



# The Defense That Never Rests

Louisville Metro's 62 public defenders (most of whom are shown above) represent those who cannot afford to hire their own attorney, a population on the rise in incarceration-heavy Kentucky.

BY CARY STEMLE  
PHOTOS BY JOHN NATION

**I**n a room on the second floor of the Jefferson County Judicial Center — the modern complex at Seventh and Jefferson streets, not the dated monstrosity a block east that is known as the Hall of Justice — Ashley Edwards bent at the waist to put on wool crew socks over her hose, still looking up to continue discussing the trial that was presently consuming her life.

Edwards, 29, a staff attorney for the Louisville Metro Public Defender's Office, had just come from the sixth-floor courtroom of Circuit Court Judge Barry Willett, where she was trying her first murder case. Today, the second day of testimony, had been hellacious, punctuated by seemingly bizarre testimony from one of the commonwealth's key witnesses, who had been led into the courtroom in shackles and orange prison garb.

It was a Thursday afternoon in late January, and Louisville was under a winter weather advisory. Snow was falling, ice was in the forecast, and

as luck would have it, Edwards had a dinner engagement that evening at the Henry Clay, where she would accept an award from the Louisville Bar Association. And her parents were on their way down from Columbus, Ohio.

Edwards replaced her dress shoes with a pair of Merrells and put on her overcoat. We headed out across Jefferson to Advocacy Plaza, the block-long office-and-garage complex that houses the public defender. In Edwards' third-floor office overlooking Jefferson, a constant stream of faces materialized, each offering encouragement. The prevailing notion said the defense case was strong. Edwards knocked on her desk and cringed at the premature suggestion.

It was cautiousness well-founded. Six days later (counting the weekend and a snow day on Friday), the jury in the case of Commonwealth v. Derrick McAtee found the defendant, a 23-year-old black male who sat quietly throughout the trial, guilty of murdering 40-year-old Rodney Haskins late in the evening on July 9, 2009, in front of a house on Jefferson Street in Louisville's West End.

legal defense to its neediest citizens.

The Jefferson County office, led by chief public defender Dan Goyette since 1982, today has 99 employees overall and 62 attorneys, including well-regarded long-timers like deputy chief defender Leo Smith, capital division chief Jay Lambert and juvenile division chief Pete Schuler.

The office's trial attorneys, with the exception of those in the capital murder division, take cases on a random, rotating basis, meaning their caseload includes everything from low-level misdemeanors to serious felonies such as robbery or assault, as well as murder cases that don't involve the death penalty. Under "vertical representation," the attorneys stick with cases from start to finish, as opposed to a horizontal system where lawyers are assigned to individual courts.

"In my opinion and that of other experienced defenders," Goyette says, "the horizontal system smacks of and is conducive to an assembly-line method of representation. We'll never adopt that approach."

Two-thirds of the office's annual budget — \$6.5 million for fiscal year 2011 — comes

But there are challenges — low pay, budgetary constraints, public stereotyping and juries who think police never distort the facts, to name a few. In the difficult economy, with more people considered indigent, the office's caseloads increased 8.6 percent last year, to nearly 40,000. Individual defenders typically handle 150 cases at any given time.

Retention is an ongoing concern — a dozen attorneys left in 2010, including Julie Kaelin, who started her own criminal-defense practice. Kaelin has high praise for the office and many friends there but admits it was about money. She hired in at nearly \$37,000 annually and left earning \$46,000. "In the year since I left," she says, "I paid off all of my credit card debt, and I don't have to get any money from my parents anymore."

Goyette says turnover runs in cycles but is part of the deal. "Periodic staff turnover is a phenomenon common to most public defenders due to the demands of the job and remuneration that is markedly less than what can be made in the private sector," he says. "While it's safe to say no one who comes to work in this



“He'd look me dead in the eye and say they had the wrong person,” says Edwards (pictured with Derrick McAtee, the defendant).”

**T**he Louisville-Jefferson County Public Defender Corp. was incorporated in 1971 and opened for business in 1972, becoming the first full-time public defender program in Kentucky. Previously, judges would often simply compel attorneys to represent indigent clients. Later that year, then-Gov. Wendell Ford signed a law creating a statewide public defender system.

The Louisville office contracts with the state to operate as a non-profit corporation and functions as a full-service law firm providing defense representation in all state courts, at every level, as well as appellate and post-conviction advocacy in both state and federal courts. The state's other 119 counties receive public defender services through the Department of Public Advocacy. On this matter, Kentucky is viewed as progressive for the way it provides competent

from the state, and about one-third from the city. The office, with a roster of veterans on one end and numerous young attorneys at the other, has separate divisions for adults, juveniles, capital murder cases and appeals, and also handles mental inquests.

It has argued six cases before the U.S. Supreme Court and won numerous awards, including a national one naming it public defender's office of the year in 2003. The late and highly respected Kentucky Supreme Court Justice Charles Leibson, speaking to the downtown Louisville Rotary Club, once said the office was so good that he would consider "pauperizing" himself if he ever found the need for a criminal defense attorney.

The office motto, and mantra, is: "Justice doesn't just happen; you have to make it happen."

office is motivated primarily by money, the reality is, most young lawyers are struggling to pay off educational debt load from law school, and there comes a time when that becomes difficult, if not impossible, in public service.

"We've had no raises in two years, and now we're dealing with furloughs. And given the nature of the work, it takes a special personality — some would say peculiar — to maintain the drive and desire to do this work over the long haul. Fortunately, we have more than our share of special people who continue to fight the good fight."

**T**he witness's name was Gregory Kilgore III, also known as "Li'l Greg" or "K.G.," and he created a bit of a spectacle when he was brought into the courtroom through a side door in the shackles and an orange prison outfit. Kilgore, who an earlier prosecution witness had described as a known drug dealer, is currently incarcerated near Lexington for two incidents of

robbing people at gunpoint as they left Highlands nightspots. That case was pending in September 2009, when police finally located Kilgore and questioned him in the Haskins murder.

During that interview with lead detective Kevin Trees, which was eventually played in court, Kilgore admitted he was present during the altercation that preceded the shooting but said he ran home, two doors down, when he saw it getting out of hand. (The detective immediately expressed his disbelief that Kilgore ran home.) Under pressure from Trees during the interview, Kilgore also admitted knowing the man police had arrested for the shooting — McAtee — but only by the street name of “Y.G.” And after Trees mentioned the name McAtee — a highly suggestive act, Edwards later pointed out — Kilgore pointed to a photo of Derrick McAtee and said he was the shooter.

That interview took on extra significance when Kilgore developed amnesia on the witness stand, telling Assistant Commonwealth’s Attorney Tom Coffey more than a hundred times he simply could not remember anything he’d told the detective.

During her opening statement, Edwards had asked the jury to keep in mind what each of the commonwealth’s key witnesses might stand to gain by helping the state. Now, as she cross-examined Kilgore, Edwards probed his felony conviction and pointed out that Coffey was also the prosecutor on that case. Although there was no formal agreement to lighten Kilgore’s sentence in exchange for his help in the McAtee case, Edwards pointed out that the sentence dropped from 15 years to 10 years after the state realized Kilgore would figure into the McAtee case, and further that Coffey had agreed to make no objections when Kilgore comes up for shock probation in June after serving six months in prison.

That, Edwards insisted, was a de facto deal.

**K**entucky’s prison population has exploded over the past three-plus decades, from about 3,000 in 1974, when there were three state prisons, to a high by 2008 of 22,000 inmates, held in 13 state-owned and three private prisons, plus numerous county jails that house state prisoners because of overcrowding.

State spending on corrections has grown from about \$11 million in 1974 to a high of \$500 million, and Kentucky’s incarceration rate reached one in every 92 adults in 2007, compared with one in 100 nationally; at the same time, the state’s crime rate has remained essentially flat since 1974 and was, in recent data, approximately 20 percent lower than the national average. That’s a crisis, says Robert Lawson, a University of Kentucky law professor and perhaps the leading expert on the state’s criminal justice system.

Lawson says it would be a mistake to suggest the increased prison population derives from poor criminal-defense work. He blames the long-running war on crime, which has been ongoing since he helped write the state’s 1974 penal code, and legislators who have enacted increasingly harsher sentencing laws. “I’ve watched for 40 years as they changed almost everything in (the penal code),” Lawson says, “all to elevate penalties, especially the persistent



“I could make more money in private practice,” says Meier (above), “but I’m not living under an overpass.”

felony offender (PFO) law. In 1974, it required a person to have been in prison twice before the penalty could be elevated and there was only one degree of PFO. Now you don’t have to have been in prison at all, and there is a second-degree PFO that requires only one offense.”

That has increased the number of inmates classified as persistent violent offenders, he says, and numerous others have accepted longer sentences to get the PFO charge dropped.

Lawson says the prosecution has most of the leverage. “It used to be a balanced system, but the defense has tremendous disadvantages now,” he says. “So 95 to 98 percent of cases are resolved with guilty pleas — they never go to trial. The incarceration rate has gone up with the higher penalties. They have totally distorted the difference between serious and non-serious offenses.”

In that context, competing against the commonwealth is “like rounding up the troops every day and going to Custer’s Last

Stand,” says Don Meier, a supervisor in one of the Jefferson County Public Defender’s adult trial divisions. And, he adds, “knowing you’re going there, and doing it again the next day.”

Meier, 57, joined the office in early 1983 after graduating from the University of Louisville law school. His starting salary was \$12,000; he’d been earning more in management at Winn-Dixie, the supermarket chain. Meier initially thought he might be a prosecutor, but now finds that idea repugnant. “Everyone needs to go to jail for as long as possible,” he says of the prosecutorial mind-set. “If that’s how many years I can get, that’s how many I want.”

Like most public defenders, Meier has been asked more than once whether he was an actual attorney. “I’ve had clients ask me how many cases you have to win before you’re a real lawyer,” he says. “My response every time I get that is, ‘Well, you have to be a public defender until you win your first case. I’ve been doing this 20 years and I feel real good about your case.’”

Meier can tell war stories for hours and says he recalls every trial. He successfully defended a man in the notorious 1994 case in which firefighter Shawn Nutter was killed after a self-storage unit was set on fire to cover up a burglary. Afterward the fire chief said he’d like 10 minutes in a room with Meier and the defendant.

Meier also worked on the 2004 rape case in which prosecutor Sandra McLeod (now District Court Judge Sandra McLaughlin) was fired for allegedly berating a juror after Meier’s client was acquitted. Meier’s quizzical look after that verdict — the defendant, Edward Nation, had kissed his cheek — became part of a WLKY-TV promo ad for a while. Meier took some ribbing on that one.

He lives modestly with his wife and an adult son with muscular dystrophy. “I could make more money in private practice,” he says, “but I’m not living under an overpass. I have a house and an eight-year-old Corolla.” He smiles when he says that. But — and this is important — he loves the work. “It is the pure practice of law,” he says. “I don’t have to chase after my next fee. I don’t have to prostitute myself. It’s exciting. For every shot in the gut you take, like this case Ashley just had, there’s an incredible rush when you win a case. It’s just the ability to make a difference.”

He’s heard the rap about the clientele but says “I just don’t agree with the premise. There are no more (bad people) on our client list than in any other part of society. We represent a lot of good people who are being judged for what might be the worst 10 or 15 minutes of their life. . . . It’s interesting to see the people who make those kinds of judgments when they’re in that situation or their kid gets pulled over with a joint under the floor mat — all of a sudden they have someone in front of the law and they can’t believe how they’re treated.”

**T**he prosecution brought several other witnesses to the stand in the McAtee trial. One was Marcus Gray, who on the night of the murder walked to the scene from his house on Herman Street, a block away, after hearing his step-brother had been killed. He told police then that he'd earlier seen two men walking past his house quickly, as if looking for someone, and he told officers point blank that Kilgore was one of them, but he did not recognize the other man. He also told police that he had seen a white car speed out of an alley between Jefferson and Herman streets after he heard gunshots. (It was later established that Kilgore drove a white Monte Carlo.)

At the trial, after Gray testified that McAtee was the person he'd seen with Kilgore, Edwards pointed out during cross-examination that police notes from the first interview say Gray recognized only Kilgore and not the second man. She also emphasized it was only 11 months later, after seeing McAtee in court several times, that Gray picked him out of a photo pack.

Another key prosecution witness, Pamela Beals, who lived in the house in front of which the murder occurred, had spoken to police after the murder, but later quit talking. During a phone interview, which was not recorded, Beals had reportedly told police she was on her porch when the incident occurred, along with Kilgore and her daughter Robin, and that a young man she knew as Y.G. was the shooter. On the witness stand, Beals acknowledged calling 911 and covering Haskins with a sheet, but could not even recall speaking to police after the shooting.

Randolph Reeves, who lived at the boarding house next door, had approached police a few days after the shooting, saying he'd seen the incident from his porch. He gave a taped statement to police in which he alternately claimed to have seen the entire incident and only part of it because a tree blocked his view. Reeves testified that Kilgore had been present and seemed to enjoy the scuffle. From the witness stand, he pointed at McAtee and said he was the other guy he'd seen on July 9.

On cross-examination, Edwards challenged Reeves' credibility, getting him to admit he had been on probation in Clark County, Ind., at the time of the incident and was at trial time on probation in Illinois, where he had moved. On questioning from Edwards, Reeves also said he is on disability because of seizures that affect his memory, and that he was not taking his medication in July 2009.

**E**dwards studied psychology and political science at the University of Rochester, then went to law school at the University of Cincinnati. Like Meier, she wanted to try cases and thought she

was headed for prosecution, but during law school she'd worked for the Ohio Innocence Project, part of the national organization dedicated to exonerating wrongfully convicted people through DNA testing. Her thinking shifted.

She applied to several public defender offices and was thrilled to get an offer from Jefferson County in late 2007. She lauds the office for its training and support; Meier was a constant presence during the trial, for example, as were many younger attorneys who floated in and out of the courtroom. On the evening of Jan. 20, after the frazzling day in court and with the streets icing over and her parents looking on proudly, she received the Frank E. Haddad Jr. Young Lawyer Award that is presented annually to a promising young trial attorney.

Defense attorneys will tell you that cases with strong evidence against their clients are typically far less stressful. Edwards happened to believe McAtee was innocent. "From day one, without hesitation, he'd look me dead in the eye and say they had the wrong person," Edwards says. "Sixteen months later, we've had that conversation over and over, and it's never varied. He held his ground with two very well-trained homicide detectives and tried to make them understand they had the wrong person. As evidence came in and began to unravel, I began to believe more and more."

The information that comes to light at trial may come from many sources. Often, police are asked to testify about things they have learned during an investigation. Witnesses are asked about what they saw, or what they told police during an investigation. Occasionally, something someone heard from someone else tries to find its way in.

Edwards had strong misgivings about what Reeves had told police, surmising he'd filled in details about the murder after speaking to Pam Beals. But Edwards was unable to delve into that in court because of rules governing hearsay.

DNA tests on the victim's pockets showed three matches — the victim and two unidentified people — and excluded McAtee. Investigators never compared the DNA matches to Kilgore, though as a convicted felon, his DNA is now in a database.

McAtee ultimately chose not to testify, a decision Edwards said she left up to him. The defense called only one witness, McAtee's former girlfriend. She testified that McAtee regularly watched her daughter while she was at work and school, and that she didn't recall any nights that he wasn't there when she got home, and that she never saw him with bruised knuckles or anything else that would indicate he'd been in a fight.

In her closing argument, she restated her reservations about key witnesses and laid out why each had incentive to help the prosecution. Edwards then pointed the finger at Kilgore,

who'd told Trees he was scared of guns. "You watched Gregory Kilgore perjure himself. This is their big witness who they are trying to use to convict my client. ... We know that from Gregory Kilgore himself, let alone all the other witnesses we heard from or through the detective, the one consistent thing throughout this entire trial is that *Gregory Kilgore was there*. That he was there, that he saw this shooting, he saw this fight. And ladies and gentlemen, I submit to you that *he is the one who should be sitting in that chair*, who should be facing this jury, who should've been charged."

**D**uring the afternoon of Jan. 26, 567 days after Haskins' death, the jury deliberated about four hours and 15 minutes. It did not buy Edwards' version of events. After they came back, she retained composure as the post-verdict minutiae played out, but finally let go when McAtee tearfully said goodbye to his family as sheriff's deputies led him away.

Edwards cites at least two reasons for believing the public defender has grounds for a successful appeal; both center on the Trees-Kilgore interview.

The case was something of a microcosm of what goes on at Seventh and Jefferson day in and day out. It received almost no publicity; after the verdict, a *Courier-Journal* courts reporter and one TV cameraman showed up for a quick summary from the prosecutor. Edwards declined comment.

The jury of Derrick McAtee's peers included seven white men and seven women — five white, one Asian, one African-American. After closing arguments, two white men were struck as alternates. (Their numbers were drawn out of a bowl.)

McAtee was initially charged with complicity to murder — the prosecution never argued that anyone else was involved — and the judge instructed the jury to consider only murder and the attendant tampering with physical evidence charge. McAtee was found guilty on both counts and faces 25 years in prison.

Shortly after, I caught up with two jurors on Jefferson Street. One, a white woman, declined to say anything and kept walking toward the Advocacy Plaza parking garage. The other, a white woman, seemed as if she might answer questions, then began crying and begged off.

Meanwhile, it was snowing again, and Edwards had retired to her office, knowing she would carry her first murder case with her for a long, long while, melted into the consoling company of co-workers, many of whom had covered her other cases over the past week.

For now, though not for long, all of that new paperwork on her desk would just have to wait. *Contact freelance writer Cary Stemle at editorial@loumag.com.*