

AFFIDAVIT

STATE OF LOUISIANA §
PARISH OF ORLEANS §

BEFORE ME, the undersigned Notary Public, personally came and appeared:

TINA PENG, DOB: 9/19/86, who after being duly sworn did depose

and state the following:

1. My name is Tina Peng. I graduated law school in 2013. I am an attorney at the Orleans Public Defenders office, and licensed to practice law in the State of Louisiana (Bar No. 35279). I have only worked at the Orleans Public Defenders since graduating law school.
2. Since January 1, 2015, I have handled 295 felony cases, 19 misdemeanors, and 35 revocations. Since January 1, 2015, and have received 16 new misdemeanors, 179 new felonies, and 28 new revocations. My current caseload includes 135 felonies, 5 misdemeanors, and 19 revocations.
3. Of those 135 felony cases, 37 are in jail. Most are housed at the Orleans Parish Prison complex. Visitation at the Orleans Parish Prison complex is extremely time-consuming. I often wait at jail for hours just to see one client because there are not enough visitation rooms and because it takes a very long time for sheriff's deputies to transport inmates from their cells to the visitation rooms. I often will wait for hours and still end up leaving without seeing any of my clients because I have too much other work to do and there are still other attorneys ahead of me in line to see their clients. This is true even when I call ahead to try to schedule my visits: the deputies often have no record that I called or say that the rooms are full anyway so they cannot honor my scheduled visit.
4. Last I checked, two of my clients are housed in East Carroll or Franklin Parishes. Each of those parishes is a four-hour drive away. I have never visited a client in either East Carroll or Franklin Parish because I do not have time to make an eight hour round trip.
5. I try not to speak to my clients on the phone because the calls are recorded and provided to the prosecutors. Regardless, I cannot call my clients, so I can only receive calls if my client calls me and I happen to be at my desk, which is rare.
6. I am a "Level 4" attorney, meaning the majority of my new clients are charged with Armed Robbery, Forcible Rape, or Attempted Murder. I have a very high number of

“Level 3” clients as well, charged with drug distribution or gun possession. The vast majority of my clients are facing decades in prison if found guilty at trial.

7. Louisiana Revised Statute 15:529.1 allows the State of Louisiana to treat my clients who have prior convictions as habitual offenders and increase their mandatory minimum sentence if they are convicted. If sentenced as a habitual offender, a person is not eligible for parole or prison time reductions, and must serve every day of the sentence imposed. The current practice of the District Attorney’s office is to use the habitual offender statute after trial to the fullest extent in almost all cases. A person with three prior felonies generally faces a minimum of 20 years (sometimes 30 years) to a maximum of life in prison if convicted of a fourth felony. Those clients are called “quads.” A person will get automatic life without parole for their third offense for crimes of violence, certain non-violent felonies such as burglary, and some drug offenses. Those clients are called “lifers.” The prosecutors will often offer plea deals that include habitual offender status billing so that my clients will not get “good time” reductions of their prison time and instead will do their time “flat,” i.e., they will do the entirety of the sentence. For example, it is not uncommon for prosecutors to offer a “quad” charged with simple possession of cocaine a plea offer of “double and 5,” meaning the client will plead guilty to having had one prior felony conviction pursuant to the habitual offender statute and agree to serve 5 years flat in prison without the possibility of parole.
8. It is office policy that I see clients within 48 hours of appointment, which happens at first appearances. Because of my caseload, it sometimes takes me two to three weeks before I can meet new clients in jail for the first time.
9. I recently received 32 news cases in two weeks; almost all of those new clients did not bond out of jail. Although I visited most of those clients within a week of their first appearance, I was unable to do any follow up work on their cases, including phone calls and basic, time-sensitive investigation requests. It took me more than three weeks to do my first investigation request for one of those clients. Of those clients, 12 are still in jail. Their charges include possession with intent to distribute cocaine, simple burglary, and aggravated second-degree battery. Seven are multiple offenders, and approximately four are either lifers or quads.

10. In most cases, I do not have time to visit clients more than twice between arrest and a substantive court hearing, such as a hearing on motions to suppress evidence or a preliminary examination. This makes it very difficult to develop rapport with my clients or get them to trust me. A trusting relationship is necessary for my clients to be willing to confide in me with what are often crucial pieces of information about their case. The inability to spend time talking to my clients about their cases also inhibits the exchange of information and cooperation that is vital to a proper defense but that only comes from repeated updates and communication. Further, with the number of cases I have, I have trouble keeping straight the individual details of each client's case.
11. When I do visit a client at jail, I am almost always visiting the maximum allowable number of clients during the same visitation period. During my visits, I am always mindful that I have other clients to see and other work to do, so I cannot spend very much time with any one client. Instead, I get just the most basic information and convey the most basic information about the case before moving on to the next client. A typical jail visit would last 20 to 30 minutes.
12. If my client is out on bond, it is very rare that I meet with them before arraignment. I have to prioritize my jailed clients. Therefore, it is very rare that I investigate those cases prior to arraignment or try to arrange pre-acceptance dispositions for those cases.
13. In the majority of cases, I plead clients guilty without any investigation being done in the case. I am forced to triage my cases, and often do not ask investigators to investigate cases that seem likely to plead. I very rarely would be able to investigate or request investigation into potentially exculpatory videos that get overwritten within one to two weeks of an alleged offense.
14. Often the prosecution will make plea offers on the day of arraignment. In those cases, I often have not seen the police report or will be handed the police report at the same time as the offer is given. Usually, everything I know about the case until that point will have come from the "gist" that the police write to make out probable cause for arrest. Because of this, I generally have to try to advise clients about whether or not to plead guilty without having done any independent investigation or having even reviewed the full police report.

1. On an average day, I spend four hours in court and up to two hours in jail. Some sections of court start early and finish early; others start late and finish late. I am assigned mostly to cases in Sections L, A, C, and E. Section L starts at 8:15 am. Section A often does not start until after 10am and is in session until late in the afternoon. It is very hard to predict how long I will be in court on a given day. Cases are not set to be handled at a specific time and they are not called in any particular order.
15. I work past 7pm most days of the week and work six to twelve hours on average during weekends. I normally log between 50 and 60 work hours a week.
16. When I am in court, I am often the "section attorney" assigned to one section of the court. That means I have to stand in for other attorneys' arraignments, assist people who have come to court unrepresented for probation status hearings, handle revocation hearings, and assist people arrested on a warrant for failing to pay fines and fees. I also have to spend a lot of time trying to communicate with my colleagues, the other public defenders who have cases set in that section of court, to get information from them about what date their case should be set for next or when they might be able to come to court to handle their matter. As a section attorney, I have very little time to do anything other than actively respond and react to what is happening in court.
1. When I am section attorney, I also usually have many matters set in other sections of court. On a typical day, I will have matters set in 5 sections of court. In order to leave the section I am covering to go to another section, I need to wait for another attorney to come and fill in for me so I can leave. That means when I am actually able to leave the court section I am covering, I have to rush from section to section to handle my matters. My interactions with my clients during section coverage days are usually extremely rushed because judges, who have been waiting for my arrival, often call my cases right away upon my entrance into the section. Often, judges are angry and berate me for not being present when they called the case earlier. This damages my relationship with my clients, who see me as incompetent because I am getting yelled at by the judge.
2. In most weeks, I have 6 to 8 motions hearings set and 1 to 3 trials. I rarely have time to prepare for my motions hearings, where 1 to 2 police officers will testify, more than a day before they are set. I almost never visit the crime scenes before motions or before guilty pleas. I would only visit the crime scene if it appears the case is going to trial, and even

- then I often would not have time. Similarly, I almost never view the evidence in a case before a suppression hearing about that evidence or before a guilty plea. Again, at best I would view it if the case is going to trial. This means that, because of my caseload and lack of resources, I am usually not able to investigate thoroughly the factual basis for pretrial motions or do sufficient legal research to make them effectively.
17. Our office is usually unable to conduct any meaningful interviews of most potential witnesses in a case. Our office is usually entirely unable to conduct any mitigation investigation relevant to sentencing.
 18. If a case is going to trial I often cannot start working on it until the weekend before it is set. That means I do not have time to subpoena witnesses I need to testify or get records that could help my client's case.
 19. I have 9 trials set between now and the end of January. I have 26 substantive evidentiary hearings set between now and the end of January. These numbers are low for a typical two-month stretch because of Thanksgiving and winter holidays, and because the courthouse does not have jurors available between the end of the second week of December and the New Year.
 20. I often do not have the opportunity to file particularized discovery motions or subpoenas until it is too late to have them be effective.
 21. I rarely have the opportunity to write original motions addressing the legal issues in my clients' cases. In most cases the most I can do is pull form motions written by other attorneys on different cases and cut and paste them into my own motions. I very rarely can do actual legal research; I often spot issues that need follow-up research in my cases but almost never have time to do it because of emergencies in other cases.
 22. I rely on other lawyers from around the country to let me know about case law developments. I have very little time to do any of that on my own.
 23. Unless revocation cases are tied to other new charges for which I represent the client, I am able to do almost nothing on those cases such as investigating the allegations or exploring alternatives to incarceration.
 24. I almost never have time to consider whether hiring or consulting with an expert would be helpful in a given case.

25. I do not believe I am providing effective representation to the majority of my clients.

Instead, I feel like a case processor, not an attorney. I spend my days pleading people guilty in the blind, not challenging the state's evidence in court or investigating the claims made by the police.

26. I chose to work at the Orleans Public Defenders because I believed in the office's mission: to provide a zealous defense to every indigent person charged with a crime in New Orleans. Two years later, I rarely feel that I accomplish that mission; more often, I feel that the systemic constraints on my practice prevent me from vindicating my clients' rights or doing much actual good, and cause me to instead aim to do the least harm possible.

That these statements are true and correct to the best of my knowledge, information and belief.



TINA PENG

SWORN TO AND SUBSCRIBED TO BEFORE ME, NOTARY, THIS 20 DAY OF NOVEMBER 2015.



NOTARY PUBLIC