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## U.S. Supreme Court Inaction Perpetuates ‘Justice Delayed, Justice Denied’

BATON ROUGE – Yesterday, by a vote of 5-4, the United States Supreme Court dismissed *Boyer v. State of Louisiana* as improvidently granted. The petition for a writ of certiorari was granted on October 5, 2012 and arguments were heard by the Court on January 14, 2013. Richard Bourke, Director of the Louisiana Capital Assistance Center (New Orleans, LA), argued on behalf of Jonathan Boyer.

Frank Neuner, Chairman of the Louisiana Public Defender Board, said, “LPDB struggles to stretch its insufficient funds to deliver constitutional defense services to as many indigent defendants as possible, and we are extremely disappointed that the Court didn’t take the opportunity to further define the role of the states to provide an effective indigent defense system for its citizens.”

Under consideration in *Louisiana v. Boyer* was whether a state’s failure to fund counsel for an indigent defendant for five years, particularly where failure was the direct result of the prosecution’s choice to seek the death penalty, should be weighed against the state for speedy trial purposes. Jonathan Boyer was indicted in 2002 for capital murder in Calcasieu Parish. Although he had one court-appointed lawyer, Louisiana law, like many jurisdictions, requires two for a death penalty prosecution. Insufficient funds made it impossible to retain associate counsel and Boyer remained in prison without a trial for five years before the prosecution reduced the charges to second-degree (non-capital) murder in order to avoid the second counsel requirement. It wasn’t until 2009 – seven years after his arrest – when Boyer was tried and convicted of second-degree murder, armed robbery and use of a firearm. He was sentenced to life in prison.

The four dissenting justices wrote that by avoiding the issue on its merits, the Court abdicated its responsibility not just to the defendant in the case but to thousands of other criminal defendants in Louisiana who are, like Boyer, too poor to pay for their own attorneys. Justice Sonia Sotomayor wrote, “The Court’s silence in this case is particularly unfortunate. Conditions of this kind cannot persist without endangering constitutional rights.”

Most of Louisiana’s 42 district public defender offices lack sufficient resources to provide timely, effective defense services, threatening the quality of defense for a majority of the state’s indigent defendants. Despite comprehensive public defense reform in 2007 – which dissolved the local boards and created in their place the Louisiana Public Defender Board to help the Legislature fulfill its constitutional mandate to develop a “uniform system for securing and compensating qualified counsel for indigents” – the Legislature did not address the flawed

mechanism that funds the public defense system. Louisiana is the only state in the nation that attempts to fund the majority of public defense services through a \$45 special court cost tacked on to traffic tickets and other convictions. This funding scheme is highly unstable, has no relationship to public defender workload, requires that funds remain in the district where they were generated, and leaves the public defender dependent on the police to write traffic tickets, the prosecutor to pursue the charges and the judiciary to collect and remit the funds. Andrew Cohen, covering the Court's *Boyer* decision for The Atlantic wrote, "If there is a state which does a worse job of providing the right to counsel for indigent defendants I am not aware of it."

LPDB Chairman Neuner adds, "Until Louisiana fixes the way it funds public defense, the system will remain in a constant state of crisis. No matter how much training we provide to defenders, how many performance standards we promulgate, or how much on-site supervision we provide, without stable and sufficient funds, the public defense system will remain broken."

As of today, Louisiana's public defender system has 127,408 pending cases in city and criminal courts statewide. One district (Calcasieu Parish) is currently in service restriction, and four others are expected to exhaust their funds before the end of the current fiscal year.