

**Commonwealth of Kentucky
Department of Public Advocacy**



Public Advocacy Commission

Justice Jeopardized Final Report

September 2005

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JUSTICE JEOPARDIZED: A REPORT OF THE PUBLIC ADVOCACY COMMISSION ON KENTUCKY PUBLIC DEFENDER CASELOADS

September 2005

“Our willingness to assure the least among us the guiding hand of counsel is a test of our American faith.” Anthony Lewis, Author of *Gideon’s Trumpet*, from the Foreword to *Gideon’s Broken Promise: America’s Continuing Quest for Equal Justice*.

EXECUTIVE SUMMARY

Forty years ago, in the landmark case of *Gideon v. Wainwright*, the United States Supreme Court declared “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.” As the justices said, “This seems an obvious truth.” Yet decades later, has the promise of *Gideon* been fulfilled in Kentucky? Since September 2004, Kentucky’s Public Advocacy Commission, charged with oversight of the state’s Indigent Defense System, has been exploring the challenging answer to this question.

After the 2004 Defender Caseload Report revealed, among other things, continued increases in overall caseloads among public defenders, the Public Advocacy Commission began hosting a series of public meetings to solicit input from the criminal justice community. At that time, defender caseloads in Kentucky were nearly twice the level recommended in nationally-recognized standards.

Commission members attended meetings throughout the state and heard testimony from Supreme Court Justices, Court of Appeals judges, public defenders, concerned members of the private bar, judges, prosecutors, and others. The consistent theme was that of an overwhelmed and jeopardized criminal justice system.

The following report summarizes not only the key findings based on testimony heard at each of the meetings but more importantly vital recommendations that policy makers are urged to implement in light of Kentucky’s continued crisis to serve adequately its poor citizens.

Listed below are the key recommendations of this report.

Recommendations

- 1. The criminal justice system should be understood as a system that requires resource parity among the different components. Policy makers should take steps to ensure that the key elements of Kentucky's criminal justice system, the courts, prosecution, and indigent defense, become and remain balanced throughout the courts, prosecution, and indigent defense.**
- 2. The Commonwealth should fully fund the Kentucky public defender system. At a minimum, an additional \$10 million per year is necessary to bring Kentucky into the mid-level area in comparison with other programs in important benchmark areas such as cost-per-case.**
- 3. Caseloads for trial attorneys should never be above 400 new mixed cases per lawyer per year.**
- 4. When Drug Task Forces provide adequate funding for law enforcement in a particular area, additional funding must be provided for public defenders, prosecutors, and courts.**
- 5. When drug or family courts are created, additional funding must also be provided to public defenders, prosecutors, and courts.**
- 6. Additional funding should be supplied for conflict attorneys in field offices.**
- 7. Each public defender office in Kentucky should have on its staff a social worker who would help in juvenile court, in drug cases, and in preparation of alternative sentencing recommendations.**
- 8. There should be 1 investigator for every 6 trial public defenders.**
- 9. There should be 1 support staff member (secretarial or para-legal) for every 2 attorneys.**
- 10. Consideration should be given by policy makers to establishing caseload limits in KRS Chapter 31 for trial level public defenders.**

Context for this Report

The Public Advocacy Commission has been concerned for many years about the growing problem of excessive caseloads carried by Kentucky public defenders. For at least the last fifteen (15) years, caseloads for public defenders in Kentucky have exceeded national standards. As DPA has converted to a full-time system from a part-time contract system, the Commission is concerned that the excessive caseload problem, despite the best efforts of DPA attorneys, lowers the quality of services being rendered by DPA attorneys at the trial level.

At its October 2004 meeting, the Public Advocacy Commission received the Department of Public Advocacy's Annual Defender Caseload Report for FY04. The Commission was distressed to hear that despite efforts to lower caseloads through increased funding from the General Assembly, caseloads remained too high, practically guaranteeing a compromise in quality of defense provided to indigent clients. Funding, intended to lower caseloads, was simply insufficient to keep up with the growing number of indigent defense appointments at the trial level. Among the findings in the report were the following:

- Overall cases rose to 131,094, up from 117,132 the previous year.
- Cases at the trial level increased by 12% from FY03 to FY04.
- Cases rose steadily over the previous four years. In FY2000, DPA had 97,818 cases. In FY 01, DPA had 101,847 cases. This increased to 108,078 in FY02, and again to 117,132 in FY03.
- Public defenders finished FY03 with an average caseload of 484 new open cases. DPA used additional revenue during FY04 to hire 10 new caseload reduction lawyers and placed them in offices with the heaviest caseloads.
- Public defenders ended FY04 averaging 489 new cases annually. Despite the hiring of the new caseload reduction lawyers in FY04, the average caseload per lawyer rose by 1.1%. DPA's average caseload for its trial attorneys was 189% of the recognized National Advisory Commission's national standards.
- Fifteen offices had average caseloads in excess of 500 new cases per lawyer per year.

In response, the Public Advocacy Commission held a series of regional public meetings to learn how this problem was affecting the different components of the criminal justice system, including but not limited to public defenders. Those meetings were held in Somerset on December 16, 2004, Covington on February 18, 2005, Bowling Green on May 20, 2005, Prestonsburg on August 24, 2005, and Paducah on September 9, 2005. A brief summary of the comments heard by the Commission are contained in the Appendix.

In September 2005, the Department of Public Advocacy released its annual caseload report for FY05. This report confirmed all of the concerns entered into the record at the public meetings. The total caseload in the Department has continued to rise by 2.6% over FY04, from 131,094 to 134,584.

Despite the hiring of 8 caseload reduction lawyers during FY05, the average new open cases per lawyer dropped only from 489 to 483. Caseloads continue to be at 189% of the national standards. Fifteen field offices continued to average 500+ cases per lawyer in FY05. The cost-per-case remains low at \$233.

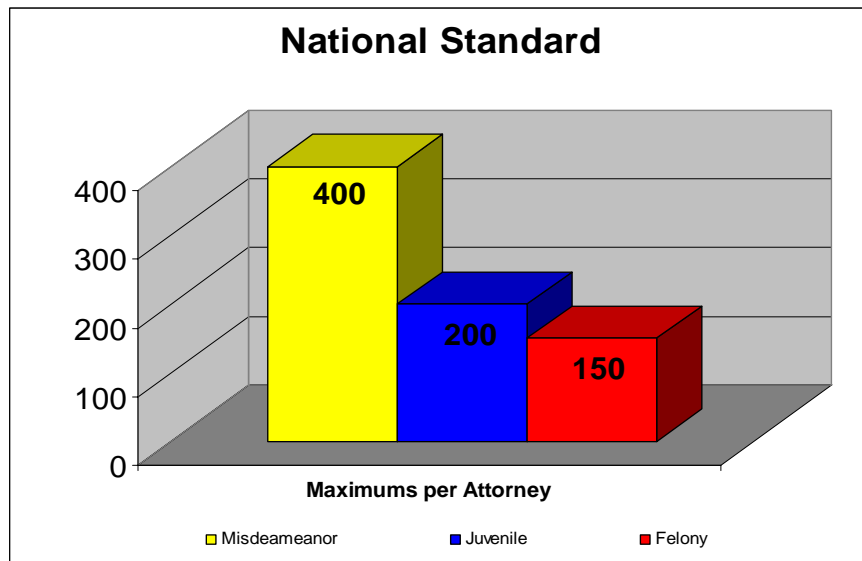
The caseload crisis in Kentucky continues to exist. As a result, the Public Advocacy Commission makes the following findings and recommendations to the policy makers of Kentucky.

Findings

- 1. Kentucky public defenders have far too many cases. In FY04 & FY05, those caseloads were at 189% of national standards. These caseloads are jeopardizing the justice being provided to Kentucky's poor.**

Kentucky public defenders' caseloads exceed national caseload standards

There is a nationally recognized numerical standard for the *maximum* number of cases that a trial level public defender should carry in a given year. The benchmark has been set in the National Advisory Commission Standards (1973) and has been followed by public defender agencies nationwide since that time. The black letter standard reads as follows: "The caseload of a public defender attorney should not exceed the following: felonies per attorney per year: not more than 150; misdemeanors (excluding traffic) per attorney per year: not more than 400; juvenile court cases per attorney per year: not more than 200; Mental Health Act cases per attorney per year: not more than 200; and appeals per attorney per year: not more than 25."



Judges control defenders' caseloads through the appointing decision

Defenders have no control over their caseloads. Rather, judges make all appointing decisions as a result of the rules of procedure and statutory law. RCr3.05(2) states the following: "If the crime of which the defendant is charged is punishable by confinement and the defendant is financially unable to employ counsel, **the judge** shall appoint counsel to represent the defendant unless he or she elects to proceed without counsel." KRS 31.120(2) states that "[t]he determination of whether a person covered by KRS 31.110 is a needy person shall be deferred no later than his first appearance in court...Thereafter, **the court concerned shall determine**, with respect to each step in the proceedings, whether he is a needy person." KRS 31.120(2). The judge who reviews the defendants' indigency status is the gatekeeper for the number of cases assigned to Kentucky public defenders.

The caseload problem has been building for years

Numerous reports over the past 8 years have detailed the extent to which high caseloads are a chronic reality in Kentucky. In 1997, Bob Spangenberg on behalf of the American Bar Association Bar Information Program stated that "[o]vershadowing all of the problems facing and the solutions proposed by DPA is that of burgeoning caseloads. Over the past decade DPA's caseloads have increased dramatically, while funding has failed to keep pace."

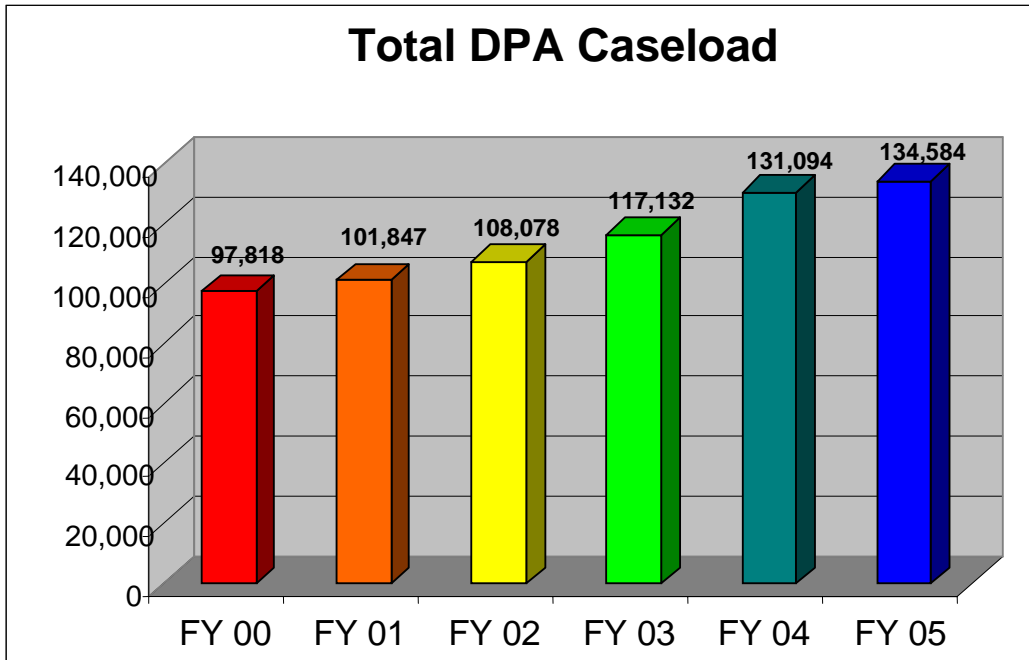
In 1999, the *Blue Ribbon Group on Improving Indigent Defense for the 21st Century* (hereinafter *Blue Ribbon Group*) issued its report, which included a number of findings and recommendations pertaining to caseloads. Finding #5 stated that "The Department of Public Advocacy per attorney caseload far exceeds national caseload standards." Recommendation #6 stated that "[f]ull-time trial staff should be increased to bring caseloads per attorney closer to the national standards. The figure should be no more than 350 in rural areas and 450 in urban areas."

In 2001, the *Blue Ribbon Group* met again and issued a resolution in response to a growing budget problem and threats of budget cuts for DPA and other parts of state government. The resolution said in part that the "...the BRG urges immediate action to fully fund the Public Advocacy system in order to achieve this constitutionally mandated basic service for the people of the Commonwealth of Kentucky."

In 2002, another report was issued that reflected on public defender caseloads for those attorneys representing children in juvenile court. "[T]he Kentucky Department of Public Advocacy and local public defender offices should ensure that...caseloads are reduced in all areas of the Commonwealth where they currently exceed the IJA/ABA Juvenile Justice Standards..." *Advancing Justice: An Assessment of access to counsel and quality of representation in delinquency proceedings* (ABA Juvenile Justice Center, National Juvenile Defender Center, and the Children's Law Center, Inc. September 2002).

Total caseloads handled by DPA have gone up each year since 2000

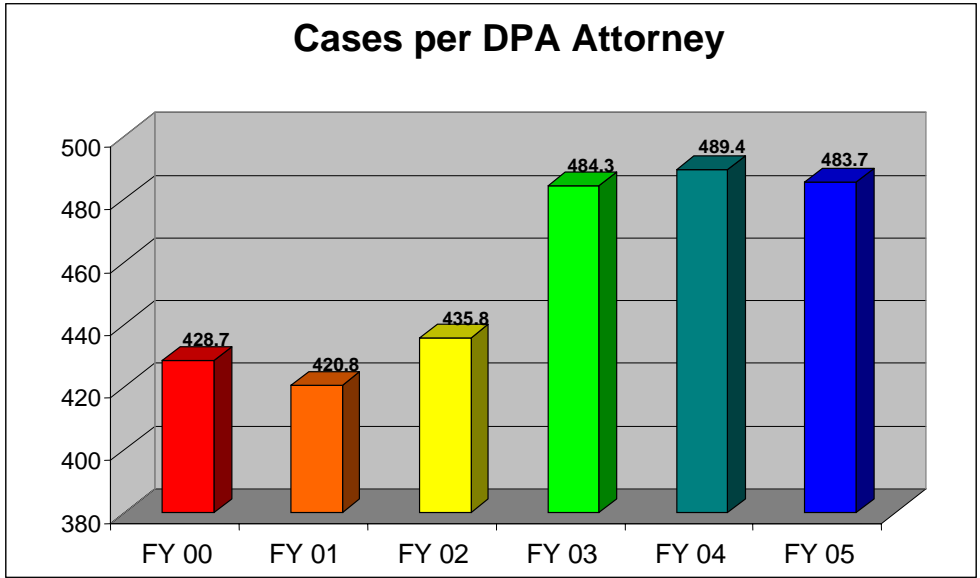
Total public defender cases have been increasing each year since 2000. That year, DPA handled 97,818 cases. By 2002 this had grown to 108,078. In FY03, this increased to 117,132. Between FY03 and FY04, the number of cases went up 12% at the trial level, from 117,132 to 131,094. In FY05, caseloads increased by another 2.6%, to 134,584 cases.



Cases per attorney remain unacceptably high

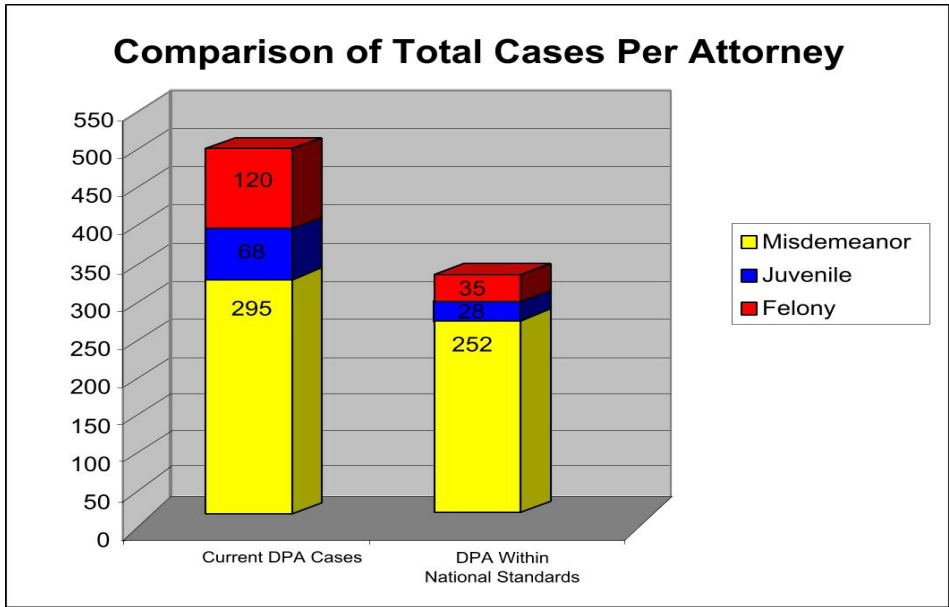
In FY01, caseloads per attorney were at 420 new open cases per lawyer per year at the trial level. In FY02 this rose to 435 cases; it rose again in FY03 to 484, and to 489 in FY04. In FY05, with 16 new caseload reduction attorneys being placed in field offices, the average new cases per attorney declined slightly to 483. It is important to remember that because Kentucky is mostly a rural state, that most defenders carry a mixed caseload. They are assigned to a county and generally handle cases in district, juvenile, and circuit court. In FY05, 24.88% of the caseload was in circuit court, up from 20.77% in FY00. 75.12% were district court cases, down from 79.10% in FY00.

Juvenile cases amounted to 13.87% of the caseload, down from 16% in FY02. Generally, cases handled in circuit court take far more time to complete than cases handled in district court.



DPA’s caseloads violate nationally recognized standards

At 483 cases per lawyer, DPA caseloads are unacceptably high. Based upon the mixed caseload handled by Kentucky public defenders, DPA trial defenders are handling 189% of national standards. Given the current mix of cases, a typical Kentucky public defender is handling 120 felonies, 68 juvenile cases, and 295 misdemeanors.



Defenders have only 3.8 hours to spend on each case

With 483 cases per year, defenders have only 3.8 hours to spend on each case, including some cases that are complex and of necessity time consuming, including capital and other violent felonies. Yet, in each case defenders are expected to do the following at a minimum:

- ◆ Interview the defendant
- ◆ Review the charging documents
- ◆ Go to court
- ◆ Investigate
- ◆ File motions
- ◆ Try the case or resolve the case through negotiations
- ◆ Participate in sentencing

It is clear that 3.8 hours is not sufficient to provide an adequate defense to DPA's clients.

Justice is jeopardized as excessive caseloads are affecting quality

The Commission heard testimony that excessive caseloads are affecting the quality of services being rendered by Kentucky's public defenders. A circuit judge testified that while public defenders are some of the best lawyers who appeared in his courtroom, the quality of justice was suffering as a result of high caseloads that kept defenders from having time to prepare their cases. A regional manager testified that during her years with DPA, "I have seen the quality of representation decrease as our caseloads increase. This decline in quality of representation is not due to lack of skill or lack of training. The decline is due to our crushing caseloads...Innocent people may lose their freedom because high caseloads prevent their public defender from preparing their case."

Another directing attorney testified that clients were suffering in his office due to the excessive caseloads. He stated that phone calls were not being returned, jail visits were not occurring within 24 hours of appointment, and briefs on issues were not being prepared.

The Commission is concerned that excessive caseloads are also affecting quality of services in juvenile court. Testimony was heard that great progress has been made in improving the quality of services in juvenile court, particularly through the growth of full-time offices. However, progress is tempered with the fear that caseloads for juvenile defenders are still too high and that quality of representation is being affected.

Excessive caseloads are producing burnout and turnover

The Commission heard considerable testimony that high public defender caseloads have a deleterious effect on public defenders and defender staff. A Directing Attorney, who handled 700 cases in the previous year testified that as a result of high caseloads, "there is a lot of burnout. Attorneys in many offices have not had a vacation in years. There is huge stress in representing clients not knowing if you had represented them well enough." A county attorney expressed concern that the "attorneys' lives are suffering because of the volume of the cases – their personal lives are suffering."

The Department of Public Advocacy Caseload Definition

The definition of a case utilized by DPA was developed by a committee of stakeholders over a decade ago and has been utilized since that time. The committee discussed the need for a very conservative definition that would be a useful management tool. The committee also consulted a model caseload definition. The committee set out to eliminate anomalies and over counting that can reduce the usefulness of caseload data. The essence of the definition is that a “case consists of a single accused, having either under the same or different case number(s), one or more charges, allegations, or proceedings arising out of one event or a group of related contemporaneous events. These charges must be brought contemporaneously against the defendant, stemming from the same course of conduct, and involving proof of the same facts.”

In an effort to improve continuously the accuracy of the caseload figures, the Department this year created a Caseload Integrity Committee. The Committee examined the caseload collection process and found ways that it could be improved. The Committee particularly focused on the education of those entering the data, generally one administrative specialist in each field office, regarding the caseload definition and how to implement it in different situations. Extensive education of those administrative specialists has occurred and is ongoing.

The Commission finds that the caseload figures upon which this report is based are accurate and dependable.

2. Defender caseloads in some offices are so high as to be unethical.

Caseloads have ethical implications

The Commission considers caseloads handled by Kentucky public defenders within the context of several national standards. Rule 1.1 of the Kentucky Rules of the Supreme Court states that, “a lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.” SCR 1.3 states that, “a lawyer shall act with reasonable diligence and promptness in representing a client.” Both of these Supreme Court rules are implicated by excessive caseloads.

American Bar Association (ABA) *Standards Relating to the Administration of Criminal Justice* Standard 4-1.3(e) states that “[d]efense 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.”

ABA Standards Relating to the Administration of Criminal Justice Standard 5-5.3 states that “(a) Neither defender organizations, assigned counsel nor contractors for services should accept workloads that, by reason of their excessive size, interfere with the rendering of quality representation or lead to the breach of professional obligations. Special consideration should be given to the workload created by representation in capital cases.”

ABA Standards Relating to the Administration of Criminal Justice Standard 5-5.3(b) states that: “Whenever defender organizations...determine, in the exercise of their best professional judgement, that the acceptance of additional cases...will lead to the furnishing of representation lacking in quality or the breach of professional obligations, the defender organization, individual defender, assigned counsel or contractor for services take such steps as may be appropriate to reduce their pending or projected caseloads, including the refusal of further appointments. Courts should not require individuals or programs to accept caseloads that will lead to the furnishing of representation lacking in quality or to the breach of professional obligations.”

American Council of Chief Defenders Ethics Opinion 03-01 (April 2003) states that “[a] chief executive of an agency providing public defense services is ethically prohibited from accepting a number of cases which exceeds the capacity of the agency’s attorneys to provide competent, quality representation in every case...When confronted with a prospective overloading of cases or reductions in funding or staffing which will cause the agency’s attorneys to exceed such capacity, the chief executive of a public defense agency is ethically required to refuse appointment to any and all such excess cases.”

In the ABA Report of 2005 entitled *Gideon's Broken Promise*, Recommendation #3 states that “[a]ttorneys and defense programs should refuse to continue indigent defense representation, or to accept new cases for representation, when, in the exercise of their best professional judgment, workloads are so excessive that representation will interfere with the rendering of quality legal representation or lead to the breach of constitutional or professional obligations.”

The ethical implications of the excessive caseloads present a dilemma for the Commission as well as leadership in DPA. Most of the Commission consists of attorney appointees. The Commission is responsible for “review[ing] the performance of the public advocacy system...” KRS 31.015(6)(c). The Public Advocate and the division directors of the Trial and Post-Trial Division are attorneys. Under Rule 5.1 of the Rules of the Supreme Court, a well-founded argument can be made that the Public Advocate and his Leadership Team as well as the Public Advocacy Commission are responsible for the ethical breaches of public defenders caused by excessive caseloads.

3. Kentucky public defenders are unable to perform many of the tasks performed by private defense counsel due to their excessively high caseloads. These tasks include such matters as litigating pretrial release decisions, preparing alternatives to incarceration, preparing pretrial motions, and answering client phone calls and correspondence. One of the unintended consequences of the lack of defender capacity is jail overcrowding and increased costs to counties.

The Commission was particularly concerned by testimony heard in more than one hearing that there were functions of representation performed regularly by private defense attorneys performed regularly that could not and were not being done by Kentucky public defenders because of the caseload crisis. One area affected is that of pretrial release advocacy. Testimony was heard that defendants, particularly those being arrested in conjunction with Drug Task Forces, had bond set at particularly high levels. Defenders expressed a desire to challenge those bonds but due to their excessive caseloads many are simply unable to do so.

DPA has adopted the National Legal Aid and Defender Association’s *Performance Guidelines for Criminal Defense Representation* (1994). Guideline 2.1 states that an “attorney has an obligation to attempt to secure the pretrial release of the client under the conditions most favorable and acceptable to the client.” Guideline 2.3 states that counsel “should be prepared to present to the appropriate judicial officer a statement of the factual circumstances and the legal criteria supporting release and, where appropriate, to make a proposal concerning conditions of release.” The Commission finds that these guidelines are not being followed by some defenders due to excessive caseloads.

A second area upon which testimony was offered was that of the preparation of alternatives to incarceration. Kentucky stresses that in every case in which a person is found guilty of a criminal offense, alternatives to incarceration must be considered.

See KRS 500.095 and KRS 533.010. With the use of incarceration increasing so rapidly, public defenders could play an important role in identifying alternatives to incarceration and preparing plans to present to the judge. The Commission heard testimony that private criminal defense lawyers regularly prepare motions for alternative sentencing that includes an alternate sentencing plan. The Commission is concerned that due to their excessive caseloads, Kentucky public defenders were unable to spend time doing this important task. This is inconsistent with NLADA Performance Guideline 8.6, which reads in part that “Counsel should prepare and present to the court a defense sentencing memorandum where there is a strategic reason for doing so. Among the topics counsel may wish to include in the memorandum are...(6)information concerning the availability of treatment programs, community treatment facilities, and community service work opportunities; (7) presentation of a sentencing proposal.”

The Commission heard further testimony that other areas of criminal defense practice are not being done due to excessive caseloads. These include motion practice, visiting clients in jail, answering client telephone calls, and other work with clients and their families. The Commission finds that excessive caseloads are preventing Kentucky public defenders from performing some of the most basic functions performed by a criminal defense lawyer.

4. Other components of the criminal justice system, including the judiciary and prosecutors, are aware of and affected by the increase in caseloads for public defenders. Many parts of the criminal justice system, including the judiciary and prosecutors, are supportive of relief for overworked public defenders. Some members of the judiciary noted that due to high caseloads defenders are not able to spend sufficient time to prepare major cases. In addition, excessive caseloads have caused delays in the processing of cases.

The Commission was impressed by the high level of support that was expressed during testimony at the public meetings. The public meetings were attended by four members of the Kentucky Supreme Court, including the Chief Justice, and three members of the Kentucky Court of Appeals, including the Chief Judge. Numerous trial judges also attended the meetings. One circuit judge summed up the situation by warning that the system is “expecting too few attorneys to do too many cases” and that the only solution is “adequate funding to put us where we should be.”

The Chief Justice reflected that the caseload problems experienced by public defenders were also being experienced by other parts of the system. He expressed his support for addressing the issue of excessive caseloads, noting that he had served on the Kentucky *Blue Ribbon Group on Improving Indigent Defense for the 21st Century*. A second Supreme Court Justice stated that when trial attorneys have caseloads that are 189% of national standards that quality suffers. He stated that the Supreme Court of Kentucky is very concerned about the possibility of convicting an innocent person, a possibility made more likely by excessive caseloads. The Chief Judge of the Court of Appeals stated that efficiency suffers when caseloads are at 189% of national standards.

In her view the lack of funding is as much a matter of conscience as it is a matter of funding. One circuit judge expressed that as a result of high caseloads, cases are being delayed.

Prosecutors also expressed support for an adequately funded public defender system. One Assistant Commonwealth's Attorney testified that not having an adequately funded public defender system effects all parts of the criminal justice system. He stated that a poor person accused of a crime needs to have a public defender with enough time, resources, and support staff. A County Attorney testified that her concern was that because of high caseloads the "attorneys' lives are suffering because of the volume of the cases—their personal lives are suffering."

5. Kentucky's "War on Drugs" has had a serious impact on the criminal justice system, and particularly Kentucky's public defenders. This is particularly true where federally funded drug task forces are in existence.

One reason that caseloads are going up in Kentucky is that large sums of federal money are being used to fund police officers in Drug Task Forces. In 1995, there were 17,766 drug arrests in Kentucky. By 2004, this had risen to 40,793. Increased funding for law enforcement directly leads to an increase in the numbers of arrests, and as a result, an increase in public defender appointments. Federal money is being used to hire some state prosecutors. However, no federal money is allotted to fund indigent defense.

Prosecutors are also experiencing an increase in caseloads.

The same increase in caseloads is also affecting prosecutors across Kentucky. The Attorney General's 2004-2005 *Blue Ribbon Commission Report on Criminal Prosecution* stated that "prosecutors repeatedly voiced that they are struggling to handle massive increases in their caseloads...In their survey responses, prosecutors blame much of this caseload increase on an explosion of drug crimes." The Commission heard testimony by the President of the Commonwealth's Attorneys' Association that the same caseload pressures public defenders are experiencing are also affecting prosecutors.

6. Kentucky continues to fund its system of indigent defense at a level that is at the bottom of the nation based upon the cost-per-case benchmark. The Commonwealth of Kentucky is at risk for failing to provide sufficient resources for its indigent defense system. Unless there is a response to this campaign, there is the possibility of a "KERA-like" lawsuit challenging the constitutionality of Kentucky's system of indigent defense.

One way to examine the issue of funding for indigent defense is to compare what Kentucky spends with what other states similarly situated spend.

Based upon the latest available information, it is clear that Kentucky is funding its system of indigent defense at far below what other states are spending per case. Below is the cost-per-case from a number of states in the latest report of the Spangenberg Group (2002). Kentucky figures are for 2005.

- Colorado: \$889
- Ohio: \$719
- Alabama: \$603
- Iowa: \$570
- West Virginia: \$513
- Massachusetts: \$468
- North Carolina: \$435
- Missouri: \$384
- Georgia: \$310
- Maryland: \$306
- Virginia: \$250
- Kentucky: \$233

7. Private attorneys working as conflict counsel for DPA trial offices are not being paid sufficiently. In many instances, private attorneys are not being reimbursed for their costs, and are thus working pro bono on indigent defense cases.

The Commission is concerned that with the development of a full-time public defender system, pay for private lawyers in conflict cases has not kept pace. In FY 05, it is estimated that DPA paid \$297 per case in its field offices in conflict cases (excluding Jefferson, Fayette, and Boyd Counties). Testimony was heard from one Northern Kentucky conflict lawyer that DPA had only paid \$1,250 for a murder case he had handled, which was not sufficient to pay for his overhead. The President of the Kentucky Association of Criminal Defense lawyers testified that she had been paid only \$350 as a conflict lawyer and that the case took so much time the fee did not cover the cost of copying, travel, and collect calls.

8. The Department employs too few support staff in its field offices. As a result, attorneys are handling clerical matters such as typing and filing.

One support staff for every three attorneys, the current funding model for DPA, is inadequate and inefficient. The Commission heard testimony that in private practice, there is typically one support staff for every attorney. One person testified that DPA secretaries were overworked and attorneys are doing their own typing and filing. An attorney testified that when she was in private practice, there were 2 secretaries for every attorney. She testified that hiring additional support staff is at least as important as hiring additional attorneys. Without adequate support staff, the Commonwealth of Kentucky is wasting the resources invested in attorneys who are forced to perform clerical functions.

9. The Department employs too few investigators, particularly in larger field offices. As a result, defenders are trying to handle investigations for lower level felonies and misdemeanors with the potential for troubling ethical consequences. .

The Commission also finds that there are insufficient numbers of investigators in DPA's field offices. Investigators play a vital role in the preparation of cases whether by plea or by trial. In the long run, investigators save precious attorney time for the core functions of representation. DPA has only one investigator in each field office.

While that is adequate in some offices, there are offices such as Paducah, Elizabethtown, Hopkinsville, and Morehead with ten attorneys or more on staff with only one investigator. Testimony was heard that investigators do not have sufficient time to investigate all the cases in which there are requests. The result is that attorney time is being spent investigating cases, which is both inefficient and takes away from the crucial function of client representation.

10. The availability of social worker services is critical in order for public defenders to play the role that the criminal justice system expects of them.

There are only two social workers in the public defender system in Kentucky. They are located in the Hazard and Hopkinsville Offices where there are mental hospitals and many commitment hearings. With so few social workers, there are many unmet needs throughout the public defender system, including the assessment of persons arrested on drug offenses who are in need of immediate treatment. Many defender agencies across the country utilize the services of social workers to perform this assessment and who participate in placement of clients for treatment. There are states where resources are saved through diversion of mentally ill and addicted clients out of the criminal justice system and into the treatment system, all through the use of defender social workers.

A second need that is presently unmet in Kentucky defender offices is the assessment of juveniles for purposes of developing dispositional alternatives. Testimony was heard that some juvenile defenders are doing little more than triage with their juvenile clients because they do not have the resources available to the state to assess children and their families and develop dispositional alternatives to present to juvenile court.

Finally, DPA needs social workers to develop alternatives to incarceration for adult offenders through the preparation and presentation of sentencing plans. It is estimated that including a social worker in each field office could more than pay for itself through the diversion of adult offenders from costly prison beds into community services and other alternative sentencing options. In addition, as Kentucky alters its methods for treating sex offenders, social workers in DPA's field offices will play a vital role in reviewing the different assessments on sex offenders that will be taking place.

11. There is a question whether the criminal justice system is doing an adequate job of determining eligibility. Some judges raised the issue of the verification of eligibility for those appointed a public defender. Some defenders supported the perception that people were being appointed a public defender who were not eligible, a perception with which other defenders disagreed.

The Commission heard from one circuit judge who stated that no one in the system was verifying eligibility for persons appointed a public defender. The Executive Director of the Administrative Office of the Courts agreed that verification of indigency was something that needed to be done by her agency. Other witnesses stated that verification of eligibility was not a solution to the high caseload problem, that many crimes were committed by poor people and that as many people are not being appointed a public defender when they are eligible as are being appointed when they are not eligible.

Recommendations

- 1. The criminal justice system should be understood as a system that requires resource parity among the different components. Policy makers should take steps to ensure that the key elements of Kentucky’s criminal justice system, the courts, prosecution, and indigent defense, become and remain balanced throughout the courts, prosecution, and indigent defense.**

Parity among the different parts of the criminal justice system is absolutely essential. The *Blue Ribbon Group for Improving Indigent Defense for the 21st Century* Final Report (1999) affirmed this concept strongly. In Finding #7, it stated that “[all] components of the criminal justice system should be adequately funded, particularly public defense.” In the ABA report *Gideon’s Broken Promise: America’s Continuing Quest for Equal Justice* (2005), it is stated that “[f]airness dictates that there should be a balance in the resources available to both sides in our adversary system of criminal justice. In an effort to ensure this balance, national standards specify that the government should provide equivalent funding and other resources to both the indigent defense and prosecution functions of state criminal justice systems.”

The Commission heard testimony from one prosecutor that expresses well the desirability of parity, particularly when applied to public defenders. He states that the “system works best when there is a balance. With the current drug situation facing all states and the federal government, the demands placed upon the prosecution and the defense have created a balance problem. Most of the resources have been allocated to the prosecution. From a prosecutor’s standpoint that is a good thing as it helps the police enforce the law. However, when more people are arrested and most of those people are indigent that creates an imbalance on the other end of the see-saw because the people assigned to the job of representing the poorest, least educated segment of our society have more work than they can handle. Thus, in dealing with a crisis we have created another crisis.”

- 2. The Commonwealth should fully fund the Kentucky public defender system. At a minimum, an additional \$10 million per year is necessary to bring Kentucky into the mid-level area in comparison with other programs in important benchmark areas such as cost-per-case.**

Since 1996, the DPA has been building a full-time system at the trial level. That system is now complete with 30 offices spread throughout the Commonwealth covering all 120 counties. DPA is a statewide administered public defender system. DPA is an independent state agency with an oversight board having as one of its primary duties the protection of DPA’s independence. The Commission recognizes that Kentucky has done an excellent job creating a public defender system with a model enabling statute and structure. Where Kentucky lags behind is in funding that public defender system. Indeed, Kentucky continues to lag at the bottom of the country in funding for indigent defense.

In the 1999 *Blue Ribbon Group* Report, it was found that the Department of Public Advocacy was near the bottom among all the states in per case funding. In FY 1998, the funding per case was at \$187. In FY03, the funding per case was at \$238. In FY04, per case funding declined by 4.2% to \$228. In FY05, the funding per case has risen only to \$233. Kentucky continues to spend far less per case than other states. The effects of underfunding is demonstrated most dramatically by Kentucky's caseload crisis. Kentucky's system of criminal justice is indeed jeopardized by having far too many cases with far too few public defenders.

The Public Advocacy Commission calls upon the Governor and the General Assembly to fully fund Kentucky's public defender system. It is estimated that for \$10 million annually added to the General Fund, the following goals can be accomplished:

- Lower caseloads of trial attorneys to no more than 400 new cases per year per lawyer.
- Attorney to support staff ratio of 2:1.
- Attorney to investigator ratio of 6:1.
- A social worker in each office.
- An increase of 25% in money for the conflict budgets going to defense counsel.

The Commission encourages Kentucky's policy makers to fund these reasonable goals when they are requested at the 2006 General Assembly.

3. Caseloads for trial attorneys should never be above 400 new mixed cases per lawyer per year.

The *Blue Ribbon Group* recommended in Recommendation #6 that "full-time staff should be increased to bring caseloads per attorney closer to the National Standards. The figure should be no more than 350 in rural areas and 450 in urban areas." Since that time, DPA trial attorneys have not only continued to exceed the national standards but have never achieved the 350/450 goal set by the *Blue Ribbon Group*. This recommendation recognizes that most of Kentucky's public defenders carry a mixed caseload. It is believed that were caseloads to be lowered to 400 per lawyer that many of the problems associated with excessive caseloads would be mitigated or eliminated.

4. When Drug Task Forces provide adequate funding for law enforcement in a particular area, additional funding must be provided for public defenders, prosecutors, and courts.

Drug Task Forces have resulted in a spike in arrests, prosecutions, and ultimately public defender appointments. Federal funds are primarily being utilized for law enforcement, with some funding going for special state prosecutors. Public policy makers should understand that fundamental fairness requires that when law enforcement is granted extra funding that other parts of the criminal justice system, including indigent defense, will be affected and thus need to be funded.

5. When drug or family courts are created, additional funding must also be provided for public defenders, prosecutors, and courts

One of the best things to have occurred in Kentucky's Court of Justice over the last decade is the development of two specialty courts, drug court and family court. Both courts add a great deal to the quality of justice provided to the people of Kentucky. Both, however, create additional dockets and cases for Kentucky's public defenders and prosecutors to cover. DPA has not been funded to handle either family court or drug court. Public policy makers should be sensitive to this and begin to fund the prosecution and defense so that they can play their appropriate roles in both family and drug courts.

6. Additional funding should be supplied for conflict attorneys in field offices.

In FY05, there were 3,283 cases that were not handled by a local trial office due to a conflict of interest. This did not include the Louisville, Lexington, or Boyd Offices. It is important in a full-time system to continue the involvement of the private criminal defense bar. That bar will not participate if funding is so low that it cannot even cover the cost of overhead. Policy makers need to add money into DPA's budget in order for private lawyers to be fairly compensated when they are providing services to poor people accused of crimes.

7. Each public defender office in Kentucky should have on its staff a social worker who would help in juvenile court, in drug cases, and in preparation of alternative sentencing recommendations.

Social workers are playing a vital role in public defender agencies across the country. This is not the case in Kentucky, however, due to chronic funding problems. At present, there are only 2 social workers in Kentucky's 30 field offices. Social workers can virtually pay for themselves by performing drug assessments, finding treatment options for drug offenders, presenting dispositional alternatives in juvenile court, and making alternative sentencing recommendations in adult court. The Commission strongly endorses the use of social workers in Kentucky's public defender offices, and encourages the funding of one social worker per office.

8. There should be 1 investigator for every 6 trial public defenders.

Consistent with the recommendation above, public defenders should not be doing all of their own investigation. In those offices with sufficient numbers of attorneys, funding should be provided to hire a second investigator.

9. There should be 1 support staff member (secretarial or para-legal) for every 2 attorneys.

There is insufficient support for Kentucky's public defenders. As a result, public defenders are doing their own typing, filing, and handling of other clerical tasks. This is inefficient, and is inconsistent with how private lawyers handle their practices. The Commission asks for the Governor and the General Assembly to grant sufficient funding to establish a 2:1 attorney to support staff ratio.

10. Consideration should be given by policy makers to establishing caseload limits in KRS Chapter 31 for trial level public defenders.

Caseloads for Kentucky public defenders have been considerably above national standards for some time. This has occurred despite repeated calls for funding that would enable national standards to be met. Some states and cities have mechanisms that prohibit this situation from occurring. In those jurisdictions, once a public defender agency has cases in excess of national standards, those cases are sent out to another entity, usually private lawyers, with funding to be made available to pay for those cases to be handled. While such caseload limits would be both costly and unwieldy, there may be no choice. Excessive caseloads for public defenders are jeopardizing the quality of justice for Kentucky's poor. Something must be done to alleviate this problem. Caseload limits should be considered by public policy makers.

Conclusion

The Department of Public Advocacy is Kentucky's statewide public defender system. Over the past decade, DPA has been chronically underfunded at the same time that a system of full-time offices covering all of the counties in the Commonwealth has been created. DPA's structure is an excellent one for providing competent counsel for the poor. However, excessive caseloads for Kentucky's public defenders jeopardize the quality of justice provided by this system. For a relatively small sum of money, Kentucky could and should fully fund the Kentucky public defender system.

This report has been written at a time when funding for indigent defense has been declared inadequate throughout this nation. The ABA issued a report during 2005 entitled *Gideon's Broken Promise*. Included in the Executive Summary is the following: "Overall, our hearings support the disturbing conclusion that thousands of persons are processed through America's courts every year either with no lawyer at all or with a lawyer who does not have the time, resources, or in some cases the inclination to provide effective representation...The fundamental right to a lawyer that Americans assume apply to everyone accused of criminal conduct effectively does not exist in practice for countless people across the United States."

The Public Advocacy Commission strongly encourages public policy makers in Kentucky to fully fund the Department of Public Advocacy so that Kentucky will avoid the heart-breaking reality described in *Gideon's Broken Promise*. The Commission asks the Governor and the General Assembly to once and for all fully fund indigent defense in this Commonwealth.

"If we are to keep our democracy, there must be one commandment. Thou shall not ration justice".
Justice Learned Hand

APPENDIX

Somerset Public Meeting held on December 16, 2004

Members of the Public Advocacy Commission held a public meeting in Somerset, Kentucky, on December 16, 2004.

Chief Justice Joe Lambert

Chief Justice Joe Lambert addressed the meeting. He recalled that he had been on the *Blue Ribbon Group on Improving Indigent Defense in the 21st Century* in 1999, and that there had been a good outcome from that effort. He reflected that the problems that public defenders are having with caseloads are part of a problem effecting many parts of the system. He stated that county judge executives across the Commonwealth are concerned about the costs of incarceration. He stated that in Union County, Kentucky alone that 55% of the county budget is devoted to incarceration.

The Chief Justice congratulated the Public Advocacy Commission for bringing the problems of excessive caseloads to the public's attention. He also expressed his support in addressing the excessive caseload issue.

Jim Cox

Jim Cox has been a public defender in the Somerset Office for over 2 decades. He said that he is proud to be a public defender, but that it "hurts me emotionally to see my people under stress...I feel helpless...Their health is deteriorating." He also stated that he worried about the poor clients represented by the Somerset Office.

Dan Venters

Dan Venters is a retired circuit judge from Pulaski and Rockcastle Counties. He noted how his docket that had been covered by 1 judge spending ½ day once a month now required 2 judges working all day to accomplish the same thing. He stated that what motivates him as well as the public to support indigent defense is the fundamental belief in liberty. He said that as a trial judge "I sleep better at night knowing there's a public defender system." "The obvious need is a lot more money in the system. This is not charity. This is money spent for our own peace of mind."

Roger Gibbs

Roger Gibbs is the directing attorney for the London Public Defender's Office, and regional manager for the Eastern Region, approximately the same region covered by Operation UNITE. He stated that without the growth of drug arrests, particularly for methamphetamine, that there would not be a caseload problem in his office. He said that in Bell County they had moved from 1 rule day a month, to 2 or more each month. He said that in Leslie County, court is held from 8:00 a.m. to 7:00 p.m. to deal with the caseload. "We do not have enough bodies—that's the problem. Every Tuesday, if someone is in trial, I don't have enough attorneys to cover all the courts in my counties."

Teresa Whitaker

Teresa Whitaker is an attorney in the Somerset Office. She had once directed the office in Columbia. She expressed great frustration, saying “we’re busting our butts and we’re just treading water” as a result of high caseloads. She emphasized that just because a client has an attorney standing next to them doesn’t mean that the attorney is prepared to represent the accused. She complained that bonds were being set that were much too high but that she did not enough sufficient time to appeal the bonds. “People are staying in jail because defenders don’t have enough time to work on their bonds.” “My worst fear is that I’m not going to be able to defend the innocent client because of my caseload.”

Jennifer Hall

Jennifer Hall has been a public defender in the Richmond Office for over a decade. She has seen the growth of her caseload in Clark County, where she has worked since she began. “There are so many clients that I cannot always be the guiding hand through the process that the right to counsel promises....Private counsel, with their one or two clients, can ask for time to speak with their defendants while the rest of the docket goes on. The ‘rest of the docket’ is my docket. The judge cannot wait for me because I represent most all of the defendants on the docket. I am spread much too thin to provide careful guidance to every client. And careful guidance is what the right to counsel promises.”

“I fear that my clients may serve jail time for offenses when private counsel’s clients may get the help they need. Zealously advocating for every possible option to incarceration is what the right to counsel promises. So maybe justice is for sale. If not because a client can buy ‘expertise’, then maybe because a client can buy something more precious—counsel’s time. I fear the promises of the right to counsel are being lost somewhere in the stack of files on my desk that just keeps growing taller. For now, I will continue to fight to keep my promises every day. But every day I get a little more tired and a little more convinced that I am fighting a losing battle.”

Glenda Edwards

Glenda is the directing attorney of the Columbia Office which covers 9 counties and 2800 square miles. She said that three of her lawyers are on “jagged edge” as a result of their caseloads. “There is a lot of burnout. Attorneys are with the office who have not had a vacation in years. There is huge stress in representing clients not knowing if you had represented them well enough.” Glenda reported that last year she had over 700 cases with most of them being felonies.

Lynda Campbell

Lynda Campbell is the regional manager for the Bluegrass Region, and the directing attorney for the Richmond Office. She has been a public defender for 24 years. “I have seen the quality of representation decrease as our caseloads increase. This decline in quality of representation is not due to lack of skill, or lack of training.

The decline is due to our crushing caseloads...Innocent people may lose their freedom because high caseloads prevent their public defender from preparing their case. Innocent people may lose their lives because of our high caseloads. All citizens in this Commonwealth lose as well. They lose their faith in our system of justice, and their belief that justice does not depend on the amount of money a person has. Prosecutors and judges know that the justice system wins every time a person accused of a crime is represented by an attorney who is a zealous advocate. Only Perry Mason won every case. But even when I lose a case, the justice system wins if an adequate defense is made. The rich can buy an attorney with the time to devote to their case. The poor cannot. Our justice system is in jeopardy.”

Public Meeting Held in Covington on February 18, 2005

Over 80 members of the Northern Kentucky criminal justice community gathered for a Justice Jeopardized public meeting on the afternoon of February 18, 2005. Public Advocacy Commission members Mark Stavsky, Melinda Wheeler, Ed Worland, John Rosenberg, and Jerry Cox were in attendance. The public included Supreme Court Justice Donald Wintersheimer, judges, prosecutors, public defenders, clients, members of NAACP, and others. Legislators who had intended to attend were unable to do so as a result of the late meeting of the Kentucky General Assembly.

Judge Greg Bartlett

Kenton Circuit Judge Greg Bartlett spoke, saying he was concerned about the caseload statistics that he was hearing. He stated that while public defenders were some of the best lawyers who appeared in his court, the quality of justice was suffering as a result of high caseloads. He stated that public defenders did not have time to prepare on major cases.

Judge Anthony Frohlich

Boone Circuit Judge Anthony Frohlich stated that his circuit had the busiest docket in the state. Judge Frohlich states that he had been a public defender 15 years ago. He said that public defenders now have a much higher percentage of the caseload than they did 15 years ago. Another change is that as a result of high caseloads, cases are delayed when they were not before. He reflected that a significant hidden cost is that people are waiting in jail when they should have their cases resolved by probation.

Kim Brooks-Tandy

Kim Brooks-Tandy, Director of the Children’s Law Center, noted that she had been a part of two assessments of the quality of juvenile representation in Kentucky over the past 10 years. The quality of juvenile justice has improved a great deal during that period of time. She was concerned about the statistics that she had heard regarding the excessive caseloads. The challenge as she saw it was to finish the building of the full-time system for both children and adults.

Linda Tally-Smith

Linda Tally-Smith is Commonwealth's Attorney for Boone and Gallatin Counties. She stated that the same caseload pressures occurring for public defenders are occurring as well with her office. She said that she told victims that it will take 18-24 months for a case to get to trial. She stated that in Boone County, caseloads are increasing by 27% per year since she's been prosecuting.

John Delaney

John Delaney is the Directing Attorney of the Boone County Public Defender's Office. He stated that justice is being jeopardized in his office coverage area by the high caseloads his attorneys are carrying. He stated that clients were suffering as a result of these caseloads. Examples that he mentioned included phone calls not being returned timely, jail visits not occurring within 24 hours of appointment, lawyers focusing on cases that are going to trial within a week rather than investigating cases that are set for a longer period of time in the future, and briefs on legal issues not being prepared. He stated that the community is also suffering because he has not had time to work on important criminal justice projects such as the rocket docket or drug court. Finally, he stated that he did not have the time to mentor the young lawyers that he had hired.

Mary Rafizadeh

Mary Rafizadeh is the Directing Attorney of the Covington Office. She stated that she had been staffed with 4 new lawyers to cover Campbell County and that she needed 6. Turnover is high in her office due to the caseloads, resulting in 9 new lawyers in her office, 4 of which are right out of law school. She says her lawyers are burned out having to work nights and weekends. Her newest lawyers are already in a panic and ready to leave due to being assigned high caseloads immediately upon being hired.

Michelle Arnold

Michelle Arnold is a former client of the Maysville Office. She stated that she was represented in an excellent fashion. She is a single mom who could not afford the \$6500 cited to her as a fee by a private lawyer. She had heard horror stories about public defenders. She stated that her lawyers, Tom Griffiths and LaMer Kyle-Reno, had worked nights and weekends to defend her.

Patricia Summe

Judge Summe is a Kenton Circuit Judge. She stated that everyone in the system has too many caseloads. Her concern was that no one was verifying eligibility. She feared that we were not using public money wisely as a result. She agreed that the lack of verification of eligibility was the "fault of the judiciary." She believed that a better system of verification would reduce the caseloads of public defenders. She also believed that public defenders should focus more on felony cases and less on juvenile and misdemeanor cases.

She was also concerned that the private criminal defense bar was not handling more criminal cases. She wondered whether private criminal defense lawyers couldn't do some of the cases to relieve overworked public defenders.

Karen Mauer

Karen Mauer is a DPA lawyer with the Appeals Branch. She stated that what she had been seeing was problems with lawyers at the trial level who had so many cases that they were unable to write pretrial motions and unable to preserve the record for appeal.

Melinda Wheeler

Public Advocacy Commission member Melinda Wheeler, who is also the Executive Director of the Administrative Office of the Courts, stated that she agreed that verification of indigency needed to be improved. She also agreed that everyone in the criminal justice system is overworked. "It is time for everybody to come together to improve the system." She stated that we are pouring money into law enforcement without looking at the effect of that use of resources on the entire system.

Jerome Bowles

Jerome Bowles is the President of the Northern Kentucky Branch of the NAACP. He testified that his organization would like to partner with others to ensure that indigents have good representation.

Rob Riley

Northern Regional Branch Manager Rob Riley testified that caseloads in his office in LaGrange have gone from 300 cases per lawyer to 520 cases per lawyer. As a result, defenders are working at 6:00 a.m. on a Sunday morning. "We are just grinding our public defenders down."

Frank Mungo

Frank Mungo is a private criminal defense lawyer and former Assistant Commonwealth's Attorney in Boone County. He stated that the caseloads handled by public defenders were much too high, that he was successful because he handled only about 6-7 felonies per year. He believed a "high volume practice" was unethical. He also stated that DPA was paying too little for conflict cases. He stated that DPA paid only \$1250 for murder cases, which would not pay his overhead for a month. He said that innocent people will go to jail without a doubt if we pay only \$1250 per case.

Steven Jaeger

Steven Jaeger is a Kenton Circuit Judge. He stated that the problems discussed at the meeting were the same problems that had been in existence since the time of the *Blue Ribbon Group*.

He regretted that solutions had not been discussed. He said that there needed to be working groups from the courts, prosecutors, and others to come up with solutions to these problems.

John Rosenberg

Public Advocacy Commission member John Rosenberg stated that while the issue of eligibility needed to be examined, that verification was not the solution to the high caseload problem. He stated that he was proud of the public defenders present; he stated that they were the most courageous people in the courtroom.

Tom Griffiths

Tom Griffiths is the Directing Attorney in the Maysville Office. He stated that the solution that public defenders in his office use is to work for nothing rather than go home with their family. He said that he never sees people in jail during the day, that all of his visits to the jail are at night. He said that his trial preparation is at night and on weekends.

Public Meeting Held in Bowling Green on May 20, 2005

70+ members of the criminal justice community appeared at the Public Meeting held in Bowling Green on May 20, 2005. Robert Ewald, Chair of the Public Advocacy Commission, and Jerry Cox, Commission member, were present. Speaker Jodie Richards and Senator Brett Guthrie were in attendance, as were numerous judges, prosecutors, and public defenders and defender staff.

Katie Wood

Katie Wood is the President of the Kentucky Association of Criminal Defense Lawyers. She stated that she had been paid only \$350 as a conflict lawyer for the Somerset Office in a case that took many hours. She stated that the money did not cover the cost of copying, travel, collect phone calls, and certainly not her time. "We funded her defense. We gave the state our time to meet the constitutional obligation."

Ed Monahan

Ed Monahan is the Executive Director of the Catholic Conference. He entered a statement into the record, which is a part of the Appendix.

Rev. Nancy Jo Kemper

Rev. Nancy Jo Kemper is the Executive Director of the Kentucky Council of Churches. She was unable to appear at the public meeting, but sent a statement that was made a part of the record and is part of the Appendix.

Vaughn Wallace

Vaughn Wallace is an Assistant Commonwealth's Attorney with the Warren County Commonwealth's Attorney's Office. He is funded with a HIDTA federal grant. He stated that he had been a public defender, a private lawyer and a prosecutor. He stated that an adequately funded defender system is important, that it effects all parts of the system, that it saves the county money by getting indigents out of the jail sooner, and it gives the indigent a voice. He stated that a poor person accused of a crime needs to have a public defender with enough time, resources, and support staff.

Amy Milligan

Amy Milligan is the Warren County Attorney. Four of her six lawyers came from the public defender's office. She stated that without adequate funding, the justice system will be slowed down in district court. She also said that her concern "is that the attorneys' lives are suffering because of the volume of cases—their personal lives are suffering."

Rob Sexton

Rob Sexton is the regional manager for DPA's Central Region. He expressed gratitude for the funding increases that had occurred recently. His first year caseload as the directing attorney of the Owensboro Office had been over 1000 cases. That caseload is now around 450.

Judge Bill Harris

Judge Harris is the Circuit Judge in Allen and Simpson Counties. He stated that he had been on the bench for 16 years and had seen the system evolve. He stated that there was no way to express the difference between the old contract system using private lawyers and the new full-time system. He stated that DPA lawyers in the Bowling Green Office "do an excellent job." He encouraged the legislators to "take these things to heart."

Judge Kelly Easton

Judge Easton is a Hardin Circuit Court judge. He said that the problem is "expecting too few attorneys to do too many cases." He said that the only solution is "adequate funding to put us where we should be." The rocket docket is providing some relief. At one point caseloads were at 636 per lawyer in Elizabethtown, when they had "serious delays." Things have improved recently with the addition of a caseload reduction lawyer.

Allen Graf

Allen Graf has been an attorney for 30 years, and is now with the Bowling Green DPA Office. He related a story of a client who recently hired a lawyer and told him that he had done so due to Graf's heavy caseload. Mr. Graf felt badly because the client told him this in front of another client who could not afford to go out and hire another lawyer.

Cindy Lyons

Ms. Lyons is an Administrative Specialist with DPA's Owensboro Office. She worked in private practice for 15 years as well. In private practice the ratio of attorneys to support staff was 1-1. She said that she had checked with prosecutor's offices and that they also had an attorney to support staff ratio of 1-1. In Owensboro there are 9 lawyers to 3 secretaries. The same is true throughout the Central Region. The result is that secretaries are overworked and attorneys are doing their own typing and filing. "We need more secretarial and support staff."

Diana Werkman

Diana Werkman is an attorney in the Bowling Green Office. One half of her time is spent on circuit court cases, and one half on status offender cases. Last year she had over 400 status offender cases in one year in addition to her circuit court caseload, despite the national standards recommending no more than 200 juvenile cases for any one defender in a year. She stated that her juvenile clients were not getting the services that they needed, that oftentimes little more than triage was occurring. She stated that DPA needs a social worker in every trial office to assist our juvenile defenders do their job.

Glenda Edwards

She stated that she is worried for her attorneys due to their caseloads. She said that they were working nights and weekends. She said that all of them are getting their hearts broken by clients because they can't do everything for them that they need to do. "I want the Commission to know the physical toll this is taking on our attorneys."

Public Meeting Held in Prestonsburg on August 24, 2005

The fourth meeting of the Justice Jeopardized Campaign was held at the Mountain Arts Center in Prestonsburg, Kentucky on August 24, 2005. Approximately thirty-one (31) people attended the meeting. Robert Ewald, Chair of the Public Advocacy Commission, and John Rosenberg, Vice-Chair of the Commission, were present. Justice Will Scott as well as Chief Judge Sara Combs, Circuit Judge John David Caudill, Johnson County Circuit Court Clerk Vicki Rice, and Greg Rush of the Justice Cabinet were in attendance, as were numerous public defenders and defender staff.

Justice Will Scott

Justice Scott stated that justice does suffer in Kentucky at the trial level. When trial attorneys have a caseload at 185% capacity, you cannot achieve a quality of justice, or its requirement, a fair trial. He stated that the essence of the problem is that of funding. The reason DPA is not funded better is that public defenders have no political base. He encouraged defenders to thing big. He encouraged the Commission to consider the possibility of electing public defenders in each county in order to achieve a political base. He also raised the possibility that DPA should be moved from the Executive Branch into the Judicial Branch. He noted that Commonwealth's Attorneys do not have to have public campaigns in order to receive adequate funding.

He stated that while he did not speak for the Court, he believed that all of the other six Justices would support the Commission's quest for justice. Justice Scott noted that as caseloads go up, efficiency goes down, and that the risk of convicting an innocent person also goes up. The Supreme Court of Kentucky is very concerned about the possibility of convicting an innocent person.

Chief Judge Sara Combs

The Chief Judge of the Court of Appeals, Judge Sara Combs, stated that public defenders touch people who are "basically untouchables." She viewed the funding issue as more than a funding issue but first an issue of conscience. She noted that if you are at 185% of nationally recognized standards, you cannot be at 100% efficiency. Judge Combs believed that public defenders did not have access to the time and money that we needed to do our jobs. She asserted that she was present when the KERA lawsuit was being prepared, and that she believed that there were many parallels between that situation in education and the present situation for public defense. She questioned whether a lawsuit might be the only solution to this problem.

Teresa Reed

Teresa Reed is a public defender in the Hazard Office. She began her public defender career after having been in private practice and a federal prosecutor. She noted that a large percentage of her time was spent on matters other than preparing her cases. This included taking care of her clients' personal matters such as their medical conditions. She stated that was one reason DPA needs more support staff. She said that when she was in private practice, there was 2 support staff for every private lawyer. She criticized the stated goal of 1 support staff for every 2 lawyers, although she agreed that would be better than the present 1 to 3 ratio. She believed that additional support staff is at least as important as additional attorneys. She noted too that there were 259 people in the Perry County jail which had only 135 beds, and that this caused her to have to spend a large amount of time trying to solve that issue with the Department of Corrections as well as inmates' family members. All of this takes time, time that she said she did not have.

Harolyn Howard

Harolyn Howard is the directing attorney of the Pikeville Office. She is in her 15th year as a public defender and is still paying off "massive student loans." She stated that the biggest problem in the Pikeville Office had been turnover. Recruiting for the Pikeville Office was also difficult, as was retention. She believed that the stated goal of 400 cases per lawyer was too high, that a mixed caseload of 300 to 350 was a goal more consistent with having sufficient time. 3.8 hours per case is not nearly enough to represent someone properly.

Roger Gibbs

Roger Gibbs is the directing attorney of the London Office and regional manager for the Eastern Region. He related two events that summed up the problems in the London Office. He said that he had attended a meeting at which Congressman Rogers had given \$5 million for drug treatment, an amount that will allow 300 people to be treated. He said that was insufficient to meet the need. When he got home the previous night, WYMT reported that 40 new arrests had been made on drug charges in Clay County, with 60-80% of those predicted to go to his office. He stated that he needed social workers to assess clients within 48 hours of arrest in order to make treatment effective.

Steve Geurin

Steve Geurin is the directing attorney of the Morehead Office. He stated that he had one attorney in his office with 640 cases, and a second attorney with over 1000 cases. He said that time did not allow his attorneys to represent people adequately due to the high caseloads.

Public Meeting Held in Paducah on September 9, 2005

The fifth and final public meeting was held by the Public Advocacy Commission in Paducah, Kentucky, on September 9, 2005. In attendance for the Commission were Deb Miller, who chaired the meeting, and Ernie Lewis, *ex officio*. There were over 60 attendees, including Justice William Graves of the Kentucky Supreme Court, Judge Rick Johnson of the Kentucky Court of Appeals, Rep. Brent Yonts, Rep. Frank Rasche, and numerous judges and prosecutors throughout the Western Region. The following is a summary of the comments heard by the Commission:

Rick Johnson

Court of Appeals Judge Rick Johnson stated that the primary message he has received from citizens in Western Kentucky is the need for more attorneys in the public defender system. Their biggest concern is that attorneys have too many cases and not enough time to prepare. Further, as a Court of Appeals judge, he sees many claims that allege that the attorney does not have sufficient time to prepare, as opposed to the more classic instance of ineffective assistance of counsel.

Representative Brent Yonts

Rep. Yonts stated that the public defender system had progressed a great deal since he had been a public defender as a young lawyer.

Justice William Graves

Justice Graves stated that when he began practicing law in 1965, that there was no public defender program. He said that it is clear state funding is inadequate. As a result, the Supreme Court is exploring the possibility of requiring all attorneys to provide *pro bono* services to indigents accused of crimes.

Ginger Massamore

Ginger Massamore is the Directing Attorney in the Hopkinsville Office. She has been with DPA for 10 years. The Hopkinsville Office covers 6 counties consisting of an area over 200 miles across. The attorneys in the Hopkinsville Office have tried 34 cases since February 2005, and all but 5 were either acquittals or a sentence to less than the offer. Her office has had 8 death penalty cases since August of 2004. She stated that as a result of “staggering caseloads,” no client has suffered. However, the staff of the Hopkinsville Office is suffering, their families are suffering, and their health is suffering. “We are drowning under the caseloads and stress.” The one thing money can buy in the criminal justice system is the time of the attorney.

Mike Ruschell

Mike Ruschell is the Directing Attorney of the Madisonville Office and the Regional Manager for the Western Region. He stated that his office has family members calling all of the time asking why the attorneys don't go see a particular defendant in jail. He stated that the reason why this is not being done like it should be is the heavy caseloads.

David Massamore

David Massamore, the husband of Ginger Massamore, is also the elected Commonwealth's Attorney in 4th Circuit. The problems with increasing caseloads for public defenders is also happening with prosecutors' offices. Thirty years ago Hopkins County had only 40 indictments; this last year there were over 500 indictments. There used to be 7 police officers in Madisonville; today there are 36. Massamore stated that the criminal justice system is like a see-saw that you have to watch to make sure that it does not become imbalanced. An imbalanced see-saw does not work. He stated that the criminal justice system is now like the imbalanced see-saw. He stated that the primary driver of the problem is the drug problem. While we need to fund law enforcement, we must also fund prosecutors and public defenders. He said that burned out, overworked, untrained public defenders are his worst enemy. Finally he stated that he was present as a family member. “I see what this job does to dedicated people.”

Amy Harwood

Amy Harwood is a Paducah public defender who has been practicing for 7 years. She was concerned about the retention problem in DPA. She stated that in her office retaining experienced attorneys is very difficult, and that as a result, inexperienced attorneys are handling murder cases.

Chris McNeil

Chris McNeil is the Directing Attorney in the Paducah Office. He stated that the public meeting was that of a criminal justice community coming together to talk about part of the problem, high caseloads for public defenders, as a criminal justice community.

Shane Beaubien

Shane Beaubien has been the investigator in Murray since the opening of the office. His concern was that of turnover in the Murray Office. The Murray Office has lost 7 attorneys during the last three years. He was excited about the possibility of getting a social worker in each office who can work on the clients' underlying problems.

Brian Scott West

Scott West is the Directing Attorney of the Murray Office. He said that a client has suffered in his office as a result of high caseloads. He told the story of a young attorney who had an innocent client. The attorney is now a nurse, and as a result, Scott inherited the case. When he got the case, he realized that the innocent client had sat for 6 months in jail. She had stayed in jail because Scott did not have the time to review the file, and did not have the time to coach the new attorney. He stated that only with new funding could he do a better job, and that that will ultimately save time and money for the system. He noted that both sides need to be adequately funded. When the Commonwealth's Attorney's Office received additional funding, that resulted in a more efficient operation.

Gail Cook

Gail Cook is the Commonwealth's Attorney in the 42nd Circuit. In her opinion, the big reason for the caseload increase among prosecutors and public defenders is the growth in the drug problem, and particularly methamphetamine. The load presently being carried by all parts of the criminal justice system is untenable. The only thing that has kept the system going is the dedication of everyone in the system.

Cirrus Barnes

Cirrus Barnes is one of DPA's newest trial lawyers, located in the Murray Office. She said that her primary impression as a new lawyer was how heavy the caseload was and how much energy it takes to get through district court.

Cindy Long

Cindy Long has been with DPA for two decades. She is an investigator in the Hopkinsville Office. She stated that DPA needed more investigators. She noted that the Commonwealth had immense investigative resources through their own investigators, sheriff's departments, the Kentucky State Police, City Police Departments, the Crime Lab, and Federal Task Forces. She noted that lawyers in her office were doing their own investigation because of the absence of sufficient investigators.

Deb Miller

Deb Miller is not only on the Public Advocacy Commission but also appeared as a long-time staff member of Kentucky Youth Advocates. She has worked for 20 years with them, part of which was as Executive Director. Kentucky Youth Advocates has watched the juvenile justice system. She stated that KYA was very disturbed by the high caseload numbers. She also noted that regional detention has made the job of public defenders more difficult. KYA is pleased with changes in the law guaranteeing counsel for the poor. KYA is also concerned about the lack of sufficient support staff for attorneys. KYA is particularly enthusiastic about the possibility of social workers in public defender offices and what social workers can bring to the representation of juveniles.