a client to get to the point where the client trusts you that you know what you're talking about and to get the case in a position where you can get it in front of a judge and get a reasonable outcome.

Q. Okay. But you said it was a burden, an initial burden, right?

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A. Correct.

Q. And that would be a burden that was imposed as a result of this circuit attorney policy, right?

A. Yes.

Q. And I think you said also that they're maybe going to change that policy with a new circuit attorney that had come in; is that right?

A. That was part of her campaign promise, but it's not yet been fulfilled.

Q. Okay. It's coming down the pipeline probably?

A. We're a year in already.

Q. Okay. And so as far as the resources your attorneys have in the office to work their cases up, I understand that they have access to Westlaw?

A. Correct.

Q. And are there any limitations on Westlaw that are really cumbersome or onerous that you're aware of?

A. There's a couple things. You know, whenever you want to click on a -- a larger article, you can't get it. It's always not in our subscription. I don't think -- is Missouri practice

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I don't think is in our subscription. All the stuff over on the right is not in our subscription.

Q. Okay. The stuff on the right. So other than in those limitations, I mean, are you aware of anything else that's really, you know, onerous about your access to legal resources, legal research resources?

A. Westlaw -- no Westlaw is easily accessible.

Q. Okay. And do you have any kind of internal servers or anything where prior pleadings or examples would be stored?

A. Yes.

Q. And all your attorneys have access to those prior pleadings and examples?

A. They do.

Q. Any other resources that your attorneys can utilize whenever they're working these cases up other than of course, you know, investigators and experts and things we've already discussed?

A. I would say those are the main ones. We also have what we call an area 22 database where somebody does something that we think will need to be used again, we try to preserve it in there.

Q. And so that's like another database

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with like pleadings and examples of things that --

A. Not pleadings, but you know, if there's -- somebody has attended a training and there's information they think would be helpful to others in the office, we keep it in there.

Q. Okay. And this is something that all the public defenders in your district would have access to no problem, right?

A. Yes.

Q. Tell me again why the -- you said the St. Louis City trial docket is different than other divisions, right?

A. Correct.

Q. So why is it so much higher than other divisions?

(Court reporter interruption.)

Q. (By Mr. Moore) Why is it so much different than other divisions in your opinion?

A. Well, it's a combination of things. One, it's a rolling docket as you described. So you're -- every six weeks you're required to appear to request a continuance if you're not ready.

The other thing is that you're not assigned to your trial division until you're assigned out to trial. So if, you know, I'm

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preparing a case in front of judge A and I know judge A will rule a certain way on things and judge B won't, I don't know who the judge is until I get there. So it affects -- that can affect your preparation. And because we have been successful more cases go to trial.

Q. So the rolling docket -- strike that. Is there like an informal time for criminal cases, where you can go in for informals?

A. You can always show up in Division 16 if there's a judge there. You can do an informal.

Q. Okay.

A. It's not -- it's not like the civil docket.

Q. Okay. Would there be anything preventing the public defender from just en masse filing a motion to continue all at one time at some informal docket if they know like a certain batch of cases isn't going to go to trial the next docket?

A. So the -- the docket call for the criminal trial docket happens every Wednesday morning, and so any continuance request is made at that docket.

Q. I'm saying could you just, you know, show up with a bunch of requests to continue for a

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period of, you know, 90 days or something instead of showing up at the docket every six weeks or whatever the -- or every Wednesday you said?

A. No, because you don't know which case is going to be ready until you show up at that Wednesday docket. So the first question is is the state ready? Or is the state asking for a continuance.

Q. Uh-huh.

A. So you need to be there with the state. You can't ex parte the judge for a continuance request. You have to have the other side there. And then the court wants to hear the reasons and the court makes the determination as to whether or not to grant it. So there's also continuances that are denied.

Q. Right. Could you coordinate with the prosecutors' office to get a joint continuance in advance of that Wednesday hearing for a period of time that was greater than like the week, the rolling docket?

A. Generally not because the attorneys are always in court. I mean, there's times that that happens, but if you want a continuance on your case you should be there Wednesday at the trial docket,

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and I handle the continuances for our office. So every attorney from the office isn't there. I'm present.

Q. Okay. So it sounds like it would be possible to kind of -- kind of like a joint continuance on file instead of showing up at the dockets, but it's just not something that you feel is really feasible?

A. No, it's not possible. Maybe I'm not explaining clearly, but if you want a continuance on your case, you need to be at the Wednesday docket.

Q. You actually have to appear?

A. Someone on your behalf. So as I said, I appear on behalf of our attorneys.

Q. Okay. So --

A. Could be like the Monday morning civil docket in Division 1. You need to appear.

Q. We talked earlier about how your office doesn't have any paralegals, right?

A. Correct.

Q. But we also talked about how you do have sufficient administrative staff, right?

A. We have good amount of administrative staff, but I'm not sure it's sufficient. It's sufficiently -- we're operating the office based on

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what we have, but the attorneys are doing administrative work.

Q. Okay. I just think earlier you -- I think you used the word sufficient administrative staff. I guess my question is what would a paralegal do that the administrative staff doesn't do? Like what would a paralegal add to the office?

A. I would think they could do legal research. So we often utilize interns for legal research. So if we had a paralegal that would add some consistency to legal research.

Q. Okay. Any other tasks that you feel a paralegal would do that the current staff can't or doesn't do?

A. I think they could draft pleadings. I don't think our support staff could draft pleadings right now other than form pleadings.

Q. I'm sorry, you said your staff can draft pleadings now?

A. No, they use form pleadings. So an entry of appearance or a request for discovery.

Q. And so you think paralegals would be able to draft like substantive like legal motions and things of that nature?

A. I think if they did legal research they

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could also probably assist in preparing, you know, files for trial. So when the attorney general goes to trial you would have well-prepared binders and you have a paralegal who is there with you and has your exhibits organized and available to produce on screen. When the public defender goes to trial they show up with cardboard box and a lot of paper.

Q. So that goes for like preparing the -- the, you know, materials and organizing the materials that are going to be taken into trial. But it sounds like the administrative staff that you have could probably do the same thing, right?

A. I don't think they have the legal knowledge to do it. Most of our administrative staff does not -- do not have any advanced degrees.

Q. So they couldn't like just print the exhibits out and like organize the exhibits and put them in the binder you don't think?

A. Not unless you marked them all and told them what they were. I mean, they -- they haven't worked the case up with you.

Q. Okay. Are there any other tasks that you feel a paralegal would be able to do that the current administrative staff cannot do?

A. Nothing that's coming to mind.

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Q. Let me see. Let me talk to you quickly about a couple of exhibits that were cited earlier. Exhibit 32, this is the order concerning probation revocation hearing. It is 32, right?

MR. MAUNE: Yep, Fox 32.

Q. (By Mr. Moore) So you're taking a look at the exhibit and you're familiar with the exhibit that we'd like to discuss?

A. I am.

Q. So tell me a little bit more about your role in preparing this order. I think you said earlier that you had assisted in the creation of the order; is that correct?

A. Right. So when the initial conversations occurred in terms of caseload relief, probation revocations, in which the court was just intending to continue someone on probation was an area that we looked at where a public defender did not need to be involved.

Q. So I guess tell me a little bit more about the history of this document. You're saying there was a group at some point convened that discussed these issues and then generated this document?

A. So the Supreme Court decision in Waters

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directed the courts to meet with the public defenders and the prosecutors and to come up with resolutions for the case crisis.

Q. Okay.

A. Pursuant to that directive the 22nd Judicial Circuit had a meeting, and this was one of the things that came as a result of those meetings.

Q. Okay. And so you -- did you actually like yourself draft the documents or like --

A. No.

Q. -- approve it or anything like that?

A. I think Judge Bush is the one who drafted it.

Q. Okay. Do you feel there are any constitutional issues involving this document?

A. Constitutional issues?

Q. Uh-huh. Or issues generally, just anything wrong, like with this -- this order that was generated as a result of the meeting?

A. No.

Q. All right. Very good. I'd like to look now at -- I might mispronounce this, Petsch, is it Petsch 1?

A. Okay.

Q. This appears to be an internal

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memorandum amongst the public defenders regarding certain policies for public defender office; is that correct?

A. I think it's an e-mail within the area 16 district office.

Q. Okay.

A. So the attorneys listed were all area 16 attorneys, and it's from the person who at that time was the area 16 district defender.

Q. I remember. This is not an e-mail that you were personally sent, right?

A. No. I wasn't with the public defender system in 2002.

Q. Okay. And you didn't have any participation in like drafting these policies that are mentioned in this e-mail, right?

A. No. No.

Q. I believe you said earlier I think that you did agree that -- you did agree with the policies that are contained in this e-mail; is that right?

A. I agreed that the visitation policy of the public defender system is that you are to have contact with your clients within seven days of assignment and thereafter at least every 30 days.

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Q. Okay. Very good. So the seven days, that's fine. As to the 30-day --

A. Unless you're the person sitting in jail for seven days without a lawyer.

Q. Just like to talk about the 30-day contact requirement, right?

A. Okay.

Q. So the public defender actually requires a physical visit every 30 days to wherever the defendant is kept; is that right?

A. If they're confined in the local jail, yes.

Q. Only if they're confined in the local jail?

A. Well, so if they're in the Department of Corrections that contact can be by phone call.

Q. Okay. So the contact doesn't necessarily need to be physical, it can also be via telephone?

A. Only if they're confined in the Department of Corrections.

Q. Okay. And so in your experience have the public defenders been able -- have your defenders been able to comply with this requirement?

A. No.

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Q. They're not able -- they're not able to make a telephone call every 30 days to their client while they're in jail?

A. That's not what I said.

Q. Okay. Fair enough. What manner are they not able to comply?

A. They're not able to meet with all of their confined clients within seven days of assignment of the file and they're not able to meet with all of their clients thereafter at least every 30 days.

Q. Okay. Just speaking to the 30-day requirement, though, they're able to make a phone call to them, right? It doesn't have to be an in-person visit?

A. No, you cannot -- you cannot call somebody in jail.

Q. I thought you said they were able to make a telephone call as opposed to visiting in person for the 30-day contact requirement?

A. No. So if a person is confined in the Missouri Department of Corrections --

Q. Uh-huh.

A. -- so the Missouri penitentiary system, they've been sentenced on something else, they're in

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prison as opposed to in jail waiting trial.
Q. Okay.
A. Okay. So if they're in the Department of Corrections and they as a result of that could be anywhere within the state of Missouri.
Q. Uh-huh.
A. Or if they're in a federal penitentiary, which could be anywhere in the country, or if they're in a state penitentiary in another state, you do not have the ability to get to all of those locations throughout the state and the country.
Q. Okay.
A. So in that instance your contact can at some point be by phone.
Q. Okay.
A. But you can't only meet a client by phone and then be prepared to represent them at trial.
Q. Right. Just as to these requirements, so they're able to do the telephone every 30 days for Department of Corrections and federal penitentiaries you're saying; is that right?
A. Correct.
Q. Now, the ones that they're not able to

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complete would be when they're in local jail, right?
A. Those are the ones that are more difficult, yes.
Q. Okay. And you say you can't make a call into the jail?
A. You cannot.
Q. And is that in relation to the defenders' policy earlier where they cut off that access or is that something else?
A. Our clients don't have phones in the jail. So there's no number to call them.
Q. That wouldn't have anything to do with like public defender resources or whatnot, this has to do with the way the jails are administrated or the resources of the jails I guess?
A. But it has an effect on public defender resources because as a result we need to go to the jails to see our clients and that usually takes quite a bit of time between waiting for the client, seeing the client, and if it's one of our jails that is not next to our building, driving to the jail.
Q. Now, as far as the 30-day contact requirement in this e-mail, do you know what that 30 days is based off of, that policy?
A. The guidelines for representation that

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are -- the public defender system has.
Q. Is it based on any kind of like constitutional decision or any statute or anything?
A. No. Other than the ethical obligation to communicate regularly with your client.
Q. Okay. Do you know whether it's typical to meet with -- in person with your client every 30 days in other types of cases?
A. I missed the first thing you said.
Q. Do you know whether it's typical in other types of cases to meet in person with your client every 30 days?
A. Do you mean like in civil cases?
Q. Yeah, civil cases or --
A. I have no idea.
Q. -- other -- any other kind of legal matter?
A. I don't know. I can tell you in cases that I represented people in that were not criminal we met on a pretty regular basis.
Q. Do you think it's necessary to meet in person with criminal defendants every 30 days?
A. I think it is essential to have regular consistent contact with your clients especially if they are confined so that you can create a

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relationship in which they trust your counsel and in which they accept your counsel.
Q. Do you think that like a status letter to your client every 30 days would suffice?
A. No.
Q. And why is that?
A. Because they want to see you. They have questions. And your status letter can't answer their questions.
Q. Well, I mean, in theory I guess if the public defenders' phone lines were opened up and they could ask the questions, then you could respond --
(Court reporter interruption.)
Q. (By Mr. Moore) In theory, right, if there was -- if the public defenders' phone lines would allow the inmates to call their offices, then they could ask you their questions and you could answer those questions over the phone, right?
A. If the phones could accommodate it.
Q. Right.
A. And if there was some sort of way to get the persons actually through to their attorneys.
Q. Right. Do the public defenders have like a voicemail for each defender?

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A. We do.
Q. So the inmates, if the phones -- if they were allowed to, they could call and leave a voicemail for their defender --
A. That was another problem is that voicemails got filled by one person and then other persons could not leave voicemails.
Q. Right. But just in theory if the phone lines were opened up, then the inmates could -- the defendants could call their attorney, leave them a voicemail, and that attorney could send a letter replying to their inquiries, right?
A. Correct.
Q. But that's not possible now because the public defender cut off that line of communication due to the burdens involved in the multiple phone calls, right?
A. Correct.
Q. Do you know if the defendants have any access to like e-mails while they're in jail?
A. No, they don't.
Q. Are they able to send letters while they're in jail?
A. Yes, they are. And without postage.
Q. Without postage?

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A. To us without postage, yes.
Q. Okay. Also distinguishes clients from trial caseload clients, do you see that?
A. I did see that.
Q. What does that mean exactly? How -- how does it determine if a client is a trial caseload client versus not a trial caseload client within I guess whenever you get assigned a case?
A. I think this referred to dockets that existed in Kansas City back in 2002 that don't exist anymore.
Q. Okay.
A. I think at that point they had -- cases went to two different types of dockets. One was called something, I don't know what it was called, and the other one was called a trial caseload or trial docket. So I think that's what he's referring to, but I don't know for certain.
Q. Okay. But in your opinion it would be all clients, they would all get the initial in-person visit in seven days of assignment; is that right?
A. Correct.
Q. Would there be any exceptions to that requirement for any other -- you know, any other

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cases like probation violations or things of that nature, low-level stuff?
A. No. They're supposed to meet those clients also.
Q. Okay. What if there's just nothing going on in the case except for just typical discovery, people are sending documents and things back and forth, do you think the 30-day in-person meeting would still be required?
A. Yeah, because you don't know what's going on with the client. I mean, the client could be having some issues that they need to discuss with you.
Q. I'd like to ask you a couple questions about the fiscal year 2018 supplemental legislative budget request document, and my version I was given doesn't have the exhibit number.
MS. SHIPMA: It's Exhibit 21.
MR. MOORE: Okay. Thank you.
THE WITNESS: Is it this one?
MR. MOORE: 2018, yeah.
THE WITNESS: Mine doesn't have a number on it either.
MR. MAUNE: It's a replacement for one previously marked.

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THE WITNESS: Okay.
Q. (By Mr. Moore) Very good. So I think the questioning kind of centered on page seven. So would you turn to page seven? Whenever you're ready we can just kind of go over a couple things on there.
A. I'm ready.
Q. Okay. So we were looking at this chart on page seven, and you were kind of citing off the way that some of these columns were calculated, right?
A. Correct.
Q. And I did not quite catch the formulas. So I think the first one was net case units. That's the 89,515 figure. Do you see that?
A. Yes.
Q. What's the formula that you had cited for calculating that one?
A. So you have to go back to page --
Q. It's contained somewhere in this?
A. It's not in here. You need to go back to the RubinBrown study and the RubinBrown study gives case units to different case categories. Then you would multiply the number of cases times that case unit. So if you had 300 felonies and felonies

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got a 14-case unit, that would be 300 times 14.
Q. Okay. So this is all based off of the RubinBrown study then?
A. Correct. That's my understanding, especially since it says RB up at the top.
Q. Very good. Then we also looked at the column third from the right that says capacity, right?
A. Right.
Q. And I think you had a formula for that as well?
A. I think it was number of attorneys times available hours within the year.
Q. And that -- those metrics would also be based on the RubinBrown study and its conclusions, I guess, right?
A. I think so, yes.
Q. And percent of capacity?
A. That's just a calculation.
Q. Same kind of deal based on RubinBrown statistics?
A. No. I think percent of capacity is just a mathematical computation.
Q. Okay. So do you have any background in like statistical analysis or sociological studies of

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any kind?
A. No.
Q. Do you have any opinions or are you able to give any testimony today about whether the RubinBrown study and its methodology are accurate?
A. So I've always complained that the RubinBrown study does not take into consideration the number of cases that get tried in the city of St. Louis. So we're always towards the bottom of the list, but I don't feel like that accurately reflects the case overload crisis within our office.
Q. Okay.
A. So it's made for the system and I think it needs to be, you know, changed for individual offices for specific issues.
Q. Okay.
A. So for instance, a felony gets the same amount of time and a lot of our felonies are assault first degree.
Q. Okay.
A. And a lot of our felonies are, you know, four, five, six counts in one case.
Q. Okay.
A. But that only gets 14 hours credit. So I don't feel like the RubinBrown gives us enough

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credit for the type of cases that we handle, the severity of the cases, and the number of cases that have to be prepared for trial and the number of cases that go to trial.
Q. Okay. Any other issues you have with the RubinBrown study or --
A. No.
Q. No. But you again are not really familiar with like their methodology for collecting the data or analyzing the data in that study, right?
A. I was around when they did it. I mean, I know basically what -- how they did it.
Q. Fair enough. But like you don't have a background in statistics you said, right?
A. No.
Q. So whether they're using the correct metrics or formulas or whatever else, you wouldn't be able to testify about that, right?
A. No.
Q. And as far as the data collection, do you have any knowledge about how they collected all of their data in the RubinBrown study?
A. Just general.
Q. Okay. So you wouldn't be able to say specifically if like they did everything correct as

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far as the data collection was concerned, right?
A. No.
Q. I think you said that you put data in for this; is that correct?
A. Well, the data comes from our case database.
Q. Okay. Just tell me a little bit about how -- how that worked.
A. So you create a case, it goes into the case database. The case code is in there, so it tells you what type of case it is, which would impact the net case units, and the -- whether you withdrew or conflicted the case out within the first 30 days would go in, which would impact the third row minus cases withdrawn.
Q. Okay.
A. And the number of attorneys you have would also go in. And the -- the number of attorneys does not reflect -- I guess this is one other complaint. The number of attorneys does not reflect the reality of number of attorneys you have.
So while I have 30 attorneys assigned to the office, I am fully staffed right now for the first time in I think a year and a half, and I have an attorney who's leaving at the end of the month.

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So I've never really had 30 attorneys.
Q. Okay. Okay. And so if I'm understanding correctly, this was -- you would be inputting this data into some kind of computer program or something?
A. Right.
Q. Okay. It was like a case database --
A. Right.
Q. -- is that right? That's not Lotus, though, right, it's some other thing?
A. Right. No, it's Lotus.
Q. Oh, it is Lotus, okay. So the RubinBrown used the Lotus data as far as you know to generate their statistics and stuff?
A. Part of it, yes.
Q. Okay. I think I have just a couple more. So I think you testified earlier that there's a high turnover and that you hired a bunch of new attorneys who just graduated the bar in October, right?
A. Correct.
Q. Do you recall how many of those there are, like the really fresh ones?
A. There's three who just -- just were licensed.

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Q. Okay. And then you said there were some other ones who had worked in other capacities prior to joining the public defender, right?
A. Correct.
Q. Kind of walk me through their backgrounds a little bit more.
A. You talking about the 15 that were hired this year?
Q. We'll go through them, yeah.
A. Okay. So we'll start with December last year. Attorney number one was a new attorney in December and hired. Attorney number two was a new attorney in December and hired. Attorney number three was a new attorney in October and hired in February.
Attorney number four had passed the bar in October and I think we were first place he was hired. So he was hired in March. Attorney number five passed the February bar and was hired in April. So he was a brand-new attorney at that time.
Attorney number six was a new attorney this year and we hired her. Attorney number seven had passed the bar the year before but had been working in document review for one of the larger firms. Attorney number eight had been an associate

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at Lewis Rice, so had several years' experience in civil litigation and came to us.
Q. Do you know how many years' experience?
A. I want to say two to three. Attorney number nine was -- passed the bar in October and came to work for us. Attorney number ten passed the bar in October and came to us. So actually I was wrong, there were more than three.
Attorney number 11 passed the bar about ten years ago and did policy work and just came back to St. Louis and came to us. Attorney number 12 was a transfer from the West Plains office. Attorney number 13 --
Q. Oh, sorry, the transfer, how long -- were they a new attorney or they had been doing it a while?
A. No, no. He had been doing it for a while.
Q. Okay.
A. Attorney -- he had been there for two years.
Q. Okay.
A. Attorney number 13 was -- was I already on 13?
Q. Yeah.

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A. So this is attorney 14.
Q. Oh, I think we --
A. Are we on 13?
Q. I think we're on 13.
A. Okay. We're missing somebody in there. Attorney 13 was an attorney in our Springfield office and then went into private practice and moved to St. Louis, and I recruited her to come back to us. She came back with experience.
Q. Okay.
A. And attorney 14 was a prosecutor in the circuit attorney's office who left that office and joined us. And there's one more person who I feel terrible I've forgotten.
Q. We'll just keep this transcript private. You don't have to worry about hurting her feelings. Okay.
So in any event, it sounds like you do have some fresh faces, but also some faces that have been out and they were practicing law for a number of years, and I think you said one had like ten years of experience, though not in criminal law, right?
A. Not in law. He was doing policy work.
Q. For the entire ten years or --

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A. Yeah.
Q. Do you know how long the prosecutor had been out practicing as a prosecutor?
A. She began as a prosecutor in 2008 or '9.
Q. Okay. Very good. So as to the -- the really new ones, right, they all went to a law school and passed the bar exam, right?
A. Yes.
Q. And as part of their law school curriculum they all, you know, took criminal law and evidence and did all the things you're supposed to do in law school, correct?
A. I hope so.
Q. Right. And the, you know, ethical obligations and requirements for a new attorney aren't really any different than for attorneys who have been out there for 30 plus years, right?
A. Correct.
Q. And I think, you know, as a new attorney you're still deemed to be competent just like an attorney of 30 plus years when it comes to, you know, the services you're supposed to render to your client, right?
A. Correct.

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MR. MOORE: Sorry, you're going to --
MS. SHIPMA: I don't know that the rules of evidence deem you competent just because you're an attorney. They say you have the obligation to be competent, but the rules of evidence don't deem someone competent.
MR. MOORE: Okay. That's fair enough. RubinBrown study.
MS. ROSCA: So Justin, it's one o'clock and Mr. Reynolds is here. So I just want you to --
MR. MOORE: No, that's good.
MS. ROSCA: You've been going for over an hour and a half.
MR. MOORE: This is going to be it, I think.
Q. (By Mr. Moore) And so these are people that also went through the interview process with your office, right?
A. Correct.
Q. And they met all the requirements you would expect for someone to work in your office and they were hired, right?
A. Correct.
MR. MOORE: I think that's all I have.
MS. SHIPMA: Okay. Mary, I just have some follow-up.

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EXAMINATION
QUESTIONS BY MS. SHIPMA:
Q. I have a few follow-up questions. I think I'm going to go backwards just for the fun of it. I won't speak backwards. I'm just going -- so you were talking about the RubinBrown numbers and I believe you said in your opinion they're not fair to your office. I don't think those were your exact words, but that was the meaning that -- that you gave that they don't --
A. Correct.
Q. -- accurately reflect the reality in your office?
A. Yes.
Q. Now, is -- does that mean that the RubinBrown numbers appear to place your office at a lower percentage of capacity than you think is fair?
A. Yes.
Q. The attorneys from Thompson Coburn that are -- that you had, you had talked about having an attorney --
A. Yes.
Q. -- from Thompson Coburn, did that attorney have a lesser caseload than the other public defenders in your office?
A. Yes.
Q. Do you know about what his or her caseload was?
A. I believe he had about 30 to 40 misdemeanors at a time.
Q. Do you remember when the RubinBrown study -- when the report came out?
A. 2016, '15.
Q. And I believe you said that in your memory that the public defender system was tracking their time from 2014 to 2016?
A. I don't remember when it began. I know it ended October 2016.
Q. Did the ending of it coincide with completion of the RubinBrown study?
A. The RubinBrown study was completed, yes.
Q. Did the -- did keeping time continue for a period after RubinBrown was completed?
A. I don't know the answer to that question.
Q. All right. Of the cases that are handled in your office during a year, a typical year, what would you estimate the percentage of

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cases that utilize experts to be?
A. Probably under five percent.
Q. And the same question for depositions, what would you estimate the number of cases that utilize depositions to be?
A. Well, we -- we've asked for 300 depositions in fiscal year 2017.
Q. And that was about 4,200 cases; is that correct?
A. Correct.
Q. Now, if there are no rules that limit the taking of depositions, to what do you attribute this low number of depositions?
A. That the cases are being prepared quickly and resolved quickly.
Q. And the same with the use of experts, why -- why are only five percent of cases have experts?
A. I -- I attribute that more to our lack of experience and attorneys able to determine when an expert would add value to the case.
Q. And in your experience, are defendants out there bamboozling the system to try to get public defender representation?
A. No, not at all.

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Q. And I know --
A. The people we represent are very poor.
Q. I know you gave a couple of -- you gave an example and then said maybe five times when your office has gone back to court and said we don't think this person -- you know, because the person was going on a cruise or whatever.
A. Right.
Q. But that in your opinion, do you see that -- do you believe that that's happening more often than your people are catching?
A. No. And usually if the person posts a high bond, which may cause us to question their indigence, it's a family member who has posted it for them.
Q. So doing further investigation on the financial means of these folks wouldn't result in a substantial decrease in the number of cases handled by the -- or by the public defenders office; is that correct?
MR. MOORE: Sorry. I'll just object, calls for speculation. Subject to that, you can go ahead and respond.
A. I doubt it if it would decrease it at all.

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Q. (By Ms. Shipma) And you talked about how a case or a matter was defined?
A. Yes.
Q. To your knowledge, is the -- the description that you gave, is that consistent throughout the public defender system or is that -- does that just apply to your district?
A. It's how I was trained as a district defender to do it, so I would assume so, but I haven't looked at other people's databases.
Q. I believe Mr. Moore asked you a question about who you've spoken to regarding concerns about your caseload without giving you a time frame for that, and you answered you talked to the attorneys in the office, the Post-Dispatch, MSPD management, some judges. What time frame were you giving your answer for?
A. For the last several months. So since the Hinkebein decision came out.
Q. You said that you have three attorneys right now who handle conflicts?
A. Correct.
Q. Is that all they handle --
A. Yes.
Q. -- conflicts? And is that --

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A. One of the attorneys has a few St. Louis City cases.
Q. And has that been your practice to have attorneys who handle conflicts only handle conflict cases?
A. Generally because they have tended to be experienced attorneys, they've also had maybe a St. Louis City homicide also.
Q. You've spoken a couple of times about someone not being eligible as opposed to not being indigent. I took it that's what you were meaning. Can you explain the difference in those two terms, if there is a difference?
A. There is a difference. So there are indigent people, which is a determination based upon their income and assets, and then there are eligible cases. So you can be indigent and not have an eligible case. So if you're indigent and you're charged with municipal code violation, you would not be eligible.
Q. Thank you. When you said that you have 15 to 30 open cases, I wasn't certain because you had been asked about the number of clients that you have as well. And so I just wanted to make sure that we get the -- the answers correct. How many

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open cases do you have right now?
A. Currently right now, 20.
Q. For yourself?
A. Yes.
Q. And do you know about how many clients that represents?
A. One client has two cases. So 19.
MS. SHIPMA: That's all the questions I have.
MR. MAUNE: I have nothing further.
FURTHER EXAMINATION
QUESTIONS BY MR. MOORE:
Q. Just one last question. As far as like use of experts and amount of depos you guys are taking, would you say that you pretty much do whatever the case requires to the extent that you're able?
A. We do what the attorney thinks is appropriate, the assigned attorney.
Q. Right. So I mean, not every case is going to require an expert, right?
A. Right.
Q. And any cases that require an expert may be the case that it gets plead out or doesn't reach that stage where an expert becomes necessary,

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right?
A. Correct. But -- but you would have already retained the expert even if it results in a plea.
Q. Depending on where the case is at, right --
A. Yeah.
Q. -- wherever -- and the same thing with, you know, depositions and other types of discovery, right?
A. What was the question?
Q. The question was you do whatever like amount of discovery or consulting with experts or retaining experts that is necessary for the cases, but sometimes just because of the way the cases get resolved there are times whenever those -- you don't quite get to those steps where you would then be retaining the expert or be doing the deposition; is that fair?
A. Correct. Yes.
MR. MOORE: That's all.
FURTHER EXAMINATION
QUESTIONS BY MS. SHIPMA:
Q. Now I have a follow-up. Mary, in your opinion are there instances where cases could have

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benefited from the use of -- of an expert, but an expert wasn't requested?
MR. MOORE: Call for -- I'll object. It calls for speculation, but you can answer.
A. Yes.
Q. (By Ms. Shipma) And the same with depositions, are there cases where there should have been depositions taken in a case but they were not?
A. The case would have benefited from depositions.
Q. And what is -- in your opinion, what has been the reason for these either experts not being used or depositions not being taken in those cases?
A. Lack of experience of the attorneys, lack of continuity of the attorneys in the office, and lack of time.
Q. Every case that comes through your office, is it fully worked up to the extent it should be?
A. No.
MS. SHIPMA: Nothing further.
FURTHER EXAMINATION
QUESTIONS BY MR. MOORE:
Q. And just to clarify, you also discussed

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another reason for not doing the discovery of the experts, which was that sometimes the case gets resolved prior to the stage in the litigation where you would be retaining the expert or doing a discovery, right?
A. Yes, but when the case gets resolved early you want to know why? It's because the person is in jail and we have not been able to get together the resources to do a bond reduction to get the person out of jail.
Q. Or they got a good deal, right?
A. No, because we don't get any deals.
Q. No defendant ever gets a plea deal of any kind in the city?
A. Very seldom.
Q. So it does happen sometimes, though?
A. It's beginning to happen.
Q. Okay. And I know it may be a little hyperbole or whatever else, but I mean, there are -- plea deals do take place and defendants do plead guilty in exchange for, you know --
MS. ROSCA: Objection, calls for speculation.
Q. (By Mr. Moore) I'm asking whether this does happen. They do make deals or whatever else

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whereby they plead guilty and then they receive a reduction in the possible sentence that they could receive, right?

A. Right. Yeah.

Q. And sometimes that happens before you would get to the stage where experts are required, right?

A. It could.

Q. Has that happened? I mean, does that happen?

A. I can't tell you a specific case off the top of my head, no.

MR. MOORE: Okay. I think that's good enough. Done.

VIDEOGRAPHER: The time is 1:14. We are off the record. This concludes our deposition of Mary Fox.

COURT REPORTER: Signature?

MS. SHIPMA: Yeah, just like before I'm going to read and sign.

COURT REPORTER: And counsel, can I just get on the record that everybody is going to duplicate transcript orders from the last time we had depositions in October? Is that a yes?

MS. SHIPMA: Yes.

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MR. MOORE: That's a yes for me.

MR. MAUNE: Yes.

(WHEREIN, the deposition was concluded at 1:14 p.m.)

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CERTIFICATE OF REPORTER

I, William L. DeVries, a Certified Court Reporter (MO), Certified Shorthand Reporter (IL), Registered Diplomate Reporter, and a Certified Realtime Reporter, do hereby certify that the witness whose testimony appears in the foregoing deposition was duly sworn by me pursuant to Section 492.010 RSMo; that the testimony of said witness was taken by me to the best of my ability and thereafter reduced to typewriting under my direction; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition was taken, and further that I am not a relative or employee of any attorney or counsel employed by the parties thereto, nor financially or otherwise interested in the outcome of the action.

_____

Certified Court Reporter
within and for the State of Missouri

Page 200

Alaris Litigation Services
(314) 644-2191

December 26, 2017
Ms. Jacqueline Shipma
Missouri State Public Defender
1000 West Nifong
Building 7, Suite 100
Columbia, Missouri 65203
(573) 525-5212
jacqueline.shipma@mspd.mo.gov
In Re: SHONDEL CHURCH, et al. vs. STATE OF MISSOURI, et al.

Dear Ms. Shipma:

Please find enclosed your copy of the deposition of MARY FOX taken on December 19, 2017 in the above-referenced case. Also enclosed is the original signature page and errata sheets. Please have the witness read your copy of the transcript, indicate any changes and/or corrections desired on the errata sheets, and sign the signature page before a notary public.

Please return the errata sheets and notarized signature page to Alaris Litigation Services, 711 North Eleventh Street, St. Louis, Missouri 63101 within 30 days of receipt.

Thank you for your attention to this matter.

Sincerely,

William L. DeVries, CCR(MO)/CSR(IL)/RDR/CRR
Enclosures

WITNESS ERRATA SHEET
Witness Name: MARY FOX
Case Name: SHONDEL CHURCH, et al. vs. STATE OF MISSOURI, et al.

Date Taken: DECEMBER 19, 2017

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Witness Signature: _____

STATE OF)
)
COUNTY OF)

I, MARY FOX, do hereby certify:
That I have read the foregoing deposition;
That I have made such changes in form and/or substance to the within deposition as might be necessary to render the same true and correct;
That having made such changes thereon, I hereby subscribe my name to the deposition.
I declare under penalty of perjury that the foregoing is true and correct.

MARY FOX

Executed this day of ,
20__, at .

Notary Public:
My Commission Expires:

A

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A/B 67:16
abbreviation 21:19
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Exhibit M

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
CENTRAL DIVISION

SHONDEL CHURCH, et al.,)
)
Plaintiffs,)
)
vs.) Case No. 17-04057-CV-C-NKL
)
STATE OF MISSOURI, et al.,)
)
Defendants.)

VIDEOTAPED DEPOSITION OF ANTHONY C. CARDARELLA
TAKEN ON BEHALF OF PLAINTIFFS
DECEMBER 7, 2017
9:01 A.M. TO 2:35 P.M.
BETH A. KALTENBERGER, CCR, CSR, RPR, CRR

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
CENTRAL DIVISION

SHONDEL CHURCH, et al.,)
)
Plaintiffs,)
)
vs.) Case No. 17-04057-CV-C-NKL
)
STATE OF MISSOURI, et al.,)
)
Defendants.)

VIDEOTAPED DEPOSITION OF ANTHONY C. CARDARELLA, produced, sworn, and examined on December 7, 2017, between the hours of 9:01 a.m. and 2:35 p.m. of that day, at American Civil Liberties Union of Missouri, 406 West 34th Street, Kansas City, Missouri, before Beth A. Kaltenberger, a Certified Court Reporter, Certified Shorthand Reporter, Registered Professional Reporter and Certified Realtime Reporter, in a certain cause now pending in the United States District Court, Western District of Missouri, Central Division, wherein SHONDEL CHURCH, et al., are the Plaintiffs and STATE OF MISSOURI, et al., are the Defendants.

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Videographer:
Mr. Christopher Wright

IT IS HEREBY STIPULATED AND AGREED by and between counsel for the Plaintiffs and counsel for the Defendants that this deposition may be taken in machine shorthand by Beth A. Kaltenberger, a Certified Court Reporter, Certified Shorthand Reporter, Registered Professional Reporter and Certified Realtime Reporter, and afterwards transcribed into typewriting; and the signature of the witness is expressly reserved.

* * * * *

(Deposition commenced at 9:01 a.m.)

THE VIDEOGRAPHER: We're now on the record. Today's date is December 7th, 2017. The time is 9:01 a.m. This is the video-recorded deposition of Anthony Cardarella in the matter of Shondel Church, et al., versus State of Missouri, et al., Case Number 17-0405-CV-C-NKL in the U.S. District Court for the Western District of Missouri, Central Division. This deposition is being held at American Civil Liberties Union, a Missouri Foundation. The reporter's name is Beth Kaltenberger. My name is Chris Wright. I'm the legal videographer. We're with Alaris Litigation Services.

Will the attorneys present please

introduce themselves.

MS. WILCOX: My name is Gillian Wilcox for the plaintiffs.

MR. RAMSEY: Steven Alan Ramsey for the State of Missouri and Governor Greitens.

MS. SHIPMA: Jacqueline Shipma for MSPD defendants.

THE VIDEOGRAPHER: Will the court reporter please swear in the witness.

ANTHONY C. CARDARELLA,

of lawful age, produced, sworn and examined on behalf of the Plaintiffs, deposes and says:

EXAMINATION

BY MS. WILCOX:

Q. Mr. Cardarella.

A. Good morning.

Q. Hi. Could you state your name for the record and spell your last name?

A. Sure. Anthony Cardarella. Last name is spelled C-A-R-D-A-R-E-L-L-A.

Q. Thank you. Have you ever been deposed before?

A. Yes.

Q. How many times, do you think?

A. Oh, probably no more than a handful,

maybe.

Q. Okay. Is it safe to assume you have taken depositions?

A. Not nearly enough, but, yes.

Q. Okay. Do you remember the last time you were deposed?

A. I might have been deposed for a postconviction relief hearing, in all likelihood. If not, it would have been even farther back than that when I would have been the deponent. I think we were suing a bank, but that was not work related.

Q. Okay. So over five years ago?

A. At least, I think so.

Q. Okay. So you know these rules, but I will very briefly go through the ground rules, partly so I remember them as well. Verbal responses.

A. Yes.

Q. "Yes" or "no." We will try not to interrupt each other.

A. Okay.

Q. It's probably more important for me than for you.

Unless you're instructed not to answer by your attorney, provide an answer to the question, even if there is an objection. If you don't

understand a question, let me know. I will do my best to rephrase or we will move on.

If you need a break -- if anyone needs a break, just let us know, but make sure it's not when a question is pending.

A. Okay.

Q. Did you review any documents in preparation for today's deposition?

A. I took -- I began to take another look at the petition. I wasn't able to finish it entirely, but I think I have -- once I received it much earlier, I probably read the entire thing, I think.

Q. Okay.

A. But in terms of prep for the deposition, I would have reviewed portions of the petition.

Q. Did you look at anything else?

A. Not in preparation for this deposition, no.

Q. Did you bring any documents with you today?

A. Not with me.

Q. And besides your attorney, Ms. Shipma, have you talked to anyone else or met with anyone

else in preparation for today's deposition?

A. Other than telling people I was going to be deposed by the ACLU, I don't believe there's anything in addition to that.

Q. Okay. And who would you have told?

A. Oh, probably a long list of people. My co-manager would have been one of them, probably secretaries in terms of having to cancel things that were over-calendared. I'm sure I told my wife. The list is probably longer than that, but, really, it's inconsequential. I didn't tell anybody at a retail store or anything.

Q. Okay. We'll talk about education and employment. Tell me about your current employment, where you work, your title, and how long you've been there.

A. Okay. My title is district defender. I'm employed by the Missouri State Public Defender Trial Division. My office is physically located at 234 West Shrader in Liberty, Missouri. We cover more counties than the county that that resides, which is Clay.

And if there was more to that question, I've already forgotten it.

Q. How long have you been the district

defender?

A. You know, I was trying to think about that this morning because I figured that would be one of the questions. I'm going to say around 15 years, but that's an estimate.

Q. And does your district have a number?

A. 07.

Q. Do you also call it Area 7 sometimes?

A. I think the system does, yes.

Q. Okay. So today we may refer to it as District 7 or Area 7.

A. Oh, yes.

Q. How long have you worked for MSPD, total?

A. I started in August of 1989, and with the exception of being out of the system in private practice with a law firm for approximately 24 months, the entirety of my career since that date, time frame.

Q. When was the two-year period when you were in private practice?

A. I was with -- I started in August of 1989. I was with the system for four years and 11 months. I know that because I didn't plan my vesting very well. I was away for 24 months and then came

back. When I returned, I was into management.

Q. Okay. So let's talk a little bit, then, about what other roles you have been in with MSPD before you were district defender.

A. Okay. That would have been my first approximate five years with the public defender system. I began in appellate/post-conviction relief where I did three years and two weeks, not that anyone was counting, before I transferred over into the trial division. And both of those were in the Kansas City, Missouri location. I remained, like I said, just shy of five years before I went with the law firm.

Q. And when you came back from the law firm, what position did you start in?

A. After two years with the law firm, I returned to the public defender system as a manager, district defender in Area District 5, Buchanan County, St. Joseph, Missouri, where I remained for about six or seven years.

Q. And from that position, did you take the position in District 7 as the district defender?

A. That's correct.

Q. Okay. And what district is Kansas City?

A. 16.

Q. So you worked at three different districts?

A. Yes.

Q. Okay.

A. Trial and appellate in Kansas City. Just trial in Areas 5 and 7.

Q. Okay.

A. As management.

Q. And not as management in Kansas City in the appellate and trial?

A. Never.

Q. Is there a central office at MSPD?

A. Yes. The central office is now in Columbia, Missouri, as I understand it.

Q. And who runs that office?

A. Our director, Michael Barrett.

Q. Who do you report directly to as a district defender for Area 7?

A. Well, we have a hierarchy of managers. Most recently the assistant trial division director retired, and the public defender system did not fill that position, so it's the head of the trial division, Ellen Blaugh, would be who I report most directly to now.

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Q. And you did report to the person who retired?

A. She had an assistant, Leon Munday, who had recently retired, so I would typically go to her assistant, or I may just e-mail both of them. I considered, obviously, both of them my managers.

Q. And where were their offices located?

A. Ellen Blaugh, St. Louis, Missouri, and Leon Munday, Kansas City, Missouri.

Q. Okay. And do you know why the positions were not filled when those people retired?

A. It's just the one person that retired. The assistant trial division director, Leon Munday. I don't have personal knowledge as to why it was. I can only speculate, but I'll choose not to do that.

Q. What direction, if any, related to the work you do as the district defender, do you receive from the central office or from the people that you reported directly to?

A. I'm not sure I understand your question.

Q. I assume you have a lot of discretion in your office for how things run, but did you receive directions as to how your area -- the work should be done in your area from anyone in the

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central office?

A. I do have a lot of discretion. I'm not sure what you mean by -- if I spend money, if I do something that I believe requires management review or approval, I always contact them, so I just -- in terms of day-to-day, no.

Q. Okay. So there are certain things that you would go to them for. Those are things that you understand that you would go to them for based on your experience as the district defender?

A. That's correct. Or perhaps legal advice if I know that one of them has a specialty or something like that or has dealt with something recently or may have as a result of them supervising the rest of the state.

Q. For either a case you're working on or someone in your office?

A. Correct.

Q. You said that District 7 has several counties, one of them is Clay County?

A. Yes.

Q. What other counties are covered?

A. Our three primary counties remain Clay County, Platte County and Clinton County. Clay County is 7, Area 7. Platte County is Area 6, and

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Clinton County is a part of the 43rd Judicial Circuit. There's another trial office that handles the majority of the remaining counties of the 43rd Judicial Circuit.

Now, that being said, those are our three primary counties. That's where we are responsible now as of fairly recent. Prior to that, we were -- we probably would, at any given time, have those primary counties, as well as anywhere from 10 to 12 to 15 additional surrounding counties, some of which were not very close in proximity.

Q. How recently did that change?

A. Oh, boy. Probably inside of a year, I think.

Q. Do you know why it changed?

A. My understanding is that the public defender system utilized funds that were part of its budget to assist trial and appellate offices dealing with conflict counties. And by "conflict," that necessarily or often necessarily meant that it would be greater distances to cover, jails that were farther away, prisons that were farther away, courthouses that were farther away, defendants that were farther away, so to lighten the load, if you will, was the goal.

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Q. And if those -- when you said there were a lot of other counties that you had been covering --

A. We still do because of attrition. We still will until they, by attrition, you know, those cases are settled, dismissed or resolved some other way.

Q. Okay. And if those counties are in other districts, do you share the workload with public defenders, say, in District 6 or in a district that also covers those counties?

A. Well, probably the best way, easiest way I can explain it would be by example. The Kansas City Trial Office, Area 16, and our office, Liberty, we will share. If two young men are accused of a crime and they wind up being co-defendants and there would thus be inherent conflicts, we would send our second young man to the Kansas City office to represent him. If they had two folks charged with stealing a car, for example, they would send their second one to us. That's the way it went on for years and years and years, frankly, as long as I've known it, until recently, approximately a year.

Q. How would that be handled now?

A. Now, instead of conflicting out -- and

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this is all electronically through a form on a computer, you know, so things can be kept track of, now, instead of sending it to Kansas City, we send it to the transfer agent and they locate, contract public defender attorneys who have -- who are interested in providing criminal indigent defense to people accused of crimes.

Q. Are these people who work for the public defender system like you do or are they private attorneys?

A. They are private attorneys who, for whatever reason, have agreed to do that for whatever duration and for whatever selected counties.

Q. Do you know who pays them or if they are paid?

A. My understanding is the public defender budget pays them.

Q. What judicial circuit is District 7 in or if it's in multiple circuits?

A. I should have been more clear on that. Clay County is Judicial Circuit 7 and Platte County is Judicial Circuit 6.

Q. And Clinton County is 43rd?

A. 43rd, yes.

Q. So you now work -- your office works

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in these three counties, you said, as of recently, that's your main area?

A. Those have always been our main area. They are now the only cases we receive indigent applications from, but we still have a large amount of remaining conflict counties that we have a caseload with.

Q. Okay. How big of a geographic area is it where your office currently takes cases from?

A. Well, Platte County is -- the courthouse is not too far from the KCI airport. The downtown Liberty Courthouse is where -- our Clay County cases, and then Clinton County is in -- the courthouse is in Plattsburg, Missouri, if that describes anything.

Q. Maybe the easier way to do this -- so your office is in Liberty?

A. Yes.

Q. Which is where the attorneys are based?

A. Yes.

Q. How far of a driving distance is it to get to the respective courthouses?

A. Approximately 30 miles.

Q. To each one?

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A. Approximately.

Q. Okay.

A. That might be slightly -- might be slightly farther for Clinton County, Plattsburg, Missouri. It's more rural, so not really a direct route, if you will.

Q. Do each of those -- if you have a case in one of those counties or courthouses, is it likely that then your client is going to be in custody near that courthouse?

A. Well, unfortunately, let me begin, it's far more likely that our clients are going to be in custody. It does not necessarily mean that they're going to be in custody close to our home office of Liberty, Missouri, or in the jurisdiction where they're charged.

For example, for quite -- for quite a few years the people who are charged with crimes in Clinton County, where the courthouse is located in Plattsburg, Missouri, are not -- they have an archaic jail in the bowels of their basement which probably house, I'm told, you know, a dozen, 15 people, maximum. And I use that term "house" generously because it's not fit for -- it shouldn't be used. But because they have far, far more people accused of

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crimes and far, far more people in custody, they farm them out -- "they," Clinton County, farms them out to other jurisdictions. And for the last several years they farm those inmates out to another city, another county, Andrew County, so we have to drive quite a bit farther north to see an inmate in custody.

Q. Whose hearings will actually be in Clinton County?

A. If they're lucky enough to be brought to court, yes, if it's not by, for example, you know, video court.

Q. Okay. And I'm going to touch on that in a little bit.

A. I'm sure you are.

Q. So just to make sure I understand, your office is not currently covering conflict cases by assignment?

A. That's right. And we hope that to be the case forever and ever, amen.

Q. Okay.

A. I don't have any confidence in that.

Q. And you say you hope that to be the case because it is --

A. It provides a miniscule amount of relief.

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Q. Got it. As to your workload, correct?
A. Yes.
Q. How many attorneys work in your office?
A. Including myself, a total of 12.
Q. Are you currently fully staffed with 12 attorneys?
A. The phrase I prefer to use is we're currently fully understaffed because I don't think we're properly staffed, but, yes, of the full-time employees that are allocated to the office I manage, we're fully staffed.
Q. How many attorneys do you think your office would need to be what you might call fully staffed?
A. Under my definition?
Q. Yes.
A. Twice as many.
Q. With your current caseload --
A. Well, yeah.
Q. -- right?
A. That's presumably part of the question, yeah.
Q. Is there a high turnover in your office for attorneys?

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A. I mean, statistically, I haven't done the math. I know that we keep track of, gosh, no one left recently, and every day that that happens, that's a day to celebrate.
Q. When is the last time you had to hire a new attorney?
A. Probably approximately 12 months ago or so. That's the best of my recollection. Might have been slightly longer.
Q. 12 is -- I don't want you to go through every one, but is there a way that you could tell me, maybe, the average level of experience the attorneys in your office have?
A. Well, that changes with transition, but I can tell what -- you know, approximate what it is now.
Q. Sure.
A. We have probably -- I can think of one attorney with probably an extensive amount of criminal defense experience, 15 to 20 years, I'm estimating, and we have another attorney with about 10 to 12 years of experience, another attorney with probably that same amount of experience, my own experience, as I've already detailed, and I think we have about -- I think the last time I thought about

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that with any degree of seriousness, we have approximately half of us, so I think six attorneys that are relatively -- what I would call relatively new to criminal defense.
Q. When an attorney does leave your office, how are that attorney's cases transitioned to someone else?
A. Well, I mean, more times than not, they're absorbed. That's not always the case. By that I mean redistributed to the existing full-time attorneys that remain. It always creates a burden, and it's an unfair reality to any of the clients that are losing their attorney.
Q. I guess let's go back to the last position you filled when an attorney left. Was it easy to find someone to fill that position or was it difficult?
A. Well, understand I barely had time to come here, so we really despise having to list positions and take time out of an otherwise incredibly busy week to stop everything and review applications, schedule interviews, conduct interviews, do the things that we're required to do in order to document the interviews, conduct second interviews, check references, et cetera. It's a huge

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amount of time commitment, so I'm happy when that doesn't happen. I prefer working with and attempting to train the attorneys that we presently have, but sometimes, you know, I get the notice anyway.
Q. Are you solely responsible, in your position, for filling the -- if someone leaves, you do the interviewing and the hiring involved with a new attorney?
A. I involve my assistant, my co-manager, to a great extent, so...
Q. If you could give me an explanation of what other staff, besides the 12 attorneys, work in your Area 7 office.
A. Sure. Everyone is full time. The attorneys, of course, are full-time salary, so that slightly creates a different predicament. Then we have two full-time investigators. We have one full-time legal assistant, and then we have, I believe, four office specialists that we used to call them clerks for decades, so, frankly, I can't even remember what they're called now.
Q. A position that's not technically a paralegal or legal assistant, but provides support to the attorneys in the office?
A. Absolutely, yes.

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Q. You've been at your office for over ten years?

A. Yes.

Q. Can you talk about how the size of your office has grown or not grown over that time?

A. I think since I came to the Liberty office as the manager, transferring from the St. Joe, I think the office was -- has been given, I think, another two or three full-time attorneys. There's been some transition with the positions over the years. There was a period of time where we had no investigators, and those were instead, by attrition, legal assistants for a brief period, and then we -- yeah, I convinced management to have some investigators again.

Q. I think I know the answer to this, but do you believe your office is sufficiently staffed?

A. Of course not.

Q. And just explain a little bit of why not.

A. How much time do you have? Well, I mean, it's a pretty simple equation of the law of supply and demand. The supply is endless, it is absolutely endless. As many cases that prosecutorial authorities can file are filed. There's no limit.

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And the prosecutorial discretion is absolutely unfettered, so with that hypothetical number and with the population and economy with a greater number of people not being able to afford expensive attorneys, our numbers have skyrocketed. And you take that, and legislators that continue to pass more onerous provisions, continue to make additional acts illegal, create mounting and duplicative punishments and extended punishments for periods of incarceration in our adult prisons and juvenile facilities, the stakes have just risen. And the courts rely on the public defender system to put it all on their back like a burro, and it's not working.

Q. I'm going to go through a list of resources, and first just tell me whether they're available to the attorneys in your office.

A. Okay.

Q. Maybe with a yes or no, and then after that, we can talk about the process of how they're available.

A. Okay.

Q. The ability to locate witnesses?

A. And this part of your question is whether or not it's available to the attorneys?

Q. Yes.

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A. Well, with a ratio of 12 attorneys to two investigators, I don't know that that's always available. I mean, it is in theory, but get in line.

Q. Right. Do you ever use outside investigators?

A. It is -- I can think of only one occasion where we did something like that. It's so rare. It was a unique circumstance that involved a conflict. I think that's about the only time I can think of having ever used that.

Q. And if that is used, that's an additional cost, correct? Because the investigators you have are on staff, and paid a salary?

A. That's correct.

Q. So if you have to go use an outside investigator, then that's an additional cost that's being spent on top of the salaries that are already --

A. It necessarily would be, sure.

Q. Are there social workers available?

A. I'm not -- honestly I don't know whether they are social workers. I know the public defender system had looked into a program or had begun one or two interns in the system. I think one may have been located in Columbia, Missouri, but I'm

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not certain of that. I haven't heard anything about the social workers, anything recent, so I have no reason to believe that we have a division of social workers, none that we rely on.

Q. Your attorneys are not regularly using social workers that are available to you?

A. We sometimes joke and say that we are the social worker, too.

Q. What about experts in cases?

A. Assuming that an attorney had some time to think about what expert, there would be a mechanism by which he or she could request funds, justify the use of them, because it's the taxpayers' money, and then lay those things out for a funding request. So it is, in theory, available.

Q. And I'm going to get back to the time that it takes to think about that.

A. Sure. I just don't want any of my questions and answers being taken out of context. That's probably why you're not going to get a "yes" or "no."

Q. That's fair.

What about taking depositions?

A. Same thing. We have the funding available with the funding requests, specific

details, different levels of review before the money is finally released. It's available.

Q. Okay. In theory, again?

A. Everything is available, in theory, because there's not time to do it, nor is there sufficient staff.

Q. Okay. What about the use of translators?

A. Well, we have -- of course, the court pays for the translators in the courtroom, so unless there's a glitch, the court should have the appropriate translator there for the person accused of the crime who are, quite often, in custody, more often times than not.

Independent of the courtroom setting, the attorneys in our office and our system have the ability to seek funding for a translator in order to communicate with their client. You know, it's cumbersome, but it can be done.

Q. So if a defendant needs a translator to speak with their attorney, that attorney, in order to go meet with their client, say, in a jail, would have to request the funds for a translator, schedule the translator to go have the meeting; is that an accurate --

A. Sure, sure. I mean, the attorney may not do that himself or herself but, yes, that's how it plays out, yes.

Q. Okay.

A. Probably ask a support staff member to help do that, but the attorney -- he or she will request the funding, and the funding has to be approved before you can utilize the resource, of course.

Q. Do you approve or reject expense requests in your office, or does that go to someone else?

A. I approve or review them for approval, and then, you know, if they need to be clarified, obviously, that occurs, and then it's passed on for further review. I don't -- I'm not quite sure how much monetary approval I have, independent of my supervisors, but that really doesn't create much of an issue, I mean, if there's a need to clarify, that obviously has to happen.

Q. So someone other than you has the final say of whether --

A. On most things, yes.

Q. Okay. Is there ever a reason -- if an attorney has the time to decide they need an expert, has the time to find an expert, and makes a request, is there ever a reason why that might be rejected by -- if you're not making the final decision, I guess, then whoever you pass it on to?

A. No, that's never been rejected.

Q. Okay. So the reason that an expert wouldn't be utilized more often than not is not because the request would be rejected, but because there wouldn't be time for the attorney to even get that far?

A. I thought -- I understood your question to relate to translators, so I may have misunderstood you, so could you state that part again?

Q. Yes. My question was actually broad, and that probably is what made it confusing.

A. Okay.

Q. So the question is if there's an expense request, which is a broad question.

A. Sure.

Q. So if it helps, I can narrow it into the different categories. What I'm trying to get at is it ever -- is an expense request ever rejected for lack of funding?

A. I don't think so, no. I mean, you know, there's clarification that's sought.

Q. Okay.

A. And there may be -- ultimately, my supervisor has the last call on that, but I don't think it's based on funding. I'm assuming it's -- I assume that part of what is considered is the wise use of funds, but that's speculation on my part.

Q. Do you encourage attorneys in your office to think about the budget or the funding before they make requests for the types of resources, experts, taking depositions, using a translator to visit a client?

A. I encourage them to use resources, but the reality is they don't have time to do that so, I mean, I'm not going to insult their intelligence.

Q. Okay. But you would never instruct them to not request it because of budgetary reasons? If they feel like they need it for a case, you would support their request for it?

A. Oh, absolutely, sure, certainly. Because if the system didn't have the funding, should we reach that point, then we seek relief from the courts.

Q. You touched on this, so I would like to talk about it a little bit, the use of

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investigators. So there are two investigators in your office?

A. Yes.

Q. How does an attorney utilize the investigator? You made a comment "get in line." So if you could just kind of give maybe an example, a day-to-day example of how that plays out in your office.

A. Our procedure is in order to track and monitor workload and progress in a case, action items are initiated through the software of our computer system, action item to Investigator A or Investigator B that spells out what you want him or her to do with a theoretical due date. And, obviously, the task could be multiple variety, so it may well be just running someone's criminal history or maybe trying to locate a witness. Those are going to be something that's more in flux. Sometimes it could be scene investigation, could be schedule a meeting, and then be present when the attorney is conducting an interview, for example. So, I mean, there's endless number of things that we would use an investigator for.

Q. Is it up to the investigator to schedule and prioritize the requests that come in?

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A. Well, every action item is given a due date by the attorney assigned, and the way we like to do it in our office is if the -- now, it's not a perfect system because everybody is too busy, but what we like is if the due date for the action item needs to be extended or monitored, I would like for them to come to me so that we can see. I want to make sure that there's not one attorney hogging all the investigators, and there's not, but, you know, not everything can be done in two days because you think it's an emergency because, frankly, it may not be.

Q. So given the capacity of the in-house investigators you have and the number of cases your attorneys have, are there times when an investigator -- where it would be helpful for them to do something, but they just can't get the task accomplished?

A. Well, each investigator -- each of the two investigators I have, they're not salaried people, so they only are allowed to work 40 hours a week, so, I mean, that's -- even the most industrious folks are able to accomplish so much, so many tasks, even in the most efficient manner, in 40 hours.

Q. Does your office have standard litigation practices?

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A. Can you tell me what you mean?

Q. Is there anything in your office that maybe would be, like, a written standard litigation practice or a manual that attorneys would refer to?

A. The only thing, theoretically, I could reference would be the Guidelines for Representation by the Missouri Public Defenders System, but I'm certain -- I'm virtually certain there's no attorneys who have done anything except, perhaps, glanced at that. You know, they are -- they are the ideal. They're a good set of what things that should be done, but with the workload, that's an impossibility. With the workload, i.e., especially with the existing resources, people, it's an impossibility to do everything you need to do on a case.

Q. And we're going to move into workload now, so we're going to start talking more in detail about those issues.

Can you describe your role as district defender, your -- this is going to be a hard question to answer, but your day-to-day responsibilities?

A. Well, I'm not proud of this, but I think the first thing a lot of what the managers do, including myself, is to put out the next day's fire,

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and that could be practically anything.

Q. Is it fair to say that you're responsible for managing your office, assigning cases and managing the budget? Are those three things you're responsible for?

A. At least. And it's not an exhaustive list.

Q. If you were to add other things to that list that could be generally --

A. I have a caseload.

Q. Yes. And we are going to get to that.

A. Okay.

Q. Yes. And maybe -- maybe you explained this as well as you can, but you do manage the budget in your office, to some extent? Does that fall on you or does it usually fall on someone -- a supervisor of yours?

A. As I understand it, the comptroller allocates the budget to the individual offices, so we're given notice of that. I have a longstanding clerk assistant who was, frankly, doing that long before I got to the office in terms of keeping track of the money spent on the funding for professional expenses, for translators, things like that, for purchasing office supplies so, I mean, I do not -- I

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do not sit and subtract -- when we get an order of staples, subtract it from the budget. I don't do that, but she'll track that for me.

Q. Okay.

A. And does a good job of it.

Q. And you've already said that your office does not have the staff it needs and the support it needs. Is there ever a time when there's not enough money to meet the demands that your office has now, if that's a question you can answer?

A. I'm not sure I understand it. I mean, it could be -- that could be broadly interpreted to mean funding, and I'm sure that's not your question.

Q. I understand you need more attorneys. Is there -- working in the budget that you have right now, have you ever made a request for your office of something -- like, a position to fill or something that normally is paid for, and that has not happened because of the budget?

A. I'll give you an example. I mean, I could, the first thing I do every morning is shoot an e-mail that says please give me more lawyers. But I don't do that. I think that's presumed. Everyone across the state would be sending out the same e-mail, I presume. If what you're saying is have I

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asked to utilize funds, and been told no? No, I haven't been turned down.

Q. Can you talk a little bit about the day-to-day responsibilities of the other attorneys in your office who are not managers?

A. Well, each of the attorneys, the 10 are not -- that don't fulfill a management role, have a caseload, of course, of their own, so as any -- their responsibilities would mimic any attorney with clients, specifically criminal defense clients, so they spend an inordinate amount of time in court, some of them an inordinate amount of time getting to court for far, far away places, visiting clients at jails, communicating with clients through letters or phone calls, if not personal visits, opening the file or opening the electronic file or the physical file, and reviewing discovery, creating to-do lists and then, you know, as it goes. If it's creating action items to investigators, of course, a large amount of time is going to be utilized in negotiating with the prosecuting authorities. It's a large number of tasks and it would -- a lot of those would be consistent, whatever file you pick up, but some of those, depending on what the nature of the charge is, it might be more limited or it may be more expansive.

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Q. How much time would you say is spent on administrative tasks versus substantive legal work, by the attorneys?

A. Again, we're talking about nonmanagement attorneys?

Q. Let's talk about them separately.

A. Okay.

Q. Talk about the line attorneys first, nonmanagement.

A. Well, they would -- they have daily time sheets, they have expense reports. Anytime any funding is requested there's a -- you know, there's a form for that, as the phrase goes, in order to make sure we're closely monitoring our expenses. There's action items for any requests that they want staff to do. You know, outside of hey, would you copy this or make three copies of that, there's going to be a form that asks an investigator to do something or a legal assistant that asks for a letter of incarceration or to contact and get -- go to the jail, get a medical release from this client, go to the provider, get an estimate for the dollars so the attorney can then ask for the estimate of the dollars to be approved. I guess some of those are administrative because we have to account for, you know, guardians of the

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taxpayers' funds, so in order to just get the ball to roll, those steps have to be made.

Q. Could you say how much, you know, if a hundred percent of their day, what percentage of it is spent doing that type of work, on average, for an attorney?

A. I would be guessing.

Q. Okay.

A. And it would differ from attorney to attorney because, frankly, some of them are better at filling out their time sheets than others are. Some of them are better at filling out the request to do a depo than others are. Some of them are still learning.

Q. How much time do you think you, personally, spend on administrative tasks versus substantive legal work?

A. Not enough and yet too much.

Q. If your office had more support staff, would that alleviate some of that work for the attorneys?

A. Of course.

Q. Can you describe or explain how cases get assigned to the public defender system and then, specifically, to your office, how that process works?

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A. The statutory scheme is that an indigent accused of a crime fills out an application for an attorney from the public defender system. That may be a judge or a judge's clerk handing it over to someone who is being read their initial charges. It may be someone who is arrested in a facility, and asks for an application, but it -- everything commences with that application for -- application and affidavit of indigence.

We receive those through a variety of mechanisms. Could be through the mail, we pick them up from the jail, some jails every day, some jails not every day. And then those are processed. Those people that are deemed to be indigent, files are created, attorneys are assigned, and then the commencement of the pleadings begin.

There are times, obviously, statutorily, the applicant has the right to appeal our finding to the judge, so the judge may appoint us, so we'll get it post-appeal, if you will, where a person accused of a crime that filled out an application then says, "No, I really don't have enough money. I know they said that I don't qualify, but I don't have any money. I've got this rent, I've got that bill, I lost my job," et cetera. And then

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the judge considers and appoints us, in a lot of cases, so -- and I probably didn't finish my answer, but I'm not sure what -- does that generally address your question?

Q. Yeah.

A. Okay.

Q. So the applications for your -- for Area 7 are processed in your office?

A. Yes.

Q. Okay. How do you decide which attorney takes a case? How are they assigned to attorneys one someone is either, I guess, appointed by the court, if there's some appeal of the finding in your office, or your office just decides yes, they qualify?

A. Is your question how do we know which attorney is going to be assigned?

Q. How are the cases assigned?

A. I assign them, and there's a scheme that we use to assign them, and that may be impacted by jurisdiction, experience. So that's the way it works.

Q. Is it a scheme that you've developed in your office or does it come from a command at central office how to do it?

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A. There's no commandment on that and, frankly, there couldn't be no more than I can have one set scheme because if I lose an attorney with 20 years' worth of experience, I better hope I get another one. And that doesn't always happen.

Q. What is your personal caseload right now?

A. I don't have an exact number. If you're okay with approximations, we can deal with approximations.

Q. Yes, please.

A. Frankly, it may be -- it may be more than the last time I looked or it my be slightly less because, again, part of the limitations of not having sufficient resources means you don't have sufficient resources to keep an accurate count of those things that should be closed, and I don't think it's a mischaracterization to say it's approaching 400.

Q. What types of cases do you have in that 400?

A. Everything from speeding to murder.

Q. In your time at District 7 as the district defender, have you always maintained your own caseload?

A. I've also had a caseload, yes.

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Q. Is that by your choice, as a manager in that office, or something that comes from the directive of someone above you?

A. I'm certainly not told what to do in that respect, I mean, I have, over the past -- it's been years and years, but I have been -- it's been suggested to me by supervisors to reduce my caseload in order to, you know, do more of the administrative things. That's not a bad suggestion. It just -- in my estimation, it wasn't a practical one because -- again, because there is no maximum number of caseload that judges feel that we just have an endless amount of supply and endless number of shelves and endless amount of time.

There are people who are going to be accused of crimes who properly qualify and, under the constitution, have the right to an attorney. And if it's not me representing them, it's going to be another person perhaps with as much experience or Lord forbid, somebody without any experience. And I don't mean on the speeding ticket.

Q. Right. Do certain attorneys in your office -- because I know we talked about there are, I think, you said, at least three attorneys who have a significant amount of experience so -- and I know the

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scheme changes how you assign cases, but are there attorneys in your office who handle more felonies? Are there some attorneys who don't handle any felonies? Could you kind of describe how that works, or maybe it's always changing, and you can't.

A. It does change from time to time and, frankly, it -- I like to tell the attorneys when they come in or when I interview them, they may not even be made an offer at some point, but is that we try not to throw them in the deep end without some sort of training. That's the goal. That's not always the reality.

Now, we're not going to have them defending the serious cases the minute they come in the door. Even if they want them, they don't get them, but, I mean, invariably what happens is the attorney starts with a slow caseload, and then we percolate it up by necessity, and then they finally get the -- I think they finally begin to wonder and realize the warning I've given them because invariably during an interview with an attorney applicant, they'll ask, "What's your caseload?"

And I'll say, "Whatever you think it is, it's higher than that. It doesn't matter what number I give you."

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And part of that is because if they're a new attorney, I'll go so far as to say they really don't have any idea how much work would be involved in one file, much less many, many more than that.

Q. Does your office handle any appeals?

A. Part of the scheme is we don't. Those are given to appellate offices.

Q. Okay.

A. I mean, there may be an extraordinary writ or something, but in terms of -- it's rare.

Q. Okay. But, like, direct appeals and then post-conviction relief, those go to the appellate office?

A. Different departments, yes, yes.

Q. If you can, can you approximate how many cases the other attorneys in your office have?

A. Not really, I mean, without -- no. As I'm sitting here, I won't be able to do that. It varies.

Q. Okay. Are there other attorneys who have a number close to yours?

A. No.

Q. Do you have the most?

A. I do.

Q. Are there other attorneys who might

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have 200 cases?

A. Yes. Oh, yeah. That's not to imply the other attorneys have a soft workload.

Q. I have an exhibit that will help that, I think, that will clarify workload that I'm going to get to in just a minute.

So given that you have your own caseload of 400 cases and you're also the managing attorney in your office, can you talk about how you are able or not able to supervise the substantive work of attorneys in your office?

A. It's virtually impossible. I mean, we do the best we can. "Hey, I've got a question" is usually the way that's dealt, or possibly an e-mail, but it's usually -- I mean, more often times than not, it's, "Sorry. Do you mind if I interrupt your lunch?" And I never mind.

Q. Are they -- do you have performance evaluations of the attorneys in the office, annual evaluations or such?

A. Yeah, we do that. I mean, it's hard to find time to do that, but we do that. We target it so that if they're there for the appropriate amount of time to merit review and to -- and if their performance is there, then we recommend the

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promotion, but reviewing for review sake, we don't have time for that, honestly. We should, but we don't.

Q. So you review, like, for a promotion?

A. Yeah, earmarks in the calendar, sure.

Q. Okay. What kind of a promotion?

A. From an APD, Assistant Public Defender I to II, III, IV. Those are the four levels.

Q. Is that the same in all the district offices, do you know?

A. That demarcation, yes.

Q. Okay. So as a public defender, you start at I?

A. Yes.

Q. The highest you can get to is IV?

A. Uh-huh.

Q. And beyond that would be someone in a manager position?

A. Correct.

Q. And you said you have a co-manager. What's that person's title?

A. It's a deputy district defender.

Q. Okay.

A. I reference her as my co-manager, Ara,

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A-R-A, Bailey Brown.
Q. Okay.
A. And I think she's been with the public defender system 10 to 12 years, I'm estimating.
Q. And she also maintains a caseload?
A. Yes.
Q. Do you have any idea how big her caseload is?
A. Not off the top of my head. I know it's too much. Other than that, if you're looking for a number, I can't give it to you.
Q. Does the central office perform any evaluations on attorneys, that you're aware of?
A. They -- probably the most direct answer is not that I'm aware of. For example, if we have recommendations for promotion, then we go to our supervisor, and he or she -- at the time, it was he or she -- would review, and if they had any questions or sought any clarification, that's the way that would work. I mean, we don't have the final approval for that. Our supervisors do.
Q. Okay.
A. So they may ask you to do some additional case reviews, case file reviews, for example, if you've done X, they may want more. It

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just depends.
Q. But they're not actually performing the evaluation?
A. Usually not.
Q. Okay. Do you, in your office, gather your own statistics on workload, attorney workload? Do you keep -- I mean, I'm sure there's a way to figure out --
A. There's views on our computer, but, I mean, that's just not my expertise.
Q. Okay.
A. I think I know where to find them, but I would probably need a translator for that, or at least some assistant or someone that's more familiar.
MS. WILCOX: All right. I have the first exhibit I'm going to use, and we are trying to consecutively number exhibits from the last deposition that was taken, so these are going to come slightly oddly numbered, it's going to seem. This one is going to be Exhibit 14 because I think at that last deposition we left off with 13.
(Exhibit 14 was marked for identification.)
Q. (BY MS. WILCOX): So I'm handing you what's been marked as Exhibit 14. I will hand a copy to all attorneys in the room.

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Can you identify what this document is?
A. Well, the schematic of what it is I've seen before, you know, and it's -- obviously, the time frames differ, but it's titled "Missouri State Public Defender Cumulative Caseload Metrics."
Q. So you've seen a report like this before?
A. Sure.
Q. Okay. And this shows, just to confirm that I'm correct, a date range of 4/1/17 to 6/30/17?
A. It does.
Q. And it looks like -- and you can correct me if I'm wrong -- that these cumulative caseload metrics show a three-month window. Is that common?
A. That's what I interpret it to be.
Q. Okay. And can you see Area 7?
A. I'm looking.
Q. About halfway down, a little before that.
A. I see it now.
Q. Okay. And if you follow it over to the almost second one it says percent of capacity. And tell me if we're all reading the same column. It

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says 273.1 percent.
MS. SHIPMA: No.
Q. (BY MS. WILCOX): Is that what we think or am I reading the wrong one? 253.6 percent.
A. Yeah, I believe my eyes are going over to Rank 14, and it appeared to be percent of capacity as you detail it, yeah.
Q. Everybody agrees that that is the correct one, 253.6 percent.
So if I understand this correctly, that means that your office is over capacity at 253.6 percent?
A. I think whoever loads these metrics, that's their opinion, yes.
Q. Okay.
A. Sure feels like a lot more than that.
Q. How long do you think your office has been working above capacity?
A. From memory, my honest recollection, I believe Area 7, Liberty, has been over capacity for as long as these metrics have been published, but I don't know when that started, so I just know it's been a lot of years.
Q. Do you feel like you've been over capacity the entire time you've been working in

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Area 7?

A. You know, I thought you might ask when things started to heat up, and I'm going to guess around 2005. Now, that's not a -- to be fair, I also read portions of your petition, and it reminded me of events, telltale events, many of which I didn't like to think through again and remember, but if I'm going to put a general calendar year on there, that's -- I think that's as fair as any others.

Q. And then you've been working above capacity since 2005?

A. I think the system has, but, you know, for example, I don't know how -- I can't tell you exactly -- have a personal opinion about the other offices because I just -- other than what I believe, but I don't work there. I don't know what sort of experience level they have. I'll leave that to the deference of those individual managers.

Q. Yeah, we'll talk about your office.

So is it a fair summation of what you said that the number of cases currently handled in your office is not manageable?

A. Oh, it's absolutely not manageable by manageable in any definition of the word "manageable." And it's certainly not fair for the

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person accused of a crime.

Q. How do you monitor the caseload for attorneys in your office --

A. Not sure what you mean.

Q. -- if you're able to?

A. Well, first off, there's only so much utility in monitoring it, right, because it's really, as your petition indicates, it's just about rationing the justice. We don't -- we don't ordinarily have a way to tell -- to tell anyone, "We have enough, thank you, you know, pass." That's not an option.

So I'm cognizant of the relevant experience level of the attorneys and try to have some -- try to monitor the degree to which they're likely to go into further hysteria if I give them more things. My goal every week is not to lose -- not to lose anyone, especially an attorney, I don't want anyone to leave, support staff either, but in particular anyone with a bar number. So we take extreme measures to try to make that goal.

Q. Okay. And we're going to touch on recent events later, so I don't think we need to get to that now.

A. I understand.

Q. But is there -- from what I

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understand, the cases come in and they get assigned. That's why everybody is above caseload. Is that a fair way to say that? You're not turning away -- you have not historically been turning away cases that come into your office?

A. As a general rule, well, I mean, there's been a period with the public defender system where that's been attempted, of course, your petition mentioned that, but as a rule, no.

Q. Okay. Is there a way that an attorney can raise a complaint about their caseload, or is it informal?

A. Of course, they can. They can report me to the bar. They can report any of their supervisors to the bar. I think they could probably report the judge to the bar, if you're just talking about could they. Now, whether or not they know that, you know, I don't know if I knew that when I was a year or two out of law school. Probably didn't.

Q. Is there any mechanism within your office that when you hire people they're told, you know, if you have a grievance or complaint about your work experience or your caseload, here's the process of how to make that known?

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A. When they're hired? No. I just give them unadulterated warning that the caseload is beyond belief, and it's not fair to the clients and it's not fair to the attorneys and it's not a 40-hour workweek. I don't want them coming in and then leaving because that's a disservice to the clients that they represent that I assign to them, a further disservice than already exists.

Q. And with the caveat that we're going to talk about recent events, your letter, later, if an attorney -- and maybe this has never happened, but if they come to you and they say -- I am guessing this has happened -- "I can't manage my caseload. I have all these cases. I can't do it," what can be done? What do you do in that situation if that's happened?

A. Oh, it's definitely happened.

Q. Can you give an example of how that plays out?

A. Well, sometimes they resign. Sometimes they resign shortly after that. Sometimes they resign in that same meeting. Sometimes, depending on what the -- what my ability is able to do, sometimes I'll say let's look at your caseload to see if I can give you any relief. It's really -- it

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is just -- it's not any relief at all except to that one particular attorney, so there's only so many things we can do with that, assuming that everyone else is overburdened, which is always the case when you consider their experience level.

Q. And if you're giving relief to one attorney, that burden is going to fall on another attorney; is that right?

A. It depends on what kind of relief it is. It may be something -- it may be more complicated than take these 10 cases and give them to that attorney. It may be shifting of a docket so that it opens up a pocket of time for them to do jail visits or something like that.

I usually -- I like to -- I tell the attorney, "I'm not necessarily going to be able to do it, but what do you think might help you the most?" And they have -- sometimes they don't have an idea; sometimes they do. I know that in terms of retention, it's probably going to do -- I'm going to try to -- if it's possible for me to do what they think is best, I'm going to try to do that if it's doable. It depends if it's doable. I might just lose the lawyer.

Q. How often do lawyers in your office

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raise concerns about their caseloads?

A. Well, they're a pretty resilient group. I mean, if they don't have a sense of humor, they don't work for us. All the time. But, I mean, you know, it's not woe is me, it's woe is the client.

Q. Uh-huh. But -- so it's fair to say that everyone has too many cases --

A. Yes.

Q. -- your office?

A. Yes.

Q. Everyone is aware of that all the time?

A. I think that's accurate.

Q. Is your personal caseload now higher than at any point since you've been district defender?

A. I believe it is.

Q. And would you agree that the caseloads in your office by other attorneys are higher now than at any other point that you've been district defender or that you've been at MSPD?

A. Well, I mean, we're talking about different level of crisis, but each one of those is a crisis, so I don't know how you want me to split hairs with that. And that with the caveat that we're

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going to talk about most recent events in the future, I'm not comfortable about dealing with that in a vacuum.

Q. Okay. Then we'll just touch on it again when we get to that.

We already talked about the discretion you have in your office kind of generally. Do you have discretion setting policies in the office?

A. Somewhat, sure.

Q. Okay. What kinds of policies do you set as the district defender?

A. I mean, it could be anything in terms of, you know, where the paper cutter -- what room that goes in, where the copier is. These are high-level command decisions I make. Can also be, for example, investigators are not assigned tasks without using the action item through the software. If there's a measure, and there is, a mechanism by which you call in sick or seek annual leave, you know, that's a policy --

Q. That you set in your office?

A. Yes.

Q. Yeah. But, like, the amount of leave, those policies are set by MSPD?

A. The amount of leave certainly is,

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yeah. That's through the public defender system.

Q. All right. I'm going to move on. Now, we're going to talk more about how the court system itself works.

A. Okay.

Q. So starting with initial hearings. Describe to me or explain what happens after an indigent is arrested, typically. And what I'm going to get to is at what point are they first brought before a judge?

A. As I understand it, there's an initial arraignment before a judge. I don't know if that's necessarily -- I have no reason to think that's necessarily always in person, but probably very often through video presentment, and initial bond is set.

Q. So the initial arraignment, the judge goes over the charges with them?

A. That's my understanding.

Q. Okay. And you just said that's when bail or bond is set, at that hearing?

A. That's my understanding.

Q. Is there an attorney present at that hearing from your office with the defendant, or have they not yet applied?

A. If they're doing video arraignments in

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the court, we may be present in the courtroom. We're not involved in that defendant -- in that accused case.

Q. That person has not yet applied for your services?

A. I don't think they've been told they can apply. I mean, I'm assuming it's pretty fresh, in terms of the arrest.

Q. Okay. And is the judge who normally does an arraignment the same judge who sees the case through to the end?

A. I have no reason to think that that consistency applies, especially in a jurisdiction where there are many judges.

Q. Does your jurisdiction have associate circuit courts and circuit courts?

A. Both Platte and Clay does, and so does Clinton.

Q. Correct me if I'm wrong about this. Sometimes is a case assigned to an associate circuit judge, and then it will be transferred over at some point to a circuit judge, depending on decisions that are made about how that case is going to move forward?

A. If it's a felony, it could start in an

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associate or circuit.

Q. Okay.

A. If it's a misdemeanor, it will begin and conclude in associate.

Q. So bail is set at this initial hearing when an indigent defendant is not represented because they have not filled out an application?

A. I assume that is true, even if they're not indigent.

Q. Okay. The bail is always set at the first hearing. Can a bail not be changed after that point, and how is that done?

A. Through a pleading, oral or written bond modification effort.

Q. In your area, is it difficult to have bail reduced after it's been initially set?

A. I mean, it happens. I mean, if you back up a minute, I think most of the bond amounts are unreasonable, by definition, so I don't know -- I don't know how much the timing affects that, is what I'm saying.

Q. Is the prosecution involved in the initial bail setting or bond amount?

A. I don't know if they're in the room. Again, if they're in the room, they may be -- of

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course, if they're going to a judge with a warrant, that sort of thing, they may be -- they may have that exchange outside the courtroom, maybe. If -- I don't know if they're always there.

Q. Okay.

A. Yeah.

Q. Is there a certain point in a case when a defendant can move to dismiss charges against him or where they would have to do that?

A. Many of them think that that's such a motion.

Q. And it is not, is that what you're saying?

A. It would be a rare motion where that would be filed. There may be strategic reasons to do that.

Q. Is there a certain point in the case putting aside that maybe you haven't gotten an offer yet, which would preclude this, but when a defendant can plead guilty? Is there any time that's too early for a defendant to plead guilty or too late in the case? I mean, I'm sure you see it up until trial they can plead.

A. Well, let me try to explain. I think -- you know, we've seen -- I've witnessed

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before where people are being initially arraigned, and the person accused, perhaps before the judge has warned them that they have the right to remain silent, they have the right to an attorney, will blurt out something about -- and it could probably be summarized about how sorry they are and how they want to plead guilty. So I suppose, technically, that's what they've done without counsel, without sufficient early warning by the judiciary, but I don't think that's really your question.

Q. Well, it is, kind of. Have you seen that happen where they've pled guilty that early?

A. Well, you see -- no, they don't plead guilty that way.

Q. Okay.

A. The judge will say, "I'm going to enter a plea of not guilty for you."

Q. Okay.

A. But, you know, the problem is they would have blurted something out.

Q. Are there any defenses, in your experience, that have to be raised at a certain time, or they could be waived?

A. Boy, that's a loaded question. I'm sure you'll come to it later. Well, waived

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procedurally or waived because they're not practically available anymore?

For example, waived procedurally, unless we miss a time limit, that's probably not going to happen, but waived from a practical standpoint, you know, a case gets -- a case gets stale, it takes too long to get a lawyer, it takes too long to do the investigation, you lose any real chance of getting any kind of alibi defense, memories fade. And then years later you're in a courtroom, and the prosecutor says, "So this is the first time you've told anybody this."

And, frankly, it's never the first time they've told them that, or not likely, but the prosecutor attempts to characterize it as this long, protracted delay, and sometimes it's due to no one's fault except the criminal justice system and the lack of funding. This is assuming the lawyer is not retained privately and, you know, and has a caseload ratio of one to one.

Q. No. All these questions are assuming that these people are in your office. So it is possible that a defense -- so let's not call it waived, but an opportunity could be missed to raise something because of workload because something just

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isn't done?

A. Of course, yeah, absolutely. Yeah, absolutely. It could be overlooked because someone is untrained, could be overlooked because someone is too weary because they're overworked. It could be because there's not a sufficient communication link set up so that the client really understands what it is you're discussing. Yeah, could be a lot of reasons.

Q. So if I understand you correctly, the defendant may not bring something up, and if memory fades, it's hard to go back and get that information, even if the attorney can find the time to try to get the information?

A. That's one scenario, sure.

Q. Okay.

A. If it sits on an attorney's shelf long enough, too long, before -- before it comes to the top of the pile or because it's going to go to court next week for pretrial motions or whatever, sure, all those things could be. It's hard to resuscitate old evidence, is what I'm trying to say --

Q. Yeah.

A. -- old testimony.

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Q. And at what point does the defendant waive any claim, like, a constitutional rights violation claim? Has that happened?

A. You have to be more specific. I'm not sure.

Q. Why don't I tell you my understanding of it.

A. Sure.

Q. And then we'll see if you agree with that.

So from my experience, my understanding is that -- and I've seen appellate cases that say, you know, you have to raise this at the earliest possible time, and if it wasn't raised at the earliest possible time, it's waived. Is that a fair understanding of how --

A. That's more of an appellate scheme than trial scheme, but, yes.

Q. So if it's not raised by an attorney in your office, it could be waived later?

A. I mean, you're mixing apples and oranges. If it's not raised in the motion for a new trial, it won't be raised later in the appellate sense, but I'm talking about in terms of pretrial litigation. My head is usually in that realm, but,

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you know, right to a speedy trial would be a good example.

Q. How often do your clients want you to file a motion for a speedy trial?

A. Pretty often.

Q. And how often can you do that for them?

A. I tell them they don't have a right to a speedy trial from a practical perspective in the State of Missouri. And I always try to tell them, depending if they're still listening, what the case law -- how the case law talks about that because there's really two elements of bad news when it comes to that. The case law is such that, if I'm recalling accurately, it can go as long as 16, 17 months, an insane amount of time, and the courts have found that not to be a violation of a speedy trial. But from a practical standpoint, when you're represented by an attorney whose workload is far, far too excessive, you don't get a right to speedy anything.

Q. How do your clients take that when you have that conversation with them?

A. Well, I try not to have it just like that. I try to explain to them that they can have a speedy trial, but all that means is they'll have

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probably an underprepared or totally unprepared counsel, and I try -- in each and every instance, try to urge them that's probably not the right thing. You know, quick result is not always the result you're going to want. And some listen, and many, many clients file pro se motions for a speedy trial.

Q. Even while they're represented, right?

A. Of course.

Q. You said defendants in your area often attend hearing by video; is that correct?

A. Sometimes.

Q. Okay.

A. It depends. Probably more Clinton County than Platte or Clay.

Q. So they're in a jail facility, and they just appear on the video. Is there an attorney present in the courtroom, usually, on their behalf?

A. That's why I don't prefer the video -- Polycom is what they call it, but the State of Missouri is starting to do it because it saves money, like that should be the guidepost.

But, for example, in Clinton County -- I don't want you to get the belief that this happens all the time, but it's not unusual for in Clinton County for there to be -- 43rd Judicial Circuit --

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for there to be a Polycom where the client is in custody in a jail facility, sometimes a prison, and they're brought, ushered, just like I am, before a camera here, and then their case is called, and there's some exchange. Now, it may be something as simple -- it could be something as simple as saying your attorney has requested a new docket call, we're going to call you on the next law day, or it may be something more complicated like the guilty plea itself or, Lord forbid, the sentencing, so...

Q. That has happened on video, though?

A. I think so.

Q. Even when someone is represented by someone in your office?

A. I think so.

Q. Who makes that choice of whether it's going to be video or in person?

A. That word choice is a loaded question.

Q. Who decides?

A. Again, a loaded question. The judge may encourage that, and then I think, I want to say that it's endorsed so much by the court system, I think there's an OSCA form that waives -- official form that waives presence. I don't know the number, of course, and it's all in the name of saving funding

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and travel and mileage and everything else.

Q. That the state pays for. So the state is trying to save money because they --

A. State court system. I don't know who is saving money. I frankly don't care. I think it's wrong, but, yeah.

Q. So if you're an attorney on a case, and there's going to be a video hearing, does that -- do they run that by you first, or do you sometimes show up in court, and find out that your client is not coming in person?

A. Well, if you're familiar with the jurisdiction, you may know that's probably what's coming. It may be called a Polycom day, and then you figure out that's what -- that's all that's going to happen that day. They may interrupt court proceedings to bring in the Polycom unit and have that happen. Sometimes I guess it could be a surprise. Sometimes you know. It's a rare instance where it's really a good idea, I think, but...

Q. Yeah. But sometimes -- I mean, if I'm not familiar with the jurisdiction, and I have a client who is in custody, I might show up, as the defense attorney, well, thinking my client -- obviously, I can talk to them in person because

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they're going to come here, and we can have a little conversation before the hearing.

A. Right.

Q. Then I might show you up, and that might not be the case, but I had no way of knowing that ahead of time?

A. Right. I think that does happen.

Q. Okay. Because you're saying in your office, you might know, but that's based on experience, knowing the judges, knowing the jurisdiction?

A. Right. Once you're shocked by it the first time, if someone hasn't told you about it, yeah.

Q. Not because you're agreeing to it ahead of time by some formal mechanism?

A. Well, there may be. I mean, again, you're encouraged to agree to it, so -- and there may be an outcome determinative reason why you would.

Q. Is it hearing by hearing decided for a person, or do you maybe agree all pretrial hearings could be by video?

A. If a judge encourages you to proceed in that matter. You might decide whether or not you're going to keep that judge, or if you have an

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alternative.
Q. But they might want --
A. You're probably -- probably going to pick and choose between clients, probably.
Q. But a judge might want every hearing up until trial to be by video?
A. Conceivably.
Q. Okay. Can you just describe for me what a preliminary hearing is and when that might happen?
A. Sure. In the instances where your client is charged with one or more felonies, you have the right to a preliminary hearing, and it's -- I equate it with a probable cause hearing, explaining to clients that not all the evidence has to be in or is likely to be presented, but just a portion enough to convince a judge that some felony has occurred in some connection, linking you to one or more crimes. And that's the -- in a nutshell, what a preliminary hearing is.
Q. How often are they held in your -- where you practice?
A. I don't know that the question makes sense. It's a -- what we have -- well, I'll give you -- our three primary counties, Clay County has a

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grand jury, so when a county has a grand jury, they never have to allow a client to have a preliminary hearing. And that confuses clients because you tell them they have the right, the judges tell them they have a right, and then it's swept away with a grand jury so Clay County has a sitting grand jury, so you could conceivably never -- could conceivably never have a preliminary hearing. Sometimes they allow it, sometimes they decide to agree. There's reason even -- some reasons why a prosecutor might be okay with it, or it might be their idea.
Platte County, most recently, has had their grand jury stripped away from them. Historically they didn't have one all the time, and then most recently they were allowed to have one. I think that was found to -- I don't know why, I don't know why technically it was taken away, but I'm just glad it was because now -- because some jurisdictions abuse it. So if someone is charged with a felony in Platte County, they get to have a preliminary hearing unless it's waived.
Q. What might a circumstance be where it would be waived?
A. There are a lot of different reasons you would waive a preliminary hearing, some of which

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clients understand sometimes. Sometimes they get it, sometimes they don't. Sometimes they're overly confident that a witness won't show up, and the case will be dismissed, but without revealing too much strategy, a preliminary hearing allows an alleged victim another opportunity to see your client and perhaps better be able to describe physical features, any conceivable physical feature.
Additionally, the case law is such that if a preliminary hearing is held, there's the concern that later, down the road, if that witness is unavailable under the legal terms unavailable, their testimony would be allowed in front of your jury and, really, at that point in time, you probably have not had enough chance or certainly not much opportunity to investigate the case or depose the alleged victim, et cetera, and then that strong one-sided evidence comes in in front of your jury. So a lot of reasons to waive, some reasons to have. That is a case-by-case basis.
Q. Okay. After your office is assigned, so someone applies, they qualify, is assigned to your office, does an attorney from your office attend every hearing after they're deemed indigent?
A. If you mean the same attorney, no.

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Q. Talk about what you mean with that.
A. Okay. For example, if I've got -- if I've got Clay County cases assigned to half of our 12 attorneys, if that's the layout, then the attorney assigned to a gentleman's case doesn't necessarily mean that that attorney is going to be at every one of their docket calls because they may be -- they may be out sick, they may be sick, they may be on approved leave, they may be conflicted from a calendar perspective, and be somewhere else, they could conceivably be in trial. But there would be some other assistant public defender, if not myself or the co-manager, present for that proceeding, so they wouldn't be without an attorney, but they might likely be without the attorney that technically represents them in the filing, in the pleading.
Q. Okay. Let's -- I think this next question is going to be better with an example because it involves how much you prepare for initial hearings, and I'm guessing that varies, depending on the kind of hearing you're showing up to.
A. Sure.
Q. That's fair, right?
A. That's totally fair.
Q. So let's say you have an early hearing

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where you're going to seek to reduce bail. How much time would you have -- would you prepare for that hearing?

A. Well, it depends. You know, the question really is how much time you might wind up preparing or choose to prepare or forced to prepare because sometimes it's the client, you're shoulder to shoulder, they want a bond hearing. Sometimes, depending on where you are, you may be in front of a judge that you know is going to entertain that oral bond motion. You also may be, likewise, in front of a judge you know is never going to entertain that with that sort of warning notice.

Likewise, same thing with the opposing prosecutor. You may know that that jurisdiction is never going to allow that sua sponte addressing a bond. Sometimes you look at the individual case and see if it's a case that has an alleged victim. If they do, then, statutorily, frankly, the other side is obligated to give them notice or see if they want to attend, that sort of thing. So there may be obstacles created by statute that preclude the judge and the prosecutor to take up that bond. But you may still say -- request of the judge to see if they would be willing to take up bond, for a variety of

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reasons, even though you may know they're not going to.

Now, conversely, sometimes you have witnesses that you're going to subpoena to a bond hearing. Those are the ones where you've had some time to think. Those are the ones where what you have to say might make a difference or you hope might make a difference. Sometimes it makes zero difference. So it varies, but, quite honestly, probably in the majority of our cases, we don't do much except find out about the client's self-divulged criminal history, which is not always accurate. Sometimes through dishonesty, sometimes through actually misunderstanding or not understanding that that was a conviction or "I forgot about that, it was so many years ago." And sometimes that's honestly their mistaken recollection.

So because of the workload, it's all too often not very much preparation at all in terms of the information that you would really like to present, assuming the client had the type of criminal history that you might find to be favorable for a modification of bond, and assuming the client had ties to the community, employment lined up, transportation available for court, a lack of a

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failure to appear to court appearances, that sort of thing. But you really need to know all that in order to be well-armed, even if the investigation yields a prediction that the bond is probably not going to be touched.

Q. When did you -- and maybe you need to do this in two different answers -- but you and the attorneys in your office typically first meet with a client?

A. That probably varies. Some attorneys are better at it than others, and not better because they're more experienced or capable or have a better car. It may be because of what jurisdictions they represent. And this -- usually, I'm talking about people who are in custody.

Q. Uh-huh.

A. You know, people who are fortunate enough to be free, either on bond or released on their own recognizance, we encourage to make an appointment, you know, see us as early as you like, assuming our calendar is available. And sometimes that can be a challenge. But in terms of custody clients, we don't see them soon enough. I mean, the public defender guidelines have a theoretical mandate for how quickly to see them. Sometimes -- I mean, in

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many instances, that's not possible.

Q. What is that theoretical mandate?

A. I think it's within seven days of being assigned the case.

Q. What --

A. I think that's the way it's phrased.

Q. What percentage -- this is going to be an approximate percentage, but of your -- the current clients that your office represents are in custody right now?

A. I'm going to say I don't think 75 percent would be a gross misrepresentation. I think that's probably about true. It could be higher.

Q. So how often will an attorney meet with a client within seven days of getting a case?

A. I'm going to suppose probably not very often.

Q. Okay. Does client contact, initial client contact, ever happen at the first court appearance that an attorney from your office attends?

A. It could, I mean, it probably would be -- might be more times than not by accident, if you're going in and the judge isn't on the bench yet, you're going and you're talking to the folks in custody, and you're trying to figure out if they've

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applied or "Are you Alfred?" or whatever. And you may just have some human contact with them, and then that happens if there's time, if the court hasn't come out on the bench.

Q. Do you think that you and the attorneys in your office meet with your clients enough?

A. No. I mean, I know I don't, and I'm not faulting my attorneys that I supervise. You know, it's kind of -- it's hard to blame them when I'm giving them too much to do.

Q. Right. In a perfect world, how often would you want to meet with a client?

A. Depends on what they're charged with.

Q. Felony.

A. Depends on what felony, too. Depends on the client, too, regardless of their charge because some need -- some need more assistance and continuation of communication than others, so just depends.

Q. Is client contact most often done in person or do you sometimes have over-the-phone with clients in custody?

A. Clients in custody routinely call all the time that they are allowed to call from the jail

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facilities. You know, there's lockdowns and silly rules all the time. I could go on and on about that. But we have both types of communications, you know, clients that are able to call during business hours and jail visits.

Q. Are the jail visits and the phone calls that you have, are they confidential, to your knowledge, with all your clients?

A. Well, jail settings are certainly confidential if you visit them in the attorney-client area, I mean, where there wouldn't be anywhere else to visit them. You don't use the -- one facility has a family phone visitation. You don't use that because they record it, so you can't visit in some of the other rooms because they're recorded surreptitiously, but -- and in terms of the clients calling from the jail to our -- those are understood to be confidential and not recorded.

Q. Okay. Is it common for your clients in custody to remain in custody until their case is resolved either by a plea or trial?

A. Far, far too often, yes. And that's assuming they're going to get out of custody, yes, but out of the custody of the jail, yeah.

Q. Right. Do you feel like you have the

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time and resources to communicate with your clients in a manner that each of your cases requires?

A. Of course not.

Q. Do you have any cases where you feel like you can communicate with them in the amount and time that the case requires?

A. I have clients who may call a lot, purely by accident, you know, that I wind up talking to them with some frequency --

Q. Okay.

A. -- but other than that, no.

Q. And do you think that's the same for the attorneys in your office?

A. I would presume. I'd have to be -- I'm forced to presume it would be the same because of the workload they have, and commitments.

Q. Without getting into specifics, if you can and, obviously, not compromising attorney-client privilege, can you think of a time when your representation of a client was hampered by the lack of time you had to communicate, if you could give an example, or for someone in your office?

A. Sure, I could probably give an example that we try to use as a learning tool. Former assistant public defender trying, quite honestly, to

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do the best job that they could, used a -- a client in custody, used a communication method because the jail visitation rooms were tied up, because that's one of the many problems with having clients in custody is because they don't have sufficient visitation hours or facilities to visit with your attorney. And it may have been -- it may have been during a trial or it may have been right shortly before some court proceeding, but that attorney, out of a sense of emergency, there was some urgency for communication, communicated with a client through the family visitation phone thing, and that was recorded, and I don't know if there was a whole lot of forethought about that. There clearly wasn't. But I think the prosecutor wound up mentioning it or bringing it up in some fashion. Now, whether or not it impacted the resolution of that case, I don't know, but it was a learning experience for everyone.

Q. If you can -- I know that these are hard approximations, but in the percentage of your cases, if I give kind of a list of things that you feel like you're able to do, could you tell me, like, what percentage of cases, so the first example is to interview the victim and other witnesses?

A. Are you talking about me, personally?

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Q. Yeah. A lot of these questions --
A. Sure.
Q. -- are you, personally --
A. Okay.
Q. -- and then the attorneys in your office.
A. Sure. You're going to find some similarity in the responses. There's not enough time to do that, so, no, it doesn't get done in a routine fashion.
Q. How about visiting a crime scene?
A. Same answer.
Q. And you're saying the same answer for you and the attorneys in your office?
A. Yeah. I have no reason to think it's different, I mean, on an overall basis. Obviously, if one of us is -- me or the attorneys I supervise are targeting a case while everyone else, you know, waits in the wind, then that person is really getting first class service for that period of time when it finally comes to the top of the pile.
Q. How often does that happen?
A. The top of the pile? Not very often because there's only one top.
Q. So some cases will never make it to

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the top unless -- or will they if there is an important hearing then, obviously, that will rise it to the top?
A. Well, I mean, we have clients every day that plead guilty to -- plead guilty to things that they didn't do because they see the workload and the lag.
Now, they may have been convicted of those things they didn't do because there may be evidence sufficient or there may not be. You just don't know until you try it to a jury, right? And sometimes they plead guilty in an effort -- we call it pleading to daylight when they're kept unfairly on too high a bond that nobody can make, and then the probation is offered, dangled outside of their cell, then they're probably going to yield to the pressure and say yeah.
Q. So they're pleading guilty to get out of jail?
A. Every day.
Q. Okay. How often, if at all, are you able to identify witnesses not mentioned in a police report?
A. Well, our investigators do a good job of doing that on the cases, you know, if it's

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possible, right, talking about a neighborhood canvas, going and interviewing a clerk on the alternate shift. I mean, in terms of how often we're able to do that, I think probably not very often because we're not -- the caseload is such that we're not having the investigators do that sort of thing.
Q. Okay. Same question for investigate an alibi.
A. Well, that's an even more essential question because the timing of the alibi is so critical. You're going to lose alibi witnesses and you're going to lose credibility of the alibi witnesses if you don't -- because you have a prosecutor that will cross-examine them in front of the jury, this is the first time you mentioned that. And what they don't say is "Because your attorney had 400 cases" or "because people kept quitting because of the low pay and high workload" or, most recently, "the fear of being disbarred."
Q. How often can you investigate police conduct?
A. Well, that's probably only going to be done -- most likely going to be done through deposition, so that's the obstacle we face with being able to examine the file enough to know what pressure

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points we're going to make on that file and who to investigate and the timing of the depositions of the officers and the scene visits and witnesses interviews or other witness depositions so it all falls into the same category of not enough time, too much stuff to do.
Q. Okay. Are there -- are there things in cases that you see repeatedly coming up that you wish you had time to do that, frequently, you and attorneys in your office don't have time, like, the majority of cases, you wish you could take depositions, and you can't, or you wish you could find an expert, and you can't? Are there certain things that pop up more frequently as things that you just don't have the time or resources to do?
A. Sure. Most things, but, I mean, I could think of -- I would like to be able to -- of the -- and we try to do this, but then we get interrupted because life happens or, more accurately, work happens.
If you have a catalog of depositions of law enforcement officers from a certain jurisdiction, in a perfect world, we would have a brief bank of those depositions so that we would be able to know the things that they did. I can think

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of one particular case where the dash cam video, snapshot of the dash cam video, I believe, shows -- and it was not my case. It was one of the investigators that uncovered it as a result of a request from the assigned attorney -- where the car stop was conducted because the vanity light on the rear license plate was out.

Well, it wasn't out. The dash cam showed that. Had that attorney not looked at that -- and we have lots of cases like that. Well, lots of cases where the vanity light is out, too, and lots of cases where the police officer doesn't -- is trained, I believe, or comes to the conclusion maybe they shouldn't turn that dash cam on yet so the defense counsel will never be able to see that it was lit.

So if you're going to negotiate it with the prosecutor, that's a powerful tool. If you're going to file a motion to suppress and try to seek judicial intervention, that's a powerful tool. If you've got a cop that has done that, what I would like to do, but never would have enough time to do, would be to be able to -- in a perfect world, I would catalog that, I would make sure my entire office knew about it, and I would make sure surrounding offices knew about it that deal, from a conflict, sometimes

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with that officer because that's plain and simple untruthful testimony and a bad stop.

Q. So you're saying that in a perfect world, you would like to do that, but in your current world, you're not able to do that?

A. Not even come close. I'm not even sure I've told enough people about that.

Q. Okay. How often do you think, if it's ever happened that attorneys in your office have the time to work up a case in the manner that the case requires and that that attorney would want to work up that case for a trial?

A. I think they all want to to the extent they have the experience to know what the next steps would be. Part of the obstacle will be the inability -- because of the workload, the inability to mentor them as to what to do. A lot of them have great ideas themselves, but they may not know how to put those -- procedurally, how to make that happen. But, you know, this doesn't mean every one of our clients gets poor representation. If you pick somebody out, and you ignore everybody else, that person is going to get class A representation. But it doesn't work like that because you have dockets and you have your inbox with more cases coming in.

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And even though that attorney may make the effort to work on that client's file every weekend, from a practical standpoint, that just -- that's not a workable solution, and it's not fair to the other -- all the other remaining clients.

Q. So it's fair to say that certain things, the things we've been talking about, visiting the crime scene, identifying witnesses, the alibi, investigating police conduct, are not done because of time management, not because they're not necessary for the trial? The decision is made that there might be not time to do it, or resources, even though an attorney believes that, in a perfect world, it should be done?

A. Right. I agree with that in a general sense. Now, part of the problem is if you haven't visited the scene, you don't know, really, what you might have missed, so I may characterize that as something I don't -- now, what I can do is conclude they have sufficient amount of evidence no matter what I find at that scene. I could conclude that, so I'm probably not going to visit that scene. But if the scene is important, the scene is important enough to be visited, and it's not getting done.

Q. Okay. Does the -- in your area, is

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the discovery that the state is required to disclose frequently disclosed when it should be?

A. Oh, boy. Short answer, no. It's a slow drip, and it's not timely. Let's just say it that way. It's not timely, it's not complete and it's -- if it weren't about people's lives, it would be comical.

Q. Does it depend on the type of case or is it routinely the same across the board?

A. To a certain extent, it depends on the type of case.

Q. Do you have an example of what you're -- without getting into too many specifics?

A. Sure, right. With the experience that you develop, you probably have a feeling for what's likely to be being held back, what testing hasn't been done, what testing isn't going to be purposely done until later. And in some cases you know that that's never going to be within the realm of the evidence, so it's not coming now, it's not coming later, they're not withholding it. It may be slow, but that just may be because of their insufficiency, not purposeful.

Q. How often do you, in your cases, request discovery from the state, make formal

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discovery requests?
A. In every case from the speeding ticket to serious crimes.
Q. And is that the same for the attorneys in your office?
A. Yes.
Q. How frequently do you file discovery-related motions?
A. Can you be more specific?
Q. Yeah. Do you ever have to -- you know, like a motion to compel to seek something you've asked for that you're not getting?
A. We do it with some frequency. I mean, it depends on the jurisdiction and, really, the opposing prosecutor. Part of what you may want is you're more -- you're more interested in getting the information because you may still need to negotiate the file, so you may not want to put it in quite as an adversarial position as you might. Just depends on when you're going to pull the trigger.
Q. So kind of an overall question. In your opinion, do you and the attorneys in your office have the time and resources to obtain and review discovery in a manner that each case requires?
A. No. Not in a timely manner, no. Not

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in a complete manner, no.
Q. And do you have -- can you provide any examples of when the inability to do this, because of time and resources, has hampered a case for you or someone else in your office?
A. I can probably give you a general example which has happened, and will happen from time to time. Because of the -- if you have too few people, too few resources, you know, ideally what you want to do is inventory the information and when you get discovery in case there's a discovery dispute down the road. And sometimes that's a pretty challenging thing to do because it comes in spurts, and sometimes it comes in through duplication efforts. So you'll get -- you know, I'll have attorneys all the time that say, "Look, I got 50 more pages, but only three pages were new." Happens a lot and, quite honestly, it's just easier for the other side to do it that way. I mean, it takes time on their end and personnel on their side to keep track of what they're going to give, but if they know they can just dump everything on you, and it's going to work, and the case law is going to succumb to that discovery violation, then that's the way they're going to do it. They're not going to change.

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But in a short sense that the timely inventorying of discovery, when we get it and what we get, is something I wish we could do so then we could actually challenge it when it comes up new during a trial or shortly before a trial. But it's got to be thorough or the judge is never going to find -- you're not going to have any credible way to explain that and prove it.
Q. Okay. Back to expert witnesses. We talked about it briefly, but how often do you use experts in your office, you and the attorneys?
A. From time to time. I don't know how -- not every case, obviously, needs it, but the key is they have to have -- the attorney has to get into the file early enough to know, and that means reading the discovery a couple of times to be able to figure out what they need, maybe to confer with a more experienced attorney, maybe to question would this help, would this toxicologist help, would this firearms expert help? If you get a file with DNA doesn't mean you need a DNA expert. If you get a file with fingerprints, it doesn't mean you're necessarily going to need a fingerprint expert. It depends. And needing them, sometimes you're just consulting with them. You may never call them at

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trial. But it is a way to educate the defense team if it becomes an integral part of the state's theory of prosecution. You know, so the key is we're not early enough into the discovery in order to prepare the next step which would include, among many things, the expert.
Q. So because of time management, there are cases where you might want to gather the information, but just can't?
A. Just hasn't been reviewed sufficiently enough in advance of -- early enough in the case, no.
Q. Are there cases where an attorney thinks an expert might be helpful, but then doesn't have time to actually engage in consulting an expert?
A. I really wouldn't know that, the answer to that.
Q. Okay.
A. I mean, because by the time I would have learned of that, I would have been talking through whether or not they need one with them.
Q. In your current caseload, are you using experts in any of your cases?
A. Any?
Q. You don't have to tell me, like, what the cases are.

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A. Sure, sure.
Q. How many do you think?
A. Understand there's some files I haven't touched, so none in those, but I may come to -- and one we're going to be seeking funds for soon, so it just -- just depends. I mean, the key is until you digest the contents of the file, you don't have any idea what you might need. And it's that lack of time to digest the contents of the file that's key to the -- that's the key to the disadvantage that our clients are at.
Q. Okay. And when you do engage an expert, do you believe that you and the attorneys in your office, once that expert has been engaged, have the time and resources necessary to consult an expert in the manner that the case requires?
A. Well, I mean, there's always the challenge of coordinating calendars with experts. They're really busy. They may be doing a lot of other things. And then trying to get back with the attorney who may be -- well, necessarily is in court a lot so, I mean, that's something you can work -- that's not our greatest obstacle, by far.
Q. Once you've gotten to that stage?
A. Right. The question is getting to

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that stage, having sufficient information and investigation of the contents of the file to get to that stage.
Q. So I've been asking for a lot of examples. Do you have, like, a learning example of when a client could have been helped by the use of an expert, but because of time management, one wasn't engaged, and that that hampered the case?
A. Not a specific example, I mean, not a specific example other than just generally a client's desire to -- you know, whether it's to go home or sometimes to go to prison because they hate the jail, you know, but that's hard to -- there are those examples, but it's hard to tell someone to be patient when they see what's going on with all the other people in the jail because they know it.
Q. Uh-huh. Do you and the attorneys in your office regularly seek continuances in your cases?
A. Yes.
Q. And if so, is there kind of a common theme to why those are sought that you can discuss?
A. Usually, two main categories. One is because we haven't had enough time to deal with the discovery that we've referred, and then the other

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most common would be discovery that's received late.
Now, how those are interrelated is as follows: If you -- and this happens all the time. If you don't get into the file early enough and create an inventory of those things you can tell are missing because they say please refer to file report number, and when you're done with the pile, it's not there, and you shoot the prosecutor an e-mail or a note that says we're missing this and this.
If you haven't had a chance to do that then, quite honestly, the prosecutor, he or she may not even know that they don't have it, right? And invariably what will happen is when they interview their witnesses or police officers for trial, they'll bring the file, and then they've got files -- they've got reports that they don't have, and then they'll tell us, "We've got new reports."
You know, that may not be anyone's fault, but if we would have had the adequate resources to digest that, the existing discovery, in a timely manner, we could have asked for that a lot sooner. And we're talking -- we're not talking days here. We're talking months or years here.
Q. And are those months or years often when someone is going to sit in jail?

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A. Almost everyone is in jail. So they're either going to remain in jail or they're going to plead guilty because they're in a rush, or plead guilty to something that there may not be a submissible case for.
Q. Are there any guidelines to when an attorney should move for a continuance or is it more of a case-by-case decision?
A. Well, I mean, I will tell you a phenomenon that I deal with and have for quite awhile is because of the attorneys' workloads, they know their limitations and they know there's always more cases, so what I'll find is somebody just got late discovery, and then they're hampering around, trying to get ready for trial, when that is absolutely not the proper thing that they should do.
They should -- easy for me to say -- make Father Time stand still, file a continuance request detailing why they need it and when they got it and that sort of thing, and what other investigation they need to do as a result of that. But they also know that if they do that, it may not be granted, and they're forced to go to trial with three to five hours' less preparation because they've been working on the silly continuance motion.

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And they also know that the next Monday and the Monday after that and the Monday after that they may have a trial scheduled, so I have had attorneys that tell me, "If I'm not going to be able to work on it now, what makes me think I'm going to be able to work on it in six months or three months from now if the judge boots it over for three months?" Because they see how tied up they are, and they know what their weekly life is like, and most of which a lot of times in court and in jail.

Q. And not doing -- not in their office, able to do substantive legal work?

A. Right.

Q. That's a good segue, actually, because I want to talk about how much time is spent traveling to court and to jail.

A. Okay.

Q. So this is hard, too, because I know there are 12 attorneys, but is there a way to kind of average how many times in a day an attorney might spend just traveling to and from court and then just traveling to and from jail?

A. Not really. I mean, the only thing that's of any quantitative value would be the expense reports. Attorneys are going to log their miles, and

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all that will tell you is how many miles their car has traveled. It won't tell you how long they waited in a courtroom for their case or cases to be called or in a jail for their client or clients to come to the room. I don't know how to quantitate that.

Q. That is another question I have, so I will just jump to it.

How often do you and attorneys in your office go have a scheduled visit with a client who is in custody, and still have to wait for that client to be made available to you for a visit?

A. All too often, yeah. I mean, we're happy when it doesn't happen. We're usually bragging about it when it doesn't happen. The norm is that there's, yeah, and that's -- it's worse in some jurisdictions, right?

Q. Uh-huh.

A. And there's also, you know, instead of -- there's no way there's no room at the inn. There's no room at the jail. If they got too few visitation rooms, you're not just competing with -- you're not just competing with your other public defender that you have an office down the hall from because that's your competition for that room. It's also any private lawyer. It's also any probation

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officer. It's also any detective.

Q. Some jails only have one room; is that correct?

A. That's correct.

Q. Clay County?

A. Some only have one. Clay County is not -- well, Clay County has one contact room, and then four to five noncontact rooms you visit through the glass.

Q. Okay. Which could still be confidential, but you can't actually look at something with your client?

A. Well, right, I mean, you can pass through the paper. I mean, it's -- it's a microphone system that's not very efficient, but it beats nothing. It beats not being able to -- it beats waiting in the waiting room, waiting to see your client, so -- but Platte County, for example, only has one visitation room. They do have a secondary -- they built for an arraignment, video arraignment, that they allow you to go down the hall and use that where you have face-to-face contact with your client. So that's a total of two, and there are lots of times where I go or my other attorneys go, and there's no room. You'll have to wait.

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Q. What's the longest you've had to wait?

A. Well, you don't have to wait. You wait, you mark it, and you leave because you just can't have that kind of time to kill. So I'm probably less patient than most. I'm usually trying to get names and talk to judges before that happens.

Q. And if you leave, then you just don't see your client?

A. Of course. Not only that client, whatever other client you were going to see that time. It happens.

Q. Is time spent on travel, would you call that an ongoing issue for you, personally, as far as resources and getting your work done, time spent on travel and waiting for clients?

A. It's really not that big a burden for me, but for some of the attorneys that I supervise, it's an incredible burden because they may have to drive for hours to try to facilitate one file, and then hours back. Now, that's the sort of thing that we hope to have some relief from, continued relief from, some day.

Q. Okay. And how would you get relief?

A. Well, the -- without being too specific because I don't want to speculate, we've

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recently had -- been afforded, like I said, a miniscule -- I don't want to sound like I'm not grateful for it because I am. The allocation of the public defender system's budget that allowed contract public defenders to be utilized for conflict surrounding areas saves us that travel.

Q. Because those might be further away than the --

A. They absolutely are further away, yeah.

Q. Okay. I see. So, then, you can focus on the cases that are in an area that's closer?

A. Primary counties, yeah.

Q. Okay.

A. And sometimes still be driving way past them to go see the inmate, of course, like Plattsburg because you drive to Andrew County.

Q. How frequently do attorneys in your office file suppression motions?

A. Again, they do it. They'd probably do more -- I know they would do more if they had more time to get into the file early. We just know that because we're always discussing things and bouncing ideas off each other's head and stuff.

Q. Can you think of a time when maybe

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that window passed where you -- by the time you really get into something and figure out that --

A. Oh, sure.

Q. -- maybe you should have filed a suppression motion, but now it's too late for one reason or another?

A. Sure. If you haven't taken that deposition or conducted a scene visit or done a witness interview until later in the game, if you have a -- assuming your client is in custody, they're really not going to be inclined to want -- to wait for you to start working -- start working on their case. Now, sometimes you slap something together, but everything you do takes time.

Q. Uh-huh.

A. You know, if it's the kind of motion where it's your burden, you're going to have to subpoena witnesses. Just depends on what kind of motion it is.

Q. Are there other pretrial motions that you frequently see that you think could be helpful, but there just isn't time --

A. Sure.

Q. -- to work it up?

Can you just give me examples of ones

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that you've seen in your day-to-day practices?

A. Sure. There's some precautionary pretrial motions that might deal with, for example, from a procedural standpoint, going to trial, you don't want the prosecutor to mention in the voir dire or opening statement or witness testimony dealing with evidence of other uncharged misconduct. Unless you take the time to file that pretrial motion, you may have an issue at trial. And sometimes you do it to signal to the judge to alert to them this is coming. It, frankly, gives the judge more time to think if you have a judge that you think this judge might -- has a chance of ruling in our favor, or they may rule against us, and then the appellate lawyer, if the client is convicted, has something on appeal. Because you're always thinking about preservation for appellate error. That's one thing.

The other things would be, you know, with expert -- talk about the subject of expert testimony. With the landmark cases of Frey or Daubert, you know, I've got cases right now, files of mine, that I know that I've got to file a Frye or Daubert motion, and I just -- I shutter to think when I'm going to have time to do that. I know I'll go back and I'm going to save a lot of time because I'm

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going to go back to one I filed years ago, and dress it up better, but in order to do that, first, I've got to read the newest edition of -- the Daubert case that everybody is talking about, and I haven't read that.

I'll give you a perfect example. I talked to a private attorney who used to work for us. He's read the article, and I haven't. That's the difference.

Q. How frequently are cases -- and I can divide this into categories if this helps -- taken to trial --

A. Okay.

Q. -- in your office?

Does it help if I divide it into categories?

A. Probably makes more sense.

Q. Okay. So start with noncapital homicide cases. And maybe a better way to answer that is how frequently do you see those cases, and then of the ones you see, how frequently are they taken to trial?

A. Well, it depends on the jurisdiction, of course, too, because the venue -- the venue is going to decide what sort of fair population cross

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section of a jury panel we're going to get, and in many instances that's going to play a role in the decision and, perhaps, advice of what we give to a client to do. Obviously, it's always the client's decision, but in terms of if there's advice to be given and taken, then that may -- so the jurisdiction matters.

Also, quite honestly, there are some jurisdictions where if it's that type of case, noncapital homicide, the offer is never going to be -- never going to be reasonable, or anywhere near reasonable, so you know it's probably going to go to trial. That doesn't create more time for you to work on it. Just because you see a file and you've got the gold sticker on it and you know it's a murder in such and such jurisdiction, you're never going to get an offer. And that's -- that's regardless of whether or not you've had a chance to digest the contents of that file in order to see whether or not there's investigation to be done or a plausible defense.

Q. Do you see charges -- noncapital homicide charges frequently in your district?

A. Oh, yeah.

Q. So then -- so it is common, then, that they would go to trial, like, because of what you're

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saying you know you're never going to get an offer?

A. Depends on the jurisdiction and many go to trial, yeah.

Q. Okay. Is there a way to average how many in a year might go?

A. Not really.

Q. Okay.

A. I mean, how many a year should go or how many a year do go?

Q. I guess both. Yeah, I mean, because I imagine the more serious the case, often the longer it would take to get it to a trial; is that common?

A. That truism, I believe, is true, but there's also things that don't involve a decedent that's extremely complicated, right? There may be an assault, where all that means is, frankly, there's more witnesses.

Q. So after homicide cases I have, how about for A/B felonies?

A. Depends what sort of case it is. I mean, it's -- those could include rape or kidnapping, or it could be a possession turned into a -- somebody with a -- somebody with a severe record that's got an incredible amount of exposure. So it may be not really a whole lot of drugs, but it may involve a

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sale or a transfer, a hand to hand or a series of those.

Those typically aren't necessarily the kind of cases that are going to scream a great deal of investigation because, frankly, they have professional witnesses, law enforcement officers, and that -- I mean, it is what it is. You'll still need to listen to the tapes, if there are audiotapes, and that sort of thing. You'll need to chase down any leads your client gives you, but sometimes it's more of a how much negotiation you're going to be able to spend trying to approach the prosecutor to try to get some resolution that doesn't, you know, eat up the rest of your client's life.

Q. So is it fair for me to understand what you're saying that the more serious the charge or the more serious the consequences for a defendant, depending on their maybe history or what was going on, those are more likely to go to trial?

A. No.

Q. They're not?

A. That just plays a role. I mean, we could have -- I'll give you an example. We've got more than one case where there's -- it's a misdemeanor file, right, and depending on when we get

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the discovery and how much we know about it, we may give it to the relatively newer public defender attorney, and then all of a sudden they come and say there was a dead body involved in this. This was a fatal accident and that sort of thing. And it started out as a misdemeanor, and it may end up that way, but we've got to treat it as if it might not. So that isn't pled. That's slowed down. That's not going to be like the -- it was on the traffic docket, so you can't treat it like a traffic case where the client just wants to get their license back and plead guilty, or whatever the situation may be, go to alcohol training.

We also have -- and that's not the only case where we've got it's a misdemeanor and there's a dead body in the file. So we've got to be concerned about -- because sometimes the prosecutors are planning their method of prosecution or they're just waiting for additional evidence, whether it's an autopsy or uncovering more witnesses.

Q. Do misdemeanors -- I know there are other cases you're talking about that might be an exception. Do misdemeanor cases often go to trial or are those cases more often pled?

A. It just depends. Overall, I would

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probably say they're, more oftentimes than not, resolved by resolution other than trial.

Q. Okay. How about for felony sex offenses?

A. It just depends. You're probably -- you're probably -- you're certainly going to work it up like it's a trial and assume it's going to be a trial because the offers are not going -- it just depends if your client has a history because that's probably going to control whether or not it's going to be resolved by mutual agreement with the other side.

Q. Does your office handle a lot of juvenile cases?

A. We do not at present.

Q. Can you explain that a little bit further?

A. Sure. Since the Waters -- since approximately the Waters cases.

Q. So around 2012?

A. Roughly.

We had -- our management, the public defender management, met with the judges, and as a result of that, I believe our two major counties, Clay and Platte, sort of eased off on the juvenile

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cases, and assigned them to private attorneys on their list. And so for Clay and Platte, knock on wood, we don't -- we don't do juvenile. There's a couple exceptions in there where we might have got briefly involved, but, for the most part, no. The courts afforded us that relief. Clinton County did not.

Q. Do you know what -- are you familiar with how Jackson County appoints --

A. A little bit.

Q. -- for juvenile?

It's any attorney can be on the list. Is that the same for Clay and Platte County?

A. I think Clay and Platte -- no, I think it's different for Clay and Platte because they don't have the major behemoth law firms to draw from. I think -- I think Clay and Platte looks for volunteers that want to be on the list. They may get a nominal fee, with the hope of picking up other cases and expanding their clientele, maybe, but I don't think it's the same way as Jackson.

Q. Okay. And part of what I'm getting at is that do you think -- do those attorneys usually have some criminal defense experience that are getting appointed to take those cases?

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A. We talking the juvenile?

Q. Yes.

A. You know, I don't know, but I'm assuming that they probably have some juvenile exposure which, quite honestly, may be sufficient because of the familiarity with the juvenile prosecutors, staff, that kind of thing.

Q. Okay. Has an attorney in your office ever waived opening or closing argument at trial? And if so, do you know why they would have done that?

A. I know I have.

Q. Okay.

A. I presume -- I'm certain other lawyers have, but as far as why they might, I assume it's a case-by-case basis. I mean, there's perfectly valid reasons to do that.

Q. What's a reason that you have done it, if you can share? And if not, we can move on.

A. Well, I can't talk about this particular client's case.

Q. Right.

A. It's strategic.

Q. Does that happen often in your experience, that you can speak to?

A. It depends on the case. Because it's

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guided by strategy, there's really no way to put a number on -- you know, it's on the case, it's on what I think the government's case is going to be, it's on whether or not your client is going to testify, it's on whether or not that's a certainty or not.

Q. Okay. You know there's been a theme to the answers, so I know I'm asking questions that probably I know how the answer is going to come, but in your opinion, do you have the time and resources to adequately prepare for trial?

A. No.

Q. And do you think the attorneys in your office have the time and resources?

A. I know they don't.

Q. For any of the cases?

A. Well, again, the devil is in the details. If you have one case, and you prepared the heck out of it, and you pled 99 other people or they've decided to plead because they see by the time you come to us, I can't sit here a year and a half. I mean, we've got specific examples of clients in jail, I mean, they're there together, they see what happens. They go to court very often together to the same docket calls, and they see how many lawyers there are available. They can do the math, and that

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sometimes frustrates them.
Q. So if there's time to work on one case --
A. You may do an absolute superb job. It's kind of like having a favorite pet, right? That doesn't mean you're -- if you single somebody out, but it's to the detriment of everyone, that's why there's a concurrent conflict of interest because how do you choose without being unfair to the people you haven't chosen?
Q. Is that the same for sentencing proceedings, too, about having the time and resources to adequately prepare, and if you do find the time and resources for one case, that necessarily is a detriment to other cases?
A. Well, I would like to -- can we talk about the sentencing, then take a break?
Q. Yes.
A. And the reason I give the 2005 line of demarcation is not just a random number, but I think that's when -- I could be wrong about the year. I could be off a couple years -- Senate Bill 5, I think, was passed around there, might have been '03, not certain, but that was a huge, huge piece of legislation. And it did a lot of things, but I think

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chiefly, what I remember it doing, is bifurcating criminal proceedings where otherwise they weren't bifurcated.
So, for example, your misdemeanor shoplifting or your misdemeanor drug possession, if it went to a jury, and your client were convicted, it would go immediately into the sentencing phase, just like a capital case, although I don't do capital, so this is all from magazines I read and friends I have, but -- now, when Senate Bill 5 passed, there was, to my knowledge, zero -- absolutely zero dollars allocated, additional dollars, allocated to the Missouri Public Defender System to deal with that enormous burden that Senate Bill 5 passed upon the criminal defense bar. Because what it meant was you have -- the jury is waiting. If you plead your client guilty, the judge is going to set sentencing off so you have some time to gather some additional information, witnesses at a future date. You got a jury waiting, that's never going to happen. Judges are not going to do that. Whenever your jury verdict comes back, your sentencing is going to start. If it's late one evening, that judge may continue on or it may start up first thing the next morning, but you've got to be ready. And you're no longer talking

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about -- then you're looking for leniency of a jury which means a whole lot of things, including experts that you might conceivably want to utilize, including family members that you might want to utilize.
What I'm saying is the public defender got zero additional dollars to deal with Senate Bill 5. No more -- to my knowledge, no more funding to have mitigation specialists, no more funding to have sentencing advocacy specialists, anything like that. Instead, over the course of the years, the alternative sentencing unit, as well as the juvenile unit, had to be absorbed because of the enormity of the other burden on the remaining cases. I don't know -- I'm not disagreeing with that call. I'm not saying I would have made a different call. It's a different -- it's a difficult call.
Do I miss the -- do I miss the juvenile unit? Do I miss the alternative sentencing unit? Yeah. But does that mean that one of the trial offices got another lawyer? Probably did. It probably would have shifted -- I mean, I know that's what happened, whether appellate or trial got another -- got some kind of relief. But day-to-day functioning of the trial offices on Senate Bill 5 -- and it doesn't affect -- well, doesn't necessarily

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have its firsthand -- an impact on the appellate side of things. And capital was already like that with the bifurcated, I mean, we can't even compare ourselves to capital. But the trial side, when you have a client that's been convicted, they go to jury sentencing, you have to have had all that lead time in preparation what are you going to now present to the jury in terms of leniency to try to mitigate your client's ultimate punishment.
And I remember my first jury trial which was after Senate bill 5. I know what my preparation consisted of. It consisted of an elevator ride in a Platte County Courthouse. And had he not been acquitted, by luck, had he not been acquitted, we wouldn't have had a whole lot. There was nothing planned for the sentencing phase, nothing, but I bet there was on the other side, so -- and there's been cases on appeal about that. In cases some clients have gotten relief on that. Trying to think of my client's name that got relief because of that, as he should have. But that's a perfect example of, you know, additional legislation pushing down on one side of the teeter-totter, and no relief to the other side.
MS. WILCOX: Take a break?

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THE WITNESS: Yeah.
MS. WILCOX: Okay. Go off the record.
THE VIDEOGRAPHER: We're off the record at 11:26 a.m.
(A brief recess was taken.)
THE VIDEOGRAPHER: We're back on the record at 11:40 a.m.
Q. (BY MS. WILCOX): I think before we took the break, we had just finished talking about prep and time for trials and sentencing.
A. Okay.
Q. We concluded that. I'm now going to move into guilty pleas.
A. Okay.
Q. I have the same list of kinds of cases that we talked about before for -- starting with noncapital homicides, but I think I'll just -- we'll see how this works, but I'll start going through them.
A. Okay.
Q. How much time do you think it's necessary to spend working up a noncapital homicide case before you would advise a client whether to take a plea?
A. It depends on the charge and -- you

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know, depends on the charge, depends on the discovery, whether or not it's complete yet. I'm never going to allow a client to plead without -- if I think there's some discovery that's missing that's obligated to be given. Some clients will disagree with that. Some judges, in theory, might, but it doesn't matter until you have all the discovery. And by "discovery," I deal with that different than investigation. That just means show me what you've got and what you're going to have by way of evidence. Until I have a way to measure and monitor that, I don't know what sort of investigation this case might merit.
Q. And this takes us back, actually, to something we talked about. I imagine this is the same across the board, so correct me if I'm wrong, but if you're saying you need to look through the discovery, is it also true that that falls, then, on your time management issues that if you have to look through discovery and make sure you have it, you then can't even consider whether to look at the plea until you've had the time to do that?
A. Right. I mean, it's not unusual for me to shoot out an e-mail that asks for a plea. I just do that if I'm, you know, as a matter of course

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because it's just if I'm there and my hands are at the keyboard, that's what I'm going to do because I want it in writing, et cetera. But until I've digested all of the discovery and satisfied myself that we have all the discovery that there is; that they've complied with their duty, I'm not going to allow a client to accept a plea. I'll convey the plea if they're asking, but I'll say, you know, here's what we don't have, the lab report, this officer's report is, you know, not in there.
Q. Is that the same for all kinds of cases? I mean, from my list it's noncapital, and A/B felony, C/D felony, felony sex offenses and misdemeanors.
A. The incomplete discovery never yields guilty plea in my book.
Q. And how about for the attorneys in your office that you know?
A. Well, yeah, I can do better than know. They know that's my rule.
Q. Okay.
A. Now, the difference may be before electronic discovery, the prosecutor would actually bring a file to court, and if you didn't have the police report, and your client's offer was probation,

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you could look in the prosecutor's file, read through their discovery, and if you're satisfied, I think they have a submissible case, they're going to be able to satisfy their burden, client wants to plead guilty, and there's no investigation that is going to make a difference in the case, that's different. But that's only with a client that's anxious to get -- we're still going to try to shoot for a bond reduction to see if we can get them out to have more time to think about that, but you're in a jurisdiction, depending where you are, you may know what the answer to that is going to be. But, you know, we have told judges the plea offer is probation. I haven't had a chance to look through this. I haven't met with them, that sort of thing, and try to use that as a catapult to get a lower bond to get the client more time to think.
Clients are sometimes, quite honestly, in a hurry, in a hurry to make a good decision or a bad decision. I don't know. If I haven't examined the file, I don't know if it's a good decision. They may know something that I don't or, worse yet, they may think they know something that I don't, which happens sometimes.
Q. You said you will ask for a plea

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offer?
A. Uh-huh.
Q. Do you kind of do that across the board on all cases, early in a case?
A. Almost all cases. Murder cases, I may not, because I don't want to create the wrong impression on the prosecutor.
Q. Okay.
A. And also because I know what their answer is always going to be, something horrible.
Q. Do they often present you with a plea offer before you ask, is that common?
A. Prosecutors, for the most part, act as if they're surprised every time we ask, like, "Oh, you want a plea offer?"
Of course we do. Everyone you meet does. Every attorney on the planet does. But they do that to slow down the process and to not, in my mind, not to do work and to prolong the client's captivity if there's going to be a probation offer.
Q. Can you -- and maybe this is impossible, but can you give me kind of a percent of cases that you have in your office where you get a defendant that wants to take a plea just to get out of jail, how often that comes up, whether they take

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it or not, how often that comes up?
A. Sure, sure, absolutely. Well, I'm generalizing, but it's true, I have circumstances, cases now and cases in my past. Clients from the department of corrections all want to plead guilty to concurrent time. They probably have an out date or know that they're going to have an out date, and more times than not, not never, but more times than not, that's an unrealistic idea of what's probably going to be offered by the state voluntarily. So what that means, that creates an environment where the client is mad at you for not resolving it immediately especially if you deliver the news that they're probably not going to offer you concurrent time. And you say that from experience. It's not like you're rooting for one side or the other like I know them, I know the judge, they think it's a free case, that's not happening, so instead you say let me talk to them and we'll see, and that kind of stuff.
Q. Explain to me what you mean like concurrent time for something that they're already --
A. Right. If they're in the DOC --
Q. -- serving?
A. Yeah, if they're in the DOC, serving a sentence, and they've just hit parole, but more times

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than not they've filed a disposition of detainer and they're writted to the jurisdiction, what they don't want is to serve the remainder of that case they're serving, and then commence this new one because they'll wind up with an overall greater length of incarceration.
Q. Okay. Are you and the attorneys in your office able to spend the amount of time on a case before you advise a client about taking a plea that you feel is necessary?
A. I mean, I can only tell you what I do and what I hope the others do.
Q. Uh-huh.
A. What I fear the others do is try to juggle an over -- overly burdensome workload, but I know that, ethically, they're resolved and obligated to do otherwise.
If I see a file and there's not sufficient notes or not notes, I'm going to -- and, again, I don't have much time to do this, but it should be what I'm doing, as a manager. If I go and I look at the file and I see some insufficiency, I'm going to put a note on the file, give it to the attorneys, put on it their chair and say, "Give me five minutes."

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Q. What would -- because I think what you said is you don't have time to look at all the files like this to review them, so what would -- when would you do that, or is it kind of a one off you just randomly pick files to review sometimes of the attorneys?
A. For me -- well, we have file reviews for purposes of promotion.
Q. Okay.
A. And then the other thing would be if a client calls with a question or a client's family member, that probably precipitates me looking at the electronic file in our computer or maybe pulling the physical file and looking. It's kind of hard to notice if there's not what you expect to be in the file. Or if a client calls and they want a copy of their file, and they're looking, it means there's a closed file, perhaps, why there isn't what I think needs to be in there.
Now, it's hypocritical of me to be too hard on the lawyer who I've given too many cases, right? It's like saying why aren't you seeing everybody in seven days? And the answer is because I know where you've been. You've got a perfect alibi. I'm sending you all over the place.

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Q. What -- so aside from asking for an offer and then looking through the file, to some extent, to figure out whether there's something else you need to do, are there other steps that you always take before -- or while you're negotiating on a plea?

A. Typically, what I do is, you know, you take the steps in order to get the discovery in the file. Automatically, you get a copy to the client. In my review of discovery, I'll look to see for completeness or anything that's missing. That's the first thing I do. I may jot down some notes or highlight some things that are critical that I know are going to be really good or possibly openings for a possible defense. I may also highlight some innocuous things, too, that don't have anything to do with either, but that's the way I begin the file.

And many times that will happen before I even have any meaningful meeting with the client or have ever met them. Quite honestly, many of them now are phone calls and nothing more than that.

Q. Do you and the attorneys in your office always communicate a formal plea offer to your clients?

A. When it exists, sure.

Q. When you get a formal plea offer, you always communicate that, even though your advice might be don't take the plea?

A. Oh, absolutely, it's always communicated. Now, how timely it is is a different issue, right?

Q. Talk about that a little bit.

A. Sure. Prosecutors like to put deadlines on things sometimes. What I immediately -- my response to that is -- and if we haven't, and we've made records of this, which is, you know, an offer is expired, it doesn't happen a whole lot, but we're not going to let it go unpunished.

If a prosecutor sets an artificial deadline to it, and we have things that we really just haven't been able to do that, or whether it means going to visit the client or having a good phone number for the client if they're fortunate enough to be released to come in and to talk to you because, frankly, they may have been picked up on something else, some traffic violation or something, costs, and be whisked away to another jurisdiction. So you haven't been able to communicate it, offer expires, there's case law that supports they can't do that, and that's the position I take, or at least an argument can be made that they can't do that.

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Q. That it can't expire before you can communicate it?

A. Well, under the Frye and Lauffler cases, I think -- I think I would like to draw an analogy between failing to provide the plea offer and trying, but through no fault of the client, you haven't been able to, so they could have gotten this whether it's reduction or more lenient sentence, et cetera.

Q. So is it typical for the state to offer a plea or give you an offer that will expire? Do they often put deadlines?

A. It depends what mood they're in. Most recently I've gotten some, but I pay no attention to the expiration date, I mean, because I know the judges. The judges are not going to punish an overburdened public defender's office. They're just not.

Now, the problem with that is sometimes, because of unfettered prosecutorial discretion, they get to -- if their offer -- I have offers right now where, "Plead to this. If not, I'm going to file a felony."

Well, the judge has no control over that, so I do have to -- I do have to pay some attention to that deadline. Now, whether or not I'll be able to meet it, your guess is as good as mine.

Q. How common does that happen where they file charges for misdemeanor, and then it gets -- that kind of offer, "Plead to this" --

A. And that's why you say what's your caseload, it's an artificial number because there are -- depending on the jurisdiction, there are a lot of instances, and I do mean a lot, where clients are charged with misdemeanors, and if they don't fold and take what is accepted, the threat is we will file a felony or we will file additional charges.

It happens all the time. So you have that -- and I've got to be mindful of that or attempt to be mindful of that when I'm assigning cases, too, right, because all of a sudden this misdemeanor, I won't necessarily know what the client's criminal history is, it's not an exposure for up to 12 months in jail all of a sudden or maybe four in prison, it could be a lot more than that. So the attorney assigned needs to be able to deal with a burden like that.

Q. Do you always try to communicate plea offers in person or you were saying that sometimes it probably necessarily happens over the phone?

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A. I mean, I prefer in person, but, I mean, quite honestly, there's a science, I think, I found to plea offers. If I have a plea offer, I'm almost never going to communicate that unless it means get out of jail, but many of my plea offers are not you get out of jail. It's how long you're going to prison. I'm usually not going to communicate that in the first visit. And it would be such an offer that would not expire, obviously.

Q. Right. Any formal offer that's going to -- has some expiration date that you think matters, you would relate?

A. I would attempt to comply with the deadline, but I can't guarantee that I would be able to.

Q. And it's a deadline given by the prosecution --

A. Uh-huh.

Q. -- that they make up?

A. They make up, but if it means elevating charges, it's not an idle threat.

Q. So in your opinion, do you and the attorneys in your office have the time and resources to adequately negotiate plea deals and counsel your clients on whether to accept a plea?

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A. It's pretty time-consuming, depending on the jurisdiction that you're dealing with. Some prosecutors prefer to be courted in person, and some prefer -- are okay with e-mail, so one being more time-consuming than another.

Q. This is the same question, without getting into the specifics or compromising attorney-client privilege, can you think of an example for you, personally, or someone in your office, where there could have been a better plea deal if there had been more time and resources?

A. Sure. I can't think of an example, but I can think of circumstances where sometimes, at least my philosophy is, if the prosecutor, if they know they're going to have to work harder, they might give a little bit more back. That's not absolutely true, you know, sometimes if you take a deposition, they're going to pull a plea offer. They just will, yeah.

Q. What other conditions might -- have you seen in your practice that the prosecution puts on a plea deal, like, what you're saying if you -- it's not really a condition, but I guess if you know there are cases where if you want to take a deposition, they're going to pull the plea.

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A. Sure.

Q. Are there other examples you can give like that?

A. Sure, sure. We are all the time or frequently, depending on what it is, depending on which prosecutor it is, depending on how we deal with them, I have attorneys that ask the prosecutor, "If I file a suppression motion, are you going to pull the deal?"

Some will say, well, yeah. Some will say no. It's the same thing with the preliminary hearing. If you request a preliminary hearing and they have a grand jury, justice is going to be affected.

Q. How do you communicate that to your client?

A. It causes a lot of frustration when you explain something like that. Well, I mean, my particular way, it just depends on the client and their level of intelligence, probably.

Q. But you do try to -- I mean, you have to convey to them that I have this plea offer?

A. Oh, sure.

Q. But I also think you have a legitimate suppression argument to be made, and here are the

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consequences that I'm facing, and you have to try to communicate that to your client?

A. Sure, sure.

Q. Do you and the attorneys in your office -- I guess talk to me about how you visit with your clients about immigration consequences of criminal charges.

A. I would probably say poorly. We ask if you're a U.S. Citizen. That's about as deep as it gets. Beyond that, we delay a case in order to try to get additional information. We have one or more attorneys, I think, that the public defender system has worked out an agreement to take our questions. I have a friend I went to law school with that I sometimes burden or will give his name to some of the attorneys I supervise.

I mean, it's a commonplace issue because we have a lot -- for example, a lot of DWIs where -- this is sort of beside the point, a translator is often involved. What that does is make it more cumbersome, from a time perspective, and protract things, but then to have the time to be -- actually be able to figure out what the ICE hold is about, and overcome the obstacles of that, because it's cumbersome. And you just don't want to -- I

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mean, so, really, what the client often is told is this may impact whether you're deported or whether you're ever able to return. And that's about the only advice they ever get. Nothing more specific than that.

Now, it's a real complicated subject. I don't pretend to be an expert on it, and I know most of my clients aren't, but there's -- you know, sometimes what that does is cause us to set a DWI trial for jury trial to buy time to look into it or with the hope that the prosecutor might do something. Or if ICE is involved, that ICE happens before they get this conviction because if you have the discovery, you probably can be able to assess whether or not they're going to be able to carry their burden which with the blood alcohol level, they're probably not going to need anything else.

Q. Are there -- so are there any formal steps that are taken within your office or that you know of with MSPD that are required for -- you know, besides asking, "Are you a U.S. citizen?" And maybe that's just an office policy.

A. Well, it's the result of a landmark case. That's what caused it, that additional inquiry and precaution.

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Q. Okay.

A. And it was only because of that case, the name of which escapes me now.

Q. How long ago was that?

A. The case?

Q. How long have you been asking, "Are you a U.S. citizen?" formally?

A. Since that case law came down.

Q. But you don't remember exactly when that was?

A. I can't remember the name of the case or the year that case came down, but it's the landmark case.

Q. Okay.

A. It may come to me before the end of the day. If it does, I'll blurt it out.

Q. Is there any -- and then so you'll reach out to any resources that you have about who might know something about immigration law, is what you're saying?

A. Right. And sometimes if the clients, whether they're in custody or out, the communication may include, "Do you have an immigration attorney?" because sometimes they're working with one, not very often, but sometimes, or sometimes I've got a fellow

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who is fortunate enough to be on bond. He actually has consulted with some or sought to, but couldn't afford it, you know, et cetera.

Q. So he knows more about --

A. He seems to know more than the afternoon person about it.

Q. Okay. Have you ever seen any special training offered or required to identify immigration consequences for attorneys in your office?

A. I'll say this about training: The training within the public defender system, they seek to do a good job. The challenge is creating the time to attend those things is really pretty impossible.

Q. Have you ever seen trainings offered on immigration consequence?

A. I think I have.

Q. Okay.

A. Yeah, I think, in fact, the friend that I mentioned I think even presented at one of the MSPD functions. I look at the syllabus and I see it, and I don't have time to attend it, but I see it.

Q. So in your opinion, do attorneys in your office, including you, have time and resources to adequately advise your clients on immigration consequences of the decisions they're making in their

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criminal case?

A. Not to an extensive extent, no. Not to a sufficient extent, I don't believe so.

Q. Can you think of any examples of where maybe someone didn't have time to do the work or didn't understand the consequences, and had a negative result?

A. We probably wouldn't necessarily be aware of the negative result because, frankly, that might not happen till years in the future if it involves re-entry. I just don't know. And if there's an ICE hold, that's usually a bad sign. But, again, I don't know if that means there's defenses to that through immigration, appointed attorney or not.

Q. Okay. How often do you see competency proceedings happening in your area?

A. Well, let me back up and say that we do a lot of -- we spend a lot of resources and consult a lot of expert concerning competency under 552 and 552.02 and .03. It's an enormous, as you might imagine, time drain because it's so complicated and involves an expert, whether it's the state's expert or privately retained expert, hired through the funds available under the MSPD, and it impacts the negotiation and defenses, but we see it a lot. I

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mean, there's -- mental health is huge in our caseload, mental health issues.

Q. Could you give it, like, an approximate percentage of cases where either competency becomes an issue whether or not, I guess, it ultimately results in a proceeding?

A. In the higher level cases, I can't give you a percentage, but it frequently comes up where there's an independent examination that's requested. We look at it and, frankly, even the lowest level of criminal events, we look at it in terms of mitigation or negotiation with the state, hoping that they see some leniency side of things.

Q. Does the state ever request psychiatric evaluation?

A. Sometimes.

Q. Not as frequently?

A. Certainly not as frequently as we do privately, no.

Q. If someone has been arrested and charged and is in custody, and then deemed incompetent, I guess, at that time, what happens to them? Where do they go?

A. I think they go to the Department of Mental Health for a stay of six months until another

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report or update is given to the judge, is the way I understand 552.

Q. And every six months, they would be reassessed to see if they can continue with the case?

A. That's the way it's supposed to function, yeah. I think that -- my understanding is the Department of Mental Health, because of either perhaps legitimate budgetary constraints, takes longer than that or needs longer than that. That's what I've heard.

Q. Okay. Do attorneys attend an evaluation, a psychiatric evaluation, with a client?

A. Typically, I don't believe so.

Q. Okay. Are line-ups common in cases you're handling, police line-ups?

A. Photographic or in person?

Q. I was going to ask both.

A. Okay.

Q. So please talk about both.

A. We have a lot of our cases where there are photos arrays, and also show-up IDs that are involved.

Q. What's a show-up ID?

A. Where the clerk is brought to the person that is arrested around the corner or where

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the person around the corner is brought to the retail store, and the clerk is -- you know, those are not preferable by either side I don't think.

Q. And they just bring in the one person?

A. Yes.

Q. And say, "Was this the person who committed" --

A. Well, I think that's what they say if it's on a tape, yeah, or they might word it a little more strongly than that.

Q. Do those typically occur early in a case?

A. In the case investigation?

Q. Yeah, how far after charges are filed and you're, I guess, get a case would something like that happen?

A. Well, it would be before we're involved or we have the right to be involved.

Q. That makes sense. So then you're not showing up at those, that's just the --

A. Well, you have to understand when you say "photo array" or a "line-up," those -- I assume you're talking about those that involve a case investigation before someone is charged or the magical words "person of interest." So precharges

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were not involved in any of that. We don't -- we would have no reason -- we would have no reason to have ever received an application, for example. Now, whether or not those folks, when or if they're ever advised to the right of counsel, I wouldn't know unless I had a chance to look at the reports.

Q. Okay. Presentence investigation, I guess, or PSI reports, are those common before sentencing?

A. Yes. More recently they've changed their name to sentencing assessment reports, so from a PSI they went to an SAR, same things only they're not as long.

Q. Okay.

A. I don't know if that's good or bad, but it's common to have that sort of thing. And sometimes that's part of the negotiation, and sometimes there are judges that prefer the involvement of the SAR. Some judges don't care, some judges won't resolve a matter without having one. Now, what that means, from a practical standpoint, is if your client is offered probation, and you're in front of a judge and they're in custody, if they're offered probation, and they elect to plead guilty to the charge or charges, and the judge, if you're in

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front of a judge that insists on a SAR, and they remain in custody, that's going to take another probably six weeks before their sentencing. If they're released, it will delay it by six weeks.

Q. So it's always the judge that would request it, or would it be requested by a --

A. Judges like to -- some judges insist on having one, and won't accept to be bound by the plea without the SAR. Every now and then you get judges that do that, but in order for it to be waived, the judge has to be comfortable that everybody is involved in waiving it, elects to waive it on the record.

Q. Who participates in the assessment besides the person being assessed and the person assessing them, is the attorney -- is anyone else present?

A. You know, it's funny you mention that. I had never participated in one or attended one in decades of practice until a recent client that I had. And I advised the probation officer I wanted to be present, and then -- well, one thing led to another. Eventually I made it up the chain of command, and they provided me the policy they have, state probation and parole, where they suspend the

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constitution of the United States and say that an attorney is not to be involved in that. So it's just crazy. It's just one of their silly rules, but I have it in writing. It's one of their rules. It goes to show you not every rule is a rule.

So -- and I really wanted to be present for one, I had one particular reason because of the nature of the client. It was a murder client that -- long history to it, and she knew why I wanted to be present. So I attended, but I complied with their silly rule of noninvolvement. I didn't interrupt him. I know I could have. It might not have resulted in -- he probably would have taken it out on the client so, once again, someone with an associate's degree in command of the criminal justice system. So usually don't attend those.

Q. So you just learned about this policy?

A. Yeah, but I could care less about their policy. If we had time, we would attend them all.

Q. Okay.

A. Absolutely. We would love to be able -- if we had time, we would attend them all. I'm not saying we would have the interest to attend them all, but there would certainly be a legitimate

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reason to attend them all because the clients really could benefit, I think. More clients than not could benefit because many are undereducated. And, quite honestly, the reason they don't want you there is because then they've got a witness. So if they're willing to videotape them, I don't need to be there, but I would still probably be there.

Q. But they don't videotape them?

A. No, no, goodness no.

Q. Have you asked them to videotape?

A. No. I just now thought of that. That's the first time I ever thought of those two things, those two worlds colliding.

Q. Who does the assessment?

A. State probation and parole officer of some sort.

Q. So who is normally in the room, just the probation/parole officer and your client?

A. Well, like, for example, when you go to the jail, they'll be on the phone lines and you'll see them, and that's the way they're conducted, or they may come into the -- they may tie up the only room they have to visit our client doing them, too, doing the interview.

Q. Do you know how long they usually

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spend, or does it totally depend on the case and the person?

A. Well, I mean, I've heard everything from -- they're not thorough. When I tell you they went from a PSI to an SAR, same number of initials. Less thorough. It's really pretty useless.

Q. Okay.

A. I don't know how long they take. I've heard of circumstances where they are they just drop off the forms to the client, "Fill this out, and I'll come back for it," so I'm not sure that they necessarily have a face-to-face exchange in each and every instance. I wouldn't know.

Q. Why do you think judges find them so helpful?

A. Cover. And sometimes they actually do provide some useful information about the -- you know, for those judges that are inclined to, you know, exercise leniency in those cases that are deserving of it, they could theoretically be useful for that purpose.

Q. But more often than not, in your opinion, they are not useful or helpful?

A. Depends on the judge.

Q. How often do clients represented by

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your office want to withdraw a plea?
A. It comes up. I don't know. I can't give it a -- it doesn't come up so frequently that I would say, oh, that happens a lot.
Q. Okay.
A. But there are circumstances where it does.
Q. What steps do you take if that happens?
A. Well, if I'm aware of it, it's because one of the attorneys have come and said, "Hey, so and so wants to withdraw their plea," and then we talk about -- I try to walk the attorney through why and what's the reason and what stage the case is at and that sort of thing, so -- and then we look to the rule.
I'm of the opinion that they don't have the right to withdraw their plea unless, under the rule, there's a manifest reason to do that. And sometimes, quite honestly, we've got to be concerned with the client shooting themselves in the foot by doing that because it may -- you may be in a jurisdiction where the judge says, "I'll not just withdraw it, I'll withdraw it with pleasure." And when they do, the prosecutor elevates the charges.

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So, you know, it's all about protecting the client and trying to educate them at the same time.
Q. When does your office's role and representation end, I mean, is there -- just at sentencing, when that is done, is your office done with representation? Does that question make sense?
A. Sure. When it's a plea, it's when the judgment and sentence is concluded, the sentencing hearing. When it's a trial, then there's the obligation to have -- most clients want to appeal. You presume that's the case, you know, after a trial. Every now and then you find one that doesn't, but you can always withdraw that later. We prepare a motion to proceed in forma pauperis along with the proposed order to present to the judge at sentencing. After the judge sentences, we present that, and then we coordinate with the appellate division. Trial side, typically, files the notice of appeal.
Q. So you advise your clients about their rights to appeal separately, and does the court usually do that as well at a sentencing?
A. Well, the right under 24.035, the judge does because they've pled guilty, and that's part of the proceeding. After a trial, it usually -- you know, it usually is part of the explanation you

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make to the client in terms of if you filed a suppression motion or a motion in limine, to talk about -- I always talk about trying to -- if the trial is not successful, protecting them, and giving them all appellate points that are possible to preserve. How much of that they understand, I don't know, but in terms of, you know, will you be my attorney on appeal, then you explain how the process works and how we're going to file this, and then it will be up to the appellate office to assign you an attorney.
Q. So you help them get there, though?
A. Right. We sort of serve it -- we tee it up. We tee up the appeal through the notice of appeal.
Q. Okay. And how -- I'm told I'm using this term correctly. Elocutions done in your district, is that something that you're attending and participating in with your client?
A. I'm pretty sure that's just a phrase at the sentencing, in my experience.
Q. So you're there, and it's just --
A. We're there when the judge says that word.
Q. Okay. And then so as far as

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post-trial, you would file any post-trial motions in your office, or that would happen before the notice of appeal and you kind of handed it off?
A. The post-trial motion typically would just include the motion for new trial after a jury has convicted then a sentencing date set, you attend that sentencing date, argue the motion for new trial, it's typically overruled, of course, and then the sentencing occurs. It's at the conclusion of that that we file the motion and order to appeal in forma pauperis, and then within 10 days is, I believe, the due date for the notice of appeal for the court of appeals.
Q. And because we already -- your office is not currently taking any juvenile cases unless there's a special circumstance?
A. Clinton County, we do.
Q. Okay.
A. And those are not really special circumstances, it's just whenever the judicial judge in the 43rd Judicial Circuit involves us.
Q. Then I will go through these questions.
A. Okay.
Q. And when you say -- so Clay and Platte

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County, that's a judge decision that they decided --
A. They afforded us that relief around the time of Waters.
Q. Okay.
A. One of them sort of one -- one of them has been continuous. Platte has been more continuous than Clay, but both, right now, we are relieved of that obligation.
Q. How are those cases assigned within your office, the ones you do get from Clinton County and then I guess --
A. I primarily have one attorney, and only one attorney, covering Clinton County cases, so the attorney that I have covering Clinton County cases is assigned their juvenile cases.
Q. And then also covers many other cases, other dockets, as well?
A. Goodness, yes, and other counties, too, sure.
Q. Okay. How is indigency determined for juveniles?
A. My understanding is, frankly, every juvenile qualifies unless they have some trust fund that we're going to stumble upon, they're going to qualify. We're not going to find them to be

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ineligible because of the wealth of either or both parents.
Q. Okay. Are they often held in custody and kept in custody in the cases that you see?
A. Yes.
Q. Where are they held?
A. Glad you asked. From our experiences, those juveniles that are charged in the 43rd Judicial Circuit, the portion, the tiny fraction of the 43rd Judicial Circuit that we cover, which is Clinton County Courthouse in Plattsburg, Missouri, those young men and women are generally housed in Kirksville, Missouri.
Q. How far is that from where they might live?
A. Well, I don't know where they live, but it is hours and hours away from the Plattsburg courthouse.
Q. Which is where they need to show up for their hearings?
A. Yes, and where our lawyers are, yeah, so we drive half a day away and back again for the juvenile cases.
Q. Why are they sent there, is it just because of the facility that --

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A. I have inquired of the Clay County juvenile chief detention officer about that because in a conversation with the judiciary, I expressed my frustration over that, why so far. Because I was thought -- I was led to believe perhaps there was a possibility that they would -- that those juveniles could instead be housed within walking distance from our office at the Clay County Juvenile Justice Center, but the communication was made and, apparently, the 43rd Judicial Circuit contracts with the Kirksville facility, I'm told.
In my mind, still not good enough reason to make my staff waste their time because, frankly, they could drive them a shorter distance to the Clinton County jail, juvenile jail. They have specific -- an entire building dedicated to juvenile justice.
Q. In Clinton County?
A. Clay County.
Q. Clay County. Sorry.
A. Clinton instead transfers them to Kirksville.
Q. Hours away?
A. Hours away.
Q. Okay. So if you are an attorney who

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is assigned this case and wants to visit a client before a hearing in person, they would have to drive --
A. I have had my Clinton County attorneys, over the course of the different attorneys that have covered Clinton County, drive to Kirksville.
Q. And so that -- I mean, that's an entire day just for a visit?
A. Yes.
Q. If your office is conflicted out of a juvenile case, where does that case go in Clinton County?
A. Since we only do Clinton County conflicts in juvenile, I don't know that we've done that. I can't say that we've done that. It's happened in Clay or Platte, but those have been years and years ago, so I'm not quite sure where that would go, how that would be handled.
Q. Would a juvenile -- because assuming they would all qualify for representation -- ever have to attend a detention hearing without an attorney?
A. Yes.
Q. What's the circumstances that that

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would happen?
A. The rules require it to be within -- I forget the number of hours, maybe 20. It's relatively short. Might be a little longer than that. And sometimes that occurs prior to their application, I think. I have more familiarity with Clay County than anything else and, like I said, we've been fortunate enough not to do that for a number of years, but I think there's a possibility that the juvenile in Clinton County would have a detention area without an attorney, but I don't know if that's the normal practice or not.
Q. And that's just because of how quickly it happens and they don't have -- they haven't applied or they don't have an attorney assigned?
A. I mean, they're usually -- of course, the only source they have, generally, is either the judge or the juvenile officer to tell them, usually speaking to the parent, probably, you have the right to fill out an application, so...
Q. Are they usually told that, in your experience?
A. I'm not sure. Juvenile, especially in the 43rd Judicial District, is a shroud of secrecy. It's unlike anything you see on American TV.

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Q. Okay. So that judicial circuit is just particularly its own situation, in your experience, I guess?
A. In a word, yes.
Q. Okay. Are there frequently certification proceedings for juveniles that your office sees?
A. There have been in the past. I don't know that recently we've had any certification hearings in the juvenile cases that we handle.
Q. Is it common for the attorney who handles the cases to line up alternatives for detention for the juveniles?
A. I'm sorry. Let me go back to that first question. I guess it wasn't all that long ago that I handled a juvenile certification hearing in Jackson County because, as you mentioned, Jackson County has the list, and it was during the transition of the relief afforded our trial offices with contract conflict counsel, and the special way that Jackson County does their juvenile through the private attorney list and law firms assistant, that sort of thing, but there was one lingering that was sort of caught in between where our office was involved. I handled it, frankly, because I -- all my

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attorneys were -- there's no way that I could cast them into -- have that additional burden, too, and so we had -- that was pretty time-consuming, but we had the hearing down there in Jackson County.
Q. What type of preparation comes -- do you do for a certification hearing?
A. Well, on that particular one, again, he happened to be at the top of the pile which is -- you know, you create the pile. It's not first come, first served or last in line. It's the triage method. And there was sufficiently interesting information in the discovery that we received that we wound up subpoenaing probably half a dozen officers.
Q. But that's not always the case?
A. Not typically the case.
Q. So, then, I guess now we're going to jump back to alternatives to detention. Are there resources available to the attorneys in your office to identify alternatives, or is this just something maybe they know about because they do this type of work regularly?
A. Are we still talking about juvenile?
Q. Yes.
A. Okay. Other than -- I think, as far as I know, the only alternative to detention would be

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one of the parents or family members.
MS. WILCOX: Okay. Can we go off the record for a second.
THE VIDEOGRAPHER: We're off the record at 12:27 p.m.
(A brief recess was taken.)
THE VIDEOGRAPHER: We're back on the record at 12:30 p.m.
MS. WILCOX: All right. So we're talking about alternatives, I believe, is where we left off.
Could you read back the last question and answer.
(The record was read by the Reporter.)
Q. (BY MS. WILCOX): So if a parent and family member is an alternative to detention, that's something that the attorney would argue for -- would go to a hearing and argue that the child be placed somewhere other than in a detention facility?
A. That would be the argument, yes.
Q. How often is that granted?
A. In the setting of Clinton County, I'm going to -- I think it's safe to believe probably never.
Q. Okay. And so, then, those juveniles

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are housed is Kirksville, pending some outcome of their case?

A. Yes.

Q. Is that where they would stay if their sentence involved a period of time after, like, a conviction or a plea? Do they stay in that facility?

A. It's a special juvenile facility so, yes. That could be where they wind up if they were serving juvenile detention after the case is concluded.

Q. Does the attorney in your office ever work with expert witnesses in juvenile cases?

A. I don't have any firsthand knowledge of that, I mean, I'm sure there was a time when we did more juveniles that, perhaps, that came up probably in the Jackson County setting.

Q. Okay.

A. But I don't remember approving any use of those in the Clinton County. That's where I -- that would be my gatekeeper, right, because I didn't approve, so I'm assuming it wasn't utilized.

Q. Are social workers utilized in the juvenile context?

A. I don't believe so. I know we don't.

Q. These are kind of summation questions,

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so bear with me because they are things you've said, but I would like to just kind of ask a final question.

A. Sure.

Q. In your opinion, can the attorneys in your office, including you, adequately represent all the clients on their docket?

A. No.

Q. And what's the basis for your opinion?

A. Excessive workload and insufficient resources.

Q. And does your opinion stay the same no matter how expert or the amount of experience an attorney has?

A. It may be impacted by the amount of experience necessarily because, quite honestly, an inexperienced attorney, wherever they work, wouldn't necessarily know what they're missing.

Q. We talked -- we've touched on the Waters case --

A. Yes.

Q. -- from 2012. So you were in your -- the current employment?

A. Yes.

Q. How did the attorneys in your office

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respond to the Waters decision?

A. Well, the lead-up to the Waters decision, because this is -- I've got a file at the office just of the opinion, but it's been years since I've read it. Leading up to that and the effort to create -- to impact the workload and create a caseload cap, there was a certain degree of optimism.

After Waters, there was legislation pending that sought to privatize the public defender system, and it was received, frankly, with some hysteria on the part of attorney and nonattorney staff members for fear of the system -- that wasn't everyone, but that was a lot of people, for fear of losing their jobs and their income and their health care and that sort of stuff.

Q. How did the judges in the district respond to the Waters decision, was there any change?

A. Well, like I said, Clay and Platte, as a result of the meetings that my supervisors held with Waters -- in connection with the Waters, they continued the relief through the juvenile cases, and we didn't -- sparing us of that obligation. I don't know how else to explain how they impacted -- how they effected it. When the prosecutors file the cases, the judges really don't have any control over

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the number of cases that are charged.

Q. Do you think that your office continually exceeded its caseload capacity for any period of time that spans three months at a time before and after Waters? Has that been ongoing?

A. Our overcapacity, there's no doubt, has been continuously ongoing.

Q. Since at least 2005?

A. '05?

Q. That was kind of the year we were talking about?

A. Sure, sure, sure. Well, I mean you're talking about that's the Anthony assessment. You're talking about metrics in Exhibit 14, so I don't know -- you're talking about what it feels like as a manager and what I believe we were going through with the then period of transition and lack of investigators and relative -- a lot of novice -- new experienced attorneys, yeah. I mean, I don't have any reason to think that in 2005, it's not a good time to begin to say things were beyond -- began to get beyond control.

Q. And have stayed that way, and gotten worse?

A. They've gotten far worse.

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Q. Okay.
A. Worse.
Q. Can attorneys in your office -- let's talk about before Hinkebein. Am I pronouncing that correctly?
A. Karl Hinkebein.
Q. Hinkebein. Before that, in the recent events, was there a way for attorneys to refuse to take cases in your office?
A. Before the Karl Hinkebein case opinion was rendered, no one -- we never really discussed about refusing cases. There was never any discussion of that. There was always a constant discussion of too many cases, and -- but that was the extent of it. I mean, refusing as in -- frankly, the refusal was -- I'm assuming that was with attorney resignations. And I don't know if it's accurate to characterize that as a refusal. It may have been -- frankly, may have been, unfortunately, been -- and I'm not proud of this -- a surrender. Or they may have left for other reasons. They may have left because their student were such that they couldn't afford to pay them, you know, or some combination thereof. But refusal, that's a magical term that comes from the Karl Hinkebein case.

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Q. Okay. So why don't you tell me about the case, and describe the best you can, I guess, and without going -- and briefly, like, but what the decision was and what that held, what that means for your office.
A. Well, I have some experience with the office of chief disciplinary committee as a result of nonmanagement as well as nonmanagement duties. I'm certainly not an expert on that. But over the years, there was always discussion at management meetings that, you know, clients were making bar complaints. And there was never -- there was never an issue with -- unless someone legitimately did something wrong, affirmatively did something wrong, it was never at the forefront of anybody's concern, but the Karl Hinkebein case took an overworked public defender who also had medical issues, according to the published opinions, and faulted him for not being able to perform. And, essentially, what that did, in my mind, was faulted him for not being able to overperform with a grossly excessive caseload in the appellate setting, which is different than a grossly excessive caseload in the trial setting because there's different duties involved, vastly different. But having worked in appellate for awhile, I do

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understand there's a lot to be done and a whole lot of preparation and a whole lot of research and writing.
But, essentially, my assessment of the Karl Hinkebein case was that the Office of Chief Disciplinary Committee made an issue of specifically making excessive caseload not a defense to the attorney, regardless of whether or not the attorney is a private counsel, and purposely took on too many cases, trying to become a profiteer, essentially, or somebody like Karl Hinkebein, who's been a state employee, undercompensated, overworked for decades, someone who had their supervisor bring them work to the hospital bed to continue to work for their clients.
And the Office of Chief Disciplinary Committee made it a point, because it's a point in their brief, to make sure that the Supreme Court did not carve out an exception to public defenders specifically no excuse that you don't have any control over the number of cases that you have an obligation to ethically and zealously defend.
It's a mathematical calculation that I could never agree with. It just doesn't make any sense. And it sent shock tremors through the public

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defender system, especially after listening to the oral argument, and I went as far as to read the appellate briefs on either side. It was very disturbing, and we drew a line in the sand.
Q. When did that decision come down, within the last two months?
A. Well, I think my letter went out October 2nd, so it was shortly -- probably took me a week, only because I was so busy, not through lack of interest, to complete the letter --
Q. Okay.
A. -- my version of the letter. And as soon as the opinion came out, I sent word to my attorneys that I would be doing everything I could to protect our bar licenses, and I encouraged them to do the same thing, and to listen to the opinion and educate themselves, not just what we were talking about in the lunchroom or, you know, over the watercooler, if we had one.
Q. How did the MSPD central office respond to the decision?
A. Well, I believe it was a supportive response, at least that's the impression I got from the direction I've seen taken by our director, and he, I think, directed a memo or a letter out, I

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haven't read that in quite awhile, educating us about the opinion and that sort of thing.

And then thereafter, myself and my co-director, Ms. Brown, as well as our director, Mr. Barrett, scheduled meetings with the presiding judges of Clay County and Platte County, I think it was on the same day, and then inviting any other judge with, albeit, short notice to come to wherever we were holding those meetings, you know, in the relative jurisdiction of Clay and Platte, to discuss public defender concerns. And that meeting was held on that day and, you know, things were discussed that could possibly try to address the workload concerns.

Q. Did you talk to your staff about what you felt like that decision meant and what maybe precautions they needed to take before you got a memo from the central office? Did you have discretion, you felt, to do that, just based on your role as the district defender?

A. I didn't think I needed discretion. I've got a bar license, and I did it before I got the memo.

MS. WILCOX: All right. Since we're talking about it, I'm going to hand you what's going to be marked as Exhibit 15.

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(Exhibit 15 was marked for identification.)

Q. (BY MS. WILCOX): Can you identify this document for me?

A. Sure. Exhibit 15 is a copy of a letter dated October 2nd, 2017, that I directed out to the presiding judges of Clay, Platte and Clinton County in relation to the Karl Hinkebein decision.

Q. Can you summarize what you're telling the judges, what it says?

A. Well, let's see. Probably no way to quickly summarize that. It's pretty detailed, but --

Q. And we can read it, so, yeah, I don't want you to --

A. I think -- the only thing I was trying to convey to the judges was how, as a result of the Hinkebein decision, at least as far as I was allowed to proceed, we were going to try to defend our law licenses any way that we thought we needed to.

Q. Have the judges that you directed this letter to continued to appoint public defenders?

A. Well, I should note that I carbon-copied all the other judges and a commissioner in Clay and Platte and Clinton, so not just the presiding judge. So there have been some -- there have been some judges that have continued to appoint

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the public defender in both Clay and Platte. Insofar as Clinton County is concerned, I did not hear back from that judge.

Now, in defense of that, I'm not accusing him of anything. We only cover a tiny fraction of the 43rd Judicial Circuit, and I believe communication was through -- for the Clinton County judiciary was made through, I'm presuming through the Chillicothe trial office that handles the remaining seven, eight counties, the majority of those, obviously, all but one, so -- but because we cover that one, it was my duty to notify him, too. So I haven't heard from that presiding judge. I have heard from some of the other judges in Clinton County and 43rd, but not the presiding judge, so -- but, yes, we have continued to be appointed by some of judges in those jurisdictions, after my letter.

Q. Are you aware of communications between other district -- public defender district offices and courts throughout the state regarding the Hinkebein decision?

A. Somewhat aware, I mean, I don't know if I'm aware of every communication that was made, but I've talked to friends and seen the letter directed by the district defender out of Columbia,

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Missouri. I think that's the only other letter I've seen, but I can't be certain of that. All I can recollect right here. I remember I saw that letter before I composed mine.

Q. And have you gotten any word from people you've spoken with about what other judges who have maybe been alerted to the situation and to the concerns of the public defenders office are doing if they're continuing to appoint attorneys?

A. Well, I think there's been newspaper articles about it, so it's no secret. The 16th Judicial Circuit has not taken it well, and I think the reaction by the presiding judge, who shall remain nameless in my videotaped deposition, characterized the public defender antics as horse shit, if my recollection serves me.

Q. I think that's correct.

Have you, internally, to the extent you can discuss it, have you guys been talking with other offices about the decision and what it means for the attorneys?

A. I know I've had conversations with other managers, but it's just been probably more about the Hinkebein decision than anything else.

Q. Do you know anybody who has resigned

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because of it or know anybody who has resigned because of it?

A. No one in my office has resigned yet because of it, but every Monday morning is a teetering edge, so -- and I have every reason to believe that's going to happen, but I'll take it as -- I'll take continuity as long as I can. And I will say this about -- to be fair, some members of the judiciary in Clay and Platte have attempted to be cooperative and considerate.

Q. And you said you met with the two presiding judges for Clay and Platte?

A. Shortly after the letter went out, myself, my Deputy District Defender Ara Bailey Brown and our director, Michael Barrett, met with the presiding judge, Judge Sutton and Judge Van Amburg, and any of the judges that were available in the courthouse there that, you know -- and, again, it was short notice, so there was just one or two available in each jurisdiction in that meeting. There was a full discussion about our concerns and the Hinkebein decision and what the judges could do to help and that sort of stuff.

Q. What's your takeaway from that meeting? What did they say they could do to help or

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what has been done in your opinion to alleviate?

A. Well, it was made clear that my concern would be not only would we be in the situation that we are now, and it's no secret the judges see that our cases linger forever. They're the ones granting continuances. They see -- I believe they genuinely see how hard the attorneys are working. They certainly see the parsement of numbers compared, in a totality sense, to the public defender attorneys that are practicing before them, so I think they're mindful of the fact that my concern is with resignations, and then we will all be in a worse position than we are now, which is a pretty dire position.

Q. Did they have any concrete suggestions of what could be done?

A. Well, each Clay and Platte are -- attempted to contact -- sort of sent messages through the private bar to seek out names of attorneys in the private setting that would be willing to take on pro bono -- some pro bono public defender indigent cases, perhaps even at a reduced fee, so I'll say pro bono/reduced fee.

Q. Do you know who would pay the fee, where that would come from, if you know?

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A. I really don't know. I would be speculating. I think the emphasis was on pro bono.

Q. Not a long-term solution, but kind of a -- it sounds like it was more of a short-term fix to, right now, alleviate the caseload that you have so that you hopefully don't lose all the attorneys you have in your office?

A. That's probably fair.

Q. I have this document that was previously marked as Exhibit 5. Have you seen this document before or heard of its existence? And can you kind of identify what it is that you're looking at?

A. Sure. Exhibit 5 is titled "Suggestions in Support of Writ of Prohibition and/or Mandamus." I think -- I'm not positive, but I think I've seen this on a database, so if I would have viewed it it, in all likelihood, would only have been electronic. I don't know that I have printed it out.

Q. Okay.

A. But I'm not even certain I've seen it.

Q. Okay. So it looks like it's a form from the public defender system of a writ that would allow someone to object to an appointment. Is this something that's ever been filed in your office or by

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someone in your office?

A. No, not my office.

Q. Okay. All right. I have another exhibit that is going to be not previously marked, and this is now going to be exhibit --

MS. SHIPMA: 16.

MS. WILCOX: Thank you. 16.

(Exhibit 16 was marked for identification.)

Q. (BY MS. WILCOX): And if you could just identify what it is, it's a similar form document --

A. Sure.

Q. -- and let me know if you've seen it before.

A. Sure. Exhibit 16 is a motion to withdraw due to excessive caseload.

Q. Have you seen this document before, to your recollection?

A. Again, I may have. It's possible I saw this on the electronic database but, again, I'm not even sure I printed it.

Q. So to your knowledge, has an attorney in your office ever filed this kind of motion, motion to withdraw due to excessive caseload?

A. No, not to my knowledge.

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Q. We have talked about this, I think, in a lot of your other answers, but we're going to focus on what I'm going to call the triage of cases, so if an attorney in your office spends the amount of time that he or she thinks is necessary to zealously prepare a client's case, what happens to the other clients?

A. Nothing except they're probably put at a more disadvantageous position than they already are. Conceivably, their witnesses disappear. Conceivably, their alibi goes away. If they're in custody, they're suffering loss of liberty longer if they wind up not bonding or being, you know, continuously placed in loss of liberty. Nothing good.

Q. I think you used the term "triage" earlier. Is that something that -- a word you would use for what attorneys in your office do with their cases?

A. It's a dirty word we use, yeah. We've been using it for decades.

Q. Explain to me what you mean when you say things are triaged.

A. Well, the analogy is often made to a MASH unit where the sick and wounded come in, you

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deal with them as they come in best you can, and usually there's a waiting period. And people are not getting better while they're waiting while they're not being treated. So the triage -- it's also could be -- it's the fires that we put out every day and, significantly, it's also the waiting at the dockets for hours and the probation violation and the traffic dockets. Because while those attorneys' times are tied up with that, they're not investigating the cases that might have an alibi. And I say "might" because they haven't determined it yet because they probably haven't read through the discovery. And they also have clients who are sitting in jail whose bond motions may have never yet been filed, certainly not investigated, probably not investigated, and hearings that haven't been held.

Now, from an optimistic sense, maybe they -- maybe the judge reduces their bond, maybe their family locates some money and they're able to have pretrial detention out of custody. And it's always better for any client, I believe, to work with his or her attorney in an out-of-custody situation. You know, pointing through the glass and trying to demonstrate things, not good. It's always better to have the client -- it's critical to have the client

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out of custody if it's possible.

What happens when you don't is what you, essentially, have is you're creating documentation for the prosecution because clients are making recorded phone calls and writing. There's no privacy in visiting with family. All of that is recorded in the jurisdictions that I'm aware of and accessible, fully accessible, by the prosecuting attorney's office. So what we're left with is we get some late discovery on a client that has been making some jail calls, possibly incriminating information, possibly not. It may be neutral, but we wouldn't know until we take time to listen to them. And if you're going to get them the Thursday before your Monday trial, that's not really fair. But you haven't really filed a motion to make sure that they comply and give that to you in a timely, consistent, within, you know, 48 hours of their recording. You haven't done that because you've taken the one case at the top of the pile, and you're working it and you're providing -- that client is not getting first class service. That client is getting service that every client deserves, one lawyer, not a team of lawyers, one lawyer. And that's what the constitution guarantees.

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Q. Do you think that the current circumstances with caseload and resources are causing violations of the rules of professional conduct in your district by lawyers?

A. Can we take a break?

MS. WILCOX: Sure.

THE VIDEOGRAPHER: We're off the record at 1:00 p.m.

(A brief recess was taken.)

THE VIDEOGRAPHER: We're back on the record at 1:09 p.m.

Q. (BY MS. WILCOX): I'm going to rephrase the question I asked you.

A. Okay.

Q. In the letter you sent to the court on October 2nd which -- can you remind me the exhibit?

A. 15.

Q. 15. It's on the second page. In that letter you say that you've instructed the assistant public defenders in your office to notify you or your deputy district defender if they believe accepting new cases would materially limit their responsibilities to existing clients so they can ensure compliance with the rules of professional conduct.

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That's true that you've asked the attorneys in your office to do that?

A. That's true.

Q. Okay. And then can you just tell me what -- how have you been assigning new cases that have been coming in since this letter went out?

A. Since the letter went out, I think it was -- it may have been within a week of the letter going out. Trying to think. I think it probably was the letter cutoff date.

Well, there's a period of time that we created a waiting list. Immediately after the letter, October 2nd, 2017, there was a waiting list that was created or begun to be created, and understand with a limited staff, that took a lot of resources and redirecting them to creating the waiting list because we still had to process applications and find whether or not they were deemed indigent, et cetera.

And then there was a short period of time where we directed out letters to those folks who were on the waiting list, and after a relatively short period, some of the prosecuting attorney authorities began to file -- either provided me with a sample or actually filed a motion to -- the state's

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motion in opposition or to show cause, and I think what they were doing is voicing their belief that the letter that I had sent out, perhaps others, was not within -- not in compliance with the statute Chapter 600, and instead sought the court's relief to order us to file entry in the case. And there was a groundswell of information that came in informally through other managers I've talked to and, frankly, the other attorneys throughout the different offices, and it was clear that some -- one or more judges, their intention was to hold somebody in contempt. They were clearly itching to do that.

I decided to eliminate the wait list, and continue to assign Clinton County cases to the single attorney that I've assigned to Clinton County duties and clients, and those entries of appearances have been modified. I can't remember the exact language, but it, I believe, said something along the lines of entry of appearance under duress and in the unintentional violation, contraindication of Rule 4, I think, or words to that effect.

It's a form motion. It is, I believe -- with the exception of clients that we -- if we represent John Doe now, and John Doe picks up a new case, we enter in that case because we already

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represent John Doe's interest, but absent that single exception, all of our other entries of appearances are made under duress and in the unintentional violation of the Rule 4. So everyone that was on the waiting list is now assigned to me, and my entry of appearance under duress was made. And then, of course, there was a period of time, since we weren't making the waiting list, still people were applying. They were found to be indigent or they were found to be nonindigent, and appointed by the court, and those were also personally assigned to me under duress. That's why I have nearly -- approaching 400.

Q. So there is no wait list right now. You're just doing the entry under duress?

A. There is technically no wait list. Clients are waiting for me, but they're not on a wait list.

Q. Okay. When they were on a wait list was it informal within your office, or maybe formal? Informal is not the right way to describe it.

A. Well, I mean, we had a running list on a database, and I think we might have provided a copy of that list to one of the associate circuit judges that, I think, asked for it. It was no secret. You know, they just wanted to know. I think they were

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concerned with the count, maybe. I'm not sure what their concerns were but, yeah, I mean, it existed. It no longer exists.

Q. How long do you think that it must have --

A. I mean, there was -- we had letters that were printed that never went out. That's how short duration of a waiting list we had.

Q. Okay.

A. But yet some of them got it, and clients told me no, I'm on a waiting list. Well, you were for a brief period of time.

Q. Anyone who was on it has since now -- some entry of appearance has been filed in that case in your office, waiting, but has been assigned?

A. Or they represented themselves, proceeded pro se, or they hired private counsel.

Q. Okay.

A. There's probably a fraction of those that did that.

Q. So the -- in your district, the private bar appointments, are they happening yet or that has not happened yet, that was just a discussion?

A. There's -- we have a list from the

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Clay County and a list from Platte County, and my staff is told that when people apply that are not -- people apply that are not qualified, we provide them a list, and explain, number one, that they have a right to appeal our finding; to have the court consider whether they're going to appoint us under the statute. And if you're interested, here is a list of lawyers who have voluntarily put their name on the list that either represent pro bono or at a reduced rate.

I didn't change the list as it came from the courts or the court's clerk. If it said "pro bono" on it, I didn't tinker with that language. If it said "reduced rate," I didn't tinker with that language. I didn't tinker with anyone.

Q. But you're saying these are for defendants who your office has found don't qualify for your representation?

A. Right, yeah. Because we can't turn them away and say hey, call pro bono. I mean, under the statute, they have the right to apply. We're obligated to process them to deem -- to see whether or not they fall within the indigent guidelines.

Q. So to date, there is no refusal of cases from your office to the court?

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A. When I last left the office, there wasn't any refusal of cases. We've been here awhile.

Q. Are you familiar with the Missouri Coalition for the Right to Counsel?

A. I've heard of it.

Q. Okay. Do you understand it to be in existence?

A. I don't know anybody that's affiliated with it.

Q. Okay.

A. So other than having read the phrase, the title, I don't --

Q. So that program is not alleviating the amount of cases you have in your district; is that fair?

A. Not to my knowledge.

Q. Okay.

A. I'm not even sure what it is. Let's just say this: It's not alleviating it enough.

Q. Okay. That is bringing me to the conclusion. If there's anything else that you think we should know regarding your ability or the ability of your district to provide effective representation, I would open it up for you to share that with me, but I have no other questions.

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A. I can't think of anything. I mean, I may think about it later. I still haven't thought of that immigration landmark case.

EXAMINATION

BY MR. RAMSEY:

Q. Good afternoon.

A. Good afternoon.

Q. My name is Steven Ramsey, again, and I represent the State of Missouri and Governor Eric Greitens.

If we could go back to your experience, did you come straight from undergrad into law school or was there a period of time in between?

A. I had a hard time getting into law school, so there was a lapse of time, about five years.

Q. And during that five years, what did you do? What you were employed as or how did you take up that time?

A. I had -- goodness. Goes back a ways. I worked for my family business. I worked for the IRS. I think that's probably it.

Q. And how would you classify your work for the IRS?

A. Started as a seasonal tax examiner,

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and I showed up, so they kept me.

Q. And then so from that period, you went to law school. Did you immediately -- and I apologize if I missed this. Did you immediately begin in private practice for, I believe, four years?

A. No. My first job was with the Missouri Public Defender System as an attorney.

Q. And then was there a period that you did leave and then went into private practice?

A. Right. About five years with the public defender -- four years, 11 months -- and then two years with private practice, a law firm downtown Kansas City, Missouri, doing insurance defense, and returned to the public defender as a manager in the Saint Joe office and then the Liberty office.

Q. And then just briefly, what were your degrees in or your degree from undergrad?

A. BA in history.

Q. In terms of your preparation, I remember you testifying about the people you spoke to, Counsel, and you reviewed the petition. What other -- this is a big question, that's a broad question. What other broad groups or classes of people have you talked to in regard to your workload and caseload concerns, other district defenders being

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an example or can you give broad classes?
A. Sure. Judges, other members of the bar, you know, we see private members of the bar at the dockets. It's pretty much on our mind. Some may have said, "Hey, I volunteered" in relation to whether it was Clay or Platte, their call for pro bono. I've had a couple of folks do that.
Q. Have you been in contact with any organizations or nonprofits?
A. In connection with the crisis of the public defender system?
Q. Correct.
A. I don't think so.
Q. How about the press, any news, radio, et cetera?
A. I spoke -- I'm trying to think of when I spoke -- I'm trying to actually recall whether or not this was on or off the record.
Q. And if you're unsure, it's okay to not disclose that as well.
A. Well, I will say I have talked to various members of the press, historically, about the public defender crisis, caseload crisis, workload crisis.
Q. How about within the last year or so?

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A. They call me sometimes, but I don't have any direct recollection of it being in the last 12 months unless it would have been -- I'm recalling something with KCUR, but I'm not sure. They called once about the placement of a judge, and that may be -- which would, of course, have been totally unrelated to the public defender issues.
Q. There was some conversation concerning the funds that were appropriated by the general assembly to the Missouri State Public Defender System for the conflict counsel.
Do you recollect that testimony you gave earlier?
A. Yes.
Q. Was I right to hear you or to understand you saying that you were not confident that those funds would still be there in subsequent years?
A. Sure. Can I answer that fully?
Q. Sure.
A. Okay. When I call them conflict counsel money, if you will, it's not up to me how they're spent. I think it's up to our director how it's utilized and funneled out. I'm grateful that it's funneled out for that purpose. The history --

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my particular history with the governor's office is continual disappointment with the previous governor with vetoing legislation, with withholding funds with Governor Nixon. My only understanding and appreciation for Governor Greitens is that he did not follow in the path of his predecessor, Governor Nixon, and, with our fingers crossed, did not withhold funds. So to that extent, I believe those that can appreciate the budgetary limitations are grateful that those funds haven't been withheld.
My understanding is as a result of Governor Greitens not doing what Governor Nixon had done time and time again, allowed that additional funding to the public defender system, and the system, through, I believe, extensive examination of how to maximize resources decided, and I agree, that that could be best utilized by resourcing those to contract private bar who agree to act in the public defender capacity and cover conflict counties to reduce our windshield time and everything else that would be affiliated with driving out to the wild blue yonder and farther and farther away from your offices in order to provide indigent defense.
As far as the future, I can only remain hopeful. I'm not an expert on the legislature

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other than every year they submit a budget. Other than that, I'm used to -- frankly, I'm used to getting bad news. This is the first good news I've gotten in quite a spell.
Q. In your experience and knowledge of the budgetary system who appropriates funds in the Missouri state system?
A. Not an expert on that. Don't care to speculate.
Q. What is your understanding of the withholding process that you mentioned about the governance?
A. There was at least two different times, if not three, that we were -- "we" being the public defender system management, had communicated that this money was requested, this money is in this committee, that committee, that sort of thing. Again, I don't understand it. Until they tell us it's ours, you know, I don't --
Q. I'm sorry. I apologize. Which committees? I interrupted you. I apologize for that.
A. That's okay. I just used that as an example. I don't even know if it goes to committee, so you won't hear me critique the legislature other

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than to say they need to give us more money. I won't be more specific than that.

Q. I understand. So I guess my question is your understanding is that the legislature is the one to appropriate the money?

A. Yeah, I guess so. I can't disagree with that.

Q. Okay. Now, you talked a little bit how -- so you have 12 attorneys right now?

A. Including myself, yes, sir.

Q. Including yourself.

And you were asked in an ideal world what you need, -- you think you would need to have a reasonable caseload. And if I remember correctly, your answer was 12 more attorneys or to double what you currently have; is that correct?

A. That's my estimate, yes.

Q. And that basis was on your experience?

A. It's based on two, two factors. One is my experience over decades and, two, on my reliance on the public defender assessment and the budgets they put out each year and when they talk about we have X number of attorneys which I believe are in excess of 300, and we need in excess of 300 more. So I trust their analysis, but in terms of

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what I personally believe, sure, we could absolutely use that. Were we ever going to get that? No.

Q. And so your understanding of how many attorneys you need comes directly from central office as opposed to being you having a history in statistics or management or some other independent basis?

A. You didn't listen to my question. I said it came from two factors.

Q. Uh-huh.

A. One was my reliance on the management studies that were done, but, more importantly, on my decades of experience.

Q. And as your experience as being a manager and being --

A. Manager, but not a statistician, correct.

Q. Let's take a few steps in a different direction.

A. Okay.

Q. When it comes to the determination of indigency, who makes that determination on your staff, specifically?

A. I have two of my formally titled clerks that are allowed to do that. I mean, I can

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make it at any point, my co-manager can make it at any point, but in terms of the nonmanagers, the two -- the two clerks that I -- I don't want everyone making that decision, so I have two that do it.

Q. Do those two have any specific training in that regard or how do you go about trusting those two as opposed to just everyone making that determination?

A. It's only recently been the two, quite honestly. Primarily, before that, it was the one who preceded me in the office, so she's been there probably around 20 years, and was a court clerk before that. Again, she's not a statistician, but she's familiar with the poverty guidelines, but that's really probably what we go off, the poverty guidelines, as a starting point in terms of income and assets.

Q. Do you have a sense of -- this isn't a term of art, but do you have a sense of a rejection rate for those who apply for services from the system?

A. Not that I can put a number to. I could probably just explain it better than that if you want.

Q. Please.

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A. I can give that a stab.

I think our office, the Liberty office, and I don't know this for a fact, but I get a sense that our office takes more steps to attempt to verify, spot check, income, assets. We also sometimes -- if for whatever reason we use the phrase smell of money. If we think there's assets there that they're not telling us about, as good guardians of the taxpayers' pocketbooks, we're going to look a little further, and we're not bashful about telling the courts to wait. The courts aren't always excited about that, but they have no choice but to wait because under the statutory scheme of Chapter 600, I have the right to conduct an independent investigation.

There are at present -- and understand I don't have sufficient staff to do this, but I utilize and take them away from doing other things, important things, to do this. We have -- we joke in our office that we have a financial investigation unit. It's not really a unit. I have one secretary not of which who is authorized to make the determination, but she's the one who is going to do the processing beyond if someone says they apply or if someone says let's -- or they qualify, let's do

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some -- we call it Chapter 600 investigation. And I have a document we file with the court that's entitled "Chapter 600 Investigation Pending," and we say the aforesaid has made application and is currently -- the financial investigation is being performed pursuant to Chapter 600, whatever number applies.

We have -- we contact the Missouri Department of Labor. Again, this is spot check. This is not on every application. We wouldn't be able to -- we would not be able to function to do anything else because we get so many applications. Okay. And when we spot check that, we provide the name of the applicant, the social security number of the applicant, and we ask for the past four quarters or last year's, but nothing more extensive than that because the recently is what we want because we know that's all the judge is necessarily going to care about. If they made money two years ago, it's gone. That doesn't -- you know, if they were out of a job for a year, we're going to be appointed. We're trying -- we're trying to limit our involvement, and not be taken advantage of for somebody who just wants a free lawyer.

Now, most frankly, most of the people

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who apply for us are dirt poor. They don't have much money for anything, but even if it's a small fraction of cases that we can avoid, okay, we want to try to avoid them because it's wrong to represent them to give them a free lawyer when they don't deserve one.

The other thing is that motivates them. If they're on the curve and they have it, but it really would be a financial imposition or might set them back a little bit, which a lawyer should, we do the best we can to try to motivate them to do that.

Now, they still have an obligation to attend every court appearance, whether they're in custody or out, but what I've seen is for the small fraction that we spot check -- and we're trying to make it a larger number, but it's hard to do with the staff we have -- we have a portion of that that falls off, and what they do is hire private counsel. Sometimes they represent themselves. They're not doing that in serious cases. They're doing it in cases where they have a bad case and they're going to repay the bad check. They're doing that sometimes in driving while suspended or revoked, and sometimes they're going to get the exact same outcome we do, but many times they're hiring private lawyers.

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Because of the economy, salaries or fees have taken a dip because of the glut of lawyers, unfortunately. The economy has never fully recovered I don't think. It's gotten better, but never fully recovered for members of the bar, but it has created a -- there's some lowballers out there, and we're absolutely fine with people charged with criminal events hiring those members of the bar who can do a sufficient job to represent them. We're trying to encourage them to do that.

The judges see that. Some of the judges are very patient with that. Some are not as patient, but the ones that aren't as patient, we make it clear that they really don't have a choice.

Q. Is it your sense that your district -- forgive me if I'm misunderstanding, but your district has probably more or potentially more verification of resources than potentially other districts?

A. Well, when I look at Exhibit 14, understand that my assessment is purely speculation because I have no idea what most of these folks do, but I just assume that they don't have any more resources than me to do -- to serve such a function.

As to what they do independently, I really don't have any firsthand knowledge of it, but

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I know that it's a time crunch, and it takes away from -- because it's not the first time we've been doing it. Even something as simple as running a real estate check and trying to see and doing some research with that, and even title search with vehicles, sometimes, every now and then, it saves us from a case, but it's an inordinate amount of resources. It might be easier to handle the case, but it wouldn't be easier on the attorney. It's a burden on the staff, though.

Q. Would you say it's common to reject an application? Is that something that comes through every day that you see a rejection or -- I'm trying to get a sense of how often your district turns away applications.

A. I know that there's a database that seeks to record the application, and whether or not the indigency finding is made by the public defender system or if it's instead appointed by the court. So I would have to defer to the historical accuracy of that.

Q. Who has the final say? So if the support staff member looks at an application and says yes, this person is in -- is there an independent control there, a monitoring, or do you all trust the

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discretion of that support staff or if it's yourself making that determination?

A. I make it clear to my support staff that their extra effort is there to limit cases and to make sure that people who don't deserve us don't take advantage of taxpayers' funds. So, if anything, they're going to err on the side of embarrassingly rejecting people.

Q. And so when that support staff rejects a person, hypothetically speaking, does that rejection stand or is there someone else or yourself, for instance, go back and look over the application and verify it?

A. If it's rejected, that's good by me. That's called a good call only because the applicant has the right, and we advise them of the right, or try to remember to advise them of the right every time, and, frankly, if we don't, which we seek to, the courts do and, quite often appoint us. But that just depends. And that's going to differ from judge to judge.

Q. You alluded to this potentiality earlier, but say a person has three other cases, criminal cases, and they have private counsel on those three cases --

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A. Uh-huh.

Q. -- and they catch a fourth case. Does the virtue of them having the other three counsel, is that a factor that goes into whether or not they are indigent for that fourth case?

A. Absolutely. Part of what our process is -- and that's why the judges get frustrated. You've got the application. What else is there to do? What our staff does is -- and this I don't know whether or not other offices do. I would encourage them to do it, but I don't know if they have the time or resources to do it -- is we go to CaseNet, and we don't check every jurisdiction, but we check the ones that are more likely to be involved, and to see if that person has charges. Okay? And we also look up the case or cases that they are alluding to -- some of them know, some of them don't -- on their application.

If there's a way to connect them with private attorney at present or recently in that case or another, we're going to opt to find them not indigent. Then they have the right to appeal to a court.

Q. Switching gears a bit. How would you define a case or a matter?

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A. Can you be more specific?

Q. Sure. So you -- let's say that there's five cases, and I'm trying to get a sense if that means there are five criminal defendants or if that's saying there are five independent charges?

A. Sure.

Q. So I'm trying to understand the categorization of a case.

A. Okay. As I look on our database, I'll see, you know, John Doe, and see if he has any open cases. Now, John Doe may have -- and I break out that CR number. He may have -- he may have several counts on there, and I believe that would be tallied as one case. He may have -- it may be the kind of case where they threaten to charge additional counts, and that's why the numbers really -- you can't be guided by the numbers, not safely, because if you have one count, and they're threatening the other four, well, the attorney is working the other three. It's not fair to say we're only working the one because they have to be working all three in order -- for example, in order to negotiate that case, I require the attorneys -- and I think it's an obligation under the rules -- to get the discovery for the other three controlled buys if they're

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charged with the one. Because if part of the benefit of the bargain in pleading guilty is we won't charge you with these others, I want to make sure you've got cases on the others.

Now, under that setting, we are working more than the computer reflects because there's uncharged cases. So it works both ways.

Now, conversely, we also have traffic cases where the officer is mad at the person, and they've written every ticket imaginable. One extreme case that we've had, and it is extreme and it's never been recreated, is the officer wrote 30-plus tickets. Now, it's never happened. Usually it's more common to have one or two, maybe three or four.

Q. Let's turn to that -- your caseload in particular.

A. Okay.

Q. Did I hear you correctly is that you're testifying that you represent clients that have or -- yeah, clients have felonies, A/B all the way through speeding and traffic?

A. Speeding to murder.

Q. Speeding to murder.

Could you give a breakdown -- and I know you probably can't be precise without the

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numbers in front of you -- but what percentage is where? How many do you have in the municipal court with the traffic versus a felony or a misdemeanor?

A. We don't have any municipal court, but we do handle -- the public defender system does handle traffic cases in the associate circuit state court setting. We have a lot. The office has a lot. I, in particular, have -- I handle the traffic docket in Platte County, so I'm going to have a high number in there. One of my other attorneys will handle the traffic docket in Clay. She'll have a high number on that. Obviously, that isn't the limit of my caseload, nor is it the limit of her caseload.

As far as what sort of cases I'm in right now, I'm embarrassed to tell you I'm not even sure. The secretaries are directed to file my entry of appearance under duress. I then look at them, begin to create memos to file to create some semblance to the madness.

Q. Setting those aside, the ones that you entered duress on, before that, before those rolled in, about how many cases did you have at that point in time, if you can remember? I know it's probably been a few months.

A. I can't recall. I can guess, but I

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don't want to do that. It was high, but I can't give you a number.

Q. Sure. Let's talk a bit about the triaging that you and your district go through on a day-to-day basis. I think I had heard you testify that it's not simply a first in, first out method, but things rise to the top of the pile in different ways. I'm curious as to those different ways something can rise to the top of the pile.

A. A lot of it -- when we're talking about putting out fires, a lot of it has to do with trial date settings that you scheduled by courts. That becomes -- that trial is on fire -- I mean, that file is on fire because you don't know whether or not you're going to get a continuance. You may have a sense, based upon your experience and whatever jurisdiction and judge it is because it could differ not only by jurisdiction, but by judge. So those are really -- because what you're talking about is, as you know, bringing a jury in is taken serious by a judge. And so it's really -- that's the judge's priority, too, we have found. So if that means that's going to be the judgment day for the client to answer charges, by necessity, we've got to begin to pay the attention that we have available to it.

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Q. So impending trial dates would be a factor?

A. Sure.

Q. Are there any other factors in terms of this case has been continued for months or years? Is there any sense of -- yeah, what other reasons would your office have or you have to bring something to the top of the pile?

A. If you look at it and you think the -- if you think the discovery is complete, sometimes you get a since -- sometimes you agree with the other side, this is not -- you know, we agree the prosecutor doesn't have this yet. We know we're waiting for it. The court knows that. We know that trial date is probably going to be continued. That's a trial date, the file is not on fire because everybody knows we're going to get it. Now, that's assuming you have the kind of judge that is going to give you the continuance you believe you deserve. You don't always have those kind of judges, so it may still be a flamethrower in that sense.

Other reasons might be -- you know, when I talk about a Monday morning MASH, it's every day for clients who either want a bond motion to be filed because when they want it filed, the office of

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chief disciplinary committee expects you to file it. There's no excuse for not filing it. They take that pretty seriously.

Now, that doesn't -- you don't get to factor in whether or not you think the person has money. You don't get to factor in whether or not you've already asked for it a number of times. You don't get to factor in whether or not the judge is going to just say no. That takes time to do it, and you've got to do it in order, frankly, to protect yourself from the bar complaint.

Another thing, very frequent thing, would be where the client has a probation officer. Sometimes it takes awhile to get that, but once you get the probation officer, you have an obligation, under the rule, to examine all the state's evidence that they have and that they've given you. If you -- if you have it and you haven't looked at it, you need to look at it so that becomes something that comes to the top of the pile. Why? Because this man or woman has an opportunity to get out of jail, especially if they've been telling you, "I want to take the deal." Right? Or even if they haven't been telling you that, if it's probation, you want to maximize the best for your client. So if you can get them out,

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but as a lawyer you have all the obligations to do the things and make the checklist and make sure that it's a submissible case, make sure there isn't any defenses that you have not checked with your client to make sure that that doesn't exist, and whether or not they want to waive those rights, if there's any suppression issues. Sometimes they're going to say, "I don't care about that."

Q. Do you have any policies or procedures that lay out the triage method, or is it one that you have gained through experience that not necessarily every attorney in your office has access to?

A. By definition, triage is without any rules, so there's no policies.

Q. About how many cases come in per year in your district if you have that off the top of your head? If not, no worries.

A. I don't.

Q. Do you have a sense of within the past year, either 2017 or 2016, how many cases your office has tried?

A. Not off the top of my head, no, sir. There would be statistics for that, but I wouldn't -- I can't recall them.

Q. Do you remember -- I apologize for

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interrupting you.

A. Sure.

Q. Can you recall your office taking to completion one trial within the past year?

A. Oh, yeah, certainly. The only reason I'm able to say that with definite is because we got -- my co-manager and I got an e-mail that there's a newsletter, and they wanted feedback on that, so I happened to be there when she was responding, and it was two trials, for example, that hadn't been mentioned in the news, so that was -- but it's all -- as that happens, the software picks that up, and there are statistics, indisputable statistics, that would verify whatever trials we've had.

Q. So at least one?

A. Oh, gosh, yeah.

Q. At least five?

A. Again, I can't -- I just can't -- I'm not comfortable guessing.

Q. Sure.

A. But I will say this: The trials itself could be a misleading factor, and here's why I say that: Lots of things are worked up for trial, and then they don't proceed to trial. That's an inordinate amount of attorney work hours that's

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expended for absolutely the appropriate reasons to defend that man or woman's life and liberty, but then it doesn't wind up getting tried. Some circumstances may change, the plea offer may change, so we don't go just by -- it's called trial division, but conducting trials is absolutely not the only work we do.

Q. You testified earlier that there have been excessive caseload and workload demand on the system and your -- on those that you supervise and yourself. 2005 was mentioned, but it's been there for some time; am I correct in understanding that testimony?

A. I agree with that, yes.

Q. At any point while you've been a district defender, have you put on any trainings or have known of any trainings that deal with workload or caseload concerns?

A. I think our training department may have had -- again, I don't -- quite honestly, I don't have time to attend the training, but I do try to glance at the syllabus, and I do have attorneys that are newer to the system that attend those sometimes, whatever the training are, in order to gain their CLE hours for the year, or attempt to.

I think there are syllabus items that

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deal with workplace stress, stuff like that, but I couldn't say that under oath that it actually existed. Training department would be the appropriate person to ask about that.

Q. And that's for a systemwide training, like the annual training that various public defenders go through?

A. It would be put on -- if it exists, it would be put on by the Missouri State Public Defender training division or someone that they affiliate with.

Q. But sitting here today, you have not, as a district defender, put on any specialized training for those you supervised?

A. I don't have time to. I probably have -- let me go back to the earlier question. I probably have attended management-related meetings that deal with caseload, but it's not limited to just caseload. It's also dealing with, you know, updates in the case law or procedure and that sort of stuff, but, invariably, caseload comes into the discussion.

Q. I apologize for being all over the place.

A. No problem.

Q. I'm trying to maintain coverage.

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A. It's no problem.
Q. Continuances, we talked about earlier, and I understand that judges have to grant those continuances. What is the longest period of time that you can recollect that a case was continued by your district or someone in your district?
A. I probably hold that record outside the capital, I don't know anything about capital. And I'm not boasting about it, but it's frequently mentioned. Seven years to trial.
Q. Turning to the funds that are available for various requests from assistant public defenders, your testimony earlier, I believe -- and correct me if I'm wrong -- is that you've never been turned down for a deposition when you, personally, requested funds for a deposition?
A. I don't think I have. I have had to seek further clarification from a supervisor for a meteorologist one time. I remember that. And, you know, there's often clarification sought in order to make sure that there's a good record for the use of the taxpayers' funds, but in terms of someone telling me no, it's usually more of a discussion. I don't think I've -- I don't think I've ever been told no. There may have been a brief -- very brief freeze on

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it years ago, but it really was a bump in the road. It wasn't anything like -- for the most part, the depositions that the attorneys seek the funds to conduct, there's funding there to conduct them. The real challenge becomes facilitating your workload in an efficient manner in order to get it to that point because that's a whole lot of -- I want them to be -- I want them to be done with forethought and some strategy as opposed to I just want to do them to be doing them.
Q. Have you, as a supervisor, ever declined someone who asked for funds for a deposition?
A. Yeah.
Q. What was the basis for that?
A. Sometimes strategic, sometimes case related, sometimes because the attorney -- I didn't think the attorney had thought it out enough. Sometimes I didn't think there was a disadvantage to doing it in an interview setting instead. I mean, it's not often I do that, but sometimes if strategy is involved, then I'm not hesitant to intervene, but I do think the depositions are a good training tool, not just to find out about the case, but also for the newer lawyer to learn and see all the surprises and,

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frankly, some of the good things and horrible things that come up during a deposition.
Q. Have you ever given as a reason -- or sitting here today, can you recollect a reasoning for declining a request for a deposition solely based on funds and the availability of those funds?
A. Like I said, I think there might have been that one time where there was a freeze or an encouragement, to -- but it was short-lived and a single event or single duration. It wasn't anything that was longstanding.
Q. I apologize for the duplication of these questions --
A. Sure.
Q. -- but same question for expert testimony. Have you ever been denied expert testimony that you thought was important to your case?
A. Outside of that meteorologist, which ultimately I gained permission to consult with, that would be the closest thing I could think of.
Q. And have you ever denied -- I guess you just mentioned about how you denied some depositions, but have you denied expert testimony for similar reasons?

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A. I don't think I did. We may have discussed whether the case was ready for it, so it may have been a timing issue, but I don't think I said -- I certainly didn't say, "No, you can't do it. We don't have the funding for the expert." It's more of a teaching tool and to make sure that the money is being used wisely.
Q. Do you have a sense of if more depositions and expert testimony are utilized for felonies or for misdemeanors or sitting here today, do you not have a sense of that?
A. I don't understand the question.
Q. In your experience, do you utilize -- do you -- are there more depositions for a felony A/B, for instance, as opposed to for a misdemeanor or is there no discernable difference between how many depositions are taken for a given case?
A. It depends on the contents of the file more than the charge, actually. Now, there may be more DNA in a murder case overall, but in terms of is that felony going to be a greater expense or greater amount of time invested by the attorney? Not necessarily because we have some really, really -- we joke in the office about a misdemeanor that all of a sudden, because we're inside of it, it's like wow,

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this is worse than -- this is worse than a protracted felony case because it gets so complicated, one thing leads to another, you know. So you can't really tell -- there's no such thing as just a misdemeanor, is what I'm saying.

Q. Is there or are there any policies that prevent assistant public defenders from requesting a deposition or expert based solely on cost, for instance, the meteorologist is $5,000, and we only allow $2,500 for this type of expert? Is there any limiting factors in that sense?

A. I don't -- I can't think of any. I mean, it would go probably beyond me if it was an issue of we've never spent that much on that type of court reporter or expert or translator or something like that. I know that we to utilize -- we try to tend to lean towards the state-authorized contract providers, for example, in the interpretive field, in the court reporter field, that type of thing, to try to maximize the funds.

Q. Let's turn to the timekeeping that you, in your office -- that your district engage in. Is the extent of your timekeeping at this point in time hours worked?

A. Through the -- through the time sheet

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it's done every two weeks or bimonthly, yes.

Q. So at this point in time, there are no further demanding fields for time-keeping by task or case right now?

A. That is correct.

Q. When was the last time, if you can remember, when the time-keeping was done in almost a billable hours type of context?

A. I'm not sure when that -- I would be guessing, but I want to say a couple years, but that's a guess.

Q. Do you remember any training was -- the purpose of the training was to teach assistant public defenders, or any public defender, for that matter, how to keep their time?

A. By our training department, you mean, or just --

Q. Yeah, by the training department or by a district defender by yourself or when you were not a district defender, if anyone had ever put that on?

A. Again, I'm going to presume, but I'm not certain that the training division, perhaps during a new attorney workshop, would have alluded to that, but I'll defer to the training department director to -- again, their syllabus and whether or

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not they ever conducted anything on that.

As far as in office, we had a great deal of discussion about -- I mean, I would have attorneys that would come to me and say, "How should I bill this?" Not bill it, but, you know, "How should I allocate this? Should it be this, this or this?"

And I'm like, "Well, I think," you know, so there would be those. It's subject to interpretation even in the private setting.

Q. Is there anyone tasked with monitoring or supervising the current time-keeping system? I'll rephrase.

A. Sure.

Q. Is the extent of approval right now when they fill out their two-week time sheet and it comes to you for ultimate approval?

A. Well, the bimonthly time sheet goes to the district defender. I can only tell you what I do is I check it for accuracy. If I have -- I may be the only one. I may be doing less than others, I don't know, but if someone calls in sick, I save that so that I can -- if there's a need to check that against the time sheet. If there are hours where annual leave has been requested, granted, then I have

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a note-keeping mechanism for that in order to try to make sure that there aren't honest mistakes made by the employees. And there are times when I send them an e-mail and says, "Hey, let's talk about this time sheet," and then I explain this or remind them of that, and then they adjust accordingly.

It doesn't always have to do with a mistaken entry. Sometimes it is, if it's eight hours on a holiday, and they really meant holiday, but it's more expansive than that.

Q. You were tasked with overseeing the budget that's supplied to you by the comptroller of Missouri State System or, essentially, you're given a budget. It doesn't matter from who the budget is given, but are you given a budget?

A. Yes.

Q. Do you find that that budget is sufficient to get you through the fiscal year?

A. More oftentimes than not, it is. Again, I rely on, to a large extent, that longstanding staff member who I trust to do that and helps me oversee it. And if she tells me this looks like there's going to be an issue with it, then I contact the comptroller. I mean, I'm obligated to contact the comptroller and say this looks like it's

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going to be an issue so that they can be aware of it. The last thing they want is something to go over budget. That doesn't happen a lot, but it has happened.

Q. Do you know -- and it's completely fine if you don't -- if your caseload, as a district defender, is substantially different from other district defenders that you know?

A. The only thing I can really speak to of is my understanding is in -- my understanding is that the -- well, I don't know for a fact, but I know that I have some belief that the management at the Kansas City trial office does not carry a caseload, and I would be fully supportive of that type of scheme because of the enormity of the staff and the things that they have to do, the turnover and all those things.

Like I said, I've been encouraged to decrease or eliminate mine in the past.

Q. And who was it that was encouraging you to do so, was that management or was that other district defenders as you were talking about how you're operating on a day-to-day basis? Who did those -- where did those recommendations come from?

A. Only from upper management.

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Q. As an aside, what is your relationship like with upper management?

A. I think I have a cordial relationship with upper management.

Q. And I remember you testifying earlier that there were some things that you would run by upper management, and if there are a lot of things that -- maybe not a lot -- there are some things that you wouldn't; that you had some discretion there. Is there any type of a policy or have you ever been instructed on these five things you need to run by upper management or not?

A. Periodically we get e-mails that talk about -- it's more by subjects, you know, if this is an issue, make sure to check with me or other members of management, but it's usually subject related as opposed to an overall scheme.

Q. Has workload and caseload concerns and actions such as writing a letter, is that one of those subject areas that they want you to check with them about?

A. Well, let me make it perfectly clear. When it comes to my bar license and whether or not I am trying -- whether or not I'm going to comply with the rulings of professional conduct, I have no

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supervisor, not in the public defender system.

Q. Turning to Exhibit 14, which is the MO State Public Defender Cumulative Caseload Metrics chart or grid, if you will.

A. Yes.

Q. Sitting here today, do you know how the cases initiated field is defined?

A. I'm not an expert on this metrics. I'll be honest with you. I mean, there was a time when I looked at it more, but, no, I've never studied it, and I really probably would not be the right person to be able to -- if you want accuracy, to speak to about it.

Q. Sure. And so that same statement I presume would go along with me asking about the percent of capacity. Would you have any basis of knowing whether that number is accurate or not?

A. That's a totally different question.

Q. Okay. How so?

A. Well, management has explained to me how cases are counted. We have different views that deal with -- especially in light of the caseload cap efforts, especially in light of the Karl Hinkebein case and the Rule 4 crisis that's going on right now, but I know there's different ways to measure it, and

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one may be with the NAC standards. One may be with the Ruben Brown standards. I'm not a professional at all those. I will rely upon the stats that are computed by the Missouri State Public Defender System, but I will, quite honestly, have to rely on how they explain the different fields.

Q. In your district, how would a policy become effective? Just say you wanted to, I don't know, at lunchtime there was going to be pizza for everyone every single day. That's a silly example, but how would that go about becoming effective in your district?

A. I mean, unless it's something that I need to check with my managers on, unless it falls outside of my, you know -- and understand my field is relatively narrow. It's my office. I don't get to make decisions about anywhere else, but the district defenders are entrusted with providing supervision for their offices. If we were going to make a policy about various things, it would probably go out through an e-mail or I may just tell people. I mean, it depends on what sort of thing we're talking about. Sick leave, there's an e-mail that describes it. Annual leave, there's a form on a shelf.

Now, understand that with our

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transition, there is a risk that the new people may have never gotten that e-mail. All right? So if I've got a rule, which I do, about keeping the sink clean in the kitchen that's, like, way more important than pizza, but pizza is the cause, I sometimes send that out every now and then. And I look at it and I'm, like, oh, my goodness. I've got five new people that have never seen this threat.

Q. So by virtue of sending that e-mail, that is effectively setting a policy? I know we're using that word very broadly.

A. Sure.

Q. I'm going to start jumping around a little bit more than I already have been.

A. Sure.

Q. Concerning the Polycoms, is that the appropriate term?

A. I think that's what they call it.

Q. You had testified that -- my understanding of your testimony was that some public defenders have been surprised before, and some attorneys have been surprised before when they went to the courthouse and they didn't realize that they were not going to be actually visiting with their client. Is that a fair understanding?

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A. I know I have.

Q. Okay. So you have --

A. But you only get surprised once, then you see what's going on in the jurisdiction, and then nothing will surprise you.

Q. The reason I ask is because there was some confusion on my end, potentially, of whether or not a judge had to give leave for a Polycom to appear, and the notifications that went into that. So if I'm confused, I apologize.

But it has happened to you?

A. Sure.

Q. When you had mentioned that around 75 percent -- and I believe that was a general approximation -- of the clients, it was either on your docket or within your representation are currently in custody. What was the basis for that 75 percent general rule percentage?

A. Just my experience, I suppose. I would -- most recently, if I were to conduct some sort of examination of most recent cases, when I go to update court dates and I check the outside of a folder and I see custody, custody, custody, it was a really informal poll I took, and that's why I said that's an estimate, but I would be shocked if it was

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far off.

Q. So it could be more than 75 percent?

A. Could be.

Q. And it could be less than 75 percent?

A. Absolutely.

Q. I want to get a better understanding of the conversation surrounding guilty pleas and your policy or your day-to-day operation of that. My understanding of your testimony, and please correct me if I'm wrong, is that if there is incomplete discovery, you do not allow one of your assistant public defenders to simply plea out somebody without completing that discovery; is that accurate?

A. That's accurate. I mean, I'm not always with them in the courtroom, but they know that's my rule.

Q. And how, exactly, is completion of discovery measured?

A. I'm not talking about investigation. I'm just talking about discovery. So you'll get the initial round of discovery, and you'll see first off is there anything that's mentioned in the portion that you have -- and it may be complete, but I'm always presuming it's not because of experience. Could be, though. And if you know, through

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experience, that there are other things that exist or that should exist, or it doesn't take experience if you're reading through it from beginning to end and see that it references something that you don't have in your stack, sometimes it may come through a conversation with a client that says, you know, this that or the other. It may be that while the officer, the taller officer, and you look, and all you've got is one report, you become skeptical as to whether or not there's another report.

So it could come from a variety of sources. A common example would be you don't have a lab result for a blood alcohol contents, blood or -- for possession of a controlled substance lab report.

Q. Do you have or maintain any type of checklist that would suggest when this discovery period has been completed or is it more or less on your experience and their understanding, "their" being your assistant public defenders that work under you, their understanding of your knowledge of what complete discovery is?

A. Well, there wouldn't be any set checklist because there wouldn't be any one always applicable set of standards. For example, in any case, you don't know whether or not -- if you have

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two crimes, one of them a sexual offense, then everything is going to change because you're going to have additional potential discovery.

If you got body cams, again, it's extrapolated even further. If there's surveillance from retail stores, again -- so there is no -- it's really just an analysis in order to say what's missing. And over that you may say through my experience, I bet this is there, and they just haven't given it to me. You have no idea until the client has told you, "Well, the statement I gave to the officer," and you've looked through, and you don't have the statement, that you probably should be looking for that, as well as the Miranda. So a lot of it has interaction with the client involved that would shed more light on it.

Q. Something to something you had mentioned, I believe, about the probation and for all hearings, I wanted to understand a little bit more about the statement that someone with an associate degree is running the criminal justice system.

A. Uh-huh.

Q. What did you mean by that, just in terms of the person running those hearings or --

A. I mean -- and I used to present on

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this back when there was time, but that's a thing of the past. Probation officer is only required to have an associate's degree. They're also allowed to carry firearms. They are, in my estimation, one of the few members of the criminal justice system that's allowed to reduce their own caseload, virtually having unfettered control over it because when they recommend revocation, and sometimes it's discretionary for the same act, they, by definition, get to reduce the work that they have to do the following Monday. That's what I mean by that.

Q. Now, your support staff that work with you, are they mandated to have a bachelor degree in terms of the ones who are making determinations of indigency?

A. I'm not sure what education they have or what they're required to have when they were originally hired on.

Q. We're almost there.

A. Sure. No problem.

Q. Turning to the aftereffects of the Supreme Court decision, the Hinkebein decision, you had sent -- well, you had sat down with your staff before the memo came out from the director of the public system; is that accurate?

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A. I think it is.

Q. At any point in time after that decision, did the central office provide a bullet point of "If you're worried about caseload concerns, here are four options for you," or any type of suggestions in what district defenders should do?

A. I don't think so. I think there was a single letter or e-mail. I don't think it was beyond that. I could be mistaken, but as we sit here, I don't think so.

Q. And so your decision to draft the letter and communicate with the judges, was that done solely in the vacuum of you looking at and ascertaining what Hinkebein meant for you and your staff, or were there discussions between yourself and other district defenders to come up with your game plan, if you will, or your response?

A. I talked to our director. I did not call Karl, who I know from years ago. We're not close friends, but a couple of decades ago we were at the same poker party. I'm sure I lost money because I don't know the rules.

In all likelihood, I would have talked to staff members. More than likely, I may have talked to other managers. Certainly talked to my

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co-manager, but I chiefly listened to the oral argument at least once, and printed and read the briefs on both sides, which I found to be very, very instructive, all three of those.

Q. And just for the record, who is Karl?

A. Hinkebein.

Q. At any point in time, have you made a decision or have you sought approval from upper management to file a Chapter 600 motion -- and that's the Statute 600.063 -- in terms of requesting a conference for a caseload or workload concerns?

A. I have. I have -- permission has been granted. I just haven't had the time to do it yet.

Q. And was that permission granted only after you had asked upper management, or was that something that upper management did for all district defenders, to your knowledge?

A. I mean, the statute says I have to ask. That's all I concern myself with. I didn't even realize I had to ask. Once I read the statute, I realized I better ask.

Q. And how long have you known about the existence of that statute?

A. The Chapter 600?

Q. Uh-huh.

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A. Which subsection are we talking about?
Q. 063, concerning the hearing for workload or caseload concerns.
A. I think I have a file at the office because this isn't the first time we've marched this fight of a caseload cap, and I think in that file is the Waters opinion and the -- probably the statute in response to the Waters opinion which, I believe, is the Chapter 600 we're referring to, and also the -- there's legislation that, thankfully, didn't pass that sought to extinguish and privatize the public defender system that we mentioned earlier in the conversation. I think my folder talks about that. There's some other things in there, too, about the auditor's reports and that kind of stuff. I haven't touched it for a while. This Karl Hinkebein is sort of what made me go back to it.
Q. Do you have a sense for why you decided to send the letter as opposed to ask for permission, and then file the relevant Chapter 600 motion?
A. Oh, absolutely.
Q. Why?
A. Do you want to hear why?
Q. I do want to hear why.

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A. I think the statute is poorly written. I mean, I thought that when I reviewed it, however many long ago whenever it was first crafted. It essentially said that I, the manager, needed to consult with the presiding judge, and sought permission. And, frankly, I found that to be an impractical solution, so -- and it also -- chiefly I found disappointing is that it says I could go and seek relief for a portion of my office, but not the entirety of my office, which I find to be, at a minimum, illogical, beyond that, unworkable and unfair because then I'm assuming that I must express some favoritism among the attorneys that I supervise because I can't -- I can't seek -- I mean, what I could do, I suppose, and it's unclear because it's a poorly written statute, I could divest myself of all my cases, and then seek relief for everybody in the office but me because then there wouldn't be the entire office. To what end? Everyone would find that to be peculiar and suspicious and maybe perhaps premeditated.
Now, the other thing I have, and I think it's a flaw in the statute, is I think the statute, in terms of statutory interpretation, I think the statute does not allow the public defender

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system to appeal the finding of the judge. I think the way it's written, poorly written, the conjunctive is used, and I think we need -- and I anticipate the prosecutors will pull this in their next tool and arsenal, I think the reading of the statute requires us to gain their consent to do that. Because I think, under a strict reading of the statute, only the public defender and, not or, the prosecuting attorney authority may appeal.
We don't agree about much, and we certainly don't agree that we have a caseload crisis. There are prosecutors actively working against our best interests because they know if the level field is ever close to level, they'll have to work a lot harder, and justice will be served.
So I filed the -- I wrote the letter instead. It does the exact same thing. I did not give a copy to the opposing prosecutor, by choice, and I certainly didn't have to, and yet they wrote a nasty response to me and to the court, complaining about the fact that I sought relief through the letter rather than the motion. I guess we'll just have to live to see how well my motion is successful and what difference it makes.
Q. Turning to Plaintiffs' Exhibit 16 and

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the previously marked Plaintiffs' Exhibit, I believe it's 5, do you have a sense of when these documents were created, either or, generally speaking?
A. It makes sense to me that they would -- that I would have seen them if I saw them, but they look familiar and probably saw them. As I think I said before, if I saw them, I think they were -- I glanced at a database, but I don't think I printed them. I'm assuming it would -- they appear to be around the time frame of when Karl Hinkebein's oral argument and decision was rendered. I have no reason to think that they predate that, but I suppose it is possible that they do since I'm not recalling seeing them and I haven't really read through, especially, Exhibit 5 fully, I don't -- I haven't analyzed it to see if it would necessarily precede Waters or not.
Q. Last two questions: At this point in time, have you ever been judicially determined to have provided ineffective assistance of counsel to a client?
A. Yes.
Q. On what occasions and how many?
A. I think a couple. It may be more. I'm not sure. The thing I can -- the only case I

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could point to -- well, and I don't -- it was a Platte County case, and it was the case I referenced, or I may have referenced, but I don't know if I can think of his name right now. I know his nickname, but that won't get us very far.

It was a Platte County robbery case that was a post-conviction relief hearing, and I'm not certain if the trial court deemed ineffective or if that was later at the -- on further appeal, but it dealt with the use -- and, again, it was one of the cases post-Senate Bill 5, where they had bifurcated the sentencing proceedings, and one of the allegations was -- I think it was that I should have called an expert at sentencing. And, again, this has been years, and this is just from memory, so don't -- if I'm incorrect about whether or not there was a finding of ineffective, I'll defer to whatever the official court records -- but, for some reason, I recall that gentleman getting a resentencing that the appellate office handled. It was definitely out of Platte County. I think there were other occasions, but I -- I can't be certain of that.

Q. Are there any judicially determined instances of ineffective assistance of counsel that have occurred to an employee that you have supervised

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as a district defender that you can recall?

A. I think so.

Q. Do you have a sense of how many?

A. I can't really -- any specifics, I won't be able to, but I think -- I know when that sort of thing occurs, you know, it's discussed because, frankly, because it's an appellate opinion, usually, although not necessarily. It could be remedied at the trial division, but often isn't, so it's in my memory bank, but that's about as close as it can get. I wish I could be more specific.

MR. RAMSEY: No further questions.

MS. SHIPMA: Okay. Let me look.

THE WITNESS: Can I -- I have recalled the name of that. Can I go back to that and give you the name, if you would like it?

MR. RAMSEY: If you want, yeah.

THE WITNESS: Vaca, V-A-C-A, but I can't remember the first name, but if you -- that should be enough to...

EXAMINATION

BY MS. SHIPMA:

Q. Okay. Anthony, I want to talk about the indigency determination. You had said that there are situations where your office may determine

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someone not to be eligible for services, but then the court appoints your office anyway; is that correct?

A. That does occur, yes.

Q. Do you have a -- do you have a sense of how often that occurs or what percentage of times?

A. Nothing with any clarity or specificity but, again, I think there's a database -- there should be a database when a case is opened whether the indigency determination is made by the public defender or by the court.

Q. And I'm not looking for a specific, but just in terms of your sense, does it happen more often than not that the court appoints us anyway?

A. Well, we're disappointed every time that happens because, frankly, we think there has not been -- we think we're right when we think that the person is above the poverty guidelines or that there are -- now, I will tell you that there are circumstances where the person appeals, and this happens a lot. Person appeals, and the judge will inquire or the applicant will volunteer, "I no longer have that job." Now, that may be true, that may be not true, but an applicant saying that, the judge generally appoints us without any further -- without any type of hearing or verification or inquiry by the

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judge.

Q. Okay. Thank you.

I want you to look back at Exhibit 15, which was your letter to the presiding judges.

A. Yes.

Q. Were you told by anyone in upper management that you had to write that letter?

A. No.

Q. Did you have to run that letter by upper management to get approval before sending it out?

A. No.

Q. Did you attend this past year's management training or management conference towards the end of September, I think?

A. Sadly, I did not.

MS. SHIPMA: Okay. That's all I have.

FURTHER EXAMINATION

BY MS. WILCOX:

Q. I have one follow-up, and I have to make sure I heard correctly because I'm looking for clarification.

I think you testified that the budget you get is sufficient for the fiscal year, like the budget you get, I guess, pays the costs that you

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request?

A. Well, I don't really request it. The comptroller dispenses the budgets to the different offices. I only know about wee hours, and we look, and if we get -- if we have some foreknowledge that, oh, we're going to go past that during the fiscal year, we're told to tell the comptroller, alert the comptroller in advance, and I can only remember doing that a few times or through my secretary that really keeps track of those numbers, so...

Now, that being said, that's my really involvement in it. Over the years, I used to have a library budget. I haven't had that for a decade, decade or a decade and a half. When I was in Saint Joe, I had a library budget. No such thing as a library budget. My telephone budget was, probably a handful of years ago, maybe five, slashed by 33 1/3 percent. I don't -- I don't control that.

Q. I think the clarification I'm looking for is that --

A. I'm sorry. It was my postage budget.

Q. -- is that you have a budget, it pays for certain things, but the way that interplays with the caseload crisis, that's what I'm looking for clarification in, if that makes sense.

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A. Okay. Sure.

Q. Sure, you get money in, and it pays for things.

A. Right.

Q. But are you still left in a situation where you don't have sufficient funds and resources to do the work you want to do?

A. Of course. The budget only gives me money, not time. Nobody I know can create that.

Q. And it doesn't give you enough money to pay for the attorneys that you think you need to do the work?

A. Well, the budget that I'm given, that's -- I don't get to tinker with that dollar figure. That's salaries. I'm given a budget for things like inventory and printers and warranties and some supplies, maybe some hand sanitizer. It's just -- not translators, depositions. As far as if it were as simple as me saying I would like you to double my budget for my eight assistant public defenders, I would have done that a long time ago --

Q. Okay.

A. -- if I thought it would have done any good.

MS. WILCOX: That helps. That clarifies.

I don't have any further questions.

THE VIDEOGRAPHER: We're off the record at 2:35 p.m.

(Deposition concluded at 2:35 p.m.)

-o0o-

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CERTIFICATE OF REPORTER

I, Beth A. Kaltenberger, a Certified Court Reporter for the State of Missouri, do hereby certify:

That the foregoing proceedings were taken before me at the time and place herein set forth; that any witnesses in the foregoing proceedings, prior to testifying, were placed under oath; that a verbatim record of the proceedings was made by me to the best of my ability, using machine shorthand which was thereafter transcribed under my direction; further, that the foregoing is a true record of the testimony given.

Before completion of the deposition, review of the transcript was requested.

I further certify that I am not interested in the outcome of the action.

WITNESS my hand this 23rd day of December, 2017.

_____

BETH A. KALTENBERGER, RPR
MO CCR 1335 KS CCR 1417

Alaris Litigation Services

December 27, 2017

Ms. Jacqueline Shipma
General Counsel
Missouri State Public Defender
1000 West Nifong
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Columbia, Missouri 65203
(573) 526-5212

In Re: SHONDEL CHURCH, et al., vs. STATE OF MISSOURI, et al.
Dear Ms. Shipma:
Please find enclosed your copy of the deposition transcript of ANTHONY C. CARDARELLA taken on December 7, 2017, in the above-referenced case. Also enclosed is the original signature page and errata sheets.
Please have the witness read your copy of the transcript, indicate any changes and/or corrections desired on the errata sheets, and sign the signature page before a notary public.

Please return the errata sheets and notarized signature page to Alaris Litigation Services, Production Department, 1608 Locust Street, Kansas City, Missouri 64108.
Thank you for your attention to this matter.
Sincerely,

Beth A. Kaltenberger, CCR MO #1335, KS #1714, RPR, CRR
Enclosures
cc: Ms. Gillian R. Wilcox
Mr. Steven Alan Ramsey

STATE OF)
)
COUNTY OF)

I, ANTHONY C. CARDARELLA, do hereby certify:
That I have read the foregoing deposition;
That I have made such changes in form and/or substance to the within deposition as might be necessary to render the same true and correct;
That having made such changes thereon, I hereby subscribe my name to the deposition.
I declare under penalty of perjury that the foregoing is true and correct.

ANTHONY C. CARDARELLA

Executed this day of ,
2017, at .

Notary Public:
My Commission Expires:

WITNESS ERRATA SHEET
Witness Name: ANTHONY C. CARDARELLA
Case Name: SHONDEL CHURCH, et al., vs. STATE OF MISSOURI, et al.

Date Taken: December 7, 2017

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Witness Signature: _____

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Exhibit N

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
CENTRAL DIVISION

SHONDEL CHURCH, et al.,)
)
Plaintiffs,)
)
vs.) Case No.
) 17-04057-CV-C-NKL
)
STATE OF MISSOURI, et al.,)
)
Defendants.)

VIDEOTAPED DEPOSITION OF DAVID WALLIS
TAKEN ON BEHALF OF THE PLAINTIFFS
DECEMBER 11th, 2017

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INDEX OF EXHIBITS

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Reporter's Note: The original exhibits were attached to the original transcript.

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
CENTRAL DIVISION
SHONDEL CHURCH, et al.,)
)
Plaintiffs,)
)
vs.) Case No.
) 17-04057-CV-C-NKL
)
STATE OF MISSOURI, et al.,)
)
Defendants.)

VIDEOTAPED DEPOSITION OF DAVID WALLIS, produced, sworn, and examined on the 11th day of December, 2017, between the hours of four o'clock in the evening and seven o'clock in the evening of that date at the law offices of ALARIS LITIGATION SERVICES, 2511 Broadway Bluffs, Suite 201, Columbia, Missouri 65201, before LISA BALLALATAK, a Certified Court Reporter within and for the State of Missouri, in a certain cause now pending IN THE UNITED STATES DISTRICT COURT, WESTERN DISTRICT OF MISSOURI, CENTRAL DIVISION, wherein SHONDEL CHURCH, et al. are the Plaintiffs and STATE OF MISSOURI, et al. are the Defendants.

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Also present:
Mr. Chris Tobin, Videographer
The Court Reporter:
MS. LISA BALLALATAK, CCR

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(The deposition commenced at 4:31 p.m.)
VIDEOGRAPHER: We're on the record. Today's date is December 12th, 2017, and the time is 4:31 p.m. This is the video-recorded deposition of David Wallis in the matter of Shondel Church, et al. versus State of Missouri, et al., Case No. 1704057-CV-C-NKL in the United States District Court for the Western District of Missouri, Central Division. This deposition is being held at Alaris Litigation Services at 2511 Broadway Bluffs Drive, Columbia, Missouri Suite 201. The court reporter's name is Lisa Ballalatak, and I am Chris Tobin, the legal videographer. We are both with Alaris Litigation Services.
Would the attorneys present please introduce themselves.
MR. SHERZER: Aaron Sherzer for the plaintiffs.
MR. RAMSEY: Steven Alan Ramsey for the State of Missouri and Governor Greitens.
MS. SHIPA: Jacqueline Shipma for MSPD defendants.
VIDEOGRAPHER: Would the court reporter please swear in the witness.
DAVID WALLIS,

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of lawful age, being produced, sworn, and examined on behalf of the Plaintiffs deposes and says:
DIRECT EXAMINATION
BY MR. TARTAGLIO:
Q. Good evening, Mr. Wallis. Thank you for your patience here today.
A. You're welcome.
Q. Would you please state your full name for the record.
A. It's David Roy Wallis.
Q. Have you ever been deposed before, Mr. Wallis?
A. No.
Q. Have you ever taken a deposition before?
A. Yes.
Q. Okay. Do you have a ballpark estimate for about how many depositions you've taken?
A. About ten.
Q. I'm going to read a few admonitions to you now, so please keep these in mind as we go through this deposition today. Please make sure that when you give responses to my questions, you give verbal responses and not merely giving a gesture. Is that okay?
A. Yes.

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Q. When I ask a question, please make sure I finish the question before you answer. Is that okay?
A. It is.
Q. And during this deposition today, one of the attorneys may object to one of your questions -- to one of the questions, so if that happens, please wait for the objection before you begin your response. Is that all right?
A. Yes.
Q. Because we have one stenographer who can only transcribe one person at a time, let's make sure to try to not speak over each other. All right?
A. Yes.
Q. If you don't understand any of my questions, please feel free to say, I don't understand or can you please rephrase that. I want to make sure that when you give an answer, you understand the question. Is that okay?
A. Yes.
Q. If you want to take a break today, feel free to say, I need to take a break, and we'll take one. The only condition I put on that is if there's a question pending, please answer the question, and

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then we can take a break. All right?
A. Okay.
Q. Mr. Wallis, what did you do today -- strike that.
Mr. Wallis, what did you do to prepare for this deposition today?
A. I met with Ms. Shipma on Friday.
Q. Did you review any documents to prepare for this deposition?
A. I looked at a few of our statistics on our computer this morning, and that was about it. About five minutes' worth of review.
Q. Did those statistics refresh your memory as to the subject matter?
A. They did.
Q. Mr. Wallis, how long have you -- strike that.
Mr. Wallis, are you currently employed by the Missouri Public Defenders?
A. I am.
Q. How long have you worked for the Missouri Public Defenders?
A. Since March of 2009.
Q. What positions have you held --
A. Excuse me. March of 2007.

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Q. Thank you.
Which positions have you held working for the Missouri Public Defenders?
A. As an assistant public defender and the district defender.
Q. Do you remember when you became a district defender?
A. July of 2011.
Q. Which district do you work in?
A. It would be the 13th.
Q. Have you worked in the 13th District your whole time at the Missouri Public Defenders?
A. No. I started in the 19th.
Q. Do you remember when you moved to the 13th?
A. I believe it would be June of 2009, approximately.
Q. What counties does the 13th District include?
A. Boone and just recently Cooper County.
Q. We're in Boone County right now; is that correct?
A. That's correct.
Q. Do you have a sense, even a general sense, of how much of your office's work comes from Boone

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County, as opposed to Cooper county?
A. I do.
Q. Please give that estimate.
A. We have 14 attorneys in my office. One attorney handles -- one and a half handle Cooper County. The caseload is approximately 120 cases compared to 13-, 1,400 in Boone County.
Q. So one of my questions to you -- you actually managed to figured it out before I could ask, which is, how many attorneys work in your office?
A. Fourteen, including myself.
Q. Are you the only -- well, strike that.
Does your office recognize distinction between line attorneys and supervising attorneys?
A. Yes.
Q. Could you please explain the difference in those roles?
A. There's two, I guess, managing supervisory attorneys, myself, and I have a deputy district defender, Sarah Aplin. She helps me in managerial duties in the office.
Q. So is it fair to say that there are 12 line attorneys?
A. Yes.

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Q. How many non-attorney staff are working in your office, if you know?
A. We have three office support assistants; those are full time. We have to full-time paralegals and two full-time investigators.
Q. What kind of work do the paralegals do?
A. Based on their job description, they're limited to specific tasks. They need to be assigned case -- certain caseloads. They deal with driving while intoxicated -- most driving casings, licensure issues, and some assault cases. So they work all of those -- the driving cases up for us.
Q. Okay. So -- when you say work it up, do you mean that they -- well, please describe what you mean by that.
A. Sure. They'll review discovery, they'll request records. We have access to the Department of Revenue, our DMV. They can get those records, they can search driving history, then they write up a brief summary of any video they saw, motions they might be suggesting we file, and then they provide that to the attorney.
Q. And do the attorneys -- in the cases that the paralegals work, do the paralegals also do work in the case?

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A. Yes, they do.
Q. They do different aspects of the case?
A. Sure. The paralegals really just kind of start -- kick off those kind of cases. The attorneys still watch the same video, they read the same discovery, they do all of the things that the paralegals do, there's just another set of eyes looking at it. And then, of course, the paralegals order records and get records and make document requests.
Q. Have you ever requested more than two paralegals to work in your office?
A. No.
Q. Do you feel that two paralegals is adequate for the workload your office has?
A. Yes.
Q. You mentioned that there were two investigators who worked for your office; is that correct?
A. That's correct.
Q. What kind of work do the investigators do?
A. They serve subpoenas on witnesses, they take -- they go visit crime scenes. We have them take statements of witnesses. They also locate witnesses, interview them. They are out in the

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field -- 90 percent of the day, they are out of the office.

Q. Have you ever requested that your office have more than two investigators?

A. No.

Q. Do you feel that two investigators is adequate for the amount of work that your office handles?

A. No.

Q. Could you please explain why you don't think that?

A. Well, we have 14 attorneys. My deputy district defender and I carry a caseload, so that's one investigator for seven attorneys. Based on the investigative request from our attorneys, we've had to tell the attorneys, You can only request investigations in this type of case or you can't ask for this. For example, if you're just wanting to go out and talk to the complaining witness about something, we're not going to send an investigator out there if we already have their statement from the police, unless there's some sort of exigent circumstance -- and this is mostly on misdemeanors. So we have had to limit what we can let our investigators do, mostly on misdemeanors, because

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we're trying to get out and get everything taken care of on felonies.

Q. Have you requested more investigators for your office?

A. No, I haven't.

Q. Why not?

A. I'm aware of our budget restrictions and where we're at with employees. I also know historically, somewhat, that two investigators for my size office is about what I'm going to get, and there just wouldn't be any funds for another position.

Q. So is it fair to say that there are -- if there were more funds, you would like more investigators for your office?

A. That's correct.

Q. What are the consequences, in your opinion, of not having enough investigators to handle the amount of work?

A. We don't get everything taken care of. We don't get -- we don't talk to every witness in every case, whether they be an adverse or a friendly witness. We don't go out and visit crime scenes and do our own independent investigations. We rely almost entirely on police reports and body cam

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videos that are provided to us to conduct an investigation or, at least, to steer it in the way we want it to go.

Q. So -- strike that.

As a district defender, do you have supervisory duties?

A. Yes.

Q. And please describe, in general terms, what those duties are.

A. I'm responsible for making sure people are at work. Assign court responsibilities for each division, circuit and associate, just manage the people's schedule. That's sort of the thing -- I don't have -- you know, when it comes to hiring, we do the interviews, my deputy director and I. That is then -- we seek approval from upper management. And any terminations or negative job action is done through upper management, not myself. It would be a recommendation that I would provide. So it's mainly just making sure everything working in the office.

Q. In addition to these supervisory duties, do you work cases?

A. I do.

Q. Do you know about what percentage of your time you spend working case versus doing

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supervisory?

A. Currently, it's probably about 70 percent on cases and 30 percent on management duties.

Q. Would you like to spend less time working on cases?

A. Oh, I enjoy working on cases, but I think -- I'm -- I have a job that requires me to work more on management than on cases.

Q. And what's the reason why you're not able to spend more time on that?

A. Well, our attorneys have too many cases, so my deputy and I have taken on a caseload significantly higher than we would usually assume because we don't want to give those to our other attorneys.

Q. I'd like to introduce an exhibit here. I don't think this one has been used before, so it'll need an exhibit number.

(Deposition Exhibit No. 28 was marked for identification.)

Q. (By Mr. Tartaglio) Take a second, Mr. Wallis, to glance through this.

Are you familiar with this document in here?

A. Somewhat. The information looks familiar.

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I can't say for certain I'm familiar with this exact document.

Q. So this document generally describes a protocol for measuring caseload. Is that fair to say?

A. Yes.

Q. And if you look at page 3 at the bottom there, do you see that table?

A. I do.

Q. And it breaks up cases into different types. There's noncapital homicide, sex offenses, other felony offenses, so on and so forth. Do you see that table there?

A. I do.

Q. Is -- are you familiar with this particular classification of cases here?

A. Yes.

Q. Has your office ever used this classification to measure your office's caseload?

A. We have.

Q. Does your office continue to use this classification to measure the caseload?

A. No.

Q. What procedure does your office use currently to measure the caseload that it has?

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A. Well, we don't go off of a caseload, we go off of workload, which is kind of taking the ABA opinion, I think, from 2006 -- I think that's what I'm referring to. The RubinBrown study, which is the table on the bottom of page 3, and then just in general direction we've been given that -- you know, I started off with, you know, pick a case number just for an anchor for attorneys to go off of, but then to tell them to keep in mind the type of case you're working on, the number of cases that a particular client might have. So, you know, they may have 100 cases, but they might have a client who has ten cases. So we really don't -- we're really working off of what the attorneys feel they can best work, and then also looking at that compared to historically what a full caseload was like prior to -- I want to say late September of this year.

Q. Okay. And I think I may have misspoke earlier. So do you distinguish between caseload and workload?

A. Yes.

Q. Please describe the distinction.

A. Well, a caseload is just the number of cases that you have working, regardless of whether or not it's -- one client has multiple cases or

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they're -- each caseload has one particular client. The workload, necessarily, takes into account multiple clients, the type of the case, which we kind of implement that table on page number 3, as well as legal study, reading hand-downs from the Supreme Court, keeping up on case law -- just doing all of the things that we need to do as attorneys, besides work on cases and appear in court.

Q. Do you know if this table on page 3 is what your office uses to calculate workload?

A. No. We don't use this table.

Q. Okay. How do you calculate workload?

A. Again, we look at -- just using a caseload number for an anchor to at least have some spot to work off of, and then the directive has been for each individual attorney to let me know if they can take more cases or not take more cases, based on how they are working their current cases. I go in at least once a day, and I have a view that lets me see the up-to-the-minute open cases that each attorney has, and I can sort that out by case type and venue in case. We have attorneys who are driving to other counties, and that gives me an idea about how someone is doing, and I'll approach them if I think the number is a little bit too high or a little bit

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too low and see where they're at. Taking into account trial preparation -- if someone's getting ready for a jury trial, they're not going to want to take on new cases, they're not going to be able to see their client out at the jail.

So there's a number of factors that I look at when determining if somebody has too many cases or not, but I mostly rely on the attorneys to tell me how they are handling the cases.

Q. So you're very involved in working with the attorneys in your office in determining if they have proper workload?

A. Yes.

Q. And let me know if you disagree, but this is a daily interaction with your attorneys and a daily discussion about this?

A. It may not be a daily discussions with the attorneys, but I am -- on a daily basis, one of the first things I do is I pull up the statistics for the office that lets me see where we're at with numbers. And, again, that's caseload that I'm looking at, and then if I feel like I need to have a conversation or if an attorney frequently will either e-mail me or come talk to me and say, Hey I'm ready to take more cases or please don't assign me

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any more cases, and then I'll give it another look to see where we're at.

Q. Okay. Please take a look at page 5 at the table here near the bottom. And you'll see in bold that this protocol estimates 1,752 as the average available hours per attorney per year.

A. That's correct.

Q. In your experience, do your -- do the attorneys in your office spend 1,750 hours a year working on legal work?

A. No.

Q. Do they work more than that?

A. They do.

Q. Do your -- the attorneys in your office -- is it common for them to work overtime?

A. Yes.

Q. Is it common for them to work on weekends?

A. Often.

Q. Are the attorneys in your office given extra compensation for this overtime or weekend work?

A. No.

Q. I'd like to move on to the next exhibit. This exhibit is premarked here. And if you look, Mr. Wallis, Area 13 is a little bit below

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the middle here.

A. That's correct.

Q. Do you see that?

A. Yes.

Q. So could you please -- well, first of all, do you notice in the top left corner the start date and end date text?

A. I do.

Q. So it looks like this is from the first quarter 2017. Is that fair to say?

A. Yes.

Q. And if you look at the net case units, column for 13, it says 1,5678.90. Do you see that?

A. Yes.

Q. Do you know how net case units are calculated?

A. No.

Q. Do you see that near the right there's a column "Capacity"?

A. Yes.

Q. And that 13 -- the capacity is 6,760. Do you know how that capacity number is calculated?

A. No. I don't know what that number represents.

Q. The column to the left, do you see the

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column that says "Workload"? And for this district, it is 17,284. Do you know how that number was calculated?

A. No.

Q. Do you see the percent of capacity column --

A. Yes.

Q. -- near the right?

A. I do.

Q. And here it's 255.7 percent?

A. That's correct.

Q. Could you please explain what that number means?

A. I believe that is taking the RubinBrown protocol numbers -- we'll refer to in Exhibit 28, page 3 -- and taking the number of hours an attorney should work during the year -- the total amount of hours, and comparing that with the amount of cases times the RubinBrown number, and that puts us over what we should be work by 155 percent.

Q. So that -- this number means that your office is at -- is working 255 percent capacity?

A. According to the RubinBrown study, yes.

Q. Do you agree with the metrics?

A. No. No, I don't.

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Q. Can you explain why?

A. I think the numbers are low. Taking for example, I think homicide noncapital is 137 or 100-something hours -- I'd have to look -- and that's simply too low of number for a homicide. Sex cases, I think, are 30 hours. That's an incredibly low number for a sex case, which oftentimes are many more complex than homicides. And with the advent of the Columbia Police Department, who is our primary law enforcement agency in this circuit, every officer has a body camera, and on a misdemeanor assault, if three officers are responding, and it takes them an hour to clear that case, the attorney is having to watch three hours of body cam video to make sure they're not missing thinking. So I don't agree with the numbers; I think they're low.

Q. So, in your opinion, based on those facts that you just described, is this 255.7 capacity percentage an understatement?

A. Yes.

Q. Okay. Let's move on to the next exhibit. And for the record, this is Plaintiff's Exhibit 10. And for the record, I should say that the first exhibit we looked at was MSPD21874, and the exhibit we just looked at was Plaintiff's Exhibit 4.

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We're now looking at Plaintiff's Exhibit 10.
Now, I apologize that there are no page numbers on this. For many boring reasons that I won't go into here, this is how it was printed out.
But if you turn to page six -- and I'm counting the double sides, so -- if you look near the bottom, you'll see your name down here.
A. You are counting --
Q. So -- as in --So these are pages 2 and 3.
MS. SHIPA: It's the backside of the third page.
THE WITNESS: Thank you.
A. Got it.
Q. (By Mr. Tartaglio) Okay. So I'll represent to you that this document was produced to us with a series of tabs and that the first tab -- this page corresponds to FY2009. Do you have an estimate or a guess as to what that would stand for?
A. Yeah. Fiscal year 2009 would be my guess.
Q. Is the fiscal year the same as the calendar year?
A. No.
Q. When does the fiscal year run from?
A. I believe July 1st and ends the -- July 1st of the year and then ends the following

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June, if I have that right.
Q. So the right most column here, if you look on the first page, is workload; is that right?
A. That's correct.
Q. And so if we go to page 6 and we look there for -- it says 379.74 percent. And based on my representation to you earlier, this would be your workload for fiscal year 2009. Does that sound correct?
A. I -- sure.
Q. Please describe what it's like to try to practice law at 379.74 percent of capacity.
A. You're asking me to remember back in 2009 as well. I don't know what the workload number comes from. This is -- I think this is pre-RubinBrown, so this, I think, may have been off the old ABA protocol, I believe. I don't know. I wasn't in management at that time, and I just did the cases that were assigned to me. I know practicing back then I would have been in Jefferson City and then transferred to Columbia handling full cases. It was triaging cases, picking the cases that you think needed the most help. The cases that you maybe -- after a first read of discovery, you could identify an issue that could

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help the client. Other than that, it was reading a case, if you didn't see anything at first read, seeing what the offer was, communicating that offer to the client, and pleading them.
I can tell you in Boone County at this time we didn't have what we refer to as vertical representation. We had -- there's seven divisions in Boone County, and we had two attorneys assigned to each division and -- for example, if it was Division 3 in the afternoon, there would be two attorneys who were assigned those cases. Every attorney in the office would give their files to those two attorneys, and those two attorneys would then go up to court and work those cases. So we weren't interacting on it on a constant basis with our own clients. It was very much a group effort. So it was very confusing and there wasn't a lot of client-attorney relationship at that point, so it wasn't a very good time to be practicing.
Q. Sitting here now in 2017, do you still feel that your office is under similar pressures as it was back then?
A. I do. We've changed to a more vertical representation exclusively, where if an attorney has a case, they're in court with their client, they're

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not putting it off on another attorney who would be making an appearance, but we're still faced with the same time and resource constraints.
Q. Facing these sorts of time and resource constraints, what kind of things are you not able to do for your clients that you would be able to do otherwise?
A. Again, we don't look into much mitigation when it comes to alleged offenses. You know, if there's something that may not necessarily create a dismissal but may result in a better offer, perhaps an amended charge from a more serious charge to a lesser charge. We're not able to look into a lot of the collateral consequence our clients face that we should be looking into. We're not able to look for services to help them so they don't come back to our office. And, again, going back to originally, we're not able -- attorneys rarely, if ever, go to crime scenes. They'd like to; they just don't have an opportunity to do that. It'll take them out of the office and out of court.
So there's all sorts of different things the attorneys themselves could be doing. I'm a big proponent of attorneys being present when witnesses are interviewed, doing things like. We simply don't

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have enough -- there's not enough hours in the day for an attorney to be doing all of those things under our current status.

Q. Currently is it common for attorneys to attend police lineups?

A. We don't do lineups in Boone County.

Q. Do your attorneys attend hearings on bond?

A. Yes.

Q. You mentioned in your answer previously collateral consequences and that -- well, I don't want to misstate your words. So what current effect does the workload have on the attorney's ability to counsel the clients and collateral consequences of a conviction?

A. Just -- we can -- I think we hit the minimal requirements. You know, if it is a -- certainly, an immigration issue, we counsel them under Padilla about how it may negatively impact their ability to stay in the United States. We don't go much further than that. Not only do we not have the time and the resources, we don't have that sort of expertise locally in the office. We really don't look into -- for sex offenses, we have a general idea of registration and lifetime supervision requirements, but we don't go much past

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that. You know, for possession cases, it may affect a person's ability to get a loan -- a student loan, it may affect their ability to get a job, depending on what they're doing. There are just all of these other things that, I think, if you were paying an attorney, you would hope that attorney would advise you, even though it's not tied directly the criminal case, but your -- you know, the disposition will have these consequences down the line, and we're not able to do that in the overwhelming majority of our cases.

Q. Based on your office's current workload are there delays in the case that result from that?

A. I'm not sure I understand what you're asking.

Q. Do attorneys in your office ever seek continuances, for example, because of their workload?

A. Every day. All the time, yes.

Q. Are you aware of instances in which someone's case was delayed significantly because of the workload that the attorneys have to bear?

A. I don't have a specific client name in mind, but I know that it happens on a regular and daily basis where we're just asking for continuances

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because we haven't gotten around to getting an investigative request back from the investigator. We just simply haven't had time to review the file. Maybe even to extend or convey an offer. That happens all the time. And it's nothing intentional, it's just a matter of numbers, where it just gets overlooked.

Q. So aside from spending time on cases, your attorneys presumably have to pay certain costs, for example, to hire an expert or to hire a stenographer or videographer for a deposition, like we're here today. What procedures are in place when one of the attorneys wants to undergo some sort of activity that would require the expensive fees?

A. An E-request is submitted, and it's a request for funds. If it's $499 or less, it comes to myself or my deputy district defender for approval. It will have the client's name, the classification -- felony misdemeanor -- the class type, if it's an A misdemeanor or C or D felony. It gives us an idea -- it gives us the primary charge, which is the most serious charge. So if there's multiple counts on the case, it'll give us the serious charge. It'll ask for a trial date, if there's a trial date set, if there is an offer from

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the state. It then -- there are drop-down boxes that say, What kind of service is being asked for: Evaluation, depositions. There's probably six or seven boxes to check. And then it includes, you know, does it include mileage males, does it include meals, does it include travel? And then at the very bottom, there's a narrative portion where the attorney or the support staff person who is seeking the funds will type in why they need -- why they're asking for the funds they're asking for. And It's written with an eye towards auditors, so it's not written very legally, it's very -- you know, the plain language is there. It's why we need these funds, why we can't achieve our desired result without these funds, and then it's submitted to myself for approval or my deputy district defender.

If it's over $500, same process, but after I approve it, then it's approved by someone in upper management who reviews my decision as well.

Q. So for these requests that are under $500, do you ever deny those requests?

A. No -- well, I may have denied one or two of those, and it was for an exhibit, I think, at trial, and the trial date just wasn't soon enough. In knowing that the majority of our cases are

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resolved by plea or dismissal, I waited on that. And I may have denied some investigative request for depositions where the attorney has asked for money for depositions to go talk to the complaining witness in a case, and unless there is something in the client's file that shows that that witness is not cooperative or will refuse to speak with us, then it's -- the request is denied until there's something in the file that show we have actually gone out and tried to speak voluntarily with that witness.

Q. And for requests over $500, have you ever seen those requests from your office be denied?

A. I have.

Q. What are some of the common justifications for denials?

A. The one I just described where we haven't made an effort to go out and speak to the witness prior to depositions. We have had it before where there's been an issue about who pays for an interpreter at a court appearance or at a hearing, whether or not the public defender does or whether or not that's a cost to be the burden on the state, so those have been denied. It's usually for very technical reasons, not because they don't believe

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it's a good thing to be doing.

Q. Have they ever given you justification that we just don't have the money?

A. Never.

Q. Okay. I had just one quick question. You mentioned translation. Does anyone in your office speak Spanish?

A. Yes.

Q. And so when you have a Spanish-speaking client, do you have someone available who can help translate?

A. They speak conversationally, and it's not enough for -- you know, to get into the words that we're using in a legal sense. There was also -- we had an attorney who spoke Spanish, and she seemed to be getting all of the Spanish in-custody people, and rightfully so. She wasn't being compensated any more for doing something else. But, no, we don't -- we only have one that speaks conversationally, and we're always asking for interpreter services.

Q. Are those requests ever denied?

A. No.

Q. I'd like to move on to the next exhibit. For the record, this is Plaintiff's Exhibit 3.

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Mr. Wallis, go ahead and take a few moments to look at this e-mail here.

A. Sure.

Q. Are you ready?

A. I am.

Q. Could you please describe in general terms why you sent this e-mail?

A. Approximately, I think, a week or two weeks prior to sending this e-mail, Karl Hinkebein, an assistant public defender with our post-conviction relief unit was disciplined by the Missouri Supreme Court. Our director, Michael Barrett, sent out an e-mail informing the district defenders -- and I think he even urged us to forward that e-mail on to all of our attorneys about what had happened. He asked us to watch or at least listen to the oral arguments and to read the briefs regarding Mr. Hinkebein's case, and then in Mr. Barrett's e-mail, he made it clear that, you know, we are all responsible for our own offices, that it's the individual attorney's bar number who is at risk, and that we as an office and as individual attorneys are to proceed as we see is in our best interest in regard to our bar licensure.

Q. What is your take away from the Hinkebein decision?

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A. I think it's just the court's reaffirmation that merely being public defenders and working with indigent clients and our inability to turn cases away isn't a shield to any bar discipline, should we violate the rules of professional conduct.

Q. Do you think anyone in your office in District 13 is in danger of some sort of state bar discipline because of the workload that they face?

A. Well, I think -- no. I don't think anyone is in danger. I'm not aware of any complaint -- an active complaint. I think the danger is, is that our clients -- our clients read the news, they watch the news, and I think they're aware of what happened. And some who are sitting in prison have a lot of time on their hands and could certainly make a claim. And it might be a meritorious claim of ineffective assistance raising to the level of unethical attorney conduct.

So that's the concern. But there's no -- I'm not aware of any pending bar complaint. And I think sense sending this letter to our presiding judge and stopping taking cases that we've brought that number down where I don't think our attorneys

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are worried about current clients right now, but the -- the concern is about former clients who may not have been adequately served.

Q. If you'll take a look, please, at the second paragraph from the bottom, last full paragraph here. There's a sentence that says, "Additionally, both Ms. Aplin and myself ..." Please take a moment to read that sentence.

A. Sure.

Okay.

Q. Please describe the review that you and Ms. Aplin conducted of the caseloads -- strike that.

Of the workloads of the attorneys in District 13.

A. Sure. It's similar to my previous answer. We looked a little bit at RubinBrown numbers. Again, there's that charter or that table on page 3 of Exhibit 28 -- to get an idea about the case types the attorneys were handling. We have attorneys who have -- they travel out of county. Previously, until we were given money by the legislature last year, some public defender offices were responsible for conflicts out of other counties. My office had nine counties beside Boone County that we handled conflicts out of. Once we stopped getting new

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cases, we still had residual files from those counties that we had to resolve. So attorneys were out of the office, and we took into account their travel, the types of cases, the things I had described earlier, their ability to be up on case law coming down, the ability to do research, all of those things. And, most importantly, we went and talked to the attorneys and asked them, How are you feeling with the number you're at? The number not being dispositive of anything, but simply how are you feeling with the caseload and the workload you're currently under? It was a very quick conversation with almost every attorney. We had been following this somewhat, and I knew based on their numbers what their answer was doing to be. So that was the review that we undertook, Ms. Aplin and myself.

Q. Well, generally, what did the line attorneys tell you when you conducted this review?

A. They asked for no more cases to be assigned to them. They felt overwhelmed and like they couldn't keep up, and it's something that we knew they had been feeling. Even before this happened, I would have attorneys come to me on an

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occasional basis and ask that they not be assigned cases. They may have gotten a murder case, a child sex case, they may have a trial coming up. Often, it was simply they were overwhelmed with cases and they didn't want to quit, they wanted to stay there and do what they enjoyed doing, and so I would often -- if an attorney came to me, I would stop assigning them cases for a month to two months to let them get caught up and feel like they could breathe before we started assigning them new cases.

Q. In your experience, has the workload at District 13 led to increased turnover in the workforce among the attorneys there?

A. It's been mentioned. I don't to the exit interviews, our human resource department does those, and I'm not sure of those how many are willing to share the exact reason they left. I know of at least three people within the last two years who have left because of the stress that the caseload and the job -- the number of case puts on them, and they've left one to go into private practice; two others to go so some other state agency.

Q. And what are the consequences for your office when one of the attorneys leaves? How does

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that affect the other attorneys there?

A. Well, we have some cases with -- that need an attorney, so my already overworked attorneys now are getting more cases, or what I will do or Ms. Aplin will do is we'll look at -- critically look at our workload, where we're at, and often we'll take the cases of the attorney who is leaving, at least try and maybe not work those cases up all the time, but at least keep them afloat until we can get somebody hired who we can then transfer those cases to. So it's conceivable, within a -- two or three months that a client have three attorneys and nothing have been done on his or her case. So it's -- it's crushing when that happens. Not only that, but we're losing somebody who has knowledge of the courthouse of how each associate or circuit court judge works. It's not just the number of cases they can process, it's everything else that that person may bring to the office.

Q. Does it typically take a certain amount of time to train up new attorneys? For example, replacements for people who have left.

A. Certainly.

Q. What goes into training a new attorney for -- to be a line attorney at the public defender?

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A. Well, the public defender has -- just generally, that have a new employee orientation for every employee they have. For attorneys, they have a trial skills workshop, which is, I think, a three- or four-day overnight taught by senior attorneys and our training staff. We have a centralized training division. They bring in speakers, they do all of these things. We also have new defender training, which is also, again, three to four days and nights of exhaustive training starting from the very beginning, how to conduct a client interview, how to do a preliminary hearing, how to do a deposition, all of those things. Every attorney is required to go to that training, regardless of prior experience.

They're then -- they then come back to the office and -- now, this doesn't happen right away. Depending on how the calendar works an, attorney might be in my office six months before they go to new defender training. Then we also have mentors in my office who take in new attorneys. There's nothing structural or organized about it. It's really -- we have some really experienced and really good attorneys in my office who really like helping the less-experienced attorneys out. Obviously, Ms. Aplin and myself are involved in their

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education, how to handle certain things, but we really leave it up to the new attorney to seek out who they feel comfortable with, and it's a pretty informal training in my office.

Q. So is it fair to say that both, in terms of formal training programs, as well as informal mentoring, it's a pretty substantial investment of time and energy when you have a new attorney join the office?

A. Absolutely.

Q. If we could -- I have one quick question, actually. So we talked earlier, with respect to Plaintiff's Exhibit 10, about individual workloads and workload percentage. Do you happen to know currently what your workload is, approximately?

A. Mine personally?

Q. As a percentage, yes.

A. No, I don't. I haven't looked at -- I haven't calculated that. I don't know if we have access to the -- we used to have a template for RubinBrown where we could type in our numbers and it would tell us where we're at. I'm not sure that we have access to that template anymore.

Q. So let's go back to Plaintiff's Exhibit 3 here.

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A. Sure.

Q. And let's turn to the back page. And here this paragraph talks about a caseloads causing a conflict of interest. Could you please elaborate -- I'm sorry.

A. Which paragraph number?

Q. This is here -- up here. Yeah, near the --

A. Okay. The first full photograph?

Q. That's right. So why don't you take a second to read that.

A. Sure.

Okay.

Q. And could you please elaborate on how caseloads can create conflicts of interest among the attorneys in your office?

A. Sure. I think it was, again an oral argument by the Missouri Supreme Court and also in the office of chief disciplinary counsel's petition and also in the ABA article or opinion, where it clearly stated -- and I think the Supreme Court even adopted in their argument -- or at least the chief disciplinary counsel did -- that it is a violation of our rules of ethics if we have -- if an attorney has so many cases, that taking on a new client will

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material effect their ability to represent the other client. Meaning, they don't have enough time to represent any more clients, they should not take anymore. We were way over that limit when I sent this e-mail out. Simply saying, Judge, by us taking more clients, we are now having to choose which client we're going to best represent because we don't have enough time to represent them all as they should be and as we're ethically obligated to do.

Q. Please move down to the paragraph that starts, "We have started an internal wait list." And that's around the hole punch in the middle.

A. All right.

Q. Take a minute to read the first couple of sentences there.

A. Okay.

Q. Does District 13 currently maintain a waist list for public defender resources?

A. We do.

Q. And please describe how that wait list is -- how it functions.

A. Sure. So it's -- we have an S-drive -- everyone in our office has access to that particular drive, and it -- it simply says "Wait List." It's near the top. Our clerks, when they take an

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application, if someone qualifies for our services, if they're not in custody, they're placed on the wait list.

And let me go back. If they're not locally confined in the Boone County Jail. If they're in some other county, we don't consider them locally confined. If they are not locally confined and they otherwise qualify, they're put on the wait list. Currently, I think we're about 150 people on that wait list -- not cases but individuals. If the person is in the Boone County Jail, we will wait two days before making a determination whether or not we'll take them, with the hope -- for them and for us -- that they might bond out or that they might hire private counsel. After 48 hours -- and it's an exact 48 hours. We don't enter in the case until the third day in the afternoon, so it's a little bit more than that, actually. We will then enter a case to represent locally-confined clients. Those are currently the only clients that we are taking cases, unless, however, we get somebody who is currently represented who picks up a new case, whether or not they're confined or not, we will take them as well.

Q. So you talked about locally-confined defendants. What happens to the people who are not

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locally defined -- or locally confined?

A. We will send them a letter saying, You've been -- you're approved for our services; however, at this time, we do not have an attorney to assign your case to, we will let you know in writing when we do have an attorney, please advise the court that you received this letter -- and that's hopefully to -- so when they go into court, the judges know. But if they're -- if they're not confined here in the Boone County Jail, they're given a letter, and we're letting the court deal with that.

Q. Do you know about what percentage of clients of the public defenders would fall under that category versus confined here in Boone County?

A. Which would be -- confined outside of Boone County? Is that what you're asking.

Q. I guess, just everyone who is not locally confined here in Boone County versus who is.

A. It would be a rough estimate, but I would say we probably have around a hundred to 120 clients who are in custody in the Boone County Jail always, because they keep that jail full all of the time. No matter how much they empty it, they always bring new people in. It is a small percentage of folks overall office wide. We might have right now 1,500

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open cases, and of those, we might have -- 100, 200 of those cases are folks who are in the Boone County Jail.

Q. So is it fair to say that the vast majority of your clients get the letter that you described earlier saying, essentially, that we don't have resources to represent you currently?

A. That's correct.

Q. So going back to this idea of a wait list, which is referenced in the e-mail. So what -- this is very general, broad question, but what happens to the people that are on the wait list?

A. And, of course, the courts know about this. I've been in communication with the presiding judge. If I see him in court, he'll ask me about the wait list. I tell him we're still maintaining it. About once a week, one of our clerks, our office support assistants, will go through the wait list, every single case. We have Case.net here in Missouri. I don't know how familiar you are with Case.net, but it is -- it's wonderful. You can go in and type anyone's name. It'll tell you -- it'll bring up their case information, it'll bring up docket entries -- anybody can do this.

So our clerks will go in on Case.net, see

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if the client is still -- has an open case or if they've hired private counsel. And when we do that, we kind of -- we filter out folks. Not everybody stays on that list. About three weeks ago, we were about 240 cases, last week, after the clerks had filtered out all of those other cases, they noticed that we were -- somehow, we were able to remove about 60 of those folks off of our wait list.

So other than that, they're given that letter I described, and they're told, you know, if the court asks you, let them know that you're on the public defender wait list. We've kind of taken the position that the folks on the wait list aren't our clients, and we can't give them much concern. Our concern is to our existing clients, and it's really the court's issue to deal with at that point.

Q. How do -- how does your office put -- take people off the wait list to represent them? Is there a procedure in place to do that?

A. Yes. When we get there. Right now all we're doing is taking in-custody, locally-confined people. When we get to the point where we will be taking people off the wait list, we're going to go by the severity of the primary charge and whether -- and the age of the case. So someone who has a

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Class A or B felony, which has the highest, you know, liability possibilities, we'll take them first, as opposed to somebody with a Class C misdemeanor, which has -- you know, 15 days, as opposed to life, we'll take the one who is looking at the more severe liability.

Q. Is one practical consequence of being on the wait list that one's case is delayed, in your experience?

A. That's one of them, sure.

Q. Are there any others?

A. Oh, yeah. There's the pressure to plead guilty pro se, to be done with it. You know, we'll put you on probation, you don't need to keep coming back to court without an attorney, here's your offer, and, of course, no one is advising anyone of any collateral consequences or anything else. That's one of them. And as you said, delay. Witnesses leave -- you know, the courts haven't done it, but there in the past, the courts have threatened to make somebody indigent by placing them in custody, if they couldn't hire an attorney. So there's all of those. And it's simply to have somebody constantly appear in court without counsel and not know what's going on just isn't right.

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Q. Is another potential consequence of the wait list the fact that evidence might grow stale?

A. Oh, absolutely.

Q. Do you know of any examples where that has occurred?

A. No. And, again, it's -- we haven't gotten to the wait list, so I don't know whose rights are being negatively impacted right now because of our inability to help them with their case. I'm not looking forward to that discovery, and I'm sure it's going to happen, but we're simply not able to. Most convenient stores and businesses with camera systems only keep video on a 30-day basis, and that's a high priority for us in a lot of our cases where we can get some video evidence. That's gone with the wait list, unless our clients are doing it on their own.

Q. I have -- so just to make sure I understand -- so this wait -- about how long has the wait list been around?

A. I want to say it was mid-October, I think, is when we started it. The date of this e-mail, I think, was -- was a Wednesday -- I don't know if it was a Wednesday. It was the middle of the week, and then we started, I think, the preceding Monday.

Q. How many people, to your knowledge, who were on the wait list got off the wait list and got a public defender attorney?

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A. A public defender attorney?

Q. That's correct.

A. None, to the best of my knowledge.

Q. Do you know about how many people are currently on the waist list?

A. I want to say it's about 140. I asked middle of last week where we were at, and it was 140.

Q. So if the people on the wait list are not getting attorneys from the public defender's office, how have they been getting off the wait list?

A. It would be conjecture on my part. I would assume it would be they are pleading pro se or they're going out and hiring private counsel.

Q. What are the potential problems with the criminal defendant pleading guilty pro se to a crime?

A. First, they may not have been guilty. There may be evidence that even if they did it, they weren't guilty, or a lack of evidence. And, again, it's the collateral consequences. In Missouri, if you plead guilty to the misdemeanor of driving with a suspended or revoked driver's license, the day

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that your judgment is entered, you're suspended for another year. Someone may have gone through all of the classes, paid up to a thousand dollars to get their license back, goes into court, pleads guilty, and have all of the work and all of the money they paid is gone, because there's an automatic one-year suspension. That's one of the most common ones. Not to mention, pleas that would affect someone's Second Amendment rights.

Q. How common is it that defendants that you work with in your personal experience are aware with these sorts of collateral consequences of pleading guilty?

A. Some are savvy enough and others aren't; they just want to plead guilty. Even on a misdemeanor shoplifting charge. If you do that three times in Missouri, your fourth one could be charged as a felony. Same thing with a DUI. You get enough misdemeanor and you commit misdemeanor crimes in the future, there's a possibility the state may enhance you as a prior misdemeanor offender. So it happens all the time, and I think some folks get so exasperated and frustrated with coming to court, because they have lives outside of the court system, that they just plead to be done

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with it.
Q. So let's flip to the first page of this exhibit, Plaintiff's 3, and look at the top. This is -- appears to be an e-mail written by presiding Judge Crane.
A. Judge Kevin Crane he's our -- Boone County elects a presiding judge out of the four circuit judge once every two years, and he's in the middle of his two years.
Q. So in this e-mail, he appears to be saying that Boone County will be appointing members of the private bar to represent criminal defendants. Has that been happening?
A. It happened for about a week, that Judge Crane appointed members of the Boone County Bar to clients -- defendants who were in custody locally confined.
Q. So you mentioned that went on for about a week.
A. About a week, maybe a week and a half.
Q. So there -- are there currently private attorneys being compelled to represent criminal defendants who are indigent?
A. No. Not anymore.
Q. Do you know why that process of appointing

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private attorneys stopped?
A. I do.
Q. Could you please explain that?
A. Sure. I met with Judge Crane -- I was at a conference when I sent this e-mail. He called me upon receiving it, we had a talk. I got back Friday and spoke with him in his office. He wanted to know what happened. He was aware of Hinkebein's decision. I contacted our director, Michael Barrett, and let him know what was going on with Judge Crane, because he was very curious as to what the court's reaction was to my e-mail. Mr. Barrett decided that this might be a good time to try and get some goodwill from the presiding judges, that he hadn't made many end roads with other presiding judges in Missouri, and is Judge Crane appeared to be applicable to at least some sort of talk.
So we had a meeting with Judge Crane, the court administrator, Mary Epping, myself, Ms. Aplin, and Director Barrett at the law library of the courthouse, and Judge Crane was concerned about in-custody defendants, because it costs Boone County about $45 a day to house a person in custody at the jail here, but when we get overcrowded and have to

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send them to another county, it goes up to about $130 a day. And the county has a fixed budget for housing out-of-county inmates. So Judge Crane, I imagine, was hearing it from all sorts of people at the county that we were costing -- not we, but the jail was costing the county lots of money. My understanding is that Director Barrett asked Judge Crane if he would coauthor and sign a letter to the Missouri Supreme Court, the chief justice there, asking for an audience to discuss the issue involving Karl Hinkebein and how we were going to move forward and what direction the Supreme Court was going to give us. Judge Crane agreed to do that. He also agreed to send out some information on the presiding judge Listserv that he had access to by being a presiding judge, to access all other presiding judges in Missouri. As part of that concession, Michael Barrett agreed to take money that we had earmarked for conflict attorneys, when we had conflict issues, instead of hiring -- or instead of having other public defenders in other counties do it, we would then hire private counsel. He asked for and received permission to use a small amount of that money to pay local attorneys who were a part of our conflict panel money to represent

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in-custody defendants.
And then we got to the point where attorneys in my office felt like they could take cases. We also realized that Judge Crane didn't do much, other than sign his name to the letter, and then we weren't getting any benefit to our bargain, and so we just quietly -- I let Joel Elmer, our deputy director, know, and I believe I let Mr. Barrett know that we were no longer taking -- we were no longer asking for public defender money to hire private counsel for in-custody defendants, that we would be taking those.
Q. So to make sure I understand -- so your office got money because -- money that was being used to pay for conflict attorneys was being channeled to your office?
A. That's correct. That was the concession that Director Barrett made. Since Judge Crane was going to coauthor the letter and sign it, Mr. Barrett really wanted a presiding judge to be an ally to the public defender and to how we were going to proceed, also, to ask for direction from the Supreme Court. And so he asked for and got approval -- I think he probably could probably just do it on his own, if he wanted, being the director,

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but it was a finite number of dollars. I don't know what that number was, but I can tell you we were very cognizant of the money that was being spent, because if there's one thing that attorneys with the public defender don't like, it's driving to other counties to handle conflict cases; so we didn't want to be the office responsible for making us all go back to the old way of doing things.

Q. So you mentioned a finite number of dollars that your office received. Well, first of all, what did you use that money to do?

A. Again, it -- I didn't see any of the money. The way it works is, if a defendant was in the Boone County Jail, filled out an application and qualified for our services, we would then code it in our system as a conflict, and we would code it conflict over- -- case overload. That would then go to our contracting case manager and our deputy director, Joel Elmer. They would look at that and say, Okay, we're now going to assign it to this panel attorney, and it would be done.

So it was -- we would simply take the application, approve or deny it, and if approved, we would send it to our case contracting folks who would then handle who to assign that case to. I

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just knew that it wasn't -- this wasn't going be something long-term, where we were going to be hiring private counsel to work in-custody case. That's not what that money was for, and I didn't feel right using it for that, simply because we didn't want to go back to conflicts. So that's -- when I say "finite," I didn't know what the number was; I just knew that we were going to get to a point where I was going to be told, You're out of money for this, figure out a way to work with your presiding judge.

Q. So do you still have that money that you're able to use, as you described, to not have to take on those certain sorts of cases?

A. I would assume so. Again, it's a central fund, I guess. Our case contracting number. We have a case contracting manager. She has some folks who help her out. So every office in the system, when they have a conflict, they will then send their case information to our case contracting coordinator who will look at it, approve the conflict, and then the money is dispersed centrally. So it's not -- I don't have a -- Boone County hasn't been allocated a certain percentage of the $5.4 million, I think, is what was earmarked for that.

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Q. Okay. And do you know if money is going to -- you mentioned 5.-something million dollars.

A. I believe that's what was appropriated -- the latest increase this last session.

Q. Do you know if there's money going into that fun to replenish the money that's being spent on these private attorneys?

A. I don't believe so.

Q. Do you know what's going to happen when that money runs out?

A. I do.

Q. What is going to happen?

A. We're going to go back to the old way of doing things, where if another county -- again, we handled nine counties. If one of those counties has multiple codefendants or a personal conflict in the office, we will then -- Boone County will receive those cases, and we'll be driving back to those counties to work those cases.

Q. Does handling a conflict case from a different county impose additional burden on the attorney working on the case, as opposed to local case?

A. It does.

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Q. Please describe those additional burdens.

A. It's devastating to our office and to the attorney. There's drive time to and from the counties. We have a set schedule here in Boone County with our associate and circuit courts for law days, for contested hearings. Another county may have a different schedule, so it creates scheduling problems. There is discovery procedures, local rules that we need to get familiar with, how discovery is meted out. Visiting clients, if we need to go an hour and a half away to another county -- we're a conflict, so we can't use that public defender's office, because, you know, we may be discussing information that we don't want to have discussed in their office. I certainly wouldn't let a conflict attorney into our office to meet with one of their clients because we have a conflict. So there's meeting spaces -- it's all sorts of the logistical issues, not to mention just the time that's consumed by handling conflicts.

Q. So with respect to this temporary diversion of funds that we've been talking about, do you see that as a long-term solution to the problem in District 13 of excessive workloads?

A. No. Not at all.

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Q. And please explain why that's the case.
A. We're talking about a very -- we talked about earlier about what percentage was of in custody locally confined clients. It's a very small number compared to our overall caseload and workload. So just having money for that is not going to fix anything. It was, again, just keeping our head above water and not trying to at least placate the court somewhat. We saw them as a potential. Definitely never a long-term solution. The long-term solution is more attorneys and more support staff.
Q. Do you have an estimate for when this temporary fund will run out and things will go back to the way they were?
A. I'm -- are you asking for the overall conflict money?
Q. So my understanding -- and correct me if I'm wrong -- is that there was this temporary pool of money that was used to hire private attorneys but that it would run out.
A. No. No. I may have done a poor job of explaining it. So let's say the number was five million dollars that was given to us -- I think it was 5.4, but some percentage of that may have

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gone to other things. That 5.4 was given to the public defender system in general statewide to use for conflicts -- simply conflicts. So all local offices then got out of conflicts. What we were given permission for -- and conflicts only arose -- and maybe this is the confusion. Conflicts as it arose with multiple codefendants, as it arose with maybe a -- we had a client but was a witness to a case that just came in. We couldn't represent a witness in the case and then the potential suspect. So, you know, the old fashion kind of conflicts. That's what that money was earmarked for, for the entire system. We were given a special exception to use that money for conflicts because of a conflict of interest due to violating the rules of ethics. We've never done that before with the public defender. The conflict has always been a hard conflict as we know it traditionally to be multiple codefendants, so that's -- the money was just coming out -- it was a conflict, we were just calling it something else, not your traditional conflict.
MS. SHIPA: Can we go off the record for a minute?
MR. TARTAGLIO: Yeah.
VIDEOGRAPHER: The time is 5:46 p.m., and

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we're off the record.
(Discussion off the record.)
VIDEOGRAPHER: The time is 5:47, and we're back on the record.
Q. (By Mr. Tartaglio) So, Mr. Wallis, to kind of summarize this whole discussion, let me know if you agree with this summary:
Currently your office is able to send -- to conflicts cases that it didn't used to be able to send to conflicts?
A. We had that permission, but we are no longer doing that as of about two weeks ago.
Q. Okay. So that has already ended?
A. Yes, sir.
Q. And how has that affected the workload at your office, that ending two weeks ago?
A. We're now taking people and assigning them to attorneys who qualify, as long as they're locally confined, so attorneys are only getting people who are in jail -- in the Boone County Jail, no one else; so that's how it's affected it. Ideally, nobody wants to have a client in the jail for several reasons. The jail is about a 30-minute round trip from door to door from our office. There's limited space there, we need to make

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appointments, makes representation difficult, so they're getting assigned the more difficult kind of case -- kind of cases to deal with -- maybe not factually, but it requires more work just with travel and scheduling.
Q. Okay. Let's move on to the next exhibit. This has already been marked as Plaintiff's Exhibit 5.
And I'll direct your attention to page 3, the second paragraph from the top.
A. Okay.
Q. So this paragraph is talking about private attorneys being appointed to assist the public defender's office in District 13; right?
A. That's correct.
Q. Is that continuing to happen?
A. No.
Q. Okay. So this -- strike that.
Currently is the Boone County Bar Association assisting the public defenders in dealing with the workload issues that the office is facing?
A. Not to my knowledge, they aren't.
Q. Okay. So, actually, if we could go back to Plaintiff's Exhibit 3 here. So you sent this

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e-mail on September -- or -- it looks like this was sent around September 27th, 2017; right?
A. That's correct.
Q. Between the time you sent this e-mail and now, are things at your office working differently in any material way?
A. They are.
Q. Please explain how.
A. Every attorney, except probably Ms. Aplin and myself, have fewer clients. They're able to work their cases. They're able to do things they haven't done before. It's been a positive impact since not taking the cases, keeping in mind that we're ignoring the people on the wait list, which isn't a good thing, but for the clients that we're currently representing and serving, they're getting much better representation.
Q. Have you gotten any feedback from the people on the wait list about what they think of this new way of doing things?
A. No. I generally don't have -- I'm not their first point of contact. That would be our office assistants who -- I'll hear from them that there's some frustration, but that most people understand what's going on. In the way we word our

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letters, we just don't have anyone currently to -- we don't have an attorney available for you. And I think people have understood that so far. I think that the lack of any pushback from the courts as of to date has helped as well. I think when the courts start pressuring defendants is when we'll see -- maybe see some negative impact. But as far as the folks in our office, it's been very positive.
Q. And do you see it as a suitable long-term solution to the problem of too much work and not enough people?
A. No.
Q. Please explain why.
A. Well, we have people on a wait list. Their constitutional rights are their constitutional rights, whether or not it's a low-level misdemeanor case or a felony case. The constitution requires that anyone accused facing a Liberty depravation be represented by counsel, and we're not holding up that end of the bargain right now with everyone, so it's not a long-term solution. I would hope that we would have more folks and more resources or perhaps the legislature decriminalize some things to help us in our current predicament.
Q. Are there any plans to change the wait

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list procedure as it currently exists?
A. No.
Q. I'm going to hand out another exhibit that has been premarked five.
I've been informed that this might simply be Plaintiff's Exhibit 5, as opposed to Petsch 5, but we don't need to --
MS. SHIPA: There's kind of a problem with the way the exhibits have been numbered during this deposition. I just realized it a moment ago.
MR. TARTAGLIO: Well, we can talk about that off the record.
MS. SHIPA: Okay.
Q. (By Mr. Tartaglio) So, Mr. Wallis, have you ever seen this document or documents similar to it before?
A. Some of it looks familiar, but I don't -- I can't say if I've seen this specific document.
Q. Over the last few months, to your knowledge, has anyone in your office requested that they not be appointed counsel for a case for which they would otherwise represent a client?
A. You're asking if an attorney has asked to not be given new cases?
Q. That's correct.

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A. Yes. I've had -- every attorney has asked -- has made that request.
Q. Do they do that via motion, to your knowledge?
A. No.
Q. How does that typically work?
A. Their request to me?
Q. To -- well -- so strike that.
So do the attorneys in your why office request to the court that they not be assigned to certain cases?
A. No. They make that request to myself and Ms. Aplin.
Q. Okay. And then from there, taking into account their workload and the case, you and or Ms. Aplin decide whether to take the case or put them on the wait list? Is that how that works?
A. That's correct.
MR. TARTAGLIO: All right. Let's take a break.
VIDEOGRAPHER: The time is 5:55 p.m., and we're off the record.
(A recess was taken.)
VIDEOGRAPHER: The time is 6:13 p.m., and we're back on the record.

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Q. (By Mr. Tartaglio) All right. So, Mr. Wallis, I'm going to do a quick housekeeping, kind of, recitation for the record, and then I have a few follow-up questions.

So we started off with Plaintiff's Exhibit 28, which we newly marked today. I believe we then moved to what I called Plaintiff's Exhibit 4. This is a spreadsheet -- a one-page spreadsheet of Missouri State Public Defender Cumulative Caseload Metrics. My understanding was this was the Exhibit 4 during the 30(b)(6) depositions. I believe the second exhibit I used is a very lengthy printout from the spreadsheet that shows individual workloads. It's marked as Exhibit 10. I believe this is also from the 30(b)(6) depositions. I remarked -- or I discussed earlier a Boone County Bar Association newsletter. This one is marked Plaintiff's Exhibit 5. I believe that is from the previous round of 30(b)(6) depositions. I talked about an e-mail written by Mr. Wallis and Sarah Aplin. This e-mail includes presiding Judge Crane. This one, I believe, was also from the 30(b)(6) deposition that was marked there as Plaintiff's Exhibit 3. I also talked about a template motion entitled "Suggests and Support of

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Writ of Prohibition and or Amending." This one has a sticker that says Exhibit 5, Petsch. So I believe this one is from the more recent individual depositions.

Okay. So, Mr. Wallis, I have a few quick follow-up questions. So I just want to make sure I understand the real-world consequences of the wait list. Is it the case that there are people currently sitting in jail awaiting trial who have been told that they will not be appointed a public defender lawyer at this time but they've been put on the wait list and will be given a lawyer eventually?

A. Yes. Those who are not locally confined in the Boone County Jail have been provided that notice.

Q. Do you know about how many people there are sitting in jail waiting for a lawyer who is on this wait list?

A. Out of county is what you mean?

Q. Well, just total -- approximately is fine. How many people are sitting in jail who are on the wait list waiting for an attorney?

A. I don't think the number is very large. It's less than ten.

Q. So you mentioned that -- you said that

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people who are confined in Boone County are getting a lawyer; is that right?

A. That's correct.

Q. Currently. And so if someone is confined in Cooper County, would he or she be appointed a public defender attorney, even if they qualified for it?

A. Well, that's a -- that's -- I don't know if that -- we also handle Cooper County, so we are taking -- if you're confined locally in Cooper County, for the clarification, you would also -- we also would have an attorney who could represent a person in Cooper County.

Q. So someone who is put in jail in Cooper County would be appointed a lawyer, as opposed to being put on the wait list?

A. That's correct.

Q. So who are the -- so would people who are in Boone or Cooper county but are not in jail being put on the wait list?

A. That's correct.

Q. And in the future, do you expect that people who are confined in other counties but who are being represented in District 13 because of a conflict in the future, do you believe that those

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people will be put on the wait list?

A. If they're in another county -- maybe I can -- this is the answer: If you are not confined in Boone or Cooper County and you apply and you have a charge in one of those two counties, we are not -- the public defender's office in Boone County is not going to represent those clients; they're going to be put on a wait list until we have an available attorney.

Q. Okay. And that's true even if they're in jail?

A. That's correct. There is one small caveat exception we made. If someone is in the department of corrections and they filed a statutory speedy trial request, a disposition of detainer, which by statute, once that's properly filed, which is notice to the court and notice to the prosecutor, which department of corrections help facilitate those filings, the clock starts ticking on those cases. We've agreed to take those cases as well, just because of the time-sensitive nature of those cases. Last week I think we entered in three of those cases, so, that's -- again, it's a relatively small number. But we are taking -- I forgot to mention that we are taking those cases as well.

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Q. Are there currently plans to -- strike that.

Is there a procedure in place to take people off the wait list by giving them a public defender attorney?

A. Yes.

Q. Please describe what that procedure is.

A. Once I have enough attorneys approaching myself or Ms. Aplin who will indicate that they can take new cases, and the only folks we have left are people on the wait list, we'll then start addressing the people on the wait list. Right now we get approximately ten cases a week from the Boone County Jail, so that's taking up any attorney availability at the present moment.

Q. Do you know when the time will be when your office has enough resources to start taking people off the wait list to start give them public defender attorneys?

A. No, I don't.

Q. Earlier in discussing this e-mail from Judge Crane, you mentioned briefly that there's some discussion about seeking an audience with the Supreme Court of Missouri. Do you know if something like that ever happened?

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A. I believe there was an effort for Director Barrett to meet with the chief justice or at least the clerk of the court, and there was never a response.

Q. So is it your understanding that nothing happened, or do you just not know?

A. My understanding with talking to with Director Barrett was that the Supreme Court never responded to his request for a meeting.

Q. Could you please describe what -- in Missouri criminal procedure an initial hearing is briefly.

A. I'm not sure what -- I'm not sure we have an initial hearing. I'm not -- someone is arrested, they're given a -- they're either arrested or they're given a summons. They appear to court for maybe initial arrangement. At that point, if they have counsel, they can waive formal reading of the formal charges and enter a plea of guilty or not guilty. Often is the case if they're not represented by counsel, the judge will ask them if they want to waive reading, and the judge will then enter a plea of not guilty on the person's behalf. Unless the person is confined and says what do I need to do to get out of jail, and the offer is time

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served, and then the case is disposed.

Q. Okay. And so is that initial appearance that process that you just described?

A. Yes.

Q. Thank you. I didn't know the proper language.

A. That's fine.

Q. So at the initial appearance, is that typically when a bond is set for a criminal defendant?

A. Not always, no. In Boone County, there's a bond -- a set bond schedule. If you were arrested on almost any case, except a violent A or B felony case, once you're taken to the jail, there is a sheet that says you have the right to have a judge set your bond. If you choose Option A within 24 hours, a judge will set your bond, or you can refer to Option B, which is the bond schedule, and it lists how much each particular case costs to get out of jail. A DWI, for example, is $500. You can sit in jail for up to 24 hours and wait for a judge, or you can choose Option B of a $500 bond, and then you bond out. So bond is often taken up before. The prosecutors oftentimes file what's called a bond memo on certain cases where they think the

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particular facts are egregious. It's an ex parte communication with the court; we're not involved with it. It is a letter saying, Judge, we believe bond should bet set at $10,000 for this misdemeanor assault because he has alleged to have assaulted her two times prior and is on probation for it. So bond is often already set. We will take a bond reduction hearings if we're in the case and the client is in custody.

Q. Okay. So where someone is interested in paying that statutory amount that you referenced earlier, is -- if they have a public defender attorney, is a public defender attorney involved in the case at that point, typically?

A. No. No. Typically, we're not involved until the person -- the scenario I described is almost contemporaneous with the arrest, and we're oftentimes not open at that time and certainly haven't received the application. So by the time the bond is usually set or the person has posted it, it's been several days since the initial arrest, at the soonest.

Q. Okay. And you mentioned that there was another procedure which is to have a hearing in front of a judge for bond; is that right?

A. That's correct.
Q. Are -- so if a client attends that sort of hearing and has a public defender attorney in District 13, do they typically have an attorney present at that hearing?
A. Yes.
Q. So how does that work? Do you have someone who is stationed at the courthouse who does that sort of thing?
A. No. It's -- so someone will get arrested -- let's say it's a possession case -- and they set the bond at $450, which is the set bond on a regular felony possession of a controlled substance. The person can't pay the $450 to a bondsman, so the person sits in jail. At the next arraignment date, which is typically a Monday -- let's assume the arrest is made on a weekend -- we will have gotten an application from the jail. And if get an application from the jail over the weekend, we will make a determination has to our services before court that afternoon. We will then assign the case to somebody that afternoon -- or that morning, and they'll be given a new case and they will go up to court with no information on the client, other than maybe reading the probable cause

statement, and we'll ask for a bond reduction at that point.
Q. Okay. So -- just to make sure I understand. So if -- in that -- actually, strike that?
MR. TARTAGLIO: All right. That's the questions that I have for now.
CROSS-EXAMINATION
BY MR. RAMSEY:
Q. Good evening.
A. Good evening.
Q. Again, my name is Steven Alan Ramsey, and I represent the State of Missouri and Governor Eric Greitens. Before I begin, I'm going to ask you a number of questions, and I'm going to try not to interrupt you. The two reasons why I may interrupt you are simply, one, because I'm impatient, and I'll try not to do that, but the second reason would be that you're answering questions that I did not ask.
A. Sure.
Q. With that being said, was your first job out of law school with the Missouri State Public Defender System?
A. No.
Q. What did you do before joining the public

defender system?
A. I worked for the department of insurance.
Q. And how long did you work for the department of insurance?
A. Approximately nine month.
Q. And was that in an attorney or legal capacity?
A. It was.
Q. And then did you hold any legal positions or any positions before that?
A. No.
Q. After law school. Pardon me.
A. No.
Q. Your undergraduate degree, what was that in?
A. It was legal studies with a minor in criminal justice.
Q. In regard to your preparation -- not for this deposition -- that's not really preparation. Pardon me.
Who all have you talked to or had communications with regarding workload or caseload concerns. I know that's a broad question. So you've been in contact with judges.
A. Correct.

Q. What about organizations?
A. I've -- organizations have reached out to me to talk about the caseload issue.
Q. For instance?
A. Every year, I get a slew of e-mails from journalism students at Mizzou who are writing papers. I was recently contacted by a group who wanted to start a nonprofit to help people who are incarcerated in pretrial detention; they want to try to get them out. The media. I field interview requests on a consistent basis.
Q. And what about just generally people? Like, what class of people -- I imagine other members of the Boone County Bar, but what other group, if you will, of people have you been involved with?
A. Regarding the caseload issue?
Q. Yes.
A. I've spoken to, like, family and friends. The Boone County Bar widely avoids me, so I don't really have much discussion with the Boone County Bar. But I don't really talk about -- I don't find it a real compelling topic for those who aren't involved in it, necessarily.
Q. If we turn to Plaintiff's Exhibit 28, so

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it was the first one, I believe, that we spoke about.
A. Okay.
Q. You didn't draft this document, did you?
A. No, I did not.
Q. Did you have any hand in its creation, to your knowledge?
A. No.
Q. And this graph -- or this grid, rather, on page 3 -- Bates stamp 21876 at the bottom, was it your testimony that you-all do not utilize that grid currently to assess your workload and caseload concerns?
A. No. We reference it to help gauge our workload, but there was a -- an Excel spreadsheet where we could punch the numbers in, and it would tell us where we're at with it. We don't utilize that spreadsheet, but we use these numbers in conjunction with the caseload and other factors.
Q. Turning away from that exhibit but referencing the RubinBrown report -- it presume you're at least generally familiar with that.
A. Correct.
Q. Was it your testimony earlier that the actual number utilized are inaccurate?

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A. I think I was asked if I agreed with the numbers, and I don't agree that the numbers accurately reflect the number of hours that should be taken to -- on a case.
Q. Turning to the previously marked Plaintiff's Exhibit 4. This was the grid, the Public Defender Cumulative Caseload Metrics.
A. Yes.
Q. It was my understanding from your testimony that you understood the numbers but you didn't necessarily know what each of the rows meant, if you will.
A. That's correct. I don't know what each column means.
Q. And you had no hand in creating this document?
A. That's correct.
Q. And so even if you look at the percent of capacity for your district, outside of the numbers that are on the page, you have no independent way of ascertaining whether or not this is an accurate depiction of the current state of affairs?
MR. TARTAGLIO: Objection. Leading.
A. That's correct.
Q. (By Mr. Ramsey) Turning to

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Plaintiff's Exhibit 10 -- and this is the thicker document. You -- I'm sorry. In your testimony, had you seen this document before?
A. I have never seen this document.
Q. And then furthermore, you would have no sense -- independent knowledge about the workload or caseload, I guess, columns?
A. That's correct.
MR. TARTAGLIO: Objection. Leading. Misstates testimony.
Q. (By Mr. Ramsey) Turning to the Plaintiff's Exhibit 3. This is the letter. Why did you determine that a letter to the judges was the appropriate path to proceed concerning workload concerns, as opposed to, for instance, a Chapter 600.063 motion for conference?
A. Well, I wanted the e-mail because I wanted something to memorialize what I was saying in case there was any dispute about that, and I never had any intention of proceeding under Chapter 600. This wasn't a Chapter 600 issue.
Q. And why wasn't it a Chapter 600 issue?
A. Because the e-mail was in direct response to the license -- discipline against Karl Hinkebein. The Supreme Court, office of chief disciplinary

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counsel, never referenced Chapter 600. They referenced the ethics and the rules of professional conduct over and over, and so that's how we proceeded. Had they mentioned 600, we might have taken a different stance. They didn't, so it was clear that our law license was in jeopardy by not complying with the rules of professional conduct, not because we weren't following 600.
Q. Turning away from that particular exhibit, have you filed a Chapter 600 motion up until this point?
A. No.
Q. Turning to Plaintiff's Exhibit 5 -- not the 5 Petsch but the BCBA Newsletter.
A. Okay.
Q. You didn't have any hand in writing in document, did you?
A. No, I did not.
Q. And had you seen this document before today?
A. I believe I saw the e-mail that was originally sent out by Jeff Hilbrenner who does the media for the Boone County Bar Association.
Q. Finally, the last Plaintiff's Exhibit 5, Petsch, did I understand your testimony correctly to

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be that you had not utilized this document before? In other words, you haven't filed a similar statement of prohibition?

A. That's correct. I haven't filed anything like this document, No. 5.

Q. And had you seen this document before?

A. Again, I can't say if I've seen this specific one. I know on our MSPD litigation resource database, there's several templates -- suggestions. This looks like it might be one, but it seems there may have been something else put in there. I can't say I've seen this one exactly before.

Q. And do you have a sense -- and if you don't, it's fine. Do you have a sense of -- if this has been available -- this type of document has been available for years or if this has been a more recent publication to the Web site?

A. I believe this was put on the litigation resource database in re: Action to the OCDC issue with Mr. Hinkebein, so it would be relatively recent.

Q. Turning to the wait list. Would you consider your decision to utilize a wait list more of a policy judgment or a legal judgment?

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A. I'm not sure I understand the question.

Q. I think the question was poorly phrased, so let me try it again.

What legal justification, if any, do you have for utilizing the wait list in your district?

A. Well, I think -- if the distinction is between policy as it relates to ethics and legal as it relates to authority, I think my legal justification is I'm an officer of the court, and I have sworn to abide by the rules of professional conduct. I could certainly see how there would be more of a policy argument that there isn't any statutory authority, necessarily, for the public defender to create a wait list.

Q. As you sit here today, and your understanding of how your district defines a case or a matter, could you explain what exactly a case is?

A. Sure. The way we use it locally in our office, a case is simply charges that are filed under a case number. So if a person goes out and commits a crime, allegedly, is charged, whether it have one or ten counts, the way the state files it, it's going to be given a case number through Case.net. We use that as a case. So every time there is new case number -- state-generated case

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number, we would consider that a case.

Q. And do you have any defenders who are on call 24/7?

A. No.

Q. Turning to the determination of indigency, who makes that termination at your office?

A. Initially, it falls to one of our three office support assistants. They're the ones who review the applications that come in.

Q. And is there -- or are there any independent checks on what a particular application says? To rephrase, is there any independent verification that your district goes through after a person applies and says, Hey, I'm indigent?

A. No. The overwhelming majority of the time, we take the application to be truthful. There have been some occasions where we've asked for some documentation, perhaps a letter from an employer stating there's been a recent termination or change in work hours, but that rarely happens.

Q. Do you have a sense of what percentage of applications are rejected in your district?

A. I'd say -- I get notification -- maybe five a week that are initially rejected, then there's always the appeal process.

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Q. Have you ever been rejected a request for expert testimony or the usage of an expert in a case that you personally have been involved with at the public system?

MR. TARTAGLIO: Objection. Vague.

A. I don't recall if I have. I don't -- I can't think of a time that I have.

Q. (By Mr. Ramsey) Have you ever rejected a request for expert testimony from an attorney that you supervise?

A. Again, I can't think of a specific time. If I have, it would be less than I can count on one hand. I just can't think of any. I think one time I did certainly not because of funding, but because of the nature of the request versus where we were at with the case.

Q. Outside of depositions and expert testimony, what other things do assistant public defender have to request money for in relation to litigation?

A. We will do transcripts. If we have an interrogation or interview, sometimes we will request that a transcript be prepared. There might be some travel to go to crime scenes, so it would fall under travel. There's really not --

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depositions and experts are far and away our -- the majority -- take the majority of our litigation expenses.

Q. Turning to trial, how many trials within the past year or so have you -- have either you or someone from your office actually went and tried through completion?

A. If -- we're talking the fiscal year or the calendar year?

Q. Whichever you prefer.

A. Fiscal year, we -- for the past five, six since years, we've averaged approximately 23 jury trials. I don't consider bench trials as jury trials. A jury trial, myself personally, I think in the last fiscal year -- counting this year, I think I've tried four or five since July of this year.

Q. And how many public defenders or assistant public defenders are at a particular trial? Do you send everyone with a second chair?

A. No.

Q. Okay. A few steps back. It's my understanding the district defenders have wide discretion to create policies within their districts. My question is, have you implemented any set policies since you've been a district defender?

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MR. TARTAGLIO: Objection. Vague.

A. If you're referring to local rules, I think that's how we kind of refer to local policy. I think years ago my former deputy director and I attempted to craft some and then figured out that general guidelines and handbook -- you know, the Missouri State Public Defender encompassed all that needed to be encompassed, so we do not currently have any active local policy.

Q. (By Mr. Ramsey) Do you have any, I guess, customs, procedures, or local policies concerning when a public defender may counsel his or her client to accept a plea deal?

A. Yes.

Q. Would you describe them, please.

A. The minimum expectation is there needs to be discovery in order for there to be a meaningful conversation between the attorney and the client. That's the baseline.

Q. I apologize. You -- you've been a district defender since 2009 or 2011?

A. 2011.

Q. 2011. And since you have been within the system, caseloads and workload concerns have been prevalent. Is that fair to say?

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A. Yes.

Q. And so after you became a district defender, have you created or established any local trainings for your district to help with workload and caseload concerns?

A. No.

Q. Turning to timekeeping. At this point in time, does your district only keep time by the hour?

A. That's correct.

Q. So if at the end of your two-week period, you'll get a time sheet from, I presume, everyone in your office, and you have to check off on it, and it, you know, would have 8 hours per day or 12 hours per day or how many hours per day?

A. That's correct.

Q. So you do not keep time in five-minute increments like some periods in the past?

A. That's correct.

Q. Do you have a sense for when the last time you were keeping track of time in that sense?

A. I want so say it was about maybe two years, a year and a half ago when the directive was given by Director Barrett that we no longer had to keep time.

Q. At this point in time have you at any

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point in your time with the Missouri State Public Defender System been judicially determined to have provided ineffective assistance of counsel?

A. No.

Q. Has anyone that you have supervised in that same time frame, since you've been with the public defender system, been judicially determined to have provided ineffective assistance of counsel?

A. No.

MR. RAMSEY: No further questions.

CROSS-EXAMINATION

BY MS. SHIPA:

Q. I have a couple.

Are the assistant public defenders in your office offered any kind of training locally?

A. They're not offered it locally. Through myself or Ms. Aplin, we have a training database that they can access where we have in-house MSPD training and then also where there are -- if there's national opportunities for attorneys or even investigators, they can ask for funds to attend that training if it requires funds. So there are some, but there's nothing locally that I provide myself.

Q. Do any of the attorneys in your office offer trainings or mentoring to other attorneys in

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the office?
A. They do.
Q. Can you describe that to me?
A. Some of our more senior attorneys, those with -- unfortunately, senior in my office is those with five on more years. We have one attorney who will take any new attorney in the office, teach them the ins and outs of how to conduct a trial, has them do mock trials in our conference room, has them -- he has access to Pozner & Dodd's cross-examination videos. He has them watch the videos. He's an active first and second chair with them at any jury trial. We have several other attorneys who mentor our younger attorneys. It's an informal formal sort of training.
Q. I think that you were asked earlier about your workload, but I'm not sure anyone asked you what is your current caseload.
A. I think -- the last time I looked was last Friday. I was at -- I think I was at 78 cases.
Q. Is this -- is that number higher than it usually is?
A. Yes. I think I have the highest caseload in the office.
Q. What would be a typical caseload that you

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would, you know, usually have?
A. It would -- normally, it was between 20 and 30 cases.
Q. Why is it at -- 78, I think, is what you said now?
A. Right. We had two resignations within the past few months. We had an attorney go out on maternity leave -- actually, another one just went out on paternity leave, so we have two out on leave. We currently have one open position. And so intend of taking those cases that we've already entered on and giving them to the attorneys, I absorbed those cases.
Q. And does Sara Aplin have a caseload?
A. She does.
Q. Do you know about what her caseload is right now?
A. Hers is right around 70.
Q. Is that higher than normal for Sarah?
A. Yes.
Q. Now, I want to turn your attention -- a lot of attention has been given to this Exhibit 28. And I believe you said on page 3 -- I believe you said that table on there was based on the RubinBrown standards.

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A. That's what it appears to be to me.
Q. Do you know when the RubinBrown study was done ?
A. Oh, boy. I want to say 2011 through 2014, approximately. I don't -- yeah.
Q. Okay. Could you look amount the first page of Exhibit 28 and tell me the date of this?
A. 2007.
Q. So knowing the date of that and knowing the date of RubinBrown, do you still believe that this table on page 3 is based on RubinBrown?
A. The -- the cases -- the table we're looking at looks like the RubinBrown. The date couldn't be 2007 because I had just started with the public defender, and we weren't time keeping at that point.
Q. Okay. So you were just assuming that that was based on RubinBrown? You're not for certain that it is?
A. That's correct.
Q. And would you look at the first -- the sentence right above that bottom set of numbers and read that sentence to me.
A. You're talking about the bottom sentence?
Q. Yeah. Yes. The last sentence on the

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page.
A. It's starts, "The MSPD internal workload study showed that MSPD attorneys are currently, even with existing case overloads, are spending an average of 31 hours per case on sex offense cases, so that number was used in lieu of the 12 hours per case for general felony cases."
Q. Does that sentence give you any idea of what this table might be based on, if not RubinBrown?
A. No.
Q. No? Okay. All right. That's fine.
MS. SHIPA: That's good. That's all of the questions I have.
REDIRECT EXAMINATION
BY MR. TARTAGLIO:
Q. I have one very quick follow-up question. You mentioned that the Boone County Bar Association tries to avoid you. Do you have an explanation for why that is?
A. Again, only can guess, but I believe that when a private attorney is constricted by the court to do free work, that the Boone County Bar Association blames the public defender for that.
I actually had an attorney -- right after

Judge Crane started appointing private members of the bar, we were walking down the street towards each other, and he moved over to the other side of the street. He waved but said I wasn't very popular and said a few other things, so ...

They seem to think that it's our fault that this is the mess we're in.

MR. TARTAGLIO: Let's go off the record very quickly, but then we'll be back on.

VIDEOGRAPHER: The time is 6:50 p.m., and we're off the record.

(A recess was taken.)

VIDEOGRAPHER: The time is 6:54, and we're back on the record.

Q. (By Mr. Tartaglio) So, Mr. Wallis, earlier Ms. Shipma asked you about what your typical caseload was, and I believe you said it was around 20 to 30 cases; is that correct?

A. Yes.

Q. And with respect to Ms. Aplin, I think you said her caseload is also typically around that 20 to 30 range?

A. Maybe a little higher. She doesn't exceed 40, but it was generally between 30 and 40.

Q. For the line defenders who do not have the

same supervisor duties as yourself, is their typical caseload higher than the 20 to 30 you talked about earlier?

A. Right now?

Q. Yes.

A. Yes.

Q. Okay. A little while ago we talked about verifying the indigency request to obtain counsel from the public defender's office, and I believe you said that, typically, your office does not verify those requests; is that correct?

A. That's correct.

Q. Is the reason why -- or strike that.

Isn't it true that the reason why your office typically does not spend resources verifying those requests is because there are higher priorities for your office, namely, representing clients in their actual cases?

A. Correct. And we don't have the time to do it.

Q. Thanks.

MR. TARTAGLIO: That's all I have.

VIDEOGRAPHER: The time is 6:56 p.m., and we're off the record.

(The deposition concluded at 6:56 p.m.)

CERTIFICATE OF REPORTER

I, Lisa Ballalatak, a Certified Court Reporter for the State of Missouri, do hereby certify that the witness whose testimony appears in the foregoing deposition was duly sworn by me; the testimony of said witness was taken by me to the best of my ability and thereafter reduced to typewriting under my direction; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition was taken, and further that I am not a relative or employee of any attorney or counsel employed by the parties thereto, nor financially or otherwise interested in the outcome of the action.

_____

Lisa Ballalatak
Missouri Supreme Court
Certified Court Reporter

ALARIS LITIGATION SERVICES

December 28, 2017

MS. JACQUELINE D. SHIPMA
MISSOURI STATE PUBLIC DEFENDER SYSTEM
1000 W Nifong Boulevard, Suite 100
Columbia, Missouri 65203

IN RE: SHONDEL CHURCH, et al. v. STATE OF MISSOURI, et al.

Dear Ms. Shipma,

Please find enclosed your copies of the deposition of DAVID WALLIS taken on December 11, 2017 in the above-referenced case. Also enclosed is the original signature page and errata sheets.

Please have the witness read your copy of the transcript, indicate any changes and/or corrections desired on the errata sheets, and sign the signature page before a notary public.

Please return the errata sheets and notarized signature page within 30 days to our office at 711 N 11th Street, St. Louis, MO 63101 for filing.

Sincerely,

LISA BALLALATAK, CCR

39564

ERRATA SHEET

Witness Name: DAVID WALLIS

Case Name: SHONDEL CHURCH, et al. v. STATE OF MISSOURI, et al.

Date Taken: DECEMBER 11, 2017

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Witness Signature: _____

STATE OF _____)

COUNTY OF _____)

I, DAVID WALLIS, do hereby certify:

That I have read the foregoing deposition;

That I have made such changes in form and/or substance to the within deposition as might be necessary to render the same true and correct;

That having made such changes thereon, I hereby subscribe my name to the deposition.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this _____ day of _____, 20___, at _____.

_____
DAVID WALLIS

_____
NOTARY PUBLIC

My Commission Expires:

A
Aaron 4:3 5:17
ABA 18:2 26:17 43:20
abide 86:10
ability 29:12,19 30:2,3 38:5,6 44:1 99:8
able 16:9 20:4 28:5,6,13,15 28:18 30:10 48:7 50:11 58:13 63:8,9 65:10,11
above-refere... 100:9
absolutely 42:10 50:3
absorbed 94:12
accept 90:13
access 11:17 42:20,23 44:23 55:15 55:16 92:18 93:10
account 19:2 20:2 38:3 68:15
accurate 82:21
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Exhibit O

UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF MISSOURI CENTRAL DIVISION

SHONDEL CHURCH, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Case No. 17-04057-CV-C-NKL
	)	
STATE OF MISSOURI, et al.,	)	
	)	
Defendants.	)	

EXPERT REPORT OF RODNEY J. UPHOFF

October 16, 2017

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I. Qualifications[1]

I am the Elwood Thomas Emeritus Professor of Law at the University of Missouri School of Law, where I have taught courses in Criminal Procedure, Professional Responsibility, Trial Practice, Criminal Litigation Skills, and Wrongful Convictions since 2000. Prior to that I taught similar courses and ran a criminal defense clinic at the University of Oklahoma College of Law from 1990-2000. I also directed a criminal defense clinic at the University of Wisconsin Law School from 1984-1988.

I was a public defender from 1978-1984 in the Milwaukee office of the Wisconsin State Public Defender. I was the Chief Staff Attorney for the last three years while at the office. Together with the Director of the office, I was responsible for supervising 42 trial lawyers and 6 investigators. I carried a reduced case load so that I could provide training, second chair trials of young lawyers, and help manage the office.

In the early 1980s I became active in the National Association of Criminal Defense Lawyers and attended the National College of Criminal Defense Lawyers in Houston. I also became active in the American Bar Association ("ABA") Criminal Justice Section. Later, while teaching at Wisconsin, I served as the Vice Chair of the ABA Defense Services Committee and interacted with public defender administrators from around the country.

When I moved to Oklahoma, I became active in the Oklahoma Criminal Defense Lawyers Association. Together with Bob Ravitz, who ran the Oklahoma County Public Defender Office, we started an annual Continuing Legal Education ("CLE") which brought public defenders and defense lawyers from around the state to Norman for a 2-day conference. In 1995, I was appointed by Oklahoma Governor Frank Keating to the Indigent Defense System board. This five person board was responsible for oversight of the Oklahoma Indigent Defense System (OIDS) that provided capital trial representation and appellate representation in capital and non-capital cases in all counties except Tulsa and Oklahoma counties. In addition, the OIDS board awarded contracts to private lawyers who handled trial cases in all counties other than Tulsa and Oklahoma counties, which were served by county financed Public Defender offices. After leaving the board, I was appointed to be part of the state defense team that represented Terry Nichols, one of those accused and convicted of the 1995 bombing of the Murrah Federal Building in Oklahoma City.

Since becoming a law professor, I have written a series of articles involving criminal defense practice, ethical issues and various aspects of the criminal defense system, including the delivery of defense services. In 1995, I edited a book for the ABA entitled "Ethical Problems

[1] *See* Appendices A and B for a complete list of qualifications.

Facing the Criminal Defense Lawyer" that included a chapter on dealing with excessive caseloads. I met with and talked often with Robert Spangenberg, the president of the Spangenberg Group, which had studied the indigent defense system in almost every state in the nation when he came to assess the indigent systems in Oklahoma and Missouri.

I have presented at numerous CLEs across the country and have taught regularly at Harvard Law School's Trial Advocacy Workshop. Since moving to Missouri, I have frequently presented at Missouri State Public Defender workshops or conferences. In September 2016, I facilitated a workshop for Missouri District Defenders and supervisors on the ethical challenges for supervisors of attorneys handling excessive caseloads. I will conduct a similar workshop in Indiana in December 2017. In my teaching, writing and CLE presentations, I frequently have addressed the ethical issues that confront criminal defense lawyers struggling to provide competent representation while juggling crushing caseloads. I am familiar with the problems at the national level and in Missouri based on my own research, reading many studies and reports on the subject of indigent defense, conversations with lawyers and public defender administrators at conferences and seminars, discussions with my students who are or have been Missouri public defenders or prosecutors, and my own court observations.

In addition, I organized a symposium on the crisis in indigent defense at the University of Missouri School of Law in February 2010. That symposium, "Broke and Broken: Can We Fix Our State Indigent Defense System," brought scholars and practitioners from across Missouri, and around the country, to Columbia in order to grapple with this issue. The problems with the Missouri State Public Defender System ("MSPD") were a focus of the discussion that day. Indeed, Cat Kelly, then Deputy Director of the Missouri State Public Defender office, presented at the symposium. She lamented the ongoing crisis facing her office and their efforts to rally support for the MSPD. I was also on the team that studied the operation of the death penalty system in Missouri on behalf of the ABA. That team produced a lengthy report in 2012 entitled "The Missouri Death Penalty Assessment Report." Finally, since 2010, I have been a member of the Missouri Supreme Court Criminal Procedure Committee.

II. Assignment

I have been asked to evaluate whether, on a systemic, i.e., non-individualized basis, the State of Missouri, through the MSPD, is failing to meet its constitutional obligation to provide counsel to indigent defendants.[2] I have agreed to be compensated at the rate of $200 per hour for the work in this case, including testimony.

[2] *See* Appendix C for list of materials considered in forming this opinion.

III. Background

A. Structure of the Indigent Defense System in Missouri

The MSPD is an independent department of state government that provides trial and appellate representation for indigent defendants across the state. The MSPD is overseen by the Public Defender Commission ("PDC"), whose seven members are appointed by the governor. The PDC appoints the director of the MSPD, a post currently held by Michael Barrett.

The MSPD is divided into a Trial Division, an Appellate/Post-Conviction Division and a Capital Division. The MSPD's 2016 Annual Report noted that the department employed 587 employees, 376 of whom were lawyers. These lawyers were spread across 44 district offices around the state. A District Defender heads up each of the MSPD's District Offices. The District Defenders not only must carry a caseload and generally travel between three to five counties to represent clients, he or she also must effectively manage the lawyers and staff coping with high caseloads and deal with high turnover rates. High turnover means more time spent on reassigning the cases of the departing lawyer, filling the vacant position and then training the new lawyer once the position is filled. The District Defender also must manage the assignment of conflict counsel. According to its 2016 Annual Report, the MSPD contracts with private attorneys to handle about 5% of its annual caseload. Most of these cases involve what the MSPD describes as second- and third-level conflicts. The MSPD handles first-level conflict cases by having the local office send the client that the local office cannot represent to the next nearest defender office for representation. This practice exacerbates the MSPD caseload problem by adding more cases to an already full caseload and increasing time spent traveling by MSPD lawyers.

B. The obligation to provide adequate counsel

As the U.S. Supreme Court recognized in *Gideon v. Wainwright*, 372 U.S. 335, 344 (1963): "The right of one charged with crime to counsel may not be deemed fundamental and essential to fair trials in some countries, but it is in ours. From the very beginning, our state and national constitutions and laws have laid great emphasis on procedural and substantive safeguards designed to assure fair trials before impartial tribunals in which every defendant stands equal before the law. This noble ideal cannot be realized if the poor man charged with crime has to face his accusers without a lawyer to assist him."

The 6th Amendment right to counsel does not mean merely that a defendant has a lawyer assigned or appointed to his or her case. Rather, a defendant is entitled to the effective assistance of counsel. *McMann v. Richardson*, 397 U.S. 759, 771 (1970). Although the Court in *Strickland v. Washington*, 466 U.S. 668, 688 (1984), declined to adopt any specific guidelines in assessing whether defense counsel was constitutionally deficient, it did point to the ABA

Standards for Criminal Justice, Defense Function, as guides to determine whether counsel's performance was reasonable. The Court did not want to mandate specific guidelines for fear that such guidelines might "distract counsel from the overriding mission of vigorous advocacy of the defendant's cause." *Strickland*, 466 U.S. at 688-89.

The Supreme Court of Missouri also has acknowledged that the right to counsel includes the effective assistance of counsel. *State ex rel. Missouri Public Defender Comm'n v. Waters*, 370 S.W.3d 592, 597 (Mo. 2012) (en banc). Moreover, to pass constitutional muster, effective representation requires appropriate investigation, preparation and presentation of the client's case. *Taylor v. State*, 262 S.W.3d 231, 249 (Mo. 2008) (en banc). Following *Gideon*, indigent defendants in Missouri were initially represented by unpaid court-appointed counsel. After the Missouri Supreme Court's decision in *State v. Green*, 470 S.W. 2d 571, 573 (Mo. 1971) (en banc) holding it would no longer compel Missouri attorneys to carry the burden of defending indigents, the Missouri legislature established a blended system of local public defender offices and appointed counsel. 470 S.W. 2d at 573. In 1982, in the face of funding shortfalls, the legislature enacted Section 600.011 et seq. of the Missouri code creating the Office of the State Public Defender under the control of the Public Defender Commission. MO. REV. STAT. §§ 600.11 *et seq*. (1982). The Missouri State Public Defender System was reorganized in 1989 and since then, assistant public defenders have represented the vast majority of indigent defendants in Missouri.

Unquestionably, indigent defendants, like those represented by private lawyers, are entitled to competent counsel. Public defenders are ethically held to the same standards as private lawyers in the performance of their duties. And in Missouri, as around the country, a public defender is not excused from his or her duties to provide competent representation simply because he or she is handling a high caseload. *State ex rel. Missouri Public Defender Comm'n v. Pratte*, 298 S.W, 3d 870, 880 (Mo. 2009) (en banc); In re *Karl Williams Hinkebein*, Case No. SC 96089 (Mo. Sept. 12, 2017) (order); ABA, COMM. ON ETHICS & PROF'L RESPONSIBILITY, Formal Op. 06-441 (2006); Norman Lefstein, *Securing Reasonable Caseloads: Ethics and Law in Public Defense* (2011).

C. What constitutes competent criminal defense lawyering

As already noted, the *Strickland* Court did not spell out exactly what steps a lawyer must take to be a vigorous advocate on behalf of a criminal defendant. Nevertheless, the ABA Criminal Justice Standards for the Defense Function (4th edition) (2005) represent the best guide to the basic duties of a criminal defense lawyer responsible for providing vigorous advocacy to a client charged with a crime. The MSPD Guidelines for Representation (1992), which specifically set forth what is expected of Missouri public defenders, largely tracks the ABA Standards. I have

included excerpts from those ABA Standards that identify the actions that any competent, conscientious criminal defense lawyer would take in defending any serious criminal case.

1. Standard 4-1.3: Continuing Duties of Defense Counsel

Some duties of defense counsel run throughout the period of representation, and even beyond. Defense counsel should consider the impact of these duties at all stages of a criminal prosecution and on all decisions and actions that arise in the course of performing the defense function. These duties include:

a) a duty of confidentiality regarding information relevant to the client's representation which continues after the representation ends;

b) a duty of loyalty toward the client;

c) a duty of candor toward the court and others, tempered by the duties of confidentiality and loyalty;

d) a duty to communicate and keep the client informed and advised of significant developments and potential options and outcomes;

e) a duty to be well-informed regarding the legal options and developments that can affect a client's interests during a criminal representation;

f) a duty to continually evaluate the impact that each decision or action may have at later stages, including trial, sentencing, and post-conviction review;

g) a duty to be open to possible negotiated dispositions of the matter, including the possible benefits and disadvantages of cooperating with the prosecution;

h) a duty to consider the collateral consequences of decisions and actions, including but not limited to the collateral consequences of conviction.

2. Standard 4-1.8: Appropriate Workload

Defense counsel should not carry a workload that, by reason of its excessive size or complexity, interferes with providing quality representation; endangers a client's interest in independent, thorough, or speedy representation; or has a significant potential to lead to the breach of professional obligations. A defense counsel whose workload prevents competent representation should not accept additional matters until the workload is reduced, and should work to ensure competent representation in counsel's existing matters. Defense counsel within a supervisory structure should notify supervisors when counsel's workload is approaching or exceeds professionally appropriate levels.

3. Standard 4-1.9: Diligence, Promptness and Punctuality

Defense counsel should act with diligence and promptness in representing a client, and should avoid unnecessary delay in the disposition of cases. But defense counsel should not act with such haste that quality representation is compromised. Defense counsel and publically-funded defense entities should be organized and supported with adequate staff and facilities to enable them to represent clients effectively and efficiently.

4. Standard 4-3.1: Establishing and Maintaining An Effective Client Relationship

a) Immediately upon appointment or retention, defense counsel should work to establish a relationship of trust and confidence with each client. Defense counsel should explain, at an appropriate time, the necessity for frank and honest discussion of all facts known to the client in order to provide an effective defense. Defense counsel should explain that the attorney-client privilege protects the confidentiality of communications with counsel except in exceptional and well-defined circumstances, and explain what the client can do to help preserve confidentiality.

b) At an early stage, counsel should discuss with the client the objectives of the representation and through what stages of a criminal matter the defense counsel will continue to represent the accused. An engagement letter as described in Standard 4-3.5 should also be provided.

c) Counsel should consider whether the client appears to have a mental impairment or other disability that could adversely affect the representation. Even if a client appears to have such a condition, this does not diminish defense counsel's obligations to the client, including maintaining a normal attorney-client relationship in so far as possible. In such an instance, defense counsel should also consider whether a mental examination or other protective measures are in the client's best interest.

d) In communicating with a client, defense counsel should use language and means that the client is able to understand, which may require special attention when the client is a minor, elderly, or suffering from a mental impairment or other disability.

e) Defense counsel should ensure that space is available and adequate for confidential client consultations.

f) Defense counsel should actively work to maintain an effective and regular relationship with all clients. The obligation to maintain an effective client relationship is not diminished by the fact that the client is in custody.

5. Standard 4-3.3: Interviewing the Client

a) In the initial meeting with a client, defense counsel should begin the process of establishing an effective attorney-client relationship. This includes assuring the client of

confidentiality, establishing trust, explaining the posture of the matter, discussing fees if applicable, and inquiring about the client's objectives for the representation. Counsel may also discuss available evidentiary materials with the client, seek information from the client as to the facts and other potential sources of information, and ask what the client's immediate objectives and needs are and how to fulfill them.

b) Counsel should interview the client as many times as necessary for effective representation, which in all but the most simple and routine cases will mean more than once. Defense counsel should make every reasonable effort to meet in person with the client. Consultation with the client regarding available options, immediately necessary decisions, and next steps, should be a part of every meeting.

c) As early as practicable in the representation, defense counsel should also discuss with the client:

i. evidentiary materials relevant to the matter (consistent with the terms of any applicable protective order), and, after sharing such materials with the client, determine in depth the client's view of the facts and other relevant facts known to the client;

ii. the likely length and course of the pending proceedings;

iii. potential sources of helpful information, evidence, and investigation;

iv. the client's wishes regarding, and the likelihood of and steps necessary to gain, release or reduction of supervisory conditions;

v. likely legal options such as motions, trial, and potential negotiated dispositions;

vi. the range of potential outcomes and alternatives, and if convicted, possible punishments;

vii. the possibility and potential costs and benefits of a negotiated disposition, if appropriate, including one that might include cooperation with the government; and

viii. relevant collateral consequences resulting from the current situation as well as from possible resolutions of the matter.

6. Standard 4-3.7: Prompt and Thorough Actions to Protect the Client

a) Many important rights of a criminal client can be protected and preserved only by prompt legal action. Defense counsel should inform the client of his or her rights in the criminal process at the earliest opportunity, and timely plan and take necessary actions to vindicate such rights within the scope of the representation.

b) Defense counsel should promptly seek to obtain and review all information relevant to the criminal matter, including but not limited to requesting materials from the

prosecution. Defense counsel should, when relevant, take prompt steps to ensure that the government's physical evidence is preserved at least until the defense can examine or evaluate it.

c) Defense counsel should work diligently to develop, in consultation with the client, an investigative and legal defense strategy, including a theory of the case. As the matter progresses, counsel should refine or alter the theory of the case as necessary, and similarly adjust the investigative or defense strategy.

7. Standard 4-4.1: Duty to Investigate and Engage Investigators

a) Defense counsel has a duty to investigate in all cases, and to determine whether there is a sufficient factual basis for criminal charges.

b) The duty to investigate is not terminated by factors such as the apparent force of the prosecution's evidence, a client's alleged admissions to others of facts suggesting guilt, a client's expressed desire to plead guilty or that there should be no investigation, or statements to defense counsel supporting guilt.

c) 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, consequences of the criminal proceedings, and potential dispositions and penalties. Although investigation will vary depending on the circumstances, it should always be shaped by what is in the client's best interests, after consultation with the client. Defense counsel's investigation of the merits of the criminal charges should include efforts to secure relevant information in the possession of the prosecution, law enforcement authorities, and others, as well as independent investigation. 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) and consideration of inconsistencies, potential avenues of impeachment of prosecution witnesses, and other possible suspects and alternative theories that the evidence may raise.

d) Defense counsel should determine whether the client's interests would be served by engaging fact investigators, forensic, accounting or other experts, or other professional witnesses such as sentencing specialists or social workers, and if so, consider, in consultation with the client, whether to engage them. Counsel should regularly re-evaluate the need for such services throughout the representation.

e) If the client lacks sufficient resources to pay for necessary investigation, counsel should seek resources from the court, the government, or donors. Application to the court should be made ex parte if appropriate to protect the client's confidentiality. Publicly funded defense offices should advocate for resources sufficient to fund such investigative expert services on a regular basis. If adequate investigative funding is not provided, counsel may advise the court that the lack of resources for investigation may render legal representation ineffective.

8. Standard 4-4.3: Relationship With Witnesses

a) "Witness" in this Standard means any person who has or might have information about a matter, including victims and the client.

b) Defense counsel should know and follow the law and rules of the jurisdiction regarding victims and witnesses. In communicating with witnesses, counsel should know and abide by law and ethics rules regarding the use of deceit and engaging in communications with represented, unrepresented, and organizational persons.

c) Defense counsel or counsel's agents should seek to interview all witnesses, including seeking to interview the victim or victims, and should not act to intimidate or unduly influence any witness.

9. Standard 4-4.6: Preparation for Court Proceedings, and Recording and Transmitting Information

Defense counsel should prepare in advance for court proceedings. Adequate preparation depends on the nature of the proceeding and the time available, and will often include: reviewing available documents; considering what issues are likely to arise and the client's position regarding those issues; how best to present the issues and what solutions might be offered; relevant legal research and factual investigation; and contacting other persons who might be of assistance in addressing the anticipated issues. If defense counsel has not had adequate time to prepare and is unsure of the relevant facts or law, counsel should communicate to the court the limits of the defense counsel's knowledge or preparation.

10. Standard 4-5.1: Advising the Client

a) Defense counsel should exercise independent professional judgment when advising a client.

b) Defense counsel should keep the client reasonably and regularly informed about the status of the case. Before significant decision-points, and at other times if requested, defense counsel should advise the client with candor concerning all aspects of the case, including an assessment of possible strategies and likely as well as possible outcomes. Such advisement should take place after counsel is as fully informed as is reasonably possible in the time available about the relevant facts and law. Counsel should act diligently and, unless time does not permit, advise the client of what more needs to be done or considered before final decisions are made.

c) Defense counsel should promptly communicate to the client every plea offer and all significant developments, motions, and court actions or rulings, and provide advice as outlined in this Standard.

d) In rendering advice to the client, counsel should consider the client's desires and views, and may refer not only to law but also to other considerations such as moral, economic, social or political factors that may be relevant to the client's situation. Counsel should attempt to distinguish for the client between legal advice and advice based on such other considerations.

e) Defense counsel should provide the client with advice sufficiently in advance of decisions to allow the client to consider available options, and avoid unnecessarily rushing the accused into decisions.

11. Standard 4-5.4: Consideration of Collateral Consequences

Defense counsel should identify, and advise the client of, collateral consequences that may arise from charge, plea or conviction. Counsel should investigate consequences under applicable federal, state, and local laws, and seek assistance from others with greater knowledge in specialized areas in order to be adequately informed as to the existence and details of relevant collateral consequences. Such advice should be provided sufficiently in advance that it may be fairly considered in a decision to pursue trial, plea, or other dispositions.

12. Standard 4-6.2: Negotiated Disposition Discussions

a) As early as practicable, and preferably before engaging in disposition discussions with the prosecutor, defense counsel should discuss with and advise the client about possible disposition options.

b) Once discussions with the prosecutor begin, defense counsel should keep the accused advised of relevant developments. Defense counsel should promptly communicate and explain to the client any disposition proposals made by the prosecutor, while explaining that presenting the prosecution's offer does not indicate counsel's unwillingness to go to trial.

c) Defense counsel should ensure that the client understands any proposed disposition agreement, including its direct and possible collateral consequences.

d) Defense counsel should not recommend to a defendant acceptance of a disposition without appropriate investigation. Before accepting or advising a disposition, defense counsel should request that the prosecution disclose any information that tends to negate guilt, mitigates the offense or is likely to reduce punishment.

13. Standard 4-8.3: Sentencing

a) Early in the representation, and throughout the pendency of the case, defense counsel should consider potential issues that might affect sentencing. Defense counsel should become familiar with the client's background, applicable sentencing laws and rules, and what options might be available as well as what consequences might arise if the client is convicted. Defense counsel should be fully informed regarding available sentencing

alternatives and with community and other resources which may be of assistance in formulating a plan for meeting the client's needs. Defense counsel should also consider whether consultation with an expert specializing in sentencing options or other sentencing issues is appropriate.

b) Defense counsel's preparation before sentencing should include learning the court's practices in exercising sentencing discretion; the collateral consequences of different sentences; and the normal pattern of sentences for the offense involved, including any guidelines applicable for either sentencing and, where applicable, parole. The consequences (including reasonably foreseeable collateral consequences) of potential dispositions should be explained fully by defense counsel to the client.

IV. History of constitutionally deficient defense in Missouri:

As the reports prepared by the Spangenberg Group in 2005 and 2009, the Senate Interim Committee in 2007, National Juvenile Defender Center in 2013, and RubinBrown in 2014 document, the MSPD has been underfunded almost from its inception. Approximately four years after the 1989 elimination of the contract system and the establishment of a statewide system of full-time defenders, The Spangenberg Group ("TSG") was asked to conduct a study of the State Public Defender System for the MSPD and the PDC, under the auspices of the ABA Bar Information Program. The 1993 study focused on the operation of the Public Defender System, the internal allocation of resources, and the overall budgeting and staffing situation compared with other states in terms of caseload and funding of statewide programs. TSG found that the MSPD was clearly underfunded compared to other state public defender programs.

The 1993 report concluded:

> [T]he increased caseload and the low salaries have led to a high turnover of staff over the last two years and several additional experienced attorneys indicated that they may also leave. The effect of the workload, the low salary and the turnover has not surprisingly resulted in morale problems in some offices. Many attorneys feel that without additional resources, they will not be able to provide competent representation to all of their clients. We echo this sentiment in very strong terms.
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> TSG, *Report on the Operation of the Missouri State Public Defender* (1993).

In 2005, in light of rising caseloads and the continuing budget problems, the MSPD approached the Missouri Bar for assistance. The Missouri Bar urged its members across the state to sign up to accept public defender appointments on a pro bono basis because of MSPD's serious case overload. The incoming president of the Missouri Bar (and recently-retired member

of the PDC), Douglas A. Copeland, subsequently created a Public Defender Task Force to work with the PDC, the bench, and the bar to identify solutions to address the problems the MSPD faced.

The Public Defender Task Force contracted with TSG to conduct a limited assessment of the MSPD. TSG's 2005 findings were "dire," concluding that the MSPD and its lawyers were operating in a crisis mode. TSG, *Assessment of the Missouri State Public Defender System* (2005) ("2005 Report") at 2; TSG, *Assessment of the Missouri State Public Defender System* (2009) ("2009 Report") at 6. TSG stated that "in our opinion, the [MSPD] is on the verge of collapse." 2005 Report at 24. TSG also noted that the PDC had itself reported on June 10, 2005, that "the situation is already at a crisis level, with trends pointing to an impending disaster in Missouri's criminal justice system." *Id*. As a result, TSG opined that there was reason to believe that some public defender attorneys were not complying with either the Public Defender Guidelines for Representation or the Missouri Supreme Court Rules of Professional Conduct and that attorneys were failing to provide the effective assistance of counsel to their clients.

TSG's 2005 study found among other things:

a) Staffing

TSG stated that the MSPD turnover exceeded that of any other public defender system in the country. An extremely high level of turnover among staff attorneys created serious problems. With many experienced attorneys leaving, cases were being distributed to the few remaining experienced attorneys or to new attorneys who were not yet ready for either a significant caseload or serious felony cases. The turnover problem was causing the remaining lawyers to shoulder the burden, further contributing to a sense of overload and burnout. Additionally, the turnover problem was creating a serious risk that newly-assigned attorneys would be unprepared or inexperienced.

High turnover also adversely affected supervision because most supervisors and district defenders were consumed with the burdens of their own ever-increasing caseloads. Finally, experienced lawyers were leaving the MSPD not only because of burnout and caseload pressures, but also because salaries were capped at $52,452 for all trial attorneys, which was the lowest that TSG had encountered in the country.

b) Quality of Representation

The combination of oppressive caseloads and turnover led some public defenders to describe their practice as triage in which defenders were forced to choose between providing adequate assistance to some clients by neglecting others. TSG reported that several defenders

admitted that the volume of cases was so high that some public defenders could not provide effective assistance of counsel to many of their clients. In particular, TSG's 2005 findings reported serious problems with client contact, including lack of timely communication.

c) Funding

Despite rising caseloads, the Missouri State Public Defender had gone through several budget cycles without an increase in full-time equivalent positions. There was also a substantial lack of non-attorney support staff. TSG reported that Missouri had the lowest per capita expenditures of any statewide public defender program in the country. Missouri ranked 47th in terms of cost per capita for indigent defense.

d) Indigency Determinations

In 2005, TSG warned that public defenders were too quick to find defendants ineligible for counsel when in fact, some of these people were unable to retain counsel. TSG concluded that there were substantial problems with indigency determinations, noting in particular the presumption that a defendant was ineligible for MSPD services if the defendant had been released on a bail of $5,000 or more. TSG observed that some public defenders were finding a defendant ineligible if such a bond had been made, without regard to other factors, such as whether a small percentage of the bail was paid to a bondsmen or whether a friend or family member posted the bond but could not also afford to hire counsel for the defendant.

e) Representation in Conflict Cases

In 2005, TSG criticized MSPD's handling of conflict cases, echoing its concerns raised in 1993. Most conflict cases were referred within the MSPD to another office. TSG concluded that public defender handling of conflict cases, including co-defendants, created an appearance of a conflict in the same manner that attorneys from the same law firm handling conflict cases would create such an appearance. TSG also noted that conflict cases were taking too long to transfer from the originating office to the conflict office or for assignment to private counsel.

f) Comparison with Ten Principles of a Public Defense Delivery System

In its 2005 Report, TSG referred to the ABA's "The Ten Principles of a Public Defense Delivery System" (2002). TSG noted that these principles have been generally accepted and used

as guidelines to assess indigent defense systems across the country. TSG's 2005 Report concluded that the MSPD failed to meet seven of the ten principles:

i. Principle 2 – Where caseload is sufficiently high, the public defense delivery system consists of both a defender office and the active participation of the private bar.

ii. Principle 4 – Defense counsel is provided sufficient time and a confidential space with which to meet with the client.

iii. Principle 5 – Defense counsel's workload is controlled to permit the rendering of quality representation.

iv. Principle 6 – Defense counsel's ability, training, and experience match the complexity of the case.

v. Principle 7 – The same attorney continuously represents the client until completion of the case.

vi. Principle 8 – 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.

vii. Principle 10 – Defense counsel is supervised and systematically reviewed for quality and efficiency according to nationally and locally adopted standards.

As a result of the efforts of the Missouri bar and the growing recognition of the MSPD problems, the Missouri Senate established an Interim Committee on the MSPD system. In 2007, following its review which included taking testimony, the Interim Committee issued a report. That report concluded:

> The Senate Interim Committee on the Public Defender System recommends that the caseloads of public defenders be reduced, support staff be increased, the number of public defenders be increased, whether through FTE or contract counsel, along with the base salary of public defenders being increased and funding being added through supplanting unconstitutional court costs and providing additional appropriations. The Committee believes that these goals can be attained using or implementing the aforementioned programs and recommendations.
>
> Senate Interim Committee Report at 15.

The PDC's 2007 annual report echoed the concerns expressed by the Interim Committee's report and stressed that the severity of the crisis left open only one viable option. Public defenders would have to start refusing to accept cases thereby precipitating a constitutional crisis in Missouri's courts. Then Chief Justice of the Missouri Supreme Court, Laura Denvir Stith, responded to the crisis in her 2008 State of the Judiciary Address, by urging legislative action.

The Missouri legislature did act. Senate Bill 37 was introduced which proposed to set caseload maximums and contract with private attorneys to handle cases exceeding those maximums. Although the bill passed unanimously in the Senate and with a substantial majority in the House, on July 13, 2009, Governor Nixon vetoed the bill.

The MSPD did not limit its efforts to the legislature. It sought relief in the courts as well. In November 2007, the PDC voted to adopt 18 C.S.R. § 10-4.010 ("the rule") which set out a procedure by which public defenders could refuse new cases. The rule authorized the MSPD director to declare an office of limited availability when its caseload became excessive. That determination was to be based on an office exceeding the maximum caseload standard for a period of three consecutive calendar months.

On October 6, 2008, the District Public Defender notified the presiding judge of the Thirteenth Judicial Circuit that the District 13 Office had been certified as having limited availability. The District Defender informed the court that the District 13 Office would not accept probation violation proceedings pursuant to a suspended execution of sentence until the District 13 Office was reinstated to full availability. When a public defender attempted to put this policy into practice, however, filing a written notice with the court that the public defender was unavailable to represent a defendant in a probation revocation matter, the judge refused, appointing the public defender to the case, despite the rule and the notice.

The PDC, the Director of the MSPD, and the individual public defender subsequently filed a petition for a writ of prohibition with the Court of Appeals for the Western District, seeking to restrain the trial judge from appointing the public defender to the indigent probationer's case. That case, along with two others, ultimately went to the Missouri Supreme Court. In *Pratte*, 298 S.W.3d at 877-78, the Court acknowledged that the MSPD caseload crisis continued to grow and that crisis raised the question of whether public defenders were fully meeting their ethical duties to their clients. Nonetheless, the Court found that the PDC rule relied upon to declare that an office was of limited availability denied an indigent of the right to representation contrary to Section 600.086. The court concluded that the PDC did not have the authority by rule to eliminate a category of defendants—in this case those facing a probation violation—that by statute the public defender is required to represent. In the companion case, the court did find that the trial judge lacked the authority to appoint a public defender to a case in his

private capacity when that public defender declined the case because of his office's limited availability status.

The Court in *Pratte* went on to clarify, however, that the PDC rule could be properly used to manage its caseload problems as long as the MSPD did not reject categorically a class of cases. It encouraged public defenders to work with judges and prosecutors to reduce the demand for public defender services. The court also discussed, but did not resolve, the troubling question of under what circumstances private lawyers could be conscripted to deal with the MSPD caseload problems.

In 2008, SPG was retained by the Missouri bar to again assess the MSPD. TSG, working in conjunction with the Center for Justice, Law and Society at George Mason University authored a report in 2009 assessing the MSPD. In its report, TSG referenced the ABA's Eight Guidelines of Public Defense Related to Excessive Workloads ("Eight Guidelines") issued in August 2009.[3]

In establishing these Guidelines, the ABA relied on ABA Committee on Ethics and Professional Responsibility, Formal Opinion 06-441 (2006), which addressed the obligations of indigent defenders burdened with excessive caseloads. TSG utilized these Eight Guidelines in evaluating the MSPD. Specifically, TSG stated that, "the Eight Guidelines point to a growing crisis of constitutional magnitude, which despite MSPD's longstanding, systematic efforts, has been permitted to worsen, placing indigents persons accused of crimes, victims of crime, and the larger system of criminal justice in great peril." 2009 Report at 13 (sic).

Among the major findings detailed in TSG's 2009 Report was that MSPD was facing a resource crisis after a decade of underfunding. As of 2008, based upon preliminary data from the 50 states, Missouri now had the lowest per-capita expenditures of all states, except for Mississippi. Before the staff attorney additions in July of 2009, there had been no increase in the number of full time employees for six years, though MSPD's caseload had risen by over 12,000 cases. The report highlighted the low salaries that contributed along with high caseload and bad working conditions to high turnover. For some lawyers who stayed with the MSPD, especially those with staggering law school debt, current salaries simply were not high enough to cover all expenses so some even worked second jobs.

TSG noted that in terms of excessive workloads, since 2005 the situation had become even more severe. TSG's 2009 Report describes frustrated and disgruntled public defenders who reported feeling trapped and unable to discharge the kinds of fundamental obligations described by the ABA in its Eight Guidelines because of an impossible volume of cases they were being

[3] *See* http://www.abanet.org/legalservices/sclaid/defender/downloads/eight_guidelines_of_public_defense.pdf.

required to handle. The report also described at length how high caseloads adversely affected the ability of public defenders to represent their clients competently.

As TSG observed in its report, the Eight Guidelines stress the importance of adequate supervision to ensure that public defenders are not overwhelmed by an excessive caseload. As the 2009 Report documented, most supervisors simply did not have the time to do the job they were being asked to do. The demands of the supervisors' own caseloads resulted in inadequate mentoring, training and supervision of the lawyers working for them.

At a symposium at the University of Missouri School of Law in February 2010, numerous speakers identified Missouri as one of the most underfunded public defender programs in the country. Speakers described the host of problems confronting underfunded public defenders grappling with excessive caseloads. In an article that I authored as the foreword to the symposium edition to the summer 2010 edition of the Missouri Law Review, I addressed the longstanding problems with MSPD. I also looked at the Missouri Supreme Court's decision in *Pratte*. I opined that the court's efforts to deal with the MSPD's caseload crisis in *Pratte* would prove unworkable and not resolve the systemic deficiencies. Uphoff, *Foreword*, 75 MO. L.REV. 667, 677 (2010).

Following the *Pratte* decision, the MSPD continued to rely on PDC Rule 18 C.S.R. 10-4.010 to cope with their caseload crisis. In January 2010, the public defender office notified 38th Circuit Presiding Judge Orr that the public defender district office assigned to represent defendants in that circuit had exceeded the maximum caseload permitted under the caseload protocol for three consecutive months and, therefore, was at risk of being certified for limited availability. In accordance with the requirements of 18 C.S.R. 10-4.010, meetings were held in March and April 2010 that included Judge Orr, local prosecutors, and personnel from both the state and district public defender's office. Those meetings failed to produce any agreement that would reduce the local office's caseload. Accordingly, the MSPD director certified the district defender's office as on limited availability as of July 1, 2010. After the district office was certified and, as permitted by 18 C.S.R. 10-4.010(2)(A), the state public defender declared the district defender office as unavailable to accept additional cases until August 2010.

On July 28, 2010, Jared Blacksher appeared for his initial arraignment before Judge Waters who, over objection, appointed "the public defender's office" to represent him. On August 2, 2010, the state public defender's office filed a motion to set aside the appointment because it violated 18 C.S.R. 10-4.010. After holding a hearing, Judge Waters stated he felt he had no choice but to appoint the public defender to represent Blacksher. The PDC, MSPD and the district defender sought relief from the Missouri Supreme Court.

In *Waters*, the Missouri Supreme Court again confronted the question of "whether the duty of public defenders to provide a defense to indigent criminal defendants as set out in section 600.042.4 requires them to accept a judge's appointment to act as counsel no matter the size of their existing caseload and their ability to provide effective representation to their existing or any additional clients and despite the mechanisms contained in 18 C.S.R. 10-4.010." 370 S.W. 3d at 605. The *Waters* Court reiterated what it had said in *Pratte* that even if the resources provided for indigent defense are inadequate, a judge nevertheless has the duty to ensure that the defendant receives the effective assistance of counsel. As the *Waters* Court stressed, "[s]imply put, a judge may not appoint counsel when the judge is aware that, for whatever reason, counsel is unable to provide effective representation to a defendant. Effective, not just pro forma, representation is required by the Missouri and federal constitutions." *Id*. at 607.

The Court also reiterated that a defender cannot ethically take on a new case if doing so will adversely affect counsel's ability to competently defend existing clients. The Court went on to recognize that 18 C.S.R. 10-4.010 was designed to aid judges, prosecutors and public defenders in ensuring that effective representation is not compromised by excessive caseloads. It noted, however, that it was not faced in this case, nor in *Pratte*, with the issue of deciding whether the PDC had the authority to promulgate a rule governing the management of its caseload or whether the protocol it adopted was valid. Because Judge Waters did not find the PDC rule invalid, he erred in ordering the public defender to disobey it and appointing the office to this case in the face of the rule. Nonetheless, the court held that trial judges have the inherent authority over their docket to work cooperatively with prosecutors and public defender and play a management role to craft solutions that avoid or limit the need to have public defender offices certified as having limited availability.

Other national groups have confirmed the serious funding deficiencies in Missouri. In the spring of 2013, the National Juvenile Defender Center ("NJDC") released a report declaring that the Missouri indigent defense system was "in crisis" after enduring years of crushing caseloads with inadequate resources to provide its services. *Missouri: Justice Rationed; An Assessment of Access to Counsel and Quality of Juvenile Defense Representation in Delinquency Proceedings*, THE NATIONAL JUVENILE DEFENSE CENTER 7 (2013). In 2014, RubinBrown issued a report on behalf of the ABA's Standing Committee on Legal Aid and Indigent Defenders. *The Missouri Project: A Study of the Missouri Public Defender System and Attorney Workload Standards*, RUBINBROWN (2014). RubinBrown assessed the MSPD workload data after the MSPD public defenders became the first defenders nationally to track time in five-minute increments. The RubinBrown report shows that MSPD lawyers were not spending the amount of time needed to perform the tasks identified as necessary to provide competent representation.

Certainly, that is the case for the sole public defender assigned to represent juvenile defendants in St. Louis County. A scathing report issued by the Department of Justice on July

31, 2015, found "substantial deficiencies in the State's system of ensuring that indigent juveniles in St. Louis County receive meaningful access to counsel." The DOJ report described the single public defender handling juvenile cases as having an excessive caseload. The DOJ concluded that the "failings reflect a system devoid of adversarial process. When no motions or appeals are filed, when no independent investigation takes place, when the actions of the police go unexamined, when all but a handful of cases result in a guilty plea to all counts and when DOJ recommended dispositions are almost always accepted without challenge, the only possible conclusion is that children in St. Louis County do not receive adequate or effective representation in delinquency proceedings, in violation of the Constitution." *Investigation of the St. Louis Family Court, St. Louis, Missouri*, U.S. DEP'T OF JUSTICE (2015).

The Missouri Legislature's reaction to the MSPD's funding crisis has been mixed in recent years. The Legislature responded to *Waters* by enacting Section 600.062, which blocked the PDC or MSPD director from declaring an office unavailable and denied public defenders the ability to refuse a case without prior court approval. Nevertheless, the Legislature has approved budget increases for the MSPD. Yet even when the Legislature has taken steps in recent years to increase funding, the governor has thwarted these efforts. In 2014, the Missouri legislature appropriated $3,472,238 to permit the MSPD to contract out all conflict cases as part of its FY2015 budget. Although Governor Nixon line item vetoed this funding, that veto was overridden and the funds were added to MSPD's core budget. However, Governor Nixon only released $500,000 of those funds during FY2015.

Shortly after the release of the DOJ report criticizing the representation of juveniles in St. Louis County, MSPD Director Michael Barrett sent a letter to Governor Nixon highlighting the MSPD's funding woes and requesting a $10 million supplemental budget. Letter from Michael Barrett, Director, MSPD, to Governor Nixon (August 7, 2015) (*see* Appendix D). Not only was no budget increase forthcoming, but in FY2016, MSPD's appropriations core was cut by $3,472,238. On August 2, 2016, Barrett made national news by appointing Governor Nixon to represent an indigent defendant in Cole County. Letter from Michael Barrett, Director, MSPD, to Governor Nixon (August 2, 2016) (*see* Appendix E). Governor Nixon successfully challenged that appointment when the trial court ruled that Barrett lacked the authority to assign a public defender case to a private lawyer.

In FY2017, $4,500,000 was added to MSPD's core budget but Governor Nixon directed that all but $1 million of those funds be withheld from the MSPD. In January 2017, Missouri's new governor, Defendant Greitens, pledged to restore an additional $2.5 million in the next budget, for a total of $3.5 million, still short of the prior year's allocation of an additional $4.5 million. As of the date of this report, Greitens has still not released the $3 million that Nixon withheld from the MSPD's FY2017 budget.

On or around September 27, 2017, David Wallis, District Defender of Trial District 13 sent an email to local judges saying that the public defenders in Boone and Cooper County would be violating ethical rules if they continued to take new cases. According to Wallis, "every attorney under our supervision is currently violating the Rules of Profession Conduct. Their current individual caseloads create a conflict of interest with existing clients because they are forced to choose effective representation of one client to the detriment of other clients." Ex. 3 to Michael Barrett's Deposition Testimony, *Church v. Missouri*, No. 17-04057-CV-C-NKL (Oct. 4, 2017) ("Barrett Deposition Testimony") (*see* Appendix I). Presiding Judge Kevin Crane responded to the Wallis email by emailing the members of the Boone County bar on September 27, 2017 and saying that the Boone county judges would be appointing private lawyers to represent indigent defendants starting that day.

Undoubtedly, Wallis wholeheartedly believes the public defenders under his supervision have caseloads that are so high that they cannot take on additional case without violating their ethical obligations to existing clients. David Wallis is not the only District Defender who has recently notified a local judge about the ethical dilemma confronting public defenders. In a story on NPR, Dan Margolies reported that other public defenders already have or are planning to notify their local judges that they cannot take on any new cases. Margolies, *Many Missouri Public Defenders Decline New Cases After State Supreme Court Disciplines Lawyer*, NPR (Oct. 6, 2017).) (*see* Appendix F). In that story, Michael Barrett is quoted as saying:

> If I was a cartoonist for a newspaper, I'd draw a public defender whose got two guns pointed at him from either side of their head: On one side, the (Office of Chief Disciplinary Counsel) and the Supreme Court saying "I dare you to take that case and I'm going to take your law license." On the other side is the local court who says, "I dare you to not take that case. And I'll hold you in contempt." That is our world right now.
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> *Id.*

Given the dilemma facing the MSPD lawyers, Barrett sent a letter on September 11, 2017, to all MSPD lawyers reminding them that they are ethically obligated to decline cases if, because of high caseloads, they cannot competently represent their clients consistent with those ethical obligations. Ex. 2 to Barrett Deposition Testimony (*see* Appendix H). Barrett also reassured public defenders that they would not be fired for refusing a case consistent with their ethical obligations. *Id.* In the face of excessive caseloads, low salaries and the threat of disciplinary action, the turnover rate for MSPD lawyers has risen to "upwards of 25 percent." Barrett Deposition Testimony at 167:1-16 (*see* Appendix G). That, of course, will only make a bad situation even worse for MSPPD clients.

g) Excessive Caseloads

The 2014 Delphi study conducted by RubinBrown demonstrated that with the number of lawyers employed by the MSPD, the Missouri public defenders lacked sufficient time to perform the tasks necessary to competently represent their clients given the volume of cases they are required to handle. Since that report, the number of cases has risen but the number of staff lawyers has remained virtually the same. The affidavits on file in this case reflect what the past reports in Missouri also have consistently shown. Missouri public defenders struggling with excessive caseloads operate in a triage fashion that ultimately adversely affects their clients' right to effective representation.

Not surprisingly, excessive caseloads result in defenders being underprepared for trial that not only deprives defendants of their right to a fair trial but also increases the risk of wrongful convictions. Perhaps even more significant is the fact that excessive caseloads adversely affect a public defender's ability to obtain a favorable plea bargain or a good sentence result. Finally, excessive caseloads lead to poor and limited client communication, which contributes to the pressure on neglected clients simply to plead guilty regardless of their guilt or innocence, or the strengths and weaknesses of the state's case against them.

V. Empirical Observations

In addition to reviewing affidavits, exhibits, and reports, I visited a small sample of courts in central Missouri to observe to what extent, if any, the MSPD caseload pressures were impacting indigent clients.

A. Boone County

I went to Boone County on September 7, 25, and 28, 2017. In Boone County, indigent defendants generally appear at their initial appearance without counsel. During my visits, most of the defendants who were in custody appeared on video and were not present in the courtroom. None of the defendants who appeared on video were represented by a public defender except for one defendant in a misdemeanor case whose public defender happened to be in court on several other matters. That public defender advised the court that a plea bargain had been worked out and asked that the matter be set for a pretrial date.

For those in custody facing a felony charge, no public defender was available at the initial appearance to make a bail argument. Defendants were advised to apply for a public defender and cases were adjourned for a week to two weeks for a status conference. In many instances, the judge ordered a bond investigation but the unrepresented defendants had no opportunity to request a personal recognizance bond or argue for lower bail. Indeed, the judge cut off one defendant trying to explain that his arrest on a warrant was a mistake and told him he could

explain things once he had counsel. His case, however, was continued for twenty-two days until the next court appearance. Another defendant, appearing without counsel, asked the court for a recognizance bond which was summarily denied.

Several defendants in custody on misdemeanors were advised that the prosecutor was willing to offer a fine with credit for time served to satisfy the fine and court costs if the defendant was willing to plead guilty. As with misdemeanor defendants who appeared in person for their initial appearance, the judge announced to all defendants that if the prosecutor was waiving jail, they would be ineligible for public defender services. Those defendants who did not want to plead guilty, or those defendants for whom the prosecutor was unwilling to waive jail were told to go to the public defender to apply if they lacked funds to hire counsel. Several indicated that they had already been to the public defender office but had not heard anything about their application. These defendants were given a status date several weeks later and urged to again follow up with the public defender office.

Most of the defendants in custody as well as those who had bonded out and walked into court, accepted the prosecutor's offer of no jail time and entered a guilty plea. Others who had posted bond and showed up for their initial appearance in felony cases were advised to apply for the public defender and report back one month later. Several defendants who appeared reported that they had gone to the public defender after their initial appearance but were deemed ineligible for a public defender. These defendants were told to seek private counsel and given another status date a month later. For defendants with jobs, multiple court appearances not only cost the defendant money, but also may threaten the defendant's employment.

During my visits, I observed several public defenders speaking to their clients in the spectators' gallery and in the jury box where defendants in custody were seated waiting for their case to be called. These communications were not in a confidential setting. Rather, others were sitting close and clearly within earshot of these attorney-client communications.

B. Cole County

I visited Jefferson City on September 29, 2017, to observe the proceedings that morning. I also spoke to the presiding judge after the morning session. The judge, who had been on the bench for over twenty years, stated he had noted a significant difference in his court in the last 2 or 3 years with respect to the availability of public defenders. He said public defenders used to appear at initial appearances but no longer do so unless they are already representing a defendant on another matter. He also indicated that Cole County created a pretrial release program because of the significant lag time between initial appearance and the appointment of a public defender.

I also spoke with the judge's bailiff who stated they have video arraignments for those in custody. The public defenders do not appear with such defendants so the cases are set over for a week for appointment of counsel. The bailiff said it was usually two or three weeks before a public defender was actually appointed for those in custody.

As in Boone County, those who had posted bond and were appearing for their initial appearance were told to apply for a public defender and given a date of November 3 to report back. Both the bailiff and the prosecutor, Tristin Estep, indicated that the public defenders do not appear at initial appearance with defendants who have posted bond. They stated it usually takes 30 to 60 days before a public defender is appointed because the office is so "backed up."

During my visit, one defendant complained he had applied for a public defender while in jail but had heard nothing. The judge advised him to go back to the public defender's office. In addition, as in Boone County, after the prosecutor waived jail time, many misdemeanor defendants plead guilty in exchange for a sentence of time served or a fine.

C. Audrain County

Audrain County Courthouse is located in Mexico, a small city of about 12,000 people about forty-four miles from Columbia. I observed court there on the morning of September 12, 2017. Unlike in Boone or Cole County, indigent defendants do sometimes appear at initial appearances with public defenders if they have completed an application and been found indigent. A paralegal from the public defender office was in court during my visit and assisted the public defender in interviewing defendants in custody in the jury box. As in Boone County, these attorney-client communications were not confidential in that other defendants were seated nearby. The public defender and paralegal also interviewed defendants who walked in and requested counsel. Again, those conversations were conducted amid other people in the audience. Nonetheless, unlike Boone County, I witnessed public defenders in some cases make bail arguments at initial appearances.

Assistant Prosecutor Scott Fox confirmed that public defenders frequently argued for lower bail or a recognizance bond at initial appearances except on those cases where he would object because the victim in the case had not been given appropriate notice. As in Boone and Cole County, several defendants who walked in after posting bond were referred to the public defender office and given a new status date over a month away. One defendant informed the judge that he had been to the public defender and was advised he did not qualify because of his disability income. When the defendant told the court he had no money to have counsel, his case was set for an indigency hearing.

D. Morgan County

On October 3, 2017, I went to Versailles to observe the Morgan County Court. However, there were not any arraignments that day nor were any scheduled that week. I spoke with the court clerk Pat Wasdyke, who said they usually set all of the public defender cases on Wednesdays. After a defendant is arrested, the defendant is given a public defender application. If the defendant qualifies, then a public defender will appear with the defendant at the initial appearance.

Wasdyke noted that if the defendant posts high bond, then that defendant will likely lose his or her public defender. If a person bonds out and walks in for an initial appearance, that defendant is given a public defender application, asked to fill it out, and then her office faxes the completed application to the public defender office. The defendant is then given a court date several weeks away for a status conference.

E. Recent Contacts with Missouri public defenders

As already noted, I met with the MSPD district defenders and office supervisors in September 2016 at a training focused on the ethical challenges public defenders supervisors face when they and their lawyers struggle with excessive caseloads. The supervising public defenders to a person complained that the lawyers they were supervising did not have enough time to perform consistent with what is required by the MSPD Guidelines for Representation and thereby provide competent representation to all or even most of their clients. The supervisors were especially worried for the younger, inexperienced lawyers in their office who were ill equipped to deal with the crush of cases they were being asked to handle.

I also conducted phone interviews within the past month with Josh Peter, Matt Gass, and Patrick Kutz, three lawyers who left the public defender office within the past year. Both Gass and Peter also submitted affidavits on file in this case. I spoke to all three of them about their experiences with the MSPD, their observation about their fellow public defenders, and the extent to which their high caseloads affected their ability to effectively represent their clients.

While in the past, I have talked with many public defenders about their work and I would have liked to speak to current PDs, I was unable to do so given the pending litigation.

VI. Conclusions

Based on conversations at the District Defenders workshop in September 2016, the affidavits and reports on file in this case, my observation during my court visits, frequent conversations with Missouri public defenders over the years including Kutz, Peter and Gass, and

my own professional experiences, I conclude that: Missouri public defenders are handling too many cases leaving defenders insufficient time or the resources to do all of the tasks needed to adequately defend their clients. The reoccurring problems caused by excessive caseloads are as follows:

A. Lack of Representation at Initial Appearances and Failure to Conduct Prompt Interviews of Detained & Released Clients

Although the MSPD Guidelines and the ABA Standards discuss the role of the defender at the initial appearance in felony cases, it appears that many Missouri defendants are unrepresented at this critical stage of a criminal case. Not only are defenders not available to argue for a client's release on a personal recognizance bond, but there often is a serious delay before public defenders ever meet their clients. This leads to unnecessary jail time for clients who might have been released if the court were presented with information justifying a personal recognizance bond or at least a lower bond. In Lafayette County, Matt Gass stated that his excessive caseload backed up the system to the point that the local jail in Lexington was filled and some of his clients had to be shipped to Saline and Johnson County. That only exacerbated Gass's time problems because he was the only attorney in Lafayette County and then had to travel over an hour to these adjoining counties to visit his clients.

In many counties in Missouri, public defender caseloads prevent those public defenders from seeing defendants within ten days of their initial appearance. Rather, as the affidavits, my court visits and my conversations with Peter, Kutz and Gass reflect, there is often a significant lag time between arrest and when counsel is able to schedule and advocate for a defendant's release on bail. As a result of this delay, defendants and their families may suffer severe consequences—loss of job, loss of transportation, eviction. This is especially troubling for those who have been wrongfully arrested—on a stale or recalled warrant for example.

In addition, the long lag time between a defendant's initial appearance and the appointment of counsel, coupled with a failure to conduct prompt interviews of defendants in custody, contributes to cases of unnecessary incarceration for Missouri citizens arrested or being held wrongfully. Stories in the Saint Louis Post-Dispatch, *see, e.g.*, Robert Patrick & Jennifer S. Mann, *Jailed by Mistake*, St Louis Post-Dispatch (Oct. 26, 2013) (*see* Appendix J), have documented many such cases and Patrick Kutz confirmed this problem. The TSG 2009 Report also discussed this problem.

The failure to do timely first interviews also means that investigations are often delayed weeks and or even months before being initiated. Such a delay often can negatively affect the attorney- client relationship. Both clients in custody, as well those who have been released on bond may be adversely affected if counsel waits weeks to start any investigation. Indeed, a

delayed investigation ultimately may compromise counsel's ability to successfully defend the case. The award winning documentary "Murder on a Sunday Morning" recounts the true story of two Jacksonville, Florida public defenders successfully winning an acquittal of a 15-year-old defendant charged with murder. One of the key factors for the defense was that a defense investigator was able to take photos of the young defendant's facial bruising right after the initial appearance, which corroborated the defendant's claim that his confession was beaten out of him. It is highly unlikely those photos would ever have been taken by a Missouri public defender.

Peter, Gass, Kutz and other Missouri public defenders spoke to the common experience of those lawyers who have to cope with excessive caseloads: the need to deal with the press of the cases on the docket that day so that the needs of other clients, especially the newest clients are put off. Inevitably, that means that investigations are virtually always launched after a significant delay. In turn, that means witnesses never located, critical surveillance tapes taped over, and important evidence never discovered.

B. Sufficiency of Time to Communicate with and Counsel Clients

Central to meantingful representation in criminal case is establishing a good attorney-client relationship built on trust. It is difficult to build that trust when the client is already frustrated waiting weeks before first seeing his or her public defender. A thorough initial interview is critical to launching a timely, effective case investigation but such thorough interviews cannot be done if counsel has too many cases and feels pressured to do a rushed interview. Moreover, even if one starts out with a good relationship, that trust will be quickly eroded if the defender is tied up in so many cases he or she cannot continue to keep the client informed of case developments. The TSG reports mirror what is reported in the affidavits and in my conversations with public defenders. Excessive caseloads severely limit time needed to build and maintain good lines of communication with so many clients.

A public defender intern laughed in my law school criminal litigation skills course when I demonstrated how to conduct a meaningful initial interview. He said he had seen many of the public defenders in the Columbia trial office interview clients and none had spent more than a fraction of the time I spent or covered the areas covered in my interview. Again, the TSG reports and my conversations with public defenders reveal that Missouri public defenders often put client communication on the back burner as they struggle to deal with day-to-day problems. Many Missouri public defenders reported an inability to follow through on office policies requiring seeing clients at least once every 30 to 60 days depending on whether the client was in custody or not. Moreover, when defenders finally see their clients after long periods of no contact, they often face angry clients who have little confidence in their defenders and do not trust the recommendations they make.

Communication issues are compounded by the high turnover in the public defender office and by the fact that the public defender conflict procedures, at least up until July 1, 2017, require travel to adjoining counties. Clients get frustrated telling their stories to a second and sometimes third public defender. That leads to more requests for continuances, as the new lawyer needs time to catch up on that case while trying to do so in a host of other cases as well. This shuffling of cases often further delays case investigation and complicates client communication, but also it increases the pressure on defendants to simply plead guilty to get the case over. Thus, poor client communication can interfere with a client's right to effective assistance of counsel in many ways. Defendants may not learn of plea offers in a timely manner. *See Missouri v. Frye*, 566 U.S. 134, 145-46 (2012). Rushed discussion of plea deals often will not include any discussion of the collateral consequences of the pleading guilty. Perhaps most importantly, poor communication and limited contact can cause innocent defendants to accept guilty pleas because they have no confidence in their lawyer's ability or will to defend them. It also can affect a client's sense that he or she was fairly treated by the system.

C. Justice Delayed Can Be Justice Denied

In its 2009 Report, TSG noted that defendants were filing pro se motions in order to ensure that their speedy trial rights were not jeopardized by the problems with public defender representation. TSG noted that in *State ex rel. McKee v. Riley*, a defendant charged with several counts of tampering with motor vehicles was detained for approximately a year and a half, with his case continued five times. 240 S.W.3d 720, 730 (Mo. 2007). Though he was represented by the public defender, he repeatedly filed speedy trial motions, pro se, as his case was continued time after time. The Supreme Court directed the trial court to immediately convene a hearing to determine whether the defendant's speedy trial rights had been violated, observing that:

> In considering how to weigh any delay caused by crowded dockets, this Court and Respondents must take into consideration that the delay in this case is not unique. Numerous other petitions for writs have been filed in this Court by persons incarcerated while awaiting disposition of their charges in this and on some occasions in other jurisdictions, similarly alleging lengthy delays. The right to a speedy trial is an important right that the courts of this state are duty-bound to honor, even in the face of heavy trial dockets and competing demands for trial. Protracted and unreasonable delays in criminal cases due to crowded dockets cannot become routine. Neither is it acceptable for the prosecuting attorney and defense counsel to accept or request such routine continuances without objection. The defendant's right to a speedy trial and the public's interest in timely resolution of criminal cases demands that this and other similar cases receive more expeditious treatment, even in the face of competing demands on counsels' and the court's time.

> This Court does not mean to suggest that any party to this proceeding has intended to violate any defendant's speedy trial rights, but—unreasonable delay in run-of-the-mill criminal cases cannot be justified by simply asserting that the public resources provided by the State's criminal-justice system are limited and that each case must await its turn.‖ [The defendant] is entitled to a prompt hearing on his claim that his constitutional rights have been violated and, if they have not yet been, then he is entitled to a prompt trial on the merits of these charges.
>
> *Id.* at 731-32 (citations omitted).

The affidavits, depositions, and other exhibits on file in this case show that excessive caseloads and high turnover continue to plague the MSPD and the criminal justice system. As Patrick Kutz and Matt Gass described to me in our phone interviews, the number of cases to be handled required constant triaging. Trying to pull everything together for a trial in one case meant putting virtually every other case on hold. Admittedly, that tension exists to some degree in every public defender office in the country. However, the problem is exacerbated in a program like the MSPD where excessive caseloads compromise the ability of defenders to provide many of their clients with constitutionally adequate representation. Indeed, the sheer volume of cases inevitably leads to long delays before one's public defender finally has the time to fully review one's case.

In addition to compromising the defendant's right to a speedy, fair trial, such delays increase the risk of wrongful convictions as evidence disappears, memories fade, and witnesses move never to be found. Moreover, these delays coupled with poor communication pressure frustrated defendants to accept plea deals just to get the case finished. The collateral consequences to defendant's families—and those of victims—while cases drag on are also significant.

D. Completion of Necessary Investigation and Discovery Practice

The TSG reports, public defender affidavits, and my recent conversations with former public defenders also reveal that excessive caseloads and limited investigative staff adversely affect their ability to adequately investigate most of their cases. Again, defenders are forced to pick only a few cases upon which to focus their investigative resources. That means that misdemeanors, except in truly unusual circumstances, simply are not investigated. In fact, most investigation is done only in serious felonies, particularly aggravated sex offenses, which take a substantial amount of time. Lesser felonies, like misdemeanors, are put at the bottom of the list and rarely investigated. Moreover, since lawyers and investigators are both pressed for time, even those cases that are investigated may suffer because investigators may rely on phone

interviews instead of interviewing witnesses in person. In addition, given the sheer volume of cases investigators are asked to handle, rarely can investigators devote the time needed to conduct a thorough investigation, particularly in terms of locating essential witnesses, which can be very time-consuming. Nor do defenders in most cases have time to visit the crime scene.

The volume of cases public defenders are handling means that much investigation is not done until shortly before trial. That increases the chances that witnesses are not located or evidence overlooked. The TSG reports also describe a willingness to shut down all investigation once a client signals a willingness to plead guilty. Given the crushing caseloads defenders are coping with, this form of triage is understandable. Yet it runs contrary to what is demanded of conscientious defense counsel under the ABA standards. Indeed, the evidence on file in this case reflects what I heard at the district defenders workshop last August and was confirmed by Josh Peter. That is, with such excessive caseloads, defenders were all too willing to plead their clients guilty even before they had collected and read discovery in a case or had done any investigation or legal research.

Excessive caseloads also limit the extent to which most public defenders engage in litigating discovery issues. Discovery is often limited to a one-time, formal boilerplate request, rather than more extensive motions practice (e.g., motions to compel) and hearings on questions of discovery. Kutz noted that it often took weeks or even months to get discovery from prosecutors in St Louis City. Their office policy, unlike many other offices, was not to enter into a plea bargain until reviewing discovery. However, since there was a long lag time in getting discovery, in part due to dealing with so many other cases, incarcerated clients sometimes waited a considerable amount of time before a plea bargain could be finalized even when the result was a sentence of probation.

E. Completion of Legal Research

Aggressive motion practice is hallmark of good defense lawyering in a criminal case. Sometimes good motions can lead to a case being dismissed. Good motion practice can also increase pressure on prosecutors to offer more favorable peal bargains. Yet effective motion practice demands time to do legal research and craft effective arguments.

Caseload pressures, and the corresponding time crunch Missouri public defenders routinely struggle with, however, severely limit time for legal research. In turn, that means public defenders generally have little time to draft and litigate suppression motions or file other motions. As Matt Gass explained, when he went to a public defender training he learned all of the things he should be doing to competently defend his clients including filing various motions. But the daily press of business, especially appearing in court, traveling to court and to jail, and negotiating with prosecutors left little time for investigation, legal research, or motion practice.

Gass also mentioned that one of the judges and some of the prosecutors he dealt with made it clear that setting a case for trial and filing motions would result in plea offers being withdrawn. So without time to research the viability of potential issues, he tended after consulting with clients not to file motions because his clients were not willing to take the risk. Excessive caseloads often cause this kind of shortcutting. Excessive caseloads, therefore, negatively affect counsel's leverage to negotiate favorable plea bargains for his or her clients.

F. Pre-hearing/Pre-trial Preparation

The reports and affidavits on file in this case indicate that the deficiencies of Missouri public defenders mirror what happens in other jurisdictions with public defenders struggling with excessive caseloads.

Public defenders with too many cases headed for trial at roughly the same time must do the best they can by spreading their limited time around. Therefore, some cases get modestly more attention and others not much at all. Thus, as Kutz noted, he might do depositions in a case that was headed for trial, but in many others, he simply did not have the time to do any depositions.

As TSG noted in its 2009 Report, "[t]rial preparation, moreover, is inextricably intertwined with investigation and legal research, two areas where attorneys report they are consistently failing." 2009 Report at 26. TSG's 2009 Report noted that overworked public defenders failed to file necessary documents like alibi notices As any experienced lawyer knows, gathering information and proper preparation are critical parts of performing well at trial such as conducting an effective cross examination. Especially for inexperienced lawyers, lack of supervision and of the time to conduct research before trial can doom one's client. Failing to raise a viable motion may be the difference between getting a case dismissed and a client being convicted and receiving a lengthy prison sentence for a client.

G. Pre-Sentence Preparation

From my own experience as a public defender and office supervisor, I know the value in many cases of working with the client before negotiating a plea or arguing at a sentencing hearing. Indeed, I am aware of many cases in which presenting a good mitigation package to the prosecutor and/or the court made the difference between probation and a long term in prison for a client. Given the inadequate contact most Missouri defenders have with their clients, however, it is difficult for defenders to conduct a thorough sentencing investigation and put together a sentencing memorandum tailored to the background and personal characteristics of the client. Thus, even though the vast majority of clients ultimately plead guilty, excessive caseloads leave little time for developing creative sentencing alternatives or being prepared to make effective

sentencing presentations in cases calling for such a presentation. In addition, Missouri defenders have limited access to social workers or resources that might aid defenders in this aspect of their representation.

H. Lack of Essential Supervision

The evidence in this case confirms what I learned at the District Defender workshop last September. Even though supervisors were given reduced caseloads in order to spend time managing the office, training the inexperienced lawyers, offering advice on cases and overseeing the work of lawyers and investigators, the volume and complexity of cases they handle leave insufficient time to supervise. The problem is compounded because of the frequent turnover and relative inexperience of the new lawyers who come into the office. As Josh Peter, among others, noted, the supervisor ends up taking the most serious and time-consuming cases in the office. Turnover also means more time that the supervisor must spend dealing with client complaints and shuffling cases among remaining staff while vacancies are filled. When a vacancy is finally filled, the supervisor often needs to devote even more time to that lawyer while other lawyers with only slightly more experience are left largely unsupervised. Both Josh Peter from Jackson County and Patrick Kutz in St Louis City spoke of the lack of supervision and the large number of inexperienced lawyers in their respective offices. As a result, inexperienced lawyers were too quickly assigned to handle serious felony cases that were over their heads and had to do so without much guidance at all from their supervisors, who were themselves struggling with their own caseloads. TSG's 2009 Report observed that "[s]upervisees conveyed a sense of near-panic at the lack of supervision provided in the face of overwhelming caseloads." 2009 Report at 30. Over the years, and well before being retained as an expert in this case, I have talked with many current and former MSPD attorneys who found themselves handling serious felonies less than a year after graduating from law school, and who often felt overwhelmed and under supervised during their time at the MSPD. Certainly, the district defenders at the September 2016 workshop lamented the lack of time they had to do the kind of supervision that they felt was needed.

Based on my observations, conversations, professional experience, and the reports and evidence on file in this case, it is my professional opinion that the MSPD fails consistently to provide the effective assistance of counsel to which all of their clients are constitutionally entitled. These failures stem from the MSPD's systemic deficiencies, which in turn result in Missouri public defenders having insufficient time, too many cases, too few resources, too much travel, and too little supervision to comply with their own Guidelines, the ABA Standards, ethical norms, or the Missouri and U.S. Constitutions. These systemic failures are not the product of the MSPD's operational inefficiencies. Rather, as TSG's reports and the RubinBrown study clearly demonstrate, the MSPD has been severely underfunded for years. Simply put, the MSPD lacks the funding to hire the number of lawyers needed to handle the number of defendants the MSPD is being asked to represent.

As Matt Gass, a manpower officer in the Air Force before becoming a public defender explained in our conversation, he was very familiar from his work in the Air Force of how to budget his time as efficiently as possible to cope with a heavy workload. There comes a point, however, when the amount of work simply is too much for a person or a unit to shoulder. He and one other lawyer handled about 90% of almost 1,300 felony cases a year in Pettis County. He closed about 800 felony cases in a little over two years, an extraordinary number. He stated he was overwhelmed from the start and could do little preparation in any case because he was focused on moving cases and trying to stay up with communicating with over a hundred clients. As he said, recognizing he could not keep up, he went up the chain of command as he was trained to do in the military, and ultimately raised his concerns with Michael Barrett. He told Barrett that, with the number of cases he was juggling, he was struggling to perform consistent with his ethical obligations.

When he moved to Lafayette County, his caseload for a short time was manageable. He was soon overwhelmed and things went from bad to worse when a 90-day hiring freeze went into effect and he was alone in Lafayette County. Again, he spoke to Barrett and told him either he had to fill the vacancy or he would have to stop taking cases. Gass finally quit because he knew he could not do his job properly and he saw no relief in sight.

The ethical and moral dilemma that Gass faced, and his fellow public defenders continue to face, is real. With excessive caseloads, defenders must stretch themselves to the breaking point trying to serve too many clients. They can only provide competent representation to some of their existing clients by neglecting other clients which generally means their newest clients. This puts them in violation of Missouri Rule of Professional Conduct 4-1.7 because they have an actual conflict of interest. Without the option of refusing new clients, the only options are to quit or to struggle on in Sisyphean fashion, hoping that what happened to Karl Hinkebein does not happen to them. Not surprisingly, more public defenders are leaving because, as Barrett observed, they're "not [] able to do what they need to do for their clients." Barrett Deposition Testimony at 167:14 (*see* Appendix G).

For public defender clients, the choices are very stark. Fire your public defender and hope you, your family or friends can scrape up enough money to hire a private lawyer to negotiate a plea. Or plead guilty, even if innocent, to whatever deal your beleaguered public defender can negotiate. Alternatively, you can languish in jail for months or even a year or more until your trial is finally held, taking your chances with your lawyer despite knowing he or she is likely unprepared and your case not adequately investigated.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Date: October 16, 2017

RODNEY J. UPHOFF

Exhibit P

UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF MISSOURI CENTRAL DIVISION

SHONDEL CHURCH, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Case No. 17-04057-CV-C-NKL
	)	
STATE OF MISSOURI, et al.,	)	
	)	
Defendants.	)	

EXPERT REPORT OF STEPHEN GILLERS

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I. ASSIGNMENT AND FINDINGS

I have been asked to opine about the background ethical rules governing the provision of legal services to indigent defendants, in criminal cases, in the State of Missouri.

II. QUALIFICATIONS AND BACKGROUND

I am a professor at the New York University School of Law and have spent 39 years teaching, speaking, and writing about the ethical obligations of lawyers. My curriculum vitae is available at http://its.law.nyu.edu/facultyprofiles/index.cfm?fuseaction=profile.full_cv&personid=19943. A list of my publications is available at http://its.law.nyu.edu/facultyprofiles/index.cfm?fuseaction=profile.publications&personid=19943.

III. COMPENSATION

I am not being compensated for the time I spent working on this case, but will be reimbursed for travel expenses.

IV. RECENT TESTIFYING EXPERIENCE

I have testified as an expert at trial or deposition in one case in the last four years. That case was before JAMS (an arbitration) and is entitled *Ruby v. Allen Matkins.* I was retained in 2014 and testified at a deposition. The lawyer and firm retaining me on behalf of Mr. Ruby was Dale Kinsella of Kinsella Weitzman in Santa Monica, CA.

I am scheduled to testify in a case in federal court in the Eastern District of New York in October or November of 2017. I have not been deposed in that case.

V. DOCUMENTS CONSIDERED

In preparing this report, I consulted the ABA Model Rules of Professional Conduct and the Missouri Rules of Professional Conduct. In addition to the document considered, I rely on my experience in the field of legal ethics as described on my resume.

VI. CORE ETHICAL DUTIES

There are certain core ethical duties that all lawyers, including public defenders, owe to their clients.

A. The Duty to Provide Competent Representation

A lawyer is ethically obligated to render competent representation. Competence requires that a lawyer who is representing a client in a matter before a tribunal to (a) know or have the time and ability to discover the governing substantive, procedural, and evidentiary laws associated with the matter; (b) investigate the facts of the matter and have the time and resources to do so; and (c) exercise a level of care, skill and judgment in making decisions in the matter based on the law and the facts that the lawyer has identified. Competence requirements are further described *infra*.

B. The Duty to Communicate with the Client

A lawyer is ethically obligated to assist a client in making informed decisions that the client is entitled to make about the matter, to promptly respond to a client's reasonable requests for information about the matter, and to keep the client reasonably informed about the matter's status even without being asked. These ethical duties take time and a lawyer must have the time needed to fulfill them.

C. The Duty to Act Punctually and Diligently

A lawyer is obligated to act with reasonable promptness in seeking to achieve the client's objectives. Lack of diligence and failure to communicate are among the most frequent reasons

for client complaints to disciplinary agencies. Furthermore, lack of diligence can lead to a loss of rights.

D. The Duty of Loyalty

A lawyer is obligated (a) to avoid conflicts of interests whereby the interests of other clients or the lawyer's own interests present a significant risk that the lawyer's representation of a client will be materially limited; and (b) to obtain informed client consent confirmed in writing when such conflicts emerge. A lawyer must have the knowledge needed to discover the existence of such conflicts, including conflicts that the governing rule imputes to the lawyer because of the conflicts of other lawyers with whom the first lawyer is associated.

VII. FURTHER DESCRIPTIONS OF THE DUTY OF COMPETENCE

In a criminal case, competent representation requires time—often much time—for the defense lawyer to be able to gather information, where indicated, concerning (a) the client generally; (b) the client's response to the charging instrument; (c) the client's response to information from others who will testify or whom the lawyer has interviewed; and (d) the client's investigative recommendations, including the identity of possible witnesses whom the defense lawyer should interview. The lawyer will often have to return for subsequent client interviews as new information emerges.

Time, skill, and funds must exist for the defense lawyer to identify and confer with consulting or testifying experts and to learn their specialized knowledge sufficient both to conduct a direct examination and to cross-examine any expert called by the prosecutor.

Time and skill are also required for the defense lawyer to discover the prosecutor's proof, either through formal discovery, or informal investigation, and to formulate responses to that

proof, including discovery of information that may help impeach the prosecutor's anticipated witnesses.

Beyond time to discover and investigate facts, the defense lawyer must have the time to research the current state of the substantive (including Constitutional), procedural, and evidentiary law as these bear on the issues in the case, and to research and draft discovery, procedural, substantive, and *in limine* motions as appropriate.

Overall, the lawyer for a criminal accused must have the time and skill needed to learn and deploy the legal and factual information relevant to issues that arise at every formal stage of the prosecution, including any lineup, the filing of the charge, bail determination, pretrial motions including to suppress evidence, plea bargaining (and collateral consequences of a pleas), *in limine* evidentiary motions, trial and post-trial motions, and sentencing (in the event of conviction). In addition to time, the defense lawyer must have the funds needed to perform tasks such as travel to interview witnesses, including alibi witnesses, witnesses who can impeach the credibility or contradict the testimony of the state's witnesses, and eyewitnesses.

The primary policies behind the duties identified are (a) to ensure that the lawyer knows and can present to the trier of fact admissible information beneficial to the client; (b) to ensure that the client enjoys all the rights and protections to which he or she is entitled under the law; and (c) to respect the autonomy of the client including the client's interest in participating in decisions about his or her matter.

VIII. APPLICATION OF ETHICAL DUTIES TO VARIOUS SITUATIONS

The basic duties described here can be applied to various situations that may confront a defense lawyer in a criminal case. Appropriate conduct at any decision point must, of course, be analyzed in light of the particular circumstances then existing. But some general conclusions are

possible. I have been asked to assume and respond to each of the following circumstances, in order to help explain the general principles described in this report.

A. Situation 1

A public defender fails to interview a client before a bond hearing and has very little knowledge of the client's case.

The bond hearing will determine the conditions of pretrial release and is a critical stage of the proceeding. A free defendant will be better able to assist in preparing his defense, including psychologically. Separately, the client has an interest in freedom as an end in itself, and the lawyer's job is to help him achieve it. The failure here violates the duty of competence.

B. Situation 2

A public defender is so busy that he fails to attend a post-arraignment line-up.

Competence requires attendance at a line-up to ensure that it is conducted in accord with due process requirements and therefore more likely to yield accurate results. Presence at the line-up may also aid the lawyer in identifying information that may impeach an in-court identification.

C. Situation 3

A client tells the public defender about a witness who might be able to provide an alibi, but the public defender and his investigators are too busy to interview the witness.

Being "too busy" to interview an alibi witness and so failing to do so is inconsistent with the duty of competence. This is not to say that every witness identified by a client should be interviewed. But a credible alibi can establish reasonable doubt. If a lawyer is too busy to interview an alibi witness, she should not have accepted the case.

D. Situation 4

A public defender knows that an expert witness could expose serious weaknesses in the prosecution's forensic evidence, but he lacks the resources and time to engage an expert.

Competence requires application to the court for funds to engage the expert. Denial of these funds to an indigent accused – whether denied by the court or because the legislature has not made them available – may be a due process violation. The lawyer must preserve the point for appellate review. To do that, she must request the funds and support her request with legal and factual arguments.

E. Situation 5

A client is in jail pending trial. His overworked public defender, attempting to "triage" his caseload, asks for multiple trial continuances that stretch on for many months.

Depending on the amount of time the lawyer is unable to attend to the case because of her caseload, the failure can jeopardize the client's ability to defend himself (*e.g.*, witnesses disappear or forget). Further, pre-trial incarceration is a harm in itself if the client is acquitted or convicted of a crime carrying (or that results in) a sentence lower than the time spent awaiting trial. While a lawyer must balance her time, at some point ignoring a matter can amount to a violation of the diligence required by Rule 1.3.

F. Situation 6

In a possession-with-intent-to-distribute case, a police officer searched the client without getting a warrant, and the public defender doubts whether the search was lawful. Nevertheless, because of a lack of time, he does not file a motion to suppress the fruits of the search.

Lack of time is no justification for failing to protect (in effect, possibly waiving) the client's Fourth Amendment rights. This failure is inconsistent with the duty of competence. A

lawyer who fails to make appropriate pretrial motions because of lack of time should not have accepted the matter.

G. Situation 7

A witness who would provide valuable testimony lives beyond the subpoena power of the court, and it appears that he would probably not have the financial means to travel and testify for a trial. The public defender is too busy to depose the witness.

Being "too busy" does not justify a failure to interview and depose a "witness who would provide valuable testimony" but is outside the subpoena power of the court. The failure is inconsistent with the duty of competence. If a lawyer is "too busy" to perform this task, she should not have accepted the matter.

H. Situation 8

In a possession-with-intent-to-distribute case, the public defender files a motion to suppress the evidence. To save time, the public defender uses a "boilerplate" motion template without performing any legal research.

Whether or not this is inconsistent with the duty of competence is highly fact dependent but almost always (if not always), it will be inconsistent with the duty of competence because suppression decisions turn on the facts in the actual matter. Competence will require a lawyer to argue those facts against the backdrop of Fourth Amendment standards. Citing generic rules from a template (which by definition is not based in the facts of the matter) can result in a loss of the claim.

I. Situation 9

A client is in pre-trial detention and has not heard from his lawyer in months. When he calls his lawyer, he is told that his lawyer is too busy to talk with him.

This conduct will ordinarily violate Rule 1.4, the duty to communicate with a client. While lawyers must budget their time, being "too busy" is not a justification for prolonged failure to communicate. As discussed previously, the lawyer who is too busy to communicate should not have accepted the case.

J. Situation 10

With a felony trial set to begin in just a few days, the public defender has done hardly anything to prepare for trial.

Almost certainly, having done "hardly anything" before a felony trial would be inconsistent with the duty of competence. Absent extreme facts, which I find it hard to imagine, doing nothing will always be inconsistent with the duty of competence.

K. Situation 11

After trial, a client is convicted. Due to a lack of time, the public defender fails to prepare for the sentencing hearing.

For defendants, the sentencing hearing, whether after trial or a plea, is a critical event in those cases where the court has a range of sentencing options. Factual investigation to prepare for the hearing, and to identify witnesses to call as appropriate, is essential for competent representation. Research may also be needed to identify the legally correct sentencing options.

L. Situation 12

A public defender, whose client is about to plead guilty to a felony, fails to warn the client about the immigration-related consequences of the guilty plea.

This is inconsistent with the duty of competence. A guilty plea may not only subject the defendant to incarceration but also to collateral consequences, including deportation. Even if failure to inform a client of a particular consequence is not the ineffective assistance of counsel

as a matter of law, where the consequences are significant, where a reasonable person contemplating a guilty plea would be expected to weigh them in making the decision, competence requires disclosure and consultation.

IX. OATH

I, Stephen Gillers, declare under penalty of perjury under the laws of the United States that the foregoing report is true and correct.

Dated: October 16, 2017

By: _____
Stephen Gillers

Exhibit Q

Judge Robert S. Lasnik

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

----------x

JOSEPH JEROME WILBUR, *et al.*,

Plaintiffs

v.

CITY OF MOUNT VERNON, *et al.*,

Defendants.

----------x

No. C11-1100RSL

STATEMENT OF INTEREST OF THE UNITED STATES

U.S. Department of Justice
Civil Rights Division, Special Litigation Section
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STATEMENT OF INTEREST OF THE UNITED STATES

The United States files this Statement of Interest to assist the Court in answering the question of what remedies are appropriate and within the Court's powers should it find that the Cities of Mount Vernon and Burlington violate misdemeanor defendants' right to counsel. The United States did not participate in the trial in this case and takes no position on whether Plaintiffs should prevail on the merits. The United States files this SOI to provide expertise and a perspective that it may uniquely possess. If the Plaintiffs prevail, it is the position of the United States that the Court has discretion to enter injunctive relief aimed at the specific factors that have caused public defender services to fall short of Sixth Amendment guarantees, including the appointment of an independent monitor to assist the Court. The United States has found monitoring arrangements to be critically important in enforcing complex remedies to address systemic constitutional harms.

In discussing the remedies available to the Court in this Statement, the United States will address questions (1) and (3) of the Court's Order for Further Briefing, with particular focus on the role of an independent monitor. (Dkt. # 319.) To answer the Court's first question, the United States is unaware of any federal court appointing a monitor to oversee reforms of a public defense agency, but the Ninth Circuit has recognized a federal court's authority in this area under 42 U.S.C. § 1983. *Miranda v. Clark County, NV*, 319 F.3d 465 (9th Cir. 2003). The United States is aware of one case in which a federal court, through a Consent Order instituting reforms of a County public defender agency, received reports from the county regarding the progress of those reforms. *Stinson v. Fulton Cnty. Bd. of Comm'rs*, No. 1:94-CV-240-GET (N.D. Ga. May 21, 1999). However, the Court did not have the benefit of an independent monitor to assist it in assessing the implementation of the reforms.

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Also, an independent monitor is currently monitoring systemic reform of a juvenile public defender system through an agreement between the United States and the Shelby County (TN) Juvenile Court ("Shelby County").

Finally, it is worth noting that but for removal to federal court by the Cities here, this matter would have proceeded in state court, and state court litigation over the crisis in indigent defense is not at all unusual. Those cases bear out the practicality—and, at times, the necessity—of court oversight in this area.

In answer to the Court's third question, a number of states have imposed "hard" caseload standards,[1] but the United States believes that, should any remedies be warranted, defense counsel's *workload* should be controlled to ensure quality representation. "Workload," as defined by the *ABA Ten Principles of a Public Defense Delivery System,* takes into account not only a defender's numerical caseload, but also factors like the complexity of defenders' cases, their skills and experience, and the resources available to them. Workload controls may require flexibility to accommodate local conditions. Due to this complexity, an independent monitor would provide the Court with indispensible support in ensuring that the remedial purpose of workload controls is achieved.

The Washington State Bar's Standards for Indigent Defense, incorporated by its Supreme Court in its criminal rules, considers the importance of workloads in evaluating the efficacy of defender services. Washington's move to implement workload controls is a welcome recognition of its obligation under *Gideon*. The United States recognizes that these standards are the result of work commenced at least since 2003 by the Washington State Bar Association's Blue Ribbon Commission on Criminal Defense and supported by the State Legislature, the

[1] For example, Arizona, Georgia, and New Hampshire have specific caseload limitations. A number of states have "soft" caseload caps by using a weighted system. See attached Exhibit 1 for a description of select jurisdictions.

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Washington Defender Association, and the Washington Association of Prosecuting Attorneys, among others. These workload controls are scheduled to go into effect October 2013.[2]

INTEREST OF THE UNITED STATES

The United States has authority to file this Statement of Interest pursuant to 28 U.S.C. § 517, which permits the Attorney General to attend to the interests of the United States in any case pending in federal court. The United States has an interest in ensuring that all jurisdictions—federal, state, and local—are fulfilling their obligation under the Constitution to provide effective assistance of counsel to individuals facing criminal charges who cannot afford an attorney, as required by *Gideon v. Wainwright*, 372 U.S. 335 (1963). The United States can enforce the right to counsel in juvenile delinquency proceedings pursuant the Violent Crime Control and Law Enforcement Act of 1994, 42 U.S.C. § 14141 (Section 14141). As noted above, the United States is currently enforcing Section 14141's juvenile justice provision through a comprehensive out-of-court settlement with Shelby County.[3] An essential piece of the agreement, which is subject to independent monitoring, is the establishment of a juvenile public defender system with "reasonable workloads" and "sufficient resources to provide independent, ethical, and zealous representation to Children in delinquency matters." *Id.* at 14-15.

As the Attorney General recently proclaimed, "It's time to reclaim Gideon's petition – and resolve to confront the obstacles facing indigent defense providers."[4] In March 2010, the Attorney General launched the Access to Justice Initiative to address the access-to-justice crisis. Indigent defense reform is a critical piece of the office's work, and the Initiative provides a

[2] The United States does not by this mean to endorse or detract from the efforts of these entities.
[3] Mem. of Agreement Regarding the Juvenile Court of Memphis and Shelby Counties, Tennessee (2012), *available at* http://www.justice.gov/crt/about/spl/findsettle.php.
[4] Attorney General Eric Holder Speaks at the Justice Department's 50th Anniversary Celebration of the U.S. Supreme Court Decision in *Gideon v. Wainwright*, March 15, 2013, *available at* http://www.justice.gov/iso/opa/ag/speeches/2013/ag-speech-1303151.html.

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centralized focus for carrying out the Department's commitment to improving indigent defense.[5] The Department has also sought to address this crisis through a number of grant programs.[6] The most recent is a 2012 $1.2 million grant program, *Answering Gideon's Call: Strengthening Indigent Defense Through Implementing the ABA Ten Principles of a Public Defense Delivery System* administered by the Bureau of Justice Assistance.[7] In light of the United States' interest in ensuring that any constitutional deficiencies the Court may find are adequately remedied, the United States files this Statement of Interest on the availability of injunctive relief.

BACKGROUND

The Plaintiffs' claims of deprivations of the right to counsel, if meritorious, are part of a crisis impacting public defender services nationwide. Fifty years ago, the Supreme Court held that "any person haled into court, who is too poor to hire a lawyer, cannot be assured a fair trial unless counsel is provided for him." *Gideon*, 372 U.S. at 344. And yet, as the Attorney General recently noted, "despite the undeniable progress our nation has witnessed over the last half-century—America's indigent defense systems continue to exist in a state of crisis," and "in some places—do little more than process people in and out of our courts."[8]

Our national difficulty to meet the obligations recognized in *Gideon* is well documented.[9] *See*, *e.g.* ABA Standing Committee on Legal Aid and Indigent Defendants Report, *Gideon's Broken Promise: America's Continuing Quest for Equal Justice*, (December 2004). Despite

[5] The office works with federal agencies, and state, local, and tribal justice system stakeholders to increase access to counsel, highlight best practices, and improve the justice delivery systems that serve people who are unable to afford lawyers. More information is available at http://www.justice.gov/atj/.
[6] *See* Government Accountability Office, *Indigent Defense: DOJ Could Increase Awareness of Eligible Funding* 11-14 (May 2012), *available at* http://www.justice.gov/atj/idp/.
[7] Grants have been awarded to agencies in Texas, Delaware, Massachusetts, and Michigan.
[8] Attorney General Eric Holder Speaks at the American Film Institute's Screening of *Gideon's Army*, June 21, 2013, *available at* http://www.justice.gov/iso/opa/ag/speeches/2013/ag-speech-130621.html.
[9] In March 2013, the Yale Law Journal held a symposium on the challenges of meeting Gideon's promise and published resulting articles in its most recent issue. *See* 122 Yale L.J. __ (June 2013).

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long recognition that "the proper performance of the defense function is . . . as vital to the health of the system as the performance of the prosecuting and adjudicatory functions," Attorney General's Committee on Poverty and the Administration of Federal Criminal Justice, *Final Report* 11 (1963), public defense agencies nationwide remain at a staggering disadvantage when it comes to resources. Steven W. Perry & Duren Banks, U.S. Bureau of Justice Statistics, *Prosecutors in State Courts, 2007 Statistical Table*s 1 (2012) (noting that prosecution offices nationwide receive about 2.5 times the funding that defense offices receive); National Right to Counsel Committee, *Justice Denied: America's Continuing Neglect of Our Constitutional Right to Counsel* 61-64 (2009) (collecting examples of funding disparities).

Due to this lack of resources, states and localities across the country face a crisis in indigent defense. Cara H. Drinan, *The Third Generation of Indigent Defense Litigation*, 33 N.Y.U. Rev. L. & Soc. Change 427 (2009) (describing crises nationwide). In many states, remedying the crisis in indigent defense has required court intervention. *E.g., State v. Citizen*, 898 So.2d 325 (La. 2005); *Hurrell-Harring v. New York*, 930 N.E.2d 217 (N.Y. 2010); *Missouri Public Defender Comm'n v. Waters*, 370 S.W.3d 592 (Mo. 2012). The crisis in indigent defense extends to misdemeanor cases where many waive their right to counsel and end up unnecessarily imprisoned. NACDL, *Minor Crimes, Massive Waste* 21 (2009).[10]

DISCUSSION

It is the position of the United States that it would be lawful and appropriate for the Court to enter injunctive relief if this litigation reveals systemic constitutional deficiencies in the Defendants' provision of public defender services. Indeed, the concept of federal oversight to address the crisis in defender services has gained momentum in recent years. *See, e.g,. Gideon's*

[10] The report is available at http://www.opensocietyfoundations.org/reports/minor-crimes-massivewaste.

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Broken Promise, *supra*, at 41-42 (recommending federal funding); Drinan, *The Third Generation of Indigent Defense Litigation*, *supra* (arguing federal judges are well suited to address systemic Sixth Amendment claims); Note, *Gideon's Promise Unfulfilled: The Need for Litigated Reform of Indigent Defense*, 113 Harv. L. Rev. 2062 (2000) (advocating systemic litigation). (Again, the United States takes no position on the merits of the underlying suit.)

I. The Court Has Broad Authority to Enter Injunctive Relief, Including the Appointment of an Independent Monitor, if It Finds a Deprivation of the Right to Counsel.

If Plaintiffs prevail on the merits of their claims, or as part of a consent decree, this Court has broad authority to order injunctive relief that is adequate to remedy any identified constitutional violations within the Cities' defender systems. *Swann v. Charlotte-Mecklenburg Bd. of Educ.*, 402 U.S. 1, 15 (1971); *see also Thomas v. County of Los Angeles*, 978 F.2d 504, 509 (9th Cir. 1992) (noting that courts have power to issue "broad injunctive relief" where there exist specific findings of a "persistent pattern of [police] misconduct"). When crafting injunctive relief that requires state officials to alter the manner in which they execute their core functions, a court must be mindful of federalism concerns and avoid unnecessarily intrusive remedies. *Labor/Community Strategy Center v. Los Angeles County*, 263 F.3d 1041, 1050 (9th Cir. 2001). Courts have long recognized—across a wide range of institutional settings—that equity often requires the implementation of injunctive relief to correct unconstitutional conduct, even where that relief relates to a state's administrative practices. *See, e.g.*, *Brown v. Plata*, 131 S. Ct. 1910 (2011) (upholding injunctive relief affecting State's administration of prisons); *Brown v. Bd. of Educ.*, 349 U.S. 294 (1955) (upholding injunctive relief affecting State's administration of schools). Indeed, while courts "must be sensitive to the State's interest[s]," courts "nevertheless

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must not shrink from their obligation to 'enforce the constitutional rights of all persons.'" *Plata*, 131 S. Ct. at 1928 (quoting *Cruz v. Beto*, 405 U.S. 319, 321 (1972)).

In crafting injunctive relief, the authority of the Court to appoint a monitor is well established. *Eldridge v. Carpenters 46*, 94 F.3d 1366 (9th Cir. 1996) (holding that district court's failure to appoint a monitor was an abuse of discretion where defendant insisted on retaining a hiring practice already held to be unlawfully discriminatory); *Nat'l Org. for the Reform of Marijuana Laws v. Mullen*, 828 F.2d 536, 543 (9th Cir. 1987); *Madrid v. Gomez*, 889 F. Supp. 1146, 1282 (N.D. Cal. 1995) (holding that the "assistance of a Special Master is clearly appropriate" because "[d]eveloping a comprehensive remedy in this case will be a complex undertaking involving issues of a technical and highly charged nature").

II. Appointment of an Independent Monitor Is Critical to Implementing Complex Remedies to Address Systemic Constitutional Violations.

In the experience of the United States, appointing a monitor can provide substantial assistance to courts and parties and can reduce unnecessary delays and litigation over disputes regarding compliance. This is especially true when institutional reform can be expected to take a number of years. A monitor provides the independence and expertise necessary to conduct the objective, credible analysis upon which a court can rely to determine whether its order is being implemented, and that gives the parties and the community confidence in the reform process. A monitor will also save the Court's time.

In Grant County, Washington, an independent monitor was essential to implementing the court's injunction in a right-to-counsel case. *Best et al. v. Grant County*, No. 04-2-00189-0 (Kittitas Cty. Sup. Ct., filed Dec. 21, 2004). There, the monitor assisted the court and parties for almost six years by conducting site visits, assessing caseloads, and completing quarterly reports on the County's compliance with court orders. We note that the monitor's term in Grant County

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was limited from the outset to a defined period, and the monitor's final report noted work that still remained to be done.[11] In our experience, it is best to continue monitoring arrangements until the affected parties have demonstrated sustained compliance with the court's orders.

In 2009, the United States entered a Memorandum of Agreement with King County, Washington to reform the King County Correctional Facility. *United States v. King County, Washington*, No. 2:09-cv-00059 (W.D. Wash., filed Jan. 15, 2009). That successful reform process was assisted by an independent monitor. Other significant cases involving monitors include: *United States v. City of Pittsburgh*, No. 97-cv-354 (W.D. Pa., filed Feb. 26, 1997) (police; compliance reached in 1999); *United States v. Dallas County*, No. 3:07-cv-1559-N (N.D. Tex., filed Nov. 6, 2007) (jail); *United States v. Delaware*, No. 1-11-cv-591 (D. Del., filed Jun 6, 2011) (mental health system); *United States v. City of Seattle*, No. 12-cv-1282 (W.D. Wash., filed July 27, 2012)(police). In each of these cases, the independent monitor improved efficiency in implementation, decreased collateral litigation, and provided great assistance to the court.[12]

The selection of a monitor need not be a strictly top-down decision by the Court. The parties may agree on who should fill the role of the monitor, but if they cannot, the Court can order them to nominate monitor candidates for the Court's consideration. In addition, it should be noted that the cost of an independent monitor, however it is paid, should not reduce the funds available for indigent defense.

Finally, it should be noted that the appointment of an independent monitor can ensure public confidence in the reform process. With allegiance only to the Court and a duty to report its findings accurately and objectively, the monitor assures the public that the Cities will move

[11] The monitor's final report and two of its quarterly reports are attached as Exhibit 2.
[12] Summaries of those cases, relevant pleadings, and reports from the monitors can be found at http://www.justice.gov/crt/about/spl/findsettle.php.

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forward in implementing the Court's order, and will not escape notice if they do not. Moreover, the Cities' progress towards implementing the Court's order will be more readily accepted by a broader segment of the public if that progress is affirmed by a monitor who is responsible for confirming each claim of compliance asserted by the Cities.

III. If the Court Finds Liability in this Case, its Remedy Should Include Workload Controls, Which Are Well-Suited to Implementation by an Independent Monitor.

Achieving systemic reform to ensure meaningful access to counsel is an important, but complex and time-consuming, undertaking. Any remedy imposed by the Court may require years of assessment to determine whether it is accomplishing its purpose, and the Court and the parties may need independent assistance to resolve concerns about compliance.

One source of complexity will be how the Court and parties assess whether public defenders are overburdened. In its Order for Further Briefing, the Court asked about "hard" caseload standards, which provide valuable, bright-line rules that define the outer boundaries of what may be reasonably expected of public defenders. *ABA Ten Principles, supra*. However, caseload limits alone cannot keep public defenders from being overworked into ineffectiveness; two additional protections are required. First, a public defender must have the authority to decline appointments over the caseload limit. Second, caseload limits are no replacement for a careful analysis of a public defender's *workload*, a concept that takes into account all of the factors affecting a public defender's ability to adequately represent clients, such as the complexity of cases on a defender's docket, the defender's skill and experience, the support services available to the defender, and the defender's other duties. *See id*. Making an accurate assessment of a defender's workload requires observation, record collection and analysis, interviews with defenders and their supervisors, and so on, all of which must be performed quarterly or every six months over the course of several years to ensure that the Court's remedies

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are being properly implemented. The monitor can also assess whether, regardless of workload, defenders are carrying out other hallmarks of minimally effective representation, such as visiting clients, conducting investigations, performing legal research, and pursuing discovery. ABA Standing Committee on Legal Aid and Indigent Defendants, *Eight Guidelines of Public Defense Workloads* (August 2009). These kinds of detailed inquiries, carried out over sufficient time to ensure meaningful and long-lasting reform, are critical to assessing whether the Cities are truly honoring misdemeanor defendants' right to counsel, and they can be made most efficiently and reliably by an independent monitor. As shown in Exhibit 2, these are the kinds of inquires made by the independent monitor in the Grant County, Washington case. Also, should non-compliance be identified, early and objective detection by the monitor, as well as the identification of barriers to compliance, allow the parties to undertake corrective action.

An independent monitor may also obviate the need for the Court to dictate specific and rigid caseload requirements. In the Shelby County juvenile justice enforcement matter, for example, the County is required to establish a juvenile defender program that provides defense attorneys with reasonable workloads, appropriate administrative supports, training, and the resources to provide zealous and independent representation to their clients, but the agreement does not specify a numerical caseload limit. *See* Mem. of Agreement at 14-15.

CONCLUSION

Should the Court find for the Plaintiffs, it has broad powers to issue injunctive relief. That power includes the authority to appoint an independent monitor who would assist the Court's efforts to ensure that any remedies ordered are effective, efficiently implemented, and achieve the intended result.

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CERTIFICATE OF SERVICE

I hereby certify that on August 14, 2013, a copy of the foregoing was filed electronically. Notice of this filing will be sent by email to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's CM/ECF System.

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EXHIBIT 1 TO U.S. STATEMENT OF INTEREST

EXHIBIT 1: CASELOAD LIMITS IN VARIOUS STATES

ARIZONA	
Caseload maximums	Presumptive caseload limits based on National Legal Aid and Defender Association standards: • 150 felonies per year • 300 misdemeanors per year
Case refusal discretion	Not stated
Authority	*Arizona v. Smith*, 140 Ariz. 355 (1984); *Zarabia v. Bradshaw*, 185 Ariz. 1 (1995)
Comments	The presumptive limits function as hard caps in the counties with public defender offices, but not in counties with contract attorneys.

GEORGIA: Northern Judicial Circuit	
Caseload maximums	Director of Georgia Public Defender Standards Council cannot assign more cases to contract attorneys than: • 125 felony cases to attorneys with 5 or more years of experience • 75 felony cases to attorneys with fewer than 5 years of experience • 300 misdemeanor cases to attorneys who handle only misdemeanor cases
Case refusal discretion	Not stated
Authority	*Cantwell v. Crawford,* No. 09EV275M, Consent Order 6-7 (Elbert Cty. Sup. Ct. July 8, 2010)
Comments	None

MONTANA	
Caseload maximums	Montana has "soft caps" in the form of a case weight system to ensure that a public defender agency is not exceeding ethical caseload limits, and to ensure that resources are being properly distributed. The case weight system assigns daily case hours to each case when assigned and evenly distributes cases among attorneys to monitor how many cases

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	each attorney receives per month. When an attorney's monthly hours reach 125, the Regional Manager or Managing Attorney must meet with the staff attorney to discuss the attorney's caseload. Different types of offenses are given different case weight hours: • **Misdemeanors** range from 2.5 hours for fugitive/out of county warrants to 10 hours for misdemeanor sex crimes. Additional hours are added when jury trials occur, when the case is outside of the assigned region, if there are five or more charges in one case, and for those who practice in courts located outside of the city where their office is located. Hours are assigned based on the highest crime charged, with no hours assigned for the other charges. • **Felonies** range from 2.5 hours for fugitive/out of county warrants to 100 hours for homicides. Additional hours are added if there are three or more charges in the case, if the case is outside of the assigned region, when a jury trial occurs, and for those who practice in courts located outside of the city where their office is located. Hours are assigned based on the highest crime charged, and additional points may be added based upon the number of additional charges. • **Civil/Juveniles** range from 2.5 hours for involuntary commitments to 20 hours for dependent neglect. Additional hours are added if the case is outside of the assigned region, and for those who practice in courts located outside of the city where their office is located.
Case refusal discretion	When a public defender faces an excessive workload, the supervising attorney shall consider doing any of the following: • discontinue assigning cases to the public defender for a specified time; • discontinue assigning specific kinds of cases to the public defender for a specified time; • assign other public defenders to assist on particular cases; • assign extra staff or an investigator to assist on particular cases; • reassign particular cases; and/or • negotiate time off work for the public defender.
Authority	Statute authorizing establishment of statewide standards for acceptable caseloads and workload monitoring protocols to ensure that public defender workloads are manageable:

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	• Mont. Code Ann. § 47-1-105 (2011) Administrative policy for case refusal: • Mont. Admin. Pol'y Title 47, § 1-105 (2012)
Comments	The Public Defender Commission adopted OPD Policy Number 117, which states that a mission of the Office of the Public Defender is to ensure that no attorney doing public defender work—either as an employee or as a contract attorney—has a workload of such an amount that clients are not adequately represented and/or the attorney's well-being is jeopardized. The Policy also establishes that regional deputy public defenders and managing attorneys in each public defender office are responsible for managing attorney caseloads, sets out a procedure for monitoring caseloads, and requires the Chief Public Defender to report to the Commission any workload problems that arise. The Public Defender Commission, adopted on February 15, 2013, resolved that the Chief Public Defender is authorized to take any and all actions necessary to align caseloads with resources, including, but not limited to, taking all necessary and appropriate actions, in conjunction with and in consultation with judges and prosecutors, to limit acceptance of new case assignments, until OPD either receives additional resources to cover caseloads, or caseloads subside to a level that OPD can handle them with current resources, or some combination of both.

NEW HAMPSHIRE	
Caseload maximums	Full-time attorneys providing general felony, misdemeanor, and juvenile delinquency cases shall maintain a caseload of not more than 65 open and active cases. When attorney cases are a mixture of different types, the acknowledged maximums are as follows: • Felony maximum: 35 cases • Misdemeanor maximum: 35 cases • Juvenile delinquency maximum: 20 cases • Other cases: 15 cases The mix of cases totaling 65 for each attorney shall be determined by the Public Defender Program Executive Director, Director of Legal Services, and Managing Attorneys based upon the staff attorney's experience level.

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Case refusal discretion	The allocation of cases between the public defender program and assigned counsel shall be in accordance with a plan adopted by the public defender program and approved by the judicial council. The plan establishes caseload limits for defender attorneys in accordance with professional standards under the code of professional responsibility, and shall provide for appointment of assigned counsel only where maximum caseloads have been reached or public defender attorneys are otherwise unavailable. Once caseloads have been reasonably reduced, the public defender will resume intake of new cases.
Authority	Allocation of cases: N.H. Rev. Stat. § 604-B:6 Appointment of other counsel if and when a decision is made to close the intake of new cases: N.H. Rev. Stat. § 604-A:2 II.
Comments	Conflict cases are handled by private attorneys under contract. Their caseloads are limited by virtue of the fact that they contract to handle a certain number of "units" each year, and no one is awarded so many "units" that their caseload of indigent defense matters could or would become unmanageable. The conflict case administrator sends the contract attorneys their cases in an even rotation, ensuring that the contract attorneys do not acquire too many cases at any one time.

NEW YORK CITY	
Caseload maximums	Number of cases assigned per year per attorney shall not exceed: • 150 felony cases; • 400 misdemeanor cases; or • Proportional combination calculated at a ratio of 1 felony case to 2.66 misdemeanor cases Chief Administrator of Courts shall annually review attorney workloads and take action to promote compliance Rules are non-binding guidelines between 4/1/10 and 3/31/14, and will be made binding as of 4/1/14.
Case refusal discretion	Not stated
Authority	Rules at: Title 22 NYCRR Judiciary, Part 127.7; Part ZZ of Chapter 56 of the Laws of 2009 directed that such rules be promulgated.
Comments	None

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VIRGINIA	
Caseload maximums	No hard caps. The Virginia Indigent Defense Commission uses a "soft number" of 335 cases per attorney per year (mixed misdemeanors and felonies).
Case refusal discretion	Chief public defenders have statutory authority to turn down cases when they believe their office caseload is too high.
Authority	VA Code § 19.2-163.4 provides authority for defenders to turn away conflict cases.
Comments	None

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EXHIBIT 2 TO U.S. STATEMENT OF INTEREST

EXHIBIT 2(A) TO U.S. STATEMENT OF INTEREST

LAW OFFICE OF
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June 29, 2012

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[VIA EMAIL ONLY]

RE: Best, et al. v. Grant County

Dear Counsel,

It is my understanding that my tenure as Settlement Monitor ends at the conclusion of the "Monitoring Period" on June 30, 2012. Accordingly, I am writing to provide a brief assessment as to the current state of Grant County public defense as well as recommendations for the future.

During the last five years, Grant County's public defense program has improved significantly. Though performance varies among attorneys, the overall quality of representation provided by public defenders in Grant County is far better than it was when I started serving as Settlement Monitor in 2007. The trial rate has increased dramatically. Motions and expert requests are filed with much greater frequency than before. Defenders are more likely to make timely jail visits.

While Grant County has made substantial progress in establishing a quality public defense program, there remains much work to be done. Going forward, I recommend making the following areas/issues priorities:

1. **Support staff –** Grant County has never provided its in-house defenders with appropriate paralegal/secretarial support. GCPD has been operating without an office manager for 6 months. The only other permanent staff member is Katy Montemayor who serves as receptionist and administrative assistant. Her work is almost exclusively administrative and does not directly support the work of

individual defenders. As a result, the in-house defenders have no paralegal/secretarial support. Director Stephen Kozer has emphasized the need for additional support staff but thus far has not received hiring authorization. Grant County needs to immediately hire an office manager and at least one paralegal or secretary to support the defenders

2. **Mental health cases** – The failure to promptly seek experts in mental health cases has been a chronic problem in Grant County. Mentally ill defendants frequently find their cases in limbo, with the speedy trial period stayed, no defense expert, no investigation, and a lengthy waiting list for Eastern State evaluations. Although required to do so by the Amended Settlement Agreement, Grant County has not yet adopted a policy requiring its defenders to seek an expert on cases in which defendants are evaluated by Eastern State Hospital. Similarly, Grant County has yet to provide its defenders with forms to be used in requesting experts.

3. **Investigation** – Attorneys continue to be inconsistent in their use of investigators. Director Stephen Kozer has put appropriate policies in place but more active monitoring and supervision is needed in this area.

While there are certainly other areas for improvement, these three have the potential to make the greatest practical difference for defenders and their clients.

The long-term success of Grant County's public defense program will depend primarily on its ability to recruit and retain quality public defenders. Recruiting has been an ongoing problem as Grant County lacks a significant pool of local criminal defense attorneys from which to draw. Attorneys who apply from elsewhere often lack the necessary experience or are poor candidates for a variety other reasons. Obvious solutions to this problem are to pay more, advertise openings more widely, and recruit more actively.

On an institutional level, I recommend that Grant County expand its in-house program to include at least a few district court positions. In most jurisdictions, public defenders start with misdemeanors where they learn the basics of criminal defense work and gain trial experience. Those defenders are then promoted to felony work when positions become available. A group of in-house misdemeanor defenders would provide Grant County with a pool of qualified applicants who are known quantities and have not already learned bad habits and/or been unsuccessful in other jurisdictions. Moreover, recruiting for a misdemeanor division should be much easier as a law degree is the only experience required and new law graduates may be much more willing and able to move to Grant County for work.

If Grant County does elect to expand GCPD to include district court, it is essential that Director Stephen Kozer do absolutely no felony casework or coverage. Training new defenders requires intense supervision. For at least the first few months of any new attorney's tenure, Mr. Kozer would need to regularly accompany the attorney to court appearances and consult in the preparation of all cases. Handling even a small felony caseload or providing coverage for other attorneys in Grant County Superior Court would be incompatible with these responsibilities.

Although my term is ending, I remain invested in the success of Grant County's public defense program. If I can be of any assistance in the future, please do not hesitate to contact me.

Finally, I would appreciate any guidance you may have as to the disposition of my files. Normally, such files would be the property of the client, but in this case, I do not have a client in the traditional sense. If either party wishes to retain the files, I am happy to make them available to you. Most of my file materials consist of documents copied from Grant County Superior Court files which I suspect would be of little interest. I also have some handwritten notes from observing court, interviewing investigator candidates, etc. Finally, I have electronic files that include my reports, correspondence, spreadsheets, and the like. If you would like to take possession of any or all of my file materials, please let me know by July 31, 2012. If I do not hear from either party, I plan to dispose of the file materials as I see no ongoing need for them.

Thank you for the opportunity to serve as Settlement Monitor. It has been a very challenging but also rewarding experience.

Sincerely,

Tito Rodriguez
Attorney at Law

Cc: [via email only]
Donald Scaramastra
Theresa Simpson
David Taylor
Breena Roos
Joe Morrison
Sarah Dunne
Jerry Moberg
Stephen Kozer
Susan Oglebay
BOCC
June Strickler

EXHIBIT 2(B) TO U.S. STATEMENT OF INTEREST

Best, et al. v. Grant County

Monitor's Report

First Quarter, 2011

April 23, 2011

Submitted by Francisco Rodriguez, Settlement Monitor

Monitor's Activities

During the first quarter, I conducted monthly site visits to Grant County on the following dates:

- January 10-11, 2011
- February 22-23, 2011
- March 21-22, 2011

While in Grant County, I observed court proceedings, reviewed court files, and met with public defenders.

Between site visits, I have periodic contact with the Supervising Attorney, individual defenders, investigators, and counsel for both parties. I also regularly review electronic court dockets to track case dispositions, motions practice, and the use of experts, as well as to identify cases that warrant further review.

Access to Information

The Settlement Agreement provides that the Monitor is entitled to broad access to information concerning the Grant County public defense system. During the first quarter, I continued to experience delays in receiving basic monthly report information from the Grant County Department of Public Defense (GCPD). The delays were even lengthier than last quarter. For example, Grant County did not provide some monthly report information for January until April 15 despite multiple requests for the information. In addition, Supervisor Ray Gonzales has been slow in responding to requests for information. In some instances, I had to make repeated requests over several weeks before receiving any response from Mr. Gonzales.

Until last quarter, significant delays in receiving basic data regarding the public defense program had been rare. Supervising Attorney Ray Gonzales attributes this quarter's delays on Grant County's implementation of the DAMION case management system. He reports that the new system has "bugs" and "anomalies" that have prevented his office

from fully adopting the software and interfered with his ability to produce monthly report information.

With respect to court documents, Katy Montemayor, GCPD's legal assistant, continues to be very diligent and prompt in responding to my requests. Similarly, the staff in the Grant County Superior Court Clerk's Office is always exceptionally helpful in my review of court files.

Compliance Issues

As noted in my last report, I asked the parties to submit argument on the question of whether an extension of the Settlement Agreement was warranted. I originally asked the parties to respond by February 16, but the parties requested that I extend that deadline as they attempted to negotiate an agreed resolution. On March 2, Plaintiffs' counsel submitted a lengthy letter urging that I not only extend the term of the Settlement Agreement by one year but also find Grant County in violation for 2010. Plaintiffs' letter detailed a variety of violations of the Agreement and proposed a number of "cures" for these violations including the termination of Supervising Attorney Ray Gonzales.

The original deadline for resolution of the dispute regarding 2010 compliance was March 16, but the parties have requested several extensions to facilitate negotiations. The current deadline for both resolution of the pending dispute and my decision regarding extension of the Settlement Agreement is April 29. I understand that the parties are very close to reaching an agreement to resolve all outstanding issues.

Attorney Staffing

The first quarter of 2011 was a period of transition for Grant County public defense. Defender John Doherty departed at the end of January. Dean Terrillion, who left GCPD in early December, returned to finish a few remaining cases early in the quarter. Julie Trejo has also resigned, but her departure date has now been extended to May 31, 2011. Supervising Attorney Ray Gonzales reports that he stopped assigning Ms. Trejo new cases in early April.

Two new attorneys joined GCPD during the first quarter. Stephen Kozer started work on January 3, 2011. Mr. Kozer has 27 years of criminal experience as a public defender, private criminal defense attorney, and prosecutor. He most recently worked at the Yakima Office of Assigned Counsel. Christian Cabrera began work at GCPD on March 1, 2011. Mr. Cabrera has approximately one year of criminal experience handling misdemeanors for the Yakima Department of Assigned Counsel.

Grant County's hiring of Mr. Cabrera to handle criminal cases covered by the Settlement Agreement is problematic as he lacks the qualifications required to handle felony cases under the WSBA Standards for Indigent Defense Services. Those standards require that any attorney assigned to handle felony cases, including probation violations, must have a

minimum of one year of criminal experience and have completed at least two jury trials. Mr. Cabrera has completed just one jury trial and is thus not qualified under the WSBA Standards to work on any criminal cases covered by the Settlement Agreement.[1]

Supervising Attorney Ray Gonzales apparently failed to evaluate Mr. Cabrera's qualifications under the WSBA Standards when making his hiring decision and was not aware of the issue until I raised it with him recently.[2] As a result, Mr. Cabrera has already been assigned to cases for which he is not qualified in apparent violation of the Settlement Agreement. More problematic, however, is the fact that Mr. Gonzales now has two full-time attorneys in his office who are limited to handling child support cases, a caseload that last year amounted to about .33 FTE. I have written to the parties urging them to address this issue right away.

Grant County has yet to hire a replacement for Julie Trejo but has advertised the position. Unlike previous positions, the notice for this contract defender position was posted through both the Washington Defender Association (WDA) and the Washington Association of Criminal Defense Lawyers (WACDL). As of mid-April, Supervising Attorney Ray Gonzales was still interviewing potential candidates.

Based upon the cases assigned during the first quarter, Grant County will receive approximately 600 more criminal case assignments this year. With current staffing, Grant County has a remaining caseload capacity of 566 case credits, a shortfall of 34 credits. This shortfall will worsen if Grant County does not hire Ms. Trejo's replacement right away. The primary reason for the projected deficit is the inability of Grant County to assign criminal cases to Ms. Maggard or Mr. Cabrera. If the parties agree that either or both attorneys are eligible to handle criminal cases covered by the Settlement Agreement, Grant County will have a surplus capacity of approximately 115 to 265 case credits (0.75 to 1.75 FTE).

Caseloads

The Settlement Agreement establishes an annual caseload limit of 150 case equivalents for full-time defenders. In addition, Grant County has adopted monthly and quarterly caseload limits to ensure that case assignments are spread relatively evenly throughout the year.

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[1] I have not had the opportunity to review Mr. Cabrera's work or even meet with him, so I do not intend to make any comment on his knowledge or skills as an attorney.

[2] Mr. Gonzales's failure to determine whether Mr. Cabrera was even eligible to handle felonies is troubling. Presumably, trial experience would be an important area of inquiry in the interview process for a position in the felony unit of a public defender office. Moreover, Mr. Gonzales is well aware that the Settlement Agreement requires that all attorneys meet the WSBA Standards. We have had numerous discussions about those standards as well as the Settlement Agreement's requirement of compliance with those standards. Indeed, this is precisely the same error Mr. Gonzales made when he hired Kacie Maggard mistakenly believing she would be eligible to handle criminal cases under the Settlement Agreement.

Overall case assignments during the first quarter of 2011 were virtually identical to the first quarter of 2010. Individual attorney caseloads were higher, however, because Grant County has one fewer public defender on staff this year. The first quarter total caseload for each defender is listed in the table below:

ATTORNEY	1Q TOTAL
Kentner	37.33
Trejo	37.33
Oglebay	36.66
Kozer	36.33
Perry	36.33
Maggard	22.00
Cabrera	7.66
Doherty	1.33

Although the totals for all defenders were within Grant County's monthly and quarterly limits, the projected annual caseloads for the five public defenders eligible for criminal cases assignments are very close to the annual maximum, leaving virtually no flexibility for upward fluctuations in case assignments. Moreover, had those defenders been required to absorb the criminal cases erroneously assigned to Mr. Cabrera, all would have projected annual caseloads exceeding the yearly limit.

As noted in prior reports, the above caseload figures are likely inaccurate as Grant County continues to omit extraordinary credits from its caseload totals. Supervising Attorney Ray Gonzales reported zero extraordinary credits earned during the first quarter. He has not reported a single extraordinary case credit earned in the last 8 months. Because Mr. Gonzales makes no effort to track extraordinary cases, it is difficult to estimate the magnitude of this problem.

Caseload Management/Transfers.

Grant County has not established any policy or procedure to facilitate the transfer of caseloads when public defenders leave the program. Although I have encouraged Supervising Attorney Ray Gonzales to develop a formal framework for addressing caseload transfers, he has thus far declined to do so. The recent spate of resignations has highlighted the problems with Mr. Gonzales's informal approach to this issue.

In response to past inquiries regarding the transfer process, Mr. Gonzales had indicated that departing attorneys were providing their replacements in each case with a detailed case status report, though perhaps in a different format than I had suggested. I have been requesting samples of these documents for months and only recently learned that no such documents exist. Instead, Mr. Gonzales finally produced a case list for each attorney. These lists contained very little information other than the next court date (if that).

The case transfer process in Grant County does not adequately protect the interests of indigent defendants. When taking over a felony case, the new attorney needs to know the status of discovery, investigation, motions, and plea negotiations. The substituting attorney should not be forced to essentially start over or attempt to reconstruct the case history based upon documents in the file.

The recent transfer of John Doherty's caseload illustrates the problems caused by the lack of any formal transfer protocol. Almost all of Mr. Doherty's cases were transferred to Stephen Kozer. In moving for a continuance on an Attempted Murder 1° case, Mr. Kozer recently explained that he "had to 'jump' into the middle of most of [Mr. Doherty's] cases, sorting out the work that needs to be done" and that he needed a continuance in order to provide effective assistance of counsel. Mr. Kozer went on to explain that "I have been in the office early in the morning (5am) and have spent every weekend Saturday and Sunday . . . working on cases." Although taking over another attorney's caseload is always challenging, adequate supervision can dramatically ease the transition. Handing a new attorney a large stack of felony case files and wishing him or her good luck is not an appropriate way to transfer a caseload.

I am also concerned about Grant County's caseload management for new attorneys. Grant County does not award incoming attorneys any caseload credit for transferred cases when they assume a departing defender's caseload. This is not an unreasonable practice assuming care is taken to ensure that the new attorney's workload is manageable. If no credit is to be awarded for such cases, the supervising attorney should (1) require that the prior attorney fully work up the cases, file briefs, request investigation, etc., (2) review the entire caseload and assign some cases to other attorneys in order to lighten the transfer burden, and (3) not assign the recently hired attorney a full load of new cases until he/she is up to speed on the inherited caseload. Unfortunately, Supervising Attorney Ray Gonzales has not been taking these or other similar steps to manage workloads.

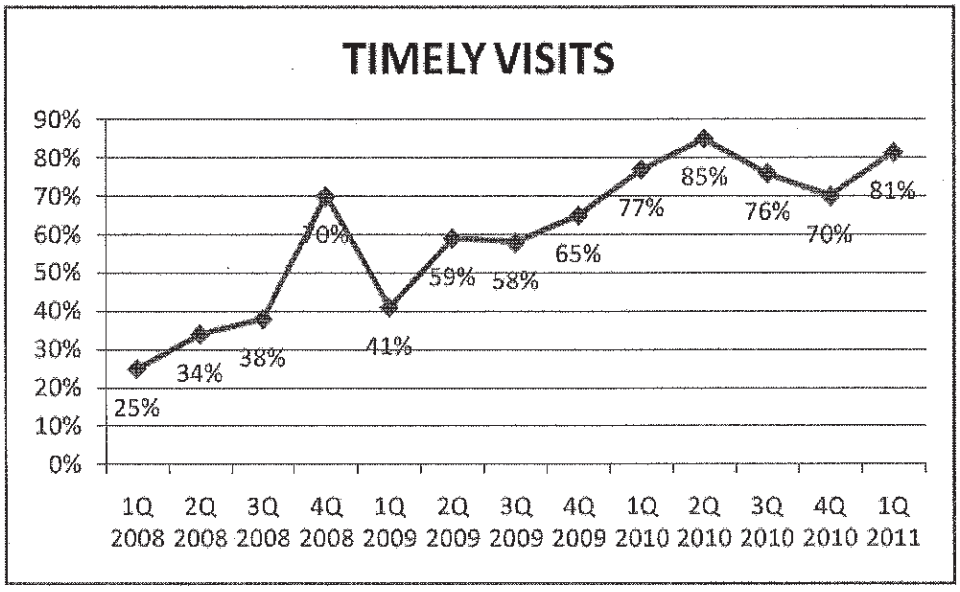
In the declaration mentioned above, defender Stephen Kozer wrote that he had been "reassigned from Mr. Doherty's caseload approximately 28 A and B felonies . . . ." In addition, Mr. Kozer has received a full load of new case assignments in each of his first three months. The quarterly caseload maximum for Grant County's public defenders is 40 case equivalents. Supervising Attorney Ray Gonzales assigned Mr. Kozer 67.33 case equivalents in the first quarter, 36.33 in new assignments and 31 in transferred cases. While Mr. Kozer seems highly capable and extremely diligent, the workload he has been asked to assume is overwhelming. It does not appear that Supervising Attorney Ray Gonzales has offered Mr. Kozer any relief or accommodation to account for the large volume of serious cases he inherited.

Jail Visits

Grant County requires its public defenders to visit all in-custody clients prior to arraignment. This requirement is memorialized in a formal written policy and subject to monthly monitoring by the Supervising Attorney.

For the first quarter, I reviewed 70 in-custody felony case assignments, cross referencing case assignment data with jail visitation logs, jail inmate rosters, and court dockets to determine whether the assigned lawyers visited their clients prior to arraignment. In some cases, I treated the visit as timely even though the visit occurred shortly after arraignment because the case had been assigned on or after the arraignment date.

Overall, I found the rate of timely jail visits for the first quarter to be 81.4%, the second best quarterly performance recorded in the last three years. Although the overall rate of timely visits has greatly improved over the last several years, the rate of timely visitation remains inconsistent and below what it should be. This quarter Grant County exceeded 80% compliance for only the second time in more than three years:



Individually, public defender performance this quarter was more consistent than in past quarters:

ATTORNEY	% TIMELY
Kentner	100.0%
Perry	94.7%
Oglebay	85.7%
Kozer	80.0%
Trejo	53.3%

Bob Kentner again visited 100% of his clients in a timely fashion. Mr. Kentner has now maintained a perfect rate of timely visits for the last year. John Perry also had a high rate of timely visits this quarter, visiting 18 of his 19 in-custody clients as required (94.7 %). Susan Oglebay (85.7%) also made timely visits to all but one of her jailed clients.

Stephen Kozer's visitation rate (80%) was somewhat lower, but that is certainly understandable given his workload. In addition to taking over Mr. Doherty's caseload and receiving a full load of new cases, Mr. Kozer also received the highest number of in-custody felony case assignments this quarter at 20.

Julie Trejo had a much lower rate of timely visits than her colleagues this quarter at 53.3%. Jail visitation has always been a weakness for Ms. Trejo due in part to her commute from Spokane. Setting aside Ms. Trejo's visits, the overall rate of timely visits for the other defenders as a group was 89.1%.

I am optimistic that in the near future, Grant County's public defenders will finally achieve and maintain an overall rate of timely visitation of 90 to 100%. Defenders Kentner, Perry, and Oglebay have already demonstrated their commitment to timely jail visits. Although Mr. Kozer's rate of timely visits this quarter was not as high as it should be, he appears to be extremely diligent, and I anticipate that he too will consistently visit his jailed clients as required. If Grant County's next attorney hire is similarly committed to complying with Grant County's jail visitation policy, Grant County should easily attain a rate of timely jail visits that exceeds 90%.

In addition to the timeliness of initial visits, I also reviewed the total time each defender spent visiting clients at the jail. Stephen Kozer spent substantially more time visiting his in-custody clients during the first quarter than the other defenders:

ATTORNEY	TOTAL HOURS
Kozer	56
Kentner	42
Perry	26
Trejo	16
Oglebay	11
Maggard	5
Cabrera	3

Bob Kentner also spent a great deal of time consulting with his jailed clients. Ms. Oglebay and Ms. Trejo spent less time in the jail visiting their clients than their peers. Ms. Oglebay has only recently started receiving new felony assignments, however, having handled the probation violation calendar for the last year or so. Kacie Maggard handles child support cases, and Christian Cabrera has taken over the probation violation calendar, so their workloads inherently involve fewer jail visits.

The outlook for jail visitation at this point is quite positive due almost entirely to the personnel currently in place. Past experience demonstrates, however, that Grant County cannot rely on always having a highly diligent, self-motivated staff of public defenders. Accordingly, Grant County needs to adopt its own system of monitoring jail visits so that it has a mechanism in place to identify and correct future problems in this area. The current system of transcribing jail sign-in logs into spreadsheets and cross-referencing them with case assignment records is very time-consuming and unlikely to continue after

the Settlement Agreement ends. I have recommended that Supervising Attorney Ray Gonzales explore a simpler and less labor intensive approach to monitoring jail visits, but he has yet to take any action to address the issue despite repeated promises to do so.

Client Complaints

Grant County maintains a toll-free telephone line for client complaints. All calls to the complaint line are logged, and substantive complaints are referred to Supervising Attorney Ray Gonzales for follow-up as appropriate. Most calls to the complaint line are from inmates at the Grant County Jail. In addition to using the complaint line, clients and family members sometimes contact Supervising Attorney Ray Gonzales directly with complaints.

Grant County's posted notices within the jail dormitories seem to be effective in informing jailed defendants how to make a complaint, but Grant County has yet to implement an effective complaint system for out-of-custody clients. Supervising Attorney Ray Gonzales has delegated responsibility for informing these clients of the complaint procedure to the public defenders. The defenders are asked to provide written notice of the complaint procedure to their clients at the time of arraignment. In practice, however, the public defenders rarely distribute the complaint notice to their clients. During my three site visits this quarter, I did not observe a single defender distribute the notice. I have advised Supervising Attorney Ray Gonzales that the current system does not comply with Grant County County's obligation under the Settlement Agreement to "inform[] all indigent criminal defendants of the right to make complaints regarding the quality of their public defense." Based upon our discussions of this issue and his own observations of the problem, Mr. Gonzales agreed that his office would mail a notice to each defendant with information about how to make a complaint along with the name and contact information of the assigned attorney. Months later, however, Mr. Gonzales has yet to institute this or any other procedure that complies with the Settlement Agreement.

During the first quarter, Grant County logged approximately 22 calls to the complaint line from 14 different clients:

ATTORNEY	CALLS
Trejo	9
Perry	4
Kentner	3
Billingsley	2
Doherty	2
Oglebay	1
Kozer	1

Although nine calls came from Ms. Trejo's clients, none of those calls were concerning. Five were from the same defendant who was apparently anxious about the resolution of his case. Ms. Trejo visited him eight times over the course of a month and was able to

resolve his case with a misdemeanor plea. The other callers made inquiries or left messages unrelated to the quality of their representation.

Most of the calls from clients of the other current defenders did not involve substantive complaints about their public defenders. One of Bob Kentner's clients complained about a lack of visitation, but the jail sign-in logs show that Mr. Kentner had visited him relatively recently, and Mr. Kentner visited him again the day of his call. A client of John Perry called to complain about not being released as expected due to a DOC hold, and Mr. Perry promptly obtained a new release order for the client.

Calls from two clients of defenders no longer working for Grant County were of greater concern, but as those attorneys are no longer with Grant County, I see no need to address them further at this time.

The relatively small number of complaints documented in Grant County's reports is encouraging, but I am concerned that these reports may not capture all of the complaints made against Grant County's public defenders. Some callers to the complaint line are apparently urged to submit their complaints using a jail "kite." These "kites" are not included in the complaint logs. Defendants who file repeated motions for new counsel sometimes do not appear on the complaint line report. Similarly, two individuals who contacted me to complain this quarter do not appear in the complaint log. It is surprising that individuals who seem rather aggressive in pursuing complaints against their public defenders never called the complaint line nor complained directly to the Supervising Attorney.

Supervising Attorney Ray Gonzales's most recent report noted that he had had contact with three clients who were "not complaining but wished to have their concerns heard." In response to my request for clarification, Mr. Gonzales reported that one of these clients was "concerned about the progress of his case and whether his counsel was properly prepared to go to trial." At one point, the client's calls to the GCPD office had become so frequent that Mr. Gonzales directed the client to call no more than twice per week. When I reviewed the docket and portions of the court file for this defendant's case, I found that he had filed a request for new counsel containing very specific allegations against his assigned attorney. I also learned that Mr. Gonzales was present and addressed the court in connection with at least one of the defendant's requests for new counsel. At that hearing, the clerk's minutes reflect discussion of a lawsuit the defendant had filed over the handling of his case. The fact that this client's complaints appear nowhere in Grant County's complaint logs and that the only reference to his complaints in GCPD records is a vague, passing reference to a client who wished to have his "concerns heard" is troubling.

Investigator Staffing/Caseloads

Grant County has five approved public defense investigators: Ellyn Berg, Karl Calhoun, Taylor Kindred, Jeff Wade, and Jason Dowd. Ms. Berg is on staff with GCPD and works

exclusively with the in-house felony defenders. The other four investigators are private investigators who accept case assignments from Grant County. They are assigned adult felony cases with the contract defenders as well as other public defense cases in juvenile and district court. Jeff Wade and Jason Dowd were approved on a trial basis during the first quarter and added to Grant County's investigator panel.

During the first quarter, Grant County's defenders requested investigation in 54 adult felony cases. As in prior quarters, Ms. Berg received the highest number of adult felony assignments:

INV	1Q CASES
Berg	22
Calhoun	19
Kindred	8
Wade	6
Dowd	2

Mr. Calhoun and Mr. Kindred also received 4 juvenile case assignments each this quarter. It appears that Mr. Calhoun is receiving a disproportionate share of the case assignments. When juvenile cases are included, his total case assignments are higher than those of full-time in-house investigator Ellyn Berg. Supervising Attorney Ray Gonzales should carefully monitor Mr. Calhoun's workload to ensure he does not take on too many cases. Mr. Gonzales should also consider distributing case assignments more evenly.

Each quarter, I contact the public defenders to request feedback on the investigators, but I received little response this quarter. The in-house attorneys have always been very complimentary regarding Ms. Berg's work, and I again received positive feedback about her.

Investigation Rates

As noted above, Grant County's full-time felony defenders requested investigation in a total of 54 cases during the first quarter. The individual totals for the public defenders are listed in the table below:

ATTORNEY	INV REQ
Kentner	22
Perry	15
Trejo	7
Oglebay	6
Kozer	4

Bob Kentner again submitted the most investigation requests followed by John Perry. They have consistently been the attorneys most likely to investigate their cases.

The overall rate of investigation in Grant County at the end of first quarter was 39.1%. This rate is slightly higher than the overall rates for the last several years. Individual investigation rates continue to vary widely:

ATTORNEY	% INV
Oglebay	78.6%
Kentner	64.8%
Perry	43.1%
Trejo	18.7%
Kozer	11.4%

Defenders Susan Oglebay, Bob Kentner, and John Perry seem to be investigating their cases appropriately. Julie Trejo's investigation rate is low, and she had not submitted any investigation requests this quarter until late March. Stephen Kozer's investigation rate is also low. Moreover, he had two jury trials this quarter in which no investigation was requested. Given Mr. Kozer's workload this quarter, however, it would be premature to draw any conclusions regarding his use of investigators.

Supervising Attorney Ray Gonzales should monitor the use of investigators by Grant County's public defenders on a regular basis and take corrective action when defenders are not using investigation appropriately. Mr. Gonzales should ensure that trial cases are investigated and that the attorneys are making timely requests for investigation in all cases in which investigation is warranted.

Experts

The Settlement Agreement recognizes that defenders need to employ experts in some cases in order to be effective. The Settlement Agreement also specifically requires that expert requests be made *ex parte* and sealed in the court file.

Grant County defenders filed eight expert requests during the first quarter. Susan Oglebay and Stephen Kozer each made two requests. Bob Kentner, John Perry, Julie Trejo, and John Doherty each made one request. Mr. Kentner's request was the only one that was properly sealed in the court file. In three cases, no motion to seal was filed. In three others, the defenders filed a motion to seal that was granted, but confidential information remained unsealed due to drafting errors in the forms used.

Mental health experts are, by far, the most commonly used type of expert in Grant County. They are utilized to evaluate competency and potential mental defenses as well as to determine amenability for SSOSA. This quarter, four experts were retained to explore possible mental defenses, and two were hired to perform sexual deviancy evaluations for possible SSOSA requests.

I continue to recommend that Supervising Attorney Ray Gonzales provide additional training on the use of experts, particularly in mental health cases, and that he develop

forms and briefing to facilitate the process of requesting experts. Standardization of the process of requesting an expert through the creation of templates would allow Mr. Gonzales to finally resolve longstanding problems with unsuccessful efforts to seal expert requests. To date, however, Mr. Gonzales has demonstrated no inclination to address these issues.

Motions Practice

During the first quarter, Grant County public defenders filed substantive motions in 15 cases. Every defender filed motions in at least two cases. The totals for each public defender are listed below:

ATTORNEY	MOTIONS
Kozer	4
Trejo	4
Kentner	3
Oglebay	2
Perry	2

Julie Trejo continues to maintain an active motions practice, filing substantive motions in four cases this quarter. She won dismissal of a methamphetamine delivery case after challenging the validity of the warrant. Stephen Kozer also filed motions in four cases this quarter and appears to be quite aggressive in pursuing legal issues. In the four cases in which he filed motions, I found nine separate substantive briefs raising a wide variety of legal issues.

All of the public defenders currently handling adult felonies in Grant County are quite capable of identifying basic legal issues in their cases and appear to have been diligent in raising those issues this quarter.

Trials

The trial rate in Grant County continues to be a strength for its public defense program. Grant County's public defenders tried eight cases during the first quarter:

ATTORNEY	TRIALS
Perry	3
Kozer	3
Trejo	1
Kentner	1

Stephen Kozer quickly demonstrated his willingness to take cases to trial, completing three trials in his first three months in Grant County. He won a complete acquittal for a client charged with Assault 2°, Assault 3°, and Assault 4°. John Perry also had three trials this quarter. He won a favorable outcome for a client charged with multiple counts of

Harassment, Intimidating a Public Servant, and Resisting Arrest, with not guilty verdicts on three of the four counts.

Training

Supervising Attorney Ray Gonzales did not conduct any trainings during the first quarter. Grant County appears to have largely outsourced its training for public defenders. Mr. Gonzales reports that he anticipates most of the in-house defenders will attend the Washington Defender Association's annual training conference later this month.

I continue to recommend that Grant County offer local trainings more frequently. Such trainings are helpful because they can be tailored to the particular needs of the staff. Moreover, the less formal setting of in-house trainings promotes the exchange of ideas among public defenders and helps develop a team approach to the practice. With the wealth of criminal experience currently available within its own ranks, Grant County is missing an opportunity to allow the defenders to learn from each other. Such in-house trainings are a staple of quality public defense programs.

Conflicts

Grant County continues to operate without an approved conflict of interest policy as it has for almost two years now. Supervising Attorney Ray Gonzales is aware of the problem and has repeatedly promised to submit a conflict policy for approval. To date, however, he has not done so.

With respect to identifying conflicts, I did find some problems this quarter. In one case, Grant County's conflict check system correctly identified John Perry as having a conflict, but Mr. Gonzales assigned the case to Mr. Perry anyway. When the conflict was recognized about three weeks later, Mr. Perry was forced to withdraw from the representation of both clients. Mr. Gonzales explained that he simply made a mistake in overlooking the conflict. In another case, Grant County's conflict check system missed multiple conflicts, and the disqualified attorney represented the client through resolution of the case. I found at least two other cases in which conflicts were either overlooked or not identified.

In reviewing court files this quarter, I found yet another conflict issue. John Doherty represented a client who pled guilty to Robbery 2°. The client subsequently sought to withdraw his plea based on Mr. Doherty's ineffective assistance. Mr. Doherty represented the defendant at the hearing on his motion, arguing his own ineffective assistance. Mr. Doherty had apparently failed to inform the client that he was pleading guilty to a strike offense. In fact, Mr. Doherty had erroneously stricken language in the plea statement notifying the defendant the charge against him was a strike. Though it is laudable that Mr. Doherty was willing to acknowledge his mistake, his error created a conflict of interest, and he should not have represented the client on the motion to

withdraw his plea. The matter was ultimately resolved with a plea to non-strike offenses. When I asked Mr. Gonzales about the case, he indicated he was unaware of the situation.

The process of assigning cases to conflict counsel has also been somewhat problematic this quarter. The Settlement Agreement requires that the Supervising Attorney notify the Monitor of conflict cases immediately after assignment so that I may review whether the assignment is appropriate. Two problems have arisen in this process. First, Mr. Gonzales sometimes neglects to inform me of conflict assignments in a timely fashion. Second, when he does notify me of a conflict assignment, Mr. Gonzales frequently does not immediately send me the supporting documents I need in order to review the conflict. Apart from these procedural problems, when I was able to review conflict cases this quarter, I did not find any inappropriate conflict assignments.

Without a written conflict policy to review, it is difficult to know where to begin in making recommendations as to how to avoid these types of problems. Supervising Attorney Ray Gonzales should draft a conflict policy immediately and submit it for approval as required by the Settlement Agreement.

Supervising Attorney

My assessment of the Supervising Attorney's performance has not changed. Mr. Gonzales has addressed virtually none of the issues identified in my quarterly reports over the last two years and seems completely unconcerned with ongoing violations of the Settlement Agreement. He either ignores recommendations for improvement or promises to implement changes and never does.

Conclusion

Poor supervision is at the root of most of the problems within Grant County's public defense program. I am hopeful that the current group of public defenders may be sufficiently competent, diligent, and self-motivated to succeed in spite of a lack of effective supervision. For the long term, however, Grant County must solve its supervision problem if it hopes to institutionalize quality standards for public defense.

EXHIBIT 2(C) TO U.S. STATEMENT OF INTEREST

Best, et al. v. Grant County

Monitor's Report

Fourth Quarter, 2010

January 23, 2011

Submitted by Francisco Rodriguez, Settlement Monitor

Monitor's Activities

During the four quarter, I conducted monthly site visits to Grant County on the following dates:

- October 25-26, 2010
- November 15-16, 2010
- December 6-7, 2010

While in Grant County, I observed court proceedings, reviewed court files, and met with public defenders.

Between site visits, I have periodic contact with the Supervising Attorney, individual defenders, investigators, and counsel for both parties. I also regularly review electronic court dockets to track case dispositions, motions practice, and the use of experts, as well as to identify cases that warrant further review.

In addition to routine monitoring activities, I met with two investigator candidates during the fourth quarter as well as one indigent defendant who requested to meet with me.

Access to Information

The Settlement Agreement provides that the Monitor is entitled to broad access to information concerning the Grant County public defense system. During the fourth quarter, I experienced some delays in obtaining information from the Grant County Department of Public Defense (GCPD). These delays were unusual as I typically receive monthly report information within a few days of the due date and other basic information quite promptly. The office staff seem rather overwhelmed at present. Gail Sundean, GCPD Office Manager, continues to be responsible for responding to most of my requests for information. Katy Montemayor, GCPD's legal assistant, is often tasked with obtaining the court documents I request and provides them quite promptly when assigned to do so. Finally, the staff in the Grant County Superior Court Clerk's Office is always extremely cooperative and helpful with my review of court files.

Compliance Issues

I routinely identify compliance issues in my quarterly reports and make recommendations to address any problems noted. The Settlement Agreement provides for payment of legal fees in the event of noncompliance, but I am not charged with addressing that issue unless the parties submit a dispute to me for resolution.

The Settlement Agreement does authorize the Monitor to extend the term of the Agreement for up to one year if Grant County is not in full compliance at all times after December 31, 2007. I have not yet decided whether an extension of the Settlement Agreement is warranted. I recently wrote to the parties requesting input on this issue by February 16, 2011.

There have been a number of disputes regarding compliance over the course of the year, and though those issues apparently remain unresolved, neither party has formally requested my intervention to date.

Attorney Staffing

Grant County had experienced an unusual period of stability in staffing over the past year, but that ended in the fourth quarter. Julie Trejo[1] gave notice in early November that she was terminating her contract, and defenders Dean Terrillion and John Doherty subsequently resigned their in-house positions. Brett Billingsley's contract also ended in October.

Grant County will soon have lost 50% of its 2010 defender staff. Julie Trejo had been the longest tenured Grant County public defender, having started there in September of 2007. Brett Billingsley started working with Grant County part-time in January 2008 and converted to full-time later that year. Dean Terrillion and John Doherty had been with Grant County less than two years. Of the remaining defenders, all have worked in Grant County less than two years except John Perry who started about two and a half years ago in June of 2008. Put another way, Grant County has experienced almost 90% turnover in its defender staff in less than two years.

Grant County has experienced ongoing problems with a lack of local public defender candidates who are both interested in and qualified for the position. As a result, many of Grant County's defenders commute great distances to work. Mr. Terrillion and Mr. Doherty, for example, had been commuting to homes in Western Washington almost every weekend, and both identified job location as their primary reason for leaving Grant County.

Julie Trejo's contract requires her to give 120 day notice of her intent to terminate. As in-house defenders, Mr. Terrillion and Mr. Doherty are not bound by any particular notice requirements when leaving Grant County's employ. Mr. Terrillion gave

[1] Julie St. Marie recently got married and changed her name to Julie Trejo.

approximately two weeks notice as his new employer was not willing to be flexible on his start date. Mr. Doherty gave about one month's notice. These rapid departures created significant challenges for Supervising Attorney Ray Gonzales in assigning and transferring cases, particularly as he approached quarterly and yearly caseload limits at year's end. Fortunately, Grant County and Ms. Trejo agreed to extend her contract through the end of April 2011, providing Mr. Gonzales with some relief in assigning new cases.

Supervising Attorney Ray Gonzales reports that he has had difficulty locating qualified candidates to replace the departing public defenders. I have recommended that Mr. Gonzales advertise through the Washington Defender Association (WDA) and the Washington Association of Criminal Defense Lawyers (WACDL), the two primary (and perhaps only) criminal defense organizations in the state of Washington. Yet Mr. Gonzales has not posted any of the recent attorney openings with either organization. WDA currently has postings for Whatcom, Benton/Franklin, King and Clark Counties. Even Grant County District Court has posted an opening. Meanwhile, Mr. Gonzales informs me that he anticipates re-opening his posted positions to seek additional applicants. I hope that he will abandon his informal, word-of-mouth approach in favor of more traditional methods of recruiting public defenders.

Grant County has hired one new in-house public defender. Stephen Kozer started this month and will take over most of John Doherty's caseload. Mr. Kozer is an experienced public defender who most recently worked for the Yakima County Office of Assigned Counsel where Mr. Gonzales also once worked. Mr. Kozer had written to Mr. Gonzales back in September inquiring about openings in Grant County.

Supervising Attorney Ray Gonzales has indicated that Grant County plans to hire one additional in-house public defender to fill Mr. Terrillion's position as well as one additional contract defender to replace Ms. Trejo. If case assignments for 2011 continue at the same rate as in 2010, the planned staff of seven full-time defenders should be sufficient to handle the anticipated caseload.

Attorney Salaries

The Settlement Agreement requires that compensation for in-house defenders be comparable to that of their counterparts in the Prosecuting Attorney's Office. Ensuring salary parity was a central concern in considering whether to approve Grant County's move to an in-house public defender office. After extensive discussions regarding salary parity, Grant County agreed to adopt a formal compensation plan that based attorney salaries on criminal legal experience. Adoption of this compensation plan was a condition of approval for the in-house defender program.

A recent review of public defender salaries revealed that Grant County has not followed its own compensation plan. The compensation plan establishes six salary levels based upon criminal experience. Yet the salary levels assigned to the two most recently hired

Grant County public defenders appear to bear no relation to their actual level of criminal experience. The salary classification for each of the in-house defenders is listed below:

ATTORNEY	SALARY LEVEL	EXPERIENCE RANGE	ACTUAL EXPERIENCE
Maggard	Attorney 1	0-3 years	< 1 year
Kozer	Attorney 2	2-5 years	27 years
Oglebay	Attorney 2	2-5 years	16+ years
Terrillion	Attorney 2	2-5 years	7+ years
Doherty	Attorney 5	10+ years	16+ years
Perry	Attorney 6	Discretionary	15-17 years

Both Susan Oglebay and Stephen Kozer were assigned "Attorney 2" salaries, a level intended to include attorneys with two to five years of criminal experience. Ms. Oglebay has practiced criminal law for 23 years. Even setting aside her other areas of practice, she conservatively estimates that she has 16 years of full-time criminal experience. Similarly, Mr. Kozer has practiced criminal law for 27 years. Despite their extensive criminal experience, these attorneys were hired at salaries just one step above entry level, By comparison, the Prosecuting Attorney's Office has two felony attorneys slotted at the "Attorney 2" level, and both have only two years of legal experience. Such disparities violate the salary parity contemplated by the Settlement Agreement.

Caseloads

The Settlement Agreement establishes an annual caseload limit of 150 case equivalents for full-time defenders. In addition, Grant County has adopted monthly and quarterly caseload limits to ensure that case assignments are spread relatively evenly throughout the year.

The departure of Brett Billingsley at the start of the fourth quarter left Grant County with little excess caseload capacity for the remainder of the year. Although most of the public defenders were well below their annual limits, quarterly caseload limits prevent Grant County from assigning excessive caseloads to defenders even if they have unused capacity from earlier in the year. Capacity concerns were further complicated by the rather sudden departure of Mr. Terrillion in December which forced Supervising Attorney Ray Gonzales to transfer almost all of his active cases to other public defenders.

Fortunately, the overall number of case assignments for the fourth quarter was dramatically lower than in prior quarters. New felony assignments were down by approximately one third, with Grant County recording the three lowest monthly totals of the year in October, November, and December. Fewer new case assignments enabled Grant County to absorb the unanticipated addition of 25 transfer cases from Mr. Terrillion without overburdening the remaining defenders.

Evaluating Grant County's compliance with caseload limits is challenging because the figures provided by Grant County are not accurate. Grant County has acknowledged

errors in counting probation violation cases but has not corrected its counts for the first 5 to 6 months of the year. In addition, Grant County has not reported work on "extraordinary" cases as required. For example, John Perry represented a defendant on a charge of Aggravated Murder from September 2009 until December of 2010 without ever receiving any extraordinary credits. The failure to properly count extraordinary cases can result in significant underreporting of case credits. In 2008, the year before Supervising Attorney Ray Gonzales took over the program, Grant County reported about 110 extraordinary case credits. In 2010, Mr. Gonzales reported approximately 12. As a result of the errors in counting credits for probation cases and extraordinary cases, the attorney caseload totals reported by Supervising Attorney Ray Gonzales are artificially low.

The caseload data provided by Grant County suggests that all of its public defenders were within their monthly, quarterly, and annual caseload limits:

ATTORNEY	2010	4Q 2010	OCT '10	NOV '10	DEC '10
Oglebay	135.33	25.33	5.33	11.33	8.66
Trejo	126.33	36.33	11.00	10.33	15.00
Doherty	123.66	37.00	13.66	8.33	15.00
Kentner	111.33	25.66	5.66	6.00	14.00
Perry	108.66	30.00	9.00	10.00	11.00
Terrillion	108.33	20.33	9.66	10.66	0.00
Billingsley	70.66	0.00	0.00	0.00	0.00
Maggard	50.00	7.00	6.00	1.00	0.00

Public defender Susan Oglebay had the highest caseload total for the year at 135.33. She is the only defender who approached her annual caseload limit. Although Grant County's final figures show her finishing the year at about 135 credits, it is likely that her true caseload exceeded the annual limit of 150. Ms. Oglebay has been the primary attorney handling probation violation matters since April, and Grant County did not properly count her case credits for at least the first 2 to 3 months she covered that calendar. In addition, Ms. Oglebay was assigned at least one extraordinary case for which she has not received extraordinary case credits as required. Though the caseload totals reported for most, if not all, of the other defenders were also inaccurate, these defenders probably did not exceed their annual caseload limits as they likely ended the year with sufficient remaining capacity to absorb the uncounted credits that they should have been awarded.

Distribution of class A felony case assignments continues to be a concern. For the year, John Perry and John Doherty received about twice as many class A felony assignments as the other defenders:

ATTORNEY	2010 CLASS A
Doherty	16
Perry	16
Kentner	9
Terrillion	8
Billingsley	7
Trejo	7
Oglebay	2
TOTAL	**65**

These assignments should be spread more evenly among the defenders to balance the workload and to add depth of experience to the entire defender group.

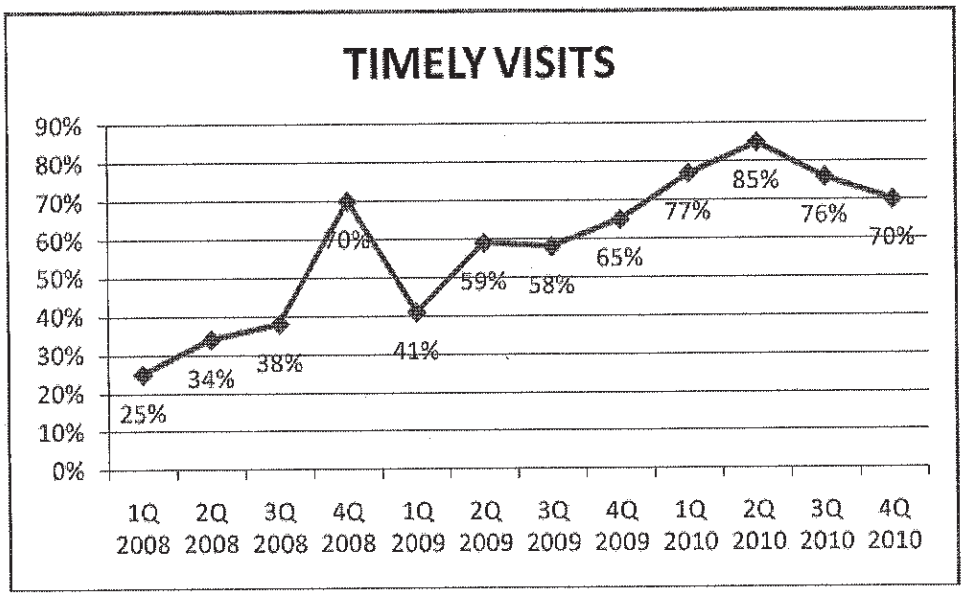
The departure of Mr. Terrillion in December posed a challenge for Supervising Attorney Ray Gonzales who had to reassign a large number of cases on short notice. Mr. Gonzales did not reassign most of Mr. Terrillion's cases until after his departure. Most were reassigned by the end of the following week, however. When a public defender resigns, that defender's cases should be reassigned at least a week or two before his or her last day to ensure continuity of representation and to allow the new attorney an opportunity to consult with counsel of record. The departing defender should prepare a transfer memorandum detailing the status of the case including discovery, investigation, motions, and plea negotiations. The memorandum should also identify any potential legal issues, summarize the client's version of events and goals for the representation, and outline case strategy. I have discussed the need for transfer memos with Mr. Gonzales in the past, and he has agreed that such documentation would be helpful. Despite this acknowledgment, Mr. Gonzales has not established any formal procedures for transferring cases and has been unable to produce a single transfer memo from Mr. Billingsley or Mr. Terrillion.

Jail Visits

Grant County requires its public defenders to visit all in-custody clients prior to arraignment. Despite its clear written policy on initial client contact, Grant County has had little success in ensuring its public defenders consistently visit their jailed clients in a timely fashion. While some defenders do make timely visits a priority, others do not. Grant County has done little to emphasize the importance of initial jail visits or enforce its own policy.

For the fourth quarter, I reviewed 65 in-custody felony case assignments, cross referencing case assignment data with jail visitation logs, jail inmate rosters, and court dockets to determine whether the assigned lawyers visited their clients prior to arraignment. In some cases, I treated the visit as timely even though the visit occurred shortly after arraignment because the case had been assigned on or after the arraignment date.

Overall, I found the rate of timely jail visits for the fourth quarter to be 70%, the worst quarterly performance this year. Though Grant County's jail visitation policy has been in place since at least 2007, Grant County has exceeded 80% compliance in a quarter only once in the last three years:



The rate of timely visits for the year was 78%, an improvement over the 2009 rate of 54%, but still unacceptably low. While I am somewhat encouraged by the generally positive trend over time, progress has been very slow. Grant County should expect more of its public defenders.

Individually, public defender performance varied widely in the fourth quarter, with Bob Kentner and Susan Oglebay visiting 100% of their clients in a timely fashion and John Perry at better than 90%, while the other defenders had much lower rates:

ATTORNEY	% TIMELY
Kentner	100.0%
Oglebay	100.0%
Perry	90.9%
Terrillion	66.7%
Doherty	58.8%
Trejo	40.0%

Both Mr. Doherty and Ms. Trejo had clients held in custody more than three weeks without receiving a visit. Mr. Doherty was assigned a mentally ill client who, as of January 10, had been in custody more than 25 days without receiving a visit. Ms. Trejo's client waited more than 22 days before finally entering a guilty plea without ever having

received a visit from his assigned attorney. For the most part, however, Grant County's defenders visited their in-custody clients within a week or so of assignment.

For the year, Mr. Kentner and Ms. Oglebay visited virtually all of their in-custody clients in a timely fashion, and Mr. Perry also had a high rate of timely visits:

ATTORNEY	% TIMELY
Kentner	98.0%
Oglebay	95.2%
Perry	87.9%
Doherty	80.3%
Terrillion	79.1%
Trejo	60.0%
Billingsley	48.6%

Mr. Kentner's near perfect performance is particularly impressive given the fact that he commutes from Seattle each week. Aside from Mr. Kentner and Ms. Oglebay, the other public defenders did not consistently visit their jailed clients as required.

To address ongoing problems with timely jail visits, I have recommended that Supervising Attorney Ray Gonzales meet individually with public defenders who fail to comply with the jail visit policy in order to stress the importance of timely jail visits as well as the consequences of failing to comply with Grant County policy. Mr. Gonzales is resistant to this type of supervision and has generally declined to formally address the problem. As a result, jail visits are not a priority for many defenders. I have also recommended that Mr. Gonzales monitor jail visits weekly by simply passing around a clipboard with a list of the week's case assignments during Grant County's regular docket days and asking attorneys to confirm that each client has received a visit. Mr. Gonzales embraced this idea and agreed to implement it months ago but still has taken no action.

Supervising Attorney Ray Gonzales has simply not made timely jail visits a priority for Grant County public defense. Defenders ignore Grant County policy with impunity and Mr. Gonzales seems unaware of or unconcerned by the problem. Indeed, his last two monthly reports did not even include jail visit information. For November, Mr. Gonzales's office did not complete its review of initial jail visits until December 30. Mr. Gonzales indicates that he views timely jail visits as very important, even suggesting he expects in-house defenders to visit all clients within three days. Yet Mr. Gonzales makes no effort to monitor compliance with this three-day visit requirement, and his staff does not comply with it.

In addition to the timeliness of initial visits, I also evaluated the total time each defender spent visiting clients at the jail. Bob Kentner spent by far the most time visiting his in-custody clients in 2010:

ATTORNEY	TOTAL HOURS
Kentner	147
Perry	112
Trejo	93
Doherty	88
Oglebay	82
Terrillion	45
Billingsley	26
Maggard	23

Dean Terrillion spent less than a third of the time that Mr. Kentner did visiting clients in jail and about half the time of most of his other colleagues. Brett Billingsley appears to have spent very little time meeting with his in-custody clients, spending an average of less than 3 hours per month on jail visits.

The lack of client visits in one of Mr. Terrillion's trial cases this quarter was particularly troubling. Mr. Terrillion visited the client in question for just ten minutes on the day of his arraignment. He did not visit the client again for more than two and a half months. The second jail visit occurred on the morning the client's trial began. After he was convicted, Mr. Terrillion did not visit him at all during the two and a half months between trial and sentencing. The client was convicted on 8 of 9 counts and received an exceptional sentence of 20 years in prison. Over the more than 5 months he had the case, Mr. Terrillion spent a total of about 45 minutes visiting his client.

Supervising Attorney Ray Gonzales recently expressed concern that some defenders may not be spending adequate time visiting jailed clients and reports he is considering establishing a minimum time each defender is expected to allot to jail visits each month. No such policy is currently in place, however.

Client Complaints

The Grant County Department of Public Defense maintains a dedicated toll-free telephone line for client complaints. All calls to this line are logged and substantive complaints are referred to Supervising Attorney Ray Gonzales for follow-up as appropriate. In addition, clients sometimes contact Supervising Attorney Ray Gonzales directly with complaints.

The Settlement Agreement requires the Supervising Attorney to maintain a compliant system that not only records complaints but also "informs all indigent criminal defendants of the right to make complaints regarding the quality of their public defense." For in-custody clients, Grant County posts information regarding the complaint line in the jail dorms. These jail postings appear reasonably effective as most of the calls to the complaint line come from inmates.

For out-of-custody clients, the assigned public defenders have been instructed to provide written notice of the complaint procedure at arraignment. In practice, however, the public defenders rarely do so. Supervising Attorney Ray Gonzales recently advised me that he estimates the complaint flyers are given to clients about a third of the time. Based upon my observations, his estimate is overly optimistic. I have notified that Mr. Gonzales that the existing procedure does not comply with the Settlement Agreement and recommended alternatives. He has not yet implemented any changes, but I have been advised that he will do so in the near future.

During the fourth quarter, Grant County logged approximately 31 contacts through the complaint line or the Supervising Attorney from 20 different clients:

ATTORNEY	CLIENT CONTACTS
Kentner	10
Trejo	8
Doherty	6
Perry	5
Terrillion	1
Billingsley	1

For the year, Grant County logged 207 complaints from 101 different clients:

ATTORNEY	CLIENT CONTACTS
Billingsley	64
Perry	41
Doherty	32
Kentner	30
Trejo	30
Terrillion	7
Oglebay	3

Clients frequently call the complaint line to ask for attorney phone numbers, leave messages for their assigned attorneys, or make other inquiries not related to the quality of their representation. Accordingly, reliance solely on call totals can be somewhat misleading. The annual totals, however, do reflect the general pattern of substantive complaints during the year.

In reviewing the substance of the fourth quarter complaints, I found complaints from two clients particularly concerning. Client A is charged with Attempted Murder 1° and the prosecutor's office is seeking an exceptional sentence. The client called in November to complain that his attorneys, John Doherty and Dean Terrillion, had each visited him only once during the six months he had been in custody. In following up on this complaint, Supervising Attorney Ray Gonzales reported that he had contacted counsel who advised him that the client had been seen and the case was "proceeding appropriately."

Mr. Gonzales' investigation of this complaint was inadequate. Had he reviewed the jail visit logs produced by his own office, he would have learned that the client's complaint was valid. Dean Terrillion visited the client briefly a few days after assignment in May. The next visit the client received occurred more than six weeks later in late June when John Doherty visited the client for the first time. This second visit took place a week before the client's scheduled trial date and about three weeks after completion of his omnibus hearing. These were the only visits he received until, after more than six months in custody, Client A finally called to complain about the lack of jail visits on the day his trial was scheduled to begin. This was the third scheduled trial date. At that time, Mr. Doherty and Mr. Terrillion had spent less than an hour combined over more than six months visiting their client on an Attempted Murder 1° case. Such behavior should not be tolerated and falls well below acceptable standards of practice. Mr. Gonzales' failure to take this complaint seriously is disappointing.

Client B called in December to complain that his attorney John Doherty has been telling him for a month that he would win the client's case with a suppression motion. The client called to complain on the day of his suppression hearing because Mr. Doherty still had not filed a suppression motion, and his hearing had been stricken. An internal email regarding Client B's complaint adds that the client "feels that JD just gave up and doesn't want to help him and lately JD has been giving him attitude. He would like to get a different attorney, one that cares." Supervising Attorney Ray Gonzales did visit the client in response to his complaint. Mr. Gonzales reports that the "client did not intend to complain" and after discussion, now "understands" his situation. Mr. Gonzales's response to this complaint suggests that he was more interested in diffusing the complaint than investigating it. Clearly, the client intended to and did complain about Mr. Doherty. Rather than meet with the client privately to investigate his complaint more thoroughly, Mr. Gonzales brought Mr. Doherty along for the visit. It should have come as no surprise that the client was reluctant to repeat his complaints in the presence of Mr. Doherty. Yet Mr. Gonzales considered the matter resolved and took no further action in the matter. Nowhere in his report does Mr. Gonzales address the substance of the client's complaint that Mr. Doherty had failed to file a winning suppression motion as promised

Overall, I have found Supervising Attorney Ray Gonzales's response to client complaints to be lacking. Mr. Gonzales seems to believe his role is to defend his lawyers against client complaints rather than to objectively investigate those complaints in order to protect the rights of indigent defendants. Mr. Gonzales cannot effectively supervise Grant County's defenders unless he is prepared to be critical when appropriate and to take correction action when necessary.

Investigator Staffing/Caseloads

Grant County has three approved public defense investigators: Ellyn Berg, Karl Calhoun, and Taylor Kindred. Ms. Berg is on staff with GCPD and works exclusively with the in-house felony defenders. Karl Calhoun and Taylor Kindred are private investigators who accept case assignments from Grant County. They are assigned adult felony cases with

the contract defenders as well as other public defense cases in juvenile and district court. Investigator Marv Scott retired as of November 1, 2010.

During the fourth quarter, Grant County's defenders requested investigation in 45 adult felony cases. As in prior quarters, Ms. Berg received the highest number of cases:

INV	4Q CASES
Berg	24
Kindred	13
Calhoun	10

Mr. Kindred also received 7 juvenile case assignments this quarter. For the year, Ms. Berg averaged about 10 new adult felony cases per month. Her total caseload was more than double that of the other investigators:

INV	2010 CASES
Berg	122
Calhoun	60
Kindred	24
Scott	21
Patterson	13

Supervising Attorney Ray Gonzales has expressed concern regarding Ms. Berg's workload in past quarters and had planned to contract with an overflow investigator to provide her with some relief. Unfortunately, he has not yet been able to do so.

Mr. Gonzales has submitted two additional investigators for approval, and I completed the review process on both candidates more than a month ago. Their applications remain pending, however, as Mr. Gonzales and I await a response from counsel for Grant County regarding possible conditional approval. Counsel has thus far not responded to my inquiries on this matter.

Investigation Rates

Grant County's felony defenders requested investigation in a total of 44 cases during the fourth quarter. The individual totals for the public defenders are listed in the table below:

ATTORNEY	INV REQ
Kentner	13
Doherty	10
Perry	9
Trejo	6
Oglebay	3
Terrillion	3

The total number of requests for 2010 followed a similar pattern:

ATTORNEY	INV REQ
Kentner	55.5
Perry	51.5
Doherty	37.5
Trejo	28
Oglebay	22
Terrillion	16.5
Billingsley	8

Together, Grant County's defenders requested investigation in 219 cases this year.

The overall rate of investigation in Grant County at the end of 2010 was 36%. This represents an increase over last year (29%) and is consistent with the investigation rates in 2007 (35%) and 2008 (36%). Individual investigation rates continue to vary widely:

ATTORNEY	% INV
Perry	58.4%
Kentner	50.4%
Oglebay	49.6%
Doherty	35.5%
Trejo	26.7%
Terrillion	20.3%
Billingsley	12.2%

Mr. Perry and Mr. Kentner more than doubled their rate of investigation in 2010. Mr. Doherty and Ms. Trejo increased their rates by more than 10%. By contrast, Mr. Billingsley and Mr. Terrillion investigated roughly the same percentage of their cases this year as they did last.

Though the investigation rates of most defenders improved in 2010, some defenders are still not investigating all of the cases they should. During the fourth quarter alone, Grant County's public defenders had six jury trials in which they had not requested investigation. Brett Billingsley took four cases to trial without the benefit of investigation while Dean Terrillion and Julie Trejo each had one such trial. Mr. Terrillion's client, discussed above, faced eight counts arising from two residential burglaries and was ultimately sentenced to 20 years in prison. It is rarely, if ever, appropriate for an attorney to proceed to trial without investigation. Neither the attorneys involved nor Supervising Attorney Ray Gonzales has offered any justification for the lack of investigation in these cases.

I continue to believe that Supervising Attorney Ray Gonzales should provide the defenders with training regarding the effective and appropriate use of investigation and that he should more closely supervise public defenders who demonstrate problems in this area. To date, Mr. Gonzales has been unwilling to follow these recommendations.

Experts

The Settlement Agreement recognizes that defenders need to employ experts in some cases in order to be effective. The Settlement Agreement also specifically requires that expert requests be made *ex parte* and sealed in the court file.

Grant County defenders filed four expert requests during the fourth quarter. Bob Kentner, John Doherty, Dean Terrillion, and July Trejo each made one request. The requests of Mr. Kentner and Ms. Trejo were sealed. Mr. Terrillion and Mr. Doherty did not file a motion to seal.

I remain particularly concerned about the handling of cases involving mental health issues. Since last quarter, Grant County public defenders have requested that three more indigent defendants be evaluated by Eastern State Hospital. In two of the three cases, the assigned defenders did not ask for a defense expert.[2] Supervising Attorney Ray Gonzales has assured me that he recognizes the importance of retaining defense experts in these cases. He has even gone so far as to propose adopting a policy requiring that Grant County's public defenders seek an expert in all cases involving mental health issues. Yet he has not follow through with his proposal or taken any other action to address this issue. When discussing the cases identified in last quarter's report, Mr. Gonzales indicated that the problem was just a matter of timing and that he still expected the assigned defenders to retain an expert in those cases. In fact, the assigned attorneys never retained experts in any of the four cases I identified. In two cases assigned to John Doherty, he stipulated to a finding of competence almost immediately after Eastern State Hospital completed its report. .

Two cases I reviewed this quarter were concerning due not only to the failure of the assigned attorneys to request an expert but also their failure to identify mental health issues in a timely fashion. In one case, the assigned attorneys had little contact with the jailed client for more than two months. During the first month the client was in custody, he received one visit from his assigned attorney Dean Terrillion.[3] The visit lasted for a total of 7 minutes. Mr. Terrillion did not seek an expert, request investigation, or raise mental health concerns with the court. The case was later transferred to John Doherty who represented the client for almost a month but never visited him. Mr. Doherty was advised that the defendant was unable to appear in court and that he already had a court-ordered mental health evaluation pending in district court. Still, Mr. Doherty did not request investigation or an expert. Only after the client had been in custody for more than two months did Mr. Doherty finally secure an order for a mental health evaluation at Eastern State Hospital.

[2] Mr. Terrillion and Mr. Kentner both failed to request experts in their cases. Mr. Kentner did request an expert in the third case.

[3] No one visited the client prior to his first appearance. No one visited the client prior to arraignment either, probably due to the fact that Supervising Attorney Ray Gonzales did not assign counsel until the day of arraignment.

In another case, police described the defendant as suicidal with strange, nonsensical speech. He was punching himself in the mouth and had broken a tooth in the process. Police took him to Grant County Mental Health for an evaluation but were called back later when he became disruptive. When police tried to assist mental health staff by escorting the man back to a secure room, the man resisted and was charged with Assault 3°. The need for a psychological evaluation was noted by the attorney handling his first appearance. Dean Terrillion was assigned to represent him shortly thereafter. Despite the obvious mental health issues, Mr. Terrillion never requested an expert or otherwise raised mental health issues. The case was subsequently transferred to Susan Oglebay who requested the defendant be evaluated by Eastern State Hospital. When Ms. Oglebay made the request, the court questioned why the prosecutor was even pursuing felony charges in the matter. The case was resolved by misdemeanor plea a week later.

Many of Grant County's public defenders exhibit a lack of urgency in addressing mental health issues in their cases. Part of the problem is likely inadequate client contact which prevents the defenders from recognizing mental health issues promptly. Even when such issues are readily apparent, however, some public defenders are not requesting a defense expert or even seeking an evaluation by the State in a timely manner. I have recommended that Supervising Attorney Ray Gonzales arrange for additional training in this area and that he develop forms and briefing to facilitate the process of requesting experts. Mr. Gonzales has expressed support for these ideas but taken no action.

Motions Practice

During the fourth quarter, Grant County public defenders filed substantive motions in 14 cases. The totals for each public defender are listed below:

ATTORNEY	MOTIONS
Trejo	5
Terrillion	3
Kentner	2
Oglebay	2
Doherty	1
Perry	1

Julie Trejo again filed the most substantive motions this quarter, as she has in every quarter this year. Mr. Kentner had a noteworthy success, winning an unusual post-conviction motion challenging a prison inmate's offender score more than 7 years after sentencing. He won the client's immediate release.

For the year, Grant County public defenders filed substantive motions in 55 cases, with Ms. Trejo filing motions in almost twice as many cases as every other defender except Mr. Terrillion:

ATTORNEY	MOTIONS
Trejo	15
Terrillion	12
Oglebay	8
Perry	8
Kentner	7
Doherty	4
Billingsley	3

Ms. Oglebay's motions total is also impressive given that she was assigned the fewest new felony cases by a substantial margin. Mr. Doherty, by contrast, received among the highest number of new cases but filed very few motions. Grant County's defenders frequently obtained favorable results for their clients by filing motions as 19 of the cases in which motions were filed ended in dismissal or a misdemeanor plea.

The departure of Ms. Trejo and Mr. Terrillion may result in fewer motions filed in 2011 given that together they filed almost as many motions as the other five defenders combined. Supervising Attorney Ray Gonzales should take care to emphasize the importance of motions practice with new hires to help ensure Grant County is able to maintain the progress it has made in this area.

Trials

The trial rate in Grant County has become the program's greatest strength. Grant County's public defenders tried 11 cases during the fourth quarter:

ATTORNEY	TRIALS
Billingsley	4
Perry	2
Terrillion	2
Trejo	2
Kentner	1
Doherty	0
Oglebay	0

Brett Billingsley had twice as many trials as any other defender as he finished his remaining cases and transitioned to his new position as a public defender in Grant County District Court. Mr. Billingsley won favorable verdicts in all of his trials, including complete acquittals in three cases. Mr. Terrillion won not guilty verdicts for his client on charges of Assault 1° and Assault 2° with the client convicted of the lesser charge of Assault 3°. Bob Kentner lost a difficult robbery trial but helped his client avoid three deadly weapon sentencing enhancements.

For the year, Grant County public defenders had 38 trials, almost twice the number as in 2009. Ms. Trejo continued her strong trial practice from last year while John Perry went from 1 trial last year to 8 this year, and both Brett Billingsley and Dean Terrillion doubled their trial totals from last year:

ATTORNEY	TRIALS
Billingsley	9
Perry	8
Trejo	7
Terrillion	6
Doherty	4
Kentner	3
Oglebay	1

Almost every public defender had multiple trials in 2010, the only exception being Susan Oglebay who received substantially fewer new felony case assignments than her colleagues.

With Mr. Billingsley and Mr. Terrillion already having left the program and Ms. Trejo and Mr. Doherty leaving soon, Grant County is losing attorneys who tried 26 cases last year. That represents almost 70% of the trials in 2010. Grant County will face a significant challenge in maintaining its trial rate in 2011 without these defenders

Sentencing

Sentencing practice remains a concern in Grant County. I recently observed Dean Terrillion represent a client at a sentencing hearing for which he appeared completely unprepared. The prosecutor sought an exceptional sentence of 20 years, arguing that the defendant's extensive criminal history suggested he would inevitably re-offend. Mr. Terrillion said little on the defendant's behalf; his comments were roughly "I can't deny the defendant is in warehouse status. The question is how much money do you want to spend warehousing him?" Both the defendant, who spoke about his family, and the judge, who noted that the defendant's criminal history was all nonviolent, made more persuasive arguments on the defendant's behalf than Mr. Terrillion. This was the same case discussed above in which Mr. Terrillion had spent very little time visiting the client, a fact that undoubtedly made presenting mitigation information more difficult. The court ultimately granted the State's request and imposed an exceptional sentence of 20 years for crimes arising from two residential burglaries that involved no weapons or violence of any kind. Ironically, Mr. Gonzales had insisted that Mr. Terrillion return from his new job to handle the sentencing in this matter because of his familiarity with the case.

Training

Supervising Attorney Ray Gonzales arranged for a lunch-time training on the Drug Offender Sentencing Alternative (DOSA) during the fourth quarter. For the year, Mr.

Gonzales organized only two local trainings. Grant County did, however, offer all of its defenders the opportunity to attend the WDA annual conference last spring. In addition, Grant County sent Dean Terrillion and Kacie Maggard to an intensive trial training program last year. As part of my year-end review process, Grant County provided the CLE record for each of its public defenders, and it appears that they all obtained adequate criminal defense training last year.

Though Grant County currently provides sufficient training opportunities for its defenders, Supervising Attorney Ray Gonzales should provide more local trainings targeted to ongoing issues such as investigation, experts, and sentencing practice. Moreover, Mr. Gonzales should take advantage of the resources available on his own staff. Grant County is in the process of losing four different public defenders each of whom could have led an in-house training. The failure to establish an ongoing in-house training program led by the defenders themselves is a significant missed opportunity.

Conflicts

Grant County continues to operate without an approved conflict of interest policy as it has for the last 18 months. Supervising Attorney Ray Gonzales has promised to submit a conflict policy for approval but still has not done so. Most recently, he assured me he would provide the conflict policy by December 17. At the end of December, he acknowledged he had missed his own deadline but still has not submitted a conflict policy.

Based upon the information provided by Mr. Gonzales, most conflict assignments during the fourth quarter seemed necessary and appropriate. One case, however, was assigned to outside counsel based not upon a conflict of interest but upon a perceived need for overflow counsel. Mr. Gonzales apparently concluded he needed overflow counsel because the other attorneys to whom he could assign the case had busy schedules. Mr. Gonzales explained that he believed that assignment to outside counsel was in the best interest of the client.

Finally, I have some concern about Mr. Gonzales's use of conflict screens. Mr. Gonzales has a very informal approach to screening conflicts of interest within his office. These conflict screens are generally not memorialized and amount to little more than an admonition to the attorneys involved to not talk with each other about the case. Conflict screens should be rarely used. If a screen is employed, it should be carefully documented. In the future, Mr. Gonzales should avoid the use of such conflict screens. If Grant County wishes to allow for screens in its conflict policy, that policy should detail how a conflict screen is to be documented.

Supervising Attorney

My assessment of the Supervising Attorney's performance remains unchanged. Despite having ample opportunity to address clearly defined problems, Mr. Gonzales has failed to do so. He seems ill-suited for a management role.

The problems identified in this report are not new. Neither are my recommendations. Each quarter I seem report on the same problems and make the same recommendations. Supervising Attorney Ray Gonzales frequently promises to follow these recommendations or otherwise address ongoing problems, but he rarely delivers on those promises. At the end of 2009, I provided a detailed list of recommendations for improving supervision in 2010. Supervising Attorney Ray Gonzales has largely ignored those recommendations. Among my recommendations from a year ago were many familiar topics:

- Monitor jail visits weekly for attorneys who have demonstrated problems in this area and personally assure each client receives a visit;
- Monitor investigation requests monthly and meet with attorneys who have low rates of investigation to discuss improving performance in this area;
- Provide training on the use of investigators and the importance of investigation;
- Draft written guidance for attorneys handling the probation violation calendar that defines which cases must be reported for case credit under the Settlement Agreement;
- Provide training on representing clients in probation violation hearings;
- Enforce reporting requirements for extraordinary credits as well as obtain and record credits for past-due hours from 2009;
- Draft templates for the defenders for expert requests and related motions to seal;
- Coordinate defender efforts regarding sealing issues and meet with the judges if necessary to better understand their concerns with the process;
- Provide training regarding the use of experts, sealing expert requests, and making a record for appeal on expert and sealing issues;
- Monitor expert requests on cases with mental health issues;
- Schedule standing weekly meetings with attorneys who have demonstrated a need for closer supervision;
- Meet with the defenders individually and/or as a group to discuss topics on which they would like training as well areas in which they might be able to present a training to their colleagues;
- Revise the conflicts policy and procedure to reflect current practice and submit it for approval;
- Develop a formal written procedure for transferring cases including a template for a transfer memo and specific guidance regarding the tasks to be completed prior to transfer; and

Rather than take specific steps to deal with ongoing problems and improve the practice in Grant County, Supervising Attorney Ray Gonzales seems content to remain a passive observer rather than a proactive manager of the program.

Mr. Gonzales's strength is in promoting a trial-oriented approach to criminal defense. He views trials as an important part of defense practice and encourages Grant County's defenders to go to trial when appropriate. I worry, however, that by emphasizing trial practice without also stressing the importance of trial preparation, Mr. Gonzales may inadvertently be cultivating what is sometimes referred to as a "cowboy mentality" among some of the public defenders. In such an environment, trial becomes an end in itself and little thought is given to the client's needs and goals or to less glamorous tasks such as investigation, jail visits, and trial preparation.

If Mr. Gonzales is to succeed as Grant County's Supervising Attorney, he must demonstrate a willingness to change and an ability to follow through on promised improvements. The turnover in attorney staff offers an opportunity to establish a new approach to supervision, a more proactive, structured approach. I hope that Mr. Gonzales will seize this opportunity.

Conclusion

Grant County starts 2011 facing the daunting task of rebuilding its public defender staff. Grant County may be fortunate and find attorneys who are highly skilled, diligent, and self-motivated, but given the high level of attorney turnover, the best way to ensure the quality of representation over time is through effective supervision. Accordingly, Grant County should make supervision a priority. Grant Count must take steps to ensure that its Supervising Attorney has internal systems and standards in place to monitor the performance of its public defenders and that he has the management skills necessary to improve attorney performance when it falls below Grant County's minimum standards.

Exhibit R

The Missouri Project

A Study of the Missouri Public Defender System and Attorney Workload Standards

Includes a National Blueprint for Future Workload Studies

The Missouri Project:

A Study of the Missouri Public Defender System

and

Attorney Workload Standards

With a National Blueprint

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Prepared by:

RubinBrown

On Behalf of the American Bar Association's

Standing Committee on Legal Aid and Indigent Defendants

ABA Defending Liberty Pursuing Justice

This publication has been prepared by RubinBrown on behalf of the American Bar Association's Standing Committee on Legal Aid and Indigent Defendants. The views expressed herein, unless otherwise noted, have not been approved by the House of Delegates or the Board of Governors of the American Bar Association and, accordingly, should not be construed as representing the policy of the American Bar Association.

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RubinBrown was engaged by the American Bar Association ("ABA") on behalf of its Standing Committee on Legal Aid and Indigent Defendants ("SCLAID") to provide consulting services and assist in the development of a process to calculate workload standards for the Missouri State Public Defender System. This report presents the results of the engagement. Our services were performed in accordance with the Statements on Standards for Consulting Services as prescribed by the American Institute of Certified Public Accountants.

RubinBrown LLP

RubinBrown LLP

Preface

This report is the result of a collaborative effort between RubinBrown LLP ("RubinBrown"),[1] the American Bar Association ("ABA"),[2] and the Missouri State Public Defender System ("MSPD"). The ABA has denominated the effort "The Missouri Project." The effort was led by Michael T. Lewis (Partner-In-Charge of the Business Advisory Services group at RubinBrown). The research team consisted of Jason Mannello (RubinBrown), Josh Leesmann (RubinBrown), and Kent Bausman, Ph.D. (Maryville University).

We would like to thank Stephen F. Hanlon,[3] Chair of the Indigent Defense Advisory Group of the ABA's Standing Committee on Legal Aid and Indigent Defendants ("SCLAID")[4] for his assistance in this effort. We would also like to thank Cathy Kelly and Peter Sterling (Director and General Counsel, respectively, Missouri State Public Defender System) for providing guidance and insight into the MSPD's practices and technical systems. We also appreciate the input and editorial comments of Norman Lefstein.[5] We would also like to thank Dean Hunter for his editorial review.[6]

We would like to thank each member of the MSPD for their cooperation and input throughout the project. We would also like to thank the group of private bar attorneys and public defender experts asked to participate in numerous surveys and meetings. The project would not be possible without their input and efforts.

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[1] Founded in 1952, RubinBrown (www.RubinBrown.com) is one of the nation's leading accounting and professional consulting firms. RubinBrown helps its clients build and protect value, while at all times honoring the responsibility to serve the public interest. RubinBrown's vision statement is: One firm, highly respected and nationally prominent with a solid foundation of core values, inspired team members and totally satisfied clients.

[2] The ABA (www.AmericanBar.org) is the largest voluntary professional membership organization and the leading organization of legal professionals in the United States. Its nearly 400,000 members come from all 50 states and other jurisdictions. They include attorneys in private law firms, corporations, nonprofit organizations, government agencies, and prosecutorial and public defender offices, as well as judges, legislators, law professors, and law students.

Since its founding, the ABA has actively worked in the fields of legal ethics and indigent defense. In 1908, the ABA adopted its first Canons of Professional Ethics (now the Model Rules of Professional Conduct) ("ABA Model Rules"). In 1913, the ABA created the entity now known as the ABA Standing Committee on Ethics and Professional Responsibility ("ABA Ethics Committee"). The ABA Ethics Committee publishes formal ethics opinions on professional and judicial conduct, provides informal responses to ethics inquiries, and, upon request, assists courts in their development, modification, and interpretation of ethical standards such as the ABA Model Rules and the ABA Model Code of Judicial Conduct.

[3] For the last 20 years, much of Mr. Hanlon's work has involved systemic challenges to indigent defense systems. Mr. Hanlon currently limits his practice to advising and representing public defenders with excessive caseloads. He currently teaches indigent defense at St. Louis University School of Law.

[4] The ABA created SCLAID in 1920 and charged the entity with examining the delivery of legal services to assist the poor.

[5] Mr. Lefstein is Professor of Law and Dean Emeritus of the Indiana University Robert H. McKinney School of Law, former Chairman of the ABA Section of Criminal Justice, Reporter for the Second Edition of ABA Criminal Justice Standards Relating to *The Prosecution Function* and *The Defense Function, Providing Defenses Services,* and *Pleas of Guilty*, and former Chairman of the ABA Committee on Criminal Justice Standards.

[6] Mr. Hunter is the Spring managing editor of the St. Louis University Public Law Review.

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Executive Summary

This report lays out the methodology, analysis, and results of the joint efforts of the MSPD, the ABA, and RubinBrown to develop data-supported workload standards. Although this effort is not the end of the process, it is a critical first step in establishing supportable, data-driven workload standards that can assist the MSPD in assessing staffing requirements and provide empirical support to determine maximum workloads.

In 1973, the National Advisory Commission on Criminal Justice Standards and Goals recommended maximum case loads for public defender programs (the "NAC Standards"). However, the NAC Standards were not based upon empirical study[7] and MSPD's recent application of the NAC Standards has been criticized by the Missouri State Auditor and the National Center for State Courts ("NCSC"). Both the Missouri State Auditor and the NCSC concluded:

- MSPD's protocol "suffers significantly from its failure to depart from NAC caseload standards,"
- The protocol suffers "from its apparent inability to make fuller use of a 2006 time study,"[8] and
- "Our review of the calculations and available data supporting the caseload protocol noted the MSPD lacks sufficient support for the data and methodology used for protocol calculations." [9]

These critiques were at the forefront of the analysis to establish new workload standards for the MSPD. This study does not rely upon the 1973 NAC Standards. It instead utilizes MSPD's current time data, combined with a data-driven survey process, to calculate new workload standards.

Daily time entry became a mandatory function for all MSPD practitioners as of March 1, 2013.[10] This study utilized MSPD time data for a 25-week period beginning in March of 2013 and ending August of 2013 as the foundation for workload standards.

Excessive workloads result in insufficient time available to provide reasonably effective assistance of counsel to all clients. As in prior studies of this type, this study required a means to identify areas where MSPD attorneys reported they often did not have sufficient time to complete certain tasks with reasonable effectiveness.

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[7] "From the NAC commentary, it is clear that no empirical study in support of its recommended caseload limits was ever undertaken." NORMAN LEFSTEIN, AMERICAN BAR ASSOCIATION, SECURING REASONABLE CASELOADS: ETHICS AND LAW IN PUBLIC DEFENSE, 44-5 (2011).

[8] NATIONAL CENTER FOR STATE COURTS, BRIEF COMMENT ON THE MISSOURI STATE PUBLIC DEFENDER COMMISSION'S CASELOAD STANDARD PROTOCOL: TECHNICAL ASSISTANCE PAPER 2, 11 (2010).

[9] THOMAS. A. SCHWEICH, MO. STATE AUDITOR, REPORT NO. 2012-129, MISSOURI STATE PUBLIC DEFENDER 11 (2012).

[10] At the time this report was issued, MSPD personnel did not record sick leave, vacation, or holidays in the time log system. However, this information was tracked in a separate form. Further, the Appellate division did not begin tracking time until April 1, 2013.

The study surveyed MSPD practitioners directly and was used to identify which case-related tasks they reported they often had either sufficient or insufficient time to perform based on current practices and staffing levels. The study then utilized a Delphi method to estimate the amount of time that should be allotted for those tasks that MSPD line defenders identified as often not having sufficient time to complete with reasonable effectiveness.[11] The Delphi method used in this study was an iterative process that included both experienced private practice criminal defense attorneys as well as MSPD line defenders.[12]

The resulting attorney workload standards, shown below, reflect estimates of the average amount of time[13] an attorney can expect to spend on a category of Case Tasks for a particular type of case to provide reasonably effective assistance of counsel.[14]

Case Type	Controllable Case Task Hours per Case
Murder/Homicide	106.6
A/B Felony	47.6
C/D Felony	25.0
Sex Felony	63.8
Misdemeanor	11.7
Juvenile	19.5
Appellate/PCR	96.5
Probation Violation	9.8

The conclusion shown in the above chart reflects the consensus time expectations (under prevailing professional norms and standards) of a group of both private practice and public defender experts from across the state of Missouri. The above workload standards, however, are not the end of the process. Stakeholders throughout the criminal justice system recognize that the study and calculation of workload and related workload standards is a continuous process.

[11] MSPD line defenders were asked to identify tasks that they often did not have sufficient time to complete with reasonable effectiveness in the current environment (i.e., current practices and staffing levels).

[12] The study excluded MSPD personnel solely tasked with the administration and management of the system, focusing only on MSPD practitioners that carry a caseload.

[13] Of course, some cases will take less time and some cases will take more time, but in each case, as the recent decision of the United States District Court for the Western District of Washington makes clear, reasonably effective representation "presumes a certain basic representational relationship" and the system of public defense must "[allow]…counsel to give each case the time and effort necessary" to ensure reasonably effective representation, Wilbur v. City of Mount Vernon, No. C11-1100RSL, 2013 WL 6275319, at *1, *3 (W.D. Wash. December 4, 2013), so that the prosecutor's case can be subjected to "meaningful adversarial testing," United States v. Cronic, 466 U.S. 648, 654, 659 (1984).

[14] The workload standards include only case-related tasks over which an attorney has some control (i.e., exclude in court, travel, training, and administrative time). Further, the workload standards assume adequate support staff and attorney resources are available. Private practice defense counsel reported utilizing 2 support staff resources per attorney, on average. By contrast, the MSPD currently has approximately 2 attorneys for every 1 support staff resource (0.55 support staff per attorney, or approximately 1/4th of the support staff available to private practice defense counsel).

These standards should be revisited periodically to account for potential changes in technology and technology usage, indigent defendant demographics and crime patterns, the Missouri criminal code, and the staffing and organizational structure within the MSPD and the larger criminal justice system.

In addition, as the MSPD's time entry system matures and the amount of data contained within it increases, the ability to utilize that data to examine organization practices, study different types of complexity factors, and quantify time sufficiency will increase.

Introduction

The guarantee of assistance of counsel in one's defense against criminal prosecution is a right afforded under the Sixth Amendment to the U.S. Constitution and Article 1, Section 18(a) of the Missouri Constitution.

In 1963, the Supreme Court's decision in *Gideon v. Wainwright* extended the right to counsel to felony cases in state criminal courts;[15] subsequently, the Supreme Court extended the right to counsel to misdemeanor cases ending with the defendant being imprisoned.[16] A majority of states, however, recognize the right to a lawyer if the defendant is charged with a misdemeanor. In Missouri, the right to counsel is extended to defendants in misdemeanor cases if incarceration is probable.[17]

Despite the promise provided by the *Gideon* decision, many academics and legal scholars have concluded that much of that promise has remained unfulfilled.[18] Simply assigning an attorney to a defendant does not ensure a fair outcome.[19] Rather, pursuant to the Rules of Professional Conduct, proper defense representation requires that lawyers: 1) be competent to represent the client, 2) offer prompt and diligent representation of the client's interests, and 3) productively engage with the client while exercising independent judgment.[20]

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[15] Gideon v. Wainwright, 372 U.S. 335 (1963).
[16] Argersinger v. Hamlin, 407 U.S. 25 (1972).
[17] *See* State v. Watson, 687 S.W.2d 667, 669 (Mo. Ct. App. 1985) (citing *Argersinger*, 407 U.S. at 37).
[18] Bruce R. Jacob, *50 Years Later: Memories of Gideon V. Wainwright*, 87 FLA. B.J. 10 (2013); Cara H. Drinan, *Getting Real About Gideon: The Next Fifty Years of Enforcing the Right to Counsel*, 70 WASH. & LEE L. REV. 1309 (2013); Roger A. Fairfax, Jr., *Searching for Solutions to the Indigent Defense Crisis in the Broader Criminal Justice Reform Agenda*, 122 YALE L.J. 2316 (2013); NATIONAL RIGHT OF COUNSEL COMMITTEE, JUSTICE DENIED: AMERICA'S CONTINUING NEGLECT OF OUR CONSTITUTIONAL RIGHT TO COUNSEL (2009), *available at* http://www.constitutionproject.org/pdf/139.pdf *and* http://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls_sclaid_def_justice_denied.authcheckdam.pdf; and ABA STANDING COMMITTEE ON LEGAL AID AND INDIGENT DEFENDANTS, GIDEON'S BROKEN PROMISE: AMERICA'S CONTINUING QUEST FOR EQUAL JUSTICE, (2004), *available at* http://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls_sclaid_def_bp_right_to_counsel_in_criminal_proceedings.authcheckdam.pdf.
[19] Wilbur v. City of Mount Vernon, No. C11-1100RSL, 2013 WL 6275319, at *6 (W.D. Wash. December 4, 2013).
[20] Phyllis E. Mann, *Ethical Obligations of Indigent Defense Attorneys to Their Clients*, 75 MO. L. REV. 715 (2010).

To guide policy makers and criminal defense practitioners in ensuring a fair and proper process, the American Bar Association has developed Criminal Justice Standards ("ABA Standards")[21] and the state of Missouri has developed the Missouri State Public Defender Guidelines for Representation ("Missouri Guidelines").[22]

The fulfillment of these obligations is dependent upon having sufficient resources available. In the years since *Gideon*, the consensus is that indigent defense in the United States has been inadequately supported, creating a crisis in the state of indigent defense.[23] According to Drinan, "[f]rom the start, states have failed to fund the indigent defense function adequately, and as the volume of criminal cases has grown over the years, too few lawyers have faced ever-increasing workloads. The result has been what many have called 'assembly-line justice' – in other words, egregious and persistent violations of the right to counsel."[24]

To address the potential violations of the right to counsel, several states and counties throughout the United States have begun to search for data-driven workload standards to assess and manage attorney resources in an attempt to provide adequate criminal defense for the poor. From our discussions with the MSPD, it was also clear that the system would benefit from a consistent methodology that would allow public defenders to quantify workload expectations necessary to provide reasonably effective assistance of counsel to indigent defendants.

[21] The ABA Standards are the result of a lengthy process that has been in continual development since 1964. Specifically, the ABA Standards "are the result of the considered judgment of prosecutors, defense lawyers, judges, and academics who have been deeply involved in the process, either individually or as representatives of their respective associations, and only after the [ABA] Standards have been drafted and repeatedly revised on more than a dozen occasions, over three or more years." Martin Marcus, *The Making of the ABA Criminal Justice Standards: Forty Years of Excellence*, 23 CRIM. JUST. (2009), *available at* http://www.americanbar.org/groups/criminal_justice/standards.html.

[22] MISSOURI STATE PUBLIC DEFENDER SYSTEM, GUIDELINES FOR REPRESENTATION (1992).

[23] NATIONAL RIGHT OF COUNSEL COMMITTEE, *supra* note 18, at 4.

[24] Drinan, *supra* note 18, at 1311.

Literature Review

The Delphi method was introduced in 1962 by researchers at the Rand Corporation. The method was described as a "new" research technique utilized by the Air Force in the 1950s to gather expert opinion and generate a reliable consensus.[25] As a methodological strategy, the Delphi method proposed that a succession of surveys be given to a group of experts, with structured feedback presented to the experts at each interval stage.[26] The surveying practices applied by the Delphi method could be interviews or questionnaires that focus on some fundamental question of significance to the group of experts convened for feedback.

The features of this method include "anonymity, iteration, controlled feedback, and the statistical aggregation of group response."[27] At the onset of the process, participants in a Delphi group are largely anonymous from one another. The purpose of anonymity is to ensure that solicited experts are not influenced by the responses of other participants and that the ideas presented are judged on their own merit. This technique is believed to be conducive to the exercise of independent thought on the part of participating experts and to aid experts in forming well-thought-out opinions.

The reliance on expert opinion as data is built on the premise that an expert is "able to select the needed items of background information, determine the character and extent of their relevance, and apply these insights to the formulation of the required personal probability judgments."[28] Experts typically complete a questionnaire over multiple iterations with the goal of allowing participants to change their opinions and judgments when presented with controlled feedback regarding the opinions and judgments of their fellow participants. This controlled feedback is normally presented as a statistical summation of the group's responses, e.g., a mean or median. The structured feedback at each successive iteration consists of "available data previously requested by…the experts…, or of factors and considerations suggested as potentially relevant by one or another respondent."[29]

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[25] NORMAN DALKEY & OLAF HELMER, RM–727, AN EXPERIMENTAL APPLICATION OF THE DELPHI METHOD TO THE USE OF EXPERTS 1 (1962), *available at* http://www.rand.org/content/dam/rand/pubs/research_memoranda/2009/RM727.1.pdf.

[26] *Id.*

[27] Gene Rowe & George Wright, *The Delphi Technique as a Forecasting Tool: Issues and Analysis*, 15 INT'L J. OF FORECASTING 353, 354 (1999).

[28] OLAF HELMER & NICHOLAS RESCHER, P–1513, ON THE EPISTEMOLOGY OF THE INEXACT SCIENCES 42 (1958) *available at* http://www.rand.org/content/dam/rand/pubs/papers/2005/P1513.pdf.

[29] DALKEY & HELMER, *supra* note 25, at 2.

The goal of the feedback at each stage is to assist in limiting mistaken beliefs an expert may have on the question at hand or to increase their awareness of other information they may not have previously considered.[30]

At the conclusion of the final iteration, the final iteration's mean or median response is used as the measure of the group's opinion.[31] In theory, the number of iterations required of the Delphi method can be unlimited until consensus among participants is achieved, however it has been found that three to four iterations is usually all that is required to reach consensus.[32] Rowe and Wright systematically reviewed studies that explored the effectiveness of the Delphi method. Their focus was on how well the Delphi method worked in producing a consensus of opinions and judgments and to assess how accurate those opinions and judgments were.

Overall, they found that the majority of these evaluative studies showed support for the Delphi method in reducing variances in opinion and judgment, thus indicating that greater consensus had been achieved. As for the concern over the accuracy of those opinions and judgments, Rowe and Wright again found that the majority of studies provide compelling evidence in support of the Delphi method. Compared to other methodological techniques utilized for similar purposes, the Delphi method was found to "lead to improved judgments over staticized groups and unstructured interacting groups."[33]

Since its introduction, the Delphi method has been employed across a diverse array of industries, such as health care, education, information systems, transportation, and engineering.[34] The purpose of its use beyond forecasting has ranged from "program planning, needs assessment, policy determination, and resource utilization."[35] Within the legal system, early examples of use of the Delphi method can be traced back a couple of decades.

Examples of these attempts were sponsored by both the National Association of Court Management ("NACM") and the National Center for State Courts ("NCSC"). These efforts were principally charged with assessing judicial and court support staff needs.[36]

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[30] *Id.* at 2–3.
[31] Rowe & Wright, *supra* note 27, at 354.
[32] Chia-Chien Hsu & Brian A. Sandford, *The Delphi Technique: Making Sense of Consensus*, 12 PRAC. ASSESSMENT, RES. & EVALUATION 1 (2007), *available at* http://pareonline.net/pdf/v12n10.pdf.
[33] Rowe & Wright, *supra* note 27, at 366.
[34] HAROLD A. LINSTONE & MURRAY TUROFF, THE DELPHI METHOD: TECHNIQUES AND APPLICATIONS 10–11 (2002); Rowe & Wright, *supra* note 27, at 355.
[35] Hsu & Sandford, *supra* note 32, at 1. For detailed examples of the application of the Delphi method, see LINSTONE & TUROFF, *supra* note 34.
[36] *See, e.g.*, VICTOR E. FLANGO & BRIAN J. OSTROM, NAT'L CENTER FOR STATE COURTS, ASSESSING THE NEED FOR JUDGES AND COURT SUPPORT STAFF (1996).

In the 2000's, the NCSC started using Delphi techniques in addressing the caseload and workload crisis of indigent defense in the United States. In a recent book, Lefstein comments on the use of the Delphi method, noting:

> "The technique is recommended when a problem does not lend itself to precise measurement and can benefit from collective judgments. This would seem to be precisely the situation when a defense program seeks to determine how much additional time, on average, its lawyers need to spend on a whole range of activities involving different kinds of cases."[37]

The Delphi method has been recommended as a necessary complement to time-based studies that seek to determine appropriate caseloads for defense lawyers.[38] What the Delphi method is believed to offer is a method to adjust preliminary case weights based on time studies while avoiding the institutionalization of potentially sub-standard current practices.

Methodology & Analysis

Past workload studies[39] were reviewed and assessed in developing the methodology advanced in this study, which sought to quantify the amount of time a public defender should expect to spend on a particular task in a particular case type through an application of the Delphi method. As in prior studies, the Delphi methodology was used to provide an estimate of what workload standards *should be* in order for a public defender to provide reasonably effective assistance of counsel. However, among other things, this study expands upon prior work in this field in that it focuses on both the amount of time that should be spent on a task, as well as how often a task should be completed. Further, this study expands on prior work in that it utilizes the input of private practice defense counsel.

To determine workload standards, a multi-step process was used that first analyzed the current, "actual" state of affairs as a starting point. After an introduction of the definitions and key terms utilized throughout this study, the methodology can best be explained as the performance of the following steps:

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[37] NORMAN LEFSTEIN, AMERICAN BAR ASSOCIATION, SECURING REASONABLE CASELOADS: ETHICS AND LAW IN PUBLIC DEFENSE, supra note 1, at 146.

[38] *Id.* at 149.

[39] *See* National Center for State Courts' ("NCSC") reports: MATTHEW KLEIMAN & CYNTHIA G. LEE, VIRGINIA INDIGENT DEFENSE COMMISSION ATTORNEY AND SUPPORT STAFF WORKLOAD ASSESSMENT – FINAL REPORT (2010); NATIONAL CENTER FOR STATE COURTS, A WORKLOAD ASSESSMENT STUDY FOR THE NEW MEXICO TRIAL COURT JUDICIARY, NEW MEXICO DISTRICT ATTORNEYS' OFFICES, AND THE NEW MEXICO PUBLIC DEFENDER DEPARTMENT – FINAL REPORT (2007); NATIONAL CENTER FOR STATE COURTS, MARYLAND ATTORNEY AND STAFF WORKLOAD ASSESSMENT (2005). *See also* ELIZABETH NEELEY, UNIV. NEB. PUB. POLICY CENTER, LANCASTER COUNTY PUBLIC DEFENDER WORKLOAD ASSESSMENT (2008).

A. System Analysis
B. Case Type / Case Task Summary
C. Time Study
D. Time Sufficiency Survey
E. Delphi Process

Standards, Definitions, and Key Information

Sufficient time to complete the specific task: the amount of time, on average, reasonably required to complete the task with reasonable effectiveness.

Reasonable effectiveness: effective representation under prevailing professional norms.

Typical case: average, or typical, case considering that each case may have significant variability in the level of complexity (i.e., language, mental health, and other issues).

ABA Criminal Justice Section Standard 4-6.1(b): "Defense counsel may engage in plea discussions with the prosecutor. Under no circumstances should defense counsel recommend to a defendant acceptance of a plea unless appropriate investigation and study of the case has been completed, including an analysis of controlling law and the evidence likely to be introduced at trial."

Missouri v. Frye (132 S.Ct. 1399, 2012): "…ninety-four percent of state convictions are the result of guilty pleas."

A. System Analysis

The MSPD provides "direct representation to over 98% of the indigent defendants accused of state crimes."[40] The system is comprised of approximately 585 employees, of which 376 (64%) are attorneys and 209 (36%) are support staff. In other words, there is approximately one support staff resource for every two attorneys. The line defender attorney group consists of 312 public defenders in the trial division, 36.5 public defenders in the Appellate/PCR division, and 17 public defenders in the capital division. The trial and appellate/PCR division support staff group consists of 43 legal assistants, 56.5 investigators, 6.5 paralegals, 3 mitigation specialists, and 67.5 secretaries.

The MSPD maintains a case management system that tracks basic case information such as open date, close date, charge type, disposition type, jurisdiction, and assigned attorney. This study utilized the current 2–year extract of the case management database consisting of over 120,000 cases and over 300 different charge types.

[40] STATE OF MISSOURI PUBLIC DEFENDER COMMISSION, FISCAL YEAR 2012 ANNUAL REPORT 7 (2012).

Since March of 2013, the MSPD has required that all of its public defenders enter their time in a time log system. This system captures the amount of time across over 50 types of tasks for all MSPD practitioners on each case.

This study linked the case management system with the time log system as a basis for the workload analysis. Based upon MSPD's current systems, cases were grouped by type and attorney time spent on each case was grouped by task.

B. Case Type / Case Task Summary

Working with the MSPD, 11 different Case Types were initially identified to use in the development of new workload standards. The 11 Case Types are:

1. Murder / Homicide
2. Sex Felony
3. AB Felony
4. CD Felony
5. Misdemeanor
6. Juvenile
7. Probation Violation
8. Sexual Predator Proceeding
9. Appeals/PCR
10. Release Petitions
11. Special Writs

From an assessment of current cases, it was determined that Special Writs, Release Petitions, and Sexual Predator Proceedings were highly specialized and infrequent. As a result, these Case Types were excluded from the study. The remaining 8 Case Types[41] are as follows:

1. Murder / Homicide
2. Sex Felony
3. AB Felony
4. CD Felony
5. Misdemeanor
6. Juvenile
7. Probation Violation
8. Appeals/PCR

Case Type is currently the primary way complexity is addressed in this workload study, though it is recognized that case complexity can be impacted by a variety of factors. Language barriers, mental health history, and family issues are just a few examples of factors that can impact case complexity.

[41] The remaining Case Types capture the vast majority of case specific time in the MSPD time log system. For this study, the "Murder / Homicide" Case Type did not include capital murder cases. Juvenile cases primarily encompass juvenile delinquency cases; however, there are a small percentage of juvenile status offenses. The MSPD does not handle abuse or neglect cases involving juveniles.

All else equal, however, different Case Types generally have different degrees of average complexity. For example, without any prior case specific knowledge, it is reasonable to assume that a Class A felony will be more complex than a misdemeanor. Since both the case management database and the time log system consistently report Case Type, this data was utilized to assess current actual time and resource utilization, which provides the foundation to draw conclusions about time and resource allocation by Case Type. The 8 Case Types form the foundation for the workload standards and are used to identify how MSPD practitioners are actually spending their time under current conditions and practice.

This study was particularly interested in the tasks that are best performed by attorneys (versus support staff), and in those attorney tasks that may be affected by excessive workloads. In other words, this study sought to identify which attorney Case Tasks are impacted by excessive caseloads and time constraints. An attorney typically has more control over the time spent on certain Case Tasks, such as trial preparation, research, interviews, etc. ("Controllable Tasks") than the time spent on other Case Tasks, such as travel, court, etc. ("Non-Controllable Case Tasks"). Therefore, Case Tasks were segregated into two different categories for purposes of this study:

Controllable Case Tasks

- Client Communication:
  1. In Person
  2. Over the Phone
  3. Written
  4. Family/Other Communications

- Discovery/Investigation:
  5. State's Discovery Disclosure
  6. Records and Transcripts
  7. Depositions and Witness Interviews
  8. Experts and Technical Research

- Case Preparation:
  9. Legal Research
  10. Drafting and Writing
  11. Plea Negotiation
  12. Court Preparation
  13. Case Management
  14. Alternative Sentencing Research

Non-Controllable Case Tasks

15. In Court - Pretrial
16. In Court – Trial
17. In Court – Appellate Argument
18. Travel
19. Miscellaneous Case Administration

Once identified, the Case Type and Case Task classifications were utilized to measure how MSPD attorneys are currently spending their time on case-related work.

C. Time Study

The Time Study combines MSPD's time entry database with its case management database to present a picture of how much time MSPD practitioners are spending on case-related work. Time data was extracted from the time entry database for a 25-week period beginning March 2013 and ending August 2013. This data showed how much time, in total, MSPD practitioners spent on case-related tasks.

This data was combined with case count information from the MSPD case management database to calculate average time spent per Case Type, shown below.[42]

Case Type	Average Reported Controllable Case Task Hours per Case
Murder/Homicide	84.5
A/B Felony	8.7
C/D Felony	4.4
Sex Felony	25.6
Misdemeanor	2.3
Juvenile	4.6
Appellate/PCR	30.3
Probation Violation	1.4

The calculation first annualized the total case-related time incurred over the 25-week period (by dividing the total time by 25 weeks, and then multiplying the result by the 52 weeks in a year). We then estimated the average time per Case Type by using MSPD's case management database to estimate the average number of cases for which that time is incurred.

Specifically, we determined the average number of open cases between March 31, 2013 and August 31, 2013 (to reflect a workload that is concurrent with the time data), and then annualized that figure by dividing the open workload by the average length of case (based on fiscal year 2012 and fiscal year 2013 case management database). The resulting figure is an estimate of the number of cases per year. The annualized total time incurred divided by the estimated number of cases per year provides the average reported time per case, as shown below.

[42] The chart summarizes current average reported time on case-related tasks by Case Type. Further, the reported average excludes travel, in court, and administrative time. This Delphi study has focused on the Controllable Case Tasks for each of the 8 referenced case types, excluding all Non-Controllable Case Tasks (which account for a significant portion of an attorney's time), because the time required for the Non-Controllable Case Tasks is predominantly dictated by the court's schedule and the geography of the district.

Case Type	Annual Hours		Annual Case Count		Average Reported Controllable Case Task Hours per Case
Murder/Homicide	22,677	÷	269	=	84.5
A/B Felony	53,855	÷	6,196	=	8.7
C/D Felony	113,002	÷	25,910	=	4.4
Sex Felony	26,916	÷	1,051	=	25.6
Misdemeanor	30,127	÷	13,322	=	2.3
Juvenile	7,085	÷	1,554	=	4.6
Appellate/PCR	44,719	÷	1,477	=	30.3
Probation Violation	24,405	÷	16,977	=	1.4

The Time Study quantified how MSPD attorneys are actually spending their time. However, it does not indicate if this actual time is sufficient to provide reasonably effective assistance of counsel.

D. Time Sufficiency Survey

A "Time Sufficiency Survey" was conducted on MSPD line defenders.[43] MSPD practitioners were asked what percentage of the time for specific Case Type / Case Task combinations they had sufficient time to complete the task with reasonable effectiveness.

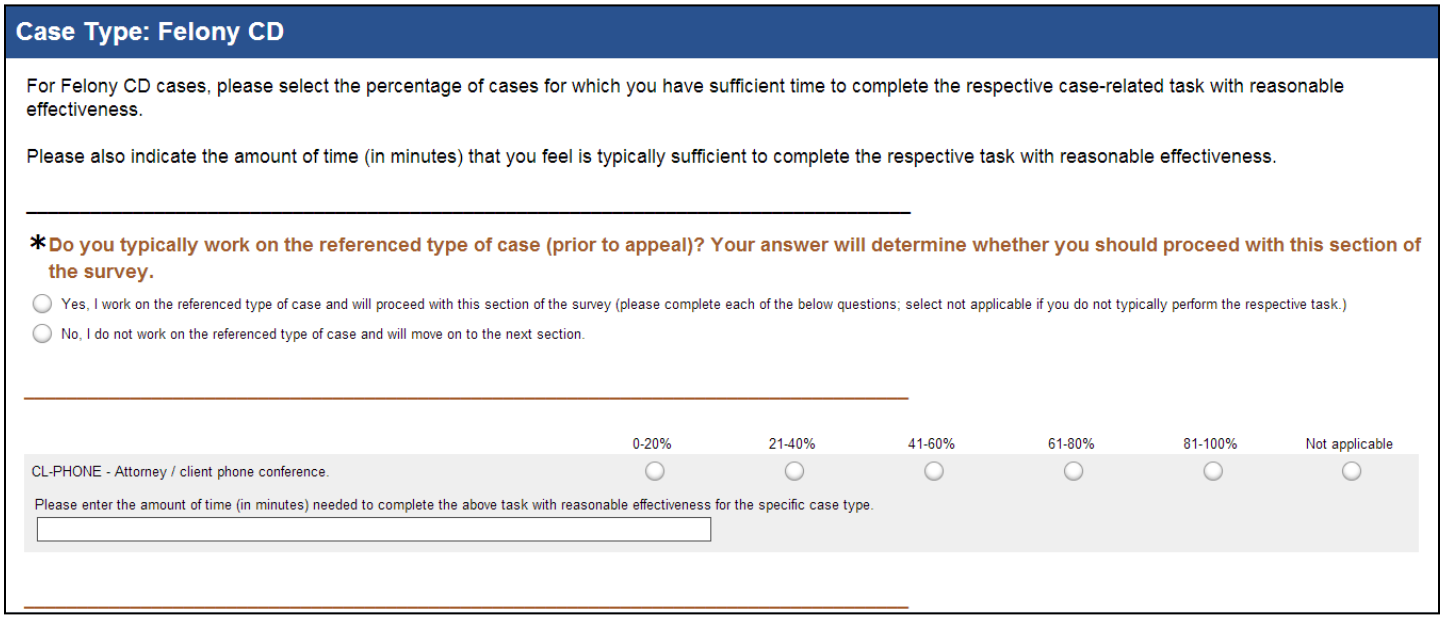
The Time Sufficiency Survey results were utilized to exclude certain Case Type and Case Task combinations from the Delphi process.[44] That is to say, if MSPD practitioners indicated that they often had sufficient time to adequately perform the specified Case Task for the Case Type based on current practices and staffing levels, the particular task was excluded from the Delphi process.

The Time Sufficiency Survey was performed by creating a questionnaire that was distributed via email to all MSPD line defenders by a third-party, professional survey provider. The survey asked respondents in what percentage of cases do they have sufficient time to complete the Case Task with reasonable effectiveness.

[43] The survey excluded operations personnel and senior management, focusing on public defenders currently carrying a case load.

[44] See the attached Exhibit 4 for the list of excluded Case Type and Case Task combinations.

The questions were asked for each Controllable Case Task within each Case Type, and the respondents were able to indicate their response by choosing either 0-20%; 21-40%; 41-60%; 61-80%; or 81-100% of the time. An example of the survey instrument is shown in the illustration below.



Case Type: Felony CD

For Felony CD cases, please select the percentage of cases for which you have sufficient time to complete the respective case-related task with reasonable effectiveness.

Please also indicate the amount of time (in minutes) that you feel is typically sufficient to complete the respective task with reasonable effectiveness.

* **Do you typically work on the referenced type of case (prior to appeal)? Your answer will determine whether you should proceed with this section of the survey.**

- ○ Yes, I work on the referenced type of case and will proceed with this section of the survey (please complete each of the below questions; select not applicable if you do not typically perform the respective task.)
- ○ No, I do not work on the referenced type of case and will move on to the next section.

	0-20%	21-40%	41-60%	61-80%	81-100%	Not applicable
CL-PHONE - Attorney / client phone conference.	○	○	○	○	○	○

Please enter the amount of time (in minutes) needed to complete the above task with reasonable effectiveness for the specific case type.

The Time Study, combined with the Time Sufficiency Survey, described the "current state of affairs." In other words, these two components of the analysis allowed for 1) the quantification of how MSPD practitioners currently spend their time on cases, broken down by Case Type / Case Task combinations and, 2) the identification of those Case Type / Case Task combinations where MSPD practitioners report that there is not enough time to perform those functions with reasonable effectiveness.

To move from the "current state of affairs" to a "sufficient state" required a methodology to gauge how much time should be allowed for performance of certain Case Type / Case Task combinations. The "Delphi Process" was utilized to obtain this data.

E. Delphi Process

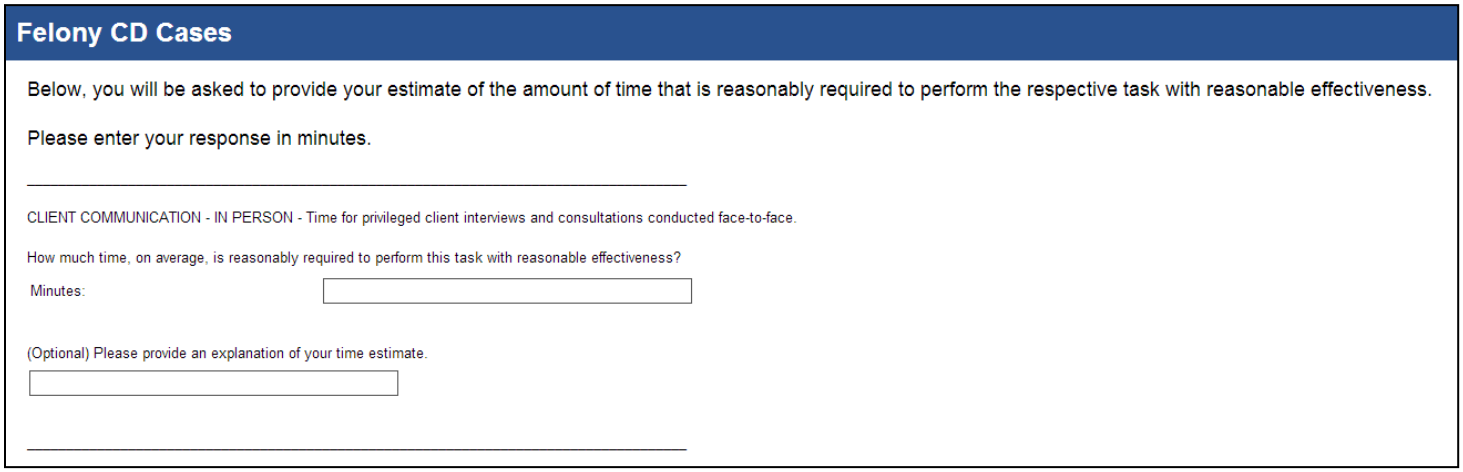
The Time Sufficiency Survey, in combination with the Time Study, provides critical information about current practice. However, the Time Sufficiency Survey results indicated that the MSPD defenders may be operating under excessive workloads. Thus, current practice may provide very little useable information about how much time attorneys *should be* spending and how often attorneys *should be* performing particular tasks in order to provide reasonably effective assistance of counsel.

The Delphi process used in this study leverages the expertise of both private practice and public defenders to provide a consensus estimate of the amount of time defense counsel *should* expect to spend on a particular case in order to provide reasonably effective assistance of counsel. Further, in providing estimates of the amount of time an attorney should expect to spend on a particular case, the Delphi panel was asked to consider prevailing professional norms and standards of practice. That is to say, the standards resulting from this process should reflect the prevailing professional norms and standards, such as the Missouri Guidelines and the ABA Standards.

As a first step in this process, the time an attorney spends on a particular case can be broken out into two components, time and frequency, as follows:

1. time incurred on the performance of specific Case Tasks ("Task Time"); and
2. the actual performance (or non-performance) of certain Case Tasks ("Task Frequency").[45]

Then, criminal defense experts (private, as well as public defense practitioners) from across the state of Missouri were identified and asked to participate in an iterative study of the time associated with the Case Tasks and Case Types. The expert panel was asked to provide an estimate of the amount of time that *should be* spent on each Case Task for each Case Type, assuming that the task must be performed. An example of the survey instrument for this step is shown in the illustration below.

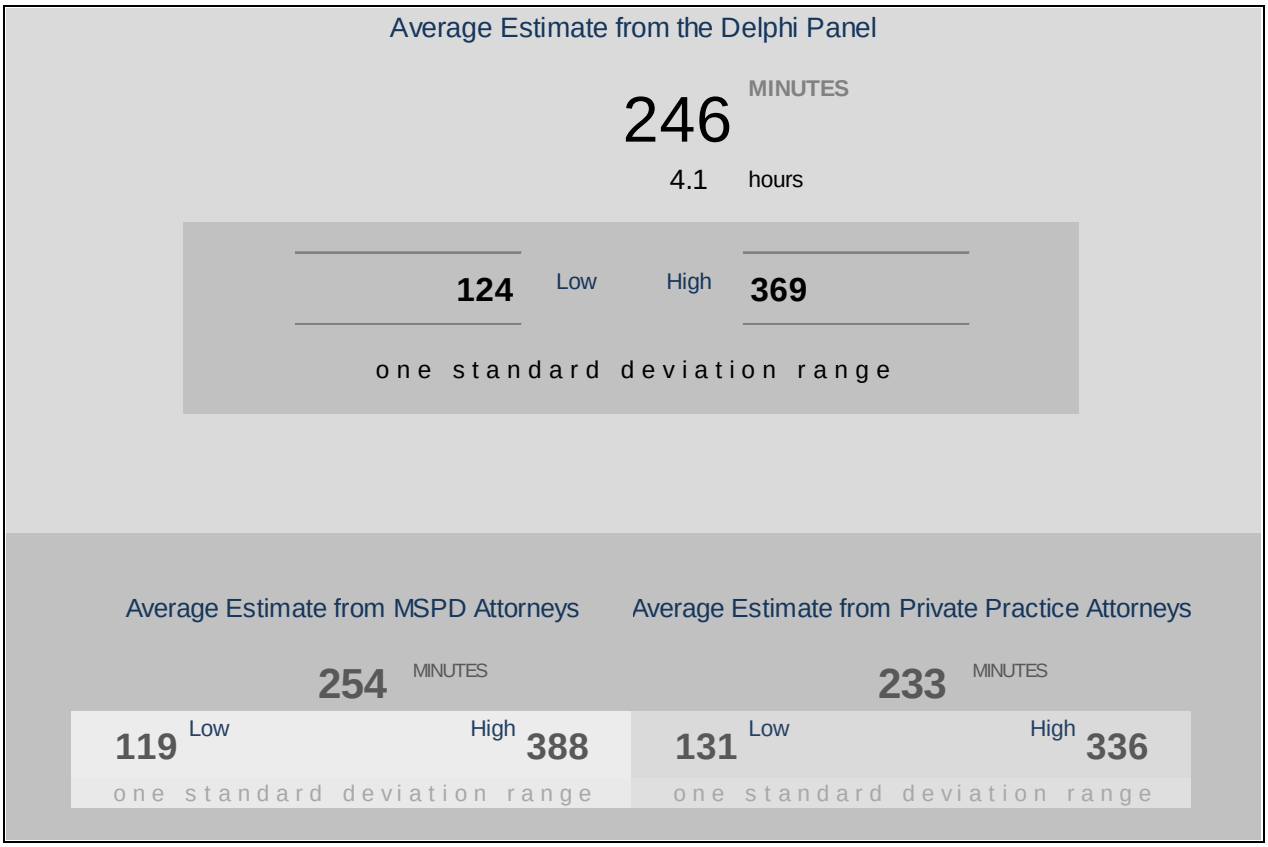


[45] For example, Task Frequency component seeks to answer: "In how many cases does an attorney speak to a client over the phone?" This is contrasted with the number of phone calls an attorney may make within a particular case, which was not in the scope of this study.

The response estimates of Task Time were then summarized across the entire group of experts. The group was then provided summary statistics on the point estimate and range of time from this first survey. An example of the summary information from the first survey round is shown in the table below.

CD Felony			
(Estimated Minutes)	**Lower**	**Average**	**Upper**
Client Communication - In person	30	309	606

Using the same survey instrument as the first round, the expert panel was then asked to again provide an estimate of the Task Time, this time taking into account the summary of responses from the first round of the process. Similar to the first iteration, the responses were summarized across all participants for this round as well. This round also presented the summarized responses of the private practice and MSPD attorney groups. An example of the summary from this second round is shown below for the same **CD felony** Case Type and **in person client communication** Case Task.



As a third and final iteration, the expert panel was invited to participate in a live meeting to discuss a summary of the second round of the survey process and to reach a group consensus for each Task Time estimate. The information in the above illustration was presented to the group during the in person discussion. The group was reminded to keep in mind that the time estimate should:

1. assume adequate support staff (and that attorneys would only perform tasks not appropriate for support staff),
2. assume that the task must be performed,
3. apply prevailing professional norms, and
4. provide an estimate of the amount of time defenders should expect to perform the Case Task.

Given the above information, the group was asked to either confirm the time estimate from the second survey round, or provide a new estimate to replace the second round average.

Although this initial survey process provided an estimate of the typical amount of time required for a particular task, it did not provide insight into the frequency with which these tasks should be performed. To collect this data, the Delphi panel was asked to repeat the same process (making the same assumptions as above and applying professional norms) as with the Task Time estimates, only now providing an estimate of the frequency that defenders *should* expect to perform the Case Tasks. Again, the three stage process resulted in a group consensus of the Task Frequency for each Case Type.

As a final step in the Delphi process, the Task Time was combined with the Task Frequency to arrive at an expected time for each Case Task. That is to say, the Task Time was multiplied by the Task Frequency as follows:

$$Expected\ Time\ per\ Task\ =\ Task\ Time\ \times\ Task\ Frequency$$

The expected time per task is interpreted as the amount of time that a public defender *should* expect to spend on any one Case Task and Case Type combination for the typical case. The Delphi panel was then convened for a final meeting for a presentation of the results of the Delphi process to confirm the time expectation resulting from the study. The expected time was then summarized for each Case Type in arriving at the final workload standards.

The Delphi panel's frequency weight was applied to the time estimate to arrive at the estimated amount of time that an attorney can reasonably expect to spend on a particular task for a given Case Type. The resulting workload standards for each Case Type are shown below.[46]

[46] The reported workload standards include only time for Controllable Case Tasks (i.e. exclude in court, travel, and administrative time). The workload standard total shown in the table is rounded to the nearest 10th of an hour.

Case Type	Average Reported Hours		Delphi Panel Adjustment		Workload Standard for Controllable Case Tasks
Murder/Homicide	84.5	+	22.2	=	106.6
A/B Felony	8.7	+	38.9	=	47.6
C/D Felony	4.4	+	20.7	=	25.0
Sex Felony	25.6	+	38.2	=	63.8
Misdemeanor	2.3	+	9.5	=	11.7
Juvenile	4.6	+	15.0	=	19.5
Appellate/PCR	30.3	+	66.2	=	96.5
Probation Violation	1.4	+	8.3	=	9.8

Attorney Workload Standard Conclusion

The following table shows the Delphi-estimated time required for controllable Case Tasks for an attorney to provide reasonably effective defense by Case Type. [47]

Case Type	Controllable Case Task Hours per Case
Murder/Homicide	106.6
A/B Felony	47.6
C/D Felony	25.0
Sex Felony	63.8
Misdemeanor	11.7
Juvenile	19.5
Appellate/PCR	96.5
Probation Violation	9.8

This study sought to quantify the amount of time a public defender *should* expect to spend on a particular type of case through an application of the Delphi method. In other words, this study sought to quantify what workload standards *should be* in order for a defender to provide reasonably effective assistance of counsel.

[47] The workload standards include only case-related tasks over which an attorney has some control (i.e., exclude in court, travel, training, and administrative time). Further, the workload standards assume adequate support staff and attorney resources are available. Private practice defense counsel reported utilizing 2 support staff resources per attorney, on average. By contrast, the MSPD system currently has approximately 2 attorneys for every 1 support staff resource (0.55 support staff per attorney, or approximately 1/4th of the support staff available to private practice defense counsel).

Exhibit 1 (attached to this report) shows the estimated time by both Case Type and Case Task group. The conclusion shown in the above chart reflects the consensus time expectations (under prevailing professional norms and standards) of a group of both private practice and public defender experts from across the state of Missouri.

Exhibit 1: Concluded Workload Standards by Case Type and Case Task Group

	Client Communication[1]	Discovery/Investigation[2]	Case Preparation[3]	**Total**
Murder/Homicide	34.6	33.5	38.5	**106.6**
AB Felony	13.1	18.3	16.2	**47.6**
CD Felony	6.3	8.4	10.3	**25.0**
Sex Felony	22.5	17.8	23.6	**63.8**
Misdemeanor	3.5	4.1	4.1	**11.7**
Juvenile	5.4	6.8	7.3	**19.5**
Appellate/PCR	20.3	31.5	44.7	**96.5**
Probation Violation	2.9	2.6	4.2	**9.8**

1. The client communication Case Task group includes: in person conversations, phone calls, written communication, and communication with family.

2. The discovery/investigation Case Task group includes: State's discovery disclosures, records and transcripts, depositions and witness interviews, and expert and technical research.

3. The case preparation Case Task group includes: legal research, drafting and writing, plea negotiations, alternative sentencing research, court preparation, and case management.

Exhibit 2: Current Average Reported Case-Related Hours by Case Type and Case Task Group

	Client Communication[1]	Discovery/Investigation[2]	Case Preparation[3]	**Total**
Murder/Homicide	14.8	33.5	36.2	**84.5**
AB Felony	3.0	2.1	3.6	**8.7**
CD Felony	1.8	0.8	1.7	**4.4**
Sex Felony	6.0	7.3	12.4	**25.6**
Misdemeanor	0.9	0.4	0.9	**2.3**
Juvenile	1.4	1.0	2.1	**4.6**
Appellate/PCR	3.1	7.5	19.6	**30.3**
Probation Violation	0.7	0.2	0.5	**1.4**

1. The client communication Case Task group includes: in person conversations, phone calls, written communication, and communication with family.

2. The discovery/investigation Case Task group includes: State's discovery disclosures, records and transcripts, depositions and witness interviews, and expert and technical research.

3. The case preparation Case Task group includes: legal research, drafting and writing, plea negotiations, alternative sentencing research, court preparation, and case management.

Exhibit 3: Case Task Descriptions

Case Task	Task Description
Client Communication - In person	Attorney's time for privileged client interviews and consultations conducted face-to-face.
Client Communication - Phone	Attorney's time for privileged client interviews and consultations conducted via phone.
Client Communication - Written	Attorney's time for privileged client interviews and consultations conducted by written correspondence. Includes drafting and reviewing correspondence prepared by others.
Client Communication - Family/other communications	Non-privileged communications with client's family and friends, not including potential witnesses.
Discovery/Investigation - State's discovery disclosure	Attorney's time receiving, organizing and reviewing the state's disclosure to all discovery requests including special discovery by motion.
Discovery/Investigation - Records and transcripts not included in state's discovery	Attorney's time in requesting, acquiring and reviewing records which were not part of the state's disclosure, e.g., client's medical records.
Discovery/Investigation - Depositions and witness interviews	Attorney's time preparing for and conducting depositions or witness interviews where the attorney is investigating the case.
Discovery/Investigation - Experts and technical research	Identifying, contracting, and consulting experts including testimony prep and also attorney's time doing self research on a technical (not legal) subject.
Case Preparation - Legal research	Case related legal research for arguments, motions or briefs.
Case Preparation - Drafting and writing	Attorney's time actually drafting, typing or reviewing legal documents including motions and briefs.
Case Preparation - Plea negotiation	Plea negotiation with the state's attorney or representative whether verbal or written.
Case Preparation - Court preparation	Attorney's time reflecting, analyzing, brainstorming and outlining court case presentation. Also includes subpoenas, writs ad testificandum, and pre-charge representation.
Case Preparation - Case management	Attorney's time for case related office administrative tasks, e.g., time keeping, billing, and docket management tasks.
Case Preparation - Alternative sentencing research	Attorney's time identifying, locating, and engaging alternative sentencing resources, e.g., treatment programs.

Exhibit 4: List of Tasks Identified as Often Having Sufficient Time to Perform

	Murder/ Homicide	AB Felony	CD Felony	Sex Felony	Misdemeanor	Juvenile	Appellate/ PCR	Probation Violation
Client Communication								
In person								
Phone	X		X	X		X		
Written								
Family/other communications								
Discovery/Investigation								
State's discovery disclosure	X			X			X	
Records and transcripts	X							
Depositions & interviews	X			X				
Experts and technical research	X							
Case Preparation								
Legal research	X			X		X		
Drafting and writing	X							
Plea Negotiation								
Court Preparation	X	X	X	X	X	X		
Case management	X							
Alternative sentencing research								

The table shows the 22 Case Type and Case Task combinations that MSPD practitioners identified as often having sufficient time to adequately perform based on current practices and staffing levels. If the Case Type and Case Task combination was identified by MSPD practitioners and the practitioner estimated sufficient time was consistent with actual time spent on the particular task (from the time log system), the combination was excluded from the Delphi process. Specifically, if the average survey results were higher than 3.3 (on a scale of 1 to 5, 5 being most often having sufficient time) and the average estimated time needed was at least 75% of the actual time observed the Case Type and Case Task combination was excluded from the Delphi process.

It is important to note that it is anticipated that this study will be the first of many performed by the MSPD. An evaluation should be performed in each subsequent study to determine which Case Type and Case Task combinations should be included, or excluded, based upon the results of the Sufficiency Survey.

A National Blueprint

In the following appendices, we set forth additional detail and documents for use by other state and local public defender programs attempting to replicate the work and methodology set forth in The Missouri Project. With appropriate modifications, the additional detail and documents can be used by other public defender programs wishing to replicate The Missouri Project methodology in their respective jurisdictions.

Appendix 1: Example Sufficiency Survey Instructions

RE: Public Defender System Workload Study

As you may be aware, the Public Defender System is currently undertaking a study to develop new workload standards to assist in evaluating the Public Defender System resource requirements.

A key step in this process is the completion of a time sufficiency survey by public defenders and the supporting staff. A time sufficiency survey assists researchers in identifying specific areas where, on average, public defenders feel that they either do or do not have sufficient time to complete the specific task (and thus may be impacting their ability to provide effective assistance to clients). This survey will also provide valuable insight from public defenders on how long various tasks should take.

Your participation in this survey is critical to the process of developing new workload standards specific to the public defender system. You are being asked to complete the electronic time sufficiency survey that will be sent as an email link from a survey provider.

The survey asks a series of questions by type of case ("Case Type") and the specific case-related tasks ("Case Task"). You will be asked in what percentage of those specific cases do you feel that you have sufficient time to complete the Case Task with reasonable effectiveness. Each question has a related question which asks how much time, on average, you feel is necessary to perform the specific Case Task with reasonable effectiveness.

In completing the survey please consider the following:

- Your responses will be kept confidential and any reporting of the results of the sufficiency survey will be done anonymously.
- While each case has significant variability in the level of complexity (i.e., language, mental health, and other issues), the survey is meant to capture responses for the "typical" case. In other words, please consider the average case.
- "Sufficient time" to complete the specific task means the amount of time, on average, reasonably required to complete the task with reasonable effectiveness. "Reasonable effectiveness" means effective representation under prevailing professional norms.
- The questions are segregated along "n" Case Types:
    - Case Type 1
    - Case Type 2
    - Case Type n

If you do not work on the respective type of case, please select "No" for that section of the survey and proceed to the next page. If you do work on the respective type of case, please select "Yes" and answer each Case Task question, selecting or entering "Not applicable" if you do not perform the specified task for that Case Type.

- The Case Tasks are the same tasks that you utilize for time entry in your Time Log system.
- The time sufficiency survey will ask you to indicate in what percentage of cases DO YOU HAVE sufficient time to complete the indicated case-related task (we are not asking in what percentage of cases you don't have sufficient time to complete the indicated task).

We know you face many demands of your time. It is estimated that this survey will take approximately 1 – 3 hours to complete, and your progress will be saved for each section as you click "Next" so the survey can be completed over multiple sessions. You can access your saved survey via the original survey link in the email. Your participation in this process is a critical part of the process in developing accurate and defensible workload standards.

Thank you for your time and attention to this very important matter.

Appendix 2: Example Sufficiency Survey

Case Type: Felony CD

For Felony CD cases, please select the percentage of cases for which you have sufficient time to complete the respective case-related task with reasonable effectiveness.

Please also indicate the amount of time (in minutes) that you feel is typically sufficient to complete the respective task with reasonable effectiveness.

*Do you typically work on the referenced type of case (prior to appeal)? Your answer will determine whether you should proceed with this section of the survey.

- ○ Yes, I work on the referenced type of case and will proceed with this section of the survey (please complete each of the below questions; select not applicable if you do not typically perform the respective task.)
- ○ No, I do not work on the referenced type of case and will move on to the next section.

	0-20%	21-40%	41-60%	61-80%	81-100%	Not applicable
CL-PHONE - Attorney / client phone conference.	○	○	○	○	○	○

Please enter the amount of time (in minutes) needed to complete the above task with reasonable effectiveness for the specific case type.

Appendix 3: The Delphi Methodology Employed in The Missouri Project

Assembling the Delphi Panel

During the initial phases of the Delphi process, a list of over 50 private practice attorneys and 50 public defenders was compiled by a steering committee of experts led by MSPD management. Experience, reputation, and location were all considered when compiling this list of over 100 attorneys. Each attorney on the list was extended an invitation to participate in a study to develop workload standards for state of Missouri (see Appendix 4 for example invitation language). Of the over 100 invitations, 32 private practice attorneys and 35 public defenders expressed interest and availability to participate in the study.

Designing the Survey

The general survey content was heavily influenced by MSPD's time entry system and the Case Types and Case Tasks included in the survey were modeled after the MSPD system. An initial survey instrument was built and sent to 5 randomly selected Delphi panel members to elicit comments and feedback that would then be used to develop the final survey structure prior to surveying the entire Delphi group. In order to facilitate a more effective survey, the time component (i.e., how long a task would take, assuming that the task is performed) was broken out from the frequency component (i.e., how often the task is performed). Specifically, isolating the research variables (i.e., time and frequency) facilitates a more robust structured feedback process by providing clarity and allowing the survey participants to avoid having to weight responses.

The Survey Process

Using the Time Survey process as an example, the initial survey round was anonymously administered to all 67 Delphi attorneys (see Appendix 5 for example instructions). It should also be noted that throughout the process, attention was paid to maintaining a balance of public defenders and private practice attorneys (see Appendix 11 for example response rates for the groups). The survey responses were compiled anonymously and summarized into an average response with an upper and lower bound (based on 1 standard deviation from the mean). The summarized responses were provided back to the Delphi panel and they were asked to complete the same anonymous survey again, after reviewing the summary statistics from round 1. The survey responses from round 2 were again summarized into an average response with an upper and lower bound (based on 1 standard deviation from the mean).

Survey Conclusions

Again using the Time Survey process as an example, those completing the second round of the survey were asked to participate in a live meeting to discuss survey results and develop final workload standard recommendations. 24 Delphi panel attorneys participated in the final live round, representing over 495 years of criminal defense and over 55 years of prosecution experience. The results from round 2 of the anonymous survey were presented during the in person meeting (as shown on page 19 of the Missouri Report). Each survey question was addressed individually and the participants were asked to comment, confirm, or recommend a final workload standard for the particular Case Type and Case Task combination before moving onto the next question. By the end of the approximately 8 hour meeting, all Time Survey questions were confirmed or updated by the Delphi panel.

Appendix 4: Example Delphi Panel Invitation

The Public Defender System ("PD") is currently undertaking a study to develop new workload standards to assist in evaluating PD resource requirements. You have been identified as a luminary within the field of criminal defense and have graciously agreed to participate in this Delphi study. We understand that there are many demands of your time and we greatly appreciate your agreement to participate. Although it is difficult to estimate the exact timing of the 'iterations' of this process at this point, we anticipate completing the first two (online) surveys over the next two to three weeks. Further, we anticipate following the survey portion of the process with a meeting (dependent upon coordinating the schedules of the various panel participants).

As a first step in this process, you will be receiving a (separate) follow-up email with a link to the first survey. (If you have not received the link to this survey by Monday (July 15), we ask that you please check your email spam folder to ensure that the message was not blocked by the email system.) We ask that you please carefully review the instructions and, if possible, complete the survey by July 19, 2013. If you have a conflict with this timing, please let us know and we will work hard to try to accommodate alternative timing.

We recognize that this is likely going to be a challenging endeavor and we are glad to be of assistance to you in any way that we can as you work through this process.

Appendix 5: Example Delphi Time Survey Instructions

RE: Public Defender System Workload Study

Thank you for your participation in this process. As you are aware, the Public Defender System is currently undertaking a study to develop new workload standards to assist in evaluating Public Defender System resource requirements.

A key step in this process is the completion of a Delphi study of criminal defense experts in the state of Missouri. The Delphi study will assist the public defender system in creating recommendations for workload standards. This process will provide valuable insight from criminal defense attorneys on the time reasonably required to perform various tasks.

The Delphi study will be structured into iterative phases. It is anticipated that the first 2-3 phases will consist of time sufficiency surveys that will ask participants how much time, on average, is reasonably required to perform a specific task for a specific case type. After compiling the results of the first survey, we anticipate reporting back to you summary statistics from the first round of the survey and submitting to you the second round survey, similar in format to the first round, asking you to update (or leave unchanged) your estimate based upon your review of the results of the first survey. In order to facilitate a consensus of the necessary time for the specific tasks, it is anticipated that there will be an in person (or conference call) panel discussion which will include the expert panel and representatives from the Public Defender System.

Your participation in this survey is critical to the process of developing new workload standards specific to the public defender system. You are being asked to complete the electronic time sufficiency survey that will be sent as an email link.

To start, you will be asked two questions regarding the support staff utilized for case work. Then, the survey asks a series of questions by the specific case-related tasks ("Case Task"). You will be asked how much time, on average, you believe is reasonably required to perform the Case Task for a typical case with reasonable effectiveness (for both attorneys and support staff).

In completing the survey please consider the following:

1. Your responses will be kept confidential and any reporting of the results of the sufficiency survey will be done anonymously.
2. While each case has significant variability in the level of complexity (i.e., language, mental health, and other issues), the survey is meant to capture responses for the "typical" case. In other words, please consider the average case.

3. "Sufficient time" to complete the specific task means the amount of time, on average, reasonably required to perform the task with reasonable effectiveness. "Reasonable effectiveness" means effective representation under prevailing professional norms.
4. The Case Tasks are similar to the tasks utilized by the Public Defender system for time entry in its Time Log system.
5. The questions are segregated along “n” Case Types:
    a. Case Type 1
    b. Case Type 2
    c. Case Type n
6. Your time estimate should reflect the cumulative time reasonably required to perform the task for the entire case. That is to say, if the task takes 10 minutes per instance and a typical case requires 5 instances, the appropriate response would be 50 minutes.
7. We will be available to assist with any questions you have regarding the survey or the Delphi study as you participate in the process.

We know you face many demands of your time. It is estimated that each survey will take approximately 1 – 3 hours to complete, and your progress will be saved as you click “Next” so the survey can be completed over multiple sessions. You can access your saved survey via the original survey link in the email. Your participation in this process is a critical part of the process in developing accurate and defensible workload standards.

Thank you for your time and attention to this very important matter.

Appendix 6: Example Time Survey Questions

Felony CD Cases

Below, you will be asked to provide your estimate of the amount of time that is reasonably required to perform the respective task with reasonable effectiveness.

Please enter your response in minutes.

CLIENT COMMUNICATION - IN PERSON: Time for privileged client interviews and consultations conducted face-to-face.

How much time, on average, is reasonably required to perform this task with reasonable effectiveness?

Minutes:

(Optional) Please provide an explanation of your time estimate.

CLIENT COMMUNICATION - PHONE: Same as above only by phone.

How much time, on average, is reasonably required to perform this task with reasonable effectiveness?

Minutes:

(Optional) Please provide an explanation of your time estimate.

Appendix 7: Example Delphi Time Survey Instructions for Successive Surveys

RE: Public Defender System Workload Study

Thank you again for your participation in this process and the completion of the phase 1 survey. We are now ready to begin phase 2 of the iterative Delphi process and appreciate your continuing participation.

In phase 1, we asked participants how much time, on average, is reasonably required to perform a specific task for a specific case type. We have compiled the results of the first survey, and will be reporting back to you summary statistics from that survey. In addition, we will be submitting to you the second round survey, similar in format to the first round, asking you to reenter your estimate based upon your review of the results of the first survey. The results of this second round survey will be used to facilitate the in person panel discussion which will include the expert panel and representatives from the Public Defender System.

Your continued participation in this survey is critical to the process of developing new workload standards specific to the public defender system. As in the first round, you are being asked to complete the electronic time sufficiency survey that will be sent as an email link.

To start, we would like to highlight the primary change from the first round:

1. You will be presented with summary statistics (explained in more detail below) from the first survey. These are intended to assist in informing your responses to the second round.

Other than this change, the second round survey will be very similar in format to the first round survey. The Case Types are the same, and the Case Tasks are the same as well. The survey itself will provide two response areas per question: one for your time estimate in minutes (which will be restricted to numeric responses only) and an additional *optional* comment box which will provide an opportunity to comment on your estimate if you feel it is necessary.

We will be providing you with two data points for each Case Type / Case Task combination – the average time estimate for each combination, and a range of time estimates for each combination. Please review this data prior to and during your completion of the phase 2 survey. In reviewing this data, please keep in mind that:

1. The average time estimate is a single point estimate showing the average response of all phase 1 participants.
2. The range that we present contains approximately 2/3^{rds} of all phase 1 participant estimates. In other words, the range we present is not the entire range of estimates received, but is approximately limited to the central 2/3^{rds} of responses.

In completing the survey please consider the following:

- Your responses will be kept confidential and any reporting of the results of the sufficiency survey will be done anonymously.
- While each case has significant variability in the level of complexity (i.e., language, mental health, and other issues), the survey is meant to capture responses for the “typical” case. In other words, please consider the average case.
- "Sufficient time" to complete the specific task means the amount of time, on average, reasonably required to perform the task with reasonable effectiveness. "Reasonable effectiveness" means effective representation under prevailing professional norms.
- Your time estimate should reflect the cumulative time reasonably required to perform the task for the entire case. That is to say, if the task takes 10 minutes per instance and a typical case requires 5 instances, the appropriate response would be 50 minutes.
- We will be available to assist with any questions you have regarding the survey or the Delphi study as you participate in the process.

We know you face many demands of your time. It is estimated that this survey will take approximately 1 – 3 hours to complete, and your progress will be saved as you click “Next” so the survey can be completed over multiple sessions. You can access your saved survey via the original survey link in the email. Your participation in this process is a critical part of the process in developing accurate and defensible workload standards.

Thank you for your time and attention to this very important matter.

Appendix 8: Example Delphi Frequency Survey Instructions

RE: Public Defender System Workload Study

Thank you again for your participation in this process. In the initial phases of the Delphi process, you were asked to provide an estimate of reasonable time required to perform a specific task for a specific case type. We are now seeking information regarding the frequency of performance of specific tasks for specific case types and appreciate your continuing participation.

We will be sending you a survey, similar in format to the last survey, asking you to enter your estimate of the percentage of cases that defenders should perform the specific task. Specifically, you will be asked to "Provide your estimate of the percentage of cases that attorneys *should* perform the specific task to provide reasonably effective representation." Also similar to the last survey, we anticipate completing two iterations of this frequency survey:

Iteration 1: You will be asked to provide an estimate of the percentage of cases that attorneys should perform the specific task.

Iteration 2: You will be asked to provide an estimate of the percentage of cases that attorneys should perform the specific task, *after you review a summary of Iteration 1 responses*.

Your continued participation in this survey is critical to developing new workload standards specific to the public defender system. Similar to prior surveys, you are being asked to complete the electronic survey that will be sent to you as an email link.

The survey itself will provide two response areas per question: one for your frequency estimate—in percentage form— (which will be restricted to numeric responses only); and an *optional* comment box which will provide you an opportunity to comment on your estimate, as necessary.

In completing the survey please consider the following:

1. Your responses will be kept confidential and any reporting of the results of the sufficiency survey will be done anonymously.
2. While each case has significant variability in the level of complexity (i.e., language, mental health, and other issues), the survey is meant to capture responses for the "typical" case. In other words, please consider the average case.
3. Your frequency estimate should be in percentage form (i.e. enter "25" for 25% of cases).
4. Your response should reflect the frequency that attorneys (not support staff) *should* perform the specific task to provide reasonably effective representation.

5. Your frequency estimate should reflect the typical case (or average case), assuming adequate support staff.
6. For example, if you enter “25” for the task question, your response will be interpreted as: On average, 25% of cases require performance of that particular task in order to provide reasonably effective representation.
7. "Reasonably effective" means effective representation under prevailing professional norms.
8. In responding, please consider the ABA Criminal Justice Standards (found here: **ABA Standards**) and the State guidelines for representation (found here: **PD Guidelines**).
9. We will be available to assist you with any questions you may have regarding the survey or the Delphi study as you participate in the process.

We know you face many demands of your time. It is estimated that this survey will take approximately 1 to 3 hours to complete, and your progress will be saved as you click “Next” so the survey can be completed over multiple sessions. You can access your saved survey via the original survey link in the email. Your participation in this process is critical to developing accurate and defensible workload standards.

Thank you for your time and attention to this very important matter.

Appendix 9: Example Frequency Survey Questions

Felony CD Cases

Below, you will be asked to provide your estimate of the percentage of cases, on average, that attorneys should perform the specific task to provide reasonably effective representation.

Please enter your response as a percentage (for example, please enter 25 for 25%)

CLIENT COMMUNICATION - IN PERSON: Time for privileged client interviews and consultations conducted face-to-face.

Please enter an estimate of the percentage of cases, on average, that attorneys should perform the above task to provide reasonably effective representation.

Percent of cases:

(Optional) Please provide an explanation of your percentage estimate.

CLIENT COMMUNICATION - PHONE: Same as above only by phone.

Please enter an estimate of the percentage of cases, on average, that attorneys should perform the above task to provide reasonably effective representation.

Percent of cases:

(Optional) Please provide an explanation of your percentage estimate.

Appendix 10: Example Structure and Layout of Response Summary

CD Felony

(Lower Limit, Average, and Upper Limit of Survey Responses)	Lower	Average	Upper
Client Communication - In person			
Client Communication - Phone			
Client Communication - Written			
Client Communication - Family/other communications			
Discovery/Investigation - State's dicovery disclosure			
Discovery/Investigation - Records and transcripts not included in state's discovery			
Discovery/Investigation - Depositions and witness interviews			
Discovery/Investigation - Experts and technical research			
Case Preparation - Legal research			
Case Preparation - Drafting and writing			
Case Preparation - Plea Negotiation			
Case Preparation - Court Preparaton			
Case Preparation - Case management			
Case Preparation - Alternative sentencing research			

Appendix 11: Example Response Rates from the Time Survey

Delphi Time Survey Stats	Private	Public[1]	Total
Total Number of Surveys Sent	**32**	**35**	**67**
Round 1 Response Rate	94%	91%	92%
Round 2 Response Rate	41%	74%	58%
Round 3 Response Rate	31%	40%	36%

1. The "Round 1 Response Rate" for public defenders represents 226 responses from the 247 surveys sent out to MSPD line defenders. The subsequent survey rounds represent the 35 Delphi panel participants chosen from all MSPD line defenders.

Appendix 12: Estimated Response Rates from the Time Sufficiency Survey

	Murder/ Homicide	AB Felony	CD Felony	Sex Felony	Misdemeanor	Juvenile	Appellate/ PCR	Probation Violation	Average
Response Count[1]	103	163	175	132	129	42	25	134	113
Attorneys[2]	123	266	298	181	187	46	40	213	169
Response Rate	84%	61%	59%	73%	69%	91%	63%	63%	70%

1. *The average response count for all survey questions by Case Type.*

2. *The number of attorneys consistently recording time (averaging at least 1.0 hour per week) to the particular Case Type in the MSPD time log system.*

Appendix 13: A Note on Public Defender System Requirements

Time Entry System

The public defender system should have a time entry (or time log) system meeting the following minimum requirements:

- Ability to track:
  - Attorneys' case related time by Case Type and Case Task
  - Attorneys' non-case related time
  - Time in increments no greater than a quarter of an hour
- Case Type and Case Task classification consisting of:
  - 15 – 25 case-related (attorney controllable) tasks
  - Case-related (uncontrollable) tasks
  - Non-case related tasks
  - At least 10 unique Case Types
- Time entry system should be:
  - Mandatory system-wide
  - Consistent across public defender system's offices
  - Able to track all attorney time
  - Fully deployed for at least six-months prior to commencement of study
  - Consistent with the Case Management System

Case Management System

The public defender system's case management system should meet the following minimum requirements:

- Case Management System Case Types are identical to Time Log System Case Types
- Consist of at least twelve-months of system-wide case information
- Have a case identifier also used in Time Log System
- Consistent across public defender system's offices

In addition, it would be beneficial (but not part of the minimum requirements) if other factors such as language barriers, mental health issues, and other complexity factors can be captured in the case management system.

Commitment to Permanent Time Keeping

Permanent time keeping is a critical component to the implementation, ongoing study, and refinement of attorney workload standards. In addition, it can be an invaluable management and analysis tool for a public defender system independent of the need for workload standards. Therefore, we believe it is critical that the public defender system commits to continuous time keeping.

Appendix 14: Example Engagement Letter Language

This letter of engagement ("Letter") sets forth the services that RubinBrown LLP ("RubinBrown") will provide for _____ ("Client"). In order to better understand each party's obligations, the terms "we", "us" and "our" refer to RubinBrown and the terms "you", "your" and "management" refer to the Client. Your engagement of RubinBrown shall be governed by the terms of this Letter and the attached RubinBrown Engagement Terms.

Scope of Services

RubinBrown will provide you with consulting services designed to assess and calculate caseload standards for the _____Public Defender system ("PD"). We will coordinate our efforts with _____, who is engaged on behalf of the PD, to perform our services and provide our deliverable. Based upon our understanding of the proposed project, we anticipate performing the work in the following phases:

1. **Overview of the PD system:** In Phase 1 of the project, we anticipate receiving (from PD) the following data for analysis:
    a. Annual case load (measured by new cases by year, type, and location) over an agreed upon number of years; and
    b. Personnel overview of PD (measured by number, type, location, part time / full time status, and years of experience of PD staff) over an agreed upon number of years.

    We will utilize this data to gain an understanding of the current state of the PD and to create and present to the PD summary data tables that provide a basic overview of the current caseload and structure of PD.

2. **PD Time Study:** Phase 2 of the project will involve commenting on, and ultimately the receipt of data from, the in-process time study (the "Time Study"). It is our understanding the PD has begun tracking personnel time on a system wide basis. We anticipate communicating and collaborating with the PD to obtain a clear understanding of how time is being tracked and categorized. It is our understanding that time is being captured along two (2) dimensions: Case Type (a broad designation of the type of case, such as Class B Felony or traffic related, for example) and Case Task (a field to capture the specific tasks and functions that are performed by PD personnel for each Case Type, such as meetings with client or preliminary motions, for example).

    We will utilize this data to measure and present the current case load mix and initial case weights (i.e., how are PD personnel currently spending their time). Based upon similar studies performed in other states, we anticipate that the **minimum** time required for the Time Study is six (6) weeks.

3. **PD Time Sufficiency Survey:** Phase 3 of the project will utilize an already completed survey of PD personnel (the "Time Sufficiency Survey") to obtain their perspective on whether the current time spent (by Case Task) is sufficient to fulfill their obligations.

   We anticipate that specific objectives of Phase 3 will involve:
   a. Receiving the raw, underlying data from the Time Sufficiency Survey;
   b. Analyzing the data from the Time Sufficiency Survey;
   c. Creating summary data tables to provide a basic overview of the Time Sufficiency Survey;
   d. Presenting preliminary summary tables to PD for review; and
   e. Comparing preliminary conclusions from the Time Sufficiency Survey to the preliminary conclusions from the Time Study.

   We will utilize this data to identify the Case Tasks that PD personnel have indicated they currently do not have sufficient time to complete.

4. **PD Interviews:** In Phase 4, we anticipate interviewing three to five experienced PD personnel in order to discuss the results of, and our takeaways from, the Time Study and Time Sufficiency Survey. These interviews will help provide assurance that we are interpreting the data correctly as well as provide PD an opportunity to provide additional insight into the data and the overall process.

5. **Delphi Method:** Phase 5 will involve coordinating with an expert panel assembled by _____ to obtain estimates of time allocations for those Case Type / Case Task categories that were deemed to have deficiencies in current practice. This panel will be comprised of both experienced PD public defenders and experienced criminal defense practitioners who have experience with the kinds of cases typically handled by the PD.

   We expect that this phase will include two distinct survey processes consisting of a time survey and a frequency survey. By the end of Phase 5, we will have the set of final recommended case weights based upon the results of the Time Study, Time Sufficiency Survey, and panel input from applying the Delphi Method. These final case weights will form the basis for the recommended caseload standards.

6. **Final Report:** Our final deliverable will consist of a written report that will:
   a. Present the final results of our analysis;
   b. Document and describe all the steps taken and work performed in Phases 1 through 5; and
   c. Present the caseload standards and the underlying data and results in summary form through the use of tables, figures, and graphs.

   We anticipate that writing the Final Report will not actually be a final, distinct phase, but will actually be drafted throughout the process and performance of Phases 1 through 5. We will present _____ with an initial draft report for comments and feedback. The Final Report will be issued once that feedback has been received and considered.

Defending Liberty
Pursuing Justice

Exhibit S

PUBLIC DEFENDER COMMISSION

Missouri State Public Defender System
Budget Request
Fiscal Year 2019

PUBLIC DEFENDER COMMISSION

Budget Request
Fiscal Year 2019

Michael Barrett
State Public Defender, Director
573-526-5212

Office of the State Public Defender
231 East Capitol
Jefferson City, Missouri 65101
573-526-5210 – Phone 573-526-5213 – Fax

October 1, 2017

Dear Governor Greitens:

Enclosed please find the 36th budget request for the Missouri State Public Defender System (MSPD). As you are undoubtedly aware, MSPD's mission is to carry out the state's obligation to provide competent counsel to Missourians who are poor and face a loss of their liberty following a criminal conviction.

As Director of MSPD, I join your efforts to ensure that taxpayer dollars are utilized responsibly and effectively, to protect equality under the law, and due process for the accused. Over the course of the past couple of years, Missouri has climbed to 8th highest in the rate at which it incarcerates its citizens, with approximately 50% of individuals incarcerated for a non-violent offense, while contemporaneously reaching 11th among the states in violent crime rate.

These outcomes suggest that the prison population, and its budget, is continuing to grow without any positive impact on the state's violent crime rate. In addition to helping the state fulfill its obligation under the 6th and 14th amendments, MSPD's aim is to make sure that taxpayers are not burdened with the enormous costs of incarceration if a person can be effectively managed in the community. Without adequate resources, however, MSPD's ability to develop alternative plans for someone otherwise facing incarceration is limited. Regrettably, this often results in more people going to state prison for low-level or non-violent offenses, including for violating their probation. Not only does this break up families, it needlessly inflates the reliance on the welfare roles when families are forced to break up.

Therefore, it is my responsibility to submit a budget request that accurately reflects the task that is before us. During the course of the past two years, MSPD's caseloads have increased substantially, from about 76,000 cases statewide to more than 85,000 cases a year. Without a budget that mirrors the workload that the state has placed on MSPD, constitutional violations will undoubtedly continue and Missouri will continue to achieve poor outcomes in both its incarceration rate and public safety.

Very truly yours,

Michael Barrett
Director, Missouri State Public Defender

State Public Defender
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PROGRAM DESCRIPTION

Department: Office of the State Public Defender	**HB Section(s): HB 12.400**
Program Name: Public Defender	
Program is found in the following core budget(s):	**This program is found in all MSPD core budgets. MSPD has only one mission and only one program - To Provide effective legal representation to indigent persons accused of crime.**

1a. What strategic priority does this program address?

The single overriding goal of the Office of the Missouri State Public Defender System is to provide effective criminal defense representation for its clients fulfilling the office's constitutional mandate. Strategies to accomplish this mission have been identified and implemented with continued refinements to enhance productivity, efficiencies, whereby reducing costs and eliminating waste in the processes and operations that deliver such services.

1b. What does this program do?

The Missouri State Public Defender System [MSPD] is a statewide system that provides legal representation to poor persons who are accused or convicted of state crimes in Missouri's trial, appellate, and Supreme courts. Carrying out these functions fulfills the state's obligation to provide the right to counsel under the state and U.S. Constitutions to those who cannot afford it.

2. What is the authorization for this program, i.e., federal or state statute, etc.? (Include the federal program number, if applicable.)

Chapter 600 R.S. Mo, which was enacted to comply with the state's obligations under the U.S. Constitution and Missouri Constitutions:

In all criminal prosecutions, the accused shall enjoy the right to . . . have the assistance of counsel for his defence.
Amend VI, U.S. Constitution

In order to assert our rights, acknowledge our duties, and proclaim the principles on which our government is founded, we declare: . . . That in criminal prosecutions the accused shall have the right to appear and defend in person and by counsel.
Article I, Section 18(a), Missouri Constitution.

3. Are there federal matching requirements? If yes, please explain.

No

PROGRAM DESCRIPTION

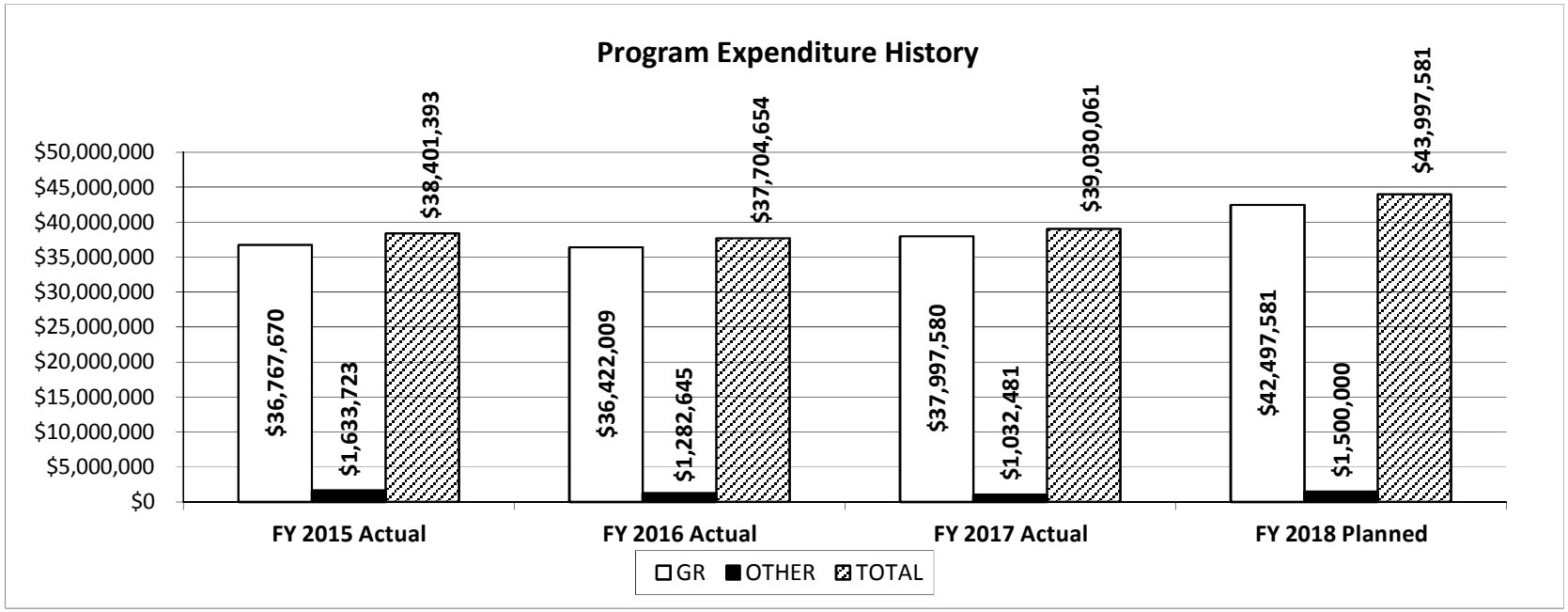
Department: Office of the State Public Defender	**HB Section(s):** HB 12.400
Program Name: Public Defender	
Program is found in the following core budget(s):	**This program is found in all MSPD core budgets. MSPD has only one mission and only one program - To Provide effective legal representation to indigent persons accused of crime.**

4. Is this a federally mandated program? If yes, please explain.

Yes. The Provision of counsel to indigent defendants facing prosecution and potential loss of their liberty if federally mandated the United States Constitution.

"In all criminal prosecutions, the accused shall enjoy the right to...have the assistance of counsel for his defence."
Amend VI, U.S. Constitution Bill of Rights.

5. Provide actual expenditures for the prior three fiscal years and planned expenditures for the current fiscal year.



6. What are the sources of the "Other " funds?

Legal Defense and Defender Fund - Collections from Client fees.

PROGRAM DESCRIPTION

Department: Office of the State Public Defender	**HB Section(s): HB 12.400**
Program Name: Public Defender	
Program is found in the following core budget(s):	**This program is found in all MSPD core budgets. MSPD has only one mission and only one program - To Provide effective legal representation to indigent persons accused of crime.**

7a. Provide an effectiveness measure.

There are three primary measures of effectiveness applicable to the Missouri State Public Defender System:

(1) **Case Law:** Through cases ruled upon by the United States Supreme Court, the Missouri Supreme Court and Courts of Appeal, specific standards of what does or does not constitute effective assistance of counsel in the representation of a criminal defendant have evolved. Where an attorney is found by the court to have failed to meet those standards, any conviction of the defendant must be set aside.

(2) **Missouri Rules of Professional Responsibility** are established by the Missouri Supreme Court and applicable to every attorney licensed to practice law within the State of Missouri. The Rules set out what is expected from a competent, professional attorney and are enforced by the Missouri Supreme Court through its Office of Chief Disciplinary Counsel. Failure to comply with these rules can result in actions being taken against the attorney's license, ranging from a formal reprimand up to and including permanent disbarment from the right to practice law within the state.

(3) **MSPD Guidelines for Representation** adopted by the Missouri State Public Defender Commission, which set out the Commission's expectations of its attorneys in order to meet the above standards for effective representation of clients served by Missouri Public Defenders.

Unfortunately, the Missouri State Public Defender System is not currently able to meet many of these standards because it is staffed to handle only a percentage of the total caseload assigned to it this last year. The overload has forced lawyers and investigators alike to cut corners, skip steps, and make on-the-fly triage decisions in order to keep up with the deluge of cases coming in the door. As a result, effectiveness in many of these cases is seriously compromised.

American Bar Association Ethical Advisory Opinion re Public Defender Caseloads: In 2006, the American Bar Association issued an ethical advisory opinion warning against ethical violations caused by excessive defender caseloads and highlighting the fact that public defenders are not exempt from the professional obligation of all attorneys not to take on more cases than they can effectively handle. That opinion cited national caseload standards, as a base which should not be exceeded, but warned that other factors must also be taken into consideration, such as availability (or lack of) support staff to assist the attorneys, time taken away from case preparation by other non-case-related duties, such as travel, training, management, etc., and the specifics of local practice that could impact the amount of time needed for handling particular case types. *See, ABA Formal Opinion 06-441: Ethical Obligations of Lawyers who Represent Indigent Criminal Defendants When Excessive Caseload Interfere with Competent and Diligent Representation, May 13, 2006.*

PROGRAM DESCRIPTION

Department: Office of the State Public Defender	**HB Section(s): HB 12.400**
Program Name: Public Defender	
Program is found in the following core budget(s):	**This program is found in all MSPD core budgets. MSPD has only one mission and only one program - To Provide effective legal representation to indigent persons accused of crime.**

Over the last ten years, the issue of Missouri Public Defender's workload has been the subject of five different studies: one by a Missouri Bar Task Force, two by *The Spangenberg Group,* an independent consultant, another by a Senate Interim Committee, and the most recent by the American Bar Association titled *The Missouri Project*. Each of these investigations reached the same conclusion: Missouri's public defenders have too many cases and not enough lawyers or support staff to fulfill the state's constitutional obligations.

The most recent ABA study, conducted and overseen by RubinBrown of St. Louis, one of the nation's top accounting and business analytics firms, was designed to not only identify excessive work overloads – which it did -- but also to establish reliable case weights to determine what staffing levels are needed to match the existing workload (i.e., the average number of hours a competent attorney could expect to spend on a particular case type to provide competent representation).

When these case weights are applied to MSPD's caseload, the number of staff MSPD would need to meet its existing caseload is 347 additional attorneys (see case weight metrics below). 336 attorneys are requested in the Constitutionally Mandated Representation decision item. 11 attorneys are requested in the Juvenile Advocacy decision item. This proposal further seeks funding that would allow MSPD to continue to assign all Trial Division conflict cases to private attorneys, which remains the single most efficient way to immediately impact case overload.

ABA/RubinBrown Workload Study	
Non-Capital Homicide	106.6
A/B Felony Offense	47.6
C/D Felony Offense	25.0
Sex Offense - Felony	63.8
Misdemeanor	11.7
Juvenile	19.5
Appeals/PCR	96.5
Probation Violation	9.8

Department: Office of the State Public Defender	**HB Section(s): HB 12.400**
Program Name: Public Defender	
Program is found in the following core budget(s):	**This program is found in all MSPD core budgets. MSPD has only one mission and only one program - To Provide effective legal representation to indigent persons accused of crime.**

The budget request also includes the addition of:

A comprehensive compensation structure for Attorney staff - Assistant Public Defender recruitment and retention is critical to the Missouri State Public Defender System's (MSPD) ability to meet its constitutional mandate of effective representation, especially in light of the fact that it is operating with less than one half the attorneys and one quarter the support staff needed for its existing caseload.

Two Youth Advocacy Units, one in Kansas City and one in St. Louis, to specialize in the representation of juveniles (11.50 attorneys);

Each of these constitutes a measured, but significant step forward on the road toward fulfilling the state's constitutionally mandated obligations.

7b. Provide an efficiency measure.

The Missouri State Public Defender System's 369.50 Trial and Appellate lawyers closed 76,752 cases last year, appearing in every courthouse in every county across the state, at an average cost to the state's taxpayers of just $325.31 per case. This astonishingly low cost of indigent defense in Missouri – among the lowest in the nation -- is not a cause for celebration. It comes at the cost of justice, the result of widespread failure to provide indigent defendants the effective assistance of counsel that the U.S. Constitution's Bill of Rights guarantees them. There is a limit to the 'Do More With Less' mantra within the arena of criminal justice, and Missouri passed it sometime ago.

PROGRAM DESCRIPTION

Department: Office of the State Public Defender	**HB Section(s):** HB 12.400
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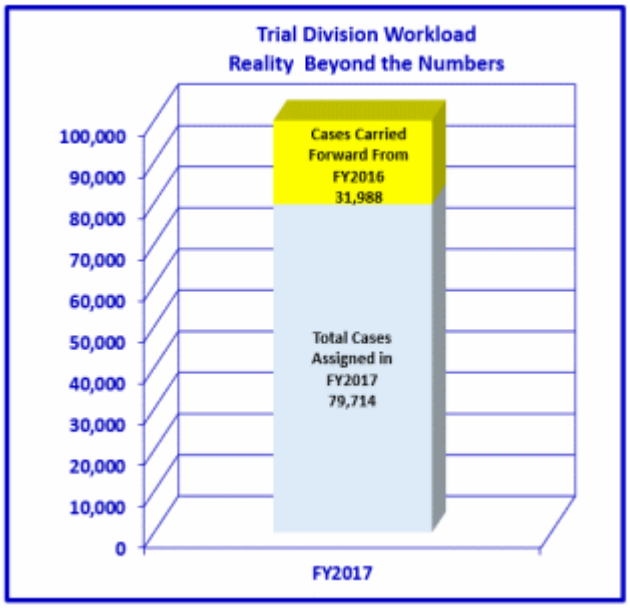
Program is found in the following core budget(s):	**This program is found in all MSPD core budgets. MSPD has only one mission and only one program - To Provide effective legal representation to indigent persons accused of crime.**

7c. Provide the number of clients/individuals served, if applicable.

In FY2017, MSPD provided representation in 85,812 new cases. The Public Defender Commission sets the indigency guidelines that are used to determine who is eligible for public defender services. Currently, those guidelines match the Federal Poverty Guidelines. Strictly applied, that would mean an individual making only $12,000 a year would not qualify for a public defender. According to recent reports, Missouri ranks 50th out of 50 states in income eligibility standards for public defender services, leaving a wide gap of ineligible defendants who in reality still lack the means to retain private counsel in the market. The guidelines, however, do allow for the taking into consideration of all of the defendant's particular circumstances affecting his/her ability to hire counsel, so things such as the seriousness of the charge may impact that decision. Defendants have the right to appeal MSPD's denial of their application to the court for an independent review of their eligibility. If the court finds they are unable to afford private counsel, the court can overrule the public defender denial.



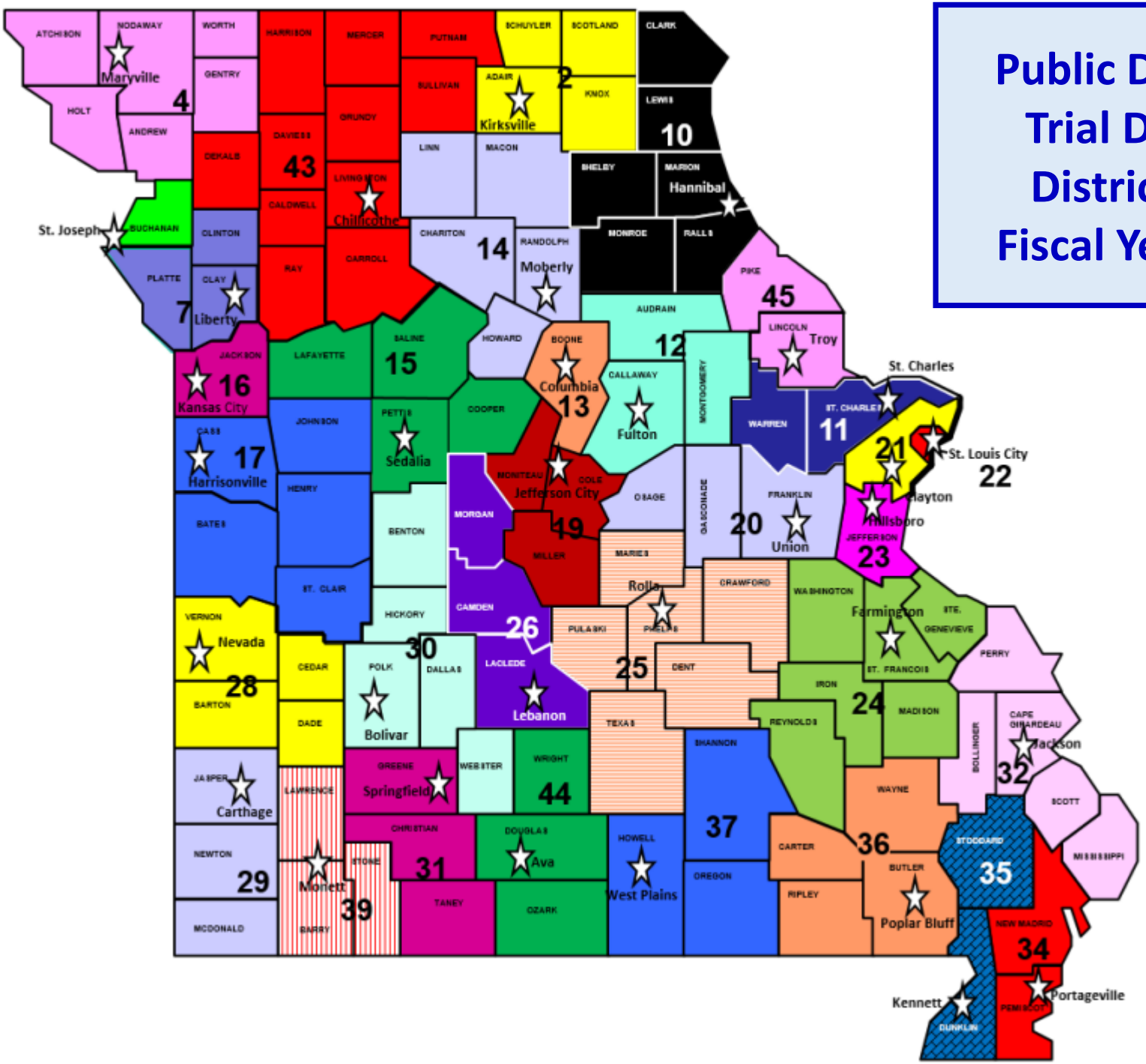
The table on the following page shows a 6.26% increase in the number of cases assigned to the Public Defender System in Fiscal Year 2017. This is on top of a 9.72% increase in Fiscal Year 2016. In Fiscal Year 2015, the Missouri State Public Defender opened 73,598 cases. In Fiscal Year 2017, 85,812 cases were opened. In addition to the cases opened in Fiscal Year 2017, public defenders must provide representation in those cases that were opened in prior fiscal years and have not yet been closed, as the table on the right illustrates.

Missouri State Public Defender System

Cases Assigned by Case Type

Fiscal Year	Murder 1st	Other Homicide	Felony	Murder + Felony Caseload	Misdemeanor	Juvenile	PCR	Other	Probation Violation	Appeals	Total Opened	Total Closed
FY17	179	195	45,364	45,738	16,487	1,617	1,264	458	19,405	843	85,812	78,629
FY16	187	138	42,276	42,601	16,121	1,677	829	204	18,557	766	80,755	71,934
FY15	167	148	37,879	38,194	14,853	1,831	916	174	16,831	799	73,598	71,464
FY14	129	138	38,554	38,821	15,228	1,830	939	166	17,460	752	75,196	72,197
FY13	152	207	38,785	39,144	16,692	1,670	986	238	18,477	792	77,999	79,985
FY12	121	197	38,551	38,869	20,948	1,923	1,212	159	20,320	966	84,397	81,871
FY11	148	149	35,753	36,050	22,767	1,893	1,088	119	20,066	913	82,896	80,137
FY10	161	164	34,781	35,106	24,768	2,393	1,141	131	20,147	930	84,616	81,346
FY09	121	180	33,226	33,527	25,181	2,513	1,264	181	19,518	898	83,082	81,704
FY08	158	154	34,766	35,078	26,098	2,715	1,061	182	19,555	716	85,405	85,116
FY07	174	161	35,109	35,444	27,816	3,380	828	129	19,157	743	87,497	85,133
FY06	138	146	35,339	35,623	28,227	3,676	838	46	19,412	710	88,532	83,260
FY05	156	124	33,282	33,562	28,931	3,881	937	120	20,012	688	88,131	87,180
FY04	154	140	34,422	34,716	28,018	4,258	807	98	20,263	756	88,916	86,356
FY03	195	114	35,425	35,734	25,807	4,147	806	103	18,479	832	85,908	81,059
FY02	163	132	33,183	33,478	25,147	3,918	802	64	18,047	750	82,206	77,165
FY01	182	125	29,934	30,241	22,903	4,488	711	82	17,663	698	76,786	73,438
FY00	147	109	28,019	28,275	24,119	4,998	763	76	16,768	739	75,738	69,591
FY99	182	108	28,892	29,182	23,721	4,629	797	112	14,488	809	73,738	74,570
FY98	196	87	31,591	31,874	24,676	4,270	674	138	14,141	689	76,462	74,495
FY97	169	79	29,663	29,911	21,912	4,075	513	156	13,437	839	70,843	67,870
FY96	175	88	30,198	30,461	23,069	3,612	707	178	11,444	1,038	70,509	70,664
FY95	256	109	27,688	28,053	17,696	3,916	719	165	9,362	1,138	61,049	61,710
FY94	255	152	25,338	25,745	17,852	3,374	682	201	8,225	1,017	57,096	52,453
FY93	301	136	24,402	24,839	15,883	3,146	766	249	7,301	872	53,056	52,363
FY92	282	37	25,458	25,777	19,974	3,372	1,129	167	5,321	569	56,309	55,651
FY91	193	63	21,304	21,560	13,941	2,713	588	169	5,051	820	44,842	49,038
FY90	227	109	23,336	23,672	14,627	3,300	732	369	5,834	1,094	49,628	46,425
FY89	193	149	20,838	21,180	12,902	3,298	1,342	418	5,074	1,243	45,457	42,532
FY88	202	161	20,640	21,003	12,427	3,455	1,006	470	4,475	920	43,756	40,117
FY87	199	145	19,254	19,598	11,736	3,564	755	443	4,308	728	41,132	37,081
FY86	166	175	17,042	17,383	10,602	3,328	612	611	3,815	608	36,959	34,491
FY85	152	172	15,397	15,721	9,126	3,500	543	522	3,293	632	33,337	32,410
FY84	176	175	15,048	15,399	9,256	3,098	534	499	2,878	506	32,130	31,730

Public Defender Trial Division District Map Fiscal Year 2017



June 30, 2017

State Auditor's Reports and Oversight Evaluation

Program or Division Name	Type of Report	Date Issued	Website
Public Defender Commission	Audit	October 1, 2012	http://www.auditor.mo.gov/Press/2012-129.pdf

Budgeting Unit / Decision Item / Fund	Rank	FY 2019 DEPT REQ DOLLAR	FY 2019 DEPT REQ FTE	********** SECURED COLUMN	********** SECURED COLUMN	CUMULATIVE TOTAL DOLLARS	CUMULATIVE TOTAL FTE
OFFICE OF THE DIRECTOR							
CORE	001						
GENERAL REVENUE		37,776,510	595.13	0	0.00	0	0.00
TOTAL		37,776,510	595.13	0	0.00		
EXTRAORDINARY EXPENSE/CONFLIC							
CORE	001						
GENERAL REVENUE		4,721,071	0.00	0	0.00	0	0.00
TOTAL		4,721,071	0.00	0	0.00		
LEGAL DEFENSE & DEFENDER FUND							
CORE	001						
LEGAL DEFENSE AND DEFENDER		2,985,943	2.00	0	0.00	0	0.00
TOTAL		2,985,943	2.00	0	0.00		
GRANTS							
CORE	001						
PUBLIC DEFENDER-FEDERAL & OTHR		125,000	0.00	0	0.00	0	0.00
TOTAL		125,000	0.00	0	0.00		
OFFICE OF THE DIRECTOR							
COMPREHENSIVE COMPENSATION - 1151001	005						
GENERAL REVENUE		3,295,139	0.00	0	0.00	0	0.00
TOTAL		3,295,139	0.00	0	0.00		
JUVENILE ADVOCACY - 1151002	005						
GENERAL REVENUE		973,999	18.00	0	0.00	0	0.00
TOTAL		973,999	18.00	0	0.00		
CONSTITUTIONAL REPRESENTATION - 1151003	005						
GENERAL REVENUE		25,514,634	448.00	0	0.00	0	0.00
TOTAL		25,514,634	448.00	0	0.00		
GRAND TOTAL		**$75,392,296**	**1,063.13**	**$0**	**0.00**		

Budget Unit / Decision Item / Budget Object Summary / Fund	FY 2017 ACTUAL DOLLAR	FY 2017 ACTUAL FTE	FY 2018 BUDGET DOLLAR	FY 2018 BUDGET FTE	FY 2019 DEPT REQ DOLLAR	FY 2019 DEPT REQ FTE	********** SECURED COLUMN	********** SECURED COLUMN
OFFICE OF THE DIRECTOR								
CORE								
PERSONAL SERVICES								
GENERAL REVENUE	28,355,350	578.95	29,896,943	595.13	29,896,943	595.13	0	0.00
TOTAL - PS	28,355,350	578.95	29,896,943	595.13	29,896,943	595.13	0	0.00
EXPENSE & EQUIPMENT								
GENERAL REVENUE	5,921,158	0.00	7,879,567	0.00	7,879,567	0.00	0	0.00
TOTAL - EE	5,921,158	0.00	7,879,567	0.00	7,879,567	0.00	0	0.00
TOTAL	**34,276,508**	**578.95**	**37,776,510**	**595.13**	**37,776,510**	**595.13**	**0**	**0.00**
COMPREHENSIVE COMPENSATION - 1151001								
PERSONAL SERVICES								
GENERAL REVENUE	0	0.00	0	0.00	3,295,139	0.00	0	0.00
TOTAL - PS	0	0.00	0	0.00	3,295,139	0.00	0	0.00
TOTAL	**0**	**0.00**	**0**	**0.00**	**3,295,139**	**0.00**	**0**	**0.00**
JUVENILE ADVOCACY - 1151002								
PERSONAL SERVICES								
GENERAL REVENUE	0	0.00	0	0.00	803,592	18.00	0	0.00
TOTAL - PS	0	0.00	0	0.00	803,592	18.00	0	0.00
EXPENSE & EQUIPMENT								
GENERAL REVENUE	0	0.00	0	0.00	170,407	0.00	0	0.00
TOTAL - EE	0	0.00	0	0.00	170,407	0.00	0	0.00
TOTAL	**0**	**0.00**	**0**	**0.00**	**973,999**	**18.00**	**0**	**0.00**
CONSTITUTIONAL REPRESENTATION - 1151003								
PERSONAL SERVICES								
GENERAL REVENUE	0	0.00	0	0.00	20,620,992	448.00	0	0.00
TOTAL - PS	0	0.00	0	0.00	20,620,992	448.00	0	0.00
EXPENSE & EQUIPMENT								
GENERAL REVENUE	0	0.00	0	0.00	4,893,642	0.00	0	0.00
TOTAL - EE	0	0.00	0	0.00	4,893,642	0.00	0	0.00
TOTAL	**0**	**0.00**	**0**	**0.00**	**25,514,634**	**448.00**	**0**	**0.00**
GRAND TOTAL	**$34,276,508**	**578.95**	**$37,776,510**	**595.13**	**$67,560,282**	**1,061.13**	**$0**	**0.00**

CORE DECISION ITEM

Department: Office of the State Public Defender
Division: Public Defender
Core: Legal Services

Budget Unit 15111C
HB Section HB 12.400

1. CORE FINANCIAL SUMMARY

	FY 2019 Budget Request					FY 2019 Governor's Recommendation				
	GR	Federal	Other	Total	E	GR	Federal	Other	Total	E
PS	29,896,943	0	0	29,896,943		0	0	0	0	
EE	7,879,567	0	0	7,879,567		0	0	0	0	
PSD	0	0	0	0		0	0	0	0	
TRF	0	0	0	0		0	0	0	0	
Total	**37,776,510**	**0**	**0**	**37,776,510**		**0**	**0**	**0**	**0**	
FTE	**0.00**	**0.00**	**0.00**	**0.00**		**0.00**	**0.00**	**0.00**	**0.00**	
Est. Fringe	*8,879,392*	*0*	*0*	*8,879,392*		*0*	*0*	*0*	*0*	

Note: Fringes budgeted in House Bill 5 except for certain fringes budgeted directly to MoDOT, Highway Patrol, and Conservation.

Other Funds:

Other Funds:

2. CORE DESCRIPTION

The Missouri State Public Defender System [MSPD] is a statewide system, providing legal representation to indigent defendants accused of state crimes in Missouri's trial, appellate, and supreme courts. It is an independent department of state government, located within, but not supervised by, the Judicial Branch. It is governed by a seven-member Public Defender Commission, appointed by the governor.

This decision item includes funding for public defenders and their support staff throughout the state and central administrative staff. It also

3. PROGRAM LISTING (list programs included in this core funding)

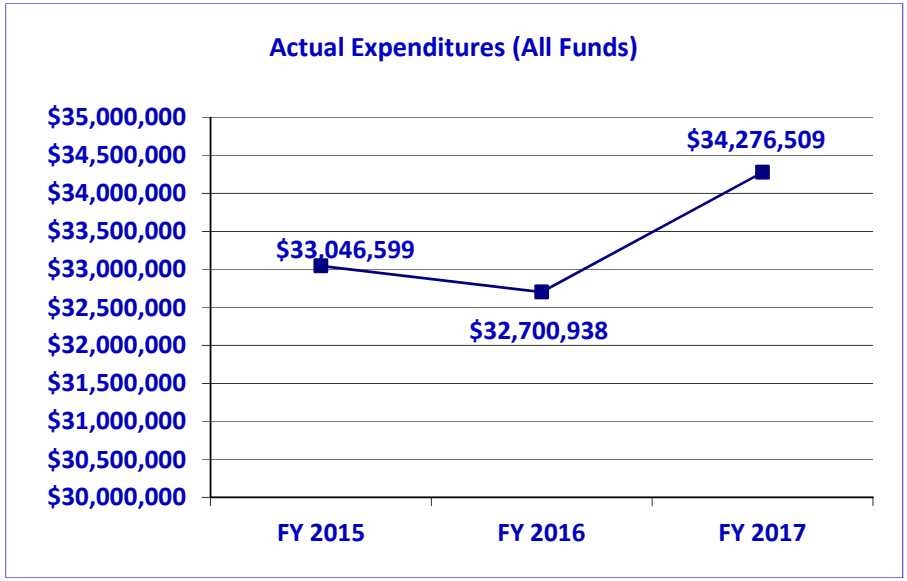
The Missouri State Public Defender has only one program: providing constitutionally required criminal defense representation to Missourians facing the loss of liberty in state misdemeanor and felony prosecutions, as well as in appellate and post-conviction representation matters in which the state has created a right to counsel.

CORE DECISION ITEM

Department:	**Office of the State Public Defender**	**Budget Unit**	15111C
Division:	**Public Defender**		
Core:	**Legal Services**	**HB Section**	HB 12.400

4. FINANCIAL HISTORY

	FY 2015 Actual	FY 2016 Actual	FY 2017 Actual	FY 2018 Current Yr.
Appropriation (All Funds)	$36,018,838	$32,700,939	$37,776,510	$37,776,510
Less Reverted (All Funds)	$0	$0	$0	$0
Less Restricted (All Funds)*	-$2,972,238	$0	-$3,500,000	$0
Budget Authority (All Funds)	$33,046,600	$32,700,939	$34,276,510	$37,776,510
Actual Expenditures (All Funds)	$33,046,599	$32,700,938	$34,276,509	$37,776,510
Unexpended (All Funds)	$1	$1	$1	$0
Unexpended, by Fund:				
General Revenue	1	1	1	N/A
Federal	0	0	0	N/A
Other	0	0	0	N/A



*Restricted amount is $0.00 as of October 1, 2017

Reverted includes the statutory three-percent reserve amount (when applicable).
Restricted includes any Governor's Expenditure Restrictions which remained at the end of the fiscal year (when applicable).

NOTES:

On June 30, 2015, after the close of the Accounting Fiscal Year 2015, Governor Nixon "released" the $2,972,238 that had been withheld.

The $3,500,000 withheld from Fiscal Year 2017, was not released.

Budget Unit / Decision Item / Budget Object Class	FY 2017 ACTUAL DOLLAR	FY 2017 ACTUAL FTE	FY 2018 BUDGET DOLLAR	FY 2018 BUDGET FTE	FY 2019 DEPT REQ DOLLAR	FY 2019 DEPT REQ FTE	********** SECURED COLUMN	********** SECURED COLUMN
OFFICE OF THE DIRECTOR								
CORE								
TEMPORARY EMPLOYEE	14,877	0.55	0	0.00	0	0.00	0	0.00
SECRETARY	3,253,853	119.17	3,409,888	122.50	3,399,692	120.50	0	0.00
COMPUTER INFO. SPECIALIST	349,123	6.64	469,099	6.25	413,043	7.50	0	0.00
INVESTIGATOR	1,998,721	55.86	2,108,350	57.38	2,186,458	57.63	0	0.00
PARALEGAL	203,535	5.50	200,753	6.50	168,144	4.50	0	0.00
MITIGATION SPECIALIST	288,753	7.22	286,874	7.00	322,229	8.00	0	0.00
ASSISTANT PUBLIC DEFENDER	17,790,928	324.48	18,885,424	336.50	18,774,860	335.00	0	0.00
DISTRICT DEFENDER	3,100,694	41.74	3,267,012	43.00	3,249,928	43.00	0	0.00
DIVISION DIRECTOR	599,146	5.49	580,849	5.00	565,659	5.00	0	0.00
PROGRAM TECHNICIAN	144,545	4.03	164,644	4.00	225,647	6.00	0	0.00
PROGRAM MANAGER	463,037	7.27	375,912	6.00	443,023	7.00	0	0.00
DIRECTOR	148,138	1.00	148,138	1.00	148,260	1.00	0	0.00
TOTAL - PS	**28,355,350**	**578.95**	**29,896,943**	**595.13**	**29,896,943**	**595.13**	**0**	**0.00**
TRAVEL, IN-STATE	910,585	0.00	950,000	0.00	935,000	0.00	0	0.00
TRAVEL, OUT-OF-STATE	9,060	0.00	12,500	0.00	10,000	0.00	0	0.00
FUEL & UTILITIES	44,003	0.00	47,500	0.00	45,000	0.00	0	0.00
SUPPLIES	440,732	0.00	305,000	0.00	445,000	0.00	0	0.00
PROFESSIONAL DEVELOPMENT	143,387	0.00	4,500	0.00	143,500	0.00	0	0.00
COMMUNICATION SERV & SUPP	370,557	0.00	418,205	0.00	375,000	0.00	0	0.00
PROFESSIONAL SERVICES	2,086,502	0.00	4,950,677	0.00	3,985,067	0.00	0	0.00
HOUSEKEEPING & JANITORIAL SERV	110,963	0.00	118,685	0.00	115,000	0.00	0	0.00
M&R SERVICES	411,277	0.00	175,000	0.00	415,000	0.00	0	0.00
COMPUTER EQUIPMENT	415,963	0.00	25,000	0.00	425,000	0.00	0	0.00
MOTORIZED EQUIPMENT	25,881	0.00	0	0.00	26,000	0.00	0	0.00
OFFICE EQUIPMENT	38,978	0.00	20,000	0.00	40,000	0.00	0	0.00
OTHER EQUIPMENT	57,896	0.00	5,000	0.00	60,000	0.00	0	0.00
BUILDING LEASE PAYMENTS	776,879	0.00	780,000	0.00	780,000	0.00	0	0.00
EQUIPMENT RENTALS & LEASES	28,220	0.00	17,500	0.00	30,000	0.00	0	0.00
MISCELLANEOUS EXPENSES	50,275	0.00	50,000	0.00	50,000	0.00	0	0.00
TOTAL - EE	**5,921,158**	**0.00**	**7,879,567**	**0.00**	**7,879,567**	**0.00**	**0**	**0.00**
GRAND TOTAL	**$34,276,508**	**578.95**	**$37,776,510**	**595.13**	**$37,776,510**	**595.13**	**$0**	**0.00**
GENERAL REVENUE	**$34,276,508**	**578.95**	**$37,776,510**	**595.13**	**$37,776,510**	**595.13**		**0.00**
FEDERAL FUNDS	**$0**	**0.00**	**$0**	**0.00**	**$0**	**0.00**		**0.00**
OTHER FUNDS	**$0**	**0.00**	**$0**	**0.00**	**$0**	**0.00**		**0.00**

FLEXIBILITY REQUEST FORM

BUDGET UNIT NUMBER: 15111C **BUDGET UNIT NAME:** Office of the State Public Defender - Legal Services **HOUSE BILL SECTION:** 12.400	**DEPARTMENT:** Office of the State Public Defender **DIVISION:** Director's Office - Legal Services

1. Provide the amount by fund of personal service flexibility and the amount by fund of expense and equipment flexibility you are requesting in dollar and percentage terms and explain why the flexibility is needed. If flexibility is being requested among divisions, provide the amount by fund of flexibility you are requesting in dollar and percentage terms and explain why the flexibility is needed.

DEPARTMENT REQUEST

As in previous years, the Office of the State Public Defender is requesting full flexibility in our legal services appropriations. (Appropriations 0911, 0912 and 8727). Due to the turnover of attorney positions, the number of conflicts and the overload of cases, it is frequently necessary to transfer cases from state employees (Appropriation 0911) to private counsel who can be compensated from appropriation 0912 or 8727.

It is also necessary to transfer vacancy savings dollars from the Personal Service Appropriation to the Expense and Equipment Appropriation to cover appropriation shortfalls in case litigation expenses and increasing office expenses such as travel, postage, equipment maintenance and network charges.

2. Estimate how much flexibility will be used for the budget year. How much flexibility was used in the Prior Year Budget and the Current Year Budget? Please specify the amount.

PRIOR YEAR ACTUAL AMOUNT OF FLEXIBILITY USED	CURRENT YEAR ESTIMATED AMOUNT OF FLEXIBILITY THAT WILL BE USED	BUDGET REQUEST ESTIMATED AMOUNT OF FLEXIBILITY THAT WILL BE USED
$998,712	$1,000,000	$1,000,000

3. Please explain how flexibility was used in the prior and/or current years.

PRIOR YEAR EXPLAIN ACTUAL USE	CURRENT YEAR EXPLAIN PLANNED USE
$988,712 was transferred from Personal Service (0911) to Expense & Equipment (0912) to cover a significant shortage in litigation costs, general operating costs and $643,067 of conflict cases transferred to private counsel.	Flexibility will be utilized to best meet the caseload demands of the State Public Defender System. Dollars from Personal Service vacancy savings could be used to meet the costs of operating the local offices or to contract out cases to private bar as the need arises or to pay for increasing necessary litigation expenses.

NEW DECISION ITEM
RANK: 5 OF 5

Department:	**Office of the State Public Defender**	**Budget Unit**	**15111C**
Division:	**Public Defender**		
DI Name:	**Comprehensive Compensation** **DI#1151001**	**HB Section**	**12.400**

1. AMOUNT OF REQUEST

	FY 2019 Budget Request					FY 2019 Governor's Recommendation				
	GR	Federal	Other	Total	E	GR	Federal	Other	Total	E
PS	3,295,139	0	0	3,295,139		0	0	0	0	
EE	0	0	0	0		0	0	0	0	
PSD	0	0	0	0		0	0	0	0	
TRF	0	0	0	0		0	0	0	0	
Total	**3,295,139**	**0**	**0**	**3,295,139**		**0**	**0**	**0**	**0**	
FTE	**0.00**	**0.00**	**0.00**	**0.00**		**0.00**	**0.00**	**0.00**	**0.00**	
Est. Fringe	*978,656*	*0*	*0*	*978,656*		*0*	*0*	*0*	*0*	

Note: Fringes budgeted in House Bill 5 except for certain fringes budgeted directly to MoDOT, Highway Patrol, and Conservation.

Other Funds:

Note: Fringes budgeted in House Bill 5 except for certain fringes budgeted directly to MoDOT, Highway Patrol, and Conservation.

Other Funds:

2. THIS REQUEST CAN BE CATEGORIZED AS:

	New Legislation		New Program		Fund Switch
	Federal Mandate		Program Expansion		Cost to Continue
	GR Pick-Up		Space Request		Equipment Replacement
X	Pay Plan		Other:		

3. WHY IS THIS FUNDING NEEDED? PROVIDE AN EXPLANATION FOR ITEMS CHECKED IN #2. INCLUDE THE FEDERAL OR STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS PROGRAM.

Assistant Public Defender recruitment and retention is critical to the Missouri State Public Defender System's (MSPD) ability to meet its constitutional mandate of effective representation, especially in light of the fact that it is operating with less than one half the attorneys and one quarter the support staff needed for its existing caseload. Further, MSPD must be able to retain the employees it does have in order to avoid the backload that occurs to the existing high caseloads when attorneys move on to other jobs.

NEW DECISION ITEM
RANK: 5 OF 5

Department:	**Office of the State Public Defender**	**Budget Unit**	**15111C**
Division:	**Public Defender**		
DI Name:	**Comprehensive Compensation DI#1151001**	**HB Section**	**12.400**

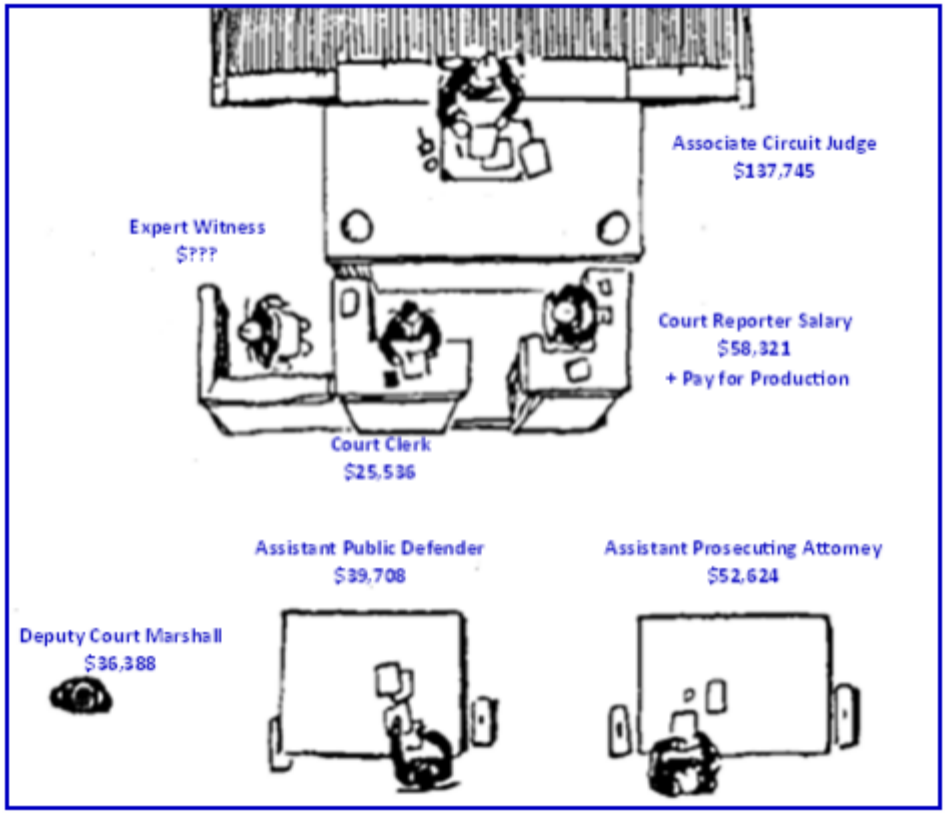
4. DESCRIBE THE DETAILED ASSUMPTIONS USED TO DERIVE THE SPECIFIC REQUESTED AMOUNT. (How did you determine that the requested number of FTE were appropriate? From what source or standard did you derive the requested levels of funding? Were alternatives such as outsourcing or automation considered? If based on new legislation, does request tie to TAFP fiscal note? If not, explain why. Detail which portions of the request are one-times and how those amounts were calculated.)

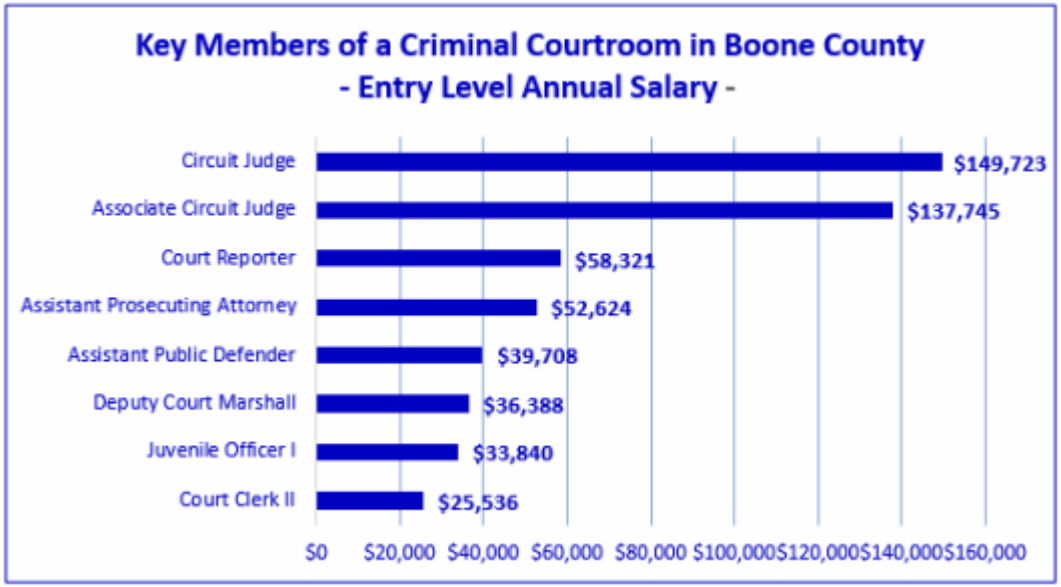
MSPD must be able to pay a competitive salary and offer advancement opportunities to address APD recruitment and retention issues. This can be accomplished through the repositioning of existing job classes to salary ranges that more accurately reflect market/competitive pay and by expanding the job classification structure, creating additional promotion opportunities. The proposed salary minimum represents the first pay step on the planned pay range. Salary structures of the Attorney General, local Prosecutor's Offices and other statewide public defender offices were consulted prior to developing the proposed compensation structures.

The American Bar Association (ABA) adopted 10 Principles of a Public Defense Delivery System in 1992. The Principles were created by the ABA's Standing Committee on Legal and Indigent Defendants and were approved by the ABA House of Delegates in February 2002, as a practical guide for governmental officials, policymakers, and other parties who are charged with creating and funding new, or improving existing, public defense delivery systems.

Principle 8: "There is parity between defense counsel and the prosecution with respect to resources and defense counsel is included in as an equal partner in the justice system."
The commentary on this principle calls for parity of salaries. Prosecuting attorneys and public defenders are key players in the criminal justice system and require the same education and experience. Compensation should be comparable.

As the economy remains strong, APD turnover con*nues to increase with the separa*on rate for Fiscal Year 17 at 17.99%, up 3.38% from Fiscal Year 16. A signi[illegible]ant contribu*ng factor to turnover is the salaries MSPD is able to pay APDs.

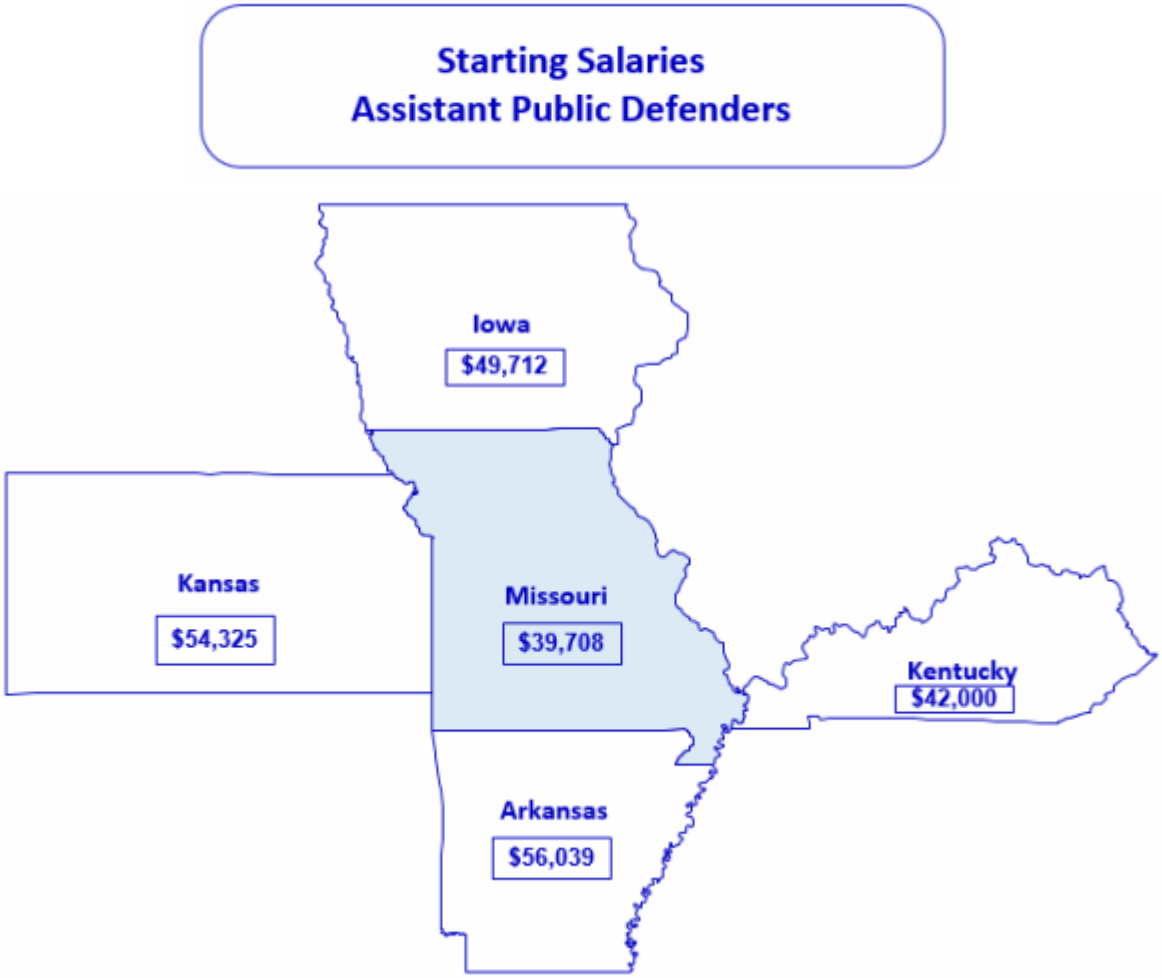

Associate Circuit Judge
$137,745
Expert Witness
$???
Court Reporter Salary
$58,321
+ Pay for Production
Court Clerk
$25,536
Assistant Public Defender
$39,708
Assistant Prosecuting Attorney
$52,624
Deputy Court Marshall
$36,388


Key Members of a Criminal Courtroom in Boone County
- Entry Level Annual Salary -
Circuit Judge
$149,723
Associate Circuit Judge
$137,745
Court Reporter
$58,321
Assistant Prosecuting Attorney
$52,624
Assistant Public Defender
$39,708
Deputy Court Marshall
$36,388
Juvenile Officer I
$33,840
Court Clerk II
$25,536
$0
$20,000
$40,000
$60,000
$80,000
$100,000
$120,000
$140,000
$160,000

County Assistant Prosecuting Attorney & Assistant Attorney General Comparisons		
County	Starting Salary	Average Salary
Boone	$52,624	$64,833
Cole	$43,188	$55,929
Greene	$49,819	$62,046
St. Louis County	$50,856	$74,497
Missouri Assistant Attorney General	$45,500	$62,588
Missouri Assistant Public Defender Trial Division	**$39,708**	**$50,784**

County Prosecuting Attorney Set By Statute		
	Starting Salary	Average Salary
County Prosecuting Attorney	$137,745	$137,745
MSPD District Defender	$72,528	$74,472

In addi*on, Missouri Assistant Public defenders make less than their counterparts in other statewide public defender systems.



NEW DECISION ITEM
RANK: 5 OF 5

Department:	**Office of the State Public Defender**	**Budget Unit**	**15111C**
Division:	**Public Defender**		
DI Name:	**Comprehensive Compensation** **DI#1151001**	**HB Section**	**12.400**

5. BREAK DOWN THE REQUEST BY BUDGET OBJECT CLASS, JOB CLASS, AND FUND SOURCE. IDENTIFY ONE-TIME COSTS.

Budget Object Class/Job Class	Dept Req GR DOLLARS	Dept Req GR FTE	Dept Req FED DOLLARS	Dept Req FED FTE	Dept Req OTHER DOLLARS	Dept Req OTHER FTE	Dept Req TOTAL DOLLARS	Dept Req TOTAL FTE	Dept Req One-Time DOLLARS	E
Assistant Public Defenders / C00400	1,804,620						1,804,620			
District Defenders / C00460	1,490,519						1,490,519	0.0		
Total PS	**3,295,139**	**0.0**	**0**	**0.0**	**0**	**0.0**	**3,295,139**	**0.0**	**0**	
							0			
							0			
							0			
Total EE	**0**		**0**		**0**		**0**		**0**	
Program Distributions							0			
Total PSD	**0**		**0**		**0**		**0**		**0**	
Transfers										
Total TRF	**0**		**0**		**0**		**0**		**0**	
Grand Total	**3,295,139**	**0.0**	**0**	**0.0**	**0**	**0.0**	**3,295,139**	**0.0**	**0**	

PROPOSED
Missouri State Public Defender Attorney Pay Plan

Proposed Classification	Minimum Qualifications	Minimum	Salary Range
Assistant Public Defender I	Member of Missouri Bar or eligible for bar licensure in Missouri	$46,992	29F
		(0-1 year)	($46,992 - $68,052)
Assistant Public Defender II	1 year experience as APDI Provides representation as assigned	$50,112	31F
		(1 year)	($50,112 - $72,636)
Assistant Public Defender III	2 years experience as APDII Provides representation in complex & serious cases Is active in training & mentoring	$58,896	34H
		(3+ years)	($58,896 - $82,656)
Assistant Public Defender IV	2 years experience as APDIII Provides representation in complex & serious cases Is active in training & mentoring	$66,672	37H
		(5+ years)	($66,672 - $94,164)
Assistant Public Defender V	2 years experience as APDIV Provides representation in complex & serious cases Is active in training & mentoring	$72,528	39H
		(5+ years)	$72,528 – $102,828
Assistant Public Defender VI	2 years experience as APDV Provides representation in complex & serious cases Is active in training & mentoring	$77,472	41H
		(8+ years)	($77,472 - $112,320)
Deputy District Defender	(Midpoint Salary of $94.164 Used for Budgeting)	$77,472	41H
			($77,472 - $112,320)
District Defender	(Midpoint Salary of $102,828 Used for Budgeting)	$84,444	43H
			($84,444 - $122,676)

Assistant Public Defenders

Job Title	Current # of FTE	Proposed # of FTE	FY17 Salary	Proposed Salary	Cost
Assistant Public Defender I	75.00		$39,708		$2,978,100
Assistant Public Defender I		75.00		$46,992	$3,524,400
Assistant Public Defender I Salary Adjustment Cost					$546,300
Assistant Public Defender II	74.00		$46,992		$3,477,408
Assistant Public Defender II		74.00		$50,112	$3,708,288
Assistant Public Defender II Salary Adjustment Cost					$230,880
Assistant Public Defender III	66.00		$52,116		$3,439,656
Assistant Public Defender III		66.00		$58,896	$3,887,136
Assistant Public Defender III Salary Adjustment Cost					$447,480
Assistant Public Defender IV	109.00		$63,912		$6,966,408
Assistant Public Defender IV		74.00		$66,672	$4,933,728
Assistant Public Defender IV Salary Adjustment Cost					-$2,032,680
Assistant Public Defender V	0.00		$0		$0
Assistant Public Defender V		20.00		$72,528	$1,450,560
Assistant Public Defender V Salary Adjustment Cost					$1,450,560
Assistant Public Defender VI	0.00		$0		$0
Assistant Public Defender VI		15.00		$77,472	$1,162,080
Assistant Public Defender VI Salary Adjustment Cost					$1,162,080
Total FTE	324.00	324.00	Total Decision Item Cost		$1,804,620

District Defenders Deputy District Defenders					
Job Title	Current # of FTE	Proposed # of FTE	FY17 Salary	Proposed Salary	Cost
Deputy District Defenders	11.00		$69,528		$764,808
Deputy District Defenders		11.00		$94,164	$1,035,804
(Mid-Point of Range)	Deputy District Defender Salary Adjustment Cost				$270,996
District Defender	43.00		$74,467		$3,202,081
District Defender		43.00		$102,828	$4,421,604
(Mid-Point of Range)	District Defender Salary Adjustment Cost				$1,219,523
Total FTE	54.00	54.00	Total Decision Item Cost		$1,490,519

NEW DECISION ITEM
RANK: 5 OF 5

Department:	**Office of the State Public Defender**	**Budget Unit**	**15111C**
Division:	**Public Defender**		
DI Name:	**Comprehensive Compensation DI#1151001**	**HB Section**	**12.400**

6. PERFORMANCE MEASURES (If new decision item has an associated core, separately identify projected performance with & without additional funding.)

When an Assistant Public Defender (APD) leaves MSPD for another job, cases must be reassigned to other APD's who are already overloaded with high caseloads. This results in case delays for clients, puts additional burdens on local county jails as defendants continue to sit in jail awaiting case resolution, and creates unnecessary backlogs for the courts. In addition, high turnover creates a constant cycle of hiring, training, and rehiring as APD's gain valuable knowledge and experience and then seek other jobs negatively impacting the morale and increasing burnout of remaining staff. All of which ultimately end up costing the Missouri taxpayer.

Budget Unit / Decision Item / Budget Object Class	FY 2017 ACTUAL DOLLAR	FY 2017 ACTUAL FTE	FY 2018 BUDGET DOLLAR	FY 2018 BUDGET FTE	FY 2019 DEPT REQ DOLLAR	FY 2019 DEPT REQ FTE	********** SECURED COLUMN	********** SECURED COLUMN
OFFICE OF THE DIRECTOR								
COMPREHENSIVE COMPENSATION - 1151001								
ASSISTANT PUBLIC DEFENDER	0	0.00	0	0.00	1,804,620	0.00	0	0.00
DISTRICT DEFENDER	0	0.00	0	0.00	1,490,519	0.00	0	0.00
TOTAL - PS	**0**	**0.00**	**0**	**0.00**	**3,295,139**	**0.00**	**0**	**0.00**
GRAND TOTAL	**$0**	**0.00**	**$0**	**0.00**	**$3,295,139**	**0.00**	**$0**	**0.00**
GENERAL REVENUE	**$0**	**0.00**	**$0**	**0.00**	**$3,295,139**	**0.00**		**0.00**
FEDERAL FUNDS	**$0**	**0.00**	**$0**	**0.00**	**$0**	**0.00**		**0.00**
OTHER FUNDS	**$0**	**0.00**	**$0**	**0.00**	**$0**	**0.00**		**0.00**

NEW DECISION ITEM
RANK: 5 OF 5

Department:	**Office of the State Public Defender**	**Budget Unit**	**15111C**
Division:	**Public Defender**		
DI Name:	**Juvenile Advocacy Offices** **DI# 1511003**	**HB Section**	**12.400**

1. AMOUNT OF REQUEST

	FY 2019 Budget Request					FY 2019 Governor's Recommendation				
	GR	Federal	Other	Total	E	GR	Federal	Other	Total	E
PS	803,592	0	0	803,592		0	0	0	0	
EE	170,407	0	0	170,407		0	0	0	0	
PSD	0	0	0	0		0	0	0	0	
TRF	0	0	0	0		0	0	0	0	
Total	**973,999**	**0**	**0**	**973,999**		**0**	**0**	**0**	**0**	
FTE	**18.00**	**0.00**	**0.00**	**18.00**		**0.00**	**0.00**	**0.00**	**0.00**	
Est. Fringe	*432,851*	*0*	*0*	*432,851*		*0*	*0*	*0*	*0*	

Note: Fringes budgeted in House Bill 5 except for certain fringes budgeted directly to MoDOT, Highway Patrol, and Conservation.

Other Funds:

Note: Fringes budgeted in House Bill 5 except for certain fringes budgeted directly to MoDOT, Highway Patrol, and Conservation.

Other Funds:

2. THIS REQUEST CAN BE CATEGORIZED AS:

	New Legislation	**X**	New Program		Fund Switch
	Federal Mandate		Program Expansion		Cost to Continue
	GR Pick-Up		Space Request		Equipment Replacement
	Pay Plan		Other:		

3. WHY IS THIS FUNDING NEEDED? PROVIDE AN EXPLANATION FOR ITEMS CHECKED IN #2. INCLUDE THE FEDERAL OR STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS PROGRAM.

In the Spring of 2013, the National Juvenile Defender Center issued an assessment of Missouri's system of juvenile indigent defense representation. The report was part of a national strategy to review state juvenile indigent defense delivery systems and to evaluate how effectively attorneys in juvenile court are fulfilling their constitutional and statutory obligations to their clients. (- continued next page -)

NEW DECISION ITEM
RANK: 5 OF 5

Department:	**Office of the State Public Defender**	**Budget Unit**	**15111C**
Division:	**Public Defender**		
DI Name:	**Juvenile Advocacy Offices** **DI# 1511003**	**HB Section**	**12.400**

The study concluded that "Missouri's indigent defense system is in crisis and has endured at least two decades of crushing caseloads and inadequate resources to provide its mandated services," and little to no attention has been paid to what this crisis has meant to poor children accused of a criminal offense. Specifically, it found that:

"children facing criminal or status offenses in Missouri's juvenile justice system frequently do so without the benefit of counsel or without adequate representation through all critical stages. There are significant gaps in both access to and quality of representation provided to youth that fall well below the standards established by the Institute of Judicial Administration and American Bar Association's *Juvenile Justice Standards*, the ABA *Rules of Professional Conduct*, the *Ten Core Principles for Juvenile Indigent Defense* established by NJDC and NJDS's newly release *National Juvenile Defense Standards*. Justice is often rationed to juveniles in Missouri for a variety of reasons, not the least of which is the crisis in the public defender system...."

Further, the NJDC assessment emphasized that "the defense lawyer plays a critical role for youth in delinquency court by protecting clients from unfairness, promoting accuracy in decision making, providing alternatives for decision makers, and monitoring institutional treatment, after care and reentry. Throughout the entire court process the juvenile defender is the individual responsible for bringing the child's perspective and interests before the court." Not only is the defense lawyer the child's voice, in order to adequately represent a child, they need to be knowledgeable in other areas including adolescent brain development, education law, childhood mental illnesses, trauma, and cognitive limitations, age-appropriate treatments and disposition options, and juvenile court practice and procedure. Specialization is critical when representing youth.

NEW DECISION ITEM
RANK: 5 OF 5

Department:	**Office of the State Public Defender**	**Budget Unit**	**15111C**
Division:	**Public Defender**		
DI Name:	**Juvenile Advocacy Offices** **DI# 1511003**	**HB Section**	**12.400**

4. DESCRIBE THE DETAILED ASSUMPTIONS USED TO DERIVE THE SPECIFIC REQUESTED AMOUNT. (How did you determine that the requested number of FTE were appropriate? From what source or standard did you derive the requested levels of funding? Were alternatives such as outsourcing or automation considered? If based on new legislation, does request tie to TAFP fiscal note? If not, explain why. Detail which portions of the request are one-times and how those amounts were calculated.)

Utilizing data provided from the Office of the State Court's Administrator, there were 14,342 formal juvenile cases filed statewide in 2012 (the last year that OSCA has provided MSPD with numbers), of which 7,836 were abuse/neglect cases, leaving 6,506 juvenile cases where the juvenile was entitled to an attorney. Of the 6,506 juveniles, only 13% were actually represented by private counsel. That leaves 5,660 juvenile cases where the juvenile needed a public defender. However, in that same year, MSPD provided representation in just 1,923 juvenile cases.

As a result of this finding, the Missouri Juvenile Justice Association is seeking a rule or statutory change to prohibit the waiver of counsel by juveniles (this need has become even more so given the Department of Justice's findings in its recent report on St. Louis County). In the meantime, they have asked MSPD to pursue the reinstatement of the two Juvenile Advocacy Units, one in the Kansas City area and one in the greater St. Louis area. (MSPD previously had these units, but had to relinquish them when trial division caseloads became too high and no additional personnel were added.)

These specialized units not only better serve juvenile clients, they also provide a resource and expertise for those providing juvenile representation throughout the state. This will become even more essential if waiver of counsel in these cases is eliminated and more public defenders and inexperienced private attorneys are appointed to provide juvenile defense representation.

MSPD is requesting juvenile attorney staffing at the recommended RubinBrown workload standards. MSPD is also seeking one additional attorney in each office to represent juveniles certified to stand trial as an adult and to serve as a statewide juvenile resource attorney to assist local offices across the rest of the state.

NEW DECISION ITEM
RANK: 5 OF 5

Department:	**Office of the State Public Defender**	**Budget Unit**	**15111C**
Division:	**Public Defender**		
DI Name:	**Juvenile Advocacy Offices** **DI# 1511003**	**HB Section**	**12.400**

5. BREAK DOWN THE REQUEST BY BUDGET OBJECT CLASS, JOB CLASS, AND FUND SOURCE. IDENTIFY ONE-TIME COSTS.

Budget Object Class/Job Class	Dept Req GR DOLLARS	Dept Req GR FTE	Dept Req FED DOLLARS	Dept Req FED FTE	Dept Req OTHER DOLLARS	Dept Req OTHER FTE	Dept Req TOTAL DOLLARS	Dept Req TOTAL FTE	Dept Req One-Time DOLLARS	E
Secretary / C00200	106,608	4.0					106,608	4.0		
Investigator / C00300	61,152	2.0					61,152	2.0		
Mitigation Specialist / C00350	73,848	2.0					73,848	2.0		
Assistant Public Defender / C00400	416,928	8.0					416,928	8.0		
District Defender / C00460	145,056	2.0					145,056	2.0		
Total PS	**803,592**	**18.0**	**0**	**0.0**	**0**	**0.0**	**803,592**	**18.0**	**0**	
Travel / 140	46,200						46,200			
Supplies / 190	9,100						9,100			
Rent / 680	87,237						87,237			
Phones & Network Costs / 340	12,870						12,870			
Professional Costs / 400	15,000						15,000			
Total EE	**170,407**		**0**		**0**		**170,407**		**0**	
Program Distributions							0			
Total PSD	**0**		**0**		**0**		**0**		**0**	
Transfers										
Total TRF	**0**		**0**		**0**		**0**		**0**	
Grand Total	**973,999**	**18.0**	**0**	**0.0**	**0**	**0.0**	**973,999**	**18.0**	**0**	

Missouri State Public Defender
JUVENILE CASELOAD

ST. LOUIS AREA - FY2017 Actual Juvenile Cases Handled

St. Louis City	242			
St. Louis County	327			
St. Charles	62			
Total Number of Cases	631			
* RubinBrown/ABA Hours	19.50		*Does Not Include Travel	
Hours Required	12,304.50		or Court Time	
/ Hours per Attorney Per Year	2,080.00			
	5.92			
Statewide Juvenile Resource Attorney	**1.00**			
Total Attorneys Requested	**6.92**	(Round to 7)		
Job Titles	FTE	Salary	Cost	
District Defender	1.00	$72,528	$72,528	
Assistant Public Defenders III	6.00	$52,116	$312,696	
Juvenile Dispositional Specialist	1.00	$36,924	$36,924	
Legal Assistant	1.00	$25,536	$25,536	
Investigator	1.00	$30,576	$30,576	
Secretary	1.00	$27,768	$27,768	
TOTAL PERSONAL SERVICE	11.00			$506,028
Travel & Parking				
$95/ mo * 12 * 12 = Parking			$12,540	
$200/ mo * 12 * 8 = Mileage			$19,200	
Supplies			$3,000	
Professional			$7,500	
Telephone $90 * 11.50			$990	
Network Costs $450 * 12 months			$5,400	
Postage $300 * 12 months			$2,400	
Building Costs			$45,792	
TOTAL EXPENSE & EQUIPMENT				$96,822
TOTAL COSTS ST. LOUIS AREA				$602,850

Missouri State Public Defender
JUVENILE CASELOAD

JACKSON COUNTY - FY2017 Actual Juvenile Cases Handled

Jackson County	173.00			
* RubinBrown/ABA Hours	19.50		*Does Not Include Travel or Court Time	
Hours Required	3373.50			
/ Hours per Attorney Per Year	2080.00			
	1.62			
Statewide Juvenile Resource Attorney	**1.00**			
Total Attorneys Requested	**2.62**	(Round to 3)		
Job Titles	FTE	Salary	Cost	
District Defender	1.00	$72,528	$72,528	
Assistant Public Defenders III	2.00	$52,116	$104,232	
Juvenile Dispositional Specialist	1.00	$36,924	$36,924	
Legal Assistant	1.00	$25,536	$25,536	
Investigator	1.00	$30,576	$30,576	
Secretary	1.00	$27,768	$27,768	
TOTAL PERSONAL SERVICE	7.00			$297,564
Travel & Parking				
$65/ mo *12*8 = Parking			$5,460	
$125/ mo *12*6 = Mileage			$9,000	
Supplies			$2,500	
Professional			$7,500	
Telephone $90 *12			$1,080	
Network Costs $450 * 12			$5,400	
Postage $100 * 12			$1,200	
Building Costs			$41,445	
TOTAL EXPENSE & EQUIPMENT				$73,585
TOTAL COSTS JACKSON COUNTY				$371,149
TOTAL COSTS FOR EXISTING JUVENILE CASES ST. LOUIS AREA & JACKSON COUNTY				**$973,999**

Budget Unit / Decision Item / Budget Object Class	FY 2017 ACTUAL DOLLAR	FY 2017 ACTUAL FTE	FY 2018 BUDGET DOLLAR	FY 2018 BUDGET FTE	FY 2019 DEPT REQ DOLLAR	FY 2019 DEPT REQ FTE	********** SECURED COLUMN	********** SECURED COLUMN
OFFICE OF THE DIRECTOR								
JUVENILE ADVOCACY - 1151002								
SECRETARY	0	0.00	0	0.00	106,608	4.00	0	0.00
INVESTIGATOR	0	0.00	0	0.00	61,152	2.00	0	0.00
MITIGATION SPECIALIST	0	0.00	0	0.00	73,848	2.00	0	0.00
ASSISTANT PUBLIC DEFENDER	0	0.00	0	0.00	416,928	8.00	0	0.00
DISTRICT DEFENDER	0	0.00	0	0.00	145,056	2.00	0	0.00
TOTAL - PS	**0**	**0.00**	**0**	**0.00**	**803,592**	**18.00**	**0**	**0.00**
TRAVEL, IN-STATE	0	0.00	0	0.00	46,200	0.00	0	0.00
SUPPLIES	0	0.00	0	0.00	9,100	0.00	0	0.00
COMMUNICATION SERV & SUPP	0	0.00	0	0.00	12,870	0.00	0	0.00
PROFESSIONAL SERVICES	0	0.00	0	0.00	15,000	0.00	0	0.00
BUILDING LEASE PAYMENTS	0	0.00	0	0.00	87,237	0.00	0	0.00
TOTAL - EE	**0**	**0.00**	**0**	**0.00**	**170,407**	**0.00**	**0**	**0.00**
GRAND TOTAL	**$0**	**0.00**	**$0**	**0.00**	**$973,999**	**18.00**	**$0**	**0.00**
GENERAL REVENUE	**$0**	**0.00**	**$0**	**0.00**	**$973,999**	**18.00**		**0.00**
FEDERAL FUNDS	**$0**	**0.00**	**$0**	**0.00**	**$0**	**0.00**		**0.00**
OTHER FUNDS	**$0**	**0.00**	**$0**	**0.00**	**$0**	**0.00**		**0.00**

NEW DECISION ITEM
RANK: 5 OF 5

Department:	**Office of the State Public Defender**	**Budget Unit**	15111C
Division:	**Public Defender**		
DI Name:	**Caseload Relief - Constitutionally Mandated Representation** **DI#1151003**	**HB Section**	12.400

1. AMOUNT OF REQUEST

	FY 2019 Budget Request					FY 2019 Governor's Recommendation				
	GR	Federal	Other	Total	E	GR	Federal	Other	Total	E
PS	20,620,992	0	0	20,620,992		0	0	0	0	
EE	4,893,642	0	0	4,893,642		0	0	0	0	
PSD	0	0	0	0		0	0	0	0	
TRF	0	0	0	0		0	0	0	0	
Total	**25,514,634**	**0**	**0**	**25,514,634**		**0**	**0**	**0**	**0**	
FTE	**448.00**	**0.00**	**0.00**	**448.00**		**0.00**	**0.00**	**0.00**	**0.00**	
Est. Fringe	*10,957,459*	*0*	*0*	*10,957,459*		*0*	*0*	*0*	*0*	

Note: Fringes budgeted in House Bill 5 except for certain fringes budgeted directly to MoDOT, Highway Patrol, and Conservation.

Other Funds:

Note: Fringes budgeted in House Bill 5 except for certain fringes budgeted directly to MoDOT, Highway Patrol, and Conservation.

Other Funds:

2. THIS REQUEST CAN BE CATEGORIZED AS:

	New Legislation		New Program		Fund Switch
	Federal Mandate		Program Expansion		Cost to Continue
	GR Pick-Up		Space Request		Equipment Replacement
	Pay Plan	**X**	Other:	**Constitutionally Mandated Representation**	

3. WHY IS THIS FUNDING NEEDED? PROVIDE AN EXPLANATION FOR ITEMS CHECKED IN #2. INCLUDE THE FEDERAL OR STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS PROGRAM.

As stated in the program description, the issue of Missouri Public Defender's workload has been the subject of many different studies. Through budget requests, the media and eventually law suits, the Missouri State Public Defender (MSPD) has warned that the rights of poor Missourians are being violated throughout the state because MSPD's resources are too few and the caseloads too high. These claims were confirmed for both juveniles and adults.

NEW DECISION ITEM
RANK: 5 OF 5

Department:	**Office of the State Public Defender**	**Budget Unit**	15111C
Division:	**Public Defender**		
DI Name:	**Caseload Relief - Constitutionally Mandated Representation** **DI#1151003**	**HB Section**	12.400

In the Spring of 2013, the National Juvenile Defender Center (NJDC) released a report that declared Missouri's indigent defense system to be "in crisis" after having "endured two decades of crushing caseloads and inadequate resources to provide its mandated services." A year later, following yet another failed attempt to acquire more resources, the American Bar Association (ABA) released the results of a commissioned report using a nationally renowned accounting firm, RubinBrown, which assessed MSPD's workload data in order to draw unbiased conclusions.

To facilitate this review, MSPD became the first public defender system in the country to require its attorneys to track time in five minute increments. Applying the Delphi methodology, a proven business-analysis model, the ABA Report, "The Missouri Project", found that MSPD did not have nearly enough resources to meet its obligations and that a significant number of additional attorneys were needed.

When these case weights are applied to MSPD's 2017caseload, the number of staff MSPD would need to meet its caseload is 347 additional attorneys (see case weight metrics to the right). 336 attorneys are requested in the Constitutionally Mandated Representation decision item. 11 attorneys are requested in the Juvenile Advocacy decision item. This proposal further seeks funding that would allow MSPD to assign all Trial Division conflict cases to private attorneys, which remains the single most efficient way to immediately impact case overload.

ABA/RubinBrown Workload Study Hours Per Type of Case

Non-Capital Homicide	106.6
A/B Felony Offense	47.6
C/D Felony Offense	25.0
Sex Offense - Felony	63.8
Misdemeanor	11.7
Juvenile	19.5
Appeals/PCR	96.5
Probation Violation	9.8

4. DESCRIBE THE DETAILED ASSUMPTIONS USED TO DERIVE THE SPECIFIC REQUESTED AMOUNT. (How did you determine that the requested number of FTE were appropriate? From what source or standard did you derive the requested levels of funding? Were alternatives such as outsourcing or automation considered? If based on new legislation, does request tie to TAFP fiscal note? If not, explain why. Detail which portions of the request are one-times and how those amounts were calculated.)

This Decision Item presumes that:

1. All Trial Division conflict cases are contracted out to the private bar;
2. Current contract fee amounts to private counsel remain flat;
3. Caseload, and the percentage of cases that have conflicts, remain relatively flat; and
4. The personnel increase, included in **Part B,** is also funded.

NEW DECISION ITEM
RANK: 5 OF 5

Department:	**Office of the State Public Defender**	**Budget Unit**	15111C
Division:	**Public Defender**		
DI Name:	**Caseload Relief - Constitutionally Mandated Representation** **DI#1151003**	**HB Section**	12.400

CASELOAD RELIEF - Constitutionally Mandated Representation
Contracting ALL Trial Division Conflict Cases (PART A)

When a case involves multiple defendants, there is always the risk that one will point a finger at the other. Therefore, the local defender office can only represent one co-defendant and any other co-defendants must be represented elsewhere, either by another defender office or by private counsel on a contract for representation. Historically, MSPD had sent the first co-defendant to another defender office and contracted out additional co-defendants to private counsel.

To assist in efficiencies, in Fiscal Year 2018, the Missouri State Legislature and the Governor, provided an additional $4,421,988 unrestricted funds for the purpose of contracting out all conflicts to private attorneys.

Although the private counsel fee schedule has not been adjusted in years, due to 6.25% caseload increase from Fiscal Year 2016 to Fiscal Year 2017 and due to the fact that are simply more conflicts, an additional $858,842 is needed to be able to contract out all conflicts.

Missouri State Public Defender
Private Counsel
Fee Schedule

Case Type	Description	Contract Rates
15	Murder 1st Degree	$10,000
62	Sexual Predator Trial	$8,000
20	Other Homicide	$6,000
30D	AB Felony Drug	$750
30F	AB Felony Other	$1,500
30X	AB Felony Sex	$2,000
35D	CDE Felony Drug	$750
35F	CDE Felony Other	$750
35X	CDE Felony Sex	$1,500
45M	Misdemeanor	$375
50N	Juvenile - Non Violent	$500
50V	Juvenile - Violent	$750
65	Probation Violation	$375
110F	Direct Appeals - Felony	$3,750
110S	Direct Appeal - Misdemeanor	$3,750
124A	Rule 24.035 Appeal	$500
124M	Rule 24.035 Motion	$500
	Rule 24.035 Evidentiary Hearing	$250
129A	Rule 29.15 Appeal	$1,875
	Rule 29.15 Evidentiary Hearing	$500
129M	Rule 29.15 Motion	$1,000

Note: MSPD will pay additional compensation in cases resolved by Trials
Jury Trial $1,500 for the first day and $750 for each additional day
Bench Trial $750 per day - prorated

FY2017 CONFLICT CASES -
Trial Division
Does Not include Appellate, Capital or CDU

Case Type	Description	Conflicts (41, 42, & 49's)	Contract Rates	Cost of Contracts
15	Murder 1st Degree	35	$10,000	$350,000
20	Other Homicide	42	$6,000	$252,000
30D	AB Felony Drug	545	$750	$408,750
30F	AB Felony Other	773	$1,500	$1,159,500
30X	AB Felony Sex	68	$2,000	$136,000
35D	CDE Felony Drug	1,914	$750	$1,435,500
35F	CDE Felony Other	3,029	$750	$2,271,750
35X	CD Felony Sex	26	$1,500	$39,000
45M	Misdemeanor	1,393	$375	$522,375
45T	Misdemeanor - Traffic	129	$375	$48,375
50N	Juvenile - Non Violent	142	$500	$71,000
50S	Juvenile - Status	4	$500	$2,000
50V	Juvenile - Violent	83	$750	$62,250
65F	Probation Violation - Felony	792	$375	$297,000
65M	Probation Violation - Misd	190	$375	$71,250
	Totals	9,165		$7,126,750
	Fiscal Year 2018 Contract Budget			-$6,267,908
	Additional Appropriation Required to Contract Out All Trial Division Conflicts			$858,842

ALL TRIAL CONFLICTS TO PRIVATE COUNSEL

NEW DECISION ITEM
RANK: 5 OF 5

Department:	**Office of the State Public Defender**	**Budget Unit**	15111C
Division:	**Public Defender**		
DI Name:	**Caseload Relief - Constitutionally Mandated Representation** **DI#1151003**	**HB Section**	12.400

Attorney Staff Needed to Handle Remaining Caseload: Removing all conflict cases helps to reduce the public defender case overload, but it does not eliminate it. Assuming that there is no increase in caseload, MSPD would still be 347 lawyers short of the number of attorneys needed according to the ABA report. This number is determined by applying RubinBrown's average case weights to the number of cases for each case type assigned for Fiscal Year 2017. The number was calculated after conflicts have all been eliminated and contracted to private attorneys. Attorney travel time and court time were added to the RubinBrown metrics calculations, resulting in 1,470,060 attorney hours required. Assuming 2,080 available attorney hours each year—707 attorneys would be required to provide effective, constitutional representation. The current number of Trial and Appellate Division attorneys is 359.50. There are 11.50 attorneys requested in a separate Juvenile Advocacy decision item; leaving 336 attorneys to be requested in this decision item.

Support Staff: Every law practice management expert will affirm that lawyer time needs to be leveraged by utilizing support staff for everything that can be done by a non-lawyer. This allows the lawyer to focus on tasks that only a lawyer can do. Therefore, MSPD is requesting 1 legal assistant for every 3 attorneys; that would mean 112 legal assistants in order to meet that ratio.

Attorneys and support staff would be allocated to the most over-worked offices based on several factors including but not limited to: the RubinBrown caseload weights, problematic counties to practice in, difficult prosecutors to negotiate with, office space available, etc.
The calculations for the Trial Division office only include the juvenile cases where the public defender system is currently providing juvenile representation. Some local public defender offices do not provide representation for juveniles and in those instances many counties are contracting with private attorneys to do so. A separate decision item is included in MSPD's FY2019 Legislative Budget Request to set up juvenile advocacy offices in St. Louis Area and in Kansas City.

Some of the staffing requested in this decision item would be used to establish a Springfield Appellate/Post-Conviction office. (The caseload numbers for these appellate/pcr cases are included in the RubinBrown metrics and in the total number of attorneys needed for effective representation.) The Appellate/Post-conviction Division presents unique overload issues, which unlike Trial Division conflicts, are best addressed not through increased contracting to private counsel, but by the creation of an additional appellate/post-conviction office in Springfield, MO.

The attorneys in this division represent defendants who have already been convicted of a crime and are raising issues of error in the judicial process that led to their conviction. Post-conviction counsel must always review and raise, where appropriate, the issue of ineffective assistance of the client's previous counsel. This means that the office that provides appellate representation for a client will always have a conflict handling that client's post-conviction proceedings, which is why MSPD has six appellate/post-conviction offices, two each in St. Louis, Kansas City, and Columbia. Each duo of offices is able to handle conflict cases for one another, without (most) of those cases having to be shipped across the state to one of the other two appellate/post-conviction office locations.

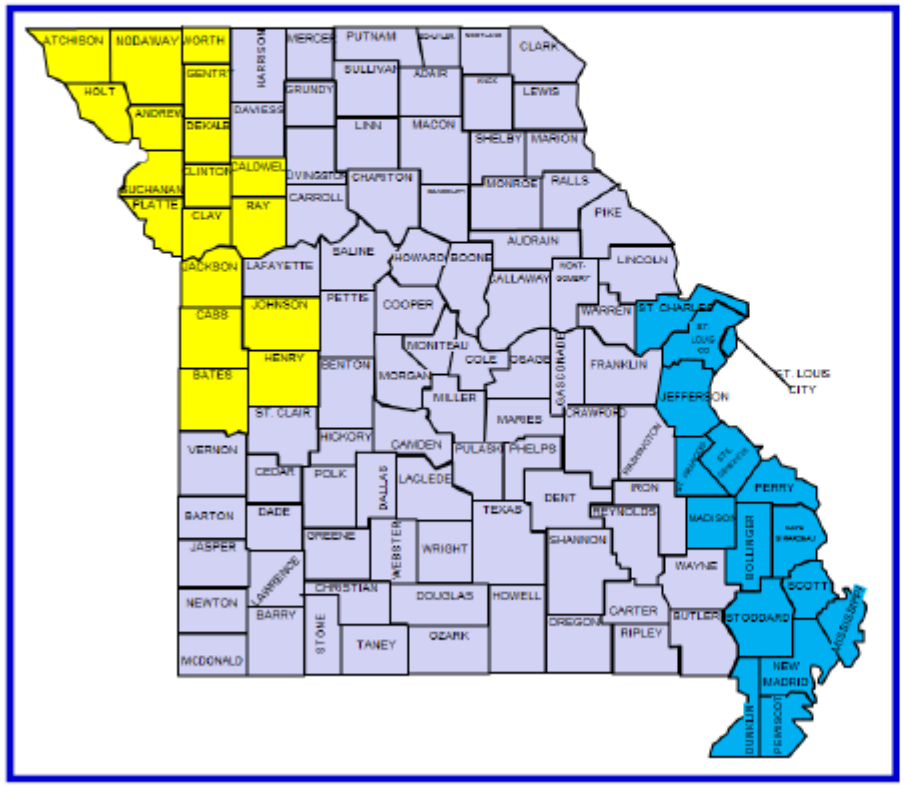
Department:	Office of the State Public Defender	Budget Unit	15111C
Division:	Public Defender		
DI Name:	Caseload Relief - Constitutionally Mandated Representation	HB Section	12.400
	DI#1151003		

However, travel is still a significant problem in this division because of the nature of post-conviction proceedings, which take place in the circuit court of conviction. This means MSPD has five offices covering post-conviction proceedings in 114 counties plus the City of St. Louis. (Only one of the offices in Columbia handles post-conviction matters, the other handles only appellate cases.) The map on the next page shows how the counties are currently divided among the existing offices. As the map indicates, the heavier concentration of cases in the two urban areas of St. Louis and Kansas City leave the attorneys in those areas unable to take on as many counties as their Central Missouri counterparts are required to cover. But even with fewer cases coming in from each of the outstate (grey) counties, MSPD's Central PCR office is carrying a caseload at 362% of its attorney capacity. Add in the amount of travel involved and it becomes an equation that is simply not sustainable.

MSPD has attempted to reduce the travel burden on these offices by contracting out "remote-county PCR's", as they are known within the system, to local private counsel, but this approach has not been successful. Post-conviction practice is unique and very technical. Very few private attorneys have any experience, much less expertise, in these types of cases. MSPD's attempts to contract these cases to private counsel have too frequently resulted in the cases having to be brought back in-system to correct significant, case-changing errors made by attorneys who are in over their heads. MSPD attempted to address this problem by offering training to private attorneys interested in taking these cases, but that, too, has proved insufficient to the task. Few accepted the opportunity and those who did, ended up taking these cases so infrequently that any benefit they may have received from the training has long since worn off by the time they get their next PCR.

Therefore, part of this decision will address the problem by adding an additional office in Springfield. Missouri's appellate courts are located in St. Louis, Kansas City, and Springfield (with the Supreme Court in Jefferson City), so the new office would be conveniently located to the appellate court, while also reducing the travel time associated with a majority of the post-conviction cases in southwest Missouri. As expected, given the fact that Springfield is Missouri's third most populated city and Joplin is not far behind, the southwest region of the state accounts for a significant number of the post-conviction cases currently overloading the Central PCR office. Creating an additional Appellate/PCR office in Springfield will siphon these cases off the Columbia office, provide better service to the clients and courts in Southwest Missouri while reducing travel costs and freeing up time for the Columbia Central PCR attorneys to better handle the workload in the remainder of Missouri's outstate counties.

Current PCR County Assignments



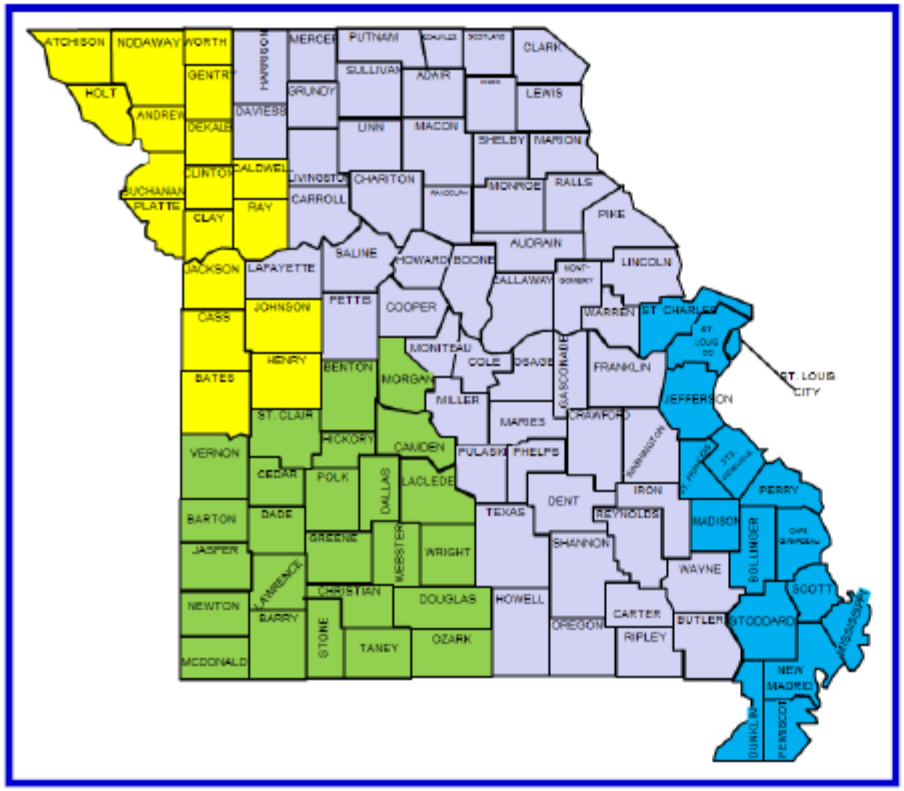
Post Conviction Relief - Trials
(Circuit Court Level)

Central PCR
District 67

Eastern Appellate/PCR
Districts 51 & 68

Western Appellate/PCR
Districts 52 & 69

Proposed PCR County Assignments



Post Conviction Relief - Trials
(Circuit Court Level)

Central PCR
District 67

Eastern Appellate/PCR
Districts 51 & 68

Western Appellate/PCR
Districts 52 & 69

Proposed PCR Office
District 66

Fiscal Year 2017 ASSIGNED CASES -
Trial & Appellate Division Caseload, Adjusted for Withdrawals, and Office Conflicts
MSPD to Retain All Cases That Are Not Conflicts

Does Not include Capital or CDU

Type Code	Case Type	Trial & Appellate Division Cases	Adjusted for FY17 Withdrawn	1st Level Conflicts 41's, & 49's - Sending Office	1st Level Conflicts 41's, & 49's - Receiving Office	Conflicts Assigned to Private Counsel 42's	Trial & Appellate Adjusted Caseload NO CONFLICTS	RubinBrown Hours Required for Case Type	FY16 Required Hours
15	Murder 1st Degree	161	(31)	(31)	(31)	(4)	64	106.60	6,822
20	Other Homicide	173	(24)	(33)	(33)	(9)	74	106.60	7,888
30D	AB Felony Drug	2,065	(287)	(408)	(408)	(137)	825	47.60	39,270
30F	AB Felony Other	4,284	(510)	(620)	(620)	(153)	2,381	47.60	113,336
30X	AB Felony Sex	685	(102)	(54)	(54)	(14)	461	63.80	29,412
35D	CDE Felony Drug	12,189	(824)	(1,579)	(1,579)	(335)	7,872	25.00	196,800
35F	CDE Felony Other	23,176	(1,761)	(2,469)	(2,469)	(560)	15,917	25.00	397,925
35X	CDE Felony Sex	308	(46)	(21)	(21)	(5)	215	63.80	13,717
45M	Misdemeanor	13,689	(691)	(1,211)	(1,211)	(182)	10,394	11.70	121,610
45T	Misdemeanor - Traffic	2,175	(148)	(111)	(111)	(18)	1,787	11.70	20,908
50N	Juvenile - Non Violent	780	(24)	(124)	(124)	(18)	490	19.50	9,555
50S	Juvenile - Status	156	(4)	(3)	(3)	(1)	145	19.50	2,828
50V	Juvenile - Violent	620	(41)	(73)	(73)	(10)	423	19.50	8,249
60	552 Release Petitions	9	(7)				2	0.00	0
65F	Probation Violation - Felony	15,487	(782)	(668)	(668)	(124)	13,245	9.80	129,801
65M	Probation Violation - Misd	3,511	(166)	(154)	(154)	(36)	3,001	9.80	29,410
75	Special Writ	246					246	0.00	0
110F	Direct Appeals - Felony	404	(14)	(3)	(3)	(1)	383	96.50	36,960
110S	Direct Appeal - Misdemeanor	22	(3)	(1)	(1)		17	96.50	1,641
124A	Rule 24.035 Appeal	179	(2)				177	96.50	17,081
124M	Rule 24.035 Motion	979	(96)	(19)	(19)		845	96.50	81,543
129A	Rule 29.15 Appeal	193	(1)	(2)	(2)		188	96.50	18,142
129M	Rule 29.15 Motion	277	(17)	(25)	(25)	(2)	208	96.50	20,072
Other	Other	25	(12)				13	0.00	0
	Totals	81,793	(5,593)	(7,609)	(7,609)	(1,609)	59,373	Case Hours	1,302,967

Trial and Appellate Division - Case Standards - 2017 Attorney Calculation Assuming All Trial Division Conflicts to Private Counsel Appellate PCR's Remain with Public Defender System	
Attorney Travel Time Per Year - Estimated from FY2016 Expense Reports	37,457.0
Attorney In Court Time - Estimated from FY2016 Time Log Data	129,636.3
Case Hours Required Per ABA/RubinBrown Study - January 2014	1,302,966.7
Total Attorney Hours Required Per Year	1,470,060.0
Attorney Hours Available Per Year	2,080.0
Number of Attorneys Required	706.8
Current Number of Trial & Appellate Division Attorneys (Authorized FTE)	359.5
Number of Attorneys Needed to meet RubinBrown Standard	347.3

Note: These figures do not include juvenile cases not represented by the public defender. 11.50 attorneys are requested in the Juvenile Advocacy decision item. The remaining 336 attorneys are requested in the Constitutionally Mandated Representation decision item.

NEW DECISION ITEM
RANK: 5 OF 5

Department:	**Office of the State Public Defender**	**Budget Unit**	15111C
Division:	**Public Defender**		
DI Name:	**Caseload Relief - Constitutionally Mandated Representation** **DI#1151003**	**HB Section**	12.400

5. BREAK DOWN THE REQUEST BY BUDGET OBJECT CLASS, JOB CLASS, AND FUND SOURCE. IDENTIFY ONE-TIME COSTS.

Budget Object Class/Job Class	Dept Req GR DOLLARS	Dept Req GR FTE	Dept Req FED DOLLARS	Dept Req FED FTE	Dept Req OTHER DOLLARS	Dept Req OTHER FTE	Dept Req TOTAL DOLLARS	Dept Req TOTAL FTE	Dept Req One-Time DOLLARS	E
							0			
Secretary / C00200	3,110,016	112.0					3,110,016	112.0		
Assistant Public Defender / C00400	17,510,976	336.0					17,510,976	336.0		
Total PS	**20,620,992**	**448.0**	**0**	**0.0**	**0**	**0.0**	**20,620,992**	**448.0**	**0**	
Travel, In-State / 140	1,176,000						1,176,000			
Supplies / 190	187,600						187,600			
Communication Service & Supplies	537,600						537,600			
Professional Services / 400	858,842						858,842			
Computer Equipment / 480	526,400						526,400			
Office Equipment /580	605,360						605,360			
Other Equipment /590	150,640						150,640			
Building Lease Payments /680	851,200						851,200			
Total EE	**4,893,642**		**0**		**0**		**4,893,642**		**0**	
Program Distributions							0			
Total PSD	**0**		**0**		**0**		**0**		**0**	
Transfers										
Total TRF	**0**		**0**		**0**		**0**		**0**	
Grand Total	**25,514,634**	**448.0**	**0**	**0.0**	**0**	**0.0**	**25,514,634**	**448.0**	**0**	

Trial and Appellate Divisions Case Standards
Assuming All Conflicts to Private Counsel
RubinBrown

COST BREAKDOWN	TOTAL COSTS
Personal Service	
Assistant Public Defender III - Range 30	336.00
$52,116	$17,510,976
Legal Assistants - Range 15	112.00
$27,768	$3,110,016
	448.00
Total Personal Service	**$20,620,992**
Expense & Equipment	
One-time Purchases	
Attorney Package	336.00
$2,855	$959,280
Legal Assistant Package	112.00
$2,885	$323,120
Total One-Time Purchases	**$1,282,400**
On-Going Costs	
Attorneys	336.00
$6,600	$2,217,600
Legal Assistant	112.00
$4,775	$534,800
Total Personnel Related On-Going Costs	**$2,752,400**
Total Expense and Equipment	**$4,034,800**
Total Decision Item Request	**$24,655,792**

Position Cost Detail for New FTE's

One Time Equipment Purchase

Attorneys	
Desk	$540
Chair	$175
Side Chair (2)	$250
Bookcase	$215
File Cabinet (2)	$225
Telephone	$275
Laptop w/ Docking Station	$960
PC Software	$215
	$2,855
Support Staff	
Desk	$540
Chair	$175
Side Chair (2)	$250
Camera	$190
Digital Recorder	$105
File Cabinet (2)	$225
Telephone	$225
Laptop w/ Docking Station	$960
PC Software	$215
	$2,885

Detail for Projections

On-Going Costs - Trial & Appellate Divisons

Attorneys	
Travel @ $250 per month	$3,000
Office	$500
Rent	$1,900
Phone & Network Communications	$1,200
	$6,600
Legal Assistants/Investigators	
Travel @ $125 per month	$1,500
Office	$175
Rent	$1,900
Phone & Network Communications	$1,200
	$4,775

Budget Unit / Decision Item / Budget Object Class	FY 2017 ACTUAL DOLLAR	FY 2017 ACTUAL FTE	FY 2018 BUDGET DOLLAR	FY 2018 BUDGET FTE	FY 2019 DEPT REQ DOLLAR	FY 2019 DEPT REQ FTE	********** SECURED COLUMN	********** SECURED COLUMN
OFFICE OF THE DIRECTOR								
CONSTITUTIONAL REPRESENTATION - 1151003								
SECRETARY	0	0.00	0	0.00	3,110,016	112.00	0	0.00
ASSISTANT PUBLIC DEFENDER	0	0.00	0	0.00	17,510,976	336.00	0	0.00
TOTAL - PS	**0**	**0.00**	**0**	**0.00**	**20,620,992**	**448.00**	**0**	**0.00**
TRAVEL, IN-STATE	0	0.00	0	0.00	1,176,000	0.00	0	0.00
SUPPLIES	0	0.00	0	0.00	187,600	0.00	0	0.00
COMMUNICATION SERV & SUPP	0	0.00	0	0.00	537,600	0.00	0	0.00
PROFESSIONAL SERVICES	0	0.00	0	0.00	858,842	0.00	0	0.00
COMPUTER EQUIPMENT	0	0.00	0	0.00	526,400	0.00	0	0.00
OFFICE EQUIPMENT	0	0.00	0	0.00	605,360	0.00	0	0.00
OTHER EQUIPMENT	0	0.00	0	0.00	150,640	0.00	0	0.00
BUILDING LEASE PAYMENTS	0	0.00	0	0.00	851,200	0.00	0	0.00
TOTAL - EE	**0**	**0.00**	**0**	**0.00**	**4,893,642**	**0.00**	**0**	**0.00**
GRAND TOTAL	**$0**	**0.00**	**$0**	**0.00**	**$25,514,634**	**448.00**	**$0**	**0.00**
GENERAL REVENUE	**$0**	**0.00**	**$0**	**0.00**	**$25,514,634**	**448.00**		**0.00**
FEDERAL FUNDS	**$0**	**0.00**	**$0**	**0.00**	**$0**	**0.00**		**0.00**
OTHER FUNDS	**$0**	**0.00**	**$0**	**0.00**	**$0**	**0.00**		**0.00**

Budget Unit / Decision Item / Budget Object Summary / Fund	FY 2017 ACTUAL DOLLAR	FY 2017 ACTUAL FTE	FY 2018 BUDGET DOLLAR	FY 2018 BUDGET FTE	FY 2019 DEPT REQ DOLLAR	FY 2019 DEPT REQ FTE	********** SECURED COLUMN	********** SECURED COLUMN
EXTRAORDINARY EXPENSE/CONFLIC								
CORE								
EXPENSE & EQUIPMENT								
GENERAL REVENUE	3,721,071	0.00	4,721,071	0.00	4,721,071	0.00	0	0.00
TOTAL - EE	3,721,071	0.00	4,721,071	0.00	4,721,071	0.00	0	0.00
TOTAL	**3,721,071**	**0.00**	**4,721,071**	**0.00**	**4,721,071**	**0.00**	**0**	**0.00**
GRAND TOTAL	**$3,721,071**	**0.00**	**$4,721,071**	**0.00**	**$4,721,071**	**0.00**	**$0**	**0.00**

CORE DECISION ITEM

Department: Office of the State Public Defender
Division: Public Defender
Core: Litigation Expenses/Conflict Cases Core Request

Budget Unit 15151C
HB Section 12.400

1. CORE FINANCIAL SUMMARY

	FY 2019 Budget Request					FY 2019 Governor's Recommendation				
	GR	Federal	Other	Total	E	GR	Federal	Other	Total	E
PS	0	0	0	0		0	0	0	0	
EE	4,721,071	0	0	4,721,071		0	0	0	0	
PSD	0	0	0	0		0	0	0	0	
TRF	0	0	0	0		0	0	0	0	
Total	**4,721,071**	**0**	**0**	**4,721,071**		**0**	**0**	**0**	**0**	
FTE	**0.00**	**0.00**	**0.00**	**0.00**		**0.00**	**0.00**	**0.00**	**0.00**	
Est. Fringe	*0*	*0*	*0*	*0*		*0*	*0*	*0*	*0*	

Note: Fringes budgeted in House Bill 5 except for certain fringes budgeted directly to MoDOT, Highway Patrol, and Conservation.

Other Funds:

2. CORE DESCRIPTION

This appropriation was established to cover three main types of expenses.

VIOLENT CRIMES: Payment of expenses associated with the defense of violent crimes, including those charged as sexually violent predators.

LITIGATION EXPENSES: Litigation expenses costing over $500 are paid out of the appropriation. These would include, but are not limited to, such things as independent analysis of DNA evidence, mental health evaluations by experts, depositions, interpreters, medical records, transcriptions, exhibits, immigration consultations, fingerprint experts, handwriting analysis, etc. There has been no increase in funding for litigation expense since fiscal year 1996.

CONFLICT CASES: A conflict requiring a case to be contracted out to private counsel occurs when there are multiple co-defendants charged in a particular incident. Should these co-defendants, each want to snitch on the other, an ethical problem is created and one defender office may not represent more than one co-defendant.

CORE DECISION ITEM

Department: Office of the State Public Defender
Division: Public Defender
Core: Litigation Expenses/Conflict Cases Core Request

Budget Unit 15151C
HB Section 12.400

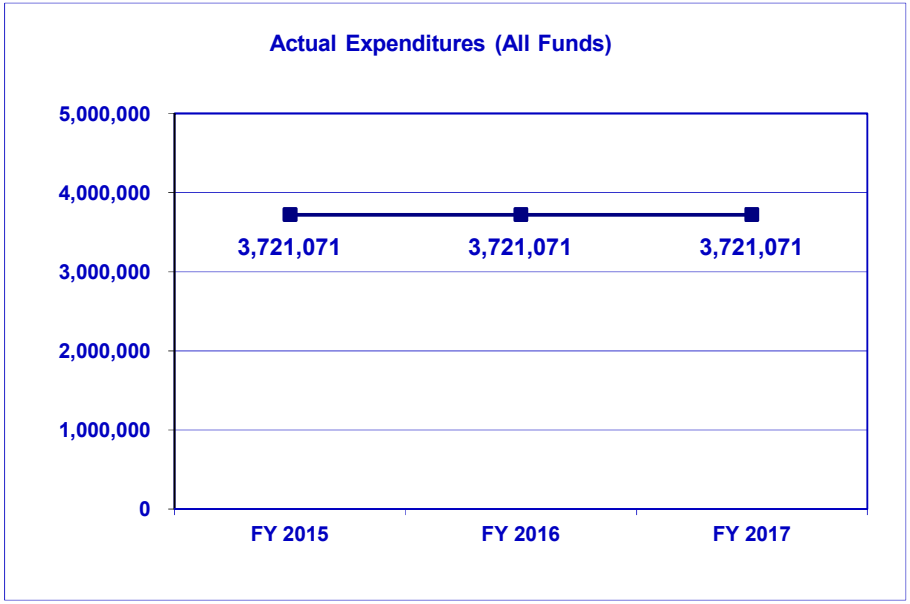
3. PROGRAM LISTING (list programs included in this core funding)

There are no "separate" programs within this appropriation.

A chart depicting the contract rates paid to private counsel may be found under the tab "Constitutionally Mandated".

4. FINANCIAL HISTORY

	FY 2015 Actual	FY 2016 Actual	FY 2017 Actual	FY 2018 Current Yr.
Appropriation (All Funds)	3,721,071	3,721,071	3,721,071	4,721,071
Less Reverted (All Funds)	0	0	0	0
Less Restricted (All Funds)*	0	0	0	0
Budget Authority (All Funds)	3,721,071	3,721,071	3,721,071	4,721,071
Actual Expenditures (All Funds)	3,721,071	3,721,071	3,721,071	N/A
Unexpended (All Funds)	0	0	0	0
Unexpended, by Fund:				
General Revenue	0	0	0	N/A
Federal	0	0	0	N/A
Other	0	0	0	N/A



*Restricted amount is $0 as of October 1, 2017

Reverted includes the statutory three-percent reserve amount (when applicable).
Restricted includes any Governor's Expenditure Restrictions which remained at the end of the fiscal year (when applicable).

NOTES: In Fiscal Year 2018, the Missouri State Legislature and the Governor, provided an additional $1,000,000 unrestricted funds for the purpose of contracting out all conflicts to private attorneys. The Fiscal Year 2019 Budget Requests includes an additional $851,200 request to fully fund this objective.

Budget Unit / Decision Item / Budget Object Class	FY 2017 ACTUAL DOLLAR	FY 2017 ACTUAL FTE	FY 2018 BUDGET DOLLAR	FY 2018 BUDGET FTE	FY 2019 DEPT REQ DOLLAR	FY 2019 DEPT REQ FTE	********** SECURED COLUMN	********** SECURED COLUMN
EXTRAORDINARY EXPENSE/CONFLIC								
CORE								
TRAVEL, IN-STATE	264,011	0.00	295,000	0.00	275,000	0.00	0	0.00
TRAVEL, OUT-OF-STATE	48,353	0.00	60,000	0.00	50,000	0.00	0	0.00
FUEL & UTILITIES	5,257	0.00	6,000	0.00	5,500	0.00	0	0.00
SUPPLIES	24,460	0.00	23,000	0.00	25,000	0.00	0	0.00
PROFESSIONAL DEVELOPMENT	0	0.00	1,500	0.00	1,500	0.00	0	0.00
COMMUNICATION SERV & SUPP	19,813	0.00	23,000	0.00	20,000	0.00	0	0.00
PROFESSIONAL SERVICES	3,115,041	0.00	4,099,571	0.00	4,129,571	0.00	0	0.00
HOUSEKEEPING & JANITORIAL SERV	2,714	0.00	2,500	0.00	2,500	0.00	0	0.00
M&R SERVICES	6,149	0.00	6,000	0.00	6,000	0.00	0	0.00
COMPUTER EQUIPMENT	246	0.00	0	0.00	1,500	0.00	0	0.00
OFFICE EQUIPMENT	441	0.00	1,500	0.00	1,500	0.00	0	0.00
BUILDING LEASE PAYMENTS	226,088	0.00	200,000	0.00	200,000	0.00	0	0.00
EQUIPMENT RENTALS & LEASES	1,903	0.00	1,500	0.00	1,500	0.00	0	0.00
MISCELLANEOUS EXPENSES	6,595	0.00	1,500	0.00	1,500	0.00	0	0.00
TOTAL - EE	**3,721,071**	**0.00**	**4,721,071**	**0.00**	**4,721,071**	**0.00**	**0**	**0.00**
GRAND TOTAL	**$3,721,071**	**0.00**	**$4,721,071**	**0.00**	**$4,721,071**	**0.00**	**$0**	**0.00**
GENERAL REVENUE	**$3,721,071**	**0.00**	**$4,721,071**	**0.00**	**$4,721,071**	**0.00**		**0.00**
FEDERAL FUNDS	**$0**	**0.00**	**$0**	**0.00**	**$0**	**0.00**		**0.00**
OTHER FUNDS	**$0**	**0.00**	**$0**	**0.00**	**$0**	**0.00**		**0.00**

Budget Unit / Decision Item / Budget Object Summary / Fund	FY 2017 ACTUAL DOLLAR	FY 2017 ACTUAL FTE	FY 2018 BUDGET DOLLAR	FY 2018 BUDGET FTE	FY 2019 DEPT REQ DOLLAR	FY 2019 DEPT REQ FTE	********** SECURED COLUMN	********** SECURED COLUMN
LEGAL DEFENSE & DEFENDER FUND								
CORE								
PERSONAL SERVICES								
LEGAL DEFENSE AND DEFENDER	135,187	1.88	135,187	2.00	135,187	2.00	0	0.00
TOTAL - PS	135,187	1.88	135,187	2.00	135,187	2.00	0	0.00
EXPENSE & EQUIPMENT								
LEGAL DEFENSE AND DEFENDER	876,366	0.00	2,825,756	0.00	2,600,756	0.00	0	0.00
TOTAL - EE	876,366	0.00	2,825,756	0.00	2,600,756	0.00	0	0.00
PROGRAM-SPECIFIC								
LEGAL DEFENSE AND DEFENDER	20,929	0.00	25,000	0.00	250,000	0.00	0	0.00
TOTAL - PD	20,929	0.00	25,000	0.00	250,000	0.00	0	0.00
TOTAL	**1,032,482**	**1.88**	**2,985,943**	**2.00**	**2,985,943**	**2.00**	**0**	**0.00**
GRAND TOTAL	**$1,032,482**	**1.88**	**$2,985,943**	**2.00**	**$2,985,943**	**2.00**	**$0**	**0.00**

CORE DECISION ITEM

Department:	**Office of the State Public Defender**	**Budget Unit**	**15141C**
Division:	**Public Defender**		
Core:	**Legal Services & Defender Fund (LDDF)**	**HB Section**	**12.400**

1. CORE FINANCIAL SUMMARY

	FY 2019 Budget Request					FY 2019 Governor's Recommendation				
	GR	Federal	Other	Total	E	GR	Federal	Other	Total	E
PS	0	0	135,187	135,187		0	0	0	0	
EE	0	0	2,600,756	2,600,756		0	0	0	0	
PSD	0	0	0	0		0	0	0	0	
TRF	0	0	250,000	250,000		0	0	0	0	
Total	**0**	**0**	**2,985,943**	**2,985,943**		**0**	**0**	**0**	**0**	
FTE	**0.00**	**0.00**	**0.00**	**0.00**		**0.00**	**0.00**	**0.00**	**0.00**	
Est. Fringe	*0*	*0*	*40,151*	*40,151*		*0*	*0*	*0*	*0*	

Note: Fringes budgeted in House Bill 5 except for certain fringes budgeted directly to MoDOT, Highway Patrol, and Conservation.

Other Funds: Legal Defense and Defender

Other Funds:

2. CORE DESCRIPTION

As laws continue to change and turnover of Missouri State Public Defender's staff is significant, training of public defenders and their staff becomes even more critical. The funds in this appropriation are collecteded from the indigent accused and by statute are used at the discretion of the Director of the State Public Defender System for the operation of the department, including, but not limited to, training, Missouri Bar Dues, legal research, one-time equipment purchases, office moves and other cirtical needs.

3. PROGRAM LISTING (list programs included in this core funding)

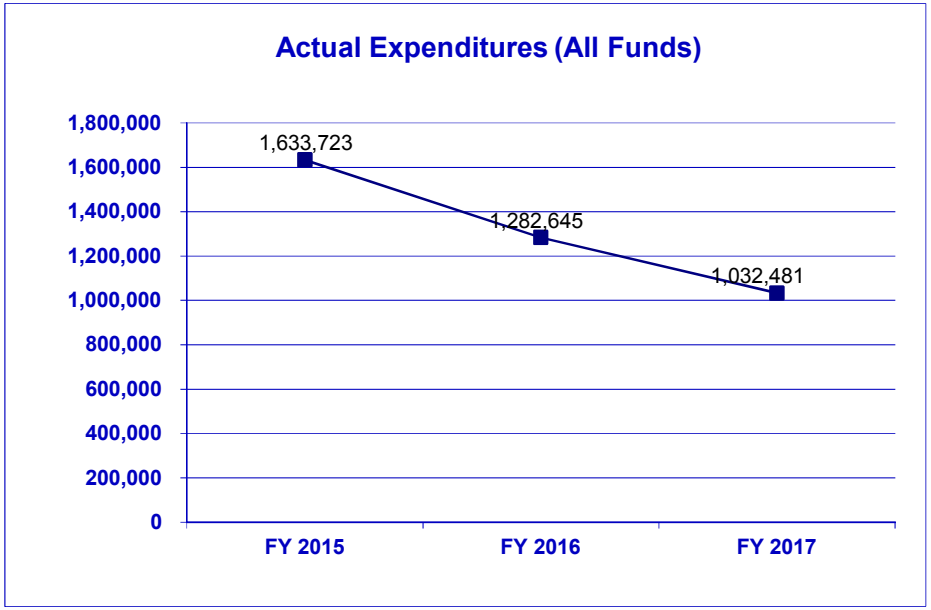
There are no separate programs within this appropriation. Dollars collected from Puiblic Defender Clients are utilized to assist in funding the Missouri State Public Defender System.

CORE DECISION ITEM

Department:	**Office of the State Public Defender**	**Budget Unit**	**15141C**
Division:	**Public Defender**		
Core:	**Legal Services & Defender Fund (LDDF)**	**HB Section**	**12.400**

4. FINANCIAL HISTORY

	FY 2015 Actual	FY 2016 Actual	FY 2017 Actual	FY 2018 Current Yr.
Appropriation (All Funds)	2,982,583	2,983,293	2,985,943	2,985,943
Less Reverted (All Funds)	0	0	0	0
Less Restricted (All Funds)*	0	0	0	0
Budget Authority (All Funds)	2,982,583	2,983,293	2,985,943	2,985,943
Actual Expenditures (All Funds)	1,633,723	1,282,645	1,032,481	N/A
Unexpended (All Funds)	1,348,860	1,700,648	1,953,462	0
Unexpended, by Fund:				
General Revenue	0	0	0	N/A
Federal	0	0	0	N/A
Other	1,348,860	1,700,648	1,953,462	N/A



*Restricted amount is $0 as of October 1, 2017.

Reverted includes the statutory three-percent reserve amount (when applicable).
Restricted includes any Governor's Expenditure Restrictions which remained at the end of the fiscal year (when applicable).

NOTES: The Appropriation is the requested spending authority should collections of fees collected from Missouri State Public Defender Clients reach the limit.

In addition to the acutal expenditures, transfer of funds occur between the Office of Administration and the Public Defender for employee fringe benefits and the Central Services Cost Allocation Plan (CSCAP). In Fiscal Year 2018, MSPD's share of the CSCAP will be $14,071.

Budget Unit / Decision Item / Budget Object Class	FY 2017 ACTUAL DOLLAR	FY 2017 ACTUAL FTE	FY 2018 BUDGET DOLLAR	FY 2018 BUDGET FTE	FY 2019 DEPT REQ DOLLAR	FY 2019 DEPT REQ FTE	********** SECURED COLUMN	********** SECURED COLUMN
LEGAL DEFENSE & DEFENDER FUND								
CORE								
DIVISION DIRECTOR	89,168	0.88	94,985	1.00	94,985	1.00	0	0.00
PROGRAM TECHNICIAN	46,019	1.00	40,202	1.00	40,202	1.00	0	0.00
TOTAL - PS	**135,187**	**1.88**	**135,187**	**2.00**	**135,187**	**2.00**	**0**	**0.00**
TRAVEL, IN-STATE	406,316	0.00	800,756	0.00	800,000	0.00	0	0.00
TRAVEL, OUT-OF-STATE	70,966	0.00	75,000	0.00	75,000	0.00	0	0.00
SUPPLIES	12,373	0.00	130,000	0.00	35,000	0.00	0	0.00
PROFESSIONAL DEVELOPMENT	47,150	0.00	185,000	0.00	185,000	0.00	0	0.00
COMMUNICATION SERV & SUPP	0	0.00	160,000	0.00	160,000	0.00	0	0.00
PROFESSIONAL SERVICES	10,987	0.00	125,000	0.00	125,000	0.00	0	0.00
M&R SERVICES	85,944	0.00	375,000	0.00	375,000	0.00	0	0.00
COMPUTER EQUIPMENT	28,986	0.00	450,000	0.00	320,756	0.00	0	0.00
OFFICE EQUIPMENT	36,924	0.00	195,000	0.00	195,000	0.00	0	0.00
OTHER EQUIPMENT	0	0.00	75,000	0.00	75,000	0.00	0	0.00
BUILDING LEASE PAYMENTS	3,589	0.00	10,000	0.00	10,000	0.00	0	0.00
EQUIPMENT RENTALS & LEASES	17,868	0.00	45,000	0.00	45,000	0.00	0	0.00
MISCELLANEOUS EXPENSES	155,263	0.00	200,000	0.00	200,000	0.00	0	0.00
TOTAL - EE	**876,366**	**0.00**	**2,825,756**	**0.00**	**2,600,756**	**0.00**	**0**	**0.00**
REFUNDS	20,929	0.00	25,000	0.00	250,000	0.00	0	0.00
TOTAL - PD	**20,929**	**0.00**	**25,000**	**0.00**	**250,000**	**0.00**	**0**	**0.00**
GRAND TOTAL	**$1,032,482**	**1.88**	**$2,985,943**	**2.00**	**$2,985,943**	**2.00**	**$0**	**0.00**
GENERAL REVENUE	**$0**	**0.00**	**$0**	**0.00**	**$0**	**0.00**		**0.00**
FEDERAL FUNDS	**$0**	**0.00**	**$0**	**0.00**	**$0**	**0.00**		**0.00**
OTHER FUNDS	**$1,032,482**	**1.88**	**$2,985,943**	**2.00**	**$2,985,943**	**2.00**		**0.00**

STATE OF MISSOURI
FUND FINANCIAL SUMMARY

DEPARTMENT: Office of the State Public Defender
FUND NAME: Legal Defense & Defender Fund
FUND NUMBER: 0670

			Federal Fund		
X	Statutory	RSMo 600.090.6	X Administratively Created		Subject To Biennial Sweep
	Constitutional		X Interest Deposited To Fund		Subject to Other Sweeps (see Notes)

FUND OPERATIONS	FY 2017 ADJUSTED APPROP	FY 2017 ACTUAL SPENDING	FY 2018 ADJUSTED APPROP	FY 2019 REQUESTED
BEGINNING CASH BALANCE	151,270	151,270	466,826	0
RECEIPTS:				
REVENUE (Cash Basis: July 1 - June 30)	1,416,566	1,416,566	1,500,000	1,500,000
TRANSFERS IN	0	0	0	0
TOTAL RECEIPTS	1,416,566	1,416,566	1,500,000	1,500,000
TOTAL RESOURCES AVAILABLE	1,567,836	1,567,836	1,966,826	1,500,000
APPROPRIATIONS (INCLUDES REAPPROPS):				
OPERATING APPROPS	2,985,943	1,032,481	2,985,943	2,985,943
TRANSFER APPROPS	0	68,529	63,165	63,165
CAPITAL IMPROVEMENTS APPROPS	0	0	0	0
TOTAL APPROPRIATIONS	2,985,943	1,101,010	3,049,108	3,049,108
BUDGET BALANCE	(1,418,107)	466,826	(1,082,282)	(1,549,108)
UNEXPENDED APPROPRIATION *	1,884,933	0	0	1,549,108
OTHER ADJUSTMENTS	0	0	0	0
ENDING CASH BALANCE	466,826	466,826	(1,082,282)	0
FUND OBLIGATIONS				
ENDING CASH BALANCE	466,826	466,826	(1,082,282)	0
OTHER OBLIGATIONS				
OUTSTANDING PROJECTS	0	0	0	0
CASH FLOW NEEDS	0	0	0	0
TOTAL OTHER OBLIGATIONS	0	0	0	0
UNOBLIGATED CASH BALANCE	**466,826**	**466,826**	**(1,082,282)**	**0**

Budget Unit / Decision Item / Budget Object Summary / Fund	FY 2017 ACTUAL DOLLAR	FY 2017 ACTUAL FTE	FY 2018 BUDGET DOLLAR	FY 2018 BUDGET FTE	FY 2019 DEPT REQ DOLLAR	FY 2019 DEPT REQ FTE	********** SECURED COLUMN	********** SECURED COLUMN
DEBT OFFSET ESCROW FUND								
CORE								
PROGRAM-SPECIFIC								
DEBT OFFSET ESCROW	1,095,998	0.00	0	0.00	0	0.00	0	0.00
TOTAL - PD	1,095,998	0.00	0	0.00	0	0.00	0	0.00
FUND TRANSFERS								
DEBT OFFSET ESCROW	0	0.00	1,200,000	0.00	1,200,000	0.00	0	0.00
TOTAL - TRF	0	0.00	1,200,000	0.00	1,200,000	0.00	0	0.00
TOTAL	**1,095,998**	**0.00**	**1,200,000**	**0.00**	**1,200,000**	**0.00**	**0**	**0.00**
GRAND TOTAL	**$1,095,998**	**0.00**	**$1,200,000**	**0.00**	**$1,200,000**	**0.00**	**$0**	**0.00**

CORE DECISION ITEM

Department:	**Office of the State Public Defender**	**Budget Unit**	**15161C**
Division:	**Public Defender**		
Core:	**Debt Offset Core Request**	**HB Section**	**12.400**

1. CORE FINANCIAL SUMMARY

	FY 2019 Budget Request					FY 2019 Governor's Recommendation				
	GR	**Federal**	**Other**	**Total**	**E**	**GR**	**Federal**	**Other**	**Total**	**E**
PS	0	0	0	0		0	0	0	0	
EE	0	0	0	0		0	0	0	0	
PSD	0	0	0	0		0	0	0	0	
TRF	0	0	1,200,000	1,200,000		0	0	0	0	
Total	**0**	**0**	**1,200,000**	**1,200,000**		**0**	**0**	**0**	**0**	
FTE	**0.00**	**0.00**	**0.00**	**0.00**		**0.00**	**0.00**	**0.00**	**0.00**	
Est. Fringe	*0*	*0*	*0*	*0*		*0*	*0*	*0*	*0*	

Note: Fringes budgeted in House Bill 5 except for certain fringes budgeted directly to MoDOT, Highway Patrol, and Conservation.

Other Funds: M

Other Funds:

2. CORE DESCRIPTION

Beginning in FY1995, each department/agency participating the Department of Revenue's Debt Offset Program, was required to establish an appropriation to receive money intercepted from individual Missouri State Income Tax Refunds by the Department of Revenue on behalf of the department/agency.

The Department of Revenue has also set up an intercept program for persons receiving Lottery winnings, in which the State Public Defender participates.

3. PROGRAM LISTING (list programs included in this core funding)

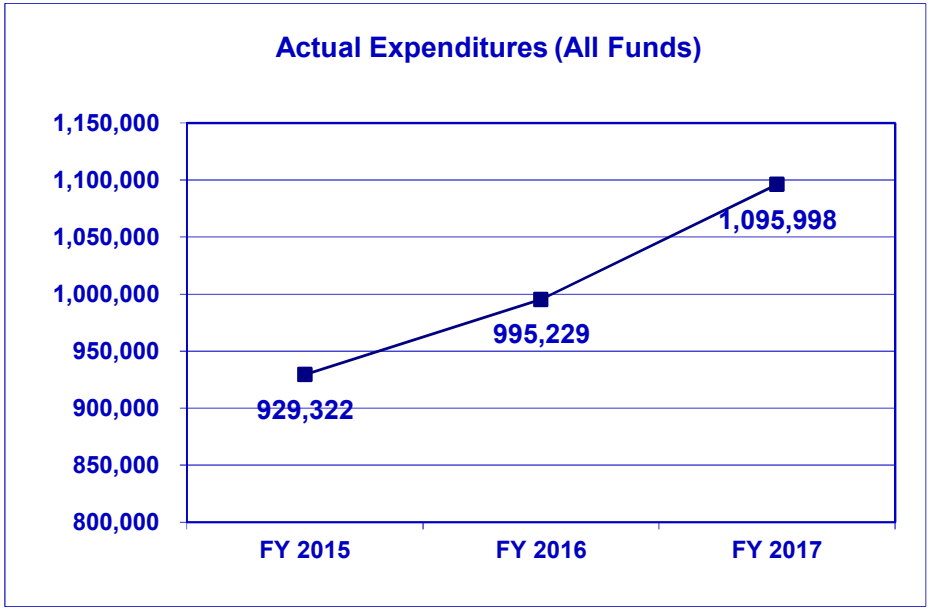
In Fiscal Year 2017, the Missouri State Public Defender intercepted $1,059,487.53 of Missouri State Income Tax refunds and $95,201.99 of Lottery winnings form past Public Defender clients who have/had outstanding debts to the State Public Defender.

CORE DECISION ITEM

Department:	**Office of the State Public Defender**	**Budget Unit**	**15161C**
Division:	**Public Defender**		
Core:	**Debt Offset Core Request**	**HB Section**	**12.400**

4. FINANCIAL HISTORY

	FY 2015 Actual	FY 2016 Actual	FY 2017 Actual	FY 2018 Current Yr.
Appropriation (All Funds)	1,200,000	1,200,000	1,200,000	1,200,000
Less Reverted (All Funds)	0	0	0	0
Less Restricted (All Funds)*	0	0	0	0
Budget Authority (All Funds)	1,200,000	1,200,000	1,200,000	1,200,000
Actual Expenditures (All Funds)	929,322	995,229	1,095,998	N/A
Unexpended (All Funds)	270,678	204,771	104,002	0
Unexpended, by Fund:				
General Revenue	0	0	0	N/A
Federal	0	0	0	N/A
Other	270,678	204,771	104,002	N/A



*Restricted amount is $0.00 as of October 1, 2017.

Reverted includes the statutory three-percent reserve amount (when applicable).
Restricted includes any Governor's Expenditure Restrictions which remained at the end of the fiscal year (when applicable).

NOTES:

Budget Unit / Decision Item / Budget Object Class	FY 2017 ACTUAL DOLLAR	FY 2017 ACTUAL FTE	FY 2018 BUDGET DOLLAR	FY 2018 BUDGET FTE	FY 2019 DEPT REQ DOLLAR	FY 2019 DEPT REQ FTE	********** SECURED COLUMN	********** SECURED COLUMN
DEBT OFFSET ESCROW FUND								
CORE								
REFUNDS	1,095,998	0.00	0	0.00	0	0.00	0	0.00
TOTAL - PD	**1,095,998**	**0.00**	**0**	**0.00**	**0**	**0.00**	**0**	**0.00**
TRANSFERS OUT	0	0.00	1,200,000	0.00	1,200,000	0.00	0	0.00
TOTAL - TRF	**0**	**0.00**	**1,200,000**	**0.00**	**1,200,000**	**0.00**	**0**	**0.00**
GRAND TOTAL	**$1,095,998**	**0.00**	**$1,200,000**	**0.00**	**$1,200,000**	**0.00**	**$0**	**0.00**
GENERAL REVENUE	**$0**	**0.00**	**$0**	**0.00**	**$0**	**0.00**		**0.00**
FEDERAL FUNDS	**$0**	**0.00**	**$0**	**0.00**	**$0**	**0.00**		**0.00**
OTHER FUNDS	**$1,095,998**	**0.00**	**$1,200,000**	**0.00**	**$1,200,000**	**0.00**		**0.00**

Budget Unit / Decision Item / Budget Object Summary / Fund	FY 2017 ACTUAL DOLLAR	FY 2017 ACTUAL FTE	FY 2018 BUDGET DOLLAR	FY 2018 BUDGET FTE	FY 2019 DEPT REQ DOLLAR	FY 2019 DEPT REQ FTE	********** SECURED COLUMN	********** SECURED COLUMN
GRANTS								
CORE								
PROGRAM-SPECIFIC								
PUBLIC DEFENDER-FEDERAL & OTHR	0	0.00	125,000	0.00	125,000	0.00	0	0.00
TOTAL - PD	0	0.00	125,000	0.00	125,000	0.00	0	0.00
TOTAL	**0**	**0.00**	**125,000**	**0.00**	**125,000**	**0.00**	**0**	**0.00**
GRAND TOTAL	**$0**	**0.00**	**$125,000**	**0.00**	**$125,000**	**0.00**	**$0**	**0.00**

CORE DECISION ITEM

Department:	**Office of the State Public Defender**	**Budget Unit**	**15131C**
Division:	**Public Defender**		
Core:	**Federal & Other**	**HB Section**	**12.400**

1. CORE FINANCIAL SUMMARY

	FY 2019 Budget Request					FY 2019 Governor's Recommendation				
	GR	**Federal**	**Other**	**Total**	**E**	**GR**	**Federal**	**Other**	**Total**	**E**
PS	0	0	0	0		0	0	0	0	
EE	0	0	0	0		0	0	0	0	
PSD	0	125,000	0	125,000		0	0	0	0	
TRF	0	0	0	0		0	0	0	0	
Total	**0**	**125,000**	**0**	**125,000**		**0**	**0**	**0**	**0**	
FTE	**0.00**	**0.00**	**0.00**	**0.00**		**0.00**	**0.00**	**0.00**	**0.00**	
Est. Fringe	*0*	*0*	*0*	*0*		*0*	*0*	*0*	*0*	

Note: Fringes budgeted in House Bill 5 except for certain fringes budgeted directly to MoDOT, Highway Patrol, and Conservation.

Other Funds: Federal or Other Funds that could be come available to Assist in Funding the State Public Defender System

Other Funds:

2. CORE DESCRIPTION

Appropriation is requested to have spending authority should Federal or other funds become available during Fiscal Year 2019 to assist in funding the State Public Defender System.

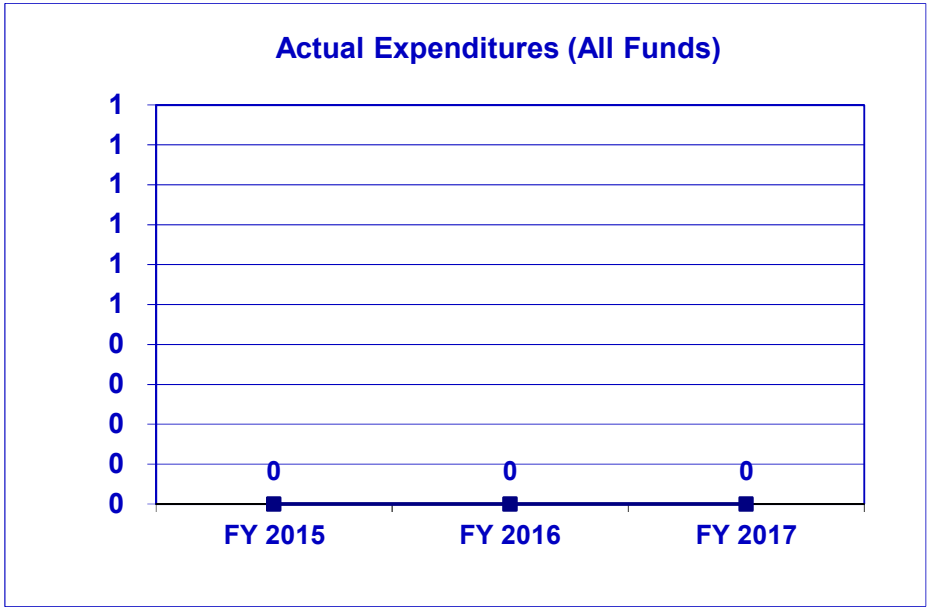
3. PROGRAM LISTING (list programs included in this core funding)

CORE DECISION ITEM

Department:	**Office of the State Public Defender**	**Budget Unit**	**15131C**
Division:	**Public Defender**		
Core:	**Federal & Other**	**HB Section**	**12.400**

4. FINANCIAL HISTORY

	FY 2015 Actual	FY 2016 Actual	FY 2017 Actual	FY 2018 Current Yr.
Appropriation (All Funds)	125,000	125,000	125,000	125,000
Less Reverted (All Funds)	0	0	0	0
Less Restricted (All Funds)*	0	0	0	0
Budget Authority (All Funds)	125,000	125,000	125,000	125,000
Actual Expenditures (All Funds)	0	0	0	N/A
Unexpended (All Funds)	125,000	125,000	125,000	0
Unexpended, by Fund:				
General Revenue	0	0	0	N/A
Federal	0	0	0	N/A
Other	0	0	0	N/A

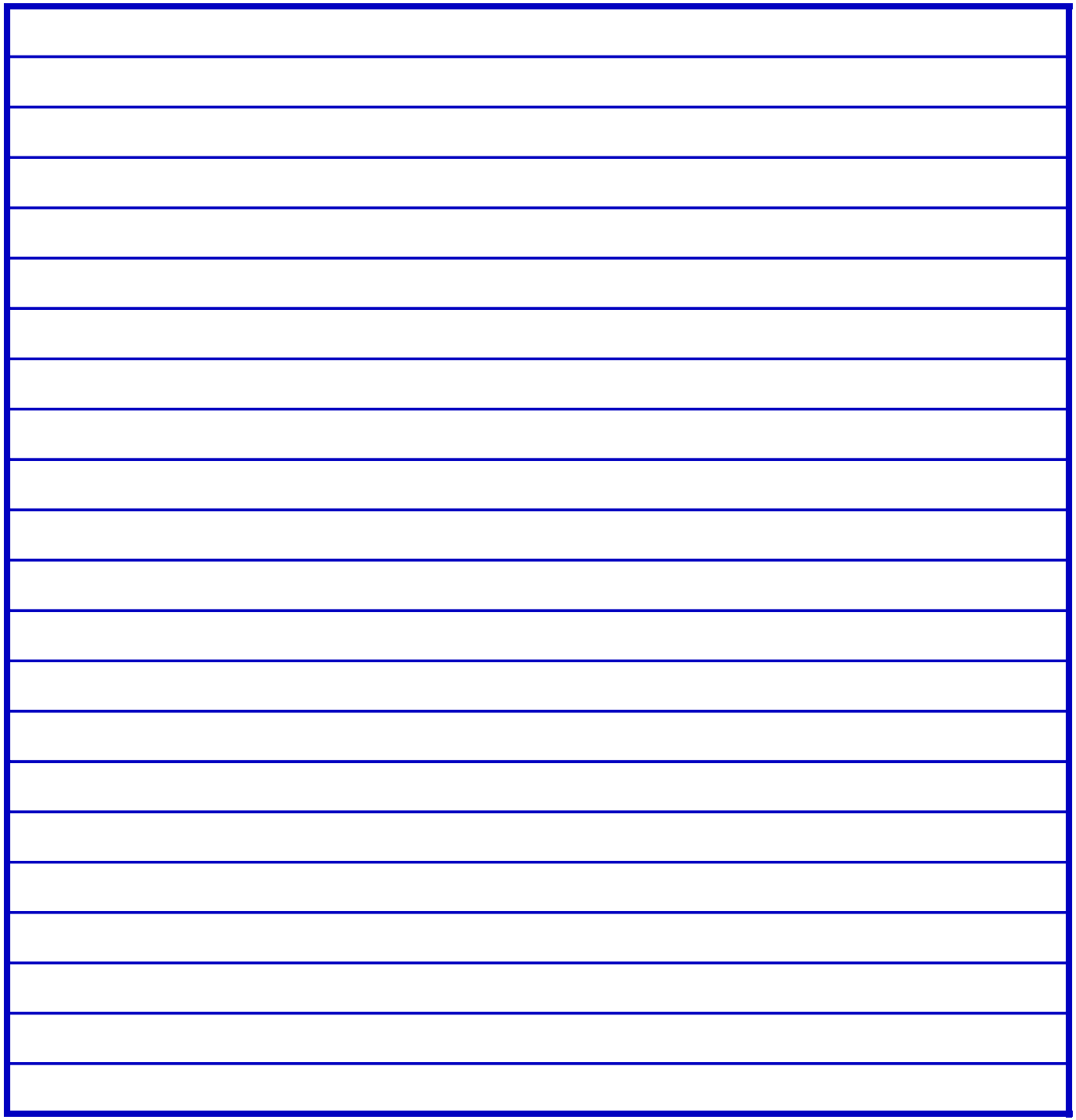


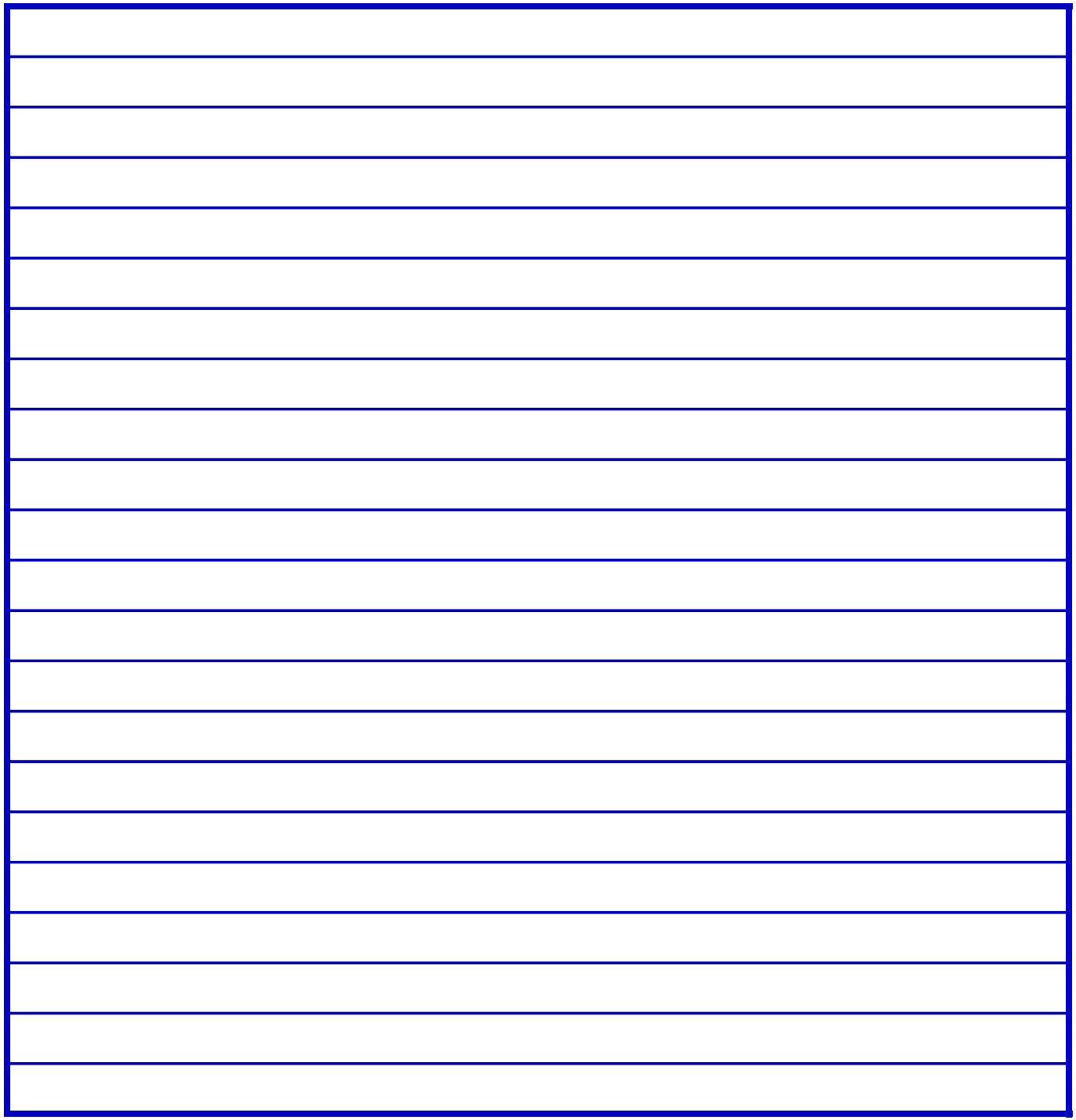
*Restricted amount is as of ___

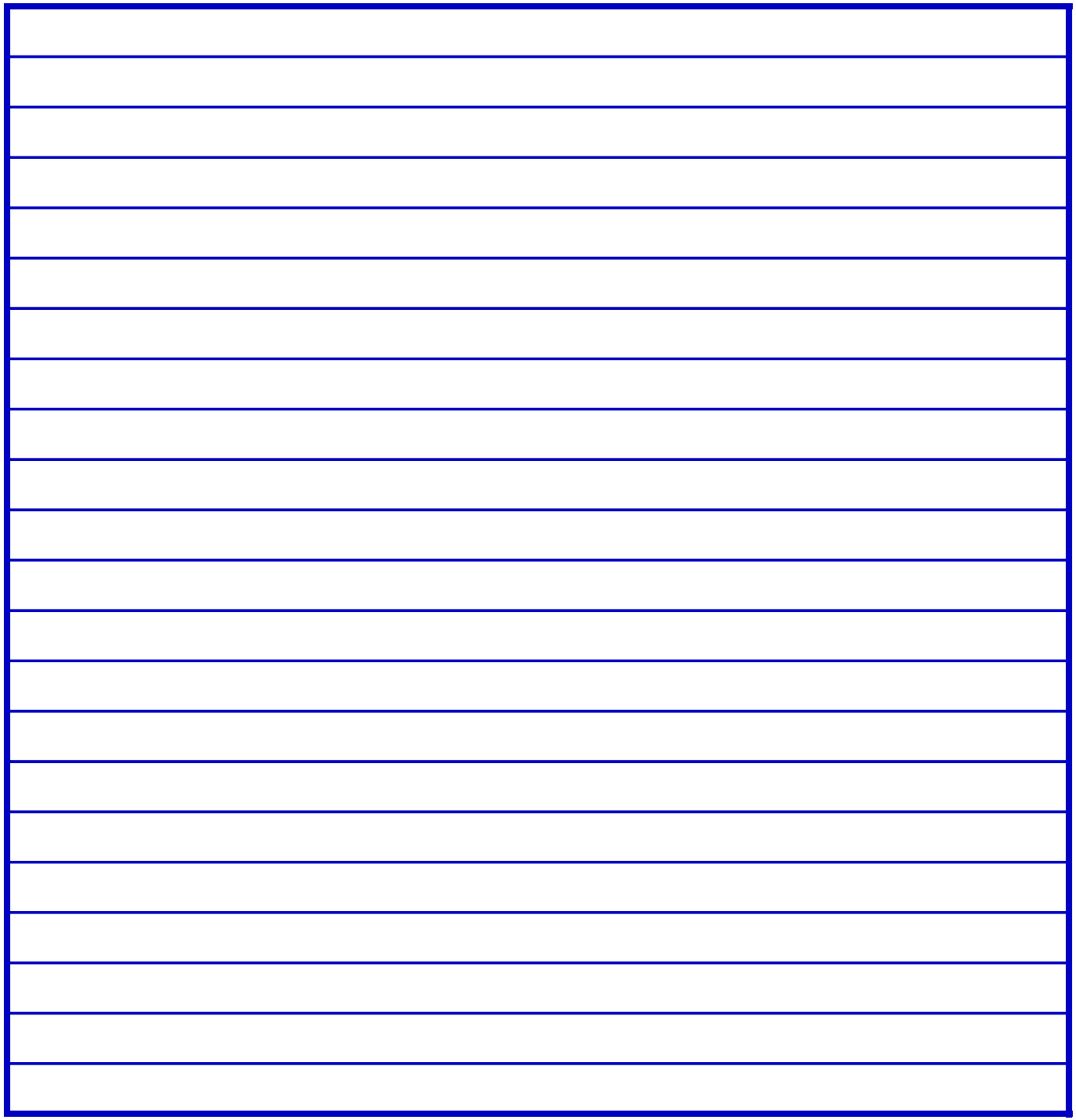
Reverted includes the statutory three-percent reserve amount (when applicable).
Restricted includes any Governor's Expenditure Restrictions which remained at the end of the fiscal year (when applicable).

NOTES:

Budget Unit / Decision Item / Budget Object Class	FY 2017 ACTUAL DOLLAR	FY 2017 ACTUAL FTE	FY 2018 BUDGET DOLLAR	FY 2018 BUDGET FTE	FY 2019 DEPT REQ DOLLAR	FY 2019 DEPT REQ FTE	********** SECURED COLUMN	********** SECURED COLUMN
GRANTS								
CORE								
PROGRAM DISTRIBUTIONS	0	0.00	125,000	0.00	125,000	0.00	0	0.00
TOTAL - PD	**0**	**0.00**	**125,000**	**0.00**	**125,000**	**0.00**	**0**	**0.00**
GRAND TOTAL	**$0**	**0.00**	**$125,000**	**0.00**	**$125,000**	**0.00**	**$0**	**0.00**
GENERAL REVENUE	**$0**	**0.00**	**$0**	**0.00**	**$0**	**0.00**		**0.00**
FEDERAL FUNDS	**$0**	**0.00**	**$125,000**	**0.00**	**$125,000**	**0.00**		**0.00**
OTHER FUNDS	**$0**	**0.00**	**$0**	**0.00**	**$0**	**0.00**		**0.00**







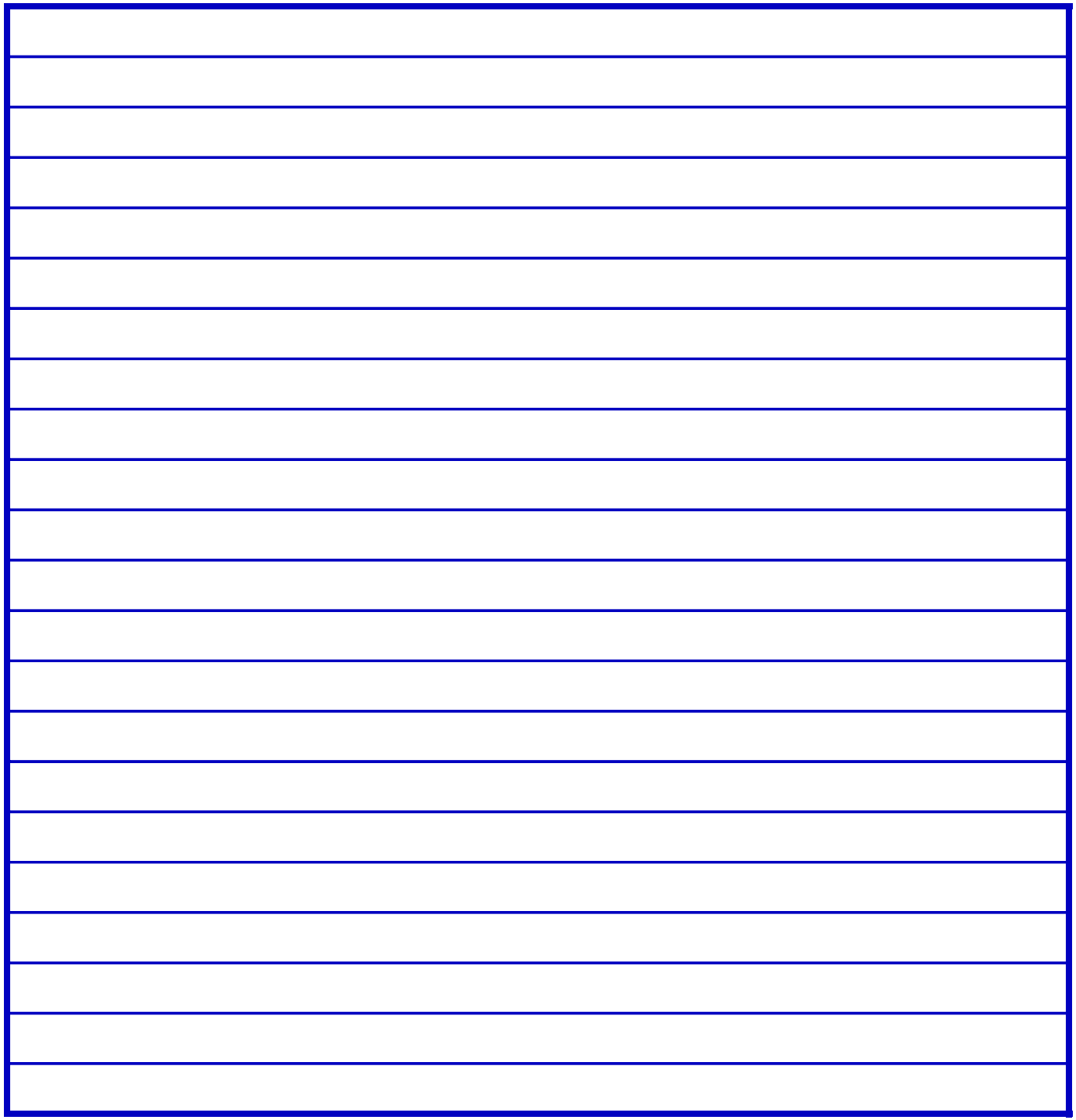


Exhibit T

MISSOURI STATE PUBLIC DEFENDER SYSTEM

Fiscal Year 2018

DRAFT

Legislative Budget Request

Michael Barrett, Director

Commission Meeting

September 21, 2016

Prepared by:

Kathleen L. Lear, Comptroller/Internal Auditor

PLAINTIFF'S EXHIBIT 33

Fiscal Year 2018—Draft Budget Request
September 21, 2016—Commission Meeting

Rank	Decision Item Title	Fiscal Year 2018 Amount	Page #
1	State Public Defender Core		3
	Personal Service (includes $542,880 restricted)	$29,875,223	3
	Expense & Equipment (includes $2,957,120 restricted)	$7,901,287	3
1	Homicide/Conflict Core	$3,721,071	3
1	Federal & Core Program Specific Distribution	$125,000	3
1	Legal Defense Core		
	Personal Service	$135,187	3
	Expense & Equipment	$2,850,756	3
1	Debt Offset Payments Core	$1,200,000	3
	Legal Services Introduction		4
	RubinBrown Weights		4
	Caseload History		5
	FTE History		6
	Trial Division State Map		7
	Legal Services—FY2017 Recommended Decision Items—		8
5	All Conflicts Represented by Private Counsel—PART A	$1,338,618	8
5	Assistant Public Defenders & Support Staff for constitutionally mandated representation Includes Springfield Appellate Office—PART B	$22,600,965	11
5	Comprehensive Compensation Structure	$728,805	18
5	Juvenile Advocacy Offices	$1,055,751	19
5	FSLA Overtime Regulations—Submitted at the Request of OA	$70,008	20

FISCAL YEAR 2018

Legislative Budget Request

State Public Defender Core		
Personal Service ($542,880 restricted)	$29,875,223	
Expense & Equipment ($2,957,120 restricted)	$7,901,287	
From General Revenue		$37,776,510
Homicide Conflict Core		
Expense and Equipment	$3,721,071	
From General Revenue		$3,721,071
TOTAL GENERAL REVENUE ($3,500,000 restricted)		$41,497,581
Legal Defense and Defender Core*		
Personal Service	$135,187	
Expense & Equipment	$2,850,756	
From Legal Defense & Defender Fund		$2,985,943
Federal Funds Core*		
Program Specific Distribution	$125,000	
From Federal or Other Funds		$125,000
Debt Offset Refund Payments*		
Revolving Fund Payments	$1,200,000	
From Tax Intercepts		$1,200,000
Total State Public Defender System FY2018 Core Budget		$45,808,524
Not to exceed 597.13 FTE		

Each year the budget request must contain core requests for each of the appropriation categories that were funded in the previous year. (As represented above.) The core requests are required for continued funding. The dollar requests in core decision items reflect the appropriations received in the current fiscal year less any one-time equipment expenditures or core reductions and are the base with which MSPD begins the FY2017 budget request.

Every other item in this budget request is a separate and distinct budget decision item which is considered for funding by the Governor and the Legislature. MSPD's request for new decision items are put forth on the following pages. In the FY2018 budget request, MSPD is requesting that the Commission approve decision items to provide a more comprehensive attorney compensation structure and additions .

The Fiscal Year 2018 Budget Instructions received from the Office of Administration (OA), Division of Budget and Planning, states that Departments should not include any statewide pay plan requests in our budget submission, such as cost of living adjustments. OA did request that the cost to comply with FSLA Overtime Regulations should be included as part of the Department's request.

*Spending Authorization - only if funds become available from other source; not actual funds available.

Church, et al v. State of Missouri, et al
DFs - 001512

Over the last couple of decades, the issue of Missouri Public Defender's workload has been the subject of five different studies: one by a Missouri Bar Task Force, two by the *The Spangenberg Group*, an independent consultant, another by a Senate Interim Committee, and the most recent by the American Bar Association titled *The Missouri Project*. Each of these investigations reached the same conclusion: Missouri's public defenders have too many cases and not enough lawyers or support staff to fulfill the state's constitutional obligations.

The most recent ABA study, conducted and overseen by RubinBrown of St. Louis, one of the nation's top accounting and business analytics firms, was designed to not only identify excessive work overloads – which it did -- but also to establish reliable case weights to determine what staffing levels are needed to match the existing workload (i.e., the average number of hours a competent attorney could expect to spend on a particular case type to provide competent representation).

When these case weights are applied to MSPD's caseload, the number of staff MSPD would need to meet its existing caseload is 332.9 additional attorneys (see case weight metrics below). 311 attorneys are requested in the Constitutionally Mandated Representation decision item. 11.5 attorneys are requested in the Juvenile Advocacy decision item. In addition, there are 10 FTE currently being restricted by Governor Nixon. This proposal further seeks funding that would allow MSPD to assign all Trial Division conflict cases to private attorneys, which remains the single most efficient way to immediately impact case overload.

ABA/RubinBrown Workload Study	
Non-Capital Homicide	106.6
A/B Felony Offense	47.6
C/D Felony Offense	25.0
Sex Offense - Felony	63.8
Misdemeanor	11.7
Juvenile	19.5
Appeals/PCR	96.5
Probation Violation	9.8

The budget request also includes the addition of:

- Two Youth Advocacy Units, one in Kansas City and one in St. Louis, to specialize in the representation of juveniles (11.50 attorneys);
- A comprehensive compensation structure for Attorney staff; and
- Dollars to fund the new FSLA Overtime Regulations should they become law.

Church, et al v. State of Missouri, et al
DFs - 001513

Missouri State Public Defender System

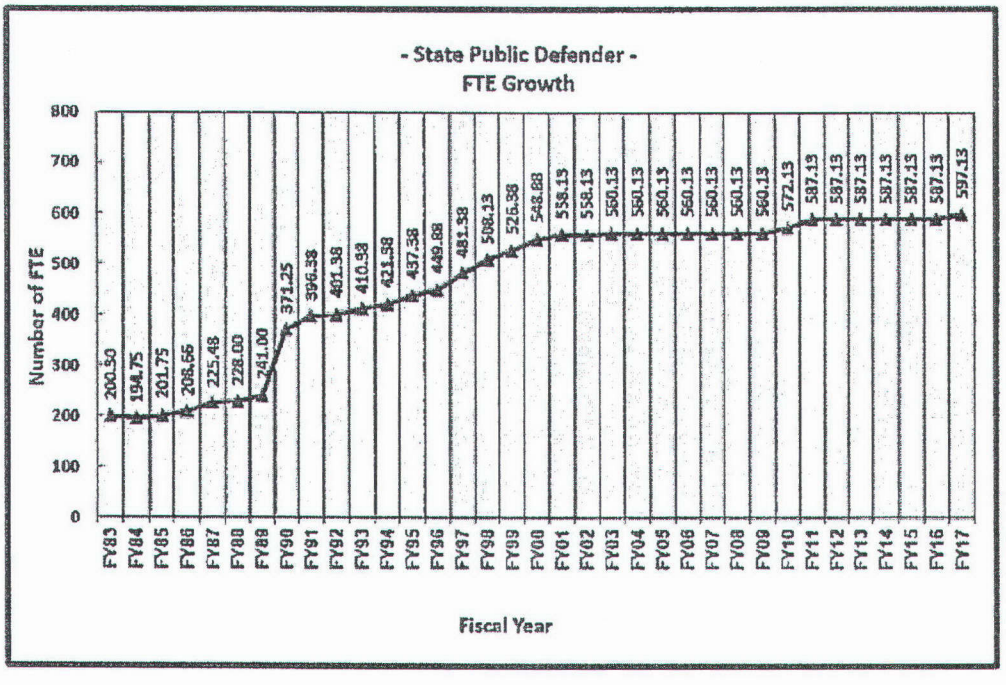
Cases Assigned by Case Type

Fiscal Year	Murder 1st	Other Homicide	Felony	Murder + Felony Caseload	Misdemeanor	Juvenile	PCR	Other	Probation Violation	Appeals	Total Opened	Total Closed
FY16	187	138	42,276	42,601	16,121	1,677	829	204	18,557	766	80,755	71,934
FY15	167	148	37,879	38,194	14,853	1,831	916	174	16,831	799	73,598	71,464
FY14	129	188	38,554	38,821	15,228	1,830	939	166	17,460	752	75,196	72,197
FY13	152	207	38,785	39,144	16,692	1,670	986	238	18,477	792	77,999	79,985
FY12	121	197	38,551	38,869	20,948	1,923	1,212	159	20,320	966	84,397	81,871
FY11	148	149	35,753	36,050	22,767	1,893	1,088	119	20,066	913	82,896	80,137
FY10	161	164	34,781	35,106	24,768	2,393	1,141	131	20,147	930	84,616	81,346
FY09	121	180	33,226	33,527	25,181	2,513	1,264	181	19,518	898	83,082	81,704
FY08	158	154	34,766	35,078	26,098	2,715	1,061	182	19,555	716	85,405	85,116
FY07	174	161	35,109	35,444	27,816	3,380	828	129	19,157	743	87,497	85,133
FY06	138	146	35,339	35,623	28,227	3,676	838	46	19,412	710	88,532	83,260
FY05	156	124	33,282	33,562	28,951	3,881	937	120	20,012	688	88,131	87,180
FY04	154	140	34,422	34,716	28,018	4,258	807	98	20,263	756	88,916	86,356
FY03	195	114	35,425	35,734	25,807	4,147	806	103	18,479	832	85,908	81,059
FY02	163	132	33,183	33,478	25,147	3,918	802	64	18,047	750	82,206	77,165
FY01	182	125	29,934	30,241	22,903	4,488	711	82	17,663	698	76,786	73,438
FY00	147	109	28,019	28,275	24,119	4,998	763	76	16,768	739	75,738	69,591
FY99	182	108	28,892	29,182	23,721	4,629	797	112	14,488	809	73,738	74,570
FY98	196	87	31,591	31,874	24,676	4,270	674	138	14,141	689	76,462	74,495
FY97	169	79	29,663	29,911	21,912	4,075	513	156	13,437	839	70,843	67,870
FY96	175	88	30,198	30,461	23,069	3,612	707	178	11,444	1,038	70,509	70,664
FY95	256	109	27,688	28,053	17,696	3,916	719	165	9,362	1,138	61,049	61,710
FY94	255	152	25,338	25,745	17,852	3,374	682	201	8,225	1,017	57,096	52,453
FY93	301	136	24,402	24,839	15,883	3,146	766	249	7,301	872	53,056	52,363
FY92	282	37	25,458	25,777	19,974	3,372	1,129	167	5,321	569	56,309	55,651
FY91	198	63	21,304	21,560	13,941	2,713	588	169	5,051	820	44,842	49,038
FY90	227	109	23,336	23,672	14,627	3,300	732	369	5,834	1,094	49,628	46,425
FY89	193	149	20,838	21,180	12,902	3,298	1,342	418	5,074	1,243	45,457	42,532
FY88	202	161	20,640	21,003	12,427	3,455	1,006	470	4,475	920	43,756	40,117
FY87	199	145	19,254	19,598	11,736	3,564	755	443	4,308	728	41,132	37,081
FY86	166	175	17,042	17,383	10,602	3,328	612	611	3,815	608	36,959	34,491
FY85	152	172	15,397	15,721	9,126	3,500	543	522	3,293	632	33,337	32,410
FY84	176	175	15,048	15,399	9,256	3,058	534	499	2,878	506	32,130	31,730

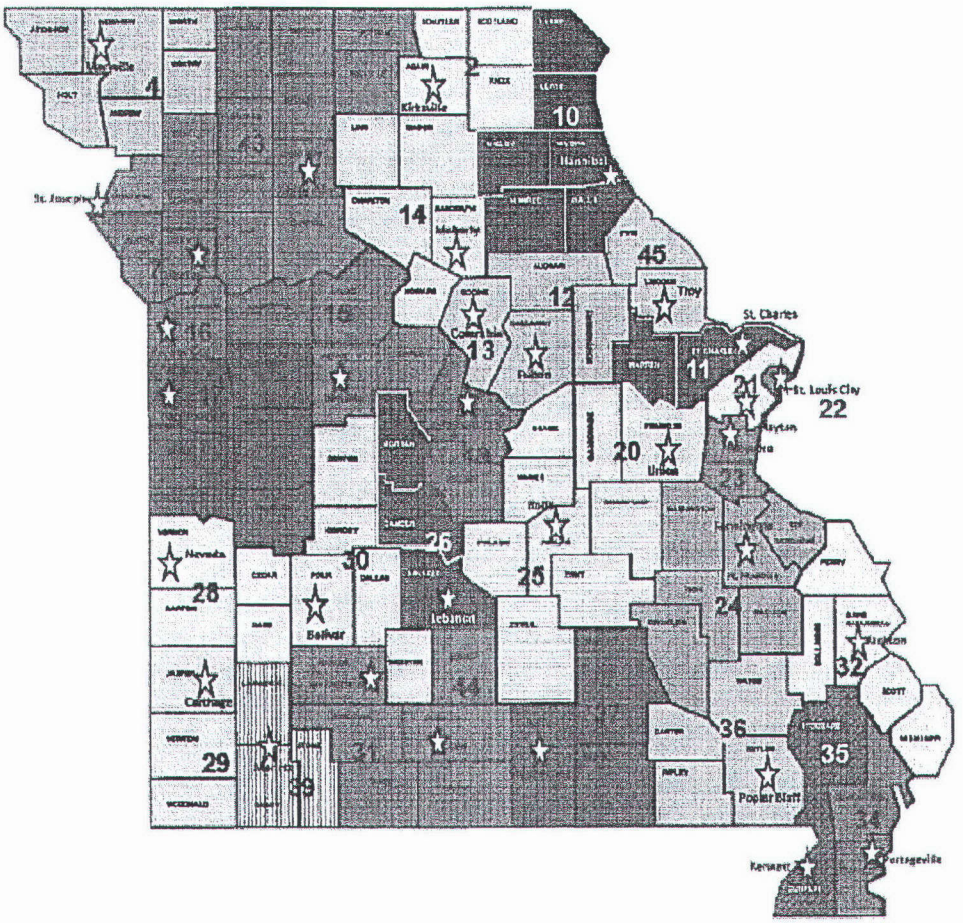
07/21/16

FTE Growth By Fiscal Year			
Fiscal Year	Number of FTE	Fiscal Year	Number of FTE
FY83	200.30	FY00	548.88
FY84	194.75	FY01	558.13
FY85	201.75	FY02	558.13
FY86	208.66	FY03	560.13
FY87	225.48	FY04	560.13
FY88	228.00	FY05	560.13
FY89	241.00	FY06	560.13
FY90	371.25	FY07	560.13
FY91	396.38	FY08	560.13
FY92	401.38	FY09	560.13
FY93	410.38	FY10	572.13
FY94	421.38	FY11	587.13
FY95	437.38	FY12	587.13
FY96	449.88	FY13	587.13
FY97	481.38	FY14	587.13
FY98	508.13	FY15	587.13
FY99	526.38	FY16	587.13
		FY17	597.13*

*10.00 FTE Authorized, Funding Withheld.



Public Defender Trial Division
District Map



CASELOAD RELIEF—PART A
ALL TRIAL DIVISION CONFLICT CASES TO THE PRIVATE BAR

FY2018 New Decision Item—	
Trial Division Conflicts	**$1,338,618**

This option presumes that:

1. All Trial Division conflict cases are contracted out to the private bar;
2. Current contract fee amounts to private counsel remain flat;
3. Caseload, and the percentage of cases that have conflicts, remain relatively flat; and
4. The personnel increase, included in Part B, is also funded.

Contracting All Trial Division Conflict Cases:

Currently, when a case involves multiple defendants, there is always the risk that one will point a finger at the other. Therefore, the local defender office can only represent one co-defendant and any other co-defendants must be represented elsewhere, either by another defender office or by private counsel on a contract for representation. Historically, MSPD has sent the first co-defendant to another defender office and contracted out additional co-defendants to private counsel. However, this in-house handling of trial division conflict cases is not a cost-effective approach because it pulls lawyers out of their primary jurisdictions and requires them to drive significant distances to appear in court, conduct investigations, witness interviews and depositions, visit their clients in jail, all in a distant county. It is not uncommon for each trip to take a day of the attorney's time to deal with one or two cases. Instead, economies of scale suggest it is more cost-effective and efficient to contract all trial level conflict cases to local attorneys in the private bar and allow the defender offices to concentrate on effectively representing the cases that arise within the counties they are designated to serve.

At present, MSPD uses the fee schedule on the following page for cases contracted out to private counsel. Litigation expenses (the cost of transcripts, investigation, experts, or depositions) are not included in these fees but are approved on a case-by-case basis. Such costs would be incurred by MSPD whether the case was being handled internally or by private counsel.

Given the assumptions set out, the cost of contracting out all Trial Division conflict cases to private counsel would run a little over $6.573 million. Since our Fiscal Year 2017 appropriation for this purpose is approximately $2.278 million plus $2,957,120 in Legal Services, which is currently restricted by Governor Nixon, contracting out all conflict cases would require an additional $1,338,618 million, as shown in the table on the following pages.

Missouri State Public Defender
Private Counsel
Fee Schedule

Case Type	Description	Contract Rates
15	Murder 1st Degree	$10,000
20	Other Homicide	$6,000
30D	AB Felony Drug	$750
30F	AB Felony Other	$1,500
30X	AB Felony Sex	$2,000
35D	CD Felony Drug	$750
35F	CD Felony Other	$750
35X	CD Felony Sex	$1,500
45M	Misdemeanor	$375
45T	Misdemeanor - Traffic	$375
50N	Juvenile - Non Violent	$500
50S	Juvenile - Status	$500
50V	Juvenile - Violent	$750
65F	Probation Violation - Felony	$375
65M	Probation Violation - Misdemeanor	$375
110F	Direct Appeals - Felony	$3,750
110S	Direct Appeal - Misdemeanor	$3,750
124A	Rule 24.035 Appeal	$500
124M	Rule 24.035 Motion	$500
129A	Rule 29.15 Appeal	$1,875
129M	Rule 29.15 Motion	$1,000

Note: MSPD will pay additional compensation in cases resolved by:

Trials

- Jury Trial $1,500 for the first day and $750 for each additional day
- Bench Trial $750 per day - prorated

Appeals

- Rule 29.15 Evidentiary Hearing $500
- Rule 24.035 Evidentiary Hearing $250

FY2016 CONFLICT CASES - Trial & Appellate Division

Does Not include Capital or CDU

Case Type	Description	Conflicts Currently Handled by MSPD Sister Offices 41's & 49's	Conflicts Currently Contracted to Private Counsel 42's & 44's	Contract Rates	Cost of Contracts
15	Murder 1st Degree	24	10	$10,000	$340,000
20	Other Homicide	23	1	$6,000	$144,000
30D	AB Felony Drug	475	135	$750	$457,500
30F	AB Felony Other	611	146	$1,500	$1,135,500
30X	AB Felony Sex	55	7	$2,000	$124,000
35D	CD Felony Drug	1,261	294	$750	$1,166,250
35F	CD Felony Other	2,349	477	$750	$2,119,500
35X	CD Felony Sex	20	1	$1,500	$31,500
45M	Misdemeanor	1,072	191	$375	$473,625
45T	Misdemeanor - Traffic	94	17	$375	$41,625
50N	Juvenile - Non Violent	112	19	$500	$65,500
50S	Juvenile - Status	6	1	$500	$3,500
50V	Juvenile - Violent	70	6	$750	$57,000
65F	Probation Violation - Felony	675	115	$375	$296,250
65M	Probation Violation - Misd	181	17	$375	$74,250
110F	Direct Appeals - Felony	3		$3,750	$11,250
110S	Direct Appeal - Misdemeanor			$500	$0
124A	Rule 24.035 Appeal			$500	$0
124M	Rule 24.035 Motion	15	1	$500	$8,000
129A	Rule 29.15 Appeal	4		$3,750	$15,000
129M	Rule 29.15 Motion	17	2	$500	$9,500
	Totals	7,067	1,440		$6,573,750
				Fiscal Year 2017 Contract Budget	-$2,278,012
				Governor's 2017 Withholding	-$2,957,120
				Additional Appropriation Required to Contract Out All Conflicts	$1,338,618
	ALL TRIAL & APPELLATE CONFLICTS TO PRIVATE COUNSEL				

CASELOAD RELIEF—PART B
FUNDING FOR 258 ASSISTANT PUBLIC DEFENDERS & 86 SUPPORT STAFF

Constitutionally Mandated Representation

$22,600,965

Attorney Staff Needed to Handle Remaining Caseload: Removing all conflict cases helps to reduce the public defender case overload, but it does not eliminate it. Assuming that there is no increase in caseload, MSPD would still be 332.9 lawyers short of the number of attorneys needed according to the ABA report. This number is determined by applying RubinBrown's average case weights to the number of cases for each case type assigned for Fiscal Year 2016. The number was calculated after conflicts have all been eliminated and contracted to private attorneys. Actual attorney travel time and court time were added to the RubinBrown metrics calculations, resulting in 1,419,445.40 attorney hours required. Assuming 2,080 available attorney hours each year—682.40 attorneys would be required to provide effective, constitutional representation. The current number of Trial and Appellate Division attorneys is 349.50, there are 10 FTE currently being restricted by Governor Nixon. There are 11.50 attorneys requested in a separate Juvenile Advocacy decision item; leaving 311 attorneys to be requested in this decision item.

Support Staff: Every law practice management expert will affirm that lawyer time needs to be leveraged by utilizing support staff for everything that can be done by a non-lawyer. This allows the lawyer to focus on tasks that only a lawyer can do. Therefore, MSPD is requesting 1 legal assistant for every 3 attorneys; that would mean 86 legal assistants in order to meet that ratio.

Attorneys and support staff would be allocated to the most over-worked offices based on several factors including but not limited to: the RubinBrown caseload weights, problematic counties to practice in, difficult prosecutors to negotiate with, office space available, etc.

The calculations for the Trial Division office only include the juvenile cases where the public defender system is currently providing juvenile representation. Some local public defender offices do not provide representation for juveniles and in those instances many counties are contracting with private attorneys to do so. A separate decision item is included in MSPD's FY2018 Legislative Budget Request to set up juvenile advocacy offices in St. Louis Area and in Kansas City.

Some of the staffing requested in this decision item would be used to establish a Springfield Appellate/Post-Conviction office. (The caseload numbers for these appellate/pcr cases are included in the RubinBrown metrics and in the total number of attorneys needed for effective representation.)

The Appellate/Post-conviction Division presents unique overload issues, which unlike Trial Division conflicts, are best addressed not through increased contracting to private counsel, but by the creation of an additional appellate/post-conviction office in Springfield, MO.

The attorneys in this division represent defendants who have already been convicted of a crime and are raising issues of error in the judicial process that led to their conviction. Post-conviction counsel

Church, et al v. State of Missouri, et al
DFs - 001520

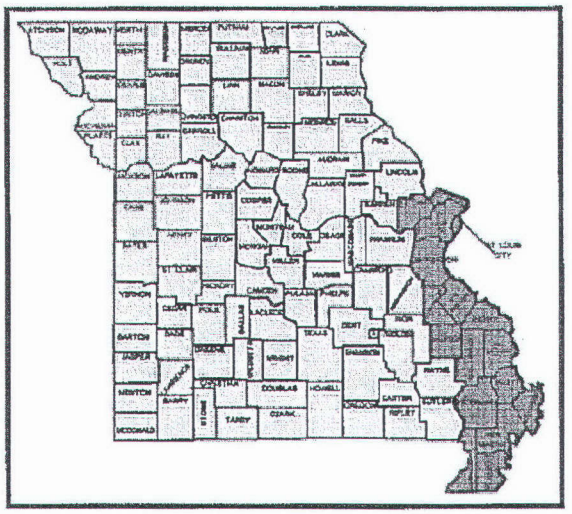
must always review and raise, where appropriate, the issue of ineffective assistance of the client's previous counsel. This means that the office that provides appellate representation for a client will always have a conflict handling that client's post-conviction proceedings, which is why MSPD has six appellate/post-conviction offices, two each in St. Louis, Kansas City, and Columbia. Each duo of offices is able to handle conflict cases for one another, without (most) of those cases having to be shipped across the state to one of the other two appellate/post-conviction office locations.

However, travel is still a significant problem in this division because of the nature of post-conviction proceedings, which take place in the circuit court of conviction. This means MSPD has five offices covering post-conviction proceedings in 114 counties plus the City of St. Louis. (Only one of the offices in Columbia handles post-conviction matters, the other handles only appellate cases.) The map on the next page shows how the counties are currently divided among the existing offices. As the map indicates, the heavier concentration of cases in the two urban areas of St. Louis and Kansas City leave the attorneys in those areas unable to take on as many counties as their Central Missouri counterparts are required to cover. But even with fewer cases coming in from each of the outstate (grey) counties, MSPD's Central PCR office is carrying a caseload at 300% of its attorney capacity. Add in the amount of travel involved and it becomes an equation that is simply not sustainable.

MSPD has attempted to reduce the travel burden on these offices by contracting out "remote-county PCR's", as they are known within the system, to local private counsel, but this approach has not been successful. Post-conviction practice is unique and very technical. Very few private attorneys have any experience, much less expertise, in these types of cases. MSPD's attempts to contract these cases to private counsel have too frequently resulted in the cases having to be brought back in-system to correct significant, case-changing errors made by attorneys who are in over their heads. MSPD attempted to address this problem by offering training to private attorneys interested in taking these cases, but that, too, has proved insufficient to the task. Few accepted the opportunity and those who did, ended up taking these cases so infrequently that any benefit they may have received from the training has long since worn off by the time they get their next PCR.

Therefore, part of this decision will address the problem by adding an additional office in Springfield. Missouri's appellate courts are located in St. Louis, Kansas City, and Springfield (with the Supreme Court in Jefferson City), so the new office would be conveniently located to the appellate court, while also reducing the travel time associated with a majority of the post-conviction cases in southwest Missouri. As expected, given the fact that Springfield is Missouri's third most populated city and Joplin is not far behind, the southwest region of the state accounts for a significant number of the post-conviction cases currently overloading the Central PCR office. Creating an additional appellate/pcr office in Springfield will siphon these cases off the Columbia office, provide better service to the clients and courts in Southwest Missouri while reducing travel costs and freeing up time for the Columbia Central PCR attorneys to better handle the workload in the remainder of Missouri's outstate counties.

Current PCR County Assignments



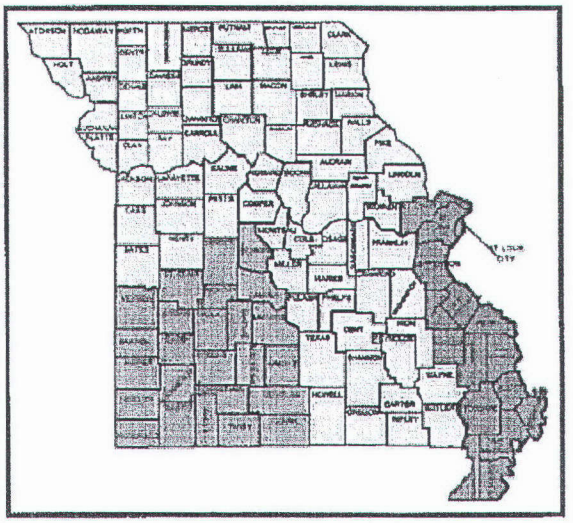
Post Conviction Relief - Trials
(Circuit Court Level)

Central PCR
District 67

Eastern Appellate/PCR
Districts 51 & 68

Western Appellate/PCR
Districts 52 & 69

Proposed PCR County Assignments



Post Conviction Relief - Trials
(Circuit Court Level)

Central PCR
District 67

Eastern Appellate/PCR
Districts 51 & 68

Western Appellate/PCR
Districts 52 & 69

Proposed PCR Office
District 66

Mo. State Public Defender Cumulative Caseload Metrics

Fiscal Year 2016

Start Date 7/1/2015
End Date 6/30/2016

*[Withdrawn/Conflict cases closed in the same month they were opened]

Area	Area Name	#Attys	Cases Initiated	Minus Cases w/drawn	Net New Cases	Net Case Units (RD)	Travel & Court Time (Time Log)	Workload (Units + Travel & Ct Time)	Capacity	Percent of Capacity	Rank
35	Kennett	5	1,728	202	1,526	32,260.60	2,257.67	34,518.27	10,400	331.9%	1
15	Sedalia	7	2,266	210	2,056	42,217.80	2,882.75	45,100.55	14,560	309.8%	2
17	Harrisonville	8	2,559	164	2,395	47,209.60	4,170.42	51,380.02	16,640	308.8%	3
31	Springfield	20	6,161	301	5,860	116,211.80	9,204.50	125,416.30	41,600	301.5%	4
24	Farmington	10	2,763	118	2,645	57,788.80	3,761.50	61,550.30	20,800	295.9%	5
23	Hillsboro	5	1,730	150	1,580	28,516.60	1,839.17	30,355.77	10,400	291.9%	6
38	Poplar Bluff	8	2,252	189	2,063	41,754.70	6,746.42	48,501.12	16,640	291.5%	7
25	Rolla	13	3,582	206	3,376	73,057.70	4,444.33	77,502.03	27,040	286.6%	8
39	Monett	7	1,924	233	1,691	37,372.10	2,993.42	39,765.52	14,560	273.1%	9
44	Ava	4	1,218	182	1,036	21,353.70	1,125.58	22,479.28	8,320	270.2%	10
14	Moberly	6	1,686	205	1,481	31,454.30	2,098.33	33,552.63	12,480	268.9%	11
26	Lebanon	7	2,280	270	2,010	36,599.90	2,517.58	39,117.48	14,560	268.7%	12
37	West Plains	5	1,342	200	1,142	25,981.40	1,960.08	27,541.48	10,400	264.8%	13
32	Jackson	12	2,908	267	2,641	60,921.50	4,239.92	64,861.42	24,960	259.9%	14
30	Bolivar	7	1,594	148	1,446	33,785.10	3,614.17	37,399.27	14,560	256.9%	15
13	Columbia	13	3,586	299	3,287	63,693.80	5,211.17	68,904.97	27,040	254.8%	16
19	Jefferson City	8	2,044	172	1,872	38,722.40	2,559.00	41,281.40	16,640	248.1%	17
10	Hannibal	5	1,370	159	1,211	23,899.20	1,779.08	25,678.28	10,400	246.9%	18
7	Liberty	12	3,173	155	3,018	55,963.00	6,292.75	61,255.75	24,960	245.4%	19
34	Caruthersville	5	1,188	225	963	23,620.00	1,789.00	25,409.00	10,400	244.3%	20
21	St. Louis County	20	4,273	263	4,010	89,943.60	11,148.67	101,092.27	41,600	243.0%	21
11	St. Charles	7	1,685	112	1,573	32,107.90	2,922.25	35,030.15	14,560	240.6%	22
12	Fulton	7	1,655	95	1,560	31,067.70	3,333.58	34,401.28	14,560	236.3%	23
20	Union	5	1,250	157	1,093	22,390.90	1,438.00	23,828.90	10,400	229.1%	24
43	Chillicothe	9	2,198	224	1,974	40,208.00	2,238.92	42,446.92	18,720	226.7%	25
28	Nevada	5	1,295	146	1,149	20,171.50	2,095.08	22,266.58	10,400	214.1%	26
29	Carthage	15	3,437	533	2,904	62,538.90	4,115.83	66,654.73	31,200	213.6%	27
4	Maryville	3	655	96	559	12,311.90	1,007.42	13,319.32	6,240	213.5%	28
45	Troy	5	1,074	99	975	20,005.70	2,126.33	22,132.03	10,400	212.8%	29
5	St. Joseph	8	1,962	130	1,832	31,851.30	2,892.92	34,744.22	16,640	208.8%	30
2	Kirksville	3	636	98	538	10,911.10	1,030.33	11,941.43	6,240	191.4%	31
22	St. Louis City	30	4,199	302	3,897	92,229.30	11,274.25	103,503.55	62,400	165.9%	32
16	Kansas City	34	4,437	344	4,093	100,049.10	15,464.92	115,514.02	70,720	163.3%	33
TRIAL DIVISION TOTAL		318	76,150	6,694	69,456	1,457,470.90	130,975.34	1,588,446.24	661,440	240.1%	
67	Columbia PCR	5	355	6	349	33,099.50	395.25	33,494.75	10,400	322.1%	1
52	Kansas City A Appellate/PCR	3	178	8	170	16,308.50	157.75	16,466.25	6,240	263.9%	2
69	Kansas City B Appellate/PCR	3	162	4	158	15,054.00	159.08	15,213.08	6,240	243.8%	3
68	St. Louis B Appellate/PCR	5	262	11	251	24,221.50	320.17	24,541.67	10,400	236.0%	4
50	Columbia Appellate	6.5	331	1	330	30,204.50	106.83	30,311.33	13,520	224.2%	5
51	St. Louis A Appellate/PCR	7	341	13	328	30,687.00	538.00	31,225.00	14,560	214.5%	6
Ap/PCR DIVISION TOTAL		29.5	1,629	43	1,586	149,575.00	1,677.08	151,252.08	61,360	246.5%	

Fiscal Year 2016 ASSIGNED CASES -
Trial & Appellate Division Caseload, Adjusted for Withdrawals, and Office Conflicts
MSPD to Retain All Cases That Are Not Conflicts
Does Not Include Capital or CDU

Type Code	Case Type	Trial & Appellate Division Cases	Adjusted for FY16 Withdrawn	1st Level Conflicts 41's, & 49's - Sending Office	1st Level Conflicts 41's, & 49's - Receiving Office	Conflicts Assigned to Private Counsel 42's & 44's	Trial & Appellate Adjusted Caseload NO CONFLICTS	RubinBrown Hours Required for Case Type	FY16 Required Hours
15	Murder 1st Degree	147	(28)	(24)	(24)	(10)	61	106.60	6,503
20	Other Homicide	133	(22)	(23)	(23)	(1)	64	106.60	6,822
30D	AB Felony Drug	2,704	(348)	(475)	(475)	(135)	1,271	47.60	60,500
30F	AB Felony Other	4,277	(548)	(611)	(611)	(146)	2,361	47.60	112,384
30X	AB Felony Sex	677	(99)	(55)	(55)	(7)	461	63.80	29,412
35D	CD Felony Drug	10,006	(764)	(1,261)	(1,261)	(294)	6,426	25.00	160,650
35F	CD Felony Other	22,357	(3,783)	(2,329)	(2,329)	(477)	15,439	25.00	385,975
35X	CD Felony Sex	300	(29)	(20)	(20)	(1)	230	63.80	14,674
45M	Misdemeanor	13,557	(625)	(1,072)	(1,072)	(191)	10,597	11.70	123,985
45T	Misdemeanor - Traffic	2,057	(160)	(94)	(94)	(17)	1,692	11.70	19,796
50N	Juvenile - Non Violent	912	(34)	(112)	(112)	(19)	635	19.50	12,383
50S	Juvenile - Status	81	(5)	(6)	(6)	(1)	63	19.50	1,229
50V	Juvenile - Violent	625	(50)	(70)	(70)	(6)	429	19.50	8,366
60	552 Release Petitions	9	(9)				0	0.00	0
65F	Probation Violation - Felony	14,880	(706)	(675)	(675)	(115)	12,709	9.80	124,548
65M	Probation Violation - Misd	3,350	(128)	(181)	(181)	(17)	2,843	9.80	27,861
75	Special Writ	10					10	0.00	0
110F	Direct Appeals - Felony	396	(1)	(3)	(3)		389	96.50	37,539
110J	Direct Appeal - Juvenile	3					3	96.50	290
110S	Direct Appeal - Misdemeanor	21					21	96.50	2,027
124A	Rule 24.035 Appeal	168					168	96.50	16,212
124M	Rule 24.035 Motion	547		(15)	(15)	(1)	516	96.50	49,794
129A	Rule 29.15 Appeal	213		(4)	(4)		205	96.50	19,785
129M	Rule 29.15 Motion	262		(17)	(17)	(2)	226	96.50	21,809
Other	Other	98	(9)	(20)	(20)		49	0.00	0
	Totals	77,790	(5,348)	(7,067)	(7,067)	(1,440)	56,868	Case Hours	1,242,538

Trial and Appellate Division - Case Standards - 2016 Attorney Calculation Assuming All Trial Division Conflicts to Private Counsel Appellate PCR's Remain with Public Defender System	
From Time Log - Attorney Travel Time Per Year	47,812.5
From Time Log - Attorney In Court Time	129,094.5
Case Hours Required Per ABA/RubinBrown Study - January 2014	1,242,538.4
Total Attorney Hours Required Per Year	1,419,445.4
Attorney Hours Available Per Year	2,080.0
Number of Attorneys Required	682.4
Current Number of Trial & Appellate Division Attorneys (Authorized FTE)	349.5
Number of Attorneys Needed to meet RubinBrown Standard	332.9

Note: These figures do not include juvenile cases not represented by the public defender. 11.50 attorneys are requested in the Juvenile Advocacy decision item. In addition there are 10 FTE currently being restricted by Governor Nixon. The remaining 311 attorneys are requested in the Constitutionally Mandated Representation decision item.

Trial and Appellate Divisions Case Standards Assuming All Conflicts to Private Counsel RubinBrown	
COST BREAKDOWN	TOTAL COSTS
Personal Service	
Assistant Public Defender III - Range 30	311.00
$52,116	$16,208,076
Legal Assistants - Range 15	104.00
$25,536	$2,655,744
	415.00
Total Personal Service	$18,863,820
Expense & Equipment	
One-time Purchases	
Attorney Package	311.00
$2,855	$887,905
Legal Assistant Package	104.00
$2,885	$300,040
Total One-Time Purchases	$1,187,945
On-Going Costs	
Attorneys	311.00
$6,600	$2,052,600
Legal Assistant	104.00
$4,775	$496,600
Total Personnel Related On-Going Costs	$2,549,200
Total Expense and Equipment	$3,737,145
Total Decision Item Request	$22,600,965

Position Cost Detail for New FTE's

One Time Equipment Purchase	
Attorneys	
Desk	$540
Chair	$175
Side Chair (2)	$250
Bookcase	$215
File Cabinet (2)	$225
Telephone	$275
Laptop w/ Docking Station	$960
PC Software	$215
	$2,855
Support Staff	
Desk	$540
Chair	$175
Side Chair (2)	$250
Camera	$190
Digital Recorder	$185
File Cabinet (2)	$225
Telephone	$225
Laptop w/ Docking Station	$960
PC Software	$215
	$2,885

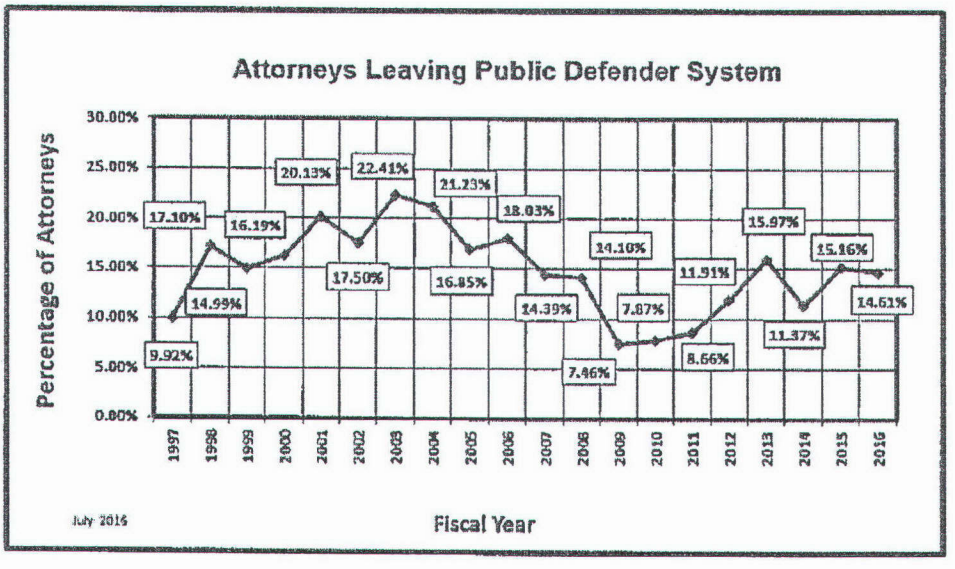
Detail for Projections On-Going Costs - Trial & Appellate Divisons	
Attorneys	
Travel @ $250 per month	$3,000
Office	$500
Rent	$1,900
Phone & Network Communications	$1,200
	$6,600
Legal Assistants/Investigators	
Travel @ $125 per month	$1,500
Office	$175
Rent	$1,900
Phone & Network Communications	$1,200
	$4,775

COMPREHENSIVE COMPENSATION STRUCTURE **$728,805**

Employee retention and recruitment is essential to the Missouri State Public Defender System's ability to meet its constitutional mandate to provide effective representation, especially in light of the fact that it is operating at less than one half the attorneys and one quarter the support staff needed for its caseload. Further, MSPD must be able to retain the employees it does have in order to avoid the back-load that occurs to the existing high caseloads when attorneys move on to other jobs.

Without moving somewhat closer in salary parity to prosecuting attorneys, MSPD cannot recruit or retain employees. The resulting revolving door, as evidenced by our increasingly high turnover rate, which increased from 11.37 % in 2014 to 15.16% in 2015. The rate remains at unacceptable 14.61%. makes it more likely that innocent persons will be incarcerated, that clients will languish in jail waiting until someone can get to their cases, and that non-violent offenders will be unnecessarily sent to prison, all at an extraordinarily high cost to Missouri's citizens, a much higher cost than what it would take to provide salary parity and greater retention for our employees. Every time an attorney leaves, his or her cases are reassigned and an already overloaded attorney adds the case to his or her existing backlog. With MSPD operating at one quarter the support staff needed, it also is critical that MSPD is able to retain the existing investigators, paralegals, legal assistants, mitigation specialists, and other clerical staff.

A comprehensive compensation structure, with some minor adjustments to existing salaries, will provide the needed promotion tracks to retain attorneys throughout their career.



Assistant Public Defenders					
Job Title	Current # of FTE	Proposed # of FTE	FY17 Salary	Proposed Salary	Cost
Assistant Public Defender I	58.00		$39,708		$2,303,064
Assistant Public Defender I		58.00		$42,708	$2,477,064
Assistant Public Defender I Salary Adjustment Cost					$174,000
Assistant Public Defender II	95.00		$46,992		$4,464,240
Assistant Public Defender II		95.00		$48,156	$4,574,820
Assistant Public Defender II Salary Adjustment Cost					$110,580
Assistant Public Defender III	56.00		$52,116		$2,918,496
Assistant Public Defender III		56.00		$54,288	$3,040,128
Assistant Public Defender III Salary Adjustment Cost					$121,632
Assistant Public Defender IV	115.50		$63,912		$7,381,836
Assistant Public Defender IV		40.50		$62,664	$2,537,892
Assistant Public Defender IV Salary Adjustment Cost					-$4,843,944
Assistant Public Defender V	0.00		$0		$0
Assistant Public Defender V		60.00		$65,364	$3,921,840
Assistant Public Defender V Salary Adjustment Cost					$3,921,840
Assistant Public Defender VI	0.00		$0		$0
Assistant Public Defender VI		15.00		$71,100	$1,066,500
Assistant Public Defender VI Salary Adjustment Cost					$1,066,500
Total FTE	324.50		Total Decision Item Cost		$550,608

District Defenders Deputy District Defenders					
Job Title	Current # of FTE	Proposed # of FTE	Average FY17 Salary	Proposed Salary	Cost
Deputy District Defender	11.00		$69,605		$765,655
Deputy District Defender I		4.00		$68,160	$272,640
Deputy District Defender II		4.00		$71,100	$284,400
Deputy District Defender III		3.00		$74,304	$222,912
		11.00			$779,952
Deputy District Defender Salary Adjustment Cost					$14,297
District Defender	43.00		$74,600		$3,207,800
District Defender I		20.00		$74,304	$1,486,080
District Defender II		19.00		$81,036	$1,539,684
District Defender III		4.00		$86,484	$345,936
					$3,371,700
District Defender Salary Adjustment Cost					$163,900
Total FTE	54.00		Decision Item Cost		$178,197

JUVENILE ADVOCACY OFFICES **$1,055,751**

In the Spring of 2013, the National Juvenile Defender Center issued an assessment of Missouri's system of juvenile indigent defense representation. The report was part of a national strategy to review state juvenile indigent defense delivery systems and to evaluate how effectively attorneys in juvenile court are fulfilling their constitutional and statutory obligations to their clients.

The study concluded that "Missouri's indigent defense system is in crisis and has endured at least two decades of crushing caseloads and inadequate resources to provide its mandated services," and little to no attention has been paid to what this crisis has meant to poor children accused of a criminal offense. Specifically, it found that:

> "children facing criminal or status offenses in Missouri's juvenile justice system frequently do so without the benefit of counsel or without adequate representation through all critical stages. There are significant gaps in both access to and quality of representation provided to youth that fall well below the standards established by the Institute of Judicial Administration and American Bar Association's *Juvenile Justice Standards*, the ABA *Rules of Professional Conduct*, the *Ten Core Principles for Juvenile Indigent Defense* established by NJDC and NJDS's newly release *National Juvenile Defense Standards*. Justice is often rationed to juveniles in Missouri for a variety of reasons, not the least of which is the crisis in the public defender system...."

4,000 JUVENILES WENT WITHOUT REPRESENTATION IN ONE YEAR

Utilizing data provided from the Office of the State Court's Administrator, there were 14,342 formal juvenile cases filed statewide in 2012 (the last year that OSCA has provided MSPD with numbers), of which 7,836 were abuse/neglect cases, leaving 6,506 juvenile cases where the juvenile was entitled to an attorney. Of the 6,506 juveniles, only 13% were actually represented by private counsel. That leaves 5,660 juvenile cases where the juvenile needed a public defender. However, in that same year, MSPD provided representation in just 1,923 juvenile cases.

As a result of this finding, the Missouri Juvenile Justice Association is seeking a rule or statutory change to prohibit the waiver of counsel by juveniles (this need has become even more so given the Department of Justice's findings in its recent report on St. Louis County). In the meantime, they have asked MSPD to pursue the reinstatement of the two Juvenile Advocacy Units, one in the Kansas City area and one in the greater St. Louis area. (MSPD previously had these units, but had to relinquish them when trial division caseloads became too high and no additional personnel were added,)

These specialized units not only better serve juvenile clients, they also provide a resource and expertise for those providing juvenile representation throughout the state. This will become even more essential if waiver of counsel in these cases is eliminated and more public defenders and inexperienced private attorneys are appointed to provide juvenile defense representation.

MSPD is requesting juvenile attorney staffing at the recommended RubinBrown workload standards. MSPD is also seeking one additional attorney in each office to represent juveniles certified to stand trial as an adult and to serve as a statewide juvenile resource attorney to assist local offices across the rest of the state.

Church, et al v. State of Missouri, et al
DFs - 001530

Missouri State Public Defender JUVENILE CASELOAD				
ST. LOUIS AREA - FY2016 Actual Juvenile Cases Handled				
St. Louis City	300			
St. Louis County	314			
St. Charles	59			
Total Number of Cases	673			
* RubinBrown/ABA Hours	19.50		*Does Not Include Travel	
Hours Required	13,123.50		or Court Time	
/ Hours per Attorney Per Year	2,080.00			
	6.31			
Statewide Juvenile Resource Attorney	1.00			
Total Attorneys Requested	7.31	(Round to 7.50)		
Job Titles	FTE	Salary	Cost	
District Defender	1.00	$72,528	$72,528	
Assistant Public Defenders III	6.50	$52,116	$338,754	
Juvenile Dispositional Specialist	1.00	$36,924	$36,924	
Legal Assistant	1.00	$25,536	$25,536	
Investigator	1.00	$30,576	$30,576	
Secretary	1.00	$27,768	$27,768	
TOTAL PERSONAL SERVICE	11.50			$532,086
Travel & Parking				
$95/ mo * 12 * 12 = Parking			$13,680	
$200/ mo * 12 * 8.50 = Mileage			$16,800	
Supplies			$3,000	
Professional			$7,500	
Telephone $90 * 11.50			$1,035	
Network Costs $450 * 12 months			$5,400	
Postage $300 * 12 months			$2,400	
Building Costs			$48,750	
TOTAL EXPENSE & EQUIPMENT				$98,565
TOTAL COSTS ST. LOUIS AREA				$630,651

Missouri State Public Defender JUVENILE CASELOAD				
JACKSON COUNTY - FY2016 Actual Juvenile Cases Handled				
Jackson County	228.00			
* RubinBrown/ABA Hours	19.50		*Does Not Include Travel	
Hours Required	4446.00		or Court Time	
/ Hours per Attorney Per Year	2080.00			
	2.14			
Statewide Juvenile Resource Attorney	1.00			
Total Attorneys Requested	3.14	(Round to 4)		
Job Titles	FTE	Salary	Cost	
District Defender	1.00	$72,528	$72,528	
Assistant Public Defenders III	3.00	$52,116	$156,348	
Juvenile Dispositional Specialist	1.00	$36,924	$36,924	
Legal Assistant	1.00	$25,536	$25,536	
Investigator	1.00	$30,576	$30,576	
Secretary	1.00	$27,768	$27,768	
TOTAL PERSONAL SERVICE	8.00			$349,680
Travel & Parking				
$65/ mo *12*8 = Parking			$6,240	
$125/ mo *12*6 = Mileage			$9,000	
Supplies			$2,500	
Professional			$7,500	
Telephone $90 *12			$1,080	
Network Costs $450 * 12			$5,400	
Postage $100 * 12			$1,200	
Building Costs			$42,500	
TOTAL EXPENSE & EQUIPMENT				$75,420
TOTAL COSTS JACKSON COUNTY				$425,100
TOTAL COSTS FOR EXISTING JUVENILE CASES ST. LOUIS AREA & JACKSON COUNTY				**$1,055,751**

FSLA OVERTIME REGULATIONS **$70,008**

The Department of Labor (DOL) issued the final regulations making changes to overtime exemptions under the Fair Labor Standards Act (FLSA). The new employee salary threshold is slated to be set at $47,476/year. The prior salary threshold was $23,660. The new salary threshold will encompass several MSPD employees that are currently classified as exempt.

There is an automatic escalator every three years in the minimum salary level for exempt employees. Employers must comply with the new rule by Dec. 1, 2016.

Below is a spreadsheet analyzing the impact of potential changes on MSPD.

Classification	Annual Salary As of 7/1/16	Annual Cost To Adjust To FLSA Threshold Of $47,476
Support Services Coordinator I	$36,924.00	$10,552.00
Support Services Coordinator II	$39,708.00	$7,768.00
Mitigation Specialist I	$38,304.00	$9,172.00
Mitigation Specialist I	$36,924.00	$10,552.00
Mitigation Specialist I	$38,304.00	$9,172.00
Mitigation Specialist II	$41,184.00	$6,292.00
Mitigation Specialist II	$43,560.00	$3,916.00
Mitigation Specialist II	$41,184.00	$6,292.00
Mitigation Specialist II	$41,184.00	$6,292.00
	$357,276.00	$70,008.00

The FLSA regulation does not apply to employees who are licensed attorneys. As a point of interest, there are 153 MSPD attorney staff whose salaries fall below the threshold amount of $47,476. To bring these 153 attorneys to the minimum threshold would cost $496,524.

Assistant Public Defenders					
Job Title	Current # of FTE	Proposed # of FTE	FY17 Salary	Proposed Salary	Cost
Assistant Public Defender I	58.00		$39,708		$2,303,064
Assistant Public Defender I		58.00		$47,476	$2,753,608
Assistant Public Defender I Salary Adjustment Cost					$450,544
Assistant Public Defender II	95.00		$46,992		$4,464,240
Assistant Public Defender II		95.00		$47,476	$4,510,220
Assistant Public Defender II Salary Adjustment Cost					$45,980
Total FTE	#REF!	Total Decision Item Cost			$496,524

Missouri Public Defender - General Revenue Budget History	
Unrestricted General Revenue Budget Fiscal Year 2017	$37,997,581
General Revenue Budget Fiscal Year 2009	$34,069,815
Increase over 8 Year (since Fiscal Year 2009)	$3,927,766
Pay Grade Adjustment	$381,480
Cost of Living Adjustments to All State Employees	
FY13	$401,433
FY14	$215,909
FY15	$276,878
FY16	$154,339
FY17	$575,571
Missouri Bar Dues Increase	$33,435
Net Increase Available for Legal Representation	$1,888,721
% Increase to be applied to indigent legal representation	5.54%
JUST to keep up with the CPI, (12.35% increase) the FY2009 Appropriation of $37,997,581 would need to be $38,278,339. The unrestricted FY2017 Appropriation falls short by over a quarter of a million ($280,758)	
Other Facts	
Total Number of Cases Opened Fiscal Year 2016	80,755
Total Number of Cases Opened Fiscal Year 2015	73,598
Increase from FY2015 to FY2016	7,157
% Increase from FY2015 to FY2016	9.72%
FY2016 Average Costs of "experts" per all disposed cases, including capital, CDU, Trial and Appellate	$44.20
FY2016 average direct cost per all disposed cases, including capital, CDU, Trial and Appellate	$434.69
FY2016 average direct cost per all disposed cases, Trial Division ONLY	$355.87
FY2016 expenditures to the private bar for Conflict Cases	$2,143,298
Number of Cases Contracted	2,893
Cost per Private Bar Contract Case	$740.86
FY2016 - $'s Transferred from Personal Service to Expense & Equipment to fund case costs, such as expert witnessess	$912,845
% of Personal Service Budget	3.17%

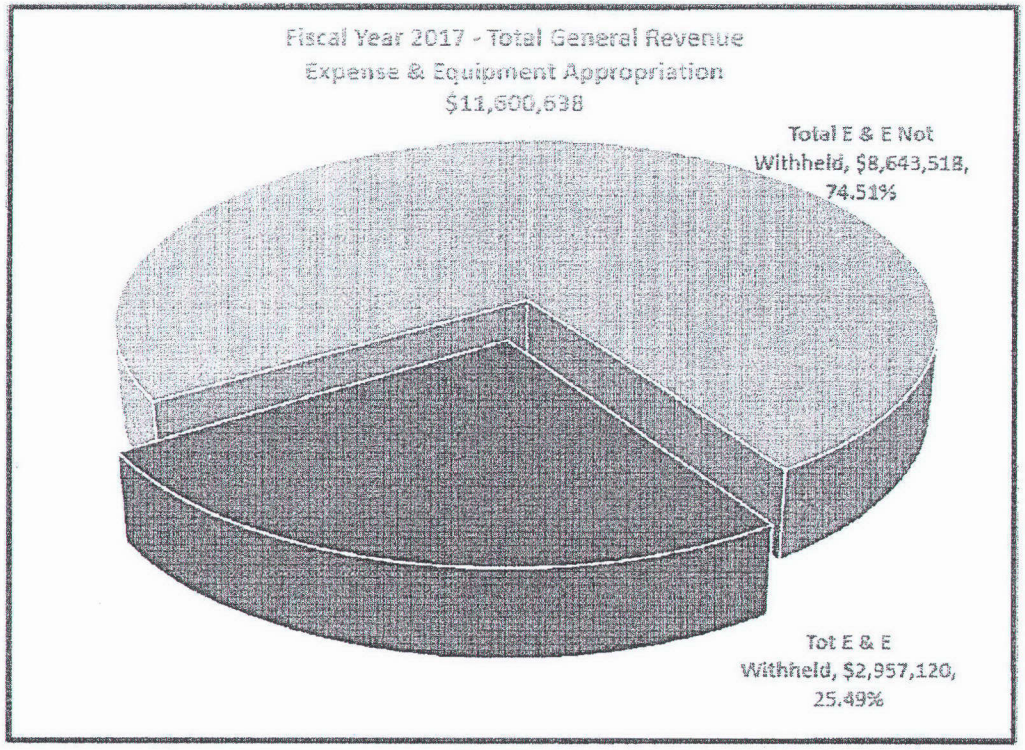
State Public Defender
General Revenue Appropriations

Fiscal Year	Description	Amount	Total Amount
2009	Public Defender PS	$26,373,051	
	Public Defender EE	$4,305,262	
	Extraordinary Expenses Homicide/Conflict	$3,391,502	
Total FY 2009			$34,069,815
2017	Public Defender PS	$29,875,223	
	Public Defender EE	$7,901,287	
	Extraordinary Expenses Homicide/Conflict	$3,721,071	
Total FY 2017 (Current Withheld = $3,500,000) Available =$37,997,581			$41,497,581
(Current Withheld = $3,500,000) Available =$37,997,581			

Increases/Decreases		$7,427,766
Withhold		$3,500,000
Net Increase From 2009-2017		$3,927,766
FY10 - 12 FTE for Contracts (FTE to Replace Contract $'s)	$569,248	
FY10 Successful Retention	$381,480	
FY10 Litigation/Conflicts	-$833,443	
FY11 Caseload Growth	$500,000	$250,000 Not released
FY13 General Structure Adjustment	$401,433	
FY13 Conflict Counsel	$1,163,012	
FY14 Pay Plan & Cost To Continue PY Plan	$215,909	
FY14 Court Reporters	-$530,096	
FY14 OSCA Pilot Project	-$700,000	
FY15 Pay Plan & Cost to Continue PY Plan	$276,878	
FY15 Missouori Bar Dues Increase	$33,435	
FY15 Money Transferred back from OSCA	$700,000	
FY15 Conflicts	$3,472,238	Veto Override $2,972,238 Not Released
FY16 Core Cut	-$3,472,238	
FY16 Cost to Continue FY15 Pay Plan	$154,339	
FY17 Representation Costs	$4,500,000	$3,500,000 Not Released
FY17 Pay Plan	$575,571	
Total Increase over 8 Fiscal Years	$7,427,766	21.80%
Total Increase over 8 Fiscal Years Less Current Withhold	$3,927,766	11.53%

Using CPI from Costs from 2009 to 2016
Appropriations would need to be $38,150,976 to keep up with inflation.
MSPD's FY2017 Appropriation Available (Not Withheld) is $37,997,581.

Pay Plans	-$1,624,130	
Increase Net of Pay Plans	$8,803,636	
Current Withhold	-$3,500,000	
Net Current Increase	$2,303,636	
% of GR Increase Since 2009 Not Including Pay Plans	6.76%	
Not toward Core	$2,039,045	
Not Released	$3,500,000	
TOTAL NOT AVAILABLE	$5,539,045	
NET OVER INCREASE OVER 8 YEARS	$1,888,721	
DIVIDED BY FY2009 APPROPRIATION	0.055436785	


Fiscal Year 2017 - Total General Revenue
Expense & Equipment Appropriation
$11,600,638
Total E & E Not Withheld, $8,643,518, 74.51%
Tot E & E Withheld, $2,957,120, 25.49%

Budget Comparisons All Funds			
Fiscal Year	Department of Corrections	Public Defender	PD % of DOC
2017	$733,417,859	$45,808,524 [2]	6.25%
2016	$710,168,328	$38,330,303	5.40%
2015	$725,156,473	$42,847,492 [1]	5.91%
2014	$677,401,536	$38,363,840	5.66%
2013	$667,334,020	$39,427,497	5.91%
2012	$659,727,330	$37,812,363	5.73%
2011	$660,034,212	$37,812,363	5.73%
2010	$664,563,452	$37,312,363	5.61%
2009	$670,076,613	$37,175,078	5.55%
2008	$624,098,904	$35,927,777	5.76%
2007	$638,347,220	$33,851,151	5.30%
2006	$567,748,920	$30,556,416	5.38%
2005	$573,982,419	$30,556,416	5.32%
2004	$527,941,674	$29,452,608	5.58%
	2004 = Estimate		

Notes: #1 - FY2015 PD $2,972,238 Withheld and Not Released by the Governor

#2 - FY2016 PD $3,500,000 Withheld and Not Released by the Governor

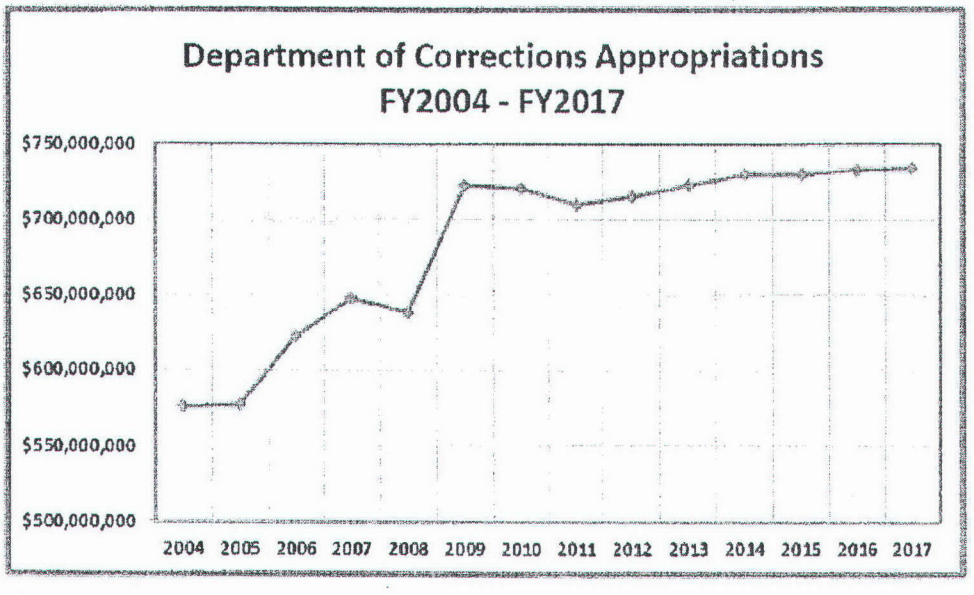


Exhibit U

MISSOURI STATE PUBLIC DEFENDER SYSTEM

Fiscal Year 2018

APPROVED—October 25, 2017

Supplemental Legislative Budget Request

Michael Barrett, Director
Commission Meeting

October 25, 2017

Prepared by:

Kathleen L. Lear, Comptroller

EXHIBIT
50
12-2017
PENGAD 800-631-6989

CASELOAD RELIEF—Supplemental Request
ALL TRIAL DIVISION CONFLICT CASES CONTRACT TO SPECIAL PUBLIC DEFENDERS

FY2018 Supplemental for Conflicts	**$858,842**
FY2018 Supplemental for Overload	**$1,587,083**
Total Supplemental	**$2,445,925**

This option presumes that:

1. All Trial Division conflict cases are contracted out to special public defenders in FY2018
2. 1/3 of the overload cases for both the Trial and Appellate Divisions are contracted to special public defenders for 2 months of FY2018.
3. Current contract fee amounts to private counsel remain flat;
4. Caseload, and the percentage of cases that have conflicts, remain relatively flat from Fiscal Year 2017 to FY2018;

Contracting All Trial Division Conflict Cases:

Currently, when a case involves multiple defendants, there is always the risk that one will point a finger at the other. Therefore, the local defender office can only represent one co-defendant and any other co-defendants must be represented elsewhere, either by another defender office or by a special public defender on contract for representation. Historically, MSPD has sent the first co-defendant to another defender office and contracted out additional co-defendants to special public defenders. However, this in- house handling of trial division first level conflict cases is not a cost-effective approach because it pulls lawyers out of their primary jurisdictions and requires them to drive significant distances to appear in court, conduct investigations, witness interviews and depositions, visit their clients in jail, all in a distant county. It is not uncommon for each trip to take a day of the attorney's time to deal with one or two cases. Instead, economies of scale suggest it is more cost-effective and efficient to contract all trial level conflict cases to local attorneys as special public defenders and allow the defender offices to concentrate on effectively representing the cases that arise within the counties they are designated to serve.

At present, MSPD uses the fee schedule on the following page for cases contracted out to special public defenders. Litigation expenses (the cost of transcripts, investigation, experts, or depositions) are not included in these fees but are approved on a case-by-case basis. Such costs would be incurred by MSPD whether the case was being handled internally or by a contracted special public defender.

Given the assumptions set out, the cost of contracting out all Trial Division conflict cases to special public defenders would run a little over $7.126 million. Since our Fiscal Year 2018 appropriation for this purpose is $2,845,920 plus $3,421,988 in Legal Services (Total $6,267,908), contracting out all conflict cases would require an additional $858,842, for both FY2018 and FY2019 as shown in the table on the following pages.

In Fiscal Year 2018, the Missouri State Legislature and the Governor, provided an additional $4,421,988 unrestricted funds for the purpose of contracting out all conflicts to private attorneys. Due to 6.25% caseload increase from Fiscal Year 2016 to Fiscal Year 2017 and due to the fact that are simply more conflicts, an additional $858,842 is needed to be able to contract out all conflicts for this current fiscal year and continuing into FY2019.

Due to required and desired compliance to the Rules of Professional Conduct regarding excessive Public Defender caseloads, MSPD is requesting funding to contract out one-third of the overload to special public defenders bar.

In the Trial Division, in Fiscal Year 2017, initiated 40,858 cases over the Ruben Brown calculated caseload capacities. The Appellate Division initiated 1,249 cases over the appellate standards.

Using the FY17 case type percentages, and applying these percentages to the overages, it can be determined the number of each case type that would be included in the overload. When the MSPD contract fee rates are applied to the number of cases, a cost of contacting the overload can be derived.

This supplemental request was calculated for funding two months of the overloads. But there are simply not enough panel attorneys (Special Public Defenders) in the state to take the 6,809 Trial Division and the 208 Appellate Division cases initiated in these two months. Therefore, MSPD is requesting 1/3 or the calculated costs of contracting out the overload for this two month period.

Missouri State Public Defender
Special Public Defender - Panel Attorney
Fee Schedule

Case Type	Description	Contract Rates
15	Murder 1st Degree	$10,000
62	Sexual Predator Trial	$8,000
20	Other Homicide	$6,000
30D	AB Felony Drug	$750
30F	AB Felony Other	$1,500
30X	AB Felony Sex	$2,000
35D	CDE Felony Drug	$750
35F	CDE Felony Other	$750
35X	CDE Felony Sex	$1,500
45M	Misdemeanor	$375
50N	Juvenile - Non Violent	$500
50V	Juvenile - Violent	$750
65	Probation Violation	$375
110F	Direct Appeals - Felony	$3,750
110S	Direct Appeal - Misdemeanor	$3,750
124A	Rule 24.035 Appeal	$500
124M	Rule 24.035 Motion	$500
	Rule 24.035 Evidentiary Hearing	$250
129A	Rule 29.15 Appeal	$1,875
	Rule 29.15 Evidentiary Hearing	$500
129M	Rule 29.15 Motion	$1,000

Note: MSPD will pay additional compensation in cases resolved by Trials

Jury Trial $1,500 for the first day and $750 for each additional day
Bench Trial $750 per day - prorated

This table shows the calculations for the "Conflict" Cases for both FY17 and FY18.

FY2017 CONFLICT CASES - Trial Division Does Not include Appellate, Capital or CDU				
Case Type	Description	Conflicts (41, 42, & 49's)	Contract Rates	Cost of Contracts
15	Murder 1st Degree	35	$10,000	$350,000
20	Other Homicide	42	$6,000	$252,000
30D	AB Felony Drug	545	$750	$408,750
30F	AB Felony Other	773	$1,500	$1,159,500
30X	AB Felony Sex	68	$2,000	$136,000
35D	CDE Felony Drug	1,914	$750	$1,435,500
35F	CDE Felony Other	3,029	$750	$2,271,750
35X	CD Felony Sex	26	$1,500	$39,000
45M	Misdemeanor	1,393	$375	$522,375
45T	Misdemeanor - Traffic	129	$375	$48,375
50N	Juvenile - Non Violent	142	$500	$71,000
50S	Juvenile - Status	4	$500	$2,000
50V	Juvenile - Violent	83	$750	$62,250
65F	Probation Violation - Felony	792	$375	$297,000
65M	Probation Violation - Misd	190	$375	$71,250
	Totals	9,165		$7,126,750
	Fiscal Year 2018 Contract Budget			-$6,267,908
	Additional Appropriation Required to Contract Out All Trial Division Conflicts			$858,842
ALL TRIAL CONFLICTS TO PRIVATE COUNSEL				

The next two tables show the calculations for the "Overload" cases for the Trial Division and the Appellate Division for a two month period. The total costs of the contracts would be $4,761,250. As there are not a sufficient number of panel attorneys (special public defenders) to take these cases, particularly for the fees paid , MSPD is requesting 1/3 or the calculated costs of contracting out the overload for this two month period or $1,587,083

Fiscal Year 2017 - Trial Division - Cases by Case Type							
Case Type	Description	Initiated Cases	% of Total Initiated	Applied to Cases Over Capacity 40,858	For 2 Months Remaining in FY2018	Contract Rate	Cost of Contracts For 2 Months
15	Murder - 1st Degree	161	0.2020%	82	14	$10,000	$140,000
20	Other Homicide	173	0.2170%	89	15	$6,000	$90,000
30D	A - B Felony Drug	2,065	2.5905%	1,058	176	$750	$132,000
30F	A - B Felony Other	4,284	5.3742%	2,196	366	$1,500	$549,000
30X	A - B Felony Sex	685	0.8593%	351	58	$2,000	$116,000
35D	C - D Felony Drug	12,189	15.2909%	6,247	1,041	$750	$780,750
35F	C - D Felony Other	23,095	28.9723%	11,837	1,973	$750	$1,479,750
35X	C - D Felony Sex	308	0.3864%	158	26	$1,500	$39,000
45M	Misdemeanor	13,689	17.1726%	7,016	1,169	$375	$438,375
45T	Misd. - Traffic	2,175	2.7285%	1,115	186	$375	$69,750
50N	Juvenile Non-violent	780	0.9785%	400	67	$500	$33,500
50S	Juvenile Status	156	0.1957%	80	13	$500	$6,500
50V	Juvenile Violent	620	0.7778%	318	53	$750	$39,750
60	Mental Health Release Petitions	9	0.0113%	5	1	$0	$0
65F	Probation Violation - Felony	15,487	19.4282%	7,938	1,323	$375	$496,125
65M	Probation Violation - Misd.	3,511	4.4045%	1,800	300	$375	$112,500
75	Special Writ	246	0.3086%	126	21	$0	$0
82	Appeal - Other	3	0.0038%	2	-	$0	$0
99	Unknown	78	0.0978%	40	7	$0	$0
		79,714	100.0000%	40,858	6809		$4,523,000

Fiscal Year 2017 - Appellate Division - Cases by Case Type							
Case Type	Description	Initiated Cases	% of Total Initiated	Applied to Cases Over Capacity 1,249	For 2 Months Remaining in FY2018	Contract Rate	Cost of Contracts For 2 Months
All Dp	Death Penalty	4	0.1924%	2	0		$0
110F, 110 I	Felony App	348	16.7388%	209	35	$3,750	$131,250
110S	Misd App	22	1.0582%	13	2	$3,750	$7,500
124M	Post Plea PCR	979	47.0899%	588	98	$500	$49,000
129M	Post Trial PCR	277	13.3237%	167	28	$1,000	$28,000
124A, 124SA 129A, 129SA	PCR Appeals	376	18.0856%	226	38	$500	$19,000
	Other	73	3.5113%	44	7	$500	$3,500
		2,079	100.0000%	1,249	208		$238,250

State Public Defender Cumulative Caseload Metrics - FISCAL YEAR 2017

Start Date: 07/01/2016
End Date: 06/30/2017

*[Withdrawn/Conflict cases closed within 30 days of being opened]

Area	Area Name	# Attys	Cases Initiated	Minus Cases w/drawn	Net New Cases	Net Case Units (RB)	Attorney Court Time (Estimated)**	Attorney Travel Time (Estimated)**	Workload (Units + Ct Time + Travel)	Capacity	Percent of Capacity	Rank
35	Kennett	6	2,076	331	1,745	37,473.00	2,228.67	1,004.49	40,706.16	12,480	326.2%	1
15	Sedalia	7	2,324	261	2,063	40,173.60	2,467.25	1,115.80	43,756.65	14,560	300.5%	2
39	Monett	7	2,205	381	1,824	39,601.80	2,383.17	1,188.24	43,173.21	14,560	296.5%	3
24	Farmington	10	2,921	257	2,664	55,524.50	3,682.00	1,596.27	60,802.77	20,800	292.3%	4
26	Lebanon	7	2,434	379	2,055	38,198.90	2,509.33	1,158.91	41,867.14	14,560	287.5%	5
17	Harrisonville	9	2,606	287	2,319	47,622.60	3,805.92	1,393.29	52,821.81	18,720	282.2%	6
32	Jackson	11	3,124	481	2,643	58,110.20	4,233.92	1,800.93	64,145.05	22,880	280.4%	7
44	Ava	4	1,242	183	1,059	21,542.70	1,060.08	660.02	23,262.80	8,320	279.6%	8
31	Springfield	21	6,055	453	5,602	110,622.40	9,149.00	1,458.56	121,229.96	43,680	277.5%	9
36	Poplar Bluff	8	2,144	286	1,858	36,818.50	6,722.92	1,537.27	45,078.69	16,640	270.9%	10
30	Bolivar	7	1,837	341	1,496	33,991.00	3,605.17	1,358.52	38,954.69	14,560	267.5%	11
23	Hillsboro	6	1,900	226	1,674	30,719.10	1,818.17	117.14	32,654.41	12,480	261.7%	12
21	St. Louis County	20	4,722	350	4,372	97,397.10	10,974.67	190.56	108,562.33	41,600	261.0%	13
11	St. Charles	8	2,211	196	2,015	39,785.60	2,742.92	504.27	43,032.79	16,640	258.6%	14
28	Nevada	5	1,574	213	1,361	23,978.90	1,892.08	580.58	26,451.56	10,400	254.3%	15
10	Hannibal	5	1,600	294	1,306	23,468.40	1,739.83	1,115.93	26,324.16	10,400	253.1%	16
25	Rolla	14	3,762	454	3,308	67,360.40	4,444.33	1,625.60	73,430.33	29,120	252.2%	17
12	Fulton	7	1,834	227	1,607	32,432.10	3,125.50	954.76	36,512.36	14,560	250.8%	18
37	West Plains	5	1,343	319	1,024	23,614.70	1,957.58	495.56	26,067.84	10,400	250.7%	19
7	Liberty	12	3,232	392	2,840	55,336.80	5,205.00	1,910.13	62,451.93	24,960	250.2%	20
20	Union	5	1,497	248	1,249	23,901.90	1,420.75	469.24	25,791.89	10,400	248.0%	21
14	Moberly	6	1,547	180	1,367	27,319.50	2,097.50	1,476.47	30,893.47	12,480	247.5%	22
13	Columbia	13	3,456	406	3,050	60,044.50	5,045.08	1,375.36	66,464.94	27,040	245.8%	23
34	Portageville	5	1,240	302	938	21,675.70	1,712.75	657.76	24,046.21	10,400	231.2%	24
5	St. Joseph	7	1,987	204	1,783	30,227.90	2,839.42	179.04	33,246.36	14,560	228.3%	25
4	Maryville	3	716	120	596	12,192.50	821.92	791.04	13,805.46	6,240	221.2%	26
29	Carthage	15	3,488	621	2,867	62,267.80	4,113.83	1,491.22	67,872.85	31,200	217.5%	27
19	Jefferson City	8	1,762	211	1,551	31,637.50	2,548.08	803.07	34,988.65	16,640	210.3%	28
43	Chillicothe	9	1,991	260	1,731	33,214.30	2,194.75	2,878.33	38,287.38	18,720	204.5%	29
45	Troy	5	1,027	123	904	18,068.40	2,096.33	431.88	20,596.61	10,400	198.0%	30
16	Kansas City	35	4,928	418	4,510	127,303.10	15,261.33	1,307.36	143,871.79	72,800	197.6%	31
2	Kirksville	3	667	184	483	9,831.20	1,002.00	627.67	11,460.87	6,240	183.7%	32
22	St. Louis City	30	4,262	455	3,807	89,515.10	11,179.25	1,313.85	102,008.20	62,400	163.5%	33
TRIAL DIVISION TOTAL		323	79,714	10,043	69,671	1,460,971.70	128,080.50	35,569.11	1,624,621.31	671,840	241.8%	
67	Columbia PCR	6	502	36	466	44,293.50	370.75	572.84	45,237.09	12,480	362.5%	1
51	St. Louis A	6	424	23	401	38,214.00	473.33	501.17	39,188.50	12,480	314.0%	2
68	St. Louis B	6	358	28	330	31,845.00	312.17	211.62	32,368.79	12,480	259.4%	3
69	Kansas City B Appellate/PCR	4	242	18	224	20,747.50	142.00	156.98	21,046.48	8,320	253.0%	4
52	Kansas City A Appellate/PCR	3	174	16	158	15,054.00	150.75	263.18	15,467.93	6,240	247.9%	5
50	Columbia Appellate	7	379	15	364	32,617.00	106.83	182.07	32,905.90	14,560	226.0%	6
Ap/PCR DIVISION TOTAL		32	2,079	136	1,943	182,771.00	1,555.83	1,887.86	186,214.69	66,560	279.8%	

** Court time estimated using fiscal year 2016 time log data. Travel time estimated using fiscal year 2016 expense report data

Exhibit V

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI
CENTRAL DIVISION

SHONDEL CHURCH, et al.,)
)
Plaintiffs,)
)
vs.) Case No.
) 17-04057-CV-C-NKL
STATE OF MISSOURI, et al.,)
)
Defendants.)

VIDEO-RECORDED DEPOSITION OF JOEL R. ELMER
TAKEN ON BEHALF OF THE PLAINTIFFS
OCTOBER 4, 2017

(Starting time of the deposition: 1:10 p.m.)

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(The original exhibits were retained by the court reporter to be attached to the original and copies of the transcript.)

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI
CENTRAL DIVISION

SHONDEL CHURCH, et al.,)
)
Plaintiffs,)
)
vs.) Case No.
) 17-04057-CV-C-NKL
STATE OF MISSOURI, et al.,)
)
Defendants.)

VIDEO-RECORDED DEPOSITION OF JOEL R. ELMER, produced, sworn and examined on October 4, 2017, between the hours of one o'clock in the afternoon and five o'clock in the afternoon of that day, at ACLU of Missouri Foundation, Suite 1130, 906 Olive Street, St. Louis, Missouri 63101, before William L. DeVries, a Certified Court Reporter (MO), Registered Diplomate Reporter, and Certified Realtime Reporter, in a certain cause now pending in the United States District Court, Western District of Missouri, Central Division, between SHONDEL CHURCH, et al., Plaintiffs, vs. STATE OF MISSOURI, et al., Defendants; on behalf of the Plaintiffs.

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IT IS HEREBY STIPULATED AND AGREED by and between counsel for the Plaintiffs and counsel for the Defendants that this deposition may be taken in shorthand by William L. DeVries, RDR/CRR, a Certified Court Reporter and Certified Shorthand Reporter, and afterwards transcribed into typewriting; and the signature of the witness is expressly reserved.

* * * * *

JOEL R. ELMER,

of lawful age, produced, sworn and examined on behalf of the Plaintiffs, deposes and says:

(Starting time of the deposition: 1:10 p.m.)

VIDEOGRAPHER: We're on the record. Today's date is October 4th, 2017, and the time is approximately 1:10 p.m. This is the video-recorded deposition of Joel R. Elmer in the matter of Shondel Church, et al., versus State of Missouri, et al., Case Number 17-04057-CV-C-NKL, in the United States District Court for the Western District of Missouri, Central Division.

This deposition is being held at ACLU of Missouri Foundation in St. Louis, Missouri. The reporter's name is Bill DeVries. My name is John Niehaus. I'm the legal videographer. We are with

Midwest Litigation Services.

Will counsel please introduce yourself for the record?

MR. SHAHABIAN: Matt Shahabian for the plaintiffs.

MR. WILLIAMSON: Jason Williamson for the plaintiffs.

MR. RAMSEY: Steven Ramsey for the State of Missouri and Governor Eric Greitens.

MR. QUINLAN: Michael Quinlan for the State of Missouri and Governor Eric Greitens.

MS. SHIPMA: Jacqueline Shipma for MSPD.

VIDEOGRAPHER: Can you please swear in the witness?

COURT REPORTER: Do you swear or affirm that the testimony you are about to give in this proceeding will be the truth, the whole truth, and nothing but the truth?

THE WITNESS: Yes.

EXAMINATION

QUESTIONS BY MR. SHAHABIAN:

Q. Good morning, Mr. Elmer. I know we met outside, but just introduce myself again, my name is Matt Shahabian. I'm an attorney representing the

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plaintiffs in this case, and I'll be asking you some questions for your deposition here today. Have you ever been deposed before?

A. I don't believe so.

Q. Okay. So let's just go over a few ground rules. If you could listen to my question and wait for me to finish before answering, that would be great for both me and for our court reporter here. If you do not understand my questions, please ask me to clarify.

If you would like, we have seven hours scheduled for this deposition. I do not think we're going to need anywhere near seven hours, but if you'd like to take any breaks as we progress, please let me know. I just ask that if there's a question pending, you answer the question before we take a break. Do you understand those ground rules?

A. Yes.

Q. Great. Could you please tell us your title?

A. Deputy director, Missouri State Public Defender system.

Q. What is your role as the deputy director of the Missouri State Public Defender system?

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A. I am one of two deputy directors. The trial division director reports to me. Our operations director reports to me. Our IT director reports to me. And our case contracting manager director reports to me. So I oversee those persons. And I also handle any special projects assigned by the director.

Q. Who is the trial division director?

A. Ellen Blau.

Q. Who's the operations director?

A. Jane Duncan.

Q. And who is your IT director?

A. John Mullin.

Q. And the case contracting manager?

A. Maggie Johnston.

Q. How long have you been the deputy director of the Missouri State Public Defender system?

A. Since July 1st of 2014.

Q. What did you do before that?

A. I was a division director.

Q. What does it mean to be a division director?

A. At the time we had multiple division directors before our current structure. I had

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approximately ten offices that I oversaw the district defenders of those offices.

Q. How long were you a division director?

A. For about three and a half years.

Q. And you said that was before your current structure. Is there no longer a division director role at the MSPD?

A. Well, there's one division director. That's Ellen Blau.

Q. Okay. And how long have you been employed with the MSPD in any capacity?

A. First as a law student beginning in 1983 for a couple of years, and then beginning as an assistant public defender in 1987.

Q. So you've been there for over 30 years?

A. Yes.

Q. Congratulations. Do you have any other experience in criminal defense outside of your role as MSPD employee?

A. No. I mean, I was -- right after law school I clerked for the Missouri Supreme Court for two years, and of course criminal cases came before us, but obviously I wasn't practicing criminal defense.

Q. Do you understand that you're being

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deposed today as a representative of the Missouri State Public Defender system pursuant to Federal Rule 30(b)(6)?

A. Yes.

Q. What is your understanding of what it means to be a representative of the MSPD for purposes of this deposition?

A. My role is to answer the questions truthfully that are asked of me.

Q. Have you reviewed the notice of deposition in this case seeking a 30(b)(6) deposition of the MSPD?

A. I -- yeah, I reviewed it.

(Exhibit 1, Previously marked exhibit.)

Q. (By Mr. Shahabian) I'm handing you what's been premarked as Plaintiffs' 1. Is that the notice of deposition you reviewed?

A. Yes.

Q. And my understanding is you are prepared to testify to -- if you look at attachment A, you'll see a list of deposition topics, 13 of them numbered?

A. Yes.

Q. My understanding is you've been designated to testify on all but number 13, relating

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to the budget. Is that your understanding?
A. Yes.
Q. What did you do to prepare for your deposition today?
A. I did a little bit of review and I met with Ms. Shipma.
Q. Did you meet with anybody else?
A. Greg Mermelstein and Jane Duncan, and I believe that was it.
Q. Who is Jane Duncan?
A. She's the operations director.
Q. Apologies. My memory is a little slow at this age. Did you review any documents in preparation for this?
A. There's also a brief discussion that Michael Barrett was involved in too.
Q. Was anyone else involved in that discussion?
A. Ms. Shipma, Mr. Mermelstein.
Q. Did you review any documents in preparation for your testimony today?
A. I looked over our last annual report, the Missouri Project Report prepared by Missouri -- by RubinBrown. I looked at our last workload capacity reports. A couple of turnover reports that

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have been prepared by Jane Duncan. And I looked at some expenditure dollar numbers in our management databases.
Q. Do you know if the documents you reviewed have been produced to the plaintiffs in this case as part of discovery?
A. I -- I know some of them have. I can't tell you for sure if all of those have.
Q. Okay. So let's turn to some of the topics you're here to testify about. I'll try to run through these as quickly as possible. I'd like to start with the policies and procedures regarding the use of conflict counsel by the Missouri State Public Defender's office. Could you tell us generally how con -- the appointment of conflict counsel works in the Missouri State Public Defender system?
A. If an assistant public defender believes they have a conflict of interest, then they -- that goes to their district defender, and ultimately if the district defender agrees then it is transferred to case contracting, and unless I have questions it's assigned to someone on our panel, a private attorney on our panel.
Q. Do all conflict cases go to attorneys

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on the panel?
A. Since July 1st, except for rare exceptions, they all go to panel attorneys.
Q. Prior to July 1st, did all conflict cases go to panel attorneys?
A. No.
Q. What was the system prior to July 1st?
A. What we called the first-level conflict we'd go to a nearby office. In the urban areas, even what we considered a second-level conflict would go to a different nearby office. Beyond that, all the other conflicts came to case contracting to be assigned to a panel of attorneys.
Q. And to clarify, when you said July 1st, you meant July 1st, 2017?
A. Correct.
Q. What's the difference between a first-level conflict and a second-level conflict?
A. Well, if an office represents A and there is another client who has a conflict with a client A, say client B has a conflict with client A, then client B would be a first-level conflict. If there's yet another client who had a conflict with client A, we'll call him client C, then that would be a second-level conflict.

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Q. So a second-level conflict would be two or more conflicts or am I misunderstanding?
A. That's correct. For instance -- well, that's correct.
MR. QUINLAN: Like if there were multiple defendants in the same case.
A. Yes. If there were three co-defendants, then there would be one for the local office, there would be a first-level conflict, and there would be a second-level conflict.
Q. (By Mr. Shahabian) And then for conflicts of third level or higher, would those go to panel attorneys?
A. Yes. Most of the second-level conflicts went to panel attorneys, and third-level and beyond all went to panel attorneys.
Q. How is the panel attorney system administered?
A. Could you clarify what you mean by administered? It's a pretty broad term.
Q. Sure. It is a broad term. I'll try to be more specific. How does an attorney end up on the panel attorney list?
A. They make application. They fill out a panel attorney application.

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Q. What does that application require them to provide?

A. Name, address, other personal identification such as bar number, years of practice, recent jury trial experience, a couple of references for us to check, and if they want anything beyond misdemeanors and C and D felonies, then they have to outline their experience in those other areas, such as A and B felonies, homicides, appeals, etc.

Q. Do all panel attorneys have criminal defense experience prior to becoming panel attorneys?

A. No.

Q. Do all panel attorneys have jury trial experience prior to becoming panel attorneys?

A. No.

Q. Roughly what percentage would you say of panel attorneys have criminal defense experience prior to becoming panel attorneys?

A. The large majority, but I can't tell you beyond that.

Q. Roughly what percentage would you say of panel attorneys have jury trial experience prior to becoming panel attorneys?

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A. I can't really say. I couldn't answer that question.

Q. How often are panel attorney applications rejected by the MSPD?

A. Probably, you know, five to ten percent.

Q. And are those rejections generally new applicants or reapplications by existing panel attorneys?

A. Well, they would be new applicants. Existing panel attorneys don't have to reapply unless they leave our panel and then apply again.

Q. Why would a new applicant be rejected for the panel?

A. Either because of concerns raised by reference checks. Sometimes concerns about their prior performance that we're aware of.

Q. Once someone is on the panel, how are they assigned a case?

A. On the -- I forgot to mention, on the panel attorney application they also indicate what circuits they're willing to handle cases in. Our general rule is that you have to take an entire circuit. You can't choose county by county.

We do make a few exceptions when it's

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in our -- in our interest to do so because of our desperate need for attorneys in those counties that they'd be willing to go to without the entire circuit.

So then we have our panel attorneys broke up by counties that -- that they're eligible for, and presumptively it is a rotating assignment with a -- with a preference for what we call a home county preference. By home county, we don't mean where their home is, we mean where their office is.

So we would first go to, you know -- for instance, if there's a case in Crawford County and, you know, our presumptive pick would be whoever is up next in line who has an office in Crawford County who is eligible for the type of case that we're assigning based upon what types of cases they apply for and that they were approved for. There are exceptions, but that's the general rule.

Q. Are panel attorneys free to turn down assignments or is there a requirement that they accept a certain number of cases?

A. Certainly not a requirement that they accept a certain number of cases, but they are expected to accept assignments. We -- we occasionally make exceptions, but no, the

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expectation is they take the assignment. We don't ask them will you take this assignment.

Q. Does MSPD require conflict counsel to -- for panel attorneys specifically to report the nature and quantity of their caseloads outside of panel attorney appointments?

A. No.

Q. Does MSPD track the workload or caseload of panel attorneys based on their panel attorney assignments?

A. To an extent, yes.

Q. What is that extent?

A. Well, we either have -- the cases originally we would refer to as an open case, which means it's pending. They're supposed to advise us when that case has been disposed of and we close the case and it's designated as closed.

And if we also learn some other fashion that the case has been disposed of before we learn from them, then we would close the case. So we have open cases and we have closed cases, and so we can view what someone's open caseload is. It's not entirely accurate, but we do try to check against Case.net every six months to keep as accurate as we can.

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Q. Once a panel attorney has a case, if they -- how would they request payment for litigation expenses or expert witnesses or other case-associated expenses?

A. They use an Excel spreadsheet that we provide to them on-line and they submit that to our contracts assistant, and she works with them to get that and the proper information that we require, and then that is submitted to me for my either -- for my consideration.

Q. Are those requests generally approved as submitted or are there rejections or modifications?

A. They're generally approved. I mean, there are modifications. There are denials, but they're generally approved.

Q. How often do panel attorneys request to use expert witnesses, investigators, or other assistance on cases?

A. I don't have a percentage number. It's not unusual.

Q. How are panel attorneys paid for the cases they accept?

A. They are paid a flat fee at the beginning of the case. How much the flat fee is

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depends upon the case type. There is a mechanism for them to request additional compensation for -- for complex or extraordinary cases beyond what would normally be expected in that type of case. They are also paid a per diem fee for days spent in trial.

Q. How often do panel attorneys request additional compensation for complex or extraordinary cases?

A. Not very often.

Q. When those requests are made, how often are they approved?

A. I don't have a percentage, but certainly a lot of them are denied. I have granted some.

Q. Would you say in a given year it's more or less than ten?

A. Less.

MS. SHIPMA: More or less than ten that are --

MR. SHAHABIAN: Ten cases.

MR. QUINLAN: That are?

MS. SHIPMA: The requests that are made.

MR. SHAHABIAN: Sorry. Let me clarify.

Q. (By Mr. Shahabian) Would you say in a given year it's more or less than ten requests for payment?

A. Less.

Q. Just taking a step back, is the panel attorney program also referred to as the Code 49 program?

A. No. Code 49 is one part of the case contracting program. It has to do with disposition codes we use in our case management system.

Q. What are the -- so could you explain what the Code 49 program is?

A. Sure. Code 49, we began using that code when we first began conflicting out some first-level conflicts, which was prior to July 1st, 2017. We -- we had enough funding that in some areas we were able to contract out first-level conflicts.

So those -- our offices, when they sent those to us, would use disposition code 49 to identify them as first-level conflicts. Since July 1st we've continued to use code 49 for all the first-level conflicts, so it's a first-level conflict that's been contracted out.

Q. There are other codes for conflicts other than first-level conflicts?

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A. There are.

Q. So Code 49, it's fair to say, is a subset of the overall panel attorney program?

A. Correct.

Q. Have conflict counsel commented to you or to your knowledge anyone in the MSPD on the rates that are paid for conflict counsel cases?

A. Yes.

Q. What to your knowledge have those comments been?

A. That they're ridiculously low.

Q. Is that a frequent comment that's made?

A. Pretty frequent.

Q. How often are the fee payments adjusted, the fee schedule adjusted?

A. You mean the overall fee schedule? I've been doing this since July 1st of 2014. I can tell you they haven't been adjusted since then.

Q. Generally speaking, what is the experience level of a typical panel attorney?

A. I can't say there's a typical experience level.

Q. Are you aware of a voluntary pro bono program that has started to assist the MSPD with criminal cases?

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A. Yes, if you're referring to the Missouri Coalition For the Right to Counsel.

Q. I am. Could you describe what that program is?

A. It is a law firm initiative where the law firms -- where the law firms identify certain attorneys within their firm to take assignments from us for pro bono, and -- and they will work with our local district defender and identify cases to send to those associates and -- and we will assign them to them.

Q. The cases are assigned to associates at law firms?

A. Yes. It depends upon the model. Ultimately that's who handles them. Some law firms have us assign them to a partner who then distributes them within the firm, but --

Q. The expectation is associates will be handling the cases?

A. As far as I know, yes.

Q. Is there an experience threshold for an associate to handle these cases?

A. No.

Q. How many cases have been referred to pro bono attorneys this way?

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A. I think approximately 60.

Q. What kinds of cases have been referred to pro bono attorneys?

A. I think all levels. Sitting right here today I can't tell you whether or not we've assigned a homicide case to one, but other than that I think we've assigned all levels.

Q. Does the MSPD supervise the associates in the performance of those cases?

A. No.

Q. Does the MSPD supervise the performance of panel attorneys who are assigned cases?

A. No.

Q. Does the MSPD train the pro bono attorneys?

A. MCR, pro bono attorneys, we did conduct MCR training several months ago when it was kicked off and we're doing some training again later this week, two-day training.

Q. About how many hours of training would a pro bono attorney have before getting a case assignment?

A. Approximately 16 from us.

Q. Does the MSPD provide training to panel attorneys?

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A. Occasionally. We have had training on post-conviction matters that we've invited panel attorneys to. We also at our last annual training that's available to all of our in-house attorneys, we call it spring training, but we also invited a certain number of panel attorneys to that.

Q. Are panel attorneys required to attend those trainings?

A. No.

Q. How often do panel attorneys leave the panel?

A. Frequently.

Q. Do they provide reasons when they decide to leave the panel?

A. Sometimes.

Q. What kinds of reasons are given for leaving the panel?

A. Could be because of the fees are too low. Could be because they're retiring from the practice of law. Could be because they're going to a job where they aren't allowed to take assignments from us.

They might be unhappy with a particular practice of ours, such as our requirement that they take an entire circuit, and just decide that they're

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not in a position to do that anymore. I mean, those would be the most common that I can think of.

Q. Does the MSPD keep statistics on how frequently -- on how much turnover there is in the panel attorney system?

A. No. But -- no, we don't keep statistics.

Q. Can you give a ballpark estimate?

A. I was going to say is they leave about the same rate they come on. People come and go, but the level of panel attorneys stays pretty level.

Q. Do panel attorneys ever withdraw from cases they have been assigned to?

A. They do occasionally.

Q. What happens when they decide to move to withdraw from a case?

A. We ask them to consult with us before moving to withdraw. That may or may not happen. If they haven't consulted with us and we agreed to it, then we might ask them to do a resume representation and that might happen, but ultimately if -- if they're allowed to withdraw and they don't resume representation, then we would reassign it to someone else generally.

But you know, we also sometimes take

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the position that if it's done at a client's request, that the client has chosen to -- to proceed pro se or hire private counsel, then he doesn't get to select what -- which public defender or which special public defender, which are panel attorneys, are assigned to them. I can't think of a particular situation where the client has actually ended up going pro se, but --

Q. When you say that the cases are reassigned to someone else generally, do you mean another panel attorney or an MSPD public defender?

A. Another panel attorney.

Q. Does the MSPD ever take back cases that have previously been assigned to panel attorneys?

A. Rarely, but I'm sure it's happened.

Q. And just to clarify, you used the term special public defender. That refers to a panel attorney?

A. Yes.

Q. What happens to the fees that are paid to a panel attorney who withdraws from a case?

A. Depends upon their reason for the withdrawal. Sometimes it results in us believing that the -- the entire fee needs to be returned to us. Sometimes we feel like they may have earned a

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portion of the fee and we'll determine which -- what portion of that, and any unearned portion we'd expect it to be returned to us.

And when I say returned, our preference is that -- that we recoup the money through reduced fee assignments rather than literally have the money returned to us.

But if they're not able to do that for either they leave the panel -- well, if they leave the panel for some reason and so can't take any additional assignments, then we ask them to return the money, which goes to general revenue. It does not go to the Missouri State Public Defender system.

Q. So to break that down, if a panel attorney withdraws from a case and has been paid a fee, the first resort of the MSPD is to pay them a reduced amount on future cases?

A. Yes.

Q. But if the panel attorney leaves the panel before the MSPD is able to recoup through reduced future payments, then the MSPD does not receive money back from the panel attorney?

A. Missouri State Public Defender system does not return money -- does not get the money, that's correct.

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Q. The panel attorney may be asked to return the actual money paid to them, but that is returned to the general revenue fund for the state of Missouri?

A. Yes.

Q. Is that right? And that money is not disbursed back to the MSPD?

A. Correct.

(WHEREIN, Exhibit 6, Panel attorney circuit court criminal disposition form, was marked for identification.)

Q. (By Mr. Shahabian) So I'm showing you what's been marked Plaintiffs' Exhibit 6. Do you recognize this document?

A. Yes.

Q. What is it?

A. It's our panel attorney circuit court criminal disposition form.

Q. Is this the form you were referring earlier to when you mentioned that the MSPD attempts to keep track of which cases are opened or closed?

A. Yes.

Q. Is this an accurate copy of this form?

A. I believe so. We revise it occasionally. And this one at the bottom shows this

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one was last revised on April 21st, 2016 as sitting right here. I mean, I assume that's our most recent one.

Q. So this form is sent to panel attorneys to fill out upon when a case is disposed of?

A. They access it on our panel attorney website.

Q. Are there any other forms that MS -- I'm sorry, that panel attorneys are required to submit to the MSPD to inform the MSPD of the progress of ongoing cases?

A. There is a different form for -- I believe for appeals and PCRs, post-conviction relief cases.

Q. For trial-level cases are there any other forms that panel attorneys must submit?

A. No, not for disposition of the case.

(WHEREIN, Exhibit 7, Panel attorney memorandum of understanding, was marked for identification.)

Q. (By Mr. Shahabian) So I'm showing you now what's been marked Plaintiffs' Exhibit 7. Do you recognize this document?

A. Yes.

Q. What is it?

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A. It's our panel attorney memorandum of agreement.
Q. Is that the same as the panel attorney contract?
A. Yes. Yes, that combined with a notification of case assignment I would consider the contract.
Q. Is this an accurate copy of that memorandum of agreement?
A. Yes.
Q. If you look at the last page of the document, do you see what appears to be a fee schedule?
A. I do.
Q. Is that an accurate statement of the current fee schedule for panel attorneys?
A. The fees are correct because of the revision of the criminal code we now refer to what's identified as C, D felony, drug, etc., where it says C, D, we now refer to it as CDE.
Q. But otherwise the fees are accurate?
A. Yes.
Q. Do panel attorneys need to renew this memorandum of agreement once they've signed it?
A. No.

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Q. You mentioned that in addition to the fee schedule panel attorneys can request extraordinary compensation in special cases. What would constitute an extraordinary case to deviate from this fee schedule?
A. Well, I can remember one for example recently. I -- I approved where we had to assign an attorney from a long distance, and the person was in the department of corrections and he was traveling those long distances both to visit the client and to attend multiple hearings, something that was, you know, it was very unusual because of the distance from where the client was located.
There's also been times when -- when we've asked panel attorneys to take cases for counties they're not assigned to because we had nobody else to assign them to, and -- and I have paid additional fee for that.
Q. The contract also references extraordinary expenses as opposed to payment to counsel. What would constitute an extraordinary litigation expense?
A. Can you refer to me -- tell me where you're referring to that?
Q. Sure. If you look at the third page

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under attorneys and staff, section five, the second sentence says (quote as read):
Where extraordinary expenses are necessary to provide effective assistance of counsel, the panel attorney may submit a request for extraordinary expenditure approval to MSPD.
Do you see that there?
A. I do.
Q. What would that mean? What would constitute an extraordinary expense?
A. I think that's referring to litigation expenses.
Q. What in your opinion would be an example of an extraordinary litigation expense?
A. Well, I think it's -- I mean it's what -- it's referring to litigation expenses. I wouldn't say extraordinary litigation expenses. It's simply referring to litigation expenses, and that could include depositions or hiring of various types of experts.
Q. So just to make sure I understand what you're saying, generally litigation expenses are to be paid for by the panel attorney. However, in

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extraordinary cases they can submit for reimbursement. Is that correct?
A. No. No, they're not expected to pay the litigation expenses. We will pay for any necessary litigation expenses. They don't have to be extraordinary litigation expenses.
Q. Okay. Are cases ever reassigned from one panel attorney to another?
A. Without going through us?
Q. Correct.
A. No. I mean, they will have someone appear for them, but to my knowledge they -- they don't hand off cases. They're not -- that would be contrary to our policies and practices.
Q. So let's shift topics away from conflict counsel for a bit and talk about MSPD public defenders and how they perform their cases. Does the MSPD have written policies and procedures relating to requests for expert witnesses?
A. There is not a lot in terms of written. There is a -- a memo I think probably from around 2008 or so stating what sort of information to be included in requests for -- for different types of litigation expenses.
Q. How would an MSPD attorney request a --

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the use of an expert witness?
A. They complete an encumbrance request. That's an electronic form. It first goes to their district defender for first-level approval. I mean, that's how it's submitted.
Q. What limits, if any, are placed on MSPD attorneys who are requesting expert witnesses?
A. There's no -- what kind of limits, dollar limits?
Q. Are there monetary limits?
A. No.
Q. Does the availability of funds affect the ability of the MSPD to pay for expert witnesses?
A. Yes, I think that's fair to say.
Q. Who makes the ultimate decision on whether an expert witness will be hired?
A. For noncapital cases where the request is for less than $500, the district defender makes that decision, ultimate decision. For any capital case -- I say capital case. I really mean for any homicide case.
For any homicide case or for any expense request that's for $500 or more, that ultimately requires division director approval. Or in the instance of the divisions that

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Mr. Mermelstein supervises, the deputy director, his ultimate approval since there aren't division directors in his divisions.
Q. How often are requests for expert witnesses rejected?
A. I can't say at the district defender level. It's pretty infrequent at the division director level. I don't know at the district defender level because they have to either give the ultimate approval on some or the first-level approval on others. Those denials don't come to us.
Q. Is that process any different for other expert witnesses or -- I'm sorry, strike that.
How would an MSPD attorney request the use of an investigator for their case?
A. Well, we have in-house investigators in every office, so how a particular investigator is assigned to a case would be up to the practice of the local district defender. In theory they could request funds for outside investigators the process I just described for litigation expenses.
Q. To your knowledge, do MSPD attorneys request funds for an outside investigator?
A. Not to my knowledge.
Q. For the in-house investigators, who

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decides whether they are available to work on a specific case?
A. That would be the district defender.
Q. Do resource constraints affect the availability of investigators to assist on cases?
MR. QUINLAN: Object to the vague form of the question.
A. Certainly it can. It probably affects more on when they'll be gotten to than whether or not they're available, but I'm sure that it impacts and you end up having attorneys do some of their own investigation or in theory some investigation may not get done, but yes, yes, it would impact it.
Q. (By Mr. Shahabian) To your knowledge, have district defenders requested more resources to either hire additional investigators or for investigators to be assigned to their offices?
A. Yes.
Q. How would an MSPD attorney request the use of a social worker?
A. Through litigation expense request. We do have mitigation specialists for our capital cases, but other than that, through hiring of outside social worker.
Q. So for noncapital cases, if an MSPD

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attorney requests the use of a social worker, it's an outside litigation expenditure?
A. Yes. They may occasionally if one of our mitigation specialists had time in the capital division, there might -- we might ask them to work on it, on noncapital requests, but that's rare.
MR. QUINLAN: Did you say mitigation specialist?
A. Yes.
Q. (By Mr. Shahabian) How would an MSPD attorney request the use of an interpreter?
A. Through the encumbrance request process I've described.
Q. Does the MSPD have interpreters on staff?
A. No.
(WHEREIN, Exhibit 8, Protocols, was marked for identification.)
Q. (By Mr. Shahabian) I'm handing you what's been marked Plaintiffs' Exhibit 8. Do you recognize this document? To be clear, it's double-sided.
A. No, specifically I don't.
Q. Can you tell from reviewing the document what it appears to be?

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A. Well, it states its protocols for various things, such as indictments, investigative requests --

(Court reporter interruption.)

A. Indictments, investigation requests, expense requests.

Q. (By Mr. Shahabian) Does this appear to you to be a document produced by someone in the MSPD?

A. Yes.

Q. You see the second page of the document is investigation requests?

A. Yes.

Q. If you want to take a minute and -- and review that page before I ask you any questions about it. So the top of this page under the heading it says (quote as read):

Effective immediately, please follow the below referenced new procedure whenever making investigation requests in your cases.

Do you see that?

A. Yes.

Q. And then the document outlines a set of steps to follow that involves documentation of

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investigation requests. Do you see that?

A. Yes.

Q. Does this appear to be an accurate statement of MSPD procedures for requesting an investigator?

A. From paragraph four under section two, this states address the e-mail to LaDonna and cc myself. I can only assume this is a document prepared by a particular office, though I'm not sure who LaDonna is, but -- I think that's why I wasn't familiar with it, but -- and also just scanning it -- well, that's the one name I see.

Q. If you look at the first page, the names are Betty or Heather. Does that refresh your recollection on -- on what office may have prepared this?

A. No.

Q. Setting aside the names referenced in the document, does the general procedure of how to request an investigator appear to be accurate reflection of MSPD practices for requesting an investigator?

A. No. I would say it would -- varies widely from office to office. This may be the procedure. It may not be for a particular office.

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Q. Particular offices can set varying procedures on how to request investigators?

A. Yeah, and it may not be -- yes.

Q. If you look at page three of the document, the heading is expense request. Do you see that?

A. Yes.

Q. And then the document sets out how electronic encumbrances works. Do you see that?

A. On page three, yes.

Q. On page three.

A. Uh-huh.

Q. Does that appear to you to be referencing the encumbrance expenditure process you referenced earlier for requesting things like expert witnesses or social workers?

A. If I could have one minute to read it. Yes.

Q. Does this appear to be an accurate statement of MSPD's policies or practices for making an encumbrance request?

A. Yes. I mean, there is the additional memo I referenced earlier that states certain information that should be included, but --

Q. So certain districts may require

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additional information above and beyond what the MSPD generally requires; is that fair to say?

A. That might happen.

Q. But generally this appears to be a correct statement of the -- the policies or practices to request an encumbrance?

A. Yes.

Q. Taking a step back to general oversight, how does the MSPD central office oversee districts?

A. I guess I need more clarification of your question.

Q. Do district defenders have to check in with the central office before issuing district specific policies?

A. Local policies I believe still, you know, are supposed to be approved by division directors, but not everything would we consider a local policy. There's quite a bit of autonomy given to our district defenders.

Q. Does the central office impose reporting requirements on individual districts to report statistics or case information back to the central office?

A. No. Most of it's there in our

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databases that they use, so we can generate reports from that. They aren't expected to send in reports.

Q. The database that districts use to compile case information is accessible by the central office as well?

A. Yes.

Q. What are some of the metrics that the central office may look at to oversee district offices?

A. I can't give you an exclusive list, but depends upon what we're looking at, but if we're looking at caseload, we'll look at number of cases, we'll look at type of cases, we'll look at number of clients, we'll look at miles covered, we'll look at how many counties they're covering, we'll look at number of staff they have and what types of staff. We look at expenditures.

Q. You mentioned miles covered. What do you mean by miles covered?

A. Work-related travel.

Q. What kinds of work-related travel are MSPD attorneys expected to perform?

A. Going to court, investigating cases, meeting with clients, attending training.

Q. Are there auditing practices that the

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central office uses to oversee districts?

A. Our comptroller is considered our internal auditor, Kathleen Lear.

Q. Does the MSPD impose timekeeping requirements on MSPD attorneys?

A. There is a time sheet that has to be completed every pay period indicating the number of total hours worked each day, and then if there are insufficient number of hours worked, then appropriate use of either annual or sick leave.

Q. Is there any more detailed timekeeping that MSPD attorneys are required to perform, such as specific tasks performed that day?

A. Not currently.

Q. At any time were MSPD -- to your knowledge MSPD attorneys required to keep such time statistics?

A. Yes, we had time logging, which is the sort of detailed timekeeping that you're referring to.

Q. When did the MSPD do that time logging?

A. You know, I think it ended approximately a year and a half ago. I would have to look to tell you for sure, but -- and it -- I think we had done it up to that point for around

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three and a half years or so.

Q. Why did the MSPD do time logging for that three and a half years?

A. Well, both in terms of providing us necessary data for the RubinBrown report and then after that for legislative request. But also for resource allocation within offices by district defenders, resource allocation statewide by -- by the director and the performance monitoring by -- by supervisors to see what sort of work and how much work in certain areas was being done.

Q. Why did the MSPD stop doing time logging?

A. That was director Barrett's decision. I think he could best answer that question, but -- but I think it's fair to say that the primary reason was -- was the amount of time that it was -- was taking. It couldn't be justified given our workload.

(WHEREIN, Exhibit 9, All staff survey response summary, was marked for identification.)

Q. (By Mr. Shahabian) I'm handing you what's been marked Plaintiffs' Exhibit 9, and I apologize for the ridiculously small font size on this document. Do you recognize this document?

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A. Yeah, I believe I know what it is.

Q. What is it?

A. It's entitled All Staff Survey Response Summary. I believe it was a time sufficiency survey that was conducted as part of the RubinBrown report, the Missouri project to come up with the appropriate rates.

Q. Do you know approximately when this document was produced?

A. No, I don't remember. I wouldn't want to guess.

Q. Do you know how it was -- how this survey was conducted?

A. I was not part of senior management at that time, but I don't remember. As I remember, it was sent to everyone to -- to fill out. I don't remember if it was from MSPD or if it was from RubinBrown that sent it.

Q. Do you know if the MSPD has any more recent surveys similar to this one?

A. Not to my knowledge.

(Exhibit 4, Previously marked exhibit.)

Q. (By Mr. Shahabian) I'm showing you now what's been marked Plaintiffs' Exhibit 4. Do you recognize this document?

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A. It's our workload capacity report. Specifically what we call the Missouri State Public Defender cumulative caseload metrics.

Q. What does this report show?

A. This report is a three-month report for January through March of 2017. It shows the percent of capacity for -- for each office's caseload. By percent of capacity, I mean as compared to the RubinBrown standard.

Q. So capacity refers to the RubinBrown standards for -- for workload?

A. Yes.

Q. Do you know who prepared this document?

A. Anthony Johnson of our IT department.

Q. Do you know how this document was created?

A. Not the specifics of it, no. That would be an IT function, but it's -- you know, the case numbers are -- are pulled out of our case management databases. The -- the travel time currently is pulled from our -- our expense reports. In-court time is pulled from averages from when we were keeping time log data.

Q. So I just want to make sure I understand this document. So I apologize for the

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excruciating detail upon which we are about to embark. What does the report mean when it refers to cumulative caseload metrics?

A. I didn't -- it existed before me as far as what title was given. I don't know why the word cumulative is necessarily included.

Q. So let me ask it a different way. To your knowledge, do the case numbers on this document reflect only cases that were opened between March -- between January 1st, 2017 and March 31st, 2017 or are these all cases on the docket of the MSPD between those dates?

A. They are cases in which we commenced representation during that period of time.

Q. So these are -- this spreadsheet reflects only cases where representation was commenced between January 1st, 2017 and March 31st, 2017?

A. Correct.

Q. Is that what the fourth column cases initiated refers to?

A. Yes.

Q. What does minus cases withdrawn mean?

A. For purposes of our percent of capacity, we do not count cases in which we withdrew

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within I believe 30 days. That's correct.

Q. And those -- and that column is subtracted from the cases initiated column to create the net new cases column; is that right?

A. Yes. And actually looking closer at the top at the time of the preparation in this report, withdrawn conflict cases closed in the same month they were open. We now do it based upon 30 days, but at the time it was if they were -- if we withdrew within the same month.

Q. What is the next column net case units opened (RB) mean?

A. That -- that is the net new cases multiplied by the RubinBrown weight given the different case types. So in other words, that 441 has a lot of different case types in it. And each of those case types has a specific RubinBrown number of hours, and -- and so you know, in the background IT is through a formula multiplying each of those number of case type codes by the RubinBrown numbers that -- that are associated with that case type code and arriving at that net case units.

Q. Next column is -- excuse me, the next column is attorney court time (estimated). What does that mean?

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A. That is an estimation of the time that -- that attorneys spend in court where if you read the RubinBrown report, specifically footnote 14 is an uncontrollable task, and RubinBrown said that their standards do not include any time spent in court. So to accurately determine a percent capacity, you have to add that time in.

Q. The next column is attorney travel time (estimated). What does that mean?

A. That's an estimation of the travel time the attorneys spent, and again, according to the RubinBrown report, that time is not considered in arriving at their -- at their weight. So that -- that time has to be added in.

Q. Next column is workload (units plus court time plus travel). What does that column mean?

A. Well, that's net case units plus attorney court time plus attorney travel time.

Q. The next column is capacity. What does that mean?

A. That is the number of attorneys times -- trying to make sure I get this, understand this correctly. I'm looking at the numbers. Give me one minute. Yeah, that would be the number of

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attorneys times two hundred -- 2,080 hours per year, but this is a three-month report so that would have to be divided by four.

Q. So capacity in that column refers to the capacity for the three months of this report?

A. Yes.

Q. What does percent of capacity refer to?

A. That would be essentially the capacity divided by, you know, the number of hours for those three months, which would be 2,080 divided by four, which is approximately 520.

So I think that's, you know, probably -- well, I would have to sit down and do the math, but it's -- it's how much they -- you know, how many -- out of the workload -- I'm sorry. Give me a minute. It's the workload divided by the capacity is -- is what it is.

Q. And so that is the capacity utilization for new cases in the three months January 1st to March 31st, 2017?

A. Yes.

Q. Stepping back to the travel time column for a minute, does travel time include the time spent visiting clients?

A. If they had to -- if it was travel time

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that appeared on their expense reports, yes, associated with that client visit.

Q. What about to cover conflict cases prior to July 1st of this year?

A. Yes.

Q. Are there other kinds of travel that this may refer to?

A. Yes, anything that would appear on the expense reports, which is work-related travel. So it could be travel time to investigate cases. It could be travel time for training.

Q. And you see the report breaks down each area name and provides statistics for each area name?

A. I do.

Q. And then below that there's a row that says trial division total?

A. Correct.

Q. Do you see that?

A. Yes.

Q. Is it your understanding that the area names that precede that refer to cases in the trial division for those area names?

A. Yes.

Q. How often is this report updated?

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A. Every three months. At the end of each quarter.

Q. Could you provide us with copies of more recent reports than March 31st, 2017?

A. We have done the one for -- for April 1st through June 30th would be the last one that was done, so yes, we could provide that.

Q. Does the MSPD prepare reports that compile not only new cases for the time period, but also existing caseloads?

A. I mean, in our case management database it shows open cases and -- and closed cases, which is the same terminology I use when describing -- or conflict database, whether or not a case has been disposed of or not.

Q. Is a report like this prepared using that data?

A. No.

(WHEREIN, Exhibit 10, List of public defenders spreadsheet, was marked for identification.)

Q. (By Mr. Shahabian) I'm showing you now what's been marked Plaintiffs' Exhibit 10. This one is a little more readable, but a lot longer. Do you recognize this document? And if it would perhaps

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reflesh -- excuse me, refresh your recollection, I would encourage you to flip towards the back where there's a sheet that starts with the column with the row last name, first name, etc., and the first name listed is Daniel Radke. I believe that may be --

A. Which page are you referring to?

Q. So the document unfortunately as produced is not page numbered. It is the --

MR. QUINLAN: It's not in alphabetical order?

MR. SHAHABIAN: It is -- so it was produced -- this is a compilation of spreadsheets that are sorted by fiscal year from fiscal years '09 through '17. The --

MR. QUINLAN: Looks like the names on this are by bar number.

MR. SHAHABIAN: Correct. But for each fiscal year the sheet starts over.

MR. QUINLAN: I see.

MR. SHAHABIAN: And the way we printed from Excel, there's no way to reflect those sheet names, so ...

MR. QUINLAN: Okay.

A. So which page are you referencing?

Q. (By Mr. Shahabian) So it is -- if you

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flip back one, two, three, four, the fifth page from the end of the document.

A. I do see that, yes.

Q. And the first row is last name, first name, bar number, caseload, workload, and the first entry is Radke, Daniel. Do you see that?

A. Yes.

Q. Does that perhaps refresh your recollection as to what this document may be?

A. To the best of my recollection, this was a report prepared as a result of a discovery request in this litigation, I think.

Q. If you flip through starting from the page with Daniel Radke to the end of this document and scan the list of names, do these names mean anything to you?

A. Well, I recognize a lot of the names. I think for whatever period of time this is for it is attorneys who handled cases for us during that period.

Q. And by handle cases, are you referring to employees of the MSPD or --

A. Yes.

MR. SHAHABIAN: Just to help in terms of identification purposes, I'm also going to show

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you what's been premarked Plaintiffs' Exhibit 11.

(WHEREIN, Exhibit 11, List of public defenders spreadsheet, was marked for identification.)

Q. (By Mr. Shahabian) A similar, but much shorter document. If you go to the last page, which is double-sided, and the first side of that page, that may refresh your recollection. Similar to the other document, this was produced as a series of spreadsheets dated fiscal years '09 to '17. '17 is at the end here. Do you recognize this list of names?

A. Yes. Again, I think it's attorneys who handled cases for us during for whichever period of time. This is in-house attorneys, and I recognize these names as attorneys within our appellate PCR division, which makes me think that probably the prior exhibit, Exhibit 10, were probably attorneys within our trial division, but Exhibit 11 I think is attorneys within our appellate PCR division.

Q. So to be clear, your understanding is the names on the last two pages of Exhibit 11 refer to appellate and PCR attorneys of the MSPD?

A. Yes.

Q. And turning back to Plaintiffs'

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Exhibit 10, those last five pages, that list of names you believe refers to attorneys within the trial division, employed within the trial division of the MSPD?

A. Yes.

Q. So let's look at Plaintiffs' Exhibit 10. What does caseload, the column caseload refer to?

A. You know, if my memory serves me correctly, that is in a case that they handled during that -- by any case they handled, I mean that was assigned to them at any particular time during that year.

It may have a case that carried over from a prior fiscal year but was still pending at the beginning of that fiscal year, or it may mean a case in which they actually commenced representation during that fiscal year, but ...

Q. But you're not sure sitting here today whether it's just new cases commenced that year or total docket for that year?

A. I'm fairly confident it's both.

Q. Okay. What does workload refer to?

A. I think that's probably a comparison of the caseload to the -- to the workload capacity of

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that attorney.

Q. How would that workload --

A. By use of the RubinBrown weights.

Q. So workload incorporates the RubinBrown metrics?

A. I believe so.

Q. Do you see going down about a quarter of the way on that fifth page starting Daniel Radke an entry for Nancy Pew.

A. I do.

Q. And for Nancy Pew the caseload 1.00. Do you see that?

A. That's what it indicates, yes.

Q. And it says the workload is 1.20 percent. Do you see that?

A. Yes.

Q. Do you have an understanding of why an MSPD trial attorney might have a caseload of one or a workload of 1.2 percent?

A. I'd assume she either left right after the beginning of the -- the reporting period or -- or was hired right before the end of the reporting period.

Q. So the attorneys on this list to your understanding reflect attorneys employed by the MSPD

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at any point during the fiscal year for which this is reporting?

A. Yes.

(WHEREIN, Exhibit 12, 11-16-15 Blau e-mail, was marked for identification.)

Q. (By Mr. Shahabian) I'm handing you what's been marked Plaintiffs' Exhibit 12. Do you recognize this document?

A. In general, yes. I don't remember seeing this specific e-mail, but yes.

Q. What does it appear to you to be?

A. A guide for certain information for district defenders to -- to look at in appraising attorneys in line for promotion, the assistant public defender three or assistant public defender four.

Q. What is a assistant public defender three?

A. Well, our assistant public defender classification level, it's a -- it's a merit-based promotion system with minimum tenure requirement. So an APD III for instance means someone who has met the minimum tenure requirement of two years as an assistant public defender two and who meets the -- mirror requirements for the promotion.

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Q. What is an assistant public defender four?

A. That would be someone who has met the minimum tenure requirements, which for an assistant public defender four is two years as an assistant public defender three and meets the -- the performance requirements.

Q. What is an assistant public defender two?

A. That is someone who has met the minimum tenure requirement as one year as an assistant public defender one and meets the performance requirements for the position.

Q. And apologies for going out of order, but what is an assistant public defender one?

A. A brand-new attorney.

Q. Are there --

A. Brand-new assistant public defender. They may not be a brand-new attorney.

Q. Are there assistant public defender classifications above four?

A. Not for assistant public defenders, no.

Q. What would be the next promotion after assistant public defender four?

A. There would be no further promotions after that.

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Q. How would an assistant public defender become a managerial-level public defender such as a district defender?

A. To apply for a vacancy when it occurs and be selected.

Q. If there is no vacancy or they are not selected, assistant public defenders do not progress past assistant public defender four?

A. Correct. We pay differentials for capital work, but that's not a promotion, just a different pay scale.

Q. This document Plaintiffs' Exhibit 11 is from --

A. You mean 12?

Q. I'm sorry, 12. Thank you. Appears to be from Ellen Blau. Do you see that?

A. I do.

Q. And could you refresh my recollection as to who Ellen Blau is?

A. She's our trial division director.

Q. So these standards for promotion to assistant public defender three and public -- assistant public defender four apply throughout the MSPD system?

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A. I would not refer to these as the standards. These are the metrics that they -- that Ellen would like to see in the appraisal, things to be looked at.

Q. What do you mean by metrics?

A. Well, client contact, you know, the substance, how is the client contact, how frequently it's occurring. Trials, what trials have they had, what types of dispositions are they getting, what's the quality and extent of their motion practice, etc.

Q. Do these metrics apply throughout the MSPD system for purposes of promotions from -- to assistant public defender three and assistant public defender four?

A. This is a trial division document.

Q. Do these metrics apply throughout the MSPD trial division system for purposes of promotion to assistant public defender three and four?

A. This was sent in 2015. Whether or not Ellen has -- has altered it somewhat as far as her guidance of what to put in an appraisal, you would -- I -- I wouldn't want to say for sure, but it generally does.

Q. For a promotion from assistant public

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defender one to assistant public defender two, is that promotion based solely on the attorney's tenure with the MSPD?

A. No, there's also performance standard, but it's obviously a lot lower than for a three or four.

Q. What sort of performance standard is?

A. Successful performance in C and D felonies.

Q. What would a successful performance in a C and D felony look like?

A. An attorney that can -- you know, essentially I'm just sort of summarizing, but an attorney who successfully -- you know, providing the necessary representation that should be provided in cases up to and including C and D felonies.

Q. Is it often for an assistant public defender one who meets the tenure requirements for assistant public defender two not to be promoted to assistant public defender two?

A. That would be rare.

Q. Is it fair to say that promotions to assistant public defender three and assistant public defender four are more merit-based than those to assistant public defender two?

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A. I think that's fair to say.

(WHEREIN, Exhibit 13, District 12 Trial Observation Form, was marked for identification.)

Q. (By Mr. Shahabian) I'm handing you what's been marked Plaintiffs' Exhibit 13. Do you recognize that document?

A. Yes.

Q. What is it?

A. It is a trial observation form. This specific one is one that obviously came from our Fulton trial office, District 12.

Q. Is it a -- is the trial observation form used only in District 12 or is it used throughout the MSPD system?

A. It's not necessarily used everywhere, but it's used more than at District 12. It depends upon if a district defender finds it useful and decides to use it.

Q. Do you know who prepared this document?

A. I did.

Q. Why is this document used more at District 12?

A. I don't know that it is used more in District 12. I prepared it when I was a district defender in the Kansas City trial office, and I

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think it's been shared by the division directors for district defenders to use if they wanted to.

Q. Is there any systemic review of the use of this form to your knowledge?

A. I'm not sure what you mean by systemic review.

Q. Is there -- let me rephrase. Is there a practice to how this form is used in District 12 or more generally?

A. No.

Q. What could it be used for?

A. Well, it could be used at any time someone has a trial in District 12, that most likely their supervisor or more senior attorney would fill out when they either second-chaired the trial or observed the trial.

(WHEREIN, Exhibit 14, District 12 Case Review, was marked for identification.)

Q. (By Mr. Shahabian) I'm handing you now what's been marked Plaintiffs' Exhibit 14. Do you recognize that document?

A. Yes.

Q. What is it?

A. It's district defender -- District 12's case review form.

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Q. What is the difference between Exhibit 14, the case review form, and Exhibit 13, the trial observation form?

A. The trial observation form would be limited to cases that were tried. A case review might be performed in any particular case during the pendency of the case.

Q. What is a case review?

A. That's when a district defender or senior attorney sits down with an attorney and it reviews the case with them, including what preparation has been done and needs to be done.

Q. Who prepared this document?

A. The form itself?

Q. Yes.

A. I did.

Q. To your knowledge, is it used outside of District 12?

A. I used it in a Kansas City trial office. Truthfully this form wasn't used nearly as much as the trial observation form. I can't -- I don't know which other offices are using it or how frequently they're using it if they do use it.

Q. Is there a standardized MSPD policy to conduct a case review?

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A. No.
(WHEREIN, Exhibit 15, District 12 Guilty plea or sentencing observation form, was marked for identification.)
Q. (By Mr. Shahabian) I'm handing you what's been marked Plaintiffs' Exhibit 15. Do you recognize that document?
A. Yes.
Q. What is it?
A. District 12's guilty plea or sentencing observation form.
(Court reporter interruption.)
A. District 12's guilty plea or sentencing observation form.
Q. (By Mr. Shahabian) Do you know who prepared this document?
A. I did.
Q. What would this guilty plea or sentencing observation form be used for?
A. Again, it's something that would be filled out most likely by a manager or a senior attorney for a guilty plea or sentencing that -- that they witnessed.
Q. To your knowledge, is this document used outside of District 12?

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A. I don't know.
Q. Is there any MSPD policy that districts use to form similar to this form for purposes of guilty plea or sentencing observations?
A. No.
(WHEREIN, Exhibit 16, District 12 Motion hearing observation form, was marked for identification.)
Q. (By Mr. Shahabian) I'm handing you what's been marked Plaintiffs' Exhibit 16. Last one, I promise. Do you recognize this document?
A. I do.
Q. What is it?
A. District 12's motion hearing observation form.
Q. What would this motion hearing observation form be used for?
A. Completed again most likely by a manager or a senior attorney who observed an attorney handle a motion hearing.
Q. Do you know who prepared this document?
A. I did.
Q. To your knowledge, is it used outside of District 12?
A. I don't know.

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Q. Does the MSPD have a policy or practice for how districts should document observing a motion hearing?
A. No.
Q. I want to go back to Exhibit 13 just for a minute to clean up a question I missed. That's the trial observation form. To your knowledge, is there a policy or practice of the MSPD in how districts should document observing a trial?
A. No.
MR. SHAHABIAN: I think it's a good time for a break.
THE WITNESS: If you'd like.
VIDEOGRAPHER: We're going off the record at approximately 2:34 p.m.
(WHEREIN, a recess was taken.)
VIDEOGRAPHER: We're back on the record at approximately 2:45 p.m.
MR. SHAHABIAN: Mr. Elmer, thanks for coming back.
THE WITNESS: You're welcome.
Q. (By Mr. Shahabian) I want to turn a bit more to the topic of training and supervision of MSPD attorneys. Are there centralized policies within the MSPD for how new attorneys are trained?

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A. Only in the sense that there is certain training events that they're required to attend.
Q. What -- what events are they required to attend?
A. They attend a new employee orientation. Normally the first one that occurs after they begin employment. They have to attend new defender workshop, which is usually sometime within their first year of employment. They attend a trial skills workshop that usually occurs within their first year of employment.
I think that was trial skills I had said there. And then finally we have an annual training available to all attorneys which I mentioned earlier we call spring training. They're required to attend that for their first three years and it's optional after that.
Q. How long is the new defender workshop?
A. Several days. Less than a week. Or no more than a week.
Q. What topics does the new defender workshop cover?
A. I haven't attended one for a few years, but specifically I think things like probation violations, preliminary hearings, client contact,

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things like that.
Q. How long is the new employee orientation? Apologies. I missed that.
A. One day.
Q. What is covered in the new employee orientation?
A. Things like indigency determination, policies, promotions, the path of the case through the criminal justice system, and then various operations, personnel make presentations. Our general counsel and I think our HR manager covers things within their -- their areas, HR practices.
Q. How long is the trial skills workshop?
A. I think that's again several days. No more than a week.
Q. This may be an obvious question, but what topics are covered in the trial skills workshop?
A. Trial skills, from voir dire through -- through closing and everything in-between.
Q. How long is spring training?
A. I believe that's usually two or three days.
Q. What topics are covered in spring training?

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A. That varies from year to year. It's more advanced training and then very specific. There might be something on, you know, immigration one year, there might be something on motion practice another year. There will be several topics covered. Usually multiple tracks where folks can choose which presentations to -- to attend.
Q. Is there special training for juvenile defense?
A. We do try to do juvenile training. It usually occurs about once a year.
Q. Is that for all MSPD attorneys or for attorneys focused on juvenile cases?
A. It's generally focused on attorneys handling juvenile cases. We request that offices send at least one person.
Q. Is at least one person from each office required to attend a juvenile training?
A. I wouldn't say required, no.
Q. Is there training for handling defendants with mental health issues?
A. You know, occasionally we may have -- we may have held specialty training. I couldn't say for sure. Certainly that might be a presentation in spring training.

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Q. You mentioned immigration concerns. Are new attorneys required to receive training on immigration concerns in providing defense?
A. No. Let me say I'm referring to statewide training. I can't tell you what the requirements of particular district defenders would be within their office.
Q. Do district defenders add additional requirements on top of the statewide training?
A. They may. Something within their control such as undergoing training within their own office.
Q. Aside from these statewide training workshops you've mentioned, are there other forms of training that are offered on a statewide basis?
A. Well, as I said, different presentations given in spring training. You know, there's probably other, you know, single focused training that are periodically put on, such as appellate training or post-conviction training or on some other subject that's more -- more periodic than annual.
Q. Who is charged with training new attorneys?
A. Well, statewide we have a training

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director, and the district defenders certainly also have that responsibility.
Q. District -- what is the role of a district defender?
A. They are the managing attorney for their local district office.
Q. What are their responsibilities as the managing attorney for the local district office?
A. Well, to train the attorneys, to assign the workload, to monitor the performance of the attorneys, to do -- make -- to do appraisals, to make promotion requests, to work with general counsel and our HR manager and division director with any performance concerns. Manage their budget.
Q. Are district defenders expected to take on case assignments?
A. That is a decision the district defender makes in consultation with the division director, but generally, yes, our district defenders handle caseload.
(Court reporter interruption.)
A. Handles caseload, personal caseload.
Q. (By Mr. Shahabian) How are new MSPD attorneys recruited?
A. You know, for specifics I'd want to

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defer to our HR manager, but in general we -- we do on-campus recruiting at the law schools. Generally the law schools within Missouri.

I know they -- I think they do some posting of vacancies in publications or on the Missouri Bar website. Certainly by -- by word of mouth. We also have a website. I believe our employment application is on it.

Q. Does the MSPD face any problems in recruiting new attorneys?

A. We do.

Q. What kinds of problems?

A. Not enough. Oftentimes don't have -- don't have any or any sufficiently qualified attorneys to -- to fill a vacancy with. It's not unusual. Frequently is a vague term, but it's not unusual, especially in rural areas.

Q. Why is that?

A. Why don't we get enough? Pay. Their particular interest, whether or not they want to do the work. How many people want to live in that area. I mean, it could be for various reasons, but certainly the pay has a lot to do with it.

Q. Who decides when MSPD attorneys are promoted?

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A. Well, I described the promotion process and the -- the minimum requirements. Within the confines of that, the district defender makes a recommendation. That ultimate decision lies with the district defender for promotion to APD II.

For APD III the ultimate decision lies with the division director, or in the case of Greg Mermelstein's division, with him as a deputy director. With assistant public defender four after the district defender recommends it and a district defender approves, then -- then for the trial division I have to approve it. For the appellate PCR division, capital division, CDU, that would be Mr. Mermelstein.

Q. How often is -- strike that.

You mentioned it is rare for an assistant public defender one to not -- who meets the tenure requirements to not be promoted to assistant public defender two. How frequently does an assistant public defender two not get promoted to assistant public defender three?

A. Depends upon which time frame you're meaning. Ultimately, I mean, I -- I suppose we have people who obviously have left the system who -- and before they're promoted to APD III, even though they

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met the minimum time and tenure requirements, but I don't -- I'm not sure how to answer your question.

But certainly there are assistant public defender twos who are not promoted to three at their minimum tenure eligibility date, but we certainly strive to get them to that point by then.

Q. Just going back to our -- our last topic, you mentioned that part of the reason the MSPD has trouble recruiting is pay, but I didn't ask you to be specific. What do you mean by pay?

A. Our low salaries.

Q. What is the starting salary for a new public defender?

A. I think it's approximately 39,000.

Q. Is there adjustments for locality?

A. No.

Q. So for any public -- new public defender placed in any office in the state of Missouri, the starting salary is approximately 39,000?

A. Yes. I mean, they're in the process for -- for requesting tenure credit, but -- but yes, that's the starting salary.

Q. And by tenure credit, you mean credit for experience as an attorney prior to joining the

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public defender's office?

A. Yes.

Q. How often is that tenure credit granted?

A. I don't have a number. It's not very often.

Q. Approximately how many years of experience would an attorney have before the MSPD would consider granting tenure credit?

A. There's no particular number. I mean, we would certainly -- sort of compare it to our -- to our in-house promotion criteria.

Q. So I'd like to turn now to a new topic, the process by which MSPD attorneys are permitted or required to refuse case appointments. Are you familiar with the Missouri Supreme Court's decision in I believe it's Missouri Public Defender Commission v. Waters?

A. Yes.

Q. What is your understanding generally? Not asking for recitation of the specific holding, but generally what that case meant?

A. They upheld our caseload rule that we had promulgated at the time under the -- our power to adopt rules under the code of state regulations.

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They upheld that rule, which allowed us to certify an office as overloaded and -- and not take on new cases.

Q. After that decision came down, how often did MSPD offices certify that they were overloaded and could not take on new cases?

A. I don't have a certain number. There were -- there were several, but it was short-lived.

Q. Why was it short-lived?

A. Because of the statutory change and the legislative push leading up to that statutory change.

Q. What was the statutory change?

A. In essence that -- that we could not use that rule that we had promulgated under the code of state regulations as a basis for turning away cases.

Q. You also mentioned the legislative push leading up to that change. What did you mean by legislative push?

A. There was legislation that would -- required us to contract out certain of our cases.

Q. What do you mean by require to contract out certain cases?

A. Well, specifically as I -- the best I

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could remember them, the legislation would have required us to contract out all C and D felonies and below, but given us no more money to do it. So we would have to find the money to do it.

Q. So the legislation would have sent C and D felonies to panel attorneys or something similar?

A. It would have -- it would have required as I remember for us to essentially go through a process of letting -- letting contract attorneys submit bids for -- for bulk contracts to handle cases of certain parts of the state.

Q. In your opinion, would that have been an effective way to provide indigent defense in the state of Missouri?

A. It would not have been.

Q. Why not?

A. Well, first of all, it wouldn't have solved our problem because no more money would have been given us. So we would have had to lay off staff in order to pay for it, and whatever staff was left would have had to handle all the A, B felonies and homicides. And it wouldn't have been enough.

We still -- our staff would have been in the same position. There would have been fewer,

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but individually they would have been in the same position. So the clients that we handled through in-house representation still would have been working with overloaded attorneys.

As far as using contract attorneys for the rest of the cases it was -- it was fraught with problems. I think it would have been more expensive. I think, you know, we wouldn't have been able to provide training for those attorneys.

I think because they likely would have been trying to, you know, get the winning bid, they would have been very low. You know, they would have been low bids. They couldn't justify them spending much time on the -- on the cases.

Flat fees -- certainly flat fees such as in this which would have been an agreement to handle any -- an indefinite number of cases that came, an unlimited number of cases that came in for a certain price, but it's looked down upon by the ABA as not -- not a good practice.

In many areas of the state I don't think there would have been either any attorneys or attorneys qualified to be handling those cases. For all sorts of reasons.

Q. One of the reasons you mentioned is

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that it would have been more expensive. Could you elaborate on that concern a little bit?

A. I believe that within the trial division our average cost per case annually is I think $325. The cases that we contract out currently to private attorneys, the average is approximately $700. So it costs us more than twice the dollar amount to handle a case to contract a case privately as opposed to handling it in-house.

Q. Is it your understanding that following Waters MSPD officials in some districts agreed not to assign attorneys to cases where prosecutors promise that defendants would face no jail time?

A. I think when -- if the case became a fine-only case, then we would not handle the case, and so I don't think it was just a matter of the prosecutor agreeing not to -- not to seek jail time. The judge would have to agree up-front the case would be a fine-only case, that nothing more than a fine would be imposed on the case ever.

Q. And was that for certain districts or statewide?

A. If you -- you know, it was by district.

Q. Do you know which districts entered into such agreements?

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A. There were various for lack of a better term Waters agreements entered into. I don't know how many or any -- if any of them included declaring certain classes of cases as fine-only. I don't remember.

Q. Regardless of the specifics of the agreements, to use your term Waters agreements, do you know which MSPD districts entered into Waters type agreements?

A. Not as I sit here today.

Q. Do you know of any cases where the MSPD agreed not to take a representation because of a promise of no jail time only to learn later that the -- that the defendant received jail time?

A. I don't remember the specifics, but that would not surprise me.

Q. Why would it not surprise you?

A. There was frequently confusion over what fine-only meant. For instance, you know, suspended imposition of sentence or a suspended execution of sentence does not meet the terminology of fine-only even though the person is given probation at that time, unless the judge says if he gets revoked I will never impose anything more than a fine.

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If he's leaving jail on the table at that time, even up-front the person is entitled to counsel because he ultimately may get jail, and there was often confusion over that.

Q. What is the source of your knowledge for that confusion?

A. Just general recollection at the time.

Q. Recollection based on your work in the MSPD?

A. Yes.

Q. Are you aware that the -- so the then head of the MSPD was Cat Kelly; is that correct?

A. Correct.

Q. Are you aware that Cat Kelly was told that if local offices continued to turn away cases, the legislature would privatize the entire indigent defense system?

A. I -- yes.

Q. What is the source of your knowledge for that?

A. Working with Cat at the time at the -- at the capitol and there were legislators sponsoring the bill there.

Q. What -- do you recall in any more detail what specifically was said either to you or to Cat or other MSPD officials by legislators about privatizing the system?

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A. Not specifics, no.

Q. What about generally?

A. Well, generally that, you know, they were sponsoring bills and appeared they very well might have the votes to do it. Then that was in the House, and then the Senate substitute bill was offered that -- that took out that language and added ultimately what became language in the new statute.

But once the Senate did that then -- then the House member amended other bills to include his language that had been taken out of the Senate bill. So it was -- it ended up being in various pieces of legislation.

Q. Do you remember which legislators those were?

A. It was Representative Stanley Cox who -- who was sponsoring the language.

(WHEREIN, Exhibit 17, 1-16-13 Kelly e-mail, was marked for identification.)

Q. (By Mr. Shahabian) I'm handing you what's been marked Plaintiffs' Exhibit 17. Do you recognize this document?

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A. Yes.

Q. What does it appear to you to be?

A. An a e-mail from director Cat Kelly to the district defenders regarding timekeeping.

Q. Approximately when was this e-mail sent?

A. January 16th, 2013.

Q. Did you receive this e-mail?

A. Yes, I would have received it.

Q. If you could please turn to page two of this document. Do you see the heading in the e-mail that says caseload relief, about halfway down the page?

A. I do.

Q. Could you read the first paragraph following that heading out loud, for the record out loud, please?

A. (Quote as read):

I know there is a fair amount of angst, anger, frustration, fill in the blank here about the current state of our efforts to obtain caseload relief. When we won the Supreme Court ruling last summer, we all thought we'd be well on our way to reasonable caseload

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by this time. That of course hasn't turned out to be the case.

Q. Do you know what Cat Kelly may have been referring to here in saying that hasn't turned out to be the case?

MR. QUINLAN: Object to form, calling for speculation.

A. I think she's referring both to the legislative efforts to -- to keep us from using our rulemaking authority and to require us to contract out certain of our cases, as well as the fact that the Waters meetings that were required under the Waters decision were not bearing any useful fruit.

Q. (By Mr. Shahabian) Is that under -- is that consistent with your understanding of the state of affairs at the time?

A. Yes.

Q. Could you read the next sentence out loud, please?

A. The next sentence or paragraph?

Q. Just the next sentence.

A. (Quote as read):

There are quite a few who argue we should have forged ahead and not pulled back on certification when we did

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regardless of the pushback from policymakers.

Q. Do you have an understanding of what certification refers to?

A. Yes.

Q. What does it refer to?

A. The process under our -- our caseload rule that had been upheld by the Waters decision that allowed us to certify an office and therefore not take on new cases.

Q. Do you have an understanding of what pull back refers to?

A. That we abandon the certification process.

Q. Do you have an understanding of what pushback from policymakers refers to?

A. I think he's referring to the legislative efforts.

(WHEREIN, Exhibit 18, 12-29-16 Winfrey e-mail chain, was marked for identification.)

Q. (By Mr. Shahabian) I'm handing you what's been marked Plaintiffs' Exhibit 18. Do you recognize this document?

A. Without reading the entire document, no, I -- I don't remember seeing it, but I may have.

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Q. If I could focus your attention on the e-mail from Justin Carver starting at the bottom of page two and continuing to pages three and four. Does that e-mail look familiar to you?

A. I don't remember it specifically.

Q. Who is Justin Carver?

A. He's our district defender in our Jefferson City office.

Q. And if you look at the bottom of page two, who does it appear he is sending this e-mail to?

A. I would say it looks like he's sending it to judges and courts where Jefferson City is responsible for the handling of public defender cases.

Q. If you look at page three --

A. Along with the -- some prosecuting attorneys, or attorney.

Q. If you look at page three, the second full paragraph says (quote as read):

The struggles of the public defender office remain. Every single one of my lawyers has expressed to me that their caseload is too high and that they cannot effectively handle the cases

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that they have.

Is that statement consistent with your understanding of the caseload in the Jefferson City office?

A. Yes.

Q. Is that statement unique to the Jefferson City office?

A. No.

Q. Is that a statement that could be applied more generally to the MSPD system?

A. Yes.

Q. The next sentence says (quote as read):

I have lawyers threatening to quit if I don't get their caseloads down to a level where they can be effective.

Do you see that sentence?

A. Yes.

Q. To your understanding, is that statement consistent with the state of affairs of the Jefferson City public defender's office?

A. Yes.

Q. Is that unique to the Jefferson City public defender's office?

A. No.

Q. Are lawyers threatening to quit

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throughout the MSPD system due to high caseloads?
A. Yes.
Q. To your knowledge, have lawyers quit the MSPD due to high caseloads?
A. Yes.
Q. The next sentence says (quote as read):
Director Barrett tells me that agency turnover is now at 22 percent.
Does that appear to you to be an accurate statement of where total MSPD turnover stood at that time?
A. Yes.
Q. And to be clear, going back to page two, this e-mail was sent near the end of December 2016?
A. Yes.
Q. If you look down at the -- near the end of the page, the largest full paragraph says (quote as read):
Starting in January when I receive a qualifying application for public defender services I will do one of two things. If the applicant is in jail, I will assign the applicant a lawyer immediately until all of my lawyers

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have become overloaded. If the applicant is not in jail, I will hold the application until the end of the month. If I have available lawyers at the end of the month, I will assign it to one of my lawyers. If I don't have available lawyers, I will be filing a motion to appoint a lawyer who is employed by the state of Missouri.
Do you see that?
A. Yes.
Q. Did Justin Carver discuss his plan with the central MSPD office before sending this e-mail?
A. Before sending the e-mail, I don't know.
Q. Did the MSPD office become aware of this plan after this e-mail was sent?
A. Either before or after, yes.
Q. Do you have an understanding of why Justin Carver refused cases for applicants not in jail?
A. Yes, for the reasons stated in his e-mail.
Q. To your understanding, are the reasons in this e-mail for refusing cases unique to the

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Jefferson City office?
A. They are not unique.
Q. Could they be applied to the rest of the MSPD system?
A. Yes.
Q. If you could turn back to page two of this e-mail, e-mail chain, sorry, do you see an e-mail from PeggyRichardson@courts.mo.gov?
A. I do.
Q. Do you know who Peggy Richardson is?
A. I believe she's a judge.
Q. Looking at the e-mail she sent, it says starting with the sentence in any event, it says (quote as read):
In any event, here is what I wish you could do. Instead of holding back on applications, go ahead and let us know if the defendant qualifies. After all, the fact of his or her qualification will not change. It is much easier to manage the cases with the lawyer in the case and then grant continuances due to the caseload. We know that on any given jury week there is no way the public defender can prepare for the

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number of cases that get set, so at least for me continuances will be pretty freely given. It is a whole different ball game however when the case is just sitting there spinning on a return with counsel date. Perhaps what I'm asking doesn't fit what you're thinking, but please consider it.
Do you see that suggestion by Peggy Richardson?
A. I do.
Q. Is it consistent with your understanding of an attorney's ethical responsibilities to accept appointment to a case that they cannot handle and seek continuances?
A. No.
Q. Would an MSPD attorney be risking their bar license to accept an appointment to a case they cannot handle and seek continuances?
A. Yes.
Q. What makes you think an MSPD attorney would be risking their bar license for doing that?
A. Well, for one, the specific rules of professional conduct regarding competence, diligence, and communication. Two, ABA formal

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opinion, which has been cited favorably by the Missouri Supreme Court.

Three, the Pratt and Water decisions where they've stated that bar licenses would be at risk. Four, various bar complaints that are being made against our attorneys both by judges, clients, and perhaps prosecutors. And four, the recent decision regarding one of our attorneys named Karl Hinkebein.

Q. What was that recent decision?

A. It was an order. It wasn't a written opinion. It was an order suspending his license for one year, but staying that suspension for a period of probation of either one or two years.

I might have the exact specifics wrong, but suspend his license, stayed it, and put him on probation. And I should add that not only the complaints, but the recommendations being made by the Office of Chief Disciplinary Counsel in light of those complaints.

Q. What recommendations are you referring to?

A. Well, for example, in the Hinkebein case, ultimately their recommendation was Missouri Supreme Court was that his license be suspended.

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(WHEREIN, Exhibit 19, 4-28-17 Barrett letter to Pratzel, was marked for identification.)

Q. (By Mr. Shahabian) I'm handing you what's been marked Plaintiffs' Exhibit 19. Do you recognize this document?

A. Yes.

Q. What is it?

A. It's a letter dated April 28th, 2017 to Alan Pratzel, chief disciplinary counsel, from our director Michael Barrett regarding request for guidance.

Q. To your knowledge, was this sent -- letter sent before or after the chief disciplinary counsel recommended that Mr. Hinkebein's bar license be suspended?

A. I believe it was before.

Q. To your knowledge, did the chief disciplinary counsel provide Mr. Barrett or the MSPD with a response to this letter?

A. I believe after a long while there was technically a response, but I believe the response was I can provide you no guidance.

Q. Was that response documented?

A. I don't know.

Q. So to your knowledge, you don't know if the MSPD received a written response from the chief disciplinary counsel to this request for guidance?

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A. No, I don't know for sure.

Q. How have MSPD offices reacted to the Supreme Court's decision in Hinkebein?

A. Alarm, fear. Attorneys quitting. And ultimately with district defenders reviewing caseloads with their attorneys and finding out from their attorneys whether or not they would think that continuing -- continuing to accept new assignments would violate their duties under the rules of professional conduct, and that if that is the case, to -- to alert the local judges to that fact and that they would not be accepting new cases.

Q. Are you aware of any counties that have alerted judges to the fact that they will not be accepting new cases?

A. Yes.

Q. Which counties?

A. You know, I can tell you our district offices. If I start naming counties I'll get them wrong, but it's our --

Q. District offices are fine too.

A. Our District 13, which is our Columbia trial office. Our West Plains office, which I think

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is District 37. Our Kennett office, which I think is District 35. Our Rolla office, which I believe is District 25. Our Nevada office, which I believe is District 28. And I believe that's the list -- those are the offices that I'm aware of.

Q. And those are offices that have communicated to judges that they will not be accepting new cases?

A. Yes.

Q. Do you know of any other offices that are considering communicating to judges that they will be no longer accepting new cases?

A. Yes.

Q. What offices are those?

A. I don't specifically -- I can't recall those, but I know I've seen e-mails from other offices who are engaging in the process with their attorneys to sit down with them and educate them on the rules of professional conduct and hear from them whether or not they can.

(Exhibit 2, Previously marked exhibit.)

Q. (By Mr. Shahabian) I'm handing you what's been marked Plaintiffs' Exhibit 2. Do you recognize that document?

A. Yes.

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Q. What is it?
A. It is a letter dated September 11th, 2017 from our director Michael Barrett that was sent to all of our attorneys regarding the Hinkebein order.
Q. What is your general understanding of the intent of this letter?
A. To let them know of the Hinkebein decision, and that the Supreme Court expected them and rules of professional conduct require them to follow the rules of professional conduct.
Q. If you look about halfway down that letter, do you see a reference to, quote, materials for withdrawing due to excessive caseload?
MS. SHIPMA: End of the third paragraph.
A. Yes, uh-huh.
Q. (By Mr. Shahabian) Do you know what that is referring to?
A. To material that's posted on our litigation resource board.
Q. What sorts of materials?
A. Sample motions or materials for drawing due to excessive caseload, and the ABA opinion I think is probably posted there. Mister --

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Mr. Mermelstein, who moderates litigation resource board, would be -- you know, best be able to tell you exactly what's on there.
Q. If you haven't yet produced those documents, could you produce those?
MS. SHIPMA: Uh-huh. We've been preparing a supplemental response to you for a couple of weeks now.
MR. SHAHABIAN: Thanks for letting me know.
(Exhibit 3, Previously marked exhibit.)
Q. (By Mr. Shahabian) I'm handing you what's been marked Plaintiffs' Exhibit 3. Do you recognize this document?
A. Yes.
Q. What is it?
A. It is a e-mail sent by presiding Judge Crane in Boone County to the Boone County Bar Association alerting them to the fact that our public defender office, our Columbia trial office specifically had stated that they could no longer accept new cases under the rules of professional conduct, and as a result Boone County judges would be appointing private counsel to handle indigent representation in those cases.

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Q. Does the MSPD have any role in overseeing private counsel appointed to handle cases by Judge Crane in Boone County?
A. No.
(WHEREIN, Exhibit 20, Missouri Bar President announcement, was marked for identification.)
Q. (By Mr. Shahabian) I'm handing you Plaintiffs' Exhibit 20. Do you recognize this document?
A. Yes.
Q. What is it?
A. It is an announcement sent out I believe to all the Boone County attorneys alerting them to what was happening in Boone County and as set forth in Judge Crane's e-mail essentially, and also outlines other efforts the Missouri Bar has undertaken and will undertake.
Q. If you look at the fourth full paragraph starting with the second sentence, it says (quote as read):
That's why I met with the Missouri State Public Defender system director to discuss these challenges two weeks ago immediately following the board

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meeting where I was elected president of the State Bar. Then I met with the deputy director.
Is that referring to a meeting with you?
A. It is.
Q. What did you discuss at that meeting?
A. Our hope that the Missouri Bar could -- could work with us in solving our caseload problem.
Q. What if anything did Morry Cole, Missouri Bar President, say to you in response to that?
A. That they would -- they would take back our ideas. They had -- the meeting he was referring to, they had -- they announced they were forming a public defender committee within the bar to help look at the problem and come up with the ideas, and any ideas that Michael Barrett or I had given them, that, you know, they would -- they would take those under consideration and look at them along with any other ideas that they came up with.
Q. If you look at the first paragraph of this letter, the last full sentence says (quote as read):
To assist lawyers appointed in these

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cases, the Missouri Bar is providing educational resources and sample forms in the members-only section of mobardot.org. under criminal defense appointment resources.

Did the MSPD have any role in the -- in the preparation or providing of those materials to attorneys appointed in Boone County?

A. You know, some of them -- I haven't looked to see what's there recently. Some of them may be left over from when we were certifying offices under the Waters decision. Some of them may be new.

You might ask Mr. Mermelstein. It seems like I heard either him or our training director state that they had been contacted about supplying some materials, but I'm not sure. You'd want to check with Mr. Mermelstein.

Q. Did the MSPD oversee how the Missouri Bar provides resources to lawyers appointed to represent clients in Boone County?

A. No.

Q. We've talked about district offices and lawyers in the MSPD refusing new cases. To your knowledge, since the Hinkebein decision, have any

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MSPD attorneys filed motions to withdraw from existing cases due to excessive caseloads?

A. I don't think so.

Q. So I want to go back for a second to something we talked about at the beginning of this deposition. You mentioned that on July 1st of this year the MSPD began using panel attorneys almost exclusively for conflict cases. Is that an accurate statement of what your prior testimony?

A. For new conflict cases that came to us after July 1st.

Q. What precipitated that change?

A. Increase in our appropriation from the legislature that -- that allowed us to do that.

Q. Do you expect that change to be permanent?

A. We hope. I mean, there's an appropriation process every year.

Q. If the resources are not there, would the MSPD go back to using MSPD attorneys from other districts as conflict counsel in conflict cases?

A. To the extent that we could provide them and -- and those offices were accepting new cases as far as I know. And we haven't really talked about that.

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Q. You mentioned earlier that the timekeeping requirement was suspended by Mr. Barrett. Do you know if that requirement is suspended indefinitely?

A. Yeah, it's suspended indefinitely, but -- but I say that, it's suspended. It could start up again, but suspended indefinitely.

Q. But there are no plans to reimpose timekeeping requirements?

A. No.

Q. I know we're jumping around a bit, but going back to the Waters agreements we talked about earlier, in a case where the prosecutor's office had agreed not to seek jail time, would it be your understanding within the experience of those agreements for courts to still require defendants to post bail?

A. I'm not sure I understand the question.

Q. Let me rephrase. You testified that Waters agreements covered generally cases where the prosecutor and the judge agreed not to impose jail as a sentence?

A. Correct.

Q. Or fine-only to use your words. Setting aside sentencing, would it have been

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within -- would the MSPD still have agreed not to take a representation in a case like that where even though there was no threat of jail at the sentencing phase, the judge imposed a bail requirement that required the defendant to remain in pretrial custody until bail had been posted?

A. That may very well have been the case, but I don't have any specific recollection.

Q. Are there any policies or procedures from the state office, from the central MSPD office on how MSPD attorneys should use depositions in representing clients?

A. No.

Q. If an MSPD attorney wanted to take a deposition, how would they do that?

A. Through the encumbrance request process that -- that I've described.

Q. And that encumbrance request process would be used to pay for a court reporter --

A. Yes.

Q. -- or videographer? Are there any monetary limits that govern the use of depositions?

A. We -- we have a list of court reporters who have agreed to the state contract, and by state contract I don't -- I'm not referring to a public

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defender contract, but a state contract rates. And unless there's a reason to deviate from that, to use those court reporters as the most cost effective.

Q. Are there any other limits placed on MSPD attorneys who are requesting depositions?

A. No.

Q. Are there differences in how districts supervise the use of depositions?

A. I believe so.

Q. What kinds of differences?

A. Well, I mean, I can't say specifically, but certainly there are offices that submit more -- more deposition encumbrance requests than other offices, and that could be because of district defender policies or -- or practices. It could be by the culture of the -- the offices.

Q. Does the central office of the MSPD track the number of requests for depositions?

A. We have an encumbrance number database that would have that information.

Q. Is that database broken down by district?

A. Yes.

MR. SHAHABIAN: If you haven't provided that information previously, could you provide that

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in your forthcoming supplemental production?

MS. SHIPMA: I think I did provide it.

MR. SHAHABIAN: Okay. And I may have missed it.

MS. SHIPMA: There were only 23,000 pages of documents. How you missed it ...

Q. (By Mr. Shahabian) Are there policies and procedures governing travel cost reimbursements by MSPD attorneys or investigators?

A. Well, they have to fill out a monthly expense report to -- to get reimbursed. There are statewide travel regulations that apply to the state, not just to the public defender system.

We -- you know, where it's practical and cheaper we -- we ask attorneys to use rental car rather than drive their own vehicles. Beyond that, if there's any other policies it would be at the local level.

Q. Does the MSPD reduce caseloads for attorneys that have to travel great distances?

A. That would be a district defender decision about how to allocate caseload within their own offices.

Q. Isn't it your understanding the district defenders generally would adjust caseloads

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for attorneys who have to travel great distances for a case?

A. It could happen.

Q. But you don't have an understanding of a general practice one way or another?

A. No.

Q. Are there policies and procedures relating to how often MSPD trial attorneys meet with their clients?

A. We have guidelines for representation addressing client contact.

Q. What do those guidelines state generally?

A. The initial contact is to occur within seven days of commencement of representation. The ongoing contact is to occur monthly.

Q. And that's a statewide policy?

A. It's a guideline.

Q. That's a statewide guideline?

A. Yes.

Q. Does the MSPD track how often trial attorneys meet those guidelines?

A. It's reviewed through the appraisal process.

Q. How is that information collected for

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the appraisal process?

A. File reviews. And by file reviews I mean review of both physical files and electronic files in our case management database.

Q. So MSPD attorneys should mark when they visit clients in the files?

A. Yes. It should be documented.

Q. Does the MSPD have any immigration expert attorneys on staff?

A. Currently no. I don't believe we do.

Q. Does the MSPD have agreements with outside attorneys who specialize in immigration matters for consulting purposes?

A. I wouldn't say agreements. I mean, there are particularly in the urban area, at least Kansas City, a particular immigration law firm that requests would most often go to, I believe.

Q. Do you know how often requests are sent to that law firm?

A. Only if there's an encumbrance request.

Q. Do any districts in the state of Missouri have sizable immigrant communities?

A. Yes.

Q. Which districts?

A. I don't know specifically. Certainly

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the urban areas, but it's not confined to that. I mean, I think numerous rural areas do.

Q. Do you know roughly how many public defenders are employed in the trial division right now?

A. In the trial division, no. I mean, within the -- with the system attorneys, including assistant public defenders and district defenders and deputy district defenders I think it's around 378, somewhere around there, attorneys in the public defender system.

Q. 378 refers to not just trial division attorneys, but also appellate and PCR attorneys?

A. Right.

Q. Do you know roughly the average number of years that a trial division attorney has been employed by the MSPD?

A. No.

Q. When an MSPD attorney decides to leave the MSPD or is terminated, is it the practice of the MSPD to have an exit interview?

A. We provide them with an exit interview and offer them to schedule a discussion with the HR manager to go over the -- the exit interview.

Q. Roughly how -- how often do MSPD

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attorneys who are leaving the MSPD's employment go through an exit interview?

A. I don't know.

Q. During those exit interviews do the public defenders explain why they are leaving if they are leaving voluntarily?

A. They're asked and they frequently provide that answer.

Q. What sorts of answers do MSPD attorneys give for leaving?

A. Well, by far the majority are caseload and salaries.

Q. And by caseload and salaries, you mean caseloads are too high?

A. And salaries are too low, yes.

Q. Do you know how many public defenders leave the MSPD to join district attorney's offices?

A. Not specifically, no.

Q. Does it happen?

A. Yes.

Q. Would you say it's rare, infrequent, occasional?

A. Occasional would probably be the best word?

Q. Why would an MSPD attorney leave for

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the district attorney's office?

A. Well, again, I think it's frequently because their caseloads there would be lower, salaries would be higher. Might be for other reasons.

MR. SHAHABIAN: Can we go off the record?

VIDEOGRAPHER: We're going off the record at approximately 3:45 p.m.

(WHEREIN, a recess was taken.)

VIDEOGRAPHER: We're back on the record at approximately 3:52 p.m.

MR. SHAHABIAN: Thanks very much for your time, Mr. Elmer. I have no further questions at this time.

EXAMINATION

QUESTIONS BY MR. RAMSEY:

Q. Mr. Elmer, my name is Steven Ramsey. I represent the State of Missouri and Governor Eric Greitens, and I have a handful of questions.

A. All right.

Q. I apologize for being mildly sporadic, but we're going to jump around just a bit. Okay. If I understood your testimony correctly, you've been in the system for over 30 years, the MSPD

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system for over 30 years?

A. Correct.

Q. Now, in that time when it comes to written policies and procedures, it sounds as if it's very much a discretionary system in terms of the various districts have discretion to -- to promote guidelines. Is that accurate?

A. I would describe it as very decentralized with a lot of autonomy to our district offices.

Q. So my question concerns the types of procedures and policies that are centralized. At this point in time are you aware of any policies and procedures that deal with attorney supervision?

A. You know, the -- not specifically. Appraisal process and promotion process and promotion criteria, but --

Q. But none as to the actual supervision of how attorneys tasked with supervisor should go about that process?

A. Correct.

Q. Are there any policies and procedures concerning ensuring the effective assistance of counsel of assistant public defenders?

A. Our guidelines are representation.

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Q. I don't quite follow.
A. Well, the point of them is to -- is to make sure that by following those guidelines that our clients will be effectively represented.
Q. Let me ask this question a different way. In terms of the various training opportunities that you have throughout the course of the year, whether it's the spring training or the new employee orientation, are any of those geared at just ensuring the effective assistance of counsel, like --
A. In the sense that they're providing the attorneys with some of the training they need in order to do that.
Q. And are there any trainings -- are there any trainings tasked with teaching supervision or -- or helping those who are managing other attorneys to -- to supervise attorneys underneath them?
A. We have defender management workshop that's normally held once a year.
Q. About how long is that training?
A. Approximately three days.
Q. Okay. And is it mandatory or discretionary?

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A. It's mandatory.
Q. Who all is -- who all is required to go to that?
A. District defenders and deputy district defenders.
Q. At this point in time are you familiar with any instances within your tenure at the Missouri State Public Defender's system where there's been a judicial determination of ineffective assistance of counsel?
A. Sure.
Q. How many would you say, like one? Would you say ten?
A. Over what period of time? 30 years?
Q. Yeah, let's go with that, over 30 years.
A. A lot.
Q. And would that normally come in a PCR motion, a post-conviction?
A. Usually a post-conviction motion. They frequently never find their way to the appellate courts. It will be a trial court ruling. That's why if you just look at appellate court decisions it may not seem as many as there actually are.
Q. But your sense is that there's quite a few?

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A. Yeah, over a 30 period -- 30-year period, yes.
Q. Would you be able to ballpark figure that in terms of --
A. No.
Q. Is it 50 or what do you mean by quite a few?
A. Not infrequent.
Q. Not infrequent. So you would not be able to -- in any way to put a number on that in terms of just like a hundred, 200, you just -- it's not infrequent, but you can't put a figure on it?
A. Correct.
Q. Would there be any records kept in your Missouri State Public Defender system in terms of there's one judicial determination, there's two, is there any recordkeeping of that?
A. No.
Q. Okay. So this is all from your vantage point of view 30-year career?
A. Yeah, from being specifically aware of some at the time of having to conflict off cases because of allegations or finding of ineffectiveness, which may have occurred at a

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post-conviction level or sometimes occurs at motions to withdraw before a sentencing.
A judge allows an attorney or client to withdraw his plea based upon claims of ineffective assistance of counsel, and then those that come to me to be conflicted off.
Q. Are you aware -- same vein, just a different part of the office question. Are you aware of any ethical complaints against Missouri state public defenders?
A. Yes.
Q. Would you say -- so there's the one obvious example that was -- that's been referenced today. Are you familiar with more than that?
A. Yes.
Q. And are you familiar with any of those complaints that have risen to the level that we've seen in the Supreme Court case recently?
A. Do I remember a public defender being -- his license having been suspended, not right offhand, no.
Q. Slightly different topic. Turning more towards the caseloads. Are you familiar with the state statute that allows for public defenders to motion to the court to have a conference concerning

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caseload concerns?
A. Yes.
Q. In your recollection and in your experience, has that statute ever been used to -- to consider workload concerns?
A. What do you mean by consider? Has it ever been used?
Q. Yeah. Have you all ever filed a motion to your knowledge to have a conference with the judge to have a conversation about having too much workloads for a public defender or set of public defenders?
A. Not that I'm aware of.
Q. Concerning the communication from the various districts to the various judges saying we're not going to be taking any more cases, are all of those to your knowledge e-mails or just informal conversations with -- with the judge to your knowledge?
A. I think they've all been letters to the judges, probably mixed with conversations along with the letters.
Q. But no motions?
A. No.
Q. Okay.

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A. They're not in the case, there's no motion to be filed -- to be filed.
Q. Turning to the time logging system, at any point before -- I think it was said about three and a half year time period where you all kept time logs, did that ever occur before that time period?
A. Yes.
Q. Do you know about when did that occur?
A. A few years before that there was a short sort of -- I would refer to it as -- I know it was designed to be short. It was done for one of the studies that was being -- was happening at the time, I think.
Q. So it happened for a short stint before that three and a half year period?
A. Yes.
Q. Then it happened for that three and a half year period?
A. Yes.
Q. And then it's been discontinued indefinitely at this point in time?
A. Correct.
Q. During any of those periods did the system keep track of the time spent per the system public defender?

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A. Yeah.
Q. Did it keep track per case?
A. Yeah. There were -- there were some tasks that were case related, case specific. Some tasks were not case specific. So some of the time showed up under our case, yes.
Q. And then per task?
A. Yes.
Q. Was it on a daily basis similar to the time entry system you alluded to earlier in terms of each two-week period?
A. Yes.
Q. Was it separate from that system?
A. Yes.
Q. Do you know the precise time that the logging system was discontinued?
A. Not offhand.
Q. Do you know who would know that?
A. Offhand, I -- you know, I could easily figure it out.
Q. It's just not in front of you right now?
A. I think it was about a year and a half ago, but I don't have the date in my mind.
Q. Is there currently a repository of raw

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data from that system?
A. Yeah. There's a database.
Q. And is that historical data available in terms of the per day, per task, per case written down?
A. It's there.
Q. And currently even though that system has been discontinued, are you all still tracking that data in any way, the per case, per defender, per task?
A. No.
Q. So not at all?
(Court reporter interruption.)
A. No.
Q. (By Mr. Ramsey) Are you familiar with any constitutional requirement for the public defender system to represent those in immigration cases? Pardon me.
A. As an immigration court? Or in --
Q. Either/or.
A. I'm not sure what you mean by immigration cases.
Q. Well, I -- the question was very general, but sure, immigration court or a case that touches immigration.

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MR. SHAHABIAN: Objection to vague as to any case that touches immigration.

Q. (By Mr. Ramsey) Any case that occurs in an immigration court?

A. No, we don't provide representation in immigration court.

Q. Now, I apologize for my sporadic questions, but I'm going to jump back into the conflict realm. Just so I understand, so the conflict system is much broader than simply the Code 49 system. Is that accurate? Or Code 49 is a subsection of the conflict?

A. It's a subsection.

Q. So at this point in time are all conflicts being handled or being contracted out to contract attorneys or these panel attorneys?

A. New cases coming in, virtually all of them absent a rare exception.

Q. And at this point in time in terms of contract attorneys, is the only purpose or the only use of contract attorneys conflict cases or is there any other way that the MSPD system utilizes contract attorneys?

A. We -- if there's sufficient money in our budget, we will do some what we call overload

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contracting of nonconflict cases.

Q. Do you have a sense for how often that occurs when you have that excess budgetary allocation to do that?

A. It varies from year to year. We've done it a little bit this year already, this fiscal year. It's a small percent of our budget.

Q. Would you take a stab at maybe two or three percent or how would you --

A. I'd have to look.

Q. Okay. Now, just a clarification on Exhibits 10 and 11, and those were the exhibits -- I believe they're still in front of you with the various list of attorneys by bar number, caseload, and workload. And I believe one was alluded to as being from the trial --

A. Yes.

Q. -- department, the other was from the PCR. Was it your understanding that that -- those figures came from the aggregate sum of all cases handled by those attorneys in-between the years 2009 and 2017?

A. I don't know the time period. I don't know over what period of time. I mean, there's various documents it looks like all stapled together

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which I can only guess have to do with different time periods.

MR. RAMSEY: Just wanted to clarify if we were talking about the same thing on that matter. No further questions.

MS. SHIPMA: I have a couple of questions.

EXAMINATION

QUESTIONS BY MS. SHIPMA:

Q. Joel, are the RubinBrown numbers used in any way with respect to the cases that you send through the contract system?

A. Yes.

Q. Can you explain how that is?

A. I'm aware of any -- at any given time that for the current fiscal year what -- you know, what is the RubinBrown weight of the cases we have assigned to a panel attorney for that fiscal year.

Q. Okay. Are you familiar with an attorney by the name of Richard Scherrer?

A. Yes.

Q. And what is his relationship with MSPD?

A. He spearheads our Missouri Coalition For Right to Counsel. I think actually he's a volunteer member of our St. Louis city staff.

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Q. And what is his function there on the St. Louis city staff?

A. I think the liaison with the Missouri Coalition of Right to Counsel attorneys and firms.

Q. Does he supervise any of the attorneys who are providing that representation?

A. Oh, I don't think so.

Q. Okay.

MR. QUINLAN: How do you spell his last name.

MS. SHIPMA: S-C-H-E-R-E-R [sic], I believe. Not the same Richard Sher who was our mediator.

MR. QUINLAN: Right.

Q. (By Ms. Shipma) I want to ask a question about management training. When new district defenders are brought on, is there any type of training for them other than the three-day yearly management training?

A. Some one-on-one coaching and mentoring by their division directors.

Q. Is there a systemwide training?

A. There is also, I forgot, a periodic new district defender training that I think usually is one day of the newest district defenders. I say

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periodic. It's essentially a handful of new district defenders will schedule them.

MS. SHIPMA: Okay. That's all the questions I have.

MR. SHAHABIAN: Just have a few more follow-up questions based on those questions. I'll be really short.

FURTHER EXAMINATION

QUESTIONS BY MR. SHAHABIAN:

Q. Mr. Elmer, you mentioned that in your 30 years at the MSPD you had seen cases involving a judicial finding of ineffective assistance of counsel. To the best of your recollection, did any -- did excessive caseloads factor into the finding of ineffective assistance in any of those cases?

A. I don't know.

Q. You mentioned something about overload contracting for panel attorneys. Why would the MSPD use overload contracting to assign cases to panel attorneys?

A. To help alleviate our caseload problem.

Q. You mentioned that it fluctuates from year to year. Why would the caseload -- how would that -- could you help me understand why it fluctuates year to year if the goal is to relieve

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caseloads?

A. Because there's only a certain amount of money available. I go into each fiscal year knowing my -- my working budget for case contracting. We may be coming in under budget because there are fewer conflicts than we anticipated so that will free up money.

On the other hand there may be other areas within the public defender system such as litigation expenses that are going over budget, so I need to come in under budget to -- to help fund litigation expenses.

And -- and so, you know, once that first scenario would allow us to do more overload contracting, the second scenario would allow us to do less overload contracting or no overload contracting.

Q. And you mentioned the Missouri Coalition Right to Counsel pro bono attorneys. In your opinion, how impactful is that program to the ability of the MSPD to meet its mission to provide indigent defense?

A. Well, as far as alleviating our caseload issue, it's not effective at all. I mean, 60 cases out of 85,000 doesn't make much of a dent.

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MR. SHAHABIAN: I have no further questions at this time.

VIDEOGRAPHER: We're going off the record at approximately 4:10 p.m.

(WHEREIN, the deposition was concluded at 4:10 p.m.)

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CERTIFICATE OF REPORTER

I, William L. DeVries, a Certified Court Reporter (MO), Certified Shorthand Reporter (IL), Registered Diplomate Reporter, and a Certified Realtime Reporter, do hereby certify that the witness whose testimony appears in the foregoing deposition was duly sworn by me pursuant to Section 492.010 RSMo; that the testimony of said witness was taken by me to the best of my ability and thereafter reduced to typewriting under my direction; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition was taken, and further that I am not a relative or employee of any attorney or counsel employed by the parties thereto, nor financially or otherwise interested in the outcome of the action.

_____

Certified Court Reporter
within and for the State of Missouri

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MIDWEST LITIGATION SERVICES

October 9, 2017

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Woodrail Center
1000 West Nifong
Building 7, Suite 100
Columbia, Missouri 65203

IN RE: SHONDEL CHURCH, et al. vs. STATE OF MISSOURI, et al.

Dear Ms. Shipma,

Please find enclosed your copies of the deposition of JOEL R. ELMER taken on October 4, 2017 in the above-referenced case. Also enclosed is the original signature page and errata sheets.

Please have the witness read your copy of the transcript, indicate any changes and/or corrections desired on the errata sheets, and sign the signature page before a notary public.

Please return the errata sheets and notarized signature page within 30 days to our office at 711 N 11th Street, St. Louis, MO 63101 for filing.

Sincerely,

William L. DeVries, RDR/CRR

35446

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ERRATA SHEET
Witness Name: JOEL R. ELMER
Case Name: SHONDEL CHURCH, et al. vs. STATE OF MISSOURI, et al.
Date Taken: OCTOBER 4, 2017

Page #_____ Line #_____
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Reason for change: _____

Witness Signature: _____

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STATE OF _____)

COUNTY OF _____)

I, JOEL R. ELMER, do hereby certify:

That I have read the foregoing deposition;

That I have made such changes in form and/or substance to the within deposition as might be necessary to render the same true and correct;

That having made such changes thereon, I hereby subscribe my name to the deposition.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this _____ day of _____, 20___, at _____.

_____
JOEL R. ELMER

_____
NOTARY PUBLIC

My Commission Expires:

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Exhibit W

Missouri State Public Defender System – By the Numbers

Cases and Costs - In FY2015, MSPD attorneys provided representation in 73,595 cases; more than 68,000 of these cases were handled by MSPD's trial division at an average cost of $374 per case (with overhead) on everything from misdemeanors to murders. While this is evidence of a lean system, it also raises concern about whether Missourians are receiving adequate representation before tax payers are burdened with the high cost of incarceration. What's more, cases are on the rise in FY16.

Litigation Expenses – The costs associated with practicing law have significantly increased (e.g., mental health experts). However, MSPD has not received a single new dollar for litigation expenses since 2008. MSPD's litigation costs for FY2015 were $2,775,120 or 60% of the total E & E Appropriation. In 2004, MSPD's E & E budget was cut by $2.5 million and it was never restored. This forces us to make devastating internal cuts such as not filling a number of positions for nearly half of the fiscal year. For instance, MSPD currently has a moratorium on backfilling all vacancies until the end of the fiscal year.

Budget – MSPD is 49th out of 50 in the funding it receives for indigent defense. As a result, Missouri is 11th highest in the rate at which it incarcerates its citizens, with DOC funding rising from $575 million in FY2006 to $710 million in FY2015. In just one budget year (FY14-FY15), DOC's budget increased by an amount greater than MSPD's entire operating budget, nearly $48 million. Simply put, there is a direct correlation between not funding MSPD and the $140m plus increase to DOC over the last ten years.

Time Keeping – MSPD is the first public defender system in the country to require its attorneys to keep their time, which is done in five minute increments. This allows the Director to ensure that resources are appropriately distributed and that attorneys are working diligently on their cases. Time keeping also provides data with which to request appropriate levels of funding.

The Missouri Project – In 2014, the ABA asked RubinBrown, a national accounting firm, to study MSPD's caseload. The project compared how much time MSPD attorneys were spending on each task for each case type (e.g., client meetings, motion practice) with how much time private criminal defense attorneys were spending. After removing outliers, RubinBrown established time standards for specific cases. Applying these time standards to MSPD's current caseload and current roster of attorneys revealed that MSPD is in need of 291 more attorneys in order to provide constitutionally adequate representation.

Turnover – The caseload crisis is exacerbated by employee turnover. Starting salary is very low - $38,928 - and with too many cases and not enough time to work on individual cases, MSPD attorneys are the target of regular ethics' complaints. These circumstances create a turnover rate of about 20%, which means MSPD spends needlessly to train new attorneys. Also, reassigning cases from attorneys who leave the system drastically increases the workload for the remaining attorneys in the local office.

Outside Reports – "The indigent public defense system in Missouri has faced extraordinary challenges for a number of years due to extremely limited resources and a chronic budgetary crisis." July 2015, U.S. Department of Justice, Civil Rights Division. "Missouri's indigent defense system is in crisis and has endured at least two decades of crushing caseloads and inadequate resources to provide its mandated

services." *Missouri: Justice Rationed, An Assessment of Access to Counsel and Quality of Juvenile Defense Representation in Delinquency Proceedings*, Spring 2013, National Juvenile Defender Center.

Exhibit X

Event Date: 03/17/2017 Start/Preview_Date: 03/17/2017
End/Purge Date: 04/16/2017

Author Details:
Subject: ** DIRECTOR'S UPDATE ** - Letter to Governor Greitens 3-15-17.
Category: Agency Announcement

Attached below is a copy of a letter Director Barrett sent to Governor Greitens, March 15, 2017, in response to Executive Order 17-09.

Letter to Governor Greitens 3-15-17.PDF

For questions regarding this information, please contact:

Michael Barrett
Director and Public Information Officer
Telephone: 573-355-6030
Email: michael.barrett@mspd.mo.gov

Letter to Governor Greitens from Missouri State Public Defender Director Michael Barrett

Marsha Plank to: Natalie.Fryrear 03/16/2017 02:15 PM

Dear Ms. Fryrear,

Attached please find a letter to Governor Greitens from Missouri State Public Defender Director Michael Barrett.

Letter to Governor Greitens 3-15-17.PDF

Sincerely,

Marsha Plank
Executive Assistant
Missouri State Public Defender
Office of the Director
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CONFIDENTIALITY STATEMENT
This electronic communication is from the Missouri State Public Defender System and may contain confidential and/or privileged information. If you are not the intended recipient or the employee or agent responsible for delivering this information to the intended recipient, unauthorized disclosure, copying, distribution or use of the contents of this transmission is strictly prohibited. If you have received this message in error, please notify the sender immediately at the following email address, Marsha.Plank@mspd.mo.gov, or by calling (573) 526-5212 or (573) 777-9977 ext. 224. Thank you.

MISSOURI STATE PUBLIC DEFENDER
OFFICE OF THE DIRECTOR

March 15, 2017

The Honorable Eric Greitens
Governor of Missouri
P.O. Box 720
Jefferson City, Missouri 65102

Dear Governor Greitens:

I read with interest Executive Order 17-09, which grants executive-branch employees paid parental leave that is not to be counted against their annual or sick leave. This is the right thing to do, and for that I applaud you. As the Director of the Missouri State Public Defender System, an independent department within the judicial branch (Sec. 600.019.1, RSMO), I want very much to follow your lead and adopt a similar policy for MSPD employees as you suggest in the EO. As leaders, it is our responsibility to take care of the people whom we rely on to fulfill the mission, to help recruit the very best talent, and to value their roles as mothers and fathers and caregivers.

That said, I will regrettably not be extending this benefit to the employees of MSPD and I want to tell you why.

Because of crushing caseloads, MSPD attorneys are only able to spend 8.7 hours on each class A/B felony, where clients often face life in prison, just 4.4 hours on a C/D felony, 2.3 hours for a misdemeanor, and 1.4 hours for a probation violation, which is a driving force behind Missouri's artificially inflated prison population. These dedicated and skilled attorneys for the poor know that for each additional hour they take as leave, it further reduces the amount of time that can be spent on a client's case, thus increasing the rate at which defendants plead guilty so that they can be released from county jail in hopes that their jobs and housing are still in place. Public defenders know that more time off, without expanding the current cadre of public defenders, only increases the chances of a wrongful conviction and enhances the likelihood that a person convicted of a non-violent offense will be sentenced to state prison (47% of Missouri's prison population is incarcerated for a non-violent offense).

Also, for many MSPD employees, it would be a policy distinction without much of a practical difference. The reason is that an alarming percentage of MSPD attorneys simply do not take the leave they have. In 2016, 79 of MSPD's attorneys forfeited a total of 3,431 hours of annual leave - that's 86 weeks. Creating additional policies that suggest they can, or should, take time off beyond what is currently offered is to suggest that even less time should be spent defending poor persons who face loss of liberty and excessive fines and fees, including having to pay for the cost of their pre-trial jail stay because they are too poor to post bond during a time when they are presumed innocent.

I believe that these mission critical employees would instead prefer that I work to alleviate their impossible caseload burden and deliver them a salary that is worthy of their contribution to the state and its citizens. MSPD's attorneys are drastically underpaid with a starting salary of $39,708, many of whom have student loans in excess of $100,000, and a maximum salary for the most senior attorney classification of $63,912,

many of whom have more than twenty (20) years' experience. As a result, MSPD's turnover rate hovers around 20% - that's about 1 out of every 5 attorneys each year who leave the system, forcing MSPD to spend a disproportionate amount of its budget training new employees. While employees regularly leave for higher pay and better benefits, the number one reason we lose experienced attorneys is because they do not have the time to do what needs to be done on their clients' cases.

It is important to point out that these are public servants – they are not motivated by prosperity, but rather the ability to do their jobs in a way that complies with what the Constitution requires, in a manner that allows them to utilize the skills that they have worked so hard to develop, and in a way that gives them an opportunity to help the state distinguish between the innocent and the guilty, as well as among those who need to be incarcerated, at great expense to the state, and those who do not.

This Saturday, March 18, 2017, commemorates the 54th Anniversary of *Gideon v. Wainwright*. This landmark Supreme Court decision, which makes the right to counsel guaranteed by the Sixth Amendment applicable to the State through the 14th Amendment, is particularly special to us in the Show-Me State, not just because of our love of liberty, but because Clarence Earl Gideon was a Missourian, a poor man with an eighth grade education, who was born in Hannibal.

While I appreciated the comments you put forth in the State of the State address regarding the right to counsel, you have since not released any of the $3.5 million currently being withheld from MSPD, my letters of November 16, 2016 and January 17, 2017 have gone unanswered by your office, and you have suggested a FY2018 budget that only equals what the legislature passed in CY2014 (MSPD's caseload has increased more than 13% since then). This approach does not move the needle on our ranking of 49th among 50 states in indigent defense funding. To be sure, you did not create this mess; however, it is now ours to address and I stand ready to assist you in that effort.

This We'll Defend,

Michael Barrett, Director
Missouri State Public Defender

1000 West Nifong
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Columbia, MO 65203

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Exhibit Y

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
CENTRAL DIVISION

SHONDEL CHURCH, et al.,)
)
Plaintiffs,)
)
vs.) Case No.
) 17-04057-CV-C-NKL
STATE OF MISSOURI, et al.,)
)
Defendants.)

VIDEO-RECORDED DEPOSITION OF STEPHEN P. REYNOLDS
TAKEN ON BEHALF OF THE PLAINTIFFS
DECEMBER 19, 2017

(Starting time of the deposition: 1:48 p.m.)

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(The original exhibits were retained by the court reporter to be attached to the original and copies of the transcript.)

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
CENTRAL DIVISION

SHONDEL CHURCH, et al.,)
)
Plaintiffs,)
)
vs.) Case No.
) 17-04057-CV-C-NKL
STATE OF MISSOURI, et al.,)
)
Defendants.)

VIDEO-RECORDED DEPOSITION OF STEPHEN P. REYNOLDS, produced, sworn and examined on December 19, 2017, between the hours of one o'clock in the afternoon and eight o'clock in the evening of that day, at the ACLU of Missouri Foundation, Suite 1130, 906 Olive Street, St. Louis, Missouri 63101, before William L. DeVries, a Certified Court Reporter (MO), Registered Diplomate Reporter, and Certified Realtime Reporter, in a certain cause now pending in the United States District Court, Western District of Missouri, Central Division, between SHONDEL CHURCH, et al., Plaintiffs, vs. STATE OF MISSOURI, et al., Defendants; on behalf of the Plaintiffs.

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IT IS HEREBY STIPULATED AND AGREED by and between counsel for the Plaintiffs and counsel for the Defendants that this deposition may be taken in shorthand by William L. DeVries, RDR/CRR, a Certified Court Reporter and Certified Shorthand Reporter, and afterwards transcribed into typewriting; and the signature of the witness is expressly reserved.

* * * * *

STEPHEN P. REYNOLDS,

of lawful age, produced, sworn and examined on behalf of the Plaintiffs, deposes and says:

(Starting time of the deposition: 1:48 p.m.)

VIDEOGRAPHER: We are now on the record. Today's date is December the 19th, 2017. The time is approximately 1:48 p.m. This is the video-recorded deposition of Stephen Reynolds in the matter of Church, et al., versus the State of Missouri, et al., Case Number 17-04057-CV-C-NKL, in the United States District Court for the Western District of Missouri.

This deposition is being held at the St. Louis ACLU. The reporter's name is Bill DeVries. My name is David Doell, and I'm the legal videographer. We are here with Alaris Litigation

Services.

Would the attorneys present please introduce yourselves?

MS. ROSCA: Camille Rosca from Orrick, Herrington & Sutcliffe on behalf of the plaintiffs.

MR. MAUNE: James Maune for Orrick, Herrington & Sutcliffe on behalf of plaintiffs.

MR. MOORE: Justin Moore for the State and Governor Greitens.

MS. SHIPMA: Jacqueline Shipma on behalf of MSPD defendants.

VIDEOGRAPHER: The court reporter please swear in the witness and we may proceed.

COURT REPORTER: Do you swear or affirm that the testimony you are about to give in this proceeding will be the truth, the whole truth, and nothing but the truth?

THE WITNESS: Yes.

EXAMINATION

QUESTIONS BY MS. ROSCA:

Q. Good afternoon, Mr. Reynolds. Have you ever been deposed before?

A. Yes.

Q. Okay. So I -- I assume you understand how the rules work, but I'm just going to give you

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some reminders if that's okay. Could you please answer my questions in verbal responses?

A. Yes.

Q. And please wait to hear my question and then respond so we're not speaking over each other?

A. Yes.

Q. And if you don't understand one of my questions, just please let me know and I'll be happy to rephrase them. And if you need a break, just let us know and I'm happy to give you a break. But I just ask that we respond to the question -- we not take breaks while a question is pending. Do you understand that?

A. Yes.

Q. Great. What did you do to prepare for this deposition?

A. I met with the public defender legal counsel.

Q. And is that counsel present at this table?

A. Yes.

Q. And who is that counsel?

A. Ms. Shipma.

Q. And was there anyone else present at this meeting?

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A. No.

Q. Did you review any documents during this meeting?

A. No.

Q. Did you review any documents in preparation for this -- the deposition in general?

A. After the meeting with Ms. Shipma I reviewed some statistics in our computer case management system.

Q. And what statistics were you reviewing?

A. Caseload numbers, open cases per fiscal year.

Q. And you mentioned you read them on the system. Can you explain what that system you're referring to is?

A. It's the Lotus Notes case management system that's used in every office.

Q. Do you have any of those statistics with you right now?

A. I have what I looked at in my head.

Q. Okay. And did reviewing those statistics refresh your recollection about any of the issues with respect to this case or this deposition?

A. Yes.

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Q. And what specifically did it remind you of?

A. The number of cases opened per fiscal year.

Q. And what is that number?

A. Fiscal '17 I believe was around 4700.

Q. Is that total for the office?

A. For the Clayton trial office.

Q. Could you state your title for the record?

A. I am the district defender of the St. Louis County trial office.

Q. And does the St. Louis County trial office have other counties within it?

A. Not at this time.

Q. So it's just the St. Louis County?

A. Correct.

Q. Okay. Can you provide your employment history since you graduated law school?

A. I graduated law school in 1998 and started as an assistant public defender in the city of St. Louis in the trial division. In 2004 I left the city of St. Louis trial division and was in private practice from 2004 to 2007.

In 2007 I returned to the Missouri

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public defender in the position of assistant district defender in the city of St. Louis. In March of 2010 I transferred to St. Louis County where I became the district defender of the St. Louis County trial office.

Q. Okay. And when you became a public defender in 1998 you said in the city of St. Louis, what was your roles -- roles and responsibilities coming into the public defenders office?

A. I was a trial attorney.

Q. And what would a trial attorney be -- typically would have to do? What were your responsibilities?

A. Representing clients in criminal matters.

Q. Did you -- did you get assigned certain types of cases when you started as a trial attorney?

A. In my first years I was assigned less serious felonies. After two years I believe I was assigned all ranges of felonies.

Q. And then when you moved up -- when you came back to the public defenders office in 2007; is that correct?

A. Yes.

Q. Were you assigned more serious cases

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then?
A. I had a small caseload that depending upon the needs of the office would either be serious felonies or not serious felonies.
Q. Okay. And then in 2010 that's when you became the district defender for the St. Louis County office?
A. Correct.
Q. Okay. And has your roles and responsibilities changed since you became district defender?
A. Yes.
Q. And how have they changed?
A. I'm now manager of that office.
Q. And what does that mean? What do you manage?
A. I manage 20 lawyers, three investigators, one office management specialist, three clerks, and two legal assistants.
Q. Okay. So you said 20 lawyers, three investigators, one office management specialist, three clerks, and two legal assistants. Do you have any paralegals in your office?
A. We do not.
Q. Do you have any other staff in your

Page 14

office aside from the ones you've mentioned?
A. No.
Q. Okay. Do you personally still have a full caseload?
A. I do not have a full caseload, but I do have a caseload.
Q. And how is the ratio between -- or what is the percentage of time dedicated to your caseload would you say?
A. Nearly 50 percent.
Q. Okay. And is your caseload, does it typically include certain kinds of cases or do you get the same range of cases as you did prior to being district defender?
A. It largely consists of complicated serious felonies and/or mentally ill clients or clients who have mental illness and are very difficult for lawyers to interact with and manage.
Q. And then what is the other 50 percent of your time dedicated to?
A. Management.
Q. How do you supervise your attorneys?
A. Meaning?
Q. Meaning do you evaluate them? Is there a process by reviewing their work? Do they come to

Page 15

you and have discussions about their -- their caseloads?
A. Would it be okay to answer as to how lawyers are managed in the office and trained?
Q. Sure.
A. Is that what you're asking?
Q. Yes. We'll start with that.
A. So myself and the assistant district defender, we manage the office. And new lawyers, both myself and the deputy district defender train the lawyers. Certainly in their first six months to a year. We're responsible for reviewing all the lawyers' work throughout the year and for promotions. And there's four step promotions for attorneys.
We handle client complaints, client problems with the lawyers. We work with them on specific cases. We second chair lawyers. We brainstorm with lawyers. We handle hostile workplace issues, both within the office and within the courthouse.
Q. Do you have a human resource manager in your office that assists with any of that or is it just --
A. We have a state human resource manager.

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Q. Okay. But no one internally?
A. Correct.
Q. Okay. And you were saying -- is there anything else aside from hostile work environment?
A. And then the same applies to the investigators, the clerk staff, and the legal assistants, we train them and manage them.
Q. Okay. Can we talk about how your office is organized? You said you had 20 attorneys.
A. Yes.
Q. What -- who is the -- or what is the most experienced attorney, what year are they essentially? How long have they been in practice?
A. We have one lawyer who's close to having 25 years' experience.
Q. Okay.
A. We have two lawyers, including myself, who have close to 20. We have another lawyer who has between 25 and 30 years' experience. We have two or three with ten years' experience. We have three to four right around the five-year experience. And then everyone else is less than five years.
Q. So you said one who has 25. That's -- and then you follow after that. So that's two.
A. We have two with right around 25. Two

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with right around 20.
Q. Oh, okay. So would you say about ten -- ten of your lawyers have less than ten years' experience?
A. Oh, certainly, yes.
Q. Okay. And how many lawyers have the least amount, like less than a year?
A. Right now I believe we have three lawyers who have less than a year experience.
Q. And how are the attorneys organized? So do the attorneys with less than a year experience get a certain -- or less -- less serious cases or does everyone get the same batch? How does it work?
A. For your first year if you're a lawyer in our office, meaning first year of experience as a criminal defense lawyer, and even if you're a transfer from another jurisdiction we will -- for the first six months we give a reduced caseload, which in our office is around 50 cases, and those 50 cases are low-level nonviolent felonies.
We will make some exceptions for some transfers, but not all. At around a year mark we will -- just because the number of cases are so high, the cases -- the number of cases go up to what everybody else has, which range from a hundred to

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200 cases generally speaking.
And then for the less experienced lawyers, right around the year mark we introduce more serious felonies, and depending upon that lawyer's ability we slowly add serious felonies to their caseload.
Q. Does -- so the attorneys with less than a year, would they handle felony cases?
A. Yes.
Q. Would they -- would they work on any trials?
A. Yes.
Q. And -- but they would be nonviolent?
A. Generally speaking.
Q. Okay. And then --
A. With the exception of domestic violence.
Q. Meaning that they would handle domestic violence cases?
A. They would handle domestic violence.
Q. Okay. And what about juvenile cases, is there someone in your office that's specialized to handle those types of cases?
A. Yes.
Q. And how many attorneys are -- are

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equipped to handle those kind of cases?
A. One.
Q. And do they get funneled to this one attorney?
A. Yes.
Q. Okay. And probation -- probation revocation cases, are they also handled by everyone?
A. Yes.
Q. Are there other cases that I haven't mentioned that are handled by your attorneys generally speaking?
A. It's probation revocations, felonies, juvenile cases. We have very few misdemeanors.
Q. Okay. You mentioned 100 to 200, your more experienced attorneys' caseload number. Is there attorneys in your office that are actually at the 200 mark?
A. In certainly in November, yes.
Q. Of this year?
A. Yes.
Q. And why was that the case?
A. We distribute cases evenly at the same rate. The lawyers who had more than 200 cases are highly experienced lawyers who tend to set more cases for trial, so their cases move more slowly.

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Their caseload moves more slowly because of that.
Q. So as the district defender you -- you stated that you have 50 percent of your time to your personal caseload and then you have 50 percent to managing your attorneys. Do you spend other time on other administrative tasks like budget requests, for example?
A. Budgeting is generally done statewide, and the requests for money that we have for litigation expenses are all done electronically. I'm in charge of that, but I -- I sort of wrap that up into administrative tasks in working with lawyers. It's a very quick process.
Q. Okay. Do you set any policies for your office in terms of how they should be litigating their cases?
A. We train them to litigate their cases and we work with people to litigate pretrial motions and push cases to trial. There's nothing in writing, though.
Q. Okay. Would you have the discretion, though, as the district defender to set what those policies would be to reach whatever goals your office might have with respect to getting a case to trial?

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A. I mean, one could write a policy, but whether something goes to trial is so dependent upon the specific case and the clients' needs that I don't know if a policy would change anything.

Q. Okay.

A. It's really learning how to work with clients and achieve their goals and taking risks with clients who want to take risks.

Q. Okay. Can we talk about the -- you said you had three investigators in your office?

A. Yes.

Q. Okay. And how -- how does the investigators work with your attorneys, are they -- are they assigned to specific attorneys or do they work for the office as a whole?

A. They're assigned to specific attorneys.

Q. And what about the other attorneys that aren't assigned to an investigator?

A. All attorneys are assigned an investigator. So we have three investigators. And each investigator works with roughly seven -- six or seven lawyers.

Q. Okay. And does the investigator assist as soon as an attorney is assigned a case or do they have to request that kind of assistance from their

Page 22

primary investigator?

A. Both. It depends on the working relationship. Some lawyers and investigators have a working relationship where the investigator automatically reads all the police reports and discovery for that lawyer's case and then the two collaborate. Other lawyers prefer to assign items.

Q. Okay. So it's not working with them through the start and finish of a case, but piecemeal as needed essentially?

A. It depends on the lawyer.

Q. Okay.

A. But even if it's piecemeal, and I don't know if that's the best word, if there's an assignment to do something and three months later there's another assignment, that investigator is sticking with the case and the lawyer.

Q. Okay. And you said it's one -- one for every seven?

A. Approximately.

Q. Okay. And then you said you had five legal assistants?

A. Two legal assistants.

Q. Oh, two legal assistants. And three clerks?

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A. Correct.

Q. Clerks.

A. Two clerks and then one office management specialist.

Q. And -- and how does the work or assignments to the legal assistants be -- or are assigned? Are they also for -- you know, one for every seven or --

A. The legal assistants we use in associate court to manage the intake of new clients and to organize the associate dockets for the entire office. The associate dockets are quite busy and logistically complicated, and that's where we get most of our new cases.

So we have two associate divisions, and each legal assistant works in one of those divisions and manages all the paperwork, client intake, and opening up cases for new clients. In addition, the legal assistants will play discovery for video discovery for clients on occasion when requested by lawyers.

They also are largely in charge of ordering and gathering all records, whether they be employment records or medical records or school records, and we divide the office in half based upon

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the associate division. So each legal assistant roughly has ten lawyers.

Q. Would you say that -- you said the legal assistants manage the intake of new clients and organizing the docket. Would you say that that's a daily job?

A. Yes.

Q. And then on top of that they also assist with discovery?

A. Yes.

Q. Has there been a time or an instance when a legal assistant was too busy to assist an attorney with discovery requests?

A. Yes.

Q. How often does that occur?

A. It happens I would say with some degree of frequency because given the number of cases that need to be opened, the incoming clients, that takes priority sometimes, and then the -- the records can be delayed, ordering the records. So then the investigators have to step in and help. Vice versa, sometimes the investigators can be out finding witnesses and overloaded.

Q. Uh-huh.

A. And they also play discovery for

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clients, and then the legal assistants have to step in.

Q. What do you mean by play discovery for clients? Just not familiar with the term.

A. There is a lot of video discovery now in criminal cases. It could be video recordings of witness interviews by the police. It could be 911 calls. It could be videotapes of interrogations. It could be videos of the crime scene. It could be surveillance footage.

It could be recorded phone calls from the jail. Some cases may have 50 hours of this material. And it's impossible for the lawyer to meet with the client to -- and view all the discovery together, so we have to break it up and have assistants help out.

Q. Okay. And then you have the two clerks, and what -- what are their functions and how do they get their assignments?

A. The two clerks manage the -- the phones up front.

Q. Okay.

A. And they are also opening up cases, probation revocation cases. They are reviewing applications that come from the jail and determining

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indigency. They are opening up applications that we get at the circuit arraignment docket.

This is when a case moves from associate court to circuit court. There's a formal proceeding where the client appears before a judge and enters a plea of not guilty. We do pick up new cases at this docket for various reasons.

Q. So are both the clerks and the -- the legal assistants making indigency determinations?

A. Yes.

Q. Okay. And then the office manager, what -- what are their functions?

A. The office manager helps open cases. She's also in charge of conflicting all cases. She helps manage the phones. She does all the IT work. She also fills in for legal assistants and clerks as needed.

Q. So --

A. And all billing. She also is in charge of all billing.

Q. So when you say the office manager helps open cases, does that also mean that there's indigency determinations by the office manager?

A. Correct.

Q. So does your attorneys spend any time

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doing administrative tasks aside from pursuing their -- their individual cases? Like aside from researching cases or going to court, do they send out their letters themselves, do they prepare the templates themselves?

A. Most letters are created and generated and printed and mailed by the attorneys. We do have a system where discovery on low-level cases will be copied by the two clerks and mailed to the clients automatically as it comes in.

Administratively one of the -- the problems is there's no interface between the court's computer system of Case.net and our Lotus management. So all court dates have to be manually entered to keep up in our system, and most lawyers fall behind in that administrative task just given the caseload.

Q. And there's -- is there any time available on the part of the legal assistants or the clerks to take on that role?

A. No.

Q. And being the district defender and managing your attorneys in your office, on average how much time percentage wise do you think your attorneys are spending on administrative work?

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A. I would say if you were to count checking your voicemail, updating the computer, meaning you visited a client in the jail, you have to put notes into the computer, you've been to court, you have to put notes into the computer, put in a new court date, I would say it would at least have to be an hour a day if you were on top of it.

Q. And how many hours does your attorneys generally work in a day?

A. Eight to ten.

MR. MOORE: That was eight a.m. to ten p.m.?

THE WITNESS: Eight hours to ten hours.

MR. MOORE: Okay.

Q. (By Ms. Rosca) Would you say that your office would benefit from having more administrative staff?

A. It could.

Q. What's your basis for that?

A. I would say more investigation would help cases move through the system more equitably and more quickly. And I don't know if there's a tech solution or if it's a personnel solution to the administrative tasks would be helpful.

Q. Would your office benefit if they had

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more investigators?
A. Yes.
Q. And what is your basis for that?
A. More investigation I think would show earlier what was going on with a case and what needs to be litigated.
Q. Can you think of an instance -- and I'm not trying to pry into any attorney-client privilege communications. But can you think of an instance, a specific one where a case was hampered because it just didn't have an investigator assistance just because the investigators were not available?
A. That's tough because you learn about it on the back end. There have been cases -- I can -- there have been cases where lawyers have realized early on that surveillance video needed to be obtained quite quickly or certain records needed to be obtained quite quickly and that resulted in a better result for the client. I think the fear is just given the flood of cases that those instances cannot be seen by a lawyer that's overloaded with cases.
Q. Is that -- would you say that's true -- well, strike that.
Do you think your office would benefit

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from more legal assistants?
A. Yes.
Q. And what is your basis for that?
A. Discovery could be shown to clients much more quickly and efficiently. I think it would increase the problems with diligence and communication that the Hinkebein case has raised for the whole system. And so I -- I think that would be very helpful.
Q. You said that discovery would be shown much more quickly. At the going rate right now, when are these discovery videos being shown?
A. I would say after the discovery is received it can take two to four months for the discovery to be shown to the client.
Q. And does that impact at all do you think the amount of time that the -- that the case gets resolved?
A. Yes.
Q. And what is your basis for that?
A. I think a lot of the serious violent felonies -- this is the dynamic in our office is the C and D and E felonies, those are the low-level felonies in Missouri. Those are the majority of our cases.

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The time to disposition is 79 days, which is quite short for that large of a caseload. And so the lawyers are focusing on visiting those clients, getting them out on bond, perhaps resolving the case a little bit too quickly.
And then what happens with the 30 or 40 violent felonies that the lawyer has, those get neglected, and those are the cases where there could be 50 hours of discovery, where the case lingers in court for nine months before getting set for trial, which is another nine months off.
So it's the serious crimes that get neglected, the clients don't get visited, discovery doesn't get reviewed, it doesn't get played. That's the most serious problem in our office at this time due to the number of cases.
Q. So just so I understand, the attorneys in your office are trying to move as many cases as they can so they'll focus on the lower-level felonies, and that will take away from the time from the more serious offenses?
A. Partially correct. The flood of the low level is intense and moves quickly.
Q. Okay.
A. And the demand and the need, it's a

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legitimate need, to have those clients released and do bond hearings, that's taking up a huge amount of time and there's no problem with that. But because that part of the caseload is moving quickly, that's where the river so to speak is -- where the lawyer is standing in the river.
Q. Right.
A. The -- the murders, the rapes, the robberies, the things that are generally going to move slower tend to move much more slower and get neglected because the focus is always on the incoming case.
MS. ROSCA: I'm going to hand you what I think is -- are we on 35?
(WHEREIN, Exhibit 35, St. Louis Public Radio article, was marked for identification by the Court Reporter.)
Q. (By Ms. Rosca) So the court reporter is going to mark this document Reynolds Exhibit 35. If you could just review that document and let me know when you finish reviewing it. Are you finished reviewing it?
A. Yes.
Q. Have you seen this document before?
A. Yes.

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Q. Can you state for the record what -- or can you describe what this document is?
A. This appears to be the web version of a news story on St. Louis Public Radio from 2012.
Q. And just for the record, the title of the news article is "Missouri public defenders take problem of high caseloads to high court."
A. Yes.
Q. So if you turn to the second page of that printout, do you see where your last name seems to appear sort of middle of the page, or your full name actually?
A. Yes.
Q. Did you provide statements for this radio interview?
A. Yes.
Q. And do you have any -- do you have any concerns about the accuracy of the statements you provided in this radio interview.
A. No.
(WHEREIN, a discussion was held off the record.)
Q. (By Ms. Rosca) So what was the subject matter of this interview?
A. Caseloads in our office, and at the

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time there was litigation regarding public defender caseloads across the state.
Q. And you see on the -- again the second page of the printout it says that (quote as read):
Missouri's public defenders have argued for years that they have too many cases.
Or it's at the top of the second page, I guess. Do you agree with that statement?
A. Yes.
Q. And what's your basis for that agreement?
A. To my knowledge, since 2007 caseload numbers have been a high priority of the public defender system, and there's been numerous efforts in the legislature and the courts to reduce those numbers.
Q. And does that caseload issue -- has that caseload issue also affected your office in particular?
A. Yes.
Q. And it says if you look further down that St. Louis County is the biggest county in Missouri, and at that time it said that the public defenders office has more than 18,000 cases pending

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and just 12 full-time lawyers. Do you see where that statement is written?
A. Yes.
Q. And since that time you've increased to 20 attorneys?
A. I would say 18. I cannot recall if at the time the 12 lawyers -- I can tell you the 12 lawyers did not include myself and Pat Brayer.
Q. Okay.
A. It did not include management lawyers when I made that statement.
Q. Does -- does that 18,000 cases strike you as a particularly high number?
A. I believe it's 1800 cases.
Q. 1800, excuse me.
A. And I would say it's -- it's a high number for 12 lawyers full-time caseload dedicated lawyers to handle. Currently our live caseload, meaning our pending caseload, is 2,200. So that number is not unfamiliar.
Q. And then later in that same page it says one of the attorneys has 118 cases. That appears from this article that you were looking at a screen that tracks the caseload; is that correct?
A. Correct.

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Q. And you testified earlier that your more experienced attorneys have about 100 to 200 cases per attorney; is that correct?
A. Correct.
Q. So would you agree that your caseload per attorney at least for the experienced ones have increased since this article was written or this interview was taken?
A. It very well could have. Because this article only references one lawyer with 118 cases, I don't recall what the numbers were for the other 11 lawyers at that time. I can tell you right now just every one but two full-time dedicated lawyers has over a hundred cases in our office right now.
Q. And does that figure strike you as particularly high?
A. Yes.
Q. And what is your basis for that opinion?
A. I think once cases go above 60, I think it's incredibly difficult for even the most trained lawyer to maintain communication and diligence on a caseload over 60.
MS. ROSCA: Okay. And the article also says that -- I will introduce another exhibit. So

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the court reporter is going to mark this Exhibit 36, Reynolds Exhibit 36.

(WHEREIN, Exhibit 36, The New York Times article, was marked for identification by the Court Reporter.)

Q. (By Ms. Rosca) Could you please review this document and let me know when you've finished reviewing it?

A. Yes.

Q. Have you seen this document before?

A. Yes.

Q. And can you state for the record or describe what the document is?

A. This is a computer printout of a article from February 19th of 2014 that was published in The New York Times about public defender caseloads.

Q. And just for the record, the article is titled "Public Defenders, Bolstered by a Work Analysis and Rulings, Push Back Against a Tide of Cases?"

A. Correct.

Q. If you turn to the second page of the printout, it's the backside of the first page towards the bottom, do you see your name stated

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there?

A. Yes.

Q. Did you provide comments for this article?

A. Yes.

Q. And do you have any concerns or doubt as to the accuracy of those comments?

A. No.

Q. You state in the article that, quote (quote as read):

Until recently lawyers here were carrying more than 200 felony cases from drugs to rape and murder.

Do you see that?

A. Yes.

Q. Is that -- was that true for your office just before 2014?

A. Yes.

Q. Has that number continued this year?

A. Not to the extent -- still a problem, but it's not as intense as it was shortly before this article was written.

Q. And what was the reason for I guess the reduction in intensity of cases?

A. It's -- I don't know if I can give a

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cause. In 2012 and 2013 the prosecutor's office switched the head of the warrants office and there were more filings, and those filings increased our numbers where across the board nearly every lawyer in our office had 200 or more. And then that number dropped, but as recently as this summer we had several lawyers over -- we had two lawyers over 200 and several approaching 200.

Q. And just to be clear, the Exhibits 35 and 36, they -- they both reference a ruling. Do you know what -- what was happening at the time the Supreme Court case that they're describing in both articles, do you know what that's in reference to? You can also look at Exhibit 35. That would help too.

A. I don't remember the -- the style of the case, but it was the case that was being litigated in the Missouri Supreme Court about whether public defenders could manage their caseload numbers.

Q. Was it the Waters decision, would that --

A. Yes.

Q. Okay. And just back to Exhibit 36, you also state right under the comment that we just read

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that the burden has eased, but it's still more than we can probably -- properly handle. Do you still agree with that statement?

A. Yes.

Q. And what do you mean by what your office can properly handle?

A. Communication, diligence, litigating cases, all of those three areas, particularly communication and diligence our lawyers struggle with, and do not make reasonable -- I guess they do not meet reasonable standards.

Q. Are you -- when you say reasonable standards, are you referring to ethical standards?

A. Yes.

Q. And the term communications, diligence are -- is that a term of art that you're referencing?

A. I believe those are terms also used in the ethical rules.

MS. ROSCA: I am going to introduce -- this one exhibit has been previously marked, so this is Plaintiffs' Exhibit 4.

(Exhibit 4, Previously marked exhibit.)

MS. ROSCA: And then with that I am also going to introduce Reynolds Exhibit 37.

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(WHEREIN, Exhibit 37, Cumulative caseload metrics spreadsheet, was marked for identification by the Court Reporter.)

Q. (By Ms. Rosca) Have you seen these documents before? I know one is hard to read. I apologize.

A. I do not believe I've seen 4. And I do not believe I have seen 37 either.

Q. Okay. So I'll represent to you that these documents were produced by the public defenders office to our office, and they list cumulative caseload metrics. And if you look at row 21 or area 21 it lists the St. Louis County. Do you see that?

A. Yes.

MR. MOORE: I'll also object to the form of the question as it's leading and argumentative as to what the exhibits show, but subject to that you can continue.

Q. (By Ms. Rosca) Mr. Reynolds, could you just describe for the record what you see on these exhibits, what you think these documents are?

A. My understanding of these documents, and I've seen these doc -- not these specific documents, but iterations of statistics in the past

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because they were distributed to district defenders as they were produced, these -- this shows caseload metrics for each office.

Q. And just looking at Plaintiffs' Exhibit 4, can you see is there any date on this document?

A. It appears to be January 1, 2017 to March 31st of 2017.

Q. And you mentioned that you've seen iterations of these documents before. Have you seen any prior metrics from prior time periods?

A. Yes. The last time that I -- I saw documents similar to these would be probably 2014, somewhere around there I believe they stopped being distributed to the district defenders unless you specifically requested it.

Q. All right. Is there a reason why you wouldn't request sort of the caseload metrics for your -- for your office?

A. Nothing's changed. I mean, you can tell just by the number of cases that come into our office that the metrics would not be changing much.

Q. Okay. So let's look -- let's start with Plaintiffs' Exhibit 4. So it says you have 20 attorneys. Is that -- that's still accurate, correct?

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A. Correct.

Q. Okay. And do you have any understanding of what these columns mean?

A. Yes.

Q. Okay. So for example, the column that says net new cases, what -- what does that -- what is your understanding of what that column is displaying?

A. The number of cases that were opened in that quarter minus cases that we withdrew from.

Q. Okay. And then do you see that that figure for Plaintiffs' Exhibit 4 says 1,118?

A. Yes.

Q. Okay. And then if you look at the column that says workload, it's sort of the last -- fourth -- fourth to the last?

A. Workload units plus count time plus travel?

Q. Yes. Do you have an understanding of what the information in that column is conveying?

A. Yes.

Q. And do you see that it says 27,352?

A. Yes.

Q. Okay. Just going back to the net new cases, the 1118, does that seem accurate to you for

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the first three months of this year?

A. Yes.

Q. And for the -- do you see the column that says percent of capacity?

A. Yes.

Q. And what is your understanding of that column?

A. Based upon the number of lawyers and the formula devised by RubinBrown, there's an hour capacity assigned to an office, and then based upon the cases that come in there's an hour number assigned to those cases, and then they come up with a percentage which shows how much over or under the target is for lawyers and work hours for the given caseload in an office.

Q. And do you see that the percentage for the Plaintiffs' Exhibit 4 is 263 percent?

A. Yes.

Q. Would you agree or do you think that's an accurate portrayal of how much capacity your office has to take on cases?

MR. MOORE: Also object to the foundation, but subject to that you can respond.

A. Yes.

Q. (By Ms. Rosca) If we now move to -- is

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it Exhibit 37?
A. Yes.
Q. Okay. To Reynolds Exhibit 37. Is there a date for this document?
A. April 1, 2017 to June 30th, 2017.
Q. And would you agree that the columns that you described earlier are the same with respect to meaning for this document?
A. Yes.
Q. And do you see if we go to net new cases, which we discussed in the prior exhibit, that the number is 1,062?
A. Yes.
Q. And that the workload is 25,866?
A. Yes.
Q. So do you -- and also the percent of capacity is 240 -- 240.7 percent. Do you see that?
A. Yes.
Q. Do you have an understanding as to why the percent of capacity and the net new cases has decreased within just the six-month time period?
A. No.
Q. Do you still think that that's -- do these figures still strike you as -- as high in terms of workload capacity?

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A. Yes.
Q. And what is your basis for that?
A. I think any reasonable and experienced attorney would not be able to handle the number of cases that came into our office during that period as divided among the staff that we have.
MS. ROSCA: Okay. And I'm going to introduce another -- actually, it's previously been introduced.
MR. MOORE: So that was Plaintiffs' 4 and Reynolds Exhibit 37, right?
MS. ROSCA: I'm going to introduce one more and then we can take a break. The court reporter is marking what is Reynolds Exhibit 38, and it starts with Bates number MSPD0038970.
(WHEREIN, Exhibit 38, FY 2018 Supplemental legislative budget request, was marked for identification by the Court Reporter.)
Q. (By Ms. Rosca) Could you review the document and let me know when you've reviewed it? I'm going to really only ask you about the last page, so -- have you seen this document before?
A. No.
Q. If we turn to the last page, have you seen iterations of this spreadsheet before?

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A. Yes.
Q. In what ways have you seen it?
A. In the same way that I described for 37 and 4.
Q. Okay. You can look at page seven of this document or this exhibit. It says St. Louis County. Again, area 21.
A. Yes.
Q. Can you describe what you think this spreadsheet is providing in terms of information?
A. I take back my answer. I have seen this document for the fiscal year 2017.
Q. And in what instance have you seen it?
A. I saw it in anticipation of this deposition.
Q. Okay. And what -- what is this spreadsheet providing in terms of information?
A. It's the cumulative caseload metrics for fiscal year 2017.
Q. And do you see -- strike that.
Are the columns that are listed here similar to the columns that you were seeing in Exhibits 37 and Plaintiffs' Exhibit 4?
A. Yes.
Q. Would you agree that the columns have

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the same meaning as in those exhibits?
A. Yes.
Q. Okay. So for net new cases it says 4,372.
A. Yes.
Q. Do you understand that to mean -- sorry for speaking over you. Do you understand that to mean that there's four hundred -- 4,372 cases for that fiscal year that were new?
A. Yes.
Q. Okay. And then it says that you still had 20 attorneys?
A. Yes.
Q. So just by dividing that total number by the 20 attorneys, that's about 218.6 cases per attorney?
A. I will accept that calculation.
Q. Would you -- does that strike you as high to have over 200 cases per one attorney in a given year?
A. Yes.
Q. And what's your basis for thinking that's a high number?
A. They're all felonies. Many of those felonies are violent felonies. And I think it's

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unusual for lawyers to have that many cases in one year, and then when you consider the number of violent felonies, I think it's extremely unusual. And I can't think of anybody in private practice who would handle that number of cases and particularly the seriousness of those cases.

Q. You said they're particularly violent cases. In your experience as a district defender and a public defender, do violent cases take up more time?

A. Yes.

Q. And why is that?

A. They're more complicated. The stakes are higher. There's more witnesses. There's more discovery. Often there's more issues with mental health. There's more client communication needed. There's more investigation needed. There's more depositions needed. There's more discovery review needed.

Q. So by that answer do you also think that violent cases require more resources?

A. Correct.

Q. At the moment right now at your office, is it your opinion that your office is getting the -- the sufficient amount of resources it needs to be

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able to litigate a case to the ethical standards that are required?

MR. MOORE: I'll just -- sorry. Just object to the form. I think it's vague. Subject to that, you can respond.

A. No.

Q. (By Ms. Rosca) And why -- what is your basis for your opinion on that?

A. Our office needs five to ten more lawyers at least to ethically handle the cases that come into our office each year.

MS. ROSCA: Have you -- strike that. We have been going I think for over an hour. Would you like to take a break?

THE WITNESS: Sure.

MS. ROSCA: Okay. Off the record.

VIDEOGRAPHER: The time is 2:46. We are off the record.

(WHEREIN, a recess was taken.)

VIDEOGRAPHER: The time is 2:51. We are back on the record.

Q. (By Ms. Rosca) Hi, Mr. Reynolds. Can we talk about case assignment? Can you walk through how your office gets a case?

A. We get cases in a variety of ways.

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Would you like me to list them?

Q. Please.

A. We get cases through the associate division when people are first arrested on a case. We will get cases where clients in the Department of Correction mail in applications because there's outstanding warrants.

We get cases of what's called the circuit arraignment docket, which is where a case is transferred from associate to circuit court. We get walk-ins, people who have been released and are looking for a lawyer.

We get applications from the jail across the board, any type of case and wherever it is in the system. We get referrals from the court, meaning clients have shown up in court without a lawyer.

We get e-mails from family members looking to get a lawyer for a family member. We get telephone calls from potential clients or family members looking for a lawyer. That would be the basic overview. There may be other instances, but that pretty much covers it.

Q. So when a case comes to you through any of those avenues that you just listed, what happens

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next? Is there a determination as to whether you're going to take the case?

A. Once we get an application. And how we get an application is going to vary based upon all those different ways we take in cases.

Q. And so can we start with maybe through the associate division as an example when a defendant is just arrested you mentioned; is that correct?

A. Correct.

Q. Okay. So how -- can you walk me through essentially how that case that you received from the associate division then gets assigned to an attorney in your office?

A. So in the associate division there's what's called a confined docket each morning, and those are defendants who have been arrested anywhere 24 to 72 hours prior to that court date. The judge does a -- what's called an initial arraignment where he informs the defendant of the charges and inquires how the defendant is going to acquire an attorney.

If the defendant requests a public defender or indicates that they have no resources to hire a private attorney, an application is filled out in court and given to our legal assistants who

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review the application in court or after court and make an indigency determination.

Q. And then once this indigency determination is made, what happens next?

A. A case is created in our computer system and at the same time it's assigned to an attorney.

Q. And who makes the determination as to which attorney gets that assignment?

A. The legal assistant.

Q. Does the legal assistant have any information as to -- or strike that.

Does the legal assistant consider the attorney's caseload at all when it gives the assignment of a case?

A. Yes. So we have a spreadsheet that we use for assigning all cases in the office and assignments are largely made by scheduling availability so we can achieve vertical representation. So that's one major factor in the case assignments. The other major factor is the attorney's experience level.

Q. Okay. And the more experienced attorneys would get the more serious cases. Is that how it works?

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A. Correct. And we make categorical determinations on the difficulty of the case and the lawyer's experience level so that the legal assistant can assign the case according to those parameters.

Q. Okay. Is there ever an instance where a case was assigned to an attorney in your office by a legal assistant after making an indigency determination where the attorney said he can't handle the case?

A. No.

Q. If there was a situation that that would occur, what would the attorney's recourse would be? Could he talk to someone about that?

A. Oh, it would be quite easy. If a lawyer cannot handle a particular case or certainly in this post-Hinkebein landscape if an attorney said there are too many cases, they would talk to me and we would figure out a resolution.

Q. And what would happen to that case if the resolution was this particular attorney cannot handle that case?

A. In what capacity?

Q. Like internally, would it go to another attorney?

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A. No. I meant is it because the case is too difficult for the lawyer or the lawyer's caseload is too high and the lawyer can't have a new case?

Q. The -- the latter.

A. We have not encountered that as an office, although all lawyers know that they're overloaded. And we are working with the courts to try to resolve that, but as of yet no lawyer has said no more cases.

Q. What about in the prior situation where they just don't have the experience to take on that particular case?

A. We'd reassign it.

Q. Can we talk a little bit about initial hearings? At what point -- can you describe what happens after the indigent defendant is arrested? Do they get an initial hearing? You mentioned before that they can request the PD after they get arrested, but after that point if they're not assigned a PD is there an initial hearing?

A. Initial hearing is not a term that's really used --

Q. Okay.

A. -- in our jurisdiction.

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Q. What would you -- how would you describe the process? What terms would you use?

A. Can I describe the process?

Q. Sure.

A. So the confine docket is the arrested person's first appearance in court where charges are read. The case is then continued by the court for one or two weeks for entry of counsel.

If we enter on the case generally speaking, particularly for low-level felonies, the case is given two court dates. One for preliminary hearing and one for a bond hearing.

The bond hearing is generally within a week of that second appearance in court and then the preliminary hearing is scheduled by the court and is usually six weeks out.

Q. Has there been an instance where the PD has been unable to enter as counsel after those first two weeks after being arrested?

A. I'm not understanding the question.

Q. Let me rephrase. That was vague. You mentioned that after they are arrested and appear for the first time there's one to two weeks in which the -- your office may enter as counsel; is that correct?

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A. Yes.
Q. Okay. Has there been a situation where your office was unable to have an attorney present to enter as counsel?
A. No.
Q. Okay. After you've entered as counsel for a particular case, you stated that there are two other court dates that are usually set, the preliminary hearing and the bond hearing?
A. Correct.
Q. Has there been a situation where an attorney in your office has been unable to attend either of those hearings?
A. No.
Q. Okay. Has the -- do the attorneys in your office typically meet with their client prior to these hearings?
A. As much as possible.
Q. And what does as much as possible mean?
A. Given the number of cases that come in, many attorneys find it difficult to have an initial visit within statewide public defender standards of seven days. Because of the number of cases and the -- the flow of those cases are so quick, we expanded our initial visit to ten business days for our

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office. As much as possible the lawyers try to achieve that, but it doesn't happen in every case.
Q. So -- go ahead.
A. And just to finish, before the preliminary hearing which is usually six weeks after we've entered, most lawyers have met with their confined clients, but there are exceptions given the caseload where that does not occur.
Q. So there's a possibility then that a client would be confined for at least six weeks and have not met with their counsel yet?
A. It has happened.
Q. And -- and what is the frequency of that happening in your office?
A. I don't have an exact percentage.
Q. Uh-huh.
A. The computer does not track that. It would have to be hand calculated. But when we do promotion reviews I hand calculate that, and notice that in a percentage of cases some lawyers have missed those marks.
Q. Would you say it was more than 30 percent?
A. Some lawyers more than 30 percent, other lawyers less than five percent.

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Q. Okay. Do you -- is there a trend as to the lawyers missing it being less experienced attorneys?
A. No.
Q. Okay. So you're saying even the more experienced attorneys may be missing the six-week client contact?
A. In our office it would be counted as have you seen the client within the first ten days.
Q. Okay.
A. And then we've deviated from every 30 days, which is the statewide standard, to every 60 days just given the speed of cases and the number of cases, and there are lawyers who miss both of those marks. There are some lawyers who meet their clients within seven days and then every 30 days also.
Q. For the instances where they have missed the mark on the 30 days or the 60 days, in your opinion do you think that it -- that it impacts the relationship with the client?
A. Yes.
Q. And what is your basis for that conclusion?
A. The 60-day mark is usually being missed

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in the serious and violent felonies because as I've mentioned in this deposition, the focus is on the flow of cases, the C, D's, and E's which move quite quickly.
So what happens with some degree of frequency is the more serious clients are neglected because of caseload problems and rightfully become worried and anxious, and that contributes to deteriorating attorney-client relations.
Q. And to prepare for the preliminary hearings, what if anything does your attorneys do to prepare for these hearings?
A. In our jurisdiction generally speaking a case set for preliminary hearing discovery will be provided. However, the timing of that discovery when it's released varies because there are probably 12 prosecutors who are individually responsible for disclosing discovery, and some of them are more diligent than others.
So an attorney can meet with a client with the discovery and prepare for the preliminary hearing if the discovery is provided in time. If it's provided two or three days before the preliminary hearing, the attorney will have met with the client, but not necessarily with the discovery.

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Q. Okay. We're talking about how the attorneys would meet with the client. Where does the client contact generally take place?

A. If the client is confined, in the jail. If the client is released, usually over the phone. Although office appointments are offered, I think a lot of released clients do not -- sometimes just don't take that opportunity.

Q. And when they meet in the jail, is it usually a confidential place?

A. Yes.

Q. Are there ways for the clients to call your office I think you mentioned?

A. Yes.

Q. And that's where the legal assistants take the calls, right, or the clerks?

A. We all -- the jail, all of the inmates in the jail can make free phone calls to our office several times a day. Our phone system is provided by the county. So it has to go through the operator.

Q. And then after the preliminary hearing and a case is set for -- or is going through the litigation, what is the percentage of client contact by your attorneys?

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A. I'm not understanding the question.

Q. Does your attorneys have any difficulties meeting with clients after the preliminary hearing because --

A. Because of -- because of caseload problems?

Q. Yes.

MR. MOORE: Also object to the form of the question because it's vague, but you can respond.

A. Because of the caseload numbers, keeping up with visitation with the clients in the jail is difficult for every attorney in my office.

Q. (By Ms. Rosca) Is there a policy -- you mentioned that ten days after you've -- you've entered as counsel. Is there a policy after the preliminary hearing as to how many times the attorney should meet with their client?

A. The policy is meet with the client within ten days of assignment --

Q. Uh-huh.

A. -- and every 60 days thereafter.

Q. And has your attorneys been able to meet the every 60 days thereafter?

A. Our attorneys struggle with that and do not make that number a hundred percent.

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Q. And in your opinion, do you attribute that to the caseload problems?

A. Yes.

Q. You said that they had -- they meet with the -- the client at the jail for the first meeting. Do they need to meet with their client at the jail for any subsequent meetings, those 60 days?

A. Yes.

Q. Does that -- does that have any impact on their time to travel to the jail?

A. No.

Q. The jail is fairly close?

A. The jail is in the same building as the courthouse.

Q. Okay. What about for clients that are in state prison or in federal prison?

A. That is a challenge.

Q. Can you explain why that's a challenge?

A. Phone calls are not readily set up. Each Missouri state prison seems to have a different policy for setting up phone calls, whether they're collect, who dials in, what hours can be used.

Each Missouri state prison also has varying hours when attorneys can set up in-person

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visits. For example, Potosi Correctional Center, it's Friday afternoon, Saturdays, and Sundays.

So you cannot see somebody in Potosi Correctional Center Monday, Tuesday, Wednesday, Thursday, Friday morning. And that involves a huge amount of travel obviously.

Q. And what about clients that may face any immigration consequences, do your attorneys have a lot of clients with that issue?

A. Our jurisdiction does not have a very high percentage of clients with that issue.

Q. Okay.

A. Attorneys inquire of every client about nationality, place of birth, immigration status, and are very aware of the issue.

Q. Okay. Let's talk about the resources that your office has apart from just the staff that work there. Do you -- do you have any social workers working in your office? I don't think you mentioned.

A. No.

Q. Has that had any impact on how your attorneys defend their cases?

A. I would say that because -- and this is a national trend, and our office is part of this, is

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many cases are negotiated even through litigation. And that mitigation at sentencing is crucial, and the lack of social workers to create mitigation reports is I would say -- it's sort of unimaginable that Missouri State Public Defender has no social workers. It's just -- it seems like that's just what's done in criminal defense across the board.

Q. And have you tried to request any resources for social worker reports either to the central office?

A. What our lawyers tends to do is in certain cases we try to hire psychiatrists to create those reports, but it's very expensive and it's very selective.

Q. Would these psychiatrists be acting as experts then?

A. Yes.

Q. What resources are available to your attorneys to then -- to hire these experts? Can you go through the process of how they would obtain an expert for their case?

A. They would contact the expert, talk about the background of the case, get an estimate, and then submit an E request for money.

Q. Do they submit it to you?

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A. Yes.

Q. And what do you consider in approving those requests?

A. Meaning?

Q. Meaning are there any factors you consider as to whether you should approve a request for an expert?

A. Usually it's self-explanatory in the request that the -- the attorney has done enough investigation that there's certain school records, medical records, health history, social histories that indicate that a social mitigation report would be helpful, and the state of negotiations, that that mitigation report could help with sentencing, either persuading the prosecutor or the court.

Q. Have you ever denied an expert request?

A. No.

Q. You said they were very expensive. Does it have an impact on your local office budget?

A. Not to my knowledge.

Q. What about taking depositions, what resources are available to your attorneys for taking depositions?

A. They can request to take a deposition in cases.

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Q. Is that request made to you?

A. Yes.

Q. Have you ever denied taking a deposition?

A. No.

Q. Is there a certain point in -- in any case, and I understand there are very different cases so it would run differently, but generally is there a certain point where the attorneys are requesting these resources, is it usually, you know, prior -- like a month or two prior before trial or are they working to request these resources at the outset of the case?

A. I would say the trend is to request depositions closer to trial than probably is in the best interest of the client in the case.

Q. And why do you think the attorneys are delaying their requests for depositions to closer to trial?

A. I don't know --

MR. MOORE: Just object to -- go ahead. I'll object to the form of the question. I think it misstates prior testimony, but it sounds like you were kind of going there, so go ahead.

A. I don't think it's an intentional

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delay. I think what's happening is the request is not happening until that 60-day window because of the caseload numbers.

Q. (By Ms. Rosca) In your opinion, if you had extra attorneys and extra staff, do you think that these resources, like experts, availability of deposition would occur earlier in the case?

A. Certain --

MR. MOORE: I'm sorry. Again, just calls for speculation, but you can go ahead.

A. Yes.

Q. (By Ms. Rosca) How about translators, do you run into request -- do your attorneys generally need to request translators for their cases?

A. For certain percentage, yes.

Q. And what resources are available to them to request translators?

A. There are several agencies in St. Louis that provide translation services that we'll hire on an hourly basis.

Q. And does the request go to you to approve for obtaining a translator?

A. Yes.

Q. And have you ever denied providing a

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translator for any of the attorneys?
A. No.
Q. Is there any -- does the central office have any policy or guideline as to how much your office can spend on these resources?
A. To my knowledge, no.
Q. Okay.
A. I know there's a number in our office budget, but I don't think that number is ever actually ever used for depositions and experts. I think it's something like ten or $20,000, but it's always exceeded.
Q. So what about pretrial investigations, do your -- I assume your attorneys engage in pretrial investigations?
A. Yes.
Q. Do you -- in your opinion, do you think they're spending enough time conducting pretrial investigations?
A. I would say that they're not because attorneys have mentioned to me that they're not.
Q. And what is the reason for being unable to do so?
A. Caseload numbers.
Q. Would you say that's true specifically

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for interviewing witnesses?
A. Yes.
Q. How about visiting the crime scene?
A. Yes.
Q. How about investigating the police conduct?
A. Yes.
Q. Can you think of a situation where -- and you don't have to disclose or compromise any attorney-client privilege, but a time where either your representation or that of the attorneys in your office was hampered by the inability to investigate a case sufficiently?
MR. MOORE: Just object to the form of the question. It's vague. Subject to that, you can respond.
A. Yes.
Q. (By Ms. Rosca) Could you provide the details of that instance?
A. This is an instance that's currently being litigated in a PCR hearing, and it was litigated on appeal, so I don't think it affects much confidentiality. There was a lawyer in our office that was in this period of 2014 where they were -- the caseload was 200 cases.

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It was an assault trial where he was unable to investigate witnesses that the client had asked him to investigate that the client said would be witnesses in his favor that he did not commit the assault.
Q. Is that an atypical case or does that typically happen for other attorneys in your office since 2014?
A. I'm sure it happens.
Q. And why do you say you're sure it happens? What's your basis for that conclusion?
A. Two reasons. The attorneys in my office are saying that people are pleading guilty because they've been in jail and they're waiting too long. And the attorneys are concerned that people are pleading guilty to get out of jail, not because they're actually guilty, and are unable -- and the attorneys are unable to work on those cases.
So attorneys have reported that problem to me. And then we will get complaint calls and complaint letters from clients and it goes to the diligence problem of these things have not been done on my case, these witnesses have not been contacted.
Q. Okay. Can we talk about motions for a moment? Just particularly discovery motions.

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Attorneys in your office file discovery motions I assume?
A. Yes.
Q. Have you -- has any attorney in your office provided concern about not having enough time to prepare for these discovery motions?
A. Discovery motions in Missouri are pro forma, meaning they're filed. It's based upon a Supreme Court rule.
Q. Uh-huh.
A. So there's really not much time involved in filing the motion where the -- the time in discovery takes place is making sure that the prosecutor has disclosed everything that's discoverable.
Q. And how has the trend been with requesting discovery from the prosecutor's office in your district? Has it been difficult to get the discovery in a timely manner?
A. Generally not. There are some prosecutors that are more difficult to get the discovery from than others.
Q. Are the requests for the discovery from the prosecutor's office made at a later point in the case by your attorneys?

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A. They're made in associate court.
Q. Okay.
A. When we had her on the case.
Q. So early on?
A. Yes.
Q. What about reviewing the discovery that you receive from the prosecutor's office, has attorneys in your office expressed concern that they've been unable to fully and sufficiently review the discovery they receive?
A. Yes.
Q. Do you have any examples of that happening?
A. Last month an attorney when we were discussing caseload numbers and how to approach the courts and reach a resolution for the Hinkebein problem mentioned that she was worried that she had plead clients to cases where she had not adequately reviewed the discovery, but the client just wanted to get out of jail and plead guilty.
Q. When you do the evaluations of the attorneys in your office, is that something that you consider? Is that -- whether or not they're reviewing discovery and in a timely manner?
A. That is not one of the -- the factors

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because I think that's very hard to measure unless you interview the lawyer.
Q. Do attorneys in your district regularly seek continuances?
A. Yes.
Q. And what do you think the reason for regularly seeking it is?
A. The case is not ready for disposition.
Q. And what typically are the reasons that it would not be ready for disposition?
A. More investigation for mitigation before a plea. More trial preparation if it's a case headed to trial.
Q. You've been mentioning the Hinkebein decision through your testimony today, so I'd like to sort of turn to that. The first question before getting there is you said that there hasn't been an instance where an attorney has refused an assignment; is that correct?
A. Correct.
Q. Okay. And by that logic your office hasn't refused assignments?
A. Correct.
Q. Okay. How has the Hinkebein decision impacted the attorneys in your district with respect

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to caseload concerns?
MR. MOORE: Just object to the form of the question. Calls for speculation. It's also vague. Subject to that, you can respond.
A. They are concerned -- previous to the Hinkebein they were concerned about the caseload and their ability to ethically represent clients. Post decision they're concerned that they on top of not being able to do a good job for their clients, that their law license may be jeopardized for something beyond their control.
Q. (By Ms. Rosca) And knowing these concerns has -- has your office taken any formal action in response to the Hinkebein decision?
A. Our office sent a conditional letter to the judges saying that pretty much at any moment we could start that process, but before starting that process we wanted to engage in constructive dialogue with the courts for solutions.
And so for the past two months we have been meeting with the judges regularly to try to reach a resolution. So we -- that's how we approached it.
Q. When you say you're meeting with the judges regularly, what are -- what's being discussed

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at these meetings?
A. Wait lists, private appointments to the St. Louis County Bar. Judges rethinking how they do probation violations.
Q. Can we start with wait lists? Is there currently a wait list in your district?
A. No.
Q. And so what would be the proposal with respect to the wait list?
A. What is being considered is a wait list would be generated of clients who were released and then a number of what is an appropriate, reasonable amount of cases would be assigned per attorney, and unless the -- unless the attorney was below that number everybody on bond would be on a wait list.
Q. So those who are confined or in jail would not be on the wait list, they would still get a public defender?
A. That's what's being contemplated right now.
Q. Okay. You said private appointments. Can you explain a little bit about what that proposal is considering?
A. In order to get our numbers where each lawyer would be under a hundred cases -- and we're

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just using that number as an arbitrary number right now. We would have to shed 700 cases -- 500 to a thousand cases. That can only be achieved through private appointments.

Also, there's a concern if a wait list is generated that speedy trial rights would be violated from the defendants. So the court is thinking of private appointments. How to appoint that number of cases is exceedingly difficult and it's expected that the private bar will be resistant.

Q. Now, these private appointments, would they be mandatory I would assume?

A. To be decided.

MS. ROSCA: I'm going to introduce an exhibit. Are we on 39? The court reporter is going to mark this document as Exhibit 39, or Reynolds Exhibit 39. And the Bates number for this document is MSPD0039427.

(WHEREIN, Exhibit 39, 10-12-17 Reynolds message to Judges Beach and Burton, was marked for identification by the Court Reporter.)

MS. ROSCA: Could you review the document and let me know when you finish reviewing it? I'm going to introduce Exhibit 40 as well in

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conjunction.

(WHEREIN, Exhibit 40, 10-12-17 Reynolds letter to Judges Beach and Burton, was marked for identification by the Court Reporter.)

Q. (By Ms. Rosca) But just first the big -- Reynolds Exhibit 39, have you seen this document before?

A. Yes.

Q. How have you seen this document before?

A. I created it.

Q. And what is it?

A. It's an e-mail that I sent to Judge Beach and Judge Burton.

Q. And when did you send it?

A. October 12th, 2017.

Q. And what is the substance of the e-mail?

A. It's a request to meet with them to talk about our caseload and the Hinkebein decision.

Q. And if you look at the first sentence of the e-mail, it says I met with -- or I met informally with Judge Burton this week; is that correct?

A. Correct.

Q. And what did you discuss with Judge

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Burton?

A. Our caseload and the Hinkebein decision.

Q. What about your caseload?

A. That it was ethically unmanageable due to its size.

Q. And what was his response?

A. He agreed.

Q. Is that all that he said?

A. He believes that the Hinkebein decision should be taken seriously and he wanted -- he was reaching out to us to meet and try to come up with solutions.

Q. So he reached out to you?

A. Yes. At the same time that I was going to reach out to the judges. I had heard that he wanted to reach out to us.

Q. And how did you hear that he wanted to reach out to you?

A. I forget.

Q. Okay. It says in the e-mail that -- so this e-mail also has Judge Beach copied on to it; is that correct?

A. Correct.

Q. And it says (quote as read):

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I have attached a formal letter outlining our ethical dilemma in the wake of in re Hinkebein.

Can you describe what the ethical dilemma is?

A. It's outlined in the letter.

Q. Okay. So if you turn to Reynolds Exhibit 40, is this the letter that was attached to this e-mail?

A. Correct.

Q. And just for the record, this is MSPD0039433. Did you write this letter?

A. I did.

Q. And what is the substance of this letter?

MR. MOORE: Just object -- also object. I mean, it calls for a narrative and I think the document speaks for itself, but subject to that you can continue.

Q. (By Ms. Rosca) What is this letter about?

A. The caseload numbers in our office and the ethical obligations under in re Hinkebein.

Q. If you see the first paragraph of your letter, it says (quote as read):

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Hinkebein's discipline occurred within the context of a high caseload beyond his control, a reality familiar to all Missouri public defenders.

Is this reality also true for your office?

A. Yes.

Q. Then you write in the next line that (quote as read):

I am writing to you today about the caseload problems in our office and -- and the ethical dilemma we currently face with regard to our current and future clients.

Could you explain what you meant by that sentence?

A. Our lawyers want to provide ethical representation to all of the clients. Because of the caseload numbers, that's impossible to do. And there's no way for our office to control the caseload numbers.

Q. And did you reach that conclusion because you've spoken to the attorneys in your office about this?

A. Yes, and just the number of cases

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coming into the office.

Q. You also write that in the middle the second paragraph it says (quote of read):

I'm asking you to collaborate with us in solving not only the problem of high public defender caseloads but also the quality of justice in Missouri.

What do you mean by the quality of justice in Missouri?

A. Because public defenders handle like -- something like 80 percent of all criminal cases and do not have enough time to work on the cases I think that calls -- calls into question the quality of justice across the state.

Q. And then in the footnote on the bottom, footnote one, you cite to Missouri rules, ethic rules. Do you see that?

A. Yes.

Q. Can you -- what is your understanding of the rules that you're citing here? What do they require?

A. That an attorney be attentive to what issues the case presents and follow up on those issues as a reasonable lawyer would do.

Q. In your opinion based on how you

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evaluate the attorneys in your office, do you believe the attorneys in your office are meeting those standards?

A. Not in every case.

Q. And is that because of the high caseload issue for your office?

A. Yes.

Q. And footnote three you say that (quote as read):

Managers also have a duty to make sure that no attorney under their supervision violates the rules, Missouri Supreme Court Rule 4-5.1(c). Do you see that?

A. Yes.

Q. In your opinion, do you think this rule applies to you as the district defender?

A. Yes.

Q. And what have you been doing to ensure that the attorneys in your office don't violate the ethics rules?

A. Since Hinkebein I've been working with the judges to try to come up with a solution for caseload relief.

Q. Does that include just the

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conversations with the judiciary?

A. To date that's largely been what we are doing.

Q. And what are your plans if that is unsuccessful?

A. That is still to be decided. The problem is if this is not successful then we end up in litigation. Litigation is -- I don't know if that would be any more successful.

Q. Litigation in terms of --

A. The procedure under Chapter 600.

Q. Okay. In the second page of your letter you said that (quote as read):

Many attorneys in my office carry a caseload of 100 to 175 pending felonies.

Is that an accurate statement?

A. Yes. That is based off of the live caseload at the time I created this letter.

Q. Has it increased since you've created this letter?

A. It has slightly decreased.

Q. What is the reason for the decrease do you think?

A. I do not know.

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Q. You say that at the end of the sentence that (quote as read):

Within this caseload most attorneys have two to five murders, five to ten sex offenses, and five to 20 violent felonies. By any standard this is an ethically unmanageable caseload.

Do you see that statement?

A. Yes.

Q. What do you mean by ethically unmanageable caseload?

A. I think and I believe that whenever that amount of serious violent felonies are concentrated in one lawyer, even the most experienced practitioner, whether they be public defender or in private practice, would struggle and not be able to achieve ethical representation.

Q. And then the paragraph after that you say (quote as read):

All public defenders in St. Louis County are one phone call or one letter away from a complaint to the disciplinary counsel, an investigation and a finding that clients were not communicated with for months and cases

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were left untouched for the same period or longer.

Do you see that?

A. Yes.

Q. Do you still believe that this statement is accurate?

A. It is accurate today.

Q. What do you mean by they're one phone call or one letter away from a complaint to the disciplinary counsel?

A. There are many clients in our office represented by lawyers who have not been seen in months and their cases have not been worked on in months. I receive those complaint calls. The Woodrail office receives those complaint calls.

We receive letters. If the letter was directed to disciplinary counsel, the -- the lack of diligence would still be there and we would be dealing with a disciplinary counsel rather than an internal complaint.

Q. When you receive these complaints from your clients, what do you -- do you have a conversation with the attorneys being complained of?

A. Yes.

Q. And what is the response from the

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attorneys?

A. They do their best to resolve the problem.

Q. And what is the difficulty in not being able to see their clients according to them?

A. The number of cases, the speed of the cases, the number of court appearances required.

Q. You said that an investigation in finding the clients were not communicated with for months. Is that true that clients would not be communicated with for months?

A. That is true for clients represented in our office.

Q. Does that include clients that are detained?

A. Yes.

Q. Are you aware of the -- the longest amount of time a client has been detained and has not communicated with their attorney, what length of period of time is the longest?

A. May I break that question into two?

Q. Absolutely. It's a compound question anyway.

A. There have been clients who have not been communicated with counsel in nine months to a

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year in my office.

Q. Are those clients detained or confined?

A. Detained.

Q. Okay. And then what about for others who are released?

A. Most clients who are released, they are part of the C, D's, and E's that move very quickly within -- disposed of within a hundred days or less. I'm sure that occurs, but we don't get complaints from those clients.

Q. Yes. Understandably.

A. So I don't know the numbers.

Q. So the one that's -- the clients that are detained or confined for you said nine months at least and not receiving client contact, what is happening to their cases? Are attorneys still -- go ahead.

A. One of two things. They tend to be the more serious cases where the trial -- because of the St. Louis County dockets are very busy, trial may have been set a year to 18 months out, and then the client became neglected.

It could be it's still a serious case and it's popping up on the docket every 30 to 60 days and the attorney because they're overloaded

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is substituting talking to the client in court rather than visiting the client.

Q. So for example, a client has been detained for nine months, there's -- there's a court appearance set and the attorney has not spoken to that client for those nine months and speaks to that client for the first time at that court appearance?

A. What would be more likely is that the -- the case has been continued three times within a nine-month period, but the only client contact has been between the attorney and the client when the client is appearing for those court dates in court. There hasn't been a confidential visit and along with the confidential visit there hasn't been work done on the case.

Q. How has that impacted the relationship with those clients?

A. The attorney-client relationship is highly damaged and it takes a lot of effort to repair it.

Q. And when you say that the attorney is not working on that -- on the case, why would they not be working on the case?

A. They have too many cases.

MR. MOORE: I'll also object, note my

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objection because it calls for speculation. But your answer is on the record, so --

Q. (By Ms. Rosca) Just finally on this letter you also say -- you also say that this problem has been in existence for years. Is that correct?

A. Yes.

Q. How -- how long would you say this has been going on?

A. When I came back to the public defender in 2007 caseload numbers were a priority for management in all offices.

Q. And you also say in this letter that (quote as read):

At some point in the near future at the request of an attorney under the ethical rules I will stop assigning cases to that attorney until their caseload issue is resolved.

Do you see that?

A. Yes.

Q. Is that an option you're willing to take if it comes to that situation?

A. That is what the whole office is going to do at some point if a resolution is not worked

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out with the court.

Q. And if you stop assigning cases, what will happen to those potential clients?

A. This letter was written before the most recent decision in the Hinkebein matter. So it has to be read in that context.

Q. Can you give some -- can you explain what you mean by the most recent decision in the Hinkebein matter?

A. I don't know the case style, but early on the public defender was under the assumption that because of the ethical rule we could stop assigning cases without going through the procedure in Chapter 600.

Q. Uh-huh.

A. Shortly after this letter was written there was an appellate decision saying the public defender cannot stop assigning cases based upon the ethical rules. They have to go through the Chapter 600 procedure. So this letter was written before that appellate decision.

Q. Got it. These two -- this e-mail -- the e-mail and the letter, what has been the communication with the judiciary since you sent this letter?

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A. Judiciary has set up a subcommittee chaired by Judge Kerr, co-chaired by Judge Ribaudo, and I have met with both of them five or six times. There's also been meetings with the larger stakeholders in St. Louis County. There's been two of those meetings. And --

Q. What do you mean -- I'm sorry. What do you mean by the larger stakeholders?

A. Probation and parole, prosecutors office, clerks office, St. Louis County jail.

Q. Okay. Does the subcommittee have a goal as to when this would be resolved?

A. I've told the subcommittee that we need an answer sooner rather than later, and early on said I'd like an answer in January. Because St. Louis County is seriously considering private appointments that would be ongoing for potentially years, that may -- process to figure out how to do that may take longer than January.

Q. Is there any incentive for the judiciary or the stakeholders to promptly resolve this issue?

A. The stakeholders -- the judiciary that I've spoken to takes Hinkebein very seriously and wants to resolve it as quickly as possible. Their

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timeline perhaps differs than our timeline.
Q. Are you aware of how other judiciaries or other districts are reacting to Hinkebein?
A. Yes.
Q. Have they had the same response as the judiciary in your district?
A. No.
Q. Can you explain the difference?
A. My understanding is Kansas City, which is similarly situated, has been actively hostile. So the fact that we can actually talk to judges about solutions I think at this point is productive even though the remedy may not be forthcoming within 60 days.
Q. So is the solution to the caseload problem in your office dependent on whether the judiciary wants to cooperate or be hostile to the district defenders office?
A. I believe it is because I think the alternative to go into litigation is not going to solve any problems.
MS. ROSCA: We've been going for another hour. Would you like to take another five-minute break?
THE WITNESS: Sure.

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MS. ROSCA: Okay. Off the record.
VIDEOGRAPHER: The time is 3:48. We are off the record.
(WHEREIN, a recess was taken.)
VIDEOGRAPHER: The time is 3:53. We are back on the record.
MS. ROSCA: Mr. Reynolds, I'm going to have the court reporter mark this document Exhibit 41.
(WHEREIN, Exhibit 41, 10-14-17 Reynolds letter to Barrett, was marked for identification by the Court Reporter.)
Q. (By Ms. Rosca) Would you please review the document and let me know when you're finished?
A. I reviewed it.
Q. Have you seen this document before?
A. Yes.
Q. What is this document?
A. It's a letter I wrote to Michael Barrett.
Q. And just for the record, the Bates stamp on this is MSPD0039435. When did you write this letter?
A. October 14th.
Q. What was the purpose of writing this

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letter to Mr. Barrett?
A. To inform him that under the ethical rules in the in re Hinkebein case that caseloads in our office were unethically high.
Q. You write (quote as read):
That caseloads for nearly all attorneys violate ethical standards.
Do you see that?
A. Yes.
Q. Do you agree with that statement?
A. Yes.
Q. And what is the basis for that statement?
A. The caseload numbers and the seriousness of the cases in our office.
Q. In your -- in the second paragraph of the letter you say that you're requesting additional staff, about five to ten additional attorneys, for individual cases. Do you see that?
A. Yes.
Q. Is that statement still accurate?
A. Yes.
Q. Why do you think your office needs an additional five to ten attorneys?
A. I think that would give a live caseload

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per attorney of somewhere between 50 and 70 cases.
Q. You say in your letter that you've initiated dialogue with the St. Louis County judiciary. Do you see that?
A. Yes.
Q. Is the dialogue that you're referring to in this letter the same as we've been discussing in the prior exhibits?
A. Yes.
Q. You ask that -- you're requesting that Mr. Barrett be available to assist in these discussions if called upon. Do you see that?
A. Yes.
Q. Has Mr. Barrett been involved in -- in the discussions with regards to caseload issues?
A. Yes.
Q. And how has he been involved?
A. He appeared at one meeting with the St. Louis County judiciary, and he has spoken with Judge Kerr.
Q. Did he participate in the meeting?
A. Yes.
Q. And what -- what did he say at the meeting?
A. That he would like to work with

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St. Louis County and he would like St. Louis County to come up with solutions to this problem with the public defender.

Q. Did he express -- strike that.

The last part of the paragraph you said that you alerted the Office of Disciplinary Counsel that the ethical problems within my office are systemic. Do you see that?

A. Yes.

Q. What do you mean by systemic?

A. That they're systemic, meaning that the number of cases that come in to our office exceed what our office can handle and it's not due -- those numbers aren't due to anything that the attorneys are doing.

Q. In your opinion, do you think the attorneys are doing all they can to sufficiently work on their cases?

MR. MOORE: Just object to the form of the question as vague. Subject to that, you can respond.

A. The attorneys are doing the best they can under the circumstances.

MS. ROSCA: I'm going to have the court reporter mark Exhibit 42.

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(WHEREIN, Exhibit 42, 10-14-17 Reynolds letter to Pratzel, was marked for identification by the Court Reporter.)

Q. (By Ms. Rosca) Can you please review that document and let me know when you finished reviewing it?

A. I've reviewed it.

Q. Have you seen this document before?

A. Yes.

Q. Did you prepare this letter?

A. I did.

Q. What is this document?

A. It's a letter to the chief disciplinary counsel.

Q. In Exhibit 41, which you also still have in front of you, you mention that you alerted the disciplinary counsel. Do you see that?

A. Yes.

Q. Is this the letter that was referenced in the letter to Mr. Barrett?

A. Yes.

Q. And what -- what was the purpose of writing this letter to the disciplinary counsel?

A. Alerting him that the lawyers in our office have caseloads that are ethically unmanageable.

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Q. Are the same issues that you raise in your letter to Mr. Barrett the same as the issues you are raising in this letter to Mr. Pratzel?

A. Yes.

Q. You also mention in this letter to Mr. Pratzel that you've notified your supervisor Michael Barrett in order to resolve this problem. Do you see that?

A. Yes.

Q. And is the letter from Exhibit 41 the letter that you're referencing in this letter to Mr. Pratzel?

A. Yes.

Q. You say at the end that (quote as read):

Since public defender caseloads in my office and throughout --

(Court reporter interruption.)

Q. (By Ms. Rosca) (Quote as read):

Since public defender caseloads in my office and throughout the state have been repeat -- repeatedly verified to exceed ethical bounds.

Do you see that?

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A. Yes.

Q. How have they been verified?

A. I think going back ten years -- I forget the names of all the studies, but there's been several studies by outside agencies. There's been the RubinBrown standards and the exhibits that you've been referencing. There's just been numerous instances of metrics and outside studies that have commented and said that the caseloads are too high.

Q. And these studies and metrics, what are -- what is the data that is provided to these studies and metrics to come up with this conclusion?

A. My understanding, that its been internal public defender statistics. One of these studies or two of these studies if I'm recalling correctly, it's been almost ten years ago, have visited at offices, observed and interviewed public defenders.

Q. Do you recall during the time you were either a district defender or working for the public defenders office these study -- or the people conducting the studies visiting your office?

A. Certainly when I was assistant district defender in the city of St. Louis.

Q. What about in St. Louis County?

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A. I don't know if there was an outside agency that visited us. I can't recall.

Q. You might have told me this, but do you input any statistics into a database for your internal office with respect to caseload?

A. The computer generates the information.

Q. Can you explain how it generates the information? Does the attorneys put in their amount of cases they have manually or --

A. It's programmed through Columbia to collect the information based upon whatever is entered into the computer.

Q. Into Lotus?

A. Yes.

Q. Okay. Do you ever review the statistics entered into the computer just to see how the attorneys in your office are doing with respect to caseload?

A. Occasionally.

Q. And have you reviewed it recently?

A. Yes.

Q. And what conclusions have you drawn from reviewing the -- the statistics from those spreadsheets I assume?

A. The most useful metric is the live

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caseload, what each lawyer is handling at the moment you look at the screen. So that would be what I've referred to attorneys in our office are handling a hundred to 200 cases, that's -- that's the most useful metric for day-to-day management of the office.

Q. And you testified previously that's a hundred to 200 felony cases, correct?

A. Correct.

Q. Okay. Have you had any further conversations with Mr. Barrett regarding the issues you raised in your letter to him?

A. I've spoken to Mr. Barrett four or five times since that letter.

Q. And what has your discussions been about?

A. Updating him on what has been happening with my discussions with the St. Louis County judiciary.

Q. And what has been his response?

A. He wants a solution, as do I, sooner rather than later, but at the same time appreciates that the St. Louis County judiciary is talking about this issue and talking about actual solutions to the problem.

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Q. With respect to Exhibit 42, the one with Mr. Pratzel; is that right?

A. Yes.

Q. Had you -- did you have a response from Mr. Pratzel after sending this letter?

A. No.

Q. Did you have a response from anyone at the chief disciplinary counsel with respect to the caseload issue post-Hinkebein?

A. No.

Q. I take it then that the chief disciplinary counsel's office is not part of the discussions you're having with the judiciary and the stakehold -- stakeholders in your district?

A. Correct.

MS. ROSCA: I'm going to hand the court reporter another document, and I'm going to ask that he mark it Reynolds Exhibit 43.

(WHEREIN, Exhibit 43, 10-25-17 Reynolds message to various, was marked for identification by the Court Reporter.)

Q. (By Ms. Rosca) Could you please review document and let me know when you're finished reviewing it?

A. Yes.

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Q. Have you seen this before?

A. Yes.

Q. What is it?

A. It's an e-mail that I sent to judges who were part of this committee to address public defender caseload issues.

Q. Did you prepare this e-mail?

A. I did.

Q. Do you see the date on this e-mail?

A. Yes.

Q. What's the date?

A. October 25th, 2017.

Q. And for the record, this is Bates number MSPD0039430. You said that this was in regards to the committee that you testified about earlier?

A. Yes.

Q. It says here that Mary Fox, the district defender of the city of St. Louis, has reported that this measure significantly decreased her office caseload numbers. Are you -- are you familiar with Ms. Fox?

A. Yes.

Q. And how do you know her?

A. She's the district defender in the city

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of St. Louis.
Q. It appears from this e-mail that you are using some approaches she's used in her office as suggestions for your committee; is that correct?
A. Yes.
Q. And why -- why are you using -- what are the approaches in this -- in Mrs. Fox's district that you think would be helpful for your district?
A. The city of St. Louis several years ago, I don't know exactly when, adopted a screening tool for when public defenders would be required in probation cases, and it's my understanding that that screening tool, which is implemented by the judges, reduced the number of probation cases that her office handles.
(Exhibit 32, Previously marked exhibit.)
Q. (By Ms. Rosca) I'm going to present to you Exhibit Fox -- Exhibit 32, Fox Exhibit 32. This is the same from the prior. Is that the screening tool that you're referring to?
A. That is the order resulting from the screening tool, yes.
Q. And why do you think that this would be helpful for your district?
A. It would be helpful based upon the

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experience in the city of St. Louis that this order based upon the screening tool reduce the number of probation cases that the city of St. Louis handled.
Q. Currently how are probation cases handled in your district?
A. If the person qualifies for indigency we open a probation case.
Q. Is there a determination as to due process?
A. No.
Q. So do attorneys in your office have to appear for probation cases every time there's a probation revocation hearing?
A. If the client qualifies for services, yes.
Q. For indigency determinations?
A. Correct.
Q. Then there's no subsequent determination like this order discusses?
A. At this time, no.
Q. And how has -- has there been a response from the judiciary in your subcommittee meetings about this screening tool?
A. Yes.
Q. And what has the response been?

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A. The judges are considering implementing this tool along with other reforms of how probation hearings are handled.
Q. Can you go through this e-mail that you sent regarding this subcommittee meeting, could you just explain what the expanded pretrial release proposal would be?
A. Right now the St. Louis County jail has a very small pretrial release program, and that program involves a pretrial release officer supervising a defendant when they're released from custody with various conditions of -- of the release, but no money is required.
So if more clients were released from custody without public defender involvement, there's the possibility that the clients would be able to be reengaged with work and be able to hire private counsel.
Q. What was the response to this proposal by the judiciary?
A. I believe that coincident with the Hinkebein issue and the public defender crisis the St. Louis County judiciary was in the process of forming a committee to reevaluate bond and release. These instances happened to coincide.

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Q. Right now is there a bond schedule for your district?
A. There is.
Q. The second proposal that you discuss in this e-mail is the wait list. Is this the same wait list you were testifying about earlier?
A. That -- the second paragraph under pending cases that begins one of the measures --
Q. Uh-huh.
A. -- that is technically not a wait list.
Q. What -- what is it then?
A. The city of St. Louis public defender at some point in the past seven to eight years stopped taking applications in associate circuit court upon a client's first appearance. And that action reduced caseloads.
Q. What do you mean that they stopped taking applications? What happens to those clients that want or need counsel?
A. Because I have not worked down there when this policy was implemented, I don't have direct knowledge. My understanding is unlike the county where we have legal assistants who will take applications from clients at that first appearance after they've been arrested, that does not happen in

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the city, and that applications travel to their office in a different manner.

And at some point during that process more people are hiring private counsel than applying to the public defender, and as a result caseloads have dropped. Now, how that actually works since I'm not down there, I don't know beyond what I've just described just from hearing the effects.

Q. Who at the subcommittee meeting proposed comparisons to the city of St. Louis approaches that are now reflected in this e-mail?

A. This e-mail was actually in response to concrete ideas, just throw everything possible on the table. And it might have been Judge Beach when I was meeting with him informally in the hallway just saying throw out ideas beyond private appointments. Not that private appointment wasn't being considered.

Q. Uh-huh.

A. So this is a laundry list of various ideas, a brainstorming session.

Q. You do mention in your e-mail that given St. Louis's -- St. Louis County's fiscal need to reduce the jail population, what worked in the city may not necessarily work in St. Louis County.

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What do you mean by that?

A. If the public defender does not take applications at that first appearance in associate court, it is likely and probable that more clients will remain confined. If more clients remain confined, the jail population increases.

In St. Louis County for the past ten years there's been a huge concern of the jail population and it exceeding somewhere around 1,200, and that goes into overtime costs for jail personnel, which impacts St. Louis County financially quite significantly.

Q. So the wait list then is being referred to in this third paragraph, correct? However, if more defendants, that one. In the alternative wait list --

A. Yes.

Q. Okay. Is there a difference between a wait list and an appointment list?

A. At this point in the discussions with the court a -- a wait list was not a prominent option being discussed. So those terms are being used rather loosely in this e-mail.

Since then the idea of a wait list has -- because it's being contemplated in other

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jurisdictions in Missouri and judges are talking to one another, you know, this was almost two months ago, that the idea of a wait list as it exists now is perhaps different than what's trying to be articulated in this e-mail.

Q. Can you describe the proposal for the wait list now?

A. I think conceivably in this St. Louis County and other jurisdictions there's talk about people who were released out of custody being placed on a wait list until the public defender office has capacity to take them.

Q. The e-mail also talks about the private counsel appointment?

A. Yes.

Q. Can you explain what that proposal would be?

A. This e-mail in particular is not talking about a large scale appointment process across the bar. What it is referencing at the bottom of the page is there are cases in St. Louis County where a client will have multiple cases and will hire a private lawyer on one of those cases, and the public defender will end up having to represent the client on the other cases because the

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person can't afford the private counsel for all the cases.

Q. You mentioned that following that same thought onto the second page of the e-mail, quote (quote as read):

We also mentioned encouraging private counsel to resolve all pending matters for a particular defendant.

Do you see that?

A. That's -- that's just another way of saying what I just mentioned.

Q. Meaning they don't have the option of giving it back to the public defenders office once they are appointed the case. Is that what that means?

A. What it means is a client will have let's say three cases and will hire a private lawyer on one of the three. We would encourage the courts to consider encouraging that private counsel to resolve all three rather than just one out of three.

Q. I see. Okay. Does the court or the subcommittee discuss what the requirements would be for the private counsel taking on criminal cases?

A. It's a touchy matter because you're interfering with the financial relationship between

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private counsel and the client, so I don't know if there's a resolution to this, but it's -- it's being discussed.

Q. What do you mean by your interfering with the financial relationship?

A. The -- the attorney is saying I've only been paid for one case. You can't force me to work on these other two cases for free.

Q. So the private counsel are actually getting a fee for doing this?

A. Correct. This has nothing to do with appointment.

Q. Okay. So this is not a pro bono?

A. No.

Q. Okay.

A. This is the marketplace.

Q. Okay. Has there been talk of having a pro bono requirement for private counsel taking on criminal cases?

A. Not that I know of.

Q. Just quickly on the wait list again, the proposal for having a wait list, even if the defendants would be released and then placed on a wait list, theoretically if this plan goes through what happens or how is their pretrial motions

Page 114

affected if they don't have representation?

A. There would be no pretrial motions while they're on the wait list.

Q. Has this been a concern or topic that's been discussed?

A. People are aware of that problem. I suppose there's a tradeoff.

Q. Okay. And even if they're released just again on the wait list, is there a talk of certain types of cases that would go on the wait list versus others?

A. Low-level felonies, largely simple possessions and child support.

Q. Okay. Thank you. Has there ever been a wait list in your district?

A. No.

MS. ROSCA: I'm going to have the court reporter mark a document. Exhibit 44. Reynolds Exhibit 44.

(WHEREIN, Exhibit 44, 10-31-17 e-mail chain, was marked for identification by the Court Reporter.)

Q. (By Ms. Rosca) Would you please review the document and let me know when you've reviewed it? I'm also going to introduce Reynolds Exhibit 45

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with that.

(Court reporter interruption.)

MS. SHIPMA: It's not privileged. This was -- I asked him to send me this so I could forward this.

MR. MOORE: Okay. I just wanted to find out that before we started.

MS. SHIPMA: Thank you.

(WHEREIN, Exhibit 45, MSPD improved case flow plan, was marked for identification by the Court Reporter.)

Q. (By Ms. Rosca) Did you have a chance to review Reynolds Exhibit 44?

A. Yes.

Q. Have you seen this document before?

A. I have.

Q. And what is this document?

A. This is another e-mail sent to the judges who are on the committee for the public defender issues, prosecutor representative, the lawyer for the courts or the clerk of court, and somebody from probation and parole.

Q. Do you see that this e-mail has an attachment that says MSPD improved case flow plan?

A. Yes.

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Q. Could you take a look at Reynolds Exhibit 45, which is over here, and tell me if that is the exhibit being referenced in this e-mail?

A. Yes.

Q. Okay. Could you talk a little bit about what this improved docketing proposal is?

A. At the same time Hinkebein appeared the court was meeting with representatives from the jail, probation and parole, and the prosecutor's office about improvements to court processes.

And so as part of the conversations in the beginning there was discussion about whether improved docketing and court processes would help the public defender caseload issue. So this e-mail addresses those concerns and questions and has some ideas.

Q. In your opinion, if these -- this improved docketing proposal was in effect but your attorneys are still assigned the same number of cases they are and you have not increased the number of attorneys in your office, would it have a significant effect in reducing the caseload in your office?

A. I don't think that it would affect the caseload. It could affect -- it could create more

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time for lawyers to address the caseload as it exists now.

Q. What do you mean that it could create more time to address the caseload as it exists now?

A. A scheduling in St. Louis County is extremely difficult. There are two associate divisions and 13 circuit divisions that handle criminal matters.

Vertical representation is administratively better and ethically better for the client. But to achieve that our lawyers are in court nearly every day of the week and sometimes both mornings and afternoons.

If there was a coordinated scheduling and docketing, that would reduce the amount of time that our attorneys are in court and therefore they could devote more time to client communication and case preparation.

Q. Based on your communications with the judiciary and your circuit court, how likely is this improved docketing system going to be put into effect?

A. It's not going to be put into effect.

Q. And what is your basis for that conclusion?

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A. The judges have said so.

Q. Okay. So they've decided on this already?

A. Correct.

Q. Okay. What is the reason why they don't want to put it into effect, did they say?

A. I think there's -- it's too difficult of a task to achieve given the number of stakeholders. So efforts are addressed at the caseload issue as opposed to -- which I said this docketing issue came at the same time as Hinkebein. So that's docketing and court processes are just being pushed to the side.

Q. This e-mail also lists again the appointments to the private bar. I think it discusses it in a little bit more detail. Do you see that?

A. Yes.

Q. You said before that the private bar would be paid a fee, but then it says here that this could be presented as a pro bono requirement. Is that a consideration now as well?

A. Did I -- I'm sorry, did I reference a fee?

Q. I thought you said that appointments to

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private counsel, there would be a financial issue because they would be paid a fee; is that correct or no?

A. If I said that or implied that, it would be incorrect. I don't know if I said that.

Q. Well, then let's start again. What -- what is the proposed plan for appointments to private counsel? Is it the same as this e-mail?

A. There is no concrete plan. This is an outline of a -- a rough outline of a plan.

Q. Okay. Can we discuss -- can you discuss what the plan would be?

A. Now or in the e-mail?

Q. What is the plan now?

A. The judges are considering how to approach the St. Louis County Bar and/or lawyers who live in St. Louis County to talk about the need for private appointments, and then what's under consideration is appointing child support and drug cases.

Q. And just to be clear, the private appointments would be pro bono on the part of the counsel?

A. Correct.

Q. Is there currently a pro bono

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requirement in the district?

A. No.

Q. Would the judiciary have to set one?

A. I do not know.

Q. What about training, has training been discussed for private counsel taking on criminal cases?

A. Yes.

Q. And what is the training that will be involved?

A. Specific training would be devised for those types of cases and made available to people who are appointed to those types of cases.

Q. Is there a screening process as to how the private counsel would be appointed?

A. I -- nothing has reached that point.

Q. Okay. Currently is the private bar involved in your district to alleviate caseload issues?

A. I would say other than MCRC to the extent that they're involved, no.

Q. I would actually like to talk about that. I'm going to present you with an exhibit that was previously marked.

(Exhibit 6, Previously marked exhibit.)

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Q. (By Ms. Rosca) Mr. Reynolds, this is an exhibit, Exhibit 6 of the Petsch deposition, from the Petsch deposition. Have you seen this document before?

A. I've seen something similar to this. I think I've seen it, it's just not formatting as it appears on my computer screen.

Q. Do you see that on page six of this exhibit that your name is on the top, Stephen Reynolds? Page two.

A. Yes.

Q. Okay. Why are you listed on this -- well, strike that.

What is this exhibit?

A. This appears to be a copy of the electronic notification from the Missouri State Public Defender to an attorney participating in the MCRC program. And if a case is originating out of my office, I am listed as the contact person.

Q. And can you describe what the MCRC program provides?

A. It is a group of firms that have come together and volunteered to take cases that are likely to go to trial.

Q. So do they come in after the case has

Page 122

already been commenced or initiated?

A. To date that is how the program has worked in our office.

Q. And how do these private counsel receive training to handle those types of cases?

A. Yes. That's my understanding.

Q. And how -- how do they get the training?

A. I believe that there's been specialized training events, two to date, and interested volunteers are required to attend those trainings before taking cases is my understanding.

Q. And who runs the trainings, does the MSPD run them?

A. Yes. That's my understanding.

Q. Has your district office at all been involved in running the training programs?

A. A little bit.

Q. How have they been involved?

A. I gave an introductory presentation and I believe at the next training the deputy district defender is one of the scheduled trainers that's going to do in-depth training to whatever extent that is for that program.

Q. When did you give the introductory

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presentation?

A. Sometime over the summer.

Q. And when did this program begin?

A. Late spring, early summer.

Q. Of this year?

A. Yeah.

Q. And how many cases from your office have gone to the MCRC?

A. Five. Five to ten. I don't know the exact number. Somewhere in that range.

Q. How long are the trainings for the private counsel taking on these cases?

A. The training that was in St. Louis, my understanding was that it was two days. I believe there's been a training in Kansas City, but I wasn't part of that.

Q. Are the trials that the MCRC private counsel taking, are they for violent cases?

A. They are -- we have offered a variety of cases from low-level felonies to high-level felonies.

Q. Okay. So it's possible then for a high-level felony case, a violent high-level felony case to be assigned to the MCRC private counsel?

A. Yes.

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Q. But they only receive two days of training to take on that trial; is that correct?

A. I don't know what training the lawyers have in addition to the public defender training.

Q. Do they have to be criminal attorneys to be participating in this program?

A. I don't know.

Q. Okay. You can put that aside. Just -- just going back to the e-mail with the various proposals and the appointments to the private bar, I think it's Exhibit 44, did the committee or the judges discuss sort of the list of private counsel that they would choose from to make these appointments?

A. I think that's one of the issues that they are trying to resolve is how to generate that list.

Q. Okay. And what about you said that it would be pro bono for the attorney. What about the expenses associated with handling a case like depositions or getting experts, did they discuss who would be funding that aspect of it?

A. My understanding is that the public defender would fund those --

Q. Okay.

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A. -- costs, and that's based upon Michael Barrett telling the judges that during some point in the discussions.

Q. And is there a discussion about whether the attorneys can refuse the appointment?

A. The appointment process is not that far down.

Q. Okay.

A. It's in the generative stages. It's a serious intended commitment, but no details have been worked out.

Q. Okay. And I'm just going to keep asking questions about it --

A. Right.

Q. -- just to know the scope. Is there any discussion about the oversight of the private counsel on the part of the MSPD?

A. Not to date.

Q. Is that something that is being considered by the judiciary or by the MSPD?

A. I don't know.

Q. Are there -- are you aware of any other districts that are doing this, that are appointing private counsel to reduce caseload?

A. I'm aware that at one point the

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Columbia office, I don't know which county, there were appointments. I don't know if those are still continuing. I'm aware that the Harrisonville office at one point there were appointments, but I don't know if that's still continuing.

Q. And are you aware if -- for the offices that did participate in having appointments, was it successful in reducing their caseload?

A. I don't know.

Q. Okay. When is your next follow-up communication with the judiciary or the subcommittee?

A. It was to be today, but I'm taking a deposition.

Q. Understandable. Is it being rescheduled?

A. It will be.

Q. You said how frequently do you -- does this committee meet?

A. The committee itself is not meeting until January, but I am in frequent communication with judges on the committee. So work can be done -- you know, work doesn't necessarily have to be done at the meeting.

Q. What do you mean work doesn't have to

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be done at the meeting? What other work is involved in this process?

A. Talking to judges about formulating a plan and then being able to present it at a meeting for other judges to consider and then how to approach the private bar, talking about just the logistics and the administrative necessities of a wait list. You know, the details of these -- both proposals can be worked out without having an official meeting.

Q. You mentioned how to approach the private bar. Have you had any discussions from the private bar about this issue?

A. Judge Kerr met with MCRC.

Q. And do you know what the discussion involved in that meeting?

A. Yes.

Q. What did they talk about?

A. Judge Kerr was inquiring whether MCRC could be a vehicle for large-scale appointments.

Q. And what was the response by the private bar?

A. The representative of the MCRC said that that organization was not created to take large-scale appointments.

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MS. ROSCA: So I'm going to have the court reporter mark this Exhibit 46, Reynolds Exhibit 46. Can you please review this document and let me know when you have finished reviewing it?

(WHEREIN, Exhibit 46, 11-20-17 McCulloch letter to Reynolds, was marked for identification by the Court Reporter.)

A. I recognize it.

Q. (By Ms. Rosca) What is this document?

A. It is a letter sent to me by Robert McCulloch of the St. Louis County Prosecuting Attorney.

Q. Just for the record, it is dated November 20th, 2017, correct?

A. Yes.

Q. And why is the Office of Prosecuting Attorney sending you this letter?

A. You'd have to ask Mr. McCulloch.

Q. It says on the first line that this is a follow-up on our discussions with the circuit court. Was he present at those subcommittee meetings?

A. He was present I believe at the first one.

Q. Okay. And did he provide any

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statements at that first meeting?
A. He did.
Q. What did he say?
A. He suggested that the court appoint the private bar as the court back in 1980 did, which resulted in the creation of an improved public defender system.
Q. Do you agree with that alternative?
A. Under the circumstances I think that is a good suggestion because he also pointed out that the appointments to the private bar resulted in the private bar speaking directly with the legislature for improved funding of a public defender system.
Q. Just so I understand, you're saying that appointments to the private bar would prompt more discussions or -- yeah, would prompt more discussions with the legislature for funding for the MSPD?
A. That is what he suggested.
Q. Do you have any concerns about appointing private counsel to these criminal cases?
A. Meaning?
Q. Do you think that they would have the sufficient experience that your attorneys have at your office, do you think that there's any issues

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with the client relationship having private counsel appointed to them, just any concerns generally by having them represent the clients versus your office?
A. I mean --
MR. MOORE: Just real quick I'll object to the form. I feel like it's leading, also kind of vague. Go ahead.
Q. (By Ms. Rosca) Strike that. I'll rephrase.
Do you have any concerns that private -- or appointment of private counsel would be less effective than attorneys representing clients in these criminal cases?
A. If I'm trying to understand your question, and correct me if I'm wrong, you're asking me will the appointment of private counsel jeopardize the quality of representation for a given client.
Q. Yes. I'm specifically thinking of a situation where a civil attorney who doesn't handle criminal matters is now appointed a criminal case and how effective they would be in representation.
A. That could be an issue.
Q. Is that something that the judges are

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considering at all?
A. You would have to ask them.
MR. MOORE: Okay.
A. But I'm sure it's an issue.
Q. (By Ms. Rosca) Can we go back to this exhibit with the letter from the prosecution -- prosecutor's office?
A. Yes.
Q. Since that first meeting where he was present, has he or anyone in his office been involved in these discussions with the judiciary and your office?
A. There was a meeting in the last week of November where two representatives of his office appeared.
Q. Based on your observations from the meeting and what if anything they have stated, have they been amenable to trying to help resolve the caseload issue for this district?
A. I can only interpret what I -- I can only interpret their actions. I can't -- I don't know exactly what their thoughts are, but they have expressed through Bob McCulloch and his idea for appointment of the private bar that they recognize that there is a caseload problem.

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Q. So in particular in this letter he offers another proposal it seems like in addition to just the private bar. He says (quote as read):
You select one deputy defender and provide this office with a list of all pending cases assigned to that deputy and we will pull the files, make certain all discovery has been provided.
Do you see that?
A. Yes.
Q. What is your opinion of this suggestion by the prosecutor's office?
A. Operationally I don't think that this is going to help the caseload issue.
Q. And why not?
A. C, D, and E felonies already move through our office in less than a hundred days. The time to disposition does not solve the number of cases in our office.
Q. Just because you're receiving so many C, D, and E cases that it doesn't matter how quickly they're resolved. Is that why?
A. This letter suggests that moving cases more quickly will solve caseload problems. Our

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office already moves cases extremely quickly.
Q. But not quickly on the serious and violent felonies, correct?
A. Those aren't going to move quickly regardless.
Q. Okay.
A. This letter is referencing low-level easily resolved cases.
Q. Okay.
A. Those cases are already moving under a hundred days.
Q. So just so I'm clear, this suggestion would not reduce the caseload problem in your office?
A. Correct.
Q. Has the prosecutor's office provided any other suggestions to reduce the caseload issue aside from what has been suggested in this letter and the private appointment of counsel suggestion?
A. I believe those are the two suggestions that they've had.
Q. Are you aware of other districts that have been working with prosecutors' offices to reduce caseload issues in their offices?
A. No.

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MS. ROSCA: Can we take a ten-minute break? Thanks.
VIDEOGRAPHER: The time is 4:47. We are off the record.
(WHEREIN, a recess was taken.)
VIDEOGRAPHER: The time is 4:54. We are back on the record.
Q. (By Ms. Rosca) Mr. Reynolds, just to tie up the questioning about the subcommittee and the judiciary meetings that you've had, just to be clear, even if the judiciary in your circuit went with private appointments, would that alone reduce the caseload issues in your office absent adding new attorneys to your office?
A. Highly unlikely.
Q. Why do you say that?
A. The amount of cases needed to be offloaded we estimate between 500 and a thousand just to get our lawyers below a hundred cases. To appoint that many cases would be exceedingly difficult even if you had a cooperative, willing private bar.
Q. So you testified earlier that the prosecutor's suggestion in the letter that was sent to you was not going to reduce the caseload issue on its own; is that correct?
A. Correct.
Q. And now you've just testified again and clarified that the private appointments plan being contemplated by the judiciary circuit will not reduce caseload issues on its own; is that correct?
A. It is highly unlikely to do so, yes.
Q. And so what would be the solution to reducing the caseload issue in your office?
A. The easiest and best solution is to hire more public defenders.
Q. Okay. Thank you. Can we just go back and talk about just the turnover rate in your office? How many attorneys have you hired this year?
A. I'm going to say five to seven.
Q. Out of the 20?
A. Yes.
Q. So does that mean that five to seven prior attorneys left last year?
A. Correct.
Q. Is that on average what the turnover rate is per year since you've been a district defender?
A. I would have to access those

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statistics, which are not -- in views that I have are not tabulated automatically. It's a hand count, but I would say turnover has increased in the past four years.
Q. And why do you think there is such a high turnover rate or why -- strike that.
Why do you think turnover rate has increased in the past four years?
A. My view would be high caseloads, low pay, an extremely difficult job that very few people are suited to do, have the qualifications and the aptitude to do. I would say that public defender jobs, the skill level is highly underestimated what it takes to be successful and also to be able to practice over the long term.
Q. Of the five to seven you've hired this year, what is their experience level with respect to representing indigent clients?
A. Three had no experience. Two -- one had ten years' experience, one had five to seven years' experience. The other hire that we had that puts us in this five to seven range was a transfer from a rural jurisdiction with two years' experience who only lasted in our office for six months.

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Q. She left already?
A. It was a man. He left.
Q. Oh, he left already?
A. He left within six months.
Q. Why did he leave?
A. You would have to ask him.
Q. Okay. You don't do like a post -- like a post discussion after they give their notice as to --
A. Human resources conducts --
Q. Okay.
A. -- that interview.
Q. Okay.
A. What I think is what I think.
Q. What do you think?
A. I don't think he could handle the caseload and I don't think he liked the job.
Q. Of the -- the ones that had, you know, ten years' experience, five to seven years' experience, is this experience with the public defenders office?
A. Those two, yes.
Q. Okay. And then the three that had no experience, what are their backgrounds?
A. One is a recent law grad from Fordham

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University who really wanted to do trial work and did a national job search. One is a recent graduate of Suffolk University and was similarly positioned, wanted to do trial work, wanted to work for the public defender and did a national job search.
The other was working with a sole practitioner for maybe a year or so after graduation from law school. We considered based upon his interview that his experience, although we're fortunate that he had a job, was really not substantial in any way.
Q. Okay. Would you say -- you said that you don't know the specific, but generally would it be less than five that would leave per year or more than five?
A. I think the trend is towards the numbers I described for the past 12 months.
Q. Which is five to seven?
A. Yes.
Q. Okay. Thank you. Traveling, I just want to talk about how much time the attorneys in your office travel for their cases?
A. Currently, other than investigation, very little. All of our lawyers have cases in St. Louis County, but for one who is finishing up a

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conflicts assignment in the city of St. Louis and that's just left over from when conflicts have been contracted out. He still has a conflict caseload.
Q. Can you talk a little bit about conflict cases? When -- when did it get start -- when did it get contracted out?
A. The beginning of this fiscal year.
Q. And what were -- what was your office doing prior to that?
A. We were doing first-level conflicts in -- from St. Louis City, and I believe -- I don't know if it was first or second level from St. Charles.
Q. So could you explain, you know, how the attorney -- prior to it being contracted out, how the attorney was assigned a conflicts case?
A. We had one attorney assigned to do the conflicts cases in the city of St. Louis. Normally we would have two. Because we knew that the contract money was likely to be forthcoming in December of last year, that particular attorney volunteered to take all of the city conflict cases, which were lower in number than the St. Louis County cases per attorney, but required more work and more preparation for trial because St. Louis City is a

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trial-rich environment. And then the St. Charles County cases we would assign as they came in to the lawyer that was best suited to handle it.
Q. So just so I understand, there was one designated -- one attorney designated for conflict cases stemming out of the city of St. Louis; is that correct?
A. For the past year.
Q. For the past year. And then prior to that how were the conflict cases from St. Louis being apportioned?
A. There were two attorneys doing city of St. Louis conflict cases prior to then.
Q. And then the only other conflict cases you receive was from St. Charles; is that correct?
A. Correct.
Q. Okay.
A. In the -- in the past two to three years.
Q. Past two to three. And then that would be apportioned out to everyone?
A. Those numbers were quite small. I think it was probably less than 20 cases a year. So we would find the person best suited to handle that case given their caseload.

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Q. And then can you just describe what you mean by the conflict cases being contracted out in the beginning of this year?

A. The legislature apportioned money for all conflict cases to be contracted out through a centralized contracting office in Columbia, Missouri run by the public defender.

Q. Has that decision significantly impacted caseload issues for your office?

A. At some point in the next six months we will be able to reassign our one conflicts attorney to take a St. Louis County caseload.

Q. So it only really affected that one attorney?

A. We will gain the equivalent of one FTE to devote to the St. Louis County caseload. As soon as that attorney's caseload is reduced enough to make the transfer.

Q. And when -- prior to the contracting out of these cases, were the two designated St. Louis City attorneys also handling cases that were not conflict cases at all?

A. No. They were entirely dedicated to city of St. Louis conflict cases.

Q. But the ones that were handling the

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St. Charles cases also had additional nonconflict cases they were handling?

A. Other than one or two cases their caseload would be all St. Louis County cases.

Q. Oh, I mean the St. Charles?

A. Correct.

Q. Oh, okay. They would be -- they would do both?

A. So -- yes.

Q. Okay.

A. The St. Charles numbers, we only got ten to 20 of those cases a year. The numbers were quite low.

Q. Okay.

A. So somebody in St. Louis County would be handling 150 cases and then they would have one St. Charles case.

Q. Got it. Thank you. Just guilty pleas, do you -- do you guys have plea negotiations --

A. Yes.

Q. -- in your district? Okay. Can you just talk about how that works?

A. The prosecutor's office delegates a considerable amount of authority to the individual prosecutor to negotiate the case. So each case is

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negotiated with the individual prosecutor who has wide discretion.

Q. And how much time do the attorneys in your office spend negotiating plea deals?

A. Meaning?

Q. Meaning for one case, for example, what percentage of their time is spent negotiating a plea deal?

A. I mean, the reason I'm hesitating is you could count that as minutes spent on the phone, in court, and add it up, or you could count it as what work the lawyer is putting into the case to then present information to the prosecutor to achieve a better negotiated result. I don't know which measurement you're asking.

Q. Could you combine the two, just in general?

A. It would depend on the case then.

Q. What about for nonhomicide cases, like C, D felonies?

A. I mean, the reason I'm hesitating is if -- if the client in a particular case and there's not much negotiation to take place, there -- it can be very quick. If it's -- even if it's a low-level case and the lawyer has been working up the case and

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talking to the prosecutor over a period of months, it can be hours. I mean, it really varies on the case.

Q. So the ones that you testified earlier that were being completed in a hundred days, were those C, D felonies?

A. Those were C, D's and E's.

Q. Okay. Would those negotiations be much quicker then?

A. Some of them can be. Some of them can be extended also.

Q. Okay. And then I assume the ones that are the more serious violent offenses, they're longer times spent on negotiations?

A. Yes. Those negotiations often persist up until you're picking a jury.

Q. Now, you testified earlier that the reason why because of the flow of the C, D felony cases and how expedited the dispositions of those cases are, not a lot of time is spent on the serious violent cases; is that correct?

A. Correct.

Q. Does that include time spent with negotiation of plea deals with the prosecutor's office?

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A. You could put that in there.
Q. Okay. And do you know of an instance where that has been the case for one of your attorneys?
A. Meaning?
Q. Meaning they did not have enough time to negotiate a plea deal with the prosecutor's office for a serious violent offense because they had too much on their plate?
A. I think the problem is the attorney has not investigated and litigated the serious case to have a better negotiating position. Not that they don't have time to negotiate. One can negotiate with a prosecutor quite easily, but if you're not bringing anything to the table, the negotiations are not maximized for the client.
Q. So just so I understand, the issue then is that the time it takes to research and work on the case in preparation for the negotiation of the prosecutor's office; is that correct?
A. Correct.
Q. And do you think that the clients would be benefited if the attorney had more time to research and investigate in preparation of these plea -- plea deal negotiations?

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A. Yes.
MR. MOORE: Object to form, calls for speculation, but it's on the record.
Q. (By Ms. Rosca) What is your basis for thinking that?
A. What is my basis for thinking that?
Q. Yes.
A. Concerns that the lawyers have expressed to me when I'm reviewing cases because of client complaints or promotions. You know, I notice that some cases need to be worked on more.
Q. Can we sort of quantify or qualify what the serious cases are that's not getting the attention in terms of time that your attorneys can provide to these cases? Does this include felony sex offenses?
A. Yes.
Q. And then homicides I assume?
A. Yes.
Q. And what other types of cases that I haven't mentioned would it include?
A. Robberies and assaults.
Q. Okay. How much -- you have to then communicate with a client prior to negotiating with a prosecutor over a plea deal?

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A. Negotiations have to originate with a client.
Q. Meaning that they would have to request it?
A. Meaning like in any attorney-client relationship the client makes the primary fundamental decisions, including whether or not the client wants to negotiate and what the parameters of the negotiation will be.
Q. And for -- you testified earlier that there are instances where there is no client communication for nine months for these serious cases. Would that affect whether they -- the client has enough information to make a decision about plea negotiations?
A. It can.
Q. What do you mean by it can? Do you know of an instance where this has occurred in your office?
A. Well, I would -- I would imagine if a client has not been met for that period that they are not fully knowledgeable about the case and it could affect their thoughts about how to proceed and they've not had enough time to meet with a lawyer, collaborate with a lawyer and figure out a case

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plan, whether it be trial or negotiation or preparation for trial to advance a better negotiating position. Obviously none of that has taken place.
Q. If a client has been detained or confined for a period of time and -- could they request a plea deal even before the attorney has had time to adequately investigate and prepare for a plea -- plea deal negotiations?
A. I'm not understanding the question.
Q. You said -- you testified earlier that the client has to be the one to initiate whether they want to engage in plea deal negotiations; is that correct?
A. Correct.
Q. Is there an instance where they requested to accept a plea deal even before the attorney working on the case has had adequate time to -- to research and investigate whether that was a sufficient offer on the table by the prosecutor's office?
A. I think the way this actually works is clients who have not met with their lawyer have serious concerns and express, hey, I need to meet with my lawyer, nothing's been done on my case, and

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it's usually those expressions of concern which are legitimate are usually directed at investigating the case.

It is very rare for a client to say I just want to plead. My lawyer won't let me into court and plead. I mean, I just haven't encountered that unless somebody is seriously mentally ill.

Q. I guess my question is a little different. Has there been a situation where a client has been in custody and to get out of custody faster has just opted to take a plea deal even before the attorney has had adequate time to research and investigate whether that would be the best solution for that client?

A. Yes.

Q. And how often do you think that occurs in your office?

A. Lawyers have reported that it happens with enough frequency that they are personally concerned about that phenomena.

Q. Do you think that the lawyers' inability to attend to researching the scope of a plea deal or a negotiation impacts the time at which the client requests to just plead guilty to get out of custody?

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MR. MOORE: Object to the form. I think it's vague. Also I think it might be leading and calls for speculation, but you can go ahead.

A. Yes.

Q. (By Ms. Rosca) Do you have an instance in mind where this has occurred with one of your attorneys?

A. I think I mentioned it's probably the same example, but in the past month when we've been discussing caseload numbers and the Hinkebein problem, several lawyers have mentioned this to me as being a problem.

Q. Okay. Does the attorneys in your office attend lineups for their clients?

A. No.

Q. So your clients are in these lineups without representation?

A. Yes.

Q. Does that strike you as a concern?

A. I need to give a long answer to this.

Q. Please.

A. So certainly there are physical lineups conducted in the jail, and the police in many of these instances are following the Constitution, informing the client that they have a right to a

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lawyer to be present at those lineups. We have not been contacted to appear at those lineups. Were we contacted, we would appear at those lineups.

Q. If you are contacted to appear at those lineups, how would that affect the time that your attorneys spend on cases?

MR. MOORE: This calls for speculation. Go ahead.

A. Unknown because in eight years we have not received such a call.

Q. (By Ms. Rosca) Does your attorneys make any psychiatric evaluations when determining client's competency?

A. Yes.

Q. How does that process work?

A. When a attorney learns or suspects that there's a serious mental illness that affects competence, the policy, even though it's not written but it's clearly communicated to the lawyers, it's better to investigate competency even if you're in doubt, and the preference is to investigate it through a private evaluation. Not always. So they will contact a psychiatrist, make an E request, and I will approve it and submit it to Columbia.

Q. Do these competency determinations ever

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go to court?

A. Yes.

Q. Are the attorneys in your office present during these competency evaluations?

A. When I answered yes the competency evaluations go to court, meaning, you know, the result of the evaluation will be dealt with in court. Lawyers are generally not present during the competency evaluation.

Q. Is there a reason for that? Strike that.

Are the -- the competency evaluations are not done in court?

A. No, they're -- either the private evaluation, the evaluator will go to the jail and conduct the evaluation in the jail. If the client is released, the client will go to the office of the evaluator.

In some instances where we are going through the Department of Mental Health first, and those are carefully screened, the person is transported to the Department of Mental Health for the evaluation.

Q. Do your clients ever participate in interviews for presentence investigation reports?

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A. In our jurisdiction we try to avoid what are called sentencing assessment reports, and that's -- that's what you're referring to because they're usually unhelpful for our clients. And if we're in a situation where a judge is requesting it, we try to do our own mitigation case to counteract the sentencing assessment report.

Q. Your attorneys attend voir dire, I assume?

A. Yes.

Q. Do you know of an instance where any attorney in your office has ever waived a voir dire?

A. No.

Q. Is there any instance where they've skipped a voir dire?

A. That would never happen.

Q. Why is that?

A. Because we monitor the trials, and every lawyer in the Missouri State Public Defender knows that in a jury trial voir dire is one of the most important parts. It would be inconceivable that anybody would do that. I don't think they'd be employed if they did.

Q. That's fair. At the moment given that we've discussed that you have an ethical duty under

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the rules as a manager to report -- or ensure that your attorneys are complying with the ethical standards, are there any attorneys in your office that are not complying with those standards?

A. I mean, I think given the caseload, all of our lawyers, their caseloads are unethical. We have decided rather than to litigate to try to work with the courts to resolve these issues. I think if we had just decided to litigate no productive discussions would have resulted.

Q. And by that answer have you filed any formal motion to the court with respect to withdrawing as -- as representation or not accepting any more representation?

A. Not to date because we're in the middle of discussions. We don't want to end up like some of the other jurisdictions. Now, if it gets to that we'll do it, but at this point we're not there.

Q. What do you mean by some of the other jurisdictions?

A. Kansas City.

Q. Can you explain what has happened there that you've been aware about?

A. It's been very hostile from the bench and I've -- my understanding is they've attempted to

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file the 600 motion and it's been rejected on trivialities.

Q. And you said that if it gets to that point your office is willing to do that as well?

A. Right. But we don't want it to be a dead end. We just don't want to file a motion, go through a needless hearing and have no relief. Why not talk to judges and even though the relief may be imperfect as you've pointed out in this deposition, it's better than anything to date.

Q. And just to be clear, the relief is dependent on how amenable the judges are in speaking with the public defenders office with respect to the caseload issue?

A. Well, the relief on the horizon is private appointments and a wait list, which has never happened before in Missouri. It's an imperfect solution, but it's -- it's a step in the right direction. And why shut down that possibility by filing a motion tomorrow.

Q. And you've testified that the private appointments and wait lists, even if they went forward, would not have a significant impact on reducing the caseload issue for your office if no other attorneys were added to your office?

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MR. MOORE: Again, calls for speculation, but go ahead.

A. I mean conceivably, yeah. I mean, it's a lot of cases to offload.

Q. (By Ms. Rosca) Okay.

A. And it's as you've pointed out, the wait list is -- is an imperfect solution to people's rights under the Constitution, whether it's speedy trial or due process.

MS. ROSCA: Okay.

MR. MAUNE: That's it.

MS. ROSCA: That is it for me. I'm passing the witness.

EXAMINATION

QUESTIONS BY MR. MOORE:

Q. Very good. My name is Justin Moore. I'm with the Attorney General's Office. I'm here on behalf of the State of Missouri and Governor Greitens. I'd like to ask some follow-up questions. Okay. So just going to backfill a little bit here. Tell me a little bit about your educational background. Where did you go to school, starting with undergrad?

A. Bowdoin College.

Q. Where is that at?

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A. Brunswick, Maine.
Q. Okay. Are you from Maine?
A. No.
Q. Where are you from originally?
A. Colorado.
Q. Okay. So did you go to high school in Colorado, I guess?
A. I did.
Q. And how did you end up in St. Louis?
A. After I graduated from Bowdoin College I had a friend who worked for the public defender in Seattle. The job interested me and I found a job in St. Louis as an investigator.
Q. Okay. You started off as an investigator in St. Louis?
A. Yes.
Q. So take me through like the timeline, I guess. So you graduated from undergrad and then from there you start working as an investigator in the public defender in St. Louis?
A. Yes.
Q. Where did you go to law school?
A. UCLA.
Q. So how long did you work as an investigator prior to going to law school?

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A. One year.
Q. Okay. And when did you graduate from law school?
A. 1998. I also -- I went from -- just so you -- everything is clear, I was investigator for a year, and then I was a student at UCSC in the anthropology program, and then I went to law school at UCLA.
Q. Okay. So you were a student of anthropology initially at UCSC?
A. Yes.
Q. And did you ever complete that -- that would have been like a master's or something like that?
A. Master's.
Q. Did you ever complete that?
A. Yes.
Q. Okay. So were you doing that at the same time you were going to law school?
A. No, I went to UCSC, completed the master's, worked on a Ph.D., then decided to go to law school.
Q. Okay. Very good. How long was that master's program with UCSC?
A. I was there three years.

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Q. Okay. And you worked on a Ph.D. you said, right?
A. Yes.
Q. How many years did you work on that?
A. Three years altogether.
Q. Okay. But you never completed the Ph.D.?
A. No.
Q. And then you decided to go to law school after that?
A. Correct.
Q. Is there a reason you never did finish the Ph.D.?
A. I didn't want to be a professor.
Q. Ah. Now, you went to law school. And how did you end up back in St. Louis then after that?
A. My wife is from here.
Q. Okay. Is she an attorney as well?
A. Yes.
Q. Okay. How is she employed?
A. Missouri Public Defender.
Q. Okay. And where is she employed at?
A. Eastern Capital.
Q. Okay. And in what capacity?

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A. She is the district defender for Eastern Capital.
Q. Okay. Very good. And any other degrees or institutions that you've attended since your undergraduate degree that we haven't discussed?
A. No.
Q. Have you noticed any recent trends in how your district is defending cases? And by that I mean an increase or decrease in like the number of depositions or experts you're utilizing, anything that you've noticed?
A. No.
Q. And you may have gone over this already, but can you just kind of walk me through how you oversee your defenders whenever they're working on these cases?
A. We have one-on-one meetings with lawyers periodically. Just go into their office, talk about their caseload. We have brainstorming sessions. We have a formal review process for promotion.
During the first six months the deputy district defender is in charge of training, which includes all aspects of training. We have newer lawyers second chair so they can understand how to

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do a trial.
We try to find cases that will go to trial so a lawyer will get a trial within the first six months if at all possible. Sometimes we succeed. Sometimes we don't.
Q. Okay. And anything else?
A. That's an overview.
Q. Okay. Do you have any kind of like computer system whereby you can monitor your defenders' cases, how they're progressing?
A. Yes. I've referenced that as the Lotus Notes case management system.
Q. And I understand Lotus Notes includes -- basically it's like the file stored digitally; is that correct?
A. Correct.
Q. So you can see like the pleadings and discovery and all that kind of thing on the system, right?
A. We scan discovery into nearly every case. The pleadings will not be a complete reflection of the court file because there's no interface between Case.net and our internal database.
Q. Okay. Anything else that it would not

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be included in the Lotus Notes?
A. Any handwritten notes that would be in a physical file.
Q. Okay. How about like e-mail correspondences or correspondence from your office to prosecutor's office or to your clients, are those on Lotus Notes?
A. Generally speaking, but because it's -- the system is manually intensive, so if you're sending an e-mail, if you want it preserved, you also have to manually enter it into Lotus Notes. That sort of administrative burden is not always met by the lawyers.
Q. Okay. It falls on the lawyers to retain their e-mails on the Lotus Notes system?
A. Yes.
Q. Have you ever had a situation where they would ask their administrative staff to assist in that task?
A. No.
Q. They just haven't asked them to do that you don't think?
A. There's no time for the administrative staff to do it.
Q. Okay.

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A. So there's no point in asking.
Q. So you're saying that they have not asked the administrative staff to attempt to to your knowledge?
A. Correct. I haven't either.
Q. Okay. Now, as far as when cases come into your office, is it you that decides how to divvy up the cases between your defenders?
A. Because the amount of cases and scheduling needs, I have created parameters for case assignments, but the case assignments are primarily done by our office manager and the legal assistant.
Q. Okay.
A. The two legal assistants.
Q. And how do they decide who gets what?
A. The legal assistants assign cases by the day that the case will appear in associate circuit. There are two associate circuits Monday through Thursday. Each day in each division there are two lawyers.
So the case if it's designated a Wednesday Division 41 case will go to one of two lawyers. There are parameters in place for the lawyers' experience, and also we assign cases evenly so that one lawyer does not receive more cases than

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another. With regard to sex and murder cases, those are specifically assigned by me or the deputy district defender.
Q. And they're assigned on the basis of what exactly?
A. Whether the lawyer is capable of handling that particular case in terms of experience and skill.
Q. Okay. And are there any local policies or procedures that are specific to your district that you've created that are not system wide?
A. A few.
Q. Okay. And what would those be?
A. Primarily our office emphasizes and requires that attorneys are very prompt and diligent in returning all phone calls and inquiries from family members more so than other offices.
We've also had to deviate from the statewide client contact standards given the case flow issues in our office combined with the caseload number issue in our office.
Q. Okay. Yeah, I did remember you talking about that earlier. So I think there was some standards promulgated where it was initial visit after seven days and then follow-ups every 30 days

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after that; is that correct?
A. That is the statewide standard.
Q. But you've changed that for your district to be initial visit within ten days and then follow-up every 60 days after that?
A. Correct.
Q. Okay. And what was the reason for that change?
A. It was impossible for the lawyers given the caseload flow and numbers to meet the statewide standard, and it was causing extreme morale problems where departures from our office would have increased beyond the numbers that I've mentioned.
Q. So people were telling you they were going to quit over those standards. Is that basically the gist of it?
A. Implying.
Q. They were implying they were going to quit?
A. Yes.
Q. And how did they imply that to you?
A. The caseload's too much. I can't take this job anymore.
Q. Okay. Did they specifically cite these standards whenever they were telling that to you or

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is that not something that they specifically identified?
A. This was the result of a very large office discussion that Michael Barrett initiated and that I assisted in where there were discussions with all the lawyers about caseloads, client complaints and visitation.
Q. Okay. And so I guess it was in that meeting where you felt that it was implied that the standards needed to be changed for your district; is that right?
A. That -- those conversations resulted in us changing the standards, and there may have been information in the exit interviews that I don't know about that Michael Barrett may have known about.
Q. Okay. So it seems like in your particular office that you have a lot of attorneys with kind of a good amount of experience. Would you say that's true?
A. I mean, there's -- there's a number, yes.
Q. Okay. I mean, earlier you were testifying I think that many of them had at least two years' experience and some of them had up to 25 years of experience?

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A. Yeah, I'm trying to give you a number.
Q. Okay.
A. If you wanted a number.
Q. Oh, no, sure. Yeah.
A. I think there's -- there's two lawyers with close to 25 or more than 25. There's two with 20. There's two with ten. There's two or three with five. And then everybody else is below that.
Q. And how many -- we already went over this, I apologize, but how many would the remaining below five be? How many attorneys are below five?
A. Seven to ten.
Q. Okay. Let me take a look at my notes because we did go over that already. I think you said there were only three that had less than one year. Does that sound right?
A. Yes.
Q. Okay. So do you know whether having attorneys with that level of experience is typical or atypical for other districts?
A. I don't know. I know there's high turnover in the public defender, but I don't know the numbers in other districts.
Q. Okay. So we talked to you earlier about like tasks that would be considered

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administrative tasks, right, that would be handled by assistants. Do you recall that conversation?
A. Yes.
Q. And you stated that you don't have any paralegals in your office, right?
A. Correct.
Q. I just kind of want to pin down, I guess, the type of tasks that would be considered administrative versus the ones that would be like attorney tasks. So if you could go ahead and tell me what tasks you consider to be administrative ones.
A. Copying, obtaining records some degree, presentation of discovery to some degree. I think that's a gray area. A lot of the computer entry. Printing and mailing letters. Things of that nature.
Q. And so nonadministrative tasks would include things like drafting pleadings; is that correct?
A. Anything that's not a -- an entry of appearance or a discovery which are really the only two form pleadings, those would be administrative tasks.
Q. Used the term earlier was it pro forma

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for certain pleadings that are pretty standard?
A. The only two are entry of appearance and a discovery motion. Everything else should be case specific.
Q. Okay. Now, to what extent are the attorneys performing these administrative tasks?
A. I think a lot of the computer entry, particularly of court dates, is done by the attorneys. Because of the number of cases there's some copying of discovery that needs to be done by attorneys, particularly as it comes in over a course of time.
Q. And do you know whether it's typical for other practice areas or other private firms to have attorneys, you know, manage their own calendars or make their own copies, do you know?
A. Depends on the firm.
Q. So you were in private practice for a period of time, right?
A. Correct.
Q. How long was that?
A. Three years.
Q. And where were you at during those three years?
A. Berg, Borgmann, Wilson, Wolk &

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Reynolds.
Q. And what kind of -- what area do they practice in?
A. It was a general practice.
Q. Okay. And during your years in private practice did you ever have to manage your own calendar or make your own copies?
A. Occasionally.
Q. I think there was some discussion about what would happen if there were more investigators or more administrative staff. Do you recall that conversation?
A. Correct.
Q. And then I think that you said something like things would be better if you had more, right?
A. Generally.
Q. But that's like speculation, correct? I mean, you're just kind of speculating that it would be better because there's no -- you didn't have any like studies or anything that you're basing this opinion on, correct?
A. In terms of investigation, I think statistically -- and I don't have the number at my fingertips, but in terms of investigations per case

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that number is available, and I believe it's pretty low. What it is for my office, I don't know.
So I think if you were to look at those numbers, that would be something number based, and then based upon lawyers saying I don't have time to investigate cases so I'm not assigning investigations, that would be another source of information.
And the fact that our investigators are limited to 40 hours and will come to me and say I can't work more this week, I'm capped at 40, so I don't think it's complete speculation. Those would be the three flows of information as to why more investigators would be helpful and beneficial.
Q. So some resources where we could determine whether it would have an impact of any kind, or positive or negative impact, but you've not performed any analysis of those sources or to your knowledge has anybody else performed analysis of those sources?
A. Not to my knowledge.
Q. Okay. And so any impact it would have on the cases it would be speculative, right?
MS. SHIPMA: I object. These questions are argumentative. He's given his answer and if you

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want to argue that later, you can. Move on.
Q. (By Mr. Moore) Fair enough. Just question is on the record. So you can provide a response.
A. I mean, I think the problem is nobody's seen a public defender system in Missouri or many other places where cases are adequately investigated and what results that would have.
Q. So you're saying that no cases are investigated adequately?
A. I did not say that.
Q. Okay.
A. I did not say that -- I don't think that study has been conducted, but I think there's enough concern out there that it's a problem.
Q. Can you think of a specific instance where, you know, an investigator would have had some kind of measurable impact on a case where there was no investigator?
A. I mentioned the case that was in litigation that was not investigated and witnesses at the scene were not located and it's subject of a PCR. The problem with the PCR as a remedy is it -- many witnesses need to be found within a short time period.

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When the PCR hits the court five to ten years later, it's even more exceedingly difficult to find those witnesses, and that's reflected in a lot of case law that raises Sixth Amendment speedy trial concerns, loss of witnesses to the defense or even due process cases, which is a parallel track to argue that problem, the disappearance of witnesses over time.

Q. So is there a reason given in that case for why the investigation didn't take place?

A. The lawyer had over 200 cases and was struggling to keep his head above water. It's still in litigation.

Q. Is that what the lawyer said that's why or was -- what was the reason given, if any, for lack of investigation?

A. That was -- that was the reason the lawyer gave.

Q. He just cited that he had a lot of cases?

A. That's what he told me, that reflected in his caseload, which was over 200.

Q. Okay. But he could have had an investigator perform the investigation, right?

A. I think the problem that I've been

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describing is when you have that number of cases, any reasonable lawyer cannot stay on top of that caseload, which includes finding the time to send out that investigation request.

It may even include not being able to adequately visit with the client where the client can express, hey, you need to find these witnesses. You need to do it quickly.

Q. What is involved in the investigation request, is it like a form that they fill out or something?

A. It's an electronic message to an investigator to do a certain assignment on a case, usually to find witnesses.

Q. And what does that electronic message look like, it's just kind of like an e-mail or --

A. It's built into the system. It's called an action item.

Q. Okay. And so is it just like a one-page kind of form that people would fill out or what would be involved in filling out this action item?

A. You click on the scene that says action item. You assign it to an investigator. You describe the task to be done. You click on the

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button and it sends it to the investigator. That's also how we track how much work investigators are doing.

Q. Okay. And so this attorney claimed that there was no time to do that because of his caseload?

A. That was the condition at the time this case went to trial.

Q. Other than that one situation where we have, you know, this investigation that is claiming should have been performed, are you aware of any other instances specifically where an investigator would have had a measurable impact if only they had been assigned that you can point out with specificity?

A. Not at this deposition at this time.

Q. Take a look at some of these exhibits regarding the caseload metrics that we went over at the beginning of the deposition. So I'm looking at Plaintiffs' Exhibit 4, Reynolds 37, and then the fiscal year 2018 supplemental legislative budget request document.

MS. SHIPMA: It's Exhibit 21.

MR. MOORE: Thank you. Yes.

Q. (By Mr. Moore) Can start with

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Plaintiffs' 4.

A. I don't think it's in this stack, Plaintiffs' 4.

Q. How about Reynolds 37 or Exhibit 21, any of them are good really if you're able to find them.

MS. SHIPMA: Well, choose one that you want him to look at. Any of them are good. They're not all the same, right?

MR. MOORE: Probably going to go over all of them, so whatever he's able to pull up most expediently.

THE WITNESS: 37 and 4 must have been placed somewhere.

MR. MOORE: I only have copies.

MS. SHIPMA: Can we go off the record for a moment while we find those?

MR. MOORE: Yeah.

VIDEOGRAPHER: The time is 5:48. We are off the record.

(WHEREIN, a recess was taken.)

VIDEOGRAPHER: The time is 5:49. We're back on the record.

Q. (By Mr. Moore) Very good. So we've located some of the exhibits, and just to correct

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the record, we're looking at Plaintiffs' Exhibit 4, Reynolds 37, and Exhibit 38. So do you have those three exhibits in front of you?
A. Yes.
Q. Okay. So we can just start with 37, which appears to be a pretty clear printout. Are you looking at 37?
A. Yes.
Q. Okay. And you know, just for the record, I mean, all these exhibits appear to be largely the same just with different years and figures. Is that accurate?
A. Two are quarters. One is a fiscal year.
Q. Okay. And they all purportedly deal with caseload metrics, would you agree?
A. Yes.
Q. Okay. So do you have any background in statistical analysis?
A. No.
Q. Sociological studies, psychological studies of any kind?
A. Yes.
Q. And that's in relation to your anthropology studies I believe, right?

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A. Yes.
Q. So to what extent have you had any experience with sociological or psychological studies?
A. I was in graduate school for anthropology, and those three fields are interrelated.
Q. Did you actually conduct such studies?
A. During my work I had classes in psychological anthropology. My particular research was historical.
Q. Okay. So any collection or analysis of datasets from a statistical standpoint on psychological or sociological topics in your educational background?
A. Yes.
Q. You actually collected data and analyzed data; is that correct?
A. I understood your question had I received training in it. I had taken coursework in it, but it was 20 years ago. I'm not claiming to be a statistical expert on these metrics.
Q. Okay. Yeah, we'll just go -- we'll just move along then. So in any event, for these studies in front of you, right, are you aware of the

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method they used to collect the data that was analyzed in these studies?
A. Just the general formula.
Q. Okay. And when you say the general formula, what do you mean specifically?
A. Well, there was a RubinBrown group that in order to create a workload metric organized a group of public defenders and private attorneys to figure out what is a reasonable workload for different types of cases, and then that metric was created and compiled by a national accounting firm using their standards, and then it was adopted into this formula to compare to the number of lawyers in an office, and the number of cases and a weighted case, homicide would be weighted differently than a possession case. And that's a general overview of what these are.
Q. Okay. But you would not be in a position to establish, you know, the veracity or the robustness of their methods of collecting the data or analyzing the data in the RubinBrown report, would you?
A. I'm not understanding your question.
Q. So I guess first question is you understand -- I think you stated earlier that these

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are based on numbers from the RubinBrown study; is that right?
A. Part of the numbers in here, my understanding, involve that metric created by the RubinBrown group.
Q. Okay. And so these numbers based on the RubinBrown group's report, however, you would not be in a position to analyze or testify as to the robustness or accuracy of the RubinBrown report and its methodology, would you?
A. I have not been asked to and -- yeah.
Q. You said that you would be able to or you --
A. I have not been asked to and I would not be able to.
Q. Okay.
A. Yeah.
Q. And so, you know, you're kind of taking these metrics at face value I guess given that they are based on this RubinBrown report; is that right?
A. I'm acknowledging that these exist.
Q. Okay. If you could look at Reynolds 37. Looking like five and six columns from the right, attorney court time and attorney travel time. Do you see those two columns?

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A. Yes.
Q. And underneath of that it says estimated. Do you see that?
A. Yes.
Q. Do you have any idea what that -- how they came to those estimates or by what methodology they determined those numbers would be accurate estimates?
A. There are two asterisks that refer to the bottom of the page which reads court time estimated using fiscal year 26 [sic] time log data, travel time estimated using fiscal year 2018 expense report data.
Q. I think that was 2016 expense report data, right, not 2018?
A. 2016, yes.
Q. And so -- so what would that mean specifically then for the numbers that are contained in those columns, do you know?
A. Whoever created this spreadsheet is referencing the source of the data.
Q. And do you know by what method they estimated the numbers specifically?
A. It indicates that there was a 2016 time log data.

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Q. Do you know what that time log data is?
A. I would imagine that it's a time log data that was created through the Lotus Notes system.
Q. But that would be speculation, right?
A. I didn't create this spreadsheet.
Q. Fair enough. And how about the next sentence? Travel time estimated using the fiscal year 2016 expense report data --
(Court reporter interruption.)
Q. (By Mr. Moore) I'll just go with how about the next sentence, do you know what that sentence really means?
A. I read it in plain English, but I think the answer to your question is I didn't create this spreadsheet.
Q. Okay. And so because you didn't create the spreadsheet and because you're not familiar with the RubinBrown methodology and analysis, it's possible that these numbers could be incorrect, right?
A. I don't know. It's speculation. I -- I didn't create this spreadsheet. I'm not -- I'm not the witness to comment on the veracity of this spreadsheet.

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Q. Right. You'd be unable to do so, right? I mean, is that correct, you would be unable to testify as to the veracity of the data contained in these reports?
A. No.
Q. So you are able to testify as to the veracity of the data?
MS. SHIPMA: No. He said he is not the witness that would be able to testify as to the veracity of the information in the report. I believe he said it a couple of times now. This has been asked and answered.
MR. MOORE: Could you read my question to him back?
COURT REPORTER: Question: So you are able to testify as to the veracity of the data?
MR. MOORE: Did he give an answer to that one or -- okay, the one before that then.
COURT REPORTER: Question: You'd be unable to do so, right? I mean, is that correct, you would be unable to testify as to the veracity of the data contained in these reports?
Answer: No.
Q. (By Mr. Moore) So then he's saying that he can testify as to the veracity of the data,

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right? I mean, if I'm misunderstanding the answer that's fine too. I'm just trying to clarify on the record.
MS. SHIPMA: Stephen, can you testify as to the veracity of the information in that report?
A. I can testify that the case numbers appear to reflect accurately what's in our system. I have no reason to disbelieve these numbers. I have no information to say that they're inaccurate, but I have no specialized knowledge of the formulas used to actually create the numbers.
Q. (By Mr. Moore) And so you said which information as to the cases appears to be accurate? Look at Reynolds 37 first. You can reference it by columns I suppose.
A. Cases initiated minus cases withdrawn, net new cases.
Q. And so those are numbers that you feel look correct, right?
A. Those are numbers that I have access to in the Lotus Notes system and they appear to be the same numbers that's in my system. The calculations, they appear to be correct, but I'm not the one who did the calculations.

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Q. So as to the cases initiated, withdrawn, and net new cases, are those numbers that you reviewed just prior to this deposition, is that how you verified those numbers?

A. I did look at our fiscal year numbers for 2017 and 28 [sic] prior to this deposition that as exist in the computer system at my office.

Q. And so you feel that those three appear to be accurate, right?

A. Right.

Q. But as to the remainder, you would not be the person to testify about whether those calculations were performed correctly or whether those are accurate, right?

A. Correct. I have no reason to disbelieve them, but talk to the person who created the spreadsheet.

Q. All right. And as to what's going on in these other offices, divisions, you wouldn't be able to give testimony about whether those numbers are accurate or inaccurate; is that right?

A. I can't testify about anything going on in another office.

Q. Okay. I think earlier there was a discussion about problems involving getting

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discovery from prosecutors. Do you remember that conversation?

A. I remember discussions about discovery.

Q. And specifically about the length of time it could take to get certain discovery from prosecutors, right? Or do you not recall that? That's fine too.

A. I don't recall the discussion in those terms.

Q. Okay. I think maybe it was in the context of problems with discovery, and you said some prosecutors are better than others about getting you what you need prior to trial. Does that sound more in line with our discussions?

A. Correct.

Q. Okay. But I mean, your -- the financial status of public defender and the number of attorneys, you know, the number of administrative staff, none of that would change what the prosecutor is doing with the discovery, would it?

A. Incorrect.

Q. Okay. So explain.

A. The best practice for discovery is for an attorney to keep a detailed discovery log or for a paralegal or a legal assistant to keep a detailed

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discovery log to review the discovery, to discern what has been disclosed, what is probably out there and has yet to be disclosed, and to communicate on a regular basis about the outstanding discovery.

And then when the outstanding discovery is not delivered to promptly litigate that similar to what civil lawyers would do with interrogatories and production of documents. That is certainly not taking place in our office at this time.

Q. So you just described what you would consider to be the best possible practice, right, with regards to the discovery issue?

A. That is the best practice and it's also the reasonable practice for any lawyer conducting criminal work. Just as it would be the same for a civil lawyer to stay on top of interrogatories and request for documents.

Q. But it would be up to the prosecutor to comply with your requests, right?

A. And if they don't, you need to litigate it just as in civil litigation in a diligent manner.

Q. And so you're saying that this issue has not been litigated in a diligent manner by your office?

A. Not across the caseload because of the

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caseload numbers.

Q. And you say because of the caseload numbers. Do you have any specific instances that you can cite or evidence where that's the case?

A. You can go into the database and you can see that the -- the letters of the discovery inventory and outstanding discovery and motions to compel are not being filed. It's quite easy to discern, and if -- you can also go into Case.net and that happens when you're reviewing caseloads and attorney performance.

Q. Sorry. So you can see that it's not getting filed, but is there anything showing that it's not getting filed because of caseloads?

A. If it's not getting filed across a large section of cases, what else would it be? And if there's last minute discovery, what else would it be? And if attorneys are complaining about it, what else would it be?

Q. But you're saying that, you know, you can't think of anything specifically showing that, you know, these issues are caused by caseloads, right?

A. I'm telling you they're caused by caseloads.

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Q. And as far as evidence goes, do you have any sort of evidence that would back that claim up?

MS. SHIPMA: Again, I object. It's argumentative.

MR. MOORE: Just asked if -- what evidence he had in support of his description.

MS. SHIPMA: And he's told you.

A. What I've described is the answer to your question.

Q. (By Mr. Moore) So I don't think that quite answers the question because, I mean, we see what you would consider to be a result the lack of these motions getting filed, and you have identified what you believe to be a cause, which is caseloads. I'm looking for something that would connect those two, some objective evidence. Do you have anything like that, like -- like a study or something, some kind of data or anything that would connect those two issues?

A. I'm referring you to what exists in our Lotus information system that that type of activity is not taking place.

Q. So would there be like correspondence in there, stuff saying like we can't get what we

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need because of caseloads or anything of that nature?

A. I'm saying there's an absence of those requests, and that's standard practice.

Q. Okay. So there's been some discussion about various investigative techniques and things that could be done. For example, visiting a crime scene, filing motions regarding police conduct, etc. Do you recall those conversations earlier in this deposition?

A. Yes.

Q. Now, it's true, though, that, you know, these aren't going to be required in every single case that comes before you, correct?

A. Not every single case.

Q. For example, you know, visiting crime scene, not going to be required in every single case, right?

A. I just said that.

Q. Right. And filing anything regarding police conduct, not going to be required in every single case. For example, cases where there is no police misconduct, right?

A. The question is has the case been reviewed enough to make that determination.

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Q. But as to my question it would be correct that, you know, not every case requires the same list of, you know, investigative things to be done to it, cases just don't require the same things, right?

MS. SHIPMA: Asked and answered.

Q. (By Mr. Moore) You can respond.

A. Each case requires an analysis as to what that case requires. The problem is that analysis as to what each case requires is not taking place because of the caseload numbers.

Q. And so again, what evidence do you have that, you know, it's not taking place because of caseload?

A. Attorney reports and attorney reviews.

Q. And so what kind of reports are we talking about, are these written reports where they're saying that it's due to caseloads that they're not able to engage in investigative techniques?

A. It's what I mentioned in the first part of the deposition where attorneys are telling me that they are unable to do things and that they've worried that they've plead people too quickly and they're also worried that clients are pleading to

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get out of jail because the lawyer has not had enough time to work on the case and it's dragging and they just want to get out of jail rather than address the merits of the case.

Q. And so these would just be conversations that you've had with your defenders, right?

A. It's part of my management. It's my job to talk to my lawyers about their work on their cases.

Q. Okay. But there wouldn't be anything in writing where they're discussing their inability to visit a crime scene because of their caseloads or anything, right?

A. We talk about it. I've not required that they put it in an e-mail also.

Q. So we discussed also that this issue of defendants being in jail and then I think you said that some of them feel a greater pressure to plea -- to plead so they can get out of jail, right?

A. Yes.

Q. So do you have or maintain any kind of a system whereby you can track how long somebody has been in jail on these cases?

A. Those numbers are easily obtained.

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Q. And so what do you mean? Does your office track those numbers or are they located somewhere else?
A. Jail keeps a list of days confined.
Q. Okay.
A. And that's e-mailed to us on a daily basis.
Q. Okay. So then your office would be aware of how long these people have been in jail; is that accurate?
A. Yes.
Q. So is there any system in place whereby, you know, you're -- what you do on a case is -- would be dictated in any way by how long they've been in jail?
A. No.
Q. So why is that?
A. Each case is being worked on to the best of the lawyer's ability. Some cases even if they're worked on as they should be are going to take a while, longer than others. The phenomena I described is happening. It could be tracked if we were asked to track it.
Q. Do you think it would be helpful to, you know, track that so you could avoid the outcomes

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that you discussed earlier?
A. No.
Q. Why is that?
A. Given the resources -- and as I described in one of my letters to the court, lawyers are concentrating their efforts on representing clients, not collecting statistics for a problem that is relatively obvious and has been heavily studied by outside agencies for the past ten years.
Q. I think you mentioned earlier that some of the less serious felonies will kind of go through the system faster than the more serious ones, right?
A. Yes.
Q. So don't you think some kind of a tracking system for how long somebody has been in jail could help the attorneys prioritize the cases that they're working on as opposed to just working on the less serious ones first?
A. No.
Q. Why is that?
A. The flow of cases is immense. The number of complaints are immense. And attorneys are spreading themselves thin across a very high caseload in trying to do the best they can. The clients that are neglected are neglected because the

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clients don't have -- you know, the attorneys don't have time for those clients.
Q. So you're saying that even if the attorneys were apprised of how long their client had been in jail at your office, that wouldn't affect how they litigate the files at all?
A. No. They already know the problem.
Q. Okay. So you don't think it would be important to work on the bigger stuff and try to get the clients out of jail or dispose of those matters quicker than the smaller matters?
A. They're both important.
Q. But it sounds kind of like the smaller ones go first; is that right?
A. That's the way the flow is occurring.
Q. Tell me again why that takes place.
A. The flow of the lower-level felonies is at a higher volume. They move through the case, the system more quickly. The lawyers are overwhelmed with that flow of the cases and they devote their attention to get people out of jail.
Q. Are any metrics kept about the number of cases attorneys have closed in a year?
A. Yes.
Q. Are there any like rewards based on how

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many cases they close in a year?
A. No.
Q. Or any incentives -- I'm sorry, I talked over you there. Your answer was no?
A. No.
Q. Is it considered whenever they're up for a promotion or for raises of any kind?
A. No.
Q. So to what extent is it utilized if you're keeping track of it?
A. I don't keep track of it. I don't -- I don't know if there's much value to that particular metric.
Q. Oh, okay. So who does track it then?
A. It's tracked in the computer.
Q. But it doesn't have any relevance in the hiring or retention or promotion process you're saying?
A. I'll tell you why. One of the largest complaints is that somebody is coerced into a plea. I don't think you want to incentivize coerced pleas, and coerced pleas would be if you incentivize closing cases quickly, the by-product of that could be coercing pleas, and you'll create more 24.035 problems, more client complaint problems, more

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request for change of counsel.
It's not how you counsel a client. The fact is most of the cases are being disposed of within a hundred days anyways. There's no need to speed up the process.
Q. That's fair enough. I'm trying to understand why, you know, there would be this incentive to -- or why the attorneys would turn over these low-level felonies constantly and why that would affect the bigger felonies, why -- why does that take place exactly? I know you've talked about the flow, but I mean, is there any other reason, is there --
A. Yeah.
Q. -- psychological or --
A. If you have 150 cases and a hundred of them are calling you to get out of jail and a hundred of them are working towards a probation recommendation, and if those cases are the majority of cases that are constantly flowing to the office, that's just where most of the attention gets directed. I've answered the question that way several times. I don't think there's anything else I can tell you.
Q. Do you think like a first-in, first-out

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type system would be of use?
A. No.
Q. Why is that?
A. It's unethical.
Q. And why is that?
A. You're supposed to represent a client based upon the client's needs and the dynamics of the case.
Q. And so just kind of flesh that out, I guess. Why would that be unethical if you're, you know, trying to get the oldest cases out before the newer cases?
A. So you have five cases. Five people come in and want a bond reduction. You work on the other five cases and ignore those five cases for three months. How is that not -- not unethical?
Q. You're saying the current practice of just kind of dealing with the low-level felonies is more ethical than leaving the more serious felonies to I guess kind of sit in the background?
A. I think the whole point of this litigation is the caseload is unethical.
Q. More -- my question is more about the way the cases are prioritized. It seems like for some reason lower-level ones are prioritized over

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the bigger ones. I'm trying to figure out why that would be.
A. I've given you the answer.
Q. So in these cases, in these felonies, I think you testified earlier that there can be some discovery that needs to be reviewed that your attorneys don't have time to review; is that right?
A. Yes.
Q. So what kind of discovery are we talking about for these cases? What would be contained in that file?
A. As I mentioned, many cases involve electronic discovery, which can involve crime scene videos, witness videos, interrogation videos, surveillance videos, phone calls from the jail, cell phone records.
Q. And anything else that, you know, would typically be in these files?
A. Including police reports, the other thing that comes to mind is electronic analysis of cell phones and computers.
Q. And so are we talking like will there ever be a situation where you have like thousands and thousands of pages of medical records or anything of that nature in the files?

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A. Yes.
Q. And when would that be?
A. Many of the mental health cases.
Q. And other than mental health cases, you know, any kind of voluminous documentation like that?
A. Victims with serious injuries.
Q. And other than those, anything else?
A. Mitigation.
Q. Mitigation? What do you mean specifically?
A. Most cases are resolved through a plea, but those pleas involve presentation of mitigation evidence, either to the prosecutor or to the court. Mitigation evidence is often documentary reaching back to the client's childhood. It could be school records, medical records, work records.
Q. So earlier on you also made a statement that it was expected that the private bar would be resistant to these cases being appointed. Do you recall making that statement?
A. Yes.
Q. And what's your basis for that?
A. My basis for that is that that is the expected result. Now, if the private bar is

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appointed and is not resistant, no problems. But I think to go into a large-scale appointment process thinking that the private bar is going to be pleased, I think most people would find that to be a bad strategy and some communication strategy needs to be implemented if that program is to be successful.

Q. So had you talked to private attorneys who said they would be resistant to it?

A. The head of the MCRC.

Q. That's the Missouri Coalition for -- what was the rest of it?

A. Right to Counsel.

Q. So he said he would be resistant to receiving these cases?

A. Yes.

Q. Even though he started the MCRC?

A. The goal of that organization is to find cases for trial for the participants, not to engage in a very large appointment process.

Q. And anyone else tell you that they would be resistant to the appointment process?

A. Everybody else on the MCRC board when it was being created.

Q. They all told you the same thing?

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A. Yes. That was part of the reason why they wanted to focus on trial cases rather than widespread appointments.

Q. Okay. And can you just list for me who was on that board at the time?

A. I don't know the names, but representatives from Bryan Cave and Thompson Coburn and other large firms in St. Louis.

Q. Okay. And so earlier I think you pretty much headed this question off, but you can only really speak to the goings on in your district, right, not the other districts in Missouri?

A. Correct.

Q. Okay. So you stated multiple times in this deposition that you believe the caseload in your district for your attorneys is too high, right?

A. Correct.

Q. What would be an acceptable caseload for each attorney?

A. The federal public defenders cap their caseload at 40. This area has a large area of debate, but I think that's one metric that is in use and is approved by a court system.

Q. Do you personally have a number in mind?

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A. Somewhere between 50 and 80.

Q. And so then how did you come to that range?

A. Federal public defender numbers, American Bar Association numbers, experience of the difficulty through personal experience of when a case becomes unmanageable, whether as a public defender or in private practice. What I know of the RubinBrown study and the metrics used there.

Q. And so these numbers are just kind of an amalgamation of this kind of like zeitgeist of information out there that includes all the studies and your own experience, right?

A. Yes.

Q. It's not based on any study that you've personally conducted, right?

A. Correct.

Q. So there's a situation earlier where you discuss that there was like a nine to 12-month period of time where a defendant had not had any contact from the attorney, right?

A. Correct.

Q. I think you noted that one of the reasons for that was because a trial had been set like 18 months out, right, by the court?

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A. What I said is that situation occurs and sometimes it occurs when a trial date has been set out that far. It can also occur on a serious case even though there's regular court appearances over that same period where the attorney is meeting with the clients in court very briefly, but never having any substantive conversation with that client in the jail or doing any substantive work on the case.

Q. So they'd still be seeing the client at like court appearances, though, throughout that period of time?

A. They would visually see the client. They would not consult with the client about the case. They would make a court announcement. They would not consult with the client about the case.

Q. But if, you know, you have -- you have the client and the attorney in the same room, right? That's the way the dockets are set up?

A. Yes, and there are usually 12 attorneys and 20 defendants in the courtroom and six other defendants in the jury box who are confined. So it's impossible to do anything.

Q. And how often do those case management conferences take place?

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A. It depends on the case and the -- and the courtroom.
Q. Just generally speaking.
A. Every 30 to 60 days.
Q. Okay. So it seems like every 30 to 60 days you have attorney and client in the same room, right, for most cases you would say?
A. In the courtroom with other people.
Q. Fair. But the client could, you know, wave the attorney down and say, hey, I need to talk to you at some point, right? That's possible?
A. I'm sure that happens.
Q. Okay. And they could even, you know, whisper something in their attorney's ear or have a brief conversation with their attorney at those case management conferences, right?
A. I would disagree.
Q. Why is that?
A. If you're talking about a substantive conversation, what your question implies, the answer is no. If you're talking about a client making a simple request, hey, can you visit me, the answer is yes.
Q. And the attorney can give them a status update of those case management conferences, right,

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about just whatever was going on, hey, we're --
A. No.
Q. -- looking into this, we're looking into that?
A. No.
Q. Why is that?
A. There's no confidentiality.
Q. Even if they're like whispering to each other like right next to each other?
A. No.
Q. And that's I guess because you think that some third party would be able to hear them, right?
A. Confined client is seated next to other confined clients closer than the people in this deposition room. If that client is charged with a sex offense, everybody else in the jail who's confined and within a four-foot radius of that client is going to hear your conversation. I doubt that's appropriate.
Q. So this particular instance you said within nine to 12 months of no contact, was there other case management conferences going on in that instance, if you know?
A. That is not the only instance.

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Q. Just for that one, though, for right now?
A. I don't know. I'd have to check the record.
Q. Okay. And in any event, you know, if the court sets a case for trial 18 months out, your client's not going to be getting out in that interim period of time no matter what kind of contact you're having with them, right?
A. Highly unlikely.
Q. Okay. And your clients are able to make phone calls to your office, right?
A. Yes.
Q. You don't have any system in place whereby they have no access to you guys from jail, right?
A. Correct.
Q. And you guys can still send letters back and forth, right?
A. Yes.
Q. Are there any other ways you can communicate with your clients while they're in jail other than, you know, telephone and in-person meetings and regular mail?
A. Those are the three methods.

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Q. There's no like e-mail or, I don't know, text messaging, anything like that?
A. No.
Q. So you're familiar -- are you familiar with Chapter 600, the safety valve statute? Does that sound familiar, 600.063?
A. Yes.
Q. Okay. And what's your understanding of that statute?
A. That statute is a procedure where you can address the court about caseload issues.
Q. Okay. And I think you stated earlier that you've not utilized that, right?
A. Correct.
Q. And you gave some reasons for not utilizing that, correct?
A. Correct.
Q. And can you tell me what those reasons were specifically?
A. The judges are willing to engage in productive dialogue and not requiring it, and the remedies being discussed are serious and on the table and would be the same as if we had gone through that procedure and that procedure allows for a hearing on the record, but to solve these problems

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is going to take extensive discussions and so it's form over substance. We're doing the same thing. We're being collaborative.

Q. So why wouldn't you proceed via both methods then, the informal and the formal with, you know, the rule 600 requirements?

A. Because it was initiated before that was required by the court of appeals and we're deep into the discussions, and at some point we may do that, but it's not going to make a difference if we're already productively discussing things. It's form over substance.

Q. I think you also mentioned some other disincentives and you reference something that happened in Kansas City; is that right?

A. Yes.

Q. So I guess Kansas City had attempted to use the section 600 remedy?

A. That's my understanding.

Q. So what's your understanding of what took place I guess specifically in Kansas City?

A. It's acrimonious and the judges are not engaging with the public defender about the caseload issue and the Hinkebein decision.

Q. And so specifically what kind of

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acrimony are we talking about?

MS. SHIPMA: I object. His testimony on this is just based on his understanding. We had a whole deposition of Ruth Patch, the public -- the district defender in Kansas City who talked at length for hours and was questioned for hours by your colleague Stephen Ramsey about this issue.

I would just refer you to her deposition to get your answers on that. They're going to be much more valuable than Stephen's recollection or understanding of what may or may not have happened there.

MR. MOORE: Right. No, I do understand that, and I appreciate that. But his understanding of what's happened in Kansas City has affected his --

MS. SHIPMA: I don't understand what his understanding of what happened in Kansas City is adding to this deposition other than time.

MR. MOORE: Well, we're going to get there.

MS. SHIPMA: Are you going to ask a specific -- well, get there quickly.

MR. MOORE: Okay. I appreciate your patience.

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Q. (By Mr. Moore) So what is your understanding of specifically what took place in Kansas City? Because my understanding is that has affected your opinion of approaching this in your district; is that accurate?

A. Which question do you want me to answer?

Q. Both. You can start with your understanding of what happened in Kansas City first.

MS. SHIPMA: And he has answered that for you already.

MR. MOORE: Well, I don't think specifically he's had a --

A. What I've -- what I've said is -- is the extent of my understanding.

Q. (By Mr. Moore) Okay. So that's all that you've heard about the Kansas City issue, right? Just that there was acrimonious -- you don't have any more specifics than that; is that right?

A. What I said is what I know.

Q. Okay. And sir, are you saying that that knowledge disincentivized you in your district from pursuing section 600?

A. No, I just -- I've -- what I stated previously is why we're not using 600, and I've also

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stated that if these discussions don't lead anywhere that we will do 600, but the result is going to be determined by these discussions. And once again, it's form over substance and it's pretty much my answer.

Q. You still think the proceeding pursuant to the statute is necessary because of these informal negotiations?

MS. SHIPMA: Asked and answered.

Q. (By Mr. Moore) Is that right?

A. I've -- I've answered your question as best as I can. I mean, I know you keep rephrasing it, but if these discussions don't work we'll do the statute, but these discussions are the substantive equivalent of the statute.

Q. So my question was just why not do both at the same time? Why not? Why not proceed through both avenues concurrently now that they're both available so that in case the informal one doesn't work out you have done what is required by statute?

A. And I've said we may do that.

Q. Why not at the same time, though? Why not concurrently?

A. I've just -- I've answered your question.

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Q. I don't know that there has been an answer to that question specifically.
A. Just the discussions that we are having are substantive solutions, which would be the same remedies as filing under the statute.
Q. So you feel like it's a waste of time then or I'm trying to -- why not do like both is the question? You say you're already doing the informal ones, which I understand. The question really is so why not also the formal section 600?
A. I know. I've answered your question. I mean, I just -- I don't have anything else to add.
Q. So there are no other reasons then other than what you've already discussed?
A. Correct.
Q. Have you ever given any other interviews with newspapers on these issues or any other news media other than the ones we've gone over today?
MS. SHIPMA: Objection. The question is vague, time frame.
Q. (By Mr. Moore) Time frame is unlimited. Regarding the issues that are at issue in this lawsuit, have you ever given any other interviews or, you know, written articles regarding

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these issues for any other media outlets other than the ones that we've discussed here today?
MS. SHIPMA: And I would object that the question is overbroad. He's been working with the public defender system for I don't remember how long, but -- but more than ten years. You're asking him to recall every instance he's talked with a news outlet regarding caseload issues in the past ten years, 20 years, what time frame?
MR. MOORE: I mean, if it's been that voluminous, I guess we'll need to go through and determine, but my question was just --
MS. SHIPMA: I object. It's overbroad. Stephen, you can answer if you can.
A. So in terms of caseload, I believe those two articles are the only two.
Q. (By Mr. Moore) Okay. Are there other issues in this lawsuit not unrelated to caseload that you would have given other interviews or, you know, prepare articles or participated in articles outside the ones we've talked about today?
MS. SHIPMA: Objection, vague. What other issues?
MR. MOORE: That's what I'm trying to determine. He cited caseloads specifically.

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MS. SHIPMA: Because --
Q. (By Mr. Moore) So are there other noncaseload issues that you feel are related to this suit that you've previously given news interviews or participated in news articles in the past that we've not discussed?
A. Not to my knowledge.
Q. Okay. Have you ever been interviewed or had discussions with anyone at the ACLU regarding this lawsuit?
A. No.
Q. How about anyone else beside from of course your counsel?
A. Meaning?
Q. So attorney-client privilege, don't want to hear about those conversations. You said nothing with plaintiffs' counsel at the ACLU. Have there been any other, you know, conversations or interviews that you've had regarding this lawsuit that we've not discussed today?
A. No.
Q. So it sounds like from our prior conversations that you have hopes that this informal collaborative process with the judges and other organizations is going to bear fruit; is that right?

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A. I would like to see these conversations produce a temporary measure of relief to the problem that might lead to a more lasting relief of the problem.
Q. So my question was more are you optimistic that those talks are going to be successful?
A. I would like for them to be successful, and I believe they can be successful.
Q. Do you believe that they will be?
A. I have no idea. We'll find out.
Q. So you have no indication whether those talks are going to be successful one way or the other?
MS. SHIPMA: I object, asked and answered.
A. I mean, that's -- we'll find out. All of us will find out in the future. I mean, they're being done in good faith and ideas are on the table and concrete ideas are being discussed. Let's see what happens.
Q. (By Mr. Moore) I understand --
A. What else do you want?
Q. I understand nothing is certain, but as party to those talks, I mean, you might have some

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kind of indication whether you feel they're going to be successful or not, right?

A. I've just given you my evaluation of the situation. I'm not in control of the situation.

Q. That's a very lawyerly answer.

A. It's the answer.

Q. So -- so there's just -- you have no indication either way --

MS. SHIPMA: I object.

Q. (By Mr. Moore) -- whether you feel they're going to be successful? It's just a simple question. I mean --

MS. SHIPMA: It is a simple question and you've asked it probably about five times now and he's answered you. Let's move to another productive, more productive topic. One that you haven't asked him about five times.

MR. MOORE: Could you please read back his answer to my last question then?

COURT REPORTER: Answer: I've just given you my evaluation of the situation. I'm not in control of the situation.

MR. MOORE: I guess we've got to go back to the one prior to that then.

COURT REPORTER: Answer: I mean,

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that's -- we'll find out. All of us will find out in the future. I mean, they're being done in good faith and ideas are on the table and concrete ideas are being discussed. Let's see what happens.

Q. (By Mr. Moore) That didn't sound like an answer to me. That sounds like a not answer. My question was --

MS. SHIPMA: What was the one before that?

Q. (By Mr. Moore) The question specifically was do you feel that they're going to be successful, and you can say that you're not sure, you don't know, or I guess no.

MS. SHIPMA: I object for you suggesting answers to him.

MR. MOORE: That's fine too. I'm just -- very simple --

(Court reporter interruption.)

MS. ROSCA: There's an answer before that if you'd like that read back.

MR. MOORE: Well --

MS. ROSCA: Can you read back the question -- the answer before the one you --

MR. MOORE: You know what, let's just stop. We have enough on that one. We'll just move

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on.

MS. SHIPMA: I agree.

Q. (By Mr. Moore) I think you were asked earlier about essentially the competence of the private attorneys being assigned these criminal matters. Do you recall that conversation?

A. Yes.

Q. I think you said something along the lines of it could be a concern, right?

A. Yes.

Q. So I want to discuss a little bit about what would be concerning about assigning these matters to members of the private bar. Are you saying generally that any amount of assigning these out is a questionable and could potentially raise issues or are you saying there's specific instances where it could become an issue?

A. I was understanding the question to mean if these cases are assigned to private counsel who are disinterested in taking the case and/or do not have adequate training that the solution of assigning cases to private bar may be equal to the problem that exists in the public defender, the case is not receiving attention, or even potentially worse because some of these appointees may not even

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-- if they have the training, may not want to do the case and work on the case as it should be.

Q. Okay. Fair enough. But if the private counsel was interested and had adequate training, do you feel that there would be anything to be concerned about?

A. Under -- if those are true in the immediate term, no, they would not be something that would be concerned about if those two things are true.

Q. Okay. So I think you said earlier that turnover has increased over the last four years. Does that sound accurate?

A. Yes.

Q. I think as a cause of that you cited high caseload, low pay, and -- and being a hard job generally; is that right?

A. Yes.

Q. So have -- has the caseload or pay or nature of the job changed some way -- in some way in the last four years?

A. No.

Q. Okay. So could there be some other reason for the turnover that you are aware of?

A. I don't know.

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Q. But it might not strictly be related to caseload, right?
A. I think it's -- I've mentioned that it's those three factors are my best estimates of what's causing the caseload. I mean, the turnover of attorneys.
Q. Okay. There's a lot of discussion about the negotiations that would be engaged in as part of the plea process. Do you recall that conversation?
A. Yes.
Q. And I think that, you know, in the end your conclusion was that the negotiations could potentially be hindered by the level of workup the case receives; is that right? Not so much by the time that they have to negotiate with the prosecutor, correct?
A. Correct.
Q. Okay. And so can you cite any specific instances where, you know, a specific attorney has told you like I was not able to negotiate as well because I didn't work this case up good enough?
A. Yes. Cases that are set for trial in our office tend to result in not guilty verdicts or reduced plea offers or nolles. Those statistics are

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-- particularly with the jury results are kept and they're beginning to be kept with the nolles. So that is the basis for applying that analysis across the rest of the caseload.
Q. So was there like a specific instance you're thinking of where somebody told this to you or is it more like just the general trend that you're seeing?
A. Like I said, the jury trial result statistics are kept. The nolle statistics are in place to start being kept as far as my understanding is.
Q. But --
A. This happens -- once again, part of my job is to talk to lawyers about their caseload and when they're doing their review to learn about their successes.
(Phone interruption.)
MS. SHIPMA: So sorry.
MR. MOORE: She's ready to take off.
A. And so I know when lawyers are litigating and getting better results.
Q. (By Mr. Moore) So you're saying this more from like a bird's eye's view I guess based on results and cases; is that accurate?

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A. It's on my day-to-day management duties. It's not a bird's eye view. It's my -- my job is to know what's going on in my attorneys' caseload.
Q. So I guess in other words, in bird's eye view --
(Court reporter interruption.)
A. It's my day-to-day job to know what's going on in my attorneys' caseload.
Q. (By Mr. Moore) So just ask you this like negotiation because of workup link, okay. Has anybody specifically told you that they were not able to negotiate as successfully because of the workup in the case that they performed? Anyone specifically ever said that to you?
A. Yes.
Q. Okay.
A. And I've mentioned that in my deposition that lawyers have told me that they felt uncomfortable with guilty pleas because the client wanted to get out of jail and the case had not been worked up according to the attorney's estimation of their work input into the case, and those conversations are frequent.
Q. And when you say frequent, what kind of

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frequency are we talking?
A. Several times a month per attorney.
Q. The same conversation about the -- the plea deals and all that kind of thing.
A. In reference to different cases.
Q. And there is also discussion about attending lineups. Do you recall that conversation?
A. Yes.
Q. I think you said that the reason that there had been no attendance is because you guys are not contacted, right?
A. That is probably the number one and predominant and sole reason.
Q. Okay. Just give me a second here. Do you have any defenders that are on call 24/7?
A. In what capacity?
Q. Any capacity.
A. Formally, no. Attorneys do work on weekends, but there's no in-call system for notifying lawyers.
Q. Okay. Has there ever been a situation where an attorney requested some discovery be performed and you said no for financial reasons?
A. No.
Q. Is there any situation where an

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attorney had requested an expert and you said no for financial reasons?
A. Yes.
Q. Okay. And did an expert end up -- did an expert of some kind end up getting retained or utilized in that case?
A. Yes.
Q. And tell me a little bit about how that process went to the best of your recollection.
A. We wanted to do mitigation on a mental health case. We wanted to hire a local psychiatrist to prepare a mitigation report and treatment alternatives and community placement.
That request was denied. We were asked to use a social worker. There are no social workers who perform this function in the market in St. Louis. We were referred to a social worker based out of Springfield.
She did a remote report. It was inadequate and was essentially a waste of money, and we should have hired the psychiatrist in the first place.
Q. Ah. In that situation it wasn't that no expert was retained, it simply you just had to go with a different expert, right?

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A. We were told to use a social worker because it was less expensive than the expert that we requested.
Q. And so to answer my question, you just -- you got a different expert than the one that you initially requested, but you did get an expert, correct?
A. Different type of expert, correct.
Q. Was there ever a situation where you requested an expert and it was flat denied, no expert ended up being appointed in a case?
A. No.
Q. Are there any other kind of like financial requests that you would make for the office, for example, like office supplies or things of that nature, or is that done by some other officer of the public defender?
A. I'm not understanding the question.
Q. So with like supplying your office, you know, with office supplies and things like that, is that something that you do or is that something that somebody else does?
A. There's a budget for office supplies for the fiscal year and that's largely managed by our office management specialist.

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Q. Okay. And do you have any knowledge about that -- the state of that budget or is it mostly just handled by the office manager?
A. The amount of money is determined by Woodrail and then we order supplies within that budget.
Q. Okay. But that's not something that you like oversee really. I mean, you're in charge but office manager kind of takes care of staying within budget?
A. I'm responsible for staying in budget. The task of management of that budget is delegated to the office management specialist. I have to sign off on every expenditure.
Q. Okay. And have you stayed within budget for the years that you've been the district defender?
A. For office supplies, yes.
Q. And just general like office equipment and maintenance of the office, you know, outside of the number of defenders, printers and office supplies and just whatever other expenses, have you ever exceeded your budget for those things while you've been the district defender?
A. The hardware is not determined by the

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local office.
Q. Okay. So that's a budget item that would be dealt with at the state level?
A. Correct.
Q. But for everything else you've been within budget; is that right?
A. There is a number assigned to deposition and expert witnesses. Where that number comes from, I don't know, but it is usually exceeded very -- within two or three months.
Q. Okay.
A. So you'd have to ask the state office about that number and the actual resources --
Q. Okay.
A. -- available for depositions and experts.
Q. And so for -- as far as who sets that budget for your office, is that done at the state level?
A. Yes.
MR. MOORE: Okay. I think that's all I've got.
MS. SHIPMA: Okay. I have a few questions.
EXAMINATION

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QUESTIONS BY MS. SHIPMA:
Q. Stephen, in your opinion are lower-level cases more easily resolved?
A. In -- I don't understand the question.
Q. Does it take less work to bring a lower-level case to completion than a higher-level case?
A. Yes.
Q. And the stakes are less for a client typically in a lower-level felony than a higher-level felony?
A. In terms of imprisonment, yes. I think impact on a client's life is something that needs to be taken into consideration and can be significant in a low-level felony.
Q. Do you require your attorneys to document the things that they haven't been able to do in a case?
A. No.
Q. Why not?
A. They don't have enough time to take care of the cases and to do things on cases. That would be an administrative burden that does not address immediate client needs in the office.
Q. In your opinion, are there times when

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attorneys may not even realize what they failed to do on a case?
MR. MOORE: I'll object to the form. That calls for speculation. Also object to foundation. You can respond.
A. Yes. And I -- I have an example. I was on a case in a murder case and I'm being PCR'd for not obtaining AT&T cell phone records, and that may have been something in the course of that case that at the time I was not aware of, and I -- the other case that's being PCR'd that I mentioned is witnesses.
I think you may not be aware of witnesses and lawyers learn too late because they're not meeting with the client and the client is saying, hey, I need this witness contacted. By the time that conversation is taking place, the witness has disappeared.
And it can also go with surveillance video, text messages are very hard to recover. A lot of these things that we're talking about it's very hard for lawyers to perceive what is important to the case unless they have enough time to really delve into it quickly and at the beginning of the case.

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Q. (By Ms. Shipma) You testified earlier about when an attorney wants an investigator to do something they -- they simply do an action item to the investigator; is that correct?
A. Yes.
Q. And that action item I believe you've stated is something that is a function in Lotus Notes; is that correct?
A. Yes.
Q. How would an attorney know that there needed to be some investigation done in order to do the action item?
A. Consultation with a client and review of discovery.
Q. So it's not simply just pushing a button on Lotus Note and filling out a form for an action item?
A. Correct. There's work that takes place before the investigation request is assigned to -- to an investigator.
Q. Do you think that client contact every 60 days meets ethical standards?
A. No.
Q. And I just want to clear up something I think that a question was asked and you answered it

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without maybe listening to the way the question was asked.
MR. MOORE: I'll object to the form. That seems leading, but go ahead.
Q. (By Ms. Shipma) I believe that the question was asked do the attorneys make psychiatric evaluations. Now, if I ask you that question do your attorneys make psychiatric evaluations, what's your answer?
A. No. My understanding of the question was do they investigate and hire appropriate people and collect records to conduct those investigations.
Q. Okay. Just wanted to make sure we weren't having attorneys out there practicing psychiatry.
And I believe you stated earlier that you've had about -- that you've hired or replaced about five to seven attorneys this year?
A. Yes.
Q. Is that calendar year?
A. I am speaking roughly from November, December last year to now.
MS. SHIPMA: That's all I have.
MR. MOORE: Couple, but do you want to circle back around first?

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MS. ROSCA: No, I don't have any.
FURTHER EXAMINATION
QUESTIONS BY MR. MOORE:
Q. Okay. Just tying up loose ends here. Did you when you were in private practice bill your time?
A. It depended on the case.
Q. Okay. And when you did bill your time on those cases, would it be tenths of an hour if you recall?
A. Yeah, it was -- it was either five or ten-minute increments.
Q. Okay. Do you know whether it's typical for attorneys to bill their time in private practice?
A. The state of private practice right now may be considerably different than the state of private practice before 2007 and the recession, and business models may have changed.
Q. Fair enough. At the time to your knowledge whenever you were in private practice was it typical for attorneys to bill their time?
A. In our practice we were a general practice. We had a diverse practice. And some cases we would bill. Other cases we would do flat

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fees.
Q. Okay.
A. In other cases we would do retainers, meaning a percentage at the end of the conclusion of the case depending upon the -- the award, whatever was determined.
Q. Okay. Fair enough. Have you ever been adjudicated to have rendered an ineffective assistance of counsel?
A. Yes.
Q. You have been?
A. Yes.
Q. When was that?
A. Last year.
Q. Was there a case number associated with that?
A. It's a Eastern District of Missouri federal court case. It's a death penalty case. It's Carman Deck versus whoever is the superintendent of the Department of Corrections.
Q. Okay. And you don't recall like a case number or anything, do you?
A. No. No.
Q. Okay. Other than that instance, any other instances?

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A. No.
Q. We discussed a few times how attorneys that you've referenced have failed to investigate or made other mistakes in the course of working up their cases, right?
A. Right.
Q. And you have mostly attributed those mistakes or omissions to the caseload they're working under, right?
A. Yes.
Q. But isn't it true that attorneys and people generally, they make mistakes, right?
A. Yes.
Q. And so it can be kind of difficult to determine or distinguish between a mistake an attorney makes that's just a regular mistake or a mistake that's made because of caseload. Would you agree?
A. Not necessarily.
Q. Okay. And so how would you be able to distinguish just a normal omission versus an omission caused by -- caused by caseload?
A. I mean, I think both occur.
Q. So how could you distinguish?
A. You look into the circumstances and you

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make decisions and judgment calls.
Q. So it would be kind of just a judgment call as far as teasing out whether it was caused by caseload or caused by just general human error, right?
A. There would be an analysis, yes.
Q. Okay. But in the cases you reference, you believe that it was caused by caseload, right?
A. Yes.
Q. And in your mind is it possible that any of those could have been caused by just normal human error?
A. It's always possible.
MR. MOORE: That is all that I have.
MS. ROSCA: That's all I have.
VIDEOGRAPHER: The time is 7:03. We are off the record. This concludes the deposition of Stephen Reynolds.
(WHEREIN, the deposition was concluded at 7:03 p.m.)

CERTIFICATE OF REPORTER

I, William L. DeVries, a Certified Court Reporter (MO), Certified Shorthand Reporter (IL), Registered Diplomate Reporter, and a Certified Realtime Reporter, do hereby certify that the witness whose testimony appears in the foregoing deposition was duly sworn by me pursuant to Section 492.010 RSMo; that the testimony of said witness was taken by me to the best of my ability and thereafter reduced to typewriting under my direction; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition was taken, and further that I am not a relative or employee of any attorney or counsel employed by the parties thereto, nor financially or otherwise interested in the outcome of the action.

_____

Certified Court Reporter
within and for the State of Missouri

Alaris Litigation Services
(314) 644-2191

December 26, 2017
Ms. Jacqueline Shipma
Missouri State Public Defender
1000 West Nifong
Building 7, Suite 100
Columbia, Missouri 65203
(573) 525-5212
jacqueline.shipma@mspd.mo.gov
In Re: SHONDEL CHURCH, et al. vs. STATE OF MISSOURI, et al.

Dear Ms. Shipma:

Please find enclosed your copy of the deposition of STEPHEN P. REYNOLDS taken on December 19, 2017 in the above-referenced case. Also enclosed is the original signature page and errata sheets.
Please have the witness read your copy of the transcript, indicate any changes and/or corrections desired on the errata sheets, and sign the signature page before a notary public.

Please return the errata sheets and notarized signature page to Alaris Litigation Services, 711 North Eleventh Street, St. Louis, Missouri 63101 within 30 days of receipt.

Thank you for your attention to this matter.

Sincerely,

William L. DeVries, CCR(MO)/CSR(IL)/RDR/CRR
Enclosures

WITNESS ERRATA SHEET
Witness Name: STEPHEN P. REYNOLDS
Case Name: SHONDEL CHURCH, et al. vs. STATE OF MISSOURI, et al.

Date Taken: DECEMBER 19, 2017

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Reason for Change: _____

Witness Signature: _____

STATE OF)
)
COUNTY OF)

I, STEPHEN P. REYNOLDS, do hereby certify:
That I have read the foregoing deposition;
That I have made such changes in form and/or substance to the within deposition as might be necessary to render the same true and correct;
That having made such changes thereon, I hereby subscribe my name to the deposition.
I declare under penalty of perjury that the foregoing is true and correct.

STEPHEN P. REYNOLDS

Executed this day of , 20__, at .

Notary Public:
My Commission Expires:

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Exhibit Z

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Electronically Filed - SUPREME COURT OF MISSOURI - April 28, 2017 - 03:28 PM

IN THE SUPREME COURT OF MISSOURI
EN BANC

IN RE:	)	
	)	
KARL HINKEBEIN	)	
Woodrail Centre	)	
Building 7, Suite 100	)	
1000 W. Nifong	)	
Columbia, Missouri 65203,	)	DHP No. DHP-16-004
	)	
MO Bar # 41666,	)	
	)	
Respondent.	)	

DISCIPLINARY HEARING PANEL DECISION

Introduction

A hearing was held in this matter on July 26, 2016 in Jefferson City, Missouri before Thomas M. Dunlap, Presiding Officer, Donna M. White, Attorney Member, and Dale A. Siebeneck, Public Member. Informant is the Chief Disciplinary Counsel. Informant was present through Melody Nashan, Staff Counsel, Office of Chief Disciplinary Counsel. Respondent was present in person and through counsel, Sara Rittman. After considering the evidence presented, the Disciplinary Hearing Panel finds, concludes, and recommends as follows:

FINDINGS OF FACT

1. Informant is the Chief Disciplinary Counsel appointed by the Court pursuant to Rule 5.06.

2. On or about March 31, 2016, Informant determined, pursuant to Rule 5.11, that probable cause existed to believe that Respondent Karl Hinkebein is guilty of professional misconduct and on March 31, 2016, Informant filed an Information charging Respondent with violation of specified Rules of Professional Conduct.

3. Respondent Karl Hinkebein was licensed to practice law in Missouri on October 1, 1993. (Information (hereafter "Inf.") ¶ 3; Answer (hereafter "Ans.") ¶ 3.)

4. The address Respondent registered with The Missouri Bar is Woodrail Centre, 1000 W. Nifong, Bldg. 7, Ste. 100, Columbia, Missouri 65203. (Inf. ¶ 4; Ans. ¶ 4.). As reflected by the caption hereto, Respondent's bar number is 41666.

5. Respondent is a public defender with the Missouri Public Defender System ("MPDS"). (Inf. ¶ 5; Ans. ¶ 5.)

6. Respondent's license is in good standing. (Inf. ¶ 6; Ans. ¶ 6.)

7. Respondent has received three admonitions in the past:

   a. By letter dated December 8, 2003, Respondent was admonished for violating Rule 4-1.3 (diligence);

   b. By letter dated July 16, 2008, Respondent was admonished for violating Rule 4-1.3 (diligence); and

   c. By letter dated February 26, 2010, Respondent was admonished for violating Rules 4-1.3 (diligence) and 4-1.4 (communication).

(Inf. ¶ 7; Ans. ¶ 7; Ex. 9.)

8. Respondent works for the MPDS in Area 67, the Central Appellate PCR divison. (Tr. 18 – 19 (testimony of Respondent).)

9. Respondent's primary work is representing indigent clients who have moved, *pro se*, for post-conviction relief under either Rule 29.15 or Rule 24.035. (Tr. 19 (testimony of Respondent).)

10. The movants who are the subject of this disciplinary proceeding sought relief under Rule 29.15. (Tr. 21 (testimony of Respondent).)

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11. Appointed counsel, per Rule 29.15, may file an amended motion for post-conviction relief, or a statement in lieu of an amended motion for post-conviction relief. (Tr. 143 (testimony of Steve Harris, District Defender Area 67 MPDS).)

12. Determination regarding whether to file an amended motion or a statement in lieu of an amended motion is made after the records have been reviewed, after communication with the client, and after any necessary investigation. (Tr. 144 (testimony of Steve Harris).)

COUNT I – Robinson

13. Respondent Hinkebein served as counsel for the movant Darin Robinson in *Darin Robinson v. State of Missouri*, Case No. 1031-CV18129, in the Circuit Court of Greene County, Missouri, a post-conviction relief proceeding. (Inf. ¶ 9; Ans. ¶ 9; Ex. 5.)

14. Respondent entered his appearance as counsel for Movant Robinson on or about February 14, 2011. (Inf. ¶ 10; Ans. ¶ 10; Ex. 5.)

15. Respondent filed a motion for extension of time in which to file an amended Rule 29.15 motion on behalf of Movant Robinson. (Inf. ¶ 11; Ans. ¶ 11; Ex. 5.)

16. The Court granted the motion for extension of time to March 13, 2011. (Inf. ¶ 12; Ans. ¶ 12; Ex. 5.)

17. Respondent wrote the prison to arrange telephone calls with Movant Robinson on March 10, March 11, and March 14, 2011. (Inf. ¶ 13; Ans. ¶ 13.)

18. Respondent sent letters to potential witnesses for Mr. Robinson on March 9 and 10, 2011. (Inf. ¶ 14; Ans. ¶ 14.)

19. The letters to potential witnesses from Mr. Robinson were sent too late for any information forwarded by those potential witnesses to be included in a timely filed amended motion. (Tr. 32 (testimony of Respondent).)

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20. At the time the amended motion was due, Respondent had not yet decided whether to file an amended motion or a statement in lieu of an amended motion of behalf of Movant Robinson. (Tr. 33 - 34 (testimony of Respondent).)

21. In a statement in lieu of an amended motion, counsel must include, *inter alia*, a statement that the pro se motion contains all claims known to the movant after counsel has examined the file. (Tr. 24-25, 33 (testimony of Respondent); Tr. 143 – 144 (testimony of Steve Harris).)

22. After the statement in lieu is filed, the movant has 10 days to respond as to whether movant disagrees with the filing of the statement in lieu. (Tr. 25, 33 (testimony of Respondent).)

23. Respondent did not prepare a Statement in Lieu of an Amended Motion regarding Mr. Robinson's post-conviction relief motion. (Inf. ¶ 15; Ans. ¶ 15.)

24. Respondent did not file an amended Rule 29.15 motion, or a Statement in Lieu of an Amended Motion, on behalf of Mr. Robinson on or before March 13, 2011. (Inf. ¶ 16; Ans. ¶ 16; Ex. 5.)

25. Respondent failed to communicate with Mr. Robinson after March 2011. (Inf. ¶ 17; Ans. ¶ 17.)

26. Respondent intended to file a Statement in Lieu of an Amended Motion on behalf of Movant Robinson. (Tr. 34 (testimony of Respondent); Ex. 18.)

27. Respondent did not send Mr. Robinson a Statement in Lieu of an Amended Motion for his review. (Inf. ¶ 18; Ans. ¶ 18.)

28. Respondent Hinkebein never filed an amended Rule 29.15 motion or a Statement in Lieu of an Amended Motion on behalf of Movant Robinson. (Inf. ¶ 19; Ans. ¶ 19.)

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29. Respondent remained Movant Robinson's attorney until he withdrew as counsel of record for Movant Robinson on September 5, 2014. (Inf. ¶ 20; Ans. ¶ 20; Ex. 5; Tr. 34 (testimony of Respondent).)

30. Respondent withdrew as Movant Robinson's counsel because Movant Robinson's case was reassigned to another public defender. (Tr. 35 (testimony of Respondent).)

31. Movant Robinson's new counsel filed a Motion for Finding of Abandonment and for Leave to File an Amended Motion. (Inf. ¶ 21; Ans. ¶ 21; Ex. 5.)

32. The trial court entered an Order finding that Respondent had abandoned Movant Robinson on his post-conviction relief action. (Inf. ¶ 22; Ans. ¶ 22; Ex. 5.)

COUNT II – Hines

33. Respondent Hinkebein served as counsel for the Movant Christopher Hines in *Christopher J. Hines v. State of Missouri*, Case No. 1231-CV16886, in the Circuit Court of Greene County, Missouri, a post-conviction relief proceeding. (Inf. ¶ 25; Ans. ¶ 25; Ex. 4.)

34. Respondent entered his appearance as counsel for Movant Hines on or about December 21, 2012. (Inf. ¶ 26; Ans. ¶ 26; Ex. 4.)

35. Respondent filed a motion for extension of time in which to file an amended Rule 29.15 motion on behalf of Movant Hines. (Inf. ¶ 27; Ans. ¶ 27; Ex. 4.)

36. The Court granted the motion for extension of time to March 5, 2013. (Inf. ¶ 28; Ans. ¶ 28; Ex. 4.)

37. Respondent received Movant Hines' trial file on or about December 26, 2012. (Inf. ¶ 29; Ans. ¶ 29; Tr. 37 (testimony of Respondent).)

38. Respondent received Movant Hines' direct appeal file on or about December 11, 2012. (Inf. ¶ 30; Ans. ¶ 30; Tr. 37 (testimony of Respondent.)

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39. Respondent wrote the prison to arrange telephone calls with Movant Hines on March 4, 2013, March 5, 2013, March 6, 2013, and August 15, 2014. (Inf. ¶ 31; Ans. ¶ 31.)

40. March 4, 2013 was the first time Respondent had attempted to speak to Mr. Hines regarding the facts of his case. (Tr. 38 – 39 (testimony of Respondent).)

41. Before March 4, 2013, the only communication Respondent had with Mr. Hines since Respondent was appointed was the introductory packet of information generated by Respondent's secretary that is sent to movants and which includes a form questionnaire. (Tr. 38 – 39, 46 (testimony of Respondent).)

42. Respondent did not file an amended Rule 29.15 motion, or a Statement in Lieu of an Amended Motion, on or before March 5, 2013 on behalf of Movant Hines. (Inf. ¶ 32; Ans. ¶ 32; Ex. 4.)

43. Respondent intended to file an amended motion on behalf of Movant Hines. (Tr. 39 (testimony of Respondent); Ex. 20.)

44. Respondent did not communicate with Mr. Hines from March 2013 until August 15, 2014. (Inf. ¶ 33; Ans. ¶ 33.)

45. Respondent communicated with Mr. Hines on or about August 15, 2014 after Mr. Hines complained to Respondent's supervisor that Mr. Hines hadn't heard from Respondent. (Tr. 39 – 40 (testimony of Respondent).)

46. Respondent Hinkebein never filed an amended Rule 29.15 motion, or a Statement in Lieu of an Amended Motion, on behalf of Movant Hines. (Inf. ¶ 34; Ans. ¶ 34; Ex. 4; Tr. 39 (testimony of Respondent).)

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47. Respondent withdrew as counsel of record for Movant Hines on September 5, 2014 and the case was reassigned to another public defender. (Inf. ¶ 35; Ans. ¶ 35; Ex. 4; Tr. 40 (testimony of Respondent).)

48. Movant Hines' new counsel filed a Motion for Finding of Abandonment and for Leave to File an Amended Motion. (Inf. ¶ 36; Ans. ¶ 36; Ex. 4; Tr. 40 - 41 (testimony of Respondent).)

49. The trial court entered an Order sustaining Movant Hines' motion and finding that Movant had been abandoned by Respondent on his post-conviction relief action. (Inf. ¶ 37; Ans. ¶ 37; Ex. 4.)

COUNT III – Williams

50. Respondent Hinkebein served as counsel for the Movant William Williams in *William J. Williams v. State of Missouri*, Case No. 13PO-CC00056, in the Circuit Court of Polk County, Missouri, a post-conviction relief proceeding. (Inf. ¶ 40; Ans. ¶ 40; Ex. 7.)

51. Respondent entered his appearance as counsel for Movant Williams on or about September 9, 2013. (Inf. ¶ 41; Ans. ¶ 41; Ex. 7; Tr. 42 (testimony of Respondent).)

52. Respondent filed a motion for extension of time in which to file an amended Rule 29.15 motion on behalf of Movant Williams. (Inf. ¶ 42; Ans. ¶ 42; Ex. 7; Tr. 42 (testimony of Respondent).)

53. The Court granted the motion for extension of time to November 10, 2013. (Inf. ¶ 43; Ans. ¶ 43; Ex. 7; Tr. 42 (testimony of Respondent).)

54. Respondent received Movant Williams' direct appeal file on or about August 30, 2013. (Inf. ¶ 44; Ans. ¶ 44.)

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55. Respondent received Movant Williams' trial file on or about September 13, 2013. (Inf. ¶ 45; Ans. ¶ 45.)

56. The earliest entry on Respondent's caseload timeline regarding Respondent's work on Mr. Williams's case is November 19, 2013. (Tr. 45 – 46 (testimony of Respondent); Ex. 13.)

57. Respondent spoke with Movant Williams by telephone on November 21, 2013. (Inf. ¶ 46; Ans. ¶ 46; Tr. 43 (testimony of Respondent).)

58. Respondent first spoke to Mr. Williams after the deadline to file an amended motion for post-conviction relief had passed. (Tr. 43 (testimony of Respondent).)

59. During the November 21, 2013 telephone call, Respondent told Movant Williams that Respondent intended to file an amended Rule 29.15 motion on his behalf. (Inf. ¶ 47; Ans. ¶ 47; Tr. 43 (testimony of Respondent).)

60. Respondent did not file an amended Rule 29.15 motion, or a Statement in Lieu of an Amended Motion, on or before November 10, 2013 on behalf of Movant Williams. (Inf. ¶ 48; Ans. ¶ 48; Ex. 7.)

61. Respondent did not communicate with Mr. Williams after November 21, 2013. (Inf. ¶ 49; Ans. ¶ 49.)

62. Respondent spoke with Movant Williams' mother, a witness identified by Movant Williams. (Inf. ¶ 50; Ans. ¶ 50.)

63. Respondent did not speak with the other five witnesses identified by Movant Williams' during the November 21, 2013 telephone call between Respondent and Movant Williams. (Inf. ¶ 51; Ans. ¶ 51.)

64. Respondent Hinkebein never filed an amended Rule 29.15 motion, or a Statement in Lieu of an Amended Motion, on behalf of Movant Williams. (Inf. ¶ 52; Ans. ¶ 52; Ex. 7.)

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65. Respondent intended to file an amended motion on behalf of Mr. Williams. (Tr. 41 – 42, 43 (testimony of Respondent); Ex. 20.)

66. Mr. Williams case was reassigned to another public defender and Respondent withdrew as counsel of record for Movant Williams on September 8, 2014. (Inf. ¶ 53; Ans. ¶ 53; Ex. 7; Tr. 43 - 44 (testimony of Respondent).)

67. Movant Williams' new counsel filed a Motion for Finding of Abandonment and for Leave to File an Amended Motion. (Inf. ¶ 54; Ans. ¶ 54; Ex. 7; Tr. 44 (testimony of Respondent).)

68. The trial court entered an Order finding that Respondent had abandoned Movant Williams on his post-conviction relief action. (Inf. ¶ 55; Ans. ¶ 55; Ex. 7; Tr. 44 (testimony of Respondent).)

COUNT IV – Watson

69. Respondent Hinkebein served as counsel for the Movant Dustin Watson in *Dustin S. Watson v. State of Missouri*, Case No. 1231-CV00474, in the Circuit Court of Greene County, Missouri, a post-conviction relief proceeding. (Inf. ¶ 58; Ans. ¶ 58; Ex. 6.)

70. Respondent entered his appearance as counsel for Movant Watson on or about February 9, 2012. (Inf. ¶ 59; Ans. ¶ 59; Ex. 7; Tr. 47 (testimony of Respondent).)

71. Respondent filed a motion for extension of time in which to file an amended Rule 29.15 motion on behalf of Movant Watson. (Inf. ¶ 60; Ans. ¶ 60; Ex. 7; Tr. 48 (testimony of Respondent).)

72. The Court granted the motion for extension of time to April 16, 2012. (Inf. ¶ 61; Ans. ¶ 61; Ex. 7.)

73. Respondent received Movant Watson's trial file on or about February 8, 2012. (Tr. 120 (testimony of Respondent); Ex. 45.)

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74. Respondent sent a letter requesting Movant Watson's appellate file on or about May 16, 2012. (Tr. 120 - 121 (testimony of Respondent); Ex. 45.)

75. Respondent didn't request Movant Watson's appellate file until after the April 16, 2012 due date for the amended motion. (Tr. 120 – 121 (testimony of Respondent); Ex. 45.)

76. Respondent received Movant Watson's appellate file on or about June 20, 2012. (Tr. 106, 120 (testimony of Respondent); Ex. 45.)

77. Respondent wrote the prison to arrange telephone calls with Movant Watson on July 19, 2012, July 25, 2012, July 26, 2012, and July 31, 2012. (Inf. ¶ 62; Ans. ¶ 62.)

78. Respondent didn't speak to Mr. Watson until three months after the amended motion was due. (Tr. 48 (testimony of Respondent).)

79. Respondent did not file an amended Rule 29.15 motion, or a Statement in Lieu of an Amended Motion, on or before April 16, 2012 on behalf of Movant Watson. (Inf. ¶ 63; Ans. ¶ 63; Ex. 7; Tr. 48 (testimony of Respondent).)

80. Respondent did not communicate with Mr. Watson after July 2012. (Inf. ¶ 64; Ans. ¶ 64; Tr. 48 (testimony of Respondent).)

81. Respondent intended to file an amended motion on behalf of Mr. Watson. (Tr. 41 – 42, 48 (testimony of Respondent); Ex. 20.)

82. Respondent Hinkebein never filed an amended Rule 29.15 motion, or a Statement in Lieu of an Amended Motion, on behalf of Movant Watson. (Inf. ¶ 65; Ans. ¶ 65; Ex. 7.)

83. Mr. Watson's case was reassigned to another public defender and Respondent withdrew as counsel of record for Movant Watson on September 5, 2014. (Inf. ¶ 66; Ans. ¶ 66; Ex. 7; Tr. 48 (testimony of Respondent).)

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84. Movant Watson's new counsel filed a Motion for Finding of Abandonment and for Leave to File an Amended Motion. (Inf. ¶ 67; Ans. ¶ 67; Ex. 7; Tr. 48 – 49 (testimony of Respondent).)

85. The trial court entered an Order finding that Respondent had abandoned Movant Watson on his post-conviction relief action. (Inf. ¶ 68; Ans. ¶ 68; Ex. 7; Tr. 49 (testimony of Respondent).)

COUNT V – Austin

Dismissed with prejudice by Informant on September 9, 2016.

COUNT VI – Giles

86. Respondent Hinkebein served as counsel for the Movant Allen Giles in *Allen D. Giles v. State of Missouri*, Case No. 1231-CV17820, in the Circuit Court of Greene County, Missouri, a post-conviction relief proceeding. (Inf. ¶ 85; Ans. ¶ 85; Ex. 3.)

87. Respondent entered his appearance as counsel for Movant Giles on or about January 24, 2013. (Inf. ¶ 86; Ans. ¶ 86; Ex. 3; Tr. 51 (testimony of Respondent).)

88. Respondent filed a motion for extension of time in which to file an amended Rule 29.15 motion on behalf of Movant Giles. (Inf. ¶ 87; Ans. ¶ 87; Ex. 3; Tr. 51 (testimony of Respondent).)

89. The Court granted the motion for extension of time to April 15, 2013. (Inf. ¶ 88; Ans. ¶ 88; Ex. 3; Tr. 51 (testimony of Respondent).)

90. Respondent spoke by telephone with Movant Giles on April 25, 2013 and March 24, 2014. (Inf. ¶ 89; Ans. ¶ 89; Tr. 51 (testimony of Respondent).)

91. Respondent first spoke to Mr. Giles after any amended motion was due. (Tr. 51 – 52 (testimony of Respondent).)

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92. Respondent did not begin reviewing Mr. Giles case until April 1, 2013. (Inf. ¶ 90; Ans. ¶ 90.)

93. Respondent last reviewed Mr. Giles transcript on March 24, 2014. (Inf. ¶ 91; Ans. ¶ 91.)

94. Respondent intended to file a Statement in Lieu of an Amended Motion in Mr. Giles' case. (Tr. 52 (testimony of Respondent).)

95. Respondent told Mr. Giles that he intended to file a Statement in Lieu on April 25, 2013. (Tr. 52 (testimony of Respondent).)

96. Respondent spoke to Mr. Giles eleven (11) months later on March 24, 2014, and again told him he intended to file a Statement in Lieu. (Tr. 53 (testimony of Respondent).)

97. Respondent did not prepare a Statement in Lieu of an Amended Motion regarding Mr. Giles' post-conviction relief motion. (Inf. ¶ 92; Ans. ¶ 92; Ex. 3.)

98. Respondent did not file an amended Rule 29.15 motion, or a Statement in Lieu of an Amended Motion, on or before April 15, 2013 on behalf of Movant Giles. (Inf. ¶ 93; Ans. ¶ 93; Ex. 3; Tr. 52 (testimony of Respondent).)

99. Respondent failed to communicate with Mr. Giles after March 24, 2014. (Inf. ¶ 94; Ans. ¶ 94; Tr. 53 (testimony of Respondent).)

100. Respondent did not send Mr. Giles a Statement in Lieu of an Amended Motion for his review. (Inf. ¶ 95; Ans. ¶ 95.)

101. Respondent Hinkebein never filed an amended Rule 29.15 motion, or a Statement in Lieu of an Amended Motion, on behalf of Movant Giles. (Inf. ¶ 96; Ans. ¶ 96; Ex. 3.)

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102. Mr. Giles's case was reassigned to another public defender in August 2014 and Respondent withdrew as counsel of record for Movant Giles on September 5, 2014. (Inf. ¶ 97; Ans. ¶ 97; Ex. 3; Tr. 53 - 54 (testimony of Respondent).)

103. Movant Giles' new counsel filed a Motion for Finding of Abandonment and for Leave to File an Amended Motion. (Inf. ¶ 98; Ans. ¶ 98; Ex. 3; Tr. 54 (testimony of Respondent).)

104. The trial court entered its Order finding that Respondent had abandoned Movant Giles on his post-conviction relief action. (Inf. ¶ 99; Ans. ¶ 99; Ex. 3; Tr. 54 (testimony of Respondent).)

COUNT VII – Arata

105. Respondent Hinkebein served as counsel for the Movant Jeremy Arata in *Jeremy W. Arata v. State of Missouri*, Case No. 1331-CC00971, in the Circuit Court of Greene County, Missouri, a post-conviction relief proceeding. (Inf. ¶ 102; Ans. ¶ 102; Ex. 1.)

106. Respondent entered his appearance as counsel for Movant Arata on or about August 6, 2013. (Inf. ¶ 103; Ans. ¶ 103; Ex. 1; Tr. 54 (testimony of Respondent).)

107. Respondent filed a motion for extension of time in which to file an amended Rule 29.15 motion on behalf of Movant Arata. (Inf. ¶ 104; Ans. ¶ 104; Ex. 1; Tr. 54 - 55 (testimony of Respondent).)

108. The Court granted the motion for extension of time to October 22, 2013. (Inf. ¶ 105; Ans. ¶ 105; Ex. 1; Tr. 55 (testimony of Respondent).)

109. Respondent wrote the prison to arrange a telephone call with Movant Arata on January 6, 2014. (Inf. ¶ 106; Ans. ¶ 106; Ex. 1; Tr. 55 (testimony of Respondent).)

110. Respondent did not speak to Mr. Arata until over two (2) months after any amended motion was due. (Tr. 55 (testimony of Respondent).)

111. Respondent intended to file a Statement in Lieu in Mr. Arata's case. (Tr. 55 (testimony of Respondent).)

112. On January 6, 2014, Respondent told Mr. Arata that he intended to file a Statement in Lieu. (Tr. 55, 56 - 57 (testimony of Respondent); Ex. 29.)

113. Respondent did not prepare a Statement in Lieu of an Amended Motion regarding Mr. Arata's post-conviction relief motion. (Inf. ¶ 107; Ans. ¶ 107; Ex. 1.)

114. Respondent did not send Mr. Arata a Statement in Lieu of an Amended Motion for his review. (Inf. ¶ 108; Ans. ¶ 108.)

115. Respondent did not file an amended Rule 29.15 motion, or a Statement in Lieu of an Amended Motion, on or before October 22, 2013 on behalf of Mr. Arata. (Inf. ¶ 109; Ans. ¶ 109; Ex. 1.)

116. Respondent failed to communicate with Mr. Arata after January 2014. (Inf. ¶ 110; Ans. ¶ 110.)

117. Respondent Hinkebein never filed an amended Rule 29.15 motion, or a Statement in Lieu of an Amended Motion, on behalf of Movant Arata. (Inf. ¶ 111; Ans. ¶ 111; Ex. 1.)

118. Mr. Arata's case was reassigned to another public defender in August 2014. (Tr. 59 (testimony of Respondent).)

119. Respondent withdrew as counsel of record for Movant Arata on September 5, 2014. (Inf. ¶ 112; Ans. ¶ 112; Ex. 1; Tr. 59 (testimony of Respondent).)

120. Movant Arata's new counsel filed a Motion for Finding of Abandonment and for Leave to File an Amended Motion. (Inf. ¶ 113; Ans. ¶ 113; Ex. 1; Tr. 59 (testimony of Respondent).)

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121. The trial court entered its Order finding that Respondent had abandoned Movant Arata on his post-conviction relief action. (Inf. ¶ 114; Ans. ¶ 114; Ex. 1.)

Potential Injury

122. If any of these movants, Robinson, Hines, Williams, Watson, Giles, and/or Arata, had gained actual relief from their Rule 29.15 motion for post-conviction relief, the delay in processing those motions could have resulted in them being incarcerated for a longer period of time. (Tr. 60 (testimony of Respondent).)

123. Respondent did not intentionally delay any of the cases that are the subject of this case in hopes that the passage of time would result in the prosecutor agreeing to a better outcome for the movant. (Tr. 125 (testimony of Respondent).)

124. Respondent did not ask any of the movants who are the subjects of this case to agree to a delay in hopes that the passage of time would result in the prosecutor agreeing to a better outcome for the movant. (Tr. 125 (testimony of Respondent).)

Respondent's Employee Improvement Plan

125. Missouri Public Defender System Attorney Greg Mermelstein, who receives complaints from the client base for the MPDS, received a letter from Movant Hines, Respondent's client, asking about the progress of his case. (Tr. 215 (testimony of Greg Mermelstein, Deputy Director of Specialty Practice and Resources for the MPDS ("Mermelstein"); (Tr. 26 (testimony of Respondent); Ex. 21.)

126. Mr. Mermelstein asked Mr. Harris, Respondent's immediate supervisor, the District Defender, to look into Mr. Hines complaint, and he looked through Respondent's cases and found a number of cases where amended motions had not been timely filed. (Tr. 215 - 216 (testimony of Mermelstein); Tr. 26 (testimony of Respondent); Ex. 28.)

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127. Mr. Mermelstein determined that the cases where amended motions had not been timely filed should be reassigned to another MPDS office. (Tr. 216 – 217 (testimony of Mermelstein).)

128. In August 2014, Respondent gathered up the files to be reassigned and gave them to Mr. Harris. (Tr. 29 (testimony of Respondent); Ex. 28.)

129. The cases reassigned were the subject of the Information: Movants Arata, Austin, Giles, Hines, Robinson, Watson, and Williams. (Tr. 28 – 29, 30 (testimony of Respondent).)

130. Those cases were reassigned to other public defenders in August 2014. (Tr. 28 (testimony of Respondent).)

131. Mr. Harris and Mr. Mermelstein determined that it would be best for the cases to be transferred out of their Area so that they could be examined anew and so there would be no appearance of any conflict. (Tr. 155 – 156 (testimony of Steve Harris, District Defender Area 67 of the MPDS ("Harris")); Tr. 216 – 218 (testimony of Mermelstein).)

132. Respondent withdrew from the reassigned cases in September 2014. (Tr. 29 (testimony of Respondent).)

133. On September 4, 2014, Respondent was issued an Employee Improvement Plan by Harris. (Tr. 60 - 61 (testimony of Respondent); Ex. 10.)

134. Respondent met with Mr. Harris and Mr. Mermelstein, Divison Director, about the Employee Improvement Plan. (Tr. 61 - 62 (testimony of Respondent).)

135. The Employee Improvement Plan recites that Respondent had "failed to file timely amended motions or statements in lieu of amended motions in the following cases: Dustin Watson, Christopher Hines, Allen Giles, William Austin, Jeremy Arata, William Williams, Darin Robinson…." (Ex. 10.)

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136. The Employee Improvement Plan recites that Respondent's failures "jeopardizes the clients' rights to pursue state postconviction relief." (Ex. 10.)

137. Mr. Harris, via the Employee Improvement Plan, gave Respondent directives to improve his performance. (Tr. 62 (testimony of Respondent); Ex. 10.)

138. Respondent signed the Employee Improvement Plan on September 4, 2014. (Ex. 10.)

139. The Employee Improvement Plan issued to Respondent provides: "You cannot miss filing deadlines for amended motions, statements in lieu of amended motions, or notices of appeal." (Ex. 10.)

140. Mr. Harris directed Respondent to notify him if there was a time when he would not be able to file a timely amended motion, statement in lieu of an amended motion, or voluntary dismissal before the due dates. (Tr. 64 (testimony of Respondent); Ex. 10.)

141. Mr. Harris directed Respondent to implement a calendaring system that could be monitored by Respondent's secretary and by Mr. Harris. (Tr. 65 (testimony of Respondent); Ex. 10.)

142. Respondent's secretary now generates a report for Respondent showing all due dates in the upcoming month. (Tr. 65 - 66 (testimony of Respondent); Tr. 166 – 167 (testimony of Steve Harris).)

143. Respondent now generates a report for Mr. Harris that includes his deadlines for the month past and the upcoming month. (Tr. 66 (testimony of Respondent); Tr. 166 – 167 (testimony of Steve Harris).)

144. Mr. Harris also provided in the Employee Improvement Plan that he would meet with Respondent periodically to review and discuss Respondent's performance. (Ex. 10.)

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145. The calendaring and system established in September 2014 has been mostly successful. Respondent has had issues with electronic filing where the filing was not completed before midnight. He also missed a deadline in another case where he thought he had filed the amended motion, but somehow had not. (Tr. 65, 69 – 70, 110 - 111 (testimony of Respondent); Tr. 167 – 168 (testimony of Steve Harris).)

146. Mr. Harris believes Respondent has had a marked improvement in his performance. (Tr. 171 (testimony of Steve Harris)

Respondent's Health

147. Respondent believes his health issues affected his performance between 2010 and 2014. (Tr. 85, 102, 114 (testimony of Respondent).)

148. Respondent believes his health condition was a physical disability between 2010 and 2014. (Tr. 114 - 115 (testimony of Respondent).)

149. Respondent's health has been fairly stable since he last was hospitalized in 2013. (Tr. 118 – 119 (testimony of Respondent).)

150. Respondent believes he is functioning better now than he was in 2011 through 2013. (Tr. 130 (testimony of Respondent).)

Respondent's Workload

151. Respondent believes his workload includes an unreasonable number of cases. (Tr. 111 (testimony of Respondent).)

152. Respondent has approximately 110 cases. (Tr. 122, 126 (testimony of Respondent).)

153. Steve Harris believes he was assigning too much work to Respondent before the issues in this case were revealed. (Tr. 172 – 174 (testimony of Steve Harris).)

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154. Historically, Respondent filed more amended motions and had more court hearings than anyone else in his office. (Tr. 189 – 190 (testimony of Steve Harris); Tr. 212 – 213 (testimony of Greg Mermelstein, Deputy Director of Specialty Practice and Resources for the MPDS ("Mermelstein")); Ex. D.)

155. Steve Harris believes Respondent's dedication to his clients is beyond reproach. (Tr. 191 – 192 (testimony of Steve Harris).)

156. Steve Harris testified that Respondent has a strong work ethic and even when he was very ill, he did not ask for help. (Tr. 181 (testimony of Steve Harris).)

157. Since August 2014 when the cases which are the subject of this hearing were reassigned, Respondent's supervisor has assigned him more Rule 24.035 motions than he used to, resulting in a slightly lighter workload because Rule 24.035 motions generally have much shorter records and aren't as time-consuming. (Tr. 123 – 124 (testimony of Respondent); Tr. 172 (testimony of Steve Harris).)

158. Since August 2014, Mr. Harris has reduced Respondent's case number assignments as well as the seriousness of the cases he is assigned. (Tr. 172 (testimony of Steve Harris).)

159. Steve Harris believes Respondent is an absolute asset to the office. (Tr. 193 (testimony of Steve Harris).)

160. Steve Harris has no flexibility with regard to the attorneys' heavy workload in Area 67. They actually have lost an attorney position since 2007. (Tr. 195 – 196 (testimony of Steve Harris).)

161. According to senior staff with the MPDS, a Missouri Bar task force, a Missouri Senate Interim Committee, and the American Bar Association have studied the MPDS and found

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that the System has more cases than it can ethically, reasonably, or effectively handle. (Tr. 205 (testimony of Mermelstein).)

162. Public defenders cannot decline cases based on case load. (Tr. 207 – 208 (testimony of Mermelstein).)

163. The Public Defender Commission Caseload Crisis Protocol suggests that the MPDS needs 269 additional attorneys. The System currently has approximately 370 attorneys statewide. (Tr. 204 (testimony of Mermelstein).)

164. Greg Mermelstein believes Respondent's work product is of very high quality, that he is hard-working, and that he is very good at untangling complex legal issues such as jail time credit issues. (Tr. 212 – 214 (testimony of Mermelstein).)

CONCLUSIONS OF LAW

COUNT I – Robinson

165. Missouri Rule of Professional Conduct 4-1.3 provides that "[a] lawyer shall act with reasonable diligence and promptness in representing a client."

166. Respondent violated Rule 4-1.3 by not attempting to speak to his client Robinson until two (2) days before the deadline to file an amended motion, by not contacting potential witnesses for Mr. Robinson until he sent them letters three and two days before the deadline to file an amended motion, by not filing any motion, whether an amended motion or a statement in lieu, by the March 13, 2011 due date for an amended motion or by the time Mr. Robinson's case was reassigned in August 2014.

167. Missouri Rule of Professional Conduct 4-1.4(a) requires a lawyer to (1) "keep the client reasonably informed about the status of the matter;" and (2) "promptly comply with reasonable requests for information."

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168. Respondent violated Rule 4-1.4(a) by failing to keep Mr. Robinson adequately informed in that he did not speak to Mr. Robinson until two (2) days before any amended motion was due, and he did not communicate at all with Mr. Robinson between March 2011 and when Mr. Robinson's case was reassigned in August 2014.

COUNT II – Hines

169. Missouri Rule of Professional Conduct 4-1.3 provides that "[a] lawyer shall act with reasonable diligence and promptness in representing a client."

170. Respondent violated Rule 4-1.3 by not attempting to speak to his client Hines until one (1) day before the deadline to file an amended motion, and by not timely filing the amended motion by the March 5, 2013 due date, and by not acting to cause an amended motion to be filed by the time Mr. Hines' case was reassigned in August 2014.

171. Missouri Rule of Professional Conduct 4-1.4(a) requires a lawyer to (1) "keep the client reasonably informed about the status of the matter;" and (2) "promptly comply with reasonable requests for information."

172. Respondent violated Rule 4-1.4(a) by failing to keep Mr. Hines adequately informed in that he did not speak to Mr. Hines until one (1) day before any amended motion was due, and he did not communicate at all with Mr. Hines between March 2013 and August 15, 2014 when he wrote Mr. Hines after Mr. Hines complained to Respondent's supervisor.

COUNT III – Williams

173. Missouri Rule of Professional Conduct 4-1.3 provides that "[a] lawyer shall act with reasonable diligence and promptness in representing a client."

174. Respondent violated Rule 4-1.3 by not speaking to speak to his client Williams until eleven (11) days after the November 10, 2013 due date to file an amended motion, by not

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communicating with all of the witnesses identified by Mr. Williams, by not timely filing the amended motion by November 10, 2013, and by not acting to cause an amended motion to be filed by the time Mr. Williams' case was reassigned in August 2014.

175. Missouri Rule of Professional Conduct 4-1.4(a) requires a lawyer to (1) "keep the client reasonably informed about the status of the matter;" and (2) "promptly comply with reasonable requests for information."

176. Respondent violated Rule 4-1.4(a) by failing to keep Mr. Williams adequately informed in that he did not speak to Mr. Hines until eleven (11) days after his amended motion was due, and he did not communicate at all with Mr. Williams between November 21, 2013 and August 2014 when Mr. Williams' case was reassigned.

COUNT IV – Watson

177. Missouri Rule of Professional Conduct 4-1.3 provides that "[a] lawyer shall act with reasonable diligence and promptness in representing a client."

178. Respondent violated Rule 4-1.3 by not speaking to his client Watson until three (3) months after the April 16, 2012 due date to file an amended motion, by not requesting his appellate file until after the due date to file an amended motion, by not timely filing the amended motion by the April 16, 2012 due date, and by not acting to cause an amended motion to be filed by the time Mr. Watson's case was reassigned in August 2014.

179. Missouri Rule of Professional Conduct 4-1.4(a) requires a lawyer to (1) "keep the client reasonably informed about the status of the matter;" and (2) "promptly comply with reasonable requests for information."

180. Respondent violated Rule 4-4.1(a) by failing to keep Mr. Watson adequately informed in that he did not speak to Mr. Watson until three (3) months after his amended motion

was due, and he did not communicate at all with Mr. Watson between July 2013 and August 2014 when Mr. Watson's case was reassigned.

COUNT VI – Giles

181. Missouri Rule of Professional Conduct 4-1.3 provides that "[a] lawyer shall act with reasonable diligence and promptness in representing a client."

182. Respondent violated Rule 4-1.3 by not speaking to his client Giles until ten (10) days after the April 15, 2013 due date to file an amended motion, by not filing the statement in lieu after telling Mr. Giles he intended to do so on April 25, 2013 and on March 24, 2014, by not beginning to review Mr. Giles case until April 1, 2013, by not filing any motion, whether an amended motion or a statement in lieu, by the April 15, 2013 due date for an amended motion or by the time Mr. Giles' case was reassigned in August 2014.

183. Missouri Rule of Professional Conduct 4-1.4(a) requires a lawyer to (1) "keep the client reasonably informed about the status of the matter;" and (2) "promptly comply with reasonable requests for information."

184. Respondent violated Rule 4-1.4(a) by failing to keep Mr. Giles adequately informed in that he did not speak to Mr. Giles until ten (10) days after any amended motion was due, and he did not communicate at all with Mr. Giles between April 25, 2013 and March 24, 2014, or between March 24, 2014 and when Mr. Giles' case was reassigned in August 2014.

COUNT VII – Arata

185. Missouri Rule of Professional Conduct 4-1.3 provides that "[a] lawyer shall act with reasonable diligence and promptness in representing a client."

186. Respondent violated Rule 4-1.3 by not speaking to his client Arata until eleven (11) weeks after the October 22, 2013 due date to file an amended motion, by not filing any motion,

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whether an amended motion or a statement in lieu, by the October 22, 2013 due date for an amended motion or by the time Mr. Giles' case was reassigned in August 2014.

187. Missouri Rule of Professional Conduct 4-1.4(a) requires a lawyer to (1) "keep the client reasonably informed about the status of the matter;" and (2) "promptly comply with reasonable requests for information."

188. Respondent violated Rule 4-1.4(a) by failing to keep Mr. Arata adequately informed in that he only spoke to Mr. Arata one time and that was not until eleven (11) weeks after any amended motion was due, and he did not communicate at all with Mr. Arata between January 2014 and when Mr. Arata's case was reassigned in August 2014.

RECOMMENDATION OF SANCTION

Respondent failed to communicate with his clients (Robinson, Hines, Williams, Watson, Giles, Arata), and he failed to diligently represent his clients (Robinson, Hines, Williams, Watson, Giles, Arata). Thus, Respondent is guilty of professional misconduct as a result of violating Rule 4-1.3 and 4-1.4(a) of the Missouri Rules of Professional Conduct. When determining an appropriate sanction, Missouri case law is always the first source for analysis. The Supreme Court also often looks to the ABA Standards for Imposing Lawyer Sanctions for guidance when imposing discipline, but considers the Standards advisory. See *In Re: Ehler*, 319 S.W.3d 442, 451 (Mo. banc 2010).

The ABA Standards for Imposing Lawyer Sanctions (1991 Ed.) (hereinafter "ABA Standards") provide a standard for the violation of a particular rule. Section II of the ABA Standards states in part:

> The Standards do not account for multiple charges of misconduct. The ultimate sanction imposed should at least be consistent with the sanction for the most serious

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instance of misconduct among a number of violations; it may well be and generally should be greater than the sanction for the most serious violation.

In this case, the evidence shows that the Respondent has violated two (2) Rules six (6) times each.

ABA Sanctions Standard 3.0 provides:

> In imposing a sanction after a finding of lawyer misconduct, a court should consider the following factors:
>
> (a) the duty violated;
>
> (b) the lawyer's mental state; and
>
> (c) the actual or potential injury caused by the lawyer's misconduct; and
>
> (d) the existence of aggravating or mitigating factors.

Under Section II, The Theoretical Framework, the ABA Standards provide that the most important ethical duties are those obligations that an attorney owes the client. Respondent's violations were of obligations he owed his clients.

ABA Standard 4.43 regarding "Lack of Diligence" provides: "Reprimand is generally appropriate when a lawyer is negligent and does not act with reasonable diligence in representing a client, and causes injury or potential injury to a client." In *In re Frank*, 885 S.W.2d 328, 333 - 34 (Mo. banc 1994), the court found that the respondent had committed multiple violations of his diligence and communication obligations, and that he had failed to cooperate with bar counsel. The court found 39 violations. "Absent aggravating or mitigating circumstances, reprimand is generally appropriate when a lawyer has received an admonition for the same or similar conduct and engages in further similar acts of misconduct that cause injury or potential injury to a client,

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the public, the legal system, or the profession." *Id.* at 333, citing ABA Standard 8.3(b). The court suspended respondent Frank's license, however, noting his failure to respond to disciplinary authorities and the "pattern of neglect, [and] the volume and repeated nature of respondent's ethical violations." *Id.* at 334.

All of Respondent's clients who are the subject of this case were allowed to file amended motions for post-conviction relief. Thus far, none have been granted relief based on those amended motions. Respondent's clients were, however, at risk of injury from his violations. If the clients' post-conviction motions had been meritorious, their relief was, at the most, in jeopardy, and, at the least, delayed.

Certain aggravating and mitigating factors are applicable in this case. "Aggravation or aggravating circumstances are any considerations, or factors that may justify an increase in the degree of discipline to be imposed." ABA Sanction Standard 9.21. In the case at bar, aggravating factors are: Respondent's prior disciplinary offenses (ABA Sanction Standard 9.22(a)); a pattern of misconduct (ABA Sanction Standard 9.22(c)); multiple offenses (ABA Sanction Standard 9.22(d)); and the vulnerability of the victims (ABA Sanction Standard 9.22(h)).

"Mitigation or mitigating circumstances are any consideration or factors that may justify a reduction in the degree of discipline to be imposed." ABA Sanction Standard 9.31. Mitigating factors include Respondent's full and free disclosure to disciplinary counsel and cooperative attitude toward these proceedings (ABA Sanction Standard 9.32(e)), physical disability (ABA Sanction Standard 9.32(h)), and expressed remorse (ABA Sanction Standard 9.32(l)).

Having considered the nature and extent of Respondent's misconduct and the aggravating and mitigating factors, the Disciplinary Hearing Panel recommends that, pursuant to Rule 5.16, Respondent be placed on probation for one (1) year with the conditions that he not violate the

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Rules of Professional Conduct and that he report to the Chief Disciplinary Counsel, or his designee, every ninety (90) days with the first report being due on the ninetieth day after entry of a final order in this cause by the Missouri Supreme Court. Each report shall include:

1. Any address change;

2. Any change of employment;

3. Any arrests of Respondent;

4. Any criminal charges brought against Respondent;

5. Any criminal conviction of Respondent;

6. Any civil lawsuit filed against Respondent;

7. Any civil judgment entered against Respondent;

8. A description of any disputes with clients;

9. Written confirmation from Respondent's supervisor Steve Harris (or his successor) that Respondent has complied with the Employee Improvement Plan (Exhibit 10);

10. A written statement under penalty of perjury regarding whether Respondent has complied with the rules of Professional Conduct and all conditions of probation during the preceding calendar quarter;

11. Notification to the OCDC of any investigation of the Respondent which would raise a question as to Respondent's fitness to practice law;

12. In addition to all quarterly reports, a final report containing the same information, is due no earlier than thirty (30) days or less than fifteen (15) days prior to the last day of the probation period. With the final report, Respondent may file an application with the Court for an order of successful completion of probation as set forth in Rule 5.225(g). The application shall be accompanied by an affidavit that Respondent has complied with all terms

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of probation. A copy of the application and affidavit shall be served on the Office of Chief Disciplinary Counsel.

All concur.

Respectfully submitted,

Thomas M. Dunlap, #24508
Presiding Officer

Date: October 31, 2016

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Exhibit AA

Assessment of the Missouri State Public Defender System

Final Report

Prepared By:

The Spangenberg Group

and

The Center for Justice, Law and Society at George Mason University

October, 2009

Robert L. Spangenberg
David J. Newhouse
Jon B. Gould

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"THE ATTORNEYS WHO WORK FOR MSPD DO NOT HAVE THE NECESSARY TOOLS, TIME AND STAFF TO DO THEIR JOBS . . . AND YET SOMEHOW, LIKE SISYPHUS, THEY ALL KEEP PUSHING THE BOULDER UP THE MOUNTAIN HOPING THAT IT DOESN'T CRUSH THEM AND THEIR CAREER THE NEXT TIME IT ROLLS BACK DOWN." - MSPD STAFF MEMBER

Section I. Background

Overview of the Missouri Public Defender System: Clients & Cases

The Missouri Public Defender System (—MSPD ‖) is responsible for providing legal representation to all indigent citizens accused of or convicted of crimes in Missouri, as required by the Missouri Constitution as well as the United States Constitution.[1]

Pursuant to sections 600.086 and 600.042 of the Missouri Revised Statutes, public defenders provide legal services to individuals:[2] (1) detained or charged with a felony, including appeals from felony convictions; (2) detained or charged with a misdemeanor which —will probably result in confinement ‖upon conviction, including appeals from conviction in such cases; (3) detained or charged with violations of probation or parole; (4) who have been taken into custody pursuant to section 632.489, a statute authorizing civil commitment of sex offenders, including appeals from determinations pursuant to that statute; (5) for whom the federal or state constitution requires appointment of counsel; and (6) for whom, in a case in which he or she faces a loss or deprivation of liberty, any state law requires appointment of counsel.[3]

The agency structure is divided into three parts: the Trial Division, the Capital Division, and the Appellate/Post-Conviction Division. Attorneys in district offices within each division

[1] Contract attorneys may be utilized in cases where there is a conflict of interest between a defendant and the MSPD, or to address overload or staff shortages in particular offices to the extent possible.

[2] The statutes do not distinguish between juveniles and adults. As discussed in Section IIIC of this report, we are deeply concerned about the few juveniles represented by the MSPD. We have been unable to determine why this is the case, and we strongly urge that the issue receive further inquiry and attention.

[3] Section 600.042 specifically excludes representation by the Public Defender of individuals charged with violations of county or municipal ordinances.

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provide direct representation to MSPD clients. Consistent with Chapter 600's representation requirements, a typical trial caseload of non-entry-level public defenders includes: homicides; A-B felonies; C-D felonies; misdemeanors; traffic cases; juvenile delinquency cases; and probation/parole violations.

The MSPD Mission Statement is unambiguous in its objectives:

> The mission of the Missouri State Public Defender System is to provide high quality, zealous advocacy for indigent people who are accused of crime in the State of Missouri.
>
> The lawyers, administrative staff, and support staff of the Public Defender System will ensure that this advocacy is not compromised.
>
> To provide this uncompromised advocacy, the Defender System will supply each client with a high-quality, competent, ardent defense team at every stage of the process in which public defenders are necessary.

Given that MSPD reports handling more than 85,000 cases each year, funding and staffing are critical to achieving these objectives. MSPD has roughly 560 employees, 350 of whom were attorneys. In addition to attorneys, MSPD employs paralegals, investigators and support staff. While there was no increase in staffing from 2003 to 2008, MSPD was provided with 12 new attorneys in 2009.

Though MSPD has endeavored to obtain additional funding to increase its staff for eight consecutive years, except for the attorney positions added in 2009, MSPD has had no additions to its staff, despite the fact that during the previous years (when there was no staff increase) the MSPD caseload increased by as many as 12,000 cases.

The Evolution of the Missouri Public Defender System: The Early Years

In 1963, the Supreme Court of the United States decided the landmark case of *Gideon v. Wainwright*, 372 U.S. 335 (1963), establishing that the Sixth Amendment to the United States Constitution guarantees the assistance of counsel to those unable to hire their own attorneys. In 1972, Missouri enacted Chapter 600, which established a Public Defender Commission,

responsible for the operation of a hybrid system of local public defender offices and appointed counsel programs. Five years later, in 1977, while eighteen of Missouri's 43 judicial circuits were serviced by public defender offices, the remaining twenty-five circuits were still forced to rely on an appointed counsel system, with judges assigning cases to members of the private bar. In 1982, the Office of the Missouri State Public Defender was established as an independent department within the judicial branch. At that time, some of the appointed counsel program was replaced by contract counsel; contract counsel were private attorneys who, rather than being assigned cases by a judge, agreed to take on all indigent clients in a particular area for a set fee. The contract counsel system proved remarkably problematic, not only because of rising costs, but also because private counsel were unwilling to take on a large number of cases for a set fee, in addition to (and in competition with) their paying cases.

In 1989, the contract counsel system was eliminated altogether and replaced with public defender offices, staffed with full-time public defenders, covering all counties in the state. A major structural reorganization of MSPD, designed to maximize both effectiveness and efficiency through specialization, resulted in the three legal services divisions identified above: Trial, Appellate/Post-Conviction, and Capital. The Trial Division was subdivided into thirty-six district offices, while the Appellate/Post-Conviction and Capital Division were each provided offices in Kansas City, St. Louis, and Columbia.

The Public Defender System in Missouri: 1989-2005

Approximately four years after the 1989 elimination of the contract system and establishment of a statewide system of full-time defenders, the Spangenberg Group (hereinafter —TSG‖) was asked to conduct a study, under the auspices of the ABA Bar Information Program

[4] Historically, The Spangenberg Group has been a nationally and internationally recognized criminal justice research and consulting firm that specializes in indigent defense services. TSG has conducted research in all 50 states and provided consultative services to developing and developed countries that are reforming their legal aid delivery programs. TSG has conducted comprehensive statewide studies of

(hereinafter "ABA/BIP") of the State Public Defender System for the Missouri State Public Defender and its Commission. The 1993 study focused on the operation of the Public Defender System, the internal allocation of resources, and the overall budgeting and staffing situation, in addition to providing information about Missouri's relative position with other states in terms of caseload and funding of statewide programs. During the course of the study, TSG conducted site work in Columbia, Jefferson City, St. Louis, Clayton, and Kansas City. As far back as 1993, it was clear that MSPD was experiencing great difficulty, which resulted in the following conclusions:

> [T]he increased caseload and the low salaries have led to a high turnover of staff over the last two years and several additional experienced attorneys indicated that they may also leave. The effect of the workload, the low salary and the turnover has not surprisingly resulted in morale problems in some offices. Many attorneys feel that without additional resources, they will not be able to provide competent representation to all of their clients. We echo this sentiment in very strong terms.

1993 Report at 5.

In March of 2005, over a decade after the completion of the initial study, TSG was informed that the Director of the Office of the Missouri State Public Defender, J. Marty Robinson, had contacted the Missouri Bar concerning what he perceived to be a crisis situation within the program. The ensuing discussions resulted in an effort by the Missouri Bar to urge its members across the state to sign up to accept public defender appointments on a pro bono basis because of a serious case overload within the Public Defender System.

The incoming president of the Missouri Bar, Douglas A. Copeland, subsequently agreed to appoint a Public Defender Task Force charged with working with the Public Defender Commission, the bench, and the bar to identify and solve short and long-term needs related to the

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indigent defense systems in more than half of the states, and has worked with many jurisdictions in evaluating public defender systems. In February of 2009, TSG joined George Mason University to form the Spangenberg Project (hereinafter "TSP"). Although George Mason researchers assisted with the interim report and this report, TSG is listed as the author since its researchers conducted much of the preliminary analysis.

defense of indigent criminal defendants. The Public Defender Task Force was appointed by Mr. Copeland and met in St. Louis for the first time in July of 2005. Robert Spangenberg also met with the Task Force at this time. One of the initial determinations of the Task Force was to contract with TSG to conduct a limited assessment of the Missouri Public Defender System and to report to the Task Force prior to October 15, 2005.

The focus of the 2005 study was the operation of the Public Defender System, overall budgeting, staffing, allocation of resources, caseloads and Missouri's standing relative to other comparable states. During the week of August 29, 2005, Robert Spangenberg, along with a senior research associate, visited nine Public Defender Districts across the state: District 19 (Jefferson City, Administrative Office); District 13 (Columbia); District 7 (Liberty); District 6 (Kansas City Juvenile); District 16 (Kansas City Trial); District 21 (St. Louis County); District 22 (St. Louis City); District 24 (Farmington); and District 25 (Rolla). During the visits, District Defenders, Assistant Public Defenders, staff investigators, paralegals, clerical staff, judges, prosecutors, private attorneys, and other individuals responsible for participating in the state's criminal justice system were interviewed. Two Public Defender Commission members, the State Public Defender, the Trial Division Director, the Deputy Trial Director, the Appellate Division Director and the Capital Division Director were also interviewed. Court observation was conducted as well.

TSG also reviewed an extensive amount of cost and caseload data provided by the Public Defender, along with other written material including memoranda, Missouri case law, Missouri Supreme Court Rules of Professional Conduct, Public Defender Guidelines, pleadings and exhibits filed by the Public Defender in St. Louis City litigation, and other documents provided during the site visits. In light of this work, TSG's prior experience in Missouri (and further informed by TSG's work in a number of other states), as well as the initial meeting with the

Missouri Bar Public Defender Task Force in July, TSG provided the Task Force with initial findings on September 27, 2005.

TSG's 2005 findings were dire, concluding that the Missouri Public Defender System was struggling to survive. Areas of particular concern included continuous turnover of staff, loss of experienced attorneys, extremely low salaries (with little hope of increase or advancement after several years), low morale, and a real perception of case overload. More broadly, TSG concluded that there was reason to believe that some public defender attorneys were not complying with either the Public Defender Guidelines for Representation or the Missouri Supreme Court Rules of Professional Conduct. Of even greater concern were indicators that the performance of some public defenders was falling below the constitutional minimum, signaling that attorneys were failing to provide the effective assistance of counsel to their clients and violating Missouri's Rules of Professional Conduct.

We should note that, in 2005, we were very impressed with the quality and commitment of most of the staff. Despite working under severe conditions, MSPD staff demonstrated a continuing commitment to clients, making great efforts to do the very best with the resources available.

TSG's 2005 study resulted in a number of conclusions, including, *inter alia*, the following abbreviated findings:

Staffing

An extremely high level of turnover among staff attorneys created serious problems at the Public Defender. With many experienced attorneys leaving, cases were being distributed among either a small number of remaining experienced attorneys or to new attorneys who were not yet ready for either a significant caseload or serious felony cases. The turnover problem was causing the remaining staff to shoulder the burden, contributing to a sense of overload and burnout. In addition, the turnover problem was creating a serious risk that newly-assigned attorneys would

be unprepared or inexperienced. Judges in some areas expressed a real concern over the experience of the public defenders handling serious cases. Some judges also noted that attorneys were not getting needed trial experience as few cases were being tried. Recruitment and retention proved especially challenging in the rural offices where few attorneys wished to be placed. In the Farmington office, at least three attorneys were commuting from St. Louis, a distance of approximately 70 miles. Between FY 2001 and FY 2005, the Public Defender experienced a cumulative attorney turnover rate of approximately 100%. High turnover also resulted in limited supervision, since most supervisors and district defenders were consumed with the burdens of their own ever-increasing caseloads.

The turnover problem was made worse by the fact that there appeared to be little hands-on supervision of the staff attorneys, particularly the new attorneys. Supervision was very limited because most supervisors were carrying their own heavy caseloads.

Public Defender salaries were far too low and were a major cause of the high turnover, low morale, and recruitment difficulties of the Public Defender System. There were no raises in FY 2002 or FY 2003. In FY 2004, staff earning less than $40,000 received a raise of $600. In FY 2005, all staff except the State Public Defender received a raise of $1,200. Salaries started at $33,792 and were capped at $52,452 for all trial attorneys so that attorneys had no financial incentive to stay long-term. The salary of $52,452 for the most experienced trial attorneys (APD IV‘s) was the lowest that TSG had encountered in the country. Some staff, including attorneys, had second jobs, which was both demoralizing and an additional source of stress. Recent law school graduates, moreover, were entering the practice with increasing amounts of law school debt (e.g., $50,000 - $100,000), making the low salaries an even greater hindrance to attorney recruitment and an even greater cause of stress and frustration for new public defenders. Because of the low public defender salaries, some offices were losing public defenders to the prosecutor‘s office.

Quality of Representation

The combination of oppressive caseloads and turnover led some public defenders to describe their practice as —triage. ‖ Public defenders were forced to choose between providing adequate assistance to some clients and neglecting others. Work on some cases would not begin until the trial date was near. The Public Defender Deputy Director went so far as to describe the system as follows: —The present M.A.S.H. style operating procedure requires public defenders to divvy effective legal assistance to a narrowing group of clients. ‖[5] He expressed his concern that, —[f]or individual public defenders to be forced to choose among clients as to who will receive effective legal assistance undermines professionalism and commitment. ‖[6] Similarly, a District Defender stated that the volume of cases was so high that some public defenders could not provide effective assistance of counsel to many clients. TSG's 2005 findings reported serious problems with client contact, including lack of communication as well as communication in situations which jeopardized the attorney-client privilege, and continuity of representation.

Funding

In 2005, the Missouri State Public Defender had gone through several budget cycles without an increase in full-time equivalent (hereinafter —FTE) positions. The state had provided a total of 563 FTE Public Defender positions which broke down as follows: 342.5 attorneys; 73 paralegal investigators; 81.25 clerks or secretaries; and 62.75 legal assistants and other non-lawyer positions.[7] There was also a substantial lack of non-attorney support staff.

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[5] Dan Gralicke, —Living Double in a World of Trouble–The Indigent Criminal Defense Crisis in Missouri, ‖*The Missouri Bar Weekly* at 3 (June 2005).

[6] *Id.* at 2.

[7] While this was the authorized staffing level, due to the substantial turnover rate and other personnel reasons, the positions were never completely filled at any given time. Staffing data source: Public Defender, Staffing of Local Offices - June 23, 2003.

Indigency Determinations

In 2005, TSG concluded that there were substantial problems with indigency determinations, noting in particular the —presumption ‖that a defendant was ineligible for MSPD services if the defendant had been released on a bail of $5,000 or more.[8] TSG observed that some public defenders would find a defendant ineligible if such a bond had been made, without regard to other factors, such as whether a small percentage of the bail was paid to a bondsmen or whether a friend or family member posted the bond but could not also afford to hire counsel. TSG found this practice to be problematic, as well as unsupported by the statute or the guidelines. TSG reasoned that using public defenders to make indigency determinations regarding prospective clients created at the very least an appearance of a conflict of interest, given that public defenders had an incentive to not find a person indigent, since their caseloads were already too high. In line with that analysis, TSG found that many public defenders were quick to find a defendant ineligible for counsel if, for example, they had posted a bond. In addition, valuable attorney time had to be spent interviewing potential clients regarding indigency and making eligibility determinations.

Representation in Conflict Cases

In 2005, TSG was concerned about the handling of conflict cases by the Public Defender, a concern which echoed its initial concern in 1993. There was no written policy setting forth the definition of a conflict or the policies and procedures for assigning conflict cases out to the private bar. Each attorney was told only to be guided by the Rules of Professional Conduct, and there appeared to be no review of the staff attorneys‘ determinations of conflict.

Many conflict cases were referred within the Public Defender program to other regional offices. TSG noted that it knew of only one other public defender program in the country that did not use the private bar for conflict cases. TSG concluded that public defender handling of

[8] 18 CSR 10-3.010(2)(B)(2) (2005).

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conflict cases, including co-defendants, created an appearance of a conflict in the same manner that attorneys from the same law firm handling conflict cases would create such an appearance.

TSG also noted that conflict cases were taking too long to transfer from the originating office to the conflict office. In 2003, conflict cases took an average of 55 days from initial assignment to "disposition" or transfer from the originating office. In 2005, while the average time for a conflict transfer to another MSPD office was down to 43 days, it was still too long for a case to reach a conflict attorney.[9] Cases were also taking too long to transfer for assignment to private counsel out of the office. In 2003, it took an average of 70 days to transfer a case for assignment to private counsel; in 2005, it took 101 days.[10]

Comparison with Ten Principles of a Public Defense Delivery System

In 2002, the American Bar Association issued "The Ten Principles of a Public Defense Delivery System" (hereinafter "Ten Principles"). These principles have been generally accepted and used as guidelines to assess indigent defense systems across the country. TSG's 2005 study concluded that the Missouri State Public Defender system failed to meet a majority of those requirements. Specifically, as of 2005, the system failed to meet the following seven principles:

- Principle 2 – Where caseload is sufficiently high, the public defense delivery system consists of both a defender office and the active participation of the private bar.
- Principle 4 – Defense counsel is provided sufficient time and a confidential space with which to meet with the client.
- Principle 5 – Defense counsel's workload is controlled to permit the rendering of quality representation.

---

[9] TSG also noted that the transfer of conflict cases to other Public Defender regional offices reduced the amount of time that a staff attorney could devote to his/her clients in their primary office. He/she might need a half-day or longer to attend a distant court or visit the conflict client in a distant jail. Further, TSG observed that conflict attorneys had no office in the conflict county and might not be familiar with the judges and practice there.

[10] Our understanding is that, as of 2009, the situation regarding representation in conflict cases has not changed substantially.

- Principle 6 – Defense counsel's ability, training, and experience match the complexity of the case.

- Principle 7 – The same attorney continuously represents the client until completion of the case.

- Principle 8 – 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.

- Principle 10 – Defense counsel is supervised and systematically reviewed for quality and efficiency according to nationally and locally adopted standards.

TSG further concluded that under 2005 conditions, some public defender attorneys were faced with violating both the Missouri Rules of Professional Conduct and Public Defender Guidelines for Representation each day.

Comparison with Other States

In 2005, TSG concluded that Missouri's indigent defense expenditures compared poorly in comparison to other southern states and the country as a whole. No other statewide indigent defense program had failed to receive any additional appropriations in the previous five fiscal years. In addition, TSG concluded that: (1) Missouri had the lowest per-capita annual indigent defense expenditure of all the southern states (except Mississippi, where data were not available); (2) Missouri had the lowest per capita expenditure of all statewide public defender systems; (3) Missouri had the lowest Attorney Unit Cost[11] of any jurisdiction in TSG's recent experience; (4) in order to reach the average per capita expenditure for all southern states, Missouri would need an additional appropriation of almost $16 million;[12] and (5) between 1993

[11] Attorney Unit Cost is the total cost of supporting a single FTE attorney, including salary, benefits, support staff, administration and other overhead.

[12] Based on preliminary data from 2008, that figure would now be $25 million, nearly $9 million more than that in 2005.

and 2005, Missouri appeared to have fallen from 42nd to 47th in the nation in per capita expenditure.[13]

As of 2008, based upon preliminary data from the 50 states, Missouri now has the lowest per-capita expenditures of *all* states, except for Mississippi.

ABA Guidelines for Assessing & Addressing Excessive Caseloads

In August 2009 the ABA issued for the first time —Eight Guidelines of Public Defense Related to Excessive Workloads ‖(hereinafter —Eight Guidelines ‖).[14] This landmark document was created in recognition of the fact that quality of defense services for persons charged in criminal and juvenile delinquency matters —is not achievable ‖when the lawyers providing the defense representation have too many cases. In establishing these Guidelines, the ABA relied on a 2006 ethics opinion issued by the ABA Standing Committee on Ethics and Professional Responsibility. That opinion, —its first ever ethics opinion concerning the obligations of lawyers, burdened with excessive caseloads, who provide indigent defense representation, ‖made clear that all lawyers have a duty to furnish competent and diligent service, with no exceptions. Eight Guidelines at 2 (citing ABA Committee On Ethics and Professional Responsibility, Formal Opinion 06-441 (2006)).

The Eight Guidelines recognized that, while the ethics opinion had set forth some steps to be taken when faced with excessive caseloads, neither that opinion nor the ABA Standards for Criminal Justice contained a —detailed action plan ‖as to how to proceed. The Eight Guidelines then, did just that. The First Guideline identifies certain fundamental obligations that defense lawyers have to their clients, irrespective of indigency, and notes that when lawyers fail to comply with these obligations —it is frequently because they have excessive caseloads. ‖ Eight Guidelines at 6. In other words, the First Guideline identifies the symptoms of a system

[13] Based on preliminary data, Missouri's per capita expenditure in 2008 was $5.85. This compares to expenditures of $9.02 in Kentucky, $9.19 in Arkansas, and $10.29 in Louisiana.

[14] http://www.abanet.org/legalservices/sclaid/defender/downloads/eight_guidelines_of_public_defense.pdf

overburdened by excessive caseloads, urging the management of public defense programs to assess whether excessive workloads are preventing their lawyers from fulfilling performance obligations. Guidelines 2, 3, and 4 relate to the need for continuous supervision and monitoring of workloads, as well as the concurrent need for management to determine if excessive workloads exist. Guidelines 5 through 8 address a range of options that public defense providers and their lawyers should consider when excessive workloads are present. In sum, Guidelines 1 through 4 explain the steps that may be pursued in order to assess the problem while Guidelines 5 through 8 propose ways to address the problem and effect change.

In addition to the structural deficiencies identified in the 2005 Findings (including, *inter alia*, appropriations and staffing), this Report considers both the indicators of a caseload crisis, in terms of failures to meet fundamental obligations consistent with Guideline 1, as well as MSPD's decade-long struggle for change, consistent with Guidelines 2-8. In Missouri, the Eight Guidelines point to a growing crisis of constitutional magnitude, which despite MSPD's longstanding, systematic efforts, has been permitted to worsen, placing indigents persons accused of crimes, victims of crime, and the larger system of criminal justice in great peril.

Section II. Major Findings (2009)

In 2008, TSG was retained by the Missouri Bar Association to evaluate the Missouri state public defender system. That analysis had two parts – an interim report produced in March of 2009 that reviewed the MSPD's procedures and data collected from its internal case weighting study, and this final report.

As part of the entire project, TSG conducted site visits of MSPD offices throughout the state; performed focus groups of MSPD attorneys; met with MSPD and bar leaders; interviewed prosecutors; and considered relevant findings from other states. In this respect, TSG employed a systematic research methodology, ensuring that those interviewed represented an appropriate cross-section of MSPD offices and levels of experience. For example, the focus groups were

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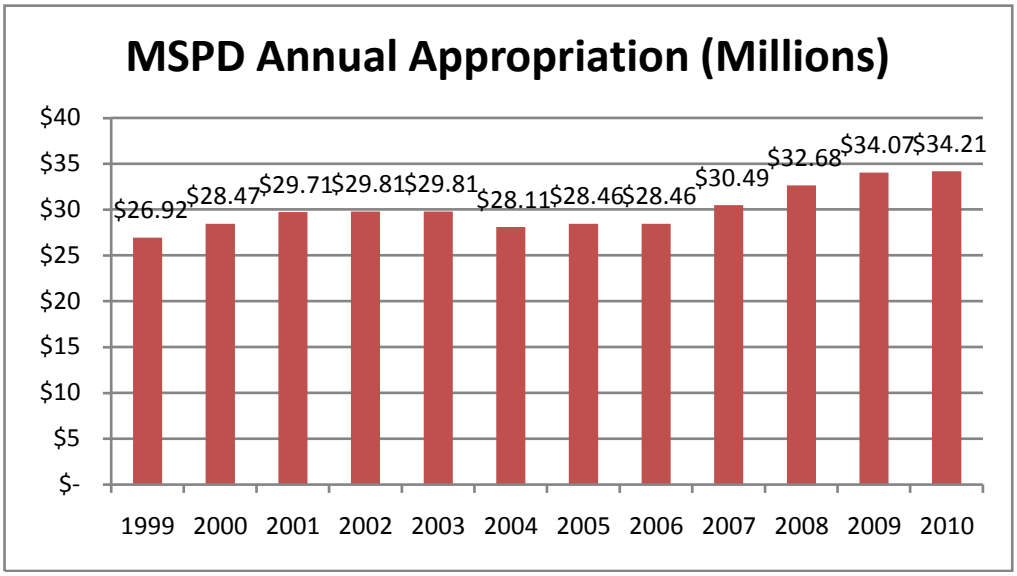
attended by 24 attorneys from 16 MSPD offices. Upon the completion of its research, TSG shared its findings with the MSPD and solicited feedback to correct any known errors in the results. The conclusions in this report, however, are entirely those of TSG.

A. STATE OF MSPD'S OPERATIONS

MSPD's Resource Crisis: A Decade of Underfunding

- Appropriations

Over the past decade, increases to MSPD appropriations have averaged 2.7 percent per year. This includes a $1.15 million dollar increase in 2007 to help pay for contract counsel.



- Attorney Turnover & Salaries

For approximately seven years (2000-2007), annual attorney turnover averaged over 18%, with some positions having turned over time after time after time. We were repeatedly advised that turnover has improved significantly, if temporarily, because of the dismal state of the economy and the lack of a meaningful job market. However, this information was almost always accompanied by the caveat that *if* people could leave for better pay, they would—and quickly.

Our June 2009 site visits confirmed that, particularly for attorneys at the lower and mid-levels of the pay scale, who also face staggering law school debt, present salaries simply are not high enough to cover all expenses. In addition to the pizza delivery, retail, bartending and truck driving that the Public Defender has previously reported, the site visit revealed other jobs maintained by these full-time attorneys. One attorney, who expressed a great deal of dedication to her clients, explained that she nevertheless maintains two other positions which she works at night: babysitter and pizza parlor waitress. Another attorney explained that he lives in his grandmother‘s basement because he cannot afford to rent an apartment. Nor was the perceived need for additional sources of income limited to attorneys; support staff also reported supplemental employment, for example, selling beer at sporting events.

- Analysis of the Number of Full-Time Equivalent Staff at All Levels

Before the staff attorney additions in July of 2009, there had been no increase in the number of FTE‘s for six years, though MSPD‘s caseload had risen by over 12,000 cases. 2008 Fiscal Report at 7.

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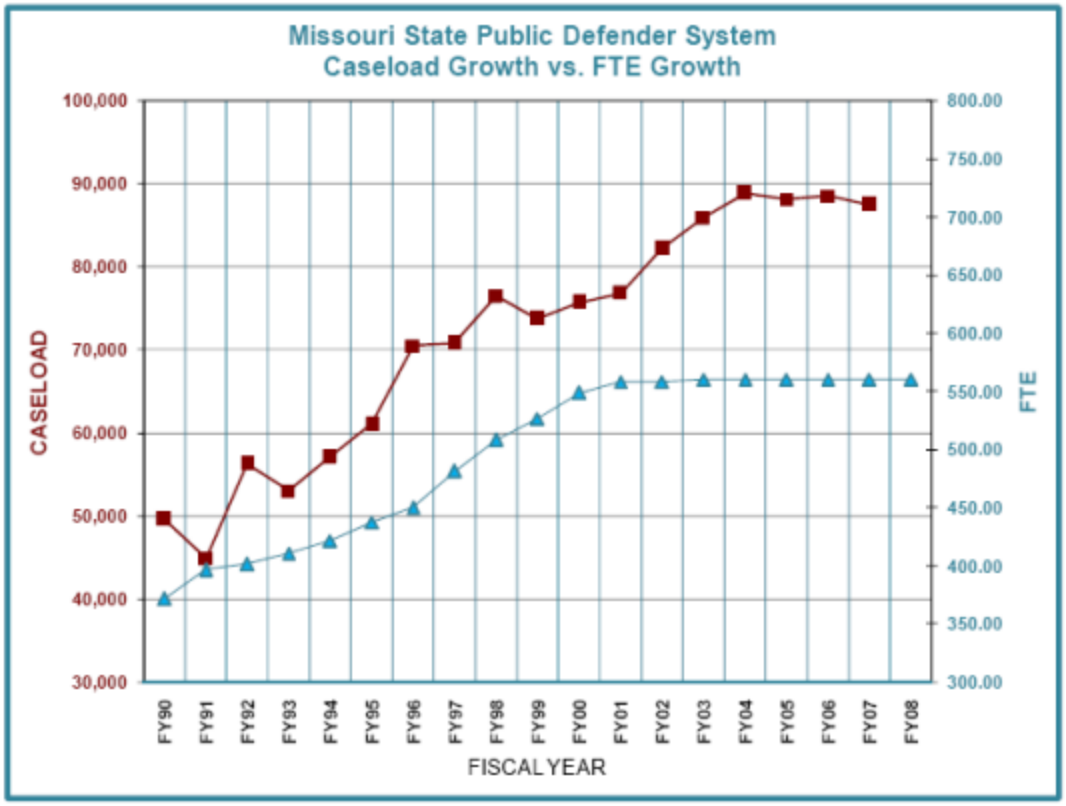

As of 2009, the staff to attorney ratio is as follows:

- 1 investigator to every 6.7 attorneys
- 1 secretary to every 5 attorneys
- 1 legal assistant to every 10.84 attorneys
- 1 paralegal to every 67 attorneys

MSPD's Caseload Crisis: Fundamental Obligations & Excessive Workloads

Perhaps the most significant findings come under the category of excessive workloads, where it appeared that far from improving since 2005, the situation has become more severe. Interviews with public defenders revealed a growing sense of frustration, at times desperation, at the sheer volume of cases they are asked to handle. One arguable improvement from 2005, a decrease in the astonishing attorney turnover rate (due to present economic conditions), appeared to have a negative side effect. It was reported to us that many disgruntled lawyers stayed on essentially against their will. Several attorneys conveyed a sense that, in this economy, some

attorneys feel that they have no alternative but to stay, and that they are effectively trapped. Rather than leaving, many attorneys are effectively biding their time until another opportunity presents itself.

Across the board attorneys explained, often with some measure of embarrassment and shame, that they were failing to discharge the kinds of fundamental obligations described by the ABA in its Eight Guidelines. Without exception, attorneys attributed these failures to an impossible volume of cases.

> When defense lawyers fail to discharge the kinds of fundamental obligations contained in this Guideline, it is frequently because they have excessive workloads. For example, the failure of lawyers to interview clients thoroughly soon after representation begins and in advance of court proceedings, as necessary, is often due to excessive workloads. When Public Defense Providers rely upon ―horizontal‖ systems of representation, in which multiple lawyers represent the client at different stages of the case, and lawyers often stand in for one another at court proceedings, it is usually because there are too many cases for which the Provider is responsible. If written motions are not filed, legal research not conducted, and legal memoranda not filed with the court, the lawyers most likely have an excessive workload. Similarly, excessive workloads may be the reason that crime scenes are not visited in cases where it might be useful to do so. [T]here are other indicia of excessive workloads[.]

Eight Guidelines at 6. These attorneys painted the picture of a system in mounting crisis, where attorneys simply do not know how to manage.

At the outset of these findings we begin where the ABA began, examining sample fundamental obligations laid out in its first Guideline:

- Whether sufficient time is devoted to interviewing and counseling clients;
- Whether prompt interviews are conducted of detained clients and of those who are released from custody;
- Whether pre-trial release of incarcerated clients is sought;
- Whether representation is continuously provided by the same lawyer from initial court appearance through trial, sentencing or dismissal;
- Whether necessary investigations are conducted;

- Whether formal and informal discovery from the prosecution is pursued;
- Whether sufficient legal research is under taken;
- Whether sufficient preparations are made for pre-trial hearings and trials; and
- Whether sufficient preparations are made for hearings at which clients are sentenced.

The findings as to excessive workloads, however, do not end there. In Missouri, in 2009, we found that attorneys were not only failing to comply with these obligations, but also fundamental obligations beyond those listed in the Eight Guidelines.

- Sufficiency of Time to Interview and Counsel Clients

Attorneys from across the state reported that the inability to adequately communicate with and counsel one's clients may be the single most problematic consequence of excessive caseloads. One lawyer explained that her time is so incredibly limited that she finds it hard to get to see her clients, even though the jail is in the same building as her office. Other attorneys communicated their sense that they are so busy trying to do the bare minimum when it comes to legal work—retrieving discovery, filing motions, and the like—that meeting with clients tends to get pushed to the bottom of the list.

This only leads to more problems, because when attorneys finally make it out to see their clients, clients express frustration that they have been ignored, skepticism that the lawyer has been doing anything with the time, and a general lack of trust in the attorney. As one attorney put it, what it would take to improve that trust relationship is more time spent counseling, but of course, the lack of sufficient time is what led to this situation in the first place, so the relationship is unlikely to be healed.

- Prompt Interviews of Detained & Released Clients

Lawyers repeatedly told us that the PD Guidelines and Recommendations are simply not followed. As one lawyer put it, there simply is not enough time in the day or enough staff to

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think about the Guidelines. In terms of prompt interviews with detained and released clients, as mentioned above, lawyers expressed grave concerns about their inability to meet with clients. We were told of a case where an attorney mistakenly believed a client had been released from jail, and did not find out until trying to reach that client at home (weeks, perhaps even months, later), that the client had been detained all along; the client's mother had to inform the lawyer that the client had never been home but had called several times from jail asking whether a lawyer was ever going to make it out to visit. The attorney said that, despite —feel[ing] miserable about this, ‖the most concerning part of the story was that it could happen again, —given the workload ‖and how little ti me attorneys have to keep track of their clients and the infrequency with which they are able to speak with clients, whether detained or released.

- Efforts to Secure Pretrial Release

Bond and detention were described to us by several lawyers as predetermined by the nature of the case and the resources of the client. Misdemeanants are typically released while individuals charged with felonies, particularly serious felonies, are detained. Several attorneys estimated that the initial client interview takes less than five minutes, thus making it impossible to gather the kind of information critical to any meaningful release determination.

- Consistency of Representation by Same Counsel

Most performance standards, including those adopted by the National Legal Aid and Defender Association, call for vertical representation, namely that one public defender handle the case of an indigent defendant from first appearance to the final disposition. There is legitimate discussion surrounding the question of whether or not horizontal representation can be provided at first appearance assuming there are a large number of defendants in the court. Many public defenders have vertical representation after the first appearance in order to take advantage of the number of cases that can be handled by one public defender, for example, the duty attorney.

It was reported that some MSPD offices engage in primarily vertical representation, while others utilize horizontal or partially horizontal representation. Some attorneys for instance, indicated that vertical representation ―is present in the major felony cases, otherwise not.‖ Another attorney reported that, except in homicides, they ―do not have vertical representation and not doing so creates so many issues such as client trust, and the quality of work involved.‖ Still another noted that ―a lack of vertical representation is a big problem because it hurts the representation.‖ In some smaller offices, there is vertical representation in virtually every case because, as one attorney explained, ―with 7 attorneys, it wouldn't work any other way here.‖

Attorneys in St. Louis County explained that they have a partially horizontal system, where one attorney handles the initial client interview and arraignment, after which another attorney is assigned for the merits phase of the case. One attorney expressed concern with this system, noting that ―there are cases where it would be better to be there from beginning to end for trust‖ and that ―overall it would be better to be there from day one to spot issues with the client.‖ Another attorney explained that when clients pass from one attorney to the next, ―clients get angry because they think they are getting passed through the system so then the attorney has to spend a lot of time getting the trust of the client.‖ Substantively speaking, the lawyer reported that, ―If attorneys represented clients from beginning to end some discoverable issues would have come to light. Because you can't spend a lot of time on facts and substance, some of the information is gone and witnesses have disappeared.‖

Due in large part to MSPD's staggering rates of attorney turnover, it has been reported that one of the great dilemmas of the system is how to maintain consistent representation. In fact, we learned in our June 2009 visit that thanks to a court decision resulting from a *pro se* filing by an inmate represented by MSPD—whose trial had been continued multiple times due to each of his lawyers leaving the office—inmates represented by MSPD now routinely file such

pro se motions in order to ensure that their speedy trial rights are not jeopardized by the complete lack of consistency in their representation.

In *State ex rel. McKee v. Riley*, 240 S.W. 3d 720 (Mo. 2007), a defendant charged with several counts of tampering with motor vehicles was detained for approximately a year and a half, with his case continued five times. Though he was represented by the public defender, he repeatedly filed speedy trial motions, *pro se*, as his case was continued again and again. The Supreme Court, sitting en banc, in an opinion authored by Chief Justice Stith, directed the trial court to immediately convene a hearing to determine whether the defendant's speedy trial rights had been violated, and if so, to dismiss the charges. It noted, moreover, that:

> In considering how to weigh any delay caused by crowded dockets, this Court and Respondents must take into consideration that the delay in this case is not unique. Numerous other petitions for writs have been filed in this Court by persons incarcerated while awaiting disposition of their charges in this and on some occasions in other jurisdictions, similarly alleging lengthy delays. The right to a speedy trial is an important right that the courts of this state are duty-bound to honor, even in the face of heavy trial dockets and competing demands for trial. Protracted and unreasonable delays in criminal cases due to crowded dockets cannot become routine. Neither is it acceptable for the prosecuting attorney and defense counsel to accept or request such routine continuances without objection. The defendant's right to a speedy trial and the public's interest in timely resolution of criminal cases demands that this and other similar cases receive more expeditious treatment, even in the face of competing demands on counsels' and the court's time.
>
> This Court does not mean to suggest that any party to this proceeding has intended to violate any defendant's speedy trial rights, but —unreasonable delay in run-of-the-mill criminal cases cannot be justified by simply asserting that the public resources provided by the State's criminal-justice system are limited and that each case must await its turn. ‖[The defendant] is entitled to a prompt hearing on his claim that his constitutional rights have been violated and, if they have not yet been, then he is entitled to a prompt trial on the merits of these charges.

Id. at 731-32 (citations omitted).

- Completion of Necessary Investigation

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Attorneys reported that investigation, oftentimes the most critical piece of effective criminal defense representation, has suffered tremendously as a result of the case overload. An investigator explained that misdemeanors, except in truly unusual circumstances, simply are not investigated. In fact, he explained that most of his investigation is devoted to —serious ‖felonies, particularly aggravated sex offenses, which take a substantial amount of time. Lesser felonies, like misdemeanors, are put at the bottom of the list and only investigated *if* the serious investigations are completed. The investigator reported that he is forced to spend two days out of the week doing bond interviews, which —is probably a waste of [his] time. ‖ Rather than going to interview witnesses in person, investigators tend to conduct phone interviews and do not typically take written statements.

It was reported to us that MSPD investigators lack formal training that they at one time routinely received. For instance, one investigator explained that previously MSPD investigators were members of a national investigation society. They would also attend a national convention with formal training. He reported that these professional training opportunities were cut five years ago. Now, according to the staff investigator, training is —just individual, ‖in other words, when a more senior investigator can find time to explain an investigative technique to a junior investigator. Salaries for investigators, moreover, cannot be said to compensate for the lack of training and professional development. Despite working for MSPD since 1995, we were told that one senior investigator still earns less than forty thousand dollars a year.

Another investigator reported that attorneys almost never participate in investigation. Like the attorneys, however, the sheer volume of cases he is asked to handle makes it impossible for him to do what he needs to do, particularly in terms of locating essential witnesses, which can be time-consuming. Lawyers themselves also reported that the MSPD fails to complete satisfactory investigation in many cases. Explanations for the failure to investigate, by lawyers

from around the state, mirrored discussions of client counseling, where as they saw it, they were forced to spend the precious hours available to them doing the legal work that only a lawyer could, which for the most part amounted to court appearances and the drafting of pleadings. Lawyers recognize, however, that investigators are —just as overloaded as the attorneys are‖ and —are often too busy ‖to accomplish what is necessary.

A rush to accept guilty pleas was also reported as a reason for cutting short investigation. Several lawyers explained that when a client wishes to plead guilty, attorneys often jump at the chance, and investigation—to the extent that it has begun at all—ceases. As one lawyer put it, if a client indicates a desire to plead guilty, —we don‘t fight it because we have too much work to do, ‖and so —we don‘t look into the case as we should ‖and instead the plea goes forward. This is particularly true in misdemeanor cases, where we were told there is the highest rate of —meet and plead, ‖making any kind of independent investigation impossible. Some attorneys noted that, as with legal research that is not completed, were there more time for investigation, there are many cases where one would discover compelling reasons to go to trial. Due to the crushing caseload, however, neither the research nor the investigation gets done, and clients likely plead guilty in cases where, provided adequate representation, they might well have prevailed.

- Pursuit of Formal and Informal Discovery

According to the prosecutors we interviewed, they provide open file discovery at arraignment pursuant to Supreme Court rules. This, according to them, obviates the need for further discovery requests in Missouri, though they indicated that public defenders nevertheless routinely submit ―boilerplate ‖ discovery requests. MSPD attorneys expressed their strenuous disagreement with this position. According to MSPD attorneys, unless they formally request discovery, it will not be provided. One senior MSPD supervisor reported that ―*Brady*, as such, ‖ has been turned over only a handful of times in her experience. But given the competing demands on attorneys‘ time, it appears from discussions with both prosecutors and public

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defenders that the pursuit of discovery is often limited to a one-time, formal request, rather than more extensive motions practice (*e.g.*, motions to compel) and hearings on questions of discovery.

- Completion of Legal Research

Attorneys reported that legal research may be the area that suffers most as a result of the caseload crisis. One lawyer—touted by her office as a star, and who explained that she works round the clock, doing most of her case preparation in the evenings at home—said that she simply does not have time to do legal research. Earlier in her career she did have time, and so she has developed expertise in certain types of cases where she feels comfortable with the law, and appreciates the significance of being well-versed in the relevant authority. However, now that she has become more senior, she lacks the time to do research, despite the fact that her cases are growing increasingly serious, and involve increasingly complicated legal questions. Recognizing that motions practice based on solid research can be essential in complicated, high-level cases, she explained that she spends most of her days in court, with clients, and often actively trying cases, so research feels more like a luxury.

In Saint Louis City, moreover, attorneys' ability to adequately research issues pre-trial is constrained by a system where one can receive a phone call mid-morning announcing that trial will begin hours later.[15] This manner of trial call means that important investigation and research projects are often cut short by sudden trial calls.

Attorneys from all over the state, not just St. Louis City, however, made clear that legal research suffers dramatically as a result of the caseload crisis. In one office, the paralegal does all the research. In fact, the paralegal is responsible for drafting any new motions (that are not in

[15] On July 14, 2009, Bob Spangenberg and David Newhouse interviewed St. Louis City prosecutors. Those prosecutors indicated that significant efforts to change this peculiar docketing system have led to substantial improvements, with more changes anticipated. They concurred that it is untenable to begin a trial—irrespective of whether one is a prosecutor or a defense lawyer—on a day's notice.

the existing motions bank) and even briefs to the court of appeals—to which attorneys, we were told, —very rarely make a change. ‖ Another lawyer explained that lawyers —do not have time to do the research they need to do ‖because they are in court all day, even though the paralegals themselves are overwhelmed with cases.

One attorney explained that she believed that there were cases where if she completed the legal research, she would likely find issues worth pursuing, particularly in the context of suppression motions. We were also told that lawyers do not frequently research the collateral consequences of pleas, and so often they either fail to inform clients regarding those consequences altogether, or they provide far less information than required. One attorney expressed the feeling that —attorneys simply cannot provide effective representation in all cases ‖ emphasizing that there —are situations where the attorneys do not know the ramifications of the pleas they are entering ‖and —may be too quick to plead when the client says they want to plead and get it over with. ‖

- Pre-hearing/Pre-trial Preparation

We were told that attorneys make a bona fide effort to prepare for trial. The trouble is, according to many lawyers, they have too many cases headed for trial at the same time. Inevitably, then, there is triage among trial cases. One attorney explained that his experience of trial triage led to less preparation in those types of cases where he felt more familiar. For instance, he said that by the time he grew comfortable handling robbery cases, he was stepping up to more serious cases, including homicides. So he found that he would do fewer depositions in robbery cases, saving time for the more serious cases with which he had less experience. He sacrificed the robbery depositions even though he knew that in a robbery case, where issues like identification often make or break the case, depositions are critical. But because he felt —more comfortable with robbery cases ‖but —extremely nervous about sex cases, ‖he made the decision to put more time into the latter.

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Trial preparation, moreover, is inextricably intertwined with investigation and legal research, two areas where attorneys report they are consistently failing. In other words, while one can write out a cross-examination of a critical witness, if one has neither deposed the witness nor visited the crime scene, the bulk of the cross-examination will be dangerously blind. Similarly, a lawyer may file a motion to suppress, but without an opportunity to research the relevant and changing Fourth Amendment authority, it cannot be said that he or she is prepared for a substantive hearing.

- Pre-Sentence Preparation

Attorneys reported that, even though the vast majority of cases are disposed of by way of guilty plea, very little preparation goes into sentencing. Given the infrequency of contact with clients, it is also difficult for attorneys to conduct a thorough sentencing investigation tailored to the background and personal characteristics of the client, one which goes beyond the criminal history and terms of the plea agreement. Attorneys reported that one perceived tragedy of the caseload crisis was the elimination of the 15-year-old alternative sentencing programs. These programs were shut down in order to convert the 8.5 FTE's to attorney positions.

In addition to those fundamental obligations identified in the ABA's First Guideline, 2009 site visits in Missouri revealed a host of other fundamental obligations that were not being fulfilled adequately, signaling a growing crisis in excessive lawyer workloads.

- Filing Appropriate/Essential Pleadings

Several attorneys reported that the —triage ‖approach has become so dramatic that at times essential pleadings simply are not filed. As one lawyer put it: —Lawyers in [this] office are struggling and are about to implode. A good chunk of the lawyers in the office are on the verge of imploding. The system of triage is pretty scary. [Attorneys are] forgetting to file alibi notices, no investigation is going out, and [lawyers are] losing track of clients in the jails. You have to have the ability to focus on your work in the midst of chaos. ‖ Another public defender reported

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that a person would go crazy if he tried to meet the performance standards that are set out for all public defenders. There simply are not enough hours in the day. Many days she works until 9:30 or 10 p.m. Yet, according to her:

> There are times where I would like to file motions to suppress but there is simply not enough time to do that. There is not enough time to raise important issues. We all have taken the position that you just have to do what you can and deal with the consequences later. There is an expectation that you will be called on a PCR [post-conviction relief] hearing at some point because of the ineffective assistance of counsel on a given case or on many cases. We are constantly being forced into being ineffective; it affects morale and how the lawyers view the adversarial system. Everything becomes eroded. Many people plead to things that they probably didn't do because they cannot keep coming back to court or they just get sick of it.

Likewise, another public defender in St. Louis stated, —the caseload makes me forget to do important tasks, like one instance when I forgot to file a motion for a new trial. ‖ He added that —there is an unwritten policy in the office that depositions are not done on C or D felony cases. ‖ We are convinced that lawyers are effectively forced to choose which cases they will actively pursue and rush the rest of the cases through the system.

- Zeal Vitiated by Morale

While recognizing and placing great value on the duty of zealous advocacy on behalf of clients, attorneys interviewed expressed their concern that when morale drops to a certain point, it becomes difficult for attorneys to muster the energy to continue fighting, particularly when they are almost always defeated.

The theme of many of our conversations with attorneys and staff was a desire to do one's best undermined by the reality of overwhelming caseloads and unsustainable salaries. A support staff member in one office reported that —morale is horrible. ‖ An attorney reported that even though attorneys —want to get in there and fight for the client, the caseload is ridiculous and the pay is bad, ‖noting that —if the economy was better, people would be jumping ship. ‖ Another

experienced attorney reported that, because of the caseload, ―the constitutional rights and protections that make us who we are, are just being eroded ‖and that the bad economy has created a ―ticking time bomb ‖before ―a massive flight from the system for better jobs. ‖ Still another attorney explained that he can barely feed his family and confessed that ―the sheer number of cases makes it impossible to do good work. ‖

One attorney explained that sometimes she goes home and ―feelsso tired of losing ‖ ― particularly when it feels as if she has lost because of ―a lack of resources or time. ‖ She explained that ―it can crush the spirit ‖and make it ―hard to keep the fire day to day. ‖ A supervisor explained that morale is affected by the stress level. An office manager explained that morale has gotten ―increasingly worse ‖and that there have been ―more complaints about attorneys being overworked. ‖Another lawyer told us that she is able to do just enough not to get sued; she wakes up in the middle of the night with a feeling of suffocation.

It is worth noting that, frequently, we have found public defenders unwilling to admit that they have failed to do all that is necessary, for fear of being charged with ineffective assistance of counsel. Despite their ―understandable reluctance ‖to report that ―they either are not, or may not, be providing services consistent with their ethical duties and performance standards, ‖[16] MSPD attorneys demonstrated remarkable candor and bravery in their 2009 interviews, revealing concerns that clients were, in many cases, failing to receive the effective assistance of counsel because attorneys were simply unable to handle the devastating caseloads for which they were responsible. These lawyers should be commended for their efforts to expose the problem rather than simply shielding themselves. Their remarkable candor is a testament to their sincere dedication to the clients they serve.

- Lack of Essential Supervision

The ABA has concluded that adequate supervision normally requires:

[16] Eight Guidelines at 9.

> (1) that meetings be held between an experienced lawyer supervisor and the lawyer being supervised; (2) that the work on cases represented by the supervisee be thoroughly reviewed through case reviews, mock presentations or other reviews; (3) that the lawyer supervisor reviews selected files of the supervisee; (4) that selected court documents prepared by the supervisee be reviewed; (5) that periodic court observations of the supervisee's representation of clients be conducted; and (6) that the number of cases represented by the supervisee, as well as their complexity and likely time commitments, be carefully assessed. In overseeing the work of those providing public defense services, it is important that supervisors have access to data through a management information system, which shows the lawyer's current caseload, the status of cases represented by the lawyer, and other important relevant data.

Eight Principles at 8.

The June 2009 site visits provided significant insight into the challenges of training, oversight, and evaluation at MSPD. The conversations with attorneys—particularly outside of Kansas City and St. Louis—painted a picture of a situation where supervisors lack the time to even discuss supervisees' cases, much less conduct mock presentations or review draft pleadings. Supervisors simply cannot do the job they are tasked with doing; it is just too much. It was reported to us that most public defenders around the state, including supervisors, carry full caseloads. Nor is this a new situation. In *Fixing Missouri's Broken Public Defender System: Pay Up Front or Pay the Consequences* (2008), it was observed that:

> almost all of the District Defenders, those attorneys in supervisor positions, carry full caseloads. With the demands of such cases, the result is inadequate training, monitoring, and supervising of personnel. The Director stated that this issue increases the risk of liability of the state, leads to a high turnover rate for attorneys, and decreases the quality of representation for clients.

Id. at 9. As described in the article, as well as to us in our 2009 interviews, the demand of supervisors' own caseloads—particularly the homicides, sex crimes, and other serious felonies—inevitably results in inadequate mentoring, training and supervision of personnel.

Several attorneys expressed concern that even when supervisors carry a reduced caseload, they lack sufficient time to dedicate to the development of more junior attorneys. One attorney explained the dilemma of a reduced supervisory caseload as follows:

> [A supervisor's caseload] is not higher than the recommended caseload. But, [supervisors] are still working just as much. The half-load that you get consists of the worst cases that come into the office. They are the most difficult and the most complicated. They are emotionally difficult. You also become the therapist for the staff. On paper, it may look like a lower caseload but it is not. You are still working the same amount of time as those who have more of a caseload. Even if you take away half of those cases, the rest of the time would be spent on the remaining cases because there is so much more that needs to be done.

This attorney explained that he was sure, at the end of each case, that he had not done enough.

Another supervisor explained that she knew she needed to be supervising certain attorneys and cases more closely, but that "it's hard to keep track of people." She said that there are attorneys who "need extra help" but that oftentimes those are the attorneys who do not seek out supervision. Her conclusion was that she needed to "reach out" to them but, unfortunately, that rarely happened because she simply had too many things to do and her attention was often focused on those attorneys diligent enough to seek out her guidance.

Supervisees conveyed a sense of near-panic at the lack of supervision provided in the face of overwhelming caseloads. One entry-level attorney told us that she had only been in the office for six weeks and had already accumulated seventy cases, a mix of felonies and misdemeanors. She explained that she does not know what to do, has had very little supervision, and is "scared to death" of going to court. A senior PD explained that with high turnover, there are always many new attorneys, but due to caseloads, they get next to no supervision; what results is a crop of attorneys faced with crushing caseloads who "*do not know what effective representation is*" due to a crippling lack of experience and supervision

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These observations with respect to training represent a significant change from the 2005 report, which gave high grades to the MSPD's training program, and are a symptom of a system that is in decline.

- Client Complaints & Lack of Trust

—Client complaints may also be an indication that representation is inadequate due to excessive workloads.‖ Eight Guidelines at 10 n.24. One public defender stated that many clients get angry because they think they are just getting passed through the system. As a consequence, the attorney has to spend a lot of additional time working to earn the trust of skeptical clients. Many clients feel that the public defender simply pushes pleas because they want to get rid of the case and have fewer to deal with.

One experienced lawyer in the St. Louis City office stated that more and more clients are saying, —I feel sorry for you because you have such a high caseload.‖ She added that, —if you had more time to talk to them that would be different. You don't even realize how much more you could do for the clients. There are a lot of reasons why. Sitting down in an office and having an hour-long meeting with every client is simply impossible. Being able to sit at the jail as long as you need because you've got to gain their trust is impossible. Here you just feel like you have to go through the basics—try to establish your rapport with them, a trust level with them—and every time I go to the jail I have to see five people. That takes me half a day.‖

One lawyer reported that if her clients trusted her, they would get better results in their cases. For instance, she would be able to persuade a client that it was worth turning down a plea offer to fight a good suppression issue, or in the opposite scenario, convince a client to believe her when explaining that his suppression issue was frivolous but that the plea offer was a good one. She explained, however, that she simply lacks the time to build the attorney-client relationship she would need to achieve these objectives. Faced with so much cynicism and

skepticism on the part of clients, several attorneys reported that client contact at times seems counter-productive.

This evidence strongly supports the conclusion that MSPD attorneys are regularly unable to comply with their fundamental obligations to clients, examples of which are provided by the ABA's First Guideline. It appears, moreover, that the situation has only grown worse over time.

B. MSPD's Fifteen-Year Effort at Reform

1993: Signs of "Near-Crisis"

As previously discussed, in June 1993, the Spangenberg Group released its first study in connection with Missouri's Public Defender System. That study noted that while there had been a substantial increase in funding in connection with the creation of a state-wide public defender system in 1989, the bulk of that funding went to overhead connected with opening several new offices. Two essential problems, dating as far back as 1993, were simply neglected: "staff salaries [and] staff caseload." 1993 Report at 4. Remarkably, the findings from the 1993 Report closely mirror our present findings, although the problems appear to have grown far worse over time:

> [T]he increased caseload and the low salaries have led to a high turnover of staff over the last two years and several additional experienced attorneys indicated that they may also leave. The effect of the workload, the low salary and the turnover has not surprisingly resulted in morale problems in some offices. Many attorneys feel that without additional resources, they will not be able to provide competent representation to all of their clients. We echo this sentiment in very strong terms.

1993 Report at 5. The 1993 Report concluded that the MSPD lacked "the necessary resources to provide competent representation," that "[t]he legal staff need[ed] to be increased," and that an emphasis needed to be placed on "salary increases and increas[ing] support staff." *Id.* at 6. As far back as 1993, "all staff members [were] underpaid [and] overworked." *Id.* at 7. The 1993 Report found that there were "serious problems requiring immediate attention and that MSPD

was facing a —near crisis‖ situation, *id.* at 2, 8, and that, —[i]n a word, the Missouri State Public Defender system is the most poorly funded of all the state public defender systems in the country,‖ *id.* at 20. Following the issuance of the 1993 report, the MSPD began the long process of seeking additional funding and personnel from the Legislature.

2002-2006: Efforts to Expose the Crisis Succeed as Efforts at Change Fail

Close to a decade later, in February 2002, the American Bar Association published its Ten Principles of a Public Defender Delivery System, discussed *supra* at 10.

Despite requests for more funding year after year, MSPD was consistently denied the substantial additional resources it required. As Douglas Copeland, former President of the Missouri Bar, explained, —I guess I was kind of easy and more understanding of the legislators when we had those very difficult budget years back pre-2005.‖ He noted, however, that this excuse could not explain why the legislature had failed to act in the years following 2005, when it had a budget surplus.

Copeland explained that it was not until appropriations hearings at the beginning of the 2005 legislative session that there began to develop an —awareness that had been lacking prior to that time . . . as to the magnitude of the problem and the potential for a collapse of the public defender system, and what would obviously then be the collapse of the criminal justice system.‖ In 2005, after it became clear that disaster was imminent, the Board of Governors of the Missouri Bar created a Public Defender Task Force to explore the contours of the crisis. On June 10, 2005, the Public Defender Commission made its findings explicit, announcing that —with increasing caseloads and without increased staffing, there is no effective control over the Missouri State Public Defender caseloads. The Commission further finds that the situation is already at a crisis level with trends pointing to an impending disaster in Missouri‘s criminal justice system.‖

In July 2005, the Task Force contracted with TSG, as discussed above, to analyze, review and prepare a report on the state of the MSPD. The 2005 study concluded that:

> [W]e remain convinced that the Missouri State Public Defender System is operating in a crisis mode and cannot ensure that clients are being provided with adequate and meaningful representation day to day . . . [W]e are able to determine that the program is severely under-funded, the salaries are pathetic, and that the appropriation for the Missouri State Public Defender is the lowest of all state public defenders in the country.

TSG found that MSPD had failed to meet seven of the ABA's Ten Principles. TSG further concluded that "in order to reach the average per capita expenditure for all southern states, Missouri would need an additional appropriation of $16 million." At that time, MSPD Director J. Marty Robinson announced that MSPD would have to hire 100 more attorneys to bring the current system up to the caseload standard of 235 cases per attorney per year, a standard that had been established by Governor John Ashcroft *in 1989*.

Armed with this information, the Public Defender Task Force endeavored to attract the attention of government decision-makers as well as the general public.[17] While its efforts at publicity were successful, and led to some improvements,[18] they failed to effect major change. The Missouri Bar, in Douglas Copeland's view, "spent a lot of time bringing [the situation] to the attention of the legislators and to the governor's office to the point where they can no longer say, 'We didn't understand that there's a problem.'" Shortly thereafter, in 2006, the ABA Standing Committee on Ethics and Professional Responsibility issued its ethics opinion,[19] discussed above, which made clear that there are no exceptions for public defenders, as the rules of professional conduct require *all* lawyers to furnish competent and diligent service to their

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[17] The Eight Guidelines make clear that seeking public support from "bar associations, community groups, and the media" are appropriate, and indeed advisable, avenues for indigent defense providers to pursue. Eight Guidelines at 21.

[18] For instance, their efforts did result in repositioning salary increases ranging from 4 percent to 8 percent over the cost of living increase.

[19] ABA Committee On Ethics and Professional Responsibility, Formal Opinion 06-441 (2006).

clients, irrespective of their means. While the Legislature did provide $2 million for pay raises in 2006, in an effort to slow a record turnover rate, Copeland made clear:

> I know [the legislature] gave [MSPD] two million bucks, . . . but it still left us at 49th among 50 states. It's a hard nut to crack, to understand how the legislature works as a body and doesn't get problems like this resolved.

Notice to Legislature of Imminent Constitutional Crisis

As more and more indicators pointed to the fact that MSPD was confronting a crisis of great magnitude, the Missouri Senate established an Interim Committee on the Missouri State Public Defender System. The committee was tasked with reviewing the then-current effectiveness of the MSPD. Copeland reported that the three main concerns of the Bar were as follows:

- A "fear that the public defender members of the Bar are currently required to violate the ethical code of attorneys because their caseload is so great;"
- A concern "that indigent criminal defendants might not be adequately represented;" and
- A concern that "the criminal justice system is not working for all people."

The Missouri Senate took testimony on these questions, including the testimony of Norman Lefstein, professor of law and long-time expert in indigent defense services, before the Missouri Senate Appropriations Committee. Professor Lefstein explained that he had been familiar with MSPD since the late 1980's. Even then, he testified, experts were "shocked by [its] intolerably overburdened condition" demonstrating "that the problems of the Missouri Defender are of long duration." Statement of Norman Lefstein on the Missouri State Public Defender System at 3 (Jan. 29, 2007). In its 2007 corrected report, the Interim Committee settled upon four issues,

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designated as —crises, ‖ which it found the —most severe and concerning, ‖ namely the: 1. Caseload Crisis; 2. Retention Crisis; 3. Management Crisis; and 4. Office Space Crisis.[20]

The Public Defender Commission's 2007 annual report echoed these concerns, and made clear that the severity of the crisis left open only one viable option: —Only by refusing cases, a move that would precipitate a constitutional crisis in Missouri's courts, can Missouri's Public Defenders meet the ethical considerations they are bound by. A solution must come from outside the Public Defender System and it must come soon. ‖ The Chief Justice of the Missouri Supreme Court, Laura Denvir Stith, in her 2008 State of the Judiciary Address, took the following position:

> Few [of the state's needs] could be more critical than in the criminal justice system, where we are on the verge of risking release of some prisoners for failure to give them a speedy trial because there simply is no public defender available to advocate on their behalf. I cannot emphasize enough the urgency of this crisis[.]

Senate Bill 37, sponsored by Republican Senator Jack Goodman, which proposed to set caseload maximums and contract with private attorneys to handle cases exceeding those maximums, was held out as one possible solution. Senate Bill 37 proposed to establish maximum caseload standards to ensure that the system was adequately fulfilling the state's constitutional obligations to provide effective assistance of counsel and was complying with the

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[20] *See Fixing Missouri's Broken Public Defender System: Pay Up Front or Pay the Consequences* (2008) at 10-11.

The office space crisis must be addressed before the caseload crisis may be resolved. As it stands, pursuant to Section 600.040.1, the burden and expense of office space and utility services for local public defender offices rests with the county served by each office. County governments are often reluctant to shoulder this burden, perceived as an unfunded mandate, with serious consequences. Public defenders —have endured the indignities of insect infestation, lack of privacy, leaky roofs, and cramped quarters, to name a few. ‖ 2008 Fiscal Report at 82. Even more important, there simply is not enough space. If the desperate need for more attorneys is fulfilled, there will be no space to put them, and MSPD will be at the mercy of the counties—counties who have let the lights go out and the rent go unpaid (leading to eviction notices).

A change in the legislation, specifically the repeal of Section 600.040.1, is necessary if meaningful change is to be effected.

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rules of ethical and professional conduct applicable to attorneys licensed to practice law in Missouri. According to Senator Goodman, —Because of a growing shortage in personnel in the public defender system, some attorneys have a larger caseload than they are ethically really able to handle, ‖adding that, —[w]hen you have a caseload that is too large, you don't have time to devote to each case like you should. ‖

Despite unanimous passage in the Senate and a substantial majority in the House, on July 13, 2009, Governor Nixon vetoed the bill, reasoning as follows:

> Senate Committee Substitute for Senate Bill No. 37 reflects a well-intentioned effort by the General Assembly to address the challenges being experienced by the Missouri Public Defender System. However, while I acknowledge that the public defender system is operating under significant stresses, I disagree that the solution is to allow the Public Defender Commission to establish maximum caseload standards and create waiting lists for criminal defendants.
> . . .
> While I commend the General Assembly for its effort in addressing this issue, after considerable thought and consideration, I have concluded that this approach vests too much unfettered discretion with the Public Defender System to set maximum caseload limits that will result in significant responsibilities shifting to other participants in the criminal justice system to the detriment of all parties, including crime victims, without appreciable benefits being realized.

The governor's veto led the St. Louis Dispatch to conclude, in an editorial, that —Missouri public defenders should ready the doomsday option. ‖ The editorial board set forth the history as follows:

> Caseloads have been climbing for years while state spending remained flat. Public defenders began pleading for better funding nearly a decade ago but were told by lawmakers to explore other solutions. So they set out to develop standards for maximum caseloads, but were told that they lacked the legislative authority. SB 37 would have given it to them. With his veto, Mr. Nixon has returned public defenders to square one—agreeing that they have been correct from the start: They need more resources, which means more people, which means more money.

July 17, 2009 Editorial, at A16. It concluded that if MSPD is pushed to handle caseloads so large that clients cannot be provided with adequate representation, it will be left with only one option, to "turn down cases," because "[t]hey have no alternative." Their "duty is to say no" if they can't meet their professional obligations."

Notice to Courts of Inability to Accept Additional Appointments

The MSPD did not limit its efforts to the legislature, however. It sought relief in the courts as well. In November 2007, the State Public Defender Commission voted without dissent to adopt a procedure by which it could refuse new cases. The procedure authorized the director of the MSPD to declare an office "of limited availability" when its caseload became excessive. The MSPD Deputy Director of Litigation's assessment was that most offices were already "at a crisis point and could qualify."

Its efforts to implement the procedure, however, were cut short by the courts. In August 2008, Director of the MSPD, J. Mary Robinson, determined that the District 13 Public Defender Office had exceeded the maximum caseload standard for a period of three consecutive calendar months. Pursuant to the 18 CSR 10-4.010(2)(b), on August 27, 2008, the Director notified the presiding Judge of the Thirteenth Judicial Circuit that the District 13 Office was at risk of being certified for limited availability.

On October 1, 2008, the Director certified the District 13 Office to be in limited availability status. The Director accompanied the certification with statistical verification showing that the District 13 Office had exceeded its maximum allowable caseload under the Public Defender Commission's Caseload Crisis Protocol for at least three consecutive months. On October 6, 2008, the District Public Defender notified the presiding judge of the Thirteenth Judicial Circuit that the District 13 Office had been certified as being of limited availability. The District Defender informed the court that the District 13 Office would not accept probation

violation proceedings pursuant to a suspended execution of sentence until the District 13 Office was reinstated to full availability.

When a public defender attempted to put this policy into practice, however, filing a written notice with the court that the public defender was unavailable to represent a defendant in a probation revocation matter, the judge refused, appointing the public defender to the case, despite the regulation and the notice.

On November 20, 2008, the Missouri Public Defender Commission, the Director of the Public Defender System, and the individual public defender subsequently filed a petition for a writ of prohibition with the Court of Appeals for the Western District, seeking to restrain the trial judge from appointing the public defender to the indigent probationer's case. The Court of Appeals granted a stay of the probation violation hearing and initially issued a preliminary order in prohibition restraining the judge from proceeding further in the case.[21]

The Court of Appeals for the Western District, relying on Section 600.042.4 of the Missouri Revised Statutes, concluded that—contrary to the MSPD's claim that the judge lacked jurisdiction, had exceeded his authority, and had abused his discretion in appointing the public defender—the judge did not err. To the contrary, the Court of Appeals concluded that an agency regulation is void if it is beyond the scope of authority conferred upon the state agency or if it attempts to expand or modify statutes. In its view, the "Public Defender Commission's regulation to not accept assignments on probation violation cases where the defendant had previously received a suspended execution of sentence conflict[ed] with section 600.042(3) [which] requires the Public Defender to represent those indigent defendants facing a violation of probation or parole." The Court of Appeals rejected the argument that the language of chapter 600.042.3 permitted such regulations. According to the Court, section 600.042.3 "does not give

[21] The case was subsequently consolidated with another matter in which a public defender had been appointed to a probation revocation matter "as a member of the local bar."

the director and the defenders discretion to refuse to accept cases they are mandated to accept under section 600.042.4. ‖

At the close of the opinion, the Court included a significant, final footnote:

> As an intermediate appellate court, this court is bound to follow the law established by the Missouri Supreme Court. As this court is a court of error and not a policy making court, we are bound to follow the Supreme Court's decisions . . . [which have] held that the Director cannot refuse to represent the persons who are entitled to representation under section 600.042.4.[22]

The Caseload Crisis Time Study

As part of its efforts to develop caseload standards for determining when an office's caseload became excessive, the MSPD conducted the Caseload Crisis Time Study from September 20, 2006 through November 14, 2006. Using a computerized time-keeping system, the study collected data on the amount of time attorneys and support staff spent on different types of case activities and involved all public defenders. Attorneys were asked to record the number of hours, in fifteen minute increments, spent on general case-related activities, case specific activities, and non-case related activities. The total time per day was then compared to the organization's payroll timesheets to ensure that time was being entered for all activities. Prior to the data collection period, training materials were developed and staff members were required to participate in training sessions.

Table I displays the results of the MSPD case weighting study as analyzed by TSG. These are the raw results, and represent the actual time spent per disposition in the various case type categories.

[22] State ex rel. Public Defender Comm'n v. Hamilton, 2009 WL 987468 at 8 n.11 (Mo. App. W.D. Apr. 14, 2009)

Table I: Time Study Results using 1812.5 Available Attorney Work Hours[23]				
Case Type	Hours	Dispositions	Hours per Disposition	Current Workload (non-Conflict Dispositions per Year)
A - B Felony Sex	6,917	103	67.2	27
A - B Felony Other	12,983	498	26.1	70
A - B Felony Drug	5,417	502	10.8	168
C - D Felony Sex	1,252	65	19.3	94
Major Felony Total	*26,569*	*1,168*	*22.8*	*80*
C - D Felony Other	25,021	3,272	7.6	237
C - D Felony Drug	7,105	1,070	6.6	273
Minor Felony Total	*32,126*	*4,342*	*7.4*	*245*
All Felony	58,695	5,510	10.7	170
Misdemeanor	8,937	3,166	2.8	642
Misd. – Traffic	1,552	1,542	1.0	1801
All Misdemeanor	10,489	4,708	2.2	814
Probation Violation (F)	4,787	2,214	2.2	838
Probation Violation (M)	1,346	860	1.6	1158
All Probation Violation	6,133	3,074	2.0	908
Juvenile Violent	1,642	198	8.3	219
Juvenile Non-violent	1,592	332	4.8	378
Juvenile Status	144	57	2.5	715
All Juvenile	3,379	587	5.8	315

While TSG researchers are satisfied that the methodology used during the time keeping period accurately captured the amount of time spent on these case types, the results only provide an accurate description of a system in crisis. Any reliance on these numbers, even as a baseline from which to develop appropriate caseload standards, would only serve to institutionalize an already crippled system.

The conclusion that MSPD attorneys are faced with such obstacles to the provision of effective representation is further supported by their responses to the Time Sufficiency survey, which was conducted in conjunction with the case weighting study.

[23] Assuming a 40-hour work week, a full-time attorney is paid for 2,080 hours per year. Subtracting 216 average holiday and annual leave hours, and an additional 51.5 hours in attorney sick leave taken during 2006, the average attorney had 1812.5 available work hours per year.

For each of the separate tasks, MSPD asked attorneys and support staff to evaluate the statement, "I have enough time to complete the activity in a reasonable and satisfactory way." The response index ranged from "Almost Never" below 20% through "Often" above 80%. A response "NA not my job" was included for tasks or functions that attorneys or support staff did not regularly perform or did not apply to their specific job.

For each task, average response scores were constructed. As these tasks were determined to be essential by MSPD, items with average response scores below 3 represent items where attorneys feel they "almost never" or "infrequently" or "sometimes" have enough time to complete the activity in a reasonable and satisfactory way. Table II presents the average attorney response scores by functional area (MSPD functional area divisions used). Most areas fall below the average 3 score. Indeed, attorneys report only two functional areas – client contact and pre-trial investigation – in which, on average, they sometimes have enough time to complete the activity satisfactorily. In all other activities, especially for preliminary hearings, the attorneys infrequently have sufficient time.

Table II: Average Attorney Responses from the Time Sufficiency Survey (by Functional Area)

Functional Area	Average Response
Bond	2.31
Preliminary Hearing	1.65
Client Contact	3.55
Motions	2.23
Investigation / Preparation Guilty Plea	2.64
Investigation / Preparation Trial	3.54
Sentencing	2.28
Ministerial Tasks	2.61
Experts / Records	3.31
Medical / Physical Injury	2.99
Mental Health	2.60
Forensic Science	2.70

One of the most evident failures of the current system, and one echoed in virtually every interview conducted with attorneys and support staff at the MSPD during our site visits, is that

there is a tremendous lack of support staff resources available. As Table III demonstrates, TSG found that only about one-third of the total time spent on cases comes from support staff. Put another way, for every hour of attorney work, there are only enough support staff resources to provide 30 minutes of support, a level that is woefully inadequate when compared to other jurisdictions. Our site visits confirmed that, due to the remarkable lack of support staff, public defenders are required to spend a great deal of time on what is properly support staff work; the time lost is time that could be spent doing legal work which support personnel are not equipped to perform.

Table III: Comparison of Attorney and Support Staff Hours

	Attorney Hours	Staff Hours	Staff % of Total Hours
A - B Felony Sex	6,917	3,867	36%
A - B Felony Other	12,983	7,556	37%
A - B Felony Drug	5,417	1,908	26%
C - D Felony Sex	1,252	719	36%
C - D Felony Other	25,021	12,225	33%
C - D Felony Drug	7,105	2,619	27%
All Felony	58,695	28,894	33%
Misdemeanor	8,937	3,774	30%
Misd. – Traffic	1,552	1,313	46%
All Misdemeanor	10,489	5,087	33%
Probation Violation (F)	4,787	1,653	26%
Probation Violation (M)	1,346	498	27%
All Probation Violation	6,133	2,151	26%
Juvenile Violent	1,642	1,079	40%
Juvenile Non-violent	1,592	598	27%
Juvenile Status	144	61	30%
All Juvenile	3,379	1,738	34%
Total	78,696	37,869	32%

Staffing *Ratios*

This alarming inadequacy is further supported by MSPD staffing records from the last six years, which show there is roughly one-half an FTE support staff person for each attorney. This is the lowest staff-to-attorney level of any jurisdiction recently studied by TSG. As Table IV indicates below, Missouri‘s staff ratio – especially in felony cases – is almost twice as low as that

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found in Maricopa County (Phoenix), Arizona. It is just 70 percent the size of other jurisdictions in a national study conducted by the federal Bureau of Justice Statistics, and as TSG strongly concludes, it rests at a level that is woefully insufficient to provide effective and adequate representation to MSPD's clients.

Table IV: Comparative Staff Support

Jurisdiction	Attorneys	Investigators	Other Support	Total Support	Investigators per Attorney	Other Support per Attorney	All Support per Attorney	Source	Year
Maricopa County, AZ PD (one of three agencies)	210			220			1.05	http://www.pubdef.maricopa.gov/index.html	2008
DE	73	16	54	70	0.22	0.74	0.96	http://publicdefender.delaware.gov/Docs/Spangenberg.pdf	2005
CT	203	63	124	187	0.31	0.61	0.92	http://www.ocpd.state.ct.us/Content/Annual2008/2008Table.htm	2008
Pima County, AZ	79			71			0.90	Pima County Case Weighting Study - TSG - 2002	2002
RI	46	8	29	37	0.17	0.63	0.80	New England Public Defenders Conference - 2008	2008
MT	104			83			0.79	http://www.publicdefender.mt.gov/forms/pdf/FY08Staffing-Report.pdf	2008
WY	46	5	27	32	0.11	0.59	0.70	http://wyodefender.state.wy.us/files/2008Annual.pdf	2008
KY	375	60	167	227	0.16	0.35	0.68	Kentucky Dept. of Public Advocacy	2010
CO	289	93	103	196	0.32	0.36	0.61	Colorado Public Defender	2008
MO (All Divisions)	**342**	**58**	**145**	**202**	**0.17**	**0.42**	**0.59**		**2008**
MO (TRIAL)	**276**	**47**	**97**	**144**	**0.17**	**0.35**	**0.52**		**2008**
Bureau of Justice Statistics (100 largest counties in US)	6300	1200	3400	4600	0.19	0.54	0.73	http://www.ojp.usdoj.gov/bjs/id.htm	1999

As discussed above, during our 2009 site visits, members of TSP held meetings in Kansas City and St. Louis with a number of District Defenders and other experienced attorneys from across the state. The participants' feedback supported and amplified the findings noted above and reinforced our conclusions from other interviews performed during our site work. Put plainly, there is a tremendous lack of support staff available to assist attorneys in their daily

practice. Attorneys are spending time on activities that should be performed by support staff, and largely as a result, the MPSD's lawyers are so overloaded with cases that they are unable to provide effective representation in all of their cases.

Comparative Caseload Standards

When TSG began this project, it fully expected to provide caseload standards specific to the MSPD system; indeed, a robust, well-functioning system of defense can benefit from caseload standards that help to ensure that public defenders are not overburdened in the provision of defense services. However, the current state of affairs in Missouri is so dire, the resources so limited, and the participants so accustomed to a system that is fundamentally broken that caseload standards are not only inappropriate at this point but would serve only to institutionalize bad practices.

The findings above on staffing indicate how much of the attorneys' time in Missouri is taken up with tasks that ought to be—and in other jurisdictions are—the responsibility of support staff members. To incorporate these activities into a caseload standard would only endorse the division of time in Missouri between public defenders and their staff, a situation that is fundamentally flawed. Before determining the maximum number of cases that Missouri public defenders should be handling, state leaders must first provide sufficient staff resources so that attorneys are truly doing the work of legal advocates and not serving also as investigators, paralegals, and secretaries.

TSG also has concerns about whether public defenders are truly representing the full panoply of eligible defendants, or if they are systematically missing or turning away particular categories of defendants. Given TSG's serious concerns about the latter, *See infra* at 53-60, we fear that the universe of dispositions upon which the time study was based does not represent an adequate sampling of cases which public defenders *should* be handling. Whether this situation reflects a deliberate decision of the MSPD to turn away clients or instead represents a system in

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which potential clients do not seek the services of a public defender even when they are eligible, the results are the same: an already overburdened MSPD is not serving potential clients, and any ensuing caseload standard would institutionalize present practices by condoning the status quo.

Finally, TSG notes the conclusion of the attorneys who participated in the caseload adjustment meetings that the environment within which attorneys are currently working makes it impossible to estimate the average amount of time a case should take in order to provide effective representation. Although well intentioned, it is as if public defenders have been forced to practice so long in a broken system of representation that they do not know and cannot even imagine what an acceptable system of defense would permit. To be sure, they can estimate their current workload, but when asked to estimate the resources and caseloads necessary to provide an effective and acceptable level of representation, participants could not provide a collective answer. Missouri's system of public defense is so underfunded, and the staffing so inadequate, that MSPD will require substantially more resources before most of its lawyers can fully comprehend all the requirements that an adequate system necessarily entails.

A comparison to caseload standards in other jurisdictions may help Missouri officials to understand just how underfunded and inadequate their system of public defense has been. Note that the following discussion and presentation of comparative caseload standards are *not* specific recommendations for MSPD, but instead are presented to provide a context in which to view the current caseloads handled by the system. As already argued, any attempt to develop appropriate attorney caseloads for the MSPD must be accompanied both by a substantial increase in resources and intensive efforts to ensure that the MSPD is representing the full range of eligible clients.

Moreover, it should be emphasized that caseload standards are not appropriate for measuring the quality of representation provided to clients in any individual case. Nor, without additional data, is it appropriate to apply these standards to any individual attorney, small group

of attorneys, or even a small office. Individual attorney workload must always take into consideration the experience of the attorney, the difficulty of their current cases and the amount of support available to the attorney in terms of clerical, investigative and administrative resources.

In 1971, the Law Enforcement Assistance Administration, a federal agency within the United States Department of Justice, commissioned the National Advisory Commission on Criminal Justice Standards and Goals (hereinafter "NAC"). One of six reports issued by the NAC, the *Report on Courts*, published in 1973, has had substantial impact because it is the only national source that has attempted to quantify a maximum annual public defender caseload. During the preparation of the *Report on Courts*, the NAC relied mostly on qualitative and anecdotal information to formulate its standards.[24] Although the NAC Standards have not been formally adopted by the American Bar Association, the standards have been cited by the ABA and referred to by some practitioners and researchers in the criminal justice field, if only for the lack of other readily available numerical national standards. The Ten Principles, *supra* at 10, state that "National caseload standards should in no event be exceeded," and references the NAC standards as an example of existing national caseload standards.

The NAC *Report on Courts* articulated express standards for indigent defense services with the goals of expanding resources for professional and support staff; increasing the amount of state versus county funding of indigent defense services; and representing all eligible defendants during all stages of criminal proceedings. The NAC standards also called for specific criteria for initial client contact, parity of pay with attorney associates at local law firms, and numerical caseload levels.

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[24] *National Advisory Commission on Criminal Justice Standards and Goals: Courts*, Washington, D.C., 43, 265 (Jan. 1973).

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With regard to the caseload levels of public defenders, the NAC established these numerical standards based on estimates by seasoned defense attorneys that public defenders should not handle more than 150 felonies per year, 400 misdemeanors per year, 200 juvenile court cases per year, 200 Mental Health Act cases per year, or 25 appeals per year *when that attorney is handling only one type of case*.[25] These standards were adopted based entirely upon estimates obtained from a number of advisory committee members.

The NAC standards certainly have their weaknesses, not accounting for local variations in practice, differences in case complexity, or ever-evolving laws and policies in the various states. Moreover, when the NAC standards were promulgated in 1973 the national landscape was much different than it is today or even a decade ago: capital punishment was not a sentencing possibility in any state; behaviors and crimes that did not exist in 1973, such as Internet-based crimes, have since become more prevalent; most jurisdictions around the country have instituted "tough on crime" policies, such as habitual offender statutes and "mandatory minimum" sentencing requirements; mental health institutions have been de-institutionalized and closed, and many people with mental health disorders find themselves facing criminal charges and jail time in lieu of treatment. In addition to traditional penalties, many convictions now carry collateral consequences, such as the loss of government benefits, fewer employment opportunities, and deportation. The changes listed above, among several others, illustrate the increased complexity of providing adequate representation.

As much as TSG has concerns about the NAC standards – and about the process of using national caseload standards to draw conclusions about specific jurisdictions – it is nonetheless instructive to consider the NAC process when contemplating an "outer marker" for attorney

[25] *National Advisory Commission on Criminal Justice Standards and Goals: Courts*, Washington, D.C., Standard 13.12 (Jan. 1973). For purposes of this standard, the term case means a single charge or set of charges concerning a defendant (or other client) in one court in one proceeding. An appeal or other action for post-judgment review is a separate case. *Id.* at 276.

caseloads. No responsible public defense system with which TSG is familiar would set its attorneys' caseloads any higher than the NAC standards, and by the same token, a caseload above the NAC level should be considered presumptively unreasonable. In this respect, TSG agrees with the "Statement on Caseloads and Workloads[26]" issued by the American Council of Chief Defenders (ACCD)[27] in August 2007, which recommends "that public defender and assigned counsel caseloads not exceed the NAC recommended levels…" The resolution goes on to state that, in many jurisdictions, maximum caseloads should be lower than those recommended by the NAC. The statement also discusses many of the reasons that representation of indigent defendants has become even more complicated since the NAC standards were developed, including, among other factors, increases in collateral consequences of convictions, an increase in the number of jurisdictions enacting persistent offender statutes and an increase in the severity of those penalties, a dramatic increase in penalties for people charged with sex offenses, and an increase in the number of juveniles charged as adults. No matter how those standards are defined, the caseload of the MSPD vastly exceeds acceptable levels, especially considering that the system has a woefully inadequate number of support staff.

The Washington (State) Defender Association has adopted caseload standards limiting the caseload of a full-time public defense attorney per year to 150 felonies; 300 misdemeanors; 250 juvenile offender cases; 60 juvenile dependency cases; 250 civil commitment cases; or 25 appeals cases with the case heard on the record. Those standards are careful to point out that additional consideration should be given to particularly complex cases, and set forth a case credit

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[26] http://www.nlada.org/DMS/Documents/1189179200.71/EDITEDFINALVERSIONACCDCASELOADSTATEMENTsept6.pdf

[27] The ACCD is a Section of the National Legal Aid and Defender Association. http://www.nlada.org/Defender/Defender_ACCD/Defender_ACCD_Home

system for those more complicated case types.[28] It should be noted that these caseload standards are not binding upon the defenders.

Previous case weighting studies performed by TSG have yielded the caseload standards appearing on the following page. Since the case type categories studied were developed independently in each jurisdiction, the specific categories differ somewhat from jurisdiction to jurisdiction. King County, Washington; Maricopa County and Pima County, Arizona; and the State of Colorado are presented here.

Table V provides a summary of the caseload standards from those jurisdictions by equivalent case type, where possible. Please note that, as discussed throughout, direct comparisons between jurisdictions cannot take into account all of the different factors that influence the complexity of any particular case type. In some cases, the case type equivalents between jurisdictions are not exact. The existence of diversion and drug treatment courts, early disposition courts, and the severity of potential sentences and charging practices are unique to each jurisdiction and can substantially contribute to the differences between jurisdictions. Nonetheless, it is important to note that all of these caseload standards are *significantly* lower than the current situation in Missouri.

The caseload standards established in these other studies were conducted under circumstances where the offices had far more support staff resources than is the case in Missouri. In one jurisdiction, Pima County, the table presents standards that have been adjusted upward to ensure that the public defender is being utilized to their full potential.

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[28] Washington Defender Association Standards for Public Defense Services, http://www.defensenet.org/resources/publications-1/wda-standards-for-indigent-defense

TABLE V: Caseloads in Other Jurisdictions				
Case Type	King County (2001)	Colorado (2002)	Maricopa County (2002)	Pima County (2002)
Available Attorney Work Hours	1806	1808	1853	1845
Felony Sex	A: 33.7 B: 61.2	32.6	31.9	
Felony A (Class 2)	Repeat Offender: 8.5 Other: 24.5	32.6	76.5	Mandatory sentence: 41.9 Other: 135
Felony B (Class 3)	Repeat Offender: 16.5 Other: 65-96	105.5		
Felony C & D (Class 4-5)	Class C* Person: 74.2 Property: 88.4 Drug: 727.1**	200.2	313.6	Mandatory & Fel. DUI: 103.1
Felony E (Class 6)		386.2		Non-Mandatory & Simple Possession: 204.9
All Felony****	99.0	135.9	177.5	106.5
Gross Misdemeanor	235.8	196.4		
Other Misdemeanor	371.4	429.8***		
All Misdemeanor****	249.4	291.8		201.9
All Juvenile	203.5	248.7	Fel: 149.5 Mis: 275.9	203.2 204.6

* the lowest level Felony in Washington State is a Class C Felony, and consists of Personal, Property and Drug Offenses.

** Felony C Drug Court. This is not a diversion court, but a court that handles only drug-related offenses.

*** Includes non-jailable misdemeanor traffic offenses

****The aggregate numbers in these categories are not caseload standards and should not be used in place of standards developed for the more specific case types for determining staffing needs. They are only presented to provide a rough comparison between jurisdictions, and will change as the ratio between more serious and less serious case types fluctuate.

The MSPD has been struggling with the development of an adequate caseload standard for many years. The Public Defender Commission found in 2005 that —excessive caseloads can and do prevent Missouri State Public Defenders from fulfilling the statutory requirements [for representation] and their ethical obligations and responsibilities as lawyers. ‖[29]

[29] Missouri State Public Defender Commission‘s Findings and Directive on Caseload Standards in Accordance With Professional and Statutory Obligations, Finding 9 (adopted June 10, 2005) (draft copy).

Adding to the burden on the Public Defender system is the method by which conflicts are handled. Conflict cases are often transferred to an attorney in another MSPD office. This often involves a significant amount of travel time, and would further decrease the number of cases an office is able to handle.

Before any caseload standards can be established to provide a reasonable formula for projecting adequate attorney staffing needs, or to provide a maximum caseload number above which public defender offices should start to decline representation, a substantial increase in support staff resources must be in place. While the internal case weighting study performed by the MSPD may provide some insight to the relative complexity of different case types, the final results of the study and the subsequent time sufficiency survey, combined with our efforts to adjust those results to provide workable caseload standards, lead to some inescapable conclusions:

A. MSPD requires an increase in the number of support staff and investigative resources of at least 50 percent before a case weighting study would be able to provide a measure of attorney representation in a functioning indigent defense system.

B. MSPD attorneys, even if they had sufficient support staff and investigative resources, are disposing of cases at a rate far greater than the NAC recommended maximum caseload standards and well in excess of any jurisdiction in which TSG case weighting studies have established caseload standards. This has been the case for many years, with virtually no increase in attorney positions and an ever-increasing number of cases being appointed.

C. MSPD, in its efforts to control workload and to provide effective representation, has been turning away cases by performing triage, and turning away defendants who have managed to raise enough capital to post bond. *See infra* at 53-60. This results in the case weighting study having measured the amount of time it takes to provide

representation only in those cases selected by the public defender, and not in the universe of cases in which representation *should* be provided.

D. The failure of the legislature to provide relief to MSPD and the failure of the judiciary to question the practices which allow defendants to be refused representation for so many years have exacerbated the crisis. While MSPD has continued to press for funding increases, it has been forced to take steps to reduce the burden on its own attorneys, effectively denying representation to those who are constitutionally eligible.

C. INDIGENCY DETERMINATIONS

The June 2009 site visits provided significant new information, particularly in the context of indigency determinations. This information appears to support a hypothesis first developed in 2005, namely that MSPD was declining to represent individuals who were deemed ―not indigent enough‖ based on an informal, arguably expanded definition of indigency. What we did not anticipate in 2005, but was reported to us in 2009—and subsequently validated with data from updated MSPD figures—was the breadth of the problem, at least as it presently stands.[30] It now appears that, as each and every effort made to stem the tide of the caseload crisis failed, indigency determinations became a backdoor method of case disposal.

This situation is reflective of the larger principle that ―lawyers have as their primary obligation the responsibility to represent the interest of *current* clients.‖ Eight Guidelines at 16 (emphasis added). To avoid being forced to choose between existing clients and new clients, it makes sense that public defenders and their staff, when determining indigency, would tend to err on the side of exclusion in indigency determinations. We argued this very point in 2005, stating that indigency determinations by MSPD, rather than an independent, disinterested agency, create

[30] At this juncture we are unable to determine whether this was the case in 2005 as well, or whether the situation has changed over time.

a conflict of interest or at the very least an appearance of conflict. In 2009, it seems clear that there is more than an appearance of conflict, but indeed an actual conflict, which has had significant ramifications in terms of indigent defendants' right to counsel in Missouri.

Statutes, Rules & Guidelines Relating to Indigency Determinations by MSPD

Section 600.086 of the Missouri Revised Statutes states that "[a] person shall be considered eligible for representation under sections 600.011 to 600.048 and 600.086 to 600.096 when it appears from all the circumstances of the case including his ability to make bond, his income and the number of persons dependent on him for support that the person does not have the means at his disposal or available to him to obtain counsel in his behalf and is indigent as hereafter defined."[31] Pursuant to the statute, the MSPD is responsible for making indigency determinations. 600.082, RSMo. The statute also permits "the commission [to] establish and enforce such further rules for courts and defenders in determining indigency as may be necessary."

The statute regarding eligibility for representation states that the ability of a defendant to make a bond is a *circumstance* to be considered in making the determination, but not a bright-line rule.[32] Prior to 2006, however, pursuant to its statutory authority, the Public Defender Commission had established Guidelines for Determination of Indigence (hereinafter "GDI") which included an explicit "presumption" that a defendant was ineligible for the appointment of a public defender if released on a bail of $5,000 or more.[33] In our 2005 study, we concluded that

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[31] We have previously noted the peculiar and problematic nature of the statutory scheme. *See* 2005 study at 18-19 & n.28 ("Unlike most states, Missouri judges do not have the inherent authority to appoint counsel in the interests of justice unless a defendant has completed and signed an application and the Public Defender has determined the defendant to be indigent. This has created some tension between the Public Defender, who is concerned about high caseloads and limited resources, and the judges who are concerned about the efficiency of the courts.").

[32] Missouri Revised Statute 600.086.1.

[33] 18 C.S.R. 10-3.010(2)(B)(2) (2005).

both the —indigency presumption ‖and the role of MSPD in determining indigency appeared, at the outset, problematic.

Following that report, in 2006, the Commission changed the language—striking the following language creating a presumption of ineligibility based on the ability to make bond:

> Bond-If the defendant has been released on bail on any case in the amount of five thousand dollars ($5,000) or more, a presumption is created that the defendant is not indigent and the ability of the defendant to meet the bail must be given consideration[.]

The post-2006 Guidelines likewise changed the language regarding mortgages and assets, striking the mortgage subheading altogether, and modifying the language regarding assets so that no specific amounts are included. The following language was not included in the 2006 (present) version:

> Mortgage-If the defendant owns or is buying a home, the defendant‘s equity must be determined. If defendant‘s equity exceeds ten thousand dollars ($10,000), the defendant would not qualify for a public defender; and
>
> Assets-Unless the defendant is charged with a Class A felony, cash in excess of one thousand dollars ($1,000) creates a presumption of non-indigency. Bank accounts, stocks, bonds, jewelry, equity in insurance and any other financial assets must be considered. All vehicles are assets and must also be considered. If the total value of the asset(s) is more than two thousand dollars ($2,000), the defendant is presumed not to be indigent.[34]

The language on assets was substantially simplified and generalized, subsuming the discussion of equity in a home, such that now the standard is as follows: —If the person owns or is buying a home, the equity must be determined and considered on the question of indigence. Bank accounts, stocks, bonds, jewelry, equity in insurance and any other financial assets must be considered. ‖18 CSR 10-3.010 (2009).

[34] 18 C.S.R. 10-3.010(2)(B)(5)-(6) (2005).

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The 2006 revisions to the GDI served to increase discretion while decreasing transparency in indigency determinations, by eliminating the presumptions that attached to particular sums, leaving the MSPD free "to consider" these factors in making its determinations.[35]

MSPD Indigency Determinations in Practice

As discussed above, the June 2009 site visits provided valuable information about the reality of indigency standards and determinations, as they exist at present in Missouri. These data supported the conclusion that MSPD's role in making indigency determinations is not only inherently problematic, but leads to deeply troubling consequences, including what appear to be repeated denials of counsel to indigent criminal defendants.

Our 2005 hypothesis that many defendants should have been found indigent but were not was met with ample support from the individuals we interviewed in 2009. In fact, we were told that MSPD is "turning a lot more people away today than we ever did," so much so that "probably 4-5 people are turned away every day whereas before it was 2 or so people." Nor are the defendants being turned away exclusively misdemeanants; interviewees noted that MSPD was "turning away more people in felonies and misdemeanors." The explanation provided for the dramatic increase in indigent defendants being turned away by the public defender was simple: "The caseloads are such that we are turning a bunch of people away."

Of particular concern was the repeated reporting that the old "presumptions" (which were removed from the Guidelines three years ago) are not only still being applied, but are being enforced more strictly than ever. The Guidelines were explained to us as follows: "If you can afford a $500 bond, you don't get a PD—*that's in the Guidelines*. It's the amount you actually post, if it's a 10% bond, and you only pay $50 then you can still get a PD, but if you have a

[35] Language added in 2008 established an absolute bar to representation by MSPD if private counsel has been retained "at any time during the pendency of a case," such that "[t]he public defender shall not be available to assume representation" where private counsel withdraws. 18 C.S.R. 10-2.010(2) (2009).

$5000 bond, and you pay $500, you don't qualify. ‖ It was also reported that it is not uncommon for individuals to collect as much money as possible from family and friends in order to make bail, for example gathering together $500. What those individuals do not realize, we were told, is that once they use that money to make bail, they will then be deprived the services of the public defender, even if (as is often the case) there is no well left to tap. One investigator charged with conducting bond interviews two days each week, reported that —any [income] over $100 a week can kick [out] a person ‖ sharing his view that, —the guidelines are ridiculous. You can make minimum wage and not get a PD. ‖ MSPD staff reported that —We've had 18 year olds who work at Taco Bell (even if they make $150) [who] need to hire a private attorney. ‖

These reports strongly suggest that there is an entire category of indigent defendants who collect all the assets they will be able to amass for their defense at the outset of their cases, in order to get out of jail, and who—because they have done that—are deemed ineligible for the public defender. This catch-22 (in which indigents are essentially told to choose between custody and counsel), moreover, is said to be the direct result of MSPD's overwhelming caseloads. In the words of one MSPD reporter, —It's sad that we have to turn people away, but we have to pick and choose. ‖ Nor does this appear to be a new phenomenon, given the relatively longstanding application of presumptions against indigency, with special emphasis on the ability to make bond.

Data indicate that, on average, public defenders are finding between 8 and 9 percent of applicants ineligible. But these numbers belie tremendous variation in the various districts, where the reported refusal rate is as high as 48 percent. Indeed, the refusal rates in the districts of St. Charles, Fulton, Sedalia, Union, and Hillsboro all exceed 20 percent. TSG's analysis shows that between 2005 and 2008, MSPD represented between 55% and 59% of defendants charged with felonies in the state of Missouri, a number far lower than the 75%-85% that we have seen in most other jurisdictions. More surprising still is that the MSPD represented only

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35% of the juvenile delinquency and status offense cases filed in Missouri courts in 2007, down from 40% in 2004, 38% in 2005, and 37% in 2006. Juvenile cases make up just about 4% of the appointments accepted by the MSPD, a number far lower that what would be expected. Whether these low rates reflect a deliberate decision of the MSPD or instead are representative of a system in which potential clients do not seek the services of a public defender even when they are eligible, the results are the same: an already overburdened MSPD is not serving potential clients. This is particularly troubling in the case of juveniles, who must rely upon others to obtain their counsel. Indeed, we are deeply concerned by the few juvenile cases being handled by the MSPD, which appears remarkably low and for which we have been unable to determine an immediate cause. This question merits further investigation and serious scrutiny.

The MSPD's pattern and practice or representation in 2009 bears out TSG's 2005 prediction, namely that using the public defenders to make indigency determinations creates at the very least an appearance of a conflict of interest. Public defenders, particularly when faced with crushing caseloads, have an incentive (however dedicated and well-meaning they may be) not to find defendants indigent. Reports from the site visit provide significant support for this conclusion, painting the picture of guidelines which, as implemented, amount to a presumption *against* indigency wherever possible. Despite the statutory requirements, we would restate our position that the Public Defender should not be responsible for indigency determinations. Few statewide public defender programs remain responsible for that task. The role creates, at the least, an appearance of a conflict if not an actual conflict.

It now appears clear that MSPD's indigency determinations have resulted in the wrongful denial of counsel to a substantial class of indigent persons. This suggests that, in addition to Missouri's obvious indigent defense crisis, there exists another quiet constitutional crisis that has never been addressed.

It is, of course, the caseload crisis that is driving the sweeping determinations of non-indigency we discovered in 2009. As we understand it, those determinations are often made by investigators and administrative staff rather than by attorneys. It seems fairly clear, then, that those on the ground are taking their marching orders from those at the top. Members of management conveyed to us, explicitly, that faced with a choice between clients to whom they have immediate duties and responsibilities, and indigent persons in the community who are entitled to a lawyer, there really is no choice; one's duty is to one's existing client. The rationale was explained as follows: Given the magnitude of the caseload crisis, resources are so scarce and attorneys so overworked that the addition of new clients must, of necessity, jeopardize the quality of representation that existing clients receive.

What results is a system wherein prospective clients are "kicked out" based on strictly enforced guidelines (including guidelines that are no longer in effect). In this system, a defendant may, for instance, cobble together what funds he can from friends and family in order to make bail, not knowing that he is actually facing a Hobson's choice between custody and counsel. The fact that he has made bail will almost certainly be used against him later, even though his friends and family may have nothing more to contribute. Once turned away by the Public Defender, he may wish he had just stayed in jail.

It seems clear that at the heart of both the MSPD Rule and SB 37, however well-meaning, was the same "case-dumping" impulse. In some ways resigned to the fact that they would never be properly resourced, management's goal was to rid the office of cases, through legislation which would create caseload caps, in the hope that it would be better able to put MSPD's limited resources toward the cases of existing clients, rather than spreading the agency more and more thinly.

The Governor is due credit for his recognition, in the face of legislation that passed by overwhelming majorities of both chambers of the Legislature, that this kind of solution, which

aimed to solve the problem by pushing cases out of the public system and onto the private bar, was no solution at all. What the Governor recognized is that ―getting rid of ‖MSPD cases does not mean that those cases go away. The cases of poor people turned away by the Public Defender—whether by a caseload cap ceiling or an indigency determination floor—do not vanish into thin air. Throughout the years some have responded that the private bar is the solution, that they can, in effect, pick up the slack. But that approach is both impractical and incompatible with the requirement that the State provide representation to indigent persons facing criminal charges; the State may not wash its hands of its obligations by seeking to transfer those obligations to the private bar.[36]

Section III. Assessment of Findings in Light of the Eight Guidelines

Our findings regarding the systemic inability to comply with fundamental obligations, explored above, fully comport with the governing principle contained in the first guideline of the ABA's Eight Guidelines, namely that when ―defense lawyers fail to discharge the kinds of fundamental obligations contained [herein], it is frequently because they have excessive workloads. ‖ The conclusion that MSPD's workloads are excessive is supported, moreover, by the data. The Eight Guidelines also provide us with substantial guidance in assessing not only the crisis situation that Missouri is confronting (and has long confronted), but also give us a metric by which to measure their response to that crisis.

Of course, it must be noted at the outset that the MSPD did not have the benefit of these guidelines during the first roughly fifteen years of its campaign for reform. Rather, the MSPD was left on its own to try and conceive an approach to a problem of remarkable breadth and

[36] *See* ―Justice Denied, ‖*Report of the National Right to Counsel Committee*, 31 n.67 (Apr. 2009); *see also* ABA Model Rules of Professional Conduct, R. 6.1 (2007). Additionally, transferring a large volume of cases to the private bar is problematic for the following reasons: (1) Members of the private bar may lack the specialized training required to effectively handle a criminal case; and (2) it is probably more expensive.

depth. MSPD did just that, developing a unified strategy that was state-wide, one which sought to address, *inter alia*, the legislature, the executive, the judiciary, and the public.

Considering their efforts in light of the Eight Guidelines, an evaluation that is retrospective by necessity, the MSPD has more than satisfied the steps proposed by the Eight Guidelines. Management was remarkably quick to recognize that the goals of the first four guidelines were not being satisfied. Although supervisors do not have the time to closely manage each case, by all accounts the situation was so dire that it did not require detailed case-by-case consideration; the sheer volume of cases combined with the generally overwhelmed response of attorneys and staff made it clear that neither reasonable workloads nor quality representation were likely to be achieved.

To the extent that it could, MSPD satisfied Guideline 5, which proposes examples of initial steps that can be taken when confronted with a caseload crisis. Guideline 5 recommends that

> Public Defense Providers consider taking prompt actions such as the following to avoid workloads that either are or are about to become excessive:
>
> - Providing additional resources to assist the affected lawyers;
> - Curtailing new case assignments to the affected lawyers;
> - Reassigning cases to different lawyers within the defense program, with court approval, if necessary;
> - Arranging for some cases to be assigned to private lawyers in return for reasonable compensation for their services;
> - Urging prosecutors not to initiate criminal prosecutions when civil remedies are adequate to address conduct and public safety does not require prosecution;
> - Seeking emergency resources to deal with excessive workloads or exemptions from funding reductions;
> - Negotiating formal and informal arrangements with courts or other appointing authorities respecting case assignments; and
> - Notifying courts or other appointing authorities that the Provider is unavailable to accept additional appointments.

Eight Guidelines at 12. The challenge that the MSPD faced, of course, particularly in light of the first three recommendations under this Guideline, had to do with the fact that it had no —additional resources ‖to spread around; nor could it simply refuse assignments for certain lawyers or reassign cases to other lawyers—because as it repeatedly indicated, *all* of its lawyers were carrying excessive caseloads.

Though MSPD lacked additional resources to redistribute, what it did instead was to repeatedly institute internal cost-cutting measures to ensure that it was operating in the most cost-effective manner possible. These measures included, *inter alia*:

- Salary and promotion freezes (even as attorneys and staff were delivering pizzas and selling beer at sporting events to make ends meet);
- Hiring freezes;
- Closure of juvenile offices in St. Louis and Kansas City;
- Closure of the Alternative Sentencing Office in order to convert 8.5 FTE's to attorney positions;
- Encouraging attorneys to perform administrative tasks such as filing and answering telephones due to the lack of support staff;
- Cutting overtime for non-attorney staff;
- Continuing to use outdated technology, including aging copy machines and inadequate voicemail; and
- Cutting back on training (where training funds were diverted to pay for bar dues and computer lines, leading to the elimination of secretarial training, new employee orientation, and —specialty ‖training, such as juvenile, capital and appellate training).

In 2007, the legislature provided $1.15 million specifically for contract cases in an effort to provide lawyers relief. But as Director Robinson explained, in Missouri, —It's actually a step backward, ‖because the MSPD is far more cost-effective at handling cases, and it received nothing, even though it needed approximately ten times more than that which was allotted to contract cases.

We were not able to obtain much information in our 2009 visit about potential efforts to reclassify minor misdemeanors, though this was a recommendation in our 2005 report. We agree with the ABA that this option is worth pursuing. However, the scope of the problem in Missouri is such that this approach could in no way be considered a total —fix. ‖

MSPD has pursued resources as consistently and aggressively as any other public defender we have seen, and yet it remains 49th in the nation among statewide systems. It has attempted to notify courts that it is unavailable, in many cases, to take appointments. The lower courts appear to have deferred to the Supreme Court (as a court with some power over policy), and the Legislature. In sum, Guideline 5, which represents the public defender's efforts to make internal changes as well as seeking relief externally, has been more than satisfied by MSPD's efforts over the years.

Guidelines 6, 7, and 8 have likewise been satisfied by MSPD's efforts to declare particular offices —unavailable ‖for the assignment of cases. MSPD decided to seek relief from appointment in lieu of withdrawal consistent with the ethical obligations to existing clients, and the principle recognized by the Eight Guidelines that it is generally better to prevent appointment than to seek withdrawal.[37] Nor did MSPD rest when the trial court refused to cease appointing particular cases. As proposed by Guideline 8, the MSPD appealed the decision, while —continu[ing] to provide representation. ‖ Eight Guidelines at 20. One step not yet taken by MSPD, but urged by the Guidelines —[w]hen alternative options . . . are exhausted, insufficient, or unavailable, ‖is to enlist the help of a private law firm to pursue civil litigation on a pro bono basis. Eight Guidelines at 17.

In sum, although the ABA's Guidelines are just that, guidelines, MSPD has gone above and beyond the suggestions they provide—mounting a unified, organized, long-term campaign

[37] *See* Eight Guidelines at 16 (—Because lawyers have as their primary obligation the responsibility to represent the interests of current clients, withdrawals from representation [are] less preferable than seeking to halt the assignment of new appointments. ‖).

on all fronts, including a substantial legislative effort cut short by executive veto—a campaign that has resulted in next to nothing. MSPD, to its great credit, has placed itself, for the good of its clients, —in an extremely awkward situation since on the one hand those in charge of the defense program have made clear that, in their professional judgment, caseloads are excessive and the lawyers providing direct client services are being forced to violate their ethical responsibilities, yet relief is unavailable. ‖ Eight Guidelines at 20. At this stage, there seems no room to doubt that as a consequence of a caseload crisis that has been essentially ignored for well over a decade,

> Defense lawyers are constantly forced to violate their oath as attorneys because their caseloads make it impossible for them to practice law as they are required to do according to the profession‘s rules. They cannot interview their clients properly, effectively seek their pre-trial release, file appropriate motions, adequately prepare for hearings and perform countless other tasks that normally would be undertaken by a lawyer with sufficient time and resources. Yes, the clients have lawyers, but lawyers with crushing caseloads who, through no fault of their own, provide second rate legal services simply because it is not humanly possible for them to do otherwise.

Eight Guidelines at 23.

Section IV. Conclusion

Caseload Crisis

Our findings lead to the inescapable conclusion that MSPD is confronting an overwhelming caseload crisis, one of the worst of its kind in the nation—a crisis so serious that it has pushed the entire criminal justice system in Missouri to the brink of collapse. The severity of this crisis has been forecasted for years, by those closest to it, but next to nothing has been done. And now the situation is as urgent as it is dire.

Haunting reports from attorneys and staff tell of lawyers whose greatest achievement at times is just showing up; when they arrive, however, they are grossly unprepared, lacking the research, the investigation, and the client contact necessary to separate mere presence from

effective representation. In addition to their lack of preparation—a deficiency that at this point is structural—these lawyers are often weary, both physically and, as some have described, spiritually. They work so hard for so little, and yet they are often embarrassed by the work they manage to do, particularly when they must confront, time and again, the panic, frustration and disappointment of their clients. As the astonishing turnover rates over the years have demonstrated, most attorneys placed in this untenable position burn out—reaching a point where they can take it no longer.

We feel compelled to recognize, however, the courage displayed by those MSPD attorneys who forge ahead, out of a deep commitment to the well-being of their clients, as well as a strong belief that an adversarial legal system requires meaningful lawyering on both sides to be just. These lawyers work, to their great credit, in conditions that would drive (indeed, have driven) many of the most dedicated away. Director Robinson may have put it best when he said that the public defenders are —doing the best they can in their absolutely heroic efforts in what they're doing. The fact is they do good work, but they have too much work to do. ‖ The stories these defenders shared with us, which reflected a remarkable combination of candor, humility, and genuine personal concern for the poor people they serve on a daily basis, speak volumes about the caliber of people MSPD is lucky enough to employ. They, in so many ways, reflect the very best of the bar.

But bravery will not buy groceries for an attorney's family, and a dedication to justice cannot create more hours in the day for a Lexis search. The caseload crisis—which has spiraled out of control even with the use of inappropriate and overbroad determinations of non-indigency—has placed MSPD's attorneys in the cruelest of positions, one in which they are virtually guaranteed to fail, despite efforts that could fairly be described as heroic.

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Earlier this year, the tragic crash of a commuter plane in Buffalo, New York sent chills across the country. The investigation that followed revealed that the pilots were underpaid, overworked, and that a combination of fatigue and poor training likely contributed to the accident. People across the country expressed their outrage that commuter pilots were paid so much less than pilots for major carriers, noting that one of the co-pilots had been forced to live at home with her parents because she could not afford to live on her own. Many concluded that the great tragedy of this event was that it was entirely predictable, and therefore preventable.

For close to a decade, MSPD has received no substantial increase in appropriations, despite the fact that year-by-year, MSPD has submitted budgets demonstrating that it is seriously under-funded and overloaded with cases. All three branches of government are on notice that Missouri has been operating a constitutionally inadequate system for some time now. MSPD has gone to the trial courts, to the courts of appeal, to the legislature, and to the governor. Yet the situation remains the same.

And so each day in Missouri, the State places the lives of poor citizens into the hands of attorneys who are underpaid, overworked, and badly supervised. We are not the first to say that Missouri‘s criminal justice system is heading for disaster, one which is both predictable and preventable. Missouri‘s public defender system stands at the bottom of its sister states in terms of resources, and the results are alarming. Missouri‘s public defender system has reached a point where what it provides is often nothing more than the illusion of a lawyer. There is nothing more dangerous in the criminal justice system than the illusion of a lawyer.

Exhibit BB

IN THE MISSOURI COURT OF APPEALS
SOUTHERN DISTRICT

TODD WOODHAM,	)	
	)	
	)	
Appellant,	)	
	)	No. SD35211
vs.	)	
	)	
STATE OF MISSOURI,	)	
	)	
Respondent.	)	

MOTION TO WITHDRAW DUE TO EXCESSIVE CASELOAD

COMES NOW Ellen H. Flottman, District Defender, and moves to withdraw as counsel in this case because counsel is unable to provide ethical, effective and competent representation to appellant because of counsel's excessive caseload. In support, counsel submits:

1. Counsel is the District Defender of the Central Appellate Office of the Missouri State Public Defender System.

2. The Supreme Court of Missouri has held that the rules of professional conduct impose on all attorneys an ethical duty to provide effective assistance of counsel to all of their clients, and that attorneys violate these rules if they "accept[] a case that results in a caseload so high that it impairs [their] ability to provide competent representation, to act with reasonable diligence, and to keep the client reasonably informed." ***State ex rel. Mo. Pub. Def. Comm'n v. Waters,*** 370 S.W.3d 592, 607 (Mo. banc 2012) (citing Rules 4-1.1, 4-1.3 and 4-1.4).

3. The Court has held that these duties apply not just to new clients, but to existing clients, "so that an attorney's acceptance of a new case violates Rule 4-1.7 if it compromises [his or] her ability to continue to provide effective assistance to [his or] her other clients." ***Id***. "[A] lawyer shall not represent a client if the representation involves a concurrent conflict of interest, which exists if there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client." ***Id***. at 607-08 (citing Rule 4-1.7(a)(2); internal quotation marks omitted). "[A] conflict of interest is inevitably created when a public defender is compelled by his or her excessive caseload to choose between the rights of the various indigent defendants he or she is representing." ***Id***. at 608 (citation and internal quotation marks omitted).

4. Rule 4-1.16(a) provides, in relevant part, that "a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if: (1) the representation will result in violation of the rules of professional conduct or other law[.]"

5. Furthermore, Rule 4-5.1 provides that a supervisor in a law firm "shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that all lawyers in the firm conform to the Rules of Professional Conduct." This duty requires the supervisor to "monitor the workloads of subordinate lawyers to ensure that the workload of each lawyer is appropriate. This involves consideration of the type and complexity of cases being handled by each lawyer; the experience and ability of each lawyer; the

resources available to support [the lawyer]; and any non-representational responsibilities assigned to the subordinate lawyers." ABA Formal Opinion 06-441 at 7 (E76).

6. Undersigned counsel supervises nine attorneys – two of whom handle capital postconviction appeals and one of whom handles sexually violent predator appeals. Six of the ten attorneys have been in the office for less than two years, and three of them are in their very first non-clerkship law job.

7. Comment 2 to Rule 4-1.3 mandates that "[a] lawyer's work load must be controlled so that each matter can be handled competently."

8. The ABA itself does not endorse a specific numerical caseload standard, but requires that "[n]ational caseload standards should in no event be exceeded." *ABA Eight Guidelines of Public Defense Related to Excessive Workloads* (August 2009) at 8-9 (copy attached); ABA Formal Opinion 06-441 at 4 n. 10. The referenced national caseload standard calls for counsel to be assigned no more than 25 appeals per year. *ABA Eight Guidelines* at 9 n. 30.

9. The attorneys in this office are carrying the following caseloads:

Ellen Flottman (28 years experience): 71 open cases

William Swift (28 years experience, handles capital): 8 open cases

Amy Bartholow (20 years experience, handles capital): 16 open cases

Chelsea Mitchell (7 years experience, handles SVP): 25 open cases

Sam Buffaloe (6 years experience): 73 open cases

Casey Taylor (6 years experience): 45 open cases

Jedd Schneider (1.5 years experience):	50 open cases
Christian Lehmberg (1.5 years experience):	45 open cases
Carol Jansen (6 months experience):	36 open cases
Katie Curry (4 months experience):	31 open cases[1]

Undersigned counsel cannot ethically assign an attorney to Mr. Woodham's case.

10. Undersigned counsel, the individual attorneys in her office, and other Public Defender System attorneys are unable to accept representation of Mr. Woodham while also providing ethical, effective and competent representation to existing clients. Accepting new cases at this time would force her, the attorneys in her office, and other Public Defender System attorneys to choose amongst their clients as to whom to provide ethical, effective and competent representation. Doing so would force them to violate or risk violating Rules 4-1.1 (competence), 4-1.3 (diligence), 4-1.4 (communication), and 4-1.7 (conflict of interest), as well as the Sixth Amendment right to effective assistance of counsel.

11. Undersigned counsel is currently attorney of record. If counsel must represent appellant, counsel will be unable to comply with the Rules of Professional Conduct, and will be unable to fulfill counsel's constitutional obligations to provide effective assistance of counsel under the Sixth and Fourteenth Amendments to the United States Constitution and Article I, Sections 10 and 18(a) of the Missouri Constitution. Appellant will be denied his rights to ethical and competent counsel, effective assistance of counsel, conflict-free

[1] See table 1 attached.

counsel, right to a speedy appeal, and due process under the Rules of Professional Conduct and these federal and state constitutional provisions.

WHEREFORE, counsel respectfully requests that this Court grant her motion to withdraw.

12. Further affiant sayeth naught.

Respectfully submitted,

/s/ Ellen H. Flottman

Ellen H. Flottman, Mo Bar No. 34664
Attorney for Appellant
1000 W. Nifong, Bldg. 7, Ste. 100
Columbia, MO 65203
Phone: 573-777-9977, Ext. 323
Fax: 573-777-9974
E-Mail: Ellen.Flottman@mspd.mo.gov

STATE OF MISSOURI)
) ss.
COUNTY OF BOONE)

On this 6th day of November, 2017, before me personally appeared Ellen H. Flottman, known to me to be the person who executed the foregoing Motion to Withdraw Due to Excessive Caseload, and acknowledged to me that she executed same for the purposes therein stated.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal, in Columbia, Missouri, the day and year first above written.

Notary Public

My Commission Expires: _____

Certificate of Service

I hereby certify that on this 6th day of November, 2017, the foregoing was placed for delivery through the Missouri e-Filing System to Shaun Mackelprang, Assistant Attorney General, at Shaun.Mackelprang@ago.mo.gov, and was mailed, postage prepaid, to Todd Woodham, Reg. No. 1020373, Algoa Correctional Center, 8501 No More Victims Road, Jefferson City, MO 65102.

/s/ Ellen H. Flottman

Ellen H. Flottman

Exhibit CC

MISSOURI STATE PUBLIC DEFENDER SYSTEM

Trial Division
210 Adams Street
Jefferson City, Missouri 65101
Telephone: 573-526-3266 Fax: 573-526-1115

October 30, 2017

Via Facsimile Only
Office of the Chief Disciplinary Counsel
3327 American Avenue
Jefferson City, Missouri 65109
(F) 573-635-2240

Dear Sir or Madam,

I am the District Defender in the Area 19 Public Defender Office in Jefferson City, Missouri. I am aware of my obligations under the rules of professional conduct. I am writing to report that my excessive caseload prevents me from fulfilling each of my obligations set out in the rules of professional conduct.

I have discussed this matter with my supervisor, who advised that the agency has no additional lawyers that can be assigned to Area 19 and that every public defender office is overloaded with cases.

I have attempted to control my caseload by: requesting additional resources from my supervisor; speaking with my judges; by filing motions to decline representation; and by filing motions to withdraw from representation. I even sent some cases to my supervisor stating that I already had too many cases and could not take the cases I sent (the cases were returned to me). My attempts to control my caseload have not yet reduced my caseload to a manageable level. I will continue to make efforts to control my caseload until such time as I am in compliance with the rules.

If you need additional information, I am happy to try to provide it.

Sincerely,

Justin Carver #52759

* * * Communication Result Report (Oct. 30. 2017 3:46PM) * * *

1) MISSOURI PUBLIC DEFENDER
2)

Date/Time: Oct. 30. 2017 3:45PM

File No.	Mode	Destination	Pg(s)	Result	Page Not Sent
0693	Memory TX	5736352240	P. 2	OK	

Reason for error
E. 1) Hang up or line fail
E. 2) Busy
E. 3) No answer
E. 4) No facsimile connection
E. 5) Exceeded max. E-mail size
E. 6) Destination does not support IP-Fax

MISSOURI STATE PUBLIC DEFENDER SYSTEM
Trial Division District Office Area 19
210 Adams Street
Jefferson City, Missouri 65101
Telephone: 573-526-3266 Fax: 573-526-1115

FAX TRANSMITTAL MEMO

The information contained in this facsimile may be confidential and may also be legally protected by the attorney-client privilege. The information is intended only for the use of the individual or entity to which it is addressed. If you are not the intended recipient, or if you are not the employee or agent responsible for the delivery to the intended recipient, you are hereby notified that any use, dissemination, distribution, or copying of this communication is strictly prohibited. If you have received this transmission in error, please notify by telephone (number listed above), and return the original transmission to the address above via U.S. Postal Service. Thank you!

Please Deliver the Following Pages to:

Name: _____ Fax No: 635-2240

Re: _____

Date: 10/30/17 Total Pages: 2
Including Cover Sheet

From: J. Carver

Message: Please see attached.
Thank you.

MISSOURI STATE PUBLIC DEFENDER SYSTEM

Trial Division District Office Area 19
210 Adams Street
Jefferson City, Missouri 65101
Telephone: 573-526-3266 Fax: 573-526-1115

FAX TRANSMITTAL MEMO

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Please Deliver the Following Pages to:

Name: _____ Fax No: 635-2240

Re: _____

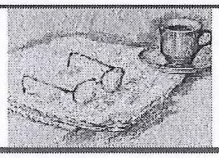
Date: 10/30/17 Total Pages: 2
Including Cover Sheet

From: J. Carver

Message: Please see attached.
Thank you.

Exhibit DD

Permanent Record - Reviewed with Employee [11/17/2016]



Appraisal Form

Created By: Rod Hackathorn

11/07/2016 12:08 PM [Modified 11/10/2016 12:38 PM]

Employee: Dawn N Calvin

Area:	31
Hire Date:	10/22/2015
Tenure in current class:	10/22/2015
Functional Job Title:	Assistant Public Defender
Classification:	0400 Assistant Public Defender I
Employee Number:	PD01261
Period Covered:	10/22/2015 (From Date) 10/31/2016 (To Date)
Timesheet Approver(s):	Rod Hackathorn /Area031/MSPD, Christopher Hatley /Area031/MSPD

Appraisal Summary : Successful

Attorney Trial and Capital Appraisal

Performance Rating:

- O = Outstanding (Performance at this level far exceeds expectations. It represents a level of performance that is rare and unusual.)
- HS= Highly Successful (Performance at this level exceeds expectations to a significant degree.)
- S = Successful (Performance at this level meets expectations. It represents what is expected of a trained, experienced successful employee.)
- IE = Improvement Expected (Performance at this level falls somewhat below what is expected of a trained, experienced employee.
- U = Unsatisfactory (Performance at this level fails to meet the requirements of the position.)

COMPONENT	EXPECTATIONS	COMMENTS	O	HS	S	IE	U
COUNSELOR							
CLIENT COUNSELING	Treats clients with respect, recognizing their issues and goals. Acquires client's trust and cooperation. Maintains timely and consistent contact so client is fully informed. *(Interviewing Techniques, Client Interaction)*	In reviewing her files, it appeared that for the first six months or so, Dawn did quite well at staying close to guidelines for client contact with her incarcerated clients. During that time she was being assigned misdemeanors and PVs only in Greene County. Once she was added to the C-D felony rotation and her caseload began to rise as well as her number of incarcerated clients, she encountered more difficulty in keeping up with client contact. The worst instance of this I saw was a case where initial contact at the jail did not occur until 102 days. There were short visits before court appearances at court. Also, it was noted in that file that she attempted a jail visit 30 days in but client had been sent to another facility due to overcrowding; regardless, further attempts should have been made to visit client sooner. When I met with Dawn to discuss this, she agreed this is an area that she needs to improve on. She brought with her a list of her incarcerated clients she had created				X	

PENGAD 800-631-6989 EXHIBIT 48 12.20.17

		that she was now using to keep track of their last visit and when another was needed. She currently has 34 clients in custody. We also talked about maintaining control during client meetings. She usually lets the client talk as long as they want at every meeting which means most of her jail visits are 45 minutes or longer each which makes it difficult to get more people seen. For out of custody clients, she briefly meets with them at their first court date and asks them to call and schedule an office visit. For the half or so that do, Dawn lets the clerks know when she is available and they schedule those appointments. For the half or so that don't call, Dawn tries to reach out to them by phone. There were notes in several of her files detailing contact with clients' family members.					
LEGAL SKILLS	Legal advice is accurate and complete. Identifies and effectively uses legal issues. *(Legal Research and Continuing Legal Education, Recognizing Legal Issues, Written Motion Practice, Investigation, File Maintenance)*	Dawn is good at spotting legal issues in her cases. In each file I reviewed there was a copy of relevant statutes and any legal research that had been done. Great notes in her files detailing what had been done so far regarding jail visits, negotiations, investigation, family contact, etc. Different parts of her files were tabbed making it easy to locate what you need. Examples of written motion: [redacted].pdf			X		
DISPOSITION ADVOCACY	Uses legal skills, experience and factual knowledge to achieve best poss ble outcome for client. *(Negotiation Skills, Sentencing, Willingness To Try Cases)*	Dawn is good at negotiating. As stated above, there were notes in many of her files showing counter offers and reasons backing those counter offers. She has had success in convincing the state to reduce some felonies to misdemeanors. Recently, having heard the PA's office wanted to move property crimes, she took 10 of her files over there and spent 3 1/2 hours negotiating good deals for her clients. She is a good sentencing advocate as well. In the three bench trials she lost, she still convinced the judge to give her clients probation and one of		X			

		them received an SIS. She recently had her first client get sent to DOC after a contested sentencing and it upset her.					
TRIAL ADVOCATE							
TRIAL SKILLS	Persuasively presents effective theory of defense. *(Preparation of Witnesses, Use of Experts, Courtroom Skills, Courtroom Presence)*	Dawn has not had a jury trial yet. She has had 9 misdemeanor bench trials and 6 of those resulted in not guilty verdicts. A couple of our APD IVs who have seen her in action during a few of those misdemeanor trials, have commented to me about how well she did and that she was obviously prepared. She has a misdemeanor set for jury trial that is likely to go next month. I went over that case with her and it is discussed below at the bottom of the file review section.			X		
RECORD PRESERVATION	Effectively preserves legal issues for post-trial litigation. *(Post-trial Proceedings)*	Although I did not have the opportunity to observe her bench trials, I have seen her representation during a preliminary hearing. She did raise objections appropriately. She did tell me that one of our senior attorneys informed her of an objection she missed after one of her bench trials. Even if she had objected and it was sustained it would not have affected the outcome, but nonetheless, it has made her realize this is an area she wants to learn and improve.			X		
COLLEAGUE							
PROFESSIONAL RELATIONS	Professional interactions are characterized by integrity and respect for others. *(Ethics and Integrity, Working Independently, Interaction with Others, Public Defender Staff, Calendar and Case Management, Punctuality and Attendance)*	Even when I know she is feeling overwhelmed from her high caseload, she maintains a professional attitude both in the office and in court. Keeps up her calendar, making sure not to let any court appearances slip through the cracks which is not easy to do with the high volume she is handling. Keeps core office hours and asks for time off in accordance with office policy.		X			
INSIGHT	Acts with awareness of the larger picture. *(Administrative Tasks)*	For the most part completes administrative tasks in a timely manner. If we were still time logging I might have marked this section as "improvement expected" as she regularly waited until time logs were due to get them completed.			X		

Attached is a breakdown of Dawn's open caseload. She admits it is a bit inflated as there are several recently disposed of cases that need to be closed.

Dawn open caseload.pdf

Goals & Objectives for next Appraisal period:

Goals Dawn and I discussed are:

1. First chair a jury trial.

2. Make jail visits more of a priority. Get closer to the guidelines on initial and ongoing client contact.

3. Become more familiar with potential evidentiary issues and be prepared to object and make the proper objection at trial.

Attached Appraisal File Review:

Calvin file review 1.doc Calvin file review 2.doc Calvin file review 3.doc Calvin file review 4.doc

Calvin file review 5.doc Calvin file review 6.doc Calvin file review 7.doc Calvin file review 8.doc

Calvin file review 9.doc [redacted] File Review10.doc

All 10 of the files I reviewed had an indigency application, and 7 of them had a filled out and easily locatable initial client interview form.

Client contact in each file:

[redacted] - jail - closed file: 0 day letter - not qualifying, 12 days court - qualifying initial contact (met privately/sign language interpreter needed), 14 - jail, 2 - court, 28 - court, 6 - letter - qualifies, 13 - jail, 9 - court

[redacted] - jail - closed file: 4 days court - not qualifying (hereafter for this and other clients summarized in this section, a court contact is a non-qualifying contact unless stated otherwise), 5 days initial contact at jail, 5 - jail, 2 - jail, 1 - jail - client ROR 4 days after this jail visit, 7 - phone - qualifies, 1 - court, 28 - court, 32 - phone - qualifies, 2 - court, 41 - phone - qualifies, 2 - court

[redacted] - out of custody - closed file: 0 day letter - not qualifying, 6 days initial contact by phone - qualifies, 1 - court, 49 - court, 34 - email - qualifies, 17 - office visit, 12 - phone/court - qualifies, 6 - phone - qualifies

[redacted] - jail - closed file: 0 day letter - not qualifying, 5 days initial contact at the jail, 2 - court, 2 - jail, 3 - court, 28 - court

[redacted] - jail - closed file: 1 day initial contact at jail, 2 - jail, 3 - jail, 1 - letter, 14 - court, 32 - jail, 4 - jail, 6 - court

[redacted] - jail - open file: 0 day letter - not qualifying, 32 - court, 11 - court, 59 - jail (4 days after the file review)

[redacted] - jail - open file: 0 day letter - not qualifying, 36 - court, 13 - court (ROR), 82 - court

[redacted] - jail - open file: 0 day letter - not qualifying, 29 days initial contact at jail (3 days after file review but still prior to first court date)

[redacted] - jail - open file: 0 day letter - not qualifying, 30 days initial contact at jail/court, 15 - court, 46 - jail, file review 11 days after last contact

[redacted] [redacted] - jail - closed file: 0 day letter - not qualifying, 15 days initial contact at jail, 5 - jail/court - qualifies, 4 - court

Summary of contact for clients in custody:

Initial contact occurred within 7 days in 2 of the files. The "misses" were 12 days, 9 days, 102 days (seen in court twice before that but no private meeting), 49 days, 29 days, 30 days, and 15 days. Ongoing contact within 31 days occurred 10 times. The "misses" were 36 days, 47 days, and 61 days.

I conducted one case review with Dawn on State v. [redacted] It is a misdemeanor harassment (2 counts) set for jury trial in about a month. She has a good grasp of the facts and has developed a theory of defense. She has been to the scene with our investigator and taken pictures. She has done some witness interviews and will be requesting funds to do a deposition of the two alleged victims. She has identified a few case specific issues to address in voir dire. Still needs to prep client for potentially testifying.

Comments and Follow-up:

Dawn demonstrates a strong backbone in court. It's obvious she cares abvout her clients and our mission. She maintains an upbeat attitude even under the pressure and stress of an overly burdensome caseload. I recommend she be promoted to APD II.

Signature: _____ _____

Employee Date

Employee Comments:

Exhibit EE

Client Contact

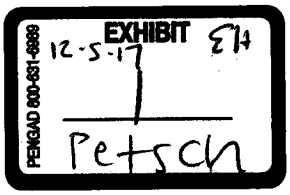
Created On: 10/13/2002 at 04:10 PM
Category: 06. Client Representation

Joel Elmer
10/13/2002 04:10 PM

To: David Bell/Area016/MSPD@MSPD, Timothy Burdick/Area016/MSPD@MSPD, Gretchen Eikermann/Area016/MSPD@MSPD, Jeff Griffin/Area016/MSPD@MSPD, Joseph Guarino/Area016/MSPD@MSPD, Burton Haigh/Area016/MSPD@MSPD, S. Chase Higinbotham Jr./Area016/MSPD@MSPD, Jerritt Hooper/Area016/MSPD@MSPD, Rick Johnson/Area016/MSPD@MSPD, Horton Lance/Area016/MSPD@MSPD, Miller Leonard/Area016/MSPD@MSPD, Madonna Limberg/Area016/MSPD@MSPD, Dimitra Massey/Area016/MSPD@MSPD, Pat McGinnis/Area016/MSPD@MSPD, Leon Munday/Area016/MSPD@MSPD, Stephen Patton/Area016/MSPD@MSPD, Ruth Petsch/Area016/MSPD@MSPD, William Raymond/Area016/MSPD@MSPD, Randy Schlegel/Area016/MSPD@MSPD, Todd Schultz/Area016/MSPD@MSPD, Nummi Setty/Area016/MSPD@MSPD, Tom Shanahan/Area016/MSPD@MSPD, David Suroff/Area016/MSPD@MSPD, Jeremy Weis/Area016/MSPD@MSPD, Jeremy Wieck/Area016/MSPD@MSPD, Ladarron Williams/Area016/MSPD@MSPD, Curtis Winegarner/Area016/MSPD@MSPD, Kirk Zwink/Area016/MSPD@MSPD

cc:

Subject: client contact documentation in the Lotus Notes e-file



As you know, you are to have contact with trial caseload clients within 7 days of assignment and thereafter at least every 30 days.

As you also know, all client contact or attempted contact is to be documented.

Effective immediately, I am requiring that, regarding trial caseload clients, all client contact or attempted contact be documented in the e-file in Lotus Notes, either by Memo to Case File or by use of the Client Appointment Form.

A case is considered to be part of your trial caseload if it is your case because I have assigned it to you directly, rather than simply because it appears on your preliminary hearing or arraignment docket. Such cases are noted by my typing of the phrase "trial caseload" in the District Defender Comments field in the Case Information Form.

As you should know, the substance of client contact is also to be documented. This substance does not have to be documented in the e-file; it can be documented either in the physical file or the e-file.

Documentation in the e-file is to include type of contact or attempted contact (e.g., "jail visit," "office visit," "telephone conversation" ("tc")). Attempts should be so designated (e.g., "def FTA for office meeting," "att. tc - left machine message"). This documentation should be in the subject line of the Memo to Case File or in the subject line of the Client Appointment Form. Any e-file documentation of the substance of the contact should be in the comments fields of those forms.

I will assume letters in the e-file were mailed to the client. Therefore, they do not need to be additionally documented in a Memo to Case File.

Regarding meeting the 7 days and 30 day rules, please remember:

-- Initial 7-day contact: If the client is in jail, this 7-day contact is to be a jail visit. If the client is on bond, the 7-day rule is met by a telephone call or a letter to the client in which the client is asked to immediately schedule an office meeting; if a telephone call is attempted but you are not able to talk to the defendant personally, the call is to be followed up by a letter in that first 7 days.

--Ongoing 30-day contact: If the client is in jail, this on-going contact is to be a jail visit. If the client is on bond, the contact is to be in the office if the client so desires; otherwise telephone or letter contact will be satisfactory, except that an initial office meeting must occur ASAP (if the client refuses, document such refusal) and except that ongoing office meetings are required as necessary to properly prepare the case for trial. Please remember that you are to be proactive in contacting bonded clients who fail to respond to your attempted contacts; you are to continue to make attempts to contact them and ultimately go into the field to look for them if they don't respond. Also, please remember you are to notify clients of all court dates, all warrants, and all continuance requests and other pleadings.

Regarding substance of client contact, please document all conveyance of plea offers, whether defendant wants the offer or not (and why), and what the client does want.

Many attorneys are already documenting client contact in the computer. I do not believe it is asking too much. In fact, after reviewing a lot of files this year, conducting many evaluations, and reassigning may caseloads, I am convinced that the best client contact and best representation is being provided by the attorneys that are doing this.

I also am convinced that in many cases we are not having proper contact with our clients and that this new requirement will allow me to better ensure that we do.

If I am able to ensure that we are having the required contact, not only do our clients benefit but I can promote attorneys, which I want to do. I cannot promote an attorney who is not having the required contact. Documenting client contact in the e-file will help make sure the contact is being had and will help make sure that it is there for me to see when it comes time for evaluation or promotion.

In my Memos to Case File assigning the case to your trial caseloads, I am now indicating whether the client is in custody or on bond. This will allow me to evaluate whether the type of contact you are having (e.g., jail vs. telephone) is sufficient. Therefore, if the custody status of your client changes subsequent to me assigning the case to you, please document it in a Memo to Case File of your own.

I'll be happy to discuss this with you if you have concerns.

Thanks.

Please beware of our below policy. For juvenile cases, once a case is post-arraignment, I expect the client contact to be documented in Lotus Notes. Pre-arraignment, it may be documented in the physical file.

----- Forwarded by Joel Elmer/Area016/MSPD on 09/04/2007 02:58 PM -----

MSPD *Local Office Policy*

Subject: Client Contact
Title: Client Contact
Area: Area016
Policy Type: Independent Local Policy

Effective Date: **06/14/2006**
Revised Date:

Joel Elmer
10/13/2002 04:10 PM

To: David Bell/Area016/MSPD@MSPD, Timothy Burdick/Area016/MSPD@MSPD, Gretchen Eikermann/Area016/MSPD@MSPD, Jeff Griffin/Area016/MSPD@MSPD, Joseph Guarino/Area016/MSPD@MSPD, Burton Haigh/Area016/MSPD@MSPD, S. Chase Higinbotham Jr./Area016/MSPD@MSPD, Jerritt Hooper/Area016/MSPD@MSPD, Rick Johnson/Area016/MSPD@MSPD, Horton Lance/Area016/MSPD@MSPD, Miller Leonard/Area016/MSPD@MSPD, Madonna Limberg/Area016/MSPD@MSPD, Dimitra Massey/Area016/MSPD@MSPD, Pat McGinnis/Area016/MSPD@MSPD, Leon Munday/Area016/MSPD@MSPD, Stephen Patton/Area016/MSPD@MSPD, Ruth Petsch/Area016/MSPD@MSPD, William Raymond/Area016/MSPD@MSPD, Randy Schlegel/Area016/MSPD@MSPD, Todd Schultz/Area016/MSPD@MSPD, Nummi Setty/Area016/MSPD@MSPD, Tom Shanahan/Area016/MSPD@MSPD, David Suroff/Area016/MSPD@MSPD, Jeremy Weis/Area016/MSPD@MSPD, Jeremy Wieck/Area016/MSPD@MSPD, Ladarron Williams/Area016/MSPD@MSPD, Curtis Winegarner/Area016/MSPD@MSPD, Kirk Zwink/Area016/MSPD@MSPD

cc:

Subject: client contact documentation in the Lotus Notes e-file

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Regarding meeting the 7 days and 30 day rules, please remember:

-- Initial 7-day contact: If the client is in jail, this 7-day contact is to be a jail visit. If the client is on bond, the 7-day rule is met by a telephone call or a letter to the client in which the client is asked to immediately schedule an office meeting; if a telephone call is attempted but you are not able to talk to the defendant personally, the call is to be followed up by a letter in that first 7 days.

--Ongoing 30-day contact: If the client is in jail, this on-going contact is to be a jail visit. If the client is on bond, the contact is to be in the office if the client so desires; otherwise telephone or letter contact will be satisfactory, except that an initial office meeting must occur ASAP (if the client refuses, document such refusal) and except that ongoing office meetings are required as necessary to properly prepare the case for trial. Please remember that you are to be proactive in contacting bonded clients who fail to respond to your attempted contacts; you are to continue to make attempts to contact them and ultimately go into the field to look for them if they don't respond. Also, please remember you are to notify clients of all court dates, all warrants, and all continuance requests and other pleadings.

Regarding substance of client contact, please document all conveyance of plea offers, whether defendant wants the offer or not (and why), and what the client does want.

Many attorneys are already documenting client contact in the computer. I do not believe it is asking too much. In fact, after reviewing a lot of files this year, conducting many evaluations, and reassigning may caseloads, I am convinced that the best client contact and best representation is being provided by the attorneys that are doing this.

I also am convinced that in many cases we are not having proper contact with our clients and that this new requirement will allow me to better ensure that we do.

If I am able to ensure that we are having the required contact, not only do our clients benefit but I can promote attorneys, which I want to do. I cannot promote an attorney who is not having the required contact. Documenting client contact in the e-file will help make sure the contact is being had and will help make sure that it is there for me to see when it comes time for evaluation or promotion.

In my Memos to Case File assigning the case to your trial caseloads, I am now indicating whether the client is in custody or on bond. This will allow me to evaluate whether the type of contact you are having (e.g., jail vs. telephone) is sufficient. Therefore, if the custody status of your client changes subsequent to me assigning the case to you, please document it in a Memo to Case File of your own.

I'll be happy to discuss this with you if you have concerns.

Thanks.

Previous Document Next Document
Return to View

Document History:
*/OU=Area016/O=MSPD - areaval

CN=Joel Elmer/OU=Area016/O=MSPD, CN=Leon Munday/OU=Area016/O=MSPD - ddval
Admin, [Approval], [HR Admin], [Local], LocalDomainServers, */Area016/MSPD - readers
Admin, [Approval], [HR Admin], LocalDomainServers, Joel Elmer/Area016/MSPD, Leon Munday/Area016/MSPD - authors

.....

Exhibit FF

Performance & Issues Entry Form

Created By: Christopher Hatley
03/02/2017 09:14 AM

Modified 03/02/2017 10:09 AM

Subject: Performance Review - Non Promotion

Category: File Review
Keyword:
Date: 03/02/2017

This Matter Concerns : Employee
Employee Name **Paul R. Duchscherer**
Employee Number PD00292
Functional Job Title Assistant Public Defender
Classification 0404 Assistant Public Defender IV
Tenure in Current Class 08/16/2007
Timesheet Approver (s) **Rod Hackathorn /Area031/MSPD, Christopher Hatley /Area031/MSPD**
Office Group : **Southwest Trial Office Group**
Area: 31

Description of Event or Issue: (field accepts attachments or you may type directly into the field)

We are conducting performance reviews of all the APD IVs in our office starting with those who have been in that position the longest. Paul is one of our longest tenured fours. Our predominant concern in conducting these reviews are client contact (unless we have noticed performance related issues in other areas).

Client Counseling

In the file reviews I did there were gaps of 3 months, 3 months, 5 months, 6 months, 6 months, 8 months, and even 13 months between qualifying contacts. I discussed with David that this method simply is not working and is in opposition to our guidelines for representation. I also told him that, given the huge caseloads, we understood that every 30 days may not be attainable. I asked him what he felt with his experience was attainable, and he replied that every 60 days could likely be done. I told him I agreed with that and asked him to devise a method to ensure he was seeing his clients at the jail, and contacting those in DOC, every 60 days regardless of whether there had been new developments in the case. He agreed. We get almost never get a client complaint about lack of contact concerning Paul which tells me he is keeping good contact with his clients and that he has a good relationship with them. The files I reviewed contained notes for each jail visit, although some were brief.

Christian County is a bit odd when it comes to client contact. The jail is an absolute hell hole and they do everything they can to discourage attorney/client meetings. However, the judges and bailiffs have always been willing to bring inmates up from the jail and allow our attorneys to have confidential client meetings in the jury rooms off the courtrooms. This is how Paul (and the other CC attorneys conduct "jail" visits". For the most part, it appears that he is either visiting with clients within 7 days of receiving the file or, at the very least, visiting with them prior to the first court date. David said he does try hard to make sure those initial contacts are done right away not just because of our guideline but also because it helps set a positive tone for the future attorney/client relationship.

Initial client interview forms weren't always filled out in the files I reviewed; however, as stated above, Paul does take good notes during his client visits and all the information that would be on that form can usually be found elsewhere in the file. In general, the files I reviewed were well documented.

Paul rarely conducts office visits with clients as most clients in Christian County either cannot make it up to our office or aren't willing to do so. Most client visits for out of custody clients are done by phone or in the meeting rooms at the courthouse.

Legal Skills

Paul is very good at spotting legal issues and demonstrates great instincts for the job. He brings interesting topics for discussion and assists in figuring out other issues that are brought up in our brainstorming sessions.

David wishes he had more time available for creative motion practice. His caseload and busy court schedule usually only allow for the doctoring of our boilerplate motions. He also only has time to prepare and submit suggestions in support when specifically requested by the judge. I noticed while doing the file reviews that the request for discovery was either filed late or not at all in several cases. David said he has improved on making sure that those are filed timely.

Paul makes good use of his assigned investigator. Files are well organized.

Disposition Advocacy

Paul is perhaps the best negotiator in the office. This is both a blessing and a curse. Paul routinely gets great results for his clients (even on serious charges) but rarely has trials of any sort. It is hard to take away anything definitive from this as for the past 12 years or so, Paul has been assigned to Christian County. Cases there almost always get worked out given the favorable offers made by the State.

Trial Skills and Record Preservation

See above.

Professional Relations and Insight

No concerns at all with Paul in these areas. Time sheets and expense forms are always submitted in a timely manner. Includes all the required information when submitting E-requests. Makes appropriate use of his assigned investigator and legal assistant. He maintains proper office hours. Keeps proper track of his court dates and is punctual to court. Well-like and respectful of others. Willing to help out coworkers when needed.

PD4.1.doc

PD4.2.doc

PD4.3.doc

PD4.4.doc

PD4.5.doc

PD4.6.doc

PD4.7.doc

Impact:

Comments and Follow-up:

Exhibit GG

Performance & Issues Entry Form

Created By: Kathleen Brown
09/26/2012 03:10 PM

Modified 03/13/2017 12:53 PM

Subject: [redacted] - Client Complaint

Category:
Keyword:
Date: 09/26/2012

This Matter Concerns: Employee
Employee Name: Michael E. Lungstrum
Employee Number: PD00548
Functional Job Title: Assistant Public Defender
Classification: 0402 Assistant Public Defender II
Tenure in Current Class: 11/16/2006
Timesheet Approver(s): Anthony Cardarella/Area007/MSPD, Kathleen Brown/Area007/MSPD
Office Group: G110 Office Group
Area: 07

Description of Event or Issue: (field accepts attachments or you may type directly into the field)

Call from Client 9/26/12 @ 3:11 - 3:23 PM
Can I have a different attorney? Says her current attorney does not want to talk to anyone she wants him to. Shoal Creek Detective (Aaron Benson) wants her attorney to call him as she has several cases from all over coming in. KCK Detective (Steven Brown) said 2 people ID her there and the DA wants to press charges. She talked to these detectives two weeks ago. She is wanting to know what charges they are going to file and the Detectives told her to have her attorney call them to find out. Basically she is wanting to know what new charges are coming. She has a receipt for the mouth swap she gave him, case number 09112-6B.
Aaron Benson, Shoal Creek Patrol Division Property Division 816-413-3425
I told her we cannot do anything for her in Kansas and some may find just our calling to find out charges from the detective as representing her. We can however see what is going on in MO / Jackson County.

Impact:

Comments and Follow-up:

Exhibit HH

EDITOR'S NOTE: Attorneys should modify this motion to make the most compelling argument on their behalf why withdrawal should be granted. This is not a one-size-fits all form motion. Paragraphs may be added or deleted to fit your situation.

It is more important to focus on what you cannot do in pending cases due to your excessive caseload than some overall statistic about caseload (such as a national standard statistic or a Rubin-Brown standard statistic.) You need to explain and demonstrate why your caseload is excessive and withdrawal should be granted. You need to show that you've had an overwhelming caseload in the recent past – which shows why you haven't been able to work up pending cases – and that your pending cases are overwhelming, as well. A single overall statistic does not capture this as well as showing your actual caseload does, and a single statistic is more subject to debate by judges and prosecutors. Because of this, Paragraphs 14 and/or 15 should be used cautiously and only if you understand how the national standard and Rubin-Brown standard operate and apply to you.

IN THE CIRCUIT COURT OF _____ COUNTY, MISSOURI
_____ JUDICIAL CIRCUIT

STATE OF MISSOURI,	)	
	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No. _____
	)	
_____,	)	
	)	
Defendant.	)	

MOTION TO WITHDRAW DUE TO EXCESSIVE CASELOAD

COMES NOW _____, Assistant Public Defender, and moves to withdraw as counsel in this case because counsel is unable to provide ethical, effective and competent representation to Defendant because of counsel's excessive caseload. In support, counsel submits:

MSPD - 0039212

PENGAD 800-631-6989 EXHIBIT 54 12.20.17

1. Counsel is an Assistant Public Defender in the Area _____ Public Defender Office.

2. The Missouri Supreme Court has held that the rules of professional conduct impose on all attorneys an ethical duty to provide effective assistance of counsel to all of their clients, and that attorneys violate these rules if they "accept[] a case that results in a caseload so high that it impairs [their] ability to provide competent representation, to act with reasonable diligence, and to keep the client reasonably informed." ***State ex rel. Mo. Pub. Def. Comm'n v. Waters***, 370 S.W.3d 592, 607 (Mo. banc 2012)(citing Rules 4-1.1, 4-1.3 and 4-1.4).

3. The Court has held that these duties apply not just to new clients, but to existing clients, "so that an attorney's acceptance of a new case violates Rule 4-1.7 if it compromises [his or] her ability to continue to provide effective assistance to [his or] her other clients." ***Id.*** "[A] lawyer shall not represent a client if the representation involves a concurrent conflict of interest, which exists if there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client." ***Id.*** at 607-08 (citing Rule 4-1.7(a)(2); internal quotation marks omitted). "[A] conflict of interest is inevitably created when a public defender is compelled by his or her excessive caseload to choose between the rights of the various indigent defendants he or she is representing." ***Id.*** at 608 (citation and internal quotation marks omitted).

4. Rule 4-1.16(a) provides, in relevant part, that "a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of

a client if: (1) the representation will result in violation of the rules of professional conduct or other law[.]"

5. During the past three months [or other chosen time period], counsel has been assigned the following new clients' cases: (list and describe, e.g., State v. Jones, Case No. XXX-XXXXX – first degree murder). EDITOR'S NOTE: NOTES CAN GENERATE A LOT OF THE STATISTICAL DATA FOR YOU; YOU CAN ALSO ATTACH LISTS OF CASES TO YOUR MOTION AS EXHIBITS INSTEAD OF LISTING THEM WITHIN THE MOTION.

6. In addition to the above new cases, counsel currently has open the following clients' cases which remain pending from prior months (list and describe as above):

7. During the past three months [or other chosen time period], counsel has also concluded representation in the following clients' cases: (list and describe disposition, e.g., State v. Smith, Case No. XXX-XXXX – felony stealing, guilty plea May 15, 2017; State v. Doe, Case No. XXX-XXXX – possession of controlled substance, jury trial May 17-18, 2017). Counsel's work in concluding these cases reduced the time available to work on counsel's other pending cases and newly assigned cases.

8. Counsel currently has the following cases set for trial: (list and describe, e.g., State v. Barnes, Case No. XXX-XXXX – first degree robbery, trial set November 15-16, 2017).

9. The Area _____ Public Defender Office has a shortage of support staff to assist counsel in preparation of cases. For example, the Office has only _____ investigators to serve _____ attorneys.

10. Counsel does not have adequate time or resources to ethically, effectively and competently represent Defendant, in addition to counsel's other clients. If counsel must represent Defendant, counsel will be forced to choose amongst counsel's clients as to whom to provide ethical, effective and competent representation. Counsel will be forced to violate or risk violating Rules 4-1.1 (competence), 4-1.3 (diligence), 4-1.4 (communication), and 4-1.7 (conflict of interest), as well as the Sixth Amendment right to effective assistance of counsel.

11. Due to excessive caseload counsel is unable to [describe in as great detail as possible what you are unable to do in cases].

12. Comment 2 to Rule 4-1.3 mandates that "[a] lawyer's work load must be controlled so that each matter can be handled competently."

13. ABA Formal Opinion 06-441 requires that "[i]f a lawyer believes that [his or] her workload is such that [he or] she is unable to meet the basic ethical obligations required of [him or] her in the representation of a client, [he or] she must not continue the representation of that client or, if representation has not yet begun, [he or] she must decline the representation." ABA Formal Opinion 06-441 at 4 (copy attached).

14. The ABA itself does not endorse a specific numerical caseload standard, but requires that "[n]ational caseload standards should in no event be exceeded." *ABA Eight Guidelines of Public Defense Related to Excessive Workloads* (August 2009) at 8-9

(copy attached); ABA Formal Opinion 06-441 at 4 n. 10. The referenced national caseload standard calls for counsel to be assigned no more than 150 felonies, 400 misdemeanors, 200 juvenile court cases and/or 25 appeals per year. *ABA Eight Guidelines* at 9 n. 30. Undersigned counsel exceeds this standard because undersigned counsel had _____ newly assigned cases during the proceeding twelve months, many of which remain pending. During the past twelve months, counsel has been assigned the following cases: (list and describe as above). The cases which remain pending are listed in Paragraph 6, *supra*.

15. The Rubin-Brown accounting firm, in conjunction with the ABA, developed empirically-based caseload standards specifically for the Missouri Public Defender. *See The Missouri Project: A Study of the Missouri Public Defender System and Attorney Workload Standards* (June 2014)(copy attached). Undersigned counsel exceeds those standards because (explain how).

16. If counsel must represent Defendant, counsel will be unable to comply with the Rules of Professional Conduct, and will be unable to fulfill counsel's constitutional obligations to provide effective assistance of counsel under the Sixth and Fourteenth Amendments to the United States Constitution and Article I, Sections 10 and 18(a) of the Missouri Constitution. Defendant will be denied his rights to ethical and competent counsel, effective assistance of counsel, conflict-free counsel and due process under the Rules of Professional Conduct and these federal and state constitutional provisions.

WHEREFORE, counsel respectfully requests that counsel be granted an evidentiary hearing in this case [IF YOU NEED ONE TO PROVE UP YOUR

CASELOAD ALLEGATIONS; IF NOT, DELETE], and thereafter, that counsel be permitted to withdraw from representation of Defendant herein.

Respectfully submitted,

_____

Assistant Public Defender
Bar No. XXXXX
Address:
Telephone:
FAX:
Email:

CERTIFICATE OF SERVICE

IN ADDITIONAL TO PROSECUTOR'S NAME AND ADDRESS, INCLUDE CLIENT'S NAME AND ADDRESS ON CERT. OF SERVICE TO PROVE THAT YOU ARE KEEPING CLIENT INFORMED OF YOUR MOTION TO WITHDRAW FROM CASE. RULES OF PROFESSIONAL CONDUCT REQUIRE THIS. YOU MUST ALSO INFORM THE CLIENT WHEN WITHDRAWAL IS GRANTED.

_____

MSPD - 0039217

Exhibit II

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
CENTRAL DIVISION

SHONDEL CHURCH, et al.,)
)
Plaintiffs,)
) Case No.
vs.) 17-04057-CV-C-NKL
)
STATE OF MISSOURI, et al.,)
)
Defendants.)

VIDEOTAPED DEPOSITION OF KATHLEEN LEAR
JANUARY 8, 2018
Taken on behalf of State Defendants
State of Missouri and Eric Greitens

I N D E X

EXAMINATIONS	Page
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Redirect Examination by Mr. Moore	66
Cross-Examination by Ms. Steffan	101
Recross-Examination by Ms. Shipma	106
Further Redirect Examination by Mr. Moore	108

EXHIBIT INSTRUCTIONS
Original exhibits were retained by the court reporter and will be copied and attached to copies of the transcript.

EXHIBITS

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Exhibit 1	10
Fiscal Year 2016 Annual Report	

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
CENTRAL DIVISION

SHONDEL CHURCH, et al.,)
)
Plaintiffs,)
)
vs.) Case No. 17-04057-CV-C-NKL
)
STATE OF MISSOURI, et al.,)
)
Defendants.)

VIDEOTAPED DEPOSITION OF WITNESS, KATHLEEN LEAR, produced, sworn and examined on January 8, 2018, between the hours of 1:01 p.m. and 3:33 p.m. of that day at the offices of the Attorney General, 221 West High Street, 8th Floor, Jefferson City, Missouri, before Angie D. Threlkeld, Certified Court Reporter, CCR No. 1382, in a certain cause now pending in the United States District Court, Western District of Missouri, Central Division, wherein Shondel Church, et al. are the Plaintiffs and State of Missouri, et al. are the Defendants.

APPEARANCES

FOR THE PLAINTIFFS:
MS. JESSIE STEFFAN
American Civil Liberties Union of Missouri
906 Olive Street, Suite 1130
St. Louis, Missouri 63101
314.669.3422

FOR THE DEFENDANTS STATE OF MISSOURI AND ERIC GREITENS:
MR. JUSTIN C. MOORE
Attorney General's Office
815 Olive Street, Suite 200
St. Louis, Missouri 63101
314.340.3447

FOR THE DEFENDANT MISSOURI STATE PUBLIC DEFENDER:
MS. JACQUELINE SHIPMA
Missouri State Public Defender
Woodrail Centre
100 West Nifong
Building 7, Suite 100
Columbia, Missouri 65203
573.526.5212

CERTIFIED COURT REPORTER:
Angie D. Threlkeld, CCR NO. 1382
Alaris Litigation Services

Page 5

IT IS HEREBY STIPULATED AND AGREED by and between counsel for the Plaintiffs and counsel for the Defendants that this deposition may be taken by Angie D. Threlkeld, a Certified Court Reporter, CCR No. 1382, thereafter transcribed into typing, with the signature of the witness being expressly requested.

VIDEOGRAPHER: We are on the record. Today's date is January 8th, 2018, and the time is 1:01 p.m. This is the video-recorded deposition of Kathleen Lear in the matter of Shondel Church, et al versus State of Missouri, et al. This deposition is being held at the Missouri Attorney General's Office in Jefferson City, Missouri.

The court reporter's name is Angie Threlkeld. My name is Rita Yencarelli, legal videographer. We are with Alerus Litigation Services.

Would the attorneys present please introduce yourselves for the record.

MS. STEFFAN: Jessie Steffan on behalf of the Plaintiffs.

MS. SHIPMA: Jacqueline Shipma for MSPD Defendants.

MR. MOORE: And Justin Moore for State of Missouri and Governor Greitens.

VIDEOGRAPHER: Thank you. Will the court

Page 6

reporter please swear in the witness.

KATHLEEN LEAR,

of lawful age, having been produced, sworn, and examined on behalf of the part of Defendants, testified as follows:

DIRECT EXAMINATION BY MR. MOORE:

Q. Good morning. Could you please state your full name for the record.

A. It's Kathleen Lear.

Q. Very good. And I believe you've already been deposed in this case once before; isn't that right?

A. That's correct.

Q. So you're familiar with how depositions go and the general ground rules, things of that nature; correct?

A. I am.

Q. Very good. So I'll just go over them real quick. Once again, for the sake of the court reporter and for the record, we have to take turns, question and answers, so we're not cutting in on one another. Do you understand that?

A. Yes.

Q. And your answers do have to be audible, a yes or a no, instead of a nodding or shaking your head. Do you understand that?

Page 7

A. Yes.

Q. Very good. Now, I believe that your educational background was already discussed at the prior deposition; is that right?

A. That's correct.

Q. Maybe we could just go through that real quickly once again, just as a refresher. Could you please just go through your educational background, beginning at the undergraduate level going forward.

A. I graduated from the University of Missouri-Columbia in 1974 with a degree in accounting.

Q. And any further education?

A. No.

Q. Now, you understand that you're here today to discuss the State of Missouri Public Defender Commission Fiscal Year 2016 Annual Report?

A. Yes.

Q. And I believe you've been identified to give testimony about certain items on our notice of deposition. Is that your understanding?

A. Yes.

Q. I believe that you have been identified to give testimony on the following topics: One, the identity of the contributors and authors of the report; is that right?

Page 8

A. Yes.

Q. Okay. And also the formal and informal policies governing the preparation of the report?

A. Yes.

Q. And also the identity of the person or persons in charge of the data used to prepare the report?

A. Yes.

Q. And as well as other uses of the data that was used to prepare this report?

A. Yes.

Q. And, finally, the identity of the person or persons responsible for approving the contents of the report?

A. Yes.

MR. MOORE: Okay. And I don't believe that she was identified for the methodology; right? That's just Joe Anthony Johnson?

MS. SHIPMA: That's correct.

BY MR. MOORE:

Q. Okay. Okay. Very good. So we'll start at the top then. Are you familiar with the 2016 report?

A. Yes.

Q. Who are the contributors and authors of the report?

A. Well, I imagine I'm the author of the report.

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The contributor is every single local public defenders office, plus our IT department, the directors.

Q. So if you can just kind of go through and tell me what each of these entities or persons do or did for this particular report.

A. The IT department provides the information, the raw data for me to basically make into a pretty publication. It dates back many years. The directors review the report before it's submitted to the Commission.

Q. And so they'll make edits and things like that?

A. Occasionally, yes.

Q. How about the public defender offices, what do they do?

A. They provide the day-to-day information to the IT department.

Q. When you say day-to-day information, what kind of information are you referring to?

A. When cases are opened by the Public Defender System, they're entered into a database by the local public defender's office. That data is swept by the IT department and consolidated and put together for me.

Q. So the individual offices are providing the raw data --

Page 10

A. That's --

Q. -- is that --

A. -- correct.

Q. -- correct? Do they assist in actually drafting the report in any way?

A. No.

Q. Okay. And you said that you're the author of this report; is that right?

A. Yes.

Q. Any coauthors or persons who help actually draft it up?

A. No.

MR. MOORE: Okay. Okay. So I have a copy of the report here. We should probably mark this as an exhibit.

(Exhibit 1 marked for identification.)

BY MR. MOORE:

Q. You've been handed what's been marked Exhibit 1, and I believe that is the 2016 State of Missouri Public Defender Commission Fiscal Year Annual Report; is that right?

A. Yes.

Q. And this is a report that we've been discussing so far in the deposition?

A. True.

Page 11

Q. So I guess before we dig into the actual report itself, let's continue down the line. Are there any formal or informal policies that govern the preparation of this report?

A. No.

Q. Are there -- so there's no rules or anything that say we have to do this on a yearly basis or anything like that or...

A. There's a statute that requires us to do so.

Q. Okay. And what statute is that?

A. 600.042.

Q. And what's your understanding of what that statute requires?

A. Just exactly what it says. Submit to the Commission between August 15th and September 15th of each year a report, including pertinent data regarding the Public Defender System.

Q. Okay. Any other formal or informal policies or rules?

A. Not that I'm aware of.

Q. Okay. So as far as the persons that would be in charge of the raw data that goes into this report, I think you've identified the individual offices, public defender offices; is that right?

A. And the IT staff, yes.

Page 12

Q. And the IT staff. Anyone else that, you know, manages -- manages the data or helps process it?

A. No.

Q. Is the data all stored locally or is it in any kind of a cloud-based format somewhere else?

A. It's -- we don't have a cloud. It is stored locally and replicated centrally.

Q. And it would be replicated, I guess, by the IT department?

A. Yes.

Q. So as far as analyzing the data is concerned, is that something that you do totally on your own or do you have people that analyze parts of it and report back to you?

A. I do it.

Q. Okay. So this is all you, as far as the analysis goes?

A. Yes.

Q. Okay. Whenever the data comes to you, you know, what does it look like? Just like an Excel spreadsheet or...

A. Generally it's a multitabbed Excel spreadsheet. It has evolved to that, being able to have the information in the Excel spreadsheet.

Q. Okay. And you said it evolved to that. So

Page 13

did it start off in some other kind of format or...
A. Yes.
Q. Okay. Tell me about that.
A. Well, prior to having -- you know, it's been years. I've done this since 19 -- a long time. '84 I think was the first one I did. So it's evolved over the years, is all I meant by that. We used to count by tick marks. We don't count by tick marks anymore on the number of cases we -- we represent. It's much more sophisticated now.
Q. It's kind of progressed, I guess, as technology progressed?
A. Definitely.
Q. Okay. And as far as the person or persons responsible for approving the content of the report, I think you identified the directors; is that right?
A. The director, yes.
Q. Oh, the director. And then the Commission; is that right?
A. The Commission accepts the report.
Q. Okay. So they don't really, I guess, review it; they just kind of accept or reject. Is that basically --
A. They just --
Q. -- how it goes?

Page 14

A. -- accept.
Q. Okay. Have they ever rejected a report?
A. No.
Q. Okay. And who was the director at the time of this?
A. This was Michael Barrett.
Q. Okay. So if I understand the process right, it would be basically just you personally create this report, based on the data that you get from the offices, and then --
A. Through IT.
Q. Through IT. And then you submit the report to at this time Mr. Barrett?
A. Correct.
Q. And Mr. Barrett will make changes, if he feels like making changes?
A. Correct.
Q. And then the report will go to the Commission, who then accepts the report?
A. Correct.
Q. Any other layers or review in there that weren't discussed?
A. No.
Q. And so you draft this all by yourself? There's no help in like the typing or --

Page 15

A. No.
Q. -- anything? Okay. Not even like the word processing or creating --
A. No.
Q. -- Excel sheets or anything?
A. No.
Q. And you anticipated my question. But, again, for the record, you just have to wait for the full question to get out. Okay. Very good.
Are you aware of other uses of the data that was utilized in this report?
A. I'm not sure I understand your question.
Q. So you are tendered as someone who could identify any other uses of the data in this report. So are you aware of other uses for this data by a public defender's office or, I guess, anyone else?
A. We utilize some of the data to generate our legislative budget request.
Q. Okay. Any other uses?
A. Not that I'm aware of.
Q. Okay. Okay. So please look at Exhibit 1, and we'll just kind of start going through it. Will you please turn to page 8. Very good. If you could just kind of review page 8; and whenever you're ready, we can discuss it. Let me know.

Page 16

A. Okay.
Q. Okay. So looking at the first paragraph at the top, there's some assertions in the text. And I wanted to ask you about the basis for those assertions. My understanding is that you are the one who drafted all of the -- this entire report, you said; right?
A. That's correct.
Q. Okay. So first paragraph, it looks like it's a sentence -- sentence, says, However, excessive caseloads and low salaries lead to a high turnover rate among attorney staff. Do you see that?
A. Yes.
Q. So is there -- is there data in this report or some other data on which you're basing this assertion?
A. This information is derived from exit interviews with employees as they're leaving, as to the reason they leave our system, and -- and tallied by the human resources department.
Q. Tell me a little bit more about that, I guess. So there's another source of data, exit interviews, that you use to prepare the report; is that right?
A. This page, yes.
Q. And are you the one that conducts those exit interviews?

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A. No, I am not.
Q. So who does?
A. It would be our HR staff.
Q. Okay. And so as far as this particular assertion goes, what did the HR department, I guess, tell you that led you to include this in the report?
A. There's a report that tells the reason for separation.
Q. And what were those reports showing, I guess, in 2016?
A. I don't have that information.
Q. So are those reports just generated by the people leaving the office? Is there self-reported?
A. No.
Q. So tell me, I guess, a little bit what your understanding of those HR reports then is. You said there's the report whenever people leave; right?
A. They do an exit interview --
Q. Yeah, I understand.
A. -- with the person.
Q. And there's some report that says the reason for the separation; right?
A. It's one of the questions that's asked.
Q. To the person that's leaving; right?
A. Correct.

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Q. So then the people leaving would be self-reporting their reason for leaving the office; right?
A. That I don't know. I believe that the HR staff is doing an interview and recording the information.
Q. Okay. So you're not really sure what's in the report, the HR report; is that right?
A. I am not.
Q. Okay. But the statement here is based off the HR reports --
A. Yes.
Q. -- right? So who, I guess, would know more about what's in the reports and how those reports are generated?
A. Our HR staff.
Q. And I guess just real quick. I asked you your education. We had discussed this in your prior deposition. But you don't have any background or training in statistical analysis in a sociological context, do you?
A. No.
Q. You're not familiar with the methodology that might be utilized for studies of that nature?
A. What nature?

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Q. The one we just discussed, the sociological studies.
A. No.
Q. As far as your accounting background, were you -- did you receive any kind of training in school to, you know, analyze data sets and draw conclusions about what might be causing those changes in the data sets?
A. I had a statistical analysis class.
Q. Okay. And that would be mostly to just determine like the numbers of data set, correct, like, you know, how to calculate confidence intervals or things of that nature --
A. Sure.
Q. -- right? But as far as drawing conclusions about what the data means, you know, you never received any training on that, did you?
A. No.
Q. But this report kind of looks at the data, and then it draws conclusions about what the data means; would you agree?
A. No.
Q. So let's look at a couple of sentences forward that starts with, The fact that these small changes. Do you see that?
A. Yes.

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MS. SHIPMA: I don't. Where are you talking about?
MR. MOORE: Still the first paragraph on page 8.
BY MR. MOORE:
Q. We'll rewind one more sentence. It says, After MSPD began hitting turnover rates of 20 to 22 percent in the mid-2000's, repositioning salary adjustments were enacted to bring salaries to the levels shown above. Do you see that sentence?
A. Yes.
Q. And the next sentence says, The fact that these small changes were enough to make MSPD's attorney turnover drop several significant percentage points, blah, blah, blah, is proof that most public defenders do want to remain in public service if at that all possible. Do you see that?
A. I do.
Q. Now, that would be a conclusion about the data that is just drawn from statistics about turnover; would you agree?
A. It's a conclusion.
Q. Conclusion. Right. But that's not something you were trained to do in your -- in your accounting background, is it?

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A. No.
Q. So where did you -- how did you come to that conclusion then, based on the data set that is --
A. I have no idea.
Q. Okay. But you're -- still you're the one who drafted the report; right? It wouldn't come from any other source?
A. This information probably did come from another source.
Q. Would you happen to know where that one came from?
A. The HR department.
Q. And so you think that there would be some -- would it be the same reports that we discussed earlier, the exit interviews --
A. Yes.
Q. -- would that be what you're referring to? But you're not certain, for sure; that's just what you think it might have been, right?
A. That's where they came from.
Q. Okay. Do you know if those HR reports are included anywhere in this --
A. They are not.
Q. Okay. Now for the next sentence. It says, However, staggering student debt loans, 60- to 200,000,

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make it extremely difficult for even those who are passionate about public interest work to continue with MSPD if they want to also make loan payments and provide for families. Do you see that sentence?
A. I do.
Q. Where did the data come from for that assertion, if there is any data?
A. There is none.
Q. So where did that -- where did the basis for that assertion come from then?
A. It's, again, from our HR staff.
Q. Okay. And do you know at this time was there any particular HR person or staff person that would have been the source of this data?
A. There are multiple people who do exit interviews.
Q. Okay. So this is all just based on exit interviews, you're saying; all the assertions in the first paragraph mostly, right?
A. Correct.
Q. Okay. So jumping down past the graph there in the middle, the first sentence says, The recession that hit in 2008 was actually much more effective in reducing attorney turnover. Do you see that sentence?
A. Yes.

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Q. Okay. So here, you know, it's commentary about the state of the economy, I guess, and the effect it had on the office; right?
A. Yes.
Q. So where did the -- where did the basis for this assertion come from?
A. I have no idea.
Q. Okay. And the next sentence says, Private law firms stopped hiring and senior attorneys on the verge of setting up their own private practice put plans on hold, given the state of the economy. Any source for that assertion?
A. Opinion.
Q. Okay. And so the next sentence as well, This combination gave MSPD a temporary reprieve from the revolving door, dropping turnover as low as 7.5, but the reprieve was only temporary. Any source for that information?
A. The source is that the turnover went back up after that point.
Q. So you looked at data that said -- that you believe that said the turnover went back up after a certain period of time; right?
A. Correct.
Q. And then you drew a conclusion about what

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that -- what may have caused that increase; right?
A. Correct.
Q. Do you have any objective proof or statistical backing that that is the cause of that trend?
A. No.
Q. Okay. So what did you base that assertion off of?
A. That the trend went back up.
Q. It's just a conclusion that you just drew yourself?
A. True.
Q. And then to the next sentence, Missouri public defenders still struggle with staggering student loan debt and much lower salaries than what other government lawyers receive. Do you see that sentence?
A. Yes.
Q. And what's the basis of that one?
A. Again, exit interviews and looking at other state employee salaries.
Q. And so when you were looking at other state employee salaries, how did that process go exactly?
A. The information's available through SAM II. You just find the attorneys and you look up their salaries.
Q. And what is SAM II?

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A. Statewide automated accounting management system.
Q. Okay. And so is that what you did in this case, you looked up salaries for other government employees and just compared them to public defenders office?
A. Yes.
Q. Do you recall what kind of -- what that search looked like exactly, how many and what kind of other government employee salaries you pulled?
A. We pulled attorney salaries.
Q. Okay. And attorneys from which branch of government?
A. All three.
Q. And which ones would those be?
A. Executive, legislative, and judicial.
Q. And so when you say that, what kind of roles are we talking here? Is it just attorneys that work at these places or is it like legislator salaries and like judge salaries who --
A. It was mainly staff people.
Q. Staff persons?
A. Yes.
Q. And the staff persons would then be compared to like assistant public defenders?

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A. Yes.
Q. Is there a place in this report that compares the findings of your research to the actual --
A. No.
Q. -- public defender salary? Is that contained somewhere outside of this report, that comparison?
A. I don't know.
Q. Do you believe that it was ever submitted in any kind of other report or was it more just kind of work that you had done on your own and then included in this 2016 report?
A. I'm sure the information was used in other ways.
Q. But you just can't recall like where -- if it's out there somewhere, you don't know where it might be at?
A. I'd say it was work product.
Q. Okay. So this is -- like is this something you worked on like on your own computer and you did the comparison and you kept the spreadsheet or whatever on your computer; it never went out in some other form to anyone else? I'm trying to figure out if it's out there somewhere we can take a look at it is all.
A. I don't know that answer.
Q. Okay. Do you recall how many -- how many

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government employees you pulled up their salaries to compare or what kind of data set you were looking at for that?
A. It would be hundreds.
Q. So you pulled hundreds of other employee salaries and then compared them to public defender salaries?
A. Yes.
Q. Do you know how many hundreds it might have been?
A. No.
Q. You think it was less than a thousand or more than a thousand?
A. Less.
Q. Okay. Do you know how much lower, I guess, the salaries you were seeing were than public defender salary -- or vice versa?
A. I do. I don't have that information with me.
Q. Okay. So how much lower was it then, if you know?
A. I don't know.
Q. Oh.
A. I have that information. I don't have it with me.
Q. Ah. Okay. So the next sentence says,

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Caseloads are still overwhelming and lawyers still enjoy no immunity from either civil liability or disciplinary action for their failures to handle that caseload effectively, no matter how impossible that task might be. Do you see that sentence?
A. Yes.
Q. So where did the -- I guess the backing for this statement come from?
A. I don't have that answer. That's not my question.
Q. You say it's not your question. What do you mean?
A. That's a question for management, not me.
Q. Okay. So is this something that somebody else put in the report then? Would that be like a Barrett add-on or something? Or where did this come from, I guess?
A. I wrote it. He edited it. If he wanted to edit it, he edited it. I just don't have an answer for that question.
Q. Okay. And are you aware of any data or statistical set that analyzes whether other lawyers have any kind of civil liability or any kind of immunity from civil liability or disciplinary action? Is that based on any kind of data?

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A. I don't have that information.
Q. You're just not sure at this time whether there's any data that would back up this claim?
A. No, I do not.
Q. So looking down at the last paragraph on the page, we'll start with the third-to-last sentence. It says, Missouri's full-time elected. Do you see that sentence?
A. Yes.
Q. Missouri's full-time elected prosecuting attorneys are required by state statute to be paid the same as an associate circuit judge, 136,402. By comparison, their public defender counterparts are paid an average of a mere 79,601. This level of pay and inequity between the defense and prosecution sides of the criminal justice system is neither equitable nor sustainable. Do you see that?
A. Yes.
Q. So as to the last sentence where you say that it's neither equitable nor sustainable, is there any kind of data that would back up the claim that it's not sustainable?
A. Again, it's a turnover question. You see people leaving because they're not making salaries.
Q. So this is -- it pretty much just compares

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the amount that the defense side and the prosecution --
A. Correct.
Q. -- side makes; right?
A. Correct.
Q. So why would that difference be unsustainable?
A. Because you can't keep people.
(Witness' phone buzzing.)
THE WITNESS: That's mine.
BY MR. MOORE:
Q. So you're just referencing a -- it's just in reference to the turnover, I guess?
A. Right.
Q. Okay. Could you turn to page 11 of the report? You see the Fiscal Year 2016 Total State of Missouri General Revenue Appropriations graph?
A. Correct.
Q. So it looks like this is comparing the amount the public defender got versus all other state departments; right?
A. General revenue money.
Q. General revenue money; is that right?
A. Correct.
Q. So what would be included in that all other state departments category?

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A. Every other state department other than the public defender.
Q. And are there a lot of those?
A. There are 13 departments in the executive branch.
Q. Are there more in other branches?
A. Yes.
Q. I'm just asking how many there are?
A. Yes. I don't know. Yes, there are. From corrections, conservation, revenue, mental health, social health, Department of Education, you know, they're in the statute.
Q. Okay. And so it looks like, comparing what the public defender got to what all the other departments got, this graph concludes that it's .41 percent of the total general revenue appropriations; is that right?
A. That's correct.
Q. But this isn't compared to other departments within the state individually; right?
A. I don't know what you mean.
Q. So when you're looking at the little sliver for the public defender, that .41 percent; right?
A. (Moved head affirmatively.)
Q. We don't know what the other state departments are getting of the general revenue

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appropriations; right?
A. It's the rest of the picture.
Q. But like you said, for example, Department of Corrections, right, you wouldn't be able to tell from this graph how much the Department of Corrections is getting from the general revenue appropriations; right?
A. No, you could not.
Q. Or you wouldn't be able to tell what any other particular state department would be getting from the general revenue appropriations based on this graph?
A. That's true.
Q. Right?
A. Not the purpose of the report.
Q. Right. When you're looking at this particular graph, you wouldn't be able to tell whether the public defender was receiving more or less or the same as all the other state departments; is that right?
A. Not from this graph, no.
Q. And are there other graphs that compare what each department gets in this report?
A. No. This a report about the public defender, not the other departments.
Q. Okay.
VIDEOGRAPHER: Excuse me, ma'am, you're leaning on the mic.

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THE WITNESS: Sorry.
VIDEOGRAPHER: Thank you.
BY MR. MOORE:
Q. Is that something that you looked into as part of your preparation of this report or is that not something that you looked into?
A. This information is pulled from the Office of Administration's website.
Q. No, that's fair enough. I'm just talking about what the other departments are getting. Is that something that you looked into as part of preparing this report or no?
A. No, it is not.
Q. Okay. So let's talk just a little bit -- back up a little bit and talk a little bit more about the general preparation of the report. You said it has to be done on an annual basis; is that right?
A. Correct.
Q. So when does preparation of this report begin each year?
A. It generally starts around first of August.
Q. Okay. And approximately how long does it take to prepare the report?
A. 120 hours.
Q. Okay. And is that just the amount of time

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that you spend on it or is that the time that all the IT and yourself and the other people put into the report?
A. That's my time.
Q. Your time. Any idea what it takes for the other people, what they put into it?
A. No, I do not.
Q. And if you could just kind of take me step by step through the process of preparing the report start to finish.
A. Generally speaking, it's a -- it's a -- I get the information from the information technology department in August. That gives ample time for the fiscal year to close, for bills to be paid, for cases to be closed that were in the process of being closed as of June 30th. So that gives that full four weeks.
I get the information generally now in an Excel spreadsheet, with multiple tabs of information regarding different sorts of the data. And I take that information and generally make it pretty for the report. I do look at the information to be sure that it's consistent with prior years. If something sticks out or there's some variance that I'm not comfortable with, we work through things like that. We being the information technology staff and myself.
Basically it's the same information in

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multiple formats throughout this whole book. You start with the cases assigned. You sort that information in any different way you can think of. What types of cases were assigned? Where were they assigned? What county were they assigned? What was their original venue? What office opened the case? So there's multiple sorts with regard to opened cases. The same thing happens with closed cases.
The rest of the book is providing information by office as to the types of cases opened, how many cases did that office close. Generally it's the same information sorted, you know, 30 times.
Q. Okay. Very good. And so continue on. So keep walking through how the report gets generated, if there's any further steps.
A. Well, once the information is gathered, it is put into -- it's actually different formats, but a lot of publisher documents, a lot of PDFs, a lot of snipping goes on so that you can pull reports from an Excel spreadsheet and drop it into a publisher document so that it looks very nice.
It gives you information with regard to, you know, what happened this year. Gives you information about what counties are provided representation by what office, how are the counties grouped. Gives you

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information with regard to who's in charge of that office. Gives you some history of how many cases did they open this year compared to the prior years. So there's a lot of good history document. It's a good historical documentation is what it is.
Q. And continue on. Is there any further steps it takes to put the report together?
A. Other than proofing and printing --
Q. Okay.
A. -- and distributing.
Q. And as I understand correctly, you said that you pretty much do all the proofing and everything yourself; right?
A. Correct.
Q. You and Mr. Barrett. Okay. So jumping back into the report, if you look at page -- there's no actual page number, but it's the third page, the message from the director.
A. Um-hum.
Q. And you see the page that I'm referring to?
A. Yes.
Q. If you look at the exhibit, there's no page number at the bottom right, but it says page 58 out of 150 --
A. Correct.

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Q. -- for the printing; right? Okay. So did you assist in the preparation of this page, the message from the director?
A. No.
Q. Okay. So you did the rest of the report; but this, I'm assuming, comes from Mr. Barrett himself?
A. Correct.
Q. So you wouldn't have any knowledge as to what he bases his assertions on in this statement, in this page?
A. No.
Q. You didn't help him write this in any way, did you?
A. No.
Q. So you wouldn't be able to say whether the stuff he's saying is accurate or inaccurate; right?
A. No.
Q. So as far as the data that is contained in this report, you receive that directly from the offices of public defenders; is that right?
A. No.
Q. Oh.
A. I get it through the IT.
Q. Through IT. Okay.
A. Correct.

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Q. I'll just rephrase that then. So --
A. Okay.
Q. -- the public defender offices are the ones who are generating this data; right?
A. Correct.
Q. And they pass it along to you through the IT department; right?
A. That's correct.
Q. Do you have any knowledge about how the data is actually produced in the first place by the public defender offices?
A. It's entered into a database.
Q. Okay. Tell me about that process.
A. That's not my question.
Q. So you don't have any knowledge about how that --
A. I don't do that.
Q. Okay. Do you have any knowledge, though, about how that process takes place, as far as, you know, acquiring the data and putting it into the system?
A. No, I don't do that.
Q. Okay. You just kind of take whatever data is given to you and then you process it; is that right?
A. Correct.
Q. Now, if you could look at page 9 of your report. Now, you see it says Public Defender Appropriations at the top there?
A. Correct.
Q. And you have a number of categories and then like a definition of categories on this page; is that right?
A. Correct.
Q. And is this contained in statute somewhere or is this just something that you created, as far as the categories and the descriptions, the same are concerned?
A. It's not part of the statute, by any stretch of the means.
Q. Okay.
A. But, also, I did not create these categories. These are categories created by the Office of Administration.
Q. Okay.
A. And I did provide the definitions of the categories.
Q. And as far as the description of the categories, are those things you just kind of made up on your own or do they have some kind of a basis somewhere?
A. Well, I didn't make them up.
Q. Okay.
A. Put it that way. I don't know what your question is.
Q. Like are these definitions you took from like a dictionary or something or is it something that you kind of just drafted up yourself?
A. It's the purpose of the appropriations.
Q. Okay. But as far as like describing each of these categories, that's something that you just created on your own --
A. It's --
Q. -- it didn't come from any particular source; right?
A. No, it's mine.
Q. Could you turn to page 16 of the report. And you see the page I'm referring to?
A. Yes.
Q. It says fiscal year -- well, it says FY16 Time-Keeping in a little graph at the top left --
A. Yes.
Q. -- right? This page discusses, it looks like, MSPD's history of time keeping and their methods of time keeping; would you agree?
A. Correct.
Q. The first -- well, actually, the second sentence says, While public defender time-keeping. Do you see that sentence?

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A. Yes.
Q. It says, While public defender time-keeping had been instituted once before, in 2006, as part of a 12-week workload study, this new time-keeping approach is not a one-time study but a permanent change in MSPD's way of doing business. Do you see that?
A. I do.
Q. Do you know why the public defender had kept their time in 2006?
A. It was part of a caseload study.
Q. Is that the RubinBrown --
A. No.
Q. -- report?
A. Not in 2006.
Q. Okay. Do you recall...
A. It's probably Spangenberg.
Q. Okay. In any event, it goes on to say that this is now a permanent change in the way that the MSPD does business; is that right?
A. That's what it says.
Q. So then it's your understanding that public defenders are continuing to keep their time, or has this policy since been abandoned?
A. Policy's been abandoned.
Q. Okay. How long did the time keeping go on

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then?
A. I don't know that answer. A year, approximately.
Q. Okay.
A. Maybe more.
Q. Okay. So did it start in 2016 and then end like a year later or what -- what time period are we talking for the --
A. It started on March 1st, 2013, as it says in this report.
Q. Um-hum. And then it kind of went forward in time --
A. Um-hum.
Q. -- you said for like a year?
A. I don't know how long it went.
Q. Okay. It says, Employee time logs are kept in five-minute increments and are completed by MSPD attorneys, investigators, and mitigation specialists; right?
A. Correct.
Q. If you look down at the graph on the same page, FY16 Attorneys-All Divisions, you see that; right?
A. Yes.
Q. As far as the data used to prepare this graph, would that have been the time logs that are

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referenced earlier in this same page?
A. Yes.
Q. And as far as this particular graph, does this include time spent by public defender attorneys, investigators, and mitigation specialists or --
A. This is attorneys.
Q. Just attorneys?
A. Yes.
Q. Do you know if there's another graph in this --
A. No.
Q. -- report that -- oh, like I said before, the -- for the court reporter.
Is there another graph in here that discusses or shows in the same manner as this graph the time spent by investigators or mitigation specialists?
A. No.
Q. Is there any reason that wasn't included in the report?
A. No.
Q. But that would be time being spent on the cases, right, just not by attorneys?
A. No. That's correct.
Q. That is correct. So, actuality, even though, you know, there's a report about the amount of time

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attorneys are spending on these particular tasks, there's actually probably, would you say, a lot more time also being spent on these cases by other staff in the public defender department; right?
A. Yes.
Q. Is there any record of how much time these other employees of MSPD are spending on the cases?
A. That's -- I don't have that knowledge.
Q. Okay. Turn to page 17 of the report. And are you looking at page 17?
A. Yes.
Q. So this first paragraph discusses a report done by RubinBrown, and it also comes to various conclusions about the way the RubinBrown study was conducted and its methodology; would you agree?
A. Correct.
Q. So, for example, it looks like it's the second sentence: In arriving at its workload standards, the -- RubinBrown used MSPD's time-keeping data, as well as surveys of both MSPD practitioners and private criminal defense attorneys in Missouri to identify case-related tasks that MSPD attorneys had sufficient or insufficient time to perform, based on current practices and staffing levels. Do you see that?
A. Yes.

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Q. Where is the basis for that assertion?
A. I don't know.
Q. Is it just based on whatever the RubinBrown study said essentially or is there some other basis for that assertion?
A. It would be the RubinBrown study.
Q. Okay. And how about the next sentence, With that time-keeping data and survey results in hand, the Missouri Project then utilized a Delphi -- or Delphi -- method, a business forecasting tool, to estimate the amount of time that should be allotted for those tasks with reasonable effectiveness. Do you have any basis for that particular assertion?
A. That's part of the RubinBrown report.
Q. Okay. Do you have any knowledge of the Delphi method?
A. Delphi method. No, I don't.
Q. Okay. Now, the next sentence, The workload standards developed provide empirical evidence that there are not enough public defenders in Missouri to meet its constitutional mandate of providing effective assistance of counsel to indigent persons charged with criminal offenses. Any particular backing for that assertion?
A. It's -- it's -- it's a product of the multiplication.

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Q. What do you mean when you say that?
A. If you know how many cases we had and what type of hours are required for those types of cases, then you know how many hours you need to provide representation in those cases. So it is a product of the multiplication.
Q. As far as coming to the number of hours needed, where did that data come from?
A. Again, from everything you just read; the RubinBrown report and the workload standards and the Delphi method applied to those.
Q. Other than the RubinBrown report and their methodology, is there any other basis for the math, as you put it, or is it --
A. Not in this instance, no.
Q. Okay. I know we went over this in your other deposition. But, again, you are not familiar with the methodology of the RubinBrown report and whether that methodology was scientifically valid; right?
A. That's not my call.
Q. You just kind of take what the RubinBrown report said at face value; is that fair?
A. No, it's not fair.
Q. Okay.
A. It's not fair, because you take it at face

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value after you do your own analysis of the information too. You don't just take something at face value. I'm going to argue with you if I don't believe it.
Q. Okay. So is there anything you disagree with --
A. No.
Q. -- with the RubinBrown study?
A. No.
Q. Okay. So even though you don't have any particular knowledge about -- knowledge about the scientific or sociological or statistical methodology of that report, you still agree with its conclusions and with the way they did things?
A. I do.
Q. Okay. And what is that agreement based off of specifically?
A. It's based off of 45 years of experience of working with the system and knowing the struggles that have -- that have lasted this entire time. So it's based on a lot of history and a lot of knowledge of the system as it operates.
Q. So you would say it's personal experience?
A. Definitely.
Q. How about, you know, objective empirical or scientific evidence, is there any of that that goes into

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it as well or is it mostly the personal experience?
A. Well, it's personal and objective.
Q. Okay. And so as to the objective side of things, what objective evidence did you have that would, you know...
A. I've been to every office. I've seen their struggles. I've seen how hard folks work. It's not an easy struggle.
Q. So it's just kind of your personal knowledge, based on what you have personally seen at the offices when you visited them and in your experience as an employee of the MSPD; right?
A. For 45 years.
Q. Right. And based on those -- those personal experiences, that's what makes you agree with the RubinBrown report; right?
A. True.
Q. But you don't have any -- a study that you have done yourself or anything that would lend credence to the RubinBrown findings; right?
A. No, that's not right. There have been multiple, multiple studies of the public defender workloads over the years, some of which I was involved in heavily. There's been many different standards applied to the public defender workloads, whether it be the

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National Advisory Council on Criminal Justice or whether it be Governor Ashcroft's standards to be applied to the public defender workloads. I've been involved in a lot of them. And for all of those years the results have been consistently the same, not enough public defenders. So it's not just this one study. It's been years and years and years of telling people where we are and finally getting to this place.

Q. And as far as -- other than those studies, though, performed by other entities, right, you yourself have never done any statistical analysis or conducted a study that you were then using to assess the RubinBrown study; right?

A. Not to assess the RubinBrown study, no.

Q. Okay. And the next sentence says, Since its release, the Missouri Project has served as a model for other attorney workload standards in the indigent defense community across our nation. Do you see that sentence?

A. I do.

Q. And what's the backing for that particular assertion?

A. There are other states using the same project, the same calculations.

Q. And what -- are those cited in this report, the other states?

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A. Not that I know of. I don't think so.

Q. Okay. Do you know what states those are?

A. I don't.

Q. How did you come to the conclusion that this was the case whenever you were drafting this report?

A. I just know there are other states that are using it.

Q. So just based on personal knowledge?

A. Yes.

Q. But today you can't tell me what those other states are?

A. No.

Q. So looking down, I guess, at the first -- not paragraph, but it's like a little box, right, it says, The workload standards developed by RubinBrown are below?

A. Um-hum.

Q. Do you see that?

A. Yes.

Q. It says murder/homicide. And then it kind of goes across, and I assume these are supposed to be hours that are to be spent on various tasks. Does that seem accurate?

A. Correct.

Q. Is this taken directly from the RubinBrown report?

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A. Yes.

Q. So then you don't have any idea how they came to these particular hour totals; is that right?

A. Yes.

Q. And then I guess the box below that, client -- let's see, it says, Comparing the above standards to the below table of average case-related hours. Is that another table that came from the RubinBrown report or did you draft that table?

A. I did not draft that table.

Q. So that's also from the RubinBrown report?

A. I don't know that answer.

Q. Okay. But you know that you didn't draft it; right?

A. I did not draft it.

Q. Okay. Do you recall how it came to be in the report?

A. It's showing a comparison of what RubinBrown said needed to be done versus what had been done, based on the calculation from the time-keeping logs.

Q. Okay. I guess I'm just asking do you know -- actually, you don't know where this table came from, though; right?

A. It's from the RubinBrown report.

Q. Okay. So the last paragraph, it says, The

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stark discrepancy between what work must be done in the proper defense of constitutional liberty and what is being done with the limited resources at hand reveals that MSPD is in need of 169-and-a-half additional attorneys to meet constitutional requirements. Do you see that?

A. I do.

Q. How do you -- any idea how that particular number, that 169.5, was calculated?

A. It's the same thing. It's what we talked about before. It's a product of the multiplication. If you know the types of cases and the hours that that type of case is required, then you can determine how many attorneys you need. It's -- it's a formula.

Q. And as I understand it, that formula was derived entirely from the RubinBrown numbers, is that right, the math formula?

A. No.

Q. Tell me, I guess, what is the -- what is the formula then?

A. If you know what you need and you know what you have, you subtract what you need from what you have; and, therefore, which -- whatever is left over is what you got to get.

Q. Fair enough. As far as the what you need

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part, though --
A. Yes.
Q. -- right? Isn't it fair to say that you're basing that off of what RubinBrown says is needed?
A. It's based on that number of hours required by type of case, yes.
Q. Is it based on anything other than the RubinBrown numbers?
A. We used the RubinBrown numbers.
Q. Okay. So the RubinBrown report is your source for what is needed from a mathematical standpoint --
A. Correct.
Q. -- right?
A. That is correct.
Q. Okay. And so then you do the math, and it gets you this number 169.5; right?
A. Attorneys needed.
Q. Okay.
COURT REPORTER: Attorneys what?
THE WITNESS: Needed.
COURT REPORTER: Okay. Thank you.
THE WITNESS: Um-hum.
MR. MOORE: Yeah, the elevator's pretty loud. Sorry about that. I guess it's not my fault, but...

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BY MR. MOORE:
Q. How can you have half of an attorney? Would that be like a contract attorney or...
A. We actually do have part-time attorneys.
Q. So for the 169.5, that would be like 169 full attorneys and then a what, like a part-time attorney?
A. Halftime attorney, yeah.
Q. Okay.
MS. SHIPMA: Could we take a break?
MR. MOORE: Oh, sure. Yeah. How long have we been going? We can go off the record.
VIDEOGRAPHER: We are off the record. The time is 2:03 p.m.
(Off the record.)
VIDEOGRAPHER: We are back on the record. The time is 2:23 p.m.
BY MR. MOORE:
Q. Very good. So we are back on the record, and we're just going to continue going through your 2016 report.
A. Okay.
Q. If you turn to page 23. Okay. And you see the --
A. They don't look the same.
Q. The table? It says Fiscal Year 2016-Trial Division-Case By Case Type?

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A. Check. Okay.
Q. Okay. So you're the one that included this in the report; right?
A. That's correct.
Q. Does this table come from any other study, like the RubinBrown report, or is this something that you created?
A. This comes from the information I assembled by the information technology department and presented to me through the Excel spreadsheet that we talked about.
Q. Okay.
A. Um-hum.
Q. And so you're the one who -- you created it, though; right?
A. I built the chart.
Q. Okay. Very good. Now, looking at this chart, it kind of breaks down the type of case, it describes the case, and then it says the number of cases that were opened and closed; right?
A. Correct.
Q. So when you're looking at the data set, does it look exactly pretty much like this and you just kind of count them up and put them in the -- put the tallies or are you -- do you spend some time kind of separating out what type of case it is?

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A. It comes tallied to me.
Q. Comes tallied to you?
A. Um-hum. From the information technology group.
Q. Okay. Do you have any idea how -- if any of these categories would overlap or if any of the cases would overlap?
A. They do not overlap.
Q. Okay. So if one person was charged in the same case for like a murder and then some kind of felony drug charge, do you know, would that be tallied as two separate cases or would it be part of one case?
A. It's -- this is not my ex-- area of expertise. But it depends on the charging practices of the local prosecutor. In many instances the prosecutor will have one case with multiple charges; and in other instances the prosecutor could have multiple cases, each charged separate. We follow the practice of the local prosecutor. So if there's two cases, we have two cases. If there's one case, we have one case.
Q. Okay. So each prosecutor has his own practices as to how the number of cases are determined for the charges; right?
A. That's my opinion, yes.

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Q. Opinion or is that your understanding of the way that it works?
A. It's my understanding, but it's also my opinion.
Q. Okay. And so, you know, the word cases, when it says open cases, it might actually only be like one case with multiple different charges; is that accurate?
A. No. We are not in control of the number of cases. The prosecutor is in control of the number of cases, not the Public Defender System. So if one case is filed, we have one case. So in this instance, these are unique cases filed by the -- by the prosecuting attorney's office.
MS. SHIPMA: And if I could just object here. This is really going to number 3 on your attachment, Procedures employed to identify and track cases assigned to the Missouri State Public Defender's Trial Division. Joel Elmer has been named as the person who would be able to provide the answers to that. I think that asking Kathy on it, although she may have an understanding based on what she's heard, is just based on what she understands of what she's heard. And if you want to get the real information, you should ask Joel those questions.
MR. MOORE: Okay. Yeah, very good. Thank

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you.
THE WITNESS: Um-hum. You're welcome.
BY MR. MOORE:
Q. Let's turn to the next page, 24. And on the graph it says, Cases carried over from fiscal year 2015 and total cases assigned in fiscal year 2016. This is just based on the data that you received from the IT -- IT department?
A. Correct.
Q. And so would this also, as far as the breakdown, kind of go with Mr. Elmer's knowledge of how these cases are tracked?
A. He'd be a great person to answer those questions for you.
Q. Okay. And then turning to page 28.
A. Got it.
Q. Cases assigned and disposed. As far as you know, what would qualify as a case that is assigned and whether it's the same and the practices of the prosecutor, that would be something for Mr. Elmer, I guess, as well?
A. If you'll notice that the number of cases is consistent. So this is the same number, you're right.
Q. Okay.
A. You are correct.

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Q. And so as far as you know, these opened and closed statistics are concerned, you're just taking the data that is given to you by IT and you're just pretty much copy and pasting it into a graph or a chart of some kind; right?
A. I'm making it pretty.
Q. Okay. But whenever you receive the data, it already gives you a number for opened or closed; there's no interpretation that is required on your end?
A. No.
Q. So as far as determining, you know, what goes into this report, is that determined by statute or does someone tell you what all to include or how did that particular decision-making process go?
A. I think I decide what's going to go in the report, based on the number of charts and graphs and things like that. It's grown, like we talked about previously, over the years as the data's become more available and easily to interpret and to put into a -- into a chart. Not interpret, but to put into a chart. I think it gives good history. It's a good historical document as to the number of cases in a given county or in a given office over a 10- to 15-year period. You can see any anomalies relatively easily.
Q. And so, for example, if you turn to, you

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know, page 41.
A. Okay.
Q. It looks like it's a 15-year comparison of the trial division caseload of closed cases by county?
A. Correct.
Q. And that's just something that you had decided to put in there?
A. Yes.
Q. That's not something that anybody asked you to put in this report; right?
A. It's beneficial when you're talking to county -- county folks.
Q. Sorry?
A. It's beneficial when you're talking to particular county commissioners that you can say, hey, here's your Adair County caseload over the last 15 years. So you have that information available when you go talk to different county people. So they -- they like to know their individual county. They don't care about the other counties in particular.
Q. Okay. Do the individual counties have some kind of input as to what they want in the report or is it pretty much just --
A. Oh, no. Absolutely not.
Q. Okay.

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A. No input.
Q. Just kind of what you think would be helpful?
A. Yes. Good historical information.
MR. MOORE: Okay. I'm just looking at my notes; but I can pass it over to one of you guys, if you'd like.
CROSS-EXAMINATION BY MS. SHIPMA:
Q. All right. Kathy, I've got just a few follow-up questions --
A. Okay.
Q. -- I want to ask you. Okay?
A. Sure.
Q. When you were testifying earlier about the process for creating the report, you had mentioned at one point in time that it is reviewed by the directors. Who are the directors that review the report?
A. I would say it's mainly the director, Michael Barrett.
Q. Are there any others that look at it and provide input regarding changes that they want to see or additions or any kind of review?
A. No.
Q. Okay. So it's just the director?
A. Just the director.
Q. Okay. And with respect to this Exhibit 1,

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the twenty-six-- the Fiscal Year 2016 Annual Report, when you were ready to create this document, when you were ready to start the process of producing the annual report, did you create it from whole cloth?
A. I did not.
Q. So tell me a little bit about what your process is with respect to each year's new fiscal report -- or fiscal year annual report.
A. Basically when I get the information from the information technology group, I start from a prior year's report and change the numbers to make it into this year's report, change the words to make it into this year's report. In fact, I will literally take a prior year's report, and that's my starting point for beginning my numbers for my current year's report.
Q. Okay. So just -- I'm just going to take the first page that we looked at kind of in some detail, page 8.
A. Okay.
Q. In preparing this Fiscal Year 2016 Annual Report, did you create this -- did you create anew the text that's on page 8?
A. I did not create it anew. It was dusted off from prior years.
Q. And so what you changed was what?

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A. I would change to the current salary level. I would change to the current turnover level. I would add the new block for percentage of attorneys leaving the system. I would update it with regard to any information I had that was more current than the previous year.
Q. Okay. So then just staying on this page 8 as an example --
A. Okay.
Q. -- do you recall when this page 8 text first made its appearance in an annual report?
A. I do not. But it's been in many annual reports, because salaries for public defenders have been an issue for many, many years.
Q. So, again, just using page 8 as an example -- I could choose another page, but I'm just going to stick with page 8 -- when it first made its appearance, whenever that was, do you believe you wrote the words that are in the text on page 8 or was that provided to you by someone else?
A. I imagine I was involved in selecting the words. The HR staff probably gave me the initial information and, you know, I dusted it off to be my style.
Q. So when you testified that you are the author of this annual report --

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A. I'm more the editor.
Q. Okay.
A. Excuse me.
Q. That's all right. I was going to ask you could you describe to me what you meant by being the author --
A. Um-hum.
Q. -- of that. I -- you also talked about, with respect to this page 8 specifically, that you get the information from an HR report; and you also testify -- testified about getting information from exit interviews.
A. Correct.
Q. Would you distinguish for me between exit interviews and the HR report you were talking about?
A. I am not involved in the exit interviews, although our HR staff is; and they do an awesome job of -- of -- what's the words I want -- consolidating the information that they receive and providing that information to the director level. That's where I get that information.
The second part of the question?
Q. I guess I'm trying to distinguish is there something -- are those two separate --
A. Yes.
Q. -- documents?

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A. Yes.
Q. The exit interview and the HR report, are those two separate things?
A. Yes, it is two separate things. The -- the information that's available regarding turnover is a view in a database that you can just basically click on it and see what the exact turnover is at any given time.
Q. And is that what you're referring to as the HR report --
A. Yes.
Q. -- in your prior testimony?
A. Yes. It's a view in a database, which is a report and it's a view.
Q. Turn to page 16, please --
A. Okay.
Q. -- of Exhibit 1.
A. Okay.
Q. With respect to that pie chart down at the bottom, the attorneys percentage of time per task.
A. Yes.
Q. You could do a report like this for other classifications of employees who did time logs; is that correct?
A. That is correct.
Q. And I believe you said earlier those were

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investigators and mitigation specialists?
A. Those are the other persons who were involved in the time log -- the time-keeping logs.
MS. SHIPMA: That's all I have.
MS. STEFFAN: I have nothing to ask.
THE WITNESS: Thank you.
MR. MOORE: I'll just follow up then on a couple of things.
REDIRECT EXAMINATION BY MR. MOORE:
Q. So I think you said that you were more the editor of the report?
A. I am -- I am the editor.
Q. Okay. It sounds like a lot of the accounting is copy and pasted from the prior years and then edited according to the new data that you have. Is that an accurate --
A. That's very accurate.
Q. So who originally wrote this report then?
A. It would have been me --
Q. Okay.
A. -- you know, 40 years ago.
Q. Okay. How long have you been with the Public Defender's Office?
A. 45.
Q. Wow. So even if you didn't prepare this --

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well, I'll strike that. You are the creator of this report, whether it was 45 years ago or 40 years ago or in 2016; is that accurate?
A. I'm the one who does it, yes.
Q. Is there anybody else who would have, you know, written these things or prepared this report initially if --
A. Certainly.
Q. Okay.
A. I mean, I've had input from every director that we've had. I've had input from division directors. There's input that I take, and I do edit it, and I put it in a format that's acceptable for publication.
Q. Right. But as far as like -- so page 8 --
A. Yes.
Q. -- of the report; right?
A. Back to 8.
Q. It's not like there was somebody who was before you that drafted this whole thing up and then just like gave it to you and you've been editing it since then --
A. No.
Q. -- is that right?
A. No.
Q. It would have been you who created it in the

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first place, and then over time it kind of gets changed by you and others. But you believe that you are the one who drafted this; right?
A. At some point in time, yes.
Q. Okay. So as to this HR reporting -- right. So if we're looking at page 8, you know, we had talked about there were some conclusions being drawn about why people were leaving the office, why there was turnover. And I think you had cited these exit interviews and the HR reports as your source for making these assertions; right?
A. I quoted the HR exit interviews, not the reports. That would be different.
Q. Okay. So the exit interviews; right?
A. Yes.
Q. So what is your knowledge of these interviews then? Does HR talk to you about the interviews or do they provide you some kind of a data set or something? What is -- how did you get -- come by this information?
A. The HR group provides information at -- to the director level of why folks leave or separated from our system.
Q. So the HR department just kind of gives a conclusion to, you said, the director level?
A. Um-hum.

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Q. So that would have been Michael Barrett at this time, I guess?
A. The director and the division director.
Q. Okay. But -- so HR didn't tell you directly?
A. I'm part of that group.
Q. Okay. So HR just said, yes, we have turnover and it's because of this reason; right?
A. They'll say, yes, we had 18 people leave; 6 of them left because of this, 5 left because of this, and 4 left because of this, and the other we don't know.
Q. Okay. And so HR gives you the amount of turnover and their -- the reasons they believe the turnover is taking place, and then you take what they told you and you put that in your report; right?
A. That's fair.
Q. It's not based on any kind of data set that they hand to you; they just kind of give you their conclusions about the data they have, right?
A. I guess. I don't know what they're giving me.
Q. Okay. And so as far as your understanding, the -- do you have any understanding as to how the exit interviews are conducted or what's included in that process?
A. No, I don't. That's not -- that's not mine.

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Q. Okay. So even though it seems like the conclusions in this report are based off of those exit interviews, there's no real understanding of what is contained in those exit interviews by you, the author of the report; is that right?
A. That's not fair, no.
Q. Okay. So tell me then what is --
A. It's not fair. I just said that the HR department provides information to the director level as to the reasons for persons separating from the State.
Q. Um-hum.
A. So that's the information I use. So it's not I pull it out of the air and put something in a report. The information is provided by the HR staff as to why the people are telling them they're leaving.
Q. Right. But you -- it sounds to me like, you know, you don't do any independent verification of what HR is telling you --
A. No.
Q. -- right? You don't look at any kind of data set that they keep themselves; right?
A. No.
Q. You don't yourself talk to the people leaving the office --
A. No.

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Q. -- to determine why they're leaving or anything; right?
A. No. Not my job.
Q. Right. Just depending on what HR tells you --
A. Right.
Q. -- correct? So you wouldn't be able to say if -- whether the HR department is telling you things that are true or false or inaccurate or accurate; right? It's just whatever they tell you that you believe, and it goes into the report; right?
A. I know those people no longer work for us.
Q. The HR --
A. So there some -- there is some verification that they're not still there. So it's not like they're just making things up.
Q. Right. But as far as the process, you know, somebody's going to leave the office, they might give reasons for why they're leaving to HR that could be inaccurate; right?
A. Could be.
Q. I mean, sometimes people don't want to hurt people's feelings, so they'll just, you know, give you some kind of reason like the salary or something? It's possible; right?

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A. Right.
Q. You have no way of verifying whether these people that are leaving are telling the truth or whether it's being accurately reported to you as --
A. I have no way of knowing.
Q. Okay. Just a couple more things in the report. If you would turn to page 18. You see at the top it says Missouri Public Defenders: Trial Division?
A. Um-hum.
Q. And just looking down like the middle of the page, it says, A MSPD trial division attorney's practice will generally include. And there's like a big list of, I guess, tasks. Do you see that?
A. Yes.
Q. How was this list of tasks generated?
A. I don't know. I really don't know. It's a list of things that the attorneys do when they're preparing their case for representation.
Q. Okay. Is that something that was provided to you by an attorney or something that you had come up with or how --
A. I think it's something that was provided by a prior director.
Q. Okay. But you can't say for certain as we sit here today where specifically this comes from?

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A. No.
Q. How about the first paragraph following that bullet list? It's on page 19. It's kind of a summary and conclusion. It says, As the above list indicates, an attorney's appearance in court on behalf of a defendant is a very small portion of the work they must do on a case. Do you see that?
A. Yes.
Q. Do you know where the basis for that assertion comes from?
A. Just on the -- just based on the number of tasks that have to be done. The small amount of time they spend in court is very small.
Q. Okay. But just because there's a lot of things that need to be done on a case doesn't mean that, you know -- that doesn't indicate how much time would be spent on any of these tasks; right?
A. No.
Q. So even though going to court is just one item out of many, it might take up a smaller or a larger portion of the actual work on the file; there's just no way to tell just from looking at the list, right?
A. There's no way.
Q. The next sentence says, When they have too many cases, some of these steps are skipped or fall by

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the wayside. Do you see that?
A. I do.
Q. And what is the basis for that --
A. It's --
Q. -- assertion?
A. Assertion. It is -- if you can't do it all, you don't do it all. That's what -- that's what people do.
Q. And I'm just -- as far as putting in the report and the basis for it, is there some kind of --
A. No, there's --
Q. -- data set or --
A. No.
Q. There is no basis for it?
A. No. Seems to be common sense.
Q. How about the next sentence, The State's evidence is taken at face value, assumed by all to be accurate, and mistakes fall through the cracks uncaught and uncorrected, is that something that you had personal knowledge --
A. I have personal knowledge of things that happen.
Q. Okay. And is that what this sentence is based off of, your personal knowledge?
A. Yes.

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Q. Is there any kind of a data set or anything --
A. No.
Q. -- that this is based off of?
A. No.
Q. What kind of personal knowledge are you referring to then for support of this sentence?
A. Just over the years I have knowledge of things that should have been done that weren't done that hurt the individual client's case.
Q. Okay. How about the assertion that the State's evidence is taken at face value, assumed by all to be accurate, is it personal knowledge --
A. Same.
Q. -- as well?
A. Yes.
Q. Just based on, I guess, cases you've seen in the past?
A. Yes.
Q. Looking at the same page, it says, Types of cases handled by the trial division. That's page 19.
A. I'm with you.
Q. Okay. Looks like in this section you have different types of cases and then like a definition of what those cases would be?

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A. Yes.
Q. So you have felony cases -- felony offenses, sorry, misdemeanor offenses, juvenile cases, and probation violation cases; right?
A. Correct.
Q. Why are the probation violation cases separated from the offenses for which they are on probation?
A. They're filed as a separate case.
Q. Filed by the court as a separate case --
A. Yes.
Q. -- or...
A. That would be a Joel Elmer question also.
Q. Okay. As far as coming up with these definitions, is that something that you had done though?
A. I had help with it, I'm sure.
Q. Okay. Turn to the next page, page 20. It says, Cases assigned by case type. There's a little graph in the middle. Do you see that?
A. Um-hum.
Q. There's a --
A. Yes, I do.
Q. Sorry for interrupting you there. There's a piece of the pie, and it says probation violations and it's about 25 percent. It's like 23.94. Do you see

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that?
A. Correct.
Q. So is this saying that any time there's a probation violation, it's assigned as a new case to a different attorney?
MS. SHIPMA: Again, that would be a Joel Elmer question.
MR. MOORE: Okay.
BY MR. MOORE:
Q. Do you have any knowledge of that?
A. I'm sorry, what was the question?
Q. Oh, if you're saying it's a Joel Elmer question, I'll just strike it.
A. Okay.
Q. I'll just go over that tomorrow. Turn to page 23, if you would, please. We had looked at this a little earlier.
A. Yes.
Q. I'm just interested now in this final category in description, the bottom where it says unknown. Any idea what -- what that means?
A. I can give you a list of the types. But there were a very, very small percentage of cases that didn't have an accurate case type associated with it. So somebody made a data entry error probably.

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MS. SHIPMA: And as she's looking that up, I'd just like to emphasize again that would be a Joel Elmer question or a --
MR. MOORE: Oh.
MS. SHIPMA: -- Jay Anthony Johnson question. Because, again, she just takes the information that they give her for this and puts it in this. How they come up with the classifications, the descriptions, that's -- that's their process. She's not involved in that.
BY MR. MOORE:
Q. I wasn't sure whether it was as a result of the data entry, something that was --
A. It is.
Q. -- or if it was like a classification?
MS. SHIPMA: I think it could be either/or. That's why I'm --
MR. MOORE: Okay.
MS. SHIPMA: That's why I'm hesitating to have her try to give an answer on that, because I think that Joel or Jay Anthony could tell you with certainty, whereas she's getting it secondhand or what she understands it to be. She didn't classify them as unknown.
MR. MOORE: That, I guess, was my question.
BY MR. MOORE:

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Q. So is that true?
A. I did not classify them as unknown. They came back with an unknown case type.
Q. So you get -- my understanding is you get this data set from IT, right, and in that data set there are just cases that are already labeled unknown?
A. Yes.
Q. Okay. So it's not like a bucket where you just kind of take misfiled cases and put them in for data stuff?
A. No.
Q. Okay. Okay. I think we're just about done here. I'm just going to take one more quick look through.
Just take a quick look at page 5 of the report. If you look at the graph at the top left, it says Fiscal Year 2016 Trial Division Cases Assigned By Case Type. Do you see that?
A. Yes.
Q. This is a chart that you have put together, right, based on the data that you received from IT; right?
A. Yes.
Q. I'm looking at that category that says Other .11 percent. Is that just a category you get that says

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other or are there cases that you then classify as other in the data?
A. Because it's such a small percentage, certain things were lumped -- were put together --
Q. Okay.
A. -- for the other category. Otherwise your chart would be unreadable.
Q. Understandable. But you're saying that when the data comes to you, these are kind of broken out, this other --
A. Yes.
Q. -- category? What kind of cases would those be?
A. Writs, appeals, things that the trial division don't typically do -- trial division doesn't typically do.
Q. Okay.
A. Petition for releases. Very small numbers.
Q. Okay. And you're referring to a document of some kind to --
A. I'm referring to my rough draft stuff.
Q. Okay. Rough draft of the 2016 report or some other report?
A. Yes.
Q. Okay. Turn to page 7, if you would. It says

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Missouri Public Defender Caseload Relief Efforts Timeline. Do you see that?
A. I do.
Q. Is this something that you put together?
A. Yes, it is.
Q. Okay. Had you put it together with input from attorneys or you've just kind of done your own research to put together?
A. This is my life.
Q. Okay. So that's -- you're saying you put it together; right?
A. I did.
Q. Okay. And so this is -- you said this is your life. That means it's basically based on your personal experience primarily; is that accurate?
A. Correct.
Q. Is there any kind of research that went into creating this --
A. It's --
Q. -- table?
A. It's a historical timeline of what we've asked for in the past.
Q. Okay. So like the 2005 -- the first entry in 2005, Mo Bar task force on the public defender was created in response to years of increasing caseload and

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turnover rates with no corresponding increase in staffing. Do you see that?
A. I do.
Q. Was that assertion, especially in response to increasing caseload and turnover rates with no corresponding increase this staffing, is that based on data somewhere?
A. It's the truth.
Q. Fair enough. But based on like data set that you have that you used to create this report or...
A. There's a data set, yes.
Q. And did you consult that data set or use it when you were entering this into the 2016 report?
A. Yes.
Q. Okay. Do you know if that data set is analyzed or included in this report?
A. It is not.
Q. Okay.
A. I'm starting to get a headache.
Q. Sorry about that. We'll be done soon. As to the assertion that the MO Bar task force on the public defender was created as a result of this -- these factors, what's the basis for asserting that as the case?
A. It's -- it's the fact. I mean, it was created for that purpose.

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Q. And that's based on just your personal knowledge of what you believe the factors were in creating the --
A. I think --
Q. -- task force?
A. -- if you looked at the purpose of the task force from the Missouri Bar, then they would tell you the same thing. I didn't create the task force, nor give it its goal, but that's the purpose of it.
Q. Okay.
A. I think it's actually the name of it, of the task force.
Q. And in the 2006 there's like three boxes. The last one says, MO Personnel Advisory Board report shows MO PD salaries approximately 35 percent lower than comparable positions in surrounding states. Do you see that?
A. I do.
Q. Again, did you consult any kind of data set whenever you --
A. It's from that report. It's from the Missouri Personnel Advisory Board's report that was provided to the Public Defender System. It was taken directly from their report.
Q. Okay. And did you have any role in preparing

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that other --
A. No.
Q. -- report? Did you have any -- did you take any steps to verify that that report was accurate or adequately researched or --
A. No. It's their report.
Q. Okay. How about the 2007, Exploration of Court Operating Rule to limit public defender employment; do you see that?
A. I do.
Q. What does that mean exactly, exploration?
A. It's what the legislature did that year. This is a summary of what happened over a timeline. It's nothing other than a summary of what happened during that year.
Q. No, that's fair enough. I'm just trying to figure out, determine the accuracy and the basis for the assertions in the timeline, you know. When it says there was exploration in 2007, what does that mean and what's the basis for that?
A. The exploration was done by the legislature, trying to see, if they would give the public defender $1.15 million for contract money, how would that affect the caseload crisis on a daily basis in the local office.
Q. And is this some -- just something that you

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had taken from memory and put it in the report, this --
A. It's what happened that year.
Q. No, that's fair enough. But it's --
A. It's what happened.
Q. Fair. But it's just based on your personal knowledge of what took place that year; right?
A. It's what happened that year. Yes, personal knowledge of what happened that year.
Q. Okay. I mean, you didn't interview people with the court to determine whether they were exploring this thing or --
A. It wasn't the court. It was the legislature.
Q. Oh, so you -- did you -- but you didn't interview anybody with the legislature to determine whether they were exploring this?
A. They did that. That's exactly what they did. They, the legislature, explored that. Not me. Not the court. The legislature.
Q. Do you know how you came by that knowledge as to what the legislature was exploring?
A. I was sitting in hearings.
Q. So you were involved in some hearings that were taking place at that time?
A. Yes.
Q. How about in 2009, Missouri legislature

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adopts and governor vetoes caseload limit legislation; do you see that?
A. I do.
Q. Do you recall what that legislation was exactly, like the --
A. That would be a Joel Elmer question. I don't know the answer to that.
Q. Okay. And so are these items just, you know, items that you personally chose to include in the history? This isn't anything that, you know, some other person told you to include in this report --
A. No.
Q. -- right?
A. This is my caseload relief efforts timeline.
Q. Okay. And it's based on your personal knowledge. And, I guess, did you do any research to complete this timeline?
A. It's based on my personal knowledge and history --
Q. Okay.
A. -- of what actually happened.
Q. So, like, for 2010 when it says, First public defender offices, and then it's got the word refused there, new cases, litigation ensues, do you recall like what case number or anything that would have been?

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A. No, I don't.
Q. You just remember there was some kind of litigation?
A. Yes.
Q. If you could turn to page 10, it says, State Public Defender general revenue appropriations. Do you see that?
A. I do.
Q. And it says fiscal year and the total amount and then total FTE?
A. True.
Q. What does FTE stand for?
A. Full-time equivalent.
Q. What does that mean exactly?
A. How much of a real person. How much of one person. Full-time equivalent, one FTE, full-time equivalent. I'm an FTE. You're an FTE. She's not an FTE. Full-time equivalent. So you could have two halftime people. It would be equivalent of one FTE. So two halftime equal one full-time equivalent. Four quarter-time people equal one FTE. It's based on number of hours worked.
Q. So this is showing the amount that was appropriated and then how many, like, employees? You know, maybe you could explain it to me better than that.

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A. It's close.
Q. Okay. Where am I missing out?
A. It's not number of employees. It's the number of full-time equivalent of employees. So you could have 50 employees; and if they only all worked halftime, then you would only have 20 FTEs -- 25 FTEs, I'm sorry. 25 FTEs.
Q. Okay. And so it looks like -- as we go through from 1994 to 2016, it looks like the numbers are all going up; is that right?
A. They go up slowly, yes.
Q. If you look at page 11, the Fiscal Year 2016 Public Defender Expenditures chart.
A. Yes.
Q. Is this based on the data set that you would get directly from IT?
A. No.
Q. What is this based off of?
A. This is the way the money is budgeted. For instance, in 2016 we had $27 million budgeted for personal service, or 73.19 percent of the money; we had 4.8 million budgeted for expense and equipment; 3.721 million budgeted for legal -- for litigation expenses and conflicts; and 1.282 budgeted for training and one-time payments. They're budgeted.

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Q. Okay. So this says Public Defender Expenditures; right?
A. Um-hum.
Q. So -- but this is actually what was budgeted for these categories?
A. I believe so. I'd have to double-check that.
Q. So this is not actually what ended up getting expended for the --
A. You wouldn't --
Q. -- categories?
A. -- know at the beginning of -- this is what was spent in '16, yes, spent in '16.
Q. So this is actually how the money was spent in 2016?
A. True.
Q. Okay. Now, you said this is not a data set that you got from the IT department; right?
A. No.
Q. Where did this -- the information for this graph come from?
A. It's from, again, the SAM II accounting system for the State.
Q. Okay. How does the information get into that SAM II system for this -- for this --
A. That's a really complicated thing. So I

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don't mean to make faces, but...
Q. No, no. That's fine.
A. Every time you pay a bill, every time you pay a person, every time you do anything with regard to the State's funds, it goes through this SAM II database. It's an Office of Administration-run system. They manage it. They maintain it. They give us the reports out of it. They give us the screens that we can look at; what screens you can't look at, I don't even know about. But they tell you a lot of information with regard to how the money was expended.

Every time I pay a bill -- like if I was going to pay the court reporter today, it would be coded appropriately so that I could tell who I paid, what budget I paid it out of, how much I paid her, did she get a 1099. All of that information is part of that bill that I pay.

We pay a lot of bills every year. And when they're -- once they're paid, then you can start doing summary data and extracting reports from that. So this information on this page 11 is representative of all of those payments that were made during that year.
Q. Okay. So are these categories the ones that you would see if you were looking at the data?
A. They are --

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Q. Are they --
A. They're the way I could collapse them, yes.
Q. So this is actually not the way the data set is organized; this is you looking at the data and then using your experience to put it in these categories, right?
A. That's not really true, no. You could get it this way if you'd want it this way.
Q. So, I mean, earlier --
A. It's a screen. You look at a screen; you get a number.
Q. Right. What I'm saying is like earlier you talked about you got information about the cases from IT --
A. Correct.
Q. -- right? And it would just tell you like this is the amount of closed, this is the amount of open --
A. Yes.
Q. -- done deal?
A. Yes.
Q. For these expenses in this fiscal year 2016 expenditures chart, not the same way; right? You have like buckets where you would put various expenses; right? And then you are classifying where -- which bucket they

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go into; is that accurate?
A. With some caveats, yes.
Q. I mean, it's not like you have freedom to do whatever you want. I'm just saying --
A. No, I can't.
Q. -- you're the one who chooses --
A. Right. I can't pay Sally if --
Q. Right.
A. -- Sally is Cindy.
Q. Right. But you're the one who just -- you take these different things that you're seeing and you put them in the proper place, for the purposes of this graph; right?
A. I guess, yes.
Q. Okay.
A. It's confusing. It's a screen you look at that says the Missouri State Public Defender paid this much money in personal service this year, and you write down the number, and you put it in a chart. The screen then says how much expense and equipment did you pay? There's the number. You write it down; you put it in a graph.

So I'm not deciding what bucket to put it in. The buckets are decided for me. The buckets are decided by the Office of Administration after the appropriations

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are determined by the legislature and signed off on by the governor.

Q. So these are the categories that would appear on this screen --

A. Yes.

Q. -- you're saying; right?

A. Yes.

Q. As far as putting that information into that data set, you take this -- various expenses for your office or for the offices, and you're the one that puts them into the categories; right? No.

A. I'm not sure where you're going.

Q. Let's move on.

A. Okay.

Q. My question is, when you look at this category, it says personal service, does not include any fringe benefits?

A. That's true.

Q. What does that mean exactly?

A. Fringe benefits are appropriated separately by the legislature to the Office of Administration and not to the individual departments. So same thing with -- the Attorney General and the Public Defender's office are exactly the same in this instance. Those moneys are appropriated -- for your salary and my salary are

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appropriated to our respective agencies, our departments.

Q. Um-hum.

A. But the fringe benefits are appropriated to the Office of Administration. So when they pay FICA and your -- your -- your -- all of your benefits, including -- words aren't coming to me -- but including everything, long-term disability, your healthcare and all of that things, those come out of a different appropriation than your salary --

Q. Okay.

A. -- and my salary.

Q. Oh, I see now. So a couple of pages earlier, personal service is defined differently than it is in the legal context?

A. True.

Q. It's not like you're serving people, like witnesses and stuff, and that's the budget for that?

A. No.

Q. It's actually defined earlier as --

A. People.

Q. -- salaries and things like that?

A. FTE.

Q. Okay. FTE, which I --

A. Now you know.

Q. -- learned about. Yeah. Okay. Go to page 12 for me, about collections.

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A. I'm there.

Q. Okay. Where does the data for this chart come from?

A. Again, from the accounting SAM II system.

Q. Okay. And so these are just numbers that you get from SAM II, and then you just put them into this chart --

A. Correct.

Q. -- right? And when it says in the second sentence, Approximately 40 percent of collections comes through the state income tax refund intercepts by the Department of Revenue and the remainder is collected by the courts, that's just based on -- does the data break that up whenever you see it?

A. Yes.

Q. Okay.

A. Has a different code associated with each type of payment.

Q. Okay. Could you turn to page 14? Trial Division Average Cost Per Case graph. Do you see that?

A. I do.

Q. So what is the source of the data for this chart?

A. Again, it's the SAM II report.

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Q. Okay.

A. That's sorted in a different manner so that I can tell which office had which expenditures. So I know that you work in the St. Louis office, and I work in the Jeff City office. So it's sorted that way so that I can post it to the appropriate office.

Q. Okay. And so this is -- this is data that the individual public defenders offices will put in and give to IT, and then IT will give it to you?

A. Not at all.

Q. Oh.

A. This has nothing to do with caseload. This has all to do with payments.

Q. Okay.

A. Okay. The caseload on here is correct, you're right. On the assigned cases and the closed cases --

Q. Right.

A. -- you are 100 percent correct on that.

Q. Okay.

A. That comes from IT. That comes from the local offices.

Q. Okay.

A. The dollar portions of it come from SAM II. Okay? And what I'm doing is taking our data from IT

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and -- and applying that toward the cost portions of it.
Q. Okay. So what are you seeing in SAM II specifically as it pertains to like costs? Does it just assign -- is it per-case cost --
A. No, no, no.
Q. -- or is it total?
A. It's total. It's -- I can sort it by office. And that's what this is --
Q. Okay.
A. -- it's sorted by office. So I can sort it by office so I know how much that office cost during that fiscal year. That's all that is.
Q. Okay. So whenever you look at SAM II, you'll see a category that just says like costs, and it will be for the Kirksville office, let's say?
A. It can be.
Q. But it will just say costs for -- like in one big bucket?
A. No. It will be all the individual payments to the court reporters, to the individual people, to the -- to buy toilet paper or to whatever. It's all of the costs associated with Kirksville.
Q. Okay.
A. Whether it be a court reporter, an expert witness, a travel voucher for an employee, postage, copy

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machines, all of those costs are associated with Kirksville.
Q. Okay.
A. And then I took the information from IT and divided it.
Q. Okay.
A. Okay?
Q. So the cost per assignment and cost per disposition, what is the difference between those two?
A. Because the number of cases assigned and the number of cases disposed are different. So, therefore, the cost per disposition and cost per assignment is different.
Q. Can you describe for me, I guess, the formula that is utilized whenever you're looking at costs versus cases assigned and cases disposed of? What is the math like when you're looking at --
A. You take the total cost of Kirksville --
Q. Um-hum.
A. -- and you divide it by the total number of cases assigned, and you get the cost per assignment. Take the total cost for Kirksville, divide it by the total number of dispositions, and you get the cost per disposition. So if you -- if we're looking at Kirksville again --

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Q. Um-hum.
A. -- and you look at that 280,000 --
Q. Right.
A. -- approximately, divide it by 636, you're going to get $440 per assignment. They closed 612, so they're going to get 457 on disposed costs.
Q. So why wouldn't it be the total cost divided by all cases that are assigned and disposed of in the same year? Why wouldn't it be done that way instead of breaking it out per assignment and disposed of?
A. I don't have any idea why you would want to do that.
MS. SHIPMA: And can I just jump in here and say I don't think you're understanding cases assigned versus cases disposed. And that I think you should ask Joel and Jay Anthony --
MR. MOORE: Okay.
MS. SHIPMA: -- about. I don't -- I don't think that -- I know that Kathy can't answer that for you adequately, although she could probably do a pretty darn good job of it. But they're the ones that are experts in that area.
MR. MOORE: Okay.
MS. SHIPMA: And I don't think you're un-- the reason you're not understanding her answer to your

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question you guys are talking about, you don't have the --
MR. MOORE: Different things.
MS. SHIPMA: -- same language.
MR. MOORE: Okay. That is definitely fair enough. I became a lawyer for -- and not a mathematician for a reason. So...
BY MR. MOORE:
Q. Very good. But, in any event, as far as the cost bucket is concerned, we discussed how you come to -- come by these numbers that are included in this column; right?
A. Correct.
Q. It's by that SAM II?
A. Um-hum. That is correct.
Q. Okay. And you said that Joel Elmer would be the person to discuss assigned versus disposed; right?
A. That would be a good idea.
Q. Okay. If you'd turn to page 16.
A. I'm there.
Q. Look at the category that says Administrative Tasks/Special Projects. Do you see that?
A. I do.
Q. What is special projects exactly?
A. That, again, would be a Joel question.

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Q. Okay.
A. I don't know.
Q. That's just what you see whenever you're looking at the data you receive?
A. Um-hum. From info.
MR. MOORE: I think that's all I have.
MS. STEFFAN: I have a -- I just have a couple of follow-up questions.
THE WITNESS: Okay.
CROSS-EXAMINATION BY MS. STEFFAN:
Q. You testified you've been at the Public Defenders for about 45 years?
A. I think it's 43. Yes.
Q. And you said you've been to each of the individual offices?
A. I have.
Q. And you've worked with other employees and other departments for many years?
A. I have.
Q. And that includes the directors as they've changed over the years?
A. I have.
Q. And the division directors?
A. I have.
Q. And the HR staff?

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A. I have.
Q. And IT staff?
A. I have.
Q. And the, at least at times, individual attorneys and mitigation specialists and investigators?
A. Yes. There's been a lot of turnover.
Q. So presumably you've learned a lot on the job over the last 43 years?
A. I have.
Q. And you -- I think you testified that you have worked on this annual report since 1984?
A. I believe that's correct.
Q. Is it -- is it fair to say that the statements in the report are based on the information you have gathered during your tenure with the Public Defender System?
MR. MOORE: I'll just object to the extent that it misstates her prior testimony as to what's contained in the report. But you can go ahead.
BY MS. STEFFAN:
Q. Do you want me to repeat the question?
A. Yeah, I think so.
Q. Okay. Is it fair to say that the statements in the report are based off the information you have gathered during your tenure with the Public Defender System?
A. Yes.
Q. And based on your considerable personal experience with the Public Defender System?
A. Yes.
Q. I'm going to make you turn back to a couple of specific pages.
A. Okay.
Q. Other than -- other than updating the report to reflect new events and new data that has happened during the last year, so fiscal year 2016, turning back to Exhibit 1, I'm looking at page 1 --
A. Okay.
Q. -- did you see or learn about anything that happened during fiscal year 2016, anything unusual about that time that would have merited any changes to page 1?
A. No.
Q. Okay. How about -- I'm going to ask you --
A. The --
Q. I'm sorry, go ahead.
A. May I make an exception to that? I don't remember off the top of my head whether or not there's a change in the shear number of employees, which is who works for MSPD.
Q. And would that have been information you would have updated?
A. I would if it had changed, correct.
Q. Okay. I'm going to ask you to look at page 7 and answer that same question. So I see there are a couple of boxes down there at the very end of this timeline for the years 2016 and 2017. Other than those boxes, is there anything that happened in fiscal year 2016 that would have merited any changes to the previous years on that timeline?
A. I don't believe so.
Q. Okay. I'm going to ask you to look at the next page, page 8. Did anything happen in fiscal year 2016 that would have merited any changes to the statements on page 8?
MR. MOORE: I'll just object to the form of the question as being vague and also foundation as to things that have happened.
But subject to that, you can respond.
THE WITNESS: I don't think there's any significant changes.
BY MS. STEFFAN:
Q. And what about page 9?
A. The definitions wouldn't have changed. However, the amount of money changed from '15 to '16.
Q. Okay. And that's just based on what was

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appropriated and/or expended in fiscal year 2016?
A. Correct.
Q. Okay. And what about page 16?
A. What do you want to know about 16?
Q. I'm sorry, I'll restate. Was there anything that changed or that you saw that was unusual or anomalous about fiscal year 2016 that would have merited any changes to the statements on this page? I understand that the charts are information --
A. Updated.
Q. -- based on what happened during fiscal year 2016.
A. I would say not.
MR. MOORE: And, again, I'll just make an objection that I think the question is kind of vague and ambiguous as to, you know, what's strange or anomalous. But the answer is on the record. So...
BY MS. STEFFAN:
Q. Okay. I'm going to ask the same question as to page 17. So answering based on your experience with the Public Defender System, did you see or learn about anything in fiscal year 2016 that would have merited any changes to the statements on page 17?
A. Absolutely not.
Q. And what about page 18? Sorry. That's

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the -- captioned Missouri Public Defenders --
A. There are no changes.
Q. And my last question is page 19. Anything unusual about fiscal year 2016 that would have merited any changes, except for any -- if there's anything -- I see like the 52.24 percent caseload. I assume that's based on updated data. But anything other than that that would have merited any changes --
MR. MOORE: And same --
BY MS. STEFFAN:
Q. -- to page 19?
MR. MOORE: Sorry. Same objection just as to form.
THE WITNESS: No changes.
MS. STEFFAN: Okay. That's my last question.
RECROSS-EXAMINATION BY MS. SHIPMA:
Q. Kathy, would you turn back to page 10, please.
A. Sure.
Q. In the box that's there, the chart that's there, the column that says total amount, can you explain what that is? Total amount of what?
A. The total amount column on page 10 represents the amount of general revenue appropriated and received by the Public Defender System from the legislature over

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this time period.
Q. So the number of dollars that the legislature appropriated in their appropriations bill for the public defender for each specific year?
A. With the exception of 2015. And although it was appropriated in 2015, money was withheld by the governor and not released.
Q. Okay.
A. But other than that, that's exactly right.
Q. Okay. The total FTE --
A. Yes.
Q. -- what does that -- I understand what the definition of an FTE is. But I'm asking, for instance, the 410.38 in 1994, is that the number of F-- tell me what that means.
A. That means that when you get to the end of a fiscal year, the State Public Defender System was authorized to have 410.38 FTE. And the way you determine how many FTE you have is take the number of total hours worked during that year by any public defender employee, include the number of annual leave hours paid out to any public defender employee, add those two numbers together and divide by twenty-eighty. We have no authority to exceed the number that's on this page.
Q. So that number that I just referred to for

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1994 --
A. Um-hum.
Q. -- the 410.38, that's the number the legislature authorized us to have?
A. No more than that.
Q. And going down for each of the years --
A. That is correct.
Q. -- that's the same? So the legislature, for instance, in 2016 said you can have no more than 585.13 FTE?
A. Correct.
MS. SHIPMA: Okay. That's all the questions I have.
FURTHER REDIRECT EXAMINATION BY MR. MOORE:
Q. I'll have you turn to page 3 of the report. This just kind of goes through the Public Defender Commission, each of the persons, I guess, that are on the Commission; is that accurate?
A. That's correct.
Q. Are you -- do you draft these profiles of the people or do they come from somewhere else?
A. They came from somewhere else.
Q. Okay. Do you recall, you know, where these come from?
A. Mostly probably from them.

Q. Okay. They like submit something to you and --

A. Right.

Q. Okay.

A. Actually, it could have come from the governor's office too, as their -- the little jacket that comes along with them when they get appointed.

MR. MOORE: Okay. I think that's all I got.

VIDEOGRAPHER: Read and sign?

MS. SHIPMA: Read and sign.

VIDEOGRAPHER: That concludes the deposition. We are off the record. The time is 3:33 p.m.

(Off the record.)

(Signature requested.)

CERTIFICATE OF REPORTER

I, Angie D. Threlkeld, a Certified Court Reporter, CCR No. 1382, the officer before whom the foregoing deposition was taken, do hereby certify that the witness whose testimony appears in the foregoing deposition was duly sworn by me; that the testimony of said witness was taken by me to the best of my ability and thereafter reduced to typewriting under my direction; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition was taken, and further, that I am not a relative or employee of any attorney or counsel employed by the parties thereto, nor financially or otherwise interested in the outcome of the action.

_____

Angie D. Threlkeld, CCR

ALARIS LITIGATION SERVICES

January 18, 2018

MS. JACQUELINE SHIPMA
Missouri State Public Defender
Woodrail Centre
100 West Nifong
Building 7, Suite 100
Columbia, Missouri 65203

IN RE: SHONDEL CHURCH, et al. v. STATE OF MISSOURI, et al.

Dear Ms. Shipma:

Please find enclosed your copies of the deposition of KATHLEEN LEAR taken on January 8, 2018 in the above-referenced case. Also enclosed is the original signature page and errata sheets.

Please have the witness read your copy of the transcript, indicate any changes and/or corrections desired on the errata sheets, and sign the signature page before a notary public.

Please return the errata sheets and notarized signature page within 30 days to our office at 711 N 11th Street, St. Louis, MO 63101 for filing.

Sincerely,

Angie D. Threlkeld

Enclosures

ERRATA SHEET

Witness Name: KATHLEEN LEAR
Case Name: SHONDEL CHURCH, et al. v. STATE OF MISSOURI, et al.
Date Taken: JANUARY 8, 2018

Page #_____ Line #_____
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Should read: _____
Reason for change: _____

Witness Signature: _____

STATE OF _____)

COUNTY OF _____)

I, KATHLEEN LEAR, do hereby certify:

That I have read the foregoing deposition;

That I have made such changes in form and/or substance to the within deposition as might be necessary to render the same true and correct;

That having made such changes thereon, I hereby subscribe my name to the deposition.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this _____ day of _____, 20___, at _____.

_____

KATHLEEN LEAR

_____

NOTARY PUBLIC

My Commission Expires:

A
abandoned 41:23,24
ability 110:8
able 12:23 32:4 32:8,15 37:15 57:18 71:7
above-refere... 111:13
Absolutely 60:24 105:24
accept 13:22 14:1
acceptable 67:13
accepts 13:20 14:19
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Exhibit JJ

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI
CENTRAL DIVISION

SHONDEL CHURCH, et al.,)
)
Plaintiffs,)
)
vs.) Case No.
) 17-04057-CV-C-NKL
STATE OF MISSOURI, et al.,)
)
Defendants.)

VIDEO-RECORDED DEPOSITION OF SARAH K. JOHNSON
TAKEN ON BEHALF OF THE PLAINTIFFS
OCTOBER 6, 2017

(Starting time of the deposition: 9:06 a.m.)

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(The original exhibits were retained by the court reporter to be attached to the original and copies of the transcript.)

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI
CENTRAL DIVISION

SHONDEL CHURCH, et al.,)
)
Plaintiffs,)
)
vs.) Case No.
) 17-04057-CV-C-NKL
STATE OF MISSOURI, et al.,)
)
Defendants.)

VIDEO-RECORDED DEPOSITION OF SARAH K. JOHNSON, produced, sworn and examined on October 6, 2017, between the hours of nine o'clock in the forenoon and one o'clock in the afternoon of that day, at the ACLU of Missouri Foundation, Suite 1130, 906 Olive Street, St. Louis, Missouri 63101, before William L. DeVries, a Certified Court Reporter (MO), Registered Diplomate Reporter, and Certified Realtime Reporter, in a certain cause now pending in the United States District Court, Western District of Missouri, Central Division, between SHONDEL CHURCH, et al., Plaintiffs, vs. STATE OF MISSOURI, et al., Defendants; on behalf of the Plaintiffs.

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IT IS HEREBY STIPULATED AND AGREED by and between counsel for the Plaintiffs and counsel for the Defendants that this deposition may be taken in shorthand by William L. DeVries, RDR/CRR, a Certified Court Reporter and Certified Shorthand Reporter, and afterwards transcribed into typewriting; and the signature of the witness is expressly reserved.

* * * * *

SARAH K. JOHNSON,

of lawful age, produced, sworn and examined on behalf of the Plaintiffs, deposes and says:

(Starting time of the deposition: 9:06 a.m.)

VIDEOGRAPHER: We're on the record. Today's date is October 6th, 2017, and the time is approximately 9:06 a.m. This is the video-recorded deposition of Sarah Johnson, in the matter of Shondel Church, et al., versus State of Missouri, et al., Case Number 17-04057-CV-C-NKL, in the United States District Court for the Western District of Missouri, Central Division.

This deposition is being held at ACLU of Missouri Foundation in St. Louis, Missouri. The reporter's name is Bill DeVries. My name is John Niehaus. I'm the legal videographer. We are with

Midwest Litigation Services.

Will counsel please introduce yourself for the record?

MS. QUINN: Sure. I'm Mae Quinn, M-A-E, Q-U-I-N-N, from the MacArthur Justice Center on behalf of plaintiffs.

MS. ANAND: And I'm Easha Anand, that's E-A-S-H-A, last name A-N-A-N-D, and I'm from Orrick Herrington & Sutcliffe also for plaintiffs.

MR. RAMSEY: Steven Ramsey on behalf of the State of Missouri and on behalf of Governor Eric Greitens.

MR. MOORE: Justin Moore on behalf of the State of Missouri.

MS. SHIPMA: Jacqueline Shipma on behalf of the public defenders.

VIDEOGRAPHER: Could you please swear in the witness?

COURT REPORTER: Do you swear or affirm that the testimony you are about to give in this proceeding will be the truth, the whole truth, and nothing but the truth?

THE WITNESS: I do.

EXAMINATION

QUESTIONS BY MS. QUINN:

Q. Good morning, Ms. Johnson.

A. Good morning.

Q. Thank you for being here today. So we know each other from our work in the community here; is that right?

A. Yes.

Q. Okay. And would you state your full name for the record, please?

A. Sarah Kennedy Johnson.

Q. And what is your current title, Ms. Johnson?

A. Sure. So I have two of them. I am the director of juvenile defense and policy for the public defender system. I am also the deputy district defender for the city of St. Louis trial office.

Q. Congratulations --

A. Thank you.

Q. -- about the second. All right. And how long have you been with the public defender service?

A. So I have been with the public defender service since 2009, October. So approximately eight years.

Q. Okay. And so you have been asked to be

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here today to represent the public defender's office.

(Exhibit 1, Previously marked exhibit.)

Q. (By Ms. Quinn) I'm going to show to you Plaintiff's Exhibit 1. It was previously marked. I don't know if the other folks in the room have a copy or need a copy. Would you mind taking a look there at Exhibit 1?

A. Okay.

Q. And have you seen that document before?

A. Yes, I have.

Q. And you recognize that as the 30(b)(6) notice for deposition for the public defender's office, correct?

A. Yes.

Q. And you were asked to be here today to testify about the subjects on the attachment to that notice, correct?

A. Yes, ma'am.

Q. And you are prepared to do that today?

A. I am.

Q. And as you noted earlier, your focus seems to be on juvenile matters in the public defender system; is that right?

A. Yes.

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Q. And so with regard to the notice, your focus then would be policies, practices, procedures relating to juvenile cases?

A. That's right.

Q. All right. And did you do anything in preparation for your testimony today?

A. I did. I spoke with our general counsel Ms. Shipma. I also reviewed the National Juvenile Defender Center Justice Rationed article that was created on Missouri. I also reviewed the Department of Justice report and I reviewed the Department of Justice agreement.

Q. All right. And you named a number of documents that I think have already been introduced into this suit by way of exhibits to our complaint. Was there any document beyond those that you reviewed that perhaps we do not have?

A. I reviewed -- there is a memorandum of understanding that was created between the public defender system and the 22nd Judicial Circuit Family Court. It is a contract attorney -- providing a contract attorney for juvenile cases in the city of St. Louis.

Q. All right. And by chance did you bring that MOU with you today?

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A. I did. There are five copies.

Q. Terrific. Let the record reflect that Ms. Johnson has shared with us a copy of this MOU relating to services of contract attorneys in the city of St. Louis for the public defender service and the juvenile court of St. Louis city and with permission of Ms. Shipma I will distribute these to everyone here.

MS. SHIPMA: Uh-huh. Are you going to have those marked?

MS. QUINN: Yeah. I think we'll get to these later on. Yeah. So I'll turn to this later if that's all right.

Q. (By Ms. Quinn) Was there any other document that you reviewed in preparation for today?

A. I reviewed the complaint that was filed.

Q. All right. And I noted that you earlier mentioned something called the National Juvenile Defender Center Justice Rationed report. Do you have any objection for today's conversation if when we talk about materials from the National Juvenile Defender Center that we use the term NJDC?

A. I do not.

Q. Okay. And same with regard to the

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Department of Justice's report, I think you mentioned, I assume you mean there the St. Louis County investigation of the juvenile court, correct?

A. Yes, ma'am.

Q. And do you have any objection as -- as we talk about that set of materials that we use the term the DOJ report?

A. No, I do not.

Q. Or maybe the DOJ investigation to be clear; is that all right?

A. That's just fine.

Q. And then the DOJ agreement is the second related document --

A. That's fine.

Q. -- does that work? Okay. Have you ever testified under oath before?

A. I have not.

Q. Okay. It's not --

A. You know what, yes. I -- I take that back. Yes, I did once previously.

Q. Okay. And was it in a deposition?

A. No, it was not. It was in a trial.

Q. All right. And -- but you were under oath?

A. I was.

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Q. So you know to tell the truth?
A. Yes.
Q. You also know if I ask a question and it's not clear, just to seek clarification from me?
A. Yes.
Q. And I'm frequently unclear, so I will not take it personally if you need me to restate the question.
A. Okay.
Q. I'm from New York as you know, and I tend to interrupt people. I'll try not to interrupt you, and maybe you can do the same. We'll try not to speak over each other so that we get a good record. And if you need a break, of course you can just ask for a break and Jacquie, your attorney of course knows to do the same. I guess the one thing is if there's a question on the table that you answer it first before we take the break.
A. Okay.
Q. Does that all work for you?
A. Yes, ma'am.
Q. Terrific. All right. So let us then talk about information that we sought by way of the 30(b)(6) notice. As the designated juvenile expert for the public defenders system, can you tell us a

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little bit about your -- your education and background?
A. Sure. So I went to St. Louis University and I got my undergraduate degree there. I went to St. Louis University Law School and I graduated there in 2009, and then I began with the public defender system in 2009 and have been there ever since.
MS. QUINN: Okay. And then are you able -- is everyone getting Ms. Johnson loud enough?
VIDEOGRAPHER: Yeah.
Q. (By Ms. Quinn) Okay. And after joining the public defender's system -- and forgive me, I'll often say the public defender's service from working at other places, but the public defender system, what roles have you played in -- in your job there?
A. Sure. So I have always been in the St. Louis city trial office, so from 2009 to 2010 I was downtown representing adults in misdemeanors and low level felonies. From 2010 to 2011 I worked in the St. Louis city juvenile division and I represented youth.
I also had some adult misdemeanor cases at that time. From 2011 to 2014 I was representing

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adults back downtown in the St. Louis city trial office. And then from 2014 to present I have represented youth in St. Louis city, St. Louis County, St. Charles County, St. Francois County, and Jefferson County.
Q. So you've anticipated my next question, and that was, you know, how many counties have you handled juvenile matters in, and so it sounds like talking a total of five at this point?
A. Yes. And that was for conflict cases. So St. Louis County, St. Charles County, St. Francois County, Jefferson County, those were all for conflict cases.
Q. Have you handled any juvenile appeals?
A. I've handled one.
Q. And what about juvenile postconviction matters separate from appeals?
A. No.
Q. And through your many years of experience with the public defender service in both adult and juvenile matters, have you had the opportunity to interact with other public defenders who handle juvenile cases?
A. I have.
Q. And you've mentioned some of the

Page 16

counties where you do conflict cases. In addition to that set of interactions, how else have you interacted with juvenile defenders across the state?
A. Sure. So in a couple of different ways. First through phone conversations. So if someone from the public defender system has a question regarding juvenile matters, they're often directed to me. So I speak with individuals who have represented youth or are -- or who are currently representing youth.
The second is through juvenile training. So we have a once-a-year juvenile training. That has traditionally been held in Columbia, Missouri or in St. Louis where individuals who represent youth in the public defender system are encouraged to come and be trained. And then the last interaction would be in court settings where I would run into individuals representing youth.
Q. All right. And we may unpack some of those interactions a little bit -- bit more as -- as we talk today. You also mention beyond handling juvenile matters and interacting with juvenile attorneys that you've also handled adult matters in the system?
A. I have.

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Q. And so is it fair to say then that you have a good sense of the differences between adult defense practice and juvenile defense practice?

A. I do.

Q. And when we're talking about juvenile defense practice we might use the term delinquency. Is that right?

A. Yes.

Q. Can you explain for folks, especially who maybe don't do juvenile practice, what the term delinquency means?

A. Sure. So when a youth under the age of 17 in Missouri is charged with an offense, it is called a delinquent offense. It is not an actual felony charge. So when a child is charged with an offense, there are allegations filed in a petition and they are felony -- they would be either felonies or misdemeanors if an adult was charged with them.

Q. Okay. Now, when you say they're not actual felonies, in fact they are felonies with all of the same elements as an adult felony charge, correct?

A. They are, yes.

Q. I think perhaps you're talking about whether or not it's an open record like an ordinary

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felony adult case?

A. And -- and whether it's a conviction. So they are not considered convictions under the juvenile code.

Q. And in terms of the young people who are charged in juvenile court, do we call them defendants?

A. No.

Q. What do we refer to them as?

A. They're referred to as juveniles, but the practice has -- is shifting towards youth. They're trying to use the word youth.

Q. Yeah. And what about the term respondent, does that mean anything to you in the context of juvenile practice?

A. It does. That is the -- the respondent is the youth or the juvenile.

Q. All right. And you have talked already a little bit about the range of matters or charges that a young person might face. Might you unpack that a little bit more for us?

A. Sure. So there are the criminal offenses that a youth can face, so those could be anywhere from very low level misdemeanors all the way up into murder in the first degree. So those

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would be the -- under the criminal code. There are also the 211.031 subsection two charges, which are the status offenses.

So those are the offenses that adults would not be charged with. So that is truancy, behavior injurious, not -- not following their parents' rules, curfew, those kinds of violations, status offenses.

Q. All right. So it sounds like in essence there are three possibilities for a young person to face in terms of charges in juvenile court: Status offenses, misdemeanor offenses or felony offenses?

A. Yes.

Q. And just so that everybody is clear, when you -- the status offense list that you spelled out for us, those are things that a person is charged with given their status as a young person; a grown person could not be charged with those, those are not considered wrongdoings for fully grown adults?

A. That is correct.

Q. And you did touch on this already, but just so the record is clear, can you talk again about the cutoff between childhood and adult for

Page 20

purposes of juvenile delinquency charges in the State of Missouri?

A. Sure. So in Missouri any child -- anyone is considered a child if they are under the age of 17.

Q. How does that compare to other case -- other states?

A. So Missouri is currently one of five states left that has that age of under 18. So there are -- they are one of five left.

Q. All right. So the default -- the majority rule across the country is 18 is the cutoff, but we're in the minority because we use 17 as the cutoff before you go to adult court; is that right?

A. That's correct.

Q. Now, do young people under the age of 17 ever go to adult court to face charges?

A. Yes, they do. But the court in -- the juvenile court first has to make a determination pursuant to section 211.071 to determine under the certification statute if they should stay in trial as an adult.

Q. Okay. Can you explain a little bit about that process and what that means?

Page 21

A. Sure. So if a child is charged with a list of offenses under 211.071 including murder in the first degree, robbery, assault first, rape, there are some other -- arson, that is called a mandatory certification review.

So the judge has to look at those ten factors under section 211.071 to determine whether the child can be rehabilitated in the juvenile system or whether they should stand trial as an adult.

There -- the statute also provides, though, that a child can be certified for any felony as well as if it is their third subsequent felony.

Q. All right. So now you have used the term mandatory to refer to some transfer or certification cases. That does not mean that the child must necessarily go to adult court, correct?

A. It does not. It means that there must be a mandatory review by the court.

Q. Okay. And you mentioned ten factors under the statute I think you meant -- said that the judge must look at. Are those the only factors the court might look at during certification?

A. No. No. That -- that is not an exhaustive list.

Page 22

Q. And in terms of nonmandatory certifications, can you talk a little bit about the process there and what the court might look at in those cases?

A. So when you mean nonmandatory certifications, you mean just permissive?

Q. Yeah, or discretionary. Yeah.

A. Okay. So these would be offenses that -- offenses that would not be listed in that list under 211.071. The procedure is the same. The court still has to look at those factors to make a determination whether the child should be sent to adult court.

Q. And how is it determined if a case will be processed with a discretionary type certification request?

A. Sure. So the request can either be made by the legal officer, who is the prosecutor. It can be made by the child or the child's parents or any interested party. It could also be the court that makes that recommendation or request.

Q. And these processes we've just spoken about in terms of certification and transfer, you noted they are in section 211; is that right?

A. Yes.

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Q. What is section 211?

A. That is the family code and the juvenile code for Missouri.

Q. And that is one of the central bodies of law that controls juvenile cases in Missouri; is that right?

A. That is correct.

Q. Outside -- it's outside of the criminal code entirely?

A. Yes.

Q. So now, since you have practiced both on the adult side of the docket and the juvenile side of the docket, do you have any opinion about juvenile defense being a specialized type of practice?

A. Absolutely.

Q. Can you tell us more about that?

A. Juvenile defense is an absolute specialty. It requires knowledge in adolescent brain development. It requires knowledge in specific laws. It requires knowledge in procedural rules that are different. It requires an ability to work with families to a greater extent in my opinion than in other cases. It also requires a knowledge of dispositional resources and -- and it requires an

Page 24

ability to work with and understand children.

Q. And it sounds like given what you mentioned earlier that a juvenile defense lawyer to be able to do their job must know the criminal side of the docket for those possible certification cases as well as all of these things on the juvenile code and juvenile practice side?

A. Absolutely. And -- and I failed to mention including Supreme Court case law and the bodies of research that surround juvenile practice.

Q. Now, you mentioned some of the things that make the job of a juvenile defender or someone who's defending a juvenile to be particularly challenging. What about communicating with juveniles, what's that like?

A. Sure. So communicating with youth is a lot different than -- than communicating with adults for several reasons. First, many youth have never been in the juvenile justice system before and so they don't have an understanding of the process and the procedures. Second, youth don't have an understanding necessarily or they might lack the necessary communication skills or language skills to understand the terminology that you're saying to them, so you have to break it down and make the

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system understandable to them.
Q. And maybe we'll make it a little more concrete. In juvenile court, as an adult court, are young people ever presented with plea offers?
A. Absolutely.
Q. And in your experience, just as a very singular example, in conveying a plea offer to a grown adult versus conveying a plea offer to a young person in juvenile court, what are the differences or perhaps challenges that you confront?
A. Sure. So a youth's first question and their first goal if they're detained is when am I going to get out, and so a lot of times that desire over -- that desire outweighs any collateral consequence or any foreseeable consequence for a youth admitting to an offense.
And so that is one difficulty. The other difficulty I see in conveying plea offers to youth is while their -- their parent might not be in the room, parents have a big influence on what happens to a child and whether or not they plead guilty or admit to the allegation -- or do not admit to the allegations.
Q. Yeah. And just from what you have described, it sounds like perhaps it takes more time

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to convey to a young person a plea offer and ensure that what they're doing is knowing, intelligent, and voluntary. Is that a fair assessment of what you just conveyed?
A. Yes, it is.
Q. All right. We may return to some of those topics later, but I want to shift our attention a little bit here to the history of juvenile practice in the State of Missouri and within the public defender's system.
A. Okay.
Q. Are you familiar with the different studies or assessments that have been undertaken to evaluate the public defender system in the State of Missouri?
A. Are you referring to juvenile assessments or just assessments in general?
Q. Actually, general. General at this point.
A. Okay. Yes, I'm familiar with some of them.
Q. All right. Are you familiar with something that is referred to as the Spangenberg report or Spangenberg report?
A. I mean, I've heard of it, but I've not

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read it.
Q. Okay.
(WHEREIN, Exhibit 21, Exhibit 6 of complaint, was marked for identification.)
Q. (By Ms. Quinn) I'm going to show to you what we're going to mark as Plaintiff's Exhibit 21, which confusingly has on its cover Exhibit 6, and that is because this is Exhibit 6 to our complaint. All right, and if you wouldn't mind, just take a few moments to familiarize yourself with that document. Have you had an opportunity just to scan some of the document that I've presented to you?
A. Yes, I have.
Q. All right. And I'm actually going to direct your attention to some specific sections --
A. Okay.
Q. -- in this report if you don't mind. Can we look together at page one, the footnote two on page one in particular, and if you wouldn't mind reading into the record what that footnote says?
A. You said footnote one?
Q. I'm sorry, page one, footnote two.
A. (Quote as read):
The statutes do not distinguish between

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juveniles and adults. As discussed -- discussed in section 3C of this report, we are deeply concerned about the few juveniles represented by the MSPD. We have been unable to determine why this is the case, and we strongly urge that the issue receive further inquiry and attention.
Q. All right. So even though perhaps you haven't spent a lot of time with this report previously, the Spangenberg report, does that footnote in some ways ring true to you?
A. Yes, it does.
Q. All right. Let's then turn to what they're referring to in this footnote on page 57, and I'll just say I think what they mean is 2C, not 3C, but let's take a look at page 57 at the end, and then heading into page 58 as it -- the report talks about juveniles. And here I'll direct your attention to the very last line on page 57 that starts more surprising still. And if you would just to yourself take a look at that next section. All right. So the -- the section I've directed your attention to indicates that (quote as read):
More surprisingly still is that the

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MSPD represented only 35 percent of the juvenile delinquency and status offense cases filed in Missouri courts in 2007, down from 40 percent in 2004, 38 percent in 2005, 37 percent in 2006. Does this information ring true to you given your experience?

A. I don't know the -- the percentages. I don't question this report, but I don't know the percentages of youth represented currently in Missouri, but it would not surprise me that -- that this is the -- the state of representation.

Q. Okay. And we'll -- again, we'll unpack this maybe a little bit more later on in our conversation, but is it your understanding that MSPD represents all young people who need counsel in juvenile courts?

A. No.

Q. And is it your understanding that some young people are going without counsel who need counsel in juvenile courts?

A. Absolutely.

Q. And that some young people who are entitled to counsel are going without counsel in our juvenile courts?

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A. Absolutely.

Q. All right. So turning then from the Spangenberg report that I marked as Exhibit 21, I want to turn your attention to the report you -- you've mentioned earlier in your testimony and that's the NJDC assessment entitled Justice Rationed. And here too confusingly you'll see that this exhibit that I'm marking as Plaintiff's Exhibit 22 for purposes of our deposition, has the cover Exhibit 9.

(WHEREIN, Exhibit 22, Exhibit 9 of complaint, was marked for identification.)

A. Okay.

Q. (By Ms. Quinn) Exhibit 9 refers to it being Exhibit 9 in our complaint. All right. So as to Exhibit 22, are you familiar with that document?

A. Yes, I am.

Q. Tell us what you know about this document.

A. So this was conducted or written in 2013. I know that NJDC came and interviewed defense attorneys, juvenile attorneys, looked at and talked with the Office of State Courts Administrator Scott Data regarding representation in Missouri and then made an assessment of the quality of representation that youth were receiving in our state.

Page 31

Q. And can you tell us a bit about the main findings of this report with regard to the quality and quantity of defense services provided to juveniles in Missouri?

A. Sure. So it was very troubling. They found that youth were routinely waiving the right to counsel. They found that many youth did not have the ability to receive counsel for important offenses, and that -- also that the structure of Missouri's juvenile court system is very conflicted and that children were not receiving adequate representation throughout all of the stages of their offense.

Q. Okay. On that last point that children were not receiving adequate representation throughout all the stages of their case, can you unpack that a little more for us in terms of NJDC's findings?

A. Sure. So first youth were not receiving counsel for detention hearings or pre -- pretrial representation. Additionally, not receiving adequate representation throughout the process and then were not receiving postdispositional services from an attorney.

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Q. And do you remember anything in the report about its findings with regard to the quantity of youth who were receiving defense representation from the public defender service or maybe said another way the percentage of youth who were going without representation in the juvenile courts?

A. I don't remember the exact number, but I know that it was alarmingly high.

Q. All right. You'd indicated this was a report that was put together by NJDC, the National Juvenile Defender Center in 2013. Do you have a sense of how they came to these conclusions?

A. So they came to the conclusions by interviewing defenders in Missouri and in -- in talking to individuals in the court system as well as looking at data.

Q. Okay. And based on your experience with the public defender system and working within our juvenile courts, do you disagree with any of their findings?

A. I do not.

Q. And even though this report was from 2013, as you sit here today, do you feel like much has changed with regard to their findings?

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A. I think that for the most part, no, I think that there -- there is some inching along that has done and maybe some good intentions, but no, for the most part this report rings true.

Q. Maybe you could flag for us a few of the good intention items and how you have characterized them as just inching along.

A. Sure. So one of the things is that we in the public defender system have identified that yes, this is an issue, and I am somebody who is supposed to start to create juvenile specialty as -- as something of importance in our system. We want to do trainings, we want to make sure that juvenile defenders are receiving adequate training. But this is just a small step, and so that is one thing. The other thing is there are organizations and groups trying to move forward, so I am a part of the Juvenile Justice Advisory Board. And so that is also trying to move the ball forward with regard to juvenile representation in the state.

Q. And the Juvenile Justice Advisory Board, that's a state-appointed position; is that right?

A. It is.

Q. All right. And we'll return to some of

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the topics that we just lifted up to unpack them a little bit more, but let me turn your attention if I can to another document that you have previously mentioned.

(WHEREIN, Exhibit 23, Exhibit 11 of complaint, was marked for identification.)

Q. (By Ms. Quinn) This will be Exhibit 23 for purposes of the deposition with a cover indicating Exhibit 11 because it's Exhibit 11 to our complaint. All right. Would you mind taking a look at Exhibit 23, please?

A. Sure.

Q. Okay. And are you familiar with this document?

A. Yes, I am.

Q. Can you tell us what it is and why you're familiar with it?

A. So this is the investigation of the St. Louis County Family Court from 2015. I am familiar with it having been in practice and practicing as a juvenile attorney during that time. I've read it and used it in motions.

Q. All right. And are you at all familiar with what the Department of Justice did to come to these conclusions?

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A. I don't know the exact steps that they use, but I know that they went into St. Louis County Family Court, they spoke with defenders, they spoke with deputy juvenile officers, they spoke with legal officers and they also looked at individual files.

Q. All right. And can you share with us your understanding of the findings of the Department of Justice with regard to the St. Louis County juvenile court?

A. Sure. So they made several findings. They found that there was not adequate representation with regard to youth primarily because the -- there was only one defender that was representing all of the youth. She had represented over 400 youth in the time period that they looked at. They also looked at children waiving counsel.

They looked at children admitting in informal -- informal offenses, admitting to the allegations, which is something that was problematic. They were admitting to those allegations without representation. They looked at representation of children pretrial. They looked at motion practice. They found the motion practice problematic.

They looked at post -- postdisposition

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practice. They found that there was not postdisposition representation. They also found that there were equal protection violations. So youth of color were being detained, they were being filed, petitions were being filed more frequently, they were being sent out of home placement, and they were also being certified more frequently than youth of other races.

Q. Now, you've indicated that the report found that there was only one public defender assigned to the county of St. Louis's juvenile court, correct?

A. Yes.

Q. Can you explain to us based on your experience in that setting how many courtrooms in a given day that a defender might have cases in or how many courtrooms are processing cases each day there?

A. Sure. So there are two judges. So there could -- those would be two courtrooms. And then there are currently two commissioners and I believe that -- there have always been only two commissioners. So four courtrooms.

Q. Four courtrooms. And then what about detention hearings, is that another docket that might take place on a given day over there at the

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county juvenile court?
A. Sure. So that different -- is a different practice from St. Louis City, but in St. Louis County there are detention hearings every morning at 8:30 a.m.
Q. All right. So a total of five different dockets that a defender might be called upon to participate in in a given day at the county juvenile court?
A. Yes.
Q. And then in each one of those court settings, how many prosecutors -- and we'll clarify what that term means, prosecutors are there assigned to handle those dockets?
A. I don't know specifically, but I know that there is one assigned to each courtroom, at least one assigned to each courtroom. There might be more.
Q. And I'll try -- I've shifted us to the future or the -- the present, but let me -- I'll -- I'll keep our attention back on 2015. In 2015 when the DOJ report was written, was it the practice of the county juvenile court to assign a juvenile prosecutor to each of those five different courtrooms to cover the dockets?

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A. Yes.
Q. And in contrast, there was a single public defender assigned to cover those five dockets?
A. That's correct.
Q. And I've used the word prosecutor to talk about persons who are filing and prosecuting cases in juvenile court. Is that the usual term we use here in Missouri?
A. No. The usual term is either legal officer or attorney for the deputy juvenile officer.
Q. And just so the record is clear for folks who maybe don't know this practice, can you explain that a little bit more?
A. Sure. So the attorney who is prosecuting cases is also the attorney for -- who is a person who is called the deputy juvenile officer. They are the individual who can help file the case, question the youth, make a recommendation as to the placement of the youth, and then supervise the youth once the disposition has completed.
Q. Okay. And so deputy juvenile officer might be seen as akin to a probation officer?
A. Yes.
Q. So these prosecutors are actually

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representing the probation officers essentially in all of these proceedings?
A. That's correct.
Q. And this set of findings that the Department of Justice made relating to the county juvenile court, in your opinion based on your experience practicing across the state, were those findings unique to St. Louis County?
A. No.
Q. Can you tell us more about that?
A. With regard to representation, I can't speak to every single county in Missouri, but I know that the representation for youth is not necessarily done by a juvenile specialist. I don't know how many children are waiving the right to counsel and admitting, so I think that's another thing that is a problem across the state, as well as admitting to informal allegations without an attorney present.
With regard to the equal protection violations, I have only practiced in the city and I only know the statistics in the city, but I would believe that those statistics ring true across the state.
Q. And just to clarify, you just there said that you only practiced in the city, but you

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practiced in -- in other counties as well?
A. I have, but I do not know the number, the statistical numbers with regard to the equal protection violations.
Q. Got you. So you've just now indicated that in terms of the quality of representation provided in St. Louis County's juvenile court as described by DOJ in 2015 is consistent with your impressions of the quality of practice across the state in 2015; is that correct?
A. Yes, and I -- and I believe -- to clarify a little bit, I believe that the number of cases, I believe that if the attorney had had less cases that she would have been able to adequately represent the youth.
Q. Yes. And I will turn to that.
A. Right.
Q. So there's the -- the quality which sounds like in your opinion is greatly impacted by the quantity?
A. Yes.
Q. And the, for instance, needing to cover five courtrooms to defend against five prosecutors on your own?
A. Correct.

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Q. In terms of the quantity and the expectations for defenders in other counties, would you in your opinion say that that disparity in terms of what's provided to the defender as compared to the prosecution exists across the state?

A. Absolutely. And I think with a little bit of a difference. I think a lot of jurisdictions have a lot of adult cases, and only a handful of juvenile cases. And so the disparity exists not in the number of juvenile cases, but in the lack of time and the ability to spend focusing on those juvenile cases, as well as the specialization.

Q. All right. So let me turn your attention to what I'm going to call for purposes of this deposition Plaintiff's Exhibit 24 --

(WHEREIN, Exhibit 24, Exhibit 8 of complaint, was marked for identification.)

Q. (By Ms. Quinn) -- which has a cover indicating Exhibit 8 because it's Exhibit 8 for our complaint. Can you take a look at Exhibit 24 and tell us if you recognize it?

A. I do.

Q. And what is this document?

A. It is a letter that our director, Michael Barrett, wrote to the then governor of

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Missouri.

Q. And you've seen this before?

A. I have.

Q. And what is it that Director Barrett is telling the governor in this letter?

A. He outlines the Department of Justice, the -- the problems that were found in that report. He talks about the resources and the fact that we do not have the ability to represent indigent persons given the current budget.

Q. And in reviewing this letter, is there anything about it that you believe to be untrue or that you disagree with?

A. No.

Q. And is the position of Director Barrett in particular with regard to the problem of the juvenile defender system being in crisis, do you agree with that?

A. I do.

(WHEREIN, Exhibit 25, Exhibit 12 of complaint, was marked for identification.)

Q. (By Ms. Quinn) All right. So I'd like to turn your attention now to Plaintiff's Exhibit 25 for purposes of the deposition. You'll note the cover says Exhibit 12 because it's Exhibit 12 to our

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complaint. Do you recognize that document?

A. I do.

Q. And what is it?

MS. SHIPMA: Could we go off the record for just a moment?

MS. QUINN: Sure, uh-huh.

VIDEOGRAPHER: We're going off the record at approximately 9:48 a.m.

(WHEREIN, a discussion was held off the record.)

VIDEOGRAPHER: We're back on the record at approximately 9:50 a.m.

Q. (By Ms. Quinn) All right. We just took a break so that I could correct an imperfection in our exhibit, and before we took a break we were talking about Exhibit 25, and I think I asked if you recognize that document.

A. I do.

Q. Notice I didn't use this scrolly thing. I'm sorry. And -- and what is Exhibit 25?

A. It is the memorandum of agreement between the U.S. DOJ and St. Louis County Family Court.

Q. And what is your understanding of the meaning of that agreement and what it does?

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A. So -- so it was an agreement reached by a number of parties including St. Louis County Family Court and it lays out specific findings and agreements between the parties.

Q. And with regard to defense services, is there anything in that document that speaks to that topic?

A. Sure. So several different things. One is that for any youth who is detained and not represented, the public defender system shall be appointed. If they are not detained and they are not deemed indigent, they can go to a number of contract attorneys. There is one specific contract attorney who has been hired by the county to represent youth and there is also a panel of contract attorneys who are also able to represent youth.

Q. And so is the upshot of this agreement with regard to defender services that one more defender has been assigned to assist with juvenile cases in St. Louis County?

A. Correct. At least one. And I don't know the numbers of -- or of how many youth the other contract attorneys are representing.

Q. But prior to the agreement there was

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also a panel of -- of conflict or contract attorneys that existed?
A. Sure.
Q. And is that any different now?
A. Just a little bit because these are not necessarily conflict attorneys. So these are attorneys for youth who don't qualify for the public defender's services. So in practice they could be representing more youth, but I don't know the answer to how many youth they're representing.
Q. Okay. And we might be getting kind of deep into the weeds on this one, but I reference a single attorney who seems to be designated as an additional defender for delinquency cases in the county.
A. Correct. Yes.
Q. And that person's name is Quinn Grimes?
A. That's right.
Q. And does Quinn handle cases of kids who are indigent?
A. I believe so, yes.
Q. Okay. And the panel is for folks who would not otherwise qualify for the public defender services?
A. You are correct.

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Q. So the public defender's services essentially have been expanded one fold or you have one additional attorney assigned in the county to assist with those five dockets we talked about earlier?
A. Correct. But that person is not hired by the public defender's office and she does not work with the public defender system.
Q. And she's receiving funds from elsewhere; is that right?
A. That is correct.
Q. Do you know much about what she handles in terms of cases or what she's assigned?
A. Sure. I know a little bit. I know that she does delinquency cases and I know that she also handles the informal adjustments.
Q. And the informal adjustments are those matters that you referenced earlier where youth might be diverted off the ordinary prosecution track, but there are concerns about admission being made in the context of those informal cases?
A. That's correct.
Q. And by Missouri law, youth are entitled to counsel at those proceedings, correct?
A. That is correct.

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Q. And previously they were not receiving access to counsel on a regular basis?
A. That is correct.
Q. So Quinn's time sounds like is a fair amount spent on those informal cases?
A. I don't know the answer to that question.
Q. Okay. Do you know if she's handling certifications?
A. I don't know the answer to that question.
Q. All right. With regard to Exhibit 25, does that agreement impact any other county in the State of Missouri other than St. Louis County?
A. It does not.
Q. And so while we now have one additional attorney with -- so a total of two public defender-type attorneys handling five dockets in the county, there's been no similar change in other counties?
A. That's correct.
(WHEREIN, Exhibit 26, Exhibit 7 of complaint, was marked for identification.)
Q. (By Ms. Quinn) All right. I'd like to share with you what we're going to call Exhibit 26

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for purposes of the deposition. It has a cover indicating Exhibit 7 because it's Exhibit 7 to our complaint. Can you look at this document and let us know if you recognize it?
A. Yes, I do.
Q. All right. And what is this document?
A. This is the RubinBrown study done of the Missouri public defender's system.
Q. And did you participate in the timekeeping required for this study?
A. Yes, I did.
Q. Can you explain a little bit to us about what timekeeping entailed?
A. Sure. So there was a system on our computer where you could document how much time you spent for a particular task, and you did it in five-minute increments.
Q. And this was a change in practice in terms of how you might record your time previously, yes?
A. Yes.
Q. More detailed?
A. Yes.
Q. More onerous?
A. Yes.

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Q. Did it take time to keep your time?
A. Absolutely.
Q. Are you aware of any similar system ever imposed on the prosecutors in the State of Missouri?
A. I am not.
Q. Have you ever heard of the legal officers over there in juvenile court being forced to keep track of their time to justify their existence?
A. I have not.
Q. Okay. So in terms of findings this RubinBrown study made findings relating to cases across the criminal and juvenile justice systems in Missouri, correct?
A. Yes.
Q. With regard to juveniles, what is your understanding of the finding relating to -- to juvenile defense matters?
A. Could you be a little bit more specific.
Q. Sure. On page 15 in the section with a title here I think it's time study in section C --
A. Sure.
Q. -- it has a list of average reportable

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controllable case task hours per case. Do you see that section?
A. I do.
Q. And what findings were made with regard to how much time on average in the State of Missouri is being spent on juvenile matters?
A. 4.6 hours.
Q. So -- and to be clear, 4.6 matters on juvenile delinquency defense cases, yes?
A. That's correct.
Q. And are you aware of what this study suggested as a appropriate amount of time to be spent on -- as a -- an appropriate amount of time to be spent on such matters?
A. The study or the AB --
Q. The study.
A. Okay.
(Court reporter interruption.)
A. ABA standard. 19.5.
Q. (By Ms. Quinn) All right. And you mentioned another standard. Will you share some about that?
A. Sure. So the ABA standards require approximately ten hours, I believe, on a -- on a juvenile case.

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Q. On a -- on a juvenile case. And do you know if there are any differences on how the ABA measured juvenile case time on average versus this study?
A. I do not.
Q. So for instance, if we take a look at the RubinBrown study, you know, it suggests 19.5 hours for a juvenile case, but a juvenile case might wind up in adult court, correct?
A. Yes.
Q. And so if a juvenile case moved from juvenile court into adult court and we were dealing with a homicide charge, what is the number of hours the report, RubinBrown report says should be spent on a homicide case?
A. 106.6.
Q. And then how much time on page 15 is it -- does RubinBrown study suggest is being spent on a homicide case on average in Missouri?
A. 84.5.
Q. And now reviewing this report, is there anything about it that seems inaccurate to you in terms of the amount of time being spent on average by colleagues across the state on these cases?
MR. MOORE: Just object to the

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foundation of the question. Subject to that, you can answer.
A. I -- say -- would you ask the question again?
Q. (By Ms. Quinn) Yes. Does it seem about right to you that such a limited amount of time is being spent on juvenile cases across the state?
MR. MOORE: Same objection. Go ahead.
A. I can tell you I do not disagree with the findings of the -- of the report.
Q. (By Ms. Quinn) All right. So we're going to talk a little bit now about policies and procedures generally, maybe a little less about these documents. Do you -- do you want to take a break?
A. No, I'm okay.
MS. QUINN: Anyone? Okay.
Q. (By Ms. Quinn) So in terms of juvenile practice you did mention earlier there are some trainings that are now taking place. What about juvenile case policy manuals, is there any statewide policy manual for juvenile defense cases?
A. Not currently.
Q. What about a case procedures manual?

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So say separately from policies about how the system might process cases or document cases. What about procedures for actually handling such matters, the attorney actions and tasks, is there a manual for that?

MS. SHIPMA: And Mae, could I just -- and you mean MSPD manuals?

MS. QUINN: Yes, yes.

MS. SHIPMA: Thank you for clarifying.

MS. QUINN: Uh-huh. Statewide.

A. Not currently. Not currently.

Q. (By Ms. Quinn) Is there a training manual for new attorneys who may be handling juvenile cases statewide?

A. Not currently.

Q. What kind of training do new hires to MSPD receive?

A. You mean generally?

Q. Generally.

A. Sure. So there are two trainings. There is a new defender workshop. It's a week-long workshop that is given. There is also trial skills that's usually -- one is usually in the summer and one is usually around mid-year.

Q. All right. And -- and let me back up a

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bit. No one is hired at this point as a designated juvenile defender in the State of Missouri, correct?

A. Aside from myself?

Q. Yes.

A. And Katrina Jones would be the other juvenile defender.

Q. Well, when you post for jobs --

A. Oh, sure.

Q. -- it's public defender for Hannibal or public defender for wherever, but no designation of a specialized juvenile defender, correct?

A. You are correct.

Q. And so someone is hired on and they go through some upfront training to learn the job?

A. Yes.

Q. You've mentioned two possible trainings they would attend?

A. Yes.

Q. Do defenders before they hit the ground and receive cases necessarily participate in both of those trainings you've just mentioned?

A. Not right away. They are required as a new attorney, but they don't -- it's not the first week on the job that they necessarily receive that training.

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Q. So you might be in court handling matters, but you've not participated in any kind of specialized training relating to your job?

A. Potentially, yes.

Q. Now, in either one of these two trainings that are provided as a matter of course, is there any component that relates to juvenile practice?

A. Not currently.

Q. So just so -- so we're clear, there's an annual defender training that takes place that any defender can attend?

A. Any new.

Q. Any new defender can attend?

A. Yes.

Q. And it has no information about juvenile cases?

A. Not to my knowledge.

Q. And then a trial skills training is a different training, yes?

A. Yes.

Q. And it too does not at all relate to juvenile practice?

A. Not to my knowledge.

Q. And a trial in an adult court is quite

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different from a trial in a juvenile court, correct?

A. Absolutely.

Q. Tell us a little bit about why.

A. So a juvenile trial is going to be in front of a judge, so it's going to be a bench trial. So there are differences in strategy that you would use. Also, there is the element of having a parent sitting at counsel table with you, so that's a difference between juvenile court and adult court. Also, knowledge of adolescent brain development, the potential to use juvenile-specific jury instructions, case law is going to be different, just to name a few differences.

Q. Okay. Now, beyond trainings for new defenders, is -- is there any kind of training that might be offered relating to juvenile practice?

A. Yes.

Q. And -- and what is that training?

A. So that is the once-a-year juvenile training put on by the public defender system.

Q. Now, that training is relatively new, correct?

A. It is.

Q. Do you know how long ago MSPD began to put on juvenile-focused trainings for its lawyers?

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A. I believe it began in the winter of 2014.
Q. So when we're saying every year, it's only been two years or three years, correct?
A. Yes.
Q. And do you have any sense how many people attended that first winter 2014 training?
A. I don't.
Q. Were you present?
A. I was on maternity leave.
Q. That is right. And what about the next training after that?
A. So the training in 2015, approximately 30 attorneys.
Q. And what about the most recent? I think it would be the most recent, 2016 training?
A. No, 2017 would be the most recent training.
Q. Okay.
A. Probably 20 to 25 attorneys.
Q. And how many attorneys total, if you know, practice as public defenders in the State of Missouri?
A. I don't know the exact number.
Q. Would it be safe to say only a small

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percentage of the attorneys in the state of Missouri's public defender system have been trained specifically relating to juvenile practices?
A. Yes.
Q. Are you familiar with a program called JTIP?
A. I am.
Q. And what is JTIP?
A. JTIP is the Juvenile Training Immersion Program.
Q. And do you know who came up with this program and what it entails?
A. Sure. It is a collaboration between Kris Henning from Georgetown University and the National Juvenile Defender Center, and it is a set of training specifically related to topics in juvenile law.
Q. And is it a training that individuals from any state might be able to participate in?
A. Yes.
Q. Are you familiar with the number of Missouri defenders who have been trained in JTIP best practices?
A. Yes.
Q. How many?

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A. Myself, Katrina Jones, so that's two. Sue Rinne, that's three. Mary Fox, that's four. Courtney Goodwin, that's five. And yourself, so six.
Q. And are you familiar with Katrina Jones being unable to participate in the JTIP program at some point?
A. I don't -- I don't know.
Q. Okay. Did you find the JTIP program to be helpful to you?
A. Absolutely.
Q. Are you aware of any other juvenile-focused opportunities -- well, strike that.
I'm going to turn to another document. I think we're on Exhibit 27 at this point?
MS. SHIPMA: Uh-huh.
(WHEREIN, Exhibit 27, New Attorney Toolbox, was marked for identification.)
Q. (By Ms. Quinn) Would you mind taking a look at Exhibit 27, please?
A. Okay.
Q. Have you seen this document before?
A. No.
Q. All right. The cover of this document, would you mind indicating for the record what --

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what it's -- how it's labeled?
A. It says New Attorney Toolbox: Guide to Area Ten and Other Important Stuff.
Q. And then on the bottom of it, where is it -- where is area ten?
A. Hannibal.
Q. Are you familiar with practices in Hannibal or area ten?
A. No, I am not.
Q. Have you ever seen one of these toolbox-type training documents before?
A. No, I have not.
Q. So let's if we can walk through this together. If you would turn to page -- I don't think the pages are numbered, but it is two, three, four, five, at the bottom it's MSPD 5668 Bates stamp on the bottom.
A. Okay.
Q. Here on this page it appears the Hannibal area ten office is providing information about poverty guidelines, correct?
A. That's what it looks like.
Q. And it says public defender guidelines and there are some charts or there is a chart on this page, yes?

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A. Yes.
Q. Have you seen this chart before?
A. I -- I have no idea if I've seen this chart before. It doesn't look familiar to me.
Q. Okay. I'll direct your attention to a section that says towards the bottom (quote as read):
Parents' income considered if D is under 18, a full-time student, or dependent on parents or if parents or a relative post bond.
Have you seen that kind of terminology before?
A. No.
Q. Can you tell us if this is the practice across the state?
A. I can tell you that children file -- they fill out -- they fill out an application, but they traditionally are accepted and not based on their parents' income.
Q. All right.
A. And that's based on my practice in St. Louis city.
Q. All right. So the practice in St. Louis city is that a child actually fills out a

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form seeking a public defender?
A. No. So the practice is that they are appointed an attorney with the public defender's office. We ensure that they want an attorney from the public defender's office and they fill out an application. But my practice, we have not turned away children based on indigency.
Q. Okay. So just so I'm clear again, so in the city the court appoints the public defender to a child's case, yes?
A. Yes.
Q. And thereafter an assessment of indigence is undertaken; is that right?
A. Yes.
Q. And is it the child that fills out the form or somebody else?
A. No. I help the child fill out the form.
Q. But just -- and let me be clear. So it's not the parent --
A. No.
Q. -- who fills out the form, it's the child in St. Louis city?
A. Yes.
MR. MOORE: I'll object to the form of

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the question. I think it misstates her prior testimony that she assists the children in filling out the form, but subject to that the answer is already in the record, so we can continue.
Q. (By Ms. Quinn) Do you want to clarify anything?
A. No.
Q. Okay. So in the city all young people in the court system receive appointment at the front end of a case for the public defender's representation?
A. Yes.
Q. Thereafter a screening is done to determine if they qualify for public defender services?
A. And if they want an attorney from the public defender's office.
Q. In terms of the qualifying, it's the policy and practice of the city that all children are deemed indigent because they're under 18 and cannot work to support themselves, correct?
A. Yes.
Q. But that is not the practice across the state?
A. I don't know.

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Q. Do you know if that is the practice in St. Louis County?
A. I don't know. I know that they fill out applications, but I don't know anything beyond that.
Q. Do you know who fills out the application in St. Louis County?
A. I do not.
Q. What about St. Charles County?
A. I do not.
Q. What about those other places you do -- do cases?
A. I do not know. Usually by the time we get the cases in the other jurisdictions, a -- an -- a defender from that jurisdiction has entered and deemed it a conflict, so they have at some point determined indigency and then conflicted the case to our office.
Q. You're coming in later so you don't know what happened --
A. Correct.
Q. -- on the front end?
A. That's correct.
Q. So I want to turn our attention back to this area ten tool kit. Can you, if you would,

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please, look through the forms that are in here looking at documents such as the penalty worksheet, the case log, client interview form, waiver of preliminary hearing form, protocol form, DWI client questionnaire form. Look through the whole document really if you don't mind.

MS. SHIPMA: And Sarah, take your time to look at --

MS. QUINN: Yeah.

THE WITNESS: Thank you.

MS. QUINN: You know, if it's all right, we can go off the record because I wouldn't mind to take a little time to take a look at this and then for me to -- to look at this document as well. So if it's all right, can we go off the record?

VIDEOGRAPHER: We're going off the record at approximately 10:15 a.m.

(WHEREIN, a recess was taken.)

VIDEOGRAPHER: We're back on the record at approximately 10:24 a.m.

Q. (By Ms. Quinn) All right. Ms. Johnson, we just took a break, but before the break I asked you to take a look at this area ten new attorney toolbox document, correct?

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A. Yes.

Q. Having now reviewed that document, did you see anything in there relating to juvenile practice?

A. I did not.

Q. But to be fair, you don't -- you've never seen this document before?

A. I have not.

Q. You don't know if this is still the current toolbox tool kit given to Hannibal area attorneys?

A. I do not.

Q. But if it was, do you have an opinion about whether this is sufficient to bring new attorneys up to speed relating to their responsibilities for juvenile clients?

MR. MOORE: Also object to the form of the question. I think it's a little vague. Subject to that, you can respond.

A. As there is nothing with regard to juvenile clients, I would say no, it is not sufficient.

Q. (By Ms. Quinn) Now, I'd like to turn our attention to St. Louis city juvenile court practices.

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A. Yes.

Q. And I think, correct me if I'm wrong, but your opinion might be that St. Louis city as an office tries to set the bar of best practices for the city -- for the state of Missouri's juvenile defenders?

A. When you say St. Louis city you mean the public defender's office?

Q. Yes. Uh-huh.

A. Yes.

Q. It's one of the few offices that has a dedicated juvenile defender?

A. Yes.

Q. And so therefore you try your best to become a model for other attorneys who are doing juvenile practice across the state?

A. I do.

Q. But are you able to do everything you think you need to do as a defender on the cases you handle?

A. No.

Q. Do you have a policy manual in St. Louis city for juvenile defense cases?

A. Myself?

Q. The office.

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A. No.

Q. Is there a office procedures manual relating to juvenile cases, how somebody should be handling a case in terms of all of the tasks that need to be accomplished in a juvenile case, any kind of manual like that?

A. No.

Q. Is there any kind of new employees tool kit or training manual for defenders joining the city of St. Louis who might handle juvenile cases?

A. You are looking at her.

Q. But if you were to hire a new attorney, would they receive any kind of manual or materials that tell them how to handle juvenile cases if they had to cover a case?

A. Sure. So I have done some trainings of attorneys if they're going to do a case, but we don't hand them pieces of paper, no.

Q. All right. And you mentioned trainings that might take place in St. Louis city. What are those trainings?

A. Sure. So we have -- I have trained some of the newer attorneys with regard to what a juvenile case is, what the processes and procedures are, case law, important Missouri case law, and so

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that has taken place a couple of times.
Q. Yeah. So you say a couple of times. Can you tell us exactly how many times?
A. So we have an attorney -- another attorney Rachel who does some juvenile stuff so I've trained her, and then I trained a group of four other attorneys. So twice.
Q. All right. And when did you train those four lawyers?
A. Exact date?
Q. Roundabout.
A. Couple months ago.
Q. And how long did that training last?
A. About an hour.
Q. Beyond that, no other juvenile-specific trainings have been conducted in the St. Louis city office relating to juvenile practice?
A. No.
Q. How many lawyers do you guys have there?
A. Approximately when we were fully staffed 30, but I believe we have about 27 right now.
Q. And of those 27 lawyers, you've indicated you're the only one that's sort of all the

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time is in juvenile court; is that fair to say?
A. It is fair to say.
Q. You've mentioned Rachel. What are her duties?
A. So Rachel handled -- before we stopped taking conflicts she handled the St. Louis County conflicts, as well as the St. Charles County conflicts for juvenile court, and she also has an adult caseload in the city.
Q. And does she do any juvenile cases in St. Louis city's juvenile court?
A. Yes, she has done some.
Q. And I'm sorry if you said that and I just missed it. So then the other 25 attorneys, they are not generally assigned to handle cases in St. Louis city juvenile court; is that right?
A. That's correct.
Q. But every attorney might in some way, shape, or form be involved in a juvenile case if it is certified to adult court; is that fair to say?
A. No. I take all of the -- if a child is certified in the city of St. Louis, I keep the case.
Q. And you stay on throughout the whole duration of that matter?
A. That is correct.

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Q. Do you know if that's the practice around the state?
A. I do not know that.
Q. Do you know anything about the practice around the state?
A. No.
Q. St. Louis County, do you have any sense?
A. I don't.
MS. QUINN: All right. You have shared with us a document today that we will mark as Exhibit 28. And I think everyone has a copy of it.
(WHEREIN, Exhibit 28, Memorandum of understanding, was marked for identification.)
Q. (By Ms. Quinn) You have -- you have that document as well?
A. I do.
Q. Can I switch you?
A. Sure.
Q. So now it is marked Exhibit 28. Can you tell us what that document is?
A. Sure. It is a memorandum of understanding between the Missouri state public defender and the 22nd Judicial Circuit of Missouri, Family Court, Juvenile Division.

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Q. And what does this document seek to accomplish?
A. So it is seeking to appoint a contract attorney in good standing to represent youth in St. Louis city juvenile court.
Q. And so when you say it's seeking to appoint an attorney, is it for -- there's to be now one contract attorney in the city or is this for any number of contract counsel? I'm just a little confused.
A. Sure. So currently there is one contract attorney in the city of St. Louis.
Q. And who is that?
A. Cindy Finney.
Q. And has Cindy Finney been trained as a juvenile defender?
A. Yes, she went to the juvenile training in the summer and I am a resource for her.
Q. And how much is Ms. Finney paid per case?
A. So there are two numbers on page two (quote as read):
The contract attorney shall be paid $500 for cases involving nonviolent offenses and $750 for cases involving

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violent offenses, and it will not exceed $20,000.

Q. And do you know how many cases Ms. Finney currently has?

A. Two.

Q. So this is new?

A. Yes, it is. She began the first week of October.

Q. Oh, I see. I see it's dated July of '17, yes?

A. Correct.

Q. But it's only taken effect it sounds like this past month, this month?

A. This past week, yes.

Q. And so for a burglary case it sounds like unless there was the use of a weapon, she would be paid $500 no matter what that case entailed?

A. Are you referring to a burglary first, burglary second?

Q. Ah, very good. We'll go burglary second.

A. Okay. I believe that would be $500.

Q. All right. And so even if she had to interview ten different witnesses, yes?

A. Potentially, yes.

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Q. No matter how many motions needed to be filed in that case?

A. That's correct.

Q. No matter how much mitigation evidence needed to be marshaled?

A. That's correct.

Q. No matter how many times she had to appear in court?

A. That's correct.

Q. Detention review hearings?

A. That's correct.

Q. Is there anything else about this document you think I should know?

A. No.

Q. And is there anything different about that arrangement, $500 no matter how much is asked of the lawyer in a juvenile nonviolent matter? Is that different from what's taking place across the state for contract counsel?

MR. MOORE: I'll object to the form of the question. I think it's argumentative and vague. Subject to that, you can respond.

A. Do you mean contract counsel for conflict cases?

Q. (By Ms. Quinn) Yes.

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A. As far as the amount of money, I believe it's the same.

Q. Did you feel I was being argumentative?

A. I --

MR. MOORE: Object to the form of the question as well.

MS. QUINN: All right. I don't want to argue with you, Sarah.

Q. (By Ms. Quinn) Okay. So you raised this question of conflict. Let's talk -- let's talk about conflicts of interest and conflict counsel.

A. Sure.

Q. So you indicated earlier that in the city of St. Louis the court appoints the public defender for any child coming through kind of as a stopgap measure in -- on the front end of a case?

A. That's correct.

Q. And you -- do you know if that -- well, that's not the practice necessarily across the state?

A. No.

Q. So focusing on across the state, do you know then on the front end of a case how youth are being appointed counsel, what the practice or policy is?

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A. Just generally. I know that it's either they are appointed subject to 211.211, or they are telling the court when the court first inquires either at a detention hearing or at a status conference whether the child wants counsel and then allows them the opportunity to apply for public defender services.

Q. So there -- there may be instances when a child is appearing before the court let's say at a detention hearing without any attorney on the case?

A. That's correct.

Q. In St. Charles County, for instance, are there any attorneys at the detention hearings?

A. And when you mean attorneys, public defenders?

Q. Public defenders.

A. Not to my knowledge.

Q. And again, across the state at the -- at the beginning stage of a case it would be important to discern if there was a conflict of interest, correct?

A. Yes, but by the -- by the defender or who are you --

Q. Just -- just as an ethical matter.

A. Sure.

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Q. There are concerns about having an attorney on the case who might have a conflict of interest in any adult or juvenile case, yes?
A. Absolutely.
Q. Do you know how conflicts of interest are discerned across the state in juvenile matters?
A. I do not.
Q. Does the public defender system have any policy relating to figuring out if and when there are conflicts of interest at the very beginning of a case?
A. Yes. There -- there would be a policy.
Q. Do you know what that is?
A. Well, I mean, I think if you -- if there is more than one child or more than one adult charged in an offense, that would be a pretty obvious conflict. That would be discerned right up front. There might be more subtle conflicts, so once you get into a case, you might recognize that the child is saying that another individual did it and then realizing that you also represent that individual.
Q. All right. And so you've kind of identified a classic conflict of interest, and that is co-defendants generally should not be represented

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by the same attorney --
A. Yes.
Q. -- during the course of a case?
A. That's correct.
Q. And so what is the policy or practice with regard to the MSPD system for figuring out when that happens and how to protect against it?
MS. SHIPMA: If you know.
Q. (By Ms. Quinn) If you know. Sure. Sure.
A. I guess I'm a little bit confused about your question how to protect against representing multiple defendants.
Q. That's right.
A. So you -- if you -- if a petition charges multiple children are acting as -- acting together, then protecting against it would be to conflict it to other offices.
Q. All right. So let's talk about -- I'll look at St. Louis city practices then.
A. Okay.
Q. So you've already indicated I think that the St. Louis city public defender's office does not represent all indigent youth in the St. Louis city juvenile court, correct?

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A. Correct.
Q. Some are going to the contract counsel who we just talked about?
A. Correct.
Q. Are there other panel or other attorneys handling juvenile matters in -- in the city for those who are indigent?
A. No.
Q. And who covers detention hearings in the city of St. Louis?
A. I do.
Q. And do you cover all detention dockets?
A. Yes.
Q. And if a case comes in with multiple respondents or juveniles charged in a single offense, do you handle that detention hearing?
A. I do.
Q. And so let's say there are five co-defendants charged in a fight.
A. Sure.
Q. You would stand up for all of those children at the detention hearing as their lawyer?
A. Yes.
Q. And that's a conflict of interest, right?

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A. Yes.
Q. When, if at all, does a new lawyer come into the case to take some of those co-respondents off your hands?
A. Sure. So if we are able to get the conflict attorneys to come down and cover the detention hearings, certainly that's something that is an option. However, if not -- it usually takes a couple weeks to contract the case and for there to be a status conference in order for all of the attorneys to get together.
Q. So for the first few weeks of a case it could be the child is without conflict-free counsel; is that right?
A. No, that's not right. So once the detention hearing is held, immediately after the cases are conflicted. So I do not -- after that first initial detention hearing, I am not visiting all five children in the detention center. I am only visiting the individual who I entered on in the case.
Q. How long does it take from that detention hearing for the new counsel to enter on average to take over the matter?
A. I don't know.

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Q. And would you agree that the beginning days of a case, juvenile or adult, are some of the most important days on a case to investigate and -- and do your job?

A. Yes.

Q. Would you also agree that detention hearings, whether somebody is incarcerated or not incarcerated, detained or not detained, is sometimes one of the most important facets of -- of a case in terms of determining outcome?

A. Absolutely.

Q. Do you feel like when you're standing on a case where there's five co-respondents and you're asked to represent all of them and you know that you're conflicted, that you're able to do your job as -- as you ought to be able to do?

A. Sure. I think in a perfect world that there would be five different attorneys representing those children, but at the moment of detention hearing my goal is to get all five children released. And so at that time I want to ensure that those children, because that is their most important question is when am I going to be released is to fight for them to get released.

Q. Are you speaking to each one of those

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five about the facts of the case when you're preparing for the detention hearing?

A. I am not.

Q. But the facts of the case could be important to a detention determination?

A. They are, and I rely on the probable cause document to make any very prima facia arguments.

Q. So it's safe to say you modified what would be considered an appropriate and best practice in order to accommodate the limitations of the system?

A. Yes.

Q. Why don't you have five attorneys standing up on five co-respondent cases?

A. We don't have the ability to with the time to get those five conflict attorneys assigned because by the time -- when the petition is filed and the detention hearing is three days and we don't have enough time to do that.

Q. And -- and let's talk about that predetention hearing period that you've mentioned, three days. How much work are you doing between when a case is papered or petitioned and when that detention hearing takes place? How much work or

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investigative time are you spending on that matter?

A. So are you asking generally?

Q. Uh-huh.

A. Okay. So when a case is petitioned I am visiting with the child, talking with the family, potentially getting any mitigation information, investigation. I don't have addresses or phone numbers for the witnesses, so usually the investigation piece is just talking to the child and if the parent knows any information. That's the investigation that's done predetention hearing.

Q. What about lining up alternatives to detention, are you able to do that work?

A. Absolutely.

Q. Tell me more about that.

A. So you -- you're talking to the parents or any kin that would be willing or able to take the child, as well as if there is a schooling issue, potentially arranging alternative schooling.

Q. I mean inpatient drug programming, residential placement, other placements other than the family to provide as an alternative at the detention hearing.

A. Children don't normally -- that's not something that they normally want, so that's -- no,

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I have -- I usually do not look into that option.

Q. So if a child had an option of being detained or going to a treatment program, it's not within your practice to look into that possibility of a treatment program?

A. Well, of course, if the -- if that's what the child wanted, then yes, I would look into the inpatient treatment program.

Q. What is -- do you know anything about the practice across the state in terms of the ability of lawyers handling juvenile matters to use that three days to investigate, obtain, and put into place alternatives to detention?

A. I don't.

Q. You talked a little bit about conflicts of interest and -- and how conflict cases might be reassigned. Can -- can you unpack a little bit more what that process looks like and who covers what county?

A. So I -- I'm sorry, I'm a little bit confused about your question.

Q. Yeah, me too. So let me clarify. Focusing on St. Louis city.

A. Sure.

Q. If there's a case with multiple

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respondents and conflict counsel needs to be assigned, what takes place? What -- what follows after that determination?

A. Currently what takes place is we determine the conflict, and then it is sent to Columbia to be contracted out.

Q. And so Columbia gets this information and then what's the realm of possibilities, to whom may those cases go?

A. I don't know the exact individuals, but they could go to any number of contract attorneys for the -- the system.

Q. So is it safe to say there's like a relationship among St. Louis city, St. Louis County, and St. Charles County attorneys doing conflict cases?

A. So that used to be the practice, but that is no longer. So these are -- St. Louis County and St. Charles County public defender's office is no longer taking conflicts.

Q. Oh, okay. When did that go into effect?

A. I don't know. Recently.

Q. Would -- would you say within the last month?

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A. I don't know.

Q. Do you know if you any longer will be required to travel out of county personally to -- to cover cases?

A. No.

Q. No, you will not or you don't know?

A. I will not.

Q. Will other attorneys across the state need to travel out of their own counties to cover cases?

A. Potentially if those are cases that they are currently entered on.

Q. But you don't know what the practice will be going forward in terms of who's getting what cases, who's covering what county?

A. No.

Q. Speaking about your practice up until this recent change, is it fair to say as you mentioned earlier that you were covering cases in five different counties?

A. Yes. I -- I stopped doing that approximately a year and a half ago.

Q. And was that because of your change in role?

A. No. My change in role was in July of

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this year, so it's just a new position. But I was -- I split that duty with Rachel Dowd. So I think it's been about a year.

Q. So when this change happened, is this intended to improve delivery of services, like do you have a sense of why this is going on?

A. Why I stopped doing the conflict?

Q. Yeah. Uh-huh.

A. Yes. Yes, to improve services. So I could focus my time on St. Louis city youth.

Q. What about the attorneys out in St. Charles County, are they still any of them being asked to travel outside of county to cover cases?

A. I don't know the answer to that question.

Q. And St. Louis County, any of those folks?

A. I don't know.

Q. I want to shift a little bit and talk about expert witnesses if that's okay.

A. Sure.

Q. I assume you have in your experience used expert witnesses in cases, yes?

A. Absolutely.

Q. Do you have any opinions about expert

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opinions -- about expert witnesses in juvenile matters? And let me ask do you feel like the use of experts is more important or something that should be relied upon more frequently in juvenile matters than adult matters?

A. I think it depends. I think expert witnesses are definitely a very important thing for juvenile cases, but I -- they could be just as important for an adult case.

Q. And so in terms of the range of experts one might use in a juvenile case, can you share with us a little bit who some of those folks might be?

A. Sure. So you might have a mental health expert who is talking either about competency or about learning disabilities or issues with a child understanding maybe verbal language, comprehension of the system. So you have those -- that kind of expert. Also have an adolescent brain development expert, psychologist, psychiatrist who would be able to -- psychologist who would be able to talk about brain development and why that is important with regard to a case. You also might have the range of experts that you would use in an adult case, so ballistics or fingerprint DNA, those kinds of experts.

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Q. So experts relating to the trial elements or the charge elements might be one area of expertise you're using?

A. Yes.

Q. And a whole other array of experts relating to the youth-specific features in a particular case perhaps?

A. Absolutely.

Q. And what's the process for obtaining an expert witness in a juvenile matter in -- in the Missouri system?

A. Sure. So you of course have to identify the expert that you're going to use, talk with them, understand how much they are going to charge an hour, and then you have to do an encumbrance request. So you have to identify the reason why you're going to be using the expert, what expert you want to use, and how much money you are going to be needing for that particular expert.

Q. And so then what is the policy or practice for then turning that information over? Like to whom do you direct that request?

A. Sure. You direct that request to your district defender and then if it reaches I believe over $500 it goes to another group, another level of

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management who then have to review the request.

Q. Are you aware of any limits on your ability to access experts or use experts?

A. No, I am not.

Q. Do you know anything about the amount of money that has been allocated to the Missouri public defender system for expert witnesses?

A. No, I do not.

Q. You've never made something called an AKE motion or AKE motion to the court directly for expert expenses?

A. I have not.

Q. Do you feel like your ability to -- to access experts is -- are there any -- any limits on your day-to-day practice that impact your ability to -- to access or use expert witnesses?

A. No.

Q. The caseloads and the like don't enter into your thinking around what kind of time you might spend with an expert or otherwise?

A. Ask -- ask that question again.

Q. Yeah. So it takes time to work with an expert?

A. Absolutely.

Q. Tell us some -- some about what that looks like.

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A. So you're going to be talking to them about, you know, pre -- using them kind of what -- what strategies you have or maybe what -- what you want them to be used for. Then you're going to be giving them documents.

They're going -- they're going to have to do a document review, maybe even a witness review, maybe talk to family members, individuals that that child has interacted with. Then you're going to be talking to them before they potentially write a report.

Do they want to write a report, do they not want to write a report? Then you're going to be talking to them pretrial or prehearing about what kind of questions you're going to be asking them, what kind of exhibits you're going to be using, what kind of questions the legal officer -- officer is going to be asking them, and then there is the hearing and then any other posthearing issues.

Q. So it sounds like to locate, work with, and deploy an expert well, it could take 4.6 hours alone on that task?

A. It could.

Q. Is it your sense that the practices in St. Louis city relating to the use of experts in juvenile cases are different from across the state?

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A. I can't speak for certain, but we have youth experts in the city of St. Louis.

Q. And do you know anything about the -- your colleagues across the state, how much they're using experts in juvenile cases or --

A. I don't.

Q. -- making requests? What about investigators, are there policies and procedures statewide with regard to the use of investigators in juvenile matters?

A. Sure. So each office is assigned investigators. If you would like an investigator to do something for you, you create what's called an action item. You send that to the district defender or deputy district defender and then they reassign that action item.

Q. And so what -- how long would you say does it take for you from when you make a request for something to be investigated for it to be assigned and the action item to be acted upon?

A. Same day.

Q. And are you finding that the investigators are dedicating the same amount to

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juvenile cases as adult cases?
A. I don't know specifically, but I do know that they are divided amongst all of the attorneys, so they have a lot of action items and investigative requests to complete.
Q. And do you know how many investigators there are in St. Louis city, the St. Louis city office?
A. I believe four.
Q. And are any specially assigned to the juvenile court?
A. No.
MS. QUINN: Just one moment.
Q. (By Ms. Quinn) Okay. So at this time if it's okay, I'd like to talk a little bit about discovery.
A. Okay.
Q. Discovery in juvenile cases in particular. What are the ways in which a juvenile defender in Missouri -- or I'll -- and I keep saying juvenile defender, an attorney handling a juvenile case or a juvenile court case in Missouri, how did they seek discovery?
A. Through a discovery request.
Q. Okay. So you can make a request in

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writing?
A. Yes.
Q. You can make an informal request?
A. Sure. Sure.
Q. Just ask for materials. Are there other means of gathering information, other discovery mechanisms in juvenile cases?
A. Are you asking through the legal officer or just in general?
Q. In general.
A. Sure. So you have your own ability to investigate a case. You can get releases signed from the youth or their family to obtain school records. You can have the investigator go take pictures, interview witnesses yourself.
Q. Okay. So investigation versus discovery. Let me just talk about informal discovery.
A. Okay.
Q. Are you familiar with the informal discovery practice in St. Louis County?
A. Are you talking about the file?
Q. Yes.
A. Okay.
Q. The blue file.

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A. Sure. Sure.
Q. Whatever color it is.
A. Yes. So the practice was -- and I don't know if this is shifted over to the new building. When I was working in the old -- when I went to the old building they would say if you want the police reports go to a file room and pull out the police reports, make a copy yourself.
Q. Okay. And the practice then in St. Louis County was to obtain whatever was in the file, but not to make a formal written request; is that right?
A. I don't know that specific instance. We always made a written formal request.
Q. And that's the city office was trained to always make a written request for discovery?
A. Yes. And that was E filed.
Q. And --
(Court reporter interruption.)
A. That was E filed.
Q. (By Ms. Quinn) What about outside the city of St. Louis, do you know if the attorneys across the state handling juvenile cases are routinely making written discovery requests?
A. I don't know the answer to that.

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Q. Are you familiar with Rule 25 of the Rules of Criminal Procedure in Missouri?
A. I am.
Q. And how that might impact or come into play in a juvenile case?
A. Well, sure. There is a Supreme Court rule, I don't know the exact rule, but it says that Supreme Court Rule 25, discovery applies to all juvenile cases.
Q. Okay. Are you aware of whether across the state all juvenile practitioners are aware of their ability to access discovery under both Rule 25 and the rules of juvenile procedure?
A. I don't know that.
Q. Are you aware of whether the prosecutors or legal officers on the other side are aware that they have duties to turn over materials beyond informal discovery under the juvenile rules?
A. I'm not aware of that.
Q. What about Brady materials? Do you personally make requests for Brady materials in your cases in juvenile court?
A. Yes.
Q. Do you know if all of the defenders across the state who handle juvenile cases are doing

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so?
A. I don't know.
Q. Do you know if it is the practice of legal officers or juvenile prosecutors to turn over such discovery, Brady discovery?
A. I don't know.
Q. How about depositions? Tell us about the use of depositions in your practice.
A. Sure. So if I believe that I need to depose a witness, I will make a request again through an E-Num request, identify how much money I think it will cost to depose a witness and then that goes to -- to the district defender to approve or deny.
Q. And so every time you need to take a deposition it comes out of the sort of state's budget for the public defender generally?
A. I don't know what budget it comes out of.
Q. But you're not making a request to the court directly?
A. I am not.
Q. And you said when you determine that the deposition is appropriate. The right to depose witnesses exists the same in juvenile cases as it

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does in adult criminal cases, correct?
A. Absolutely.
Q. On average how -- how many depositions would you say that you take in the course of a month?
A. Gosh, I -- I can't speak specifically. Not -- not more than ten.
Q. Okay. And in -- would you say you're taking depositions in every case?
A. No.
Q. Half the cases?
A. Probably not.
Q. A quarter of the cases?
A. Maybe.
Q. And do you have a sense of the practice across the state for people handling juvenile cases?
A. I don't.
Q. What about in certification matters, do you take depositions precertification?
A. Generally, no. But there have been occasions, yes, that I have taken depositions.
Q. And so in certification hearings -- well, I'll hold off on that question. Shifting from discovery and investigation to social workers, how many social workers are employed by the public

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defender system statewide, if you know?
A. I don't.
Q. Are there any written policies and procedures relating to the use of social workers in juvenile cases?
A. I don't know of any.
Q. What about policies or procedures relating to requesting social workers to assist you with those matters?
A. I don't know of any.
Q. Do you have a social worker assigned in St. Louis city -- well, to the St. Louis city office at all?
A. Yes.
Q. How many social workers?
A. One.
Q. And so safe to say that person's handling all cases, not just juvenile cases?
A. That is correct.
Q. Do you feel like there -- there then is a limit on your ability to access social work support for your juvenile matters?
A. Yes.
Q. Is it -- would you say it is -- is it safe to say that every juvenile case could benefit

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from the support of a social worker?
A. Absolutely.
Q. Are you able to do that?
A. No.
Q. And you -- again St. Louis city is the best office across the state when it comes to providing juvenile-specific defense services?
A. I don't -- I don't know that -- if it -- if it is the best, but we definitely do our best to provide adequate representation, yes.
Q. What about support staff, let's say paralegals, someone to review documents, or other kinds of attorney support services? What -- what kind of support do you have for that work?
A. Sure. I have one legal assistant who helps with that -- that sort of work.
Q. And is the legal assistant assigned to you and you alone?
A. No.
Q. Who does that legal assistant work for?
A. She has several other attorneys that she works for and with.
Q. And how many legal assistants are there for the city of St. Louis office?
A. I believe there are six total.

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Q. And they handle such things as writing letters, making copies, reviewing documents?
A. Potentially depending on what the attorney requests.
Q. And are -- do you feel like you're sufficiently supported administratively in your work?
A. Yes.
Q. In terms of support staff, social workers, investigators, are they provided with any training specifically for juvenile matters?
A. No.
Q. How about interpreters? Does the state public defender system have any interpreters on staff?
A. No, but we can hire them.
Q. Tell us about what that process looks like.
A. It's the same for a deposition or an expert. You have to do an -- an action item or an E-Num request -- I'm sorry, an E-Num request, and you have to encumber money, talk to the interpreter and then make a request to the boss.
Q. And the interpreter would -- you could access an interpreter for in-office meetings let's

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say with family members who don't speak Spanish?
A. Yes.
Q. Or don't speak English, but speak Spanish?
A. Yes.
Q. Have you worked with family who are non-English speaking but used family or others to serve as an informal interpreter for your work?
A. I have not.
Q. Never?
A. No.
Q. What about when sending letters or materials to families that are non-English speaking, how does that work?
A. So we have a translator, we can hire a translator to translate police reports, write letters, those things.
Q. And do they do that as a matter of course?
A. What do you mean by -- when you say --
Q. In every case where there's an issue of a non-English speaker, does every case have a translator and interpreter to translate every document for -- for the family?
MS. SHIPMA: You're talking about

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juvenile cases?
MS. QUINN: Juvenile cases, yeah.
A. In my practice, yes. I don't know about everywhere else.
Q. (By Ms. Quinn) So I mentioned earlier we'd come back to certification. Can you talk a little bit more about certification and why it's such an important process?
A. Certification is basically the death penalty for youth. So when a child is certified, they are forever going to be in the adult system and they could be potentially facing very long prison sentences and so it is important to focus a lot of efforts on certification hearings.
Q. We talked earlier already about there are mandatory certification matters or discretionary certification matters. Do you approach either one of those differently?
A. No.
Q. Do you know about practices across the state in terms of if they're approached differently or not?
A. I don't.
Q. Are you aware of what the burden of proof is in a certification case?

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A. Oh, gosh. That's a really good question. I would have to review the statute. I believe -- I mean, it's up to the judge, and I don't -- but I don't know the -- I can't recall at this time the burden of proof.
Q. And have you not ever challenged the fact that there is no burden of proof listed in the statute for certification cases?
A. I have not.
Q. What about weight of the evidence with regard to elements under the statute?
A. So -- so I have not challenged that, but I recognize that the court is able to give what weight it will to any of the doctors.
Q. What about proof presented by the defense in a certification case? In your practice, what kind of proof do you try to or tend to present in a certification case?
A. So with regard to the first three factors, challenges to the actual incident itself. So I've put on witnesses, I've put on police officers, potential witnesses for the case, introduced documents with regard to challenging whether or not there's probable cause for the case to proceed.

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With regard to the next seven factors I've put on statisticians through the court to talk about the racial disparity on certification. I've put on family members to talk about the sophistication and maturity of the child.

I've put on case managers who have -- and residential placement managers who've talked about the services that a child has received. I have also put on care and protection individuals, so case managers, I've put on guardian ad litems, and then expert witnesses as well, psychologists and the like who talk about a child's history.

Q. And are you aware of how that practice compares with the practice of your colleagues across the state who might be handling juvenile certification cases?

A. I do not.

Q. What about the proof that is presented on the other side, proof from the juvenile officer? What is your experience in terms of what they present?

A. They traditionally and typically present the testimony of the deputy juvenile officer.

Q. Do they usually present any other

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testimony?

A. Not usually.

Q. And that's based in your experience across the five different counties you practiced in, yes?

A. And I guess there -- there have been victims who have testified regarding the impact of the -- the crime.

Q. Okay. But in terms of the elements under the statute for certification, it's almost always only the juvenile officer?

A. Yes.

Q. Have you ever challenged that practice?

A. Tell me what you mean by that.

Q. Based on the lack of expertise or the lack of ability of that person to be a competent witness in that respect.

A. Sure. Through cross-examination, but not through formal motion.

Q. Have you ever deposed that deputy juvenile officer before they testified at a certification hearing?

A. I have not.

Q. Do you know if your colleagues ever depose deputy juvenile officers before a

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certification hearing?

A. I do not know.

Q. How long if you know do most certification hearings last in the State of Missouri?

A. I don't know.

Q. Are you aware of the standing practice in St. Louis County of certification hearings taking one hour or less?

A. No, I'm not aware of that.

Q. Have you ever had a certification hearing in St. Louis County that took longer than an hour?

A. Yes.

MS. SHIPMA: Sarah, your voice is getting softer.

THE WITNESS: Yes. Sorry.

Q. (By Ms. Quinn) Are you aware beyond St. Louis city of what happens with a child's case upon certification? If it's a -- if it's a public defender case, what happens with that kiddo?

A. Beyond St. Louis city?

Q. Yeah.

A. So I can just talk generally about what happens. So if a child is certified, then the

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prosecutor has to decide whether or not they're going to issue the case. If they decide to issue the case, they pick the child up from the detention center and transport them to the adult jail. And then the child either retains that counsel if they are providing that representation, if the public defender is providing the representation or they have to apply for services.

Q. Are you aware of the practice generally -- so in -- in what percentage of cases does the initial assigned defender stay on the case postcertification?

A. I do not know.

Q. Are you aware of cases where children between the moment of certification and when they next appear in front of a judge in adult court are essentially without counsel?

A. Am I aware of specific instances? No, I'm not.

Q. Based on your understanding of the practices across the state, is it your understanding that much work is happening between certification and when the case is next presented to a judge?

A. Work done by the defender?

Q. By the defender.

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A. I can't speak to that. I don't know.
Q. That too would be an important window for working on a case, yes?
A. Absolutely.
Q. What about motions to transfer a case from adult court back to juvenile court? Are you familiar with that practice?
A. I am.
Q. And it's -- do you have any -- have you done it yourself?
A. So before the collateral representation from certification to adult court we had an attorney, Bill Marsh, who did those motions. So before we did the continuity of representation if a child was certified he would represent all the 17-year-olds. So yes, he has done those motions and I am currently working on a motion right now.
Q. And this is in St. Louis city?
A. That I am working on a motion, no, it's in St. Louis County.
Q. Okay. But -- so across the state, are you aware of how many times when a kid hits adult court a motion is filed to transfer them back to juvenile court?
A. I'm not aware.

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Q. Is -- is that a -- are you -- have you heard of that practice happening frequently?
A. I've heard of it happening, but I don't know how often.
Q. Let's talk a little bit about collateral consequences.
A. Sure.
Q. Can you tell us what collateral consequences of a prosecution, what that term means to you?
A. Sure. So collateral consequences would mean consequences of a child being adjudicated of an offense. They could include schooling, employment, college, immigration, military service. They impact all aspects of a child's life.
Q. And are you familiar with any case law relating to collateral consequences, United States Supreme Court or otherwise, about the duty of a defender and collateral consequences?
A. Yes, and as you're asking me this the motion -- the -- the case escapes me, but it is a case about immigration consequences.
Q. And are there statewide manuals or materials that lay out for defenders in MSPD's system what all the collateral consequences of a prosecution might be?
A. Of an adult prosecution?
Q. Yes.
A. I don't know.
Q. Have you ever seen any?
A. I've not seen a manual, no.
Q. What about for juvenile cases?
A. Sure. So we've been collaborating with the National Juvenile Defender Center to create a pamphlet for collateral consequences. So there have been drafts made, but there is no -- currently no pamphlet that is available to -- for distribution.
Q. And there has -- it hasn't been the practice in the past for juvenile defenders to be referring to such material then?
A. Correct.
Q. What about immigration consequences in particular since you've raised that? Do you have in the MSPD system an immigration consequences expert?
A. Sure. So I know there are attorneys who have practiced immigration law, so yes, we have the ability to reach out to them. I don't know if they would be deemed as an immigration law expert. But also we reach out to several different organizations in the city of St. Louis with regard

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to immigration questions.
Q. Okay. So just focusing on kind of statewide resources and practices, what is the practice, policy or procedure for finding out about immigration consequences or accessing an immigration expert?
A. You're -- you're asking what MSPD's policy is?
Q. Yeah, uh-huh.
A. I don't know what the policy is for accessing. I can only speak to what -- what I -- what we do --
Q. Uh-huh.
A. -- in the city.
Q. Before we get to the city, these folks you'd mentioned, you mentioned maybe there's some people who happen to be public defenders who also happen to in their past life do immigration work.
A. Sure.
Q. Do they have -- you know, are they designated the go-to for immigration questions?
A. Not that I'm aware.
Q. Do you know when they last practiced immigration law?
A. I believe within a year is the -- is

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the person that I'm thinking of.
Q. And where is that person?
A. She is in the -- now in the St. Charles office.
Q. And so like did an e-mail go out that said, hey, we now have an immigration expert in St. Charles, everyone should access this person if they have immigration questions?
A. No.
Q. And you mentioned sort of differently or separately in St. Louis city you guys have some practices, yes?
A. Yes.
Q. And you mentioned some maybe local immigration attorneys who currently practice immigration law that you access?
A. Yes.
Q. What does that look like? What do you do?
A. So we call the -- the offices, so it's -- there is the St. Louis Catholic legal society, I think it's part of SLU, and then there's also the MICA Project. So we reach out to the attorneys, ask them for advice on immigration issues.

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Q. Are you aware in the rural counties what the practices are along those lines?
A. I do not know.
MS. QUINN: You want to take a break or should I keep going?
MS. SHIPMA: How much more have you got?
MS. QUINN: I'm on 11 of 14.
MS. SHIPMA: Keep going.
Q. (By Ms. Quinn) All right. Let's talk about motions practice a little bit if that's okay.
A. Uh-huh.
Q. So just like in adult criminal cases, juvenile defendants or respondents can file pretrial motions, correct?
A. Yes.
Q. Can you share with us just a range of the kinds of motions that -- that could get filed in a juvenile prosecution case by the defense lawyer?
A. Sure. Motions to suppress statements, motions to suppress evidence, motions to dismiss, motions to exclude witnesses, motions to exclude hearsay. Could be motions to dismiss based on specific adolescent -- so there's not specific -- you know, adolescents could not have this type of intent or could not form this type of intent. Motions to dismiss based on the conflicted system.

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Q. Okay. And do you have a sense statewide what the motion practice is like in juvenile court cases?
A. No, I do not.
Q. In the conversations you're having with fellow attorneys who are handling juvenile cases, is it your sense that they're all filing motions that are necessary in a case?
A. I think they want to file all motions that are necessary in a case and that is where I come in to help them talk that through.
Q. And so are you able to do the work for them to -- to file those motions?
A. What do you mean by that?
Q. Well, it sounded like there's an impediment to their ability to do it, and so I'm just trying to understand what that means.
A. So -- so attorneys will reach out and ask, so for example, if it's a sex case, what types of motions you would file. So I help with case law, provide relevant case law and talk through potential motions that could be filed. I'm not writing the motions for them.

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Q. Okay. And is there any let's say resource, you know, a motion section or a group of law students who busy public defenders could access to write motions they would not otherwise have the time to write?
A. I think it depends on your jurisdiction if you have a law school that's available and that there are interns that are working through the public defender system.
Q. But it's not the case in every county?
A. I don't believe so, no.
Q. How about in St. Louis city cases, are you -- are you filing all the motions that -- that we just talked about?
A. I -- I am trying to, yes.
Q. And is there any impediment to your ability to do so in every case?
A. I think time is an impediment.
Q. Let's focus specifically on a motion I don't think you mentioned, and that is a detention review motion. Are you familiar with what that is?
A. I am.
Q. Can you explain what that means?
A. Sure. So every 30 days when a child is detained the judge or commissioner has to review

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whether or not there are changed circumstances and whether the child should remain in detention.

Q. Okay. So that's by statute what the court does automatically, correct?

A. Correct.

Q. In St. Louis city does everyone kind of get around the table in 30 days to review that situation?

A. No.

Q. Isn't it the case that in St. Louis city as well as around the state the judges are making those reviews behind closed doors and then issuing an order about whether the child remains detained or gets released?

A. Yes.

Q. And so in terms of motions, a defense motion to review detention status, that is different from that statutory process we just talked about?

A. Correct.

Q. So what is a detention review motion that might get filed by a -- by a juvenile defender?

A. So if the defender believes that there are a change of circumstances pursuant to Supreme Court Rule 127, then they could file that motion and have the detention reviewed and ask for the release

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of the child.

Q. Is there anything else that might enable a juvenile defender to seek a review of the detention status other than change in circumstances?

A. Not that's coming to my mind.

Q. In terms of filing detention review motions, is that a regular part of your practice?

A. Not a regular part of my practice I would say, no.

Q. How many detention review motions do you file in a month?

A. Well, there are not very many children detained right now, so I would say right now I haven't filed any in the past couple of months due to the low numbers in detention.

Q. Through the course of your career since 2009 how many detention review motions do you think you've filed?

A. I have no idea.

Q. More than ten?

A. Probably.

Q. More than 20?

A. Probably.

Q. More than a hundred?

A. No, probably not.

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Q. Fewer than 50?

A. I would say probably between 50 and a hundred.

Q. Okay. What about your colleagues across the state, do you know if they are filing detention review motions?

A. I don't know the answer to that.

Q. Do you know if they've been trained to file detention review motions?

A. I don't know the answer to that.

Q. What about a motions bank or resource that folks can go to beyond calling you for motions, what's that look like?

A. I know that we have a motions bank in our system, and so if there are juvenile-specific motions they could access them there.

Q. How robust is that juvenile motions part of your motions bank would you say?

A. I don't know.

Q. Have you not been to it?

A. Not recently, no.

Q. Okay. You've talked about your new role as kind of statewide juvenile defense and I want to call it not coordinator, but --

A. The director of juvenile defense and

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policy.

Q. And as part of that job or new role, do you observe -- as part of your role to go and observe people in court?

A. So I think that will be eventually. I'm handling my own cases, so I have been working on all my own cases. So I have not observed anyone in court statewide.

Q. And to date there's been no practice of anyone with specific juvenile expertise going into the courts to make sure attorneys are doing what they ought to do with regard to juvenile cases?

A. I can't speak to that, no.

Q. And you mentioned that folks might call you up and ask questions as they're working on a motion. Do you review draft motions?

A. I have for attorneys that I've worked with in my office, but I've not for other attorneys.

Q. Before you had this position, did anyone hold this position?

A. No.

Q. What was Karen Craft's role as a -- a kind of juvenile go-to person in the State of Missouri?

A. Sure. So Karen had several roles,

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including dealing with capital offenses. I believe she was kind of a go-to for that as well, but she -- she went to the legislature, she answered juvenile questions, and she served as someone who was well versed in juvenile law. So I would say yes, she -- she was somebody who like me knew juvenile law.

Q. Did Karen ever handle a juvenile case in her practice?

A. I think she did. I don't think in later years she did, but yes, I believe she handled juvenile cases.

Q. So even though she wasn't practicing in juvenile court, she was the go-to for people to seek advice about juvenile matters for the last several years?

A. She and Mary Fox and myself also.

Q. But statewide Mary Fox is not designated?

A. No.

Q. Were you aware of Karen Craft reviewing motions that were filed by anyone handling juvenile cases?

A. I don't know the answer to that.

Q. Are you aware of Karen Craft doing any trainings for juvenile practice around the state?

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A. So she was involved in the trainings that I referred to that have happened in the past couple of years. She has since retired, so I don't -- I don't remember what year she retired, but she has not -- was not present for this year's training.

Q. And is it safe to say if you know that Karen Craft was put in that position perhaps in reaction to some of the findings of the -- of NJDC and the Department of Justice?

A. I don't know the answer to that.

Q. Was there anyone in Karen Craft's role before Karen Craft?

A. I don't know.

Q. Since you've been with the public defender system, have there ever been specialized juvenile defender offices?

A. So I was an intern in 2007 and 2008 and I know that the juvenile youth advocacy units were present then, but I -- I -- since I've been practicing as an attorney, no.

Q. Can you tell us more about what that looked like then in comparison to now?

A. I -- actually, I don't know what it looked like. I just know that they were present in

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the public defender system. I did not interact with any of the attorneys or go watch any hearings while there were youth advocacy units.

Q. I'm sorry. So I misunderstood. I thought you were intern with the specialized units.

A. Nope. I interned with --

(Court reporter interruption.)

Q. (By Ms. Quinn) The specialized units. So is it safe to say the specialized juvenile defense units have been dismantled?

A. Yes.

Q. And that all of the cases that previously were handled by specially trained juvenile defenders have been dumped into the regular system?

A. Yes.

Q. I want to turn to the question of caseloads and turning away cases.

A. Okay.

Q. Are you aware of any policies or procedures that allow for Missouri public defenders who are handling any kind of matter to turn away a case if their -- if their caseload has become excessive?

A. You said policies and procedures?

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Q. Yeah, what is the practice?

A. There is not a practice. I mean, there is a statute that the legislature created, but at this time I do not believe that there is a practice --

Q. Are you --

A. -- statewide.

Q. I apologize. I was stepping on your words there.

Are you aware of any recent correspondences or communications from Michael Barrett around turning away cases or indicating that your caseload has become too high to accept new matters?

A. Yes.

Q. Can you tell us about what's going on and what your understanding is of the current situation?

A. Sure. So an attorney, Mr. Hinkebein was disciplined by the office of chief disciplinary counsel for failing to do his -- his due diligence in representing clients, and so some circuits, including Columbia have -- or not circuits, some district defenders have turned away -- determined and their attorneys have determined that they're

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going to turn away cases due to their ethical obligations.

Q. And are you familiar as you sit here with, you know, which districts or which offices are turning away cases now or seeking to turn away cases?

A. The only one I know of specifically is Columbia.

Q. What about juvenile matters, are you hearing anything about attorneys turning away juvenile appointments or juvenile respondents who are seeking assistance?

A. I -- I am not aware.

Q. Is there any special follow policy or special practice for those kinds of cases to -- to turn them away or seek to close the spigot if you will on those?

A. Not that I know of.

Q. Have you ever turned away a case because your caseload was too high, a case for a juvenile?

A. No, I have not.

Q. Have you handled cases of juveniles while you feel like your caseload was too high for you really to -- to manage effectively?

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A. Yes.

Q. Are you familiar with this new pro bono practice group in the city of St. Louis with private lawyers and private firms handling cases?

A. I am.

Q. What do you know about that?

A. It's called the Missouri Coalition for the Right to Counsel, and it is private firms who have offered to take cases on pro bono.

Q. Are you aware of whether they are handling any juvenile court cases?

A. They are not.

Q. So they're doing nothing to alleviate the pressures on those who are handling juvenile cases or to -- I'll just say to handle juvenile cases?

A. They are not handling cases in the city of St. Louis, no.

Q. Okay. We talked earlier about both the Spangenberg report and the NJDC report indicating that there are high percentages of youth in the State of Missouri who are in need of juvenile defense representation, but are not being provided with counsel; is that fair to say?

A. Yes.

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Q. Okay. I'd like to take a look at another document. I think this is the last one. Exhibit 29.

(WHEREIN, Exhibit 29, Exhibit 1 of complaint, was marked for identification.)

Q. (By Ms. Quinn) Okay. And I've marked it as Exhibit 29 for purposes of our deposition, but as you see, it has a cover indicating Exhibit 1 because it is Exhibit 1 in our complaint. Looking at this document, do you recognize it?

A. I -- I don't recognize -- I mean, I know what it is, but I've -- I've not looked through it.

Q. And so in terms of knowing what it is, can you tell us what your understanding is of this document?

A. It is the two -- 2016 fiscal year annual report.

Q. And it's fair to say that the public defender system each year produces a report kind of providing an outline of the services it's provided?

A. Yes.

Q. And taking a look together at page 23 of this report, there is a chart. Are you familiar with this chart?

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A. I'm not.

Q. You see here that there's case type 50-N, 50-S, 50-V. Do you know what those numbers and letters mean?

A. So those are the case types for juvenile nonviolent, juvenile status and juvenile violent offenses.

Q. And so is that your own system, kind of you designate things with these numbers and letters internally to make clear what kind of case or matter it is?

A. Yes.

Q. And looking together at these -- these numbers, it appears that in 2016 approximately 1,600 juvenile cases were opened by the public defender system. Is that your understanding of how we should read this report?

A. Without doing the math, I can tell you that there were 912 nonviolent, 81 status, and 625 violent.

Q. Okay. And so that would be like the world of juvenile cases that the MSPD system handled in this year?

A. Yes.

Q. Are you aware of how many actual

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juvenile cases, juvenile court delinquency cases there were in the State of Missouri in 2016?
A. I'm not aware.
Q. Do you have any sense of like what percentage this is of the world of juvenile cases?
A. I'm not.
Q. And so this -- I'll -- I'll take a guess, around about 1,600 cases handled by the Missouri public defender system for juveniles, are you aware of how frequently in those 1,600 matters defenders might handle pre-petition Miranda engagements?
A. I don't know.
Q. In your own practice, how frequently have you handled a child being Mirandized pre-petition?
A. Only a handful of times.
Q. So fewer than five times since 2009 you've been able to assist a child to --
A. Probably. Sorry.
Q. My fault. I got these long questions. Fewer than five times since 2009 you worked with a kid who's being Mirandized?
A. Probably.
Q. What about lineups? How many lineups

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have you personally covered for juveniles who are -- have been taken into custody by police?
A. The practice in the city of St. Louis is they call me whenever there is going to be a lineup. So probably around 25 I would say lineups I've gone to. Certainly less than 50.
Q. And this is since 2009?
A. Yes.
Q. And what is your understanding of that practice statewide for juveniles?
A. I don't know the answer to that.
Q. And is it your sense based on everything you know that it is probably far less across the state in terms of juvenile defenders showing up to be with you during lineups?
A. Yes.
MR. MOORE: Also object to the foundation, but the answer is in the record, so go ahead.
Q. (By Ms. Quinn) You talked earlier about diversion being a process where a youth might be essentially interrogated by government agents, the court staff about an allegation; is that fair to say?
A. Well, I mean diversion is something

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different than a child being interrogated about the action. So diversion would be the process in which a petition is not filed, and then services are provided for the kid. If they are trying to do an informal adjustment conference that's when they could potentially question the kid about what happened.
Q. Okay. And I think you had raised earlier on this dilemma or problem of -- of children going to diversion conferences or informal adjustment conferences without counsel and then being asked about the facts of the case.
A. Yes.
Q. And that was a -- a problematic practice flagged by the Department of Justice, yes?
A. Yes.
Q. And now that practice has changed it seems to be in St. Louis County with the special attorney present to assist there?
A. As well as in the DJO guidelines.
Q. Okay.
A. And standards, yes.
Q. Has -- do you think across the state that the -- the juvenile -- the defenders handling juvenile cases, are they showing up in every county

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to assist children in -- in diversionary meetings?
A. Not that I'm aware of.
Q. What about violation of probation proceedings? In the 1,600 matters that we just talked about for 2016, do you have any sense of what number might have involved violation of probation hearings?
A. I -- I don't know the exact number, but based on looking at the table, I would assume that those would be the juvenile status because they would be -- you know, I don't -- yeah, I -- sorry.
Q. Yeah. I may be asking you something that you -- you -- don't have the data for --
A. Yeah.
Q. -- but just speaking generally, in a juvenile case just as in an adult case, a young person can face a motion seeking to violate their probation?
A. Yes.
Q. Separately, differently, there's something called a probation review hearing, yes?
A. Correct.
Q. As a matter of course, young people come back to court to see a judge relating to their compliance with probation?

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A. That is correct.
Q. When there are violation of probation hearings, how often are you personally able to handle those cases in St. Louis city?
A. I handle all of the motions to modify.
Q. And what about status, probation status hearings in St. Louis city?
A. Do you mean review hearings?
Q. Review hearings, right.
A. I do not go to the review hearings.
Q. So children are appearing in St. Louis city before a judge to talk about how they're doing on probation sometimes without an attorney with them?
A. Yes.
Q. What about across the state? Do you have an understanding of the practice for juveniles in other districts with such matters?
A. Sure. I know that in St. Louis County attorneys are attending the review hearings, but I don't know anywhere else.
Q. What about drug court? Are you familiar with something called drug court?
A. I am.
Q. What is that?

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A. So there are -- is an adult drug court and there's also a juvenile drug court. A -- in juvenile drug court a child would have to admit to the allegations before going to drug court. If they successfully complete the term then their petition and the allegations are dismissed and the -- and the child is free to go.
Q. And that process moving from that admission of guilt to the dismissal is a fairly lengthy process; is that fair to say?
A. It can be, yes.
Q. How long can it take?
A. It can some -- sometimes take over a year.
Q. All right. And during that year these children are appearing in the juvenile drug court before the judge to talk about their compliance, yes?
A. They are.
Q. And they might be asked about drug use?
A. Yes.
Q. They might be asked incriminating questions?
A. Yes.
Q. How frequently are you appearing in the

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St. Louis city drug court?
A. Not -- not as frequently as I would like to. So I appear -- I used to appear every Friday, that's when the drug court docket is, but I haven't been able to go recently.
Q. And what about across the state, do you have any sense of whether defenders are covering drug court appearances for youth?
A. I don't know if there are other drug courts for juveniles across the state.
Q. Okay. And what about other postdispositional advocacy on behalf of youth? For instance, youth who are in the division of youth services or who want to aside from direct appeals challenge the practice of their attorney, challenge the -- something relating to the -- the representation they received. What does that look like across the state?
A. I don't know.
Q. Have you provided any representation to any children who have been placed in DYS?
A. No, I have not.
Q. And -- and what about appeals from juvenile cases? Is it safe to say that juveniles like adults have the right to appeal a juvenile

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court finding?
A. Yes.
Q. What is the practice or policy across the state for informing youth of their right to appeal and what steps to take?
A. Sure. So I don't know what other individuals do. I can speak to what our practice is is --
Q. Okay. So before we get to your practice --
A. Sure.
Q. -- there's no manual, policy, procedure to ensure best practices around appeals being taken for young people statewide?
A. No.
Q. Okay. And then your practice?
A. Is to after a child is adjudicated speak with them about what their right is to appeal and talk with them about what that would entail, and then if they want to appeal, filing the notice of appeal and sending it to our juvenile appellate person.
Q. Okay. And you mentioned you do this after there is an adjudication for a young person, yes?

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A. And -- yes. And disposition.
Q. Okay. So after a case is resolved with adjudication and disposition or in grown-up speak finding of guilt and sentence, yes?
A. Yes.
Q. You do that in cases where there has been a trial; is that right?
A. That's correct.
Q. What about in all of your plea cases?
A. No.
Q. Do you not in the -- as a matter of course speak to children who have pleaded guilty and had their cases disposed of or had disposition tell them about their right to appeal?
A. No.
Q. Why not?
A. That's a good question. I don't know.
Q. What is a child's right to appeal following a guilty plea?
A. So I can tell you what -- what an adult -- adult has PCR rights. I don't know that there is case law in Missouri about whether a child has postconviction rights.
Q. But I mean a direct appeal following the plea of guilty and then an imposition of what

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grown-ups would call a sentence.
A. Correct.
Q. Is there no direct appeal right from that?
A. I believe there is, but I have -- I have not talked to a child about that.
Q. Do children waive their right to appeal when they take a plea?
A. No.
Q. How many appeals were filed for juveniles across the State of Missouri last year if you know?
A. I don't.
Q. How many appeals were filed by the city of St. Louis office or request to appeal?
A. In 2016? Probably less than five.
Q. Okay. Shifting gears a little bit, so I -- do you live in the city or county?
A. I live in St. Louis County.
Q. Okay. But you're aware of much of what's unfolding in the city of St. Louis around the protests relating to the Stockley verdict, yes?
A. Yes.
Q. Some is happening in the county of St. Louis, but some is happening in the city, yes?

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A. Yes.
Q. Are you aware of how many arrests have taken place in the city of St. Louis since you work there relating to protesters?
A. Hundreds.
Q. And are you familiar of any -- familiar with any offer by our attorney general Josh Hawley to the city prosecutor Kim Gardner with regard to those cases?
A. I -- I'm not aware.
Q. Would it surprise you to hear that Josh Hawley has offered Kim Gardner assistance to help prosecute those protest cases in the city of St. Louis?
MR. MOORE: I'll object to -- you can go ahead.
MS. SHIPMA: I was going to object to this. I mean, she was designated to talk about juvenile matters.
MS. QUINN: Yes, uh-huh.
MS. SHIPMA: And -- and this seems --
MS. QUINN: It's a foundation to -- I'll get -- I'll go directly to it then.
MS. SHIPMA: Okay.
MS. QUINN: That's fine.

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Q. (By Ms. Quinn) Has -- has your office, the city of St. Louis's public defender office received any offer of assistance from Josh Hawley's office to defend matters?
A. Not that I'm aware of.
Q. No post-Stockley verdict letters have come to you to assist -- to offer assistance to you or your colleagues in defending any cases in the city of St. Louis?
A. No letters have come to me personally.
Q. Is there anything else you think I should ask you about that I've not asked you about relating to juvenile practices, procedures, and policies for the Missouri public defender system?
A. There is nothing that I can think of. There is one correction, though, that I would like to make, which is I think that I probably have done less than 20 of the motions to release the youth. You were talking about the --
Q. Detention review motions?
A. Yes. Yeah.
Q. Fair enough. Fair enough. So before we wrap up, you did indicate earlier that -- that your caseload and -- and some of your responsibilities, the just amount of cases and

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responsibilities that you have has prevented you from doing everything you think is necessary in at least some juvenile cases?

A. Yes.

Q. Can you tell us more about that?

A. So I can tell you that I've been practicing juvenile for three years, specifically juvenile. When I first started I handled both Jefferson County conflicts, adult conflicts as well as juvenile cases. That was too much. That was a lot of moving parts of traveling and so I believe that there were youth that I could have impacted more effectively during that time.

Also, I believe that while my caseload is significantly lower and I have been able to do a lot of work with regard to youth, I think that time is a big issue. So doing all of the detention hearings and ensuring that each client receives the effective representation, I think that sometimes the caseloads are too high to be doing every single thing that I would like to do.

MS. QUINN: Okay. I have nothing further.

MR. MOORE: Yeah, so I mean, do you want to keep going?

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VIDEOGRAPHER: Do you want to go off the record?

MR. MOORE: Sure.

VIDEOGRAPHER: We're going off the record at approximately 11:43 a.m.

(WHEREIN, a recess was taken.)

VIDEOGRAPHER: We're back on the record at approximately 11:51 a.m.

EXAMINATION

QUESTIONS BY MR. MOORE:

Q. Good afternoon. Could you please state your full name for the record with the middle name spelled out as well?

A. Sure. My name is Sarah with an H, middle name Kennedy, K-E-N-N-E-D-Y, and my last name is Johnson, J-O-H-N-S-O-N.

Q. Okay. Sarah, my name is Justin Moore. I'm here for the State of Missouri and also now for Governor Greitens.

(Court reporter interruption.)

Q. (By Mr. Moore) So my name is Justin Moore. I'm here on behalf of the State of Missouri and also for Governor Greitens. And my entry was filed at the beginning of this deposition. So I'm just going to be going back to the beginning kind of

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filling in some of the blanks and asking you some follow-up questions if that's all right.

A. Sure.

Q. So we had discussed briefly your educational background and I believe you said you went to Saint Louis University for undergraduate. Is that right?

A. Yes.

Q. And then also SLU Law?

A. Yes.

Q. And any additional schooling after that?

A. No.

Q. Okay. Now, when you went to Saint Louis University for your undergraduate degree, what was that degree in?

A. I got a bachelor's in political science and a mine -- and a minor in Spanish and I was a prelaw scholar.

Q. Okay. And did you have any particular specialization or focus when you went to the Saint Louis University School of Law?

A. Yes. I --

Q. And what was that?

A. Focused on criminal law.

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Q. Okay. So is it safe to say that you don't really have any particular specialization in like statistical analysis?

A. No, I do not.

Q. Okay. No particular specialized background in sociological studies or psychological studies of any kind?

A. No.

Q. Okay. And you don't have like a major in math or any kind of mathematical background other than general coursework in your undergraduate, right?

A. I do not.

Q. Okay. So then going back to some of these reports we were looking at earlier, I guess we'll start at the very beginning. So we can look at Plaintiff's Exhibit 21, the Spangenberg report I think is how it's been pronounced.

A. Okay.

Q. And I'm sorry, heard you say that you had reviewed this report prior to the deposition today?

A. No, I did not.

Q. So this is the first time you're seeing this report; is that correct?

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A. Yes.
Q. And so you wouldn't be able to assess with any degree of certainty whether the methodology or statistics that underpin this report were in any way accurate; is that right?
A. I cannot speak to that, no.
Q. Okay. And you had nothing to do with the production or creation of the data that they use in this report; is that right?
A. No.
Q. And you haven't taken any steps to verify that the findings of this report or that the numbers in this report are accurate, right?
A. I have not.
Q. So any commentary that you would make about the report or whether it's accurate or inaccurate it would just be kind of your personal opinion based on your review here today at the deposition; is that right?
A. Opinions with regard to --
Q. Whether the finding of the report are accurate or inaccurate or whether they I guess jibe with your own experience; it would strictly be based on your review of this report here today and your time as a public defender?

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A. Yes.
Q. Okay. And do you know the people who wrote this report?
A. I do not.
Q. Have you ever spoken with any of those people?
A. I have not.
Q. Okay. I guess I would just have the same questions as to the other reports that were reviewed today. So we have Plaintiff's Exhibit Number 22.
A. Yes.
Q. And same general questions as to this report. To the extent there's any kind of analysis of data or, you know, collection of data, methodology, you wouldn't have any experience with those methods, would you?
A. With the methods that were used in this report?
Q. Right.
A. So the -- from my understanding the methods that were used in this report were the numbers from the Office of State Courts Administrator. So I don't know what -- how they collected that data, no. And with regard to the --

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what if any data was collected with regard to the public defender system, no, I did not have anything to do with that either.
Q. Okay. And so you wouldn't know whether the data was accurate or inaccurate -- or inaccurate, correct?
A. That's correct.
Q. You haven't independently reviewed the data in any way?
A. I have not.
Q. Okay. And was this one that you say you had reviewed prior to the deposition today or had you not?
A. No, I -- I had reviewed that prior to the deposition.
Q. Okay.
MS. SHIPMA: That was affirmative, you had reviewed it?
THE WITNESS: I have, yes.
Q. (By Mr. Moore) So the same questions as to Exhibit 23, so we're looking at the Department of Justice Civil Rights Division report of July 31st, 2015.
A. Okay.
Q. Again, for this one as to the

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methodology or research that it took to create this report, you are not personally aware of like the methodology that they utilized; is that right?
A. I am not personally -- personally aware, no.
Q. And you didn't have anything to do with the collection of that data personally?
A. I did not.
Q. Do you know who wrote this report?
A. I don't know who wrote this report.
Q. Okay. And had you reviewed this report prior to the deposition today?
A. Yes, I have.
Q. Okay.
(WHEREIN, a discussion was held off the record.)
Q. (By Mr. Moore) I'm sorry, I may have asked this already, but as far as the data utilized in this report you wouldn't have any knowledge or understanding of like how they generated that data or collected that data; is that right?
A. I mean, I know the -- how they collect -- I mean, I know that they collected data from St. Louis County and through interviews through looking at case files and things like that, but I

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don't know how they then processed those into numbers.
(Court reporter interruption.)
A. Processed that into the numbers and the statistics that they used, correct. I was not present for that.
Q. (By Mr. Moore) Okay. And so as far as you know, these numbers could be accurate, inaccurate, you just don't know, right?
A. I don't know -- I have not reviewed the -- the statistical analysis of this, no.
Q. Okay. Okay. So now looking at Exhibit 26, that's the RubinBrown report.
A. Yes.
Q. And forgive me again I can't recall, had you seen this report prior to the deposition today?
A. No.
Q. So you hadn't reviewed it in any capacity, this is just the first time you've been presented with this report?
A. I -- I've seen portions of this report, but no, I have not read it page to -- from front to back.
Q. Okay. But again, you know, to the

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extent there's any data involved in the generation of this report, you wouldn't be able to give any kind of opinion as to whether the methodology was, you know, the right methodology to use or whether the numbers are accurate; is that right?
A. Yes, that is correct.
Q. Okay. And you don't know the people who generated this report, do you?
A. The -- the individuals?
Q. Right.
A. No, I do not.
Q. You never talked to those individuals before?
A. No, I did not.
Q. Okay. Now, the -- a number of questions have been asked about procedures in the St. Louis city office which is where I -- I mean, I think you operate out of, right?
A. Yes.
Q. But also as to other counties in the State of Missouri, right?
A. So the questions that were asked, yes, they were asked about this -- other counties as well, yes.
Q. Right. But you have not practiced in

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every county in Missouri, right?
A. I have not practiced in every county, no.
Q. And in fact, earlier I think you said that it was five counties that you have practiced in, correct?
A. I don't know the exact number, but yes, I listed off those counties. Yes.
Q. Okay. Do you think there were counties that you practiced in that were not listed off earlier?
A. No. I just don't know the exact number. I -- I know the counties that I've listed off, but I don't know --
Q. Okay. No, that's totally fine.
A. Yeah.
Q. But those counties appear to be located generally around the St. Louis area, right?
A. That is correct, yes.
Q. So it's like Jefferson County and St. Louis County, things of that nature, correct?
A. That's correct.
Q. So you wouldn't really have any idea about what's going on, for example, on the -- on the other side of the state, those counties and those

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offices; is that right?
A. So I've corresponded with individuals across the state, but I don't know the daily ins and outs, no, of what happens in each circuit.
Q. Okay. And when you say you corresponded, what do you mean exactly?
A. So if a attorney has a question about a juvenile matter, then they are directed to me.
Q. Okay. So has any attorney from, you know, some of those other counties have they ever sent you a list here -- here are policies that we have in our office and let's compare policies to the St. Louis city office? Have you ever --
A. No.
Q. And I'm sorry, the answer?
A. No.
Q. Okay. So as far as you know, they were asking about the daily policies and procedures and whether the offices across the State of Missouri do X or Y thing, you would not really have any knowledge as to what they are doing; is that right?
A. I do not have any knowledge.
Q. Okay. And that doesn't say anything about whether, you know, their policies are better or worse than St. Louis city, could go either way,

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you just simply don't know, correct?
A. That is correct.
Q. Okay. Now, you were asked earlier about having to enter some time for the work that you were doing, right?
A. Yes.
Q. Tell me a little bit more about when that took place.
A. I don't know the exact year, but we were asked to start time logging.
Q. Okay.
A. And we were asked to keep our time in five-minute increments.
Q. Okay. And do you know whether it's typical in the legal profession to bill your time?
A. I know in the civil world that usually civil defendant attorneys do have to keep their time.
Q. Okay. But you say in the criminal world people don't usually bill their time in that manner?
A. No, I -- I don't -- I don't know what private attorneys do. I can't speak to what they do.
Q. Okay. You've only ever worked as an

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attorney at a public defender's office; is that right?
A. That's correct.
Q. So you've never worked in private practice or in any other capacity on any other area of law, just the public defender's office?
A. Yes, sir.
Q. Okay. There's been some discussion about the average time spent on cases. Do you remember -- do you recall that discussion?
A. Yes.
Q. Would you say that those numbers are not representative of every single case that you have before you?
MS. SHIPMA: I'm going to object. Which cases are you speaking about? Which averages?
Q. (By Mr. Moore) So I believe that there was a number thrown around the public defender has like four hours per a particular type of case.
MS. SHIPMA: That was 4.6 per juvenile case.
Q. (By Mr. Moore) Okay. So that's good. We can go with that. So 4.6 per juvenile case. Does that figure sound familiar?
A. Yes.

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Q. But that's not the amount of hours that you spend on each juvenile case, right?
A. I can't speak to each case, but each case is going to be different. So --
Q. Well, exactly, right? So I mean, each case has different needs and so some cases are going to get more hours and some are going to get less hours; is that fair?
A. I would hope that a juvenile case would not get less than 4.6 hours, but I -- I would definitely say yes, most of my cases get more than 4.6 hours.
Q. Right. I'm just generally speaking, though, so each case has different needs?
(Court reporter interruption.)
Q. (By Mr. Moore) Okay. Generally speaking, each case has different needs, right?
A. Yes.
Q. So some cases are going to require way more than the 4.6 hours and you give those cases more than 4.6 hours, right?
A. Yes.
Q. And there are cases that sometimes require at 4.6 hours or maybe even less than 4.6 hours, right?

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A. They could potentially.
Q. Right. So when you're looking at like an average of the number of hours you spend on cases, that's not representative necessarily of how much you spend on every particular juvenile case, right?
A. You're asking if 4.6 is representative?
MS. SHIPMA: Of what she spends?
Q. (By Mr. Moore) Yeah. So for yourself personally, the 4.6 figure, basically an average is just an average, correct, it doesn't say how much you're spending on every single one of your cases?
A. That number of 4.6 is not indicative of the number of hours I spend on my cases, no.
Q. Okay. And you think you spend more than 4.6 on your cases probably?
A. I would say yes.
Q. Okay. So there's also been some discussion of the training that public defenders go through as it pertains to general public defender service and then also as to the juvenile-specific section. Do you recall that testimony?
A. Yes.
Q. I think you talked about there's like a conference that the public defenders go to each

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year?
A. With regard to adult or juvenile representation?
Q. I just remember you said there was some like statewide public defender conference that they go to; is that accurate or --
A. So there are -- there are conferences, but I don't know whether you're referring to juvenile or adults representation.
Q. I guess let me just kind of go through again, like is there an annual training of some kind?
A. Sure. So there is an annual spring training for all public defender attorneys and then we also put on a juvenile-specific training once a year.
Q. Okay. And tell me a little bit about the annual spring training. How long does that last and what goes on at those trainings?
A. It's a little bit less than a week. It's usually from a Tuesday to a Friday. And there is training on and CLE credit on any number of -- of issues.
Q. Okay. And how about the juvenile-specific training, what does that look

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like?
A. Sure. It's about the same, two to three days and it's training on specific juvenile issues.
Q. Okay. So it's your opinion that juvenile cases involve specific issues that are special to juvenile cases, correct?
A. Absolutely.
Q. And you testified that areas of knowledge would include like brain development and there are some other things as well, but that's a special area of knowledge that a juvenile attorney would require, right?
A. Yes.
Q. Now, do you think there are special areas of knowledge that other public defenders working in other areas of law would also require?
A. I definitely think there are other specialties or other subsets of criminal cases that an attorney could specialize in, yes.
Q. Okay. So like if somebody is handling murder cases they probably would be dealing with different specialized issues than, you know, the juvenile cases, right?
A. One would think so, yes.

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Q. Okay. And do you know whether, you know, any specific training materials are provided for those other subspecialties?
A. I -- I can't speak to that, no.
Q. Okay. So you're just not sure one way or another if they provide --
A. That's correct.
Q. Okay.
MS. SHIPMA: Sarah was provided to speak on juvenile matters, not the MSPD system as a whole.
MR. MOORE: Okay.
MS. SHIPMA: Those depositions were Wednesday.
MR. MOORE: Okay.
Q. (By Mr. Moore) But in any event, as far as, you know, the juvenile-specific attorney materials you're provided, you could be being provided the same amount of materials as other public defenders with their specialties or more or less, you're just not sure I guess; is that right?
MS. QUINN: Objection, form of the question, vague. I just don't know what you're asking.
A. I don't either. I apologize. I have

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no idea what you're asking.
Q. (By Mr. Moore) Okay. So if there's discussion about, you know, if there's any juvenile-specific brochures or, you know, training materials provided regarding juvenile cases, do you recall those questions?
A. Yes.
Q. And so I believe you said that you weren't really aware of any and that you were working on a brochure of some kind at this time as well, amongst other testimony. Is that familiar?
A. The brochure that you're referring to is the collateral consequences brochure that I'm work -- we're collaborating with the National Juvenile Defender Center. So --
Q. Right.
A. Yes. So we are working --
(Court reporter interruption.)
A. National Juvenile Defender Center. I'm providing that to the state. But no, currently there is not a brochure on collateral consequences.
Q. (By Mr. Moore) And -- okay, very good. And as to juvenile-specific issues as well, I don't -- I think you said you weren't aware of any specific materials for juvenile cases that are

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provided to public defenders; is that right?
A. That is correct.
Q. Okay. But you're not sure whether that's typical of other specialities of the public defender's office as well; is that correct?
A. I -- I don't know.
Q. Okay. Because I mean, it could be that, you know, they do have materials or they don't have materials, you just don't know, you know about the juvenile arena only, right?
A. I -- I know about juvenile-specific, yes.
Q. Okay. But you know, attorneys that are hired by the public defender's office they've all gone to law school, right?
A. Yes.
Q. And they've all passed the bar exam?
A. Yes.
Q. Public defender's office do you have access to legal research materials of any kind?
A. Yes.
Q. And what are those legal research materials?
A. We have access to Westlaw.
Q. And as far as your Westlaw sub --

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subscription goes, I mean, are there any significant limitations on it that you've noticed or do you pretty much have access to what you need to access?
A. I -- I mean, I think that there -- would it be lovely to have all of -- access to the entire Westlaw subscription, absolutely, but I think that generally speaking I have access to the appropriate case law that I need to access.
Q. Okay. So generally you're able to access the materials that you need for your cases, right?
A. Yes.
Q. And also materials that you would need to apprise yourself of changes in the law, right?
A. With regard to Westlaw access?
Q. Or other research materials or avenues that are provided to you.
A. Yes, we are -- we -- we have the ability to find out what laws have changed, yes.
Q. Okay. And to learn about new areas of law that maybe you have been assigned to deal with, but have never dealt with before?
MS. QUINN: Objection as to form. I still don't know kind of what -- are you asking about her specifically, the system?

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MS. SHIPMA: Yeah.
MR. MOORE: I'm asking about the access to like legal research materials and whether they are --
MS. SHIPMA: For her --
MR. MOORE: -- adequate.
MS. SHIPMA: -- or for the entire system of attorneys?
MS. QUINN: Juvenile, not juvenile?
MR. MOORE: We're talking about for herself.
MS. SHIPMA: For herself, okay.
MR. MOORE: Right.
A. So you're asking if there's a new type of law that I need to have access to, do I have research materials?
Q. (By Mr. Moore) I'll just rephrase the question, I guess, right.
So you have been given access to Westlaw, correct?
A. Yes.
Q. And are there other like legal research avenues or utilities that you can utilize?
A. I mean, we have interns that we can rely on to get access to documents that we need. I

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also can utilize resources such as the National Juvenile Defender Center to provide with documents. Yes, I mean, I have -- I have the ability to go outside of the -- of Westlaw and get legal research, yes.
Q. Okay. And is that how you trained yourself to be competent in the juvenile representation?
MS. SHIPMA: I object. This is -- you're assuming that she trained herself. She hasn't said that she trained herself.
Q. (By Mr. Moore) Okay. So I guess I'll ask how -- whenever you started at the public defender's office you were not in the juvenile arena; is that right?
A. That's correct.
Q. How did you become competent and train to step into that arena?
A. Sure. So I think competence is something that you're always continuing to grow upon, so I think that -- I'm not saying that I have -- I'm completely competent in the area of juvenile law, but I have attend the National Juvenile Defender Center trainings for approximately the past five years, since 2012. I have also been

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JTIP-certified. So I am certified to train others in juvenile law.

I have attended the JTIP summer academy, so I have myself been trained. I attend the juvenile trainings every year since the year 2013. And I help present at those trainings. I -- and I read and I -- I try to do my best to keep up with the new case law that comes through with regard to juvenile-specific issues.

Q. Okay. Okay. And would those same -- would those same avenues be available for other attorneys that are in your office who are looking to step into the juvenile arena as well?

A. Well, they would have to apply through our training division to go to the -- to the trainings. Just anyone can't go to the training. It -- it's costly, so you have to apply to do those trainings.

Q. Uh-huh.

A. Of course, they are able to educate themselves on juvenile law -- law through case law and national standards. And then they can, yes, go to the trainings that are once a year.

Q. Okay. I also understand you testified earlier something about a motions bank; is that

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right?

A. Yes.

Q. Tell me a little bit about the motions bank.

A. So it's a -- it's a area where defenders can go to look at motions for their cases.

Q. Okay. Tell me a little bit more. So is it like case-specific, do you pull up cases in there or are they like just a bank of here's a motion to dismiss and there's a bunch of examples? What does it look like, I guess?

A. It would not be case-specific in case there would -- are potential conflicts. I think it would be topic-specific.

Q. Okay. So you have this bank of motions and do you have any knowledge as to like how far back this motions bank goes?

A. I don't.

Q. Okay. Would you say there's like a voluminous amount of motions and examples inside the bank?

A. I can't speak to that.

Q. Okay. Would you say there's like an adequate amount of motions in the bank?

A. I can't speak to that.

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Q. Okay. Has there ever been a time when you went to the motions bank and were unable to find like a basic motion that you were just trying to utilize in your practice?

A. No.

Q. Okay. And so all the public defenders that deal with parole matters would have access to this motions bank?

MS. SHIPMA: That deal with what kind of matters?

MS. QUINN: I'm sorry, what?

MR. MOORE: The -- I think I said parole. The --

MS. QUINN: Yeah.

MR. MOORE: Did I say parole or did I say juvenile?

MS. QUINN: You did say parole.

THE WITNESS: Parole.

MR. MOORE: Okay. Sorry. So I'll strike that.

MS. QUINN: That's my other case.

MR. MOORE: Right. Right.

Q. (By Mr. Moore) Juvenile matters. So would other attorneys working on juvenile matters have access to this motions bank?

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A. Yes.

Q. Okay. So let me talk a little bit about the detention hearing aspect of this.

A. Uh-huh.

Q. I think you said earlier there was like a time constraint as it pertains to getting counsel -- separate counsel for every single juvenile who might be facing this detention hearing at the same time. Do you recall that conversation earlier?

A. Yes.

Q. Tell me a little bit about the time constraints. I think you said there's like a three-day period?

A. Correct. So from when the petition is filed until detention hearing, the detention hearing shall be heard within three days of that petition being filed.

Q. Okay. And so as far as, you know, the restrictions on getting counsel for -- conflicts counsel for these hypothetical juveniles, what are the -- is it simply a time constraint, there's no time to process these claims or what is preventing that from taking place in your opinion?

A. Well, sure. It's -- it's a number of

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things. It -- before we had to contract cases through Columbia the defenders who were taking these contract cases might have court. So three days' notice is not a lot of notice to give someone to then have to appear in court.

They could be in other juris -- they are in other jurisdictions, and so it is an impediment to have to come down and -- and do something at a specific time. So that is one of the constraints. The other constraint now is that in order to contract a case it has to go through Columbia and then Columbia needs to find the attorneys that are going to be representing those youth. So that is now the constraint. So three days is simply not enough time to be able to do that.

Q. So for instance, it sounds like it's just a quick turnaround with three days, and also there's just some administrative things that need to be gone through and it takes time; is that accurate?

MS. QUINN: Objection. That's not -- I would object to the form of the question as mischaracterizing her testimony.

MR. MOORE: Just a -- just a question. I guess can you read the question back?

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COURT REPORTER: Question: So for instance, it sounds like it's just a quick turnaround with three days, and also there's just some administrative things that need to be gone through and it takes time; is that accurate?

Q. (By Mr. Moore) I guess I can break it down a little simpler then. So as far as what is preventing counsel from being appointed for all these hypothetical juveniles at these detention hearings, I think you testified that it's one, a timing issue, the three days is kind of a quick turnaround; is that right?

A. It -- it's an issue for the attorneys who have to represent the children, the conflict -- the conflict attorneys. So they have other cases in other jurisdictions, and so three days is oftentimes not enough time for that attorney to then find coverage for the cases that they are dealing with.

Q. Right.

A. And the current clients that they have to represent.

Q. Okay. So that kind of sounds like a -- like a yes, it is like a timing thing, right, three days is not often enough time to give notice to the proper attorneys or to, you know, recruit the

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counsel, three days is just kind of quick; is that accurate?

A. It is very quick.

Q. On the other side of that you also said that there were some issues with getting the pieces in line or recruiting counsel, making sure their calendars were cleared, things of that nature; is that right?

A. So that was the first thing that you just -- that we just talked about. The second thing is that now we refer all cases that are conflicts through Columbia, okay? And so now Columbia has to then find all of the contract attorneys that are going to represent those youth. So then that -- that is an additional piece of time. And these are also attorneys who are representing other individuals and so they have time constraints and court hearings that they potentially have to attend as well.

Q. Okay. Do you know why it all goes through Columbia?

A. That is where we -- how we contract attorneys. Columbia is the main office.

Q. Okay. And do you have anything to do with that decision as to base it all in Columbia or

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how that administratively gets handled?

A. I have nothing to do with that.

Q. Okay. There was some discussion earlier about the use of experts in juvenile cases. Do you recall that conversation?

A. Yes.

Q. And so, you know, correct me if I'm wrong, but bottom line is you don't necessarily need an expert for every single case that comes your way; is that right?

A. I don't -- I don't think that's a bottom line. I think that each child comes to you as a unique and different circumstance and so would I love to have an expert to talk about adolescent brain development on every single child, yes. Do I have that ability, no.

Q. Okay. But you would agree that the type of experts that you need on a case would be dependent on the specifics of that particular case, right?

A. Absolutely.

Q. But in your opinion you would offer an expert in every single juvenile case about juvenile brain development?

A. Juvenile brain development or mitiga --

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or mitigation or something to explain how a juvenile's intent for a certain type of case might be different than another, yes. Some form of expert, whether it be for disposition or adjudication, yes.

Q. Okay. Has there ever been a circumstance where you had requested experts be utilized in a case, but your request was denied?

A. No.

VIDEOGRAPHER: One moment, please. Can we go off the record for a second? We're going off the record at approximately 12:21 p.m.

(WHEREIN, a discussion was held off the record.)

VIDEOGRAPHER: We're back on the record at approximately 12:22 p.m.

Q. (By Mr. Moore) Thanks. I think the last question that we -- I asked you was whether you had ever been -- you had ever had your request for an expert in a case denied and I think your answer was no, that's never happened?

A. That's correct.

Q. Same question as to investigators in your cases, have you ever requested an investigator and had that request denied?

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A. No, I have not.

Q. Okay. There was some discussion earlier about like the number of depositions and motions that you filed in your cases. Do you recall those questions?

A. I do.

Q. Now, would you agree that the number of depositions and motions you file in a case are going to be highly dependent on the case itself and what's happening in that case?

MS. QUINN: Objection as to form, compound question.

A. So you asked about depositions, so yes, deposition -- it would depend on what kind of case it is. And then what was the other piece?

Q. (By Mr. Moore) Motions.

A. Motions. It would -- it would depend on the case, yes.

Q. Right. You -- you basically do what the case requires as far as taking depositions and filing motions, right?

A. I -- yes, at the time of -- that I am representing a youth, I do everything that I can to try to represent that youth to the best of my ability.

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Q. All right. And so there's also some discussions about like social workers on cases?

A. Yes.

Q. Do you know if there are any like ethical requirements that you utilize social workers on your cases?

A. Ethical requirements imposed upon myself?

Q. Right.

A. I don't know of any.

Q. How about any like legal or statutory requirements for social workers on your cases?

A. I don't know of any.

Q. Are you aware of any constitutional requirements that you util -- you utilize social workers on your cases?

A. No, I do not believe that there is a constitutional requirement that requires me to use a social worker.

Q. Okay. So you were also asked about support staff earlier. Do you remember that conversation?

A. I do.

Q. And I think you did end up stating that you felt like you were adequately supported with the

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support staff that you currently have; is that right?

A. Yes, with -- with her current duties. Would I like her to do more, absolutely, but with the duties that I give her, I believe that I am adequately assisted.

Q. Right. Very good. And there was a question about whether your staff received a special instruction as to parole matters -- or sorry, not parole. Juvenile matters. Do you recall that?

A. Yes.

Q. But as I understand the task that the staff are engaging in include like typing up letters, right?

A. Well, we don't normally do many letters because the youth are either detained or we're -- we're calling them on the phone. So letters is not necessarily juvenile-specific.

Q. Okay. I mean, do you feel that the staff would need juvenile-specific training in order to perform their duties?

A. Absolutely.

Q. And in what way would they need the additional training?

A. They need to know the rules and the

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policies and procedures with regard to juvenile court. They need to know that the individuals that we're dealing with are different than the adults. So a call from a youth from a facility is -- is going to need some very quick attention. They need to know about filing practices. They need to know about timelines and deadlines. Juvenile cases go very quickly and so they need to understand the urgency with which we deal with juvenile cases.

Q. And you've worked on adult criminal cases as well, right?

A. I have.

Q. And are there deadlines for criminal cases that involve adults as well?

A. Yes.

Q. And you also field phone calls from adult -- adults who have been convict -- or accused of crimes, right?

A. Yes. I -- I think they're important, but I -- children, their understanding of what is happening to them and what is going on and the urgency with which you address those phone calls, I think is very important that support staff understand. So I'm not placing their lives any higher than an adult defendant's life, but the --

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the staff needs to understand the urgency with which to treat their requests.

Q. Okay. And again, you feel like your staff is supporting you adequately as it relates to these requirements; is that correct?

A. With regard to the tasks that I am giving my support staff, I believe that I am adequately assisted.

Q. Okay. So as to the certification cases, you discussed that process a little bit earlier. Do you recall the conversation?

A. Yes.

Q. And I think you were asked about the type of evidence that you put on versus the type of evidence that the prosecution would put on, right?

A. Correct.

Q. And it sounded like the prosecution just puts on the deputy juvenile officer; is that right?

A. In most cases, yes.

Q. And you said yourself you have used witnesses of various kinds, you've had officer testimony, and other types of evidence as well, right?

A. Yes, I have.

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Q. So kind of sounds like in many cases you're presenting more evidence and calling more witnesses than the prosecution for these certification issues; is that right?

A. Yes. In -- in my certification cases usually I am.

Q. And you definitely feel like you've met your ethical responsibilities with regard to these certification procedures, right?

A. I -- I don't think I can -- I can say that.

Q. You don't feel like you've met your ethical obligations to your clients with regard to certification procedures?

A. Not in every case, no.

Q. And -- okay. So in -- in what way do you feel like you have not?

A. In what way? Are you asking for generally or specific cases?

Q. If you have specifics --

MS. SHIPMA: I would object to her answering any questions about specific cases.

MR. MOORE: Okay.

Q. (By Mr. Moore) So like I said, I'm jumping around a little bit. So you talked a little

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bit about the pre-Miranda process.

A. Yes.

Q. Tell me a little bit about what that entails.

A. If a child is detained and they request counsel before being interrogated by a police officer, then the juvenile court would call me.

Q. Okay. And I think you said as far as lineups go, you are now called for any lineups prior to the lineups taking place in St. Louis city; is that right?

A. Yes, I am.

Q. Okay. Now, you were asked earlier about your involvement in appeals of juvenile matters. Do you recall that conversation?

A. I do.

Q. And I think you said that maybe you had worked on a small amount, maybe one appeal or so; is that right?

A. I have written and argued my own appeal, but I have appealed other cases.

Q. Okay. But in any event, I mean, you have to have a reason to appeal in each case, right?

A. I do not have to have a reason to appeal. The child has to indicate that they want to

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appeal the case.
Q. And there has to be, you know, like a -- a legal foundation and -- you know, for the appeals process whenever you're making arguments to the court filing motions, right?
A. I'm a little bit confused by your question. Every child has a right to an appeal, so I don't have to find a reason for them to appeal. If they want to say they want to appeal a case, a case will be appealed.
Q. Okay. So if they ask you for the appeal, then you do the appeal, right?
A. That is correct.
Q. And if they don't ask you, then, you know, there's -- you don't have any right to independently pursue an appeal, right?
A. So --
MS. QUINN: Objection. I don't understand what you're asking.
MR. MOORE: I think it's a pretty straightforward question.
Q. (By Mr. Moore) I mean, so if they don't ask you for an appeal, then you don't have any independent right to just say, well, we're going to appeal this case whether you like it or not, right?

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A. So -- so we educate a child about their right to an appeal and part of that education includes also informing the parents that they also can appeal a case -- the case, so that is the process that -- and procedure that we go through with regard to juvenile appeals.
Q. Okay. So just a couple things and then we'll be done here. Looking at Exhibit 29, Plaintiff's Exhibit 29, this is the -- actually, you know what, that's not the one I wanted to look at. I want to look at 27, the new attorney toolbox.
A. Okay.
Q. I think you might have said this earlier, but just to clarify, you're not sure whether this is being utilized or in what manner it's being utilized by any public defender --
A. No, I am not.
Q. -- personally, right? You don't know whether it's been modified or amended or totally done away with in any particular county, right?
A. Correct.
Q. You didn't help draft this report in any way, did you?
A. I did not.
Q. To the extent there's any kind of

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instructions or, you know, mathematical formulas, you had nothing to do with the creation of those things, did you?
A. I did not.
Q. I guess just the last item would be Exhibit 29. That's the fiscal year 2016 annual report.
A. Okay.
Q. Again, you know, you didn't help with any part of the data collection in this -- pertaining to this report, did you?
A. I did not.
Q. You didn't help draft this report?
A. I did not.
Q. Do you know who did draft this report?
A. I do not.
MR. MOORE: Okay. I think that that is all I have for right now. I'll look at my notes, but you go ahead.
MS. SHIPMA: Well, no, I'll let you look over your notes and see if you have any other questions before I do my questioning.
MR. MOORE: Okay. Okay.
Q. (By Mr. Moore) Do you have any say as to how funds are allocated within the public

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defender system?
A. I do not.
Q. Do you have anything to do with how public defender's budget is allocated or separated out as between the offices?
A. I do not.
Q. Oh, I do have a question about discovery process. You mentioned something about like a blue file?
A. Yes.
Q. What is the blue file exactly?
A. So in St. Louis County and I can't speak to their current practices, but when I was representing juveniles in St. Louis County they had a series of blue files for each specific case, and so when you wanted to go see the police reports you would go back into the legal officers' area, pull the blue file that pertained to your case and make a copy of the -- the police reports.
Q. Okay. So as far as like obtaining those records and putting the blue file together, I mean, is that something the attorneys would do themselves or would support staff assist them in creating those files?
A. And when you're saying attorneys, are

Page 185

you talking about the legal officers?
Q. Not exactly sure. Like this is the public defenders I guess. Would they be considered the legal officers or --
A. No. So the public defenders are not creating those blue files.
Q. Okay. So I guess -- so who does that, the legal officers you said?
A. Yes, so the -- the prosecutors are -- I -- their entity is creating those files. I don't know exactly who is doing it --
Q. Oh, I see now.
A. -- but I -- but they -- that entity is creating those files.
Q. Okay. Now I understand. Have you ever subject -- have you ever been subject to any kind of discipline towards your law license with regard to your handling of cases while you were at the public defender's office?
A. I have not.
MR. MOORE: I think that's all I have. Thanks.
EXAMINATION
QUESTIONS BY MS. SHIPMA:
Q. All right, Sarah. I'm not going to

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belabor this. I'm going to work backwards just for fun. How does that sound?
A. Okay.
Q. Okay. The Missouri public defender system has an appellate division, correct?
A. Yes, they do.
Q. Does that appellate division handle juvenile -- juvenile appeals?
A. Yes.
Q. You mentioned -- or you -- you testified a couple of times about the fact that you're called prior to lineups occurring in St. Louis city?
A. Yes.
Q. Do -- are you able to make it to all those lineups?
A. No, I am not.
Q. And why would that be?
A. Sometimes the lineups are late at night or early in the morning and I am already home.
Q. Okay.
A. Or I'm in court, so I'm -- I'm not able to leave court and go to those lineups.
Q. Understood. Are there tasks that you would like to assign to your support staff but are

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unable to?
A. Yes.
Q. And why are you unable to do that?
A. I'm unable to do that because she in addition to myself has a number of attorneys that she is also working with to provide the best assistance that she can.
Q. Can you give me an example of one kind of task that you would like to assign to a support staff but are unable to do so?
A. Sure. So there is something called a social file in a juvenile case. A social file is a file that contains all the documents with regard to a specific youth. So it could be care and protection case files, it could be school records, it could be mental health records. It could be previous police reports or previous deputy juvenile officer social investigations. Sometimes it's hundreds of pages. Myself, I use a scanner and I scan all of those pages myself. I would love to delegate that task to her, but I am unable to.
Q. Because of the tasks that she's doing for other attorneys as well?
A. Yes.
Q. Okay. I think that Mr. Moore asked a

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question that was sort of characterizing that you believe that you do what the case requires when you're handling a case.
A. Sure.
Q. You remember that question?
A. I do.
Q. Are there things that you would like to do in cases, but are unable to do?
A. Yes.
Q. And why are you unable to do things that you would like to do in other cases?
A. Because of time constraints, because of obligations to other clients and -- and limitation. When you are tasked with a child who is sitting in a detention center, a num -- a number of children who are sitting in a detention center, you know, you don't want them to languish.
Q. Can you give me one example of something that you can think of that goes by the wayside because of time?
A. I was asked specifically about placement in inpatient or residential facilities. My ability to investigate options such as those, I'm not able to do on every single case.
Q. Why don't you assign that task to

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someone else to investigate?
A. Because they -- the -- either the investigator or the social worker who would be doing that is also overloaded.
Q. Have you ever requested an outside investigator?
A. Outside of the public defender system?
Q. Right.
A. No, I have not.
Q. Okay. You -- you testified that you had never had a request for an expert denied, correct?
A. That is correct.
Q. Have you ever had a request for an expert modified?
A. I have not.
Q. You talked a couple of times about the motion bank. Are you familiar with a resource called the litigation resource board?
A. Yes.
Q. And that's separate from the motion bank?
A. It is.
Q. Do you know if that resource has juvenile-specific materials on it?

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A. I believe it does, but I'm not for certain.
Q. You haven't visited that?
A. Not recently, no.
Q. Sorry, but I am going to direct you to page -- to Exhibit 29, page 23 just because I want to make sure we're all using the same terminology when we look at this. You see -- I believe that Ms. Quinn asked you about the approximately 600 -- or 1,600 and I believe she said open cases.
A. Uh-huh.
Q. Okay. Look at the columns at the top, the descriptors for the various columns.
A. Uh-huh.
Q. You see one that says Case Type, one that says Description, and one that says Opened Cases rather than open cases?
A. Correct.
Q. In -- in your mind, is there a distinction between an open case and an opened case?
A. Yes, there is.
Q. Do you know what -- do you know if MSPD makes a distinction between open cases and opened cases?
A. I believe they do, yes.

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Q. And what is that distinction?
A. So when a case is open, it is open and assigned to an attorney in our system. When a case is opened, it could be opened and then a private attorney had entered or it had been dismissed or something else. So that doesn't necessarily mean that someone is currently representing that individual.
Q. Do you know in this Opened Cases column, does that include cases that were pending that were not opened during fiscal year 2016, but maybe had carried over from a prior fiscal year? And if you don't know that, that's okay.
A. I don't know that.
Q. I can get that from someone else. Okay. Thank you. Do you know if Karen Craft had any other job responsibilities other than juvenile matters?
A. Yes.
Q. What were those?
A. I know for certain that she had also dealt with capital cases as well as I believe sex cases, and then she was also a manager of several offices or units.
Q. Okay. So she wasn't designated

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specifically just to juvenile like you had been for a while?
A. Correct.
Q. You were asked some questions regarding a policy on how to determine a conflict.
A. Sure.
Q. Do you remember that? Do you know if there's a written policy that MSPD has regarding how to spot a conflict?
A. I believe there is.
Q. Okay. Do you know if that policy differs in any respect from just the rules of professional responsibility, professional conduct?
A. No, I'm not.
MS. SHIPMA: I have no other questions.
MS. QUINN: We just have a few if it's all right.
FURTHER EXAMINATION
QUESTIONS BY MS. QUINN:
Q. I believe earlier you were asked on cross-examination about hypothetical juveniles whom you might be involved with at detention hearings where there's a conflict of interest. It is in fact true that you have represented youth at detention hearings and been conflicted while doing so,

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correct?
A. Yes.
Q. Can you estimate how many children in the last year you have represented at detention hearings while knowing that you were conflicted based on their status as having a co-defendant?
A. I can't. I'm sorry. I don't know. I don't know how many.
Q. More than ten?
A. Probably.
Q. More than 50?
A. I don't think so.
Q. And you were asked about appeals and it sounded like perhaps the question posed assumed that you were supposed to cull out when an appeal is an appropriate or inappropriate path for youth. Do you remember that question?
A. I do.
Q. Is it your understanding that all youth found guilty or adjudicated have a right to appeal?
A. Yes.
Q. And it is in fact true that you have not informed all youth of their right to appeal, correct?
A. All youth after an adjudication

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hearing, trial?
Q. Yes.
A. Yes, all youth after a plea hearing, no.
Q. And the vast majority of your cases are resolved by a guilty plea, correct?
A. I would disagree with that.
(Court reporter interruption.)
Q. (By Ms. Quinn) The vast majority of cases are resolved by a guilty plea?
A. I would say no. I would say there -- we have a lot of trials in the city of St. Louis.
Q. Right. I think the national average is somewhere around ten percent of cases go to trial and 90 percent are resolved by guilty plea. Is that about right for your office?
A. I don't think so, no.
MS. SHIPMA: And Mae, are those statistics for juvenile cases?
MS. QUINN: I think so. I think so.
MS. SHIPMA: Okay.
Q. (By Ms. Quinn) So in any event, no matter the number, when a child pleads guilty, it has not been the practice to inform them of their right to appeal at that -- at that time?

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A. No, it has not been the practice.
Q. Now, there was some review of this 4.6-hour on average number generated by the RubinBrown study relating to juvenile cases. Do you recollect that?
A. I do.
Q. And just to be clear, have you ever encountered a juvenile case in your own docket that could be handled in less than 4.6 hours?
A. It would be a very rare circumstance.
Q. And what about any of these attorneys who have called you to seek your assistance, is there any matter that they've called you about that in your opinion could be handled in less than 4.6 hours?
A. No.
MS. QUINN: I think that's it.
MS. SHIPMA: I don't have anything further.
FURTHER EXAMINATION
QUESTIONS BY MR. MOORE:
Q. Just a couple quick follow-ups. Okay. So you said earlier that you are notified whenever there's going to be a lineup in the city of St. Louis, right?

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A. Yes.
Q. But you don't always go to those lineups, right?
A. No, I do not.
Q. And what was the reason for not going to lineups? I think you said some happened in the middle of the night, and were there other reasons?
A. I've never been called in the middle of the night, but there have been some late at night. I have two small children and so I am not able to leave those -- my children and go to the lineups. Also, I have had court constraints, so I've been called in the middle of a court hearing and I've not been able to leave that court hearing and go to the lineup.
Q. Okay. And so you talked about certain tasks that you would like to assign to your support staff but that you can't. Remember that?
A. Correct.
Q. I think one of those sounded like it was basically like making copies of the social file; is that right?
A. It's scanning. We're not allowed to make copies, but we can scan it with a special instrument, yes.

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Q. Okay. Any other tasks that you would like to assign to staff that you are unable to because of -- or for whatever reason?

A. I think probably notification of court hearings and coordination of witnesses potentially. Making sure everyone knows the right place, coordinating if people need bus passes or if they need some sort of transportation help. Potentially drafting some basic form motions. Not necessarily substance of law motions, but form motions.

Q. And so you're saying these are things that you cannot assign to your support staff?

A. I could, but she is very overworked and overloaded and with the specific time constraints of juvenile cases I don't know that she would be able to accomplish those tasks in the specific time needed.

Q. Okay. Have you ever tried to assign those tasks to her or is it just something you've never done before?

A. No, I have assigned -- the only thing I've not assigned to her is the scanning of the social file. I have assigned other tasks to her, yes.

Q. Okay. Tell me a little bit more about

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the litigation resource board. What exactly is that?

A. It's a board where there are resources, case -- cases, as well as motions for attorneys across the state.

Q. Is that a -- like an on-line form of some kind or is it like a physical board?

A. No, it's -- it's on-line. It's -- it's in our system.

Q. Okay. And so you're able to access that from your computer whenever you want, right?

A. Yes. Yes.

Q. And other public defenders could presumably do the same thing, right?

A. Yes.

MR. MOORE: I think that's all I have.

VIDEOGRAPHER: We're going off the record at approximately 12:50 p.m.

COURT REPORTER: Counsel, there were orders from the depositions on Wednesday. Could I just get confirmation that those same orders apply for today?

MS. QUINN: Yes, sir.

MS. SHIPMA: Yes.

MR. MOORE: Yes.

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(WHEREIN, the deposition was concluded at 12:50 p.m.)

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CERTIFICATE OF REPORTER

I, William L. DeVries, a Certified Court Reporter (MO), Certified Shorthand Reporter (IL), Registered Diplomate Reporter, and a Certified Realtime Reporter, do hereby certify that the witness whose testimony appears in the foregoing deposition was duly sworn by me pursuant to Section 492.010 RSMo; that the testimony of said witness was taken by me to the best of my ability and thereafter reduced to typewriting under my direction; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition was taken, and further that I am not a relative or employee of any attorney or counsel employed by the parties thereto, nor financially or otherwise interested in the outcome of the action.

_____

Certified Court Reporter
within and for the State of Missouri

MIDWEST LITIGATION SERVICES

October 12, 2017

Ms. Jacqueline Shipma
Missouri State Public Defender
1000 West Nifong
Building 7, Suite 100
Columbia, Missouri 65203

IN RE: SHONDEL CHURCH, et al. vs. STATE OF MISSOURI, et al.

Dear Ms. Shipma,

Please find enclosed your copies of the deposition of SARAH K. JOHNSON taken on October 6, 2017 in the above-referenced case. Also enclosed is the original signature page and errata sheets.

Please have the witness read your copy of the transcript, indicate any changes and/or corrections desired on the errata sheets, and sign the signature page before a notary public.

Please return the errata sheets and notarized signature page within 30 days to our office at 711 N 11th Street, St. Louis, MO 63101 for filing.

Sincerely,

William L. DeVries, RDR/CRR

Enclosures

ERRATA SHEET

Witness Name: SARAH K. JOHNSON
Case Name: SHONDEL CHURCH, et al. vs. STATE OF MISSOURI, et al.
Date Taken: OCTOBER 6, 2017

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Witness Signature: _____

STATE OF _____)

COUNTY OF _____)

I, SARAH K. JOHNSON, do hereby certify:

That I have read the foregoing deposition;

That I have made such changes in form and/or substance to the within deposition as might be necessary to render the same true and correct;

That having made such changes thereon, I hereby subscribe my name to the deposition.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this _____ day of _____, 20___, at _____.

_____
SARAH K. JOHNSON

_____
NOTARY PUBLIC

My Commission Expires:

A
AB 50:15
ABA 50:19,23 51:2
ability 23:22 24:1 31:9 41:11 42:9 82:16 84:11 90:3,13,15 94:11 96:12 99:21 106:16 111:22 115:18 116:17 162:19 164:3 172:16 174:25 188:23 200:10
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Exhibit KK

Exhibit 9

MISSOURI:

JUSTICE RATIONED

An Assessment of Access to Counsel and Quality of Juvenile Defense Representation in Delinquency Proceedings

Spring 2013

National Juvenile Defender Center
Central Juvenile Defender Center

NJDC

MISSOURI:

JUSTICE RATIONED

An Assessment of Access to Counsel and Quality of Juvenile Defense Representation in Delinquency Proceedings

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EXECUTIVE SUMMARY

While Missouri stands out for its innovation in providing small, regionalized juvenile corrections programs, an effective juvenile justice system is not built solely upon the corrections options available to youth after they have navigated their way through a complex legal process. An effective juvenile justice system must encompass the foundational elements of fundamental fairness and due process. **The system must include legal advocacy and zealous representation by competent and well-trained attorneys who uphold the rights of children at all critical stages.** The 1967 United States Supreme Court decision *In re Gault* extended the principles of due process to delinquency proceedings.[1] It held that accused youth facing the awesome prospect of incarceration have the right to counsel.[2] Due process is violated when children's legal interests are not protected.

This assessment is designed to provide policy makers and juvenile defense leaders with relevant baseline information about whether youth have timely and meaningful access to qualified counsel in delinquency proceedings, identify systemic barriers to quality representation, highlight best practices, and provide recommendations and implementation strategies for improving Missouri's juvenile indigent defense delivery system.

The report begins with a summary of the evolution of due process and the right to counsel for youth in delinquency proceedings. It then provides an overview of this right as it pertains to youth in Missouri, and gives a snapshot of the state's judicial system, the juvenile justice system, and the indigent defense system. A synopsis of Missouri juvenile law and the various stages of delinquency proceedings are then described to facilitate an understanding of how youth navigate through the system.

Findings made in the report are based upon the results of survey data from judges and attorneys across the state, interviews with other key stakeholders, youth and families, and information obtained from extensive site visits to local juvenile courts in a sampling of jurisdictions. Three overarching concerns were identified by the investigative team as endemic in the system, and reached across many areas of practice:

1. Missouri's indigent defense system is in crisis and has endured at least two decades of crushing caseloads and inadequate resources to provide its mandated services. In spite of numerous reports, attempts, legislative fixes, and litigation, the system remains broken and forced to ration services. With the exception of a few counties that rigorously defend the right to counsel for juveniles, youth are discouraged from and systematically denied counsel throughout the state.

2. While Missouri is recognized for innovative facilities and an effective service delivery system for youth in the delinquency system, this does not negate the need for adequate due process protections to be put into place. There is an imbalance between acknowledging and protecting the basic rights established in *In re Gault* and adjudicating youth delinquent in order to obtain services or otherwise intervene in the lives of children and families.

3. The structure of Missouri's juvenile court, by its very nature, creates conflicting roles. The role of the deputy juvenile officer (Missouri's equivalent of probation officer) and legal officer (Missouri's equivalent of prosecutor), as designed and implemented, presents challenges to the judiciary regarding the fair implementation of due process, supervision, and the requirement of impartiality. The role of the deputy juvenile officers may also contribute to high rates of youth waiving their right to counsel.

It is against this backdrop that the juvenile defense delivery system must be put into context. Ensuring due process for youth in delinquency proceedings takes low priority in the system. This denial of due process is well

[1] *In re Gault*, 387 U.S. 1 (1967).
[2] *Id.* at 36-37.

known, and it is deeply entrenched in the culture of many juvenile courts, as evidenced by the many interviews, reports, and other sources of information reviewed as part of this assessment.

Findings also include descriptions of barriers to accessing counsel, and barriers to effective practice among attorneys defending youth at each critical stage of court proceedings. However, the investigative team also found several promising practices and programs that promote the representation of indigent youth, including some run by Missouri law schools.

The Recommendations are directed at all three branches of government and other stakeholders that impact juvenile defense practices. These Recommendations should be used as the basis for various reform initiatives to improve access to and quality of representation for children who come before the juvenile courts in Missouri. Included in the final chapter are both Core Recommendations and Implementation Strategies. The Core Recommendations, also provided directly below, focus on the principal areas in which work is needed to improve both access to counsel and quality of representation for youth in the delinquency system. The Implementation Strategies derive from these Core Recommendations and provide more detailed suggestions for achieving reform in specific areas.

THE CORE RECOMMENDATIONS

1. **Ensure Timely Appointment of Counsel:** Youth must be appointed counsel and have access to counsel early in their case.

2. **Reduce Waiver of Counsel:** Missouri should establish a presumption against waiver of counsel; whereby, a youth must first consult with counsel before any waiver is permitted. No child should be denied counsel because of lack of resources.

3. **Afford Representation at All Critical Stages:** Missouri youth should be afforded counsel at all critical stages of the proceedings.

4. **Allocate Sufficient Resources:** Missouri must commit adequate funding to juvenile representation that allows for reasonable caseloads and effective advocacy. Juvenile defenders must also have access to ancillary services such as investigators, experts, and social workers.

5. **Strengthen Monitoring and Oversight:** The indigent defense delivery system should include a separate juvenile division to centralize leadership, innovation, and responsibility around juvenile defense. The division would strengthen positive practices and policies and would provide ongoing statewide oversight and monitoring.

6. **Establish Data Collection:** A system of data collection should be established, which can track appointment of counsel at early stages, and other pertinent data regarding juvenile representation to aid management in decision making. Best practices and innovations should be identified and promoted through data collection.

7. **Recognize Juvenile Defense as a Specialized Area of Practice:** Juvenile defense should be recognized and appreciated as a highly specialized practice. A system with ongoing training, support, and networking among defenders should be established. Attorneys should participate in comprehensive training before working in juvenile court, and they should have the opportunity for ongoing training to enhance their practice skills and knowledge of the field.

8. **Reduce Youth in the Adult System:** The age for adult criminal court jurisdiction in Missouri should be raised from 17 to 18.

9. **Adopt Standards of Practice:** Juvenile defense practice standards should be adopted and implemented statewide. Expectations regarding ethical obligations and performance of attorneys providing representation at all critical stages should be included.

10. **Address the Role of the Deputy Juvenile Officer:** The expansive role of the deputy juvenile officer should be addressed to ensure that it does not influence, directly or indirectly, the ability of youth to be appointed counsel early in the process, and to prevent statements made to these individuals from being admissible in court.

INTRODUCTION

In 2013, over forty-five years after the landmark Supreme Court decision affording youth the right to counsel in delinquency proceedings, youth are regularly denied access to and provision of counsel in many states. The National Juvenile Defender Center, in partnership with our regional juvenile defender centers and other key stakeholders, has embarked on a 50 state strategy to assess access to and quality of juvenile defense afforded to youth in conflict with the law.

Several consistent themes emerge from these state assessments, including: an array of systemic barriers that prohibit youth from receiving timely access to qualified juvenile defense counsel; juvenile defense is not recognized or acknowledged as a specialized legal practice; and juvenile defense is significantly under-resourced. While all juvenile justice professionals want to ensure the best outcomes for young people and for society, the U.S. Supreme Court clearly noted in *In re Gault* that, the "absence of substantive standards has not necessarily meant that children receive careful, compassionate, individualized treatment," and that "Juvenile Court history has again demonstrated that unbridled discretion, however benevolently motivated, is frequently a poor substitute for principle and procedure."[3] Since the *Gault* decision, juvenile indigent defense systems have faltered and failed, leaving far too many children defenseless in courts of law across the country.

Underscoring the importance of a specialized juvenile defense bar, the Supreme Court noted in its 2010 decision in *Graham v. Florida* that there are, "...special difficulties encountered by counsel in juvenile representation. As some *amici* note, the features that distinguish juveniles from adults also put them at a significant disadvantage in criminal proceedings."[4] Juvenile defenders require specialized knowledge and understanding of adolescence; the skills needed to address unique hearings such as detention, transfer, and disposition; and the capacity to assist and engage their youthful clients in effective decision-making toward their defense if they are to overcome this "significant disadvantage."

While Missouri stands out for its innovation in providing small, regionalized juvenile correctional programs, an effective juvenile justice system is not built solely upon the corrections options available to youth after they have navigated their way through a complex legal process. The juvenile justice system must encompass the foundational elements of fundamental fairness and due process. It must include legal advocacy and zealous representation by competent and well-trained attorneys who uphold the rights of children at all critical stages. This piece of Missouri's juvenile justice system has been long neglected and patently misunderstood.

Missouri's indigent defense system has reached its tipping point. In a 2009 assessment (the third since 1993), a national consulting group on indigent defense systems found that the Missouri State Public Defender (MSPD) was the lowest funded state public defender system in the country and was on "the brink of collapse."[5] The caseload crisis, for which there has been no relief in two decades, has "placed MSPD's attorneys in the cruelest of positions, one in which they are virtually guaranteed to fail, despite efforts that could fairly be described as heroic."[6] In spite of efforts to reach out to all three branches of government, the MSPD has failed to obtain sufficient funding to provide constitutionally required defense services. Since 2008, MSPD has had administrative rules that establish maximum caseloads for each office and authorize the office directors to place an office on "limited

[3] *Id.* at 18.

[4] *Graham v. Florida,* 130 S.Ct. 2011, 2032 (2010).

[5] ROBERT L. SPANGENBERG, DAVID J. NEWHOUSE, & JON B. GOULD, THE SPANGENBERG GROUP & THE CENTER FOR LAW, JUSTICE AND SOCIETY AT GEORGE MASON UNIVERSITY, ASSESSMENT OF THE MISSOURI STATE PUBLIC DEFENDER SYSTEM: FINAL REPORT 64 (Oct. 2009) [hereinafter ASSESSMENT OF THE MISSOURI STATE PUBLIC DEFENDER SYSTEM]. The Spangenberg Group is no longer in existence.

[6] ASSESSMENT OF THE MISSOURI STATE PUBLIC DEFENDER SYSTEM, *supra* note 5, at 65.

availability" status to allow more time for serious cases.[7] Ongoing writ litigation in the Missouri Supreme Court has determined the reasonableness of the caseload protocol; however, it did not remedy the underlying problems of the broken and underfunded system.[8]

Little to no attention has been paid to what this crisis means for youth in the delinquency system. In fact, juvenile cases make up only about 2.36% of the cases represented by the MSPD.[9] In the 2009 assessment of the MSPD the question of juvenile representation was left unanswered, "Whether these low rates reflect a deliberate decision of the MSPD or instead are representative of a system in which indigent clients do not seek the services of a public defender even when they are eligible, the results are the same: an already overburdened MSPD is not serving potential clients....Indeed, we are deeply concerned by the few juvenile cases being handled by the MSPD, which appears remarkably low and for which we have been unable to determine an immediate cause. This question merits further investigation and serious scrutiny."[10]

The breaking point is here. The time for serious scrutiny is now. This report is part of a national strategy to review state juvenile indigent defense delivery systems and evaluate how effectively attorneys in juvenile court are fulfilling their constitutional and statutory obligations to their clients. It is important to note that the findings made in this report are based on information obtained from a number of sources, including existing data, reports, prior assessments, online surveys, and on-site investigative interviews, and observations. The information presented in this report is in aggregate form and does not reflect the practices in every juvenile court jurisdiction or public defender office. These are trends identified in Missouri, which are reflective of large scale systemic issues, as well as some best practices for service delivery. The intent of this report is to highlight the challenges faced by lawyers, judges, and other key stakeholders in ensuring access to justice for children and to offer recommendations to build upon their dedication and capacity.

> "The problem is not an abstract one. Its story is not told in statistics and pie charts, but in shortcuts that lead to wrongful convictions, incarcerations for weeks or even months with no access to counsel, attorney disciplinary proceedings and malpractice lawsuits with the state of Missouri on the hook. Triage has replaced justice in Missouri's courts. The breaking point is no longer coming. It is here."
>
> *Cathy R. Kelly, Missouri State Public Defender*

I. PURPOSE OF ASSESSMENT

Juvenile indigent defense assessments are comprehensive in scope and designed to furnish policy makers, indigent defense leaders, and other key stakeholders with baseline qualitative and systemic information upon which they can make informed choices regarding the nature and structure of their state juvenile indigent defense system. The assessment process investigates and presents a complete picture of the strengths and weaknesses of a juvenile defense system with tailored recommendations crafted to address each state's distinctive characteristics. Assessments are designed to help decision-makers focus on key trouble spots and highlight best practices.

[7] STATE OF MISSOURI PUBLIC DEFENDER COMMISSION, FISCAL YEAR 2012 ANNUAL REPORT: THE RIGHT TO COUNSEL AND THE STATE PUBLIC DEFENDER SYSTEM IN MISSOURI 2 (2012), *available at* http://www.publicdefender.mo.gov/about/FY2012AnnualReport2.pdf [hereinafter FISCAL YEAR 2012 ANNUAL REPORT].

[8] *Id.* at 5; *see also State ex. rel. Missouri Public Defender Commission v. Waters*, 370 S.W.3d 592, 598 (Mo. 2012).

[9] FISCAL YEAR 2012 ANNUAL REPORT, *supra* note 7, at 8.

[10] ASSESSMENT OF THE MISSOURI STATE PUBLIC DEFENDER SYSTEM, *supra* note 5, at 58.

II. METHODOLOGY

The National Juvenile Defender Center (NJDC) relied upon its well-tested and highly structured methodology to conduct this juvenile indigent defense assessment. NJDC, in partnership with our regional juvenile defender centers and other key stakeholders, have completed state assessments in 21 states, including Missouri. Until this process began, issues, policies, and funding decisions specific to juvenile defense had never been fully understood or studied separately from the adult system. Throughout the assessment process it has become clear that the adult criminal justice model has not served juvenile courts or its clients well.

In Missouri, the State Public Defender invited NJDC and its partner, the Central Juvenile Defender Center CJDC), to conduct an assessment of juvenile indigent defense to fill the knowledge gap and educate lawmakers and others about access to counsel for youth in the state. The Chief Justice of Missouri's Supreme Court issued a letter to juvenile court judges across the state asking for their cooperation in meeting with assessment investigators and providing access to juvenile court hearings. Other stakeholders within Missouri's juvenile justice system were engaged by NJDC and CJDC staff and were supportive in the statewide assessment process as well.

The assessment began with repeated visits to the state for meetings with key stakeholders, policymakers, advocates, and defenders. NJDC staff prepared a comprehensive briefing memorandum with general information about Missouri's geography, demographics, economy, judicial branch, and politics, and specific information about Missouri's juvenile justice system including the juvenile code, arrest statistics, disproportionate minority contact, the right to counsel in juvenile delinquency proceedings, transfer to adult court, and the adult indigent defense system.

With advice and input from on-the-ground experts, NJDC and CJDC selected a sample of counties and judicial circuits for in-depth study. The selected sample includes sites that handle approximately 50% of the youth who go through Missouri's juvenile delinquency courts and comprise over 50% of the state's total population. The sites were selected based on a thorough analysis of state demographics, population rates, juvenile arrest data, disposition rates, and the location of public defender offices, juvenile courts, detention centers, and other youth facilities. The goal in selecting these counties was to ensure that the information gathered would be representative of the delivery of juvenile defense services throughout the state, as practices vary significantly across jurisdictions. The study sample includes urban, suburban, and rural areas, and reflects the geographic and cultural diversity of the state. To ensure confidentiality, the names of the jurisdictions visited and those interviewed remain anonymous.

An investigative team of experts in juvenile defense were then recruited by NJDC and CJDC to conduct extensive visits in the selected sites. The investigative team included current and former public defenders, private practitioners, academics, juvenile defense policy experts, and juvenile justice advocates. Team members all possess extensive knowledge of the role of defense counsel in juvenile court. Investigative teams were trained and then fanned out across the state to conduct court observations and confidential meetings and interviews with key justice system personnel. The teams also visited county detention centers and state-run commitment facilities where they interviewed administrators and staff. Each team member used standardized interview protocols developed by NJDC and specifically tailored to Missouri's juvenile court system to guide their investigative activities. Upon completion of each site visit, investigators debriefed with NJDC staff and submitted field notes derived from in-depth interviews and court observations at each site. Investigators' field notes were mined for prominent themes, analyzed and incorporated into the assessment findings.

Additionally, with the assistance of the Office of State Courts, a self-report survey was sent to all juvenile court judges handling delinquency and status cases from the 45 judicial circuits in Missouri, from which 19 surveys were completed and returned. Self-report surveys were also conducted with the 34 public defender trial offices representing Missouri's 114 counties and the City of St. Louis. Thirty offices completed the survey about juvenile practices within their jurisdictions. Stakeholders and NJDC staff members compiled data from both judges and defenders that was used as one source of information about access to counsel, quality of representation issues, and systemic barriers.

CHAPTER ONE
Due Process and the Role of Counsel in Delinquency Proceedings

I. THE EVOLUTION OF DUE PROCESS AND THE RIGHT TO COUNSEL IN DELINQUENCY PROCEEDINGS

On July 1, 1899, Illinois created the first juvenile court in the United States.[11] Prior to the development of this court, minors accused of crime were treated as adults. The juvenile court movement intended to remove children from the harshness of criminal court and adult prisons and improve their chances of rehabilitation.[12] The new juvenile courts involved only cursory proceedings, utilizing judicial economy and a *parens patriae* approach to justice with no regard for due process or protection of children's legal rights. No defense attorneys were involved. Social workers and others recommended "the best disposition," and courts were allowed unfettered discretion to decide what was best for wayward youth.[13] Children were placed in child-only facilities, training schools, and private foster homes.[14] Soon thereafter, most other states followed suit.[15]

For many years after their creation, juvenile courts survived constitutional challenges.[16] States denied children many of the standard procedural rights, including right to counsel, right to notice of charges against them, right to a jury trial, and right against self-incrimination.[17] Children were often convicted by a mere preponderance of the evidence and courts regularly denied basic due process rights.[18]

In *In re Gault*, the Supreme Court extended fundamental elements of due process to juveniles in delinquency proceedings.[19] The case specifically held that juveniles have the right to counsel under the Due Process Clause of the 14th Amendment.[20] The Court stated that youth in juvenile court were getting "the worst of both worlds."[21] Youth received "neither the protections accorded to adults nor the solicitous care and regenerative treatment postulated for children."[22]

In *Gault,* the Court also explained the dangers of substituting other individuals to serve as the child's advocate.[23] "The probation officer cannot act as counsel for the child. His role...is as arresting officer and witness against the child. Nor can the judge represent the child."[24] No matter how many court personnel looked after a child's best

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[11] HOWARD N. SNYDER & MELISSA SICKMUND, U.S. DEPARTMENT OF JUSTICE OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION, JUVENILE OFFENDERS AND VICTIMS: 2006 NATIONAL REPORT, 93-95 (2006) [hereinafter OJJDP 2006 NATIONAL REPORT].

[12] *Id.* at 95-96.

[13] *Id.*

[14] Id.; Kristin Henning, *Juvenile Justice After* Graham v. Florida: *Keeping Due Process, Autonomy, and Paternalism in Balance,* 38 WASH. U. J.L. & POL'Y 17, 20-21 (2012).

[15] OJJDP 2006 NATIONAL REPORT, *supra* note 11, at 94.

[16] *Note, Juvenile Delinquents: The Police, State Courts, and Individualized Justice,* 79 HARV. L. REV. 775, 794-95 (1966), cited in *In re Gault*, 387 U.S. 1, 11 (1967).

[17] NATIONAL COUNCIL OF JUVENILE AND FAMILY COURT JUDGES, JUVENILE DELINQUENCY GUIDELINES: IMPROVING COURT PRACTICE IN JUVENILE DELINQUENCY CASES 12 (2005) [hereinafter JUVENILE DELINQUENCY GUIDELINES]; COMM'N ON BEHAVIORAL & SOCIAL SCIS. AND EDUC., JUVENILE CRIME, JUVENILE JUSTICE 158 (2001).

[18] *Gault*, 387 U.S. at 17.

[19] *See generally Gault*, 387 U.S. 1.

[20] *Id.* at 20.

[21] *Id.* at 30.

[22] *Id.* at 19 n.23 (internal quotations and citation omitted).

[23] *Id.* at 36.

[24] *Id.*

interests, any child facing "the awesome prospect of incarceration" needed "the guiding hand of counsel at every step in the proceedings against him."[25]

Gault also extended the right to notice of charges, the privilege against self-incrimination, and the right to confront and cross-examine adverse witnesses to juveniles.[26] In cases following *Gault*, the Court also held that proof beyond a reasonable doubt is required to convict juveniles in delinquency proceedings and that double jeopardy bars multiple prosecutions of a juvenile for the same allegations.[27] The Court reiterated that "civil labels and good intentions do not themselves obviate the need for criminal due process safeguards in juvenile court[.]"[28]

Following theses legal changes, Congress enacted the Juvenile Justice and Delinquency Prevention Act (JJDPA) in 1974.[29] The JJDPA created statutory mechanisms to protect the rights and welfare of youth involved in the juvenile justice system, and required the National Advisory Committee on Juvenile Justice and Delinquency Prevention to develop national juvenile justice standards and guidelines.[30] The Committee published a manual of standards in 1980 recommending that counsel represent children at early stages of delinquency proceedings and that many status offenses should be decriminalized.[31]

In 1992, Congress reauthorized the JJDPA and reaffirmed the importance of the role of defense counsel in delinquency proceedings.[32] It specifically noted the deficiencies of prosecutorial and indigent defense delivery systems.[33] Congress recognized the need for more information about the functioning of delinquency courts across the country and asked the federal Office of Juvenile Justice and Delinquency Prevention (OJJDP) to address the issue.[34] The JJDPA was last reauthorized in 2002.[35]

At the same time, leading non-governmental organizations also acknowledged the necessity of protections for youth in delinquency courts. Beginning in 1971, the Institute for Judicial Administration (IJA) and the American Bar Association (ABA) produced 23 volumes of juvenile justice standards.[36] The standards were designed to establish a juvenile justice system of lasting excellence that would not fluctuate in response to transitory headlines or controversies.

Despite these standards, federal law, the array of Supreme Court cases, and numerous reform efforts, states are still struggling to effectively implement basic due process rights for juveniles almost half a century after *In re Gault*. Where and to what extent Missouri has implemented these due process guarantees for juveniles has been largely unknown until now.

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[25] *Id.* (internal quotations and citation omitted).

[26] *See In re Winship*, 397 U.S. 358, 377-78 (1970) (describing rights affirmed in *Gault*).

[27] *See id.* and *Breed v. Jones*, 421 U.S. 519 (1975).

[28] *Winship*, 397 U.S. at 365-66.

[29] Pub. L. No. 93-415 (1974) (codified as amended at 42 U.S.C. §§5601).

[30] NATIONAL ADVISORY COMMITTEE FOR JUVENILE JUSTICE AND DELINQUENCY PREVENTION, Standards for the Administration of Juvenile Justice, §3.132 Representation by Counsel –for the Juvenile (1980).

[31] *Id.*

[32] Juvenile Justice and Delinquency Prevention Act Amendments of 1992, Pub. L. No. 102-586, 106 Stat. 4982 (1992).

[33] *See id.*

[34] *See* OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION, OJJDP ANNUAL REPORT 2002 30 (2002), *available at* https://www.ncjrs.gov/pdffiles1/ojjdp/202038.pdf.

[35] *See* 42 U.S.C. § 5601-5681; *see also* 21st Century Department of Justice Appropriations Authorization Act, Pub. L. No. 107-273, 116 Stat. 1758 and Act 4 Juvenile Justice, http://www.act4jj.org/ (last visited 2/13/2013).

36 *See* Institute for Judicial Administration & American Bar Association, *Juvenile Justice Standards*, AMERICAN BAR ASSOCIATION, http://www.americanbar.org/groups/criminal_justice/pages/JuvenileJusticeStandards.html. For a description of the project *see* INST. FOR JUDICIAL ADMIN. & AM. BAR ASS'N, JUVENILE JUSTICE STANDARDS ANNOTATED: A BALANCED APPROACH xvi-xviii (Robert E. Shepherd, Jr., ed. 1996) [hereinafter IJA-ABA JUVENILE JUSTICE STANDARDS].

II. THE ROLE OF COUNSEL IN DELINQUENCY PROCEEDINGS

As in all states, Missouri attorneys representing children in the juvenile delinquency system must be prepared to assist clients to "cope with problems of law, to make skilled inquiry into the facts, to insist upon regularity of the proceedings, and to ascertain whether [the client] ... has a defense and to prepare and submit it."[37] The U.S. Supreme Court reaffirmed these principles when it declared, "[w]e made clear in [*Gault*] that civil labels and good intentions do not themselves obviate the need for criminal due process safeguards in juvenile courts," and held that juveniles were constitutionally entitled to proof "beyond a reasonable doubt" during an adjudication hearing.[38]

Affording the right to counsel in delinquency proceedings is critical; yet, it is equally important to recognize that juvenile defense is a specialized legal practice requiring distinct training and skills for the practitioner.[39] Effective juvenile defense demands all of the training and knowledge of criminal defense practice in addition to specific expertise in adolescent development and juvenile justice. It is essential for a public defense delivery system to appreciate that children and adolescents differ from adults in significant ways. For example, children do not possess the same cognitive, emotional, or behavioral capacities as adults. Thus, juvenile defenders must create legal arguments addressing juvenile culpability and rehabilitation.[40] Juvenile lawyers also must learn about and master the elements unique to juvenile proceedings like detention hearings, disposition hearings, certification hearings, and juvenile competence proceedings.

Juvenile defense lawyers face additional challenges in establishing effective relationships with their young clients. Getting arrested and/or detained is a traumatizing and frightening experience. This holds especially true for children and adolescents. By the time youth meet their attorneys, they may have been questioned by many adults—including police officers, deputy juvenile officers, and family members. A youth may be distrustful of additional adult questioning and may not even be able to distinguish his or her defender from all the other adults in the system. Thus, at the start of a case, lawyers must work hard to establish rapport with their client. Defenders must take the time to explain that their job is to help defend their clients against the charges and represent the client's interests.[41] In addition to asking for information, it is vital for counsel to take time to discuss what is likely to happen in court and to help the client understand the nature of the attorney-client relationship.[42]

Developing a good working relationship with youth in highly stressful circumstances raises unique challenges and requires special awareness and responses by counsel. An attorney's ability to both perceive and appropriately address a young client's fears and anxieties is central to their ability to work effectively with the client and to ensure high-quality defense. Youth in the delinquency system often have disabilities that affect critical aspects of their functioning, especially their ability to communicate and comprehend.[43] Juvenile defenders must be alert to the special needs of each client and also learn of the client's strengths—be they familial, personal, or potential—and help integrate those strengths into the theory of the case, any plea bargaining, and the disposition planning.[44]

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[37] *In re Gault*, 387 U.S. 1, 36 (1967).

[38] *In re Winship*, 397 U.S. 358, 365-66 (1970).

[39] NATIONAL JUVENILE DEFENDER CENTER, NATIONAL JUVENILE DEFENSE STANDARDS, § 1.3: SPECIALIZED TRAINING REQUIREMENTS FOR JUVENILE DEFENSE (2012) [hereinafter NAT'L JUV. DEF. STDS.].

[40] NATIONAL JUVENILE DEFENDER CENTER & NATIONAL LEGAL AID & DEFENDER ASSOCIATION, TEN CORE PRINCIPLES FOR PROVIDING QUALITY DELINQUENCY REPRESENTATION THROUGH PUBLIC DEFENSE DELIVERY SYSTEMS 2 (2d ed. 2008).

[41] NAT'L JUV. DEF. STDS., *supra* note 39, at § 2.1: ROLE OF JUVENILE DEFENSE COUNSEL AT INITIAL CLIENT CONTACT.

[42] NAT'L JUV. DEF. STDS., *supra* note 39, at §2.2: EXPLAIN THE ATTORNEY-CLIENT RELATIONSHIP.

[43] NAT'L JUV. DEF. STDS., *supra* note 39, at §2.6: OVERCOMING BARRIERS TO EFFECTIVE COMMUNICATION WITH THE CLIENT.

[44] NAT'L JUV. DEF. STDS., *supra* note 39, at § 2.1 cmt.: ROLE OF JUVENILE DEFENSE COUNSEL AT INITIAL CLIENT CONTACT.

The defense lawyer plays a critical role for youth in delinquency court by protecting clients from unfairness, promoting accuracy in decision making, providing alternatives for decision makers, and monitoring institutional treatment, aftercare, and re-entry. Throughout the entire court process the juvenile defender is the individual responsible for bringing the child's perspective and interests before the court.

III. CONCLUSION

The jurisprudence delineating juvenile rights in the delinquency system has long recognized the importance of due process guarantees, and the essential role that counsel plays in these proceedings at all critical stages. Codes of professional conduct, administrative orders, case law, legal scholarship, and standards of practice have further defined the role of juvenile defense counsel, and the specialized nature of juvenile defense practice.

CHAPTER TWO
Legal Representation of Youth in Context

I. THE RIGHT TO COUNSEL IN MISSOURI

Missouri incorporates the constitutional requirements of due process and the right to counsel for juveniles accused of crimes in its statutory chapter on Juvenile Courts, which state that Missouri children are "entitled to be represented by counsel in all proceedings."[45] At a minimum, this means children must have an attorney representing their interests from the detention hearing through final disposition.

Missouri Supreme Court Rules also provide for a right to counsel at informal adjustment conferences. The Rules state that "the juvenile officer[46] shall inform [the juvenile and guardian] at the commencement of the conference of the right to counsel and the right of the juvenile to remain silent."[47] If the juvenile or the guardian requests counsel, the juvenile officer must adjourn the informal conference to allow the juvenile to consult with counsel.[48]

Missouri statute and Court Rules both require the appointment of counsel when necessary to assure full and fair hearings,[49] when a juvenile requests appointment prior to filing of a petition and the requesting child is indigent,[50] or in a proceeding when there appears to the court to be a conflict of interest between the juvenile and his or her parents, guardians, or custodians.[51] According to Missouri Supreme Court Rules, the attorney appointed to a child as guardian *ad litem* may also be appointed as counsel for the juvenile in a delinquency matter unless a full and fair hearing (as determined by the court) requires separate counsel for the expressed interests of the child.[52]

After a petition has been filed, a child may only waive his right to counsel with the approval of the court.[53] A court analyzing a waiver must do so in the context of the juvenile's age, experience, education, background, intelligence, and capacity to understand the warnings received.[54] If a child chooses to waive his or her right to counsel, the child may undo the waiver at any stage of the proceeding.

By Missouri statute, an attorney is relieved of his or her duties once a final disposition has been ordered by the court.[55] Counsel is to serve for the appeal as well, but has no further obligation if no appeal is taken.[56]

II. SYSTEM STRUCTURES IN MISSOURI

A. Structure of Missouri's Judicial System

The court system in Missouri includes three levels; the Missouri Supreme Court, three regional Courts of Appeal, and 45 circuit courts. The Missouri Supreme Court is the state's highest court and has

[45] MO. REV. STAT. § 211.211.1.
[46] The juvenile officer in Missouri is the equivalent of a probation officer in other states.
[47] MO. SUP. CT. R. 112.03, 115.01.
[48] R. 112.03.
[49] MO. REV. STAT. § 211.211.3, MO. SUP. CT. R. 115.02(a).
[50] MO. REV. STAT. § 211.211.2.
[51] § 211.211.7.
[52] MO. SUP. CT. R. 115.02 cmt.
[53] MO. REV. STAT. § 211.211.8.
[54] *In re D.L.*, 999 S.W.2d 291, 294 (Mo. Ct. App. 1999) *citing In re A.D.R.* 603 S.W.2d 575, 584 (Mo. 1980).
[55] MO. REV. STAT. § 211.211.6.
[56] *Id.*

exclusive jurisdiction over certain cases[57] and certain cases can be transferred to the Supreme Court at the Court's discretion.[58]

Below the Missouri Supreme Court in the state court hierarchy is the Missouri Court of Appeals. The Court of Appeals is divided into three regional districts—the Eastern District, the Western District, and the Southern District. The Court of Appeals handles all appeals from the circuit courts.[59] For the vast majority of appeals, the Court of Appeals' decision is final; unless the appeal relates to an issue within the Missouri Supreme Court's authority or the Missouri Supreme Court uses its discretion to accept the appeal.

The lowest level of courts in Missouri is the trial or circuit court. Missouri's counties and the city of St. Louis are divided into 45 judicial circuits.[60] Every county and the city of St. Louis are included in a circuit, with some circuits comprised of multiple counties. The circuit courts are typically located in the county seat, but there may be additional locations.[61] Missouri circuit courts have various divisions, including associate circuit, small claims, municipal, family, probate, criminal, and juvenile courts.[62]

The juvenile and family courts are specialized court divisions within the circuit courts. Missouri law mandates that all judicial circuits—except in jurisdictions that have a family court pursuant to statute—must designate by local court rule the division(s) of the circuit court to be made into juvenile divisions, and the classes of cases that will be assigned to each.[63] Some Missouri circuit courts also have specialized divisions including teen courts, drug courts, and truancy courts that divert youth from regular juvenile court proceedings.[64]

The Office of Court Services Administrator (OSCA) is an arm of the courts and conducts statistical analyses for annual reports in order to provide the Missouri juvenile and family court division with data on the number of status, law, and abuse-neglect referrals processed by Missouri's juvenile court divisions.[65]

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[57] Mo. Const. art. V § 3 (Missouri Supreme Court has authority to review: (1) the validity of a United States Statute or treaty; (2) the validity of a Missouri statute or constitutional provision: (3) the state's revenue laws; (4) challenges to a statewide elected official's right to hold office; and, (5) imposition of the death penalty.)

[58] Mo. Const. art. V § 10.

[59] Mo. Const. art. V § 3.

[60] *Circuit Courts of Missouri*, Your Missouri Courts: The Judicial Branch of State Government, http://www.courts.mo.gov/page.jsp?id=321 (last visited 2/15/2013).

[61] *Id.*

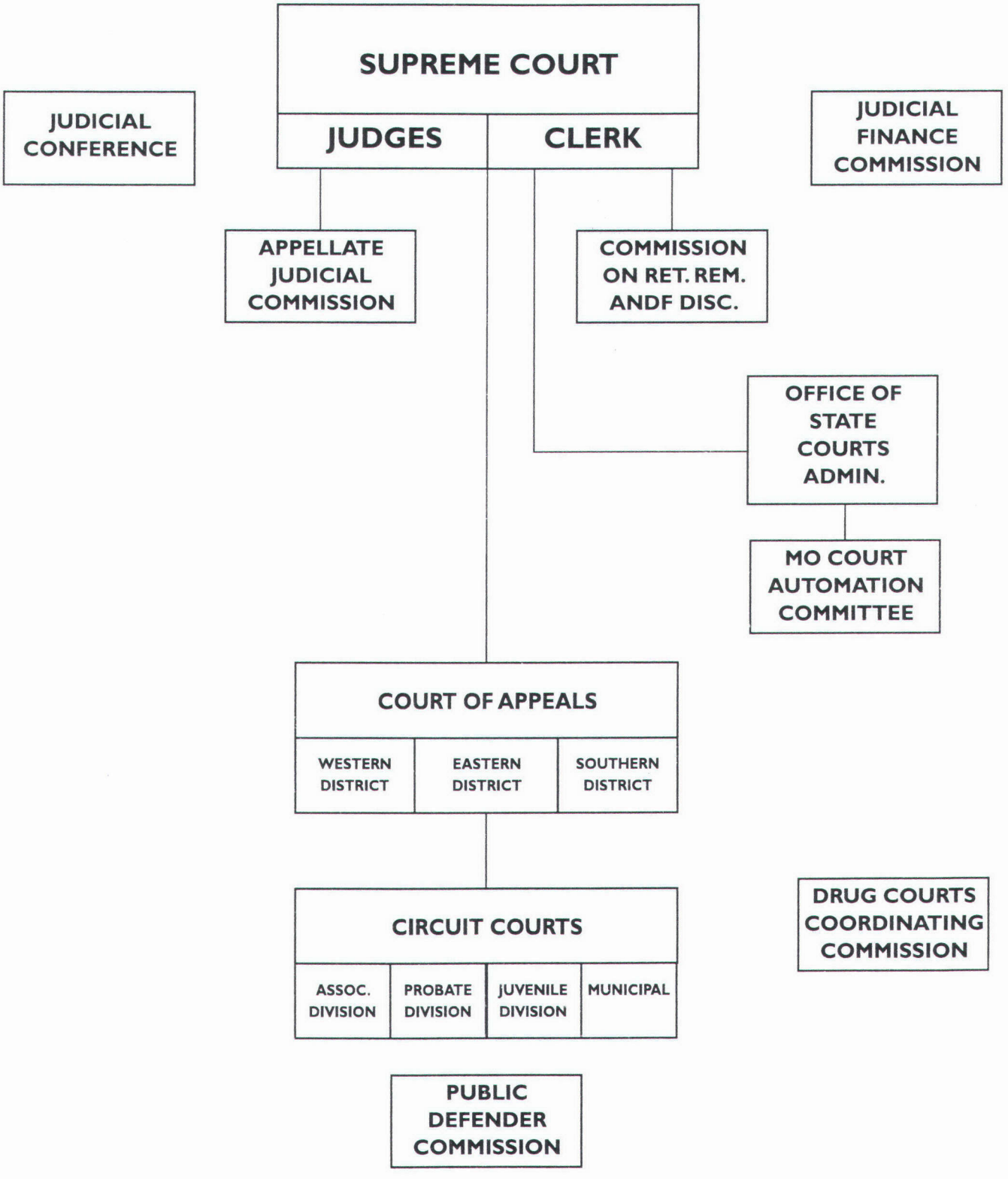
[62] *Id.*

[63] Mo. Rev. Stat. § 487.010.1.

[64] *About Your Courts*, Your Missouri Courts: The Judicial Branch of State Government, http://www.courts.mo.gov/page.jsp?id=258 (last visited 2/13/2013).

[65] *See generally* Office of State Court Administrator, Missouri Juvenile and Family Division Annual Report (2011) [hereinafter MJFD 2011 Report].

ORGANIZATIONAL CHART OF MISSOURI'S JUDICIAL BRANCH



B. Structure Of Missouri's Juvenile Justice System

1. Juvenile and Family Courts

The Missouri juvenile court was established in the early 1900s but did not have its own procedures and authority until the enactment of the juvenile code in 1957. In 1993 and 1995 a series of extensive amendments to the Juvenile Code impacted waiver, confidentiality, determinate and dual sentencing, juvenile and family court funding, structure, personnel, and programs.[66] In 1993, the Missouri legislature, following the national one-family/one-judge trend to addressing family issues in the legal system, enacted a new law that created a designated family court in six judicial circuits.[67] In 1995, the amended Juvenile Crime Bill expanded both the age range of children that could be placed into the Division of Youth Services (DYS) custody and the services DYS could provide.[68] The Bill also increased information sharing across agencies, reduced confidentiality of records, and allowed for dual jurisdiction and determinate sentencing.[69]

The 45 circuit courts encompass Missouri's 115 counties and the city of St. Louis.[70] Missouri's juvenile and family courts are specialized court divisions within the circuit courts. At a minimum, each of Missouri's 45 judicial circuits has a judge who oversees the juvenile office in charge of all juvenile court cases. In turn, each juvenile office is headed by a lead juvenile officer who supervises key system players such as legal officers as well as deputy juvenile officers (DJOs). Legal officers are the equivalent of prosecuting attorneys and DJOs are the equivalent of probation officers in other states. Their roles are described in greater detail below.

a. Judges and Commissioners

Circuit level judges are either elected or appointed by a non-partisan commission in Missouri. The judges rotate through different divisions within their circuit. The presiding circuit judge or administrative judge of the family court is ultimately responsible for overseeing family court personnel, such as legal officers and DJOs.

b. Legal Officers

Legal officers have many of the same roles and responsibilities as prosecutors or state's attorneys in other states. However, legal officers also represent the legal interests of the DJOs in court. Many of the legal officers bear the title, "Attorney for the Juvenile Officer." In essence, this means that the prosecutor represents the probation officers in court. Therefore, if the allegations of the petition are denied, the legal officer (who is counsel for the juvenile officer) elicits evidence from the DJO at a hearing on the petition.[71] All parties at the hearing are allowed to put on witnesses, cross-examine, and testify.[72] Legal officers defend the petition based on the evidence gathered.

c. Deputy Juvenile Officers (DJOs)

DJOs work for the judicial circuit's juvenile office and are the individuals primarily responsible for processing delinquency and status offense cases through Missouri's juvenile and family courts. DJOs are vested with all the

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[66] *See* Mark Schlinkmann & Kim Bell, *Carnahan Signs Juvenile Crime Bill: Allows Trials in Serious Cases*, ST. LOUIS POST-DISPATCH, June 13, 1995, at 1B.

[67] MO. REV. STAT. § 487.010.

[68] MISSOURI JUVENILE JUSTICE ADVISORY GROUP, COMPREHENSIVE 3-YEAR PLAN COMPONENTS FOR FISCAL YEARS 2009-2011 6 (2009).

[69] *Id.* at 6-7.

[70] *See About Your Courts, supra* note 64.

[71] *Id.*

[72] *Id.*

power and authority of sheriffs to make arrests; however, DJOs must allow interrogations to be conducted by law enforcement officers.[73] During an interrogation, the DJO is responsible for both informing the juvenile of his or her rights and protecting the interests of the juvenile.[74] This role—acting as both an arm of the prosecution and a protector of due process rights—may be unique to Missouri DJOs.

The DJO also plays a unique role in the screening and intake of delinquency cases. DJOs are responsible for investigating referrals, determining legal sufficiency, and writing and filing petitions. DJOs determine which cases should be handled formally and forwarded to the juvenile court for processing, and which can be disposed of informally, either through dismissal or informal supervision.[75]

DJOs also administer more traditional juvenile court probation services, which include predisposition investigations, dispositional recommendations, and probation supervision. Depending on the circumstances and the results of risk/needs assessments, DJOs may recommend a youth be placed in out-of-home services such as a private licensed residential care facility, or with a member of the child's family. They may also recommend that a child be committed to DYS and/or Missouri's Children's Division (Missouri's child welfare agency).

d. Detention Facilities

By the end of 2011, Missouri had 19 juvenile detention facilities run by the circuit courts.[76] Not all judicial circuits have a juvenile detention facility, so those that do not enter into an agreement with juvenile detention facilities to detain youth if necessary. In 2011, Missouri's detention facilities admitted at least 6,953 juveniles.[77]

Detention reform has been a part of the Missouri juvenile justice agenda since 2006 when several counties began to work with the Annie E. Casey Foundation Juvenile Detention Alternatives Initiative (JDAI). There are now 18 JDAI sites in Missouri, each focusing on reducing the unnecessary detention of youth in the delinquency system.[78] Missouri has committed to state expansion of JDAI and developed a JDAI replication team to oversee new sites.[79] To support these reform measures, the Missouri Supreme Court has issued orders mandating a statewide risk-assessment instrument and the downsizing of multiple detention facilities.[80]

2. Missouri Division of Youth Services (DYS)

DYS is the state agency responsible for the care and treatment of delinquent youth committed to its custody by the state courts.[81] DYS is a subsection of the Missouri Department of Social Services.[82]

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[73] MO. SUP. CT. R. 111.01; *see also* Juvenile Officer Handbook, Missouri Courts (June 13, 2012), http://www.courts.mo.gov/hosted/resourcecenter/JO%20Published%20April%2019.2011/whnjs.htm.

[74] *Id.*

[75] *See* Mary Kay O'Malley, *The Juvenile Office*, *in* MISSOURI DESKBOOK ON JUVENILE LAW 1-1, 1-9 (2007).

[76] MJFD 2011 REPORT, *supra* note 65, at 29.

[77] *Id.* at 30.

[78] JDAI HelpDesk, JDAI Sites, http://www.jdaihelpdesk.org/SitePages/jdai-sites.aspx (last visited 2/15/2013).

[79] The Annie E. Casey Foundation, *Missouri Taking JDAI to Scale*, JDAI NEWS (Summer 2011), *available at* http://www.aecf.org/MajorInitiatives/JuvenileDetentionAlternativesInitiative/Resources/JDAI/2011/Summer%202011/Feature%20Story/Missouri%20taking%20JDAI%20to%20scale.aspx; Press Release, Circuit Court Budget Committee, Missouri Courts Announce Plan to Implement Smarter Use of Juvenile Detention Alternatives, Facilities (April 12, 2011), *available at* http://www.courts.mo.gov/pressrel.nsf/3966cdf827e0d8d7862565ec00679fb1/03e3a1a346bf45018625786f00783615?OpenDocument [hereinafter Circuit Court Budget Committee Press Release].

[80] Circuit Court Budget Committee Press Release, *supra* note 79.

[81] *See* MO. REV. STAT. § 219.016.1.; *see also* Division of Youth Services, Missouri Department of Social Services (2009), *available at* http://www.dss.mo.gov/dys/.

[82] *See* MO. REV. STAT. § 660.010.7.

DYS operates under a unique model of corrections that is known nationally as the "Missouri Model."[83] This model emphasizes rehabilitation in small regional facilities with therapeutic environments rather than the traditional model of larger, more punitive adult-style corrections facilities.[84] The "Missouri Model" has been looked at and replicated by a number of other states seeking alternatives to their adult-style corrections models.

DYS runs 32 juvenile residential facilities throughout Missouri,[85] and is responsible for juveniles placed into the custody of the state by the court. Therefore, DYS has substantial control over the confinement of youth.[86] Juveniles in Missouri are subject to indeterminate sentencing.[87] Once placed in DYS custody, the agency determines whether a juvenile will be placed in a residential facility, how long to hold a juvenile, when a juvenile will be released, and how long he or she will be supervised after release.[88] Although judges occasionally impose a minimum period of custody, DYS usually controls release.

C. Structure of Missouri's Indigent Defense System

The Missouri State Public Defender System (MSPD) provides representation for both adult and juvenile cases.[89] The mission of MSPD is:

> To provide high quality, zealous advocacy for indigent people who are accused of a crime in the State of Missouri. The lawyers, administrative staff, and support staff will ensure that this advocacy is not compromised. To provide this uncompromised advocacy, the Defender System will supply each client with a high-quality, competent, ardent defense team at every stage of the process in which public defenders are necessary.[90]

MSPD encompasses 33 district offices with three additional offices located in St. Louis, Kansas City, and Columbia that handle capital and appellate cases. The Public Defender Commission—which governs MSPD—consists of seven individuals appointed by the governor. These commissioners also are responsible for hiring MSPD's Director.

In Missouri, juveniles have a right to counsel for all stages of the proceedings.[91] Youth can either hire their own attorney or ask that one be appointed. Missouri law entitles every party in juvenile courts to be represented by counsel.[92] By statute, the court must appoint counsel for a child prior to the filing of a petition if a request is made and the court finds that the child is the subject of a juvenile court proceeding. The court must also find that the child making the request is indigent.[93]

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[83] *See* THE ANNIE E. CASEY FOUNDATION, THE MISSOURI MODEL: REINVENTING THE PRACTICE OF REHABILITATING YOUTHFUL OFFENDERS 2 (2010) [hereinafter MISSOURI MODEL].

[84] *Id.* at 4.

[85] Missouri Department of Social Services, Division of Youth Services, *DYS Frequently Asked Questions: General Operations*, http://www.dss.mo.gov/dys/faq/genopt.htm (last visited 2/13/2013).

[86] Most defendants in Missouri—adult and juvenile—are subject to sentencing at the discretion of the judge. MISSOURI MODEL, *supra* note 83, at 22. The guidelines are not rigid. *See* NATIONAL CENTER FOR STATE COURTS, STATE SENTENCING GUIDELINES: PROFILES AND CONTINUUM 18 (July 2008).

[87] MISSOURI MODEL, *supra* note 83, at 22.

[88] *Id.*

[89] *Id.*

[90] Missouri State Public Defender, *Mission and Principles*, http://www.publicdefender.mo.gov/about/mission.htm (last visited 2/13/2013).

[91] MO. REV. STAT. § 211.211.1.

[92] *Id.*

[93] § 211.211.2.

In order to be indigent, a person—including a juvenile—must establish that he or she does not have the means available to him or her to obtain counsel on his or her behalf. This determination is based on all the circumstances of the case including ability to make bond, income, and the number of persons dependent on the person moving to be found indigent for support.[94] The primary factor to determine indigency is income.[95] In order to be eligible for public defender services, a person must not have income that exceeds the federal poverty guidelines as issued in the *Federal Register*.[96] For 2013, a single person household must make $11,490 or less in order to qualify.[97] Under Missouri regulations, when determining the income level, a person's debts and expenses, a spouse's income, and assets need to be taken into account.[98] "If a defendant is receiving disability payments, pension, unemployment compensation, or Social Security, this is considered income and the amount of the payment must be considered."[99] If a person is under 18, the parents' income must also be considered.[100] A Missouri Court of Appeals decision held that parents are not required to procure counsel for their child, and that the income and assets of the juvenile are the only consideration for whether an appointment is appropriate.[101]

In response to toughening penalties for juveniles enacted in 1995, MSPD established separate juvenile public defender units, called Youth Advocacy Units, to serve St. Louis City and County in 1997, and another in Kansas City in 2000.[102] These Youth Advocacy Units were designed to be a model for juvenile representation throughout the state and to help train other public defenders on juvenile issues.[103] These units were responsible for reducing the number of children transferred to adult court and increasing public awareness of juvenile law.[104] However, Missouri's ongoing budget crisis resulted in the elimination of the MSPD Juvenile Advocacy Units in 2007.

III. OVERVIEW OF DELINQUENCY PROCEEDINGS IN MISSOURI: A SUMMARY OF THE JUVENILE COURT STATUTE

A. Juvenile Court Jurisdiction

In a judicial circuit, the juvenile or the family court has exclusive jurisdiction in juvenile cases involving abuse and neglect, status offenses, and delinquency. Under the Missouri Juvenile Code, "child" means any person younger than 17 years of age, or who is 17 years old and alleged to have committed a status offense.[105] The juvenile or family court has jurisdiction over status offenses and delinquency cases where a person that is 17 and under is alleged to have committed a status offense,[106] or is alleged to have violated state law or municipal ordinance prior to becoming 17.[107]

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[94] MO. CODE REGS. ANN. tit. 18, § 10.3 (2012).
[95] *Id.*
[96] *Id.*
[97] Annual Update of the HHS Poverty Guidelines, 78 Fed. Reg. 5182 (Jan. 24, 2013).
[98] MO. CODE REGS. ANN. tit. 18, § 10.3 (2012).
[99] *Id.*
[100] *Id.*
[101] *State ex rel. Gordon v. Copeland*, 803 S.W.2d 153, 154 (Mo. Ct. App. 1991).
[102] Caterina DiTraglia, *Juvenile Initiative for Missouri's Public Defender System* 1 (Missouri State Public Defender System, Fall 1999); *see also* DOUGLAS E. ABRAMS, A VERY SPECIAL PLACE IN LIFE: THE HISTORY OF JUVENILE JUSTICE IN MISSOURI 157 (2003).
[103] DiTraglia, *supra* note 102, at 21.
[104] *Id.* at 14.
[105] MO. REV. STAT. § 211.021.2.
[106] *Id.* A status offense is one that is only illegal because of the child's age—i.e. truancy, curfew, etc.
[107] § 211.031.1(3).

Juvenile court may retain its jurisdiction over a child until he or she turns 21, unless the child is in DYS custody.[108] DYS can petition the court to retain jurisdiction up to age 21 if it determines the child is still in need of services.[109] Even when a child has been committed to DYS, the court can regain jurisdiction by requesting it from DYS. This jurisdiction does not include cases where the youth has committed an offense after turning 17.[110]

The juvenile or family court does not have jurisdiction over:

- Any child who is a resident or found in the county, is over 15 years old, and is alleged to have violated a state or municipal traffic law that is not a felony;
- Any child who is over 15 years old and alleged to have violated the prohibition on the possession or use of tobacco by minors;[111]
- Any child who is 17 years old unless he or she is alleged to have committed a status offense; or
- Any youth between 17 and 21 years old that the court had retained continuing jurisdiction, if that youth committed a criminal offense between those ages.[112]

The juvenile court has concurrent jurisdiction with:

- The **municipal court** over any child alleged to have violated a municipal curfew ordinance;
- The **circuit court** for any child who is alleged to have violated a state or municipal ordinance involving use of any tobacco product;[113] and
- The **adult court** for a youth younger than17 years old who has been transferred to adult court and whose prosecution results in a conviction or plea of guilty, if the court chooses to invoke dual jurisdiction and impose a juvenile disposition that would postpone the execution of an adult criminal sentence.

Not all juvenile cases are handled by the juvenile courts. A child between the ages of 12 and 17 who has committed an offense that would be considered a felony if committed by an adult can be transferred or "certified" to adult court by motion of the court, juvenile officer (probation officer), child, or the child's custodian. The court has discretion whether to certify the case to adult court and must hold a hearing on the motion. In the case of certain serious felonies, there is no age limit for certification, and the court must hold a hearing before deciding to dismiss the juvenile petition and transfer the case to adult court.[114]

B. Pre-Adjudication Custody and Detention

In Missouri, a youth may be taken into judicial custody through a court order, by a police officer, or by a juvenile officer. The juvenile court gains legal authority over youth as soon as they are taken into custody.[115] Although taking a juvenile into judicial custody is not legally considered to be an arrest, youth may be taken into custody

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[108] § 211.041.

[109] *See R.L.C., Jr., vs. Div. Youth Serv.*, 967 S.W.2d 674 (Mo. Ct. App. 1998).

[110] MISSOURI JUVENILE OFFICER HANDBOOK: JURISDICTION AND VENUE (2012), *available at* http://www.courts.mo.gov/hosted/judedintra/juvenile%20Handbook/Status_Offenses_Delinquency/JurisdiVen.htm.

[111] § 211.031.

[112] § 211.071.2.

[113] *Id.*; § 211.031.3. Note that there appears to be a discrepancy between the two statutes. The laws, when read together, state that while the juvenile court does not have jurisdiction over these cases, it also shares concurrent jurisdiction with the circuit court. This may be an error in statute writing.

[114] § 211.071.1.

[115] MO. SUP. CT. R. 127.01.

when it is alleged that they violated state criminal laws or municipal ordinances. Youth may also be taken into judicial custody for several types of status offenses.[116]

In Missouri, youth who are taken into custody must be advised of the following prior to interrogation:

- They have the right to remain silent;
- That any statement they make to anyone can be and may be used against them;
- They have the right to have a parent, guardian, or custodian present during questioning;
- They have the right to consult with an attorney and that one will be appointed and paid for them if they cannot afford one; and
- That even though they begin to talk, the youth retains the right to stop talking at any time.[117]

The person who takes the youth into judicial custody must immediately notify a juvenile officer and undertake a reasonable attempt to notify the juvenile's parents, guardian, or custodian. If someone besides a juvenile officer takes the youth into custody, he or she must submit a written report to the juvenile officer as soon as possible within 12 hours. The written report must state the facts and circumstances that led to the youth being taken into custody and the reasons the juvenile was not released.[118] The detained youth must be immediately informed verbally and in writing of the reason for detention, the right to remain silent, the right to counsel, the right to a detention hearing, and his or her rights during secure detention.[119]

"Generally, juveniles should not be held in secure detention unless they present a risk to public safety or may fail to appear in court for their hearing."[120] Each juvenile held in custody is rated using the juvenile detention assessment (JDTA) written checklist of criteria for specific detention-related risks. The overall risk score is a guide in making the initial decision whether to detain a juvenile in secure detention, utilize an alternative to secure detention, or release him or her to a custodian with or without conditions pending a hearing.[121]

In order for a youth to be placed in detention, the juvenile court must issue an order that he or she be detained, or the juvenile officer must order a 24-hour temporary detention.[122] During this time, the juvenile officer must obtain sufficient information from the law enforcement officer conducting the investigation, file a petition or a motion to modify, and submit it to the judge for an order of temporary detention. Within the 24-hour period, a juvenile judge must review the complaint or motion to modify and any supporting reports and statements. Upon reviewing these documents, the judge may order that the juvenile be released or detained pending a detention hearing. The judge may order continued detention only upon determining that: (1) probable cause exists that the juvenile committed the alleged delinquent or status offense; and (2) conditions requiring continuing detention exist.[123]

If the judge orders the child continue to be detained, a detention hearing must be held within three days, not including Saturdays, Sundays, and legal holidays, unless the court continues the hearing for good cause.[124] At the

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[116] Mo. Rev. Stat. § 211.031.

[117] § 211.059; Mo. Sup. Ct. R. 126.01; *see also J.D.B. v. North Carolina*, 131 S.Ct. 2394 (2011) (holding that age is a relevant factor in determining if *Miranda* warning must be given).

[118] Mo. Sup. Ct. R. 127.02.

[119] R. 127.05, 115.02, 127.07, 127.08, 127.10.

[120] Mo. Sup.Ct. Op. R. 28.01.

[121] *Id.*

[122] Mo. Sup. Ct. R. 127.06.

[123] R. 127.07; Mo. Rev. Stat. § 211.061. These conditions are not defined by statute or Supreme Court Rule.

[124] *Id.*

detention hearing, the judge simply determines whether or not there is good reason to detain the youth until the adjudicatory hearing. In order to continue detention, the judge must make specific findings about the need for continued detention.[125] If the court orders that the youth be detained after this hearing, the court must review the order every 30 days until the final order of disposition.[126] If a juvenile is released, the court may place limitations upon what the youth is permitted to do, who he is allowed to see, and to whom he is released.[127]

C. Diversion and Informal Adjustment

In Missouri, youth not formally processed through the juvenile court can go through an informal court process or be referred to diversion programs. Missouri law enables government subsidies for early intervention programs designed to keep at-risk youth out of the formal justice system, while retaining supervision over the youth through a diversion program.[128] These programs were created to divert juveniles from the formal system, provide services, and maintain some level of oversight.

Prior to filing a petition, the juvenile officer can decide that an informal adjustment is appropriate for a case and will hold an informal adjustment conference with the youth and his or her parent, guardian, or custodian.[129] The juvenile officer must counsel and advise the youth and his or her parent, guardian, or custodian about the right to counsel and the right to remain silent when an informal adjustment is made. The youth is required to admit to the allegations, and, if done so, such informal adjustment is considered in the juvenile's court history as an admitted referral. The adjustment can include supervision by the juvenile officer and temporary placement of the youth with an appropriate person other than the parent, guardian, or custodian.[130] At any time, the juvenile officer can terminate the informal process without further proceedings or file a petition in the interest of the juvenile. However, the informal adjustment process cannot continue beyond 12 months from the date of the informal adjustment agreement.[131]

D. Petition

Before the juvenile can be brought before a juvenile court, information must be referred to the juvenile officer, who makes a preliminary inquiry to either make an informal adjustment or file a petition.[132] Filing a petition formally creates a juvenile court case.[133] If it does not appear that there is sufficient information to bring a juvenile into the jurisdiction of the court, the complaining witness is notified and can seek the attention of a judicial officer who determines the necessity of additional investigation.[134]

When petitions are filed for delinquency and status offenses in juvenile court, the court clerk must issue a summons for service to all parties. The summons, which should be personally served, requires the juvenile and the juvenile's parents, guardian, or custodian to appear at the hearing date set.[135] If the juvenile is detained, the judicial officer shall ensure that the juvenile is brought to the hearing.[136] Personal service must occur at least 24 hours before the time set for the hearing, but when circumstances permit, earlier notice should be given.[137]

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[125] MO. SUP. CT. R. 127.08.
[126] *Id.*
[127] R. 127.02(d).
[128] MO. REV. STAT. § 219.041; Missouri Department of Social Services, *DYS Frequently Asked Questions: Juvenile Court Diversion*, http://www.dss.mo.gov/dys/faq/juv.htm (last visited 2/13/2012).
[129] MO. SUP. CT. R. 112.
[130] R. 112.01.
[131] R. 112.04.
[132] R. 111.01.
[133] *Id.*
[134] R. 111.01(c)
[135] R. 114.01(b); MO. REV. STAT. § 211.111.
[136] § 211.111.
[137] *Id.*

The petition may be amended with approval from the court at any time, and a petition can be dismissed by the juvenile officer.[138]

E. Adjudication Hearing

If the juvenile officer does not initiate an informal adjustment, the case will be filed by petition and proceed to adjudication. The adjudication stage is the juvenile equivalent of trials in the adult criminal justice system. At the adjudication hearing, the court will hear juvenile admissions on allegations in the petition or motion to modify and shall receive evidence on those allegations that have not been admitted.[139] The court must also determine: (1) whether the juvenile and the juvenile's parents, guardian, or custodian have received notice of the hearing and been informed of the allegations and the range of possible dispositions if the allegations are admitted or proved; (2) whether the juvenile has been informed of the right to counsel and, unless counsel has been previously retained or waived, whether he or she objects to proceeding without counsel; and (3) whether the juvenile's parents, guardian, or custodian have been informed of the right to counsel and whether any objections to proceeding without counsel exist.[140]

The adjudication hearing must be held on the record.[141] During the hearing, the rules of evidence apply and all parties are afforded the opportunity to testify, present evidence, cross-examine witnesses, present arguments of law and fact, and assert arguments concerning the weight, credibility, and effect of the evidence.[142] To reach a finding of guilt in a delinquency proceeding, the court must find that the state proved the allegations beyond a reasonable doubt.[143] For allegations of status offenses, the government's standard of proof is by clear and convincing evidence.[144]

F. Disposition

If a juvenile is found to have violated the law, a disposition hearing is held to determine placement or treatment. The juvenile court may hold a dispositional hearing either separately or immediately after an adjudication hearing.[145] At a disposition hearing, the court must determine and make findings on the disposition, or sentence, to be imposed on the juvenile. The disposition findings include the legal and physical custody of the youth, as well as any services, treatment, and placement necessary to facilitate the care, protection, and discipline of the youth.[146] The court must receive evidence at a hearing on the record and must make a determination that is in the best interests of the youth.[147] Although the rules of evidence do not apply, all parties must have the opportunity to testify, present evidence, cross-examine witnesses, present arguments of law and fact, and present arguments concerning the weight, credibility, and effect of the evidence.[148]

The court must admit into evidence any social study, recommendations of the DJO, any support regarding the recommendations of the DJO, and material relevant to determining the appropriate disposition in the interest of the juvenile.[149] The court, or any party, may order a social study, which must include an investigation and evaluation of the habits, surroundings, conditions, and tendencies of the youth and the youth's parents, guardian, or

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[138] Mo. Sup. Ct. R. 113.02.
[139] R. 128.02.
[140] *Id.*; *see also In the Interest of M.M.*, 320 S.W.3d 191, 195-97 (Mo. Ct. App. 2010); *In the Interest of D.L.*, 999 S.W.2d 291, 293-97 (Mo. Ct. App. 1999).
[141] Mo. Sup. Ct. R. 128.02(b).
[142] *Id.*
[143] R. 128.02 cmt.
[144] *Id.*
[145] R. 128.03(a).
[146] R. 128.03 cmt.; Mo. Rev. Stat. § 211.459.
[147] Mo. Sup. Ct. R. 128.03(b).
[148] *Id.*
[149] R. 128.03(c).

custodian.[150] All ordered evaluations and reports must be made available to all parties, attorneys, guardians *ad litem*, and volunteer advocates at least 15 days prior to any dispositional hearing.[151]

There are several dispositional options for youth that have been adjudicated delinquent. Youth may be placed at home on probation with in-home services, placed in a residential facility, or committed to DYS.[152] Additional sanctions may also be brought against adjudicated youth. The state can suspend or revoke a state or local driver's license;[153] the youth can be ordered to make restitution;[154] or the court can select an organization at which the juvenile is required to complete community service.[155] If the juvenile violated a municipal ordinance or committed what would otherwise constitute a misdemeanor, the court may order the juvenile pay $25 to the clerk of the court.[156] The juvenile may be assessed $50 if he or she committed an act that would constitute a felony if committed by an adult.[157]

The most restrictive disposition option is a commitment to the Missouri DYS. Any child may be committed to the custody of DYS when the court determines a suitable community-based treatment service does not exist or has been proven ineffective. The court can place youth in DYS custody only after it has determined and made findings on: (1) whether reasonable efforts were made to prevent or eliminate the need for removal of the youth from home; and (2) that it would not be in the best interest of the child to stay in the home.[158] The court may specify a minimum length of stay at DYS or leave it to DYS's discretion.[159] If the youth is committed to DYS, jurisdiction of the juvenile court is terminated.

In Missouri, courts must biennially review a random sample of assessments of children and the disposition of each child's case to recommend assessment and disposition equity throughout the state.[160] The statute does not explicitly provide a method for review, but requires that the confidentiality of the cases be protected.[161] This review should also examine any racial disparity in certification to adult court.[162]

G. Post-disposition Proceedings

After a disposition order has been entered, the juvenile has the right to appeal the sentence. A juvenile or a parent, guardian, legal custodian, relative, or next friend, on the juvenile's behalf, can appeal any final judgment, order, or decree under the juvenile code.[163] Notice of appeal must be filed within 30 days after the judgment, disposition order, or decree has been entered. Notice of appeal or any motion filed subsequent to the final judgment does not suspend the judgment unless the court orders it.[164] Counsel for a child must serve at all stages of the juvenile court proceedings, including appeal, unless relieved by the court.[165] Delinquency appeals are heard by the Missouri Court of Appeals and may be heard by the Missouri Supreme Court upon its own discretion.[166]

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[150] R. 118.01.
[151] Mo. Rev. Stat. § 211.455.3.
[152] § 211.181.3.
[153] *Id.*
[154] *Id.*
[155] *Id.*
[156] *Id.*
[157] *Id.*
[158] Mo. Sup. Ct. R. 128.03(e).
[159] Mo. Rev. Stat. § 211.181.4.
[160] § 211.141.5.
[161] *Id.*
[162] *Id.*
[163] § 211.261.1.
[164] *Id.*
[165] § 211.211.
[166] Your Missouri Courts, *Supreme Court*, http://www.courts.mo.gov/page.jsp?id=27 (last visited 2/20/2013).

Appeals are not the only form of post-dispositional relief. A disposition order may be changed at any time by the court's own motion.[167] The juvenile officer, parent, legal guardian, custodian, spouse, relative, or next friend of a child that is committed to the custody of an institution or agency can also petition the court at any time for a modification of the custody order.[168] The court can deny the petition without a hearing or can conduct a hearing about the issues in the petition and make orders regarding those issues as it determines to be proper.[169]

Extraordinary writs—such as *habeas corpus* and mandamus—are available to challenge a youth's confinement as illegal, if the confinement itself is unlawful (when minors, for example, are held in adult jails despite statutory prohibitions), if the juvenile's detention exceeds statutory length, or if harmful conditions exist.[170]

H. Children in Adult Criminal Court

For youth between the ages of 12 and 17, a hearing to certify a youth to adult court is required and is only allowed if the child has committed an offense that would have been a felony if committed by an adult.[171] The juvenile court has discretion over whether or not a juvenile petition should be dismissed and transferred to adult court for youth under 17 years old. Youth who commit criminal offenses at the age of 17 are automatically tried in adult court, as individuals 17 and older do not fall under the definition of "child" in Missouri's juvenile court system.[172]

There is no age limit for certification to adult court if the petition alleges that the child committed any of the following felonies: (1) first degree murder; (2) second degree murder; (3) first degree assault; (4) forcible rape; (5) forcible sodomy; (6) first degree robbery; and/or (7) distribution of drugs.[173] Transfer to adult court is also permitted if the juvenile committed two or more prior unrelated felony offenses.[174] In these cases, the court is required to hold a hearing on whether the child should be certified. Written notice of the certification hearing must be given to the juvenile and his or her custodian consistent with state law.[175]

In preparation for a certification hearing, the juvenile officer must prepare a written report that includes all available information relevant to the criteria to be considered by the court, including but not limited to:

- The seriousness of the offense alleged and whether protection of the community requires transfer to a court of general jurisdiction;
- Whether the offense alleged involves viciousness, force, and violence;
- Whether the offense alleged was against persons or property with greater weight being given to the offense against persons, especially if personal injury resulted;
- Whether the offense alleged is part of a repetitive pattern of offenses which indicates that the child may be beyond rehabilitation under the juvenile code;
- The record and history of the child, including experience with the juvenile justice system, other courts, supervision, commitments to juvenile institutions, and other placements;

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[167] § 211.251.1.
[168] § 211.251.2.
[169] § 211.251.3.
[170] *See* § 211.051.
[171] § 211.071.1.
[172] § 211.021.
[173] § 211.071.1.
[174] *Id.*
[175] § 211.071.4.

- The sophistication and maturity of the child as determined by consideration of his home and environmental situation, emotional condition, and pattern of living;
- The age of the child;
- The program and facilities available to the juvenile court in considering disposition;
- Whether or not the child can benefit from the treatment or rehabilitative program available to the juvenile court; and
- Racial disparity in certification.[176]

If the court dismisses the juvenile court petition and allows a child to be prosecuted in adult court, jurisdiction of the juvenile court over that child is terminated forever, unless the child is found not guilty.[177]

When sentencing a certified juvenile, Missouri law allows the adult court to invoke dual jurisdiction of both the criminal and juvenile codes. This allows the court to impose a juvenile disposition as a condition of the suspended adult criminal sentence. When the youth reaches the age of 17, the court must hold a hearing to revoke the suspension and order the youth to be taken to the Department of Corrections, direct that the offender be placed on probation, or direct that the offender remain in the custody of DYS, if DYS agrees to the placement.[178]

If DYS agrees to the placement, it must petition the court for a hearing before it releases a child under dual jurisdiction at any time before he or she reaches the age of 21. At that time, the court can either revoke the suspended adult sentence or direct that the youth be placed on probation.[179]

IV. CONCLUSION

The Missouri juvenile court system is similar to other states in many ways and is distinctive in several other ways that have a significant impact on the due process rights of youth. The findings in the next chapter will describe the strengths of this system as well as the challenges that impact access to justice for youth in Missouri's delinquency courts.

[176] § 211.071.6.
[177] § 211.071.5, 6.
[178] § 211.073.
[179] § 211.073.5.

CHAPTER THREE
Assessment Findings and Analysis

This chapter begins with key findings about Missouri's system of juvenile indigent defense and the barriers to providing an effective juvenile defense delivery system. Overarching themes related to resources, structure, and juvenile court culture are important to better understand the climate in which juvenile indigent defense operates. The second section presents a discussion of barriers that limit youth's access to counsel as well as issues related to the timing and appointment of counsel. Section three is devoted to the examination of barriers to effective juvenile defense practice, focusing on key stages of proceedings, and practices which impede fundamental fairness and the establishment of an adequately trained and prepared defense bar. The chapter concludes with strengths and promising practices that were observed or highlighted.

I. BARRIERS TO PROVIDING AN EFFECTIVE JUVENILE INDIGENT DEFENSE SYSTEM

A. Inadequate Resources to Ensure Effective Juvenile Defense

A discussion about Missouri's juvenile defense delivery system must necessarily acknowledge that the entire indigent defense system in Missouri is in crisis, and has been struggling for over the last two decades.[180] MSPD has not been fully staffed to meet caseload requirements since 1989—the year the public defender system went statewide to assume responsibility for all of Missouri's indigent defendants. Growing caseloads throughout the 1990s outpaced staffing levels and peaked by 2004. In the years following, the number of indigent criminal cases did not decrease. MSPD was forced to find ways to keep their caseloads manageable and alleviate the critical overload.[181]

In 2005, the Missouri Bar President chaired a Task Force on indigent defense which hired a national consulting group to do an outside assessment of the Public Defender system. The findings of that report noted that the Missouri system had the lowest *per capita* expenditure of all statewide public defender systems, and noted that attorneys were "practicing triage" in violation of ethical and constitutional requirements.[182] In 2007, after a Senate Interim Committee recommended caseload reductions and increases in both attorney and support staff,[183] MSPD received $1.15 million to help cover cases by contracting out to private attorneys.[184] In desperation, the Public Defender Commission retained the advice and counsel of the Partner in Charge of the Community Services Team at the law firm Holland & Knight,[185] and worked toward enactment of an administrative rule to determine maximum allowable caseloads for each office and authorized the director to place an office on "limited availability" status once it exceeded this maximum for three consecutive months. The limited availability rule went into effect in the fall of 2008.[186] In 2009, the Missouri legislature adopted a law to statutorily clarify that the Commission had the authority to set and enforce caseload limits for public defender offices; however, the governor vetoed this legislation with a message that the real fix for this problem was more resources.[187]

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[180] STATE OF MISSOURI PUBLIC DEFENDER COMMISSION, FISCAL YEAR 2011 ANNUAL REPORT: ASSURING THE PUBLIC DEFENSE—THE RIGHT TO COUNSEL AND THE STATE PUBLIC DEFENDER SYSTEM IN MISSOURI 2 (2011) [hereinafter 2011 PUBLIC DEFENDER REPORT].

[181] *Id.* at 1-7.

[182] *Id.* at 3.

[183] *Id.*

[184] *Id.* at 4.

[185] Steve Hanlon heads the Community Services Team of Holland & Knight LLP, and did not charge for his services. He has national expertise in litigating cases involving inadequate resources for indigent defense systems. *See* Press Release, Missouri State Public Defender, Public Defender Commission Adopts Rule to Limit Availability of Overloaded Offices to Take on More Cases (Nov. 2, 2007), *available at* http://publicdefender.mo.gov/Newsfeed/20071102.htm.

[186] FISCAL YEAR 2012 ANNUAL REPORT, *supra* note 7, at 2.

[187] *Id.* at 3.

The Missouri Bar Foundation then hired the same national consulting group and the George Mason University Center for Law, Justice, and Society to conduct a follow-up study in hopes of developing a caseload standard to determine specific needs. That study was unable to make that determination as hoped. The study revealed a situation so dire that to recommend standards "would serve only to institutionalize bad practices."[188] The Missouri Supreme Court then decided that the public defender could not turn away categories of cases due to case overload and that the proper remedy was to make the office unavailable until it could reduce the caseload below the standards set by the Commission.

By 2010, MSPD received a meager $250,000 increase in additional funding, and notified 22 judicial districts, including 43 counties, that the public defender offices serving them were at risk of closing their doors to additional cases until there were drastic reductions in caseloads. The responses by the judiciary were varied; some courts began appointing private lawyers to handle juvenile cases, while others increased pre-screening of probation violation reports. A number of prosecutors agreed to waive jail time on lower level offenses. While this helped, it did not bring the public defender offices within maximum allowable caseloads.[189] By July of 2010, two counties were "certified" and placed on limited availability status.[190] By the end of 2011, eight offices serving 23 counties were certified and were taking steps to refuse cases in excess of their maximum monthly intake under the Commission's regulations.[191]

MSPD challenged the appointment of new cases by the court in Christian County in a writ taken to the Missouri Supreme Court. A Special Master was assigned to take evidence on the reasonableness and accuracy of the Caseload Protocol that the Commission adopted and held hearings in late 2010.[192] In July of 2012, the Missouri Supreme Court held that because there was no finding by the trial court that the rule was invalid or inapplicable, the trial court should have respected the rule and applied it. The opinion does not resolve the caseload crisis in Missouri. It merely reduces the number of cases handled by MSPD, not the number filed by prosecutors. The Court recognized that "the inherent authority of courts to manage their caseloads in this manner will continue and should be utilized so as to best ensure that a defendant's constitutional rights, the defender's ethical duties, and the State's right to prosecute wrongdoers are respected."[193] While the opinion does not invalidate the process currently being used to certify counties as unavailable for accepting new cases, the ultimate lack of resources to provide a constitutionally sound system has yet to be addressed. As of October 1, 2012, 18 of MSPD's trial district offices were certified and placed on limited availability and another nine were pending certification.[194]

The formula established by MSPD for determining maximum allowable workloads is based upon the number of attorney hours needed to effectively handle each case. Cases are "weighted" generally based upon the anticipated number of attorney hours needed. Juvenile cases are weighted at 10 hours each.[195] Of the 80,588 new cases opened through the trial division in 2012,[196] only 1,923 were juvenile delinquency or status offender cases.[197] This means that juvenile cases were little more than 2% of the MSPD caseload in 2012.

It is against this backdrop that the juvenile defense delivery system must be analyzed. In Fiscal Year 2012, the Missouri Supreme Court reported a total of 4,631 new juvenile delinquency and status offense petitions

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[188] ASSESSMENT OF THE MISSOURI STATE PUBLIC DEFENDER SYSTEM, *supra* note 5, at 45.

[189] FISCAL YEAR 2012 ANNUAL REPORT, *supra* note 7, at 4.

[190] *Id.*

[191] *Id.* at 5.

[192] *State ex. rel. Missouri Public Defender Commission v. Waters*, 370 S.W.3d 592, 601 (Mo. 2012).

[193] *Id.*

[194] FISCAL YEAR 2012 ANNUAL REPORT, *supra* note 7, at 5.

[195] 2011 PUBLIC DEFENDER REPORT, *supra* note 180, at 101.

[196] FISCAL YEAR 2012 ANNUAL REPORT, *supra* note 7, at 8.

[197] *Id.* at 9.

statewide.[198] MSPD reports that during the same time period, it was assigned only 1,923 juvenile delinquency or status offender cases.[199] With only 24 juvenile cases contracted out to private counsel due to conflicts of case overload, this leaves questions about access to counsel for approximately 60% of Missouri's court-involved youth.[200]

The mystery of what happens to the vast majority of youth who come before Missouri's court on delinquency and status charges that are not encompassed in MSPD's data has begun to unravel. With the exception of the few counties observed rigorously defending the right to counsel for juveniles, and a few which assign and pay for private counsel or enlist pro bono help, youth are discouraged from and systematically denied counsel throughout the state. This denial of due process is well known, and it is deeply entrenched in the culture of many juvenile courts, as evidenced by the many interviews, reports, and other sources of information reviewed as part of this inquiry.

Youth are discouraged from and systematically denied counsel throughout the state.

But the issue of resource deficiencies does not tell the whole story. The lack of understanding about the critical role of counsel for juveniles is intertwined with minimizing the allocation of resources and justifying the lack of necessity of ensuring youth are provided lawyers. The very structure of the system, with a strong emphasis on diversion and a model corrections program, may well lend itself to support the denial of counsel. Although perhaps intended to further the best interests of youth, their legal rights are ignored. These barriers combine to create a culture where many if not most youth proceed unrepresented through juvenile court proceedings.

B. Notable Service Delivery System for Youth but Insufficient Emphasis on Basic Due Process Guarantees

Missouri has long been recognized for its successful approach in having a solid continuum of care for community-based services and for providing treatment and rehabilitation for youth in the delinquency system in small, regionalized facilities. The investigative team was impressed by the practices in many counties to divert low level offenders from formal court processing and to handle a significant percentage of juvenile cases informally. One investigator visiting a medium-sized county noted that it was "simply remarkable in the number of cases that are referred to diversion.... Only 10% of cases are filed, and these cases are described as youth who did not successfully complete diversion or 'serious' cases."

Indeed, in its 2011 report, OSCA data showed a total of 29,110 law violations by juveniles, of which more than 69% were misdemeanors.[201] Fewer than 19% of the total offenses were felony level, and only about 3% were A or B level felonies.[202] 81% of law violation cases were disposed of through the informal court process.[203] Of the remaining cases, the most common formal dispositions included in-home supervision (10%), and placement outside of the home (5%).[204] For status offense cases, 88% were disposed of informally. In-home supervision was the most common formal disposition (6.4% of cases.)[205] About 3.4% of status offenders were placed outside of home upon formal disposition.[206]

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[198] OFFICE OF STATE COURTS ADMINISTRATION, TABLE 41 CIRCUIT COURT, FY 2012 JUVENILE CASES FILED BY CASE TYPE, http://www.courts.mo.gov/file.jsp?id=58747.

[199] FISCAL YEAR 2012 ANNUAL REPORT, *supra* note 7, at 9.

[200] *Id.* at 75.

[201] MJFD 2011 REPORT, *supra* note 65, at 13.

[202] *Id.*

[203] *Id.* at 17.

[204] *Id.*

[205] MJFD 2011 REPORT, *supra* note 65, at 20.

[206] *Id.*

Another investigator described one of the treatment facilities as "an amazing secure facility with wonderful programming." One seasoned investigator who spends significant time touring juvenile facilities as part of his job indicated, "I have a highly developed ability to assess when a facility presents itself in one way but is in fact completely different. [This] facility seemed to me to be absolutely what it claims to be, a humane and caring environment dedicated to meaningful rehabilitation." The process also identified well-regarded practices by some courts to determine whether a youth's behavior was symptomatic of abuse, neglect, and/or mental health issues, or whether the behavior actually requires any "treatment."

However, a good system of services and programming for this population does not negate the need for adequate due process protections. In Missouri, there appears to be an imbalance between acknowledging and protecting the basic rights established in *In re Gault* over 45 years ago and adjudicating youth delinquent in order to meet the perceived treatment needs of the youth before the court.[207] Unfortunately, due process protections often lose out under the guise of rehabilitation and treatment.

This is evidenced by the fact that a very high number of youth are committed to DYS for misdemeanors, technical violations, status offenses, and non-violent felony offenses. Of the 920 youth committed to DYS in 2012, 39.7% of the total commitments were for class C, D, and/or unspecified felonies, which include property offenses, drug crimes, and theft. Just over 38% of youth were committed to DYS for misdemeanors and other non-felonies, which include probation violations and escapes from custody. Finally, 10.9% of youth committed to DYS were committed for juvenile offenses such as truancy and curfew violations.[208] *The need for heightened due process protections is underscored by the fact that the majority of youth committed to DYS are there for non-violent, low-level offenses and technical violations.*

As one juvenile court judge noted, "The choices for juvenile justice systems are either great outcomes and no due process or great due process and no good outcomes. The trick is to mix the best of both worlds to marry procedure with compassion."

An excellent step toward achieving the goal of marrying procedure with compassion was the establishment of the Youth Advocacy Units by MSPD in 1997. The offices were created in recognition of the unique nature of juvenile law, and the differing needs of young clients. They were also established in recognition of increased legislative penalties for juveniles, and to ensure protections were in place similar to their adult counterparts. The units included juvenile dispositional specialists to develop client-driven disposition plans and placement options. Juvenile attorneys in these offices served as trainers and advisors to other defender offices with smaller juvenile caseloads. The programs successfully documented reductions in DYS commitments and adult certifications, while serving many other functions. Falling victim to budget cuts, the units were eliminated in 2007. As the Public Defender Commission notes in its 2007 report:

> The programs were doing good work. However, with the shortage of resources in the rest of the system, the extra resources devoted to juvenile practice could no longer

[207] 387 U.S. 1 (1967). Such protections include the right to timely notice of the charges, advisement of the right to counsel, protection against self-incrimination, and the right of confrontation and cross-examination of witnesses and other evidence.

[208] Missouri Division of Youth Services FY 2012 Annual Report 7 (2012).

> be supported. Those offices were eliminated; the two juvenile dispositional specialist positions were converted to attorney FTE, and the juvenile cases rolled back into the regular caseloads of the existing trial offices in those areas. Those involved in Missouri's juvenile justice system consider this a major step backward and a failure of Missouri's public defender system. They are correct. There is nothing else MSPD can eliminate, reduce, or change to shore up the system.[209]

The Juvenile Advocacy Units could have been a significant driver in enhancing juvenile defense practices in Missouri by modeling a culture of child-focused representation. The assessment team found no concerted attempts to incorporate the concepts of the Juvenile Advocacy Units into current practice.

C. Structural Challenges Minimize the Role of Defense Counsel

The structure of the Missouri juvenile court, by its very nature, creates conflicting roles. Juvenile court judges have a direct (or at least an indirect) supervisory role over legal officers (juvenile prosecutors) and DJO's (probation officers). The requirement of neutrality on the part of the judges, as well as independent decision making on the part of the legal officers in a prosecutorial role, is compromised under such a structure.

Similarly, many have expressed concern that practices bordering on the unauthorized practice of law by some DJOs create potential legal and ethical problems for some courts. In addition to judicial monitoring and oversight, DJOs are represented by legal officers in all court proceedings. Prosecutors literally stand in as general counsel for DJOs in the same hearings where they are supposed to represent the interests of the state. DJOs make many of the filing (i.e. legal sufficiency) decisions that are more appropriately made by prosecutors. DJOs in Missouri have roles and responsibilities that include duties typically carried out by law enforcement, probation, and prosecution. This comingling of duties creates an inherent conflict in their role with youth.

> The [DJO's] have major role confusion, veering from caring and protective advocacy for the child's interest to interrogation and punishment, and sometimes using caring, protective approaches to get statements to ensure punishment."

The judiciary is responding to this issue and concerns about the allegations of unauthorized practice of law by DJOs, who are not attorneys. A recent inquiry by the State Court Administrator found that in some circuits DJOs were representing themselves in court proceedings and preparing their own pleadings. In other circuits, DJO's were represented by counsel but still drafted and signed pleadings.[210] The inquiry suggested that some of the DJO activities may constitute the unauthorized practice of law and noted that changes could have a significant effect on some long standing practices in some circuits.[211]

The role of the DJO is problematic in other ways. It was described by one legal officer as "basically a pre-*Gault* role." The DJOs are required by their position to advise youth of their rights, investigate the allegations, prosecute the case in court, present their arguments for disposition, and then monitor the youth if placed on probation. As one

[209] STATE OF MISSOURI PUBLIC DEFENDER COMMISSION, FISCAL YEAR 2007 ANNUAL REPORT 66 (2007).
[210] Letter from Gary Waint, Office of State Court Administrator, to Juvenile Court Judges and Juvenile Officers (Nov. 4, 2011).
[211] *Id.*

investigator noted, "the bad aspect of this approach is that the [DJO's] have major role confusion, veering from caring and protective advocacy for the child's interest to interrogation and punishment, and sometimes using caring, protective approaches to get statements to ensure punishment." In *State of Missouri v. Bustamante*, a 2011 decision by a Missouri trial court noted this role confusion when it held that a DJO went far beyond her statutory role when describing herself as an advocate for the youth while obtaining incriminating statements that were ultimately suppressed as a result.[212] The court noted that the DJO used deceptive practices to suggest to the youth that she was an "advocate" looking at best interest, but involvement in the interrogation of the youth exceeded her role as a DJO.[213]

Although the investigative team met many passionate and caring individuals who served as DJOs, their role in the ultimate disposition of cases often impeded the ability of the case to proceed with adequate due process, including the appointment of and assistance of counsel. DJOs are involved in deciding whether—and often what—charges get filed, engaging in interrogation, reading *Miranda* rights, and taking signed statements from youth during these sessions that can be used against them. They also prepare reports and make recommendations to the court. There was a limited understanding by many of the DJOs as to the role that defense counsel played throughout the proceedings, particularly during the investigation and fact-finding phases. As such, there was often little regard, and in some cases actual resistance, to youth representation at early stages in the proceedings or at all.

Counties varied in the degree to which they embraced a "pre-*Gault*, best interest" court. In several counties there was a court culture that appeared to exert pressure on defenders to work as a team with the other stakeholders, while most counties did exert both covert and overt pressure for attorneys to minimize zealous advocacy and work with the judge and the DJO to obtain services for youth coming in contact with the court. In one county, there was a blatant disrespect for the role of defenders as expressed interest advocates. A public defender interviewed there said, "Adversarial posturing does not work – collaboration and social work does. [PDs] have a unique role in this system; it's more social work than legal work."

II. BARRIERS LIMITING ACCESS TO COUNSEL

A. Waiver of Counsel Among Children in the Juvenile Court is Alarmingly High

The Missouri State Public Defender represents only a portion of the total delinquency cases filed each year. As mentioned earlier, in Fiscal Year 2012, the Missouri Supreme Court reported a total of 4,631 new juvenile delinquency and status offense petitions statewide.[214] MSPD reports that during the same time period, it was assigned only 1,923 juvenile delinquency or status offender cases.[215] 24 juvenile cases were contracted out to private counsel due to conflicts of case overload.[216] *Nearly 60% of the youth that come before the Missouri courts are not represented by the state's designated system of indigent defense.*

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It cannot be determined with certainty that these youth all waive the appointment of counsel and their right to counsel, or are otherwise denied lawyers. In some counties, judges have reported using

[212] *Id.*

[213] *Id.*

[214] OFFICE OF STATE COURTS ADMINISTRATION, TABLE 41 CIRCUIT COURT, FY 2012 JUVENILE CASES FILED BY CASE TYPE, http://www.courts.mo.gov/file.jsp?id=58747.

[215] FISCAL YEAR 2012 ANNUAL REPORT, *supra* note 7, at 9.

[216] *Id.* at 75.

privately appointed counsel for juvenile cases, or at least for cases which arise after the local office is certified and unavailable to take new cases. In at least one county, there was reported appointment in all cases, with no involvement of MSPD. The judge in this county stated that, "No youth can understand enough to waive counsel. It is a fundamental fairness system. No youth can understand that process." A handful of other courts have utilized pro bono attorneys to represent juveniles. There is no consistent data kept or reported on the remaining roughly 60% of cases not provided lawyers through MSPD. However, based upon observations and interviews in multiple sites, the number of youth who proceed without counsel is alarmingly high in many counties. The reasons for and the rates of waiver of counsel vary by jurisdiction, but several important themes emerged during site visits and in interviews.

First and foremost, the impact of limits on availability of defense counsel in the adult indigent defense system is magnified in juvenile court. In counties that are "certified," judges cannot exceed capacity in their number of appointments and the weighted point value assigned to each type of case. As one judge explained, cases are assigned a number of hours, and for juvenile cases, that number is ten hours, regardless of the complexity or seriousness of the case. Adult probation violations are ten hours, and felony cases are at 33 hours. He could not appoint juveniles attorneys once he reached his threshold numerically. There was enormous frustration on the part of public defenders, judges, and legal officers in these certified counties where "rationing" of hours resulted in youth being denied lawyers even when they were eligible and requested them. As one public defender pointed out, "In a month where the judge doesn't have to worry about numbers, he will send us cases. If he has to be concerned about hours, they push kids into waiving a lawyer."

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One of the most troubling findings by investigators is the role that the DJO often plays in directly or indirectly promoting waiver of counsel. One investigator noted, "Defense attorney presence is *de miminus*. The public defender is rarely involved and there is no significant private bar involvement.... These children do not consult with an attorney. The DJO is clearly in control of the system. The officers [DJOs] screen cases, take pre-trial statements and admissions from the child, determine whether to prosecute, and prepare reports and recommendations for sentencing.... While the nature of offenses being dealt with are not generally serious, what this means is that the net is wider and guilt and challenging legal issues becomes lost. The culture is supported by a 'not much is at stake attitude.'"

One DJO explained that they get police reports, statements from youth, and "...everything we need. After the process is done, kids don't ask for lawyers. They might want one just for disposition." This officer did not see how a lawyer could make a difference in most cases because, "the judge already knows we have exhausted resources."

Parents also have an important role to play in the proceedings, and their support and resources can have a significant positive effect on the outcome of the case. But parental consultation should not substitute for the advice of an attorney who can best counsel the child regarding the facts of the case, possible defenses, the range of penalties, and potential collateral consequences of adjudication. Parents may exert undue influence over the youth to admit to charges, take responsibility, and move the case to disposition without understanding the possible dangers of self-representation. In some cases, parental conflicts were noted (e.g. where they were the victim), or the parent simply did not want to return to court for financial, employment, logistic, or other reasons.

Investigators noted that youth often waived their right to counsel without understanding what an attorney does or why one might be important to the case. When asked if youth understood the rights they are waiving, one judge admitted, "[N]o, they don't. For two reasons: kids are trying to avoid additional expenses for their parents, and the parents say, 'this is nothing.'" The financial considerations were noted by some investigators as well. One

individual noted that "the fact that the Office of the Public Defender charges a significant amount of money to represent indigent clients (including detained juveniles) and that the amount is significantly less if the child enters a guilty plea is likely an added incentive to waive counsel or, if not to waive counsel, to plead guilty." Others noted that youth do not understand the role of counsel and assume there is nothing that an attorney can do about their cases. Youth are also encouraged to wind up their cases and plead out without counsel by DJOs. In spite of the fact that all youth should be presumed eligible in terms of indigence, counsel is discouraged, or if requested, denied in most cases where there is 'no dispute' about the charges. Unfortunately, because no defender has ever looked at the case, whether a legal dispute exists is impossible to determine.

Judicial colloquies—the process through which young people are advised of their rights and what it means to waive them—regarding the rights of children in the courtroom varied considerably. Investigators found some excellent practices by juvenile judges who took concerted time and energy to explain rights in developmentally appropriate ways. In some cases, judges appointed counsel to children facing more serious charges even though youth indicated they didn't need one. In other cases, judges did not advise of the dangers of self-representation or the potential disposition and collateral consequences that youth may face if they waived their rights. One investigator noted an assumption on the part of the court that the child will waive the right to counsel and witnessed "subtle pressure put on the children" by inferring that their parents would have to pay for private counsel, and the youth would meanwhile remain in detention.

B. The Process for Determining Indigence is Inconsistent, and in Some Jurisdictions Contributes to High Waiver Rates

The determination of indigence for purposes of appointment of counsel is not well understood and is not consistently applied in juvenile court. Investigators reported a mix of responses ranging from an all-inclusive approach that presumes indigence for youth to one in which parents are nearly always charged a fee and a lien is placed on their potential tax credits.

As a general principle, public defender services in Missouri are not free. Indigence, or eligibility for public defender services is tied to the federal poverty guidelines.[217] And even after indigence is determined, some of the fees charged for having an attorney in juvenile cases can be substantial. At the end of a case, the public defender fills out a form that is submitted to the court and signed by a judge providing authority for MSPD to "intercept" any state money that would otherwise go to the client to make sure that the fee is paid. The fee may be waived or the judge may decide not to sign the form. A juvenile case that results in a plea costs $125, one that has an "early disposition" costs $65, and a case taken to trial costs $250,[218] with a lien on tax refunds due to the parent. Extra fees for taking depositions, hiring experts, and hiring investigators may also be imposed.[219] There was conflicting information as to whether these fees were ever collected; however, MSPD's form clearly states, "your income tax refund may be intercepted to satisfy this debt."[220] The graduated fee system clearly incentivizes juveniles to plea, even where they are not held personally responsible for paying for public defender services, because parents may pressure youth to plea or waive counsel entirely to avoid fees.

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[217] Mo. Code Regs. Ann. tit. 18, § 10.3 (2012).

[218] Missouri Public Defender, *Fee Schedule* http://www.publicdefender.mo.gov/clients/fee_schedule.htm (last visited 2/19/2013).

[219] Missouri Public Defender, *Frequently Asked Questions for Clients* http://www.publicdefender.mo.gov/clients/FAQ_clients.htm (last visited 2/19/2013).

C. Counsel is Frequently Appointed Late in the Process After Critical Rights Have Been Forfeited by the Child

Juvenile defense systems should not only ensure that children do not waive the appointment of an attorney to assist them, but also ensure that counsel are assigned at the earliest possible stage of the delinquency proceeding.[221]

Site visits suggests that in some counties, counsel is not appointed during the early stages of proceedings when key decisions are made about the case. Reports from several DJOs indicate that the fact-finding process is minimalized, and that counsel, if appointed, has a stronger role in the disposition stage, particularly if a DYS commitment is being considered. This approach fails to recognize the importance of advocacy and the role that counsel can and should play in decisions involving detention, pretrial issues, the right to remain silent, and the presumption of innocence. One assessment team member noted that, "While waiver is extraordinarily high, for those youth who do receive lawyers, it is often too late to have meaningful impact."

"While waiver is extraordinarily high, for those youth who do receive lawyers, it is often too late to have meaningful impact."

III. BARRIERS TO EFFECTIVE PRACTICE

Legal representation of youth in delinquency proceedings across Missouri is uneven at best. Although site visitors observed numerous incidences of effective juvenile defense advocacy on behalf of youth, an even greater number of proceedings were observed where there was no attorney representing the child or the representation was completely lacking.

Juvenile defense counsel is required to act as the client's voice in the proceedings. The attorney must act based on the expressed interests of the client, not what the attorney deems is in the client's "best interests."[222] Defense counsel owes juveniles the same duty of loyalty that is owed to adult criminal defendants. Juvenile defenders should not assume they know what is best for the client; instead, they should employ a client-centered approach that seeks the client's input and conveys respect for the client's perspective.

To the greatest extent possible, defense counsel should allow the client to be the primary decision maker during a case.[223] A client should be advised by his or her attorney, but should personally direct whether to cooperate with alternative disposition options, accept plea offers, be tried as an adult, testify, or agree to specific dispositional recommendations.[224] The lawyer maintains control over trial strategy and tactics.

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[220] Missouri Public Defender, *Fee Schedule* http://www.publicdefender.mo.gov/clients/fee_schedule.htm (last visited 2/19/2013).

[221] AM. BAR ASS'N, TEN PRINCIPLES OF A PUBLIC DEFENSE DELIVERY SYSTEM, Principle 3 (2002), *available at* http://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls_sclaid_def_tenprinciplesbooklet.authcheckdam.pdf.

[222] *See* NAT'L JUVENILE DEFENDER CTR., ROLE OF JUVENILE DEFENSE COUNSEL IN DELINQUENCY COURT 7 (2009) [hereinafter ROLE OF JUVENILE DEFENSE COUNSEL]; *see also* MODEL RULES OF PROF'L CONDUCT R. 1.14(a) (2012); NAT'L JUV. DEF. STDS., *supra* note 39, at § 1.2: ELICIT AND REPRESENT CLIENT'S STATED INTERESTS.

[223] MODEL RULES OF PROF'L CONDUCT R. 1.2(a) (2012); NAT'L JUV. DEF. STDS., *supra* note 39, at § 2.2: EXPLAIN THE ATTORNEY-CLIENT RELATIONSHIP.

[224] NAT'L JUV. DEF. STDS., *supra* note 39, at § 2.2 cmt.: EXPLAIN THE ATTORNEY-CLIENT RELATIONSHIP.

To effectively represent the client's expressed interests, "counsel should seek from the outset to establish a relationship of trust and confidence with the client."[225] A juvenile defender must keep his or her client advised of developments in the case. Additionally, the defender is bound by attorney-client privilege for communication with his or her client.[226] The defender cannot disclose information to parents or guardians, even if the attorney thinks that it would be in the child's best interests.

In Missouri, these dynamics are important. While many court actors—the DJOs, judges, and prosecutors—attempt to work in the best interests of the child and the community,[227] the juvenile defender needs to work for the child's expressed interests.[228]

A. Role of Counsel at Critical Stages of Delinquency Proceedings

1. Arrest

At the earliest points of youth interaction with the justice system, an attorney can safeguard a child's rights with swift advice and action. A juvenile defender's presence during interrogation can ensure that the client does not fall prey to undue coercion, fatigue, or threat of enhanced prosecution.[229] In Missouri, youth can request counsel "prior to the filing of a petition" and receive the guiding hand of counsel during this critical phase of court processing.[230]

Across Missouri, site visitors were told that attorneys rarely, if ever, play a role during post-arrest pre-petition procedures like line-ups, interrogations, identifications, and questioning, despite a Constitutional right to counsel at these stages. In fact, it would seem that in Missouri the role of defense counsel in these early stages of court processing has been superseded by DJOs. Although DJOs are not supposed to participate in interrogating youth, they are assigned the task of giving *Miranda* warnings and "protecting" juvenile's rights during interrogation.[231] Ironically, DJOs are also responsible for charging decisions and filing petitions against the youth. These roles are in direct conflict. In several different counties, interviewers reported discussing this practice with DJOs who readily acknowledged interrogation as part of their role. After a DJO in one county explained this practice a site visitor noted,

> This situation seems to create a clear conflict of interest between the [DJO's] assumed duty of child's counsel for the purposes of interrogation and her primary duty as a representative of the Juvenile Office that initiates prosecutions. Second, it must be impossible for a child in such a situation to distinguish between the [DJO] and the police officer, thus muddying the waters with respect to the voluntariness of the child's statement to the police.

The dangers of this dual role of the DJO gained public attention in 2011 in the *Missouri v. Bustamante* case.[232] The *Bustamante* case (described earlier in this report) illustrates DJO's role confusion and its impacts on kids'

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[225] IJA-ABA JUVENILE JUSTICE STANDARDS, *supra* note 36, at Standards Relating to Counsel for Private Parties 3.3(a); *see also* NAT'L JUV. DEF. STDS., *supra* note 39, at § 2.1 cmt.: ROLE OF JUVENILE DEFENSE COUNSEL AT INITIAL CLIENT CONTACT.

[226] ROLE OF JUVENILE DEFENSE COUNSEL, *supra* note 222, at 11; NAT'L JUV. DEF. STDS., *supra* note 39, at § 2.3: EXPLAIN CLIENT CONFIDENCES AND CONFIDENTIAL INFORMATION.

[227] MO. REV. STAT. § 211.091; MISSOURI JUVENILE OFFICER HANDBOOK, STATUS/DELINQUENCY: PARTIES (2011), available at http://www.courts.mo.gov/hosted/resourcecenter/JO%20Published%20April%2019.2011/whnjs.htm.

[228] NAT'L JUV. DEF. STDS., *supra* note 39, at § 2.5: PARENTS AND OTHER INTERESTED THIRD PARTIES.

[229] *Id.* at § 3.2: Representation of the Client in Police Custody.

[230] *See* MO. REV. STAT. § 211.211.

[231] *See* MISSOURI JUVENILE OFFICER HANDBOOK, INTERVIEW AND INTERROGATION OF JUVENILE (2011).

[232] *State of Missouri v. Bustamante*, Case No. 09AC-CR03516 (Mo. Cir. Ct. June 21, 2011) (order sustaining defendant's motion to suppress).

passage through the system. In this decision the judge noted the confusion created when a DJO described herself as the youth's advocate while taking an incriminating statement, "This deception likely mislead the defendant into believing that [the DJO] was there to look after her best interests when, in fact, this was not her role."[233]

This decision in Missouri provides a clear example of what many developmental scholars have concluded: youth are vulnerable and in need of added protection in interrogation settings.[234] However, the current practice in Missouri effectively asks DJOs to serve as both law enforcement and youth advocate in interrogation settings. These inherently conflicting duties cannot be carried out by a single individual. DJOs cannot replace the critical protective role of defense counsel in the interrogation context. The decision in *Missouri v. Bustamante* highlights the inherent dangers of the DJOs' dual role. Providing youth with access to counsel during interrogation contexts would offer youth with the most comprehensive protections possible.[235]

2. Detention and Arraignment Hearings

Missouri youth have a right to counsel in all juvenile proceedings. Despite the clear and critical liberty interest at stake in detention hearings, youth received little or no representation at detention hearings in almost half of the counties visited. Reasons for the lack of legal representation at detention hearings varied. In one county, a defender explained that defenders often did not receive notice of a detention hearing in time to actually attend the detention hearing. In another county, the district defender said there were not enough juvenile clients to justify having a defender attend detention hearings. In yet another county, the defenders' office made a policy decision not to attend detention hearings since the judge refused to allow defenders to advocate for youth at this stage. The lack of defender presence at detention hearings not only denies youth the right to counsel, but also impedes the attorney-client relationship. As noted by one defender in reference to the judge preventing defender advocacy at detention hearings, "one problem with not representing children at their initial detention is it makes creating a good attorney-client relationship more difficult."

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In some of the counties visited, the courts have crafted less than adequate stopgap measures to address the absence of counsel at detention. In one county the court uses pro bono counsel to represent youth at detention hearings. But even in this county, pro bono counsel said timing of appointment poses a barrier to effective representation. The public defender in the county said that many of the pro bono counsel do not know anything about juvenile defense. "I got a call the other day from a bankruptcy attorney who had been appointed [to a juvenile case] and had no idea where to start."

Even where attorneys are present at detention hearings, the hearings are rendered "pro forma" due to the timing of appointment of counsel. Appointments are made so late that it is difficult to prepare and provide effective advocacy. In several counties where defenders did appear at detention hearings, defenders said they were appointed on the day of the hearing and not long before the detention hearing was scheduled to be heard. As a

[233] *Id.*

[234] *See* Thomas Grisso, *Juvenile Capacities to Waive* Miranda *Rights: An Empirical Analysis*, 68 CAL. L. REV. 1134 (1980); Jessica Owen-Kostelnik, N. Dickon Reppucci, & Jessica Meyer, *Testimony and Interrogation of Minors*, 61 AM. PSYCHOLOGIST 286 (2006); Kaitlyn McLachlan, Ronald Roesch, & Kevin Douglas, *Examining the Role of Interrogative Suggestibility in* Miranda *Rights Comprehension in Adolescents*, 35 LAW & HUM. BEHAV. 165 (2011).

[235] NAT'L JUV. DEF. STDS., *supra* note 39, at § 3.2: REPRESENTATION OF THE CLIENT IN POLICE CUSTODY.

result, many of these attorneys said they had only minutes before the hearing to talk with their clients, prepare an argument based on the client's input, investigate probable cause, investigate alternatives to detention, and present a cohesive plan to the court. A legal officer in one county expressed concern that late involvement by the defenders resulted in youth sitting in detention longer than necessary, forcing juveniles to look to the DJOs to discuss legal issues and options. Since the DJOs' role with youth begins much earlier than defenders, they have already completed an investigation of the case as well an interrogation of the youth before the detention hearing. By the time of the detention hearing, DJOs have either already developed a release plan with specific release requirements, or they have a strong set of reasons why release should not be recommended. Consequently, DJOs' recommendations are more informed and are generally affirmed by the court. DJOs in some counties stated that there was no need for defense attorneys at detention hearings because the DJOs had a recommendation for the court and "they had it covered."

In the detention hearings observed where counsel was present, few attorneys even made arguments to the court. Probable cause was never tested or challenged. Generally, the youth were brought before the judge in leg chains, the judge looked to the DJO for a recommendation, and the judge followed that recommendation. It is hard to imagine that a youth in these proceedings would have any idea what transpired. To add to the confusion a child might feel during these proceedings, in one county visited, the detention hearings for youth were conducted via videoconference. The child watched everyone in the courtroom from a monitor back in the detention facility. Everyone *except* the child was in court—including the attorney, where the child was fortunate enough to have one.

3. Case Preparation and Client Contact

For youth who are not detained, the first meeting with their attorney is often at the initial court appearance. Despite the fact that earlier intervention by lawyers to investigate the charges, provide legal advice, and explore alternatives to secure commitment may have significant impact on the entire course of the case.[236]

Spending time with a client is really the only means to both establish an attorney-client relationship and to prepare the defense case.[237] Across Missouri, investigators were told that attorneys had only minutes before hearings were held to meet with their clients. In these brief encounters, plea decisions were made based on cursory discussions of the events, and then an abbreviated analysis of possible ways to proceed through complex legal hearings. Not only does the lack of client contact and case preparation diminish the quality of representation, it is damaging to the attorney-client relationship. In one county, two detained youth expressed extremely negative views of their public defenders. They felt that their defenders did not fight for them, did not listen to them, and did not include them in making decisions about the case. One noted that the attorney only spent five to seven minutes with him right before court and said in disgust about the attorney that he did not think the attorney even knew his name.

Also, defenders' lack of contact can exacerbate the stress related to detention and system involvement. In at least two different counties, detention staff expressed concern that defenders did not regularly visit their clients and did not return phone calls from detained clients. One detention superintendent specifically noted that youth rarely saw their attorneys between the detention hearing and the next court date, which created a lot of anxiety for detained youth.

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[236] IJA-ABA JUVENILE JUSTICE STANDARDS, *supra* note 36, at Standards Relating to Counsel for Private Parties 6.4(a) ("If the client is detained or the client's child is held in shelter care, the lawyer should immediately consider all steps that may in good faith be taken to secure the child's release from custody."); NAT'L JUV. DEF. STDS., *supra* note 39, at § 3.1: REPRESENTATION OF THE CLIENT PRIOR TO INITIAL PROCEEDINGS.

[237] NAT'L JUV. DEF. STDS., *supra* note 39 at §§ 2.1 cmt.: ROLE OF JUVENILE DEFENSE COUNSEL AT INITIAL CLIENT CONTACT, 2.4 cmt.: REPRESENTATION OF THE CLIENT IN POLICE CUSTODY.

4. Investigation and Discovery

Every defense attorney has a mandated constitutional duty to investigate every client's case and make reasonable decisions about what investigation is necessary.[238] This duty obligates defense attorneys to conduct investigation prior to counseling a client about possible plea negotiations. Prompt investigation allows counsel to obtain quick information about the prosecution's case and assess strengths and weaknesses.

The IJA/ABA's *Juvenile Justice Standards* and National Juvenile Defender Center's *National Juvenile Defense Standards* provide that, during the initial stages of representation, many important rights of clients involved in juvenile court proceedings can be protected only by prompt advice and action. The lawyers should immediately inform clients of their rights and pursue any investigatory or procedural steps necessary to protect their clients' interests.[239]

Juvenile defense attorneys have a duty to promptly investigate cases, locate witnesses, examine evidence, obtain exculpatory material, and find information that can aid a client's potential defenses.[240] Even if the lawyer believes the client is guilty, this duty does not change.[241] Attorneys should not allow the juvenile to accept a plea agreement without first examining all available evidence in the prosecution's file and any documents and records of the DJO.[242]

In addition to, and as a result of the investigation, the juvenile defense counsel should protect the pretrial rights of the defendant. Among others, these include the right to remain silent, the compulsory process right, and the right to exclude inadmissible evidence. The lawyer should file appropriate motions, obtain discovery and *Brady* material, and argue on behalf of the client's rights throughout the process.[243]

In most of the counties visited, the attorneys representing youth in delinquency proceedings said they have insufficient time to conduct adequate investigation. Even in counties where defender offices had access to investigators and could request assistance on cases, the ratio of defense investigators to attorneys was often so inadequate that it was difficult to access their services.

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[238] *Strickland v. Washington*, 466 U.S. 668, 691 (1984).

[239] IJA-ABA JUVENILE JUSTICE STANDARDS, *supra* note 36, at Standards Relating to Counsel for Private Parties 4.1; NAT'L JUV. DEF. STDS., *supra* note 39, at §§ 2.1: Role of Juvenile Defense Counsel at Initial Client Contact, 4.1: Investigate Facts of the Case.

[240] ROLE OF JUVENILE DEFENSE COUNSEL, *supra* note 222, at 14-15; IJA-ABA JUVENILE JUSTICE STANDARDS, *supra* note 36, at Standards Relating to Counsel for Private Parties 4.3; NAT'L JUV. DEF. STDS., *supra* note 39, at PART IV: ROLE OF JUVENILE DEFENSE COUNSEL PRE-TRIAL.

[241] ROLE OF JUVENILE DEFENSE COUNSEL, *supra* note 222, at 14-15; IJA-ABA JUVENILE JUSTICE STANDARDS, *supra* note 36, at Standards Relating to Counsel for Private Parties 4.3; NAT'L JUV. DEF. STDS., *supra* note 39, at § 4.1 cmt.: INVESTIGATE FACTS OF THE CASE.

[242] ROLE OF JUVENILE DEFENSE COUNSEL, *supra* note 222, at 15.

[243] *See Brady v. Maryland*, 373 U.S. 83 (1963), *see also* ROLE OF JUVENILE DEFENSE COUNSEL, *supra* note 222, at 15; NAT'L JUV. DEF. STDS., *supra* note 39, at §§ 4.5: SEEK DISCOVERY GENERALLY, 4.7: REPRESENT THE CLIENT THROUGH PRE-TRIAL MOTION PRACTICE.

The discovery process is not a substitute for independent investigation. Missouri has open file discovery,[244] and investigators found that in many counties, the discovery practice consisted of the legal officers making their files available to juvenile defense attorneys for copy and/or inspection. In some of the counties visited, the legal officer made the copies and sent the discovery to the defense office. In one county, the defender said that it was onerous to have to take the time to go inspect and copy discovery. In general, however, discovery was not noted as a significant barrier to effective representation but instances of active investigation were rare.

5. Pretrial Hearings and Motion Practice

Motions practice is essential to effective defense work.[245] Well-executed motions can win the case by securing dismissal, excluding evidence, or altering the course of the litigation. The range of possible motions to file and argue in juvenile court is vast. From discovery to suppression to severance to dismissal, an active motions practice indicates an engaged defense.

In Missouri's juvenile courts, investigators found that there were few motions written, argued, or filed during the course of site visits. Again, the culture of many of the juvenile courts discourages formal assertion of legal issues and encourages hallway conversations to resolve legal questions. In fact, a legal officer in one county said that she had only received one written motion in the last several years and "it was from a newbie who should have known better and just called me."

6. Adjudication and Plea Agreements

Juvenile adjudication hearings are the equivalent of trials in the adult criminal justice system. In Missouri, juveniles do not have a constitutional right to trial by jury. Consequently, trials are before juvenile court judges.[246] Youth in Missouri who have been arrested and charged with a crime remain innocent until proven guilty beyond a reasonable doubt.[247] However, the most common observation across the state is that youth in juvenile court need only be "guilty enough" to prove they need some services.

It is the juvenile defender's duty to ensure that the adversarial system is preserved and that the state bears the burden of proving its case.[248] Defense counsel must ensure that all parties respect the presumption of innocence.[249] The elements of the crime and its lesser included offenses should be the central focus of the trial.[250] The juvenile defender must vigorously defend his or her client and clearly explain to the defendant his or her rights and the advantages and disadvantages of exercising them.[251] At the adjudicatory hearing, defense counsel should be thoroughly familiar with the results of pretrial investigations, advance defense theories, utilize experts when needed, and emphasize the heavy burden that the prosecution bears to prove guilt.

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[244] MO. R. CRIM. PRO. 25.03.

[245] NAT'L JUV. DEF. STDS., *supra* note 39, at § 4.7 cmt.: REPRESENT THE CLIENT THROUGH PRE-TRIAL MOTION PRACTICE.

[246] *See generally* MO. REV. STAT. § 211.171; *see also State v. Andrews*, 329 S.W.3d 396 (Mo. 2010).

[247] *See In the Interest of C.L.B.*, 225 S.W.3d 233 (Mo. Ct. App. 2000); *see also In re Winship*, 397 U.S. 358 (1970).

[248] ROLE OF JUVENILE DEFENSE COUNSEL, *supra* note 222, at 16.

[249] *Id.*

[250] *Id.* at 17.

[251] *Id.* at 16-17.

Most juvenile delinquency cases in Missouri are resolved by plea agreement. In the majority of the counties visited, all of the stakeholders agreed that 90-99% of the cases result in a plea. However, when and how the pleas are taken varies greatly across the state. In one county there was an active reluctance to allowing and accepting a plea at an initial hearing, and yet in another county over 90% of the cases were disposed of at the detention or initial hearing.

In one county a judge noted, "If [defenders] had more time and more people, we would have more trials—instead there are more deals cut. Down here when a kid admits, attorneys don't always look at if it can be proved."

What matters most in a plea agreement is whether the child has had the assistance of a defense attorney who has had sufficient time to investigate, negotiate, counsel, and advise prior to the resolution of a juvenile case. Defenders may accomplish significant goals for a youth through plea bargaining in some cases. They may get charges reduced or dismissed, or they may present mitigating factors or other evidence that illustrates the limited role of their clients in the presenting offense. As mentioned previously, many youth in Missouri proceed to plea without an attorney. In one county, the court estimates that more than 90% of youth in detention plead guilty via video at the detention hearing without ever having met their defense attorney in person. However, even in counties where youth do have counsel, a lack of resources can impede counsel's ability to adequately investigate and negotiate the resolution of a case. In one county a judge noted, "If [defenders] had more time and more people, we would have more trials—instead there are more deals cut. Down here when a kid admits, attorneys don't always look at if it can be proved."

The U.S. Supreme Court issued two opinions in 2012 that underscored the importance of effective representation in the plea process and stated that lawyers must conduct investigations into the charges, make recommendations based on the strength of the state's case, and carefully explain the pros and cons of accepting a plea offer to a client.[252] Although many of the juvenile cases observed were resolved only minutes after an attorney met a young client, the attorneys in these cases were not absolved of their duties to: (1) conduct an adequate investigation; (2) present all plea offers; (3) advise of the consequence of the plea; and (4) form a confidential relationship independent of parents.[253]

Moreover, Missouri law makes it clear that the court should not accept a plea unless the child knowingly, intelligently, and voluntarily waives the right to trial, to cross-examine witnesses, and to remain silent.[254] The record must show explicit advisements and waivers of these constitutional rights and acceptance of the possible consequences.[255] Site visitors reported that counties varied in the extent to which judges delivered developmentally appropriate colloquies—the process through which young people are advised of their rights and what it means to waive them. In some counties, site visitors reported good practices with judges taking the necessary time to ensure youth made knowing, intelligent, and voluntary waivers. In other counties, site investigators reported that judges delivered colloquies so fast it was hard for the investigators—most of whom are lawyers themselves—to understand the warnings.

Although the majority of cases observed were resolved by plea, both with and without attorneys, two of the counties visited had a very active trial practice. Attorneys in these counties investigated their cases, spent greater amounts of time with their clients, called witnesses, entered evidence, and presented a defense. But even in these counties

[252] *Missouri v. Frye*, 132 S.Ct. 1399 (2012); *Lafler v. Cooper*, 132 S.Ct 1376 (2012).
[253] *See Frye*, 132 S.Ct. 1399; *Lafler*, 132 S.Ct 1376.
[254] *See State v. Simon*, 680 S.W.2d 346 (Mo. Ct. App. 1984).
[255] *Brady v. United States*, 397 U.S. 742 (1970).

where the defenders were mounting a defense, they commented that the philosophy of the court is, "can we prove enough to allow us to do what we need to do for this kid." A defender in another county stated that the courts,"see no harm in convicting a child to get services that they believe are in the child's best interest." Though well intentioned, when courts adjudicate youth delinquent to mete out services, the result can derail a youth's education, career potential, and entire future. The standard for guilt is not "enough," it is proof beyond a reasonable doubt.

7. Disposition

The significance of disposition cannot be overstated. Juvenile dispositions should "facilitate the care, protection and discipline of children" in a way that serves the best interests of the juvenile.[256] "The active participation of counsel at disposition is often essential to protection of clients' rights and to furtherance of their legitimate interests."[257]

Missouri allows for a range of dispositions for adjudicated youth, which include probation, placement in residential settings, and commitment to DYS.[258] Defense counsel must afford youth the opportunity to proffer an alternative to the DJO's recommended dispositional plan by developing a client-driven option that addresses the interests of the client and is responsive to the court's concerns.[259] Investigation for material relevant to disposition should be conducted at every stage of the proceedings.[260]

Juveniles should take an active role in weighing dispositional options and deciding which would work best.[261] The attorney should inform the juvenile of the possible consequences and the factors the court will consider.[262] Counsel should also prepare the youth for interviews with DJOs and inform them of how their statements will be used in court.[263] Other experts should be consulted to help create an individualized dispositional option to present to the court.[264] Defense counsel should also work to ensure that procedural rights are protected during the disposition hearing by objecting to inadmissible hearsay, examining witnesses, and proffering witnesses.[265]

After a youth is adjudicated delinquent, Missouri law allows for disposition either immediately following the adjudication or in a separate hearing.[266] In most counties observed, the court goes directly from adjudication of the charges to disposition. Generally, the DJOs make a dispositional recommendation that is uncontested by defense and is accepted by the court.

Strong dispositional advocacy by a juvenile defender has long-term impact on the life of their clients. Although many youth in Missouri do not have an attorney at disposition, an attorney is the only person whose role it is to advocate for what the client thinks is an acceptable disposition with conditions that are realistic to adhere to. The defense attorney also advises the client about the possible disposition alternatives, the court process involved in disposition, and the likely outcomes. In the absence of a juvenile defender, the child must rely on the opinion of the DJO who investigated the charges, conducted the interrogation, extracted a statement, and formalized the

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[256] MO. REV. STAT. § 211.011.

[257] IJA-ABA JUVENILE JUSTICE STANDARDS, *supra* note 36, at Standards Relating to Counsel for Private Parties 9.1.

[258] MO. REV. STAT. § 211.083; § 211.181.

[259] ROLE OF JUVENILE DEFENSE COUNSEL, *supra* note 222, at 18; *see also* NAT'L JUV. DEF. STDS., *supra* note 39, at §§ 6.3: INVOLVE CLIENT IN DEVELOPMENT OF DISPOSITION PLAN AND PREPARE CLIENT FOR THE HEARING, 6.6: PROPOSE INDEPENDENT DISPOSITION PLAN.

[260] ROLE OF JUVENILE DEFENSE COUNSEL, *supra* note 222, at 18.

[261] *Id.* at 17-18.

[262] *Id.*

[263] *See* MO. REV. STAT. § 211.411 (outlining the role of police and DJOs to collect and relay facts).

[264] NAT'L JUV. DEF. STDS., *supra* note 39, at § 6.6 cmt.: PROPOSE INDEPENDENT DISPOSITION PLAN.

[265] ROLE OF JUVENILE DEFENSE COUNSEL, *supra* note 222, at 18; *see also* MODEL RULES OF PROF'L CONDUCT R. 1.3 (2012).

[266] MO. SUP. CT. R. 128.03(a).

petition. Without defense counsel, the court has almost no other choice but to go along with the recommendation of the DJO.

In the counties where youth do have an attorney at disposition, almost half of the attorneys said they often contest disposition recommendations offered by the DJO. Some of these attorneys were observed simply cross-examining the DJO to test the strength of their recommendation. In other counties, defenders offered alternative recommendations to the court, called witnesses, and presented community-based options they had developed with their client. Defenders in more rural counties said they lack the resources and options to develop alternative disposition plans and rely on the DJO for disposition planning.

8. Appellate Review

A juvenile's right to counsel and the duty to represent a client does not end after disposition, if the juvenile wishes to appeal. Missouri statute requires counsel to serve for all stages of the case, including appeal.[267] Despite this right to counsel, it appears many juveniles are not being represented for appeals. This is not entirely a result of high waiver of counsel; instead, it results from appeals not being filed. In Fiscal Year 2012, MSPD filed three juvenile appeals and closed four, within the entire state system.[268] Juvenile appeals accounted for 0.15% of the public defender's appellate practice for the year.[269]

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Although private attorneys might bring other juvenile appeals, this almost never happens. In the counties visited, almost no key player could remember when the last juvenile appeal was filed. One commissioner reported having no appeals from his decisions in over 15 years. Of the few individuals recalling juvenile appeals, most could only recall one appeal in their years practicing.

The appellate process is intended to provide individuals with several layers of review. It prevents a person's future from being determined by one individual. However, the extreme lack of juvenile appeals leaves juvenile court decisions untested and without appeals, the law remains undeveloped and unreviewed. The final decision for juvenile cases can thus take place in an informal setting without counsel, without informing the juvenile of his or her rights, and without regard for due process rights. Without appeals, juvenile rights may be short-circuited and the ill-defined and nebulous procedure may even discourage others from filing appeals in the future. In Missouri, juvenile's right to appeal is simply not utilized.

9. Other Post-Disposition

In addition to the lack of juvenile appeals, other post-disposition actions in Missouri are notably lacking. By statute, attorneys are relieved of their duties when a final disposition is in place.[270] This heavily impacts juveniles during probation review hearings. The public defender closes a case after disposition; thus, ongoing monitoring of the case is not possible. Public defenders are reappointed only when new charges are brought.

[267] *See* MO. REV. STAT. § 211.211.

[268] FISCAL YEAR 2012 ANNUAL REPORT, *supra* note 7, at 65.

[269] *Id.* at 8.

[270] *See* MO. REV. STAT. § 211.211.

However, juvenile defense attorneys have obligations not addressed in the Missouri statute. Juvenile defense counsel should research and timely file writs of *habeas corpus* and others motions challenging the outcome of a case.[271] Defense lawyers can be effective in addressing problems concerning the fact, conditions, or duration of confinement by bringing these motions.[272]

Attorneys should also periodically check on their clients to determine if there are resolvable issues preventing successful completion of their disposition.[273]

Post-disposition review is an effective tool for ensuring court orders are monitored, youth are released from facilities at the earliest point possible, and community programming is used effectively. Once a youth is committed to DYS, there are no regular reviews. Periodic reviews occur only for juvenile offenders who are in the community. While some counties have a more formal post-disposition review process, these seem to be the exception, not the norm. Still, it is important to note that these reviews usually occur without attorneys. As a result, when problems arise in review hearings, youth have no one to advocate on their behalf. One defender explained, "[A review hearing] is where so much happens...that is where we start writing the narrative about the child." Once youth get to a hearing where they are facing placement due to an accumulation of violations or other problems, there is no recognition that a lack of defender advocacy at post-dispositional review hearings may inhibit the court's ability to have all of the information necessary to make appropriate decisions.

10. Ancillary Representation

Though there were significant discussions of the multiple systems impacting the lives of most youth in the delinquency system, investigators did not see examples of ancillary representation in Missouri. Youth in the juvenile justice system often have an array of legal and social needs outside of the juvenile court. Often a youth's needs are multi-systemic and branch into arenas such as school discipline, special education, mental health, substance abuse, housing, familial problems, and immigration. A juvenile's status in any of these arenas can significantly impact delinquency proceedings. For example, the outcome of a school disciplinary hearing could influence detention advocacy or dispositional outcomes.

With the goal of affording clients holistic representation, juvenile defense counsel should, either directly or indirectly, provide youth referrals and/or assistance in ancillary services of the law that intersect juvenile indigent defense.[274] Juvenile defense counsel should become familiar with resources that will assist youth in addressing legal and social issues outside of the juvenile justice system. Juvenile defense counsel who face limitations in providing ancillary services directly, should develop contacts with advocates who can represent youth in other systems.[275]

B. Youth Tried in Adult Courts

The jurisdictional age is set at 17 in Missouri, which results in all 17 year-olds facing criminal charges being automatically processed in the adult system. Excluding less serious traffic, municipal, and conservation violations, 3,199 17 year-olds were charged in Missouri's adult criminal system in 2011.[276] Additionally, a number of youth below the age of 17 are "certified" as adults and processed through the adult system. In 2011

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[271] ROLE OF JUVENILE DEFENSE COUNSEL, *supra* note 222, at 19.

[272] *Id.* at 20.

[273] *Id.*; at 20; NAT'L JUV. DEF. STDS., *supra* note 39, at § 7.1: MAINTAIN REGULAR CONTACT WITH CLIENT FOLLOWING DISPOSITION.

[274] ROLE OF JUVENILE DEFENSE COUNSEL, *supra* note 222, NAT'L JUV. DEF. STDS., *supra* note 39, at § 1.4: SCOPE OF REPRESENTATION.

[275] ROLE OF JUVENILE DEFENSE COUNSEL, *supra* note 222, at 21.

[276] Email from Tina Senter, Research Analyst, Missouri Office of State Courts Administrator to authors (Mar. 1, 2013, 12:04 EST) (on file with authors).

alone, 74 youth were certified as adults.[277] Unfortunately, the total number of certification hearings conducted was not available. However, in two counties, judges estimated that of the total number of certification hearings held, about 25% of youth were certified and transferred to the adult court. Given that the mechanism through which Missouri transfers youth is a judicial hearing, juvenile defenders have the opportunity to mount a strong defense to retain youth in the juvenile court. Unfortunately, due to limited resources and the lack of a specialized juvenile defense bar, defenders are often unable to effectively argue on behalf of youth at certification hearings.

Missouri, similar to many other states, disproportionately transfers African American youth to adult court. A recent report issued by the Missouri Juvenile Justice Association in collaboration with the Missouri Juvenile Justice Advisory Group, examined disproportionality in the certification of African American youth in Missouri.[278] Using data of youth cases disposed for felony allegations between 2008 and 2011 from the Judicial Information System (JIS) from all of Missouri's judicial circuits, the report found the disproportionate certification of African American youth by level of offense, offense type, and kind of offense. Although the report acknowledges that its analysis cannot draw the conclusion that inequities in processing "caused" the disproportionate certification of African American youth, they do state that "[t]he totality of these findings appears to suggest that there may be more of an inclination to certify African American youth than Caucasian youth."[279]

Given these statistics, it is important to note that among the several criteria identified by statute that a judge must review in making a determination to "certify" a youth is the consideration of whether or not racial bias plays a role in the certification process. Defenders can play an important role in addressing the disproportionate certification of African American youth by addressing this issue head on in certification hearings. One of our site visit teams had the opportunity to witness this promising practice while observing a certification hearing where a defender referenced this criterion and asked the judge to consider the issue of racial bias in determining whether or not the youth should be certified to the adult court.

C. Lack of Juvenile Court Specialization, Training, and Standards

Training of public defenders and appointed counsel in Missouri's juvenile court is minimal—almost non-existent. The lack of training was a major issue identified by many of the key stakeholders. Among many of the counties visited, there was a general consensus that public defenders, judges, and prosecutors lacked training on juvenile issues. These key players lacked both opportunities for such trainings and resources to host or attend them. Current training for the public defenders is a three day conference that may or may not include occasional juvenile topics. Some of the individuals interviewed expressed a need for additional training on adolescent development and issues unique to juvenile adjudications.

One public defender expressed interest in more training on delinquency proceedings and newer techniques for fighting certification. Another court officer indicated that there was some juvenile training that was beneficial, but it mostly focused on child protection. Of the training available, there was not much consistency or availability. Most of the training is very ad hoc. A major barrier to effective training for public defenders is that the heavy caseloads prevent individuals from conducting or attending any extensive training—especially on juvenile issues.

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[277] MJFD 2011 REPORT, *supra* note 65, at 36.

[278] Catherine Patterson, *How Do Certified Youth Compare to Eligible Non-Certified Youth: Descriptive Statistics*, MISSOURI JUVENILE JUSTICE ASS'N (Nov. 2012), *available at* http://www.courts.mo.gov/file.jsp?id=58501.

[279] *Id.* at 7.

The disbandment of the juvenile-specific units perpetuated the lack of training and specialization. While these units were in place, the public defenders in those offices were recognized for their expertise, specialization, and training on juvenile issues. Now, juvenile courts are used as "training" grounds to prepare public defenders for adult cases. Juveniles no longer have trained attorneys; instead, they have attorneys in training. The focus on juvenile specialization has faded to the detriment of juvenile defendants.

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Adding to the confusion about role of counsel and juvenile defense specialization is the Missouri mechanism for allowing attorneys to play the dual role of defense attorney and guardian *ad litem* in the same case in juvenile court. Under Missouri Supreme Court Rules, juvenile defense attorneys can be appointed to act as a guardian *ad litem* for the same child they are defending in a delinquency case despite the inherent conflict between these two functions.[280] It is well settled that the role of the juvenile defender is to represent the stated interests of their juvenile clients.[281] In contrast, the role of the guardian *ad litem* is to represent what the attorney believes is in the best interest of the child. As stated in a 2012 opinion addressing a similar mechanism in Illinois, "...the type of 'counsel' which due process . .require[s] to be afforded juveniles in delinquency proceedings is that of *defense counsel*, that is, counsel which can only be provided by an attorney whose singular loyalty is to the defense of the juvenile."[282] Although the assessment teams did not observe this dual appointment in practice, the fact that it is permissible is untenable with due process.

D. Juvenile Court Culture

Courts in Missouri overwhelmingly discount the role of juvenile defense counsel by failing to appoint counsel at the outset, ignoring the defender voice when attorneys are involved in juvenile cases, and significantly restricting resources so that juvenile defenders cannot mount an adequate defense. Unfortunately, the lack of resources may force defenders to choose whether their time is spent with adult or juvenile clients. Along with the lack of resources, the lack of prestige awarded to defending juvenile clients is a constant issue. Speaking on that point, a chief DJO in one county expressed concern that defenders view juvenile court as "kiddie court" and spend more time preparing for and speaking to adult clients than they do with juvenile clients. A juvenile defender in one county explained, "We're drowning. We do a shameful job on our juvenile cases in this county."

"We're drowning. We do a shameful job on our juvenile cases in this county."

Even when attorneys have the opportunity to be advocates, their voices are often ignored. In one jurisdiction where most youth are represented by counsel, a defense attorney stated, "In juvenile court, I am not much more than a potted plant. My judges have virtually always (I can think of one exception in seven years) sided with the juvenile officer [DJO] in spite of the evidence, rules of procedure, or law. Commonly, my only achievement in a juvenile case is to explain the process to the client and attempt to comfort him/her. My work seldom changes the end result of the case." Another juvenile defender stated, "There is not a lot I can do...it's essentially standing next to someone while they get sent to DYS for petty nonsense."

[280] MO. SUP. CT. R. 115.02 cmt.

[281] *See* ROLE OF JUVENILE DEFENSE COUNSEL, *supra* note 222, at 7; NAT'L JUV. DEF. STDS., *supra* note 39, at § 1.2: ELICIT AND REPRESENT CLIENT'S STATED INTERESTS; IJA-ABA JUVENILE JUSTICE STANDARDS, *supra* note 36, at Standards Relating to Counsel for Private Parties 3.1; *People v. Austin M.*, 975 N.E.2d 22 (Ill. 2012).

[282] *Austin M.*, 975 N.E.2d at 44.

IV. STRENGTHS AND PROMISING PRACTICES

A. Counties with Routine Appointment of Counsel

While the practice of allowing youth to waive their right to counsel was pervasive throughout many jurisdictions, there were exceptions to this in counties where adequate resources for appointment of counsel were provided. Judges in those counties recognized that youth could generally not competently waive counsel without consultation and should be entitled to the assistance of an attorney through all critical stages. We heard resolve on the part of these judges that in spite of the public defender caseload crisis, juveniles would not go unrepresented in their courts.

In one jurisdiction where no waiver of counsel was seen, the judge noted that, unlike his counterparts, he appreciated the importance of juvenile court and intentionally uses a different vocabulary and demeanor. He mentioned that training through the judicial college specifically on juvenile law helped, although there was no ongoing juvenile training for judges in Missouri. In this jurisdiction, attorneys are appointed following arrest and lawyers were present at detention and at all other initial hearings.

In another jurisdiction—where the public defender system does not receive juvenile court appointments—the court has established a system of using private attorneys to handle all delinquency cases. A fund for legal costs was established by the county and provides funds for defense attorney and guardian *ad litem* appointments. The defense attorneys appointed in that county were generally experienced solo practitioners who receive little or no pay for their services. They were described as "tough, zealous advocates" in part because of their significant experience in adult criminal cases. Even prosecutors noted that these attorneys take procedural due process obligations seriously. "I have to come prepared with all of my i's dotted and my t's crossed. They want details," said one of the prosecutors. Youth in this jurisdiction are appointed counsel once charges are filed.

B. The Role of Law Schools in Forging Change

Missouri has four law schools—Saint Louis University, University of Missouri-Columbia, University of Missouri-Kansas City, and Washington University in St. Louis. These schools can and do offer significant contributions to the field of juvenile defense. By raising awareness and providing thousands of hours of free legal service to juveniles in the state, clinical programs have helped to provide training to new lawyers who can develop as leaders in the field and create a dialogue on emerging trends in juvenile defense practice.

Several of the law schools have hosted symposia on access to counsel and juvenile justice. In 2010, the *Missouri Law Review* hosted a symposium entitled *Broke and Broken: Can We Fix Our State Indigent Defense Systems?*[283] The symposium looked at the problems facing the nation's indigent defense systems. The program brought together national scholars and Missouri experts on indigent defense. In 2012, Washington University hosted a colloquium entitled *Evolving Standards in Juvenile Justice: From* Gault *to* Graham *and Beyond.*[284] Events like these help bring attention to the major problems facing indigent and juvenile defense in Missouri.

The law schools are also promoting access to counsel through clinical programs. The clinics serve two main purposes; they offer free legal services to indigent juveniles and train law students to become effective juvenile

[283] *See* University of Missouri School of Law, Missouri Law Review Symposium 2010, *Broke and Broken: Can We Fix Our State Indigent Defense Systems?* (Feb. 26, 2010), *available at* http://law.missouri.edu/faculty/symposium/symposium10/.

[284] *See* Washington University Law School, Access to Equal Justice Colloquium, *Evolving Standards in Juvenile Justice: From* Gault *to* Graham *and Beyond* (Mar. 23, 2012), *available at* http://law.wustl.edu/accessequaljustice/.

advocates. Both Saint Louis University and Washington University have clinics dedicated to juvenile indigent defense.[285] These clinics allow students to gain hands-on experience working with children and defending them on delinquency charges. Clinics like these offer immediate assistance for juveniles, long-term training for new lawyers, and recognition of juvenile defense as a specialized practice.

C. Youth Advocacy Units

Specialized Youth Advocacy Units had a strong impact on the representation youth received in Missouri. Reinstating these units across the state would significantly improve due process protections for Missouri youth in juvenile court. In 1995, the Missouri General Assembly took a more punitive approach to juvenile crime.[286] Missouri's law became focused on community protection instead of juvenile rehabilitation.[287] The public defender system recognized the higher stakes and secured resources to staff a Youth Advocacy Unit within the Trial Division. Offices were located in St. Louis and Kansas City.[288] These units were created in 1997 to provide specialized training and services.[289] The units included investigators, dispositions specialists, and licensed social workers who were part of the defense team.

In the years immediately following the creation of the Youth Advocacy Unit, there was a significant reduction in DYS commitments in St. Louis City and St. Louis County.[290] Additionally, the number of juveniles certified as adults decreased while the Youth Advocacy Units were responsible for juvenile cases.[291] These units were able to provide more attention and services directly to the juveniles. The attorneys and social workers handling the cases were able to be acutely aware of the particular needs and challenges facing juveniles.

There was a proposal to expand the Youth Advocacy Units to cover additional counties in Missouri.[292] However, this plan was never executed. Budget problems prevented the expansion and led to combining the Youth Advocacy Units with the general Trial Division.[293] What was a promising practice that could have been replicated with significant results fell victim to the state's indigent defense resource crisis.

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[285] *See Child Advocacy Clinic*, SAINT LOUIS UNIVERSITY, http://slu.edu/school-of-law-home/academics/legal-clinics/civil-advocacy-clinics; *Civil Justice Clinic*, WASHINGTON UNIVERSITY LAW SCHOOL, http://law.wustl.edu/civiljustice/index.aspx?id=393.

[286] *See* MO. REV. STAT. § 211 (1994 & Supp. 1997).

[287] *See* Caterina DiTraglia, *"The Worst of Both Worlds": Defending Children in Juvenile Court*, 63 MO. L. REV. 477, 478-871 (1998).

[288] *See Youth Advocacy*, MISSOURI STATE PUBLIC DEFENDER, http://www.publicdefender.mo.gov/legal/youth_advocacy.htm.

[289] *Id.*

[290] Letter from Deputy Director Vicky Weimholt to Attorney Caterina DiTraglia (Aug. 30, 1999) (on file with authors).

[291] *See* Letter from Caterina DiTraglia to Director J. Marty Robinson (Sept. 3, 1999) (on file with authors).

[292] *See id.*

[293] *See* Justine Finney Guyer, *Saving Missouri's Public Defender System: A Call for Adequate Legislative Funding*, 74 MO. L. REV. 335 n.42 (2009).

CHAPTER FOUR
Conclusion and Recommendations

Children facing criminal or status offenses in Missouri's juvenile justice system frequently do so without the benefit of counsel or without adequate representation through all critical stages. As this report identifies, there are significant gaps in both access to and quality of representation provided to youth that fall well below the standards established by the Institute of Judicial Administration and American Bar Association's *Juvenile Justice Standards*, the ABA *Rules of Professional Conduct*, the *Ten Core Principles for Juvenile Indigent Defense* established by NJDC, and NJDC's newly released *National Juvenile Defense Standards*. Justice is often rationed to juveniles in Missouri for a variety of reasons, not the least of which is the crisis in the public defender system and the *parens patriae* attitude that is still present in some courtrooms.

Missouri's strength is in its commitment to rehabilitation and the collaborative efforts built into its juvenile system. Across the state, there are many committed and talented people who work hard to protect the rights of children. The dozens of individuals throughout Missouri's juvenile system who committed time, resources, and insights by participation in and contribution to this assessment are reflective of the commitment to children in Missouri. This is encouraging in moving forward to use this report as a catalyst for changing the system.

When attorneys have the time and training to provide zealous representation, there can be an immediate and long-term impact on ensuring due process and decreased system costs to counties and to the state. Lawyers have the ability to develop effective and meaningful relationships with their young clients, and they should be an integral part of ensuring that youth are not adjudicated delinquent as a means to access services. And when adjudication is substantiated, defense counsel ensure that youth are subject only to the most appropriate and effective services and programs in the least restrictive setting possible.

The following recommendations were formed after a careful review of the data and findings compiled in this study. The recommendations are divided into "Core Recommendations" and "Implementation Strategies." Core Recommendations are the key proposals with general application. They represent the principal areas in which work is needed to improve both access to counsel and quality of representation for youth in the delinquency system. The Implementation Strategies flow from these Core Recommendations to provide more detailed suggestions to relevant state or local entities.

Core Recommendations:

1. **Ensure Timely Appointment of Counsel:** Youth must be appointed counsel and have access to counsel early in their case.

2. **Reduce Waiver of Counsel:** Missouri should establish a presumption against waiver of counsel; whereby, a youth must first consult with counsel before any waiver is permitted. No child should be denied counsel because of lack of resources.

3. **Afford Representation at All Critical Stages:** Missouri youth should be afforded counsel at all critical stages of the proceedings.

4. **Allocate Sufficient Resources:** Missouri must commit adequate funding to juvenile representation that allows for reasonable caseloads and effective advocacy. Juvenile defenders must also have access to ancillary services such as investigators, experts, and social workers.

5. **Strengthen Monitoring and Oversight:** The indigent defense delivery system should include a separate juvenile division to centralize leadership, innovation, and responsibility around juvenile defense. The division would strengthen positive practices and policies and would provide ongoing statewide oversight and monitoring.

6. **Establish Data Collection:** A system of data collection should be established, which can track appointment of counsel at early stages, and other pertinent data regarding juvenile representation to aid management in decision making. Best practices and innovations should be identified and promoted through data collection.

7. **Recognize Juvenile Defense as a Specialized Area of Practice:** Juvenile defense should be recognized and appreciated as a highly specialized practice. A system with ongoing training, support, and networking among defenders should be established. Attorneys should participate in comprehensive training before working in juvenile court, and they should have the opportunity for ongoing training to enhance their practice skills and knowledge of the field.

8. **Reduce Youth in the Adult System:** The age for adult criminal court jurisdiction in Missouri should be raised from 17 to 18.

9. **Adopt Standards of Practice:** Juvenile defense practice standards should be adopted and implemented statewide. Expectations regarding ethical obligations and performance of attorneys providing representation at all critical stages should be included.

10. **Address the Role of the Deputy Juvenile Officer:** The expansive role of the deputy juvenile officer should be addressed to ensure that it does not influence, directly or indirectly, the ability of youth to be appointed counsel early in the process, and to prevent statements made to these individuals from being admissible in court.

Implementation Strategies:

To make substantial improvements in Missouri's system of juvenile indigent defense, the cooperation of numerous entities must be involved. The legislature, judiciary, Missouri Public Defender System, law schools and local and state bar associations can and must all play a role in a concerted effort to reform policy and practice. The Implementation Strategies below are designed to address the Core Recommendations with specific multi-systemic reforms.

The Legislative Branch should:

- Adequately fund the system of indigent defense to encompass sufficient resources for a strong juvenile defense delivery system as well as conflict attorneys;
- Require representation of children to extend after disposition and provide funding for this representation;
- Enact a presumption of indigence for children and eliminate the requirements of a lien and fees once representation is provided;
- Strengthen the waiver of counsel statute to limit the ability of courts to allow youth to waive their right to counsel without adequate procedural safeguards;
- Restrict the ability of DJOs to obtain and utilize incriminating statements by juveniles in later proceedings and re-examine the line of supervisory authority for these positions to eliminate actual or perceived conflicts; and

- Join the majority of other states by changing the statutory age for youth in juvenile court to 18 in order to provide fair and developmentally appropriate advocacy and services to all juveniles in the state.

The Judicial Branch should:

- Work to remove the barriers to appointment of counsel for youth in the delinquency system and significantly reduce the number of unrepresented youth;
- Assure that counsel is appointed for all critical stages of the proceedings, including early appointment at the detention hearing stage and through disposition and post-disposition proceedings;
- Examine court rules to ensure waiver of counsel is limited and that youth are otherwise afforded adequate due process protections; and
- Ensure that colloquies in all juvenile cases are legally adequate and developmentally appropriate.

The Missouri State Public Defender should:

- Continue the longstanding efforts with the legislative branch in advocating for a fully funded indigent defense delivery system, especially for juvenile defense;
- Take the lead in reforming juvenile indigent defense and in implementing the core recommendations of this assessment;
- Promulgate practice standards for juvenile defenders that require attorneys to meet with clients prior to court proceedings, consult with clients and families about the case and social information, investigate cases, file motions as appropriate, provide vigorous and independent advocacy at detention, adjudication, disposition and post-disposition hearings, negotiate for fair and favorable plea agreements, prepare for and set trials to ensure that the government can meet its burden, and advise clients about all proceedings and consequences for any decision made;
- Create a high-impact culture for juvenile defense practice within the state that recognizes the practice as a specialized field and recruits and maintains well-trained and zealous lawyers;
- Create a state level Juvenile Division within MSPD, which can focus on enhancing appeals and other post-disposition work, providing specialized juvenile defense training, implementing juvenile defense policy work, and offering technical support for trial offices on juvenile cases;
- Reinstate the Youth Advocacy Units in the counties or comparable offices which can specialize in juvenile practice in large jurisdictions as well as provide assistance and consultation for smaller offices;
- Implement a means of electronic sharing across the state—e.g. listservs, social media, etc.—for those engaged in juvenile defense practices to share information and resources and provide technical assistance;
- Actively engage the law schools to further student interest and skill building in juvenile defense work and to develop potential leadership in the next generation of lawyers;
- Identify and suggest changes in court rules, which could improve access to counsel and quality of representation for youth in the delinquency system; and
- Work with and promote JDAI initiatives in participating counties to ensure that youth are provided with effective detention advocacy and that defenders are actively engaged with the JDAI committees and leadership structure. MSPD should be an active participant in the state leadership group for JDAI.

Missouri Law Schools Should:

- Continue to provide and expand high quality clinical and experiential learning programs, which can train students to be practice ready in the field of juvenile defense and identify current and relevant issues for litigation;
- Enhance the dialogue around juvenile defense reform through continued use of symposia, publications, and continuing education seminars; and
- Actively engage as a partner with MSPD and other state and non-profit entities to implement reforms identified in this assessment.

Local and State Bar Organizations should:

- Recognize juvenile defense as a specialized area of practice;
- Develop and promote policies that will support and improve juvenile indigent defense reform efforts;
- Support a fully funded indigent defense delivery system that adequately funds juvenile defense as a specialized field; and
- Offer specialized juvenile defense training programs.

National Juvenile Defender Center

1350 Connecticut Ave. NW, Suite 304
Washington, DC 20036
202.452.0010 (phone)
202.452.1205 (fax)
www.njdc.info

Exhibit LL

Ethical restrictions on attorney availability

Rod Hackathorn to: thomas.mountjoy@courts.mo.gov, david.jones@courts.mo.gov, calvin.holden@courts.mo.gov, 10/10/2017 08:25 AM

Cc: Christopher Hatley

Your Honors,

I am sending you this email as my office, Area 31 of the Missouri State Public Defender System (MSPD), covers Greene, Christian, and Taney Counties. I am sure you all aware of the recent action taken by OCDC against a public defender and their recommendation that the attorney's license be disciplined due to his alleged failure to comply with the Rules of Professional Conduct. While the Supreme Court did not follow OCDC's recommendation to suspend the license of the attorney, OCDC's brief and oral argument, as well as individual justices' statements and questions, leave no doubt that public defenders cannot defend themselves against bar complaints with evidence of a high caseload. It was made clear that the Rules of Professional Conduct absolutely apply to public defenders and any breach of those Rules will subject the defender to action against their license to practice law.

The Supreme Court referenced Rule 4-1.7, which states in part that it is a conflict of interest "if there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client[.]" MSPD recognizes that while each attorney is employed by the System, it is the individual and personal responsibility of each attorney to comply with the Rules of Professional Conduct. MSPD also recognizes that District Defenders, such as myself, and Deputy District Defenders, such as Mr. Hatley, also have a duty under the Rules to make sure that no attorney under their supervision violates the Rules. See 4-5.1(c). The Court has also held the Rules impose on all attorneys an ethical duty to provide effective assistance of counsel to all of their clients, and that attorneys violate those rules if they "accept [ ] a case that results in a caseload so high that it impairs [their] ability to provide competent representation, to act with reasonable diligence, and to keep the client reasonably informed." State ex rel. Mo. Pub. Def. Comm'n v. Waters, 370 S.W.3d 592, 607 (Mo. banc 2012)(citing Rules 4-1.1, 4-1.3 and 4-1.4).

The assistant public defenders of Area 31 have been instructed to notify myself or Mr. Hatley if they believe accepting any additional new clients would materially limit their responsibilities to an existing client so they might comply with the Rules of Professional Conduct. Additionally, both Mr. Hatley and myself have reviewed the caseload, case type, experience of each individual attorney and other factors such as travel of every assistant public defender in Area 31 to ensure there is no ethical violation as we have a specific obligation under the Rules to ensure those under our supervision do not violate the Rules.

The American Bar Association has previously weighed in on this issue. Formal Opinion 06-441, states in part "[i}f a lawyer believes that her workload is such that she is unable to meet the ethical obligations required of her in the representation of a client [...] she must decline the representation. A lawyer's primary ethical duty is owed to existing clients. (internal citation omitted) Therefore, a lawyer must decline to accept new cases[.]"

Last week, Mr. Hatley and myself had individual meetings with every attorney under our supervision. Each of them stated, and we concur, that their current individual caseloads create a conflict of interest with existing clients because they are forced to choose effective representation of one client to the detriment of other clients. It is also our belief that assigning any new cases to any individual attorney would create a conflict of interest because they would have no ability to adequately represent either their current or prospective clients.

Until one or more of the attorneys in our office are able to fully comply with their ethical obligations under the Rules of Professional Conduct, we will no longer be immediately entering into cases in which a defendant is qualified. When the Court refers the public defender to determine eligibility, our office will do so. We will continue to inform the Court if an applicant does not qualify. If the prospective client qualifies, we will also notify the court but will not assign an attorney until there is an attorney who can assume the representation without violating the Rules of Professional Conduct. We cannot

EXHIBIT 53 12-20-17 PENGAD 800-631-6989

file an entry with an individual attorney's bar number if we and the attorney know that doing so violates the Rules of Professional Conduct. To be clear, there are no hidden agendas or motivations with regard to this decision. This is simply about ensuring all Area 31 public defenders are able to maintain their license to practice law without threat of discipline by OCDC.

We have started an internal wait list for defendants who qualify for representation but who do not yet have an attorney assigned to them. We will internally monitor attorney work load and the wait list and assign attorneys to cases based on custody status. We will be providing defendants on the wait list with a letter advising them they qualify and that we will notify them as soon as an attorney is available to take their case. Any current client who acquires additional cases will be represented by counsel of record and will not be placed on the wait list. Also, in the event two or more codefendant's apply for the public defender, we will not be seeking conflict counsel until an attorney is able to represent the defendant this office ultimately keeps.

It is my sincere hope the Court will adhere to its own duty and fidelity to the Rules and will support and work with our attorneys during this process. If you have any concerns, issues or thoughts please feel free to email or call myself or Mr. Hatley.

Regards,

Rod Hackathorn
District Defender
MO State Public Defender
630 N Robberson
Springfield, MO 65806
417-895-6740 ext. 227

Exhibit MM

MISSOURI STATE PUBLIC DEFENDER SYSTEM

Trial Division
234 W. Shrader Street, Suite A
Liberty, Missouri 64068
Telephone: 816-792-5394 Fax: 816-792-8267

October 2, 2017

Hon. Janet Sutton
Presiding Judge
Clay County Courthouse
11 South Water
Liberty, MO 64068

Hon. James Van Amburg
Presiding Judge
Platte County Courthouse
415 Third Street
Platte City, MO 64079

Hon. Thomas Chapman
Presiding Judge
Clinton County Courthouse
207 North Main Street
Plattsburg, MO 64477

RE: Availability of Area 07 Liberty Trial Office & *In re Karl Hinkebein*, SC96089

Your Honors:

I am confident you are aware of the recent action taken by the Office of Chief Disciplinary Committee (OCDC) against an attorney employed by the Missouri State Public Defender (MSPD) and their recommendation that the public defender attorney's license be disciplined due to the alleged failure to comply with the Rules of Professional Conduct. *In re Karl Hinkebein*, SC96089. OCDC's brief and oral argument, as well as individual Justices' statements and questions made during oral argument on September 7th , leave no doubt that public defender attorneys cannot defend themselves against bar complaints with either evidence or excuses of a high caseload (or an excessive, overly burdensome workload). It was made clear that the Rules of Professional Conduct absolutely apply to public defender attorneys and any breach of those Rules will subject the attorney to action against his or her license to practice law.

Instead of consideration given or exception made within the Rules for public defender attorneys who work within a system with far too few resources and a seemingly (and actual) unlimited source of clients, the *Hinkebein* Court pondered aloud solutions for overburdened public defenders: perhaps (i) they could tell me that they were refusing the cases I assigned to them or (ii) they could simply resign. And what of the solemn oath taken by us all "to practice law to the best of [our] . . . ability and with consideration for the defenseless and oppressed"? Do I just say "not me" as one Justice suggested? Do I

EXHIBIT
15
Cardarella
depobook.com

just cut and run and quit as was suggested by the other Justice, who took that very oath on the same date as I over a quarter of a century ago?

That oath also contained the promise to "at all times conduct myself in accordance with the Rules of Professional Conduct". The *Hinkebein* Court referenced Rule 4-1.7, which states in part that it is a conflict of interest "if there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client[.]" MSPD recognizes that while each attorney is employed by the System, it is the individual and personal responsibility of each attorney to comply with the Rules of Professional Conduct. MSPD also recognizes that District Defenders, such as myself, and Deputy District Defenders, such as Ara Bailey Brown, also have a duty under the Rules to make sure that no attorney under their supervision violates the Rules. See 4-5.1(c). The Supreme Court has also held the Rules impose on all attorneys an ethical duty to provide effective assistance of counsel to all of our clients and that attorneys violate those Rules if he or she "accepts a case that results in a caseload so high that it impairs [his or] her ability to provide competent representation, to act with reasonable diligence and to keep the client reasonably informed." *State ex rel. Mo. Pub. Def. Comm'n v. Waters*, 370 S.W. 3d 592, 607 (Mo banc 2012) (citing Rules 4-1.1, 4-1.3 and 4-1.4).

The assistant public defenders of Area 07 have been instructed to notify myself or Ms. Brown if they believe accepting any additional new clients would materially limit their responsibilities to an existing client so they can ensure compliance with the Rules of Professional Conduct. Additionally, I have reviewed the office total workload, the attorneys individual assigned caseload and case types, the experience of each individual attorney and various other factors including but not limited to the inherently necessary travel time of every assistant public defender in Area 07 to ensure there is no ethical violation as we have a specific obligation under the Rules to ensure those under our supervision do not violate the Rules.

The American Bar Association has previously weighed in on this issue. Formal Opinion 06-441, states in part "[i]f a lawyer believes that her workload is such that she is unable to meet the ethical obligations required of her in the representation of a client . . . she must decline the representation. A lawyer's primary ethical duty is owed to existing clients. (internal citation omitted) Therefore, a lawyer must decline to accept new cases[.]"

At present, it is my firm belief that every attorney under my supervision is currently in violation of the Rules of Professional Conduct, albeit unintentionally. Unfortunately, their current individual caseload demands create a concurrent conflict of interest with existing clients such that they are forced to choose effective representation of one client to the detriment of other clients. It is also my belief that assigning any new cases to any individual attorneys would create a concurrent conflict of interest and cause them to become further unable to provide competent and diligent representation as envisioned by the Rules of Professional Conduct to each affected client.

The public defender attorney(s) ordinarily assigned to criminal cases in Clay County, Platte County and Clinton County will no longer be immediately entering into cases in which a Defendant has been deemed qualified for indigent representation. In the event the Court directs the Office of the Public Defender to determine eligibility, our office will examine any and all submitted Applications for Public Defender Services as we always have, as our time permits and, as Chapter 600 dictates, conduct any necessary and relevant investigation. We will continue to inform the Court if an applicant does not qualify. If the prospective client qualifies, we will not assign an attorney until there is an attorney who can assume the representation without violating the Rules of Professional Conduct. We cannot file an entry with an individual public defender attorney's bar number if, in my belief, doing so is a violation of the Rules of Professional Conduct.

To be clear, there are no hidden agendas or motivations with regard to my decision. Any of you that know me I shall hope understands that this was not an easy decision for me. My public defender career has always sought to adhere to the simplistic approach envisioned by Mother Teresa who had said:

> Never worry about numbers.
> Help one person at a time, and always start with the person nearest you.

The *Hinkebein* Court has caused me to make necessary changes to my otherwise longstanding approach. This is simply about protecting my attorneys and doing everything in my power to ensure that each of them are able to maintain their license to practice law without threat of discipline by the OCDC.

It is my hope that the Court maintains a high degree of understanding, flexibility and empathy as our office endeavors to place this new and necessary process into motion in our collective and sincere attempt to abide by the Rules of Professional Conduct. As is always the case, I remain available for your call or requested meeting.

Respectfully,

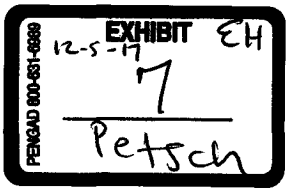
Anthony C. Cardarella
District Defender, Area 07

cc: Clay County (7th Circuit) Judiciary
Platte County (6th Circuit) Judiciary
Clinton County (43rd Circuit) Judiciary

Exhibit NN

IN THE
MISSOURI COURT OF APPEALS
WESTERN DISTRICT

STATE EX REL. RUTH PETSCH	)	
	)	
	)	
Relator,	)	
	)	
vs.	)	No. _____
	)	
HON. PATRICK W. CAMPBELL,	)	
	)	
Respondent.	)	



PETITION FOR WRIT OF PROHIBITION,

AND SUGGESTIONS IN SUPPORT

COMES NOW Relator, District Defender Ruth Petsch, pursuant to Rules 84.22 to 84.26, and 97.01 et seq., V.A.M.R., and moves this Court to issue a preliminary writ of prohibition against Respondent, the Hon. Patrick W. Campbell, Circuit Judge of the Jackson County Circuit Court, to prohibit Judge Campbell's order of October 19, 2017, which ultimately appointed Ms. Petsch personally to represent Keith A. Nevels, contrary to this Court's holding in ***State ex rel. Robinson v. Franklin***, 48 S.W.3d 64 (Mo. App. W.D. 2001), that a trial court exceeds its authority in appointing a specific Public Defender attorney to a specific case.

After a preliminary writ and opportunity for Respondent to respond, Relator requests that this Court make the writ permanent, or alternatively, order full briefing, and thereafter, make the writ permanent.

STATEMENT OF FACTS

1. Relator, Ruth Petsch, is the District Defender of the Area 16 Public Defender Office in Kansas City, Missouri, which is located in Jackson County. A District Defender is the supervisor of a local Public Defender Office.

2. Respondent, the Hon. Patrick W. Campbell, is Circuit Judge, Division 10, of the Jackson County Circuit Court, 16th Judicial Circuit.

3. Keith A. Nevels is the underlying defendant in *State v. Keith A. Nevels*, Jackson County No. 1616-CR01742-01 (E1).[1] As relevant herein, he is currently charged with a probation violation following a prior plea of guilty to the Class C felony of unlawful possession of a firearm, Sec. 571.070 RSMo. (E3-E4, E5, E7, E9-E10).

4. At the outset, Relator wishes to make clear to this Court that although the issue in this writ arises in the context of the Area 16 Public Defender Office's attempt to not accept new cases due to excessive caseload, that is not the issue Relator is raising herein. Relator will be pursuing other avenues of relief with the Jackson County Circuit Court regarding excessive caseload. The sole issue Relator raises herein is that the trial court lacked authority to appoint a specific Public Defender attorney to Mr. Nevels' case under ***State ex rel. Robinson v. Franklin***, *supra*.[2]

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[1] The exhibits in this case are page numbered consecutively E1, etc., and are referred to by individual "E" page number herein. "E" stands for exhibits.

[2] A copy of this case is in the Exhibits beginning at p. E76.

5. On Oct. 13, 2017, District Defender Petsch sent an email to Jackson County Presiding Judge John M. Torrence to notify the Jackson County Circuit Court that due to excessive caseloads in the Area 16 Jackson County Public Defender Office, the attorneys in her office were not able to provide ethical and competent representation to further clients, and, as a result, were creating a waiting list for defendants who qualify for representation but for whom there is no attorney available (E58-E59). Petsch cited, among other authorities, ***State ex rel. Missouri Public Defender Commission v. Waters***, 370 S.W.3d 592, 607 (Mo. banc 2012), citing Rules 4-1.1, 4-1.3, and 4-1.4, for the directive that attorneys violate the Rules of Professional Conduct if they "accept[] a case that results in a caseload so high that it impairs [their] ability to provide competent representation, to act with reasonable diligence, and to keep the client reasonably informed" (E59). Petsch wrote that as soon as caseloads fall to an ethical level, she would begin assigning new cases to attorneys in her office (E59). Petsch's action came after the Missouri Supreme Court recently disciplined another Public Defender attorney (E58). Although there was no opinion issued in that case, the Office of Chief Disciplinary Counsel's brief and individual judges' comments at oral argument indicated that Public Defender attorneys cannot defend themselves from discipline with evidence of an excessive caseload (E58).[3]

6. On Oct. 17, 2017, Presiding Judge Torrence wrote to Petsch to inform her that the Executive Management Committee of the Court en banc had discussed her email

[3] This occurred in the case of ***In re Hinkebein***, No. SC96089.

and "unanimously agree[d] that your position is invalid and unlawful. Consequently, the judges of the 16th Circuit will continue to appoint you and your office to represent eligible persons charged with new offenses" (E60). Judge Torrence asked Petsch to meet with the Court in an "informal process" or to invoke the provisions of Sec. 600.063 RSMo. to deal with the caseload issue (E63).

7. Meanwhile, in Mr. Nevels' case, on Oct. 16, 2017, Respondent Judge Campbell held an initial appearance hearing on the probation violation (E33). The State requested that an attorney be appointed for Mr. Nevels (E35). Judge Campbell found that due process required appointment of counsel, and asked the Public Defender attorney assigned to that courtroom, Gara Feldman-Gary, if Mr. Nevels qualified for Public Defender representation (E35). Feldman-Gary said he does qualify, but that he had been placed on the Public Defender's waiting list (E35). Judge Campbell then directed the "Missouri public defender to represent him in this matter. So whether that's you Ms. Feldman-Gary or you go get somebody else over here to represent him but he needs to be represented" (E36). After additional discussion following Feldman-Gary telephoning her supervisor for direction, Judge Campbell reiterated, "I've appointed the Missouri Public Defender's Office. Who's representing him?" (E37). Feldman-Gary said her supervisor would be available to speak to the court later in the day, but the court said:

> THE COURT: Well, you're here now. Who do you work for?
>
> MS. FELDMAN-GARY: I work for the Public Defender's Office of the State of Missouri.
>
> THE COURT: So represent him. ...

(E37-E38).

8. After further discussion, Feldman-Gary informed the court that ***State ex rel. Robinson v. Franklin***, 48 S.W.3d 64, states that a court does not have authority to appoint a specific Public Defender attorney (E38). The court said: "I didn't. I appointed the Missouri public defender. You are the Missouri public defender specifically assigned to this division for special actions; am I correct about that?" (E39). Feldman-Gary said yes (E39). The court then said there is a statute that the Public Defender shall not refuse appointment (E39). After further discussion, the court said it was "entering an order directing the Missouri public defender to represent the defendant" (E41). "The Court will further order that the district defender of the Missouri Public Defender's Office Ruth Petsch shall appoint and provide counsel for the defendant Mr. Nevels and have counsel prepared to appear, enter their appearance, and represent the defendant" on October 19 (E42).

9. On Oct. 16, 2017, the court issued a written order that "District Defender Ruth Petsch, of the Missouri Public Defender, shall provide counsel for defendant, have counsel prepared to appear and enter appearance, and represent defendant" on October 19 (E12).

10. On October 19, 2017, Petsch entered an appearance "under objection and order of court" (E13). She referenced her prior email to Presiding Judge Torrence; Rules 4-1.1, 4-1.3, 4-1.4 and 4-1.7; and ***Waters***, *supra*, for her inability to accept new cases (E13). She expressly reserved the right to pursue appellate remedies to vacate the appointment (E14).

11. Also on October 19, 2017, Petsch filed a motion to reconsider and vacate the appointment on various grounds, primarily having to do with her ethical obligations under Rule 4 prohibiting her from accepting new cases (E15 – E31).

12. On October 19, 2017, Judge Campbell resumed the probation revocation matter. Petsch said that she wanted to present evidence about all attorneys in her office and their obligations under Rule 4 (E47). The court said, "Well, I have appointed you as the public defender" (E47). After further discussion, including that the other attorneys in Petsch's office believe they would violate Rule 4 by accepting new cases, the court told Petsch, "**Well, I haven't appointed a single one of them other than you, Ms. Petsch**. So I see no purpose in allowing you to present that evidence" (E51)(emphasis added). The court denied the motion to reconsider (E51). The court then said:

> THE COURT: Do you wish to represent Mr. Nevels? Do you wish to file a writ? I am more than happy to let you do either of those two things. Or do you wish to disobey the Court and proceed under a contempt proceeding? What's your preference?

(E51). Petsch said she had entered the case [under objection] and would go forward, but that she would also pursue a writ (E51-E52).[4] The court denied the motion to reconsider

[4] ABA Formal Opinion 06-441 (May 13, 2006)(Ethical Obligations of Lawyers Who Represent Indigent Criminal Defendants When Excessive Caseloads Interfere With Competent and Diligent Representation) states that when a Public Defender is not allowed to withdraw from a case in the face of excessive caseload, the Public Defender

and reset the probation violation hearing for October 26, 2017, to allow for a writ (E52-E53).

13. Later on October 19, 2017, the court entered a written order stating, in relevant part:

> The Court finds that the Defendant, Keith A Nevels is qualified for appointment of counsel. The Office of the Missouri Public Defender has entered their appearance with objection. The Missouri Office of State Public Defender has not obtained prior approval from a court of competent jurisdiction to refuse representation. The Missouri Office of State Public Defender has not sought relief pursuant to RSMo. Section 600.063. Therefore, it is clear that the Missouri Office of State Public Defender is obligated under RSMo Section 600.062 to represent the Defendant, Keith A Nevels.[5]

(E30).

14. This petition for a writ of prohibition follows.

RELIEF SOUGHT

15. Relator, District Defender Petsch, moves this Court to issue a Writ of Prohibition against Respondent, the Hon. Patrick W. Campbell, Circuit Judge of the

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must obey the court's order while pursuing appellate remedies. ***Id.*** at 6 and n. 24. A copy of this ABA opinion is in the Exhibits beginning at p. E63.

[5] A copy of Secs. 600.062 and 600.063 are in the Exhibits beginning at p. E72.

Jackson County Circuit Court, to prohibit Judge Campbell's order of October 19, 2017, which ultimately appointed Ms. Petsch personally to represent Keith A. Nevels, contrary to this Court's holding in ***State ex rel. Robinson v. Franklin***, *supra*, that a trial court exceeds its authority in appointing a specific Public Defender attorney to a specific case. Judge Campbell exceeded his authority in appointing a specific Public Defender attorney to Mr. Nevels' case.

STATEMENT OF REASONS WHY WRIT SHOULD ISSUE

16. "The extraordinary remedy of a writ of prohibition is available: (1) to prevent the usurpation of judicial power when the trial court lacks authority or jurisdiction; (2) to remedy an excess of authority, jurisdiction or abuse of discretion where the lower court lacks the power to act as intended; or (3) where the party may suffer irreparable harm if relief is not granted." ***State ex rel. Mo. Pub. Def. Comm'n v. Pratte***, 298 S.W.3d 870, 880 (Mo. banc 2009).

17. Prohibition may be used to "undo" acts done by a court "as long as some part of the court's duties in the matter remain to be performed" and may be used "to restrain further enforcement" of the court's orders. ***Id.*** (citation omitted).

18. In ***Franklin***, 48 S.W.3d at 65-66, a trial judge ordered two specific Public Defender System attorneys – the Director of the Public Defender System and the Trial Division Director – to enter their personal appearances for a defendant, after five other Public Defender attorneys had entered the case but ultimately withdrew due to leaving the Public Defender Office. The trial court believed it had authority to order this due to

its "broad discretion in controlling its docket" and to "break the chain of continuances made by withdrawing defenders." ***Id.*** at 69.

19. The Public Defender sought a writ of prohibition from this Court on grounds that the trial court's order appointing specific Public Defender attorneys exceeded the trial court's authority, because the authority to assign specific Public Defender attorneys was vested solely in the Director of the Missouri Public Defender System under Chapter 600 RSMo. ***Id.*** at 66. This Court agreed, and issued a permanent writ of prohibition. ***Id.*** at 70.

20. This Court held that under Chapter 600, which created the Public Defender System, a trial court's sole role is to determine, upon motion by either party, "whether the services of the public defender may be utilized by the defendant." ***Id.*** at 69 (quoting Sec. 600.086.3 RSMo.). "The statute provides no authority, other than indigency determinations, for the court to be involved in the functions of the system, including assignment of particular counsel to cases." ***Id.*** "That authority is left to the Director and his representatives." ***Id.*** (citing Sec. 600.042.5(2), which states "The director may … [d]esignate persons as representatives of the director for the purpose of making indigency determinations and assigning counsel"). "The appointment of specific counsel within the public defender system, and particularly the Director, to represent indigent defendants is beyond the court's jurisdiction." ***Id.***

21. Here, Respondent Judge Campbell exceeded his authority in ultimately appointing District Defender Petsch personally to represent Mr. Nevels (E51). While it appears that Judge Campbell, at least in his initial order of October 16, may have

intended only to cause Ms. Petsch to assign counsel (E12)("Ruth Petsch, of the Missouri Public Defender, shall provide counsel for defendant, have counsel prepared to appear, and enter appearance....")(*see also* E36, E37, E41-E42), at the October 19 hearing, he appointed Petsch personally (E51)("Well, ***I haven't appointed a single one of them [the other attorneys in Petsch's Office] other than you, Ms. Petsch***.")(emphasis added). Under ***Franklin***, Judge Campbell exceeded his authority in appointing a specific Public Defender attorney to represent Mr. Nevels. Judge Campbell was authorized only to appoint the Public Defender System, and to allow the Public Defender Director, or his designee, to then assign the particular counsel to the case.

22. Nothing in Secs. 600.062 or 600.063 changes the holding in ***Franklin***. Sec. 600.062 provides that the Public Defender shall not limit its acceptance of cases based on a "caseload standard," and that the Public Defender "may not refuse to provide representation required under this chapter without prior approval from a court of competent jurisdiction." Sec. 600.063 provides a procedure for a District Defender to request a conference with a court to discuss caseload issues and seek possible relief. Although Relator contested the applicability of both statutes in the trial court and may continue to do so in future cases as events warrant, for purposes of this writ proceeding, Relator is not raising any claims under Secs. 600.062 or 600.063. For purposes here, nothing in either statute authorizes a trial court to appoint a specific Public Defender attorney. *See* Secs. 600.062 and 600.063. Assuming *arguendo* that the statutes applied – which Relator does not concede – Judge Campbell was authorized under ***Franklin*** only

to appoint the Public Defender System, and to allow the Public Defender Director, or his designee, to then assign the particular counsel to Mr. Nevels' case.

23. In short, Judge Campbell exceeded his authority in appointing Relator Petsch to personally represent Mr. Nevels. This Court should issue a writ of prohibition to order Respondent Judge Campbell to rescind the order that Ms. Petsch personally represent Mr. Nevels.

WHEREFORE, Relator respectfully requests that this Court issue a preliminary Writ of Prohibition against the Respondent, to prohibit Judge Campbell's order of October 19, 2017, which ultimately appointed Ms. Petsch personally to represent Keith A. Nevels, contrary to this Court's holding in ***State ex rel. Robinson v. Franklin***, 48 S.W.3d 64 (Mo. App. W.D. 2001), that a trial court exceeds its authority in appointing a specific Public Defender attorney to a specific case.

After a preliminary writ and opportunity for Respondent to respond, Relator requests that this Court make the writ permanent, or alternatively, order full briefing, and thereafter, make the writ permanent.

Respectfully submitted,

/s/ J. Gregory Mermelstein

J. Gregory Mermelstein, MO Bar #33836
Attorney for Relator
Woodrail Centre, Bldg. 7, Suite 100
1000 W. Nifong Blvd.
Columbia, MO 65203
Phone: 573-777-9977
Fax: 573-777-9973
E-Mail: Greg.Mermelstein@mspd.mo.gov

CERTIFICATE OF SERVICE

I, J. Gregory Mermelstein, hereby certify that on this 25th day of October, 2017, a true and correct copy of the foregoing was mailed postage prepaid to:

Hon. Patrick W. Campbell
Circuit Judge, Division 10
Jackson County Circuit Court
415 E. 12th St. – 8th Floor
Kansas City, MO 64106
Telephone: 816-881-3610; and,

Jamie Hunt
Prosecuting Attorney, Jackson County
415 E. 12th St. – 11th Floor
Kansas City, MO 64106
Telephone: 816-881-3000; and,

Keith A. Nevels
2949 Park
Kansas City, MO 64109

I further hereby certify that on this 25th day of October, 2017, a true and correct copy of the foregoing was placed for delivery through the Missouri e-filing System for filing in *State v. Keith A. Nevels*, No. 1616-CR01742-01.

/s/ J. Gregory Mermelstein

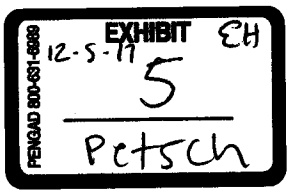
J. Gregory Mermelstein

MSPD - 0039233

Exhibit OO

IN THE MISSOURI COURT OF APPEALS
_____ DISTRICT

STATE EX REL. ASSISTANT PUBLIC DEFENDER _____,	)	
Relator,	)	
vs.	)	No. _____
HON. _____,	)	
Respondent.	)	



SUGGESTIONS IN SUPPORT OF WRIT OF PROHIBITION AND/OR MANDAMUS

The Writ of Prohibition and/or Mandamus filed by Relator, Assistant Public Defender _____, should be granted for the following reasons:

1. There is no exception to the rules of professional conduct for Public Defenders. ***State ex rel. Mo. Pub. Def. Comm'n v. Waters***, 370 S.W.3d 592, 608 (Mo. banc 2012); ***State ex rel. Mo. Pub. Def. Comm'n v. Pratte***, 298 S.W.3d 870, 880 (Mo. banc 2009). Public Defenders "themselves are risking their own professional lives" if they violate the professional rules. ***Pratte***, 298 S.W.3d at 880.

2. The Missouri Supreme Court has held that the rules of professional conduct impose on all attorneys an ethical duty to provide effective assistance of counsel to all of their clients, and that attorneys violate these rules if they "accept[] a case that results in a caseload so high that it impairs [their] ability to provide competent representation, to act

with reasonable diligence, and to keep the client reasonably informed." ***Waters***, 370 S.W.3d at 607 (Mo. banc 2012)(citing Rules 4-1.1, 4-1.3 and 4-1.4).

3. The Court has held that these duties apply not just to new clients, but to existing clients, "so that an attorney's acceptance of a new case violates Rule 4-1.7 if it compromises [his or] her ability to continue to provide effective assistance to [his or] her other clients." ***Id.*** "[A] lawyer shall not represent a client if the representation involves a concurrent conflict of interest, which exists if there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client." ***Id.*** at 607-08 (citing Rule 4-1.7(a)(2); internal quotation marks omitted). "[A] conflict of interest is inevitably created when a public defender is compelled by his or her excessive caseload to choose between the rights of the various indigent defendants he or she is representing." ***Id.*** at 608 (citation and internal quotation marks omitted).

4. Rule 4-1.16(a) provides, in relevant part, that "a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if: (1) the representation will result in violation of the rules of professional conduct or other law[.]"

5. Counsel does not have adequate time or resources to ethically, effectively and competently represent Defendant in this case, in addition to counsel's other clients. If counsel must represent Defendant, counsel will be forced to choose amongst counsel's clients as to whom to provide ethical, effective and competent representation. Counsel will be forced to violate or risk violating Rules 4-1.1 (competence), 4-1.3 (diligence), 4-

1.4 (communication), and 4-1.7 (conflict of interest), as well as the Sixth Amendment right to effective assistance of counsel.

6. Comment 2 to Rule 4-1.3 mandates that "[a] lawyer's work load must be controlled so that each matter can be handled competently."

7. ABA Formal Opinion 06-441 requires that "[i]f a lawyer believes that [his or] her workload is such that [he or] she is unable to meet the basic ethical obligations required of [him or] her in the representation of a client, [he or] she must not continue the representation of that client or, if representation has not yet begun, [he or] she must decline the representation." ABA Formal Opinion 06-441 at 4 (copy submitted as **Exhibit A**).

8. Judges, too, have an obligation to ensure that indigent defendants are represented by appointed counsel who can be competent, ethical and effective in their particular cases. ***Pratte***, 298 S.W.3d at 875. Judges must ensure that appointed counsel are able to effectively investigate, prepare for and present defendants' cases. ***Id.*** 9.

9. The Sixth Amendment right to effective counsel at all critical stages is not just to be determined after a guilty plea or trial. ***Waters***, 370 S.W.3d at 607. The right to effective counsel is "prospective" and applies to all critical pretrial stages. ***Id.*** at 606.

10. "Simply put, a judge may not appoint counsel when the judge is aware that, for whatever reason, [the] counsel is unable to provide effective representation to a defendant. Effective, not just pro forma, representation is required by the Missouri and federal constitutions." ***Id.*** at 607.

11. If Relator must represent Defendant, Relator will be unable to comply with the rules of professional conduct, and will be unable to fulfill Relator's constitutional obligations to provide effective assistance of counsel under the Sixth and Fourteenth Amendments to the United States Constitution and Article I, Sections 10 and 18(a) of the Missouri Constitution. Defendant will be denied the rights to ethical and competent counsel, effective assistance of counsel, conflict-free counsel and due process under the rules of professional conduct and these federal and state constitutional provisions.

WHEREFORE, Relator respectfully requests that the Petition for Writ of Prohibition and/or Mandamus be sustained, and Relator be permitted to withdraw from Defendant's case.

Respectfully submitted,

Assistant Public Defender
Bar No. XXXXX
Address:
Telephone:
FAX:
Email:

CERTIFICATE OF SERVICE

IN ADDITIONAL TO PROSECUTOR'S NAME AND ADDRESS, INCLUDE CLIENT'S NAME AND ADDRESS ON CERT. OF SERVICE TO PROVE THAT YOU ARE KEEPING CLIENT INFORMED OF YOUR MOTION TO WITHDRAW FROM CASE. RULES OF PROFESSIONAL CONDUCT REQUIRE THIS. YOU MUST ALSO INFORM THE CLIENT WHEN WITHDRAWAL IS GRANTED.

Exhibit PP

MISSOURI STATE PUBLIC DEFENDER
NOTICE PURSUANT TO 18 CSR 10-4.010 OF PENDING CERTIFICATION OF PUBLIC DEFENDER LIMITED AVAILABILITY

TO: The Thirty-Eighth Judicial Circuit,

Judge: Mark Orr, presiding,

District Public Defender: Rod Hackathorn

BE ADVISED:

The Missouri State Public Defender has determined that the district office serving your circuit has exceeded the Public Defender Commission's maximum caseload standard for a period of three consecutive calendar months and is therefore at risk of certification pursuant to 18 CSR 10-4.010.

This is notice pursuant to the Missouri Public Defender Commission Rule on Caseload and 18 CSR 10-4.010(C), requiring State Public Defender to provide notice to the presiding or chief judge of each affected court that the public defender office for the circuit is at risk of being certified at least one calendar month prior to certification.

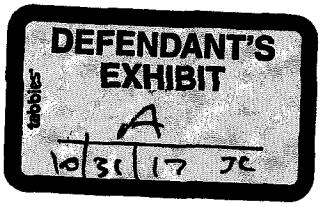
State Public Defender

Date: 1/6/10

EXHIBIT
52
12.20.17
PENGAD 800-631-6989

Exhibit QQ

Walter J. Stokely 8734 Grande Pas, Kansas City MO, 64114 573-469-1641



October 31, 2017

Before me, the undersigned authority, personally appeared Walter Stokely, who being by me duly sworn, deposed as follows:

To Whom It May Concern:

My name is Walter Stokely, I am of sound mind, capable of making this affidavit, and personally acquainted with the facts herein stated:

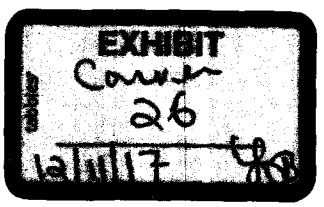
This letter is concerning the high caseload that public defenders in the Missouri State Public Defender System's Area 19 (Jefferson City) trial office have experienced in recent years.

I was an assistant public defender in Area 19 from April of 2013 through February of 2017. During that time, I was the lead attorney on well over a thousand cases in counties including Boone, Camden, Cole, Maries, and Miller.[1] My primary caseload was in Cole County.

Within one week of beginning my employment in Area 19, with no criminal law training or experience outside of one summer internship, I was given a stack of (about sixty, as best I can recall) already open files to work as lead attorney. Several attorneys having recently departed, the office had no choice. Soon after that, in December of 2013, after only eight months of practicing criminal law, I was the lead attorney on a felony case that went to jury trial. By the time of my departure, less than four years later, I had tried three sex felony cases in front of juries while also handling charges such as arson, murder, robbery – the whole gamut.

During my time in Area 19, four of the then seven attorney positions turned over, some several times. The resulting caseload redistribution caused the number of open, active cases assigned to me to surpass two hundred. This happened multiple times. When the office was fully staffed, my "normal" caseload would usually settle out around one hundred and twenty open, active cases.

During no time in my employment in Area 19 did I feel my clients were getting adequate, competent representation. Even during the best of times, it was impossible to adequately prepare for each jury trial (of the several that would typically be set each month), conduct an adequate investigation on each case, keep each client reasonably informed as to the status of their case and upcoming court dates, litigate things such as suppression issues, review discovery, or conduct necessary depositions, to name some of a criminal defense attorney's



duties. On top of this, just in Cole County, I was appearing in court nearly every workday, oftentimes for the majority of the workday.

Due to the high caseload, I was often unable to give clients competent representation. Additionally, my attention was so divided among the many cases that clients suffered as a result. One jury trial meant at least one hundred other clients' cases gathered dust for one week at a minimum. Despite complaints to my bosses, cases were continually assigned to me to the point where few if any clients received competent representation. When clients would phone or write with requests or questions, I was unable to return their communications or do what they asked in a reasonable time. Many complained to the Court that I never returned their calls, or made time to see them in person. This was doubly true for incarcerated clients, of which there were many in the Cole County jail, and in Missouri Department of Corrections facilities across the state.

Because of all of these issues, there were discussions within the office, particularly toward the end of my tenure, regarding how to limit Area 19 public defender caseloads. More manageable caseloads would mean for Area 19 not only that attorneys are complying with relevant Missouri Supreme Court ethics rules, but also that the defendants – our clients – are receiving competent, adequate representation, as the Constitution guarantees. With a reasonable and workable caseload, the problems described above could be mitigated, or even eliminated. Until then, Area 19 attorneys, at least when I was there, felt that our bar licenses were in jeopardy, but more importantly that the State of Missouri was failing in its duty to provide adequate and competent legal representation to criminal defendants.

In short, I was failing in my ethical duties to my clients as an attorney. Criminal defendants have a right to counsel, but I was only able to act as their counsel as time would allow, which was inadequate for too many.

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[1] This is to say nothing of the estimated hundreds of other cases that were never formally assigned to me, but I still worked as the primary attorney in associate court, before the office switched to "vertical representation" in 2014.

Walter J. Stokely

Subscribed and sworn to before me on this 30 day of October, 2017.

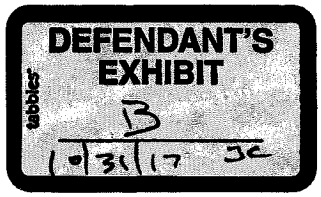
Notary Public

DEBORAH L. REUSCHER
Notary Public - Notary Seal
State of Missouri
Commissioned for Clay County
My Commission Expires: February 26, 2020
Commission Number: 12544825

My commission expires :

Feb 26, 2020

AFFIDAVIT
STATE OF MISSOURI



Before me, the undersigned authority, personally appeared James Matthew Willis, who being by me duly sworn, deposed as follows:

My name is James Matthew Willis, I am of sound mind, capable of making this affidavit, and personally acquainted with the facts herein stated:

I have been a licensed attorney with the Missouri Bar since September 2014. My Missouri Bar number is 67359. I became employed as an Assistant Public Defender on April 20, 2015.

I have asked my District Defender, Justin Carver, to assign no additional cases to me at this time. I made that request because I believe accepting any additional cases would make it impossible for me to continue to provide competent, effective legal counsel to each of my current clients.

I currently have 92 open cases. This includes 2 homicides, 1 Burglary 1st, 2 Robbery 1st cases, 4 A-B Felony sex cases, 20 misdemeanors, and 5 felony probation violations.

Here is a list of my current open cases:

1) Jeffery Millens, Jr – 17AC-CR0001-01 - Murder 2nd – Currently incarcerated at Jefferson City Correctional Center
2) Michael Phillips – 17AC-CR0507-01 - Murder 2nd - Currently incarcerated at Cole County Jail
3) John Buff – 15AC-CR00532 - Possession of a controlled substance with intent to distribute - Currently incarcerated at Southeast Correctional Center
4) Victoria Petrie – 16AC-CR01862-01 - Possession of a controlled substance with intent to distribute
5) Shawn Rose – 17AC-CR01015 - Committing Violence Against an Employee of the Department of Corrections - Currently incarcerated at Fulton Department of Mental Health
6) Montea Mitchell – 14AC-CR01031 - Committing Violence Against an Employee of the Department of Corrections - Currently incarcerated at Petosi Correctional Center
7) Johnathan Gill – 17AC-CR01316-01 - Burglary 1st
8) Johnathan Gill – 17AC-CR00644 - D Felony Stealing
9) Kane Carpenter – 17AC-CR00346-01 - Robbery 1st - Currently incarcerated at Cole County Jail -
10) Kane Carpenter – 16AC-CR02733-01 - Robbery 1st - Currently incarcerated at Cole County Jail

11) Scott Jackson – 13AC-CR01497-01 - Robbery 1st
12) Jeremy Johnson – 17AC-CR00175-901 - Robbery 2nd
13) James Stude – 15AC-CR02490-01 - Arson 2nd
14) Jeanne Capozzoli – 15AC-CR03396-01 - B Felony DWI
15) Julio Clark – 17AC-CR0573-01 - Child Molestation 2nd Degree - Currently incarcerated at Cole County Jail
16) William Giesing – 16AC-CR02926-01 - Forcible Rape - Currently incarcerated at Crossroads Correctional Center
17) James Darden – 16AC-CR00730 - Statutory Rape 2nd
18) Robert Taylor – 15AC-CR02703 - Enticement of a Child
19) Michael Rose – 17AC-CR0718 - Delivering or Concealing Prohibited Items on Premises - Currently incarcerated at Maryville Treatment Center
20) Robert Caldwell – 17AC-CR00593 - Delivering or Concealing Prohibited Items on Premises - Currently incarcerated at Tipton Correctional Center
21) Wyond Bynum – 17AC-CR00526 - Possession of a Controlled Substance
22) Wyond Bynum – 16AC-CR02527-01 - Possession of a Controlled Substance
23) Wyond Bynum – 17AC-CR0003-01 - Driving While Revoked
24) Lance Bibbs – 16AC-CR03073 - Possession of a Controlled Substance
25) Dalton Stuart – 17AC-CR00749 - Possession of a Controlled Substance - Currently incarcerated at Eastern Reception and Diagnostic Center.
26) Scott Cardwell – 17AC-CR00750 - Possession of a Controlled Substance - Currently incarcerated at Tiption Correctional Center
27) Elmber Jackson – 17AC-CR00398-01 Possession of a Controlled Substance - Algoa Correctional Center
28) Alyssa Smith – 15AC-CR00970 -01 - Possession of a Controlled Substance
29) Jeremy Maxwell – 16AC-CR01777-01 - Possession of a Controlled Substance - Currently incarcerated at Cole County Jail
30) Cassady Bible – 16AC-CR02334-01 - Possession of a Controlled Substance
31) Daniel Loepke – 16AC-CR03050-01 - Possession of a Controlled Substance
32) David Graham – 16AC-CR02830-01 - Possession of a Controlled Substance
33) David Graham – 16AC-CR02713-01 - Possession of a Controlled Substance
34) David Graham – 17AC-CR00198-01 - Receiving Stolen Property
35) Victoria Petrie – 16AC-CR02226-01 - Possession of a Controlled Substance
36) Robert Jones – 17AC-CR01048 - Delivery of a Controlled Substance
37) Kelley Mayer – 17AC-CR01143 - Delivery of a Controlled Substance - Currently incarcerated at Women's Eastern Reception and Diagnostic Center
38) Javaughn Hodges – 16AC-CR00275 - Failure to Appear – Currently incarcerated at Farmington Correctional Center
39) Brandon Wysong – 17AC-CR01317 - Tampering 1st Degree
40) Emmit Dorsey – 17AC-CR01447 - Property Damage 1st Degree
41) Joann Dent – 16AC-CR02559 - Property Damage 1st Degree
42) Benjamin Crawford – 17AC-CR01001 - Burglary 2nd Degree
43) Jeffrey McGee – 16AC-CR03262-01- Burglary 2nd Degree
44) Antonio Moore – 16AC-CR00213-01 Burglary 2nd Degree
45) Craig Jones – 16AC-CR02356-01 Stealing 3rd – Currently incarcerated at Tiption Correctional Center

46) Craig Jones – 17AC-CR00229-01 Stealing 3rd - Currently incarcerated at Tiption Correctional Center
47) Antonisha Solomon – 17AC-CR00208-01 - Stealing 3rd
48) Scott Campbell – 16AC-CR03342-01 - Stealing 3rd – Currently incarcerated at Algoa Correctional Center
49) Kandas Barnes – 16AC-CR01232-01 - Stealing 3rd - Currently incarcerated at Chillicothe Correctional Center
50) Amos Taylor – 17AC-CR00255-01 - Stealing 3rd
51) Christy Cook – 16AC-CR03261-01 - Stealing 3rd
52) Robert Kalvans-Beardsley – 16AC-CR00183-01 - Receiving Stolen Property
53) Robert Kalvans-Beardsley – 16AC-CR00184-01 - Receiving Stolen Property
54) Edmund Curry – 16AC-CR02354-01 - Receiving Stolen Property
55) Tara Taylor – 17AC-CR00181-01 - Receiving Stolen Property - Currently incarcerated at Chillicothe Correctional Center
56) Adam Wray – 17AC-CR0433-01 – Receiving Stolen Property
57) Brandon Wysong – 17AC-CR00425-01 - Forgery
58) Emmit Dorsey – 16AC-CR02489-01 - Forgery
59) Brandon Wysong – 16AC-CR01401-01 - Unlawful Use of a Weapon
60) Hannah Park – 16AC-CR03081-01 - Assault 2nd
61) Julio Clark – 16AC-CR01810-01 - Domestic Assault 2nd
62) Anthony Turner – 15AC-CR03389 - Criminal Nonsupport
63) Arik Byers – 16AC-CR03389 - Abuse or Neglect of a Child
64) Joseph Waters – 15AC-CR02493-01 - Passing a Bad Check
65) Dana Hayes – 16AC-CR01494-01 - Passing a Bad Check
66) Derrick Wooten – 17CC-CR00159 - Post-Conviction Bazell Claim - Currently incarcerated at Jefferson City Correctional Center
67) Antonisha Solomon – 16AC-CR02574 - Possession of a controlled substance - misdemeanor
68) Ashlie Grieser – 15AC-CR02296 - Unlawful Use of Paraphernalia – misdemeanor
69) David Graham – 16AC-CR03123 - Unlawful Use of Paraphernalia – misdemeanor
70) Elmer Jackson – 16AC-CR00545 - Unlawful Use of Paraphernalia – misdemeanor - Currently incarcerated at Algoa Correctional Center
71) Louis Minor – 16AC-CR02470 - Unlawful Use of Paraphernalia – misdemeanor
72) Wyond Bynum – 16AC-CR02450 - Driving While Suspended - Misdemeanor
73) Emmit Dorsey – 17AC-CR00527 - Assault 4th Degree
74) Emmit Dorsey – 16AC-CR02657 - Domestic Assault 3rd Degree
75) Emma Randall – 16AC-CR02282 - Assault 3rd Degree
76) Kane Carpenter – 16AC-CR02740 - Assault 3rd Degree
77) Edmund Curry – 17AC-CR00461 - Criminal Nonsupport – misdemeanor
78) Gevelle Jumper – 17AC-CR00356 - Trespass 1st Degree - Currently incarcerated at Cole County Jail
79) Gevelle Jumper – 17AC-CR003567 - Trespass 1st Degree
80) Gevelle Jumper – 17AC-CR00357 - Trespass 1st Degree
81) Gevelle Jumper – 17AC-CR00358 - Trespass 1st Degree

82) Daniel Loepke – 17AC-CR00891 - Stealing - Misdemeanor
83) Jonathan Gill – 17AC-CR01361 - Stealing – Misdemeanor
84) Dennis Elkin – 15AC-CR03309 - Passing a Bad Check - Misdemeanor
85) Chad Juergens – 16AC-CR00778 - Driving While Suspended – Misdemeanor
86) Scott Jackson – 11AC-CR01108-01 - Felony Probation Violation
87) Zachary Wimberley – 14AC-CR02652-01 - Felony Probation Violation
88) Phillip Word – 13AC-CR01307-01 - Felony Probation Violation
89) Scott Roberts – 14AC-CR01371 - Felony Probation Violation
90) Robert Kalvans-Beardsley – 14AC-CR00165 - Misdemeanor Probation Violation
91) Angela Luckett – 14AC-CR00141 - Misdemeanor Probation Violation
92) Lance Bibbs – 16AC-CR01239 - Misdemeanor Probation Violation

I started with the public defender system in 2015. At the time there was no discernable restriction on caseload. It was simply a matter of doing your best with the cases you were assigned. It was not common to hire experts, examine scientific data, challenge lab results, or even conduct depositions.

As a criminal defense attorney, our primary ethical duty is to the client. As a public defender, I have a duty to represent the poor. Until recently, I have let them down. Without restrictions on caseload, that ethical responsibility is demolished. Put plainly, without restrictions on caseload, I cannot represent clients effectively.

Effective representation is sometimes hard to define, but I think we can look at it through the course of working on a case. 1) meeting with clients; 2) reviewing discovery; 3) investigating a case. Each step requires an extraordinary amount of work.

First, meeting with clients can be difficult. The first issue is simply that I have 22 clients currently incarcerated throughout the state. I have clients in Algoa Correctional Center, Camden County Jail, Chillicothe Correctional Center, Cole County Jail, Eastern Reception and Diagnostic Center, Farmington Correctional Center, Fulton Department of Mental Health, Fulton Reception and Diagnostic Center, Jefferson City Correctional Center, Northeast Correctional Center, Petosi Correctional Center, South Central Correctional Center, Southeast Correctional Center, Tipton Correctional Center, Western Reception and Diagnostic Center, and Women's Eastern Reception and Diagnostic Center.

The second issue is that scheduling meetings means going through red tape. Many facilities only allow visits on specific days. For example, JCCC only allows visits on Monday and Thursday from 9am through 3pm, and Friday from 9:30am to 1:30pm and 2:30-6:30pm. Further, DOC has recently changed their policies with confidential phone calls. Previously, a phone call was relatively simple to set up. It was even possible to speak to a client the day you set up the call. Now, however, all calls must be set up 24 hours in advance, and the calls have to be scheduled through the central office in Columbia. To be clear, this means that every single public defender in the State of Missouri has to schedule phone calls through a single telephone line in Columbia. This means that some calls have to be scheduled far in advance.

Even if a client is out of custody, it is difficult to meet with a client. I have clients throughout the state. Some clients live in rural areas where cell phone reception is spotty. Further, our clients are indigent. They lack resources we take for granted. They do not have cars or transportation. These are simple resources that most of us have in the criminal justice system, but our clients do not.

Another factor in is reviewing discovery. In one case, there are over 30 CDs of photographs, videos, and medical evidence spanning hundreds of pages. Each photograph must be parsed, and each video must be viewed. Further, effective representation requires speaking to each witness. In another case, I have hundreds of pages of medical and mental health records that need to be analyzed.

Finally, there is the task of actually investigating the case. Many cases, are eyewitness identification cases. In order to be effective, I need to speak with each witness, either through our investigator or through depositions. Our investigator is excellent and efficient. However, he is the only investigator in our office, and he must investigate 694 cases assigned to seven attorneys spanning three counties.

Locating witnesses is often time-consuming. Witnesses often change addresses, change phone numbers, or relocate with friends and family, all without notice. Our investigator must track down leads, speak with friends and co-workers, and navigate social media in order to track down a witness.

For example, one client was an immigrant from the Philippines. He was accused of very serious conduct, and it was likely that he the ultimate resolution of the case would be his deportation. I had to work with the consulate in America, as well as research immigration law, to work out a resolution.

For many clients, I am the third or fourth attorney on their case. In one unfortunate case, my client was passed from attorney to attorney before the case was dismissed. My client did not have time to celebrate, however, because the state refiled and I was ultimately assigned. In another case, even though I am the third attorney, previous counsel had been unable conduct depositions. Even though the case has been pending for over one year, it is still necessary to depose the witnesses. Essentially, I have to treat the case as though I am the first attorney on the scene, and work the case from the ground up.

Finally, I must discuss a policy of caseload restrictions. This year marks the first time in my career that I have been allowed to restrict my caseload. Over the past six months, I have been able to spend time educating myself on the law and science. I have consulted with experts from across the county. They have helped me understand the new Daubert standard in Missouri and assisted in motion practice. I have been able to spend more time crafting motions and assisting clients. I have had time to research areas of the law, I would otherwise have been unable to research. I would not have been able to

effectively assist my clients absent relief. Without these restrictions, I would not be ethical.

The poor deserve the type of representation the constitution requires. Caseload restrictions are absolutely necessary to ensuring the poor get the representation they deserve.

Affiant

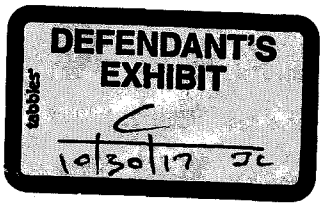
In witness whereof I have hereunto subscribed my name and affixed my official seal this 30 day of October, 2017.

(Signed)

THERESA M. SCHAEFER
Notary Public - Notary Seal
STATE OF MISSOURI
Cole County
Commission # 13452968
My Commission Expires: 12-09-2017

(Seal)

AFFIDAVIT
STATE OF MISSOURI



Before me, the undersigned authority, personally appeared Taylor Elswick, who being by me duly sworn, deposed as follows:

My name is Taylor Elswick- MO Bar Number 69810, I am of sound mind, capable of making this affidavit, and personally acquainted with the facts herein stated:

I took the Missouri Bar Exam in February 2017 and found out I passed in April 2017. I became employed in the Jefferson City Public defender's office on June 5, 2017. I have been practicing law for approximately four months.

In order to provide adequate and diligent representation, I have indicated each month that I am not able to take on additional cases. Each month, we are assigned a number of cases and asked if we can competently take additional cases. In my professional judgement, I do not believe I can take on additional cases after I have been allocated my monthly total number of cases. As a new attorney, I am still in the process of learning how to juggle all of the aspects of being an attorney. For instance, meeting with clients, going over discovery which includes viewing multiple reports and videos, preparing for various hearings, depositions, trials, and all of the investigative work in between.

In my professional judgement, I believe that being assigned more cases than I already have will have a substantial impact on my ability to work on my current cases. Each case carries with it a differing degree of time and energy depending on different factors. Some of the factors include severity of charges, number of cases assigned to each client, amount of discovery etc. In my professional judgement, being assigned more cases will impede my ability to diligently work on each case that I currently am assigned to. This would impact my ability to make time to meet with clients in jail or department of

corrections, conducting legal research, writing motions, doing evidence views, crime scene views, meeting with clients that are out of custody, and investigating work on each case. As a new attorney, I feel that it takes me longer to work on each case for the fact that I am not as experienced as my colleagues and I do have to spend extra time because I am not as familiar with case law and statutes etc.

I currently have eighty four open cases in Cole County and Miller County. Eighty two of the cases are in Cole County, while two of the cases are in Miller County. The two pending cases in Miller County are juvenile cases, as I am the designated attorney in the office that takes juvenile cases. Juvenile cases are complex in the fact that different rules and statutes apply that are different from adult courts. Almost every juvenile case that I have worked on requires a substantial amount of work because once a juvenile has been detained, I am required to drive to Miller County and have a detention hearing within three days. I also have to drive to the juvenile detention center (one hour drive each way) to see clients that are in detention. Also, I can expect to have an adjudication hearing each juvenile law day that is essentially a trial.

I currently have clients that are incarcerated in Cole County jail, Mary Dickerson Juvenile Justice Center, Chillicothe Correctional Center, Farmington Correctional facility, Fulton Reception and Diagnostics Center, Missouri Eastern Correctional Center, Moberly Correctional Center, and Women's Eastern Reception, Diagnostic and Correctional Center.

Listed below is a list of all of my current cases that are open:

1. Wendall S Belisle Jr.- 13AC-CR03269: Theft/Stealing
2. Donald L Phibert- 13AC-CR00935: Probation Violation
3. Ashley N Osborn- 11AC-CR02087- Probation Violation
4. Nathanial Jones- 15AC-CR01814- Driving while suspended/revoked
5. Michael T Leavell- 14AC-CR00710- Probation Violation
6. Allen Vaughn- 15AC-CR03231- Domestic Assault 2nd
7. Allen Vaughn- 16AC-CR00878- Domestic Assault 2nd

- These two cases are currently set for trial in January and will require extensive work and planning on setting depositions soon.

8. Danneisha Nesbitt- 16AC-CR00239- Theft/Stealing
9. Danneisha Nesbitt- 16AC-CR00099- Stealing 3rd
    - I will have to prepare a extensive motion to address a potential *Bazell* issue.
10. Tina N Abbott- 16AC-CR01135- Stealing 3rd Offense
11. Nathaniel Jones- 16AC-CR00866- Driving while suspended/revoked
12. Michael T Leavell- 16AC-CR01925- Forgery
13. Ron L Dameron- 16AC-CR01296- Invasion of Privacy
    - Client is in DOC in Farmington (three hours one way) and case is going to be set for trial as I have already completed depositions.
14. Nathanial Jones- 16AC-CR02061- Possession of controlled substance
15. Nathanial Jones- 16AC-CR01989- Possession of a controlled substance
16. Dalton C Herrera- 16AC-CR02131- Possession of a controlled substance
17. Sarah Hart- 16AC-CR02533- Possession of controlled substance
18. Dominique Woods- 16AC-CR02508- Receiving stolen property
19. Crystal Reed- 16AC-CR02771- Damage to jail property
20. Malissa Jefferson- 16AC-CR01768- Theft/stealing
21. Anthony D Curry- 14AC-CR01903- Probation Violation
22. Pilar F Rogers- 16AC-CR02727- Possession of a controlled substance
23. Courtney D Moore- 16AC-CR02516- DWI/Driving while suspended/revoked
24. Darrell L Howell- 16AC-CR02193- Theft/stealing
25. Darrick Calvin-16AC-CR01812- Forgery/Stealing 3rd offense
26. Michael D Anderson- 16AC-CR03315- Property damage 1st/ Resisting Interfering with arrest/ DWI
27. Cody A Freeman- 16AC-CR01586- Possession of a controlled substance
28. Semaj L Harris- 16AC-CR03363- Receiving stolen property (3 counts)
29. Jermaine C White-16AC-CR02552- Property damage 1st
30. Melissa G Dillon- 16AC-CR03126- Unlawful possession of paraphernalia
31. Melissa G Dillon- 13AC-CR01534- Probation violation

32. Arthur V Gagnon- 14AC-CR00726- Probation violation
33. Arthur V Gagnon- 14AC-CR01713- probation violation
34. Katrina Y White- 15AC-CR01103- Probation Violation
35. Dennis C Collins- 13AC-CR02093- Probation violation
36. Douglas W Menke- 16AC-CR02146- Unlawful possession of a firearm
37. Jeffrey T Rice- 17AC-CR00289- Possession of controlled substance
38. Britaney N West- 17AC-CR00339- Fraudulent use of a credit device
39. Jermaine C Atkins- 17AC-CR00240- Failure to register as a sex offender
40. Jessica D Morgan- 17AC-CR00402- Leaving the scene of an accident/Property damage 1st degree
41. Paige Winter- 17AC-CR00440- Theft/stealing
42. Nobel K Russell- 13AC-CR00322- Probation Violation
43. Nicole Simmons- 16AC-CR02146- Receiving stolen property
44. Carrie Courtright- 17AC-CR00399- Theft/stealing
45. Brittany Fischer- 17AC-CR00197- Property damage 2nd degree
46. Nobel K Russell- 16AC-CR02846- Violation of protective order/ Burglary 2nd degree
47. Tina N Abbott- 17AC-CR00894- Theft/stealing
48. Deandre D Lewis- 14AC-CR01556- Probation violation
49. Brittany S Phillips- 13AC-CR01218- Probation violation
50. Nathanial Jones- 15AC-CR01567- Probation violation
51. Nathanial Jones- 17AC-CR00945- Driving while suspended/revoked 2nd offense/ Possession of a controlled substance
52. Nathanial Jones- 17AC-CR00732- Possession of controlled substance/ Unlawful possession of drug paraphernalia
    - This client has seven open cases and will require extensive time spent on meeting with client on each case and reviewing all discovery.
53. Keith L Bryant- 17AC-CR00597- Delivery, Attempt to deliver, possess, conceal, deposit contraband in penal institution
54. Kevin M White- 17AC-CR01300- Domestic Assault 2nd
55. Kevin M White- 17AC-CR00476- Domestic Assault 4th

- This client recently had a probation violation case dealing with the two open cases and I have spent extensive time in preparing for these cases and meeting with client while confined.

56. Michael A Findley- 17AC-CR01260- Stalking 1st Degree
57. Michael A Findley- 16AC-CR03326- Domestic Assault 3rd degree/ Endangering welfare of a child
    - This client has two complex cases that will take extensive time preparing for depositions and trial.
58. Steven D Myers- 17AC-CR01395- Theft/stealing
59. Dimitrius Roberts- 17AC-CR00936- Theft/Steling
    - This client's case is set for trial soon. I am currently preparing for depositions and will be spending an extensive amount of time.
60. Corinne Stumborg- 16AC-CR03360- Assault Law Enforcement 3rd degree
61. Paul W High- 17AC-CR01461- Domestic Assault 2nd degree/ Domestic Assault 2nd degree/ Unlawful use of a weapon/Armed Criminal action
62. Dylan M Gibson- 17AC-CR01559- Theft/stealing
63. Dylan M Gibson- 17AC-CR01560- Theft/stealing
64. Amber F Shoults- 17AC-CR01175- Possession of a controlled substance/ unlawful possession of drug paraphernalia
65. Amber F Shoults- 17AC-CR01315- Trespass 1st degree
66. Amber F Shoults- 17AC-CR01006- Trespass 1st degree
    - This client has three open cases and is currently in DOC. Her case will take more time to prepare for future hearings and trial.
67. Brittany S Phillips- 17AC-CR01492- Theft/stealing
68. Matigg D Woods- 17AC-CR00632- Theft/stealing/ trespass 1st degree
69. Amanda R Dunlap-17AC-CR00752- Unlawful possession of drug paraphernalia/ speeding
70. Miles G Minor- 17AC-CR00636- Delivery or possession of contraband at county jail
71. Darla R Figolah- 17AC-CR01362- Theft/stealing
72. Shariode Tolen- 17AC-CR01062- Domestic assault 4th degree

73. Jennifer P Ware- 17Ac-CR00768- Fraudulent use of a credit or debit device
74. Lamaree Montgomery- 17AC-CR01099- Assault 4th degree
75. Lamaree Montgomery- 17AC-CR00708- Domestic Assault 2nd degree/ Endangering welfare of a child 2nd degree/ Assault 4th degree
76. Richard L Daniels- 17AC-CR00245- Forgery
77. Charles O Lowe- 16AC-CR01773- Possession of a controlled substance/ driving while suspended/ revoked/ unlawful possession of drug paraphernalia
78. Eizabeth Proctor- 16AC-CR02266- 3 counts of Forgery
79. Tina N Abbott- 17AC-CR01102- Theft/stealing
80. Tina N Abbott- 17AC-CR01103- Theft/stealing/ Trespass 1st degree
    - This client has four open cases and will take extensive time to review all discovery and prepare for future court proceedings.
81. Travis T Robbins- 17AC-CR00418- Possession of a controlled substance/ Unlawful possession of drug paraphernalia
82. Yashim D Smith- 14AC-CR02660- Possession of a controlled substance/ Burglary 2nd degree/ Property damage 1st degree
83. 17ML-JU00045- Miller County juvenile case is set for adjudication hearing and will take extensive time to repair and meet with client.
84. 17ML-JU00053- Miller County juvenile case that is set for hearing and will take extensive time to repair and meet with client who is in custody in Camdenton.

Affiant

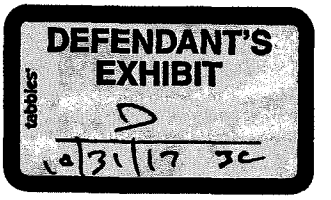
In witness whereof I have hereunto subscribed my name and affixed my official seal this

30 day of October, 2017.

(Signed)

THERESA M. SCHAEFER
Notary Public - Notary Seal
STATE OF MISSOURI
Cole County
Commission # 13452968
My Commission Expires: 12-09-2017

(Seal)



AFFIDAVIT
STATE OF MISSOURI

Before me, the undersigned authority, personally appeared Adam Cartwright, who being by me duly sworn, deposed as follows:

My name is Adam Cartwright, I am of sound mind, capable of making this affidavit, and personally acquainted with the facts herein stated and am competent to testify hereto:

I began working with the Public Defender office in Jefferson City on October 23, 2017. I previously worked at the Public Defender office in Poplar Bluff and am still the attorney of record on over 100 cases from that office. I have already been assigned 59 cases; many of these cases have had multiple previous attorneys. I am still in the process of contacting and locating many of these clients. One such felony assault case contains approximately 1,300 pages of discovery and multiple discs of digital discovery.

Insofar as my clients in Jefferson City, there are several that I have not contacted. I have clients incarcerated in the following facilities:

- Cole County Jail
- Laclede County Jail
- Chillicothe Correctional Center
- ERDCC
- Jefferson City Correctional Center
- Northeast Correctional Center
- South Central Correctional Center
- Western Missouri Correctional Center
- Potosi Correctional Center

Attached is a list of all cases I am currently assigned since October 23, 2017, in the Jefferson City office.

Due to the volume of cases I have been recently assigned, along with my continued duties to clients in my previous office, I feel that in my professional judgment

it is inadvisable to request more cases be assigned at this time. During this transition, it will be difficult to continue to effectively represent all of my clients and deliver the service necessary to ensure their constitutional rights are protected. Failure to do so could result in a finding of ineffective assistance of counsel. This would result in an increased burden on the state through the post-conviction relief process. Further, it could result in discipline by the Missouri Bar Association.

For the foregoing reasons, I have requested my District Defender, Justin Carver, that I not be assigned more cases until further notice.

Affiant

In witness whereof I have hereunto subscribed my name and affixed my official seal this 30 day of October, 2017.

(Signed)

THERESA M. SCHAEFER
Notary Public - Notary Seal
STATE OF MISSOURI
Cole County
Commission # 13452968
My Commission Expires: 12-09-2017

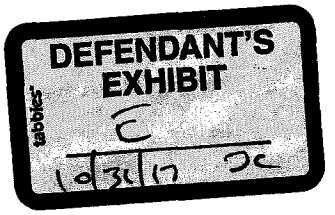
(Seal)

The following is a current list of active cases upon which I am entered.

1. Lark Gardner (16AC-CR02781) Violence towards an Emp of DOC or Inmate by an Inmate. Two Counts. Class B felony.
2. Danny Pilkinton (17AC-CR00299) Ct I: Violence towards an Emp of DOC or Inmate by an Inmate. Class B felony. Ct II: Endangering Emp of DOC or Inmate by Knowingly/Attempting to cause contact by another to bodily fluids. Class D felony.
3. Joseph Dunn (17AC-CR00298) Violence towards and Emp of DOC or Inmate by an Inmate. Class B felony.
4. Aaron Fisher (16LA-CR01529) Assault 1st Degree- Special Victim or Severe Injury. Class A felony.
5. Danny Pilkinton (16AC-CR01012) Violence towards an Emp of DOC or Inmate by an Inmate. Class B felony.
6. William Franklin (15AC-CR03187-01) Count I: Failure to Register as a Sex Offender. Unclassified felony. Ct II: Prior Sex Offender residing within 1000' of a school or child care facility after plea/conviction- 1st offense.
7. Noah Cohen (17AC-CR00589) Delivery of a less than 35 grams of marijuana. Class E felony.
8. Eugene Williams (16AC-CR01474) Delivery of a controlled substance into a jail or correctional facility. Class C felony.
9. Clinton Young (16AC-CR01860) Non-support. Class D felony.
10. Melvin Nunley (16AC-CR03086) Non-support. Class D felony.
11. Amanda Eads (17AC-CR01137-01) Stealing- 4th or Subsequent offense. Class E felony.
12. Jennifer Bell (16AC-CR02922-01) Stealing- 3rd or Subsequent offense. Class D felony.
13. Cathy Roe (16AC-CR02557-01) Stealing- 3rd or Subsequent offense. Class D felony.
14. Joshua Hamilton (16AC-CR02328) Forgery. Class C felony.
15. Michael Clanahan (17AC-CR01309-01) Endangering Emp of DOC or other person by attempting/knowingly exposing them to HIV/Hepatitis B or C. Class B felony.
16. Ed Ross (15AC-CR00521-01) No-Op 3rd. Class D felony.
17. Jacob Johnson (16AC-CR02197-01) Property Damage- 1st degree. Class D felony.
18. Victoria Thompson (14AC-CR01636-01) Ct. I: Receiving Stolen Property. Class C felony. Ct. II: Receiving Stolen Property. Class C felony. Ct. III: Endangering the Welfare of a Child- 1st Degree. Class C felony. Ct. IV: Tampering with Evidence in Felony Prosecution. Class D felony. Count V: Stealing. Class A Misdemeanor.
19. Lori Isom (16AC-CR02498-01) Receiving Stolen Property. Class C felony.
20. Rodriguez Harris (16AC-CR1026-01) Resisting Arrest. Class D felony.
21. Aron Wierman (16AC-CR00790-01) Ct I: DWI- Aggravated Offender. Class C felony. Ct. II: Driving while Suspended- 3RD or Subsequent offense. Class D felony.
22. Johnny Row (16AC-CR02325-01) DWI- Persistent Offender. Class D felony.
23. Larry Blair (16AC-CR03010-01) Leaving the Scene of an Accident. Class D felony.
24. Larry Blair (16AC-CR00526-01) Stealing Rental Property. Class C felony.
25. Noah Cohen (15AC-CR03457) Possession of Controlled Substance. Class A Misdemeanor.
26. Michael Clanahan (16AC-CR02736) Assault- 3rd Degree. Class A Misdemeanor. Three Counts.

27. Larry Blair (15AC-CR03465) Ct. I: Domestic Assault- 3rd Degree. Class A misdemeanor. Ct. II: Resisting Arrest. Class A misdemeanor.
28. Noah Cohen (16AC-CR03335) Domestic Assault- 3rd Degree. Class A misdemeanor.
29. Noah Cohen (16AC-CR03097) Ct. I: Domestic Assault- 3rd Degree. Class A misdemeanor. Ct. II: Resisting Arrest. Class A misdemeanor.
30. Maurice Bellamy (16AC-CR00894) Non-Support. Class A misdemeanor.
31. William Smith (16AC-CRO1834) Stealing. Class A misdemeanor.
32. William Smith (16AC-CR02147) Stealing. Class A misdemeanor.
33. Noah Cohen (17AC-CR00337) Ct. I: Possession of a Defaced Firearm. Class B misdemeanor. Ct. II: Unlawful Use of Drug Paraphernalia. Class A misdemeanor.
34. Amanda Eads (17AC-CR00745) Ct. I: Resisting Arrest. Class A misdemeanor. Ct. II: Making a False Report.
35. Eddie Ross (16AC-CR02307) Ct. I: Resisting Arrest. Class A misdemeanor. Ct: II: Assault- 3rd Degree.
36. Jessica O'Connor (15AC-CR03126) Ct. I: DWI. Class B misdemeanor. Driving while Suspended- 2nd Offense. Unclassified misdemeanor.
37. Emmanual Perry (16AC-CR01971) Driving while Suspended- 2nd Offense.
38. Jessica O'Connor (16AC-CR01738) Ct. I: Leaving the Scene of the Accident. Class A misdemeanor. Ct. II: DWI. Class B misdemeanor. Ct. III: Driving while Suspended- 2nd Offense. Unclassified misdemeanor.
39. Lori Isom (14AC-CR01933) Felony Probation Violation
40. Michael Clanahan (15AC-CR00178-01) Felony Probation Violation
41. Michael Clanahan (15AC-CR01249-01) Felony Probation Violation
42. Larry Blair (15AC-CR00116) Misdemeanor Probation Violation
43. Shawndell Miller (17AC-CR01000-01) Rape 1st Degree
44. Shawnella Yarbrough (17AC-CR01586) Stealing
45. Ray Smith (16AC-02116) Failure to Register as a Sex Offender
46. Jerrix Durham (16AC-CR01431) Ct. I: Burglary 2nd Degree. Ct. II: Resisting Arrest. Ct. III: Unlawful Use of a Weapon. Ct. IV: Receiving Stolen Property. Ct. V:Unlawful Possession of a Firearm. Ct. VI: Armed Criminal Action.
47. Jerrix Durham (16AC-CR01445) Ct. I: Distribution of a Controlled Substance. Class B felony. Ct. II: Resisting Arrest. Class D felony.
48. Richard Jarrett (16AC-CR01886) Possession of a Controlled Substance.
49. Richard Jarrett (16AC-CR03206) Driving While Suspended- 2nd or Subsequent Offense.
50. Richard Jarrett (16AC-CR02510) Forgery.
51. Richard Jarrett (16AC-CR03266) Driving While Suspended- 2nd of Subsequent Offense.
52. Dustin Shoults (15AC-CR00074) Probation Violation
53. Jessie Gillam (17AC-CR00296) Endangering a Corrections Employee.
54. Keshaun Collins (17AC-CR01459) Resisting Arrest.
55. Keshaun Collins (17AC-CR01381) Driving While Intoxicated.
56. Tyrone Seals (15AC-CR01806-01) Probation Violation.
57. Tyrone Seals (17AC-CR00606) Ct. I: Domestic Assault 3rd Degree. Ct. II: Domestic Assault 4th Degree.
58. Bryce Efford (16AC-CR00347-01) Domestic Assault 2nd Degree.
59. Bryce Efford (14AC-CR03257) Ct. I: Felonious Restraint. Ct. II: Armed Criminal Action. Ct. III: Domestic Assault 3rd Degree.

AFFIDAVIT
STATE OF MISSOURI



Before me, the undersigned authority, personally appeared Chelsea L Harris, who being by me duly sworn, deposed as follows:

My name is Chelsea Leigh Harris, I am of sound mind, capable of making this affidavit, and personally acquainted with the facts herein stated:

I, Chelsea L. Harris, Missouri Bar No. 65951, have personal knowledge of the contents of the information in this affidavit and, if called as a witness, would be competent to testify thereto.

I became employed as an Assistant Public Defender in April of 2014 in the Area 25 Office of the Public Defender in Rolla, Missouri. I transferred to the Area 19 Office in October of 2016 and have been employed as an Assistant Public Defender in Jefferson City since then. I have been a practicing attorney in Missouri since October 2013.

I currently have 132 open cases in 6 different counties: Cole, Moniteau, Miller, Morgan, Camden, and Dent. It is very common for me to have court in more than one jurisdiction at the same time. This means I must ask another lawyer to cover my court appearances.

The 132 cases include: 1 murder in the first degree, 1 A-B drug felony, 9 A-B other felonies, 6 A-B sex felonies, 38 C-D-E drug felonies, 44 C-D-E other felonies, 1 C-D-E sex felony, 1 pre-charge representation, 7 misdemeanors, and 23 probation violations.

I have clients who are incarcerated in 16 different institutions, including: Chillicothe Correctional Center, Cole County Jail, Fulton Reception & Diagnostic Center, Fulton State Hospital, Jefferson City Correctional Center, Miller County

Jail, Moberly Correctional Center, Moniteau County Jail, Northeast Correctional Center (Bowling Green, MO), South Central Correctional Center (Licking, MO), St. Louis Metropolitan Psychiatric Center, Tipton Correctional Center, Vandalia Correctional Center, Western Missouri Correctional Center (Cameron, MO), Western Reception, Diagnostic & Correctional Center (St. Joseph, MO), and the Women's Eastern Reception, Diagnostic & Correctional Center.

The fact that I have to attend court in 6 different counties and I have clients confined in 16 different institutions all over the state means I must spend a substantial amount of time traveling each month.

As discussed above, many of my clients are incarcerated across the state. It is time consuming to drive to where they are to consult with them. Because of their indigency, it is often difficult or impossible for my clients to contact me if they are not in jail. This is because many do not have the money for a cell phone and many do not have a driver's license or access to an operable and legal vehicle.

Below is a list of my current open cases and the associated primary charges:

1. Matthew Hamm: 17MT-CR00223—Murder 1st degree; Abandonment of a Corpse
2. Matthew Hamm: 17MT-CR00154—possession of a controlled substance
3. Lesley Blank: 15MT-CR00584-01—possession of controlled substance with intent to distribute
4. Alonzo Darrough: 17MT-CR00095—Committing Violence in DOC
5. Chris Salzman: 17MT-CR00273—Assault 1st degree; Child Abuse
6. Troy O'Banion: 17MT-CR00292-01—Burglary 1st degree
7. Troy O'Banion: 17MT-CR00363—Burglary 2nd degree; Resisting Arrest
8. Troy O'Banion: 17MT-CR00157-01—Unlawful Possession of Firearm
9. Troy O'Banion: 16MT-CR00509—Passing a Bad Check
10. Timothy Bowers: 15AC-CR02882—Committing Violence in DOC

11. Larcell Barney: 16AC-CR01899—Committing Violence in DOC
12. Steven Olin: 16AC-CR02232—Committing Violence in DOC
13. Austin Rogers: 16MT-CR00376-01—Robbery 1st degree; Armed Criminal Action
14. Robert Carter: 16AC-CR03312-01—Burglary 1st degree; Armed Criminal Action
15. Ruby Pennock: 12CF-CR01091-02—Financial Exploitation of the Elderly (class A felony)
16. Bobby Bishop: 16AC-CR02997-01—Statutory Rape 1st; Statutory Sodomy 1st
17. Kevin Mitchell: 16MT-CR00242—Statutory Sodomy 1st degree
18. Kevin Mitchell: 15MT-CR00014-01— Probation Violation
19. Kevin Mitchell: 13MT-CR00228-01—Probation Violation
20. Kenneth Herrbach: 15MT-CR00493-01—Sodomy 1st degree (2 counts)
21. Shane Burris:13ML-CR01052-02—Statutory Sodomy 1st degree
22. Chrystal McDowell: 14ML-CR00867-01—Statutory Sodomy 1st degree (8 counts)
23. Dustin Coffelt: 17MT-CR00471—Statutory Sodomy 1st degree
24. Courtney Williams: 17ML-CR00067-01—Possession of a Controlled Substance
25. Angel Belt: 17MT-CR00011-01—Possession of a Controlled Substance
26. Angel Belt: 17MT-CR00046-01—Possession of a Controlled Substance
27. Brandy Blackburn: 17MT-CR00090-01—Possession of a Controlled Substance
28. Brandy Blackburn: 17MT-CR00366-01—Possession of a Controlled Substance
29. Dyani Martinez: 16MT-CR00383—Possession of a Controlled Substance
30. Dyani Martinez: 16MT-CR00314—Possession of a Controlled Substance
31. Dyani Martinez: 16MT-CR00358—Possession of a Controlled Substance

32. Jacqueline Stegemean:17MT-CR00210—Possession of a Controlled Substance in Jail
33. Jacqueline Stegemean:17MT-CR00198—Possession of a Controlled Substance
34. Jacqueline Stegemean: 17MT-CR00150—Assault 4th degree
35. Jacqueline Stegemean: 13MT-CR00207-01—Probation Violation
36. Jacqueline Stegemean: 14MT-CR00425-01—Probation Violation
37. Kaylee Newbound: 17AC-CR00388-01—Possession of a Controlled Substance
38. Kaylee Newbound: 16AC-CR03332—Unlawful Use of Drug Paraphernalia
39. John Wallace: 17MT-CR00071-01—Possession of a Controlled Substance
40. John Wallace: 16AC-CR02840—Driving While Revoked
41. John Wallace: 16AC-CR02100—Driving While Revoked
42. Adam Raithel: 17MT-CR00133—Possession of a Controlled Substance
43. Johnny Artelt: 17MT-CR00098-01—Possession of a Controlled Substance
44. Arthur Hester: 17MT-CR00118—Possession of a Controlled Substance
45. Daniel Gilligan: 17MT-CR00253—Possession of a Controlled Substance
46. Daniel Gilligan: 16MT-CR00381-01—Probation Violation
47. Cody Stone: 17MT-CR00259-01—Possession of a Controlled Substance
48. Amanda Stewart: 17MT-CR00272—Possession of a Controlled Substance
49. Hoyt Marcott: 17MT-CR00250—Possession of a Controlled Substance
50. James Patton: 17MT-CR00197—Possession of a Controlled Substance
51. Kendal Brake: 17MT-CR00299—Possession of a Controlled Substance
52. Chloe Heather: 17MT-CR00257—Possession of a Controlled Substance
53. Edgar Walters: 17MT-CR00311—Possession of a Controlled Substance
54. Carla Hemlin: 17MT-CR00275-01—Possession of a Controlled Substance
55. Angelina Villarreal: 17MT-CR00359—Possession of a Controlled Substance

56. Angelina Villarreal: 17MT-CR00406—Possession of a Controlled Substance
57. Travis Kiesling: 17MT-CR00379—Possession of a Controlled Substance
58. Clayton Pace: 17MT-CR00349—Possession of a Controlled Substance
59. Nathan Weed: 17MT-CR00121—Possession of a Controlled Substance; Assault 2nd degree; Felony Resisting Arrest
60. Charles Green: 17MT-CR00097—Possession of Controlled Substance with Intent to Deliver
61. James Kirchner: 17MT-CR00027—Delivery of Controlled Substance
62. Jackie Hensley: 15MT-CR00380-01—Possession of a Controlled Substance
63. Larry Jobe: 16MT-CR00325—Possession of a Controlled Substance
64. Loran Collins: 17MT-CR00457—Possession of a Controlled Substance
65. Steven Fairfax: 17MT-CR00274—Possession of a Controlled Substance
66. Samantha Chapin: 17MT-CR00462—Possession of a Controlled Substance
67. Danny Hayes: 17MT-CR00436—Possession of a Controlled Substance
68. Tyler Jobe: 17MT-CR00454—Possession of a Controlled Substance
69. James Suggs: 17MT-CR00477—Possession of a Controlled Substance
70. James Suggs: 16MT-CR00439—Felony Driving While Revoked
71. James Suggs: 17MT-CR00252—Felony Driving While Revoked
72. James Suggs: 17MT-CR00030: Felony Residing within 1000 feet of school
73. Christina Butler-Wieners: 17MT-CR00239—Felony Driving While Revoked; Felony Resisting Arrest
74. Christina Butler-Wieners: 17MT-CR00245—Felony Driving While Revoked
75. Gary Smith: 17MT-CR00005—Felony Domestic Assault 3rd degree
76. Justin Cantrell: 17ML-CR00011-01—Tampering with a Judicial Officer
77. Jacob Hollandsworth: 17MT-CR00191—Tampering 1st degree
78. Jamie Christmann: 17MT-CR00352—Tampering 1st degree

79. Jamie Christmann: 16AC-CR03242-01—Felony Passing Bad Check
80. Jamie Christmann: 15AC-CR002430-01—Felony Stealing
81. Jamie Christmann: 15AC-CR02392-01—Felony Stealing
82. Jamie Christmann: 16AC-CR01182-01—Felony Stealing
83. Jamie Christmann: 16AC-CR02195-01—Felony Stealing
84. Jamie Christmann: 16AC-CR02160-01—Felony Stealing
85. Jamie Christmann: 16AC-CR02725-01—Forgery
86. Jamie Christmann: 16AC-CR02841-01—Forgery
87. Jamie Christmann: 13AC-CR03324—Stealing Leased or Rented Property
88. Jamie Christmann: 14AC-CR02775—Passing Bad Check
89. Travis Robbins: 17MT-CR00340—Burglary 2nd degree
90. David Rice: 17MT-CR00384—Burglary 2nd degree
91. Teresa Bowlin: 17MT-CR00168-01—Forgery
92. Tommy Roofe: 17MT-CR00038-01—Felony Passing Bad Check
93. Tommy Roofe: 16MT-CR00435-01—Felony Passing Bad Check
94. Dustin Tennis: 17MT-CR00072-01—Unlawful Possession of a Weapon; Hindering Prosecution
95. Matthew Anderson: 16MT-CR00462—Resisting Arrest; Assault on Law Enforcement Officer
96. Dylan Zane: 16MT-CR00298-01—Committing Violence in DOC
97. Cole Stevenson: 16MT-CR00354—Felony Driving While Revoked
98. Cornelius Davis: 16AC-CR02571-01—Assault 2nd degree; Armed Criminal Action; Unlawful Possession of a Firearm
99. Kenneth Willis: 16MT-CR00414-01—Domestic Assault 2nd degree
100. Joseph Lawson: 16MT-CR00459—Domestic Assault 2nd degree
101. Justin Cantrell: 16ML-CR01279-01—Assault on Law Enforcement Officer 2nd degree (2 counts); Resisting Arrest
102. James Deslongchamps: 16LA-CR00558-02—Assault on Law Enforcement Officer 2nd degree; Resisting Arrest; Assault 3rd degree

103. Harold Huddleston: 15MT-CR00398-01—Criminal Non-Support

104. Amanda Rooney: 16MT-CR00305-01—Criminal Non-Support

105. Carla Wynne: 15MT-CR00266-01—Endangering the Welfare of a Child 1st degree

106. Lynn Weltha—15MT-CR00266-01—Tampering 1st degree

107. Courtney Williams: 16MT-CR00499-01—Tampering 1st degree

108. Jennifer Kerley: 16AC-CR02148-01—Felony Stealing

109. Victor Turley: 16MT-CR00493—Forgery

110. Shane Worthey: 14MT-CR00166-02—Felony Resisting Arrest

111. Briana Williams: 17MT-CR00092—Sexual Contact with Prisoner or Offender

112. Clayton Reno: Pre-charge representation

113. Ronald Johnson: 17MT-CR00164—Driving While Revoked

114. Roberto Oropeza: 17MT-CR00451—Damage to Jail Property

115. James Suggs: 16MT-CR00085-01—Probation Violation

116. Tyra Sheldon: 15MT-CR00385-01—Probation Violation

117. Shane Gish: 14MT-CR00140-01—Probation Violation

118. Shane Gish: 14MT-CR00143-01—Probation Violation

119. Shane Gish: 12MT-CR00132-01—Probation Violation

120. Terra Pigg: 16MT-CR00185-01—Probation Violation

121. Stephen Hassler: 13MT-CR00211-01—Probation Violation

122. Scott Brown: 12MT-CR00514-01—Probation Violation

123. James McClelland: 16MT-CR00243-01—Probation Violation

124. Crystal Fisher: 14MT-CR00049-01—Probation Violation

125. Crystal Branch: 16MT-CR00399-01—Probation Violation

126. Dalton Fisher: 16MT-CR00108-01—Probation Violation

127. Dalton Fisher: 16MT-CR00061-01—Probation Violation

128. Drew Bowen: 16MT-CR00385-01—Probation Violation

129. Steven Fairfax: 16MT-CR00363-01—Probation Violation

130. Scott Gibler: 15MT-CR00128-01—Probation Violation

131. Scott Gibler: 14MT-CR00050-01—Probation Violation

132. Melissa Creason: 15MT-CR00471-01—Probation Violation

In addition to being understaffed in regards to attorneys, we only have three legal assistants and one investigator. Our staff members are all hard working and very good at their jobs. However, one investigator must assist all attorneys (8 attorneys when fully staffed). He is currently on paternity leave and will not return until January of 2018. This means that one of our three legal assistants is attempting to do his job in addition to her own job duties. Our other two assistants must open and close cases, process applications, and answer phones and in person inquires. This leaves them with little to no time to assist attorneys in their daily practice.

When I left the Rolla Public Defender's Office in 2016, I had been assigned to approximately 800 cases in the less than two and a half years I was employed there. In the last year I have closed 188 cases in addition to my current caseload. All told I have been assigned to 1120 cases in my three and a half years as a public defender.

When I worked in the Rolla Public Defender Office, I carried anywhere from 150-240 cases at a time. I was constantly overwhelmed by the amount of work that needed to be done. If I asked colleagues for advice, I was essentially told that was how the system worked and that I should just prioritize some cases over others. This contributed to a very high burn out rate. Many public defenders I worked with resigned after a short amount of time.

Since I have come to an office where my case load is being somewhat controlled, I have been able to better prepare my cases. I have realized the issues I had overlooked in previous cases due to my excessive caseload. I have been able to file more motions and do more legal research on issues that I may have previously overlooked. However, I am realizing how much more needs to be done

on each case. While my caseload has improved slightly, I am still currently unable to give every case the attention I need to in order to be an affective attorney.

Some of my cases are more time-consuming and complicated than others. For example, in the case I have pending in Dent County, the discovery is nearly 10,000 pages. The case has been pending since 2012 and I am the fourth attorney to handle it. I was obligated to take this case to the Jefferson City office from my old public defender office in Rolla. This means that to meet with the client, take depositions, go to court, or otherwise prepare for this case, I often have to drive 100 or more miles. Last week I traveled nearly 300 miles to go to a pre-trial conference for that case.

In another case, I have to review over 100 pages of discovery and 33 discs of audio and video content and pictures. Simply reviewing this entire discovery file will require days of concentration without working on any other case.

I currently have six cases where my clients are accused of statutory sex crimes. These cases present much more work than other cases as there are more motions that must be filed and argued and more procedural steps to take before the case can go to trial.

I have several cases where I need to request and review mental health records because my clients present with a lengthy history of mental health problems that may have contributed to their current situations. I have two clients who are currently incarcerated in state mental health facilities. It is often very difficult to communicate with them.

Because of the turnover in the public defender system, in many cases, I am the third or fourth attorney who has represented a client. Understandably, this often confuses or upsets clients. They do not understand why their cases keep getting passed off to a different lawyer. I have often found that clients have not had basic rights or the judicial process explained to them—meaning I must start from the beginning.

The Missouri Rules of Professional Conduct state that a lawyer "shall act with reasonable diligence and promptness in representing a client." (Missouri Rules of Professional Conduct [MRPC] 4-1.3.) A lawyer's work load must be controlled so that each matter can be handled competently. (MRPC 4.13[2]). MRPC 4-1.4 addresses the issue of client communication and states (in relevant part) :

(a) A lawyer shall:

(1) keep the client reasonably informed about the status of the matter;

(2) promptly comply with reasonable requests for information...

It is impossible for me to meet the standards that I have sworn to uphold if I am continually being assigned cases after informing my supervisor that I cannot ethically handle more cases. It is impossible to affectively represent more than 100 clients at a time. Ethically, that is unacceptable. I have asked not to be assigned any more cases in the near future because I am not able to provide every client with affective representation as I have sworn to do.

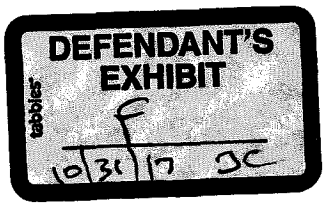
Chelsea L. Harris

State of Missouri
County of Cole

On this 30 day of October, 2017, before me, a Notary Public in and for said state, personally appeared Chelsea L. Harris, personally known or properly identified, who after having first been duly sworn, acknowledged that she executed her signature hereto as her free act and deed.

Notary Public

THERESA M. SCHAEFER
Notary Public - Notary Seal
STATE OF MISSOURI
Cole County
Commission # 13452968
My Commission Expires: 12-09-2017



AFFIDAVIT

STATE OF MISSOURI

Before me, the undersigned authority, personally appeared Justine R. Finney, who being by me duly sworn, deposed as follows:

My name is Justine R. Finney, I am of sound mind, capable of making this affidavit, and personally acquainted with the facts herein stated:

I am a licensed attorney with the Missouri Bar. My Missouri Bar number is 62915. I became employed as an Assistant Public Defender with the Area 19 Office of the Missouri State Public Defender on July 5, 2017. Immediately prior to that, I was employed as an Assistant Public Defender in the Area 15 Office of the Public Defender. I had worked as a Public Defender in that office since September 2015.

I have been a practicing law as a licensed attorney in Missouri since September 2010. My first position as a licensed attorney was as a Staff Attorney and Manager of the Application Unit at Missouri Protection and Advocacy Services, a position I held from September to December 2010. From January 2011 until September 2015, I was employed as an Assistant Attorney General with the Office of the Missouri Attorney General.

I have asked my District Defender, Justin Carver, to assign no additional cases to me at this time. I made that request because I believe accepting any additional cases would make it impossible for me to continue to provide competent, effective legal counsel to each of my current clients in each of his or her cases.

I currently have 100 open cases, not including cases to which I am assigned as second chair. This includes 1 homicide, 4 A-B drug felonies, 18 A-B non-drug felonies, 1 A-B felony sex case, 29 C-D-E felony drug case, 27 C-D non-drug felonies, 2 C-D-E felony sex cases, 8 misdemeanors, and 10 felony probation violations.

My caseload is split between Cole County – where I am assigned to 36 cases – and Miller County – where I am assigned to 64 cases. It is a common occurrence for me to have cases on a Cole County docket and a Miller County docket on the same date and time.

I am also acting as second chair in 1 A-B felony sex case (State v. Bobby D. Bishop, 16AC-CR02997-01) in Cole County and 1 A non-drug felony in Dent County (State v. Ruby M. Pennock, 12CF-CR01091-02).

Below is a list of my current cases and the associated primary charges:

1. State v. Raymond A. Russell, 14ML-CR00451-01: Incest
2. State v. Stacey R. Lewis,14ML-CR00501-01: Felony Possession of a Controlled Substance

3. State v. Wayne E. Ivory, 15AC-CR03163-01: Forcible Rape, Forcible Sodomy, Domestic Assault 2nd (x2), False Imprisonment
4. State v. Wayne E. Ivory, 15AC-CR3123-01: Felony Stealing
5. State v. Brittany Smith, 15ML-CR01243-01: Felony Passing Bad Check
6. State v. Melissa K. Saint, 15ML-CR01289-01: Felony Possession of a Controlled Substance
7. State v. Melissa K. Saint, 16ML-CR00143-01: Domestic Assault 2nd
8. State v. Carlden J. Trotter, 16AC-CR00145: Committing Violence Against a DOC Corrections Officer
9. State v. Terrell Herndon, 15AC-CR03421-01: Felony Stealing
10. State v. Chanley M. Plemmons, 16ML-CR00266-01: Domestic Assault 2nd
11. State v. Brandon J. Koch, 16ML-CR00300-01: Felony Abuse of a Child
12. State v. Krista N. Faigle, 13ML-CR01039-01: Felony Probation Violation
13. State v. Ramond Noldon, 16AC-CR01828-01: Felony Possession of a Controlled Substance; Possession with Intent to Distribute
14. State v. Joshua W. Hopkins, 16ML-CR00966-01: Armed Criminal Action (x3), Kidnapping (x3), Unlawful Use of a Weapon
15. State v. Thomas Hyde, 16AC-CR0966-01: Felony Stealing
16. State v. Edward A. Brewer, 16ML-CR00973-01: Possession with Intent to Distribute (x2)
17. State v. Justin C. Smith, 16ML-CR00973-01: Felony DWI
18. State v. Wyatt Ray, 16ML-CR01040-01: Burglary
19. State v. Robin R. Ross, 14ML-CR00702-01: Felony Probation Violation
20. State v. Thomas D. Norton, 16AC-CR00887: Committing Violence Against an Offender in DOC
21. State v. Justin D. Hartwick, 16ML-CR00722-01: Felony Possession of a Controlled Substance, Unlawful Use of a Weapon, Felony Resisting Arrest
22. State v. Kimberly R. Banner, 14ML-CR00778-01: Felony Probation Violation
23. State v. Christopher J. Ivory, 16AC-CR02229: Endangering a Corrections Employee
24. State v. Christopher J. Ivory, 16AC-CR01005: Endangering a Corrections Employee
25. State v. Christopher J. Ivory, 16AC-CR02231: Endangering a Corrections Employee
26. State v. Diandre McGee, 16AC-CR01006: Committing Violence Against a DOC Corrections Officer
27. State v. Anthony R. Mandino, 16ML-CR01270-01: Unlawful Possession of a Firearm, Unlawful Use of a Firearm, Assault 3rd
28. State v. Kerijuana Q Lowery, 16AC-CR02155-01: Felony Stealing, Misd. Endangering the Welfare of a Child (x2)
29. State v. Sherry L. Albert, 16ML-CR01276: Possession with Intent to Distribute
30. State v. Justin D. Hartwick, 16ML-CR01280-01: Felony Possession of a Controlled Substance
31. State v. Matthew C. Edington, 16ML-CR01270-01: Felony Possession of a Controlled Substance
32. State v. Charles A. Lane, 16AC-CR01475: Delivering/Concealing Controlled Substance in a Correctional Facility (x2)
33. State v. Roger Emmerich, 16AC-CR01880: Domestic 3rd

34. State v. William C. Seiling, 16ML-CR01316-01: Felony Possession of a Controlled Substance
35. State v. Chastity A. Neal, 14ML-CR00635-01: Felony Probation Violation
36. State v. Madina L. Mitchell, 16ML-CR01230: Forgery
37. State v. Michael Hudson, 16AC-CR01004: Committing Violence Against an Offender in DOC
38. State v. Deborah K. Olson, 17ML-CR00074: Felony Possession of a Controlled Substance
39. State v. Brittany Smith, 16ML-CR00874: Misd. Stealing
40. State v. Brittany Bowers, 17ML-CR00156: Felony Possession of a Controlled Substance
41. State v. Travis D. Whistler, 17ML-CR00143-01: Possession of Child Porn, Statutory Rape 2nd (x3)
42. State v. Jaimielee Daum, 17ML-CR00144: Felony Possession of a Controlled Substance
43. State v. James A. Gavette, 11ML-CR00362-01: Felony Probation Violation
44. State v. Don Salcedo, 13AC-CR01693: Arson 1st (x2)
45. State v. William C. Sieling, 15ML-CR00564-01: Felony Probation Violation
46. State v. William C. Sieling, 17ML-CR00208: Felony Possession of a Controlled Substance
47. State v. Ciara Davis, 11ML-CR00176-01: Felony Probation Violation
48. State v. Jenny Donnelly, 16ML-CR01053-01: Felony Possession of a Controlled Substance
49. State v. Erica Fletcher, 17AC-CR00303-01: Felony Possession of a Controlled Substance
50. State v. Jessica Atkisson, 10ML-CR00202-01: Felony Probation Violation
51. State v. Jessica Atkisson, 17ML-CR00366-01: Forgery
52. State v. Jessica Hine, 16ML-CR01333-01: Felony Possession of a Controlled Substance
53. State v. Jessica Hine, 17ML-CR00110-01: Felony Possession of a Controlled Substance
54. State v. Jessica Hine, 17ML-CR00089-01: Felony Possession of a Controlled Substance
55. State v. Calen R. Mummert, 17ML-CR00392-01: Tampering 1st
56. State v. William S. Dickerson, 17ML-CR00391-01: Felony Possession of a Controlled Substance
57. State v. Tommy K. Roofe, 17ML-CR00087-01: Felony Passing Bad Check
58. State v. Erica Fletcher, 17AC-CR00874-01: Forgery
59. State v. Brandon Mundy, 17ML-CR00405-01: Felony Possession of a Controlled Substance
60. State v. Philip W. Rhodes, Jr, 17AC-CR00847-01: Delivery of Controlled Substance
61. State v. Philip W. Rhodes, Jr, 17ML-CR00226-01: Unlawful Use of a Weapon, Assault 4th
62. State v. Philip W. Rhodes, Jr, 17ML-CR00314: Misd. Resisting Arrest
63. State v. Philip W. Rhodes, Jr, 17ML-CR00437-01: Felony Possession of a Controlled Substance

64. State v. Porter J. Wilson, 17ML-CR00356-01: Felony DWI
65. State v. Marsha D. Wyrick, 17ML-CR00318-01: Felony Possession of a Controlled Substance
66. State v. Miranda Dillon, 16ML-CR01157-01: Felony Possession of a Controlled Substance
67. State v. Jordan Griffitt, 17AC-CR00596: Committing Violence Against a Corrections Officer in DOC
68. State v. Jordan Griffitt, 17AC-CR00595: Committing Violence Against a Corrections Officer in DOC
69. State v. Brandon W. Humphrey, 17ML-CR00223: Felony Possession of a Controlled Substance
70. State v. Brandon W. Humphrey, 17ml-CR00626-01: Burglary 2nd
71. State v. Travis E. Saint, 17ML-CR00588-01: Unlawful Use of a Weapon
72. State v. Eugene L. Eads, 17ML-CR00646: Misd. Resisting Arrest
73. State v. Salvador Hernandez-Navarro, 16AC-CR00419-01: Property Damage 1st
74. State v. Salvador Hernandez-Navarro, 17AC-CR01346-01: Robbery 2nd, Assault 3rd, Sexual Abuse 2nd
75. State v. Donell C. Banks, 17AC-CR01321-01: Delivery of a Controlled Substance, Leaving the Scene of an Accident
76. State v. Sherry L. Albert, 17ML-CR00501: Delivery of Contraband at County Jail
77. State v. Neil K. Huff, 17ML-CR00259-01: Felony Possession of Controlled Substance
78. State v. Neil K. Huff, 17ML-CR00275-01: Burglary 1st
79. State v. Calvin M. White, 17ML-CR00662-01: Domestic Assault 1st, Armed Criminal Action, Unlawful Use of a Weapon
80. State v. Jaimielee Daum, 17ML-CR00673: Felony Possession of Controlled Substance
81. State v. Brooklyn R. Traceski, 17ML-CR00654: Felony Possession of Controlled Substance
82. State v. Travis E. Saint, 17ML-CR00776-01: Tampering 1st
83. State v. Leslie M. Dugger, 17AC-CR00368: Domestic Assault 4th
84. State v. Robert E. Smith, 17AC-CR01123: Felony DWR
85. State v. Tarrance S. Woods, 17AC-CR00994: Felony Stealing
86. State v. Daniel P. Yarnell, 17AC-CR01494: Misd. Stealing
87. State v. David W. Pigford, 16AC-CR01289-01: Burglary 1st
88. State v. Lawrence Mosely, 15AC-CR00346-02: Delivery of Controlled Substance (x2), Unlawful Use of a Weapon
89. State v. Lynn M. Sanders, 17ML-CR00851-01: Felony Possession of Controlled Substance
90. State v. Gregory D. Muncy, 17ML-CR00735-01: Felony Possession of Controlled Substance
91. State v. James M. Wright, 17ML-CR00593: Trafficking Drugs 2nd, Deliver of a Controlled Substance
92. State v. Dominick Vernon, 17ML-CR00825: Felony Stealing
93. State v. Nathan A. Huff, 17ML-CR00786: Delivery of a Controlled Substance
94. State v. Cheswick S. Cheatham, 13ML-CR00199-01: Felony Probation Violation

95. State v. George Washington, 17AC-CR01766: Committing Violence Against a Corrections Officer in DOC
96. State v. Jonathan W. Gibson, 12ML-CR00299-01: Felony Probation Violation
97. State v. Anthony R. Gendle, 16ML-CR00813: Unlawful Use of Paraphernalia
98. State v. Traivon D. Jefferson, 16AC-CR02819: Misd. Resisting Arrest
99. State v. Traivon D. Jefferson, 17AC-CR02203: Murder 2nd
100. State v. Traivon D. Jefferson, 17AC-CR02471: Unlawful Use of a Weapon

Several of my cases are unable to move forward because we need to contact witnesses. Many of my clients are waiting on my advice with regard to plea recommendation or a suppression matter, but often such advice is contingent upon finding additional evidence. That evidence often includes witness information and statements. Our office has only one investigator for all of the attorneys. While he is excellent at his job, he is limited in his ability to timely locate and contact witnesses for every attorney on every requested case in the office while also completing his other job duties, such as serving subpoenas. He is currently on paternity leave and is not expected to return until January 2018, leaving our office with no investigator. Our support staff is doing its best to complete investigative tasks in his absence, but they have plenty of their own job duties.

Meeting with clients is especially time consuming with the Missouri State Public Defender ("MSPD"). I have clients who are incarcerated in Boonville Correctional Center, Chillicothe Correctional Center, Cole County Jail, Cooper County Detention Center, Farmington Correctional Center, Fulton Reception & Diagnostic Center, Jefferson City Correctional Center, Miller County Jail, Moberly Correctional Center, Ray County Jail, South Central Correctional Center, Western Missouri Correctional Center, and Women's Eastern Reception, Diagnostic & Correctional Center. It is neither efficient nor convenient to meet with clients in correctional facilities. All require advance appointments, and each facility has its own limited hours for calls or visits. It is not uncommon to schedule a DOC appointment and be notified at the time of the appointment that the client has been transported out on a writ or transferred to another facility. Also, at both jails and prisons, an attorney can anticipate a wait of up to an hour before being permitted to visit with a client in person.

Additionally, not all of my clients who are out of custody are local. I have clients who reside throughout various counties in Missouri as well as clients who live out of state. It is routine to be unable to meet with clients outside of court appearances because of the circumstances that necessarily coincide with poverty and criminal charges. Many of my clients do not have a valid driver's license or transportation to meet with me in my office. Likewise, many of my clients do not have consistent access to a primary phone number where they can be reached for case discussion or updates.

Some of my cases are more time-consuming than others. For example, I am unable to work with one client who lives in another state because of his cognitive disability and inability to travel to my office. He is accused of very serious conduct but I am unable to prepare a defense. I am the fourth public defender from our office to represent him, and our office has still not been able to retain an expert to evaluate him in his home town.

One of my clients is an illegal immigrant, and I am not an expert in immigration law. He also speaks only Spanish. I am unable to meet with him without arranging for a Spanish-speaking interpreter, which is difficult to schedule.

In the cases in which a client is alleged to have committed violence in a correctional facility, our office has to make special arrangements to show the client all electronic evidence in the facility. In at least two of these cases, I have file boxes full of mental health and internal DOC records sitting in a corner in the office waiting to be reviewed. These records were requested by attorneys entered before me, but there are no notes indicating the records have been previously reviewed.

I spoke with an individual in DOC last week who had been a client of Area 19 for nearly a year. I am his third public defender. He thanked me profusely for speaking with him as he explained I was the first attorney he had spoken with.

I am the third or fourth attorney assigned on many of my cases, and that causes a set of problems I would not otherwise encounter. The client is usually angry and confused – and rightfully so – during our first conversation. Too often, previous attorneys have not left sufficient notes on what has been done, what conversations have taken place with the client, or what negotiations have been entertained. I am forced to start as if it's a new case, but without the same advantages. By this time a deposition may have been done but without asking questions relating to what I believe the defense to be; essential discovery has not been timely requested; a client has missed an opportunity for a change of judge or venue; evidence or witnesses that might have existed previously no longer exist or can no longer be found; etc.

I do not believe attorneys who had these cases prior to me intentionally neglected the clients or their files. Rather, I believe they were victims of how MSPD had routinely operated; they had far too many cases, and it was absolutely impossible to effectively represent every client in every case.

In the first MSPD office I worked, Area 15, I had no mechanism for capping my caseload. When I started, I was assigned as the only public defender in Cooper County, Missouri, and that meant I took every criminal case charged against every indigent person who applied for MSPD services in that county. I had five years of experience as an attorney when I started but still could not handle what was demanded of me. I carried a caseload of approximately 150-170 and was also expected to be present in court for the entirety of every associate and circuit law day. I routinely received dozens of new clients each month, and I had to meet and discuss their cases with them as well as continue progression on existing cases. I had very little time for research or motion writing, and my discovery review was done only with great brevity before discussing clients' cases with them. If I determined one case had more meritorious suppression issues or defense strategies, I would spend weekends and evenings preparing that case file.

When I asked my colleagues for advice, I was repeatedly told I had to prioritize some clients and ignore the others in order to accomplish anything and avoid burnout. I was advised to prepare for only one docket at a time – the next docket – unless I was preparing for a trial. If something was going to trial, the strategy was to ignore all cases except the case going to trial

until the trial was over. All of this advice amounted to a form of triage that I found to be unacceptable, but nobody offered a more workable solution. The courts told us we had to take cases, and we did not have enough attorneys to lower our individual caseloads. Attorneys would get overwhelmed and resign, and their cases would have to be reassigned amongst the remaining attorneys in the office.

In contrast, the caseload limit in Area 19 has been a great relief. When I started here in July, I was instructed to inform my District Defender, Justin Carver, if I reached a point when I felt I could no longer be assigned new cases and still provide competent representation to my existing clients. When combined with the unique circumstances of MPSD, I still would not consider my caseload to be ideal. However, the change is significant. In cases in which I already have discovery, I am usually able to review the discovery before my first meeting with the client. This makes the conversation more productive and makes the case move more quickly. I have also been able to spend more time researching legal issues. I've used that research to advise clients, prepare for preliminary hearings, write suppression motions, and file legal memorandums. Since September, that has led to a complete dismissal of charges in at least three felony cases.

I have also been able to demand trials and announce that I am fully prepared on the day of trial in three instances in which the prosecuting attorney was not. In those instances, the state dismissed the charges. The same has happened with preliminary hearings: I have filed motions to dismiss if necessary witnesses did not appear, and the court dismissed cases when the prosecutor did not present its witnesses. I've also filed motions to compel discovery after having time to review the file, deposed witnesses, and worked with experts on cases. I won a contested probation violation for a client in which we had two days of testimony involving an alleged laws violation. This took preparation time outside of court and two afternoons of testimony in court. I have done these things while routinely traveling to dockets in Miller County – approximately 30 miles from the office – and spending the day in the county courthouse unable to work on other matters. I've also started appearing for most of my settings in Cole County and meeting with new clients there. Finally, I was able to prepare for and second chair a child sex jury trial and the related pretrial hearings. It has been difficult to accomplish these things with the caseload I currently have, but I am certain I would not have been able to do it with the caseload I had in my last office. More importantly, on a professional level, I no longer feel like my ethical standards for representation are being compromised.

MSPD will face issues in addition to the caseload because of the nature of the work and the clients' life circumstances, but limiting the caseload to what an attorney can competently handle has and can continue to improve attorneys' ability to provide effective representation.

Justine R. Finney

Justine R. Finney

State of Missouri
County of Cole

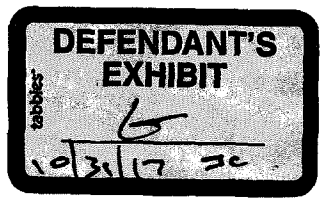
On this 30 day of October, 2017, before me, a Notary Public in and for said state, personally appeared Justine R. Finney, personally known or properly identified, who after having first been duly sworn, acknowledged that she executed her signature hereto as her free act and deed.

Theresa M. Schaefer
Notary Public

THERESA M. SCHAEFER
Notary Public - Notary Seal
STATE OF MISSOURI
Cole County
Commission # 13452968
My Commission Expires: 12-09-2017

AFFIDAVIT

STATE OF MISSOURI



Before me, the undersigned authority, personally appeared Lori Morgan, who being by me duly sworn, deposed as follows:

My name is Lori M. Morgan, I am of sound mind, capable of making this affidavit, and personally acquainted with the facts herein stated:

My position with the Missouri State Public Defender is Legal Assistant II. I became employed with the Area 19 Office of the Missouri State Public Defender on November 30, 2015. My primary job function is the processing of applications for public defender services to determine if the applicant qualifies for representation based on indigence and if they do qualify, to then assign the cases for the qualifying applicants to one of the attorneys in our office.

In January 2017 our office began to calculate the caseloads of the attorneys in our office with the intent of capping them at ethical and manageable case load. Utilizing this method, each attorney is assigned approximately 15-20 new cases per month (depending on case type). When they reach 100% of their capacity, there are internal discussions about whether the attorney can take more cases and continue to provide competent representation on all of their cases. If they can, more are assigned. If they cannot, they get no more new cases for that month. This is repeated with each attorney in the office until all attorneys in the office have exhausted their ability to take more cases.

After losing 5 attorneys to resignation and one to a military obligation, there was a need to reassign those cases among the remaining attorneys in the office and in doing so it left our office unable to open new cases. At this point I was instructed to no longer open new cases for those that qualify for public defender services but rather to file a motion asking for the appointment of another attorney to represent the qualifying defendant. The motion to appoint is the first pleading filed in our office now when processing an application.

As of October 30, 2017 there are 117 cases in Cole County that have not been assigned to an attorney, 54 in Miller County, and 3 in Moniteau County. Of these, the clients are both in and out of custody. Many are in Missouri DOC facilities, in the Moniteau County jail, Miller County jail, and Cole County jail. There are also clients with unassigned cases that are out of custody and residing across the state. I also have 36 applications for clients with cases in Cole County and 60 for Miller County for applicants that qualify for services that are pending opening.

Below is a list of all unassigned cases that have been opened in the Jefferson City Trial Office as of October 30, 2017:

Cole County Ungranted Motion to Appoint IN CUSTODY:

Adams, Arren 17AC-CR01767 Committing Violence

Almanza, Jose 17AC-CR01903 UUW

17AC-CR02037 Theft/Stealing

17AC-CR02535 PCS

Bellamy, Antoinne 17AC-CR1347 Stealing (Speedy filed)

Byrd, Corey 17AC-CR2074-01 Stealing

Byrd, Joshua 17AC-CR02352 Domestic 2nd

Edwards Jr, Charles 16AC-CR02645 Dist. Public Housing

El-Amin, Faheem 17AC-CR02374 Stealing

Fewins, Zachary 17AC-CR01956 Stealing

17AC-CR01365 Tampering 1st

14AC-CR02942-01 PV

12AC-CR00030-01 PV

12AC-CR02579-01 PV

Findley, Kenneth 17AC-CR1685-01 Domestic 2nd

Flowers, Marc 13AC-CR1468-01 PV

Floyd, Quency 16AC-CR00106-01 PV

Green, Joseph 15AC-CR00204-01 PV

17AC-CR00178 PCS

17AC-CR00200-01 Burg 1st

17AC-CR01016 Tampering 1st

17AC-CR01017 Burg 2nd

17AC-CR01018 Tampering 1st

17AC-CR01019 Receiving

13AC-CR00689-01 PV

15AC-CR00151-01 PV

Harris, Tonia 16AC-CR00562 Bad Check

Hewitt, Levi 17AC-CR01537-01 Stealing

16AC-CR01008 PV

Hickmon, Rafael 17AC-CR02264-01 Tampering/evidence

Hollandsworth,Randy 17AC-CR01128 DWS 2nd

Hudson, Marcus17AC-CR02068 Burg 2nd

Huff, Nathan 17AC-CR01479-01 Delivery

Jackson III, Stephen 17AC-CR02353 Domestic 4th

James, Christopher 17AC-CR00707-01 PCS

Labore, Brandon 17AC-CR02818-01 PCS

Long, Christina 17AC-CR00864 Stealing

Love, Patrick 17AC-CR02109-01 Stealing

McIlwain, Matthew 16AC-CR00362-01 PCS

Ostberg, Mark 17AC-CR00727-01 PCS

17AC-CR01861 Stealing

17AC-CR02060 PCS

17AC-CR00349-01 PCS

Peters, Danna 12AC-CR01116-01 PV

15AC-CR02431-01 PV

15AC-CR00143-01 PV

15AC-CR02890-01 PV

Phillips, Stephon 13AC-CR02996-01 PV

16AC-CR02469-01 Viol. O.P.

Reyes, Anna 17AC-CR00441 Stealing

Robinson, Graylon 17AC-CR01804-01 PCS

Siebenman, Aryca 15AC-CR02910-01 PV

Skinner, Bryson 17AC-CR02470 Stealing

17AC-CR02474 Stealing

17AC-CR02440 PCS

17AC-CR02439 Burg 2nd

Southern, Tiffany 15AC-CR02767-01 PV

Spence, Kiley 17AC-CR01677 PCS

Sperry, David 17AC-CR00011 DWI (B felony)

Steinbeck, Eric 15AC-CR00430-01 PV

Tolbert, Angelo 17AC-CR00922 Domestic 4th

17AC-CR01200 Tampering 2nd

Weirich, Bryan 17AC-CR01803 Stalking 1st

Whithaus, Jennifer 17AC-CR01600-01 Delivery

Williams, Jason 17AC-CR02225 PCS

Williams, Quentin 17AC-CR01562-01 PCS

17AC-CR01578-01 Domestic 2nd

16AC-CR03222 PCS

16AC-CR03110 Domestic 3rd

16AC-CR00934-01 PCS

16AC-CR00517 Domestic 3rd

16AC-CR00492-01 PCS

15AC-CR02760-01 Manufacture/produce

Cole County Ungranted Motion to Appoint Out of Custody

Alldridge, Alicia	16AC-CR00051-01 Stealing 3rd
Barton, Logan	17AC-CR02214-01 Terroristic Threat
Briggs, Charlene	17AC-CR00264-01 Stealing 3rd
Hawkins, Kelly	17AC-CR00360-01 Delivery
Irvin, Alexandra	17AC-CR00180-01 Receiving
Jones, Terry	17AC-CR01619 Abuse/Neglect of a Child
Koechner, Brandi	16AC-CR02754 PCS
	17AC-CR00270 PCS
	17AC-CR01004 PCS
McCallip III, Richard	16AC-CR01741-01 PCS
Moore, Susan	17AC-CR00869-01 DWI
Myers, Steven	17AC-CR01423 Stealing
Parker, Antonia	15AC-CR00965 Bad Check
Perkins, William	17AC-CR00764 PCS
Pigford, Elizabeth	17AC-CR00681-01 PCS
	17AC-CR01166 Paraphernalia
Sinden, Rocky	17AC-CR00773-01 PCS
Smith, Samantha	16AC-CR02063-01 Resisting
	16AC-CR03264 PCS Misd. A
West, Julie	17AC-CR00491
Wilson, Joseph	17AC-CR02069-01 PCS

Cole Motion to Appoint/Motion to Decline overruled

Byrd, Corey	15AC-CR03445 Stealing 3rd

	17AC-CR01462 PCS
Cooley, Celeste	17AC-CR02386 Delivery
Cravens, Steven	17AC-CR00239 Stealing
	17AC-CR00557 Stealing
Hite Jr, Gregory	17AC-CR01876 Resisting
Houseman, Daniel	16AC-CR03257 PV
	17AC-CR01548 Stealing
Houston, Chauntiana	17AC-CR01359 Leaving Scene
Koelling, Dara	17AC-CR01029 Domestic 2nd
McCormick, Chad	17AC-CR00599 Committing Violence
O'Donnell, Carrie	17AC-CR01615 PCS
Simpson, Glen	17AC-CR01203 PCS
Snider, Sean	16AC-CR03188 PCS
Toledo, Javier	16AC-CR01298 Stealing
Weaver, John	17AC-CR01187 Committing Violence
Weyland, Samuel	17AC-CR01969 Forgery

***Miller Motion to* Appoint Overruled**

Bilyeu, Edgar	17ML-CR01100 Sodomy 1st
Black, William	17ML-CR00956 Domestic Assault 4th
	17ML-CR01192 PCS
	11ML-CR00683-01 PV
Christian, Christina	17ML-CR00207-01 PV
Ford, Michael	17ML-CR00289 Fail to Register as a Sex Offender
Lasley, Tiffany	17ML-CR00993 PCS
Lunsford, Austin	17ML-CR00779 Stealing

Thomas, Jason	17ML-CR00545 Burg 1st
	17ML-CR00481 DWS 2nd

Miller Ungranted Motion to Appoint

Asher, Lacey	14ML-CR00966-01 PV
Birdtail, Shaniya	17ML-CR01276 Endangering
Bowlin, Ronald	17ML-CR01277 Endangering
Brown, Johney	17ML-CR01278 PCS
Callison, Jennifer	12ML-CR00354-01 PV
Chiarini, Shannon	16ML-CR00977-01 PV
Clay, Christopher	13ML-CR00908-01 PV
Crosthwait, Mark	15ML-CR00595-01 PV
	17ML-CR00928 PCS
Doyle, Diedra	11ML-CR00495-01 PV
Dwyer, Joseph	17ML-CR01097 Burg 2nd
Farrow, Gerald	17ML-CR00775 Assault 2nd
	17ML-CR00775 PCS
Gaunt, Melisa	17ML-CR00645 PCS
Goodwilliw, Sean	15ML-CR00148-01 PV
	14ML-CR00074-01 PV
Hail, Dillon	17ML-CR01136 Stat. Sodomy 1st
	17ML-CR01129 Burg 1st
Hice, John	17ML-CR01094 Domestic 2nd
	17ML-CR01093 Domestic 2nd
Hilgert, Jason	17ML-CR01281 PCS

Hill, Brandon	17ML-CR01264 DWS
	17ML-CR00447 DWS
Horton, Bradley	10ML-CR00443-01 PV
Lunsford, Austin	17ML-CR00778 Stealing
Luttrell Jr, John	17ML-CR01185 PCS
Martin, Aaron	17ML-CR01021 Delivery
Martin, Kelly	17ML-CR01020 Delivery
Olson, Christopher	15ML-CR00443-01 PV
Patalsky, Jacob	17ML-CR00954 Tampering 1st
Phillips, Lucas	17ML-CR01237 PCS
Powell, John	17ML-CR01149 Assault 1st
Riggs, Kendra	13ML-CR00773-01 PV
Scott, Ami	17ML-CR00316 PCS
	17ML-CR00404 Resisting
Taylor, Michael	17ML-CR01143 Burg 2nd
	14ML-CR00631-01 PV

Moniteau Ungranted Motion to Appoint

Hobbs, Kimberly	16MT-CR00445 DWI
Kaullen, Jeremiah	17MT-CR00100 Driving Suspended
	17MT-CR00099 DWI

Left over from other attorneys not reassigned-Motion to Appoint not granted

Brake, Randy	16ML-CR00735-01 PV
Broadway, Owen	16ML-CR00688 Bad Check
Burch, Daniel	16ML-CR00440 Invol. Manslaughter
Hertel, Robert	16ML-CR00508 Enticement

Heilig, Dillon	17AC-CR00292 DWI
Faulkner, Bill	16AC-CR02427 Assault 3rd
	16AC-CR02478 PCS
	16AC-CR02482 Violation OP
	16AC-CR02519 Violation OP
Rice, Brisha	16ML-CR00023 PCS
Shallenberger, Karla	12ML-CR00083-01 PV
Smith, Robert	16AC-CR01981 Assault 3rd
	16AC-CR00638 DWS
Stengel, Katy	15ML-CR01234 PCS
Stone, Ashley	16AC-CR02928 Assault 3rd
Turpen, Steven	16ML-CR00804 Rape 2nd

Applications

I have 36 Cole County applications where the applicant qualifies and the motion to appoint needs to be filed and a file created.

I have 60 Miller County applications where the applicant qualifies and the motion to appoint needs to be filed and a file created.

Affiant

In witness whereof I have hereunto subscribed my name and affixed my official seal this

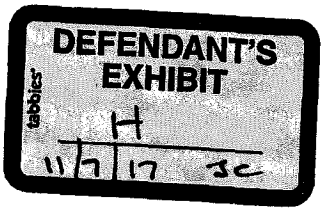
31 day of October, 2017.

(Signed)

THERESA M. SCHAEFER
Notary Public - Notary Seal
STATE OF MISSOURI
Cole County
Commission # 13452968
My Commission Expires: 12-09-2017

(Seal)

Case Information	Totals	Date	Division	Docket
Carver, Justin	~~224~~ 220			
20 Other Homicide	1			
565.021 - Murder 2nd FA	1			
Christopher C Buxton (Cause # 17LA-CR01008)		08/09/2016	3	
30D A - B Felony Drug (incl. unclassified)	4			
195.211 - Drug/Del. Manu. Prod.	4			
David D McDaniel (Cause # 16ML-CR00141-01I		02/09/2016	3	
Charles D. Christoff (Cause # 16ML-CR00291-0		04/12/2016	2	
Amber Higgins (Cause # 16ML-CR00051-01F)		05/02/2016	2	
Connor Leighton Cooper (Cause # 16ML-CR00:		10/14/2016	3	
30F A - B Felony Other (incl. unclassified, n	1			
569.160 - Burglary 1st Degree	1			
Jason M Thomas (Cause # 17ML-CR00545)		10/04/2017	4	
30F A - B Felony Other (incl. unclassified, n	3			
217.385 - Committing Violence	1			
Ronnie Brown (Cause # 16AC-CR00144F)		04/07/2016	2	
565.081 - Assault Law Enfrcmnt Officer FA	1			
Marvin Rice (Cause # 15CW-CR00087)		01/27/2012	4	
577.010 - DWI MA/B Felony B/D	1			
James Ritchie (Cause # 16ML-CR00926-01)		09/12/2016	1	
30X A - B Felony Sex (incl. unclassified, ma	2			
566.060 - Sodomy 1st Degree	1			
Edgar A Bilyeu (Cause # 17ML-CR01100)		10/12/2017	4	
566.062 - Statutory Sodomy 1st Dgr	1			
Dillon J Robertson (Cause # 17ML-CR00780)		08/24/2017	4	
35D C - D - E Felony Drug	50			
195.202 - Possession of a controlled substance	7			
George A Wohlgermuth (Cause # 16ML-CR012		01/30/2017	3	
Heather N Humphrey (Cause # 16ML-CR01160		02/08/2017	2	
Richard W Gilbert Jr (Cause # 16ML-CR01275)		04/05/2017	4	
Cathy L Roe (Cause # 16ML-CR00253)		06/14/2017	4	
Jeffery T Nash (Cause # 17ML-CR00257)		06/07/2017	4	
~~Melissa D Walker (Cause # 17ML-CR00230)~~		05/24/2017	4	
Chris L Witt (Cause # 17ML-CR01072)		09/21/2017	4	
579.015 - Possession of a Controlled Substance	41			
Mark A Blackwell (Cause # 17ML-CR00054)		01/17/2017	4	
Randy A Helton (Cause # 17ML-CR00053-01)		01/19/2017	3	
April D Ford (Cause # 17ML-CR00118)		02/01/2017	4	
Samantha J Helton (Cause # 17ML-CR00146-0		02/15/2017	1	
Ruth A Allen (Cause # 17ML-CR00179-01)		03/02/2017	3	
Ruth A Allen (Cause # 17ML-CR00206-01)		03/02/2017	3	
Christopher A Vanderpool (Cause # 17ML-CR0		04/03/2017	1	
Johnathan H. O'Neill (Cause # 17ML-CR00209-		04/05/2017	3	
Eddie L Hehner (Cause # 17ML-CR00327)		05/22/2017	4	
Ladonna L Ferguson (Cause # 17ML-CR00422)		05/22/2017	4	
Drue T Spiers (Cause # 17ML-CR00677)		06/21/2017	4	
Christopher A Vanderpool (Cause # 17ML-CR0		07/17/2017	4	
Marci Koopmeiners (Cause # 17ML-CR00693)		06/26/2017	4	
Richard B Rains (Cause # 17ML-CR00563)		06/12/2017	4	
Daniel A Davis (Cause # 17ML-CR00784)		08/08/2017	4	
Brittany Wilson (Cause # 17ML-CR00806-01)		08/08/2017	4	
Zachary D. Duncan (Cause # 17ML-CR00899)		08/10/2017	4	
Ace A Doyle (Cause # 17ML-CR00881-01)		08/10/2017	3	



Case Information	Totals	Date	Division	Docket
Chelsey M Collison (Cause # 17ML-CR00901)		08/10/2017	4	
Travis T Robbins (Cause # 17ML-CR00759)		08/16/2017	4	
Joshua L Reed (Cause # 17ML-CR00953)		08/23/2017	4	
Robert J Hertel (Cause # 17ML-CR00795)		08/23/2017	4	
Jason L Woods (Cause # 17ML-CR00984-01)		08/24/2017	4	
John Boedecker (Cause # 17ML-CR00959)		08/24/2017	4	
Donna D. Taggart (Cause # 17ML-CR00971)		08/24/2017	4	
Stanley W. Woods (Cause # 17ML-CR00787)		09/08/2017	4	
Ruth A Allen (Cause # 17ML-CR01049-01)		09/08/2017	3	
Cassie Grant (Cause # 17ML-CR00522)		09/08/2017	4	
Joshua Barton (Cause # 17ML-CR01019)		09/08/2017	4	
Brooklyn R Traceski (Cause # 17ML-CR01047)		09/12/2017	4	
Christine A Cusanelli (Cause # 17ML-CR01050)		09/12/2017	4	
Heather I Howard (Cause # 17ML-CR01018)		09/13/2017	4	
Cathy Bailey (Cause # 17ML-CR00813)		09/13/2017	4	
Nichole M Donnelly (Cause # 17ML-CR01091)		09/15/2017	4	
Bradley G. Horton (Cause # 17ML-CR01090)		09/21/2017	4	
Cory Fisher (Cause # 17ML-CR01103)		09/21/2017	4	
Stefanie M Hader (Cause # 17ML-CR01080)		09/21/2017	4	
Anthony R Mandino (Cause # 17ML-CR01070)		10/12/2017	4	
Tiffany J Lasley (Cause # 17ML-CR00993)		10/12/2017	4	
Jason L Winters (Cause # 17ML-CR00199-01)		10/30/2017	1	
Brad L Ponder (Cause # 17ML-CR00747)		10/31/2017	4	
579.020 - Delivery of a Controlled Substance	1			
Corey E Samuels (Cause # 17ML-CR00742)		08/09/2017	4	
579.068 - Trafficking Drugs 2nd Degree	1			
Cody D Stone (Cause # 17ML-CR00091)		02/09/2017	4	
35D C - D Felony Drug	**20**			
195.202 - Possession of a controlled substance	20			
Terry K Phelps (Cause # 14ML-CR00953-01F)		02/04/2015	3	
Alyssa C Smith (Cause # 15ML-CR00642-01F)		07/30/2015	2	
Preston J. Cash (Cause # 16ML-CR00171-01F)		02/24/2016	3	
Melinda Winebrenner (Cause # 15ML-CR01080		03/03/2016	2	
Ricky L Cotten (Cause # 16ML-CR00273-01)		03/29/2016	2	
David Conboy (Cause # 16ML-CR00361-01F)		04/15/2016	1	
Beverly Hollenbeck (Cause # 16ML-CR00444-0		05/25/2016	2	
Charles D. Christoff (Cause # 16ML-CR00443-0		06/07/2016	2	
Dwayne H Brown (Cause # 16ML-CR00226-01F		07/08/2016	3	
Christopher C Olson (Cause # 16ML-CR00441-(		07/11/2016	2	
Dustin R Thomas (Cause # 16ML-CR00699-01F		07/20/2016	2	
Bridgette L Beard (Cause # 16ML-CR00776-01F		08/11/2016	1	
Charles W Noland (Cause # 16ML-CR00797-01		09/25/2016	3	
Tyler M Henderson (Cause # 16ML-CR01070-0		10/21/2016	2	
Christopher A Vanderpool (Cause # 16ML-CR0		10/31/2016	3	
Mack M Teegarden (Cause # 16ML-CR01139-0		11/10/2016	1	
Ricky J Mitchell (Cause # 16ML-CR01173-01)		12/14/2016	2	
Billy Upton (Cause # 16ML-CR01225-01)		12/15/2016	3	
Mariah C Adams (Cause # 16ML-CR01300-01)		12/29/2016	2	
Shawn Steele (Cause # 16ML-CR01324-01)		12/30/2016	2	
35F C - D - E Felony Other (Incl. unclassifie	**56**			
302.321 - Driv. While Susp/Revoked 2nd & Subseq	5			
~~Rilan Retter (Cause # 17ML-CR00002)~~		04/05/2017	4	
Michael J Huber (Cause # 17ML-CR00874)		08/08/2017	4	

Case Information	Totals	Date	Division	Docket
George A Wohlgermuth (Cause # 17ML-CR008!		08/10/2017	3	
Richard L Logan (Cause # 16ML-CR01229)		08/14/2017	4	
Dominic Finch (Cause # 17ML-CR00888)		08/23/2017	4	
565.052 - Assault 2nd Degree	1			
Gregory B Davis (Cause # 17ML-CR00354)		08/16/2017	4	
565.073 - Domestic Assault 2nd Degree	3			
Teresa L McLemore (Cause # 17ML-CR00186-(		03/01/2017	1	
Justin M Landreth (Cause # 17ML-CR00263)		04/05/2017	4	
Justin M Landreth (Cause # 17ML-CR00262)		04/05/2017	4	
565.074 - Domestic Assault 3rd Degree	2			
Chrystal A Scurlock (Cause # 17ML-CR00564)		07/28/2017	4	
Andrew W Smarsh (Cause # 17ML-CR00727)		08/23/2017	4	
568.040 - Crim. Nonsupport MA/FD	1			
Brian C Belleci (Cause # 16ML-CR01165-01)		01/12/2017	2	
568.040 - Nonsupport	12			
Don W Swanigan (Cause # 16ML-CR00198-01)		01/11/2017	2	
Donald C Mathers III (Cause # 17ML-CR00192)		04/05/2017	4	
Melissa S Wilson (Cause # 15ML-CR01221-01)		05/10/2017	1	
Eric B McNeil (Cause # 17ML-CR00406-01)		06/13/2017	2	
James Stivers (Cause # 16ML-CR01064-01)		06/14/2017	2	
Brandon L Wood (Cause # 17ML-CR00762)		08/08/2017	4	
Christopher D Duncan (Cause # 17ML-CR0081-		08/16/2017	4	
Stephanie Wysong (Cause # 17ML-CR00361)		08/23/2017	4	
Michael G Davidson (Cause # 16ML-CR01311)		09/08/2017	4	
Samuel R Reedy (Cause # 17ML-CR00972)		09/08/2017	4	
David E Wallace (Cause # 17ML-CR00797)		09/15/2017	4	
William J Nowicki (Cause # 17ML-CR00049)		09/21/2017	4	
568.045 - Endangr Welfare Child 1st Dgr	1			
Heather Green (Cause # 17ML-CR00007)		06/07/2017	4	
568.060 - Abuse or Neglect of a Child	1			
Joylynn Rhoades-Matherly (Cause # 17ML-CR0		08/23/2017	4	
569.080 - Tampering 1st Degree	5			
Cody D Stone (Cause # 17ML-CR00317)		05/01/2017	4	
Cody D Stone (Cause # 17ML-CR00403)		05/01/2017	4	
Preston J. Cash (Cause # 17ML-CR00292-01)		05/01/2017	3	
David C Bryant (Cause # 17ML-CR00590)		08/08/2017	4	
Michael A Taylor (Cause # 17ML-CR00965)		08/23/2017	4	
569.170 - Burglary 2nd Degree	4			
Robert Sherrow (Cause # 17ML-CR00184-01)		03/01/2017	1	
Levi M Stiles (Cause # 17ML-CR00193-01)		03/01/2017	1	
Darrell Wilhite (Cause # 17ML-CR01105)		09/21/2017	4	
Brad L Ponder (Cause # 17ML-CR00871)		10/31/2017	4	
569.170 - Burglary 2nd FC	1			
Jason Konwinski (Cause # 16ML-CR01259-01)		01/12/2017	3	
570.030 - Theft/Stealing	6			
Jonathan H Johannes (Cause # 17ML-CR00188		03/01/2017	1	
Drue T Spiers (Cause # 17ML-CR00678)		07/12/2017	4	
Jamie L Morris (Cause # 17AC-CR01628-01)		08/18/2017	2	
Austin Lunsford (Cause # 17ML-CR00779)		10/12/2017	4	
Austin Lunsford (Cause # 17ML-CR00778)		10/12/2017	4	
Justin W Miller (Cause # 17ML-CR01184)		10/31/2017	4	
570.040 - Stealing 3rd Offense	1			
Nyisha M Robinson (Cause # 17ML-CR00362)		08/14/2017	4	

Case Information	Totals	Date	Division	Docket
570.080 - Rec. Stolen Prop. MA/FC	1			
David Murdoch (Cause # 15ML-CR00088)		09/15/2017	4	
570.090 - Forgery	1			
Finley A Burke (Cause # 17ML-CR00307)		05/04/2017	4	
571.070 - Unlawful Possession of a Firearm	2			
Anthony R Mandino (Cause # 17ML-CR00957)		08/24/2017	4	
Tyler J Clements (Cause # 17ML-CR01048)		09/12/2017	4	
575.150 - Resisting or Interfering with Arrest, Deter	2			
Preston J. Cash (Cause # 17ML-CR00293-01)		05/01/2017	3	
Stephanie Ash (Cause # 17ML-CR00165)		10/31/2017	4	
577.010 - Driving While Intoxicated	3			
Clayborn C Shafer (Cause # 17ML-CR00021-01		01/11/2017	1	
Joseph Kelso (Cause # 17ML-CR00157-01)		02/09/2017	3	
Jason A Smith (Cause # 17ML-CR00769-01)		06/14/2017	3	
577.060 - Leaving the Scene of an Accident	2			
Lindsey Russell (Cause # 16ML-CR01216-01)		04/05/2017	3	
Chris L Witt (Cause # 17ML-CR00506)		09/21/2017	4	
579.015 - Possession of a Controlled Substance	1			
Michelle L Brockway (Cause # 17ML-CR00767)		07/13/2017	4	
589.425 - Failure to register as a sex offender	1			
Michael D. Ford (Cause # 17ML-CR00289)		10/12/2017	4	
35F C - D Felony Other (Incl. unclassified, r	**32**			
195.202 - Possession of a controlled substance	2			
Melinda Winebrenner (Cause # 15ML-CR01081·		03/03/2016	2	
Kirsten N Iliff (Cause # 16ML-CR01278-01)		12/13/2016	2	
302.321 - Driv. While Susp/Revoked	3			
Gary W Patterson (Cause # 14ML-CR00989-01I		12/15/2014	3	
Mark P Rossi (Cause # 15ML-CR00037-01)		11/21/2016	3	
Daniel C Dietzman (Cause # 16ML-CR01046-01		12/02/2016	3	
565.073 - Domestic Assault 2nd FC	2			
Adam M Smith (Cause # 16ML-CR00279-01F)		04/27/2016	2	
Jeremy Howser (Cause # 16ML-CR00696-01F)		07/11/2016	2	
565.082 - Assault Law Enforcement Officer 2nd de	2			
Cheyenne Jilek (Cause # 16ML-CR00453-01F)		05/19/2016	1	
Mariah C Adams (Cause # 16ML-CR01301-01)		12/29/2016	2	
568.040 - Crim. Nonsupport MA/FD	11			
Wade Causey (Cause # 15ML-CR00190-01F)		01/21/2016	3	
James E. Wyatt (Cause # 15ML-CR00941F)		03/16/2016	4	
Avie Martin (Cause # 16ML-CR00174-01F)		03/29/2016	2	
Cheri Frank (Cause # 16ML-CR00175-01F)		05/02/2016	2	
Fred Craig (Cause # 16ML-CR00609-01F)		07/18/2016	3	
Ruby A Brown (Cause # 16ML-CR00896-01F)		09/13/2016	2	
Charles E Browers (Cause # 16ML-CR00853-01		09/13/2016	2	
John M Simons, Jr (Cause # 16ML-CR00935-01		10/28/2016	3	
Joshua E Thompson (Cause # 15ML-CR00139-		10/31/2016	2	
Latisha M Thomas (Cause # 16ML-CR01167-01		12/02/2016	2	
Ricky L Cotten (Cause # 16ML-CR01265-01F)		12/08/2016	3	
569.170 - Burglary 2nd FC	2			
Alyssa C Smith (Cause # 15ML-CR00813-01F)		09/03/2015	2	
Aaron L Matthess (Cause # 14ML-CR00403-01)		03/02/2016	1	
570.030 - Theft/Stealing	1			
Mindy J Blackwell (Cause # 16ML-CR00482-02I		07/11/2016	4	
570.120 - Passing Bad Check MA/FC	4			

Case Information	Totals	Date	Division	Docket
Walter L White Jr. (Cause # 14ML-CR00346-01I		06/22/2015	2	
Joseph A Waters (Cause # 15ML-CR00623-01F		09/09/2015	2	
Brandon J Flaugher (Cause # 13ML-CR00652-0		10/16/2015	2	
Dominic Finch (Cause # 16ML-CR00202-01F)		03/28/2016	2	
571.030 - Unlaw. Use Weapon	1			
Charles M Sandrell (Cause # 16ML-CR01332-0'		12/30/2016	3	
577.010 - DWI MA/B Felony B/D	3			
Alice Eakins (Cause # 14ML-CR00875-01F)		07/15/2015	2	
Antione S. Jordan (Cause # 16AC-CR01791-01I		10/27/2016	4	
Danny Jack (Cause # 16ML-CR01329)		12/28/2016	4	
577.060 - Leav. Scene/MV Acci. MA/FD	1			
Cody Bax (Cause # 16ML-CR00468-01F)		12/02/2016	3	
45M Misdemeanor (other than Traffic)	**12**			
302.321 - Driv. While Susp/Revoked 2nd & Subseq	1			
Jamie L Coplin (Cause # 17ML-CR00627)		07/28/2017	4	
455.085 - Violation of Protective Order	1			
Katherine Hood (Cause # 17AC-CR00776)		06/30/2017	3	
565.056 - Assault 4th Degree	1			
Jeffery L Cross (Cause # 17ML-CR00449)		06/14/2017	4	
565.074 - Domestic Assault 3rd Degree	1			
Michael J Huber (Cause # 16ML-CR01334)		08/08/2017	4	
565.076 - Domestic Assault 4th Degree	1			
William N Black (Cause # 17ML-CR00956)		10/10/2017	4	
569.140 - Trespass 1st MB	1			
Jesse M Ray (Cause # 16ML-CR00860M)		10/31/2016	4	
570.030 - Theft/Stealing	4			
Mark A Blackwell (Cause # 16ML-CR00547M)		11/10/2016	4	
~~Ryan L Southard (Cause # 15ML-CR00808)~~		05/22/2017	4	
Robert H. Mahlan, Jr. (Cause # 17AC-CR0025:		05/25/2017	3	
Brittany L Williams (Cause # 17AC-CR00409)		04/18/2017	3	
570.120 - Passing a Bad Check	2			
~~Ryan L Southard (Cause # 15ML-CR01120)~~		05/22/2017	4	
David Murdoch (Cause # 15ML-CR00903)		09/15/2017	4	
65F Probation Violation - Felony	**40**			
001.000 - Probation Violation	40			
Richard B. Holt (Cause # 12AC-CR00665-01F)		05/23/2013	2SJ	
Joseph A Waters (Cause # 12ML-CR00066-01F		09/09/2015	2	
Joseph A Waters (Cause # 13ML-CR00297-01F		09/09/2015	2	
Terrance L Declue (Cause # 12ML-CR00154-01		06/07/2016	2	
Adam M Smith (Cause # 13ML-CR00403-01F)		06/16/2016	1	
Billy E Williams (Cause # 12ML-CR00774-01F)		11/14/2016	2	
Tracey L Shelton (Cause # 14ML-CR00069-01)		04/12/2017	1	
Jason L Woods (Cause # 13ML-CR00786-01)		04/12/2017	2	
Anita Stanley (Cause # 16ML-CR00015-01)		05/17/2017	2	
Lance J Stroad (Cause # 14ML-CR00888-01)		05/17/2017	1	
Lance J Stroad (Cause # 14ML-CR00249-01)		05/17/2017	1	
Justin M McDowell (Cause # 15ML-CR00138-01		05/18/2017	2	
Justin M McDowell (Cause # 14ML-CR00623-01		05/18/2017	2	
Justin M McDowell (Cause # 12ML-CR00877-01		05/18/2017	2	
Travis D Hicks (Cause # 11ML-CR00722-01)		05/22/2017	1	
Anthony Lively (Cause # 16ML-CR00305-01)		06/14/2017	2	
Marvin Bowman (Cause # 13ML-CR00816-01)		06/14/2017	1	
Daniel S Klockzien (Cause # 15ML-CR00106-01		06/16/2017	1	

Case Information	Totals	Date	Division	Docket
Crysalois N Mccomb (Cause # 12ML-CR00456-		07/13/2017	2	
Zayne C Wood (Cause # 15ML-CR00442-01)		07/13/2017	2	
Michelle L Brockway (Cause # 14ML-CR00820-(		07/13/2017	1	
Ceaser T Bustamante (Cause # 14ML-CR00721		07/17/2017	2	
Richard B Hagedorn (Cause # 13AC-CR02788-(		05/02/2017	1	
Ashley A Newburn (Cause # 12ML-CR00249-01		06/13/2017	1	
Ezekiel R Stout (Cause # 16ML-CR00778-01)		08/08/2017	2	
Candace Rand (Cause # 16ML-CR00445-01)		08/08/2017	1	
Tiffany A Southern (Cause # 16ML-CR00191-01		08/09/2017	3	
Ace A Doyle (Cause # 15ML-CR01159-01)		08/10/2017	3	
Charity L Albers (Cause # 16ML-CR00285-01)		08/14/2017	1	
Bryan L Williams (Cause # 17ML-CR00410-01)		08/14/2017	3	
Bryan L Williams (Cause # 16ML-CR00844-01)		08/14/2017	3	
Terry J Weaver (Cause # 16ML-CR00077-01)		08/16/2017	3	
Ace A Doyle (Cause # 13ML-CR01017-01)		09/12/2017	1	
Mary R Fuller (Cause # 15ML-CR01256-01)		09/13/2017	4	
Michael L Bledsoe (Cause # 14ML-CR00980-01		09/13/2017	2	
Ezekiel R Stout (Cause # 15ML-CR00025-01)		09/15/2017	2	
Kendra Riggs (Cause # 13ML-CR00773-01)		10/10/2017	1	
Stephanie Ash (Cause # 14ML-CR00663-01)		10/31/2017	2	
Nikki J LaRusso (Cause # 13ML-CR00743-01)		10/31/2017	1	
Kyle Thomas (Cause # 15AC-CR01178-01)		10/31/2017	4	
65M Probation Violation - Misd.	**3**			
001.000 - Probation Violation	**3**			
Christopher M Maples (Cause # 15AC-CR0052(		06/15/2016	3	
Christopher M Johnson (Cause # 16ML-CR006:		08/08/2017	4	
Nicholas R Atkinson (Cause # 13ML-CR00590-(		08/10/2017	4	

Exhibit RR

IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI
16TH JUDICIAL CIRCUIT

FILED
CIVIL RECORDS
01-Nov-2017 16:30
CIRCUIT COURT OF JACKSON COUNTY, MO
BY Michele Duncan DCA

In re:
AREA 16 PUBLIC DEFENDER OFFICE) No. 1716-MC13258

EXHIBIT EH
12-5-17
8
Petsch
PENGAD 800-631-6989

MOTION REQUESTING CONFERENCE TO DISCUSS CASELOAD ISSUES

COMES NOW Ruth Petsch, District Defender of the Area 16 Public Defender Office, and requests a conference to discuss caseload issues pursuant to Sec. 600.063, subject to the below listed conditions and objections.

Reason for Conference

Due to excessive caseloads, the individual attorneys of the Area 16 Public Defender Office are violating or at risk of violating Missouri Supreme Court Rules 4-1.1 (competence), 4-1.3 (diligence), 4-1.4 (communication), and 4-1.7 (conflict of interest), as well as the Sixth Amendment right to effective assistance of counsel, if they continue to accept additional cases.

District Defender Petsch requests a conference to discuss caseload issues under the following conditions, and makes the following objections to Sec. 600.063 and Sec. 600.062.

1. ***That no prosecutor(s) be permitted to participate in the conference.***

Prosecutors lack standing to participate and have a conflict of interest in doing so.

Although Sec. 600.063 permits prosecutors to have notice of the conference and to appeal an adverse ruling, nothing in the text of Sec. 600.063 expressly permits prosecutors to be participants in the conference. To the extent that Sec. 600.063 permits or mandates participation of prosecutors, the statute is unconstitutional because in conflict with Missouri Supreme Court Rule 4; the Supreme Court's exclusive authority to regulate attorney conduct; and the rights of individual defendants, whose cases may be discussed at the conference, to confidentiality, *see* Rule 4-1.6(a), attorney-client privilege, work-product privilege, effective assistance of counsel and due process under the Sixth and Fourteenth Amendments.

2. ***That District Defender Petsch and her fellow attendees at the conference be permitted to discuss why her "entire office" is unable to accept additional cases.*** Sec. 600.063.1 provides that a District Defender may request a conference "to discuss caseload issues involving any individual public defender or defenders, but not the entire office...." However, District Defender Petsch would not need to have a conference with the Court if only some individual attorneys in her office were unable to accept additional cases; she could simply reassign cases within the office to other attorneys who were able to accept the cases. The reason why a conference is necessary is because none of the available attorneys in her office are able to accept additional cases at this time. To the extent that Sec. 600.063 precludes discussion of the "entire office," the statute is unconstitutional because in conflict with Missouri Supreme Court Rule 4, and the Supreme Court's exclusive authority to regulate attorney conduct.

3. ***That the individual attorneys in Area 16 be permitted to decline to accept additional cases when they are violating or at risk of violating Rules 4-1.1, 4-1.3, 4-1.4, 4-1.7, as well as the Sixth Amendment right to effective assistance of counsel.*** The Rules of Professional Conduct impose on all attorneys an ethical duty to provide effective assistance of counsel to all of their clients; attorneys violate those rules if they "accept[] a case that results in a caseload so high that it impairs [their] ability to provide competent representation, to act with reasonable diligence, and to keep the client reasonably informed." ***State ex rel. Mo. Pub. Def. Comm'n v. Waters***, 370 S.W.3d 592, 607 (Mo. banc 2012). To the extent that Secs. 600.062 and/or 600.063 preclude Area 16 attorneys from declining to accept additional cases when they are violating or at risk of violating the Rules of Professional Conduct, Secs. 600.062 and 600.063 are unconstitutional because in conflict with Missouri Supreme Court Rule 4; the Supreme Court's exclusive authority to regulate attorney conduct; the Sixth Amendment; and the individual attorneys' right to Equal Protection of law under the Fourteenth Amendment.

4. ***That the conference be on the record to allow District Defender Petsch the opportunity to appeal.***

5. ***That the conference be open for attendance by the public, except during those portions where details of individual defendants' cases are discussed.***

District Defender Petsch incorporates herein her "Suggestions in Support of Motion Requesting Conference to Discuss Caseload Issues."

Respectfully submitted,

/s/ Ruth Petsch

Ruth Petsch, MO Bar #48912
324 E 11th St., Suite 2000
Kansas City, MO 64106
Phone: 816-889-2098
Fax: 816-889-2999
E-Mail: Ruth.Petsch@mspd.mo.gov

MSPD_RP_0000030

Exhibit SS

Re: Michael Barrett Appointed in Crawford County - Additional Appointments

Chris Piatt to: Ellen Blau 11/21/2017 04:05 PM

Cc: Matthew Crowell, Michael Barrett, Joel Elmer, Jacqueline Shipma, Greg Mermelstein

Michael Barrett was appointed to three other cases yesterday in Crawford County. Four in total. All probation cases with the same appointment history as Wilkins.

Joshua Wilkins 14CF-CR01188-01
Aaron Selby 13CF-CR01324-01
Timothy Springer 17CF-CR00002-01
Richard Watts II 14CF-CR00204-01
Joshua Wilkins 14CF-CR01188-01

Christopher N. Piatt
Assistant Public Defender
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Rolla, Missouri 65401
Phone: (573) 368-2260
Fax: (573) 364-7976

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Ellen Blau---11/20/2017 04:36:04 PM---Chris, thanks for letting us know about this. I am going to include some other people on this email

From: Ellen Blau/Area085/MSPD
To: Chris Piatt/Area025/MSPD@MSPD
Cc: Matthew Crowell/Area025/MSPD@MSPD, Michael Barrett/Area99C/MSPD@MSPD, Joel Elmer/Area99C/MSPD@MSPD, Jacqueline Shipma/Area99C/MSPD@MSPD, Greg Mermelstein/Area085/MSPD@MSPD
Date: 11/20/2017 04:36 PM
Subject: Re: Michael Barrett Appointed in Crawford County

Chris, thanks for letting us know about this. I am going to include some other people on this email. Best, ellen

Chris Piatt---11/20/2017 04:29:52 PM---Mr. Barrett, Today Judge Parker appointed Michael Barrett to represent Joshua Wilkins in 14CF-CR0118

From: Chris Piatt/Area025/MSPD
To: Michael Barrett/Area99C/MSPD@MSPD
Cc: Matthew Crowell/Area025/MSPD@MSPD, Ellen Blau/Area085/MSPD@MSPD
Date: 11/20/2017 04:29 PM

Subject: Michael Barrett Appointed in Crawford County

Mr. Barrett,

Today Judge Parker appointed Michael Barrett to represent Joshua Wilkins in 14CF-CR01188-01 for a probation violation. On October 16, 2017, judge Parker appointed the PD to represent Wilkins in the matter and ordered the clerk to notify both our office and Michael Barrett as the Public Defender. The case was placed on today's docket for a hearing on the state's motion to revoke probation. When the case was called this afternoon I announced to the court that we did not have any attorneys who could provide competent representation at this time for Mr. Wilkins' case. That assigning an attorney from our office would not fulfill Wilkins' constitutional guarantee of competent representation given our current situation. The judge responded by ordering the entry of Michael Barrett as Mr Wilkins attorney, ordering Michael Barrett to appear at Wilkins' next court date on December 11, 2017, at 1:00 PM, and ordering the clerk to notify OCDC of his order appointing the PD on October 16, 2017, and directing the clerk to send OCDC the docket entries notifying the PD of his appointment on that date. I did notify the court that this was not permissible pursuant to State ex rel. Robinson v. Franklin, but the court declined to withdraw the order.

Judge Parker is one of our more reasonable judges. He informed me that he is trying to bring attention to the matter. I do not believe that his order, while heavy handed, is malicious. He did announce in making the order that our office was under a terrible strain and indicated that he believed we did not have the resources to handle the case.

Christopher N. Piatt
Assistant Public Defender
901 North Pine Street, Suite 200
Rolla, Missouri 65401
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Exhibit TT

IN THE TWENTY-FIFTH CIRCUIT FOR THE STATE OF MISSOURI

Circuit Court of Phelps County

	)	
	)	
In re:	)	
Area 25 Public Defender Office	)	Case No. 17PH-CV02226

FINDINGS AND ORDER

The District Defender of the Area 25 Office of the Public Defender System, together with the Deputy District Defender, came before the Court on December 27, 2017. The date and time for the hearing had been set beforehand although the Motion for Conference pursuant to Sec. 600.063 RSMo was not filed until that afternoon. Prosecutors for Phelps, Pulaski and Texas Counties were informed of the scheduled conference beforehand and the Prosecutors for Texas and Pulaski Counties were in attendance. Also in attendance was the Director of the State Public Defender System as well as several Assistant Public Defenders.

Preliminarily, the Court notes Sec. 600.063 RSMo requires approval by the Public Defender Director or the Commission (600.063.1) but the Director's attendance and participation in support of Movant assumes that approval.

Furthermore, Movant's suggestion that Prosecutor's lack standing to participate in the conference is moot. In any case, Sec. 600.063.2 presumes, infers and anticipates that participation. Movant's motion that prosecutors have no standing and to allow their participation makes the statute unconstitutional is denied.

Movant has also filed suggestions to the effect that Sec. 600.062 & 063 RSMo are unconstitutional to the extent they conflict with the Rules of Professional Conduct and that those statutes do not provide the exclusive remedy for addressing excessive case load. The Court does not need to decide those issues since Movant has chosen to avail itself of those statutes and procedures.

This Court notes at the outset that Public Defenders are called upon to provide the highest level of representation to indigent defendants. The Court observes that the Defenders in the Area 25 Office routinely do that, sometimes under difficult cirmcumstances.

The Court notes Sec. 600.063 RSMo permits this Court to grant relief "based upon a finding that the individual public defender or defenders will be unable to provide effective assistance of counsel due to case load issues." However, that statute fails to set out the applicable standard or burden of proof to make that determination. Without further guidance the Court adopts a preponderance of the evidence standard.

Movant argues that the Missouri Supreme Court, in disposing of In Re Hinkebein, SC96089, put the Public Defenders in the impossible position of violating ethical rules about acceptance of cases if they feel their caseload is too high. The Supreme Court, to this Court's knowledge made no such ruling in Hinkebein, but, in any case, that has been the law since at least State ex rel Waters, 370 S.W.3d 592 (2012). Presumably that is why the legislature enacted Sec. 600.063 RSMo in 2013.

Movant has provided the Court with figures for "Cases Initiated by County." (Part of Movant's Exhibit L) For Phelps, Pulaski and Texas Counties this shows cases have risen 14.38% from 2015 to 2017. However, the Court notes this rise is almost exclusively in C&D or low level felonies. A&B felonies for those counties have gone up only 6.48% from 2015 to 2017 and, in fact, fell 10.28% from 2016 to 2017. The Court does not have the benefit of further research in the matter but strongly believes the rise in lower level felonies can be attributed to drug cases; part of the "opioid crisis."

Movant has also provided the Court with the results of application of the Area 25 case load to both the "Old NAC Standard" and "The Rubin Brown Standard" which suggests Movant needs five attorneys each for the Phelps and Pulaski Counties and three attorneys for Texas County. None of those counties currently has that manpower. The Court is not persuaded by these studies/standards sufficiently to place reliance thereon. The "NAC Standard" imposes a numerical limit of 150 felony cases per year/ per lawyer, without regard to the types or complexities of those cases. "The Rubin Brown" study

assigns a number of hours per case based on the type of case but those assignments do not coincide with this Court's experience.

The Court believes it must apply its own experience of 35 years as a trial attorney in the same counties served by the Area 25 Office; over 23 of those years as a criminal defense lawyer and 11 ½ years in prosecution, augmented by the similarly vast experience of his colleague on the Circuit Bench, Hon. William E. Hickle.

This Court knows no attorney should accept employment as a trial attorney, whether Public Defender, Prosecutor or associate in a law firm primarily doing trial practice, and expect to work only 40 hours a week. To paraphrase the late Justice Joseph Story of the U.S. Supreme Court, "The law is a jealous mistress."

Movant raises the issue of significant turnover in the Area 25 Office, especially compared to the experience of District Offices in more metropolitan areas. There is no particular evidence to suggest this is directly related to caseload issues versus new lawyers preferring to practice in areas with more social opportunities. To the extent turnover may be salary driven it is not a matter for this Court's consideration.

Movant advocates for use of a "wait list" to "triage" cases awaiting assignment to Assistant Public Defenders. The Area 25 Office has already started doing that without benefit of the procedure mandated by Sec. 600.063 RSMo. This Court is unable to understand how use of a "wait list" does other than to "kick the can down the road." Moreover, if Public Defenders have a statutory and ethical obligation to provide counsel and representation to indigent defendants how are they not violating those obligations by placing such a Defendant on a "wait list" and allowing him or her to stay in jail until they get to that case?

Movant has provided the Court with Exhibits A, D, F, G, H & K, affidavits of the several Assistant Public Defenders professing to be unable to provide adequate assistance to their clients because of excessive caseload. Those caseloads, as recited in the affidavits, range from 39 to 82 with one affidavit failing to recite that defender's numerical caseload. These caseloads are not inconsistent with this Court's experience as a practitioner, nor as a prosecutor, nor what it knows about the caseload of Public Defenders in years past.

Accordingly, this Court does not find that the individual Defenders named in Movant's Motion will be unable to provide effective assistance of counsel due to caseload issues and Movant's Motion is denied.

Further, Movant is hereby ordered to cease immediately any use, or purported use, of "wait lists" in assignment of cases to Assistant Public Defenders.

This Court does, however, feels there are additional methods available to both the Area 25 Office and the Prosecutors that could alleviate workload of all involved. Those include:

1. The taking of depositions has expanded in criminal cases, undoubtedly due in part to use of grand juries in Texas, Phelps and Pulaski Counties in lieu of preliminary hearings. Defendants have a right to take depositions and this Court would never interfere with that right. However, not all witnesses need to be deposed. Taking depositions that do not further the defendant's planned defense wastes time and money for all involved. Assistant Public Defenders with less experience should rely on the District Defender and his Deputy as to when such expenditure of time and money is warranted.
2. Some defendants, especially those incarcerated on lower level felonies may want to accept an offer from the state. If the Defendant admits guilt to counsel and indicates a desire to accept the State's offer, delay in doing so on the part of defense counsel could be a disservice to the client and potentially violate Rule 4-1.2(a) of the rules of professional conduct. In those cases an appropriate record can be made if discovery is not complete but the Defendant wants to proceed anyway.
3. It has happened frequently that a Defender will have upcoming trials and those trials delayed, and Defendants left in jail, when their lawyer is transferred to another county within Area 25 and a new Defender assigned. This needs to stop.
4. Prosecutors should, to the extent able, implement a practice of pro se disposition of low level felonies, if appropriate. Such a "pro se docket" was implemented for misdemeanors several years ago and proved highly effective to reduce Public Defender caseloads. A "drug possession pro se docket" would likely be beneficial as well.

5. To the extent possible, the District Defender and Deputy District Defender should re-examine the methods and procedures by which they assign cases and Defenders to counties to see if modification could result in more effective and efficient utilization of Public Defender resourses.

IT IS SO ORDERED THIS 11TH DAY OF January, 2018.

_____

John D. Beger, Presiding Judge

25th Judicial Circuit

Exhibit UU

Supreme Court of Missouri

en banc

SC96736

State ex rel. Leslie Hazel and Michael Barrett, Relators,

vs.

The Honorable Robert N. Mayer, Respondent.

☐ Sustained

☐ Overruled

☐ Denied

☐ Taken with Case

☐ Sustained Until

☒ Other

Order issued: Petition for writ of prohibition denied without prejudice to the district defender invoking the statutory process set forth in sections 600.062 and 600.063 in an individual case in which the public defender has been appointed.

By: Zel M. Fischer
Chief Justice

October 17, 2017
Date

Missouri Court of Appeals

Southern District

No. SD35176

STATE OF MISSOURI EX REL. LESLIE HAZEL AND MICHAEL BARRETT,	)
Relators,	)
vs.	)
HONORABLE ROBERT MAYER,	)
Respondent.	)

FILED

OCT 13 2017

SANDRA L. SKINNER, CLERK
MISSOURI COURT OF APPEALS
SOUTHERN DISTRICT

ORDER

Now on this day, the Court takes up relators' petition for writ of prohibition. Having seen and examined said application and having been advised in the premises, the Court does deny relators' petition.

cc: Attorneys of Record