



NATIONAL ASSOCIATION FOR PUBLIC DEFENSE

Louisiana's 16th Judicial District

Public Defender Office

TECHNICAL ASSISTANCE REPORT

(Technical Assistance Services Authorized by American University, School of Public Affairs, Justice Programs Office through BJA Right to Counsel Technical Assistance Grant No. 2016-10-1)

Consultants:

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Fred T. Friedman, Esq.
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LOUISIANA'S 16TH JUDICIAL DISTRICT PUBLIC DEFENDER OFFICE

I. INTRODUCTION

A. Background on this Technical Assistance Consultancy

At the suggestion of G. Paul Marx, Esq., District Defender for the 15th Judicial District Public Defender Office in Lafayette, LA, the National Association for Public Defense (“NAPD”) was contacted in early 2016 by Cecelia A. Bonin, Esq., the District Public Defender for the 16th Judicial District, which includes three parishes: Iberia, St. Martin, and St. Mary, and a total of thirteen district and city courts. Ms. Bonin requested technical assistance from the NAPD due to the evolving crisis in the indigent defense delivery system that she is leads. Given reduced state funding administered and allocated by the Louisiana Public Defender Board (“LPDB”) and significantly reduced local parish funding through fines, costs, and traffic tickets, Ms. Bonin faced full implementation of a *Restriction of Services* (“ROS”) protocol limiting the capacity of her office to provide effective, full legal representation services in the district and city courts throughout her three parishes.

Ms. Bonin’s request for assistance was presented to Ernie Lewis, Esq., NAPD’s Executive Director. Mr. Lewis then brought her request to NAPD’s Systems’ Builders Committee which is comprised of current and retired defender leaders, public defender board and/or commission members, and systems advocates representing a wide range of experiences and perspectives on public defense issues. The mission of the Systems Builders Committee is to assist leaders who are building excellent, client-centered public defense programs, through training, consultation and collaboration. Following Committee discussion, the Committee agreed to assist Ms. Bonin through technical assistance and consultation.

By letter dated February 24, 2016, Mr. Lewis contacted Caroline S. Cooper who was at that time the Research Professor and Director of the Justice Programs Office in the School of Public Affairs at American University. The Justice Programs Office also administers the Right to Counsel Project, a program of the Bureau of Justice Assistance in the U. S. Department of Justice. Mr. Lewis explained NAPD as a national association of public defense professionals committed to improvement of the indigent defense in the United States, defined the work of the Systems Builder’s Committee, and described the very real crisis that the 16th Judicial District Public Defender Office faced as it confronted restriction of services and the fact that many eligible clients would go without counsel. He also outlined a proposed Scope of Work for a technical assistance site visit during May 2016, and he indicated that two members from the Systems Builders Committee had

agreed to provide volunteer, pro bono technical assistance. The two experienced public defense leaders are: Fred T. Friedman former chief public defender for the 6th Judicial District of Minnesota, and Phyllis H. Subin, former chief public defender for the State of New Mexico and currently the executive director of the Pennsylvania Coalition for Justice.¹

Through its March 17th response letter from Preeti P. Menon, M.A., Senior Policy Associate at the American University Justice Programs Office, Mr. Lewis received confirmatory authorization for a May 16-20, 2016 technical assistance visit to the 16th Judicial District Public Defender Office by the two named NAPD consultants under BJA Right to Counsel Technical Assistance grant number 2016-10-1.

B. Pre-Site Visit Consultations with District Defender Cecelia Bonin

Consistent with NAPD Systems Builders Committee discussions, consultant Phyllis H. Subin had contacted Ms. Bonin by e-mail on February 15th offering her assistance in building and organizing internal office systems and structures as well as in identifying training needs and programming. By her February 23rd e-mail, Ms. Bonin explained her then current staffing across the three parishes:

Felony: Three (3) full time attorneys; Four (4) part-time attorneys; One (1) contract part-time attorney

Misdemeanor: Three (3) part-time attorneys; One (1) full-time attorney; One (1) contract part-time attorney

Juvenile: Two (2) contract attorneys full-time; One (1) attorney employee part-time

Miscellaneous: One (1) newly barred attorney

[NOTE: The three part-time conflict attorneys had their contracts terminated as of March 31st due to lack of funding resources with which to pay them.]

Support Staff: One (1) District Defender; Eight (8) legal assistants; One (1) office manager; Two (2) Intake Specialists

This was followed by Ms. Subin's March 21st e-mail to Ms. Bonin confirming NAPD technical assistance, and requesting office related organizing, caseload information and other data, including the ROS protocol for the 16th District Public Defender Office and how, if at all, it impacted felony, misdemeanor, delinquency, and dependency/abuse

¹ The biographies for Mr. Friedman and Ms. Subin are attached hereto as Exhibit "A".

respondent/child representation. By her response e-mail, Ms. Bonin agreed to the technical assistance visit during the week of May 16th, and she agreed to meet by phone with Ms. Subin and Mr. Friedman on April 1st. She also indicated that she was currently in a form of ROS, still awaiting finalization by the LPDB, and that the ROS plan did not affect misdemeanor, delinquency or Children in Need of Care (“CINC”) or Families in Need of Services (“FINS”) case representation. Ms. Bonin also e-mailed her ROS protocol to Ms. Subin and Mr. Friedman for their review prior to the April 1st phone meeting.

On April 1st Fred Friedman and Phyllis Subin met with Ms. Bonin by phone. Logistics for the upcoming site visit were confirmed with Mr. Friedman and Ms. Subin flying to Baton Rouge on Monday, May 16th to meet with staff leadership at the Louisiana Public Defender Board, and, May 17-19th, driving to New Iberia for consultations with Ms. Bonin and returning to Baton Rouge on the 19th. The consultants also discussed Ms. Bonin’s ROS plan which they had reviewed and which had already been partially implemented in the 16th District. Ms. Bonin confirmed the cancellation of the contract conflict attorney contracts as of March 31st due to lack of funds to pay them, and that the district judges had subsequently approved those attorneys’ Motions to Withdraw as counsel without any notice to the chief defender for the district. Ms. Bonin confirmed that the conflict felony clients, incarcerated, and bail, were now on a “wait list”, waiting for appointment of counsel.²

As Mr. Friedman and Ms. Subin continued to prepare for their site visit, they maintained e-mail and phone contact with Ms. Bonin. On May 2nd, Ms. Subin responded to Ms. Bonin’s request for assistance, and they discussed by phone issues that Ms. Bonin had identified regarding discrepancies between her office caseload data versus the caseload data maintained by the LPDB, and they agreed that Ms. Bonin would conduct a staff data entry review to verify the accuracy of data entry by her office staff. Ms. Bonin subsequently worked on these data entry/ case tracking issues with Carol Kolinchak, Esq., LPDB Trial Level Compliance Officer, and reached a resolution as to how to more accurately compile office case numbers. On May 11th, Ms. Subin again met by phone with Ms. Bonin to discuss issues relating to caseload assignments and her remaining, available attorney staff which included two full time felony attorneys (forty hours a week) plus part-time attorneys who

² During our site visit we found out that the district judges, without approval or authorization from Ms. Bonin, had subsequently appointed district public defender part-time staff attorneys from parishes other than that of the originating case parish as conflict counsel in these former conflict attorney cases. These appointments essentially resulted in two attorneys from the same public defender law firm representing conflict co-defendants. These appointments also added to the already overburdened caseloads/workloads carried by the district’s felony defender attorney staff.

The NAPD consultants also reviewed the May 2015 letter to Ms. Bonin from Paul J. Hebert, Esq., an ethics expert from the Lafayette law firm of Ottinger Herbert, LLC. This letter offered an ethics opinion and the procedural steps that Ms. Bonin should undertake to ethically supervise subordinate attorneys representing conflicted defendants.

worked either thirty hours, or twenty hours, or fifteen hours a week. (Total attorney staff equal to 6.1 full time equivalents) Also considered in this phone discussion was a proposed motion to be filed by Ms. Bonin to limit judicial case appointment and to withdraw on the conflict /cross parish appointments. Ms. Subin recommended consultation with an experienced appellate attorney who could advise Ms. Bonin on this motion given the expectation that the motion would be denied and an appeal taken. Ms. Subin also suggested the possibility of convening a three judge panel to hear the motion with one judge from each parish hearing a case from that parish but all considering the systemic delivery and excessive caseload issues in a district wide, multi-parish judicial opinion.

C. Additional Pre-Site Visit Consultant Preparation

Both consultants were familiar with Louisiana's indigent defense delivery system having previously provided management/leadership training programs through the LPDB for district office chief defenders and their deputies. In addition, Ms. Subin had conducted strategic planning sessions for the LPDB staff, and she had presented at leadership training programs for LPDB personnel. She had also served as a delivery system's evaluator for the National Legal Aid and Defender Association's assessments of the Avoyelles Parish public defense system and of Orleans Parish juvenile delinquency indigent defense representation system following the Katrina hurricane.

However, in order to better understand the current issues involving Louisiana's indigent defense delivery system, the consultants met by phone with Frank X. Neuner, Jr., NeunerPate Law Firm, former president of the Louisiana Bar Association and former chair of the LPDB. Mr. Neuner had also consulted with Ms. Bonin on the excessive workload and staffing issues facing her office, and he indicated that he had volunteered to work with her on any motions that she may file to withdraw from the overwhelming workload in her district. The consultants also discussed with Mr. Neuner the conflict of interest ethics issues around Ms. Bonin's supervision of office attorneys representing co-defendants, and they cited to case decisional law on conflict of interest issues. The consultants agreed that the caseload/workload issues were legally stronger than the conflict of interest, and they agreed to personally meet with Mr. Neuner on May 19th in Lafayette on their drive back to Baton Rouge from New Iberia.

Through a conference call meeting with the NAPD Systems Builders Committee the consultants heard from Derwyn Bunton, Esq., chief public defender for Orleans Parish. Mr. Bunton described his office's delivery system issues: an office that lacked funding, resources and a sufficient number of experienced attorneys to handle the workload assigned to his office. In fact, the American Civil Liberties Union has filed suit against his

office due to failure to timely provide defendants with their Sixth Amendment right to counsel.

Both before and after their site visit the consultants actively read and collected newspaper and blog articles about the problems with Louisiana's indigent defense delivery system. These articles include:

Front page article Sunday, New York Times (March 20th, "*In Louisiana the Poor Lack Legal Defense*")

The Daily Iberian (March 7: "*Public Defender's Office Faces Shrinking Budget*"; May 21: "*Public defender Debate Rages*")

The New Orleans Advocate (March 24: *Guest Column: We cannot afford to deny justice to Louisiana's children*) (March 31st "*Ninth Deputy pleads guilty in Iberia Parish Jain beating investigation; sheriff to be arraigned this week*) (May 9: "*Guest Column: Public Defenders' Claims Sound like Chicken Little*", by executive director Louisiana District Attorneys Association; May 9: "*Letters: Public Defender Budget Woes Aren't New*", by Robert Burns, chairman, LPDB); (May 27: "*James Gill: Defender Bill an odd way to reform*"); (May "*Letters: Public defenders budget woes are not part of imagined crisis*", by John Giulio)

The Associated Press (May 5: "*Lawsuits: Release Louisiana Defendants Jailed Months without Lawyers*")

The Atlantic (June 2: "*On the Defensive – The right to legal counsel has long been the gold standard of American justice under the Constitution. But what happens when a state refuses to budget for public defenders? Louisiana is finding out*")

New Orleans Times Picayune (January 15: "*ACLU sues Orleans Public Defenders office over refusal of cases*")

And from on-line blogs, these articles:

Think Progress – Economy: (March 12: "*Louisiana Will Tax Its Poor to Fill Budget Hole Caused by Tax Cuts for the Rich*")

Huffingtonpost Politics: (March 25: "*Texas Mothers Jailed 5 Days in Louisiana [New Iberia] Over 2 Hot Dogs*")

Sixth Amendment Center: (April 4: "*Louisiana's right to counsel problems explained*")

NOLA.com: (April 8: "*Orleans judge halts prosecutions, orders release of 7 unrepresented defendants*")

The Best of New Orleans: Gambit: (May 25: “A public defense crisis in Louisiana: 33 of 42 public defender office restricting client services due to funding shortfalls”)

II. LOUISIANA PUBLIC DEFENDER BOARD AND STATE FUNDING ISSUES

A. Role of the LPDB & State Funding for 16th Judicial District Public Defender Office

Under the Louisiana Public Defender Act, the LPDB was established as a state agency within the office of the governor, and it is charged with providing for the “...supervision, administration, and delivery of a statewide public defender system which shall deliver uniform public defender services in all courts of the state.”³ Consistent with this mandate, the LPDB allocates to the 16th Judicial Public Defender Office state monies to support the delivery of indigent defense legal services in the three parishes served by the district.⁴ It is also charged with providing support services for juvenile, capital and trial representation and with training services in support of its district defenders and other office leaders and their staff. Unfortunately, due to LPDB state budget cuts, some of these services, such as training, have been reduced and/or eliminated.⁵

On May 16th, the consultants met with LPDB staff at its Baton Rouge offices. Present were James T. Dixon, Jr., state public defender, Jean M. Faria, Esq., capital case coordinator, Carol A. Kolinchak, Esq., trial level compliance officer, and Erik Stilling, PhD, Program Development & Resource Management Officer. The consultants and staff discussed a broad range of issues including: cross parish staff attorney conflict case appointments and their legality under Act 307; history of 16th District issues, including its ROS protocol⁶; possible supplemental 16th District funding; and anticipated funding allocation for FY17. We also considered case data collection and compilation issues in light of the concerns presented by Ms. Bonin in our pre-site visit phone conversation. Staff

³ Act No. 307, Regular Session, 2007.

⁴ LPDB data reflects the following fiscal year allocations for the 16th Judicial District Public Defender Office:

FY 16: \$650,656.00

FY 15: \$722, 229.07 (Actual Expenditure: \$695,230.07)

FY 14: \$380, 126.00 (Actual Expenditure: \$547,984.02)

FY 13: \$373, 136.00 (Actual Expenditure: \$373,138.00)

[LPDB Data received from Cecelia A. Bonin]

⁵ It has been reported in the press that Louisiana has a \$600 million budget gap this year, due in part to policies enacted under the previous governor and to the drop in the value of a barrel of oil. Louisiana strongly relies upon oil extraction along the Gulf of Mexico for revenues.

⁶ According to current press reports, thirty-three out of forty-two district public defender offices in Louisiana are currently under some form of restriction of services which results in refusing case appointment and/or placing clients on waitlists.

also updated the consultants on litigation happening in a number of parishes regarding staffing, funding, and resource issues, and we raised the issue of what, if any, monitoring of private retained caseload takes place where an attorney is also a part-time staff lawyer. (Answer: probably none.)

Given LPDB's reductions in state funding, we asked about any supplemental funding in FY16 for the 16th Judicial District Public Defender Office. Supplemental funding depends upon the legislature's budget decisions, and the legislature was in full regular session during our site visit. The state public defender did indicate some hope for additional funding assistance, possibly between \$3100 and \$7000, but, again, that depends upon the legislature. The LPDB also indicated that it had tentatively budgeted a possible \$150K increase in FY17 for the 16th Judicial District Office, but, again, much would depend upon the legislative budget outcome.

At the conclusion of this discussion, the consultants and the LPDB staff agreed to meet on May 19th upon their return to Baton Rouge.

B. Act 571: formerly House Bill 1137, 2016 Regular Legislative Session⁷

Our entire site visit took place when the legislature was considering HB 1137, now Act 571, which amends the Louisiana Public Defender Act in several ways and which was signed by the governor on June 17th. The bill, now Act 571, was very prominently on the minds of everyone with whom we met and spoke.

Act 571 terminates, as of August 1, 2016, all current board appointees to the LPDB, and, instead of fifteen members, reduces membership to eleven members whose terms also begin on August 1st. Presumably, this new board will have the power to terminate one or more of the current LPDB staff, including the executive director, and appoint new staff leadership.

In addition, Act 571 changes board appointment entities, giving the governor five appointments, one nominee from each of the five appellate court districts based upon three nominees submitted to the governor by a majority of the district public defenders sitting in the particular appellate district. The governor shall have the power to name the board chairman. The Chief Justice of the Supreme Court of Louisiana shall appoint four board members with one member being a juvenile justice advocate, one a retired judge with criminal law experience, and two at large members. Finally, the president of the Senate and the speaker of the House of Representatives each have one member to appoint. All board appointments are subject to confirmation by the Senate.

⁷ HB 1137 is attached hereto as Exhibit "B".

Act 571 gives political control of the LPDB to the executive, judicial and legislative branches of government⁸, and it removes membership appointments from the state's law schools, the Louisiana Bar Association, the Louis A. Martinet Society, the Louisiana State Law Institute's Children Code Committee, and the Louisiana Interchurch Conference. It also removes nonvoting, ex officio member appointments from the Louisiana Public Defender's Association and the Louisiana Association of Criminal Defense Lawyers, which expressed opposition to HB1137.

Under the Act 571 section concerning the Louisiana Public Defender Fund, it mandates that the LPDB "dedicate and disburse" at least sixty-five percent (65%) of its annual budget and its funds each fiscal year to the district defender offices in the various judicial districts throughout the state. Neither consultant has ever seen or reviewed a state statute that has such a funding requirement; one that removes allocation discretion from the leadership of the statewide indigent defense oversight board. However, when we met on May 19th with 15th Judicial District (Lafayette) Public Defender G. Paul Marx, he explained this provision as one developed by the district chief defenders in response to their belief that the LPDB had underfunded the district defender offices in favor of the non-profit organizations that provide capital representation throughout the state.

The Louisiana District Attorneys' Association through its executive director and other prosecutors actively and continuously lobbied the state legislature in support of Act 571, which eliminates systemic reform minded law professors and advocates from the LPDB and places, in effect, significant funding limitations on capital case defense through the not for profit law firms. In fact, the elected district attorney for the 16th Judicial District was quoted in The Daily Iberian as claiming that the LPDB funding crisis is nothing more than a "smoke screen" for a deeper agenda to get rid of the death penalty in Louisiana, emphasizing that LPDB overfunds capital case representation when those cases are one-half of one percent of the total public defense caseload. During one Senate Judiciary B hearing on HB1137, no defense attorney spoke in favor of HB1137, while five prosecutors did speak in favor of the bill.

The Act 571 (HB1137) legislative process created a coalition of strange bedfellows in Louisiana, and a "reform" agenda that raises many questions in our mind. It is yet to be determined how the 65% funding mandate actually assists the 16th judicial district public

⁸ Under the American Bar Association's *Ten Principles of a Public Defense Delivery System (2002)*, Principle One calls for the *Independence* of the public defense function from political influence and subject to judicial supervision only in the same manner and to the same extent as retained counsel." It also calls for a "nonpartisan board" to oversee the defender, assigned counsel, and contract system.

HB1137 raises many questions in its failure to follow Principle One and in the creation of an oversight board that is potentially politically partisan.

defender and other district offices, and how, if at all, that funding mandate impacts the quality and effectiveness of capital case trial and appellate legal representation in Louisiana.

C. May 19th Meeting with LPDB Staff (Baton Rouge)

On Thursday, May 19th we returned to Baton Rouge, and met again with state public defender Jay Dixon, Jean Faria, and, by phone, Carol Kolinchak. In addition to summarizing our concerns about effective legal representation and reduced staff resources in the 16th judicial district, we also offered our conclusions regarding re-organization of legal representation assignments in the 16th district office based upon the reality of current and anticipated funding and available resources. This reorganization would also require training attorneys on the intricacies of handling a totally different caseload and case client, and we offered, as needed, to assist the LPDB in creating a training curriculum that meets the needs of this process.

If LPDB policy continues to support the use and filing of restrictions of services protocols in districts unable to provide effective legal services due to overwhelming caseload/workload and lack of adequate funding resources, then LPDB staff must provide district defenders with much more extensive support and leadership direction. District defender office leaders need more extensive management and leadership training and direction from the LPDB, and the LPDB should provide them with sample motions and legal briefs to assist the district leaders who are faced with implementing ROS protocols and responding to the judges, prosecutors, and their communities. The LPDB should also continuously update all district defenders on the outcomes of any ROS litigation in the judicial districts.

We also shared with LPDB staff our concerns regarding the physical office space used by the 16th Judicial District Public Defender Office in both New Iberia and Franklin. The New Iberia 16th District office sits at the end of a small row of offices, right next to the railroad tracks with an above ground cemetery on the other side of the tracks. Both offices are professionally unimpressive, utilitarian, one story rentals, with low ceiling, a cramped feeling, and problematic utilities. Neither office space sends a message of law firm professionalism nor are they client friendly or client welcoming in layout and decoration.

We contrasted these offices with that of the 15th Judicial Office in Lafayette which we visited on May 19th. Those offices are located in a high-rise elevator office building, and present more traditional law firm layout, furnishings and decoration. There is significantly more space for attorney and support staff offices, with the juvenile division having its own waiting room and attorney offices. There are also training and conference rooms, and, through its connection to Gideon's Promise, the office has newly barred attorneys who

are partially funded through this nationally recognized training program. We suggested the possible use of a Gideon's Promise attorney for the 16th Judicial District Public Defender Office, and district defender Marx did volunteer his training room to assist 16th District Office training programs.

III. TECHNICAL ASSISTANCE VISIT TO THE 16TH DISTRICT PUBLIC DEFENDER OFFICE, IBERIA AND ST. MARY'S PARISH OFFICES (MAY 17-19, 2016)

A. Demographic Background on Iberia, St. Martin and St. Mary Parishes

Iberia (New Iberia) is the largest of the three parishes in the 16th Judicial District with a total population of 74, 103 as of July 1, 2015. 26.5% of the population is under 18 years of age as of July 1, 2014; 13.3% are over the age of 65; and 7% are under five years of age. Whites alone make up 62.6 % of the population as of July 1, 2014; African Americans alone are 32.2% of the population; Asians are 3.1%; and American Indian/Alaska Natives are .6%.⁹

St. Martin Parish (St. Martinville) has a population of 53,835 as of July 1, 2015, with its largest population base at 24.9% being persons under eighteen years of age. Persons sixty-five years and older make up 13.3% of the population as of July 1, 2014, with persons under five years being 6.6% of the population. Interestingly, just over half of the parish population is female, while 66.7% of the population is white. African Americans make up 30.5% of the population with Asians at .9% and American Indian/Alaska Native at .5%.¹⁰

Finally, St. Mary's (Franklin) parish has the smallest population at 52, 810 as of July 1, 2015. Female persons are also half of the parish population with person under the age of eighteen making up 24.6% of the population. Persons sixty-five years and older are 14.5% of the population, and children under five 6.8% of the population. White Americans are 61.7% of the population with African Americans at 32.6%, American Indian/Alaska Native 1.9%, and Asians 1.8%.¹¹

This area of southwest Louisiana is close to the Gulf of Mexico, and fishing is important as is the oil extraction industry, including all of the related oil services businesses. Unfortunately, given the drop in the price of a barrel of oil, numerous oil extraction and oil

⁹ United States Census: www.census.gov/quickfacts/table/PST045215/22045.

¹⁰ United States Census: www.census.gov/quickfacts/table/PST045215/22099.

¹¹ Unites Stats Census: www.census.gov/quickfacts/table/PST045215/22101.

services jobs are gone due to layoffs and terminations. This area of Louisiana is economically suffering and awaits the return of oil boom times.

B. Office Structure, Organization, Local Revenues and Courtroom Docket Coverage

The 16th Judicial District Public Defender Office covers numerous courtrooms as part of its legal representation mandate. There are eight district courts across the three parishes, and court administration publishes a yearly assignment calendar for each judge, subject to revisions and updates.¹² Defenders must cover 727 criminal hearing days per year across these eight district courts.

The defenders also cover five city courts: Beaux Bridge, Franklin, Jeanerette, Morgan City, and New Iberia, and each court runs its own case calendar. While the district courts handle capital and felony cases (arraignments, drug court, miscellaneous motions, trials, etc.), the city courts primarily work on misdemeanor, delinquency, and traffic cases, plus bonds and 72 hour custody hearing cases. According to the ROS, attorneys cover 213 criminal and juvenile courts per year.

Consistent with Louisiana case decisional law, defenders also provide legal representation for non-criminal cases involving child support, termination of parental rights, Children in Need of Care (“CINC”) and Families in Need of Support (FINS). With multiple court listings and multiple client representation assignments, CINC and FINS cases use significant attorney staff resources and time.

According to Ms. Bonin’s most recent ROS, the 16th Judicial District defender office maintains three separate offices, one in each parish/ county seat. From her budget she must pay rental on each office (no free/donated parish office space), plus utilities, office equipment, supplies, maintenance, and insurance (health, professional liability, and general liability).

The office has two full time attorneys, one of whom is a recent law graduate who is newly barred in Louisiana. There are seven part-time felony attorneys who work various hours per week (30/20/15 hours), and there is one full time juvenile attorney as well as two part-time juvenile attorneys. Five part-time misdemeanor attorneys share that caseload. These attorneys are supported by the district defender and additional support staff: one Budget/Human Resources officer, and ten full time staff assistants and client intake specialists. [NOTE: there are no staff social workers or alternative sentencing specialists and no staff investigators for actual case investigation. Per Ms. Bonin at the time of our site visit, her office had no funds for investigators or for experts, and, unless specifically

¹² See, www.16jdc.org.

requested, she was not reimbursing attorneys for driving to and from the parish jails/detention centers of which there are seven such locations.]

In addition to LPDB state funding, the office also depends upon local funding revenues. The office is required to collect a \$40.00 application fee from its clients, but it only has a 24% collection success on this fee. It may also receive funds through local fees imposed upon defendants: \$45.00 Special court costs; \$35.00 Mayor's court costs; probation condition fees; criminal bond fees; surety bond licensing fees; and bond forfeitures.¹³ According to Ms. Bonin, she just barely made it through FY 15 because she received emergency supplemental funding from the LPDB (\$27K) and because she implemented attorney attrition and layoffs, reduced attorney and staff salaries, renegotiated the technology (IT) contract, and withdrew from non-essential office supply contracts.

Although the three conflict contract attorneys had their contracts cancelled as of March 31st, our post-site visit information is that Ms. Bonin has at least temporarily been able to hire back conflict counsel for the 16th Judicial District public defender office. Local fines and fees from March 2016, received in April 2016 (\$119,532.73), permit Ms. Bonin to again contract with conflict counsel. She also believes that under Act 571, she will receive additional monies from the state which will allow her to hire additional counsel for both regular cases and conflict cases.¹⁴

Reliance upon these local fees and their collection is highly problematic, and subjects the office to budgetary variations that make sustaining legal services extremely difficult and unpredictable. The state, not local government, has the constitutional mandate to fully fund indigent defense legal services for those who cannot afford to hire an attorney and who face criminal charges and possible loss of liberty.¹⁵ Louisiana still refuses to do so,

¹³ LPDB Local Government Funding Records for the 16th Judicial District Public Defender Office:

FY 12: Actual Funds \$1, 147, 422.61

FY 13: Actual Funds: \$1, 370, 382.22

FY 14: Actual Funds: \$1,276,020.66

FY 15: Actual Funds: \$756, 707. 94

FY16: Budgeted: \$1,256,668.

¹⁴ Per *Motion to Continue Hearing* on defendant representation/counsel assignment before District Judge Lori A. Landry, 16th Judicial District Court, filed by Ms. Bonin's pro bono counsel, Frank X .Neuner, Jr., June 9, 2016.

¹⁵ Contrast Louisiana with New York State: On June 16th and June 17th, the New York State Assembly (A 10706) and State Senate (S08144) unanimously passed legislation authorizing state take over from the counties of all funding for the right to counsel for indigent people. The NY state legislature recognized the state's constitutional requirement and obligation to undertake initiatives to improve the quality of indigent defense legal services. These bills also recognized that mandating counties to finance the state's obligation to provide these services imposes a significant uncontrollable financial burden on counties dependent on real property taxes to fund needed services. Over a seven year process, the state by 2023 will take over 100% of county funding for indigent defense legal services.

instead relying upon poor parish residents to fund their own legal representation through local fee payments.

Ms. Bonin's office has been rescued by a sudden infusion of local funds and by the willingness of local counsel to again accept conflict representation contracts. But, will those contracts again be terminated once funds run out or if new local revenues are insufficient to pay counsel? What happens if those funds run out and are not replaced by the same or additional amounts of local funds? How many defendants will once again sit in jail wait listed or waiting for the assignment of defense counsel? The delivery of constitutionally effective indigent defense legal services cannot and should not rely upon such funding unpredictability.

C. Act 638 (House Bill 689, 2016 Regular Session): City Court Amendments and New Local Defender Boards

During our site visit HB 689 was working its way through the legislature, and, having passed both the House and Senate, it was sent on June 6th to the governor who signed the bill, now Act 638, on June 17th.

Act 638 amends the statute relative to city courts to permit the five city courts in the 16th Judicial District to allocate thirty percent of fees, fines and penalties collected in those city courts to a local Indigent Defender Fund managed by a local Indigent Defender Board. Each board shall consist of three members appointed by city council, by parish council, and by the legislative delegation from nominees from the Louis A. Martinet Legal Society.

It is our understanding that the local Indigent Defender Board *may* use these funds to hire their own defenders and to staff, in part or whole, city courts with or without assistance from the 16th Judicial District public defender office. We have seen this form of local oversight and organization of indigent defense legal services in Louisiana prior to the enactment of Act 307, the current Public Defender Act, and it was not successful.¹⁶ City court judges should not be in charge of hiring defense advocates whose continued engagement relies upon pleasing those judges. Moreover, local board members received no training or information about constitutional, effective indigent defense legal services, and they had neither the time nor the inclination to really oversee the quality of legal services provided through their funding.

D. Technical Assistance Meetings/Discussion with District Defender Cecelia A. Bonin

Tuesday, May 17th: Iberia Parish

¹⁶ See, *In Defense of Access to Justice: An Assessment of Trial Level Indigent Defense Services in Louisiana 40 Years after Gideon* (December, 2003), a project of the National Legal Aid and Defender Association and the National Association of Criminal Defense Lawyers.

We spent the entire work day, including lunch, meeting with Ms. Bonin in the conference room at the New Iberia public defender office. We discussed many leadership and management issues and challenges, especially those presented by her instituting a ROS protocol.

Caseload Tracking/Issues

Since she had alerted us prior to our visit about her concerns regarding case load tracking and numbers and their accuracy, we also wanted to consider those issues, especially after our meeting the previous afternoon with the LPDB staff in charge of the board's case tracking program.¹⁷

Ms. Bonin gave us a copy of her office's case load report package for FY14, FY15, and FY16 through May 15, 2016¹⁸. She told us that, following her recent review, she was confident that office staff was now correctly entering case data into her office case tracking system. Since Ms. Bonin was not the district defender in FY14 and into FY15¹⁹, she could not verify the accuracy of that data. When monitoring staff attorney caseloads and workloads, we suggested that she use the office figures, not data from the LPDB system, as a basis for determining staff attorney ethical workload capacity.

We compared the data for the two full fiscal years and most of FY16. It became clear to us that FINS and CINC parent representation absorbed most of the case assignments for office lawyers engaged in that civil dependency court practice. According to Ms. Bonin, those cases require numerous court docket appearances by her attorneys, all of which adds to the case workload time expenditure carried by the lawyers.

Adult misdemeanor practice presents the largest number of criminal case appointments for the office in all three fiscal years.²⁰ Very few of these cases actually go to trial, and, if they do go to trial, most are bench trials before a judge.²¹ The vast majority are guilty pleas to either the current offense charge or to a lesser offense.

¹⁷ According to the ROS, the 16th district public defender office represented 9000 clients in FY15, amounting to a basic cost per case of \$219.75. The FY16 projected cost per case is less than \$219.75, making total attorney time per case 2.45 hours.

¹⁸ We did not have an opportunity to see the individual attorney caseloads for the current fiscal or past fiscal years.

¹⁹ Ms. Bonin was appointed district defender for the 16th Judicial District Public Defender Office on March 2, 2015.

²⁰ Carry over cases from previous fiscal year plus new fiscal year adult misdemeanor case appointments:

FY14 = 5050

FY15= 4846

FY16= 3736 (Through 5/15/2016)

²¹ FY14: 1 jury trial/ 116 judge trials

FY15: 5 jury trials/ 102 judge trials

FY16: 0 jury trials/ 53 judge trials (through 5/15/2016)

We also looked at the office's adult felony caseload for cases that did not involve a life without parole sentence potential. After adult misdemeanor cases, these adult felony cases are the largest number of cases represented by the office, and, as with misdemeanors, the vast majority of these cases are disposed of by entering a guilty plea, rather than going to a trial either by jury or by judge.²²

We are concerned about the number of adult misdemeanor and felony (non-LWOP) cases that are disposed of by guilty pleas. Since there is no funding for investigators and since most of the attorney staff works part-time, our conclusion must be that these cases are not being adequately, effectively investigated.²³ We were also told that there was no office money to retain an expert witness, and, while there are cases that do not require the use of a defense expert, we must assume that this caseload does indeed include defense needs not only for a defense expert to support the defense case, but also for an expert to contradict/refute testimony from a state expert witness. Investigators and experts are essential, auxiliary elements of the Sixth Amendment Right to Counsel, and all the defendants in the 16th Judicial District are constitutionally entitled to receive effective assistance of counsel through the appropriate use of experts and case investigators.

The State of Louisiana is constitutionally mandated to adequately fund indigent defense legal services for those defendants facing criminal charges and potential loss of liberty. We call upon the State to adequately fund district public defender offices so that investigation and expert witness resources are fully and completely available to all defendants served by the district public defender offices.

We must also make sure that public defender staff attorneys, full and part-time, have the training and education resources to build their trial skill sets and to improve their case negotiation skills. If cases are not being tried because trial attorneys do not possess the necessary skills to undertake extensive pre-trial motion litigation, or jury voir dire and jury trial advocacy, or sentencing advocacy through written memorandum and meaningful presentations, then the LPDB must expand its training agenda and consistently offer these essential programs for attorneys in the district public defender offices.

²² FY14: 1154 guilty pleas/4 jury trials/5 judge trials
FY15: 1414 guilty pleas/8 jury trials/ 5 judge trials
FY16: 1312 guilty pleas/ 3 jury trials/10 judge trials

²³ See, ABA Standard 4-4.1(A) Duty to Investigate: "defense counsel should conduct a prompt investigation of the circumstances of the case and explore all avenues leading to facts relevant to the merits of the case and the penalty in the event of conviction..." This standard also states that the duty to investigate "exists regardless of the accused's admissions or statements to defense counsel of facts constituting guilt or the accused's stated desire to plead guilty". *American Bar Association Standards for Criminal Justice, Defense Function, page 181 (Third Edition, 1993)*.

The district public defender establishes the leadership direction for the office²⁴, and also has an obligation to adequately supervise the attorneys to affirm the fact that they are delivering effective assistance of counsel. When not managing during the office crisis that we observed under the ROS, the district defender should make time to conduct case reviews with her attorneys so that she knows that cases are being prepared and represented consistent with ethical standards and the standards established by the LPDB. Courtroom observation of pre-trial motions, trials and sentencing hearings also afford an opportunity to provide attorneys with immediate feedback and suggestions for affirming quality representation and for improving courtroom advocacy and attorney client relationships.

Other Case Representation Legal Services

We learned that the 16th judicial district public defender office currently has two capital cases, one of which is represented through a Louisiana capital representation non-profit law office and one by conflict attorneys who have remained on the case and who have filed a “citizen’s motion” before district judge Lori A. Landry seeking representation funding. If the office were to receive an additional capital case assignment, it would not have the in-house capacity to represent that case, and it would seek representation through the LPDB by one of the capital non-profits. We were also told that experts, investigators and other professional/non-professional experts in capital cases were funded by the LPDB through funds administered by the Louisiana Appellate Project.

Even under the ROS, misdemeanor and juvenile delinquency case assignments and representation have remained fully staff and unchanged. We gathered that this was in part a response to then pending Act 638 and an effort to show the city courts that the office was not ignoring its staffing obligations. The office also does not wish to lose the local funding that supports these legal representation services, a possibility under Act 638.

The CINC, FINS, and other civil representation cases also remained fully staffed. Ms. Bonin’s office does receive some funding from the state (\$22.5K) to staff these cases, but it is certainly not sufficient given the number of attorney hours necessary to staff these cases.

The public defender office was also withdrawing from Post-Conviction Relief representation, and providing limited representation at probation revocation hearings. Drug court representation was limited to incarcerated clients only, and the office was not

²⁴ We saw an office in crisis trying to carry on under very difficult and deprived circumstances. It is our observation that the office is attorney centered, rather than client centered, in terms of its operations and the need to cover so many courtrooms and dockets without a sufficient number of full time attorney staff and hours.

providing curatorship services. It was also not offering new offense legal services for defendants serving hard labor sentences, and it would not represent at juvenile life without parole resentencing hearings under the U. S. Supreme Court cases of *Miller v. Alabama and Montgomery v. Louisiana*.

Restriction of Service Protocol: Negative Impact on Adult Felony Case Conflict Defendants

At the time of our visit, the critical impact point of the ROS was felony case representation, for which there were no separate funds for experts or investigators. New, *non-incarcerated* felony defendants were placed on a waitlist for counsel assignment as of February 23rd. (Waitlist monitored by district defender.) Although there were no changes for *incarcerated* felony defendants with assigned staff counsel, there were major changes for those felony defendants (bail and jail) who were previously represented by then terminated conflict counsel. These conflict defendants had been placed by the office on a “priority waitlist” awaiting assignment of counsel by the district defender. Priority would be given to those charged with the serious offenses (ex.: sex cases with registration consequences), or crimes with high mandatory minimums without benefits, or crimes with high sentencing ceilings.

The waitlist process for custody, conflict defendants was implemented as of March 20, 2016. Even though district judges made some cross parish staff appointments for these defendants, there were still approximately fifty incarcerated felony defendants waitlisted without legal counsel, in violation of their sixth amendment constitutional right to counsel. We were very concerned about this outcome, and spent substantial time talking about possible strategies to immediately find counsel for these particular defendants.

Although district court judges had made some inter-parish defender staff attorney conflict case appointments, Ms. Bonin told us that this had put already overburdened mostly part-time staff attorneys into an ethical conflict of having to choose which clients will be effectively represented and which will not. At the time of our discussions, Ms. Bonin also indicated that increased/additional local and state funding was unlikely so that the conflict contract attorneys would not be rehired.

The consultants left Ms. Bonin in the late afternoon, checked into their hotel, and agreed to meet for dinner to specifically strategize possible recommendations that would permit the assignment of counsel for the waitlisted incarcerated felony conflict defendants.

Wednesday, May 18th: St. Mary and Iberia Parish

Since Ms. Bonin had morning administrative docket matters before District Judge Lewis H. Pitman, Jr. in the St. Mary’s Courthouse, the consultants went with her to Franklin,

Louisiana. We met a number of her staff attorneys and assistants in the Franklin defender office, and crossed the street to the courthouse.

While Ms. Bonin attended to her matters, we had the opportunity to observe Judge Pittman's courtroom and the work of the public defenders. Custody defendants in leg shackles and handcuffs were brought into the courtroom by armed sheriff deputies who sat the prisoners on the left side of the courtroom in chairs behind the bar of the court. Custody defendants wore either jail or prison uniforms. Almost all were African American, mostly men with a few women. Family members and observers sat on rows of chairs behind the bar of court, on the right side of the courtroom, closer to the entrance doorway.

We sat behind the bar of the court on the right side of the courtroom, and listened as Judge Pitman began to call the docket list. Defense counsel did stand with his/her client before the judge once the case was called, but it was difficult to hear counsels' arguments or statements as neither the prosecutors nor defense counsel were near microphones. On several occasions we heard defense counsel announce a *Motion to Reduce Bond* for a defendant before the judge, but both prosecution and defense counsel would then move closer to the judge's bench, and we could not hear their discussion. However, we did not see defense counsel call up any bond reduction witnesses, and we did not observe vigorous, active gestures and body movement typical of counsel assertively arguing a point of law or fact.

When Judge Pitman took a break, we went down the hall with Ms. Bonin to the break/coffee room where she introduced us to Judge Vincent J. Borne, a former elected district attorney for the 16th Judicial District and now the chief judge of the district court. Judge Borne informally spoke with us about his district, commenting that they now have fewer capital cases, in part because they were not worth the expenditure of time and funds on all sides: judicial, prosecution, and defense.

Upon completion of her courthouse matters, Ms. Bonin drove us back to our hotel where we picked up our car. The consultants met at lunch without Ms. Bonin to finalize our office re-organization recommendations which we intended to present to her at our afternoon meeting.

When we returned to the office conference room in New Iberia, we spoke by phone with Frank X. Neuner, Jr., Esq. who had agreed to serve as pro bono counsel for Ms. Bonin with regard to any motions that she may file in the district court to contest the inter-parish judicial appointments of her staff attorneys in conflict custody cases. The three of us arranged to meet with him and retired federal magistrate C. Michael Hill, now a private

criminal defense attorney, the following morning in Lafayette to consider possible motions and strategies.

Office Re-Organization Recommendations:

For the remainder of our Wednesday time with Ms. Bonin, we presented and discussed our recommendations for the re-organization of her office...assuming no additional funding relief from the LPDB or the local fines, costs, and tickets. In doing so we emphasized that the former incarcerated conflict defendants who did not currently have counsel *must immediately receive counsel assignments*.

We suggested that the 16th judicial district public defender office withdraw from all areas of civil representation involving CINC, FINS and other cases. Mr. Friedman explained that this had happened in Minnesota, with the approval of that state's Supreme Court, when that statewide public defender system was no longer in a financial position to staff these hearings. He also indicated that the Minnesota Supreme Court had then required the counties to assume funding responsibility for indigent civil juvenile representation.

The former CINC/FINS staff attorneys would then be retrained to provide representation in the city courts for misdemeanor and juvenile delinquency cases. Through their representation in child support and in representing children in CINC cases, some of these attorneys may already be familiar with the delinquency system and programs for dual system (dependency & delinquency) children.

The former misdemeanor and delinquency attorneys would move up to felony trial representation. The LPDB and the defender office would have to provide these attorneys with training, support, and supervision that would allow these lawyers to make a quick learning transition.

We told Ms. Bonin that we would also share these recommendations with the LPDB staff whom we were also meeting with the next day in Baton Rouge. We also indicated that we would emphasize the need for LPDB support in making this transition and in providing training programs and materials to assist staff attorney transitions.

We also offered Ms. Bonin one final recommendation. We suggested that, as the leader of her office during a difficult time, she herself should undertake case representation for five or six felony defendants. We suggested that this step would show her staff, the courthouses, and the community that she was more than willing to step up and to assist case representation at a time of critical need. Ms. Bonin rejected this idea, indicating that she had too much administrative work to take cases.

At this point, Ms. Bonin took a phone call from a district court judge, and we left the conference room. We agreed to meet her the next morning in Lafayette for our strategy meeting with Mr. Neuner and Mr. Hill.

Thursday, May 19th: Lafayette and Baton Rouge

At 7:30am we met Ms. Bonin, Mr. Hill and Mr. Neuner at a downtown Lafayette restaurant to discuss the critical case representation issues for the 16th Judicial District Public Defender Office. We summarized many of our concerns regarding adequate staffing and representation services, highlighting the issue of the fifty or so unrepresented, waitlisted, incarcerated former conflict defendants. Since Ms. Bonin had to return to the 16th district for court matters, she, Mr. Neuner and Mr. Hill agreed to meet the next morning to strategize how/what motions, if any, to file with regard to the inter-parish staff attorney conflict appointments and the lack of resources to provide attorney staff for incarcerated and non-incarcerated former conflict attorney clients.

IV. SUMMARY OF RECOMMENDATIONS TO IMPROVE THE DELIVERY OF QUALITY INDIGENT DEFENSE LEGAL REPRESENTATION SERVICES

A. State of Louisiana

1. The State of Louisiana, not the parishes, has the constitutional obligation to fund indigent defense legal services for adults and children facing criminal charges and the potential loss of liberty. Like the State of New York and many other states, Louisiana must finally recognize this mandate and assume 100% general fund appropriation responsibility for indigent criminal and delinquency defense representation services at the trial, appellate and post-conviction court levels.
2. The State should adequately fund the Louisiana Public Defender Board so that the position of Deputy Director/Director of Training may be restored as a fully funded staff position. There is a continuing, essential need to provide additional training and learning programs for parish district office leaders and managers as well as for trial and appellate attorneys charged with the delivery of direct legal representation services.
3. The State should adequately fund the Louisiana Public Defender Board so that the use of part-time staff attorneys is minimized and the hiring of full time staff attorneys is increased. The use of part-time staff attorneys limits attorney engagement with their clients, reduces actual time (office, court or jail) available for defender cases, and may place attorneys in the position of triaging their defender clients in favor of their retained, private clients.

4. The State should adequately fund the Louisiana Public Defender Board so that all parish district public defender offices have full capacity to hire investigators and expert witnesses whenever those essential services are necessary for the delivery of effective indigent defense legal services.

5. The State should adequately fund the Louisiana Public Defender Board so that there are sufficient funds to lease public defender parish office space that is professional, law office space with adequate and private attorney/ client meeting space. Such professional office space must have full, reliable use of all utilities and the capacity to maintain updated technology connectivity.

B. Louisiana Public Defender Board

1. If the LPDB continues to support the use and filing of *restriction of services protocols* in public defender districts unable to provide effective legal services due to overwhelming caseload/workload and lack of adequate funding resources, the LPDB staff must offer and provide district defenders with additional support, direction, and leadership ideas/suggestions.

2. With regard to *restriction of services protocols*, the LPDB should provide parish office leaders with sample motions, briefs, and talking points to assist district leaders who are faced with implementing the *restriction of services protocols* and responding to the judges, prosecutors, and their communities.

3. The LPDB should continuously update all district office leaders and managers on the outcomes of any parish office *restriction of services* litigation, agreement, or settlement. Office leaders need to know how similar issues are handled in other parishes and what strategies are working/not working for other district offices.

4. There is a very real need for additional management and leadership training for district office leaders and for a broad range of trial skills/litigation training for attorneys working as full time and part-time staff lawyers. (Pre-trial motion litigation, trial advocacy skills, and sentencing advocacy.) The LPDB needs to increase its training and education programming...with or without the re-instituted position of Director of Training. Attorney fear of trial may generate a guilty plea in a “triable” case; skills based experiential training eliminates that fear and drives “triable” cases to trial.

C. 16th Judicial District Public Defender Office and Local Issues

1. Continued public defender local office funding reliance upon the erratic, unpredictable collection of local application fees, special court fees, Mayor’s court costs, probation condition fees, criminal bond fees, surety bond licensing fees, and bond forfeitures must

stop! Relying upon poor parish residents and other indigents to fund their own legal representation through this fee collection process is completely unworkable for defender clients and attorneys, courts, prosecution, and the community that pays the increased jail costs when felony defendants sit in jail awaiting assignment of counsel.

The State of Louisiana must fully fund all indigent defense legal representation services. It is time to stop public defender office reliance upon local fees paid by the defendants whom defenders represent. Such reliance may encourage some offices to plead people guilty in order to increase their own anticipated revenues. It may also lead to the troubling expression of offices having a “good month” if fines and fees are up or a “bad” revenue month if those fees are down. It is defense counsel’s role to advocate against overly burdensome fines/fees imposed upon clients who may barely be able to afford food or a roof over their head.

2. With increased funding from the LPDB, the law offices/physical premises of the 16th Judicial District Public Defender should be upgraded to a better professional standard that guarantees the reliable use of all utilities as well as a capacity to upgrade all technology and connections.

3. At a time of reduced office resources and limited attorney staff time/ availability, the public defender office should withdraw from all civil case representation requirements: child support, CINC-child, CINC-parent, termination of parental rights, and FINS. The parish should provide and fund this representation through attorney contractors.

Staff attorneys formerly assigned to these civil cases should be re-assigned to the adult misdemeanor and delinquency cases in the City Courts. Special training programs and resources should be provided to these attorneys so that they may easily transfer into a new law practice arena.

4. Although new Act 638 authorizes the possibility that city court representation would be taken over by local city boards with the authority to contract with attorneys to undertake misdemeanor and delinquency defense representation in city courts, we would recommend that the cities not take those steps and that the cities continue to rely upon legal representation provided by the 16th Judicial District Public Defender Office. In our experience, the proposed model for city court legal representation does not work in terms of the actual delivery of effective and efficient legal representation services. A well supervised public defender office with specially assigned staff attorneys in these city courts offers a much better opportunity to deliver quality representation and to guarantee attorney availability whenever needed for city court dockets.

5. Current adult misdemeanor and delinquency attorneys should be transferred to adult felony (non-life without parole) case representation assignments. These staff attorneys must also be offered special training programs and resources so that they may learn this new area of law practice.

6. Due to lack of funding, the office terminated conflict counsel contracts on March 31, 2016. This resulted in the office's inability to assign a defense attorney to represent felony, pre-trial defendants who remained in jail unrepresented. This is clearly an unacceptable violation of the constitutional rights of those defendants. Although this situation was rectified due to increased local fee revenues for the public defender office and to newly contracted conflict legal representation, it cannot and should not be permitted to happen again. All defendants, bail or jail, have a constitutional right to the timely appointment of an attorney.

7. The 16th Judicial Public Defender Office must have sufficient funds to fully support the use of case investigators and expert witnesses. Failure to investigate cases or to use an expert witness when necessary is unacceptable and a denial of basic elements of the constitutional right to counsel. The office culture needs to change so that use of investigators and experts is an automatic part of the attorney's case assessment and evaluation process.

8. When diminished resources and lack of funding justify the use of a *restriction of services protocol*, it would be a significant step for the chief district defender to come forward and to undertake case representation for five or six felony defendants. Such a step demonstrates to office staff, the courthouses and the community that the chief defender will step up to the plate to assist the office and its clients through a difficult and challenging time.

9. At the time of our site visit there were only two full time attorneys working for the public defender office, and one of them was a new law graduate/newly barred. All other attorney staff worked part-time, giving the office either thirty, twenty or fifteen hours a week. For part-timers the defender work is in addition to their private law practice which has no caseload/workload limitations.

The 16th Judicial District Public Defender office should receive additional funds to convert as many part-time attorney staff positions to full time as may be possible in any fiscal year. When lawyers are working with clients on a full time basis, there is an opportunity to better know the client's case and defense as well as the client's background and sentencing mitigation factors. Full time staff would better enable the office to move from an attorney centered law practice to one that is more client centered.

10. It is critically important that the public defender office accurately and consistently enter case and representation data so that case trends and caseload/workload may be measured and analyzed. The chief district defender should continuously monitor data entry and make sure that it is accurate. Tracking attorney case assignments is essential to making sure attorneys are not ethically overloaded to the point that they may not be competent or diligent. The chief district defender should also evaluate the data so that it may be used for multiple purposes, including advocating for additional staff and attorney resources.

V. CONCLUSION

Both before and during our technical assistance visit with Ms. Bonin, LPDB staff, Mr. Neuner, Mr. Marx and Mr. Hill, we did our best to actively listen and to better understand the indigent defense delivery system issues that they were confronting both in the 16th Judicial District and throughout the state. We studied Ms. Bonin's ROS protocol as well as the reports and data that Ms. Bonin provided at our request and on her own motion, and we read newspaper and blog reporting on the crisis in indigent defense in Louisiana. We actively followed the legislative process that resulted in Acts 571 and Act 638, which may well change the delivery of indigent defense legal services in Louisiana and in the 16 Judicial District's city courts.

We presented Ms. Bonin with our best suggestions and recommendations for reorganizing and retraining her office attorney staff to meet the demands of felony case representation in the three parishes. We emphasized the need for training and supervision, and we offered to create a training curriculum to assist the transition of the civil/family attorneys to misdemeanor/ delinquency practice and to permit the misdemeanor/delinquency attorneys to move on to felony cases.

Fortunately for the defendants and clients in the 16th, Ms. Bonin's local funding increased to the point that she is now able to re-hire the conflict contract attorneys and to staff the conflict, new and waitlisted cases that were pending during our site visit. With the final enactment of Act 571, Ms. Bonin also expects to receive additional state funding that will allow her to hire additional attorney staff. While these are positive outcomes, the state and local funding system is still highly unpredictable, erratic, and guaranteed to create future staffing and representation challenges for Ms. Bonin and the 16th District Public Defender Office.

It is clear to us that Louisiana's indigent defense delivery system is deeply flawed, underfunded, under resourced, and in violation of the state and federal constitutional

right to counsel of presumed innocent defendants who must wait in jail before any trial for the eventual appointment of an attorney. As previous reports, assessments and evaluations of the Louisiana indigent defense delivery system have pointed out, it is past time for the state, not the parishes and not through fines, costs, and traffic tickets, to fulfill its constitutional responsibility to provide for effective, ethical indigent defense legal representation. Frankly, this has been going on for far too long; the time for change is now!

EXHIBIT "A"

(Biographies for Fred T. Friedman, Esq. and Phyllis H. Subin, Esq.)

FRED T. FRIEDMAN

Associate Professor Fred T Friedman
Duluth, Minnesota
ffriedma@d.umn.edu

Fred Friedman has been an attorney since 1972, a public defender in Minnesota since February 1, 1973, and a professor since 1975. He was born and raised in Chicago and Fort Wayne, Indiana. Fred moved to Duluth, Minnesota in March of 1964 and graduated from Duluth Denfeld High School in 1965. He attended the University of Minnesota, Duluth from 1965 to 1969 where he graduated magna cum laude and was student body president. He earned his Juris Doctorate at the University of Minnesota Law School where he graduated in 1972. He then returned to Duluth where he practiced as a full time public defender from 1973 to 1977 and as a part time defender with a private practice specializing in criminal defense and representing professionals in front of licensing boards from 1977 to 1992.

Fred served as the Chief Public Defender of Minnesota's Sixth District (northeastern Minnesota) from the spring of 1986 till April of 2014 and is Minnesota's longest serving chief defender in history. Fred has written many articles on trial skills and public defender leadership. He has taught at schools and seminars for the public and private criminal bar and others in Arizona, California, Colorado, Delaware, Florida, Georgia, Idaho, Illinois, Indiana, Iowa, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Missouri, Montana, Nevada, New Hampshire, New Mexico, North Carolina, North Dakota, Ohio, Oregon, Pennsylvania, South Dakota, Texas, Washington, Washington D.C., West Virginia, and Wisconsin, as well as the U.K., France, Germany, and Singapore.

Fred is the chair of the National Association of Public Defenders (NAPD) strike force committee that upon request advises and assists public defenders who view themselves or their organization in political or legal crisis.

In addition to being an attorney and career public defender, Fred is an associate professor at the University of Minnesota, Duluth where he has taught since 1975. He holds a joint appointment in the Department of Sociology and the School of Medicine. He has been a member of the faculty of the Minnesota Judicial College, and currently the National Public Defender Trial School at the University of Dayton, the University of North Carolina

School of Government Trial School, and the Penn State School of Law Trial School and for many years taught at the Minnesota Public Defender Trial School at St. Thomas University. He has often been selected as one of Minnesota's Super Lawyers. He has enjoyed an "av" lawyer rating for over 35 years. He has won several outstanding teacher awards and was elected to his alma mater's (Duluth Denfeld High School) Hall of Fame.

His legal awards include being selected as recipient of the 1995 Jack J. Litman Social Justice Award. In 1996 he received the Minnesota Public Attorney of the year. Award. In 2013 he was presented with the prestigious Minnesota Association of Criminal Defense Lawyers (MACDL) Lifetime Achievement Award. In 2014 he was awarded the prestigious Chief Justice Douglass Amdahl Public Attorney Career Achievement Award and the Duluth Bethel Lifetime Achievement award for Community service. He was also selected in 2014 as one of *Minnesota Lawyer's* Attorneys of the Year and received their 2014 Outstanding Service to the Profession Award. In 2015 he received the Jack Durfee Distinguished Service Career Public Defender Award. Fred also co-hosts a radio show on Public Radio throughout Northern Minnesota alternately entitled "Fool Fred" or "The Sports Page".

Fred currently serves on the Boards of the Boys and Girls Club Scholarship Committee, the UMD Baeumler-Kaplan Committee, the Duluth Life House, the Duluth Police Foundation, CHUM, Northeaster Minnesota Legal Aid, and Woodland Hills. He has also serves as a court referee hearing conciliation court cases from 1984-87 and 2015 to the present.

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Phyllis H. Subin, Esq., is a nationally recognized justice systems leadership and development consultant, program evaluator, educator and trainer, who currently serves as the executive director for the **Pennsylvania Coalition for Justice**, an advocacy and policy effort to bring Pennsylvania's county funded indigent defense legal representation delivery system into compliance with the *American Bar Association's Ten Principles of a Public Defense Delivery System (2002)*. She also has her own consulting firm and works nationally on numerous adult and juvenile justice system policy, leadership and training issues.

Ms. Subin also serves as a management and training consultant with the Defender Association of Philadelphia, where she spent over twenty years practicing trial and appellate law and was the Association's first Director of Training and Recruitment. For many years she was an Adjunct Professor of Law at the University of Pennsylvania School of Law teaching trial advocacy skills, and she has taught for the National Institute of Trial Advocacy and many other state, federal and county public defender offices. She has directed and taught Train the Trainer programs, as well as Management and Leadership programs for the American Bar Association, the National Association of Criminal Defense Lawyers, and public defender state, county and federal office leaders. A former elected board member of the National Legal Aid and Defender Association, she is a founding member of the National Association for Public Defense and the American Council of Chief Public Defenders. She is a past chair of the National Alliance of Indigent Defense Educators, and she has been a qualified trainer for the federal Bureau of Justice Assistance and Office of Juvenile Justice and Delinquency Prevention.

Ms. Subin founded the Criminal Defense Clinical Program at the University of New Mexico School of Law and was an Assistant Professor when New Mexico's Governor appointed her chief public defender for the state's public defense legal representation system. She was a member of the Governor's criminal justice cabinet, and served on numerous policy task forces and commissions, including ten years on the Juvenile Justice Advisory Commission where she worked on gender responsive services for girls in the delinquency system and studied the impact on juveniles of the federal Adam Walsh Child Protection Act (2006).

EXHIBIT "B"

HOUSE BILL 1137 (Regular Session, 2016); ACT 571

ENROLLED

2016 Regular Session

HOUSE BILL NO. 1137 (Substitute for House Bill No. 818 by Representative Mack)

BY REPRESENTATIVE MACK

1 AN ACT

2 To amend and reenact R.S. 15:146 and to enact R.S. 15:162(I), 166, and 167(E), relative to

3 indigent defender services; to amend provisions of the Louisiana Public Defender
4 Act; to provide for membership of the Louisiana Public Defender Board; to reduce
5 the number of members on the board; to provide with respect to the powers and
6 duties of the board; to provide relative to member qualifications; to provide with
7 respect to the dispersal of funds; to provide with respect to the delivery of indigent
8 defender services; to provide definitions; and to provide for related matters.

9 Be it enacted by the Legislature of Louisiana:

10 Section 1. R.S. 15:146 is hereby amended and reenacted and R.S. 15:162(I), 166,
11 and 167(E) are hereby enacted to read as follows:

12 §146. Louisiana Public Defender Board

13 A.(1) There is hereby created and established as a state agency within the
14 office of the governor the Louisiana Public Defender Board to provide for the
15 supervision, administration, and delivery of a statewide public defender system,
16 which must shall deliver uniform public defender services in all courts in this state.
17 The board shall be a body corporate with the power to sue and be sued.

18 (2) The board and its agents and employees shall be subject to the Code of
19 Governmental Ethics, the law relative to public records and open meetings, the law
20 relative to public bid and procurement, and all other provisions of law applicable to
21 state agencies.

22 (3) Members of the Indigent Defense Assistance Board serving on August
23 15, 2007, shall continue to serve as members of the Louisiana Public Defender Board
Page 1 of 8

CODING: Words in struck through type are deletions from existing law; words
underscored are additions.

HB NO. 1137 ENROLLED

1 without limitation of their term. The two members of the Louisiana Public Defender
2 Board appointed by the president of the Louisiana State Bar Association, the member
3 appointed by the chairman of the Louisiana State Law Institute's Children's Code
4 Committee, the member appointed by the President of the Louisiana Chapter of the
5 Louis A. Martinet Society, the member appointed by the Louisiana Interchurch
6 Conference, the two members appointed by the governor and the four members

7 appointed by the governor and nominated by the four law schools, as formerly
8 provided in this Section, shall terminate their service on August 1, 2016.

9 (4) To the extent practicable, the board shall be comprised of members who
10 reflect the racial and gender makeup of the general population of the state, and who
11 are geographically representative of all portions of the state.

12 (5) When a vacancy occurs, whether by expiration of a term, resignation, or
13 other event, the board staff shall submit to the appointing entity a list identifying the
14 residency of the current board members by congressional district, and request that,
15 to the extent possible, the entity make the appointment from the residents of under-
16 represented districts.

17 B.(1) The board shall consist of fifteen eleven members.

18 (2) Persons appointed to the board shall have significant experience in the
19 defense of criminal proceedings or shall have demonstrated a strong commitment to
20 quality representation in indigent defense matters. No person shall be appointed to
21 the board that who has received compensation to be an elected judge, elected official,
22 judicial officer, prosecutor, law enforcement official, indigent defense provider, or
23 employees of all such persons, within a two-year period prior to appointment. No
24 active part-time, full-time, contract or court-appointed indigent defense provider, or
25 active employees of such persons, may be appointed to serve on the board as a voting
26 member. No person having an official responsibility to the board, administratively
27 or financially, or their employee shall be appointed to the board until two years have
28 expired from the time the person held such position and the date of appointment to
29 the board during their term of office. The majority of board members shall be
30 current members of the Louisiana State Bar Association. Representatives of the

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1 client community shall not be prohibited from serving as voting members of the
2 board. With the exception of mandatory affiliation of the Louisiana State Bar
3 Association, no state or local association of lawyers shall have more than one active
4 board member or officer as a voting member of the Louisiana Public Defender
5 Board.

6 (3) The members shall be selected as follows:

7 (a) The governor shall appoint two five members, one from each appellate
8 court district, and shall designate the chairman.

9 (b) The five members shall be appointed from a list of three nominees
10 submitted to the governor by a majority of the district public defenders providing
11 public defender services in each appellate district.

12 (b)(c) The chief justice of the Supreme Court of Louisiana shall appoint two
13 four members, one member shall be a juvenile justice advocate; the other one
14 member shall be a retired judge with criminal law experience; and two members
15 shall be at large.

16 (c)(d) The president of the Senate and the speaker of the House of

17 Representatives shall each appoint one member.

18 (d) The governor shall appoint one member representing the Louisiana State
19 University Paul M. Hebert Law Center who is an active employee, retired employee
20 or has an academic association with the Paul M. Hebert Law Center.

21 (e) The governor shall appoint one member representing the Loyola
22 University School of Law who is an active employee, retired employee or has an
23 academic association with the Loyola University School of Law.

24 (f) The governor shall appoint one member representing the Southern
25 University Law Center who is an active employee, retired employee or has an
26 academic association with the Southern University Law Center.

27 (g) The governor shall appoint one member representing the Tulane
28 University School of Law who is an active employee, retired employee or has an
29 academic association with the Tulane University School of Law.

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1 (h) The president of the Louisiana State Bar Association shall appoint two
2 members.

3 (i) The president of the Louisiana Chapter of the Louis A. Martinet Society
4 shall appoint one member.

5 (j) The chairman of the Louisiana State Law Institute's Children Code
6 Committee shall appoint one member.

7 (k) The executive director of the Louisiana Interchurch Conference shall
8 appoint one member.

9 (l)(e) All appointments to the board shall be subject to confirmation by the
10 Senate.

11 (4) A vacancy on the board shall be filled in the same manner as the original
12 appointment.

13 (5) Members of the board shall serve staggered terms of four years, after
14 initial terms as follows:.

15 (a) Two members shall be immediately appointed to a four-year term by the
16 chief justice of the Louisiana Supreme Court.

17 (b) One member shall be immediately appointed to a two-year term by the
18 governor representing the Louisiana State University Paul M. Hebert Law Center.

19 (c) One member shall be immediately appointed to a three-year term by the
20 governor representing the Loyola University School of Law.

21 (d) One member shall be immediately appointed to a three-year term by the
22 governor representing the Southern University Law Center.

23 (e) One member shall be immediately appointed to a four-year term by the
24 governor representing the Tulane University School of Law.

25 (f) Upon the first expiration of the term or resignation by a current appointee
26 of the governor, one member shall be appointed to a four-year term by the executive
27 director of the Louisiana Interchurch Conference.

28 (g) Upon the first expiration of the term or resignation by a current appointee
29 of the president of the Senate, one member shall be appointed to a two-year term by
30 the president of the Louisiana State Bar Association.

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1 (h) Upon the second expiration of the term or resignation by a current
2 appointee of the president of the Senate, one member shall be appointed to a four-
3 year term by the president of the Louisiana State Bar Association.

4 (i) Upon the third expiration of the term or resignation by a current appointee
5 of the president of the Senate, one member shall be appointed to a three-year term
6 by the president of the Senate.

7 (j) Upon the first expiration of the term or resignation by a current appointee
8 of the speaker of the House of Representatives, one member shall be appointed to a
9 two-year term by the president of the Louisiana Chapter of the Louis A. Martinet
10 Society.

11 (k) Upon the second expiration of the term or resignation by a current
12 appointee of the speaker of the House of Representatives, one member shall be
13 appointed to a four-year term by the chairman of the Louisiana State Law Institute's
14 Children Code Committee.

15 (l) Upon the third expiration of the term or resignation by a current appointee
16 of the speaker of the House of Representatives, one member shall be appointed to a
17 three-year term by the speaker of the House of Representatives.

18 (6) In addition there shall be two ex officio, nonvoting members of the board
19 who shall not be counted or be permitted to be counted for purposes of the number
20 of members necessary to take board action or the number of members necessary to
21 establish a quorum. In all other respects they have all the duties, authority,
22 requirements, and benefits, except per diem, of any other board member. Each of the
23 following organizations shall appoint one such member:

24 (a) The Louisiana Association of Criminal Defense Lawyers.

25 (b) The Louisiana Public Defender's Association.

26 C. Nothing in this Section shall limit the length of the term for any board
27 members serving on the Indigent Defense Assistance Board on August 15, 2007,
28 except that they may be removed for just cause, or as provided in Subsection D of
29 this Section. However, members who have not previously been confirmed by the
30 Senate, shall be subject to Senate confirmation.

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1 D.C.(1) A member may be removed for excessive absences from meetings.

2 For the purposes of this Subsection, "excessive absences" means failure to attend

3 three consecutive meetings or more than fifty percent of the meetings of the board
4 conducted during a year missing four duly noticed meetings within a period of
5 eighteen months or three duly noticed meetings within a period of ten months.
6 (2) Upon review of board member attendance, if a board member has been
7 excessively absent from board meetings, the chairman shall inform the board of the
8 absences and shall send written notice on behalf of the board to the member
9 requesting that the member resign his position on the board. If the member refuses
10 to resign, the board shall remove the member for excessive absences in accordance
11 with the provisions of this Subsection.
12 (3) If a member is removed as provided by this Subsection, the board shall
13 send written notice to the member informing him of his removal and notify the
14 appropriate appointing authority of the vacancy on the board.
15 E.D. The board shall notify the appropriate appointing authority of any board
16 vacancy which occurs for any reason.

17 * * *

18 §162. Vacancies in position of district public defender; formation of district public
19 defender selection committee; powers and duties of committee; process for
20 filling vacancy for district public defender; interim district public defender

21 * * *

22 I.(1) Board staff shall not require of the district public defenders or their staff
23 any response with a due date less than six working days from the first full day since
24 the request is received, other than during a natural emergency. The time period
25 provided for in this Paragraph shall not include responses requested by the governor,
26 the House Committee on Administration of Criminal Justice, or the Senate
27 Committee on Judiciary C.

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1 (2) The board shall make every effort to end the use of paper reports and
2 shall make every effort to rely on searchable digital data in order to reduce costs of
3 operation.

4 * * *

5 §166. Disbursement of funds

6 A. The board shall not disburse funds to a non-governmental entity unless
7 it establishes a benefit to the function of the board pursuant to law, and unless
8 services are actually delivered. Under no circumstances shall the board disburse
9 state funds for the purpose of savings, reserves, or other purposes related primarily
10 to the economic health of the non-governmental entity or its owners and employees.

11 B. Any service which the board seeks, other than the Louisiana Appellate
12 Project or the Capital Appeals Project, which are statewide programs, shall be
13 subject to an application process by which the board provides objective deliverables
14 and allows the district defenders to make application upon the same terms as a non-
15 governmental entity to provide services in that district or a regional area for services

16 as provided by law.

17 C. No provision of Louisiana law authorizing the return or rollback of funds
18 from governmental programs to the division of administration shall apply to the
19 board account during an emergency shortfall in funding as certified by the board
20 with the approval of the chief justice of the Louisiana Supreme Court.

21 §167. Louisiana Public Defender Fund

22 * * *

23 E. The board shall dedicate and disburse at least sixty-five percent of the
24 entirety of its annual budget and its funds in the Louisiana Public Defender Fund as
25 defined in Subsection A of this Section each fiscal year to the district defender
26 offices and their indigent defender funds as defined in R.S. 15:168(A) in the various
27 judicial districts throughout the state. Any funds disbursed to any district defender
28 office shall be paid in addition to the minimum mandatory sixty-five percent of
29 dedicated and disbursed funds required in this Subsection. The provisions of this
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1 Subsection shall not apply to statutorily dedicated funds or funds received through
2 the awarding of grants.

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED:

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