ADJUDICATING COLLAPSE: JUDICIAL POWER AND CONSTITUTIONAL DUTY IN OREGON'S COURTS

by

JEFFREY PAYNE

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Approved: *Stephanie Wiley, Ph.D.*
Primary Thesis Advisor

Oregon's justice system is currently weathering a constitutional crisis of unprecedented scale. The simultaneous shortage of public defenders and prosecutors has forced the judiciary into a series of impossible choices: proceed without counsel, detain the unrepresented indefinitely, or dismiss criminal charges entirely. This thesis examines how Oregon's judiciary interprets and responds to this breakdown, investigating how judges define and enforce the constitutional right to counsel when the state itself can no longer provide it. By conducting a close reading of Oregon trial decisions citing lack of counsel, delayed prosecution, or constructive denial, I trace the judiciary's response where constitutional ideals collide with institutional limits. By connecting abstract theory to real-world governance, this thesis research fulfills the interdisciplinary mission of the Clark Honors College. Finally, as an incoming law student and aspiring public service attorney within my local Oregon community, this work serves as a personal and professional exploration of the systemic integrity I hope to uphold.

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I. Introduction

Throughout Oregon, a critical shortage of legal counsel has silenced courtrooms and halted the enforcement of vast segments of the state's criminal code. The depletion of prosecutors and defense attorneys in multiple counties has become so acute that the initiation of new criminal cases has ceased entirely. At its core, this crisis exposes a profound breakdown in access to justice, demonstrating that the protections enshrined in the Sixth and Fourteenth Amendments are effectively non-functional without the institutional infrastructure required to sustain them.

This shortage is more than a management failure; it is a stress test for the rule of law. Every prolonged incarceration, dismissal, unprosecuted crime, or release order represents a moment where the court must decide if justice delayed has officially become justice denied. Furthermore, the necessity of dismissing cases such as those involving domestic abuse, assault, and property crimes undermines the foundational goal of the legal system: the protection of society. When the state fails to prosecute, the rights and privileges of the entire community are called into question as the rule of law requires the community to respect the system, given that the rule of law fundamentally relies on community respect for the system.

As a system built on checks and balances, the judiciary serves as a vital window into how constitutional duties are protected when the executive and legislative branches fail to supply the necessary means. While existing literature often focuses on legislative funding or attorney workloads, this thesis shifts the lens toward judicial behavior. It analyzes how judges frame constitutional harm, assign responsibility, and exercise discretion when systemic dysfunction makes compliance with the law a challenge.

Ultimately, this thesis contributes to legal scholarship concerning the separation of powers, judicial minimalism, and constitutional enforcement.

In the context of Oregon, it offers a crucial historical record of an ongoing systemic emergency, one that is actively reshaping the administration of justice while exerting a profound impact on local communities.

II. Literature Review: Scholarship on the Right to Counsel and Judicial Duty

2.1 Federal Case: Gideon v. Wainwright and the Right to Counsel

The pivotal right to counsel case that upheld the rights in the sixth amendment was Gideon v. Wainwright (1963). In that landmark decision, the Supreme Court held that "in all criminal prosecutions, the accused shall enjoy the right … to have the Assistance of Counsel for his defense". Writing for the majority opinion of the Supreme Court, Justice Black declared: "In our adversary system of criminal justice, any person hauled into court, who is too poor to hire a lawyer, cannot be assured a fair trial unless counsel is provided for him." (Gideon v. Wainwright, 1963).

This doctrinal line extends back to Powell v. Alabama (1932), where the Court first recognized that denying counsel in a capital case violated due process, and forward to Rothgery v. Gillespie County (2008), which confirmed that the right to counsel attaches at the first appearance before a judicial officer. In Rothgery, the Court stated that: "A criminal defendant's initial appearance before a judicial officer, where he learns the charge against him and his liberty is subject to restriction, marks the initiation of adversary judicial proceedings that trigger attachment of the Sixth Amendment right to counsel." (*R*othgery v. Gillespie County, Texas, 2008). This means that from the moment of arraignment, Oregon defendants are constitutionally entitled to representation. Any prolonged period without appointed counsel after that stage is not a mere administrative delay; it is a continuing constitutional violation.

2.2 Federal Speedy Trial Guarantee

While Gideon outlines the constitutional guarantee and right to the presence of counsel, the Sixth Amendment's separate command that defendants "shall enjoy the right to a speedy …

trial" safeguards against state delay and indefinite pretrial restraint. The Supreme Court's interpretation of this right in Barker v. Wingo (1972) provides the framework to be applied nationwide. Rejecting a rigid time-limit rule, the Court established a four-factor balancing test requiring judges to consider: (1) the length of delay, (2) the reason for the delay, (3) the defendant's assertion of the right, and (4) the prejudice suffered. The Court wrote: "A defendant's constitutional right to a speedy trial cannot be established by any inflexible rule, but can be determined only on an ad hoc balancing basis in which the conduct of the prosecution and that of the defendant are weighed" (Barker v. Wingo, 1972).

This balancing framework sits at the epicenter of Oregon's current crisis. As trial courts confront months-long delays caused by the systemic absence of available counsel, they are forced to operationalize Barker's "reason for delay" and "substantial prejudice" metrics. This raises a fundamental question: does a structural, state-level shortage constitute a legitimate justification for delay, or does it cross the threshold into a constitutional denial? Because Barker has no bright-line boundaries, judges are left to determine where acceptable procedural lag terminates, and systemic injustice begins and, crucially, how to fashion an appropriate remedy.

The Court in Strunk v. United States (1973) then addressed the remedy question. It held unequivocally that when a speedy-trial violation is found, dismissal of the indictment is the only constitutionally adequate remedy: "In light of the policies underlying the right to a speedy trial, dismissal must remain … the only possible remedy for deprivation of this constitutional right" (Strunk v. United States, 1973). However, there is no clear legal definition of what a reasonable timeframe is, and thus, what is unreasonable. This is where judicial decision, and case-by-case discretion, is applied.

In more recent legal precedent, Doggett v. United States (1992) clarified that excessive delay can itself be prejudicial even when no specific harm is proven. The Court found in that case that an eight-and-a-half-year delay between indictment and arrest violated the Sixth Amendment, emphasizing that "the passage of time … may compromise the reliability of a trial in ways that neither party can prove or, for that matter, identify" (Doggett v. United States, 1992). The opinion underscored that systemic or negligent government delay undermines public confidence in justice, even absent intent. Oregon's widespread docket stagnation, in which defendants linger for months to even years without legal representation or trial, implicates precisely this Doggett logic: at some point, delay itself becomes a structural denial of the Sixth Amendment's promise. Again though, where that delay transforms from accepted procedural timelines into a denial of constitutional rights is up for judicial decision, case by case.

Taken together, these cases articulate a somewhat clear constitutional architecture that Oregon's judiciary must navigate. Gideon and Rothgery define when and how the right to counsel attaches; Barker, Strunk, and Doggett define what remedies follow when delay becomes unconstitutional. Together, these doctrines give trial judges both the authority and obligation to act when systemic shortages make compliance impossible. What they do not specify is an exact timeline or bright line guidelines. Instead, it is up to judicial discretion, which is why this thesis attempts to look at the judges of Oregon and how they are using this discretion.

2.3 The Oregon Project

If Gideon v. Wainwright established the right to counsel as a cornerstone of a fair trial, the Oregon Project exposes how far Oregon has drifted from that constitutional promise. The project was commissioned by the Oregon Office of Public Defense Services and conducted by Moss Adams LLP in partnership with the American Bar Association's Standing Committee on

Legal Aid and Indigent Defense to provide the workload analysis of Oregon's public defense system. Its conclusion is stark: Oregon currently operates with only about 31 percent of the public defense capacity required to meet even the minimum professional standards for effective representation (ABA SCLAID & Moss Adams LLP, 2022).

The Oregon Project gathered expert consensus from experienced public defenders on the reasonable amount of time required to provide "reasonably effective assistance of counsel pursuant to prevailing professional norms." These standards were then compared against actual historical caseloads from the Oregon Judicial Department. The results revealed a structural deficiency equivalent to 1,296 full-time attorneys statewide. To meet current demand, every contracted public defender in Oregon would need to work more than 6,600 hours per year, which is over 26 hours of casework per working day, just to maintain current coverage" (ABA SCLAID & Moss Adams LLP, 2022). This shortfall makes it mathematically impossible for many defendants to receive even the most basic and rudimentary level of representation the Sixth Amendment spells out. That says nothing about whether the basic level is even in line with the realities required to provide a proper defense.

The report also identified the data and oversight failures within Oregon's public defense system. The state lacks a centralized case management platform capable of tracking attorney assignments, time spent, or case milestones such as motions, plea offers, or expert consultations (ABA SCLAID & Moss Adams LLP, 2022). Without accurate tracking, neither the state nor the courts can verify whether counsel is meeting professional standards. The report emphasized that Oregon remains the only state that delivers nearly all its trial-level public defense through independent contract models rather than staffed state offices, creating uneven quality, supervision, and accountability (ABA SCLAID & Moss Adams LLP, 2022).

One of the most uniquely important features of Oregon's public defense crisis is that it is built into the structure of the system itself. According to the Oregon Project (2022),

> Oregon remains the only state in the nation that achieves nearly all trial-level public defense through private contract models rather than staffed public defender offices…Oregon's public defense system is structurally unlike any other and lacks the safeguards and oversight that staffed public defender offices provide

When contract attorneys withdraw, decline cases, or cannot accept new work due to capped payments or overwhelming caseloads, the state has no direct mechanism to assign another lawyer and defendants are simply left without representation.

The report also noted that flat-fee contracts "exert financial pressure on appointed counsel to resolve cases quickly, potentially at the expense of sufficient client investigation and defense preparation" (Sixth Amendment Center, 2019). In practice, this model has contributed to burnout and attrition across the state, with experienced defense lawyers leaving the system entirely as a complicated murder trial requiring, as the Oregon Project Found, on average "522 hour murder cases is treated the same as a lower-stakes case requiring only 60" (ABA SCLAID &Moss Adams LLP, 2022). These departures are not easily replaced, because Oregon lacks an institutional public defense workforce to absorb the caseload when the contract pool collapses. In addition, this model leaves public defenders to pay malpractice insurance, legal secretaries, investigators, office space, and the other various roles that typically would be handled through a state agency.

2.4 Legal Deserts

The concept of "legal deserts" provides an important framework for understanding Oregon's attorney shortage. Ryo and Humphrey, writing in the context of immigration law, define legal deserts as "Areas where lawyer shortages reduce access to counsel, especially for people already disadvantaged by poverty, geography, language barriers, and limited social

networks with low lawyer populations, often fewer than one lawyer per 1,000 residents" (Haas, 2022).

This framing is especially useful for Oregon because the state's attorney shortage is not evenly distributed. Oregon's active bar membership is heavily concentrated in urban areas such as Portland, Salem, and Eugene, while large rural regions in eastern, southern, coastal, and high desert Oregon face much thinner legal markets. Haas identifies counties such as Gilliam, Morrow, Sherman, and Wheeler as having no private practitioners at all, and describes the "empty quarter" of Malheur, Harney, Grant, and Baker counties as covering 27,773 square miles with only about 70 private attorneys for roughly 63,000 residents. These conditions create problems that go beyond simple attorney shortages as rural defendants, victims, and civil litigants may face long travel distances, unreliable transportation, limited internet or cell service, fewer support services, and higher risks of conflicts of interest in small legal communities. In criminal cases, these barriers become constitutional problems because the right to counsel and the right to a speedy trial depend on the actual availability of qualified attorneys.

The legal desert literature also shows why Oregon's crisis cannot be solved only by adding more lawyers. Ryo and Humphrey argue that increasing the supply of lawyers is necessary, but not sufficient, because representation barriers persist when people remain geographically isolated from legal services. Potential solutions mentioned by these authors include remote and hybrid proceedings, mobile advocacy models, technology-supported legal services, rural practice incentives, loan repayment assistance, law school clinics, and platforms such as Oregon Law+Connect that provide multilingual and mobile-friendly legal information.

2.5 Senate Bill 337

Oregon Senate Bill 337 frames the shortage of public defenders as a constitutional emergency saying “The current unrepresented defendant crisis represents a threat to the constitutional rights of Oregonians and must be resolved” (S.B. 337, 2023, § 103). SB 337 attempts to restructure Oregon’s public defense system in response to many of the same problems identified in the Oregon Project and the 2019 Sixth Amendment Center report. It abolishes the former Public Defense Services Commission and transfers its duties, functions, and powers to the Oregon Public Defense Commission, or OPDC (S.B. 337, 2023, § 8). It also strengthens OPDC’s authority to create statewide policies, procedures, standards, and guidelines for public defense services. It starts the process to remove the flat-fee contracting model by setting long-term staffing targets, requiring that by January 1, 2031, at least 20 percent of trial-level appointed counsel must be attorneys employed by OPDC, and by January 1, 2035, at least 30 percent must be OPDC-employed attorneys.

The bill also requires the presiding judge of each judicial district to begin immediately developing a coordinated public safety unrepresented defendant crisis plan which is especially relevant to the thesis because it places judges at the center of the state’s emergency response and creates a lawful mandate that directly connects to this thesis’ research questions. Even though SB 337 is a legislative reform, it relies on presiding judges to coordinate local crisis plans, prioritize cases, and manage the immediate constitutional consequences of the shortage.

2.6 Literature Review Summary

This literature review examines the critical intersection of constitutional mandates, specifically the Sixth Amendment rights to counsel and a speedy trial, and the systemic collapse of Oregon's public defense infrastructure. Guided by landmark federal precedents like Gideon v.

Wainwright and Barker v. Wingo, the existing scholarship illustrates how Oregon has evolved into a pronounced "legal desert." The state currently operates at a mere 31 percent of the total attorney capacity required to satisfy minimum constitutional standards, a deficit that undermines the structural integrity of the adversarial system. This crisis is historically fueled by Oregon's unique and fragile reliance on a flat-fee private contract model rather than an established, staffed public defender office. The resulting systemic friction and unique geographic and state demographics have produced "empty quarters" across rural counties, creating conditions under which indigent defendants endure months, even some cases even years, of pretrial incarceration.

This research highlights a fundamental institutional reality: when the political branches fail to provide the requisite infrastructure for justice, the burden of constitutional guardianship falls squarely upon the judiciary. Because federal jurisprudence designates the dismissal of charges as the sole remedy for persistent constitutional violations, Oregon's trial judges are increasingly forced into a stark choice between tolerating ongoing state dysfunction and dismissing active criminal indictments. While recent legislative reforms like Senate Bill 337 aim to transition Oregon toward a more stable, executive-led hybrid public defense model, their structural remedies are inherently prospective. The literature underscores that judicial discretion remains the definitive last line of defense for civil liberties within Oregon's state system that can no longer fulfill its most fundamental constitutional obligations.

III. Research Questions

This thesis examines the Oregon judiciary's response to a breakdown in the state's capacity to provide constitutionally mandated legal representation. The concurrent shortage of public defenders and prosecutors has compelled judges to confront recurring scenarios in which the Sixth Amendment's guarantees cannot be easily fulfilled. The following research questions are designed to capture the nuance of judicial reasoning, the scope of judicial action, and the evolving self-perception of the court's role within a fracturing legal system.

The first question is interpretive: How do Oregon judges frame and interpret the constitutionally guaranteed right to counsel and the right to a speedy trial when systemic shortages make compliance impossible? Analyzing how judges describe the nature of both the harm, and the source of responsibility reveals how constitutional meaning is shaped under conditions of institutional stress.

The second guiding question is remedial: What remedies do judges choose, such as dismissal, release, compelled appointment, or continuance, and how do they justify those choices? This question connects constitutional interpretation to concrete judicial action. Faced with prolonged delays or the absence of counsel, judges must decide whether to intervene and, if so, how far that intervention should go.

The third question is institutional: What do these decisions reveal about how judges understand their own constitutional role within a failing legal system? Judicial opinions reflect broader assumptions about the limits of both judicial authority and obligations. Furthermore, their decisions craft the next generation of case law. Together, these questions examine how judges assess systemic shortages as either constitutional collapse or constitutional strain, and how they meet that challenge through real-time decision-making.

IV. Methods

This thesis examines Oregon judicial responses to systemic strain on the rights to counsel and a speedy trial through a structured case law review. Case research was conducted using the Thomas Reuters Westlaw database available through the University of Oregon.

Case identification began with keyword searches designed to find criminal cases involving pretrial custody, trial delay, and counsel availability. Representative search terms included combinations such as ("held in custody" OR "remains in custody" OR "in jail") AND ("awaiting trial" OR "pending trial").[1] Searches were limited to Oregon criminal cases, with inclusion of any cases subsequently reviewed by federal courts.

These searches returned large result sets across the dozen combinations of keywords used, with each result typically having sixty to eighty cases, with many cases appearing multiple times based on the keyword searches. In total, there were nearly five hundred total case files found and downloaded through WestLaw, which was determined to exceed what could reasonably be reviewed through full close readings alone. To manage volume while maintaining consistent application of the thesis framework, an AI-assisted screening process was used as an initial relevance filter. The model system was instructed to evaluate cases through the lens of the core research questions: how Oregon courts interpret the rights to counsel and a speedy trial under systemic constraints, what remedies are selected in response, and what those choices suggest about judicial institutional role.[2] This AI screening was used only to identify potentially relevant and irrelevant cases, not to determine final inclusion.

[1] See Addendum A: Search Terms
[2] See Addendum B: Instructions Provide to AI for Screening Judicial Opinions

For use in the research, 358 unique cases were classified by the screener into three analytical categories (see Addendum C: List of Cases Included in Analysis). Category A / Denial. (145 cases) These are cases where judges acknowledge and speak about the systemic strains but deny relief. Next, Category B / Remedial. (14 cases) These were judicial opinions granting meaningful remedy. Cases that were clearly out of scope and unrelated to the thesis topic and research were labeled as Category C (199 cases) and excluded. Category C was then randomly sampled to determine AI validity in filtering, with an observed error rate of 3%[3].

After the initial screening stage, the Category A and Category B cases were analyzed through a second round of close reading and thematic coding. This process began with open coding, in which repeated forms of judicial reasoning were identified as they appeared across the opinions. For Category A, recurring denial mechanisms were coded, including blame allocation to the defendant, consent or waiver, failure to assert rights, lack of concrete prejudice, docket congestion, good-cause delay, and separation-of-powers deference. For Category B, the analysis coded the forms of remedy used by courts. These initial codes were then grouped into broader thematic and temporal subcategories and compared across cases. This process allowed the analysis to move beyond the simple question of whether relief was granted or denied and instead examine the legal reasoning courts used to either tolerate systemic delay or treat it as requiring judicial intervention.

[3] See Addendum D: Randomly Selected Category C Cases For Error Rate Validation

V. Findings

5.1 Preliminary Findings

At the outset of this thesis the expectation was to find a substantial volume of trial court opinions available for analysis that would support granular, county-level comparisons. However, as the Westlaw research progressed, it became clear that the available record did not match these expectations. Although existing literature consistently describes Oregon's attorney shortage as widespread and systemic, this reality was not reflected in the body of trial-level decisions accessible through Westlaw.

This mismatch suggests several possibilities: relevant cases may be resolved or dismissed before trial courts issue formal written opinions, trial-level decisions may not be consistently captured in Westlaw's database, or procedural and administrative practices may limit the visibility of these cases in traditional legal research tools.

To attempt to answer these questions, research was conducted outside of Westlaw to help clarify this discrepancy in visibility. The strongest evidence of a visibility discrepancy came from Multnomah County, where District Attorney Mike Schmidt publicly identified the public defense crisis as an immediate threat to the functional capacity of the criminal courts. In November 2022, Schmidt described the lack of available public defenders as "an urgent threat to public safety" and stated that "without public defenders to provide counsel, criminal prosecutions cannot legally move forward" (KATU Staff, 2022).

Reporting from OPB confirmed the tangible results of this shortage and helped clarify further. In just February 2022, "some 285 misdemeanor and felony cases... had already been dismissed by Multnomah County judges because no defense attorney was available to appoint"

(Wilson, 2022). These dismissals included “low-level assaults, domestic violence, property crimes and firearm-related offenses, according to the district attorney’s office” (Wilson, 2022).

This evidence helps explain why the Westlaw search failed to produce the expected volume of trial-level opinions. If cases are dismissed, continued, or functionally stalled before a judge reaches a substantive ruling, they do not generate published judicial opinions. In these instances, the constitutional crisis is undeniably real, but it remains confined to administrative records, press releases, and local reporting. Schmidt underscored this point directly, warning that “many months into this crisis, many are still waiting for their day in court while others have seen their cases dismissed altogether” and he went on to say that his office would publish weekly lists of these cases, Schmidt noted: “The public must be empowered with this information to understand the scope of this crisis” (Wilson, 2022). This transparency highlights a critical methodological takeaway: the absence of published trial-level opinions must not be mistaken for the absence of a constitutional breakdown.

Lane County provides a parallel example that further explains the limitations of the Westlaw database. In July 2022, Lane County District Attorney Patty Perlow announced that her office would decline to prosecute certain crimes including “disorderly conduct, driving while suspended, and property crimes” due to a severe shortage of prosecutors (Lehman, 2022). Perlow also noted the long-term nature of this staffing deficit saying, "I would anticipate that it would take about a year to get the entry-level lawyers up to speed to be able to handle the volume of cases that we would want them to... Assuming I don't lose any more lawyers, and I'm able to fill the two vacancies that I still have, I would say it's probably going to be a couple of years before we're to capacity" (Lehman, 2022). These data points from Multnomah and Lane Counties suggest that many of the most serious effects of this crisis occur before a case ever

reaches formal judicial analysis. This creates a "visibility problem" for legal research, and the more complete the breakdown at the trial level, the less likely it is to appear in the conventional appellate record.

5.2 Quantitative Findings

Before turning to the specific case analysis, the case set reveals a primary macro-pattern. After screening 358 cases and removing those that did not directly engage with the thesis questions, the relevant dataset narrowed to 159 cases. These were categorized as follows: category A remedy denied, 91.2% of dataset with 145 cases. Category B, Remedy Granted, 8.8% overall of the dataset with 14 cases.

The fact that fewer than one in ten cases resulted in a remedy suggests that Oregon courts reserve enforcement for only the most extreme or multifaceted breakdowns. This pattern is particularly significant when paired with the Multnomah and Lane County evidence.

5.3 Findings Category A: The Doctrine of Denial

Empirically, these denial cases are primarily from the Oregon Court of Appeals (119 cases), the Oregon Supreme Court (25 cases), and the Ninth Circuit Court of Appeals (1 case). These cases reveal a repeated pattern of judicial boundary-setting. Oregon judges do not usually say that rights to counsel or speedy trial are unimportant. Rather, they define those rights in ways that make relief difficult. The result is a body of doctrine that can recognize serious delay while still affirming convictions, reversing dismissals, or denying petitions.

Because Category A contains a large pool of cases spanning more than a century, the cases cannot be analyzed effectively as a single flat category. Instead, they must be sorted into recurring doctrinal patterns. When sorted thematically, the cases fall into several main groupings: structural cases, cases narrowing when rights attach, speedy trial delay cases, blame allocation

cases, concrete prejudice cases, no-counsel and effective assistance of counsel cases. These themes reveal that denial is not merely an outcome. It is a method.

5.3.1 Doctrine of Denial: Structural Cases

Within the Doctrine of denial, the first grouping consists of structural cases where the court was asked to address the structure of indigent defense itself, including whether a court could require an unavailable public defender to serve, whether the legislature had interfered with the judiciary's ability to function, and what threshold must be met before courts will intervene in a broader institutional breakdown. The two cases in this grouping are State ex rel. Acocella v. Allen (1979) and State ex rel. Metropolitan Public Defender Services, Inc. v. Courtney (2003).

In State ex rel. Acocella v. Allen (1979), nine indigent felony defendants in Lane County sought mandamus relief after the State Public Defender notified the trial court that his office could not process their appeals because of inadequate staffing. The Lane County judges nevertheless refused to allow the Public Defender to decline appointment. The Oregon Supreme Court described the issue narrowly, stating, "This is not a right to counsel case," because Oregon law already required appointment of counsel for indigent defendants on appeal. The question was instead "whether a circuit judge has the power to order the Public Defender to serve, where the Public Defender Committee has determined that he is unable to serve" (State ex rel. Acocella v. Allen, 1979).

The court acknowledged that Oregon courts do have inherent authority in this area, stating, "We have no doubt that Oregon courts have the inherent power to call upon members of the bar to represent an indigent defendant who has no other means of obtaining counsel." However, the court also limited that authority through separation-of-powers reasoning. It

explained that when the public defender is unable to serve, "the trial court has a nondiscretionary duty to honor that finding" (State ex rel. Acocella v. Allen, 1979).

The second structural case is State ex rel. Metropolitan Public Defender Services, Inc. v. Courtney (2003). In that case, Metropolitan Public Defender Services brought a mandamus proceeding against Oregon legislative leaders, seeking an order requiring what it characterized as adequate funding for indigent defense and the judicial branch. MPDS alleged that legislative budget cuts prevented the judicial branch from performing its core functions, including trying criminal cases involving indigent defendants. The case therefore presented the public defense issue at a broader institutional level than Acocella.

The Oregon Supreme Court acknowledged the seriousness of the claim and recognized the judiciary's inherent authority in broad terms stating that "There is no question that this court has the inherent power under the Oregon Constitution to ensure that the judicial branch operates as an independent branch of government, free from undue interference by the other branches," and the court also assumed, without deciding to, that this inherent power might extend far enough to allow the court to order the legislature to provide "minimum levels of funding to sustain the core functions of the judicial branch" (State ex rel. Metropolitan Public Defender Services, Inc. v. Courtney, 2003) . The court ultimately found that the threshold had not been met. Although it agreed that "the budgetary crisis currently faced by state government and, in particular, the judicial branch, is severe" and that the consequences were "unprecedented and regrettable," it concluded that the budget reductions "have not and will not prevent the judicial branch from carrying out its core functions until the end of the biennium."

Table 5.3.1 Structural Cases

Case Name	Year
State ex rel. Acocella v. Allen	1979
State ex rel. Metropolitan Public Defender Services, Inc. v. Courtney	2003

5.3.2 Doctrine of Denial: Rights Narrowing

A second major grouping within the Doctrine of Denial involves cases where Oregon courts denied relief by narrowing when constitutional or statutory protection is attached. In these cases, the court often did not begin by asking whether the defendant experienced unfairness in a broad sense[4]. Instead, the court first asked whether the defendant was in the right kind of proceeding, whether formal prosecution had begun, whether the statutory clock had started, whether the defendant had invoked the correct procedure, or whether the case fit within the specific right being asserted.

For example, in State v. Harris (1978), the court focused on when protections begin. The defendant had been briefly detained and questioned before indictment, but he was released without being booked, charged, or required to return. The Court of Appeals held that this did not trigger speedy trial protections, relying on the principle that "it is either a formal indictment or information or else the actual restraints imposed by arrest and holding to answer a criminal charge that engage the particular protections of the speedy trial provision" (State v. Harris, 1978). Because the defendant had been released without an obligation to return, the temporary

[4] See table Rights Narrowing Cases

interference with liberty was "not sufficient in themselves to bring the speedy trial provisions... into play" (State v. Harris, 1978).

A second examples uses the same kind of threshold reasoning, but in a more extreme factual setting. The defendant faced an eleven-year delay for a murder trial between a complainant's information and trial, but the Oregon Supreme Court held that the delay did not violate law. The key finding was that the complainant's information did not operate like an indictment for speedy-trial purposes. The court stated that "the delay did not violate defendant's right to a trial 'without delay' under the state Constitution, or to a speedy trial under the federal Constitution," and focused the inquiry on "whether defendant suffered any additional restraint on his liberty as a result of the filing of the 1987 complainant's information." The court answered that question directly: "He did not" (State v. Vasquez, 2004).

This narrowing also appears through technical rules about when a statutory speedy trial clock begins or restarts based, like in the Vasquez case, by how it is filed. In State v. Ellis (2014), the Court of Appeals held that the defendant was "charged, for speedy trial purposes, at the time the state filed the indictment that brought him to trial" not when an earlier complaint was filed and dismissed (State v. Ellis, 263, (2014). As a result, the relevant period of delay was narrowed, and the court concluded that a "12-month period of net unconsented delay was reasonable." In State v. Purdom (2008), the court similarly treated the later re-indictment as the point at which the prosecution commenced for statutory speedy trial purposes. In both cases, the legal issue became not simply how long the defendant had been facing state action, but which charging document counted for purposes of the constitutional analysis.

In State v. Kilby (2025) as the last example the Oregon Supreme Court held that the right to counsel did not protect a defendant during a police interrogation about an uncharged murder,

even though he was a suspect under surveillance and already represented by counsel in that investigation. The court explained

> We conclude that the right to counsel that Article I, section 11, guarantees to all 'accused' in a 'criminal prosecution' was not triggered by defendant's arrest and custodial interrogation regarding crimes with which he had not been charged. We have repeatedly explained that protections under that section ordinarily do not arise until a person has been charged with a crime...

Such decisions speak to how judges interpret the scope of constitutional rights in ways that limit their applicability in high-stakes, pre-charge situations. By strictly defining the point at which rights attach, courts prioritize formal procedural triggers over broader enforcement, granting exceptional leeway for prosecutions to continue. Together, these cases show that the courts in this grouping deny relief not by rejecting the existence of constitutional rights, but by defining the moment, posture, procedure, or threshold required before those rights produce a remedy.

Table 5.3.2 Doctrine of Denial Rights Narrowing Cases

Case Name	Year
State v. Harris	1978
Owens v. Duryee	1979
State v. Mende	1987
State v. Hunter	1993
State v. Vasquez	2004
State v. Purdom	2008
State v. Garner	2012
State v. Baranovich	2012
State v. Ellis	2014
State v. Whitten	2016
State v. McGee	2019
State v. Kilby	2025

5.3.3 Doctrine of Denial: Assigning Blame

Another theme among Category A cases shifts the practical burden for obtaining relief onto the defendant, despite formal doctrine placing responsibility on the state. Judges in many cases acknowledge that the state bears the obligation to bring a defendant to trial within a reasonable time, yet the bar between "reasonable" and "unreasonable" remains remarkably high. The findings from these cases indicate that defendants are expected to actively assert their rights, at the right time, using the right procedure. Early cases established this framework. In State v. Kuhnhausen (1954)

> The record indicates that the District Attorney most certainly made a timely effort to have the case set. Of course, the Court sets these cases in its own judgment, and I think the condition of the docket as shown here bears out the fact that it could not very well have been set prior to this month of Court without taking cases off the docket that were previously set some two months.

Many judges from the 1980s to 1990s era point to this Kuhnhausen to argue that the docket takes time to navigate and that rushing one case would displace others and that this is not harmful to defendants. A decade later in State v. Johnson (1964), the courts denied speedy trial relief by emphasizing the defendant's obligation to demand a trial and show actual prejudice, rather than treating delay in isolation. State v. Gray (1976) is particularly illustrative: despite a nearly five-year delay, relief was denied due to the absence of prosecutorial bad faith, the defendant's failure to properly assert the right, and lack of significant prejudice stating,

> We conclude that where, as here, there was no bad faith involved, defendant failed to assert his right and no significant prejudice to defendant is demonstrated, no violation of the speedy trial provisions of the state or federal constitutions occurred

In State v. Evans (1974), the denial of relief centered because Evans did not specifically file for any relief or a faster trial date until post-conviction. The court stated:

> To necessitate the drastic remedy of dismissal requires more than the mere counting of months passed between complaint or indictment and trial. It requires some showing of circumstances which imply a reasonable possibility of prejudice.[while the justices acknowledged that a time lapse of].over four years and ten months is obviously sufficient to initiate inquiry and, absent other factors, is a consideration in favor of defendant's claim

In this Evans case, they ultimately did not grant a remedy. Across Category A cases, this expectation appears repeatedly: defendants must show that delay occurred, that they asserted their rights, and that the delay produced measurable consequences. This indicates a divergence between formal doctrine and practical application, where judges effectively hold that a right is not violated until it is actively and repeatedly demanded.

This pattern of blame allocation continued in the 1980s. In Haynes v. Burks (1980), the court denied release after more than two years of pretrial detention, acknowledging institutional issues such as court congestion and public defender caseloads but still placing heavy weight on the defendant's lack of assertion of rights, Further, cases such as State v. Schneider (1982), State v. Burkette (1982), State v. Clark (1982), State v. Ralston (1983), and State v. Neal (1985) shows judicial math around delays into periods caused by defendant motions, continuances, or inaction, treating defense-initiated or accepted delays as non-violative. The best summary of this line of cases shows the concept that "a defendant cannot complain of delays attributable to himself" (State v. Hacker, 1983).

More modern decisions have continued to apply this doctrine. In State v. McQueen (1998), a 46-month delay was accepted because the defendant's previous noncompliance with diversion conditions and a failure to appear constituted implied consent. State v. Kirsch (1999) denied relief despite an eight-year delay, citing implied consent and lack of diligent assertion of rights. Similarly, State v. Gill (2004) accepted a decade-long delay because the defendant had actively evaded capture and trial. Later, in both State v. Glushko and State v. Little (2011), and

recently, with a 6-year delay in State v. Krieger (2020) the judges treated failures to appear as defendant-controlled delays that rendered the resulting periods, no matter the length, reasonable.

Taken together, these cases show that blame allocation is one consistent method of denial. Oregon judges repeatedly deny relief when the delay is connected to the defendant's conduct, be it silence, failure to appear, or failure to demand trial.

Table 5.3.3 Doctrine Of Denial Blame Allocation Cases

Case Name	Year
State v. Kuhnhausen	1954
State v. Johnson	1964
State v. Gray	1976
State v. Evans	1974
Haynes v. Burks	1980
State v. Schneider	1982
State v. Burkette	1982
State v. Clark	1982
State v. Ralston	1983
State v. Neal	1985
State v. Hacker	1983
State v. McQueen	1998
State v. Kirsch	1999
State v. Gill	2004
State v. Glushko	2011
State v. Little	2011
State v. Krieger	2020

5.3.4 Doctrine of Denial: Concrete Prejudice

Another theme in the doctrine of denial is the requirement that defendants show concrete prejudice before courts will grant relief for delay. Delay is not enough; defendants must show that the delay made the outcome of the case different. Across this group, the courts repeatedly found that this is a high bar, and that this concept of "harmless error" does have some merit, the reality is this is truly an unknown.

State v. Dykast (1985) is a foundational case in which the Oregon Supreme Court acknowledged delay but rejected generalized prejudice:

> Most criminal prosecutions cause stress, discomfort and interference with a normal life. We recognize that delay adds to the ordinary anxiety and inconvenience caused by the pending criminal charge. However, there was no cognizable prejudice to defendant and the case remains unaltered by the passage of time

More recent cases repeated the same basic structure. In State v. Olstad (2008), the Court of Appeals held that a 29-month delay was "substantially greater than average," but still affirmed because the defendant failed to show a "reasonable possibility of prejudice to the defendant's ability to prepare a defense" (State v. Olstad, 2008) The court also emphasized that "because the defendant did not claim intentional state misconduct, the analysis turns on whether the defendant was actually prejudiced by the delay" (State v. Olstad, 2008)

As a final example, in State v. Chelemedos (2017), the court rejected anxiety as a sufficient basis for dismissal. The court held that the defendant had "not shown that his anxiety caused actual prejudice that would warrant dismissal of the charges" (State v. Chelemedos, 2017). The court also repeated the broader principle that most criminal prosecutions cause stress, discomfort and interference with normal life, but the belief in the harmless error states that starting later does not change the facts of the case.

Case Name	Year
State v. Evans	1974
Haynes v. Burks	1980
State v. Langlois	1981
State v. Coggin	1994
State v. McDowell	1986
State v. Cuffy	1988
State v. Emery	1993
State v. Gehrke-Young	1995
Collins v. Foster	1996
State v. Garcia-Plascencia	1997
State v. McQueen	1998
State v. Loynes	1998
State v. Kirsch	1999
State v. Lewis	2004
State v. Vasquez	2004
State v. Olstad	2008
State v. Adams	2012
State v. Haugen	2012
State v. Gonzales-Sanchez	2012
State v. Davis	2013
State v. Wendt	2014

State v. Chelemedos	2017
State v. Stinnett	2018
State v. Ralston	2022

Table 5.3.4 Doctrine of denial Concrete Prejudice Cases

5.3.5 Doctrine of Denial: No Counsel and effective counsel

Another pattern in Category A involves cases where the issue is not delay itself, but whether the defendant had access to counsel, was entitled to substitute counsel, validly waived counsel, had effective counsel or was in a proceeding where counsel rights applied. In some cases, the court found that the proceeding did not trigger the right to counsel at all. In State v Kilby (2025) for example, the Oregon Supreme Court held that the right to counsel did not protect a defendant during a police interrogation about an uncharged murder, even though he was a suspect under surveillance and already represented by counsel in that investigation. The court explained

> We conclude that the right to counsel that Article I, section 11, guarantees to all 'accused' in a 'criminal prosecution' was not triggered by the defendant's arrest and custodial interrogation regarding crimes with which he had not been charged. We have repeatedly explained that protections under that section ordinarily do not arise until a person has been charged with a crime

In others, the court treated counsel complaints as matters of trial-court discretion, especially where the defendant sought substitute counsel. Dissatisfaction with appointed counsel was not enough unless the defendant could show a genuine conflict, breakdown, or constitutional harm. To expand on this, in State v Ponce (2025), the judicial statement said, "Counsel had been diligent in his work on this case and even secured a better plea offer; defendant failed to show a legitimate complaint warranting substitution" State v Ponce (2025). Echoing similar logic, the justices in State v Greeley (2022) say,

> Defendant was represented by counsel at every critical stage in these proceedings... the only actual harm... is that, presumably, the defendant had to pay for his retained attorney. That, however, is not the type of harm to which the harmless error standard speaks

And again in State v Vieira (2016) “In light of all the other known circumstances the defendant had not demonstrated a legitimate reason for the court to appoint substitute counsel”.

Case Name	Year
Raisley v. Sullivan	1972
Curtis v. Cupp	1973
State ex rel. Ott v. Cushing	1980
Dean v. Children's Services	1982
State v. Horine	1983
State v. Piper	1983
City of Pendleton v. Standerfer	1984
State v. Gordon	1984
Rodacker v. State	1986
State v. Pieretti	1991
State v. Jenkins	2003
Ryan v. Palmateer	2005
State v. Davis	2011
State v. Haugen	2011
Pedroso v. Nooth	2012
State v. Langley	2012
State v. Mannix	2014
State v. Vierria	2016
State v. Whitten	2016
State v. Fitzgerald	2021

State v. Greeley	2022
State v. Johnson	2023
Lopez-Minjarez v. Kelly	2024
State v. Kilby	2025
State v. Ponce	2025

Table: 5.3.5 Doctrine of Denial Effective Counsel Cases

5.3.6 Doctrine of Denial: Conclusion

Taken together, the Category A cases show a consistent judicial pattern across more than a century of Oregon case law. Courts repeatedly acknowledged delay, counsel problems, public defense strain, docket congestion, waiver disputes, and ineffective assistance claims, but generally resolved those problems through doctrines that limited relief. The cases did not deny the existence of constitutional rights. Instead, they narrowed when those rights attached, assigned responsibility for delay to defendants, required concrete prejudice, treated institutional strain as manageable, or converted counsel-related problems into questions of discretion, waiver, harmless error, or post-conviction finality.

5.4 Findings Category B: The Doctrine of Remedy

The Category B remedy-granting cases fall into three distinct groupings and two narrow legal frameworks. The first grouping consists of individualized remedy cases, where relief was granted because the record contained an unusually concrete defect or highly irregular fact pattern. The second grouping consists of ORS 136.290 custody-rule cases, where relief was granted because the defendant had been held beyond Oregon's statutory 60-day custody limit. The third grouping consists of auxiliary cases that do not fit neatly into either framework but still speak directly to the research questions, most importantly Betschart v. Oregon (2024). In total, there are fourteen cases in the Category B remedy-granting case set. Six fit the individualized remedy framework; six fit the ORS 136.290 framework; and the remaining two are auxiliary remedy cases.

5.4.1 Doctrine of Remedy: Individualized Framework Cases

Within the individualized remedy framework, relief was granted only in highly irregular, case-specific circumstances. Of the fourteen Category B cases, six fall into this grouping. In these cases, the remedy depended heavily on the unique facts of the individual case rather than a general judicial willingness to address systemic court breakdown.

State v. Borba (2018) illustrates this pattern well. The case did not turn on a broad finding that Oregon's public defense system had failed as a whole. Instead, the Court of Appeals focused narrowly on the trial record to determine if Borba had validly waived his right to counsel in his case alone. After three appointed attorneys withdrew from the case, the trial court allowed Borba to proceed pro se. The appellate court concluded that the court record lacked a "knowing and voluntary" waiver because Borba had not been meaningfully warned of the risks of self-representation while facing serious felony charges. Borba thus serves as a dual finding: while the

court granted relief for a concrete procedural defect, that defect was born directly from the turnover and attorney-shortage pressures examined in this thesis.

State v. Harberts (2000) stands as one of the unique instances in this research where Oregon judges determined that pretrial delay was inherently prejudicial and the court issued the ultimate remedy: the indictment was dismissed with prejudice, and the conviction and death sentence were vacated. Harberts spent roughly five years in custody awaiting trial for aggravated murder and rape in a household where no physical evidence existed and other intoxicated adults were present. The Oregon Supreme Court noted that the "protracted period of anxiety regarding the potential death penalty, combined with five years of detention, created a prejudice to defendant... without trial" (State v. Harberts, 331 Or. 72, 11 P.3d 641 (2000)). Within the scope of this study, Harberts is the sole case where the judiciary acknowledged that five years of pretrial incarceration was fundamentally harmful. However, even this admission was significantly influenced by the "extraordinary" stakes of a capital sentence, suggesting that without the death penalty, five years of waiting might not have reached the court's threshold for dismissal.

Table 5.4.1 Individualized Remedy Cases

Case Name	Year
State v. Romero	1969
City of Pendleton v. Standerfer	1984
State v. Harberts	2000
State v. Baker	2010
State v. Borba	2018
State v. Craigen	2023

5.4.2 Doctrine of Remedy: ORS 126.290 60-day custody rule cases

The next grouping and remedy framework found in Category B review was a group of six cases that were granted relief through ORS 136.290 instead of the typical Barker v. Wingo (1972) style speedy-trial analysis. At first, these cases appeared no different and involved the same general issue as the rest of the speedy-trial cases found in Category A: delay before trial, defendants held in custody, and courts deciding whether the system had crossed a legal boundary. However, closer review showed that these cases operated and were granted the remedy through a different legal mechanism, and that the remedy was also a much narrower relief. Rather than relying on the balancing tests, these relief decisions centered on ORS 136.290. Further review showed that ORS 136.290 establishes Oregon's statutory guidelines by defining limits to pretrial incarceration by stating that

> A defendant cannot remain in custody pending trial more than 60 days after arrest unless the defendant expressly consents to the continuance. If trial does not begin within the required time, the court must release the defendant on recognizance, third-party custody, or other reasonable conditions (Or. Rev. Stat. § 136.290).

This became a distinct theme within Category B because the remedy was not dismissal of the prosecution, but merely mandatory release from custody once the statutory time limit had been crossed. The balancing test framework in contrast often gives courts wide room to tolerate delay, especially when delay can be attributed to court congestion, case complexity, defense requests, or even defendant inaction in demanding a trial. Considering that many Category A cases involved years of delay, the 60-day custody rule marked a sharp departure.

This makes ORS 136.290 a narrow but strong enforcement device. It does not ask whether the prosecution must end. Instead, it simply defines whether the state may continue to incarcerate the defendant, and under what circumstances, while the case remains unresolved and while the prosecutor builds the case. The statute does not solve every speedy-trial problem, but it draws a firm line around pretrial custody so that cases do not have a chance to reach prolonged detentions, provided that the defendant has an attorney to press the issue and file the correct paperwork.

The ORS 136.290 cases also show a pattern of several judicial opinions narrowing and clarifying the 60-day custody rule. Rather than allowing prosecutors or trial courts to avoid the statute through procedural workarounds, in this series of cases Oregon judges clarify the rule's outer limits.

The first major narrowing appears in Collins v. Foster (1985), where the Oregon Supreme Court treated release under the 60-day rule as mandatory when the statutory conditions were met and rejected a workaround in which the state could technically "release" a defendant while setting bail conditions the defendant could not meet to preserve detention under another name. Later cases in this series continue to credit Collins as establishing:

> "ORS 136.290 requires release, a court may impose reasonable conditions, but may not set security at an amount the person cannot pay because doing so would

> allow the court to do indirectly what it cannot do directly" (Collins v. Foster, 299 Or. 90, 95-96, 698 P.2d 953 (1985)).

In the context of this thesis, Collins shows judicial enforcement not only against delay, but also against excessive bail conditions that preserve custody despite a statutory release command.

The second major narrowing appears in State v. McDowell (2012). In this case, the defendant had already been held beyond the 60-day limit when the state dismissed the charges, reindicted him on the same charges, and rearrested him. The Oregon Supreme Court rejected the states' argument around restarting the clock and ordered immediate release. For the current study, McDowell is useful because it shows a court identifying and closing a procedural loophole that would have weakened the statute's intended purpose.

The final narrowing of the 60-day custody law comes in Benjamin v. O'Donnell (2024) The state argued that the statute applied only to the first trial, not to a second trial after a conviction had been overturned. The judges rejected that limitation, reasoning that the statute concerns custody pending trial and that nothing in the text limits the rule to an initial trial.

Table 5.4.2 ORS 136.290 Cases

Case Name	Year
State v. Person	1992
Collins v. Foster	1985
State v. Coggin	1994
State v. McDowell	2012
State v. McGee	2019
Benjamin v. O'Donnell	2024

5.4.3 Doctrine of Remedy: Federal Intervention

The next takeaway from Category B is that Oregon's attorney-shortage crisis has moved beyond ordinary state doctrine and into federal intervention. Betschart v. Oregon (2024) differs from most cases in both Category A and Category B because it was not a single defendant seeking remedy. Instead, it involved a class-action habeas petition brought on behalf of hundreds of incarcerated indigent defendants who were being held in Oregon jails without appointed counsel. The Ninth Circuit treated Oregon's failure to provide timely counsel as an "extraordinary circumstance" and affirmed a preliminary injunction requiring counsel within seven days of a defendant's initial appearance, or within seven days of prior counsel's withdrawal. If counsel was not provided within that period, the defendant had to be released from custody subject to reasonable conditions (Betschart v. Oregon, 103 F.4th 607 (9th Cir. 2024)).

This case is different from the other cases because it did not apply either balancing tests or Oregon's 60-day statutory custody rule. Instead, the Ninth Circuit affirmed a separate federal constitutional counsel-or-release remedy for incarcerated defendants who had no appointed lawyer. Even so, this case still fits the same overall limited custody-remedy pattern as the ORS 136.290. The remedy was not dismissal of charges, and it was not a full restructuring of Oregon's public defense system. The state could continue prosecuting, but it could not continue holding indigent defendants in jail without satisfying a clear constitutional condition for detention: timely appointment of counsel.

5.5 Findings Summary

Table 5.3 - Findings Summary

Category	Finding	Sub-finding 1	Sub-finding 2	Sub-finding 3
Category A The Doctrine of Denial *(145 cases / 91.3%)*	Full Judicial Recognition without action	**Doctrine narrowing** Define when rights apply narrowly	**Delay Consider Harmless Error** Shortages are treated as ordinary court realities.	**Defendant Burden Trap:** Defendants must demand rights, preserve the issue
Category B The Doctrine of Remedy *(14 cases / 8.8%)*	Extremely Rare Remedy through narrow legal boundaries	**Case-specific remedies:** relief depends on concrete failures or extreme facts.	**ORS 136.290 hard line:** the 60-day custody rule produces mandatory release once crossed.	**Federal Intervention & Custody Deadlines:** strict, clear 7-day constitutional "counsel-or-release"

To summarize the findings into one single sentence, the findings expose a grim reality: indigent Oregonians frequently endured years of pre-trial incarceration, facing a judiciary that consistently normalized multiyear losses of freedom as "unfortunate" rather than unlawful.

VI. Discussion

6.1 The Constitutional Threshold: Strain vs. Systemic Collapse

A central tension arises from this thesis research and speaks to the same questions that many judges themselves must evaluate. What is a reasonable amount of time to incarcerate someone who is still presumed innocent under the law while they wait for trial? Does that timeline harm the defendant more than it protects society? At what point does the ordinary reality of criminal procedure cross from accepted delay into constitutional harm that requires judicial action? How does society turn the rights promised by constitutional text into something real within the messy, changing, and overloaded landscape of criminal law? At what point in the proceedings does appointed counsel become more than a formal promise and instead become a necessary condition for the state to continue prosecuting? Lastly, what happens when large-scale structural pressures make it difficult for the wheels of justice to keep turning at all?

The central interpretation of the findings is that Oregon's existing doctrine was built for ordinary case delay, not statewide collapse. Speedy trial and right-to-counsel cases usually ask individualized questions. Did this defendant assert the right? Did this defendant suffer prejudice? Did this defendant waive counsel? Was this delay justified by the facts of this case? Did the state act in bad faith? These questions make sense when the system is basically functional and the court is deciding whether one case went wrong. They are much less equipped to answer what happens when the system itself cannot provide enough lawyers to keep cases moving.

This is why Oregon's public defense crisis creates such a difficult constitutional problem. The state can say that a defendant has a right to counsel, but that statement means very little if no lawyer exists to take the case. A court can say that a defendant has a right to a speedy trial, but that right loses force if the case cannot move forward because the defendant remains

unrepresented. The Constitution promises a fair legal process, but legal process requires people, funding, institutions, and infrastructure.

The findings show that Oregon courts often respond to this problem by treating systemic breakdown as a collection of individual procedural issues. That approach has legal advantages. It allows courts to preserve precedent, avoid broad institutional orders, and prevent dismissals from becoming routine. But it also has a cost. When systemic failure is broken into individual pieces, the larger collapse becomes harder to see. A defendant's delay becomes "not enough prejudice." A missing attorney becomes "not yet a complete denial." Court congestion becomes "neutral delay." Prosecutorial overload becomes "understandable neglect." Each individual ruling may be defensible on its own terms, but the cumulative effect is a doctrine that absorbs collapse rather than directly confronting it.

6.2 Institutional Constraints and the Judicial Bureaucracy

This pattern also reveals something important about the institutional position of courts. Judges are not only interpreters of abstract constitutional ideals. They are also actors within a larger criminal justice bureaucracy. If courts strictly enforced Gideon v. Wainwright (1963), Barker v. Wingo (1972), and Strunk v. United States (1973) and related speedy trial principles by dismissing every case in which defendants experienced prolonged delay or lack of counsel, the immediate consequences would be enormous. Dockets would be disrupted, serious prosecutions could be terminated, victims and communities could lose access to criminal enforcement, and the judiciary itself could be blamed for public safety consequences that originated in legislative funding, attorney shortages, or executive branch capacity failures. That pressure helps explain why courts often choose narrow remedies or no remedy at all.

6.3 The Prejudice Trap and Category B Exception

The framework set out by Barker v. Wingo (1972) is theoretically flexible, but that flexibility cuts both ways, and based on the data, is heavily skewed to favor the prosecution. It allows courts to account for complicated facts, but it also allows institutional failure to be minimized into neutral delay, unavoidable congestion, or insufficient prejudice. The findings show that courts frequently require defendants to demonstrate specific and concrete harm to their defense before granting dismissal or other meaningful relief. That requirement becomes especially difficult in right-to-counsel and public defense shortage cases. A defendant without counsel is often the person least able to document the legal harm caused by not having counsel. Without an attorney, the defendant may not know how to preserve objections, identify missing witnesses, document lost evidence, challenge continuances, or build a record showing prejudice. This creates a trap. The absence of counsel causes harm, but the defendant may need counsel to prove the harm caused by that absence.

This does not mean courts never act. Category B shows that Oregon courts do occasionally enforce constitutional and statutory boundaries in some cases. However, the pattern of enforcement is narrow. The 14 Category B cases do not represent a broad judicial willingness to restructure Oregon's criminal justice system. Instead, they reveal that courts are most willing to act when there is a clear, concrete legal trigger that allows the remedy to remain administrable within the individual case. Courts are more comfortable enforcing a statutory custody limit than declaring the broader appointment system unconstitutional. They are more comfortable reversing an invalid waiver of counsel than ordering statewide public defense reform. They are more comfortable releasing a defendant from custody than dismissing the prosecution entirely.

While ORS 136.290 removes some of the discretion that exists under balancing tests because it gives courts a concrete timeline, this remedy is also limited. It does not require dismissal of the prosecution. It does not solve the shortage of attorneys. It does not force the state to build a functioning public defense system. It simply limits the state's ability to keep a person in custody while the case waits for trial. In practical terms, the statute changes the defendant's position from jail custody to conditional release, while the prosecution itself remains alive.

This creates what this thesis identifies as a custody-release paradigm. In the rare cases where courts grant relief, the remedy often protects physical liberty without fully interrupting the state's power to prosecute or addressing any of the larger underlying issues. This compromise allows courts to respond to the most immediate humanitarian concern, prolonged incarceration without trial or counsel, while still avoiding the more disruptive remedy of dismissal with prejudice. From the court's perspective, it appears release is easier to justify than dismissal.

6.4 Case Studies in Judicial Intervention: Betschart and MPDS

Betschart v. Oregon (2024) reinforces this custody pattern at the federal level, but takes it a step further by recognizing that the absence of counsel at the beginning of a criminal case can itself create immediate constitutional harm. The decision also shows that federal courts are willing to intervene when state institutions fail to enforce basic constitutional promises internally. In that sense, Betschart (2024) stands as a powerful contrast to the more deferential posture found throughout much of the Oregon appellate dataset.

At the same time, Betschart (2024) still fits the custody-release paradigm. The Ninth Circuit did not order dismissal of all affected prosecutions. It did not take control of Oregon's public defense system. It did not order the legislature to appropriate funds or require a statewide restructuring plan. The remedy was simply counsel-or-release. That remedy is meaningful,

especially for defendants sitting in jail without representation, but it is still limited. The state's power to prosecute remains intact. What the state loses is the ability to use pretrial detention while failing to provide counsel within the required period.

This makes Betschart (2024) both extraordinary and remarkably consistent with the broader findings. It is extraordinary because it imposes a concrete federal constitutional boundary on Oregon's crisis, and comparatively, a rather fast concrete boundary of a mere 7 days. It is consistent because the remedy still avoids dismissal and structural takeover. Betschart (2024) therefore reveals the outer edge of judicial intervention during collapse. Even when courts find an urgent constitutional problem, they often choose highly limited remedies.

If Betschart v. Oregon (2024) shows outside federal intervention, MPDS v. Courtney (2003) shows the Oregon Supreme Court standing at the edge of systemic intervention. In this case, the Oregon Supreme Court recognized that it has inherent authority under the Oregon Constitution to protect the independence and core functions of the judicial branch. The court even assumed, for purposes of the opinion, that this authority could include ordering the legislature to provide minimum funding necessary to sustain judicial functions. But the court refused to exercise that power, concluding that the showing made by the Metro Public defense services did not meet the extraordinary threshold required for such relief.

MPDS v Courtney (2003) captures the institutional boundary running through the entire thesis. Oregon judges clearly understand themselves as constitutional actors with real authority. They do not deny that they have a powerful role in protecting the functioning of the judicial branch. But they also appear to see that role as limited, exceptional, and to be used sparingly. The court's refusal to order legislative funding was not merely a denial of one petition. It was also a statement about judicial identity. The court recognized power but declined to use it. This

case also shows another important point, the issue is not new, nor is it an isolated problem caused by COVID-19, or recent presidents, as this case dates back to 2003. Clearly this is not a new, overnight, or sudden unexpected issue at play.

6.5 Discussion Summary

The literature review and policy background help explain why this crisis emerged. The Oregon Project, the legal desert literature, and Senate Bill 337 all point toward a system that has long struggled with attorney distribution, workload, compensation, and institutional design. Those sources explain the structural causes. The case law shows the consequences.

Legislative reform may improve the system over time, but judges must decide cases in the present. A defendant in custody cannot wait years for public defense reform to stabilize. A victim waiting for prosecution cannot be told that the system is undergoing restructuring. Trial courts face the crisis in real time. They must decide whether to continue cases, release defendants, dismiss charges, appoint unavailable counsel, or pressure attorneys to take cases they may not have capacity to handle. This is why the judicial role is so important. Legislative reforms address the system prospectively. Judicial decisions address immediate constitutional harm. The two are connected, but they are not interchangeable. A future policy solution does not answer what should happen to the person sitting in jail today without counsel. That is the pressure point this thesis identifies.

6.5 Discussion Conclusion

The first research question asked how Oregon judges frame and interpret the right to counsel and the right to a speedy trial when systemic shortages make compliance difficult or impossible. The findings show that judges usually frame these rights through existing doctrine rather than as automatic evidence of constitutional collapse. Courts rely on balancing tests,

prejudice requirements, statutory interpretation, waiver doctrine, and case-specific analysis. They acknowledge institutional strain, but they usually convert that strain into ordinary legal categories.

The second research question asked what remedies judges choose and how they justify those choices. The answer is that meaningful remedies are rare, narrow, and tied to concrete legal triggers. Category A shows that courts usually deny dismissal, release, or reversal. Category B shows that courts are more willing to act when custody limits, invalid waivers, attorney-client intrusions, or clear counsel failures create a defined boundary. The strongest modern pattern is not broad dismissal, but counsel-or-release.

The third research question asked what these decisions reveal about judicial self-conception. The cases suggest that Oregon judges see themselves as constitutional guardians, but cautious ones. They are willing to enforce rights when a specific case demands it, but they are reluctant to become managers of Oregon's public defense system, prosecutor staffing, or legislative funding choices. This creates a judiciary that is powerful enough to intervene in individual cases, but hesitant to impose systemic solutions.

The central conclusion of this thesis is therefore not that Oregon courts ignore constitutional breakdown but rather that they recognize it and yet still limit the remedy. That gap between recognition and enforcement is Oregon's public defense crisis. Oregon's judges regularly see the crisis, name parts of it, and even emphasize if effects on defendants about it. But most of the time, the judicial response is to keep the case moving, preserve the prosecution, and require a higher showing before meaningful relief is granted. In that space between constitutional promise and institutional capacity, Oregon's courts reveal both the power and the limits of judicial duty during systemic collapse.

VII. Implications

The judicial management of Oregon's public defense crisis is not contained within the walls of the courtroom. It creates cascading effects across the entire criminal legal system and the communities that depend on it. When trial courts normalize systemic delay, release defendants because counsel is unavailable, or dismiss charges because the state cannot move cases forward, those decisions reshape the daily operations and expectations of law enforcement, prosecutors, victims, defendants, and local communities. This systemic breakdown reshapes the incentives, burdens, and expectations of every actor who depends on a functioning criminal legal system.

7.1 Implications for Law Enforcement: The Degradation of Police Utility

For law enforcement officers, the systemic collapse of public defense representation disrupts the practical utility of police work. Modern policing relies on an implicit expectation that officers will investigate crimes, gather evidence, make arrests, and refer cases into a legal system capable of processing them to some form of resolution. When courts release defendants because no counsel is available, when cases are dismissed because the system cannot proceed, or when District Attorneys decline to file certain categories of cases due to attorney shortages, the practical value of police work is weakened.

This creates serious institutional frustration. Officers may spend time and resources investigating cases only to see those cases stalled, declined, or dismissed for reasons outside their control. Over time, that reality may also affect street-level discretion. In counties where prosecutors have publicly announced filing restrictions, officers may reasonably come to doubt whether certain arrests will result in formal prosecution. This does not mean police stop enforcing the law altogether, but it does mean the public defense crisis can weaken the

connection between arrest, prosecution, and legal accountability. In that sense, the shortage of lawyers does not only affect the courtroom. It can also undermine the front end of the criminal justice system.

7.2 Implications for Prosecutorial Operations and Local Communities

District Attorneys, as elected officials and primary gatekeepers of the state's charging power, face an acute structural paradox created by systemic delay and limited court capacity. In a fully functioning adversarial system, prosecutors decide which cases to charge based on evidence, law, office priorities, and the interests of justice. In the current crisis, however, prosecutorial discretion is being reshaped by a more basic question: whether the system has enough attorneys to process the case at all.

This creates a form of structural rationing. Some prosecutors may decline to file certain categories of cases, delay filing, prioritize only the most serious charges, or hold cases informally until court capacity improves. These choices may be rational responses to crisis conditions, but they compromise the uniform application of criminal law. Criminal accountability can begin to depend less on the conduct itself and more on county resources, local staffing levels, and the political incentives facing elected District Attorneys.

For local communities, this operational retreat weakens confidence in the rule of law. When entire categories of crime are effectively deprioritized or left unenforced, the state signals that certain violations of public order may not receive state-backed consequences. That can leave communities feeling abandoned by the legal system, especially in places already facing limited legal resources, rural isolation, or strained public services. The result is not simply fewer prosecutions. It is a fragmented legal landscape in which the meaning of criminal enforcement varies county by county.

7.3 Implications for Victims: The Loss of Legal Vindication

The institutional friction within Oregon's courts also harms crime victims by delaying or denying access to legal resolution. The criminal legal system channels a victim's experience through the state's formal prosecution process. When a case is dismissed because the state cannot provide defense counsel, or when a District Attorney declines to file charges because the system lacks capacity, the victim is denied an adjudication on the merits. This is especially serious in cases involving domestic abuse, assault, property offenses, and other crimes where victims may depend on the criminal process for accountability, safety planning, and a sense of closure. In some cases, dismissal or non-filing may weaken court-imposed supervision, no-contact conditions, or other protections tied to the criminal case. Even where separate civil remedies remain available, the burden shifts back onto the victim to navigate safety risks with less institutional support.

Victims may experience the process as abandonment: they reported the crime, cooperated with the state, and waited for legal action, only to see the case disappear because the system lacked attorneys. Over time, this can damage public trust and deter future cooperation with law enforcement and prosecutors, weakening victims' confidence that the state can provide meaningful legal vindication.

7.4 Implications for Defendants: The Normalization of Constitutional Harm

Paradoxically, while the threat of dismissal often receives the most public attention, the ongoing crisis also compromises the liberties of the very population the Sixth Amendment was designed to protect: indigent defendants. For people held in pretrial detention without counsel, the failure to appoint legal representation creates a state of legal stasis. Defendants may spend weeks or months incarcerated without an advocate to request release, argue for bail reduction,

investigate mitigating evidence, challenge the state's case, communicate with prosecutors, or preserve legal objections.

When courts tolerate prolonged periods of unrepresented detention before granting a dismissal or release order, they risk normalizing an unlawful baseline of pretrial punishment. The defendant has not been convicted, yet the practical consequence is incarceration caused by state incapacity. This undermines Gideon's promise because the right to counsel becomes meaningful only after the defendant has already experienced substantial harm.

This creates one of the central constitutional tensions of the crisis. The state may still claim the authority to prosecute, but it lacks the capacity to provide the adversarial process that makes prosecution legitimate. Without counsel, the early stages of criminal adjudication become less like a fair legal contest and more like an administrative trap. Liberty is lost not through a finding of guilt, but through state-produced delay, staffing failure, and institutional inertia.

IX. Limitations

9.1 AI Limitations

A specific methodological limitation arose from the AI-assisted categorization of the dataset, particularly regarding cases that exist in a "dual category" state due to the appellate process. Cases such as State v. Coggin (1994), State v. Kilby (2025), and State v. McGee (2019) were flagged by the AI screening in both Category A (Remedy Denied) and Category B (Remedy Granted). This redundancy highlights a limitation in systematic binary coding: it can struggle to capture the fluid nature of cases as they move through different layers of the judiciary.

In these instances, the AI correctly identified a trial-level dismissal (Category B) where a judge viewed bureaucratic delay as legally intolerable. However, it also correctly identified an appellate-level reversal (Category A) where those remedies were pulled back into stricter doctrinal limits. While this dual flagging initially appeared to be a technical error, it reveals a deeper finding: the tension between a trial court's practical view of faded memories, missing or dead witnesses, and an appellate court's later higher demands for prejudice and proof of harm.

Consequently, a limitation of this research is that quantifying judicial behavior through a simple "Yes/No" lens occasionally hides the reality that a remedy may be briefly granted at one level while becoming stripped at another, or vice versa. This is just the nature of a multilayered justice system subject to review and scrutiny. Unfortunately, AI was unable to pick up that nuance and treated the same case sometimes as unique, different cases based on which court heard it, allowing several cases to appear in both categories.

A further limitation of the initial AI screening was its difficulty in identifying non-standard criminal proceedings. During the random sampling process used to test the reliability of

AI classifications, a manual review identified State ex rel. Metropolitan Public Defender Services, Inc. v. Courtney (2003). The AI initially excluded this case because it is not a standard criminal appeal involving a single defendant; rather, it is a mandamus proceeding brought by a public defender organization against legislative leaders. This manual correction was necessary to ensure the dataset included cases speaking directly to the judiciary's role during institutional capacity failures. It reinforces the methodological finding that AI is an effective starting point but requires human legal judgment to capture the full scope of structural litigation.

Academic institutional positioning directly restricted the scope of data acquisition. Research was conducted using standard undergraduate credentials for the Westlaw database, which lacks advanced indexing, specialized legal analytics, and comprehensive secondary source access unlocked by law school institutional licensing. It is therefore a recognized limitation of this methodology that additional relevant orders, trial court transcripts, or localized case files may exist within broader databases or specialized legal repositories that remained inaccessible under these constraints.

9.2 The Visibility Problem: What Appellate Doctrine Omits

Another important limitation of this thesis research is that the published case law likely understates the severity of Oregon's crisis. The dataset depends heavily on cases that reached appellate review or produced searchable legal records. But some of the most serious effects of the attorney shortage occur before a case ever becomes a published opinion. When prosecutors decline to file cases because no attorneys are available, those cases do not become appellate doctrine. When cases are dismissed at the trial level without appeal, they do not appear in Westlaw and when defendants wait without counsel but later plead, are released, or have charges resolved informally, the constitutional harm does not become visible in the case law.

This creates a visibility problem, and the more complete or severe the breakdown at the local level, the less likely it may be to appear in traditional legal research. If a prosecutor's office stops filing certain charges, the absence is real, but it is not easily captured through appellate opinions. If trial judges manage the crisis through continuances, informal release decisions, or local docket practices, those choices may never generate published decisions. The evidence from Multnomah County, Lane County, and other parts of Oregon suggests that some of the most serious impacts of the crisis are happening outside the normal appellate record.

This matters because appellate doctrine often presents the system as more orderly than it is. Published opinions turn crisis into legal categories: prejudice, waiver, delay attribution, good cause, statutory interpretation, mandamus, release, dismissal. Those categories are necessary for legal analysis, but they can also sanitize the underlying reality. A person sitting in jail without counsel is not experiencing a "doctrine". A victim waiting for prosecution is not experiencing a "balancing test." A prosecutor declining charges because the office lacks capacity is not creating precedent. Yet all of those moments are part of the constitutional reality this thesis examines.

The public defense crisis is often framed as a conflict between defendants' rights and public safety. That framing is too narrow. The findings in this thesis show that the crisis harms both. When defendants are held without counsel, constitutional legitimacy is damaged. When cases are dismissed because counsel is unavailable, victims and communities lose the protection of criminal enforcement. When prosecutors stop filing categories of cases, the public sees the law as selective or unavailable. When courts tolerate long delays because the system lacks capacity, confidence in judicial authority declines.

VIII. Future Research

Due to the recent passage of Senate Bill 337, the influx of millions of dollars that accompanied it, and the new hybrid public defense structure being rolled out, a key component of future research will naturally involve investigating whether this investment has yielded measurable results, and to what degree. A central mandate of this legislation is the requirement for enhanced data collection from public defense providers including the tracking of active versus closed caseloads, time elapsed to reach specific procedural milestones, and other key performance metrics. The statutory framework also establishes explicit benchmarks, aiming to transition state-employed public defenders to handle 20 percent of trial-level cases by 2031, and 30 percent by 2035, while establishing an emergency grant infrastructure to request rapid funding. It remains critically important to research the net macro-effects of combining this historic financial influx with centralized structural leadership. To what degree these structural modifications will stabilize Oregon's broader criminal justice system, and what remaining institutional gaps will linger, remains to be seen.

Beyond these structural and legislative reforms, a vital avenue for future empirical research lies in examining the highly decentralized and fragmented responses of Oregon’s county-level District Attorneys. Because District Attorneys operate as independently elected officials, their management of the structural attorney shortage has varied dramatically by jurisdiction, resulting in an uneven landscape of statutory enforcement across the state. While some prosecutors have aggressively triaged dockets by unilaterally dismissing lower-level offenses or allowing entire sections of the criminal code to go unenforced, others have completely halted the filing of new cases or quietly built "rainy day" backlogs to be prosecuted if capacity returns. Conversely, political pressures inherently incentivize some elected prosecutors

to obscure the true depth of these backlogs to preserve public confidence. Future scholarship should engage in a comparative analysis of these county-by-county prosecutorial behaviors, investigating how localized executive discretion alters the uniform administration of justice and whether an individual's access to due process is fundamentally dictated by county lines.

Ultimately, numerous unanswered questions persist, and the unfortunate reality is that indigent defendants and crime victims alike will continue to serve as the structural test subjects as the state grapples with the operational realities of modern systemic strain. Will the elimination of flat-fee contract structures successfully entice experienced litigators back into the public defense bar, or will the administrative overhaul push remaining private practitioners out of the system entirely? Furthermore, future research must critically evaluate whether these newly appropriated millions are allocated with fidelity to the statutory intent, or if the intervention will be undermined by the familiar bureaucratic waste, mismanagement, and fragmented leadership that historically compromise large-scale government reforms.

X. Conclusions

10.1 Final takeaways

The systemic failure of Oregon's criminal justice system forces a profound reconsideration of the relationship between constitutional rights and institutional infrastructure. The data assembled in this thesis reveals that the protections enshrined in the Sixth Amendment and Article I, Section 11 of the Oregon Constitution are not self-executing; they are entirely dependent on the operational capacity of the state to provide qualified legal counsel. When that infrastructure collapses, abstract constitutional guarantees rapidly erode.

The primary takeaway from this study is the documentation of a massive disparity between judicial acknowledgment and judicial enforcement. While Oregon trial and appellate judges routinely validate the reality of the crisis, noting that multiyear pretrial delays and unrepresented detentions are "unprecedented and regrettable," the judiciary responds with institutional restraint in 91.2% of cases. By absorbing systemic failure into standard doctrinal mechanisms such as narrowing when rights attach, demanding insurmountable proof of concrete prejudice, or shifting the procedural burden to the silent defendant, judges have consistently normalized an unconstitutional baseline of pretrial punishment.

Conversely, the rare instances of judicial enforcement demonstrate that remedies are overwhelmingly confined to a strict custody-release paradigm. Enforcing statutory mandates like the ORS 136.290 60-day rule or complying with the Ninth Circuit's federal intervention in Betschart v. Oregon allows judges to protect immediate physical liberty without addressing the underlying state incapacity or executing the ultimate remedy of dismissal with prejudice. Ultimately, the current case law functions as a mechanism for legal triage, sanitizing systemic

collapse into localized, manageable administrative strain while leaving the structural foundations of the crisis unaddressed.

This stark disparity between judicial acknowledgment and actual enforcement highlights a deeper, systemic paradox: the justice system inherently prioritizes institutional self-preservation over constitutional perfection. Just as appellate courts historically reverse only a small fraction of trial judgments to maintain finality, predictability, and public confidence in the judiciary, trial courts handling the indigent defense crisis operate under an unstated fear of systemic collapse. If judges were to strictly enforce constitutional mandates by dismissing thousands of cases with prejudice or ordering mass releases of unrepresented defendants, the administrative machinery of the state would grind to a halt.

Consequently, the judiciary engages in a form of institutional denialism. By standardizing pretrial delays and treating unrepresented detentions as regretful but temporary administrative hurdles rather than structural constitutional failures, the courts preserve the illusion of a functioning system. They choose to ration justice quietly on a case-by-case basis rather than enforcing remedies that would expose the state's bankruptcy of resources. However, this is inherently self-defeating. True confidence in the rule of law cannot be built on the systematic normalization of unconstitutional procedures; it can only be restored when the system is forced to confront its failures through accountability.

10.2 Suggestions for addressing these issues

To bridge the chasm between constitutional promise and institutional capacity, Oregon cannot rely solely on prospective legislative restructurings like Senate Bill 337. The judiciary and the legislature must transition from passive administrative tolerance to aggressive, structural interventions. The following proposals outline a comprehensive roadmap to stabilize the system,

leveraging technological adaptation, academic integration, and a radical restructuring of the legal workforce:

Establish Tiered, Bright-Line Pretrial Custody Limits for Unrepresented Defendants: To internalize and refine the federal mandate of Betschart v. Oregon, the Oregon Supreme Court or the state legislature must codify a non-discretionary statutory framework based on charge severity and criminal history. If the state fails to appoint qualified counsel within the following designated windows, the unrepresented individual must be released pending appointment:

7-Day Maximum: For individuals facing a first-offense, non-violent charge.

60-Day Maximum: For individuals facing a first-offense, violent charge.

Exclusions from Bright-Line Release: To preserve public safety and institutional integrity, these mandatory release windows should exclude individuals charged with murder or attempted murder, those with aggravating conditions including extensive prior criminal histories, defendants held on Failure to Appear (FTA) warrants, or previous release condition violations.

Implement a Presumption of Prejudice for Systemic Delay: Under current doctrine, the "prejudice trap" penalizes unrepresented individuals who cannot document how a delayed trial compromises their defense. Following the logic of Doggett v. United States, Oregon should adopt a legal presumption of prejudice when a trial is delayed beyond six months solely due to state-level attorney shortages or public defense contract collapses. This shift would place the burden of proof on the state to justify continued prosecution rather than requiring the defendant to prove the negative effects of state inactivity. Judges can believe these delays are non harmless, but proving or disproving a counter factual reality is an impossibility. So implementing a strict deadline would establish accountability.

Mandate Uniform, Public Prosecutorial Data Standards: To combat the "visibility problem" and the uneven fragmentation of justice across county lines and the unknowns in the data, Oregon should mandate that as a condition of election, local District Attorneys would be required to publish standardized, data-driven case statistics and operating statistics. When resources are scarce, choices regarding which low-level or non-violent offenses to decline or defer must be explicit and transparent, preventing the arbitrary, county-by-county rationing of public safety and due process. In addition, having full data transparency allows for sound, rationale choices with resources.

Authorize Remote "Zoom Trials" for Routine and Out-of-Custody Matters: To alleviate geographic bottlenecks and maximize the efficiency of available counsel, Oregon should codify permanent rules allowing remote video proceedings. While remote litigation poses challenges for complex trial advocacy, utilizing secure virtual courtrooms for routine status conferences, arraignments, and minor pleas prevents statutory clocks from expiring and allows a single attorney to manage cases across vast geographic distances without losing hours and resources to highway transit.

Construct a Robust Pipeline within Oregon Law Schools: The state must aggressively recruit the next generation of advocates by embedding a pipeline directly into law schools. Oregon should fund specialized public defense and prosecution clinics, post-graduate bridge fellowships, and certified law student programs at regional institutions. By offering guaranteed, paid third-year clinical placements that transition seamlessly into state employment upon bar passage, the state can establish a more predictable, high-yield pipeline of practice-ready advocates to replenish the depleted workforce.

Enact Single-Budget Judicial Pay Parity: The adversarial model is inherently flawed when the state and public priorities funding to only one side of the courtroom. The legislature should dissolve separate budgets for public defenders and prosecutors, replacing them with a unified "Justice Budget" that legally mandates structural pay parity and resource splits. Every public defender tier must match the exact salary, benefits, and administrative resources allocated to their prosecutorial counterpart. True justice cannot exist when the state underwrites a professional imbalance that forces indigent defense agencies to operate as training grounds rather than career destinations.

Establish a Unified "Justice Corps" Service and Rotation Model: Borrowing from the institutional structure of the U.S. Military, Oregon should establish a unified state legal service where attorneys are commissioned to serve the broader mission of justice rather than a permanent adversarial faction. Attorneys entering this corps would agree to service contracts in exchange for total law school debt forgiveness. Under this model, practitioners are "stationed" at critical, high-need areas across the state to eliminate localized "legal deserts." To maximize system efficiency and prevent institutional burnout, corps members would rotate stations on a predictable timeline and could be assigned as either prosecutors or public defenders based on the immediate administrative and constitutional needs of the local jurisdiction. This fluid deployment ensures that both the right to a speedy trial and the right to counsel are simultaneously protected by a flexible, elite workforce.

The integrity of Oregon's criminal justice system cannot survive a continuous compromise with state incapacity. Until the political branches fully fund the institutional machinery of justice, and until the courts strictly enforce the boundaries of the law, the Bill of Rights will remain an unfulfilled promise for the state’s most vulnerable citizens.

Addendum A: Search Terms

("public defender shortage" OR "lack of counsel" OR "systemic shortage" OR "constructive denial")

("motion denied" OR "relief denied" OR "no constitutional violation" OR "Barker v. Wingo")

("attorney shortage" OR "lack of available counsel")

("acknowledge*" OR "recognize*" OR note*")

("deny dismissal" OR "deny motion" OR "no basis for dismissal" OR "insufficient to dismiss")

("public defender shortage" OR "lack of counsel" OR "systemic shortage" OR "constructive denial")
AND
("motion denied" OR "relief denied" OR "no constitutional violation" OR "Barker v. Wingo")

("systemic failure" OR "institutional failure" OR "public defense crisis") AND ("not within the court's authority" OR "separation of powers" OR "legislative responsibility" OR "institutional limits")

("public defender shortage" OR "lack of counsel" OR "no counsel" OR "constructive denial") AND ("motion denied" OR "relief denied" OR "no constitutional violation" OR "no sixth amendment violation") AND ("speedy trial" OR "Barker v. Wingo")

("public defense crisis" OR "systemic failure" OR "institutional failure")
AND
("not within the court's authority" OR "separation of powers" OR "legislative responsibility" OR "policy decision")

("speedy trial") AND ("Barker v. Wingo" OR "balancing test") AND ("systemic" OR "institutional" OR "staffing") AND ("no violation" OR "does not outweigh")

Addendum B: Instructions Provided to AI for Screening Judicial Opinions

The following instructions were provided to the AI tools Grok and ChatGPT 5.2 for the initial screenings of Oregon judicial opinions downloaded from Westlaw. These instructions defined the framework and output format used to classify cases according to my thesis research questions on the constitutional rights to counsel and speedy trial in the context of systemic constraints.

Instructions:

You are assisting me with my honors thesis analyzing how Oregon courts respond to systemic breakdowns in the constitutional right to counsel and the right to a speedy trial in the face of the ongoing public defender and public service attorney shortages. I am going to upload batches of case files, in which you are to read the cases and create a list for Excel and categorize them.
Research Questions (Guiding the Classification)

1. Interpretive Question: How do Oregon judges frame and interpret the constitutional right to counsel and the right to a speedy trial when shortages make compliance impossible, strained, or difficult?
2. Remedial Question: What remedies do judges choose (dismissal, release, compelled appointment, continuance), and how do they justify those choices?
3. Institutional Question: What do these decisions reveal regarding how judges understand their own constitutional role within a failing legal system?

Your task is to screen judicial opinions, classify them analytically, and log them in a standardized dataset that directly supports these questions.
Mandatory Analytical Categories (Choose One Per Case)

- Category A – Boundary-Setting (Tolerance) Use if the court: • Addresses right-to-counsel or speedy-trial claims • Acknowledges delay, backlog, or institutional strain • Denies relief, affirms conviction, or limits remedies • Normalizes delay through doctrine (waiver, prejudice requirements, blame allocation) Typical outcomes: affirmed, relief denied Purpose: defines the outer boundary of constitutional enforcement
- Category B – Enforcement (Boundary Crossed) Use if the court: • Finds constitutional or statutory limits have been crossed • Treats delay or lack of counsel as intolerable • Grants meaningful relief Typical outcomes: dismissed, reversed, vacated, remanded Purpose: core enforcement examples, analytically central
- Category C – Unrelated Use if the case: • Is background doctrine only • Involves civil law, habeas procedure, conditions of confinement, or unrelated criminal issues • Mentions counsel or detention only tangentially Purpose: logged for transparency, not analysis

Use only the provided case files, do not create new cases, search for secondary sources, or hallucinate facts or information not in the case files. If you are unable to find the information you need in the case files, make a note of it and do not create fake data.

Output Requirement - Excel XLS tab separated format
For every case, output one row only using this exact column order sorted by A, B, and C categories.
text
Case Name | Court | Year | Analytical Category | Primary Function | Notes for Thesis Use

Column Instructions

- Analytical Category: Must be exactly: Category A, Category B, or Category C
- Primary Function: • Category A: Boundary-setting (relief denied or limits defined) • Category B: Enforcement (relief granted or mandated) • Category C: short doctrinal description
- Notes for Thesis Use: • Brief justification tied to court action • Include disposition cues (affirmed, reversed, dismissed, etc.) • Note constitutional grounding if relevant

Addendum C: Full List of Cases Included in Analysis

Category A – Remedy Denied Cases

Case Name	Year
Application of Haynes (Haynes v. Burks)	1980
Dean v. Children's Services Div. Juvenile Corrections Program	1982
Eaton v. Eynon	2023
Johnson v. Taylor	2017
Longhini v. Bishop	1995
Lopez-Minjarez v. Kelly	2018
Morris v. State	2025
Owens v. Duryee	1990
Pedroso v. Nooth	2012
Raisley v. Sullivan	1972
Rodacker v. State	1986
Ryan v. Palmateer	2005
State ex rel. Acocella v. Allen	2024
State ex rel. Ott v. Cushing	1980
State v. Adams	2005
State v. Adams	2012
State v. Allen	2006
State v. Allen	2010
State v. Allen	2019
State v. Ashcroft	2013

State v. Ayers	2010
State v. Balfour	1991
State v. Baranovich	2012
State v. Bayer	1990
State v. Becker	2016
State v. Bellah	2011
State v. Berrellez	2014
State v. Bigelow	2007
State v. Bledsoe	2009
State v. Britt	2024
State v. Burkette	1982
State v. Chelemedos	1986
State v. Chelemedos	2017
State v. Clark	1918
State v. Clark	1982
State v. Coulson	2011
State v. Cuffy	1988
State v. Cupp	2013
State v. Davids	2004
State v. Davis	2010
State v. Davis	2013

State v. Delatorre	2009
State v. Divito	2008
State v. Dixon	2008
State v. Dunn	2022
State v. Dykast	1985
State v. Ellis	2014
State v. Emery	1992
State v. Evans	1995
State v. Everett	1968
State v. Fitzgerald	2021
State v. Fleetwood	1985
State v. Forsyth	2008
State v. Garcia	2006
State v. Garcia-Plascencia	1991
State v. Gardner	1963
State v. Garner	2012
State v. Gehrke-Young	1995
State v. Gill	2004
State v. Glushko	2011
State v. Glushko	2011
State v. Gonzales-Sanchez	2012

State v. Gordon	1979
State v. Gray	1976
State v. Greeley	2022
State v. Green	2009
State v. Gutierrez	2016
State v. Hacker	1994
State v. Hadsell	1989
State v. Hadsell	1994
State v. Hale	1986
State v. Hampton	1998
State v. Harman	2002
State v. Harman	2012
State v. Harris	1978
State v. Haugen	2012
State v. Hilton	2003
State v. Hunt	2015
State v. Hunter	1991
State v. Ivory	1981
State v. Ivory	1983
State v. Jenkins	2016
State v. Johnson	1964

State v. Johnson	1986
State v. Johnson	2005
State v. Johnson	2025
State v. Kent	2017
State v. Kirsch	1999
State v. Koennecke	1977
State v. Krieger	2020
State v. Kuhnhausen	1954
State v. Langley	2012
State v. Langlois	1981
State v. Lee	2010
State v. Lewis	2004
State v. Linh That Cam Ton	2010
State v. Loynes	1998
State v. Loza	2011
State v. Mannix	2014
State ex rel. Metropolitan Public Defender Services, Inc. v. Courtney	2003
State v. McCoy	1974
State v. McLean	2014
State v. McQueen	1998
State v. Meikle	2010

State v. Mende	1987
State v. Mercier	2012
State v. Miller	2007
State v. Moore	2015
State v. Moylett	1994
State v. Myers	2009
State v. Nail	1987
State v. Neal	1985
State v. Olstad	1993
State v. Olstad	2013
State v. Pedersen	2025
State v. Pelham	2007
State v. Peterson	2002
State v. Peterson	2021
State v. Peterson	2023
State v. Pieretti	2008
State v. Piper	1983
State v. Ponce	2025
State v. Purdom	2008
State v. Ralston	1983
State v. Ralston	2018

State v. Rohlfing	1998
State v. Schneider	1982
State v. Schneider	2006
State v. Sieckmann	1970
State v. Siegel	1992
State v. Siegel	2006
State v. Smith	2016
State v. Stanton	2022
State v. Stinnett	1990
State v. Vasquez	2004
State v. Vasquez	2011
State v. Vasquez	2018
State v. Vawter	1963
State v. Vierria	2016
State v. Wendt	2007
State v. Wendt	2014
State v. Whitten	2016
State v. Siegel	2006
State v. Smith	2016
State v. Stinnett	1990
State v. Vasquez	2004

State v. Vasquez	2011
State v. Vasquez	2018
State v Vawter	1963
State v Vierria	2016
State v. Wendt	2007
State v. Wendt	2014
State v. Whitten	2016

Category B – Remedy Granted Cases

Category B Cases	Year
Benjamin v. O'Donnell	2024
Betschart v. Oregon	2024
City of Pendleton v. Standerfer	1984
Collins v. Foster	1985
State v. Baker	2010
State v. Borba	2018
State v. Coggin	1994
State v. Craigen	2023
State v. Harberts	2000
State v. Kilby	2025
State v. McDowell	2012
State v. McGee	2019
State v. Person	1992
State v. Romero	1968

Addendum D: Randomly Selected Category C Cases for Error Rate Validation

To assess the reliability of AI-assisted exclusion decisions, a manual spot check was conducted on cases initially classified as Category C (excluded) by the screening tool. The initial review examined 41 cases, representing approximately 15 percent of all Category C exclusions. This review identified two cases that warranted inclusion: one clear false negative in which the case directly implicated the thesis's constitutional focus, and one case involving litigation over public defender contracting and compensation, which was included based on its relevance to the structural conditions producing right-to-counsel breakdown. Given that there was only one true false categorization in this sample, that gives an error rate of roughly 3%, which, given the scope of an undergraduate thesis, was determined to establish an acceptable level of statistical reliability for the screening tool.. Below are the cases randomly sampled.

Random Sampled Category C Cases: AI Validation

Case Name	Court	Year	Notes
Johnson v. Taylor	Oregon Court of Appeals	2025	Post-conviction relief denied; conviction affirmed. No systemic counsel or delay issues.
State v. Ponce	Oregon Court of Appeals	2005	Evidentiary ruling; conviction reversed. Unrelated to right-to-counsel or systemic delay.
Lopez-Minjarez v. Kelly	Oregon Court of Appeals	2024	Duplicate entry; post-conviction denial affirmed. No independent relevance.
State v. Hunter	Oregon Court of Appeals	2025	Assault conviction affirmed; no counsel or speedy-trial issues raised.
Cascadia Wildlands v. Department of Fish and Wildlife	Oregon Court of Appeals	2025	Civil environmental litigation; affirmed. No criminal justice context.
Kirschbaum v. Abraham	U.S. District Court, District of Oregon	2025	Federal habeas petition dismissed on timeliness

			grounds; unrelated to Oregon public defense crisis.
Mouktabis by and through Mouktabis v. Amarou	Oregon Court of Appeals	2019	Civil tort case; affirmed. No criminal or constitutional counsel issues.
United Pulmonary Care Inc. v. Respiratory Specialties Inc.	Oregon Court of Appeals	2024	Civil contract dispute; affirmed.
Razuki v. Armguard Insurance Company	U.S. District Court, District of Oregon	2025	Insurance dispute; dismissed. No relevance to thesis.
Institute for Free Speech v. Jarrett	U.S. District Court, District of Oregon	2025	First Amendment challenge unrelated to criminal procedure or right to counsel.
State v. Lee	Oregon Court of Appeals	2025	Evidentiary issues in assault case; affirmed. No counsel or delay claims.
United States v. Walker	Oregon Court of Appeals	2022	Unrelated to thesis subject matter.
State ex rel. Schrunk v. Walker	Oregon Court of Appeals	1985	Procedural issues unrelated to systemic counsel shortages.
Tucker v. Nink	Oregon Court of Appeals	1994	Ineffective assistance claims raised but not connected to systemic strain or institutional failure.
Tatum v. Moody	Missouri Court of Appeals	2012	Unrelated to thesis.
Weber v. Shelley	California Court of Appeals	2003	Unrelated to thesis.
State v. McCoy	Oregon Supreme Court	1974	Unrelated criminal appeal.
Corbitt v. New Jersey	U.S. Supreme Court	1978	Mentions counsel tangentially; no systemic delay or structural failure.
Khatib v. County of Orange	Unknown Court	2009	No right-to-counsel or speedy-trial claims; unrelated criminal issues.
State v. Hirsch	Oregon Court of Appeals	2003	Police interrogation without counsel; individual rights issue rather than systemic breakdown. Right to firearms issues.
Cleveland v. Goin	Oregon Court of Appeals	1983	Public defender contract dispute. While related to public defense structurally, it does not involve judicial enforcement of Sixth Amendment rights in active criminal proceedings.
State v. Barnes	Oregon Court of Appeals	1903	Improper jury instructions.

State v. McLean	Oregon Court of Appeals	1976	Unrelated criminal issues.
State v. Bowman	Oregon Court of Appeals	1999	Challenge to sentence length.
Owens v. Duryee	Oregon Court of Appeals	1979	Plea and sentencing issues unrelated to systemic counsel shortage.
State v. Walker	Oregon Court of Appeals	2024	Witness tampering issues.
State v. Rathie	Oregon Court of Appeals	1921	General conviction appeal.
State v. Peters	Oregon Court of Appeals	1993	Self-representation request ultimately denied; no systemic issue.
State v. Moen	Oregon Court of Appeals	1991	Hearsay evidentiary issues.
State ex rel. Lowrey v. Merryman	Oregon Supreme Court	1988	Excessive bail analysis.
State v. Sieckmann	Oregon Court of Appeals	1962	Speedy-trial doctrine raised from prosecution perspective; not related to defense collapse.
State v. Thomas	Oregon Court of Appeals	1991	Hearsay evidentiary issues.
State v. Gerhardt	Oregon Court of Appeals	2012	Restitution amount dispute.
State v. Hambleton	Oregon Court of Appeals	1964	Witness impeachment issues.
State v. Baranovich	Oregon Court of Appeals	2023	Routine appellate arguments without systemic relevance.
State v. Drew	Oregon Court of Appeals	2020	Unrelated to thesis.
State v. Potter	Oregon Court of Appeals	2010	Double jeopardy argument based on charging structure.
Nissel v. Pearce	Oregon Supreme Court	1973	Credit for time served dispute.
State v. Endres	Oregon Court of Appeals	2007	Return of seized property; procedural issue.

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