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EDITORIAL: Gideon plus 43: Indigent Defense Still Awaits a Fix

Hurricane-battered south Louisiana has become not just a mission ground for volunteers armed with hammers and nails, but for scores of law students around the country armed with legal pads and idealism.

Kevin Agnew, a Northwestern University law student from Chicago, is spending a two-week spring break in New Orleans helping sort through the human debris left to languish in jails because of storm-slashed budgets and too few attorneys to handle their cases. Many of these budding legal minds from some of the best law schools in the nation aren't being used to research cases but instead are parked in front of keyboards, performing simple data entry in an effort to rebuild case files that were lost in the flood. Without the help, public defender offices that already were understaffed before the hurricane, would face even more formidable tasks.

If the public defense system was broken before August 2005, it now is submerged as well. Speedy trials for suspected criminals, never a top-tier public priority, has lost even the modest momentum it was gaining. But like so many other areas, from education to health care, hurricanes can be used as an excuse for status quo but should be used as an opportunity to set things right.

The good news is Gov. Kathleen Blanco's budget calls for a doubling of state dollars \$10 million total committed to helping fund public defenders offices around the state. But the bad news is the underlying flawed funding mechanism court fees from traffic tickets remains in place and insufficient. It's a system that has no relationship to the mission it funds. Traffic tickets are subject to the vagaries of law enforcement. In hurricane-affected areas, tickets have nose-dived because of shifting law enforcement priorities and a simple reduction in traffic.

No face time with counsel

It's that flawed system that set the stage for the current overload. In a recent survey of 2,000 storm-evacuated indigent prisoners, according to the Louisiana Justice Coalition, more than 50 percent reported having no lawyer, 32 percent were unsure if they did (certainly an indicator that those who do are getting precious little face time with their attorneys) and 14 percent who had a lawyer didn't know the attorney's name. By mid-February two Orleans Parish criminal court judges were threatening to release 4,000 suspects because slashed budgets and staff left too few lawyers to effectively represent the poor.

With 23 exonerations of felony convictions over the past 15 years, the overloaded system with harried counsel and few resources means justice isn't always assured. Also consider that justice delayed is justice denied, not just for the defendant but for victims of crime.

Even before Katrina, the National Legal Aid & Defender Association picked one rural parish, Avoyelles, and found instances where some court-appointed attorneys had double the maximum of 150 cases per lawyer, and one reported having 18 minutes to prepare for a second-degree murder trial.

Modest accountability move

Spurred by a lawsuit in Calcasieu Parish, the poster child for overwhelmed public defenders offices, the state last year was slowly getting stakeholders on board for a serious stab at reform. A bill in the last legislative session by state Sen. Lydia Jackson expanded the Louisiana Indigent Defense Assistance Board to include stakeholders, ranging from the state bar association to former indigent defense clients. And because not all areas of the state were assessing the traffic court fees for indigent defense, the legislation sought to equalize statewide the assessments to bolster revenues.

In this session, in acknowledgement for the additional millions being directed at indigent defense, Jackson will take another modest step to require more transparency and accountability at public defender offices. It's a bill that should lay one more brick in accountability to build a case for more sweeping legislation down the road. With better quarterly reports, the state LIDAB can watch for spikes in caseloads to put state dollars where they are most needed.

An inefficient defense system isn't just a bleeding heart cause but also a fiscal one. Consider that Louisiana still rivals most nations in its incarceration rate. Keeping people in cells is expensive. Rather than languishing in parish jails, many nonviolent crime suspects the Justice Coalition says the majority hold down full-time jobs often would better serve their families and society to be out earning paychecks while waiting for their trial dates. And frankly, because of the high cost of lawyers, many working Louisianans, not just day laborers, would find they qualify for public defense assistance.

Last weekend marked the 43rd anniversary of the landmark case of Clarence Earl Gideon in which the U.S. Supreme Court ruled poor defendants are entitled to counsel. Almost a half century later, the nation, and especially Louisiana, continues to struggle with this basic American right. Perhaps a hurricane, as with so many other social and governmental issues, will blow in lasting winds of change.