

# **IN DEFENSE OF PUBLIC ACCESS TO JUSTICE**

## **AN ASSESSMENT OF TRIAL-LEVEL INDIGENT DEFENSE SERVICES IN LOUISIANA 40 YEARS AFTER *GIDEON***

*March 2004*

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## Chapter I Introduction

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*“The poor quality of indigent defense is largely ignored by the public and by policy-makers. After all, it’s about people accused of crime who are presumed guilty. They’re poor people, often unattractive, inarticulate, with no apparent constituency and no voice in public policy....”*

*“As one maritime lawyer commented to me, even a cargo claim over soggy bags of coffee beans gets a better defense than a person capitally charged in Louisiana....”*

*- Judge Helen “Ginger” Berrigan, United States District Court  
Eastern District of Louisiana, October 31, 2003<sup>1</sup>*

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### *The Constitutional Right to Counsel in Criminal Cases*

As manifested in the Pledge of Allegiance, a commitment to justice for all is the cornerstone of the American social contract and our democratic system. We entrust our government with the administration of a judicial system that guarantees equal justice before the law -- assuring victims, the accused and the general public that resulting verdicts are fair, correct, swift and final.

In *Gideon v. Wainwright*, 372 U.S. 335 (1963), the United States Supreme Court concluded that “reason and reflection require us to recognize that in our adversary system of criminal justice, any person haled into court, who is too poor to hire a lawyer, cannot be assured a fair trial unless counsel is provided for him.” Declaring it an “obvious truth” that “lawyers in criminal courts are necessities, not luxuries,” the Court ruled that states must provide counsel to indigent defendants in felony cases. That mandate has been consistently extended to any case that may result in a potential loss of liberty.<sup>2</sup>

### *The Louisiana Constitution & the Commitment to Equal Justice*

The right to counsel in criminal cases is also enshrined in the Louisiana State Constitution. Section 1 states that there are only three legitimate ends of government: to secure justice for all, to preserve peace, and to protect the rights and promote the happiness and general welfare of the people. In enumerating these rights, Section 13 states that any person who is indigent and has been arrested or detained in connection with the investigation or commission of any offense, has a right to court appointed

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<sup>1</sup> For full text of speech, please see: [www.criminaljustice.org/public.nsf/newsreleases/2003mn032?opendocument](http://www.criminaljustice.org/public.nsf/newsreleases/2003mn032?opendocument).

<sup>2</sup> *Gideon* established the right to counsel for felony trials. Subsequent cases extend that right to: direct appeals - *Douglas v. California*, 372 U.S. 353 (1963); custodial interrogation - *Miranda v. Arizona*, 384 U.S. 436 (1966); juvenile proceedings resulting in confinement - *In Re Gault*, 387 U.S. 1 (1967); critical stages of preliminary hearings - *Coleman v. Alabama*, 399 U.S. 1 (1970); misdemeanors involving possible imprisonment - *Argersinger v. Hamlin*, 407 U.S. 25 (1972); and misdemeanors involving a suspended sentence – *Shelton v. Alabama*, 535 U.S. 654 (2002).

counsel “at each stage of the proceedings.” Accordingly, the legislature is directed to “provide for a uniform system for securing and compensating qualified counsel for indigents.”<sup>3</sup>

*Louisiana’s History of Systemic Deficiencies in the Delivery of the Right to Counsel*

Since the U.S. Supreme Court in *Gideon v. Wainwright* ordered the states to provide indigent defense services, Louisiana has funded the right to counsel primarily through court costs collected on state, local or municipal violations. Research conducted in Louisiana over the past thirty years consistently indicates that such a funding structure threatens the integrity of the state’s system of justice.<sup>4</sup>

In 1993, in *State v. Peart*, 621 So.2d 780 (La. 1993), the Louisiana Supreme Court found that there was a “general pattern...of chronic underfunding of indigent defense programs in most areas of the state.” The Supreme Court called upon the legislature to enact indigent defense reform or the Court “may find it necessary to employ the more intrusive and specific measures it has thus far avoided to ensure that indigent defendants receive reasonably effective assistance of counsel.”<sup>5</sup>

Shortly thereafter, the Supreme Court took action, creating the first statewide indigent defense commission. In 1994, the Louisiana Supreme Court established the Louisiana Indigent Defense Board (LIDB) by court rule. LIDB was responsible for promulgating and enforcing indigent defense qualification and performance guidelines throughout the state. On January 1, 1998, LIDB was transformed into the Louisiana Indigent Defense Assistance Board (LIDAB).<sup>6</sup> Among other responsibilities, LIDAB

<sup>3</sup> Louisiana Constitution, Article 1§13, available at: [www.legis.state.la.us/tsrs/tsrs.asp?lawbody=CONST&title=1&section=13](http://www.legis.state.la.us/tsrs/tsrs.asp?lawbody=CONST&title=1&section=13).

<sup>4</sup> Though research has been conducted by various study groups, some of whom were only studying indigent defense tangentially and some of whom were authorized by governmental agencies to study the right to counsel specifically, and though the research was conducted at various times, all unanimously concluded that the indigent defense funding system fails to uphold the intent of the *Gideon* decision and should be changed. See: The Institute for Judicial Administration, *A Study of the Louisiana Court System*, 1972 (“A flexible state-funded public defender system should be instituted, which would include a number of full-time regional public defenders who could be moved to assist any court.” p. 114); The American Judicature Society, *American Judicature Society, Modernizing Louisiana’s Courts of Limited Jurisdiction*, 1973 (“Louisiana should establish a statewide system of public defender offices...to assure that indigent defendants are afforded their constitutional right to counsel” p. 138); American University Criminal Courts Technical Assistance Project, *An Evaluation of Indigent Criminal Defense Services in Louisiana and a Proposal for a Statewide Public Defender System*, 1974 (“Even if the Indigent Defender Boards were substantially funded, they could not meet the demands (for the right to counsel) on a statewide basis.”); The State of Louisiana Supreme Court Judicial Counsel’s Statewide IDB Commission, *Study of the Indigent Defender System in Louisiana*, 1992, prepared by The Spangenberg Group (“The indigent defense funding in Louisiana is hopelessly under funded in virtually every judicial district in the state” p. 38); The American Bar Association, Juvenile Justice Center, *The Children Left Behind: An Assessment of Access to Counsel & Quality of Representation in Delinquency Proceedings in Louisiana*, 2001 (“Recommendation 1: Increase the resources available to support representation in delinquency proceedings” p. 93); and, The American Bar Association, Juvenile Justice Center, *The Children Left Behind: A Review of the Status of Defense for Louisiana’s Children & Youth in Delinquency Proceedings – Summary Update*, 2002 (“The lack of adequate funding is a pervasive and dire reality of the entire indigent defense system in Louisiana” p. 16).

<sup>5</sup> *State v. Peart*, 621 So.2d 791 (La. 1993). The inadequacy of the available local funding streams to generate enough revenue to ensure competent representation resulted in public defender Rick Tessier of the New Orleans Indigent Defender Program filing a motion in District Court stating that he was unable to provide effective representation to his indigent defense clients due to the combination of a lack of resources and overwhelming caseloads. The hearings on the case showed Mr. Tessier carried caseloads far in excess of national standards, and had little or no funds for experts or investigatory resources, among other things. Based on the overwhelming factual evidence, the district judge found the New Orleans indigent defense system to be unconstitutional.

<sup>6</sup> LIDAB is governed under La. Revised Statutes, Chapter XV § 151.

awards “District Assistance Fund (DAF)” grants to local judicial districts that strive toward complying with the LIDAB standards. Although the immediate attainment of LIDAB standards is not a mandatory requirement for participation in the financial assistance program, there is a requirement that the local indigent defense administration assent to the standards as goals to be immediately worked toward and to be achieved over time.<sup>7</sup>

*Current Opportunities to Address the Continuing Inadequacy of Louisiana’s Indigent Defense Services in the 10<sup>th</sup> Anniversary of State v. Peart*

The year 2003 marked the 10<sup>th</sup> anniversary of the *Peart* decision and the beginning of state involvement in the delivery of indigent defense services.<sup>8</sup> Despite reform efforts, significant challenges remain in protecting the right to counsel for both adults and juveniles.<sup>9</sup>

In 1967, the U. S. Supreme Court held in *In Re Gault* that juveniles have the same right to counsel as adults. The standard of representation outlined in *Gault* has been established over the intervening decades in 19 volumes of Juvenile Justice Standards promulgated by the American Bar Association Institute of Judicial Administration.<sup>10</sup> On February 27, 2003, the U.S. Department of Justice informed then Louisiana Governor M.J. “Mike” Foster, Jr., of its on-going investigation into whether juveniles with cognitive impairments are waiving their right to counsel in delinquency proceedings in violation of the U.S. Constitution and federal laws.<sup>11</sup>

Three months later, the Louisiana State Bar Association passed a resolution in honor of the 40<sup>th</sup> anniversary of the *Gideon* decision that called into question the current adequacy of adult indigent defense services in the state.<sup>12</sup> The resolution proclaimed,

<sup>7</sup> *Louisiana Standard on Indigent Defense*, Chapter 1, Standards Relating to the Performance of Indigent Defense Systems: “Purpose and Scope of Standard – These standards provide recommended and aspirational guidelines for the consideration and use of district indigent defender boards in providing quality services to their indigent clients. The immediate attainment of these standards by a district indigent defender board is not a mandatory requirement for participation in the financial assistance programs of the Louisiana Indigent Defender Board. However, a district indigent defender board’s assent to these standards, as goals to be immediately worked toward and to be achieved over time, is a requirement for such participation.”

<sup>8</sup> The state of Louisiana did make a contribution of \$10,000 to local judicial district indigent defense boards in 1973 pursuant to Louisiana Revised Statute Chapter XV §146(2)c. Though the statute has never been repealed, the state has never again contributed such funding to the local level. Thus, the post-*Peart* LIDB and LIDAB district assistance funds were the beginning of sustained state funding of a small portion of indigent defense services.

<sup>9</sup> In addition to the issues delineated in this section, NLADA notes that there is a significant number of *Peart* petitions being litigated across the state, including: *State v. Donald Ray Clifton*, Criminal Docket No. 265,106, currently pending in the 9th Judicial District Court, Parish of Rapides, State of Louisiana; *State v. Dolores Mechelle Jones*, Criminal Docket No. 265,106, currently pending in the 9th Judicial District Court, Parish of Rapides, State of Louisiana; *State v. Marklin Scalisi*, Criminal Docket No. 270,297, currently pending in the 9th Judicial District Court, Parish of Rapides, State of Louisiana; and, *State v. Adrian Citizen*, Criminal Docket No. 22,815-02, 14th Judicial District Court, Parish of Calcasieu, State of Louisiana.

<sup>10</sup> See key provisions relating to juvenile defense, indexed in the U.S. Department of Justice, *Compendium of Standards for Indigent Defense Systems*, Volume V at [www.ojp.usdoj.gov/indigentdefense/compendium/](http://www.ojp.usdoj.gov/indigentdefense/compendium/).

<sup>11</sup> The U.S. Department of Justice investigation is being conducted pursuant to the Violent Crime Control & Law Enforcement Act, 42, U.S.C. § 14141.

<sup>12</sup> See Appendix A (page 69) for LSBA resolution.

“State government has created a system in which the loss of one’s liberty may be more dependent on a person’s income level and the jurisdiction in which the crime is alleged to have happened than on the factual merits of the case.” Besides the potential harm to individual defendants, the LSBA resolution also noted that the funding and structure of indigent defense services produces systemic inefficiencies and wastes limited taxpayer resources throughout other components of the criminal justice system.<sup>13</sup> And whereas one of the principle missions of LSBA is to “assure access to and aid in the administration of justice,” the resolution urged all three branches of Louisiana state government to establish a “Blue Ribbon Commission to develop a strategic plan for indigent defense system reform and set a timetable for implementation.”

On the heels of the LSBA resolution, the Louisiana House of Representatives passed a concurrent resolution during the close of the 2003 regular session. Mirroring much of the LSBA resolution, House Resolution 151 calls upon the state to rededicate itself to the “promise of equal justice for all, regardless of income” by establishing a Louisiana Task Force on Indigent Defense Services (Task Force).<sup>14</sup> The Louisiana Senate soon joined the call for reform, offering their own resolution to create a blue ribbon task force to “study the system in Louisiana of providing legal representation to indigent persons who are charged with violations of criminal laws” and present findings and recommendations for legislative change.<sup>15</sup> The composition of the Task Force in Senate Resolution 112 reflects the importance with which the Legislature views the job at hand. Besides having all three branches of state government represented, the Senate resolution includes business leaders, deans of the four law schools, religious leaders, and people from social services and legal services backgrounds.<sup>16</sup> The Task Force is set to convene and begin its work in the early part of 2004.

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<sup>13</sup> “[T]he lack of [indigent defense] resources has effectively barred Public Defenders from providing counsel at the early stages of the prosecution, resulting in overcrowding in local jails due to the large scale detention of accused persons prior to their indictment and creating serious problems for Parish government and local Sheriffs.” *Supra* note 12.

<sup>14</sup> The resolution was introduced by a bipartisan, geographically-diverse group of Representatives: L. Jackson (D – District 2), Alario (D. – District 83), K. Carter (D. – District 93), Cazayoux (D. – District 18), Gallot (D. – District 11), Green (D. District 87), Hunter (D. – District 17), M. Jackson (D. – District 61), LaFleur (D. – District 38), Landrieu (D – District 89), Martiny (R. – District 79), Murray (D. – District 96), Richmond (D. – District 101) and Townsend (D. – District 23). See Appendix B (page 73) for text of HR 151.

<sup>15</sup> Senate Resolution 112 was introduced by Senator C. Jones (D. – District 34). See Appendix C (page 77) for text of SR 112.

<sup>16</sup> The Task Force is composed of 31 members or their designees: The Chief Justice of the Louisiana Supreme Court; the President of the Conference of Court of Appeals Judges; President of the Louisiana District Judges Association; President of the Louisiana Council of Juvenile and Family Court Judges; President of the Louisiana City Court Judges Association; President of the Council for a Better Louisiana; Executive Director of the Louisiana Interchurch Conference; President of the Louisiana AFL-CIO; President of the Louisiana Association of Business and Industry; the Deans of the four Law Centers in Louisiana; the Governor of Louisiana; the Louisiana Commissioner of Administration; President of the Louisiana Public Defender Association; President of the Louisiana Criminal Defense Lawyers Association; President of the Louisiana State Bar Association; Director of the Louisiana State Law Institute; President of the Louisiana Legal Services Corporation; President of the Louisiana Chapter of the Louis A. Martinet Society; President of the Louisiana Association of Women Attorneys; Secretary of the Louisiana Department of Social Services; President of the Louisiana Senate; Speaker of the Louisiana House of Representatives; Chairman of the Louisiana Senate Committee on Finance; Chairman of the Louisiana House Committee on Appropriations; and, Chairmen of the Senate Committee on Judiciary C and the House Committee on Administration of Criminal Justice.

### *The Current Study*

In the summer of 2002, the National Legal Aid & Defender Association (NLADA),<sup>17</sup> the National Association of Criminal Defense Lawyers (NACDL),<sup>18</sup> and the American Bar Association's Standing Committee on Legal Aid & Indigent Defendants (ABA/SCLAID)<sup>19</sup> were all contacted by various constituencies within Louisiana regarding their concerns about the adequacy of indigent defense services in the state. NLADA and NACDL staff subsequently met with and/or held discussions with state legislators, members of the Louisiana Public Defender Association (LPDA),<sup>20</sup> the Louisiana Indigent Defense Assistance Board (LIDAB),<sup>21</sup> the Louisiana Association of Criminal Defense Lawyers (LACDL),<sup>22</sup> and others, to assess the serious Constitutional concerns raised regarding the right to counsel in the state.

In April 2003, staff from all three national organizations testified at the State Capitol before LIDAB to report on their preliminary findings. NLADA staff began the testimony by establishing the organization's recognized leadership in the promulgation of national indigent defense standards and gave an overview of Louisiana's indigent defense system from a national perspective.<sup>23</sup> ABA/SCLAID staff presented the *Ten Principles of*

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<sup>17</sup> The National Legal Aid and Defender Association (NLADA) is a national, non-profit membership association dedicated to quality legal representation for people of insufficient means. Created in 1911, NLADA has been a leader in supporting equal justice for over ninety years. NLADA currently supports a number of initiatives, including the American Council of Chief Defenders (ACCD), a leadership forum that brings together the top defender executives nationwide, and the National Defender Leadership Institute (NDLI), an innovative training project to support current managers and develop future leaders. NLADA is a recognized leader in the promulgation of indigent defense standards and the mechanisms for evaluating a jurisdiction's compliance against them. For more information please see: [www.nlada.org](http://www.nlada.org).

<sup>18</sup> The National Association of Criminal Defense Lawyers (NACDL) is the preeminent organization in the United States advancing the mission of the nation's criminal defense lawyers to ensure justice and due process for persons accused of crime or other misconduct. A professional bar association founded in 1958, NACDL's more than 10,000 direct members -- and 79 state and local affiliate organizations with another 28,000 members -- include private criminal defense lawyers, public defenders, active U.S. military defense counsel, law professors and judges committed to preserving fairness within America's criminal justice system. For more information please see: [www.nacdl.org](http://www.nacdl.org).

<sup>19</sup> Since 1920, the American Bar Association's Standing Committee on Legal Aid and Indigent Defendants has advocated for and assisted in providing legal services to indigent persons. SCLAID is active in improving state systems for providing defense services to indigent persons charged with crime. Moreover, it provides technical assistance on the systemic improvement of indigent defense systems to state and national policy-makers, bar associations and the judiciary. *Overview of ABA Activities, January 2003*. For more information please see: [www.abanet.org](http://www.abanet.org).

<sup>20</sup> David J. Carroll, Director of Research & Evaluations for the Defender Legal Services Division of NLADA attended the LPDA meeting on February 7, 2003 in St. Francisville, Louisiana.

<sup>21</sup> Mr. Carroll met with Mr. Ed Greenlee, Executive Director of LIDAB, Ms. Marsha Oliver, LIDAB Staff Attorney, and Mr. Jim Looney, Director of the Louisiana Appellate Project at the February LPDA meeting. Mr. Greenlee was also present at an LACDL meeting that NACDL and NLADA representatives attended in New Orleans on February 20, 2003. NLADA and NACDL representatives testified at a LIDAB hearing on April 8, 2003.

<sup>22</sup> NLADA, ABA/SCLAID and NACDL staff met with LACDL in New Orleans on February 20, 2003.

<sup>23</sup> Mr. Carroll represented NLADA at the hearing. The following is a list of NLADA indigent defense standards: The Ten Principles of a Public Defense Delivery System (adopted by the ABA, 2002); Defender Training and Development Standards (NLADA, 1997); Performance Guidelines for Criminal Defense Representation (NLADA, 1995); Indigent Defense Caseloads and Common Sense: An Update (NLADA, 1994); Standards for the Administration of Assigned Counsel Systems (NLADA, 1989); Standard for the Appointment and Performance of Counsel in Death Penalty Cases (NLADA, 1988; ABA, 1989); Guidelines for Negotiating and Awarding Contracts for Criminal Defense Services (NLADA, 1984; ABA, 1985); Standards and Evaluation Design for Appellate Defender Offices (NLADA, 1980); Evaluation Design for Public Defender Offices (NLADA, 1977); and Guidelines for Legal Defense Systems in the

a *Public Defense Delivery System (Ten Principles)*, a set of standards which “constitute the fundamental criteria to be met for a public defense delivery system to deliver effective and efficient, high quality, ethical, conflict-free representation to accused persons who cannot afford to hire an attorney.”<sup>24</sup> As presented, the purpose of the *Ten Principles* is to distill the existing voluminous national standards for indigent defense systems down to their most basic elements, in a succinct form that busy officials and policymakers can readily review and apply. The NLADA representative then discussed the state’s substantial noncompliance with the ABA and NLADA standards. The NACDL representative<sup>25</sup> testified that numerous jurisdictions have been sued for failure to provide adequate defense services to the poor, and that Louisiana is vulnerable to similar litigation.<sup>26</sup>

Based on this initial assessment, NACDL and NLADA proposed further investigation and first-hand courtroom observations of indigent defense practices, including conducting interviews with criminal justice representatives and collecting statistical data in a Louisiana Parish prior to the convening of the Task Force.<sup>27</sup>

NLADA developed a work plan for a limited study of indigent defense services in Louisiana. Because previous indigent defense studies have examined more populous jurisdictions in Louisiana,<sup>28</sup> we chose to focus the current study on a rural Parish to understand how public defense services are provided in non-urban jurisdictions. NACDL secured local and national funding<sup>29</sup> to conduct this study. NACDL administered the project while NLADA conducted the fieldwork and wrote the report.

Avoyelles Parish was selected for the site visit based upon background research concerning its population size, economic profile, its status as the sole Parish in the Judicial District, and availability of interviewees. Avoyelles is a rural parish covering

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United States (National Study Commission on Defense Services, U.S. Department of Justice, 1976). Such standards were gathered into the first-ever National Compendium of Standards for Indigent Defense Systems by the U.S. Department of Justice, with NLADA assistance, in 2000. [www.ojp.usdoj.gov/indigentdefense/compendium/](http://www.ojp.usdoj.gov/indigentdefense/compendium/).

<sup>24</sup> The *Ten Principles of a Public Defense System* is based on a paper by James Neuhard, State Appellate Defender of Michigan and former NLADA President and H. Scott Wallace, NLADA Director of Defender Legal Services, which was published in December 2000 in the *Compendium of Standards for Indigent Defense Systems* ([www.ojp.usdoj.gov/indigentdefense/compendium/](http://www.ojp.usdoj.gov/indigentdefense/compendium/)). The *Ten Principles* is available at: [www.abanet.org/legalservices/downloads/sclaid/indigentdefense/tenprinciplesbooklet.pdf](http://www.abanet.org/legalservices/downloads/sclaid/indigentdefense/tenprinciplesbooklet.pdf) and is attached as Appendix D (page 81) of this report. Ms. Shubhangi Deoras, Assistant Counsel for ABA/SCLAID presented the *Ten Principles* at the hearing.

<sup>25</sup> Ms. Kathryn Jones, Indigent Defense Counsel participated on behalf of NACDL.

<sup>26</sup> See minutes from the LIDAB meeting, Louisiana Senate Committee Room 1, Baton Rouge, April 8, 2003. <http://www.lidab.com/Minutes/2003/4-8-03.htm>

<sup>27</sup> For a variety of reasons to be detailed in this report, Louisiana has a dearth of objective indigent defense data and statistics.

<sup>28</sup> See: Kurth, Michael M., Ph.D. and Daryl V. Burckel, DBA & CPA, *Defending the Indigent in Southwest Louisiana*, July 2003; The Spangenberg Group, *The Orleans Indigent Defender Program: An Overview*, February 1997; The American Bar Association, Bar Information Program, *A Study of the Operation of the Indigent Defense System in the 19<sup>th</sup> Judicial District, East Baton Rouge, Louisiana*, prepared by The Spangenberg Group, October 1992.

<sup>29</sup> Funding sources include: The American Bar Association’s Gideon Initiative, National Association of Criminal Defense Lawyers, and Louisiana Association of Criminal Defense Lawyers. A grant from the Open Society Institute allows NLADA to conduct field research and evaluations at reduced daily rates.

832 square miles in central Louisiana.<sup>30</sup> Ranked by population, Avoyelles Parish is the 29th most populated of the 64 parishes. People of African descent comprise 29.5% of the population of Avoyelles (total population: 41,458). Median household income in Avoyelles Parish is \$23,851, which is 26.8% lower than the state median (\$32,566) and 43.2% below the national median (\$41,999). The per capita income is \$12,146, and 25.9% of the population lives below the national poverty level (6.3% higher than the state average, which is 7.2% higher than the national average). When poverty levels are this high, our experience has been that the vast majority of defendants in criminal cases qualify for indigent defense services. Additionally, nearly 21% of Avoyelles Parish residents speak a language other than English as their primary tongue and slightly less than 60% of people over 25 years of age finished high school. Such statistics usually indicate that more attorney time is needed to explain, or have an interpreter explain, all information to a defendant so that (s)he can make an informed decision about a criminal case, including any collateral consequences of pleading guilty.

### *Methodology*

Recognizing that effective public policy depends upon the effective implementation and enforcement of said policy, NLADA has played a leadership role in both the development of national standards for public defense systems and processes for evaluating a jurisdiction's compliance with them. The concept of using standards to address quality concerns is not unique to the field of indigent defense. In fact, the strong pressures of favoritism, partisanship, and/or profits on public officials underscore the need for standards to assure the fundamental quality in all facets of government. For instance, realizing that standards are necessary to both compare bids equitably and to assure quality products, policy-makers long ago standardized ceased taking the lowest bid to build a hospital, school or a bridge and required winning contractors to meet minimum quality standards of safety.

With proper evaluation procedures, standards help to assure professionals' compliance with national norms of quality in areas where the government policy-makers themselves may lack expertise. In the field of indigent defense, standards-based assessments have become the recognized norm for guaranteeing the adequacy of criminal defense services provided to the poor.<sup>31</sup> NLADA standards-based assessments utilize a modified version of the Pieczenik Evaluation Design for Public Defender Offices, which has been used since 1976 by NLADA and other organizations, such as the National Defender Institute and the Criminal Courts Technical Assistance Project of the American University Justice Programs Office. The design incorporates reviewing budgetary, caseload and organizational information from a jurisdiction in addition to a site visit.

The current NLADA site assessment methodology employs the national standards as an objective measurement of an individual organization's mechanisms for effectuating key requirements of an indigent defense system including: independence, accountability, training, supervision, effective management, fiscal controls, competent representation,

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<sup>30</sup> The background data on Avoyelles Parish in this paragraph was obtained from the U.S. Census Bureau. For more information please see: [www.census.gov](http://www.census.gov).

<sup>31</sup> For instance, see: NLADA, *Indigent Defense Services in Venango County (Franklin), Pennsylvania*, March 2002; NLADA, *Evaluation of the Public Defender Office: Clark County (Las Vegas), Nevada*, March 2003, available at: [www.nlada.org/Defender/Defender\\_Evaluation](http://www.nlada.org/Defender/Defender_Evaluation); and, NLADA, *A Pilot assessment of the Office of the Public Defender for Santa Clara County, California (San Jose)*, December 2003.

and workload. In developing a standards-based assessment methodology for the Louisiana site visit, NLADA decided to look first at the macro-level – i.e. the general problems facing all Judicial Districts – before exploring the specific problems manifested at the micro-level in the 12<sup>th</sup> Judicial District.

NLADA put together a site-visit team of professional researchers and leading public defense practitioners from the American Council of Chief Defenders to conduct in-court observations and interviews with defense providers and other key players in the local criminal justice system, including a District Judge, the District Attorney, the Sheriff, the local Indigent Defense Board, and others. On-site work was conducted on September 15-17<sup>th</sup>, 2003. The four-person research team consisted of David J. Carroll,<sup>32</sup> Robert Boruchowitz,<sup>33</sup> Fern Laethem<sup>34</sup> and Phyllis Subin.<sup>35</sup>

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<sup>32</sup> David Carroll joined NLADA as Director of Research and Development in January 2002. Since joining NLADA, Mr. Carroll co-authored a report on indigent defense services in Venango County, Pennsylvania, led an on-site assessment of the public defender office in Clark County (Las Vegas), Nevada, provided consultation services for the Maryland State Public Defender, and co-authored a report for the U.S. Department of Justice on the Implementation and Impact of Indigent Defense Standards. For five and a half years, Mr. Carroll worked as a Senior Research Associate & Business Manager for the Spangenberg Group (TSG). TSG is a national and international research and consulting firm specializing in criminal justice reform. Since 1985, TSG has been the research arm of the American Bar Association on indigent defense issues.

Mr. Carroll directed numerous projects on behalf of TSG, including: a jail-planning study for Pierce County (Tacoma) Washington; a study of indigent defense cost recovery efforts in Jefferson and Fayette Counties, Kentucky (Louisville and Lexington); a statewide assessment of West Virginia's Public Defender Services; and principal analysis on a statewide public defender, court and prosecutor case-weighting study in Tennessee. He provided analysis and re-design of the New York Legal Aid Society's Criminal Defense Division and Criminal Appeals Bureau's case management information systems. Mr. Carroll also was chosen to provide on-site technical assistance to statewide Task Forces in Illinois, Nevada, Alabama, and Vermont under the auspices of the American Bar Association and the U.S. Department of Justice, Bureau of Justice Assistance.

<sup>33</sup> Robert Boruchowitz has been the Executive Director of The Defender Association, a private, non-profit public defender agency providing representation to indigent defendants in King County (Seattle), WA since 1978. In that capacity, Mr. Boruchowitz administers an office of approximately 130 staff, including 90 lawyers and a budget of approximately \$9.8 million. He co-counseled the first King County "sexual predator" commitment jury trial (1991), and appeal in state supreme court (1991-1993), and remand to superior court (1993-1994). He also argued the case before the U.S. Supreme Court [*Selig v. Young*, 531 U.S. 250 (2001)]. As President of the Washington Defender Association, Mr. Boruchowitz oversees a statewide membership organization representing more than 700 lawyers and staff representing indigent people accused of crimes. He co-authored NLADA's Model Indigent Defense Contract. In 2003, he was awarded a Soros Fellowship to study the denial of counsel in misdemeanor and juvenile cases in the United States.

<sup>34</sup> Fern Laethem began her legal career as a Deputy District Attorney in Sacramento, California and was later appointed as an Assistant U.S. Attorney for the Eastern District of California. In 1981 she opened a solo criminal defense practice that she maintained until 1989 when California Governor George Deukmejian appointed her as the State Public Defender of California to oversee direct appeals in capital cases statewide. Governor Pete Wilson reappointed her for two more terms. Ms. Laethem retired as State Public Defender in 1999 and accepted a position with Sacramento County as the Executive Director of Sacramento County Conflict Criminal Defenders.

Ms. Laethem has served as a member of the California Committee of Bar Examiners, the California Judicial Council Appellate Standing Advisory Committee and the California Council on Criminal Justice. Ms. Laethem participated as a trainer in NLADA Defender Manager training for many years and is a consultant to contract public defender programs in other jurisdictions. She was recently appointed by the California senate to serve on the California Commission on Special Education.

<sup>35</sup> Phyllis Subin completed two gubernatorial appointment terms as the Chief Public Defender for the State of New Mexico in 2003. In that capacity, she was the leader of New Mexico's largest statewide law firm, the New Mexico Public Defender Department, which had a budget of over \$30 million and which employed 320 staff members (160 attorneys) with over 100 contract attorneys. At the time of her first appointment, Ms. Subin was an Assistant Professor at the University of New Mexico School of Law and the director of the Criminal Defense Clinic. She has a long history in the teaching and training of law students and public defender attorneys. Following years as a trial and appellate public defender, Ms. Subin was the first Director of Training and Recruitment at the Defender Association of Philadelphia (PA), a large county public defender system, where she developed and taught a nationally recognized training program for lawyers and law interns.

*Acknowledgements*

Many individuals contributed to this study. First and foremost, NLADA wishes to thank the members of the Avoyelles Parish community who took time out of their busy schedules to meet with us. We are particularly indebted to District Judge William J. Bennett for allowing us unrestricted access to his courtroom and helping us to secure interviews with other criminal justice practitioners.<sup>36</sup> District Attorney Charles A. Riddle, III, provided on-going insights into courtroom activities as they occurred. The district attorney showed compassion for victims and defendants alike and treated all people in the courtroom with dignity. In separate interviews, the District Attorney told us of his concerns about due process and allowed NLADA to review his database for available indigent defense data. It is rare for a prosecutor to be as candid and reflective on indigent defense issues as Mr. Riddle. The Chair of the 12<sup>th</sup> Judicial District Indigent Defense Board (IDB), Retired Colonel Charles Jones, provided us with contact information, helped schedule interviews, provided us with access to IDB financial records and always responded to our requests for more information in a professional manner.

Other Louisianans provided NLADA with critical data and observations. Mr. Ed Greenlee, Director of LIDAB, shared with us key funding data and walked us through the state funding schematic. Mr. Paul Marx of the Louisiana Public Defenders Association invited NLADA to address an association meeting. This in turn gave NLADA a much broader understanding of the issues defenders face on a daily basis throughout the state and helped us put the Avoyelles Parish findings into a statewide context. Representatives of the Louisiana Association of Criminal Defense Lawyers assisted us with understanding many of the unique aspects of criminal defense practice in the state. Mr. George Steimel, a managing partner of a governmental affairs consulting firm, is especially recognized for helping us collect statewide data from numerous sources and providing a local contact for us with state government representatives.

Finally, NLADA would like to thank Ms. Kathryn Jones and Ms. Catherine Vanchiere Beane, the former and current NACDL indigent defense counsel. Ms. Jones tirelessly conducted the preliminary investigations into the adequacy of indigent defense services in the state, coordinated the meetings of the concerned Louisianans and secured funding for the study. Ms. Beane continued to uphold the high standard set by Ms. Jones and provided NLADA with timely critiques and advice. Though the report's findings are NLADA's alone, the oversight and guidance provided by NACDL proved to be insightful, challenging and beneficial to the final report.

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Ms. Subin served as chair of NLADA's Defender Trainer's Section, was instrumental in writing and developing NLADA's national Training and Development standards and assisted in the creation of NLADA's Defender Advocacy Institute. Ms. Subin has consulted privately for a number of indigent defense programs, including the Kentucky Department of Advocacy.

<sup>36</sup> See Appendix E (page 86) for Judge Bennett's letter to NLADA (August 18, 2003).

Chapter II  
**Indigent Defense Services in Louisiana:  
 State & Local Structure and Funding**

Before evaluating the adequacy of public defense services in Avoyelles Parish, it is important to present an overview of how the indigent defense system in the state is intended to function. Given Louisiana's complex structure of local government, a brief overview of local government is required first.

*Local Government Structure*

Every parish in Louisiana has a locally elected governing board known as a "police jury."<sup>37</sup> With the ratification of the 1974 Louisiana Constitution, parishes were empowered with broad home rule authority reversing the traditional concept of local government as a "creature of the state" possessing only delegated authority.<sup>38</sup> Because of the importance of local control of government, the State Constitution and Louisiana Revised Statutes do not designate how a police jury should organize to discharge its functions.<sup>39</sup> Article IV §5 of the State Constitution allows for the establishment of home rule authority to be adopted through a majority vote in an election. In those parishes with no home rule charter, the Constitution specifically grants the power to the electorate to grant to the police jury whatever legal power necessary to perform any requisite function.<sup>40</sup>

Despite this broad power and authority of local government, police juries have little control over the criminal justice expenditures they administer. State law sets the salaries of sheriffs, clerks of court, and district attorneys at certain minimum levels, though funding of these costs is the responsibility of local government. Therefore, though local control of government is a defining trait of Louisiana, police juries do not exercise as much power over criminal justice matters as their counterparts in many other states.

Moreover, police juries in all parishes have one common characteristic that poses a significant separation of powers issue at the local level, namely:

The police jury system vests both legislative and administrative functions in the same persons. The jury performs the legislative functions of enacting ordinances, establishing programs and setting policy. It also is an administrative body in that it is involved in preparing the budget, hiring and firing personnel, spending funds, negotiating contracts and in general, directing the activities under its supervision.<sup>41</sup>

Serving as both the legislative and administrative function, the police jury form of government does not permit for a strong local chief executive officer, like an administrative

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<sup>37</sup> In this regard, Louisiana is unlike every other state in the nation where the political subdivisions are known as counties. At the time of Louisiana's inclusion in the United States, the state did have 12 counties. The geographic size of these counties proved too difficult to administer effectively and the counties were divided into 19 parishes that mirrored many of the 21 ecclesiastical parishes established in 1762. See: <http://www.lpgov.org/facts.htm>

<sup>38</sup> Id.

<sup>39</sup> Id.

<sup>40</sup> This is the model used in Avoyelles Parish.

<sup>41</sup> *Supra* note 37.

secretary or county manager. The result of this form of local government is that, in most parishes, the Sheriff is the elected official that maintains the most local control over government functions.

*Trial-Level Criminal Court Structure*

Crime is a significant problem for any policy-maker in the nation, whether at the state, federal or local level. Louisiana’s crime rates are among the highest in the country. For example, Louisiana ranks 22<sup>nd</sup> of the 50 states in population. In 2000, Louisiana had a total Crime Index of 5,422.8 reported incidents per 100,000 persons, ranking the state as having the fourth highest total Crime Index of the 50 states. For violent crime, Louisiana had a reported incident rate of 681.1 per 100,000 people. This ranked the state as having the 7th highest occurrence for violent crime among the states. In the same year, Louisiana had 12.5 murders per 100,000 people, ranking the state as having the highest murder rate in the country.<sup>42</sup>

The result is that the Louisiana court system is stretched to its limits simply to process the growing number of people entering the state’s criminal justice system each year.<sup>43</sup> Despite having 41 judicial districts covering the 64 local parishes, the Louisiana court system is not unified. Courts of limited jurisdiction are known alternatively as “City Court,” “Municipal Court,” or “Parish Court,” and have criminal jurisdiction over violations of parish and city ordinances.<sup>44</sup> These courts also have primary jurisdiction over all juvenile and family matters in those jurisdictions where no separate “Family and Juvenile Court” exists. There are two city courts in Avoyelles Parish (in the cities of Marksville and Bunkie). Significantly, there is no Family and Juvenile Court in the 12<sup>th</sup> Judicial District, leaving the two City Courts to perform the critical function of dispensing justice in delinquency proceedings.<sup>45</sup>

“District Courts” comprise the second level of the judiciary. City Court and District Court have concurrent jurisdiction over misdemeanor cases, while District Courts

<sup>42</sup> To complete the picture, Louisiana’s robbery rate was 168.5 ranking the state 8th highest for robbery. The state also had 466.6 aggravated assaults for every 100,000 people, the 6th highest among the states. For crimes against property, the state had a reported incident rate of 4,741.7 per 100,000 people, which ranked as the 5th highest. Louisiana has the 4th highest burglary rate in the nation. Larceny-theft was reported 3,229.9 times per 100,000 people in Louisiana, which is the 7th highest among the states. Vehicle Theft occurred 475.9 times per 100,000 people, the 10th highest among the states. All statistics are for the year 2000. (<http://www.disastercenter.com/crime/lacrime.htm>).

<sup>43</sup> In 2002, there were 531,858 criminal and traffic cases processed in Louisiana’s District Courts, an increase of nearly 10.5% over 1999’s total (481,347). The Supreme Court of Louisiana, *Annual Report 2002 of the Judicial Council of the Supreme Court*, 2003, available at: [www.lasc.org/press\\_room/annual\\_reports/reports/2002stats.pdf](http://www.lasc.org/press_room/annual_reports/reports/2002stats.pdf)

<sup>44</sup> There are also entities known as “Mayor’s Courts” or “Traffic Courts” with no criminal jurisdiction, except that Justices of the Peace serve as committing magistrates and for the issuance of peace bonds (i.e. an affidavit that a person has threatened or is about to commit a specified breach of the peace; if there is a finding of a sufficient threat, a magistrate can issue a summons or warrant).

<sup>45</sup> NLADA focused our research on adult representation, in part because of the extensive research that has already been done on the major problems with juvenile defense throughout the state. Nevertheless, it is not possible to completely separate adult and juvenile representation. In most instances in the state, the attorneys that are asked to represent juveniles in delinquency proceedings are the same ones handling adults in criminal cases. As a result, workload concerns, inadequate training, and other aspects of adult representation directly impact the quality of representation afforded to children. For more information on Louisiana’s juvenile justice system, please visit the American Bar Association, Juvenile Justice Center website ([www.abanet.org/crimjust/juvjus/home.html](http://www.abanet.org/crimjust/juvjus/home.html)) and The Juvenile Justice Project of Louisiana ([www.jjpl.org](http://www.jjpl.org)).

exclusively oversee all felony cases. By statute, the 12<sup>th</sup> Judicial District has two elected District Judges. These judges also hear appeals arising from the lower courts.

### *Local Indigent Defense Structure*

Louisiana Revised Statutes require each judicial district to form an indigent defender board (IDB).<sup>46</sup> Across the state, IDBs vary in size – but must have at least three members and no more than seven. The Avoyelles Parish IDB has four members. IDB members are selected by the district court from nominees provided by each bar association within the judicial district.<sup>47</sup> In the event no nominations are submitted by the bar association, a majority of the district court judges select the entire board. The board must reflect the racial and gender makeup of the judicial district involved.

Each district board is required to select one of the following procedures or any combination thereof for providing counsel for indigent defendants:<sup>48</sup>

1. *Assigned Counsel System* -- Appointment by the court from a list provided by IDB of volunteer attorneys licensed to practice law in the state. In the event of an inadequate number of volunteer attorneys, appointment shall be from a list provided by IDB of non-volunteer attorneys.<sup>49</sup> All appointments are supposed to be on a successive, rotational basis.
2. *Contract System* -- IDB may enter into a contract or contracts, on such terms and conditions as it deems “advisable” with one or more attorneys licensed to practice law in the state and residing in the judicial district to provide counsel for indigent defendants.
3. *Public Defender* -- IDB may employ a chief indigent defender and such assistants and supporting staff, as it deems necessary. The chief indigent defender is to be appointed for a period of three years and may not be a member of the board. IDB sets the salaries of the chief indigent defender, and all assistants and supporting personnel.

Ten parishes have created full-time public defender programs. The majority of the other parishes provide services through contracts with individual attorneys or a consortium of lawyers; at least two parishes use an assigned counsel system.

### *Local Indigent Defense Funding*

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<sup>46</sup> La. Revised Statutes, Title XV § 144.

<sup>47</sup> Elected officials, district attorneys, their employees, including assistant district attorneys, or prosecutors in any court shall not be permitted to serve on the district board. *Supra* note 46.

<sup>48</sup> La. Revised Statutes, Title XV § 145.

<sup>49</sup> Each district board is required to maintain a current panel of volunteer attorneys licensed to practice law in the state and must additionally maintain a current panel of non-volunteer attorneys under the age of fifty-five licensed to practice law in Louisiana and residing in the judicial district. The panel of non-volunteer attorneys shall not include any attorney who has been licensed to practice in Louisiana for thirty or more years. *Supra* note 48.

Each IDB is charged with administering the local indigent defense fund.<sup>50</sup> Though each IDB may accept, receive, and use public or private grants, a review of each judicial district’s financial audit reveals that it is rare that any IDB receives private grants.<sup>51</sup> Instead, funding for each IDB is garnered primarily through court costs and recoupment of costs from indigent defendants collected in the local judicial district.

Every court of original criminal jurisdiction<sup>52</sup> must remit to their local dedicated IDB account the monies collected on all state, local or municipal violations in which a defendant is convicted after a trial, enters a plea of guilty or nolo contendere, or forfeits bond on a monthly basis. The local IDB fee must be at least \$17.50, though it can be increased to \$35.00 by a majority vote of the judges of the courts of original jurisdiction.<sup>53</sup> Commonly referred to as “recoupment,” the court can order a defendant to pay for part of the cost of representation to the extent that a person is able to do so without causing undue financial hardship.<sup>54</sup>

The largest amount of the revenue has been traditionally garnered from assessing fees on traffic violations, under the assumption that those cases deal with offenders who can most afford to pay costs and fees. In Avoyelles Parish, the Office of the Sheriff is empowered as the tax and fee collection authority. In that role, the Sheriff is responsible for both the collection and dissemination of funds to the local IDB. Revenues that are not expended during the course of the year can be kept at the local level. No revenue garnered through court costs or recoupment revert back to a state or local general fund – essentially leaving cash reserves to be expended at some future time. The IDB accounts may accrue interest on unexpended monies, another source of revenue at the local level.

Although Louisiana Revised Statutes, Title XV §304 states that Parishes are responsible for all witness expenses upon approval of the District Court Judge overseeing the case, the statute was amended to make clear that nothing in the section “shall be construed to make parishes or the City of New Orleans responsible for the expenses associated with the costs, expert fees, or attorney fees of a defendant in a criminal

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<sup>50</sup> Indigent Defender Boards are governed under La. Revised Statutes, Title XV § 145.

<sup>51</sup> NLADA requested, received and reviewed the financial audits of every IDB for the years 1999-2002 through the Louisiana Office of the Legislative Auditor. All statewide financial analyses in this report are based on the review of these audits. NLADA also requested and received an electronic copy of the 12<sup>th</sup> Judicial District IDB’s financial bookkeeping system. The IDB in Avoyelles Parish use Intuit “Quickbooks”®. When possible, NLADA crosschecked state financial audits on the local software program. The Avoyelles Parish IDB did not receive any grant funding. Interviews with IDB members revealed that no grants were sought.

<sup>52</sup> Except in the town of Jonesville, in the city of Plaquemine, and in mayors' courts in municipalities having a population of less than five thousand.

<sup>53</sup> To participate in LIDAB’s district assistance program, the fee must be at least \$25. In the 12<sup>th</sup> Judicial District the fee is \$25. It is important to note that much of the criminal justice system receives similar funding from fees. Again the amount and number of agencies receiving criminal court fees varies between Parishes. In Avoyelles Parish the following agencies receive fees: the Sheriff (\$17.50); Clerk of Courts (\$7.50); District Attorney (\$10.00-\$20.00 depending on severity); The Louisiana Commission on Law Enforcement (\$6.00); District Court (\$10.00); CMIS Judicial Administrator (\$2.00); Police Jury (\$2.50); Coroner (\$10.00); Central Louisiana Criminal Detention (\$7.50); The 12<sup>th</sup> Judicial District Juvenile Detention Center (\$2.00); and, the North Louisiana Criminalistics Lab (\$10.00-\$50.00 depending on severity). In total, criminal defendants can be assessed as much as \$135.00 in court fees. List of fees obtained from the Office of Sheriff William O. Belt – 12<sup>th</sup> Judicial Disbursement Schedule (Last revised on April 2, 2001).

<sup>54</sup> The court may order payment in installments, or in any manner that it believes reasonable and compatible with the defendant’s financial ability. In courtroom observations conducted in Avoyelles Parish, defendants were routinely being assessed a flat \$125 fee to cover the cost of their representation.

proceeding.” As a result, police juries are not required to provide *any monetary assistance to their IDB*.

In 2003, the Louisiana Legislature enacted a bill allowing for another source of income at the local level. All defendants seeking the right to counsel must pay a \$40 application fee to be screened to determine indigency. The fee may be waived in cases in which paying the fee would produce undue hardship, though the bill also allows for the fee to be assessed at sentencing, or final disposition of the case, if there is a failure to pay upfront.

### *State Indigent Defense Structure*

The Louisiana Indigent Defense Assistance Board (LIDAB) is an Executive Branch Board of the State of Louisiana charged with: improving the criminal justice system and the quality of criminal defense services provided to individuals through a community-based delivery system; ensuring equal justice for all citizens without regard to race, color, religion, age, sex, national origin, political affiliation or disability; guaranteeing the respect for personal rights of individuals charged with criminal or delinquent acts; and upholding the highest ethical standards of the legal profession.<sup>55</sup>

LIDAB is governed by a nine-member board, all of whom must be attorneys with at least five years experience practicing in the state. No individual may be recommended, appointed, or serve on the board if he is an elected official, or employed by a law enforcement agency, or an office having any prosecutorial authority, or employed full-time by a court. The Governor has three appointments (including the chair), and the President of the Senate and the Speaker of the House each have three appointments. The Louisiana Association of Criminal Defense Lawyers, The Louisiana Public Defender's Association, and The Louisiana Trial Lawyers Association each have one ex-officio appointment.

The mission of LIDAB is to coordinate and improve the indigent defense system through education, specialized training, technical assistance, sound financial and administrative guidelines, case assistance and managed resource allocation. To accomplish this, LIDAB has expanded its services over the years to include the following:

1. *The Louisiana Appellate Project (LAP)* provides appellate services for indigent defendants in all felony appeals arising in those districts in which the indigent defender board has contracted with the LAP to supplement its staff with these services.
2. *The Capital Appeals Project (CAP)* is a separate section of the Louisiana Appellate Project. The attorneys handle only direct capital appeals to the Supreme Court of Louisiana and Writ Applications to the United States Supreme Court.
3. *The Capital Post-Conviction Project of Louisiana (CPCPL)* was created by LIDAB in response to a state statutory mandate to provide post-conviction

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<sup>55</sup> The LIDAB mission is available at [www.lidab.org](http://www.lidab.org). This resource was also used for information on LIDAB's expanded services to follow.

representation for persons sentenced to death. CPCPL provides assistance to those sentenced after the effective date of the legislation (1999), or unrepresented at the time.

4. *Regional Capital Conflict Panels (RCCP)* were created to handle conflict-of-interest cases in those districts that have a staffed public defender office (thereby creating a conflict in multiple-defendant capital cases). RCCP provides attorneys, a fact investigator and a penalty phase investigator in every case they accept.<sup>56</sup> Extraordinary expenses, such as psychiatrists, forensic experts and the like are not provided by LIDAB and must be funded through the local IDB or other sources.
  
5. *Juvenile Justice Project of Louisiana (JJPL)* is the leader in juvenile justice reform in the state. Though LIDAB does not account for JJPL’s entire funding,<sup>57</sup> they do provide money for the representation in juvenile delinquency appeals and modification hearings.

The LIDAB program that most directly impacts indigent defense services at the trial level is the “District Assistance Fund (DAF)” program. Each year, grants are awarded to local judicial districts to offset the cost of the right to counsel in trial level cases in which the right applies. Under rules adopted by LIDAB, participation in the DAF program is dependent on the local IDB’s working toward the implementation of LIDAB promulgated standards.<sup>58</sup> LIDAB standards mirror many of the national NLADA and ABA standards, and include:

1. Standards relating to the performance of the indigent defense system (whether public defender, assigned counsel or contract);
2. Standards relating to the early notification, assignment, and continues representation of indigent clients;
3. Standards relating to the performance of counsel providing representation to indigent defendants;
4. Standards relating to the provision of counsel to indigent persons accused of capital crimes;
5. Standards relating to the provision of counsel to indigent persons accused of non-capital crimes;
6. Standards relating to conflict of interests in the representation of indigent persons;
7. Standards relating to compensation of staff, contract and appointed counsel involved in indigent defense; and,

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<sup>56</sup> RCCP is also appointed in conflict situations in parishes that have contract systems. The reason for this is that many parishes in Louisiana do not have a sufficient number of capital certified attorneys to handle multi-defendant capital cases.

<sup>57</sup> JJPL is supported through monies from the Southern Poverty Law Center.

<sup>58</sup> *Louisiana Standard on Indigent Defense*, Chapter 1, Standards Relating to the Performance of Indigent Defense Systems. *Supra* note 7.

8. Standards relating to workload for counsel providing defense services to indigent defendants.<sup>59</sup>

Despite the requirement to work toward the implementation of standards, LIDAB is not a regulatory commission with powers to compel local jurisdictions to comply with its standards. As such, there is no ombudsperson at LIDAB to verify that progress is being made toward the goal of systemic improvement through the use of standards. Instead, each IDB applying for assistance must provide the following information to LIDAB no later than July 31<sup>st</sup> of each year:

1. A copy of the previous year's audit report or financial statement;
2. The total number of felony cases opened during the prior year;
3. The balance in the IDB account at the start of the prior year;
4. Total revenue collected during the same year;
5. Total expenditures; and,
6. The balance of the IDB account at the close of the year.

Based on this information, LIDAB uses a complex matrix to determine need. Parish IDBs that have more money in their dedicated accounts than they expended on indigent defense services in the previous year are precluded from receiving DAF funds. The available DAF funding is divided among all of the other applying parishes based on the number of reported felony cases, number of reported felony trials, and level of revenue in the IDB bank account at the close of the year – though the single most important factor in the matrix is “reported felony cases.”<sup>60</sup>

### *Statewide Indigent Defense Funding*

Significantly, the expansion of LIDAB responsibilities to include appellate and post-conviction capital programs was not matched with additional state funding. As such, the total dollars available for the DAF assistance to districts has decreased over the past decade. As recently as 1999, \$3.5 million dollars were disseminated to local parishes through the DAF program. In fiscal year 2003, that total had decreased by more than 16% (down to slightly more than \$2.9 million).<sup>61</sup>

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<sup>59</sup> LIDAB standards are available on their website at: [www.lidab.com/standards.htm](http://www.lidab.com/standards.htm).

<sup>60</sup> A more detailed assessment of the LIDAB DAF matrix, including examples to illustrate the required mathematical calculations, is included as Appendix F (page 88).

<sup>61</sup> In fiscal year 2003, 38% of LIDAB's total expenditure was spent on the DAF program (or \$2,935,096 of \$7,692,466). The balance was spent accordingly: LAP (\$975,000, or 13%); CAP (\$400,000, or 5%); RCCP & CPCPL (\$2,718,224, or 35%); and JJPL (\$320,980, or 4%). The remaining \$343,166 (4%) was expended on LIDAB administration, though a portion of this includes resources for interns in other LIDAB supported programs.

*Indigent Defense in the 12<sup>th</sup> Judicial District*

In 2002, the Avoyelles Parish IDB elected to change the structure of their indigent defense delivery system from a public defender system to a contract system.<sup>62</sup> Upon changing structure, three attorneys were contracted to provide services to all of the eligible indigent defense clients assigned to them by the court, on a rotational basis, for a single flat-fee. In July 2003, the IDB entered into a fourth contract. This fourth attorney is now paid to handle all misdemeanor and juvenile cases (including dependency proceedings) assigned to him by the courts, and all arraignment proceedings in felony cases, while the original three attorneys handle those felony cases surviving arraignment. Because of budget concerns, the three original attorneys accepted a pay cut in order to bring on the fourth attorney.

In direct violation of ABA Principle #8 and LIDAB Standard 1-3.2, there are no formal written indigent defense contracts in Avoyelles Parish.<sup>63</sup> All of the attorneys work part-time and are allowed to have private practices, both civil and criminal. Originally paid \$37,000 annually, the three post-arraignment felony attorneys are now each paid \$31,000 per year. The new attorney is compensated at \$19,200 per year. Because of the flat-fee structure, the attorneys must pay for all costs of running a law office out of these low fees, including: rent, computers, telephones, facsimile machines, copier, Internet services, legal research, office supplies, and, administrative support, among others.<sup>64</sup>

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<sup>62</sup> It should not be assumed by the reader that the 12<sup>th</sup> Judicial District ever had a “staffed public defender office” in the traditional sense of having staff attorneys and supervisors in addition to necessary support staff, like investigators, social workers, and professional paralegal workers. In fact, the staffed office functioned much like a contract model although the attorneys did receive some limited benefits. Additionally, the IDB paid for overhead expenses of office space, copiers, Internet services, etc.

<sup>63</sup> To effectuate the requirements of standards regarding indigent defense contracting, the U.S Department of Justice funded the preparation of a Model Contract for Public Defense Services by NLADA and the Criminal Courts Technical Assistance Project, “to help counties and states interested in contracting for indigent defense services identify and address issues regarding cost, accountability, workload, and quality of services” (see Bureau of Justice Assistance Bulletin, <http://www.ncjrs.org/pdffiles1/bja/185780.pdf>, at p. 4). Mr. Boruchowitz, consultant on the 12<sup>th</sup> Judicial District assessment, is one of the model contract’s primary authors. A hard copy is attached as Appendix G (page 90). An electronic version of the model contract is available on-line at: [www.nlada.org/DMS/Documents/1015619283.17/Full%20volume.doc](http://www.nlada.org/DMS/Documents/1015619283.17/Full%20volume.doc).

<sup>64</sup> In *State v. Wigley*, 624 So. 2d 425 (La. 1993), the Louisiana Supreme Court held that, in order to be reasonable and not oppressive, any assignment of counsel to defend an indigent defendant must provide for reimbursement to the assigned attorney of properly incurred and reasonable out-of-pocket expenses and overhead costs. Before appointing counsel to represent an indigent, the district court has the responsibility to determine that funds sufficient to cover the anticipated expenses and overhead are likely to be available to reimburse counsel. If the district court determines funds are not available to reimburse appointed counsel, it should not appoint members of the private bar to represent indigents.

A similar state court decision in Alabama also requires attorneys to be compensated for overhead expenditures and is illustrative to show how Louisiana’s IDBs subvert the *Wigley* decision by entering into flat-fee contracts. In Alabama, compensation rates are set by statute at \$60 per hour for in-court work and \$40 per hour for out of court work. Statutory language entitles attorneys in Alabama to any additional “reasonably incurred” expenses approved by the courts. In *James W. May v. State*, 672 So. 2<sup>nd</sup> 1310 (1995), the Alabama Supreme Court let stand a ruling of the Alabama Court of Criminal Appeals ordering the state to pay indigent defense attorneys’ overhead costs for “reasonably incurred” expenses. Setting the presumptive hourly overhead rate at \$30 an hour, the State of Alabama now pays attorneys \$90 per hour for in-court work.

Therefore, assuming that an indigent defense attorney worked half-time on indigent defense cases in Alabama (or 1,020 hours per year), the presumptive hourly overhead rate in *May* indicates that a half-time indigent defense attorney needs \$30,600 just to cover overhead in Alabama. Financial, cultural and regional similarities between Alabama and Louisiana suggest that attorneys in Louisiana have similar costs to maintain a law office. In contrast to Alabama, the post-arraignment felony contract attorneys are paid approximately \$30/hour (\$31,000/1,020 hours = \$30.39/hour, or the presumptive rate to cover overhead in Alabama). The misdemeanor and juvenile delinquency attorney is paid at a rate that is equivalent to \$18.82/hour (\$19,200/1,020 hours = \$18.82/hour).

Similarly, the attorneys must pay for the cost of litigation support, including: investigation, expert witnesses, and social service assistance.

In 2002, the most recent year for which complete financial data was available, the majority of IDB revenues in Avoyelles Parish came from court costs. In that year, the 12<sup>th</sup> Judicial District IDB received \$100,774 from the district court and two city court assessments, an amount equal to 68% of their total revenue (\$149,018). The state DAF grant accounted for an additional \$45,701, or 31% of their total revenue.<sup>65</sup>

In the same year, indigent defense expenditures for the 12<sup>th</sup> Judicial District totaled \$186,495, creating a deficit of \$37,477 for the year. The deficit was offset by decreasing the IDB dedicated account, from \$113,898 at the start of the year to a final amount of \$76,421 (or approximately 40% of the anticipated need for the ensuing year). It is important to note that the simple existence of *any* money in an IDB bank account at the close of the year is not an indication of the relative health of a local indigent defense system. This is because IDBs are precluded from expending all of their money and operating in the red. As such, there will always be *some* amount in an IDB account at the close of the year. Moreover, because of the unreliability of the primary indigent defense revenue stream (i.e. court costs) IDBs have no accurate way to predict their budgets from month to month, let alone for a full fiscal year. Because IDBs cannot operate on deficit spending and must guard against periods in which the money in their dedicated accounts would be less than their monthly costs, the IDBs often under-project revenue streams and operating budgets. And, because revenue does not flow to an IDB on a predictable basis, a significant year-end bank balance may be nothing more than a significant distribution of court cost revenue late in the year.<sup>66</sup>

As such, the simple existence of significant financial reserves in a judicial district in no way signifies that the district is satisfying its federal constitutional obligations under *Gideon*, only that the reliance on court costs as the primary funding mechanism creates disparity between parishes thereby undercutting the establishment of a uniform system throughout the state as required by the Louisiana Constitution.

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<sup>65</sup> An additional \$2,453 in miscellaneous revenue includes accrued interest on the indigent defense fund.

<sup>66</sup> NLADA does believe that a year-end bank balance that is far in excess of the previous year's total indigent defense expenditure, and far above the norm of other parishes, indicates a systemic disparity of resources between parishes, as will be shown in the next chapter.

Chapter III  
**Primary Findings:**  
**The Inadequate Funding & Lack of Independence  
of Louisiana’s Indigent Defense System**

***OVERALL FINDING:*** *In direct violation of the Louisiana Constitution, government (both state and local) has not created a “uniform system for securing and compensating qualified counsel for indigents” at “each stage of the proceeding.” Instead, Louisiana has constructed a disparate system that fosters systemic ineffective assistance of counsel due primarily to inadequate funding and a lack of independence from undue political interference. These two main systemic deficiencies produce numerous ancillary problems including a lack of oversight, training and supervision of those entrusted with the defense of the poor. When combined with the crushing caseloads public defenders are forced to carry, these factors prevent the state from securing justice for all, protecting the peace, and promoting the general welfare of its people.*

The problems found with the indigent defense system in Louisiana, as demonstrated by our research in Avoyelles Parish, are so severe and pervasive that the balance of this report will serve to detail the evidence to support our one overall finding (above). The indigent defense system in Louisiana is beyond the point of crisis and is so weakened in relation to the other criminal justice system components that it calls into question the ability of the entire criminal court system to dispense justice accurately and fairly. As U.S. Attorney General Janet Reno observed in 1999, “(i)f one leg of the system is weaker than the others, the whole system will ultimately falter.”<sup>67</sup> The failure of the system to secure justice for all should come as no surprise to policy-makers, as Louisiana’s indigent defense system has been studied over and over again and consistently has been found to be deficient in protecting the right to counsel.<sup>68</sup>

This chapter explores the two primary problems (inadequate funding and lack of independence) that produce the systemic ineffective assistance of counsel to be detailed in Chapter IV to follow. Where applicable, references to national and local standards have been cited to demonstrate the significant extent to which the state has failed to protect the rights of people of insufficient means faced with the potential loss of liberty in criminal proceedings. Also, where applicable, materials and observations from our field evaluation are referenced to provide the reader with context to understand how the right to counsel is routinely, consistently and systematically denied in Avoyelles Parish and throughout the state.

NLADA encourages the Louisiana Task Force on Indigent Defense to develop recommendations that will bring the Louisiana indigent defense system into compliance with the ABA *Ten Principles* and its constitutional obligations under *Gideon*. NLADA is prepared to assist the Task Force in accomplishing its mission.

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<sup>67</sup> U.S. Department of Justice, Office of Justice Programs, *Improving Criminal Justice Through Expanded Strategies and Innovative Collaborations: A Report of the National Symposium on Indigent Defense*, NCJ 181344, February 1999.

<sup>68</sup> *Supra*, note 4.

***Finding #1:*** *In direct violation of its constitutional obligations under Gideon and ABA Principle #2, the State of Louisiana fails to adequately fund indigent defense services. This results in a disparate funding system that fosters ineffective assistance of counsel in the parishes.*

In an effort to methodically analyze the Louisiana indigent defense funding structure, NLADA has broken down our first finding into four sub-sections to assist the reader in understanding the extent to which Louisiana stands alone in the nation in terms of the reasons for failing to comply with the state-funding mandate of *Gideon* and ABA Principle #2.

*1.1: Louisiana is the only state in the nation to attempt to fund the majority of its Constitutional obligation to provide indigent defense services through court costs.*

Since the U.S. Supreme Court in *Gideon* ordered the states to provide indigent defense services, 22 states have undertaken to fund indigent defense services entirely at the state level,<sup>69</sup> while another six states now fund at least 75% of all indigent defense costs.<sup>70</sup> Three other states fund at least fifty percent of the cost of defense services.<sup>71</sup> Louisiana and Alabama rely on a combination of state funding and court costs. The rest rely to a large extent on local funding or, in the case of Pennsylvania and Utah, rely on county funding exclusively (See Chart 3-1, page 21). This means that Louisiana and 27 other states are in violation of ABA Principle #2 that states: “Since the responsibility to provide defense services rests with the state, there should be state funding...”

Alabama and Louisiana are the only two states that attempt to fund their indigent defense systems through a combination of state funding and court costs. Though Alabama is categorized with Louisiana for funding overview purposes, there are critical differences between the two states’ indigent defense funding structures that deserve explanation. As in Louisiana, Alabama levies and imposes a fee, or “tax”, in every criminal case in district, juvenile or municipal court.<sup>72</sup> Unlike Louisiana, the revenue from these fees is remitted on a monthly basis to a “Fair Trial Tax ” fund administered by the State Treasury. This pooling of resources at the state level stands in contrast to Louisiana’s insistence on keeping generated revenues in the jurisdiction from which they were collected.<sup>73</sup>

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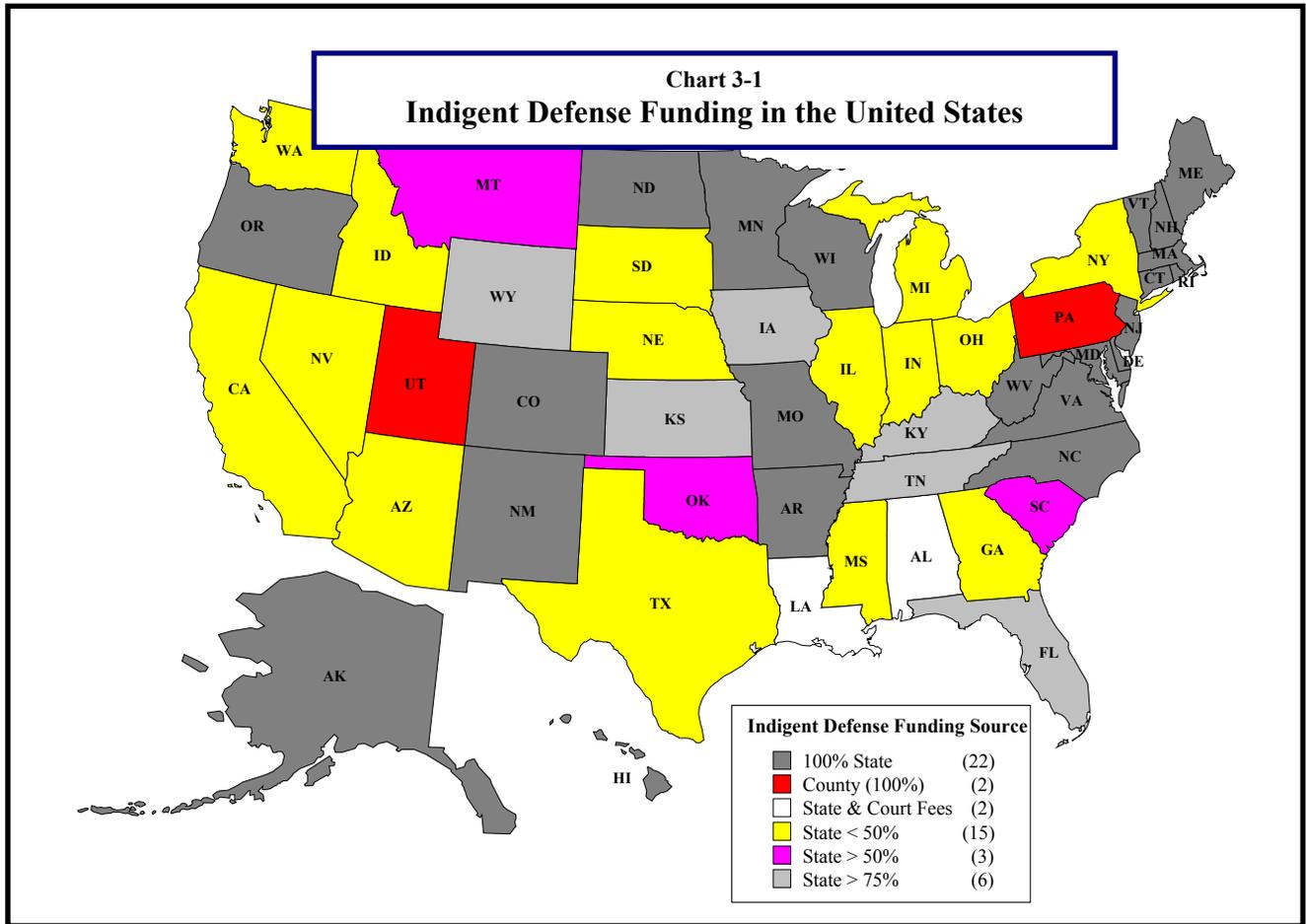
<sup>69</sup> Alaska, Arkansas, Colorado, Connecticut, Delaware, Hawaii, Maine, Maryland, Massachusetts, Minnesota, Missouri, New Hampshire, New Jersey, New Mexico, North Carolina, North Dakota, Oregon, Rhode Island, Vermont, Virginia, West Virginia, and Wisconsin.

<sup>70</sup> Florida (80.14%), Iowa (96.99%), Kansas (77.64%), Kentucky (94.81%), Tennessee (87.32%), and Wyoming (85%). Percentages provided by The American Bar Association report on indigent defense expenditures (2003) prepared by The Spangenberg Group.

<sup>71</sup> Montana (51%), Oklahoma (66.22%), and South Carolina (67.41%).

<sup>72</sup> In Alabama, the fee is currently set at \$16.

<sup>73</sup> The Fair Trial Tax fund also receives revenue from filing fees in civil cases. In small claim cases, \$13 of the \$30 dollar filing fee goes to the fund. Litigants in civil cases in district court are assessed \$109 dollars of which \$21 goes to the Fair Trial Tax Fund. Circuit filing fees are \$145. The Fair Trial Tax Fund receives \$25 from this revenue source.



Alabama’s fair trial tax was designed to uniformly offset the *entire* county cost of providing indigent defense services at the local level.<sup>74</sup> Thus, to the extent that the fair trial tax fund is not sufficient to cover the entire cost to the counties, the state is required to expend general fund revenues to cover the deficit. Because projections of collections rates never materialized as originally forecasted, the revenue stream from court costs has remained relatively stagnant over time. So, as increased caseloads, rising assigned counsel rates and new science, like DNA evidence, has increased the cost of providing indigent defense services throughout the state, the percentage of indigent defense expenditure paid by the Alabama state government has grown correspondingly. In 2002, the State of Alabama paid for approximately 74.3% of all indigent defense expenditures (or roughly \$28 million of \$37,698,403).

The State of Louisiana does not have a corresponding state general fund contribution to offset the difference between the amount of money that can be raised through court costs and the actual cost of providing adequate public defense services. Overall, Louisiana IDBs expended \$21,080,773 of revenue garnered through court costs and recoupment efforts statewide on indigent defense services in 2002. The State of Louisiana contributed \$2,973,719 in district assistance funds and another \$4.8 million toward LIDAB’s capital, appellate and post-conviction representation programs. In total,

<sup>74</sup> The State Comptroller of Alabama keeps \$50,000 from the fund to offset the costs of administering the fund.

just under \$29 million was expended for indigent defense services statewide. Because state funding accounted for slightly more than a quarter of all statewide expenditures (27%), it can be stated unconditionally that Louisiana is the last and only state to rely predominantly on court cost assessments to fulfill its constitutional obligation to provide legal representation in all cases in which the right to counsel applies.

*1.2: Funding indigent defense through court surcharges has proven to be unreliable because there is no correlation between the ability of a jurisdiction to raise revenues and the resources required to provide adequate defense services to those unable to hire an attorney. Funding indigent defense through court surcharges creates resource disparities between the parishes.*

Indigent defense revenue streams generated by court surcharges can vary greatly due to a wide number of factors. For instance, jurisdictions with high poverty rates generally have a more difficult time collecting revenues from people than would jurisdictions in better economic standing. That is to say, though a high poverty jurisdiction may in fact assess as many (or more) court costs as a neighboring affluent jurisdiction, the fact that the majority of people in the poorer community do not have the ability to meet their financial obligations to the court means that the poorer community will generate fewer actual dollars for the defense of the indigent.<sup>75</sup> The problem is compounded because the same factors that contribute to high poverty are also associated with increased crime. For instance, crime rates tend to increase when there is a high level of unemployment.<sup>76</sup> Thus, at a time when court revenue collections may be down due to high unemployment, the criminal justice system is often expected to *increase* its workload. But because less affluent jurisdictions have a higher percentage of people eligible for public defense services, the need for indigent defense funding is in fact *inversely* correlated with the ability to generate revenues.<sup>77</sup>

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<sup>75</sup> Many jurisdictions across the country assess court costs despite the recognition that people of insufficient means have major difficulties in meeting court-imposed financial obligations. In these jurisdictions, there is a general acceptance that the court may never see much revenue from these assessments, yet the imposition of them serves the goal of holding adjudicated guilty defendants accountable for their actions. At the same time, these jurisdictions do not rely on such court costs as the primary funding stream to ensure the adequate protection of the right to counsel, as is the case in Louisiana.

<sup>76</sup> Amburgey, Bryce. Kentucky Department of Public Advocacy. "Will 9/11 Drive Crime Rates and Defender Workloads Up? The Experts Say Yes." *NLADA Cornerstone*, Winter 2001/2002, Issue 4; Gould, Eric with Bruce Weinberg and David Mustard. "Crime Rates and Local Labor Market Opportunities in the United States: 1979-1997. National Bureau of Economic Research Summer Institute Workshop. Cambridge, MA. July 6, 1998 (Revised October 2000).

<sup>77</sup> Additionally, a more affluent jurisdiction may have more resources to dedicate to the apparatus of collections, again increasing collection rates in comparison to communities with higher poverty.

A closer look at the funding of Louisiana’s IDBs in 2002 is illustrative.<sup>78</sup> The 38<sup>th</sup> Judicial District (Cameron) has one of the lowest poverty rates of the 41 judicial districts in the state (12.30%).<sup>79</sup> At the close of the year, the district IDB had \$197,580 in their dedicated account. During 2002, only \$108,331 was expended on indigent defense services. This means that at the start of 2003, the 38<sup>th</sup> Judicial District IDB already had more than 182% of their budget for the ensuing year in the bank. Contrast this with Evangeline Parish (the Parish comprises the entire 13<sup>th</sup> Judicial District and has a poverty rate of 32.20%). There, indigent defense services cost slightly more than \$94,000 while revenues from court costs only brought in \$69,294. Even with the LIDAB DAF grant of \$12,362 (plus miscellaneous funds of slightly more than \$10,000), the 38<sup>th</sup> Judicial IDB ran at a deficit in 2002 and had to tap into their reserve account to make up the difference of \$2,018. At the close of 2002, the Evangeline IDB had only \$14,346 (or 15.3% of their projected need for 2003).

Similarly, Orleans Parish (poverty rate: 27.9%) expended nearly \$365,000 more in 2002 than they were able to bring in through all of their revenue sources (including the LIDAB grant). It cost the Orleans IDB slightly more than \$2.6 million to provide indigent defense services, as against revenues of a little less than \$2.3 million. This left the Parish with only 15.7% of its estimated need in its IDB bank account. In fact in three of the four years studied, Orleans Parish significantly outspent their indigent defense revenue stream.<sup>80</sup> If the same pattern were to continue, and if IDBs were allowed to expend funds based on need rather than on resource availability, the Orleans Parish IDB – the same parish that was the subject of the *Peart* ruling more than a decade ago – would deplete all of its IDB reserves in 2005.

Though the financial health of individual parishes is perhaps the most important factor in determining the effect reliance on court surcharges has on a district’s indigent defense delivery system, it is not the sole factor. Complicating the picture is the fact that because so much indigent defense funding is generated through traffic tickets, even parishes with high poverty may be able to generate significant revenue simply because a

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<sup>78</sup> NLADA went to considerable effort to gather and analyze financial records from all 41 judicial district IDB’s. We requested and received financial audits of all IDB’s from the Office of the Legislative Auditor for the State of Louisiana for the years 1999-2002. With the state requirement that small parishes need only undergo audits every other year, this resulted in NLADA reviewing 161 separate audits. Next, NLADA entered data relating to revenue sources (court costs, DAF grants, and miscellaneous), expenditures and unused monies into a Microsoft Excel<sup>®</sup> database for analysis. Though such an exercise could have been conducted by anyone in the state, to the best of our knowledge, this is the first such complete assessment of indigent defense funding and spending ever conducted in Louisiana. Tables showing the district-by-district financial picture can be found in Appendix H (page 111) of this report. Three audit discrepancies were found by NLADA during the course of this exercise. In 1999, District 37 (Caldwell) reported an ending IDB bank balance of \$11,506. The following year’s audit reported a balance of only \$1,098 to start the year, a difference of \$10,408 that is unaccounted for. Similarly, in 2000 the 22<sup>nd</sup> Judicial District (Washington, St. Tammany) reported a year-end balance of \$748,580. The ensuing year’s audit reported an opening balance of \$746,870, a difference of \$1,710.00 unaccounted for. Finally, the 26<sup>th</sup> Judicial District (Jefferson) reported \$27,716 more at the start of 2001 than was reported at the close of 2000.

<sup>79</sup> Poverty rates for Louisiana’s Parishes for 2000 are available from the U.S. Census Bureau at [www.census.gov](http://www.census.gov). District Poverty rates were calculated by NLADA by applying Parish poverty rates to the specific Parish populations, then adding up the total number of people in poverty for all parishes in a single judicial district. This sum was then divided by the total population of a judicial district.

<sup>80</sup> In 1999, expenditures outpaced revenues by \$280,353. The following year, more than \$175,000 was spent on indigent defense than could be generated through all revenue streams. In 2002, the difference was \$364,833. In one year (2001) revenues did exceed expenditures because 21% of the entire DAF funding went to the one parish (Orleans Parish received \$631,016 from LIDAB that year). This severely crippled other parishes’ ability to provide adequate public defense services.

major highway passes through the jurisdiction. Thus, some Judicial Districts like the 20<sup>th</sup> (comprised of East and West Feliciana) have revenue streams that will always outpace indigent defense costs despite their relatively high poverty rate (21.72%).<sup>81</sup> For example, in 2002 nearly \$27,000 more was recouped through court costs than was expended on indigent defense services (revenue: \$100,898; expenditure: \$74,109). The 20<sup>th</sup> Judicial District rolled that nearly \$27,000 into its IDB bank account. At the close of 2002, the 20<sup>th</sup> Judicial District had over \$305,000 in their account, or more than 412% of their expected need.<sup>82</sup>

In 2002, twenty-four of the 41 judicial districts (or 59%) were not able to raise enough revenue to offset the cost of indigent defense services. Combined, they had annual deficits totaling \$1,859,030. The other 17 (or 41% of the judicial districts) added a combined \$640,353 to their IDB accounts. At the close of 2002, as many parishes struggled to provide adequate representation to the poor, over \$9 million of unused indigent defense funding sat in IDB bank accounts across the state.<sup>83</sup>

*1.3: Funding indigent defense through court costs has proven to be additionally unreliable because the policies and practices of other policy-makers can have a deleterious effect on the primary revenue stream for public defense services.*

Because the majority of local indigent defense funding comes from court costs, policymakers who may not fully appreciate the requirements of *Gideon* and subsequent cases expanding the right to counsel may make decisions that directly, and negatively, affect the primary revenue stream for indigent defense. For example, some parishes in Louisiana have attempted to secure stable local revenue streams through gaming – most notably Riverboat Casinos in the western part of the state. The desire to increase traffic to such local sources of revenues may lead to a policy whereby the local police reduce enforcement of speeding laws in order to avoid discouraging gaming visitors. Such a policy may indeed help the economic fortunes of a parish, but it directly and negatively impacts the revenue sources available for indigent defense services.

This example actually did occur in Caddo Parish where local law enforcement reduced enforcement of traffic violations, resulting in a detrimental impact to the local IDB. From 1999 to 2002, indigent defense revenue garnered through court costs in 1<sup>st</sup> Judicial District (Caddo Parish) fell over 5% (from \$1,227,832 to \$1,166,202).<sup>84</sup> As revenue for indigent defense services diminished, the need for services grew. In 1999,

<sup>81</sup> Louisiana Highway 61 runs from Baton Rouge through the judicial district.

<sup>82</sup> In the four years (1999-2002) that NLADA analyzed IDB audits, the 20<sup>th</sup> Judicial District added significant revenue to their IDB bank account at the close of each fiscal year. In 1999, \$45,228 was added to the IDB bank account. The following year, another \$27,549 was added. The closing of 2001 saw \$34,105 contributed to the IDB account, followed by \$26,789 in 2002. In none of these years did the IDB expenditure exceed \$74,109 (2002). Thus, over the four-year period the IDB bank balance grew by 41%. (from \$217,239 to \$305,593). During the same period indigent defense expenditures in the parish rose only 14% (from \$64,957 to \$74,109).

<sup>83</sup> The insistence of trying to fund indigent defense through court costs was criticized in *State v. Peart*, 621 So.2d 780, 789 (La. 1993). Calling such funding structure “an unstable and unpredictable approach,” the Court gave an especially egregious example of how the system can fail: “when the City of East Baton Rouge ran out of pre-printed traffic tickets in the first half of 1990, the indigent defender program's sole source of income was suspended while more tickets were being printed.” *Id.* At 789 n. 10.

<sup>84</sup> Over this time period, LIDAB assistance to the Caddo Parish IDB decreased by 2.2% (from \$501,401 to \$490,149), resulting in an overall indigent defense funding decrease of 4.2% over the four year period.

Caddo Parish reported 5,886 criminal cases in District Court.<sup>85</sup> Four years later that number had grown to 6,860 (or an increase of 16.6%). Thus, a 16.6% increase in need was met with a 4.2% reduction in resources. The Caddo Parish IDB responded by reducing the balance in its dedicated account. In 1999, the 1<sup>st</sup> Judicial District IDB had \$903,852 in its dedicated account. By 2002, that available funding decreased by 74.4% down to \$231,660 (or only 13.78% of their 2002 expenditure).

In Avoyelles Parish, the practice of the Sheriff also negatively impacts the available resources for indigent defense services. The Sheriff only accepts full payment of a person’s financial court obligations for the reason that accepting partial payments would greatly increase the cost of administering the collections system. The Sheriff’s policy is much different than in many jurisdictions in the country that will accept a payment for as little as \$5.00 at intermittent periods until the balance is paid off. Such a policy means that an indigent person must try to save the entire amount of their obligation to the court and pay it in one lump sum. Though many defendants may never be able to pay off their debt entirely, accepting partial payments would allow more money to flow to the IDB than the current policy does. Moreover, accepting partial payments from all sources (traffic fines, other court costs and recoupment) would make the revenue stream more consistent, allowing an IDB to experience less fluctuations in monthly receipts and allowing for more accurate budget forecasting.

Furthermore, the Sheriff stated that he often brings traffic tickets to the District Attorney to try to get a reduction in fines, adding “if you have a personal friend who has helped you politically, you get it reduced and you pay it for them.” Above and beyond the ethical and legal issues the Sheriff’s comment raise, the reduction of traffic tickets for political gain has a direct negative impact on the Avoyelles Parish indigent defense-funding stream.<sup>86</sup>

*1.4: Funding indigent defense services through recoupment has proven to be unreliable because there is no correlation between the ability of a jurisdiction to raise revenues and the resources required to provide adequate defense services to those unable to hire an attorney.*

The third of the ABA’s *Ten Principles* addresses the obligation of indigent defense systems to provide for prompt financial eligibility screening of defendants, toward the goal of early appointment of counsel.<sup>87</sup> National standards direct that client

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<sup>85</sup> Though NLADA does not believe that current indigent defense caseload statistics in Louisiana are reliable given the lack of a uniform definition of a “case”, the lack of uniform case-tracking systems, and the lack of a statewide governmental body empowered to verify reported indigent defense data, one gauge of need is to look at the number of criminal cases reported on an annual basis to the Louisiana Supreme Court. The reported increase represents both indigent and non-indigent criminal cases. Our experience nationally indicates that indigency rates generally hold steady over time.

<sup>86</sup> This exchange transpired during the NLADA interview of Sheriff William Belt on September 17<sup>th</sup>, 2003 at the local jail. Robert Boruchowitz and David Carroll conducted the interview. In the hopes of understanding how expensive traffic violations can be in Avoyelles Parish, NLADA representatives asked the Sheriff to give a cost estimate of a ticket related to going ten miles per hour over a posted speed limit. In response, the Sheriff took a small stack of tickets from his desk and read off the dollar amounts ranging between \$100 and \$160. When asked why he had a stack of traffic tickets on his desk he offered the information that he was going to try to get the tickets reduced for the reason quoted above.

<sup>87</sup> ABA Principle 3: “Clients are screened for eligibility, and defense counsel is assigned and notified of appointment, as soon as feasible after clients’ arrest, detention, or request for counsel. Counsel should be furnished upon arrest, detention or request, and usually within 24 hours thereafter.” Standardized procedures for client eligibility screening

eligibility determinations should be performed by public defense agencies or a neutral screening agency of the court.<sup>88</sup> In the 12<sup>th</sup> Judicial District, judges are responsible for indigent defense screening. From our interviews and court observations, it is obvious that little, if any, indigency screening is conducted in Avoyelles Parish from the bench.<sup>89</sup>

The failure to conduct financial eligibility screenings has broad implications for the system's attempts to recoup the cost of defense services from clients. From our courtroom observations, Avoyelles Parish routinely assesses recoupment charges to virtually every indigent defense client.<sup>90</sup> It seems that in lieu of specific financial verification, the court assumes a certain ability to pay and assesses recoupment fairly uniformly.<sup>91</sup> National standards do permit cost recovery from indigent-but-able-to-contribute defendants, but only under very limited circumstances. Post-disposition cost recovery, as practiced in Avoyelles Parish, is strictly prohibited under all national standards.

Although various states have tried it over the years, including via statute, civil suit, lien, or court-ordered condition of probation, post-disposition recoupment has been struck down by some courts, and has been a practical failure. Courts have struck down recoupment statutes on equal protection, due process and Sixth Amendment grounds.<sup>92</sup>

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serve the interest of uniformity and equality of treatment of defendants with limited resources. When individual courts and jurisdictions are free to define financial eligibility as they see fit – e.g., ranging from “absolutely destitute” to “inability to obtain adequate representation without substantial hardship,” with factors such as employment or ability to post bond considered disqualifying in some jurisdictions but not in others – then the resulting unequal application of the Sixth Amendment has been suggested, by the National Study Commission on Defense Services, to constitute a violation of both due process and equal protection. *NSC commentary at 72-74.*

<sup>88</sup> *NSC*, Guideline 1.6. *Cf.* *ABA Defense Services*, Standard 5-7.3.

<sup>89</sup> Such a policy is not unusual across the country. In fact, many jurisdictions have no eligibility guidelines and conduct no inquiry, or simply appoint a lawyer for all defendants who claim they cannot afford retained counsel. The reasons for such systems (or non-systems, to be more accurate) vary: poverty rates among the defendant population may have been empirically found to be so high that the cost of eligibility screening would exceed the potential cost-savings; the need to keep court dockets moving may have been determined by the judiciary to be more important than taking the time and effort to conduct eligibility screening; or the reason may be simple inertia on the part of the responsible officials.

But many jurisdictions have determined that important fiscal goals of cost-control and accountability are served by implementing procedures to ensure that no one who can afford counsel is appointed one at public expense. In such jurisdictions, there is often very thorough verification of financial information provided by the defendant – many times by an independent pre-trial services unit and often at substantial costs. For a fuller discussion of eligibility standards employed in the United States, please see Appendix I (page 115).

In Avoyelles Parish, several of the people we interviewed, including at least one defense attorney, were under the impression that a “significant” number of people who would otherwise be able to afford counsel are given a public defender for the sake of expediency in moving the court dockets along. Public Defenders have no control over the number of indigent defense cases in the system -- they must and should accept every case assigned to them by the court. Should it prove true that a “significant” number of people who could otherwise afford counsel are getting free services, it would directly impact the available revenues for those who are truly indigent. Though a more formalized system would surely cost the court some money (both state and local), it again raises the possibility that a policy decision by a body other than an IDB directly impacts the IDB's ability to deliver competent services. In this case, the court's decision to not expend its own resources in an effort to prevent ineligible persons from getting an attorney may be decreasing the amount of funding available for the truly indigent.

<sup>90</sup> A flat fee of \$125 was charged in almost all felony cases. Clients are also routinely charged for the cost of the prosecution.

<sup>91</sup> While many indigent defendants might be able to pay something, we were told that very few can actually go out and hire an attorney. Almost all criminal defense attorneys in Louisiana charge a “fixed fee.” It is exceedingly difficult to hire an attorney to defend any felony for less than \$5,000.00 and to defend any misdemeanor for less than \$750.00.

<sup>92</sup> *James v. Strange*, 407 U.S. 128 (1972) (Kansas recoupment statute; equal protection); *Rinaldi v. Yeager*, 384 U.S. 306 (New Jersey statute requiring repayment of the cost of a transcript on appeal; equal protection); *Giacco v.*

Imposition of recoupment as a condition of probation can additionally lead to the incarceration of indigent people under circumstances that a non-indigent person would not be exposed to, in violation of equal protection.<sup>93</sup>

The practical difficulties are obvious. Imposition of a debt on a marginally indigent person, already convicted of a criminal offense, with the option of incarceration for failure to pay constitutionally barred, yields a likelihood of recovery so low (less than 10%, according to a U.S. Department of Justice Study<sup>94</sup>) that the revenues produced are less than the administrative costs of processing recoupment orders.

In attempting to confirm that recovery levels were low, NLADA questioned the Parish Sheriff as to the collection rate of recoupment costs assessed in the 12<sup>th</sup> Judicial District. The Sheriff stated that he had a 100% collection rate. Asked how that was possible given national experience to the contrary, he stated that he cuts deals with inmates who have not managed to pay off the debts to “stay” an extra 30-60 days in jail and participate in the work release program. This policy exposes the parish to serious financial liability for civil right violations (e.g., under 42 U.S.C. §1983) and further depletes the already limited funding stream for indigent defense services.<sup>95</sup>

***Finding #2:*** *In violation of ABA Principle 1, Louisiana’s indigent defense system lacks independence from undue political interference.*

As stated in the U.S. Department of Justice, Office of Justice Programs report, *Improving Criminal Justice Through Expanded Strategies and Innovative Collaborations: A Report of the National Symposium on Indigent Defense*: “The ethical imperative of providing quality representation to clients should not be compromised by outside interference or political attacks.”<sup>96</sup> Courts should have no greater oversight role over lawyers representing indigent defendants than they do for attorneys representing paying clients. The Courts should also have no greater oversight of indigent defense practitioners than they do over prosecutors. As far back as 1976, the National Study Commission on Defense Services concluded that: “The mediator between two adversaries cannot be permitted to make policy for one of the adversaries.”<sup>97</sup>

*Pennsylvania*, 382 U.S. 399 (1966) (recoupment statute; due process/vagueness); *Olson v. James*, 603 F.2d 150 (10th Cir. 1979) (Oregon recoupment statute; due process); *Fitch v. Belshaw*, 581 F. Supp. 273 (D. Or. 1984) (recoupment statute; due process and Sixth Amendment).

In *Fuller v. Oregon*, 417 U.S. 40 (1974), the U.S Supreme Court found that it is not a Constitutional violation to require indigent defense recoupment from people who are eligible for public counsel at the time of their conviction but who subsequently acquire the means to bear the costs of his legal defense.

<sup>93</sup> *Bearden v. Georgia*, 461 U.S. 660 (1985) (imprisoning an indigent defendant who tried and failed to pay restitution violates equal protection and the fundamental fairness guaranteed by the Fourteenth Amendment).

<sup>94</sup> *Containing the Cost of Indigent Defense Programs: Eligibility Screening and Cost Recovery Procedures* (National Institute of Justice, 1986), at 34-35.

<sup>95</sup> An interview with a local private attorney revealed that the other effect of the Sheriff refusing to accept partial payments of court costs is that defendants are subsequently revoked, without counsel, for failure to timely pay the court costs. This is illegal under Louisiana law, which like the law everywhere holds that you cannot be imprisoned for being poor. But, without a lawyer at the probation revocation hearing there is no one to advocate for the defendant in showing that (s)he was simply unable to pay despite all best efforts.

<sup>96</sup> NCJ 181344, February 1999, at 10.

<sup>97</sup> NSC Report, at 220, citing National Advisory Commission on criminal Justice Standards and Goals (1973), commentary to Standard 13.9.

The first of the ABA's *Ten Principles* addresses the importance of independence in indigent defense representation. The Principle provides that:

*The public defense function, including the selection, funding, and payment of defense counsel, is independent. The public defense function should be independent from political influence and subject to judicial supervision only in the same manner and to the same extent as retained counsel. To safeguard independence and to promote efficiency and quality of services, a nonpartisan board should oversee defender, assigned counsel, or contract systems. Removing oversight from the judiciary ensures judicial independence from undue political pressures and is an important means of furthering the independence of public defense. The selection of the chief defender and staff should be made on the basis of merit, and recruitment of attorneys should involve special efforts aimed at achieving diversity in attorney staff.<sup>98</sup>*

By vesting the District Court judiciary with the authority to appoint the members of the local indigent defense boards, Louisiana Revised Statutes, Title 15 §144 is in direct violation of this ABA principle. NLADA has promulgated guidelines to assist jurisdictions in establishing independent oversight boards. NLADA's *Guidelines for Legal Defense Services* (Guideline 2.10) states:

A special Defender Commission should be established for every defender system, whether public or private. The Commission should consist of from nine to thirteen members, depending upon the size of the community, the number of identifiable factions or components of the client population, and judgments as to which non-client groups should be represented.

Commission members should be selected under the following criteria: The primary consideration in establishing the composition of the Commission should be ensuring the independence of the Defender Director.

- a. The members of the Commission should represent a diversity of factions in order to ensure insulation from partisan politics.
- b. No single branch of government should have a majority of votes on the Commission.
- c. Organizations concerned with the problems of the client community should be represented on the Commission.
- d. A majority of the Commission should consist of practicing attorneys.

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<sup>98</sup> National standards address the need for independence in the context of all three basic models for delivering indigent defense services in the United States. Where private lawyers are assigned, the concern is with unilateral judicial power to select lawyers to be appointed to individual cases, and to reduce or deny the lawyer's compensation. Where contracts with nonprofit public defense organizations or law offices are used, the concern focuses primarily on flat-fee contracts which pay a single lump sum for a block of cases regardless of how much work the attorney does, creating a direct financial conflict of interest with the client, in the sense that work or services beyond the bare minimum effectively reduces the attorney's take-home compensation. Where a public defender system is used, the concern is with vesting the power to hire and fire the chief public defender in a single government official, such as the jurisdiction's chief executive or chief judge, a concern compounded when that official must run for popular election.

- e. The Commission should not include judges, prosecutors, or law enforcement officials.
- f. Members of the Commission should serve staggered terms in order to ensure continuity and avoid upheaval.

Though we do not believe that the majority of District Judges in Louisiana are conscious of even the “appearance” of undue influence in their control of local IDBs, the failure of the state to create checks and balances among all three branches of government in the appointment process has a direct and detrimental effect on the independence of the indigent defense system. For example, the funding crisis in Caddo Parish led the local judiciary to attempt to usurp the power for administration and oversight of the indigent defense system from the IDB. Though the Louisiana Revised Statutes are clear that the local judiciary must appoint from a list submitted by the local bar association, the 1<sup>st</sup> Judicial District Judges rejected several of the nominees and appointed three people who had not been nominated by the Bar Association (and do not practice criminal law). Further overstepping their reach under national standards, the District Court has appointed lawyers who have not been approved by the IDB to cases. In one such case, the judiciary appointed two attorneys to a second-degree murder case – neither of whom practices criminal law. Litigation over this situation recently has been filed in state court.

In Avoyelles Parish, independence issues manifest themselves in other less obvious ways. Over the past five years, the Avoyelles Parish IDB has had a significant number of people appointed to serve on the four-person board. Turnover has been high, resulting in a lack of continuity regarding oversight of the system.<sup>99</sup> At the time of our visit the IDB consisted of three people, none of whom were attorneys or came from backgrounds in criminal justice.<sup>100</sup> While made up of well-meaning people, the IDB as appointed by the court is singularly lacking in anyone with the training, experience, and knowledge to make informed choices about the recruitment, selection, and supervision of contract lawyers.<sup>101</sup> The decision to move from a public defender office to a contract system was made because the IDB sees its role as controlling costs and does not fully appreciate its role in upholding the right to counsel under the State and Federal constitutions. The expansion of the flat-fee contracting model across the state is indicative of similar problems in other jurisdictions in the state.

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<sup>99</sup> During an interview with IDB Chair Charles Jones, NLADA was told that the number of people that have been on the IDB over the past eight years numbered over 20. In a subsequent phone call, Mr. Jones said that the number was high, but not quite that high. On September 25, 2003, NLADA sent an overnight letter to Mr. Jones requesting copies of minutes for IDB meetings for the past two years in an attempt to begin quantifying the number of people on the IDB. NLADA did not receive a response to our request.

<sup>100</sup> The Chair is the Assistant Vice-Principal of the local high school. One IDB member is a real estate developer and nightclub owner. The other does some counseling and is a licensed embalmer. An attorney does technically hold the fourth seat, though the attorney has not attended a meeting in over a year and was not involved in the critical decisions that resulted in the contract model now in place.

<sup>101</sup> This failure to safeguard independence of the indigent defense system stands in contrast to LIDAB Standard 1-1.1.

Chapter IV  
**Ancillary Findings:**  
**The Effect of Inadequate Funding & Lack of Independence**  
**On the Delivery of Indigent Defense Services**

This chapter looks at the deleterious effect that the inadequate funding and lack of independence of the indigent defense system has on the level of services delivered to the poor facing the potential loss of liberty in criminal proceedings.

***Finding #3:*** *In violation of ABA Principle 8, the failure to ensure adequate funding and independence of the indigent defense system has led to the prevalence of flat fee contract systems in those districts with poor revenue streams in an attempt to save money. Flat-fee contracts are universally rejected by all national standards because they create a monetary conflict between the defense provider and the client.*

An IDB in a judicial district in which the need for public defense services is greater than can be afforded through court costs and state assistance grants must look for cost savings to stay afloat. There are only two ways to cut costs related to indigent defense: either reduce the number of cases coming into the system or cut spending on salaries and case-related expenses. Since public defenders do not control their own caseload (it is dictated by the prosecution and courts), IDBs across the state have moved away from full-time staffed public defender offices to low-bid, flat fee contract systems in which an attorney or consortium of attorneys take all of the indigent defense cases in a jurisdiction for a fixed fee in an effort to hold down costs and compensate for the failure of the state to adequately fund the system.

Avoyelles Parish is a good microcosm for studying the dynamics involved in the closing of a public defender office in favor of a flat-fee contract system. Over the four-year period from 1999-2002, the 12<sup>th</sup> Judicial District experienced a 12% increase in indigent defense expenditures (from \$166,006 to \$186,495 annually). The same four-year period saw revenues decrease 7.2% (down from \$160,607 to \$149,018). In 2002, the 12<sup>th</sup> judicial district ran a deficit of \$37,477. The IDB decided to disband the public defender office that was experiencing a normal 3% expenditure increase each year in favor of the flat fee system described in Chapter II of this report. Cost savings came from not having to pay benefits to the attorneys and staff and shifting the responsibility for investigation services to the contracted attorney. At the time of our study, the projected cost of running the flat fee system for a full year was approximately \$146,400,<sup>102</sup> or nearly 22% less than 2002 expenditure level, and approximately 12% lower than 1999 levels.

Such a move to flat fee contracting is oriented solely toward cost reduction, in derogation of ethical and constitutional mandates governing the scope and quality of representation. Fixed annual contract rates for an unlimited number of cases, as practiced in Avoyelles Parish, create a conflict of interest between attorney and client, in violation of well-settled ethical proscriptions compiled in the *Guidelines for Negotiating and*

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<sup>102</sup> Projections were made by taking all of the expenditures recorded on the 12<sup>th</sup> Judicial District IDB's Quickbooks® system through September 15<sup>th</sup> and prorating it for a full twelve months. The single largest expenditure is in contract attorney fees (\$112,200 or 77% of the entire annual expenditure). The balance is mostly related to leasing agreements for copiers from when there was a staffed public defender office, insurance, accounting and auditing services, legal fees, etc. NLADA projected less than \$2,000 will be spent on client related costs (or 1.4% of the entire budget).

*Awarding Governmental Contracts for Criminal Defense Services*,<sup>103</sup> written by NLADA and adopted by the ABA in 1985. Guideline III-13, entitled "Conflicts of Interest," prohibits contracts under which payment of expenses for necessary services such as investigations, expert witnesses, and transcripts would "decrease the Contractor's income or compensation to attorneys or other personnel," because this situation creates a conflict of interest between attorney and client. The same guideline addresses contracts which simply provide low compensation to attorneys, as practiced in Avoyelles Parish, thereby giving attorneys an incentive to minimize the amount of work performed or "to waive a client's rights for reasons not related to the client's best interests."<sup>104</sup>

For these reasons, all national standards, as summarized in the eighth of the ABA's *Ten Principles* direct that: "Contracts with private attorneys for public defense services should never be let primarily on the basis of cost; they should specify performance requirements and the anticipated workload, provide an overflow or funding mechanism for excess, unusual or complex cases, and separately fund expert, investigative and other litigation support services."

This move to flat-fee contract systems, as experienced in Avoyelles Parish, has retarded the collective statewide indigent defense expenditure rate to levels unmatched by comparison states. Once again, Alabama is illustrative. In 1999, Alabama's Fair Trial Tax generated approximately \$8,787,000 in revenue. To this amount, the state contributed an additional \$12,228,000 (or more than 58% of the total). The following year, the state contribution rose more than 11% (up to \$13,600,000). The 2001 fiscal year saw the Fair Trial Tax revenues again stay relatively stable, but the state costs jumped to approximately \$25 million. In 2002, Alabama counties spent \$37,698,403 on indigent defense, \$28 million of which came from state government (or 74.3%). This means that in four years, the revenue able to be garnered from court costs rose by only slightly more than 10% (from \$8,787,000 to \$9,698,403) at a time when actual indigent defense costs and state contributions rose by nearly 80%.

Contrast this with Louisiana. While Alabama's revenue through court costs rose by only 10% over four years, Louisiana's collective court costs revenue stream was not even that successful – increasing only 5.8% (from \$19,930,297 to \$21,080,773). And, whereas the actual costs for providing constitutionally mandated defender services in Alabama rose by 80%, the combined cost of state and local indigent defense expenditures in Louisiana *only rose by 5.3%* (from \$27,430,297 to \$28,880,773). To meet the rising costs of providing indigent defense services, the State of Alabama increased its assistance to counties by 129% (from \$12,228,000 to \$28 million) whereas in Louisiana the 5.3% increase in costs of providing services *was met with a decrease in state DAF funding of nearly 16%* (from \$3,527,370 down to \$2,973,719).

This is not to suggest that Alabama provides adequate representation to its poor facing criminal proceedings. In fact, Alabama's plan for defender services has been

<sup>103</sup> [www.nlada.org/Defender/Defender\\_Standards/Negotiating\\_And\\_Awarding\\_ID\\_Contracts](http://www.nlada.org/Defender/Defender_Standards/Negotiating_And_Awarding_ID_Contracts)

<sup>104</sup> The 12<sup>th</sup> Judicial District system is also in violation of *Louisiana Rules of Professional Conduct*, Rule 1.7(b) which states: A lawyer shall not represent a client if the representation of that client may be materially limited...by the lawyer's own interests, unless: (1) The lawyer reasonably believes the representation will not be adversely affected; and (2) The client consents after consultation..." When the IDB enters into flat-fee contracts, they place the attorney in a position of violating the Louisiana Rules of Professional Conduct.

universally criticized for its systemic deficiencies, *including inadequate funding*.<sup>105</sup> Rather, it is more telling that Louisiana's funding *does not even match Alabama's low threshold*.

By comparison, the three states with the closest populations to Alabama and Louisiana (Oregon, Minnesota and Colorado) all have lower poverty and crime rates, but have much higher indigent defense expenditures. Colorado spends \$9.36 per capita (a total expenditure of \$40 million). Minnesota spends \$10.47 per capita (or \$50 million). And, Oregon with a population that is 39.4% smaller than Louisiana (3.3 million) spends \$76 million on indigent defense or 874% more than the State government spends in Louisiana (and 153% more than is spent by both the State and its parishes). The State of Oregon spends \$23.09 per capita on indigent defense services, while the State of Alabama spends only \$6.40. The State of Louisiana spends \$1.70 per person to guarantee that people of insufficient means are afforded the protection of their constitutional right to counsel.

***Finding #4:*** *In violation of ABA Principle 5, the failure to adequately fund and ensure the independence of the indigent defense system results in attorneys handling caseloads far in excess of national standards. The crushing caseloads exist despite the fact that indigent defendants in misdemeanor cases are being denied attorneys without a proper waiver of their right to counsel in violation of the U. S. Supreme Court mandate in Argersinger v. Hamlin, 407 U.S. 25 (1972) and Shelton v. Alabama, 535 U.S. 654 (2002).*

In April 2003, The American Council of Chief Defenders (ACCD)<sup>106</sup> issued an ethics opinion declaring that a chief public defender is ethically prohibited from accepting a number of cases that exceeds the capacity of the agency's attorneys to provide competent, quality representation in every case. When confronted with the prospect of overloading cases or reductions in funding and staffing which will cause the agency to exceed workload capacities, the chief executive of the public defender agency is ethically required to refuse appointment to any and all such cases.<sup>107</sup> The opinion notes that the consequences of noncompliance can include bar disciplinary action against the defender as well as financial liability on behalf of the jurisdiction. The ACCD opinion is based on long-standing, national indigent defense standards for workload, as discussed below.

The flat-fee contract structure has caused a severe caseload issue in Avoyelles Parish, as will be detailed below. Where a contract system is employed the local IDB stands in the stead of a Chief Public Defender. The local IDB is thus the appropriate entity to insist that national workload standards be met and adhered to. But because the IDB members appointed by the court in the 12<sup>th</sup> Judicial District are not lawyers and are

<sup>105</sup> See for example: Bright, Stephen B., "Neither Equal Nor Just: The Rationing and Denial of Legal Services to the Poor When Life and Liberty are at Stake," New York University School of Law *Annual Survey of American Law*, Volume 1997, page 783 (published in 1999).

<sup>106</sup> The ACCD is a section of NLADA composed of chief executives of indigent defense programs across the country. ACCD is dedicated to supporting leaders of all types of indigent defense systems through the open exchange of information and ideas.

<sup>107</sup> The ACCD opinion is included as Appendix J (page 118) and is available electronically at: [www.nlada.org/DMS/Documents/1050081883.26/Ethics%20op-workload%20final.doc](http://www.nlada.org/DMS/Documents/1050081883.26/Ethics%20op-workload%20final.doc).

not versed in the ethical requirements of national standards, no action to bring caseloads into compliance with national standards has been undertaken.

The fifth of the ABA’s *Ten Principles* provides:

*Defense counsel’s workload is controlled to permit the rendering of quality representation. Counsel’s workload, including appointed and other work should never be so large as to interfere with the rendering of quality representation or lead to the breach of ethical obligations, and counsel is obligated to decline appointments above such levels. National caseload standards should in no event be exceeded, but the concept of workload (i.e., caseload adjusted by factors such as case complexity, support services, and an attorney’s nonrepresentational duties) is a more accurate measurement.*

Regulating an attorney’s workload is one of the simplest, most common and direct safeguards against overloaded public defense attorneys and deficient defense representation for low-income people facing criminal charges. The National Advisory Commission on Criminal Justice Standards and Goals first set numerical caseload limits in 1973<sup>108</sup> under the auspices of the U.S. Department of Justice, which, with slight modifications in some jurisdictions, have been widely adopted and proven quite durable in the intervening three decades.<sup>109</sup> They have been refined, but not supplanted, by a growing body of methodology and experience in many jurisdictions for assessing “workload” rather than simply the number of cases, by assigning different “weights” to different types of cases, proceedings and dispositions, depending on how much time is required to provide adequate representation.<sup>110</sup> Workload limits have been reinforced by a number of systemic challenges to under-funded indigent defense systems, where courts do not wait for the conclusion of a case, but rule before trial that a defender’s caseloads will inevitably preclude the furnishing of adequate defense representation.<sup>111</sup>

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<sup>108</sup> Numerical caseload limits are specified in *NAC* Standard 13.12 (maximum cases per year: 150 felonies, 400 misdemeanors, 200 juvenile, 200 mental health, or 25 appeals), and other national standards state that caseloads should “reflect” (*NSC* Guideline 5.1) or “under no circumstances exceed” (*Contracting*, Guideline III-6) these numerical limits. The workload demands of capital cases are unique: the duty to investigate, prepare and try both the guilt/innocence and mitigation phases today requires an average of almost 1,900 hours, and over 1,200 hours even where a case is resolved by guilty plea. *Federal Death Penalty Cases: Recommendations Concerning the Cost and Quality of Defense Representation* (Judicial Conference of the United States, 1998).

<sup>109</sup> See *Indigent Defense Caseloads and Common Sense: An Update* (NLADA, 1992), surveying state and local replication and adaptation of the *NAC* caseload limits.

<sup>110</sup> See *Case Weighting Systems: A Handbook for Budget Preparation* (NLADA, 1985); *Keeping Defender Workloads Manageable*, Bureau of Justice Assistance, U.S. Department of Justice, Indigent Defense Series #4 (Spangenberg Group, 2001) ([www.ncjrs.org/pdffiles1/bja/185632.pdf](http://www.ncjrs.org/pdffiles1/bja/185632.pdf)).

<sup>111</sup> See, e.g.: *Kennedy v. Carlson*, 544 N.W.2d 1 (Minn. 1996); *State v. Peart*, 621 So.2d 780 (La. 1993); *City of Mount Vernon v. Weston*, 68 Wash. App. 411, 844 P.2d 438 (1993); *Arnold v. Kemp*, 306 Ark. 294, 813 S.W.2d 770 (1991); *State v. Lynch*, 796 P.2d 1150 (Okla. 1990); *In re Order on Prosecution of Criminal Appeals by the Tenth Judicial Circuit*, 561 So.2d 1130 (Fla. 1990); *Hatten v. State*, 561 So.2d 562 (Fla. 1990); *Luckey v. Harris*, 860 F.2d 1012 (11th Cir. 1988), *cert den.* 495 U.S. 957 (1989); *State ex rel. Stephan v. Smith*, 242 Kan. 336, 747 P.2d 816 (1987); *People v. Knight*, 194 Cal. App. 337, 239 Cal. Rptr. 413 (1987); *State v. Hanger*, 146 Ariz. 473, 706 P.2d 1240 (1985); *State v. Smith*, 140 Ariz. 355, 681 P.2d 1374 (1984); *Corenevsky v. Superior Court*, 36 Cal.3d 307, 682 P.2d 360 (1984); *State v. Robinson*, 123 N.H. 665, 465 A.2d 1214 (1983); *State ex rel. Wolff v. Ruddy*, 617 S.W.2d 64 (Mo. 1981), *cert. den.* 454 U.S. 1142 (1982).

Assessing workload in Louisiana is complicated by the fact that there is no central repository for collecting caseload data. The limited funding of IDBs leave little, if any, funding to secure adequate case-tracking systems or support staff to complete necessary data entry.<sup>112</sup> After extensive review, NLADA was unable to confirm the total number of indigent defense cases that occur in Avoyelles Parish. Interviews with defense providers revealed that the contract defenders do not track the number of cases carried per year and could not estimate their own caseload.<sup>113</sup> The IDB Chairperson indicated that felony indigent defense caseload information was available from the court. Unfortunately, NLADA was only able to get aggregate caseload totals and was unable to get the supporting data to verify those numbers.<sup>114</sup> NLADA also reviewed caseload data on the District Attorney's case-tracking system and determined that data fields exist that would capture important indigent defense data if those fields were maintained consistently and uniformly. Subsequent interviews revealed that such consistency was not maintained.<sup>115</sup> With the lack of access to verifiable data, NLADA's workload analysis is based instead on the number of cases the IDB reported to LIDAB.

The 12<sup>th</sup> Judicial District IDB Chair informed an NLADA site team member that he accepts the court indigent defense caseload numbers, without further verification, when filling out the LIDAB DAF application. Avoyelles Parish reported to LIDAB that 986 felony cases were opened in 1999. The next year, that number dropped to 758. By 2002, the number of felony cases reported to LIDAB fell to 497 felony cases. If these numbers were factually accurate, it would mean that the judicial district's indigency rate (calculated as the number of public defender cases divided by the total number of felony

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<sup>112</sup> Taxpayers in the state should not have to tolerate any state money (even the little amount currently dedicated to indigent defense) being expended without some manner of ensuring that the money is being spent efficiently and the necessary services are actually being provided. Even in those districts that rely solely on local funding, poorly funded and poorly managed indigent defense systems produce wasteful spending in other criminal justice components (corrections, courts, prosecution, etc.) that do spend state money. There is no way to assure that money is being well spent without objective, verifiable data. Once again, LIDAB requests data only of those districts applying for state funds but does not have the capacity or authority to verify those figures.

<sup>113</sup> This is very telling in and of itself. If one cannot track the number of people served, then the caseload must be too excessive to effectively represent clients.

<sup>114</sup> NLADA staff sent a formal request for caseload data to District Judge Bennett on September 25, 2003. The letter indicated that NLADA was willing to pay for reasonable costs associated with having court personnel gather the data and any costs associated with sending the materials to our offices. The letter went unanswered and numerous follow-up calls went unreturned.

<sup>115</sup> In a letter dated September 25, 2003, NLADA staff formerly requested of District Attorney Riddle an electronic copy of the underlying data tables of the CRIMES database used in his office. The letter made it clear that we did not want or need any information the District Attorney consider proprietary (for instance we did not need and were not asking for client names, notes on the case, etc.). Instead, NLADA was interested in the following types of data fields observed on the CRIMES system: Charge Type (felony, misdemeanor, juvenile, etc.); Defense Attorney Name; Arrest Date; Arraignment Date [and any other event dates (pre-trial conference, trial, etc.)]; Disposition Information (i.e., pled guilty, found guilty, mistrial, etc.); and/or, Sentencing Information (jail or prison sentence, probation, etc.). NLADA offered to convert the data for analysis and absorb the cost of producing the information. In lieu of the electronic format, NLADA requested hard copy print outs of the same information.

District Attorney Riddle did respond to our request in a timely manner and put us in touch with Mr. David Baxter, Director of Information Systems for the Louisiana District Attorneys Association. Mr. Baxter and Mr. Riddle were cooperative, but it was ultimately determined that the CRIMES database system had not been running long enough in Avoyelles Parish to produce useful data and that defense attorney names were not being tracked uniformly. In an e-mail dated October 14<sup>th</sup>, 2003, District Attorney Riddle indicated that his office was from that point forward going to track such information regularly.

cases) decreased from a high of 51.9% in 1999 to only 25.1% in 2002.<sup>116</sup> It is not logical to conclude that in a district with such high poverty rates, half to three-quarters of all felony defendants were able to retain private attorneys.<sup>117</sup> District Judge Bennett estimated in our interview that about 90% of felony defendants are given counsel. This estimate is consistent with national indigency rates averages that indicate that 80-90% of all felony defendants are indigent.<sup>118</sup> Thus, NLADA’s indigent defense workload assessment is based on felony caseload numbers that are most assuredly lower than what the contract attorneys are actually carrying.

National standards regulating indigent defense caseloads in adult felony cases recommend that an attorney handle no more than 150 cases per year *if that is the only type of case handled by the attorney*. In 2002, the 12<sup>th</sup> Judicial District reported to LIDAB that they were assigned 497 new felony cases (nearly 50% less than the number reported in 1999). Assuming the same number of cases occurred in 2003 and were divided evenly among the three post-arraignment felony contract attorneys, each attorney would have handled 166 felony cases last year (or slightly more than the national workload standard of 150). But the national standards assume that the attorney is working *full-time* on indigent defense cases. In Avoyelles Parish, the attorneys work part-time. The contract attorneys estimated that between a half to two-thirds of their time is spent on indigent defense cases. Thus, using the most conservative estimate that each of the three attorneys work at a 2/3 full-time equivalent capacity, the three part-time attorney’s time spent on indigent defense cases equal the work output of two full-time equivalent (FTE) attorneys. Each FTE attorney therefore is assigned 249 felony cases, or, 166% of the national felony caseload standard.<sup>119</sup>

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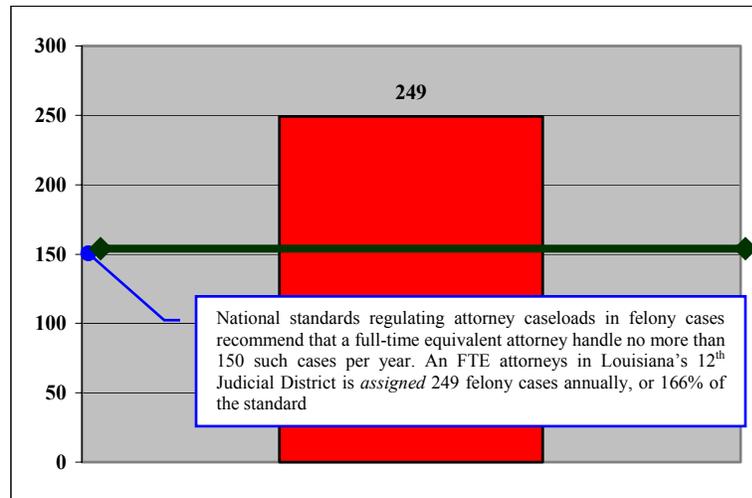
<sup>116</sup> The Supreme Court of Louisiana, *Annual Report 2002 of the Judicial Council of the Supreme Court* (2003), and *Annual Report 1999 of the Judicial Council of the Supreme Court*, (2000), indicates that District Court criminal cases have risen steadily each year in Avoyelles Parish, from 1,900 in 1999 to 1,980 in 2002 (an increase of 4.21%). Based on these totals, the number of indigent defense cases reported to LIDAB produces the extraordinarily low indigency rates.

<sup>117</sup> This is especially true given the opinion of some interviewees that even people who can otherwise afford counsel are given a lawyer at taxpayers expense in Avoyelles Parish.

<sup>118</sup> A 2001 report of the Washington State Office of Public Defense reports that the state’s trial-level superior court indigency rate is 85-90%. A comparison of that rate to other states found it to be similar to a number of states, including: Colorado (80%), Arizona (92%), Missouri (90%), Nebraska (90%), Georgia (90%), California (95-99%), North Dakota (80%) and New York (90%). See: Washington State Office of Public Defense, *Criteria & Standards for Determining and Verifying Indigency*, February 9, 2001, page 12. Report is available at: [www.opd.wa.gov/Publications/Other%20Reports/Criteria%20&%20Standards%20for%20Indigency-%202001.pdf](http://www.opd.wa.gov/Publications/Other%20Reports/Criteria%20&%20Standards%20for%20Indigency-%202001.pdf)

<sup>119</sup> Again these numbers are most assuredly underreported. Relying on District Judge Bennett’s estimates and national experience, if 80% of the total felony cases prosecuted in the district in 2002 (or 1,584 of 1,980) was used as the starting point for this analysis each FTE felony attorney would handle 792 felony cases per year or *528% of the national felony workload standard*. And, if we assumed that attorneys worked half time instead of two-thirds time, each FTE felony attorney would handle 1,056 cases or *704% of the national felony workload standard*.

Chart 4-1  
Average Annual Felony  
Cases Assigned Per  
FTE Attorney  
(Avoyelles Parish)



The starting point for analyzing workload thus has the indigent defense felony attorneys in Avoyelles Parish already far exceeding national standards. But the national standards are based on work done on *any* felony case handled during the year and not just those opened during the year in question. To the extent that there are any cases that are continued from previous years (which cannot be determined accurately at this point in time) the attorneys' caseloads are even greater than portrayed in Chart 3-2 (above). It is universally true that the number of cases assigned in one year will not be completed until at least the following year. Since we have no way to ascertain that number here, we will use national standards to illustrate how this reality impacts caseloads. Relying on national standards, an attorney was not able to perform all of the ethical requirements to guarantee an adequate defense unless he adhered to the national felony caseload standard. Under such a scenario, an attorney could only work on 150 such cases. Thus, even though an attorney maybe assigned 249 felony cases, only 150 could be disposed of during the year. In the 12<sup>th</sup> Judicial District, that would mean that a full-time equivalent attorney would have an additional 99 cases pending at the start of the next year ( $249 - 150 = 99$ ). If in that ensuing year, the attorney again were assigned another 249 cases, he would have an additional 198 cases pending at the start of the subsequent year. This scenario leads one to conclude that there is either a significant pending felony caseload building in Avoyelles Parish or that the contract attorneys are not performing all of the requisite duties needed to ensure an adequate defense of the poor, or both.<sup>120</sup>

The situation above does not even factor in private caseloads, indigent defense cases handled in other judicial districts or other work handled by the contract attorneys. For instance, one of the three contract felony attorneys also handles indigent defense

<sup>120</sup> The cost implications to the entire criminal justice system of a growing backlog are wide-ranging. If defense attorneys are unprepared to move forward on a case, court time and resources for judges, bailiffs, court reporters, district attorneys, etc. are utilized inefficiently. Additionally, as pending cases grow, attorneys may adopt a triage system in which their attention is turned to whatever is the next court date on their calendar without taking into account the circumstances of all of their other clients. When this occurs, defendants may linger in jail pre-trial or be wrongly incarcerated post-trial, substantially increasing corrections costs. Conversely, an attorney may opt to "cut corners" to keep their caseload manageable, again bringing into question the adequacy of the representation afforded to the poor, and raising the prospect of costly ineffective-assistance-of-counsel claims and wrongful convictions. The loss of trust in the system has tangible impacts on systemic costs and efficiencies in that jurors and witnesses become reluctant to come forward. Moreover, public confidence in the integrity of the system is lost when the community perceives that inadequate representation creates a system that metes out justice differently to the rich and the poor.

cases in neighboring Rapides Parish (the only parish in the 9<sup>th</sup> Judicial District). In that district, the contract attorney certified in a letter to the Rapides Parish Chief Public Defender (dated December 17<sup>th</sup>, 2003) that she was representing 476 felony defendants (4 of which were capital cases) *in that Parish alone*. This is over three times the national felony caseload standard without factoring in the Avoyelles Parish caseload or the time required to adequately defend a person’s life against capital charges.

Though the NAC standards do not establish specific workload standards for death penalty cases, a number of studies have determined that an attorney must put in between 1,200 hours (in a case settled by plea bargain) and 1,900 hours (for a case that goes to trial) to adequately defend a person on capital charges.<sup>121</sup> If one assumes that an attorney works 2,080 hours per year,<sup>122</sup> this means that an attorney handling capital cases *should handle no more than one or two capital cases per year and nothing else*.<sup>123</sup>

Therefore, this one Avoyelles Parish contract attorney handles the workload of 6.3 FTE attorneys while working part-time,<sup>124</sup> plus whatever private cases she has been retained to handle on behalf of paying clients. On top of this, the contract attorney in question teaches part-time at Southern Law School. Assuming a 1,387 hour work year (which is based on two-thirds time dedicated to indigent clients and does not include any time off for holidays, sick days and/or vacation days), clients facing felony charges are afforded, on average, approximately two hours a piece of this attorney’s time *including those charged with capital offenses*.<sup>125</sup> For those readers unfamiliar with criminal defense practices, below is a partial list of duties ethically required of this attorney to complete on the average felony case:

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<sup>121</sup> See: Judicial Conference of the United States, *Federal Death Penalty Cases: Recommendations Concerning the Cost & Quality of Defense Representation*, 1998 (available on-line at: [www.uscourts.gov/dpenalty/4REPORT.htm#a004](http://www.uscourts.gov/dpenalty/4REPORT.htm#a004)). Also see: American Bar Association, *Guidelines for the Appointment & Performance of Defense Counsel in Death Penalty Cases*, Revised Edition February 2003, footnote 114 (available at: [www.abanet.org/deathpenalty/guidelines.pdf](http://www.abanet.org/deathpenalty/guidelines.pdf)).

<sup>122</sup> It is necessary for any workload analysis to establish some baseline for a work year. For non-exempt employees who are compensated for each hour worked, the establishment of a baseline work year is quite simple. If an employee is paid to work a 35-hour workweek, the baseline work year is 1,820 hours (or 35 hours times 52 weeks). For exempt employees who are paid to fulfill the parameters of their job regardless of hours worked, the establishment of a work year is more problematic. An exempt employee may work 35 hours one week, and 55 hours the next. NLADA uses a 40-hour workweek for exempt employees for two reasons. First, a 40-hour work week has become the *maximum* workweek standard used by other national agencies for determining workload capacities of criminal justice exempt employees (See: National Center for State Courts, *Updated Judicial Weighted Caseload Model*, November 1999; The American Prosecutors Research Institute, *Tennessee District Attorneys General Weighted Caseload Study*, April 1999; U.S Department of Justice, Office of Juvenile Justice and Delinquency Programs, *Workload Measurement for Juvenile Justice System Personnel: Practice and Needs*, November 1999); The Spangenberg Group, *Tennessee Public Defender Case-Weighting Study*; April 1999.) Second, discussions with Mr. Don Fisk and Mr. Arthur Young of the U.S. Department of Labor, Bureau of Labor Statistics suggest that using a 40-hour work week for measuring workload of other local and state government exempt employees is the best method of approximating staffing needs.

<sup>123</sup> It should be noted that one of the other 12<sup>th</sup> judicial district contract felony attorneys also accepts appointments to capital cases in other parishes.

<sup>124</sup> With 472 felony cases in Rapides Parish and an estimated 166 felony cases in Avoyelles Parish, this attorney’s total indigent defense caseload is 638. Dividing the 638 cases by the national standard of 150 felony cases results in the need for 4.25 FTE attorneys. The four capital cases require two attorneys based on the evidence presented in footnote 107.

<sup>125</sup> On January 22, 2004, a *Peart* motion was filed in Rapides Parish in the capital case of State v. Delores Jones, alleging that the defendant is receiving ineffective assistance of counsel from her IDB attorneys (one of whom is the Avoyelles Parish contract attorney referenced above), because of their excessive caseloads and insufficient support in Rapides Parish.

On cases that are disposed by a plea bargain:<sup>126</sup>

- Meeting and interviewing the client;
- Preparing and filing necessary initial motions (e.g. bail reduction motions; motion for preliminary examination; motion for discovery; motion for bill of particulars; motion for initial investigative report; etc.)
- Receiving and reviewing the state's response to initial motions;
- Conducting any necessary factual investigation, including locating and interviewing witnesses, locating and obtaining documents, locating and examining physical evidence; among others;
- Performing any necessary legal research;
- Preparing and filing case-specific motions (e.g. motions to quash; motions to suppress; etc.)
- Conducting any necessary motion hearings;
- Engaging in plea negotiations with the state;
- Conducting any necessary status conferences with the judge and state;

Additional duties for cases that go to trial:

- Preparing for trial (e.g., conduct jury screening, draft opening and closing statements, etc.)
- Meeting with client to prepare for trial;
- Conducting the trial; and,
- Preparing for sentencing.

As this list makes evident, there is no attorney who can perform adequately with such a workload.

The caseload situation for non-felony cases (misdemeanor and juvenile delinquency) is just as troubling in Avoyelles Parish. NLADA was not able to confirm accurate indigent defense misdemeanor and juvenile delinquency cases for Avoyelles Parish because of the same difficulties associated with tracking felony cases. Additionally, there is no requirement to report misdemeanor or juvenile caseload data to LIDAB. What we can state is that it is not uncommon for jurisdictions in other parts of the country to have a 3:1 ratio of indigent defense misdemeanor cases to felony cases.<sup>127</sup> That is, for every felony prosecuted in a jurisdiction, three misdemeanors are prosecuted. Thus, if 497 felonies were reported to LIDAB in 2002, it is a fair assumption that indigent defense attorneys might be expected to handle nearly 1,500 misdemeanors per year. As reported in the *Louisiana Supreme Court Annual Report, 2002*, Bunkie City Court opened 331 misdemeanor cases while the court in Marksville opened 1,030. This equals 1,361 cases, a proportion roughly in line with the rest of the nation. If we assume, consistent with national experience, that 80% of these were indigent defense cases, the

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<sup>126</sup> The following is just a partial list of ethical duties required under national and state performance guidelines. Performance Guidelines for Criminal Defense Representation (NLADA, 1995) is available on-line at: [www.nlada.org/Defender/Defender\\_standards/Performance\\_Guidelines](http://www.nlada.org/Defender/Defender_standards/Performance_Guidelines). LIDAB's *Standards Relating to the Performance of Counsel Providing Representation to Indigent* is available at: [www.lidab.com/Acrobat%20files/Chapter%206.PDF](http://www.lidab.com/Acrobat%20files/Chapter%206.PDF).

<sup>127</sup> The Spangenberg Group, *Comparative Analysis of Indigent Defense Expenditures & Caseloads in States with Mixed State and County Funding*, February 1998. Prepared for the Georgia Indigent Defense Council on behalf of the American Bar Association, Bar Information Program. The report is available on-line at: [www.abanet.org/legalservices/sclaid/defender/research.html](http://www.abanet.org/legalservices/sclaid/defender/research.html).

12<sup>th</sup> judicial district IDB would have opened 1,088 misdemeanor cases (or a 2:1 ratio of misdemeanors to felonies).

National standards state that an attorney should handle no more than 400 misdemeanor cases in a single year if that is the only type of case being assigned to the attorney. In Avoyelles Parish, the one misdemeanor attorney handles all 1,088 cases, or 272% of the national standard *for a full-time attorney*. This one attorney also handles juvenile delinquency cases. National standards for juvenile delinquency cases state that an attorney should handle no more than 200 cases if juvenile delinquency cases were the only types of cases handled. The 12<sup>th</sup> Judicial District opened 321 juvenile cases in 2002 (Bunkie city court opened 225 and Marksville opened 96). Again, assuming consistent with national experience that 80% of these were indigent defense cases, the IDB contract attorney would have to handle 256 such cases, or 128% of the national juvenile delinquency workload standard.

Again, the national standards are based on an attorney handling only one type of case, and one type of case only, on a full-time basis. In those jurisdictions where attorneys work mixed caseloads (i.e. carrying some combination of various case types like misdemeanors and juvenile delinquency cases as occurs in the 12<sup>th</sup> Judicial District), the national standards need to be prorated. For example, should an attorney divide his work evenly between misdemeanors and juvenile delinquency cases, each of the standards would need to be divided by two and summed up. An attorney under this scenario should handle no more than 300 cases a year (misdemeanor: 200; juvenile delinquency 100). The lone contract attorney in Avoyelles Parish works well beyond this established workload standard (See Chart 4-2, page 40), carrying 448% of the determined mixed caseload standard or the equivalent workload of four and a half full-time attorneys. This of course does not take into account his private cases or pending indigent defense cases. It also does not take into account the fact that he is expected to staff felony arraignment calendars at District Court.<sup>128</sup>

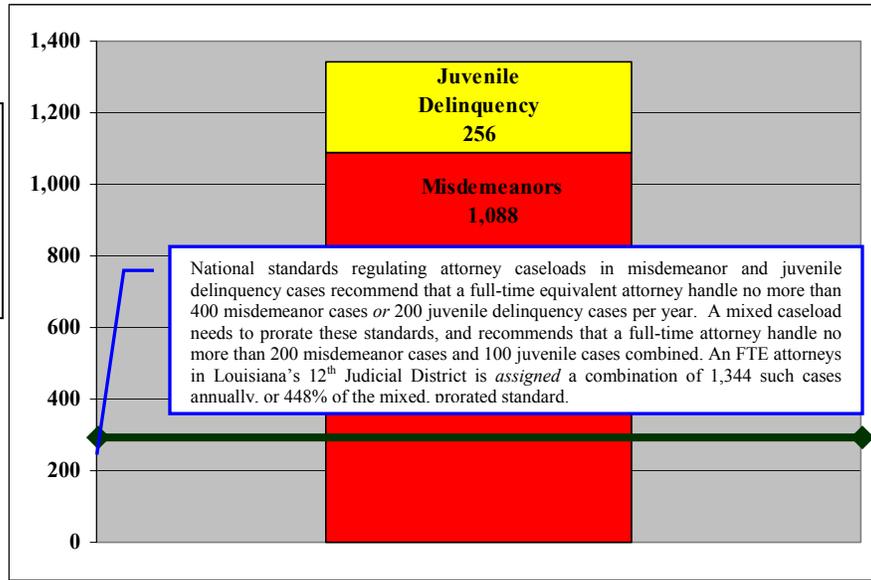
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<sup>128</sup> It is important to note that the role of support staff (investigators, social workers, paralegals, legal secretaries, and office managers) in public defender offices has taken on more importance over time both in terms of quality and cost-effectiveness. Investigators, for example, have specialized experience and training to make them more effective than attorneys at critical case-preparation tasks such as finding and interviewing witnesses, assessing crimes scenes, and gathering and evaluating evidence – tasks that would otherwise have to be conducted, at greater cost, by an attorney. Similarly, social workers have the training and experience to assist attorneys in fulfilling their ethical obligations with respect to sentencing, by assessing the client's deficiencies and needs (e.g., mental illness, substance abuse, domestic problems, educational or job-skills deficits), relating them to available community-based services and resources, and preparing a dispositional plan meeting the requirements and expectations of the court, the prosecutor and the law. Such services have multiple advantages: as with investigators, social workers are not only better trained to perform these tasks than attorneys, but more cost-effective; preparation of an effective community-based sentencing plan reduces reliance on jail, and its attendant costs; defense-based social workers are, by virtue of the relationship of trust engendered by the attorney-client relationship, more likely to obtain candid information upon which to predicate an effective dispositional plan; and the completion of an appropriate community-based sentencing plan can restore the client to a productive life, reduce the risk of future crime, and increase public safety.

Because of this, some states impose further restrictions on their indigent defense caseload standards. For example, public defenders in Indiana that do not maintain state-sponsored attorney to support staff ratios cannot carry more than 300 misdemeanor cases per year (down from the standard of 400 misdemeanors for public defenders with appropriate support staff). The Avoyelles Parish indigent defense system had no support staff whatsoever at the time of our site visit.

Both the ABA and NLADA standards recognize that support services are a vital part of adequate representation. Standard 5-4.1 of the ABA Standards for Criminal Justice, Providing Defense Services, directs that: "The legal representation plan should provide for investigative, expert, and other services necessary to quality legal representation. The Guidelines for Legal Defense Systems in the United States issued by the National Study Commission on Defense Services direct that "defender offices should employ investigators with criminal investigation training and experience. A minimum of one investigator should be employed for every three staff attorneys in an office." The Guidelines further prescribe precise numeric ratios of attorneys to non-attorney staff: One full time Legal Assistant for every four FTE attorneys; One full time Social Service Caseworker for every 450 Felony Cases; One full time Social Service

Chart 4-2  
Average Annual  
Misdemeanor &  
Juvenile Delinquency  
Cases Assigned Per  
FTE Attorney in  
Avoyelles Parish



As indicated below, it appears that the contract indigent defense attorney in Avoyelles Parish may not handle the total estimated number of misdemeanor defendants described in the above analysis (though even eliminating *all* of the misdemeanors would still leave the attorney handling cases in excess of national standards) because of our observations that show a number of misdemeanor defendants going entirely without counsel in direct violation of the U.S. Supreme Court mandates in *Argersinger v. Hamlin*, 407 U.S. 25 (1972) and *Shelton v. Alabama*, 535 U.S. 654 (2002).

In 1972, the U.S. Supreme Court extended the right to counsel in *Gideon* to any misdemeanor cases involving the possibility of incarceration.<sup>129</sup> Thirty years later in *Shelton v. Alabama* the Court mandated that governments must provide counsel to not only those indigent defendants who are sentenced to any term of incarceration, but to defendants who received probationary or suspended sentences which may be subsequently converted into incarceration by virtue of a technical violation of the terms of the probation or suspended sentences. Nationally, this is a very significant number of cases; more than four million offenders receive probation or a suspended sentence annually, and of these, 13% (or some 600,000) are subsequently incarcerated for violating their conditions of probation.<sup>130</sup> In making its ruling, the Court noted that 34 states were already in compliance with its ruling by virtue of providing a statutory right to counsel in such cases, including Louisiana.<sup>131</sup> Unfortunately, there is a big difference between the Court's reading of the Louisiana statutes and what actually happens.

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Caseworker for every 600 Juvenile Cases; One full time Social Service Caseworker for every 1200 Misdemeanor Cases; One full time Investigator for every 450 Felony Cases; One full time Investigator for every 600 Juvenile Cases; and, One full time Investigator for every 1200 Misdemeanor Cases.

<sup>129</sup> *Argersinger v. Hamlin*, 407 U.S. 25 (1972).

<sup>130</sup> Probation and Parole in the United States, 2001 (Bureau of Justice Statistics, U.S. Department of Justice, www.ojp.usdoj.gov/bjs/abstract/ppus01.htm)

<sup>131</sup> See footnote 8 of majority opinion.

In Avoyelles Parish, NLADA witnessed a few misdemeanor defendants appearing with legal counsel, but many more entered guilty pleas without counsel. The court does not use “waiver of counsel” forms to provide even minimal indicia that the waiver is both voluntary and knowing. In two instances guilty pleas were accepted, and the defendant was given a jail sentence without any discussion or colloquy to waive the right to counsel in complete violation of *Argersinger*.<sup>132</sup>

Similarly, a number of people charged with misdemeanors were given probation and suspended sentences without counsel, and without being provided with information that would allow them to make an informed waiver, in violation of *Shelton*. When asked about the violations, neither the District Court Judge nor the District Attorney was aware of the Supreme Court decision in *Shelton* and requested a citation to the decision from NLADA.

One reason the Supreme Court said it is so important to ensure that defendants are given competent representation at the front end of their case is because there is no representation for probation violation hearings should the defendant be revoked for not meeting the terms of his or her probation. At the end of the District Court docket, NLADA site team members witnessed a defendant that was brought before the Judge in chains. The probation officer was there, but no defense attorney was present.<sup>133</sup> The defendant appeared to suffer from a drug problem. The probation officer read the violation summary: on June 4, 2002, the defendant pled guilty to drug possession and was sentenced to three years suspended and placed on three years probation. The Judge asked the defendant if he had anything to say, and he responded: “I have a bad drug habit and need help.” The Judge imposed the three years that had been suspended, and the defendant was led out of the courtroom. Counsel would have had a real advocacy role in such a case -- possibly referring this case to a social worker for evaluation, assessment, and treatment possibilities that could result in reducing recidivism.

When we asked the judge about counsel appointments for individuals accused of violating probation terms, he responded that he would appoint counsel if the defendant asked for counsel when served with his probation violation papers by the probation officer. NLADA can only speculate about what these officers say and do. What we do know is that a probation officer’s role is law enforcement and (s)/he should not be placed in the position of advocating legal weaknesses in the state’s case on behalf of the defendant.<sup>134</sup>

***Finding #5:*** *In violation of ABA Principle 6, the failure to adequately fund and ensure independence of the indigent defense system results in attorneys being assigned cases which they are not qualified to handle.*

The sixth of the ABA’s *Ten Principles* provides that:

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<sup>132</sup> NLADA notified the District Attorney of this oversight in a subsequent interview and e-mail. One defendant was given a thirty-day sentence with credit for time served; the other was given a 90-day sentence.

<sup>133</sup> No prosecutor was present either.

<sup>134</sup> On a related subject, under the parole statute (La. R.S. Title 15 §574.5), the sheriff, whose parish jail houses sentenced felons for the Department of Corrections, may also determine eligibility for intensive incarceration program administered by the sheriff. The sheriff then also controls parole readiness evaluations for the Parole Board. This is an example of the significant scope of control which sheriffs exercise over defendants, inmates, and post-disposition justice.

*Defense counsel's ability, training, and experience match the complexity of the case. Counsel should never be assigned a case that counsel lacks the experience or training to handle competently, and counsel is obligated to refuse appointment if unable to provide ethical, high quality representation.*

This requirement derives from all attorneys' ethical obligations to accept only those cases for which they know they have the knowledge and experience to offer zealous and quality representation.<sup>135</sup> This Principle integrates this duty together with various systemic interests – such as efficiency and the avoidance of attorney errors, reversals and retrials, findings of ineffective assistance of counsel, wrongful convictions and/or executions, and attendant malpractice liability – and restates it as an obligation of the indigent defense system within which the attorney is engaged to provide legal representation services.

Typically, this requirement is implemented by dividing attorneys into classifications according to their years and types of experience and training, which correspond to the level of complexity of cases, the severity of charges and potential punishments, and the degree of legal skills generally required. Attorneys can rise from one classification to the next by accumulating experience and training. This is true under all three delivery models: assigned counsel programs commonly maintain various different “lists” from which attorneys are selected according to the classification of the offense; public defender programs place attorneys in different divisions of the office; and contract systems award proposals based on experience level and case complexity.

As noted earlier, Avoyelles Parish recently hired an inexperienced attorney to handle all juvenile and misdemeanor cases, as well as all felony arraignments. The attorney is just out of law school. Although he worked for a year as an appellate clerk, he has no previous trial-level experience. In questioning the IDB on the decision-making process to hire this attorney, the board members stated at various times that a small community like Avoyelles Parish allows them the intimacy to know who is a “good” person. In the case of this attorney, they wanted to help a local community member establish his own private practice by giving him trial experience while he builds his own private clientele. The attorney himself said as much. He does the defender work “to cover bills,” until he can build his own practice and “until I don’t have to do it any longer.”

Though the IDB decision may have been well-meaning, the lives of poor people and juveniles cannot be a “practice” forum for recent law school graduates to learn through the process of “sink or swim.” Moreover, at-risk juveniles, in particular, require special attention from public defenders if there is hope to change behavior and prevent escalating behavioral problems that increase the risk that they will eventually be brought into the adult criminal justice system in later years. These are commonly children who have been neglected by parents and the range of other support structures that normally channel children in appropriate constructive directions. When they are brought to court and given a public defender who has a heavy caseload and no experience other than to dispose of the case as quickly as possible, the message of neglect and valuelessness

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<sup>135</sup> See, e.g., *ABA Model Rules of Professional Conduct*, Rule 1.1; *ABA Defense Function*, Standard 4-1.6(a); *NLADA Performance Guidelines*, 1.3(a).

continues, and the risk of not only recidivism, but of escalation of misconduct, increases.<sup>136</sup> Recognizing this, other public defender systems have elevated the priority of juvenile representation and established special divisions not only to promote assessment and placement of juveniles in appropriate community-based service programs, but also to train and collaborate with others in the system to support the same goals, such as jail officials, judges, prosecutors and policy makers.<sup>137</sup>

Even misdemeanor cases can result in life altering consequences that should be recognized as a reason for requiring trained counsel. Skilled attorneys are necessary to properly advise clients and help them understand the impact a criminal record has on employment, housing, eligibility for health or income-support benefits, or immigration status – all issues that may involve future court actions at public expense.

When questioned about his use of experts for evaluation and for forensic assessment as well as investigators in juvenile cases, the young attorney looked somewhat blank and indicated that he never called upon or used such resources. When asked about the possibility of an alternative dispositional plan he stated “it’s not ever going to happen.”<sup>138</sup> The failure of the state to adequately fund indigent defense services forces IDBs to consider using flat-fee contracts. Because available revenue streams are inadequate, these flat-fee contracts often offer rates so low (\$19,200) that only someone trying to establish a practice right out of law school would consider accepting the agreement for a contracted amount.

***Finding #6:*** *In violation of ABA Principles 3 and 7, the failure to ensure adequate funding and independence of the indigent defense system undermines the timeliness of appointment of attorney and results in a lack of continuity of representation. Both erode clients’ right to a speedy trial.*

Requirements of prompt appointment of counsel are based on the constitutional requirement that the right to counsel attaches at “critical stages” that occur before trial, such as custodial interrogations,<sup>139</sup> lineups,<sup>140</sup> and preliminary hearings.<sup>141</sup> In 1991, the

<sup>136</sup> On January 12, 2004, the *Daily Advertiser* of Lafayette, Louisiana ran an interview with the current Governor of the state, Ms. Kathleen Blanco. In it, the problem of high juvenile recidivism rates was discussed. In response to the question, “What are you looking at in the area of prison reform?” the then Governor-elect stated: “Juvenile justice. We realize that we have a 70 percent recidivism with our youth. They have been taken into these adult-like prison settings. They have been separated from their families. Particularly for first-time and nonviolent offenders, this is pretty traumatic. I like to believe a very large percentage of these kids could be saved. I am in total agreement with the Juvenile Justice Commission. We need to establish something like the Missouri model, where their recidivism rates are dramatically lower, something like 20 or 25 percent.” The full interview is available on-line at: [www.acadiananow.com/news/html/A9B0E022-4DBD-4FBF-930D-87EF1BC7E5FD.shtml](http://www.acadiananow.com/news/html/A9B0E022-4DBD-4FBF-930D-87EF1BC7E5FD.shtml).

<sup>137</sup> See Juvenile Sentencing Advocacy Project, Miami/Dade County, Florida (proposal for this and other successful federal Byrne grants on-line at [www.nlada.org/Defender/Defender\\_Funding/Successful](http://www.nlada.org/Defender/Defender_Funding/Successful)). See also Youth Advocacy Project, Roxbury, MA ([www.nlada.org/News/NLADA\\_News/1005694565.43](http://www.nlada.org/News/NLADA_News/1005694565.43)).

<sup>138</sup> For their report, *The Children Left Behind: Update* (2002) ABA and JJPL site teams conducted courtroom observations in Avoyelles Parish. In juvenile revocation cases we were told that the juvenile probation officer effectively serves as prosecutor, judge and defense lawyer. The juvenile probation officer obtains waivers of legal counsel, and was observed to conduct in-chambers meetings with the judges without the presence of the defendant. One attorney interviewed said that he had not seen one case in 20 years where the judge did not follow the probation officer’s recommendation. The information in this footnote was obtained in interview with the American Bar Association, Juvenile Justice Center and The Juvenile Justice Project of Louisiana representatives.

<sup>139</sup> *Miranda v. Arizona*, 384 U.S. 436 (1966).

<sup>140</sup> *Kirby v. Illinois*, 406 U.S. 682 (1972).

U.S. Supreme Court ruled that one critical stage – the probable cause determination, often conducted at arraignment – is constitutionally required to be conducted within 48 hours of arrest.<sup>142</sup> Most standards take these requirements beyond the constitutional minimum requirement, to be triggered by detention or request, even though formal charges may not have been filed, in order to encourage early interviews, investigation, and resolution of cases, and avoid discrimination between the outcomes of cases involving indigent and non-indigent defendants.<sup>143</sup>

District Judges in the 12<sup>th</sup> Judicial District hold what is known colloquially as a 230.1 hearing – a hearing to set bail – within 48 hours.<sup>144</sup> Counsel is not appointed at these hearings. Instead, formal appointment of an attorney is handled at the arraignment hearing. By statute, defendants in Louisiana are entitled to a “speedy trial,”<sup>145</sup> and upon filing of a speedy trial motion, the District Attorney must set the matter for arraignment within thirty days, unless just cause for a longer delay is shown.<sup>146</sup> Thus, arraignment and a defendant’s first chance for a probable cause determination can happen as much as a month after arrest -- *if there is a formal motion for a speedy trial*. But since there is no attorney to file such a motion on behalf of an indigent person, even this marginal improvement in delay is denied to indigent defendants.<sup>147</sup> As such, arraignments, and consequently appointment of counsel, can occur several months after arrest in direct violation of the U.S. Supreme Court mandate.<sup>148</sup>

A further caveat to this finding must be mentioned. A motion for a probable cause hearing in Louisiana is only allowable *prior to indictment*. Since almost all felony charges in Avoyelles Parish are initiated by indictment, and since there is no lawyer to file the motion on the defendant’s behalf until after indictment, indigent defendants in Avoyelles Parish virtually never get to have a District Judge make a probable cause determination.

Further eroding a client’s right to a speedy trial in Avoyelles Parish is the practice of appointing different attorneys at arraignment and post-arraignment. The seventh of the ABA’s *Ten Principles* addresses the question of whether an indigent client may be represented by different attorneys at different stages of the proceeding (“stage,” “zone” or

<sup>141</sup> *Coleman v. Alabama*, 399 U.S. 1 (1970).

<sup>142</sup> *County of Riverside v. McGlaughlin*, 500 U.S. 44.

<sup>143</sup> *ABA Defense Services*, commentary to Standard 5-6.1, at 78-79.

<sup>144</sup> This is in accord with Louisiana Code of Criminal Procedure, Article 230.1.

<sup>145</sup> La. Revised Statutes, Title XIV, Art. 701.

<sup>146</sup> These rules require a District Attorney to file an indictment or bill of information within 45 days of arrest for a misdemeanor and within 60 days for a felony, if the defendant is held in custody at the jail. The time period is increased if the defendant is released either on bail or on his own recognizance, to 90 days on a misdemeanor charge and 150 days for a felony. Failure to follow these timelines can result in the release of the defendant, if in custody, or release of bail obligations, if not in custody.

<sup>147</sup> Additionally, in *State v. Vermall* the Second Circuit Court of Appeals held that the State can institute prosecution at any time prior to a speedy trial hearing making the defendant’s motion moot.

<sup>148</sup> NLADA heard from various interviewees that a client might be “lost” in the jail system from time to time without counsel ever being appointed. This occurs because the District Attorney only knows of those cases for which he has received the appropriate documentation from the Sheriff. Should paperwork be misplaced, a client can literally stay in jail for weeks and months at taxpayer expense, without any type of due process.

“horizontal” representation), or should have the same attorney throughout, and provides that an effective public defense system requires that:

*The same attorney continuously represents the client until completion of the case. Often referred to as “vertical representation,” the same attorney should continuously represent the client from initial assignment through the trial and sentencing. The attorney assigned for the direct appeal should represent the client throughout the direct appeal.*

Standards on this subject note that the reasons usually given for public defense systems to use “horizontal representation” are related to saving money and time. The practice of having an inexperienced lawyer handle felony arraignments before handing off those cases that survive arraignment in the 12<sup>th</sup> Judicial District fits this same pattern. The theory goes that “arraignment only” lawyers need only sit in one place all day long, receiving a stream of clients and files and then passing them on to another lawyer for the next stage, in the manner of an “assembly line.”<sup>149</sup>

But standards uniformly and explicitly reject horizontal representation,<sup>150</sup> for various reasons: it inhibits the establishment of an attorney-client relationship, fosters in attorneys a lack of accountability and responsibility for the outcome of a case, increases the likelihood of omissions of necessary work as the case passes between attorneys, and is both cost-ineffective and demoralizing to clients as they are re-interviewed by a different attorney starting from scratch.<sup>151</sup> In Avoyelles Parish our observation of felony arraignments was that the attorney saw his primary duty as getting acceptable pleas.<sup>152</sup>

Thus, the failure to appoint an attorney that will handle the case from beginning to disposition undermines the intent of early appointment of counsel and erodes any chance of conducting a trial in a reasonable period of time. Under the speedy trial statute, if a motion is granted, trials for a defendant facing a felony charge must occur within 120 days if detained or 180 days if the defendant is not in custody.<sup>153</sup> Since the felony arraignment-only attorney does nothing substantial on the case prior to arraignment and has no responsibility for the case post-arraignment, nothing that would help the client

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<sup>149</sup> NSC at 470.

<sup>150</sup> ABA Defense Services, commentary to Standard 5-6.2, at 83.

<sup>151</sup> NSC at 462-470, citing *Wallace v. Kern* (slip op., E.D.N.Y. May 10, 1973), at 30; *Moore v. U.S.* (432 F.2d 730, 736 (3rd Cir. 1970)); and *U.S. ex rel Thomas v. Zelker*, 332 F.Supp. 595, 599 (S.D.N.Y. 1971).

<sup>152</sup> It was apparent that the attorney had not previously met with the vast majority of clients, let alone conducted any investigation or initial interviews. The attorney was seeing the case file for the first time at the hearing without access to complete discovery. Because the arraignment-only attorney routinely does not meet his clients prior to arraignment, he only has a few minutes to consult with his clients, discuss the case with the prosecutor, and appear on the arraignment calendar. While we were told that the day we saw was unusual in that so many people pled guilty at their first appearance, we also were told that many more plead guilty at their second appearance, that generally there is no meeting with the client in between the two court appearances, and that generally no investigation or research is done on the case by the defense lawyer. Not only is there not enough time to determine whether a plea offer is reasonable, there also is not enough time to build a relationship of trust between the client and the lawyer.

In many places in the United States indigent defense attorneys do not meet their clients before felony arraignments or practice horizontal representation, but in these jurisdictions there is a presumption that no plea will be entered into at this early stage because there is recognition that there has been no time to prepare a defense, conduct research or complete an investigation of the facts.

<sup>153</sup> Likewise, a person charged with a misdemeanor must have his trial commence within 30 days (in-custody) or 60 days (out-of-custody).

(investigation, psychiatric exams, drug-treatment placement) occurs until his trial attorney receives the case. In most instances, this will be on the eve of preliminary hearings or pre-trial settlement conferences – several months later. The speedy trial rules have proven ineffective to overcome this dynamic because under Louisiana Statutes, the defense lawyer must stipulate on the record that he or she is prepared to go to trial. Since they are effectively just beginning the case, the lawyer cannot do so and often waives the right to a speedy trial.<sup>154</sup>

The result is that any actual substantive work on a case occurs many months after arrest. During this time, witnesses are lost, memories get cloudy, and crime scenes are disrupted. The ability of a defense attorney to mount a credible defense is severely hampered with such passing of time. More importantly, any opportunity an indigent defendant may have to prove his or her innocence is likewise jeopardized.<sup>155</sup>

***Finding #7:*** *In violation of ABA Principle 9, the failure to ensure adequate funding and independence of the indigent defense system results in a systemic failure to provide comprehensive training.*

The ninth of the ABA’s Ten Principles provides:

*Defense counsel is provided with and required to attend continuing legal education. Counsel and staff providing defense services should have systematic and comprehensive training appropriate to their areas of practice and at least equal to that received by prosecutors.*

Standards requiring training are typically cast, like the discussion of attorney qualifications above, in terms of both quality of representation to clients and various systemic interests in maximizing efficiency and avoiding errors. Commentary to the ABA *Standards for Providing Defense Services* views attorney training as a “cost-saving device” because of the “cost of retrials based on trial errors by defense counsel or on counsel’s ineffectiveness.” The Preface to the NLADA *Defender Training and Development Standards* states that quality training makes staff members “more productive, efficient and effective.”<sup>156</sup> In adopting the *Ten Principles* in 2002, the ABA emphasized the particular importance of training with regard to indigent criminal defense

<sup>154</sup> The delay in bringing cases to timely disposition has been raised as a major problem throughout the state. In Calcasieu Parish it takes an *average* of 501 days to dispose of a felony case, and only 20% of all felony cases are disposed of within one year of the date of arrest. The average length of time from arrest to arraignment on a felony charge is *315 days*. By comparison, the U.S. Department of Justice reports in *Felony Sentences in State Courts, 1998, Bureau of Justice Statistics Bulletin*, October 2001, that the average time from arrest to disposition for felony cases nationwide is 214 days, with 90% of all felony cases disposed of within a year. See: Kurth, Michael M and Daryl V. Burkell, *Defending the Indigent in Southwest Louisiana*, July 2003, page 29.

Furthermore, the University of New Orleans Survey Research Center conducted a citizen’s evaluation of the Louisiana Courts in 1998. The research found that “Delay in the courts is an area in which the public gives Louisiana negative evaluations. Only a third of the users and non-users think that court cases are completed in a reasonable amount of time and that waiting time in court is reasonable.” Further: “The vast majority of Louisiana residents believe that there is too much time between arrest and trial.” Survey summary available at: [www.uno.edu/~poli/suprem98.htm](http://www.uno.edu/~poli/suprem98.htm).

<sup>155</sup> The indigent defense system in Avoyelles Parish does not meet LIDAB Standard 5-1.1 that requires that “counsel should be provided to the accused as soon as feasible and, in any event, after custody begins, at appearance before a committing magistrate, or when formal charges are filed, whichever occurs earliest.” The system also fails LIDAB standards for continuity of representation (Standard 5-1.4).

<sup>156</sup> [www.nlada.org/Defender/Defender\\_Standards/Defender\\_Training\\_Standards](http://www.nlada.org/Defender/Defender_Standards/Defender_Training_Standards).

by endorsing, for the first time in any area of legal practice, a requirement of *mandatory* continuing legal education. Standards typically relate indigent defense training to the level of training available to prosecutors in the jurisdiction. As stated in the Attorney General's Introduction to *Redefining Leadership for Equal Defense: Final Report of National Symposium on Indigent Defense 2000*, "public defenders need access to training resources to the same degree that Federal, State and local prosecutors have the same."<sup>157</sup>

New-attorney training is essential, and should cover matters such as how to interview a client, the level of investigation, legal research and other preparation necessary for a competent defense, trial tactics, relevant case law, and ethical obligations. Effective training includes a thorough introduction to the workings of the indigent defense system, the district attorney's office, the court system, and the probation and sheriff's departments as well as any other corrections components. And it makes use of role playing and other mock exercises, and videotapes to record student work on required skills such as direct and cross-examination, and interviews (or mock interviews) of clients, which are then played back and critiqued by a more experienced attorney or supervisor.

As these standards indicate, training should be a continual facet of a public defender agency. Skills need to be refined and expanded, and knowledge needs to be updated as laws change and practices in related fields, such as forensics, evolve. Thus, on-going training is always critical, but even more so where, as in Avoyelles Parish, experienced attorneys never received any initial "New Attorney" training and may need to re-learn skills or unlearn bad practices. Without training, attorneys are left to determine on their own what constitutes competent representation and will often fall short of that mark. This is especially true when there are no practice guidelines in place and performance is not monitored on an on-going basis. There simply is no systematic, on-going indigent defense training in Avoyelles Parish or in the rest of the state.

***Finding #8:*** *In violation of ABA Principle 10, the failure to ensure adequate funding and independence of the indigent defense system results in a lack of accountability for attorney performance and systemic ineffective assistance of counsel.*

The tenth of the ABA's *Ten Principles* frames standards regarding the duties of attorneys in individual cases in terms of the indigent defense system's obligation to ensure that attorneys are monitored for compliance with such standards:

*Defense counsel is supervised and systematically reviewed for quality and efficiency according to nationally and locally adopted standards. The defender office (both professional and support staff), assigned counsel, or contract defenders should be supervised and periodically evaluated for competence and efficiency [citing the ABA's *Defense Function Standards* and NLADA's *Performance Guidelines for Criminal Defense Representation*].*

Because the IDB members in Avoyelles Parish do not have the knowledge or training to enable them to oversee any aspect of the delivery of indigent defense services

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<sup>157</sup> Office of Justice Programs, U.S. Department of Justice ([www.ojp.usdoj.gov/indigentdefense/symposium.pdf](http://www.ojp.usdoj.gov/indigentdefense/symposium.pdf)), at viii.

in the Parish, the method of delivery, caseloads, quality of representation, etc., seems to be left to the discretion of the contract public defenders. Left without enforced standards or training the attorneys have little or no understanding of what constitute ethically required standards of practice.

The NLADA site team noticed many troublesome practices of the defense attorneys that fell far from the mark of competent representation. Indeed, basic components of representation that are required by the Constitution, ethical rules that govern attorney conduct and LIDAB standards, were lacking. With one attorney, the representation was so deficient that the accused individual was left to advocate on his own behalf, despite the fact that counsel was in the courtroom. The attorney's practice was to stand 15 feet or so away from the defendant during guilty pleas, including those defendants in chains. The attorney was at times laughing with prosecutors or court staff during the proceeding in which his clients were forced to provide their own representation. In one such case, the defendant told the judge that he was not guilty of one of the burglary charges in the bill of information, and after discussion at the bench, the state moved to dismiss that particular charge – though the original plea in relation to sentencing was kept in tact. The defense attorney did nothing even after the judge admonished the lawyer to pay attention.<sup>158</sup>

In another instance, despite constitutional requirements and the LIDAB standard recognizing the grave consequences of conflicts of interests, NLADA observed a public defender represent two co-defendants that were charged in the same incident with felony theft. According to the evidence presented in court, one defendant allegedly took \$500 from a wallet he found and gave some of the money to the other. They were allegedly both intoxicated and wanted the money for liquor at the time of the incident. There may have been a trial issue as to whether or not the receiving defendant actually knew that the money from his co-conspirator was stolen. There were also questions of competency as one testified to having only an eighth grade education, and the other had a tenth grade education. Despite these potential issues, both pled guilty and received three-year suspended sentences, mandatory requirements to attend theft school, and had to pay substantial fines, costs and fees. When questioned later about the dual representation, the attorney in question indicated that if they had not pled guilty, he would have made sure that each defendant had received separate counsel appointments. Both men were constitutionally entitled to individual counsel, whether they pled or went to trial. The attorney's response evidences "casualness" about the right to one's own attorney and the rights of poor people that is highly problematic and contrary to the attorney's ethical duties, especially where no waiver of a separate right to counsel was entered either on the record or through a written waiver of conflict.<sup>159</sup>

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<sup>158</sup> It is important to mention that LIDAB Standard 6-1.1(B) states: "The basic duty the lawyer for the accused owes to the administration of justice is to serve as the accused's counselor and advocate with courage, devotion and to render effective, quality representation."

<sup>159</sup> LIDAB Standard 9-1.3 states: "The potential for conflict of interest in representing multiple defendants is so grave that ordinarily defense counsel should decline to act for more than one of several codefendants except in unusual situations when, after careful investigation, it is clear either that no conflict is likely to develop at trial, sentencing, or at any other time in the proceeding or that common representation will be advantageous to each of the codefendants represented and, in either case, that: (A) The several defendants give an informed consent to such multiple representation; and (B) The consent of the defendants is made a matter of judicial record. In determining the presence of consent by the defendants, the trial judge should make appropriate inquiries respecting actual or potential conflicts of interest of counsel and whether the defendants fully comprehend the difficulties that defense counsel may encounter in defending multiple clients."

Again contrary to constitutional requirements (to investigate cases), one defense attorney told us that he has no investigation resources for defender cases and that he has not filed a motion for an expert in at least three years because he has not needed one. He noted that there are a “tremendous amount of confessions.” He said he does not investigate cases with multiple witnesses and a confession noting, “why would you investigate what your client told you? There is nothing to investigate.”<sup>160</sup> A different defense attorney could not recall one case in 20 years in which there had been a defender investigation. This same attorney does not meet his indigent clients in his office or at all between arraignment and pre-trial hearings. He sends them a letter asking them to identify who their witnesses are and what they would say, and tells them to meet at court for the pre-trial conference, where another plea offer is made and he reviews the file again. If the client provides a list of witnesses, this particular defense attorney will have his private staff subpoena them for trial. He says the decision on whether he will interview the witnesses “depends on the facts we have.” He noted that in a criminal jury week, there are between five and 20 trials set per IDB attorney.

We witnessed another case where the defense attorney had no idea that the client he had just talked to for a mere 30 seconds, and who was pleading guilty to the equivalent of statutory rape, could not have been found guilty because he was not the requisite number of years older than his girlfriend -- who was in court to support him. The District Court judge recognized the error. When later asked about this case, the lawyer told us that he had asked the client how old he was and if the client did not know or gave a misleading answer the lawyer could not be held accountable. To compound the problem, the lawyer then let his client plead to the unproven crime of trespass (despite the girlfriend’s admission that he had been invited into the premises), as if there was some kind of quid pro quo plea bargain that needed to be maintained after the sex charges were dismissed.<sup>161</sup>

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<sup>160</sup> Among the issues to be investigated are: mental health issues, substance abuse, duress or other codefendant pressures, false confessions, etc.

<sup>161</sup> An interview with the District Attorney after this case revealed that the mother of the young woman would have testified that there was no permission for the defendant to be on her property so the trespass case might have ultimately been provable. In any event, the defense counsel was not aware of this fact and it certainly indicates the lack of preparation and investigation on a serious charge.

One significant problem with this type of casualness to serious charges is that the collateral ramifications are significant. La. R.S. 14:80 defines “Felony Carnal Knowledge of a Juvenile” as consensual sexual intercourse where the defendant is 19 or older and the “victim” is 12 to 16, OR the defendant is 17 or older and the “victim” is 12 to 14. This offense carries up to 10 years in prison or fine of \$5,000 or both.

Felony Carnal Knowledge is a “sex offense” pursuant to La. R.S. 15:541(14.1), because it is a provision of “Subpart A(1) of Part V of Chapter 1 of Title 14.” A conviction of Felony Carnal Knowledge, therefore, subjects the defendant to sex offender reporting requirements throughout the entirety of his sentence, La. R.S. 15:542, and to registration requirements for 10 years following release on parole or probation or from prison, La. R.S. 15:542(C), 15:542.1(H).

The sex offender reporting requirements include: registering as a sex offender with the Sheriff and the Chief of Police where they live; mailing notice of their neighbors of the crime of conviction, name, address, physical description and a photograph; mailing notice to the superintendent of the school district where he lives; mailing notice to the lessor, landlord, or owner of his residence; mailing notice to the superintendent of parks and recreation where he lives; publishing a notice in the newspaper on two separate days, with his photograph; and, giving notice to the Louisiana Bureau of Criminal Identification and Information of any college or technical school where he attends or works.

These requirements pertain every time he moves. Then, for the 10 years after his sentence, he still has to register annually with the Louisiana Bureau of Criminal Identification and Information, which maintains his information in the “State Sex Offender and Child Predator Registry.” He has to continue to register under these laws even if they receive a pardon of their conviction.

If the defendant was placed on probation (or later made parole), he would also have to attend a sex offender treatment program, at his own expense, throughout the probation and/or parole, La. C.Cr.P. art. 895(J), and give blood and saliva samples, La. C.Cr.P. art. 895(E).

All of these incidents occurred on a single day in which the District Judge, the District Attorney and the contract defense attorneys were aware that members of the NLADA site team were in the audience conducting court observations. Two of the attorneys appeared qualified to be handling felony cases under normal circumstances, but the high workload, the lack of training, the lack of oversight and the delay in beginning anything substantive on a case until months after arrest resulted in even these attorneys providing ineffective assistance of counsel.

***Finding #9:*** *In violation of ABA Principle 4, the failure to ensure adequate funding and independence of the indigent defense system results in the continual abridgement of indigent defense clients' right to confidentiality.*

The fourth of the ABA's *Ten Principles* provides that in an effective public defense delivery system –

*Defense counsel is provided sufficient time and a confidential space with which to meet with the client. Counsel should interview the client as soon as practicable before the preliminary examination or the trial date. Counsel should have confidential access to the client for the full exchange of legal, procedural and factual information between counsel and client. To ensure confidential communications, private meeting space should be available in jails, prisons, courthouses and other places where defendants must confer with counsel.*

As the Principle itself states, the purpose is “to ensure confidential communications” between attorney and client. This effectuates the individual attorney’s professional ethical obligation to preserve attorney-client confidences,<sup>162</sup> the breach of which is punishable by bar disciplinary action. It also effectuates the responsibility of the jurisdiction and the indigent defense system to provide a structure in which confidentiality can be preserved<sup>163</sup> – perhaps nowhere more important than in indigent criminal defense, where liberty and even life are at stake, and client mistrust of the public defender as a paid agent of the state is high.<sup>164</sup>

Substantive conversations on felony cases between clients and attorneys in Avoyelles Parish were conducted in the open courtroom audible to the courtroom audience, including other defendants, victims, family members, the judge, law enforcement officers, prosecuting attorneys, and others. Initial conversations on DUI misdemeanor cases had apparently been held in some other area of the courthouse, though they clearly were not one-on-one conversations between defendant and attorney but rather involved all of the DUI misdemeanor defendants at once. In some instances,

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Finally, there is almost nowhere that a “sex offender” can live, work, or attend church. The parole board is allowed to make a condition of parole “such other specific conditions as are appropriate.” La. R.S. 15:574.4. A typical sex offender parole requires that the parolee not have unsupervised contact with any person under the age of eighteen (18), and the parole officers and board construe this to apply to church attendance, living with your own children or step-children or siblings, eating at McDonalds, or going anywhere where you might brush up against a child.

<sup>162</sup> ABA *Model Rules of Professional Conduct*, Rule 1.6; *Model Code of Professional Responsibility*, DR 4-101; ABA *Defense Function*, Standard 4-3.1; NLADA *Performance Guidelines*, 2.2.

<sup>163</sup> NSC, Guideline 5.10

<sup>164</sup> *Id.*, and commentary at p. 460.

NLADA representatives observed indigent defense clients talking directly to the prosecutor about his or her case without the defense lawyer interceding.<sup>165</sup>

In addition to an apparent lack of physical space set aside for private attorney-conversation, an equally important reason for the confidentiality breaches was that the defense attorneys did not understand the critical importance of “client interviews,” both for investigative purposes, and to fulfill ethical obligations concerning client relations.<sup>166</sup> In discussing ways to improve the possibility of out-of-custody clients coming to interviews, one of the lawyers said he could not be bothered with bringing a calendar to court to set up appointments, or setting aside a regular afternoon to meet clients. His expressed attitude was that it was not his problem and that it did not matter anyway. The majority of the “interviews” we witnessed took no more than 30 seconds. Following one such “interview” the client entered a plea, and was sentenced on the spot to five years at hard labor.

Just as troublesome is the lack of confidentiality of the IDB office. During our site visit, the IDB office was being shared with probation officers. Clients receiving probation were requested to go to the IDB office to meet with officers. There were no IDB staff members available on the premises and a single probation officer was conducting interviews in one semi-private office. Remarkably, client case files were in open boxes and easily perused by clients, probation officers or anyone walking in off of the street.

Finally, the practice of the local Sheriff infringes on attorney-client communication, and thus, confidentiality. The Avoyelles Parish Sheriff is the owner of a communications conglomerate that provides e-mail and Internet communications to a large share of regional clients, including the IDB. One of his subsidiaries owns and operates the phone system in the jails. Several interviewees informed us that the company charges \$5.00 to place a collect call and then charges long distance rates for the entirety of the conversation. This policy has forced the IDB and the contract lawyers to set a policy that no collect calls from the jail be accepted due to financial constraints. Such a policy forces initial interviews to occur at arraignment under the conditions described above.<sup>167</sup>

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<sup>165</sup> Such conversations are in violation of the American Bar Association’s *Criminal Justice Standards*. Standard 3-4.1(b) for the prosecution function, “Availability for Plea Discussions,” states: “[a] prosecutor should not engage in plea discussions directly with an accused who is represented by defense counsel, except with defense counsel’s approval. Where the defendant has properly waived counsel, the prosecuting attorney may engage in plea discussions with the defendant, although, where feasible, a record of such discussions should be made and preserved.” The discussions between defendants and the District Attorney were not conducted before the defendant had properly waived their right to counsel. The ABA standards are available at: [www.abanet.org/crimjust/standards/pfunc\\_toc.html](http://www.abanet.org/crimjust/standards/pfunc_toc.html).

<sup>166</sup> NLADA does believe that one of the contract attorneys has a more client-centered approach than the others, but that workload concerns prevent this attorney from providing adequate representation in all cases.

<sup>167</sup> The jail phone system was the subject of previous litigation. In 1991, Judge Michael Johnson was elected to and assumed the office of Judge of the Twelfth Judicial District Court. Before and after assuming office, Johnson, together with a partner owned and operated Cajun Callers, which provided pay telephone service for all Avoyelles Parish jail inmates. Judge Johnson was responsible for the management of Cajun Callers both before and after he became a judge, and received substantial income for his efforts (\$254,616.44 in 1995). *In re Johnson*, 683 So.2d 1196, 1198 (La. 1996). A conflict was found with the judge owning the phone system since he stood to benefit from having more people in jail.

There currently is no ethical conflict for a Sheriff to own the jail telephone system. But, LIDAB Standard 6-2.1(C) states: “Personnel of jails, prisons, and custodial institutions should be prohibited to any extent from examining or otherwise interfering with any communication or correspondence between client and defense counsel relating to legal action arising from charges, detention, or incarceration.”

***Finding #10:*** *In violation of ABA Principle 8, the failure to ensure adequate funding and independence of the indigent defense system results in the lack of resource parity between the prosecution and defense in Louisiana.*

The number of prosecutions brought in a jurisdiction drives indigent defense workload. And, since prosecution resources (both funding and staffing) significantly effects the number of prosecutions brought, increased prosecution funding directly increases defender workload.<sup>168</sup> Disparity of resources between public defenders and prosecutors exacerbates the inability of public defenders to keep up with workload increases and causes delay in dispensing justice to victims, witnesses and defendants.<sup>169</sup> For this reason, the eighth of the ABA's *Ten Principles* addresses the issue of resources for indigent defense, specifically in comparison with prosecution resources:

*There is parity between defense counsel and the prosecution with respect to resources and defense counsel is included as an equal partner in the justice system. There should be parity of workload, salaries and other resources (such as benefits, technology, facilities, legal research, support staff, paralegals, investigators, and access to forensic services and experts) between prosecution and public defense.... No part of the justice system should be expanded or the workload increased without consideration of the impact that expansion will have on the balance and on the other components of the justice system. Public defense should participate as an equal partner in improving the justice system. This principle assumes that the prosecutor is adequately funded and supported in all respects, so that securing parity will mean that defense counsel is able to provide quality legal representation.*

The principle of parity between the resources of a district attorney's office and an indigent defense system is fairly straightforward. It derives from the fact that indigent defense workloads are driven by external factors – both by the prosecution, as noted, and by indigency rates among the defendant population. Whatever the percentage of criminal defendants entitled to counsel in a jurisdiction that are typically indigent, that same percentage is used as a starting point for calculating the ratio of prosecution funding to indigent defense funding. These figures may be adjusted up or down depending on the existence of other relevant factors increasing or decreasing one side's workload or budget.

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<sup>168</sup> NLADA does not take a position on whether or not the District Attorney's office in Avoyelles Parish is adequately funded.

<sup>169</sup> Chief Justice Warren Burger wrote in 1972 "society's goal should be 'that the system for providing the counsel and facilities for the defense should be as good as the system which society provides for the prosecution.'" (*Argersinger v. Hamlin*, 407 U.S. 25, 43 (concurring opinion)). The Justice Department's 1999 report, *Improving Criminal Justice* concludes that: "Salary parity between prosecutors and defenders at all experience levels is an important means of reducing staff turnover and avoiding related recruitment/training costs and disruptions to the office and case processing. Concomitant with salary parity is the need to maintain comparable staffing and workloads – the innately linked notions of 'equal pay' for 'equal work.' The concept of parity includes all related resource allocations, including support, investigative and expert services, physical facilities such as a law library, computers and proximity to the courthouse, as well as institutional issues such as access to federal grant programs and student loan forgiveness options."

For example, the prosecutor’s office may have some duties not requiring indigent defense representation, such as certain civil cases or providing victim support services, or internal policies may lead it to routinely decline prosecution in a certain percentage of the cases reviewed upon referral by the police. On the other hand, indigent defense providers may not have access to supplemental types of funding available to the prosecutor’s office, such as forfeited assets, fines, or federal grants; and as in all jurisdictions, some key resources and services available to prosecutors are furnished through other agencies budgets, and are hence “off budget” and not visible in a simple comparison of direct appropriations to the local offices of the District Attorney and the Public Defender. Examples of such “off-budget” items include the investigative resources of local law enforcement, state and federal crime labs, psychiatric and mental health experts, and federal agency personnel (e.g., FBI). As the U.S. Department of Justice has suggested, such policies, practices, and off-budget resources must be calculated into the parity balance sheet.<sup>170</sup>

In Louisiana there is nothing close to parity between prosecution and defense. On average, Louisiana prosecutors outspent their indigent defense counterparts by nearly 3 to 1 (total reported statewide expenditure for prosecution: \$75,790,140; statewide indigent defense trial-level resources: \$25,279,558).<sup>171</sup> Again, this does not take into account the amount of investigative resources provided at no cost to the prosecution by police, sheriffs, or FBI but which the indigent defense system must pay for directly, nor the cost of state crime labs or experts. At the close of 2002, Louisiana district attorneys collectively had over \$38 million in reserves -- a 420.55% disparity between the collective statewide IDB reserves.

Prosecutors in Louisiana also have the long-standing benefit of a retirement system enacted by the State Legislature in 1956. District Attorney staff who joined the retirement system after 1990 receive 3.5% of their final year’s salary multiplied by the number of years service every year upon retiring. For example an attorney working for 25 years as a district attorney, and who made \$75,000 in the final year of her career, would earn \$65,625 per year upon retirement. Other benefits include disability, early retirement, and death benefits. At the close of 2002, the District Attorneys Retirement System had a year-end balance of \$135,176,917 in reserves. Contract public defense attorneys must budget for their own retirement.<sup>172</sup>

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<sup>170</sup> See *Indigent Defense Services in Large Counties, 1999*, Bureau of Justice Statistics, U.S. Department of Justice ([www.ojp.usdoj.gov/bjs/abstract/idslc99.htm](http://www.ojp.usdoj.gov/bjs/abstract/idslc99.htm)) (“Some categories of expenses are typically borne by indigent defense but not necessarily by local prosecution agencies, thus hindering direct comparisons (e.g., expenditures of prosecutors’ offices may not include investigative resources provided by law enforcement agencies, forensic laboratory work or expert witnesses, office space or technology, and training”).

<sup>171</sup> See Appendix K (page 127) for a district-by-district parity analysis of indigent defense and prosecution services. This analysis simply reflects what was reported to the State Legislative Auditor. There are a number of instances in which further analysis is warranted. For example, in 2002, the District Attorney audit of the 34<sup>th</sup> Judicial District (St. Bernard Parish) reported that only \$6,298.00 was expended by the office. Comparatively, the IDB in the same parish reported expending \$272,509.00. Such differences are far and few between and the analysis reveals overwhelmingly that Louisiana’s judicial districts do not practice resource parity between prosecution and defense.

<sup>172</sup> The availability of retirement benefits to those attorneys working in staffed public defender offices vary from district to district. For example, the 19<sup>th</sup> Judicial District (East Baton Rouge) does have a 403(b) Plan in place that was approved by the IDB in 1992. The IDB contributes 7.8% of the employee’s salary to the Plan. The employee is not required to contribute, but he or she can if so desired. The 19<sup>th</sup> Judicial District also has a 401K cafeteria plan available for employees, though the IDB does not contribute to this plan.

Again, the 12<sup>th</sup> Judicial District serves as a good example of what this disparity means on a local level. To begin with, both the IDB and the District Attorney receive a near equal percentage of court-imposed fees. Moreover, in every court case we witnessed, guilty defendants were assessed both the cost of defense counsel *and* the cost of prosecution.<sup>173</sup> Thus, the District Attorney office begins with a nearly equal share of the primary indigent defense revenue stream *before* factoring in state and local monies.

The District Attorneys office in Avoyelles Parish consists of ten prosecuting attorneys. In addition to District Attorney Riddle, one attorney is the First Assistant District Attorney. Two prosecutors are exclusively assigned to one of the two District Courtrooms and another two prosecutors are assigned to the other courtroom. One prosecutes juvenile offenders and handles prosecutions in Bunkie City Court. One attorney heads up the Special Victims Unit.<sup>174</sup> One of the attorneys operates as a floater, while the other handles the civil department. The office has 12 support staff.<sup>175</sup>

The indigent defense system on the other hand operates with just four part-time attorneys, or the equivalent of two full-time attorneys. Three of the attorneys share workspace and have to pay for all of their office support (rent, overhead, Internet access) out of the money earned through their indigent defense contracts and private cases.<sup>176</sup> The IDB generally has a staff position to handle the bookkeeping and other administrative functions, though at the time of our visit, this position was vacant.

The disparity in resources between the prosecution and defense functions is graphically reflected in the differences that exist between the two Avoyelles Parish offices. The district attorney's office recently underwent an \$850,000 renovation, including all new computers with high-speed Internet access. We were told that most of the changes were funded through Federal grants, though some Parish money was used. Mr. Riddle's office exudes professionalism with all of the modern conveniences offered to prosecutors.

Mr. Riddle's office exudes professionalism with all of the modern conveniences offered to prosecutors.

By contrast, the Indigent Defender Board Office is in disarray. Generally unmanned (at least at the time of our visit), the office looked abandoned. The waiting area was poorly lit, and papers and case files were piled in the one hallway that connected the few offices.

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<sup>173</sup> Depending on severity of the charge, the District Attorney's share of court costs is between \$10-\$20. IDB gets \$25 regardless of severity of the charge. Additionally, the District Attorney and the IDB both receive \$125 apiece to off set the cost of the prosecution and defense, respectively.

<sup>174</sup> District Attorney Riddle created the Special Victims Unit (SVU) upon taking office. While a State Representative he authored the bill that allows victims to allocute at the sentencing phase. SVU cases include: domestic violence, sex offenses, and crimes against the elderly and against minors. Other support staff includes a "Hot Check Coordinator" assigned to work with businesses in an effort to assist them in collection of bad checks.

<sup>175</sup> This number includes the Victims Assistance Coordinator (VAC). The State authorized and funded a VAC for each judicial District. As in other jurisdictions, the VAC is dedicated to the concerns of victims, such as hearing dates, sentencing dates, release dates from jail of the criminal, and other matters.

<sup>176</sup> The fourth indigent defense attorney has a private office in Rapides Parish, making it all but impossible for clients to meet her in her office.



Indigent Defender Board Office



District Attorney's Office

### Summary of Chapters III & IV

In violation of LIDAB’s own requirement for receiving district assistance grant funding, the 12<sup>th</sup> Judicial District IDB is not “immediately” working on achieving the goal of meeting LIDAB-promulgated standards. In fact, documented evidence indicates that any “work” undertaken by the IDB has resulted in the indigent defense system in Avoyelles Parish falling further away from the statewide standards.

As indicated in Chapter I of this report, The American Bar Association’s *Ten Principles of a Public Defense Delivery System*, was devised as a set of standards which constitute the fundamental criteria to be met for a public defense delivery system to deliver effective and efficient, high quality, ethical, conflict-free representation to accused persons who cannot afford to hire an attorney. The substantial failing of the system to meet these standards can only mean that the indigent defense system devised by the legislature in Louisiana delivers ineffective, inefficient, poor quality, unethical, conflict-ridden representation to the poor. Based on a review of Louisiana statutes, LIDAB standards, recent reports by other reputable organizations, and our own firsthand courtroom observations in Avoyelles Parish, NLADA has created an easy to reference scorecard (below) regarding the extent to which the indigent defense system in Louisiana fails to meet the vast majority of the *Ten Principles*:

<u>ABA Principle</u>	<u>Explanation</u>	<u>Grade</u>
1. <i>The public defense function, including the selection, funding, and payment of defense counsel, is independent.</i>	Louisiana Statutes do not safeguard against undue judicial interference. Judges appoint IDB board members in direct violation of this principle.	F
2. <i>Where the caseload is sufficiently high, the public defense delivery system consists of both a defender office and the active participation of the private bar.</i>	Instead of creating public defender offices in those jurisdictions where high caseloads warrant such a model, Louisiana’s judicial districts have instead closed public defender offices in favor of flat-fee contract systems. The indigent defense system is not entirely state-funded as directed in this Principle’s subsection.	F
3. <i>Clients are screened for eligibility, and defense counsel is assigned and notified of appointment, as soon as feasible after clients’ arrest, detention, or request for counsel.</i>	As demonstrated in Avoyelles Parish, clients are not screened for eligibility. Counsel is not appointed in a timely manner. Clients are not appointed counsel in the early stages of a case. Statutory guarantees of a “speedy trial” are not effective in practice.	F
4. <i>Defense counsel is provided sufficient time and a confidential space with which to meet with the client.</i>	As demonstrated in Avoyelles Parish, client confidentiality is continually abridged. The failure of attorneys to meet with clients before court forces meetings to be held in the courtroom. There are no provisions in Louisiana statutes safeguarding confidentiality.	F
5. <i>Defense counsel’s workload is controlled to permit the rendering of quality representation.</i>	Louisiana statutes do not safeguard against public defender overload. Workload of Louisiana public defenders are far in excess of all nationally recognized standards, as demonstrated in Avoyelles Parish and a recent report in Calcasieu Parish. Failure to control caseload permits poor quality representation.	F

<u>ABA Principle</u>	<u>Explanation</u>	<u>Grade</u>
6. <i>Defense counsel's ability, training, and experience match the complexity of the case.</i>	Louisiana statutes do not safeguard against unqualified attorneys being appointed to indigent defense cases. As demonstrated in Avoyelles Parish, attorneys are assigned cases for which they are not qualified to represent. There is no systematic indigent defense training in the state.	F
7. <i>The same attorney continuously represents the client until completion of the case.</i>	As demonstrated in Avoyelles Parish, the same attorney does not represent clients from assignment through disposition.	F
8. <i>There is parity between defense counsel and the prosecution with respect to resources and defense counsel is included as an equal partner in the justice system.</i>	A review of all prosecutor and IDB financial audits reveal that there is no parity between prosecution and indigent defense resources. Indigent defense is not a co-equal partner in the justice system in Louisiana.	F
9. <i>Defense counsel is provided with and required to attend continuing legal education.</i>	All attorneys are required to attend continuing legal education in Louisiana. <sup>177</sup> In violation of this Principle's subsection, the general training is not specifically appropriate to the indigent defense field. Indigent defense training is not equal to the prosecutor training.	C
10. <i>Defense counsel is supervised and systematically reviewed for quality and efficiency according to nationally and locally adopted standards.</i>	Louisiana statutes provide no guarantee that indigent defense attorneys be reviewed for quality. LIDAB has no authority or capacity to do so. There is no supervision or quality review of the indigent defense system.	F

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<sup>177</sup> The Rules of the Supreme Court of Louisiana require all attorneys to complete 12.5 hours on continuing legal education (CLE) annually. At least one hour each must be devoted to ethics and legal professionalism.

Chapter V  
**An Analysis of the Failure of Post-Peart Reform  
to Improve the Quality of Indigent Defense Services in Louisiana**

***Finding #11:*** *As demonstrated in the previous two chapters, the trial-level indigent defense system in Louisiana is rife with systemic deficiencies despite the single biggest reform effort of the post-Peart era – the Louisiana Indigent Defense Assistance Board. LIDAB has failed to improve the quality of trial-level indigent defense services for four main reasons: since its inception it has been essentially flat-funded despite increased responsibilities; participation in the District Assistance Fund (DAF) program is not dependent on compliance with state standards; LIDAB is not a regulatory commission empowered to verify the uniformity and accuracy of reported statistics nor does it have the capacity to do so; and, the DAF funding matrix is fundamentally flawed in assessing need. Moreover, the district assistance fund model can never work in a funding system that is reliant on court costs and recoupment as the primary revenue stream.*

The single biggest effort to reform indigent defense services over the past decade was the creation of the Louisiana Indigent Defense Assistance Board (LIDAB), and its predecessor the Louisiana Indigent Defender Board (LIDB). LIDAB, and in particular the state’s district assistance fund, is patterned on the successful state assistance grants model employed in the State of Indiana. Louisiana, however, has significantly altered the Indiana model, and in doing so, has ceded its constitutional responsibilities to the local level in such a way that results in neither the state nor the local government having accountability for the issue.

After a brief description of the Indiana indigent defense system, this Chapter will explore the fundamental flaws responsible for the failure of LIDAB to improve the delivery of defense services to indigent defense clients at the trial-level.

*A Closer Look at Indigent Defense Services in Indiana*

Like Louisiana, Indiana has a strong home-rule tradition, favoring local autonomy over state control in many matters. Indigent defense in Indiana has always been organized at the county level, and has been provided primarily by part-time “public defenders,” generally operating under a contract. Indiana’s indigent defense standards<sup>178</sup> are written, as are Louisiana’s, at the state level, by a statewide independent commission, and compliance by the counties is purely voluntary. However, unlike Louisiana, counties that choose to comply with the state indigent defense standards are eligible to have a portion of their indigent defense costs reimbursed by the state. A state statute authorizes the reimbursement from state funds of 40% of the indigent defense expenditures of counties that meet certain standards (including client eligibility, attorney qualifications and workload).<sup>179</sup> A county that wishes to be considered for reimbursement is statutorily

<sup>178</sup> *Standards for Indigent Defense Services in Non-Capital Cases, with commentary*, Indiana Public Defender Commission, effective Jan. 1, 1995, as amended October 28, 1998.

<sup>179</sup> IC 33-9-11-4(b); 33-9-15-10.5(b). The 40 percent reimbursement figure applies only in non-capital felony and juvenile cases. Misdemeanor cases are not eligible for reimbursement. State reimbursement is available in capital cases, with two differences: the standards are issued by the state Supreme Court (as Rule 24 of the state’s Rules of Criminal Procedure), rather than the state Public Defender Commission, under similar statutory authority; and the reimbursement rate is raised to 50 percent – producing a standards-compliance rate of 100 percent.

required to establish a local County Public Defender Board of at least three members, whose responsibilities include writing a comprehensive plan for indigent defense in the county, appointing a county public defender, overseeing the office and its budget, and submitting requests for state reimbursement.<sup>180</sup>

The State Public Defender is a separate entity from the Commission that provides representation in all post-conviction proceedings, as well as some direct appeals. Indigent defense in Indiana is further assisted through an indigent defense resource center, the Indiana Public Defender Council (IPDC). IC 33-9-12 directs IPDC to: assist in the coordination of indigent defense providers through preparing manuals of procedures; assist in the preparation of trial briefs, forms and instructions; conduct research and studies of interest to indigent defense practitioners; and maintain liaison contact with study commissions, organizations and agencies of all branches of government (local, state and federal) that will benefit criminal defense as part of the fair administration of justice.

*11.1: Despite expanded services, LIDAB has been essentially flat-funded since its inception. No new monies have been appropriated to offset the cost-of-living or the cost of an expansion of services, some of which were legislatively mandated.*

Louisiana has not matched Indiana's ability to increase state funding to the state assistance grants program. When LIDB was first created on the heels of the *Peart* decision, \$5 million was budgeted by the Louisiana Legislature for its success. In the next year, the budget was increased to \$7.5 million where it has stayed, for the most part, for the next eight years.<sup>181</sup> During this time, the cost of living has climbed by 20.73%.<sup>182</sup> Since 1999, the earliest year for which court data is readily available, district court criminal and traffic cases have increased 10.5%.<sup>183</sup> During this time, LIDAB services were expanded by the Legislature to include providing defense services in post-conviction cases without any new resources dedicated to the agency.

Thus, increased need, costs and services have been met with no new funding. As such, Louisiana's state assistance program funds have not only decreased but have fluctuated inconsistently from year to year from a high of \$3.5 million in 1999 to as low as \$1,044,048 in 2000.<sup>184</sup> This means that if the pool of judicial districts that need assistance grows over time, the actual dollars going to any particular IDB will likely decrease. And, as the cost of providing indigent defense services increases, the percentage of revenues from LIDAB should fall exponentially. As history has shown,

<sup>180</sup> IC 33-9-15-6; IC 33-9-15-10.5. Counties with populations under 12,000 are exempted from the requirement to establish a County Public Defender Board.

<sup>181</sup> The initial \$5 million appropriation and subsequent increase to \$7.8 million is significantly lower than the \$20 million recommendation of noted indigent defense expert Robert L. Spangenberg. See: The State of Louisiana Supreme Judicial Court, Judicial Counsel's Statewide IDB Commission, *Study of the Indigent Defense System in Louisiana*, 1992, prepared by The Spangenberg Group.

<sup>182</sup> See the American Institute of Economic Research: [www.aier.org/cgi-bin/colcalculator.cgi](http://www.aier.org/cgi-bin/colcalculator.cgi).

<sup>183</sup> The Supreme Court of Louisiana, *Annual Report 2002 of the Judicial Council of the Supreme Court*, 2003. *Supra* note 43.

<sup>184</sup> This funding fluctuation is caused by the fact that IDBs operate on a calendar year, while LIDAB dispenses state grants on a fiscal year. In fiscal year 2001, LIDAB disseminated \$3 million but only \$1.044 million in calendar year 2000. This put a huge burden on local IDBs to make up the difference.

IDBs will likely respond to this dynamic by further lowering the quality of services to fit available resources.

This stands in direct contrast to Indiana, where funding to the Commission has increased over time to offset a higher and higher percentage of counties that have come into compliance with the state standards. When state reimbursement in Indiana was first authorized in 1993, \$1.25 million was dedicated to the commission to reimburse counties at a rate of 25% of all county indigent defense expenditures (and 13 counties came into compliance that first year). In 1997, the Commission's appropriation increased to \$3 million and the reimbursement rate was raised to 40%. Though the reimbursement rate is still 40%, state expenditures of \$7 million annually has allowed an additional 41 counties to qualify for reimbursement – for a current total of 54 of Indiana's 92 counties that have opted in (or 58.7% of counties that are in compliance with state standards).<sup>185</sup> Significantly, this is the increased expenditure of the state assistance to counties program. The money for the State Public Defender (which is akin to many of the LIDAB expanded services) and money for the resource center (for which there is no correlation to Louisiana) is appropriated under separate line items. The State of Indiana now spends over \$14 million in total on indigent defense services.

*11.2: Participation in LIDAB's DAF program is not dependent on compliance with state standards.*

As demonstrated in Indiana, compliance with state standards (and thus improvement in services) is directly related to the availability of state reimbursement. When the Indiana Commission originally adopted their non-capital standards in 1989, and when compliance was completely voluntary, no counties were known to be in compliance. Improvement in Indiana's indigent defense services only came because no money is ever disseminated to counties unless and until compliance with standards has been objectively demonstrated.

LIDAB Board members have been resistant to employing a similar philosophy of making district assistance money dependent on compliance with state standards. At the LIDAB hearing at the state Capitol in April 2003, LIDAB board members expressed the belief that the funding crisis is so bad in Louisiana that they would be derelict in their ethical duties to withhold *any* money to the local IDBs. Yet, if DAF assistance is forthcoming no matter what, there is no incentive for judicial districts ever to ensure adequacy of services through compliance with standards. In this way, Louisiana is like Georgia, which also had a state assistance board that did not enforce standards. After numerous lawsuits and reports uncovered that the failure to enforce standards resulted in constitutionally inadequate defense services throughout the state, the Georgia Legislature passed a bill, that was subsequently signed in to law by the Governor, replacing the

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<sup>185</sup> *Annual Report of the Public Defender Commission, 2001-2002* available at: [www.in.gov/judiciary/admin/pub\\_def/docs/01-02-ann-rept.doc](http://www.in.gov/judiciary/admin/pub_def/docs/01-02-ann-rept.doc). It is important to note that the Indiana Commission is experiencing funding issues. In the last fiscal year, the Commission had to prorate reimbursements to counties due to lack of funding. The Indiana Supreme Court has requested a budget of \$8.8 million (FY 2004) and \$9.5 million (FY 2005) for the Commission while the state Budget Agency has proposed flat funding. See *Letter from Indiana Public Defender Commission, Norm Lefstein, to the Chair of the Senate Finance Committee* at: [www.in.gov/judiciary/admin/pub\\_def/docs/fundingletter.doc](http://www.in.gov/judiciary/admin/pub_def/docs/fundingletter.doc). This exposes a main flaw in the indigent defense delivery model that attempts to improve indigent defense quality through state financial incentives to local jurisdictions. Should state funding not increase at a rate to continue to entice local jurisdictions to improve services, local government may choose simply to not provide adequate representation to the poor.

statewide assistance to local counties structure with a state administered system of regional public defender offices.<sup>186</sup>

*11.3: LIDAB has no verification mechanism to guarantee the uniformity and accuracy of self-reported caseload statistics.*

As noted earlier in the report, LIDAB is not a regulatory commission with powers to compel local jurisdictions to comply with its standards nor does it have the capacity to institute procedures for verification. As such, there is no ombudsperson at LIDAB to verify that the caseload data reported are factually true. We are not implying that local IDBs would purposefully and consciously report false data in an effort to secure more funding -- though the system certainly is not set up to deter such abuse. Rather, because there is no uniform definition of what constitutes a “case,” some jurisdictions may be reporting the number of felony charges, another reporting the number of felony defendants, still another reporting felony indictments/informations, and still others some combination thereof. The impact of this is enormous.

Because LIDAB’s DAF funding formula is so heavily weighted to caseload, a jurisdiction that reports the number of felony “charges” will unfairly get more assistance than a jurisdiction that reports number of “defendants.”<sup>187</sup> It is not possible for LIDAB to visit every judicial district to verify the caseload numbers, and indeed, Mr. Ed Greenlee of LIDAB informed us that he has never been to Avoyelles Parish at all in his professional capacity.

It is important at this point in time to revisit the inconsistency of the caseload numbers reported to LIDAB for Avoyelles Parish. Over the four-year period from 1999 to 2002 the reported felony caseload numbers decreased by approximately 50% despite the view of the majority of interviewees that the indigent defense caseload in the 12<sup>th</sup> Judicial District continues to increase year after year. Had the 12<sup>th</sup> Judicial District IDB reported even 75% of the total district felony cases reported in the *Louisiana Supreme Court Annual Report* (or 1,485 of 1,980) instead of simply relying on unverified court reports, their LIDAB DAF grant in 2003 would have increased from the \$25,666 they did receive to \$199,885 (or an increase of 678.8%).<sup>188</sup>

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<sup>186</sup> <http://www.georgiacourts.org/aoc/press/IDsigning-PR.pdf>

<sup>187</sup> The Conference of State Court Administrators and the National Center for State Courts’ publication *State Court Model Statistical Dictionary, 1989*, instructs administrators to “[c]ount each defendant and all charges involved in a single incident as a single case (page 19).” A defendant that is charged with reckless driving who subsequently assaults the arresting officer would be counted as one case for reporting purposes. On the other hand, a defendant who is charged with shoplifting from one store on one day and another store on another day should have the cases treated as two cases for workload purposes since the public defender would have to interview two sets of witnesses, visit two different crime scenes, etc. This holds true even if the two shopliftings were filed on a single bill of information.

<sup>188</sup> The imprecision of caseload counts can be attributed to a number of factors. First and foremost, the lack of funding does not allow IDBs to invest in case-tracking software to allow for accurate case counts. Second, because attorneys are paid the same amount regardless of caseload (at least in Avoyelles Parish and other flat-fee contract districts) there is no district-level financial requirement to track cases accurately. Finally, because the Avoyelles Parish IDB does not have the legal perspective to understand the implications of heavy workloads, it may not have been given a high priority.

The low number of felony cases the IDB received from the court may be a matter of clerical error or a failure to include the name of the attorney of record in all cases on any case-tracking system. If a report is run asking for the number of cases represented by Attorney W, and Attorney W’s name was entered in only half of the cases, the report would under-report the actual number of cases the attorney actually handle. NLADA was not allowed to review the court case-tracking system and thus this is only a hypothesis that has not been proven.

*11.4: LIDAB's district assistance fund matrix is not methodologically sound because the disproportional reliance on "Opened Felony Cases" is not an accurate measure of needed resources.*

Even if open felonies were reported uniformly and accurately, and LIDAB was in a position to verify the statistics, "opened felony cases" or new assignments is not a sound measure of resource need. First of all, a jurisdiction may have a high percentage of juvenile delinquency cases or misdemeanor cases that is never factored into the equation. For example, District Y may have 500 felony cases, but only 100 juvenile delinquency cases whereas District Z may have 450 felony cases, 250 juvenile cases and 1,000 misdemeanor cases. Under the current LIDAB formula District Y would get more assistance despite District Z having a greater need for services (assuming that both hypothetical districts are uniform in every other way – e.g., have the same cash reserves, etc.).

More importantly, new felony assignments alone cannot give an accurate portrayal of need without an examination of pending cases, as explained earlier in this report. For instance, suppose that District A has 220 new felony cases in a given year but can only dispose of 150 of them. It leaves a balance of 70 cases still to be completed during the ensuing year. If in year two the same District is assigned another 220 felony cases but can still only adequately dispose of 150, the District will have 140 cases pending at the start of year three. This means that in year three, District A has 360 felony cases to work on (despite only being assigned 220 new cases). Contrast this with District B that has 250 new felony cases assigned to it during year one but can dispose of all of them. The same thing happens in each of the subsequent years. Under DAF disbursement calculations, District B would get more funding (again if all other factors are equal) though District A has a greater need for indigent defense resources.

*11.5: The successful Indiana model of providing monetary incentives to local indigent defense boards that comply with standards will never work in an indigent defense funding system that relies primarily on revenues garnered through court costs and recoupment.*

Louisiana's primary reliance on court costs to fund indigent defense services stands in contrast to Indiana's mixture of state and local governmental general funding for similar services. The distinction is critical and worth exploring because it will never be possible for the DAF program to work effectively in Louisiana.

In Indiana, county government has a financial stake in the delivery of indigent defense services. Hypothetically, Indiana County W may have spent \$300,000 on indigent defense services in the year before applying for state assistance. To come into compliance with the workload standards, the county may have to add two attorneys at \$60,000 each. Doing so raises their expenditure to \$420,000. Yet, because the state will reimburse them 40% of the costs (or in this example \$168,000) the net result in improving indigent defense through compliance with standards means that the county will actually save \$48,000 in the next year ( $\$168,000 - \$120,000 = \$48,000$ ).

In Louisiana, there is no financial incentive to the police juries to ever improve indigent defense in this manner because they are not required to contribute anything toward the cost of indigent defense. If LIDAB were to require compliance with standards under the current delivery structure, *there is no way for an IDB to try and increase its revenue stream in an attempt to improve services.* Whereas an Indiana county may decide that the initial investment in indigent defense services will eventually bring greater

savings and make a decision to make indigent defense a fiscal priority over some other government responsibility, Louisiana's IDBs have no such ability to shift revenue from one budget line to the other – they only have the one pot of money that is woefully inadequate.

*This does not mean that the answer to the indigent defense funding crisis is to shift the entire burden of paying for the right to counsel to the police juries.* Though a local government general fund appropriation for indigent defense would certainly be more stable and reliable than the current Louisiana funding system, all national standards call for 100% state-funding because leaving local government responsible for administering and funding indigent defense services puts an undue hardship on local jurisdictions to ensure adequate representation of poor people accused of crimes. Nationally, counties with fewer sources of revenue may have to dedicate a far greater portion of their limited budget to defender services than would counties in better economic standing. Thus, at a time when tax-revenues may be down due to depressed real estate prices and people leaving the community, the criminal justice system's workload often escalates.<sup>189</sup> A county's revenue base may also be strained during economic downturns because of the need for increased social services, such as indigent medical costs. In addition, counties also must provide the citizenry with other important services, such as public education. The need to balance these responsibilities while maintaining fiscal accountability to the local citizenry often leaves county officials in the unenviable position of having to choose between funding needed services and upholding the constitutional commitment to guarantee adequate indigent defense services.

Moreover, since the state sets criminal justice policy that directly impacts the cost of indigent defense services, the state must be held responsible for the fiscal impact of its decisions. In other words, if an indigent defense fiscal impact statement was required of any new legislation creating a new crime, expanding the number of district judges, or increasing state appropriations for district attorneys or other law enforcement, policy-makers may not be as willing to enact the legislation if they know that the result will increase another budget item, indigent defense, for which they are accountable.<sup>190</sup>

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<sup>189</sup> As reported earlier in this report, crime rates tend to increase when there is a high level of unemployment. *Supra*, note 76.

<sup>190</sup> Of course, legislative action can decrease costs as well. For example, if the legislature decriminalized more non-serious, non-violent misdemeanors and felonies, the right to counsel would no longer apply and the workload of public defenders would decrease. This initial step at decreasing public defender workload comes at no cost.

***Finding #12:*** *The newly created up-front application fee will not generate the projected revenue forecasted in the bill.*

The only allowable recoupment plans under national standards are ones in which indigent-but-able-to-contribute clients pay for part of the cost of their defense prior to the disposition of the case. There are two principle forms of these “contribution” plans: 1) a promissory note to pay all or part of the representation, signed by a defendant or the parent/guardian of a juvenile defendant before the disposition of the case;<sup>191</sup> and, 2) up-front administrative fees or costs payable during the financial eligibility screening process.

In 2003, the State of Louisiana passed legislation authorizing a \$40 eligibility fee to be imposed on people seeking the services of the public defender in each judicial district.<sup>192</sup> A report of the American Bar Association, *2001 Public Defender Up-Front Application Fees Update*, informs jurisdictions contemplating such programs that “[a]ll revenues should supplement, not supplant, general fund appropriations” and that “[t]he existence of such programs does not relieve governments’ obligation to fund adequate public defense services.”<sup>193</sup> But, because state DAF grants will be based on a schematic that takes into account revenues collected through the up-front fee *before* calculating state disbursements (and potentially make a district not qualify for DAF funding), the new up-front fee may in fact supplant state funding.

Moreover, the ABA report concludes, “[a]pplication fee programs do not generate a large amount of revenue. Only 6-20% of all people requesting appointment of counsel are able to pay and do pay.” Based on this, at best the new revenue stream will bring in \$80,000 to \$100,000. This is significantly below the fiscal impact statement attached to the bill (\$5 million). Moreover, to the extent that any money is actually collected through the new fee, it is likely to be substantially offset by reductions in revenues from the exorbitant court costs already being imposed, which are at or beyond the outside limit of most indigent defendants’ ability to pay.

Finally, as demonstrated in Avoyelles Parish, some jurisdictions do not screen applicants for eligibility at all. The NLADA site team did not observe a single defendant being screened or assessed this fee during our site visit. Without screening processes, defendants cannot be charge the \$40 fee. So to the extent that revenue projection were based on simple caseload data without taking into account the number of judicial districts that do not bother with eligibility screening, the new fee will generate far less revenue than the \$80,000-\$100,000 projected above.

<sup>191</sup> Though payments of promissory notes do not have many of the legal ramifications associated with post-disposition cost-recovery programs, they can be just as costly to administer.

<sup>192</sup> Sixteen other states now have such fees (AR, CT, DE, FL, KY, MA, MN, NJ, NM, ND, OR, SC, TN, VT and WI). Six other states allow counties the discretion to impose such a fee (CA, CO, GA, IN, OH, and OK).

<sup>193</sup> The ABA report was prepared by The Spangenberg Group and is available on-line at: [www.abanet.org/legalservices/downloads/sclaid/indigentdefense/pdapplicationfees2001-narrative.pdf](http://www.abanet.org/legalservices/downloads/sclaid/indigentdefense/pdapplicationfees2001-narrative.pdf)

Chapter VI  
**The Louisiana Correctional System &  
 The Importance of Indigent Defense Reform**

The practices of the correction system in Louisiana make the need for an adequate defense system particularly acute. Louisiana has the highest per capita rate of incarceration in the nation, with 794 inmates per 100,000 residents, according to a report from the Bureau of Justice Statistics released in late July 2003.<sup>194</sup> From all accounts, the state’s high incarceration rate is impacted by a state policy that essentially allows parish jails to profit from housing state prisoners.

In response to a serious prison over-crowding situation, the state began housing state prisoners in local jails in the late 1970’s. Each parish or local jail is paid \$22.39 by the state each day for every Louisiana Department of Corrections prisoner it holds. This is a huge cost savings for the state that otherwise would have to pay approximately \$40 per day to house prisoners at state facilities. On the other hand, the extremely low wages paid to most local jail workers allows the parish jails to realize profits by housing state inmates.<sup>195</sup> As a result, all felons sentenced to less than 20 years currently serve their entire sentence in local jails, with the result that a system that was originally supposed to be a mere stopgap measure has become firmly entrenched. Currently, the state pays \$145 million a year to local Sheriffs to house state prisoners with little, or more likely no, accountability as to how the money is used or the services provided to prisoners.<sup>196</sup>

Because of potential financial advantage of holding state prisoners, there was a major proliferation of local jails throughout the state in the late 1990’s as Parish Sheriffs competed against one another for the “windfall” that came from holding state prisoners. Nowhere was that more true than in Avoyelles Parish. To promote economic development in the Parish, the Sheriff was a leading proponent of building more local jail space.<sup>197</sup> Currently, the Avoyelles Parish Sheriff has 319 full time deputies and another 295 part-time deputies, making him one of the largest employers in the Parish.<sup>198</sup>

In an effort to retard, or reverse, the escalation of corrections costs the State Legislature recently repealed mandatory sentencing for many nonviolent crimes, allowed a review of some drug possession cases and created a new sentence review mechanism to aid some prisoners seeking probation or parole. These significant changes have caused

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<sup>194</sup> 37,000 of the state’s nearly 4.5 million residents are incarcerated in federal prison, state prison or local jail (or approximately 1 out of every 121 residents are locked up).

<sup>195</sup> For instance without state prisoners, Sheriffs are more typically paid only \$3.50 per day by the local police jury to house those arrested for misdemeanor crimes or those awaiting trial.

<sup>196</sup> On September 17, 2003, a total of 907 people were incarcerated under the supervision of the Avoyelles Parish Sheriff in the Marksville Main Jail (319), the Avoyelles Women’s Correctional Center (192), the Avoyelles Bunkie Detention Center (226), or the Avoyelles Simmesport Center (170). Of these, 784 were state inmates, or 86.4% of the total number in jail. On the day of our site visit, the Avoyelles Parish Sheriff’s Office held 16 federal prisoners (1.8% of the total population) and 28 other inmates who we were told were out-of-state prisoners (3.1%). Only 79 people in jail, or 8.7% of the total population, were parish or city. Avoyelles Parish Sheriff’s Office, *Population Breakdown Report*, September 17, 2003.

<sup>197</sup> At the time of our visit, there were 1,126 jail beds under the authority of the Avoyelles Parish Sheriff. The Avoyelles Parish Sheriff told NLADA representatives that he sees it as part of his civic duty as an elected official to try to spur on economic development.

<sup>198</sup> The Sheriff is the third largest employer in Avoyelles behind the casino and school department. See: [www.entropy.com/content/LA/ed/profiles/Avoyelles2\\_parish.pdf](http://www.entropy.com/content/LA/ed/profiles/Avoyelles2_parish.pdf).

local sheriffs to scramble for resources to keep from having to reduce the size of their staff. One such way sheriffs fill vacant bed spaces is by acting on warrants for minor offenses. Though the money for housing revocation defendants is not as great as state prisoners, police juries are obligated to pay for these costs. Another manner to keep jails at maximum capacity is to hold federal prisoners, and even some out-of-state prisoners. Both practices are employed in Avoyelles Parish.<sup>199</sup>

Contrary to the desire of the Avoyelles Parish Sheriff to spur economic development through the expansion of corrections, national research has concluded, “the contention that prisons are a valuable economic tool [in rural America] has not been grounded in any empirical evidence.”<sup>200</sup> There are a number of reasons why expanded correctional facilities are actually bad for the local economy. First, correctional facilities have few linkages to the local economy.<sup>201</sup> That is, unlike manufacturing or agricultural industries, corrections offer few “spin-off” industries. Whereas an automobile plant may generate local growth in companies supplying raw materials to be processed, a correctional facility only has the immediate jobs associated with housing people. Moreover, what few spin-off industries are associated with expanded correctional facilities, like food service or communication services, are commonly owned by local sheriffs, in whole or in part.

Moreover, large correctional facilities in rural America have been objectively shown to “pit local residents in competition for employment with inmates.”<sup>202</sup> Avoyelles parish is a good example of this dynamic. The Sheriff enforces a work release program in which prison labor is offered to non-profit organizations (churches, hospitals, graveyards) and governmental agencies at costs well below minimum wage. The program is supported by garnishing 50% of the prisoner wages and charging them the cost of transportation to and from work. Considering the relatively small size of the Parish and the relatively large number of prisoners, the work release program has the effect of eliminating a large number of jobs that otherwise would be going to people who are not incarcerated. Given the high poverty and low high school graduation rates in Avoyelles Parish, the jail workforce is used to do the types of low-skilled jobs that may be in short supply for a less highly skilled workforce. In short, the expansion of the prison work force reduces opportunities for people of little or no economic resources who are then led to consider crime as a means of supporting themselves.<sup>203</sup>

<sup>199</sup> Despite these efforts, on the day of our site visit the Avoyelles Parish Sheriff’s Office was at 81% its maximum capacity (or 907 of 1,126). *Supra*, note 196.

A study of the financial audit of Parish Sheriffs for 2002 shows that the Avoyelles Parish Sheriff is one of only four parishes in the state reported a negative year-end balance (Caldwell Parish, Tangipahoa, and West Carroll were the others). The Avoyelles Parish Sheriff reported a deficit of \$183,190. Analysis of Sheriff’s audits is included as Appendix L (page 128). For comparison purposes with IDB and district attorney audits, NLADA grouped Parish Sheriffs by judicial districts (though the Sheriffs do not operate in this manner). Interestingly, in doing so, the number of Sheriffs reporting deficits is reduced by half (Avoyelles and Caldwell).

<sup>200</sup> The Sentencing Project, *Big Prisons, Small Towns: Prison Economics in Rural America*, page 19.

<sup>201</sup> Clement, D. *Big House on the Prairie*, Fed Gazette: A Publication of the Federal Reserve Bank of Minneapolis. (January 2000).

<sup>202</sup> *Supra* note 200.

<sup>203</sup> The jail workforce situation in Avoyelles Parish is not universal for every Louisiana Parish. Indeed, Dr. Bernadette Palumbo of the Louisiana State University at Shreveport preliminary analysis of the indigent defense system in Caddo Parish indicates that 70% of the population of that parish jail consists of pre-trial detainees (an NLADA site team member conducted a telephone interview with Dr. Palumbo in early February 2004). Nationally, early entry of counsel into cases helps to divert certain indigent defense clients out of jail (See, for example, United States Department of

Across the country, public defenders not only serve the general population by providing representation services in specific criminal cases, but also by challenging the questionable practices of the other governmental agencies that do not serve the interests of justice. In this case, the assumptions underlying the premise that the economic fortunes of Avoyelles Parish is tied to keeping the parish jails at maximum capacity must be challenged at every turn. As the title implies, public defenders serve the interests of the *public*. In Avoyelles Parish, and elsewhere, this critical responsibility of public defenders is undermined if local judges appoint less than qualified people to oversee the indigent defense system, legislators refuse to adequately fund the system, District Attorneys turn a blind eye to unethical practices of defense practitioners, the judiciary allows the system of justice to falter, and the Sheriffs stand to directly profit from increased incarceration rates.

Investing in indigent defense services produces cost savings throughout the rest of the criminal justice system. Louisiana legislators must examine and repair the system that allows vast amounts of unused resources to sit in bank accounts across the state while constitutional rights are not protected due to lack of funding. As was the case with the amount of money sitting in dedicated prosecutor bank accounts, the amount of unused money sitting in the Sheriff's accounts across the state is staggering to someone unfamiliar with local government practices in Louisiana. At the close of 2002, over \$310 million was sitting unspent in reserve accounts, or enough money to fully fund indigent defense services at its current low rate for 10 years.<sup>204</sup>

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Justice, National Institute of Justice, *The Implementation and Impact of Indigent Defense Standards*, December 2003). Without such defendants being unnecessarily detained pre-trial or incarcerated post-trial, correctional resources are more precisely targeted to people who pose a real threat to public safety or are a flight risk. The situation in Caddo Parish gives credence to the assertion in the Louisiana State Bar Association resolution that "the failure of Louisiana to meet the majority of the ABA *Ten Principles* has produced inefficiencies and increased costs throughout the criminal justice system, including unnecessary pretrial detention."

<sup>204</sup> See Appendix L (page 127).

Chapter VI  
**Conclusion**

The right to counsel is one of the only checks afforded to those of modest means against an unjust intrusion by the state upon their life and liberty. Without adequate defense services ensuring a fair day in court, the social fabric of our democratic way of life begins to erode. As Justice Hugo Black declared in the *Gideon* decision: “The right of one charged with crime to counsel may not be deemed fundamental and essential to fair trials in some countries, but it is in ours.”

The Louisiana Constitution states that one of the legitimate ends to government is to secure justice for *all*. Both state and local government (inclusive of the executive, legislative and judicial branches) were specifically established in Louisiana to “protect the rights” of all people, *including* those traditionally marginalized by society: people of color, children, the mentally ill, the developmentally disabled, immigrants, those addicted to drugs or alcohol, and the poor. Neither the Louisiana nor the Federal Constitution allows for justice to be rationed to the poor for any reason -- including insufficient funding or political expediency.

As demonstrated in this report, Louisiana fails to meet its federal obligations under *Gideon*. In violation of Louisiana’s own Constitution, the indigent defense funding structure is not “uniform” among the parishes and does not “secure qualified counsel.” And, with no lawyers present in the early stages of a case, counsel is not secured for people of insufficient means “at each stage of the proceeding.”

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*“The right to effective assistance of counsel is not, of course, just about separating the innocent from the guilty. It’s the most fundamental of a criminal defendant’s constitutional rights, guilty or innocent, and without it, the whole premise of our criminal justice system simply collapses. Without adequate counsel, none of the other constitutional or statutory or jurisprudential rights can be protected or exercised. Due process, fundamental fairness, and equal protection simply disappear.”*

- **Judge Helen “Ginger” Berrigan, United States District Court**  
*Eastern District of Louisiana, October 31, 2003*<sup>205</sup>

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<sup>205</sup> *Supra*, note 1.