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SCHOOL OF PUBLIC AFFAIRS

BJA Criminal Courts Technical Assistance Project: TA Report No. 4-145 OFFICE PROGRAMS OFFICE

**Review of Management and Organization  
of the Public Defender's Office  
in Calcasieu Parish (Lake Charles), Louisiana:  
Observations and Recommendations**

**CONSULTANT**

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**CRIMINAL COURTS TECHNICAL ASSISTANCE PROJECT**

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## I. INTRODUCTION

### A. Background of This Technical Assistance Report

This report provides a summary of the observations and recommendations resulting from a site visit conducted June 28 - July 2, 2010 to the Public Defender's Office in Calcasieu Parish (Lake Charles), Louisiana (CPDO) by consultant Erwin Lewis. This visit was made in response to a request for technical assistance submitted jointly by Jean Faria, Louisiana State Public Defender, and Mitchell Bergeron, District Defender for the Fourteenth Judicial District (Calcasieu Parish), to the Bureau of Justice Assistance's Criminal Courts Technical Assistance Project (CCTAP) at American University in Washington, D.C. The technical assistance request resulted from two interrelated developments: (1) the recommendations submitted by the CCTAP in a May 24, 2010 draft problem definition visit report prepared in response to a separate technical assistance request from the Fourteenth Judicial District's Chief Judge Robert L. Wyatt to review the caseload management processes in the District; and (2) a lawsuit against the Calcasieu Parish Public Defender and the State Public Defender, for which service of process was effected in May 2010, alleging incompetent counsel for indigent defendants in the Fourteenth Judicial District. As a result of this lawsuit, the Public Defender notified Chief Judge Wyatt that no additional public defender cases would be accepted after August 1, 2010. Developments following the site visit that allowed the August 1, 2010 deadline to be suspended pending further CCTAP services to the 14<sup>th</sup> Judicial District to study in greater detail the caseload management process and provide recommendations, as might be appropriate, that would improve the process and timeframes for case disposition generally as well as the ability of the CPDO to more efficiently and adequately handle its caseload.

As a first step in addressing the deficiencies in indigent defense services in Calcasieu Parish and the issues raised in the litigation, the Calcasieu Parish Public Defender and the State Public Defender jointly requested the present review of the organization and management structure of the Office with a view to (1) ensuring that existing resources are used as efficiently as possible; and (2) developing the infrastructure to ensure that any additional resources the office might receive will be used efficiently and effectively. The technical assistance review has been designed to address issues including:

- (1) staff organization and delegation of authority and responsibility;
- (2) method for case assignment to staff and contract attorneys;
- (3) supervision and oversight of both staff and contract attorneys;
- (4) training provided and needed;
- (5) investigative resources available/needed and their use;
- (6) performance appraisal process;
- (7) job descriptions;
- (8) salary structure;
- (9) performance reporting;
- (10) policies regarding outside employment; and

(11) available and needed statistics on the caseload and case process.

The consultant selected to conduct this review, Erwin Lewis, who has submitted the observations and recommendations which follow, is the retired Public Advocate for the Commonwealth of Kentucky and former Directing Attorney for the Richmond, Kentucky, Public Defender's Office. Mr. Lewis has already been conducting training programs for the Louisiana State Public Defender Board and is familiar with many of the issues and practices affecting local public defender operations in Louisiana. Prior to the site visit, a number of telephone conference calls were conducted with Mr. Lewis, CCTAP staff, Louisiana State Public Defender Board officials, and Mr. Bergeron to plan the technical assistance visit and discuss a wide range of issues that needed to be addressed. Available documentation regarding defender services in the district and other related materials were also compiled and sent to Mr. Lewis for review prior to the site visit. A list of the documents reviewed and individuals interviewed on site is included in the Appendix to this report.

## **B. Context in Which This Technical Assistance Has Been Provided**

In April 2009, the National Right to Counsel Committee issued a report on the state of indigent defense in the United States. Its summary read:

Yet today, in criminal and juvenile proceedings in state courts, sometimes counsel is not provided at all, and it often is supplied in ways that make a mockery of the great promise of the *Gideon* decision and the Supreme Court's soaring rhetoric. Throughout the United States, indigent defense systems are struggling. Due to funding shortfalls, excessive caseloads, and a host of other problems, many are truly failing. Not only does this failure deny justice to the poor, it adds costs to the entire justice system. State and local governments are faced with increased jail expenses, retrials of cases, lawsuits, and a lack of public confidence in our justice systems. In the country's current fiscal crisis, indigent defense funding may be further curtailed, and the risk of convicting innocent persons will be greater than ever. Although troubles in indigent defense have long existed, the call for reform has never been more urgent.<sup>1</sup>

In many ways, the conditions found in the public defender system in Calcasieu Parish are a microcosm of that identified in the *Justice Denied* report. Further, this report is consistent in many ways with previous reports written on the problems existing in the 14<sup>th</sup> Judicial District.

In 2004, Dr. Michael Kurth and Daryl Burckel issued a report entitled "Defending the Indigent in Southwest Louisiana" (hereinafter the *Kurth Report*) that was the culmination of a three year study. At that time, the authors lamented that "the problems of the Calcasieu

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<sup>1</sup> National Right to Counsel Committee, *Justice Denied: America's Continuing Neglect of our Constitutional Right to Counsel* (2009).

Parish PDO have two main sources: one is a lack funds [sic], and the other is a judicial process that tolerates delays.” As a remedy, the authors called upon policy makers to begin reforms that could be accomplished with additional resources as well as those which required judicial system reform. The proposed reforms entailing additional resources included:

- increase in the number of investigators,
- lower caseloads,
- increased client contact,
- professional development,
- increased salaries and benefits,
- halting the private practices of its full-time attorneys,
- increasing the numbers of support staff, and
- increased use of information technology and experts.

Proposed improvements requiring judicial system reform included:

- enhanced financial screening;
- rapid appointment of counsel as well as vertical representation;
- early use of investigators;
- early discovery;
- early bill of charges;
- timely arraignments;
- shorter court dockets;
- more felony trial dates; and
- increased plea negotiations prior to arraignments.

While some dispute arose thereafter regarding the precise accuracy of the case numbers, the report was nevertheless thorough and accurate and sadly still applicable today in many respects.

Six years later, in May 2010, Judge John Parnham and Richard Hoffman<sup>2</sup> stated that the CPDO “has steadily fallen behind in representing the approximately 95 percent of the defendants who are indigent.” They also recognized that the “right to counsel” hearing accomplished little other than a “speedy ruling on indigency”. Their report, prepared in response to the technical assistance request referenced above from the 14<sup>th</sup> Judicial District’s Chief Judge Robert L. Wyatt, was written after a three day site visit that included meetings with judges, prosecutors, clerks, law enforcement, and public defenders. The report

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<sup>2</sup> Richard B. Hoffman & Hon. John T. Parnham, *Review of Criminal Caseflow Practices and Impact on Indigent Defense in the Calcasieu Parish 14<sup>th</sup> District Court, Lake Charles, Louisiana* (BJA/AU Criminal Courts Technical Assistance Project: TA Report No. 4-141, May 2010).

underscored the significant disparity between the resources of the prosecution and public defender offices and the fact that the CPDO was out of compliance with the Louisiana Public Defender Board (LPDB) caseload limits. Among the recommendations in the report was that “a review of the management and organizational structure of the Public Defender’s Office should be immediately undertaken to identify management improvements needed to ensure that existing resources—as well as any additional resources that are provided for the office—are utilized in the most effective and efficient manner to provide the full range of indigent defense services required.”

Within this context, the present technical assistance review has been conducted with the objective of documenting the existing system for providing indigent defense services in Calcasieu Parish and providing recommendations, as appropriate, for improving the management and organization of indigent defense service delivery. Because the public defender office operates within the larger criminal justice system that involves the judiciary, the prosecution, and other criminal justice entities, recommendations involving those entities are made where problems involving those entities affect the use and delivery of indigent defense services.

It is noteworthy that at its May 2010 meeting, the LPDB allocated an additional \$114,000 to the CPDO. At the June 2010 Budget Committee and Board meeting, the LPDB allocated an additional \$300,000 to the CPDO. This allocation was made with the understanding that all attorneys were to convert to full-time status, salaries would be increased approximately \$13,000 for each lawyer, an office manager would be hired at a \$75,000 to \$100,000 salary, and \$18,000 would be dedicated to increasing salaries of support staff. This allocation of additional funds is a significant development that can result in the amelioration of some, though not all, of the problems that have been embedded in the CPDO for some time.

With this background, the following observations, findings, and recommendations are submitted.

## II. CALCASIEU PARISH PUBLIC DEFENDER OFFICE: OVERVIEW AND ASSESSMENT

### A. History

The Calcasieu Public Defender's Office was established in the mid-1980's as a full-time office. Previously, indigent defense services were provided on an assigned counsel basis. The new office was staffed with four full-time attorneys led by John Lavern, who was the Executive Director of the office until 2000. Initially, private practice by staff attorneys was not allowed, although it gradually was permitted so long as it did not interfere with the handling of the public defender caseload. The policy of allowing the attorneys to maintain private practices was a response to the low salaries being paid to the public defenders.

By the early 1990's, there were seven to eight attorneys on staff, and private practice among the attorneys was increasing. In the mid-1990's, excessive caseloads led to the filing of motions under the decision in *State v. Peart*, 621 So. 2d 780 (La. 1993), which held that an accused is entitled to a lawyer who has the time to represent him, that there was chronic underfunding of the Louisiana public defender system, and permitted public defenders to make a showing that their caseloads were so excessive that they could no longer be required to represent a particular client. The Division 8 judge granted the motions and relieved the public defenders of cases for a time. Private lawyers were appointed to handle conflict and overload cases, mostly without compensation. In 2000, Ron Ware, who is now a district judge in the 14<sup>th</sup> District, succeeded John LaVern as the director of the office.

Early in the decade, the 14<sup>th</sup> Judicial District Court reorganized into divisions, and the CPDO followed by assigning an individual lawyer to each division of court. During that same period, the office installed a computer system and established a database to support office management and operations, a system that remains. In 2004, the *Kurth Report* was issued after a three-year study of the office. It is unclear what if any changes were made to the office following the *Kurth Report*.

In 2004, a lawsuit was filed by nine clients of the CPDO under 42 U.S.C. §1983 against both the Governor and the State Legislature. *Anderson, et al v. Bobby Jindal, et al*, No. C545852 Section 24, 19<sup>th</sup> Judicial District Court, Parish of East Baton Rouge, Louisiana. This suit alleged that the defendants had failed to fund the CPDO resulting in the denial of the plaintiffs' Sixth and Fourteenth Amendment rights under the U.S. Constitution as well as their Section 2 and 13 rights under the Louisiana Constitution. The essence of the lawsuit is the allegation that the CPDO "is unable to engage in even the most basic functions of legal representation, such as conferring with its clients, engaging in any sort of substantive investigation of its clients' cases, reviewing clients' files, assisting in the securing of witnesses, and preparing for hearings and trials..." resulting in "a failure to provide any effective defense to indigent persons charged with crimes in Calcasieu Parish." The suit was relocated to Baton Rouge, where it was certified as a class action. The suit was stayed to permit Act 307, which reorganized the public defender system in the state, to take effect and

recently reactivated in 2009, with the Louisiana Public Defender Board and Mitchell Bergeron being added as party defendants in an amended complaint.

When Louisiana Act 307 took effect in 2007, it resulted in a statewide shift of oversight from local indigent defense boards to the Louisiana Public Defender Board. The local board was abolished. LPDB was funded at \$28 million, up from \$7.5 million prior to Act 307. This increased state appropriation resulted in significantly increased funding to CPDO from the state.

The office was affected severely by Hurricane Rita, which hit on September 23, 2005. The physical office itself was demolished. The office moved from a 10,000 sq. ft. office to makeshift quarters and a reduced staff. Rent was less than \$50,000. This hurricane, combined with Hurricane Katrina several weeks earlier, had a profound impact on the office as well as the client community.

Once Act 307 passed, the office moved into its present quarters in February 2008, and rent for the office tripled. As a result of Act 307, the office began for the first time to represent CINC (children in need of care) cases and hired three attorneys to handle those cases. The office also hired two additional juvenile attorneys, elevated one lawyer to handle only life without parole cases, hired an additional felony lawyer, another investigator, and two data entry clerks. Litigation and expert witness expenses increased significantly for a time. According to the CPDO Executive Director, the office staff was at its largest size in 2008 shortly after the passage of Act 307.

In December of 2008, when Ron Ware became a judge of the Fourteenth Judicial District Court, Mitchell Bergeron was selected as the Executive Director for the CPDO after serving as Interim Director for a time.

## **B. Current Structure**

The CPDO is a relatively small semi-urban public defender's office staffed with 22 full-time employees. There are several positions that were filled in 2008 that have remained vacant for the past several years. There is no organizational chart and the office is loosely structured with unclear lines of authority.

The office is led by a District Defender, Mitchell Bergeron, who has been a lawyer for 22 years, eight of which have been spent with the CPDO. Harry Fontenot serves as an informal deputy of the office while also serving as the supervisor of the juvenile and misdemeanor section and exercising some oversight of support staff along with one of the investigators.

There is a group of six lawyers who handle felonies. One attorney is assigned to each of the six divisions in district court. Three of these lawyers have over 20 years of experience, one has 14 years, one has 12 years, and one has 5 years. One of the attorneys has been with the CPDO for over ten years. There is no supervisor of the felony attorneys other than the District Defender.

A second group in the office is the Juvenile/Misdemeanor Section, headed by Harry Fontenot, who serves as Section Chief. This group consists of one juvenile lawyer, one misdemeanor lawyer, and one CINC lawyer. A second juvenile lawyer left the office in June 2010 and there is no plan to replace her due to budget constraints. Mr. Fontenot has been an attorney for 13 years, six with the CPDO. The juvenile lawyer has been a lawyer for two years, all with the CPDO. The misdemeanor lawyer has been an attorney and with the CPDO for five years. The fourth lawyer in the section handles CINC cases, has been an attorney for 14 years, and with CPDO for two years.

Support staff includes two receptionists, five secretaries, and a collections clerk. These employees are loosely supervised by Messrs. Bergeron, Fontenot, and Ron Jackson, supervisor of the investigators. Office investigatory staff consists of three investigators, two covering felony work and one responsible for investigating juvenile cases. In addition to his shared responsibilities for supervising support staff, Mr. Jackson is also the supervisor of the investigators.

There are also a number of other lawyers who are on contract with the CPDO: two misdemeanor contract lawyers, two CINC conflict contract lawyers, and five felony conflict contract lawyers. These lawyers are not routinely supervised by anyone, although they are loosely overseen by the District Defender.

In general, lines of authority in the office are vague and widely unknown. The District Defender has general authority over all the staff. There is an "open door" policy as a result of which anyone can have access to the District Defender. There is no apparent leadership team that functions as a policy making entity in the office. The investigators are not supervised by the attorneys for whom they work. No one is seen as responsible for the felony lawyers other than the District Defender.

### **C. Management Improvements Introduced by Current Executive Director**

There have been improvements in the management of the CPDO since the hiring of the current District Defender. By all accounts, the previous District Defender was an excellent trial attorney who was not focused on managing. Since taking over as District Defender, Mr. Bergeron has uncovered a significant embezzlement by two of his staff, terminated both, and guided the office to relative stability. He has taken on the task of bookkeeper for the office. He has hired a juvenile/misdemeanor supervisor, has instituted monthly staff meetings, and meets with support staff every six weeks. He has continued Judge Ware's previous practice of annual "file reviews" conducted by lawyers to ensure that cases are closed that should be closed. He exhibits intimate knowledge of his budget. Most significantly, he has raised the most important issue in the office -- that of excessive attorney caseloads, through the writing of letters to the State Public Defender and more recently announcing that as of August 1, 2010, the office would no longer take cases until the caseload is under control. It should be noted that this August 1, 2010, deadline has been suspended pending further review of the judicial process by the BJA CCTAP.

#### **D. Leadership and Communication**

As indicated above, there have been substantial improvements in the management of the CPDO during the last two years. However, the office is experiencing a deficit in strong and aggressive leadership that is needed in Calcasieu Parish. The District Defender has a vision for high quality representation, but does not communicate that vision either externally or internally. He has a vision for a community oriented defender office, but it is a quiet vision that remains with him. The criminal justice system in Calcasieu Parish generally is led by the Sheriff, the District Attorney, and the judiciary. There is little presence of the Public Defender in the criminal justice discussion in Calcasieu Parish. One private lawyer said that “the PD’s office is a pushover.” One judge stated that while the District Defender is “responsive to me,” that he was not getting reactions to his ideas when they were presented to him. The District Defender instead “always says why something won’t work.” A private lawyer said that what was needed is someone who “commands respect from judges and is viewed as a worthy adversary by the DA. DA’s and judges run the public defender system. It will take a leader who judges don’t feel they can walk over.” There is a palpable desire on the part of staff for strong leadership, for the excitement that occurs when a mission is being undertaken and a struggle is ongoing, but that element is missing with current leadership. Calcasieu Parish is in need of a strong voice for indigent defense, a voice that has been historically absent.

#### **E. Caseloads and the Dispute over Case Counts**

The *Kurth Report* found that caseloads in CPDO were three times the Louisiana Indigent Defense Assistance Board, LPDB’s predecessor’s aspirational standards and four times the national standards. The *Anderson* litigation is based on the allegation that caseloads in the CPDO are excessive. The consultant does not disagree at all with these conclusions.

While the current report is not the place to once again detail the caseload problems and the dispute over case counting methods in Calcasieu Parish, the consultant found nothing during the site visit to dispute the conclusions reached in the *Calcasieu Case Count Report* (2009) by the LPDB that corroborated the existence of an exceptionally heavy caseload in the CPDO. The consultant also had difficulty obtaining caseload figures that were consistent and definitive, particularly for past years. However, the *Calcasieu Case Count Report*, which is a snapshot, appears to be the most reliable report regarding public defender caseloads in the parish. In addition, the District Defender has evaluated the numbers of cases opened in each of the last five fiscal years and that evaluation is consistent with both the *Kurth Report* and the *Calcasieu Case Count Report*. Together, this data is such that conclusions can be reached regarding the caseload problem in the CPDO.

Several observations can be made with absolute clarity.

First: the caseloads being borne by most of the CPDO attorneys are grossly excessive and unethical, as summarized in the letter from Jean Faria, State Public Defender, to Judge Wyatt dated November 25, 2009:

*Review of Management and Organization of the Public Defender's Office in Calcasieu Parish (Lake Charles), Louisiana: Observations and Recommendations.* BJA Criminal Courts Technical Assistance Project. Assignment No. 4-145. American University. September 2010.

“The public defenders in Calcasieu Parish have been chronically under resourced for so long that they are no longer able to provide effective and competent representation as required by the Louisiana Rules of Professional Conduct.”

At that time, all of the felony lawyers in the CPDO had active felony caseloads above 400, with four of six having caseloads above 500. Each of the six felony attorneys had opened more than 400 new felonies in the 11 months preceding the letter. One attorney, Steve Coward, had 535 open felony files including 10 mandatory life cases. In addition, the District Defender has stated that his six attorneys opened 2,923 new cases in 2009, or 487 new felonies per lawyer. (Bergeron e-mail).

The well known National Advisory Commission (NAC) on Criminal Justice Standards (1973) set the following as mandatory maximum caseloads to be handled by full-time public defenders: “The caseload of a public defender attorney should not exceed the following: felonies per attorney per year: not more than 150; misdemeanors (excluding traffic) per attorney per year: not more than 400; juvenile court cases per attorney per year: not more than 200...”

One of the most significant improvements in indigent defense in Louisiana was the passage of Act 307 and its mandate that the LPDB create “mandatory statewide public defender standards and guidelines that require public defender services to be provided in a manner that is uniformly fair and consistent throughout the state.” (J.S.A.R.S. 15:148(B)(1)). The LPDB has continued the guidelines established by its predecessor board, the Louisiana Indigent Defense Assistance Board (LIDAB). Those guidelines, while relatively higher than the NAC guidelines<sup>3</sup>, require no more than 150-200 felonies and no more than 400-450 misdemeanor cases during a year.

The LPDB’s *Calcasieu Case Count Report* found that twelve of thirteen attorneys exceeded the caseload maximums as established by LIDAB. The report concluded that “the 14<sup>th</sup> DDO attorneys have, on average, caseloads that are 267% above the LIDAB maximum caseload standards. Additionally, the caseloads are 313% above the NAC recommended maximum caseload levels.” What this means in practical terms is that one full-time misdemeanor lawyer handles over 1,300 cases per year. Most of the felony lawyers are carrying 400-500 open felony files. While these lawyers are not handling capital cases, of which there are at present none in Calcasieu Parish, their caseloads do include a significant number of cases with life without parole sentences.

Second: These caseloads are an absolute impediment to the provision of quality representation consistent with the Sixth Amendment to the United States Constitution. It is

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<sup>3</sup> Kilborn & Stilling, Nov. 24, 2009.

abundantly clear that the LPDB guidelines are being violated significantly by both the felony and misdemeanor attorneys.

The conclusion reached in the *Calcasieu Case Count Report* is consistent with what the consultant found during the site visit. One judge commented that the lawyers in CPDO “cannot maintain the caseload... Clients go unrepresented because their lawyers are working on other cases. There’s no activity for six months. Cases just linger. It’s a helluva incentive to plead...The system is going to collapse within a year. They cannot continue to take on more cases.” One CPDO lawyer said “I’ve never had a caseload of this magnitude, ever. I don’t understand why the judiciary allowed it to get to this level.”

Third: There should be an immediate and significant sustainable increase in funding for the CPDO thereby reducing the overall caseloads of the CPDO attorneys. There is no question that whatever the exact case numbers are, the caseloads of the lawyers in the CPDO are excessive and unethical. The Louisiana Public Defender Board has spent a great deal of time and resources studying the caseload issue; their methodology is sound, and their conclusions reliable. The LPDB is the expert on this issue in Louisiana and should be trusted to work with the judiciary and district attorney’s office to arrive at reliable caseload figures.

#### **F. Ethical concerns regarding caseloads**

The American Bar Association as well as the national defender community has been active with regard to excessive public defender caseloads. In 2002, the ABA House of Delegates approved the *Ten Principles of a Public Defense Delivery System*. Principle #5 requires that “Defense counsel’s workload is controlled to permit the rendering of quality representation.” This was followed by ABA Formal Opinion 06-441 (2006) which stated, “If workload prevents a lawyer from providing competent and diligent representation to existing clients, she must not accept new clients.” This formal opinion made crystal clear that public defenders, public defender supervisors, and lawyers in charge of public defender offices, all bear ethical responsibilities as well as bear ethical liability with regard to caseloads that are so excessive as to interfere with quality representation. In response to the ABA Formal Opinion, the American Council of Chief Defenders issued a lengthy *Statement on Caseloads and Workloads* in 2007 reaffirming the National Advisory Commission’s case numbers of no more than 150 felonies, 200 juvenile cases, or 400 misdemeanor cases in a year. Finally, in August of 2009, the ABA House of Delegates approved the *Eight Guidelines of Public Defense Related to Excessive Workloads*. This document reiterated the obligation of the public defender office to avoid “excessive lawyer workloads and the adverse impact that such workloads have on providing quality legal representation to all clients.”

The LPDB has promulgated rules that comport with these ethical guidelines in the *Trial Court Performance Standards* (LAC22:XV.Chapter 7), (hereinafter LPDB Performance Standards). Rule 707(E) states that when “counsel’s caseload is so large that counsel is unable to satisfactorily meet these performance standards, counsel shall inform the District Defender for counsel’s judicial district and, if applicable, the regional director, the court or courts before whom counsel’s cases are pending. If the District Defender determines that the *Review of Management and Organization of the Public Defender’s Office in Calcasieu Parish (Lake Charles), Louisiana: Observations and Recommendations*. BJA Criminal Courts Technical Assistance Project. Assignment No. 4-145. American University. September 2010.

caseloads for his entire office are so large that counsel is unable to satisfactorily meet these performance standards, the District Defender shall inform the court or courts before whom cases are pending and the state public defender.”

Individual CPDO lawyers have clearly been cognizant of their individual ethical responsibilities. In a letter to Mitchell Bergeron dated November 4, 2009, Steve Coward stated that his caseload prohibited him from meeting the LPDB’s Performance Standards, or the ethical responsibilities outlined by the Louisiana Rules of Professional Conduct. Another attorney, Andrew Casanave, wrote Mitchell Bergeron on February 3, 2009, asking to be relieved of new case assignments so that his caseload would be reduced to 200 cases per year. In November of 2009, he wrote again stating that since the beginning of the year, he had been assigned 389 new cases and had 411 open files. He stated that his caseload was too high to be able to “provide competent, diligent, effective, and zealous representation.” In April of 2010, he wrote to the Ethics Counsel at the Louisiana Bar Association and asked whether carrying a caseload in excess of 200 “‘points’ per year so [sic] excessive that the acceptance of more cases is per se unethical? If there is not, is there a ‘bright line’ standard that can be imposed?” The Ethics Counsel issued an ethics advisory opinion on April 22, 2010, restating Rule 1.1(a) and 1.3 of the Louisiana Rules of Professional Conduct mandating competence, diligence, and promptness in representing clients. Beyond that, bar counsel declined to offer an opinion because the matter was in litigation.

The CPDO also expressed its awareness of its ethical responsibilities. As far back as the 1990’s, the CPDO was raising its concerns regarding excessive caseloads by filing *Peart* motions. The *Kurth Report* certainly brought the issue to the forefront. Mitchell Bergeron, District Defender of the CPDO, notified Jean Faria, Louisiana State Public Defender, in February of 2009 of his caseload concerns once he was named Interim Director. He expressed his “opinion that the attorneys are being placed at substantial risk of burnout as well as disciplinary action by the bar association. Furthermore, the caseloads place our office at risk from a civil liability standpoint...With the current caseloads, I cannot guarantee to your office or the Board that we are in compliance with [the duty to provide competent representation] and my overriding concern is that it is our clients who are paying the price and absorbing the costs of our failure to provide effective representation due to the workloads.”

The State Public Defender, Jean Faria, responded to these concerns in a letter to the Chief Judge of the 14<sup>th</sup> Judicial District dated November 25, 2009. She stated that based “on our conversations with Mr. Bergeron and his lawyers, his letter to us, and a review of the files, it is our finding that the 14<sup>th</sup> District Defender Office caseload is so high that its lawyers are no longer able to provide competent conflict free representation to all appointed clients.”

It appears that the individual CPDO lawyers, the CPDO District Defender, and the Louisiana State Public Defender have all taken the ethical issues of ABA Formal Opinion 06-441 to heart. With the notification by the CPDO that, as of August 1, 2010, they would no longer take new cases (which, as noted above, has now been put on hold pending further review of the Calcasieu Parish judicial process through a BJA CCTAP study), the CPDO indigent *Review of Management and Organization of the Public Defender’s Office in Calcasieu Parish (Lake Charles), Louisiana: Observations and Recommendations*. BJA Criminal Courts Technical Assistance Project. Assignment No. 4-145. American University. September 2010.

defense system has done all that it can do to meet its duties to clients as well as comply with ethical rules.

#### **G. How case processing delay affects public defender caseloads**

The *Kurth Report* noted that the “average length of time from arrest to disposition in Calcasieu Parish is approximately two years.” This continues to be true in 2010. This results in attorneys carrying increasingly large open cases. The LPDB’s *Calcasieu Case Count Report* includes a “backlogged caseload explanation.” The essence of this explanation, using CPDO approximate numbers, is that each year, 6000 cases are opened and 4000 are closed, leaving 2000 remaining open in the second year. By the third year, according to this “explanation”, an additional 2000 cases were added to the 6000 new cases, and the 2000 cases from year 2, resulting in 10,000 cases in year 3.

Most defender organizations count new open cases per year. Using this as a benchmark allows a supervisor to know how many cases his or her lawyers will face in the coming year. Case assignments can be made accordingly. This is not the case in CPDO, however, because cases move so slowly that attorneys’ open cases are ever growing. This complicates any analysis of CPDO’s caseload as well as burdening CPDO attorneys.

#### **H. Quality of representation**

Although the scope of this technical assistance review did not include addressing the issue of quality of representation per se, some comments can be made based on the limited attention this issue was able to receive. The attorneys who met with the consultant during the site visit appear for the most part dedicated to providing competent representation to their clients. By all accounts, representation in juvenile court can be characterized as quite good and, in many instances, the same is true in adult court. However, due to the caseloads of the felony attorneys, and due to the burnout that some of these attorneys are suffering from, it is likely that the effective assistance of counsel is not being provided uniformly. For example, there is little client contact between the “RC hearing” (Right to Counsel) and the arraignment. There is little investigation being done on any felony case other than a murder or an aggravated rape. There is little motion practice occurring, with few evidentiary hearings. Preliminary examinations are not being held routinely. Bond advocacy is not occurring. Very few jury trials are being held. There are no motions for alternative sentences, with little sentencing advocacy. Experts are not being utilized. The LPDB Performance Guidelines are not being followed—indeed, are not widely known.

Interviews with observers outside the CPDO corroborated the concern over quality. Corrections officials said that “there’s no representation going on.” A private lawyer said that representation being provided was “mediocre to poor”. “Their lawyers are winging it the whole time. They don’t meet their clients, they don’t investigate cases.” Another private lawyer called the quality of representation “poor.” One judge characterized the quality as “adequate at best.” He did not feel the CPDO lawyers were filing enough motions nor trying enough cases.

Providing high quality legal representation should be the core mission of the CPDO. In 2004, the *Kurth Report* concluded that “there are delays occurring at every stage of the judicial process, that those accused of a crime have little or no meaningful contact with lawyers outside the courtroom, and that their cases receive very little in the way of meaningful investigation, or expert assistance. In other words, we have justice by attrition rather than litigation.” While some minor improvement has occurred since this report, the same could be written today.

## I. Client Contact

Rules 709, 711, and 713 of the LPDB Performance Guidelines all contemplate a public defender who interviews his client early and completely in order to argue for pretrial release and otherwise advocate for his client in preliminary court hearings. These guidelines are not being followed because of the limited contact with clients by CPDO attorneys. Client contact has been a serious problem identified as far back as the *Kurth Report*. In 2004, the authors stated that in “general, no action is taken on a case while it is assigned to a temporary attorney and there is no contact with the client unless initiated by the client.” “[T]he attorney who will actually represent the client if the case goes to trial will not be known until about six months later when the bill of charges is handed down and the case is assigned to a specific judge.” Significantly, the delay in judicial assignment which served as a barrier to client contact has been removed by the judiciary. “Allotments” are now being made within days of the RC hearing, allowing for the CPDO to know to which division a particular case will be assigned. This enables attorneys to be assigned to the case permanently, resulting in a virtual vertical representation system.

However, while this barrier has been removed, it has not resulted in a significant increase in client contact. A May 2009 study entitled “Behind Bars in Calcasieu Parish: An Assessment of the Legal Needs of Pre-trial Defendants Appointed to the Calcasieu Public Defender’s Office” found that of 214 public defender clients interviewed, 168 had received no visits from the public defender, 39 received one to three visits, and only 7 received five or more visits. 68% of those interviewed did not feel that their attorney had kept them informed on their case.

Observations during the technical assistance site visit were consistent with the statistics in these reports. One judge indicated that 50% of the clients before him state that they have never seen their lawyer. The consultant reviewed numerous files and saw no indication of a significant, thorough first interview with a client in custody. Nor were there indications of follow-up visits, going over discovery and answering questions, preparing for pretrial hearings or trial, or going over what would be occurring at a sentencing hearing. In some cases there were small notes in the file indicating that a client had called and the attorney had taken the call. Reports were made to the consultant of numerous occasions in which attorneys were not going to the jail to see their clients, and attorneys were declining to take client calls. Most alarming was that, on many, if not most, occasions attorneys were meeting their clients for the first time in court, often at the arraignment and/or plea. The District *Review of Management and Organization of the Public Defender’s Office in Calcasieu Parish (Lake Charles), Louisiana: Observations and Recommendations*. BJA Criminal Courts Technical Assistance Project. Assignment No. 4-145. American University. September 2010.

Defender reviewed six months of files and found that “it was not pretty”, noting that the files showed virtually no contact between public defenders and their clients. He said that clients were “conditioned to the dysfunctionality.” While this situation is a direct result of high caseloads, it is also a practice that is deeply imbedded in the culture of this office.

An investigator said that he had received a call from a client who had been in jail for 100 days without seeing a lawyer, so he sent a letter to the judge who treated it as a habeas writ and ordered the client released. The consultant spoke with one client at the RC hearing in late June who had been appointed a lawyer at a previous RC hearing held in March and he had yet to see his lawyer on the previous charge. He had called the public defender who had never taken his call. The consultant spoke with a second client who had been appointed a lawyer two weeks before this RC hearing and had not yet seen his lawyer. He was being held on a Probation Violation for failing a urine test for drug use. When asked how this made him feel, he said “pissed off. They don’t do shit. They don’t pick up the phone.”

Support staff confirm that many of the attorneys in the office decline to take phone calls. Corrections reported 8000 calls within a month, and the CPDO requested a limit on the phone calls being made from the jail. Support staff says they talk with the clients, but the clients understandingly want to speak with their attorney. The clients often ask legal questions. One member of the staff said that “if they’re not going to take the calls, then they need to be in the office more.”

Interviews with three officials with the Calcasieu Parish Corrections Center also elicited reports consistent with the conclusion that client contact is suffering in the CPDO. One said that the “only time we have an attorney (from CPDO) is at the RC hearing.” Another said that he worked the night shift for four years and never saw a public defender. The impact of this is “atrocious. People get stuck in here past the maximum. The vast majority of cases, particularly misdemeanors, are resolved by a plea to time served without seeing a lawyer.” From their perspective, corrections officials often “serve more as their attorneys, we call the judge, the DA—we have to do it, the PD won’t.” “If we’re not on it, the guy’ll be here for 2-3 weeks on a failure to appear.”

One obvious cause of the lack of client contact is the heavy caseloads carried by the lawyers. One lawyer stated that he “spent a lot of time meeting people at the courthouse. Days aren’t long enough. Jails are restrictive when you can see clients. I also need to study the law, review files, and write motions. I’m not physically able to do everything and see clients.” As a result, he “pleads people in order to go home, people who should not be convicted.”

There is a strong impression that a great majority of the clients represented by CPDO are left in jail with little contact until they are taken to court where they plead guilty to time served. Two former conflict attorneys said that they had experienced public defenders pleading their clients guilty to crimes that they could not have committed. They intervened and got the cases dismissed. Support staff says that the CPDO clients are being kept “way past their time—weeks and weeks.” Support staff spends 1½ hours just to get someone released each time it comes to their attention that someone remains in jail past the statutory time.

This is one of the most fundamental flaws with the CPDO. Clients are languishing in jail for a long period of time without any counseling by an attorney. No one is advocating for a lower bond or dismissal of a charge that is unfounded. No one is investigating a case shortly after the charge to preserve evidence. Motions to suppress are not being filed. Clients are becoming discouraged. When they finally see their lawyer, all too often a plea is presented to them that requires them to plead to something they did not do but at the same time allows them to get out of jail.

This is not a client centered office. It is an office that is barely scraping by, driven by excessive numbers of arrests and appointments, unable to even begin to meet the needs of clients.

## **J. Private Practice**

Establishment of a full-time public defender office is one of the best methods for delivering services in a high quality and cost-efficient manner. Standard 5-1.2 of the *ABA Standards for Criminal Justice Providing Defense Services* (3d. Ed. 1992)(hereinafter ABA Standards) recommend a full-time defender organization for jurisdictions with a sufficient population and caseload. Such an organization can allow for the attorneys to be the local criminal justice experts, to be monitored for quality, to resist pressures from judges and prosecutors to compromise, to have a vigorous pretrial practice, to investigate cases thoroughly, to try cases that need to be tried, and ultimately to represent the whole client by obtaining needed services for them, such as a drug court or mental health court, housing, and public health, addressing with them the applicable collateral consequences associated with a conviction, and dealing with other legal needs they may have. However, creating a full-time office is not a panacea. One risk of a full-time office is that it can be under-funded, thereby creating immense pressure on the attorneys to plead their clients guilty and thus taking away the independence that the full-time system promises.

Such is the situation in the CPDO. As previously discussed, caseloads are double and triple national averages. Very few cases go to trial. Client contact is at a minimum. Whole client representation is spotty at best, with some involvement in drug court. However, one of the worst features of the current situation at the CPDO has been the policy of allowing attorneys to have a private practice. The ABA Standards state that public defender offices “should be staffed with full-time attorneys. All such attorneys should be prohibited from engaging in the private practice of law.” (Standard 5-4.2). The commentary says that a “prohibition of private practice by full-time personnel also assists in countering any tendency for those responsible for financing to maintain low salary structures on the assumption that defenders can supplement their salaries through private practice.”

Allowing CPDO attorneys to maintain a private practice has, nevertheless, apparently evolved. By 2004, allowing CPDO attorneys to maintain a private practice was one of the deficiencies addressed in the Kurth report. (*Kurth Report*, p. 43). Approximately ten years ago, one judge noted that attorneys began spending more of their time on their private

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practice. The extent to which this occurs at present varies among attorneys. Indeed, one attorney stated that he had too many cases to have a private practice. But many of the attorneys have a private practice. It is commonly accepted in the community that the salaries at the CPDO are so low that a private practice is a necessity for the attorneys to make ends meet. One attorney handling misdemeanors has over 1,300 cases, has been at the CPDO for six years, and has never been given a raise from his \$32,000 annual salary. That is simply inadequate, necessitating his having a small private practice to pay his bills. While attorneys reportedly work on their private practice at night and on weekends, it is highly likely that, inevitably, they compromise their public defender work in order to complete their more lucrative private practice.

In June 2010, as part of the additional funding to CPDO by the LPDB, all attorneys of CPDO were prohibited from having a private practice. CPDO attorneys were given until August 1, 2010 to indicate their acceptance of full time public defender employment. Effective as of that date, all full-time attorneys would genuinely become full-time and discontinue their private practices. To justify this change in employment status, the attorneys would all receive a raise of approximately \$13,000. This action by the LPDB is one of the most salutary that could have occurred to reform this office. The policy will need to be enforced vigorously and this move to complete full-time status will need to be accompanied by a culture change if the complete promise of a full-time system is to be realized.

#### **K. Conflict Attorneys**

The office has contracts with nine lawyers to handle conflicts of interest cases. This includes two attorneys handling misdemeanor conflicts, two attorneys handling conflicts in CINC cases, and five felony conflict attorneys. One of the five felony conflict attorneys handles only life without parole conflict cases, and, therefore, has a reduced caseload. Conflict lawyers are appointed randomly by the court, usually at the RC hearing. The CPDO plays no role in the individual assignments. The conflict attorneys receive a set fee with a limit on the number of open files they maintain, usually 200.

Conflict attorneys are not selected based on qualifications. Rather, “whoever will do the work” is the sole selection criteria. The attorneys are paid from \$36,000 to \$40,000 with no benefits. Significantly, that means the lawyers must provide their own overhead as well as pay taxes out of that amount. As a result, the conflict attorneys are handling fewer cases than the full-time felony attorneys with approximately the same salary but with no benefits. The full-time attorneys are provided secretaries, investigators, and malpractice and health benefits not available to the conflict attorneys. Both conflict attorneys and full-time attorneys are allowed a private practice, but the caseloads of both types of attorneys are too high to allow for a significant private practice.

There appears to be considerable turnover among the conflict attorneys. When that occurs, an entire caseload moves into dormancy until a replacement attorney can be found. Once the replacement conflict attorney is found, he or she receives an entire caseload, which can be exceptionally burdensome. One attorney agreed to handle a caseload and was given 200

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cases. This lawyer was immediately required to go to trial, and when the lawyer resisted trying cases without being prepared, the lawyer was held in contempt. This lawyer gave up handling conflicts for the CPDO because “it’s chaos and puts us in the position of malpractice.” Another conflict attorney was given a full caseload which he described as an “avalanche of work.” He “practically had to shut down” his private practice.

Conflict attorneys appear to be significantly overloaded. Those handling felonies each have over 200 open felony files. There is no way at present to know how many felony cases conflict attorneys handle in a year. The 200 case limit appears to be exceeded at the present time. One conflict attorney had 280 cases open, resulting in his “not recognizing faces or clients.” Conflict attorneys are not assigned to divisions, and can thus be required to be in court in all divisions many days of the month. These are private lawyers paid a small salary with a full-time caseload. Under these circumstances, they are a part of this system designed to fail.

Given the high caseload, low salary, and lack of benefits for conflict attorneys, it would be unlikely if this situation did not affect the quality of their services, and there are indications that quality is suffering in the conflict system. One conflict lawyer had not tried a case during the last year, had not requested an expert, and requests an investigator through the CPDO 1-2 times per year. One judge said that there are conflict lawyers who will not try cases. One of the conflict lawyers said that the conflict system was “malpractice waiting to happen.”

The most serious structural problem with the CPDO conflict system is that no one supervises the conflict attorneys or oversees their work for quality. No one reviews their qualifications prior to entering into a contract with them. No one chooses the attorney for a particular case based upon their training. This situation violates Principle 6 of the ABA *Ten Principles*, which require that defense counsel’s “ability, training, and experience match the complexity of the case.” No one periodically reviews the conflict attorneys’ files to determine what is being done in their cases. No one gives them feedback after conducting a case review or watching them in trial. In effect, the conflict attorneys are working as solo practitioners without oversight.

Contracts with conflict attorneys are not being signed annually. Rather, they are signed when a new conflict attorney begins his or her work and appear to be month-to-month contracts that can be terminated by either party with 30 days notice for an annual compensation of \$36,000-\$40,000. One conflict attorney said that he did not know whether he had signed a contract after 1998. The contract also requires attorneys to interview clients within three days of appointment, a requirement that is apparently not followed. There are no other explicit performance guidelines set out in the contract, although one clause requires compliance with LPDB policies and standards which would include the state performance guidelines. The contract specifically limits the caseload to 200 “active, open files.” A written report of their work is required upon request. It is unknown how often these reports are requested by the District Defender.

During the consultant's site visit, one conflict attorney notified the court that he had considerably more cases than his contract would allow. He was sent a letter by Judge Wyatt indicating that appointments would continue irrespective of the contract and its caseload limits. This action was one of the few instances of overt encroachment on the independence of the public defender system that the consultant witnessed during this technical assistance review. Another conflict lawyer said that this action by the judiciary was "dispiriting." This new conflict lawyer stated that if required to handle more cases than the contractual amount, he would have to quit.

There is a question as to whether there are too many cases conflicted out. It is typically thought that there should be approximately 5-10% of the cases requiring a conflict attorney. Ten percent of the caseload in Calcasieu Parish would be approximately 700 cases. It is believed, however, that, in a given year, many more than 700 cases are assigned to conflict counsel. On the other hand, it is also clear that the CPDO and the judiciary are sensitive to conflicts of interest and utilize these contracts to ensure conflict-free counsel. If anything, they err on the side of appointing conflict counsel.

#### **L. Life Without Parole Cases**

The American Council of Chief Defenders (ACCD) *Statement on Caseloads and Workloads* (2007)<sup>4</sup> emphasizes that complex practice areas have developed that were not contemplated when the NAC Standards were created in 1973. These include such matters as persistent felony offender cases and sexually violent offender commitment cases. In Louisiana, many cases carry life sentences, and qualify as such a complex practice area. The CPDO is not handling any capital cases, as these are handled by another organization in Louisiana. However, the CPDO does handle life without parole cases, and had an attorney devoted to these cases, and his caseload was limited. He is no longer with the CPDO and has not been replaced. His cases are now included in the caseloads of the other six felony lawyers. Each of them carries over 400 open files, including life without parole cases. Any analysis of their caseloads must address the fact that they are handling a number of life without parole cases.

#### **M. Training**

As has been noted elsewhere in this report, there is a critical need to change the culture of the CPDO. The best way to do so, in addition to aggressive leadership, is through the education of staff attorneys and investigators. Attorneys can be taught the right values in addition to learning how to perform specific skills, such as opening statements and cross examinations. These training efforts can have the effect of encouraging more jury trials as well as higher quality defense.

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<sup>4</sup> Resolution, Statement on Caseloads and Workloads, American Council of Chief Defenders. (August 24, 2007).

One of the biggest deficits in the CPDO is in the area of training. Simply put, there is no plan for professional development for attorneys in the office. Rather, the training that occurs is usually of the CLE variety funded by the CPDO. Often, attorneys will see training that is offered and ask to attend. It is good that the CPDO sends its attorneys to training. However, the training dollar could be far better spent on skills-based training to be offered soon by LPDB, the Southern Public Defenders Training Center, the National Public Defender Training Project in Dayton, Ohio, or the National College of Criminal Defense in Macon, Georgia. This kind of training could be required at least one time for all attorneys, with routine refresher courses for those attorneys in need. Other specific training on topics such as search and seizure or DWI could be continued. It should be noted that the absence of training also extends to the CINC lawyers.

One exception to the deficit in training described above is in the area of juvenile practice, although this happened not as a result of planning but rather as a result of the initiative of the attorney. The newest attorney in the office sought out, on her own, two nationally recognized training events which allowed her to begin her career in juvenile court exceptionally well trained. The CPDO is to be congratulated for its willingness to send her to these trainings. This practice should be made systemic.

## **N. Supervision and Time Keeping**

### **1. Supervision**

As noted earlier, a significant deficit in the CPDO is the absence of any meaningful supervision of either attorneys or investigators. As previously discussed, there is not a solid organization of the office into units with supervisors responsible for the work of the employees. There are no position descriptions for staff. There are no formal performance evaluations based upon those Position Descriptions. There are file reviews required on an annual basis, but this is for the attorney herself/ himself to perform rather than being performed by her supervisor. There are no case reviews being performed by supervisors. There is some oversight of the juvenile and misdemeanor section by the section chief. There is no supervision of the CINC lawyers. Investigators are being supervised by another investigator rather than an attorney supervisor, and the extent of that supervision is limited. The District Defender acknowledged that “there is not a lot of supervision going on in the office right now.” The District Defender is of course responsible for all of the work of the employees in the office but cannot be expected to be the supervisor for all of them. He particularly cannot be expected to perform his role as an active supervisor who knows about the cases his attorneys have and acts under Rule 5.1 to ensure that professional ethics are being followed.

### **2. Time Keeping**

Up to this point, there has been no timekeeping requirement or, essentially, any required time commitment for staff attorneys. Given the fact that all attorneys will be full-time shortly, time-keeping will have added importance. Time and attendance is an important part of

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culture. In a professional public defender setting with a client centered focus, time-keeping may not be as important as it is in the CPDO where caseloads are excessive, attorneys have a private practice and there are complaints that the attorneys are not in the office but, rather, working on their private practices.. Once the office moves to full-time, there will need to be office hours for the attorneys with some level of timekeeping.

There is a second kind of time keeping needed in addition to time and attendance. When determining workload as opposed to caseload, attorneys must keep records of the time that they spend on various parts of a case. At some point in the future, a workload study will need to occur at which time specific practice-related time keeping will be a necessity.

#### **O. Salaries and Benefits**

As noted earlier, salaries and benefits being offered by the CPDO are too low and inconsistent, and do not provide for a retirement plan. The CPDO does offer health and dental benefits as well as a small life insurance policy. The District Defender noted that his office is one of few in Louisiana which offers health insurance. The CPDO also pays for the bar dues of its lawyers.

Attorney salaries are particularly problematic. Attorneys are not paid based upon their experience level but rather upon what kinds of cases they handle. Misdemeanor attorneys are paid only \$32,000, which has been the case for the last six years. Felony attorneys are paid between \$42,000 (for an attorney with five years of experience) up to \$46,500 (for an attorney with 21 years of experience). An attorney with 11 years with the office makes \$44,080. There are no established steps given for experience. There are few, if any, raises. The juvenile/misdemeanor section chief earns \$65,000, while his attorneys earn from \$32,000 to \$36,000. One of the most experienced attorneys in the office makes \$44,000 annually while his counterpart in the district attorney's office makes \$110,000 (Alexander Interview). One judge noted that one "must pay people more money to get lawyers who care...You've got to pay them more." It should be noted that, based upon a recent notification by the LPDB, these attorney salaries will be changing soon, if they have not already been increased.

The salaries for investigators are: \$27,112 for one who has ten years of experience, \$30,000 for another who also has supervisory duties, and \$11.00 per hour for the juvenile investigator, who has one year of experience. Salaries for the two receptionists range from \$9 per hour for the full-time receptionist who is paid hourly to \$16,200 for the fulltime receptionist who is salaried. The salaries for the remaining secretaries range from \$9 per hour to \$23,847 for an individual who has 10 years of experience. Support staff said that there had not been a pay raise for them in four to six years.

The absence of a retirement plan makes the CPDO the only criminal justice entity operating without retirement benefits. The attorneys in the District Attorney's Office participate in the Louisiana District Attorneys Retirement System, which is a generous defined benefit pension plan. This disparity is unconscionable. It communicates to all CPDO employees that they are

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second class citizens, and that their work is not as important as the work of the rest of the criminal justice system. In addition, the absence of a retirement plan harms recruiting and retention in the CPDO.

**P. Budget**

The CPDO spends most of its funding on personnel. In the amended budget for 2009-2010, 82% of the total \$1,640,289 budget was spent on personnel costs. These include the following:

<b>CPDO Personnel Expenses: 2009-2010<sup>5</sup></b>	
Salaries	\$ 782,162
Hospitalization and Disability Insurance	\$ 128,230
Payroll Taxes	\$ 73,000
Worker Compensation	\$ 3,461
Conflict Attorneys	\$ 261,763
Misdemeanor Conflict Attorneys	\$ 81,375
<b>Total Personnel Expenses</b>	<b>\$1,329,991</b>

The remaining 18% of the 2009-2010 budget was spent on overhead, including 9% of the budget on a \$155,325 annual lease for office space.

The 2009-2010 budget was funded from a variety of sources. 28%, or \$462,570, came from LPDB. 57%, or \$937,490, came from court fees/costs assessed, which primarily means traffic fines. The District Defender estimates that between 55-65% of the revenue from court costs originates with traffic fines. The following displays the breakdown in revenue for 2009-2010 (prior to the \$414,000 received from LPDB at the end of the fiscal year).

<b>CPDO Revenue and Revenue Sources: 2009-2010</b>	
State Revenue	\$ 462,570 (28%)
Court Fees/Costs Assessed	\$ 937,490 (57%)
Bond Fees and Forfeitures	\$ 134,227 (8%)
Interest	\$ 26 --
Application Fees	\$ 32,791 (2%)
Reimbursement/Attorney's Fees	\$ 42,820 (2.6%)
Miscellaneous	\$ 30,365 (1.9%)
<b>Total</b>	<b>\$ 1,640,289</b>

It should be noted that the \$414,000 additional monies from the LPDB were to be applied to the 2009-2010 fiscal year (Bergeron e-mail). Because the fiscal year 2009 – 2010 had ended, the additional money from the LPDB will be spent during the 2010-2011 fiscal year. It is

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<sup>5</sup> The CPDO budget includes the costs for conflict lawyers and investigators.

unknown whether the \$414,000 from the state has been added to the base budget for the CPDO.

The CPDO's revenue stream is inherently unreliable. The District Defender states that local revenue from court costs and fines varies by as much as six figures from year to year. The local revenue has varied from \$884,000 in 2007 to \$990,000 in 2009. Traffic fines varied from \$155,432.80 in 2007 to \$235,628.71 in 2009.

Revenue from the state should at some point be reliable, predictable, and the lion's share of the CPDO's funding. Because Act 307 is new, the state contribution has yet to become stabilized and predictable. The 2009-2010 budget demonstrates the difficulty the District Defender has had recently planning the delivery of services. His original budget at the beginning of the fiscal year was \$1,984,851, with \$982,093 projected to come from the LPDB. A later budget "approved and adopted on 5/25/10" reduced his budget to \$1,640,289. This situation was caused mostly by a drop in the LPDB contribution to \$462,570. This resulted in the decision to allow at least three attorney vacancies to remain unfilled as well as the cutting of expert witness costs and conflict counsel funding.

However, in June 2010, at the end of the fiscal year, the LPDB notified CPDO that the office would receive \$414,000. The letter accompanying the notification stated that this money would be spent in the following way: "\$156,000 of this amount to fund pay raises of approximately \$13,000 per attorney, with discretion to vary the amount per attorney, to bring each attorney within the \$60,000-68,000 annual pay range" and the remainder to hire a Chief Administrative Officer, \$18,000 to increase the number of outside telephone lines, and the remainder for pay raises for support staff. The District Defender also will restore cuts he made in the Expert Witness line. Thus, the 2010-2011 budget based upon projected revenues of only \$1,595,297, with only \$577,190 from the LPDB, should be increased to reflect the additional \$414,000.

The District Defender also supplied the consultant with a copy of a "desired budget" for FY 10-11. It requests a budget of \$3,441,648. This would include an increase in salaries from \$965,776 to \$2,139,000. This desired budget would add nineteen additional attorneys, seven support staff, and one investigator for life without parole cases, all at the enhanced salary levels required by LPDB. The District Defender should be applauded for proposing a budget that would address the excessive caseload as well as the low salary issues. It does not, however, include any provision for creating a staff retirement benefit.

If the present budget for FY 10-11 includes the additional \$414,000 announced by the LPDB, the spending per capita in Calcasieu Parish will be \$10.82 based upon the 2008 population of 185,618. A determination of the expenditures per case will have to wait until an agreement is reached on accurate caseload figures. However, based upon an estimated 7,000 felony case figure, an extremely low figure, the CPDO will be spending approximately \$287 per case, a figure that is quite low given the fact that the majority of cases in the CPDO are felony cases. If the 11,803 cases of both felonies and misdemeanors are considered, the cost-per-case is only \$170.

Several other budgetary issues merit attention. The District Defender has indicated that he intends to move the office into a nearby facility that will reduce the rent by \$70,000 per year. Most of the budget involves personnel. If the caseload per attorney is to be reduced, additional staff will have to be hired thereby increasing personnel costs. Further, if retirement is supplied to all staff, which it must, the costs will again be increased. Finally, it should be noted that the CPDO does not spend any money on educational loan assistance payments for its attorneys. This should be a part of any overall budget in the future.

#### **Q. Investigations**

The *Kurth Report* found that investigators in the CPDO were “used more as runners or assistants for the attorneys—bringing files to court for hearings or conducting the preliminary meeting with clients at the jail to obtain background forms that often contain little about the case—than as true criminal investigators.” That has changed little since 2004. What has changed is the promulgation of Rule #717 of the LPDB Performance Guidelines requiring a “prompt investigation of each case.” This rule is not being followed in CPDO.

There are three investigators in the CPDO. This is not unusual for a staff of 11 attorneys. One of the investigators handles only juvenile cases and by all accounts is doing a good job. The other two investigators handle only noncapital murder and rape cases. Occasionally they will investigate a robbery case. That means that the great majority of cases are not being investigated, which is a major flaw in the representation in the CPDO.

The conclusion reached by the *Kurth Report* regarding use of investigators continues to the present time in Calcasieu Parish. Much of the investigators’ time still consists of performing tasks for the attorneys such as going to court with them, interviewing clients at the RC hearings, supplying files to attorneys during motion hour, etc. One judge said that investigators are “underutilized”, spending their time in court rather than in the field performing investigations. A private lawyer in Lake Charles noted that CPDO investigators have been observed acting as attorneys, explaining offers by the prosecution and encouraging pleas. The consultant reviewed 20 randomly selected files in felony cases and found not one investigative request or report. This is consistent with the 2004 *Kurth Report* where only two reports were found in 172 case files. The consultant observed investigators at the RC hearing conducting a brief initial interview. These are functions better filled by attorneys, while investigators should be using their unique skills to investigate cases for the attorneys.

There is a supervisor of the investigators, which means that he is the person the attorneys go to when they want to have a case investigated. He also ensures that the investigation has been completed. However, because much of the investigators’ time is being used for non-investigatory tasks, the utility of having a supervisor is limited. The chief investigator believes that more investigators are needed in the office, although the need for this is unclear until the shift in duties is accomplished.

## **R. Juvenile Practice**

Juvenile practice is one of the bright spots in the CPDO. The CPDO 2009 Caseload Report indicated 591 cases open at the close of the calendar year. It also reported six trials during the year. There were three lawyers representing juveniles, although one recently left the office and there is no plan to replace her, which is of concern due to the fact that two attorneys will now be responsible for the caseloads of three attorneys. The Deputy Public Defender responsible for juvenile practice in Louisiana states that the parish is one that diverts children, uses alternatives to secure care, and has a good success rate. He also praises both of the lawyers who had been in juvenile court. The supervisor is on the Juvenile Defender Advisory Council for the LPDB. The other lawyer is young and somewhat inexperienced but open to learning. She was sent to two national training events, and desires more training. As will be further addressed in the recommendations below, there is a need for a "structure of training" through which new lawyers are trained prior to beginning their practice in juvenile court.

There was also concern expressed regarding the lack of adequate space in the juvenile courthouse for attorneys to meet with their clients. One lawyer said that she had to talk with her juvenile clients in the hallway. The supervisor of the juvenile lawyers states that he does not believe that having social workers on staff would help. "I don't know how social workers would benefit us." While acknowledging that Calcasieu Parish was a model site for programs sponsored by the MacArthur and Annie E. Casey Foundations, he did not know much about them. He was involved with developing both CINC and Juvenile Standards with the LPDB.

## **S. CINC Cases**

The CPDO became responsible for Children in Need of Care (CINC) cases three years ago. They represent the parents in cases including termination of parental rights. There are three CINC attorneys, two of whom are CINC conflict lawyers. As a group, the CINC lawyers appear to know their field well. The one full-time lawyer was an assistant district attorney handling CINC cases for 11 years. Another handled CINC cases for OCS for many years. A third has been a lawyer for five years including a family law practice. The two conflict contract lawyers stated that their contracts were for \$31,500, with no expenses covered. The lawyers do not use investigators. One of them stated that no investigation was needed as a CINC attorney. "I rely on my clients to bring me information." Another one of the lawyers complained that he was hired to work only two days a week and the reality was that he had to spend more time than that on his cases. In response to a recent indication that time-keeping was going to be required, one of the lawyers stated that if he had to start keeping time he would give up his contract. One problem that occurs with CINC cases is that judges automatically assign public defenders rather than scrutinize eligibility. CINC lawyers had 670 open cases as of 12/31/08 according to the 2009 caseload report prepared by the CPDO. These lawyers tried 44 cases during that calendar year.

## T. Misdemeanors

According to the CPDO 2009 Annual Report, 4,631 of the cases handled by the CPDO were misdemeanors, compared with 7,172 felonies. Thus, misdemeanors are only 39% of the overall caseload handled by the CPDO. One lawyer handled misdemeanors in the office exclusively, one lawyer handled some while transitioning into felonies, and two other lawyers handled some misdemeanors while also handling a private practice. However, one can readily see that if each was a full-time attorney, which they were not, each would have handled over 1,000 misdemeanors.

The one lawyer currently responsible for misdemeanors handles his caseload while working 10 hours or so per week on private practice. He began six years ago handling misdemeanors at a salary of \$30,000. He continues to be paid \$32,000, and has \$60,000 outstanding in student loans. He prefers to remain in misdemeanor court, stating that he is “comfortable with it.” He believes that he handles 1,300 cases per year and has about 1,300 open files at any given time. He acknowledges that is a heavy caseload. He takes 30-40 files with him each day he goes to court. He acknowledges that often he goes to court when he has not met his client. If his client is “interested” in his case, he will reset the case; otherwise, he attempts to resolve the case without having met the client. He gets discovery in every case and meets with the district attorney. He does not use investigators. He has never used an expert to challenge the blood alcohol results, although he handles a lot of DWI cases. He has never tried a jury trial. He sees the lack of parity with prosecutors as “disheartening.” “We’re as valuable as the DA’s, but it is disheartening to be paid less.” He does not see himself remaining with the office for a lifetime “because there’s no retirement.” He visits his clients when he is going to try a case but not otherwise. He believes that bonds are set at an “egregious” level.

There is also a question of whether all eligible misdemeanor clients are being appointed counsel consistent with *Alabama v. Shelton*, 535 U.S. 64 (2002). The District Defender indicated that there are two city courts covered by the CPDO in Sulphur and Lake Charles that are “money-making courts.” He indicated that the CPDO was not appointed to the number of cases they should be. Rather, “the accused routinely walks up at arraignment, pleads guilty or no contest, and gets a fine and walks out of the courtroom. If they are in jail, they are given credit for time served and they go home that day.”

## U. Jury Trials

The NLADA *Performance Guidelines* state in Guideline 7.1 that the “decision to proceed to trial with or without a jury rests solely with the client.” See also Rule 733(B) of the LPDB *Performance Guidelines*. The *Kurth Report* indicated that from 1998-2001, “while the number of criminal cases filed in Calcasieu Parish increased 51.6% during this period, the number of criminal jury trials actually declined. While the number of criminal charges filed in the 14<sup>th</sup> Judicial District is in line with filings in other districts of similar size, the number of criminal jury trials appears unusually low.” (*Kurth*, pp. 37-38). It appears that this problem has continued to this time. The 2009 Annual Report by the District Defender shows

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only 10 felony jury trials were conducted by the CPDO in 2009 out of 7,172 felony cases. That is a rate of .0013, exceptionally low by any measure. In addition, the same report states that there were no *Duncan*<sup>6</sup> misdemeanor jury trials and only 3 bench trials out of 4,631 misdemeanors, or .0006. While there are a variety of reasons for a low rate of jury trials, the one most apparent in Calcasieu Parish is the carrying of heavy caseloads by the public defenders. In addition, the absence of contact with clients prior to trial results in many clients with triable cases pleading guilty to time served once their case finally comes to court.

## V. Motion Practice and Preliminary Examinations

### 1. Motion Practice

Motion practice is a vital part of the effective assistance of counsel. It is through the filing and arguing of motions that counsel upholds the rights of clients, suppresses damaging or illegally obtained evidence, secures a preliminary examination or hearing on a suggestive eyewitness identification, obtains expert assistance, speaks to the court about inherent unfairness in the proceedings, sets out arguments for bond, or creates a proposed alternative disposition. Guideline 5.1 of the *NLADA Performance Guidelines for Criminal Defense Representation* as well as Rule 723(B) of the LPDB Performance Guidelines state that the “decision to file pretrial motions should be made after thorough investigation, and after considering the applicable law in light of the circumstances of each case.” The Commentary to the NLADA Performance Guidelines notes that while the guidelines do not mandate filing motions, it does “mandate that counsel *consider* all potentially appropriate pretrial motions, so that the absence of pretrial motions is a result of professional choice, not negligence or inexcusable error.”

The *Kurth Report* indicated that the “filing of motions is often taken as one measure of effective legal representation.” (*Kurth*, p. 33). It noted that private attorneys in Calcasieu Parish were “filing two to three times as many case specific motions than did public defenders.” (*Kurth*, p. 34).

The consultant reviewed over 20 files that were randomly pulled. None of the files had a unique substantive motion filed in them. They all included form motions for discovery and for leave to file additional motions. One case appeared to involve a very ripe search and seizure issue that resulted in a plea. One of the judges with whom the consultant met indicated that he was troubled by the very few motions to suppress in drug cases that are being filed.

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<sup>6</sup> *Duncan v. Louisiana*, 391 U.S. 145 (1968), requiring a jury trial for misdemeanors which carry a sentence of more than six months.

The absence of any pretrial motion practice is not definitive. It is, however, yet another indication of an office that is overloaded and attorneys who have little time to do anything other than appear in court and plead their clients to time served.

## 2. Preliminary Examinations

Guideline 3.2 of the NLADA *Performance Guidelines* as well as Rule #715(A) state that where “the client is entitled to a preliminary hearing, the attorney should take steps to see that the hearing is conducted timely unless there are strategic reasons for not doing so.” The commentary to this guideline also says that “Heavy caseloads or chronically late appointment by the courts of counsel for indigent clients...should not be used to routinely justify ignorance by counsel of facts at the time of preliminary hearing.”

Preliminary examinations are an important part of the criminal process. Cases can fall apart at the preliminary hearing. The judge can find no probable case. The prosecutor can decide to resolve the case at that stage. An early plea to a misdemeanor can occur after testimony is taken. Defendants can be diverted out of the criminal process and into drug or mental health treatment. Witnesses can be required to testify before their memories fade or are shaped by the parties. Clients can see what the evidence is against them and can also see how their attorney fights for them.

Compare this to what the typical CPDO client experiences. He is arrested and some 1-5 days later appears at the RC hearing. The prosecution has 60 days in which to file a bill of charges. During that time, the client never sees his lawyer. While a preliminary examination can be demanded, that does not happen often, and when it does, the preliminary examination is often waived. For the CPDO, preliminary examinations are the exception rather than the rule. The client does not know what the charges are. He has no opportunity to plead to a misdemeanor. Often he does not do anything other than sit until the time of his arraignment. Sometimes, when he sits without hearing anything, his lawyer will file a habeas demanding a preliminary examination, at which time the prosecutor makes a filing decision. Thereafter the judge dismisses the habeas as moot. None of the advantages inherent in the holding of preliminary examinations is occurring on a regular basis in the 14<sup>th</sup> Judicial District, at least with CPDO attorneys.

Of course, it is difficult to determine how many preliminary examinations are in fact being held. There is no mandated reporting on the number of preliminary examinations. The District Defender estimates that approximately 100 are held annually, and further noted that this figure is increasing. One judge noted that most preliminary examinations are “waived because the attorney gets discovery.” He said that attorneys are filing a demand for a preliminary examination and then waiving it.

## W. Use of Experts

Guideline 4.1 of the NLADA *Performance Guidelines* as well as Rule 717(B)(7) state that “Counsel should secure the assistance of experts where it is necessary or appropriate to: (a) *Review of Management and Organization of the Public Defender's Office in Calcasieu Parish (Lake Charles), Louisiana: Observations and Recommendations*. BJA Criminal Courts Technical Assistance Project. Assignment No. 4-145. American University. September 2010. 27

the preparation of the defense; (b) adequate understanding of the prosecution's case; (c) rebut the prosecution's case." The *Kurth Report* found "no evidence of the use of experts" by CPDO attorneys. That has changed only slightly since 2004. This can be readily ascertained by the \$5,000 that was expended in all of 2009 for experts, an amount that could normally pay for one or two experts. Over \$10,000 was paid out in psychiatric evaluations. Thus, the combined total of money spent for experts was a little over \$15,000.

The District Defender is in charge of budgeting the limited funds he has for the CPDO. When the budget was cut for FY2009-2010, one place that was cut was for expert witnesses. It is inappropriate and unseemly that the public defender would have to "budget" funds for experts irrespective of the need for them. It is recommended that a budget on experts be set by using historical data that is need based. It is also recommended that there be a provision for paying experts when the line item is exhausted.

## **X. Policies and Procedures**

The consultant was provided with an "employee manual" by the District Defender, who also stated that another manual was in the development stage. The manual includes a section on the "standards of conduct for all employees"; a second on "disciplinary sanctions;" a third miscellaneous section covering a variety of topics such as the employment probationary period, pay periods, smoking, visitors, personnel files, housekeeping, wages, position descriptions, personal phone calls, internet access, discrimination and equal employment, and use of personal vehicle; a fourth section describing office routines; and a fifth section with details regarding leave benefits. The manual contains no policies on performance evaluations, performance guidelines, conflicts of interest, eligibility, client contact, returning client phone calls, or the many other potential policies related to ensuring quality representation.

Staff was not aware that the manual existed. One lawyer said that the absence of a policy and procedure manual had "led to poor morale in secretaries and support staff. Rules are unclear at present."

## **Y. Technology, Telephones and Physical Plant**

### **1. Technology**

The office appears to have up-to-date computer technology. Every member of the staff has a computer and access to computer research. They use a case management system that was designed by someone locally in the late 1990s and that is still being used today. The office maintains two caseload management systems, one for the CPDO, and one for the LPDB.

The management system has limitations based upon its age. It can generate court calendars, cases opened during a specified time period for the CPDO attorneys, cases closed, client location lists, and attorney/client lists. It can also indicate when the last time a file was touched. The District Defender indicates that he uses the system to generate a report on *Review of Management and Organization of the Public Defender's Office in Calcasieu Parish (Lake Charles), Louisiana: Observations and Recommendations*. BJA Criminal Courts Technical Assistance Project. Assignment No. 4-145. American University. September 2010.

cases opened and closed, a report on caseload, and a report on the clients attorneys have. Act 307 defined a case as “a charge or et of charges contained in a charging instrument or petition against a single accused arising out of one or more events, transactions, or occurrences, which are joined or which may be joined pursuant to Code of Criminal Procedure Articles 490 through 495.1. Cases that involve multiple persons accused are counted as a separate case for each person accused . . . “ (LSA R.S.15:174©. One bill of information may contain four defendants, which is four cases by statutory definition for the defenders. In an instance where a defendant has multiple bills of information which cannot be joined, that defendant’s cases must be counted separately.

Anyone in the office can obtain the status of any case by pulling up the client’s name in the system. However, the system is not set up to allow a request for a list of all of an attorney’s files and what their current status is. The system can separate the request by open, closed files and semi-active files. The system can give an active trial date, although the District Defender reports that there is a glitch in the system that often gives an inaccurate trial date.

The system cannot run any accounting or billing reports. The District Defender presently handles all accounting and billing with Quickbooks.

## 2. Telephones

There are two receptionists who handle the phones. There are reportedly 8,000 phone calls per month just from the jail. Jail personnel stated that the CPDO called and requested that inmates be limited in the days they can make phone calls. In addition, family and friends and persons out on bond call into the office. It is likely that the failure to conduct a thorough first interview as well as the practice of not seeing clients at the jail contributes to the excessive use of the phone by jail inmates, resulting in phone lines being tied up on a regular basis. The LPDB has notified the CPDO that some of the \$414,000 should be spent on two additional telephone lines.

## 3. Physical Plant

The office is presently located in a 7<sup>th</sup> floor office building close to the courthouse complex. It is professional, attractive and welcoming. The offices are large with adequate furniture. The offices have doors enabling attorneys to conduct private interviews. Most of the support staff is in one large area, while attorneys each have an office. It is anticipated that the office will soon move to a lower cost office also within close proximity to the court. It is hoped that this move will not reduce the professionalism now presented by the present office facility.

## Z. Culture

The culture of this office causes concern. It is an office that has the feel that one would expect with lawyers having too many cases. One judge characterized the culture as “too laid back...They are overwhelmed and some react by not doing anything.”

One private lawyer stated that “there is an acceptance of failure, an acceptance of the status quo, a feeling that we cannot make a difference. There is no zeal, no resistance to a system that doesn’t want good criminal defense.” “Caseloads are a problem, but zeal is a bigger problem.” Another private lawyer who had been a conflict lawyer said that “there are lawyers here who don’t fight, who are scared, who don’t know what they can ask for, who are intimidated.” One CPDO lawyer described the office culture as “getting by, let’s not die today.” Another lawyer noted that yet another lawyer in the office referred to clients as “the enemy.” One attorney said morale in the office is low, attributing it to the workload, poor compensation, and clients. “They harass you, use profanity, stalk you.” Another lawyer characterized the culture as “flat...There’s not that esprit de corps, us against the world...I don’t think the DA’s office is concerned about being taken to court by this office. There’s an idea afoot here that we’re overmatched.”

It is not a client-centered office. The District Defender is aware that the office has a crisis culture, and wants it to be an office where people are excited to be at work, and where others want to be hired. He knows that it is an office that has the feel of a crisis. He wants the office to change from a “case-centered office to a client-centered office.” Many of the lawyers want to leave but do not feel that they can at this point in their careers. Many know that they have too many cases to do the kind of work they’d like to do. In addition to additional resources that will enable higher salaries, retirement, and lower caseloads, changing this office culture is the most important thing that needs to be changed by leadership.

### III. JUSTICE SYSTEM FUNCTIONS RELEVANT TO THE CPDO OPERATIONS

#### A. Screening for Eligibility

The Kurth Report found that “systematic screening for indigency is not being done in Calcasieu Parish...it appears that for the most part anyone who requests a public defender is granted one with little or no effort to determine their economic status.” That situation has not changed since 2004.

On the other hand, often the problem in public defender offices is that eligible clients are being denied appointed counsel. This can happen for a variety of reasons, sometimes occurring in order to save the limited resources of the public defender or to ensure that private attorneys’ business is not affected by the presence of a public defender’s office. There was little evidence of this occurring in Calcasieu Parish. The only indication of persons being eligible not being appointed was an opinion by the District Defender that in city courts persons are diverted out of the system or pled to probation without the advice of counsel.

The consultant attended the RC hearing and watched for over an hour. The judge was on video and made an eligibility determination approximately every 15 seconds or so. While there were eligibility forms filled out by clients, the judge did not appear to scrutinize the forms nor ask any questions of the persons charged. The CINC lawyers likewise stated that there is no scrutiny given to defendants at the eligibility stage. One reported having been appointed to represent an under-water diver supervisor making \$130,000 annually while another reported being appointed to appear for a man making \$200,000 per year. One estimated that 15% of the appointments in CINC cases were to people ineligible for appointed counsel. Another CPDO attorney stated that one judge asks at the RC hearing who has a private lawyer, and then appoints everyone else without any individual scrutiny. He also noted that in juvenile court, judges are appointing CPDO lawyers without evaluating the parents’ income. One judge stated that he believed that “almost everybody arrested fits the bill to be appointed a public defender.” He appoints for anyone making \$25,000 or less per year. Several judges said that additional screening is to be done by the CPDO and as far as they knew that was not occurring. Another judge stated that while he did review the eligibility forms he then appointed virtually everyone on the docket knowing that some of them could pay for their own lawyers. He stated that he did appoint the CPDO for people who work off-shore.

This is not to say that the CPDO represents a majority of persons who are ineligible. In fact, in a report entitled “Behind Bars in Calcasieu Parish: An Assessment of the Legal Needs of

Pre-trial Defendants Appointed to the Calcasieu Public Defender's Office"<sup>7</sup>, the author noted that the average reported income by those in their survey was only \$1,488. This indicates that for the most part, judges are doing an adequate job of evaluating eligibility.

There is some statutory responsibility for evaluating the judges' eligibility decisions placed upon CPDO. Several judges indicated that in their experience this responsibility was not being used. The *Kurth Report* noted that the "PDO does not have the resources properly to screen clients," which is accurate.

In terms of the responsibility for eligibility determination: it appears that it is joint -- the judge makes the initial appointment and the CPDO is supposed to follow-up, which may not be happening consistently.

Pursuant to LSA R.S. 15:175(A) the "preliminary inquiry and determination of indigency of any accused person shall be made by the court, not later than arraignment . . ." There is a presumption of "substantial financial hardship" if a person receives public assistance, is incarcerated or is housed in a mental health facility. If the court makes the preliminary determination of indigence, the court "shall require the accused to make application to the district public defender office. . .who shall inquire further into the accused's economic status, and upon determining that the accused is indigent, shall file a certification thereof, in such form as the court may require. . .into the record." (LSA R.S. 15:171(A)(1)(d)).

## **B. Filing of Bills**

The filing of bills of charges was addressed in the *Kurth Report*. They noted that it took an average of 186 days after arrest for a bill of charges to be returned, which they noted was beyond the limitations of La.CCrP. art 701's sixty days for those in custody, and which they characterized as "extraordinary." This was part of their overall evaluation of excessive delay in the dispositions of criminal cases in Calcasieu Parish, which they said was part of a "system that tolerates delays, and this applies to the DA's office, the judges, and the PDO".

The delayed filing of bills continues to be a major problem in Calcasieu Parish. The problem has multiple causes.

First, very little occurs early on in the case—at the RC hearing or in the days following, until a decision is made by the DA as to whether to accept the case or not. The public defenders and the district attorneys are not working together to try to weed out the cases that should not be in court. There appears to be an inordinate number of felonies compared to misdemeanors, which indicates that there is little communication between the prosecutor and the defender and cases are proceeding as originally charged by the police.

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<sup>7</sup> "Behind Bars in Calcasieu Parish" (2009). Prepared by the Louisiana Justice Coalition.

Second, as noted earlier, there appears to be an inadequate use of the preliminary examination—indeed, more than one public defender stated that, if preliminary examinations were requested, often a decision on a bill was made by a prosecutor, thereby avoiding a preliminary examination and its often salutary effects.

Third, prosecutors wait until the 60 days pass or later in order to make a decision.

Fourth, it is said that a paralegal or inexperienced attorney makes the screening decision in the DA's office. One private lawyer stated that the "DA does not reject any cases at intake. DAs accept everything the police give them, knowing that they will be dismissed later." Another private lawyer said that the DA's office "takes everything. They pick the low hanging fruit."

Finally, the district attorney's office often does not communicate the decision to the public defender as to whether they are accepting the case or not, thereby causing significant inefficiency in the public defender's office.

This is an area in which change could be effected without altering the adversary system but resulting in increased efficiency. It should be noted that this issue has been presented several times to the district attorney's office. For a time, notice from the DA's Office was forthcoming. However, in a Field Report of the LPDB dated May 29, 2010, it was noted that "the cooperation has evaporated and Cindy Killingsworth, the First Assistant [DA], has told Mr. Bergeron that she is too busy to tell him which cases her office has refused for prosecution and/or which cases they have dismissed."

### **C. Right to Counsel Hearing**

As noted earlier, the consultant observed the "right to counsel"(RC) hearings for over one hour. There were 60-80 mostly male, mostly African Americans sitting in a large room on benches. They were all wearing orange jump suits. They were shackled at the wrists and at the ankles. There were about seven jail officials standing around the walls. The judge appeared on a small TV monitor in the front of the room. There was a bench with a public defender investigator sitting behind it. Another investigator and two attorneys also sat in the front of the room, with inmates, some of them standing, talking to them. One by one the judge asked the inmates if they could afford counsel. Over and over again the inmate said they could not afford counsel, and the CPDO was appointed. Each inmate was given somewhere between 10-20 seconds with the judge. The judge did not individually advise the inmate of his charges or determine whether he understood his charges. There was no discussion regarding bond. There was no advocacy by anyone. No cases were resolved at that point.

#### **D. 48 hour probable cause review**

*Gerstein v. Pugh*, 420 U.S. 103 (1975) and *County of Riverside v. McLaughlin*, 500 U.S. 44 (1991) mandate a probable cause review by a judge within 48 hours of arrest.<sup>8</sup> The RC court does not serve that function. The consultant was told that judges perform a paper review of probable cause, but there were questions raised whether this review was meaningful or not. Such a substantive review could have the effect of winnowing some persons out of the caseload of the CPDO.

#### **E. Case Delays and Backlogs**

In the *Kurth Report*, the authors found that it “takes an average of 501 days to dispose of a felony case...This delay is extraordinary.” The authors attributed this to a “system that tolerates delays, and this applies to the DA’s Office, the judges, and the PDO.” The May 24, 2010, BJA CCTAP Problem Definition Report, addressing the overall criminal case processing situation in the 14<sup>th</sup> Judicial District, noted that, as of 2010, the District Attorney’s Office was not communicating the status of cases to the CPDO, that continuances were the norm, and that actions needed to be taken to better manage case flow. The LPDB has noted that each year, the number of cases backlogged in the CPDO increases, thereby increasing the numbers of open cases for each court. Each of these reports touches on a very serious problem in the CPDO. It takes a great deal of time for a case to become resolved from the moment of arrest until disposition. Very little lawyering is occurring between appointment and arraignment, which can often take six months. The DA’s Office often closes cases without letting the CPDO know. Defendants remain in jail following the RC hearing without knowing what is occurring and with little or no communication from their lawyer. Public defenders end up pleading many clients to time served without having conducted an investigation, and without having filed motions other than discovery. And every year, the number of open files in the public defender’s office continues to increase. It is a system that is bogged down to the point of breaking.

#### **F. High Bonds**

A systemic issue that appears to be present in Calcasieu Parish is the setting of inordinately high bonds. One private lawyer said the bonds were “extremely excessive” and that judges were “punitive with their bail decisions.” This situation results in many clients remaining in jail during the stage between the RC hearing and arraignment. This exacerbates the paucity of contact between the clients in jail and their CPDO attorneys. Bond reductions are made on occasion but there did not appear to be vigorous bond reduction advocacy in the CPDO observed by the consultant. It appears that these high bonds, combined with little client contact and the absence of vigorous bond advocacy, is contributing to a situation where clients are pleading to time served at their first opportunity.

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<sup>8</sup> See also *State v. Wallace* 2009-2621 (La. 11/06/09, \_\_\_\_\_ So. 3d.

### **G. Resources available**

The consultant was informed that there are three possible sources of funds to solve some of these issues. First, there is a “criminal justice tax” that supplies funds to the judiciary and the DA’s office. This tax does not now provide funding for the CPDO. Second, the DA’s office reportedly has \$4 million invested from a variety of sources, including the criminal justice tax. This situation needs to be verified. If, in fact, there is \$4 million available that is not now being used to prosecute criminal cases and if in fact the DA’s office is funded at four times the level of indigent defense, then these funds should be considered a possible source of funding to remedy some of the problems described here. Third, there is the Sheriff’s Fund noted in David Carroll’s Gideon Alert of August 12<sup>th</sup> indicating that the state’s sheriffs have \$ 400 million in the bank, and the Calcasieu Parish Sheriff has \$52 million.

### **H. High numbers of felonies**

The consultant was struck by the large number of felonies compared to misdemeanors in this parish, coming from a jurisdiction where 25% of the public defender’s caseload consists of misdemeanors or juvenile cases. The CPDO has only 36% of its caseload as misdemeanors, with 64% consisting of felonies. This could be the result of overcharging by the police or the DA’s office. Either way, it exacerbates the caseload problem significantly. The Executive Director believes that this is indicative of vigorous law enforcement in Calcasieu Parish combined with few preliminary examinations and little pre-charge discussion regarding reduction of charges. Further study needs to occur on this point in any effort to identify and achieve further efficiencies in Calcasieu Parish.

### **I. Jail access**

Some comments were made by public defenders and private lawyers that it is difficult to gain access to clients at the jail, inhibiting lawyers from seeing their clients in jail. It was also reported that it is difficult to see more than a few clients in an afternoon due to feeding schedules and other limitations imposed by jail personnel. The consultant spoke with three persons from the jail, and each said that they accommodated public defenders with few exceptions and also noted that it is rare for public defenders to visit clients, particularly at nights and on weekends. This situation needs to be explored further by the District Defender working with the Corrections officials of Calcasieu Parish.

## IV. COMPLIANCE WITH NATIONAL PRINCIPLES FOR INDIGENT DEFENSE SERVICE DELIVERY

### A. The ABA Ten Principles

One of the most important frameworks for evaluating a public defender system is the *ABA Ten Principles of a Public Defense Delivery System* (2002). The following observations about the CPDO are made, using these benchmarks as a framework.

**1. The public defense function, including the selection, funding, and payment of defense counsel, is independent.**

The CPDO for the most part operates in a manner independent of the judiciary. This is the most salutary part of Act 307, which abolished the local indigent defense boards and established the LPDB. The LPDB is up and running and is exercising oversight of the CPDO. The only encroachment witnessed in Calcasieu Parish occurred when conflict lawyers enforced their contracts limiting their caseloads to 200 cases for a set sum of money and received notices from judges that they needed to tell the judges the numbers of their cases, followed by notification that judges would continue to appoint caseloads even in excess of their contract. The appointment process needs to be left between CPDO and their contractors. If additional contractors need to be hired to meet the caseload, that is the CPDO's responsibility rather than the judiciary's.

**2. 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.**

The CPDO is a full time office, and with the recent communication from the LPDB raising salaries and requiring all attorneys to give up their private practices, the reality of becoming a full-time office is made all the clearer. In addition, there are numerous contracts with the private bar for the provision of conflict services.

**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.**

As noted previously, there is inadequate screening for eligibility. Several people including judges estimated that 15% or more clients appointed counsel are ineligible for public defender services. Counsel is appointed at the RC hearing, which are conducted on Tuesdays and Thursdays. Someone could be arrested on Thursday night and not be appointed for five days. The biggest deficiency in this process, however, is that the CPDO does not do anything other than a limited, cursory interview once clients are appointed. They are virtually abandoned until later in the process, even as late as the arraignment.

**4. Defense counsel is provided sufficient time and a confidential space within which to meet with the client.**

Public defenders have sufficient space within which to meet their adult clients. Time is inhibited, of course, by excessive caseloads. Space is not a concern, as the jail provides interview rooms for attorneys. However, it appears that these interview rooms are seldom used, and many if not most felony clients are seen only at the courthouse. There is not a confidential space for the lawyers to use in juvenile court.

**5. Defense counsel's workload is controlled to permit the rendering of quality representation.**

The LPDB has caseload standards that were adopted by the LIDAB, its predecessor. The District Defender of the CPDO has notified the LPDB and the court that, as of August 1, 2010, the CPDO would no longer take cases because caseloads are in excess of NAC and LPDB standards. Contract conflict attorneys have likewise notified the court that they would not be willing to take cases in excess of their contracts. However, the judiciary has let both the CPDO and the contract conflict lawyers know that continued appointments were coming. Thus, the lawyers' workload is not controlled, and indeed it must be concluded that their excessive caseloads are inhibiting the rendering of quality representation. As noted, the August 1, 2010 date was extended, pending continued efforts by all agencies.

**6. Defense counsel's ability, training, and experience match the complexity of the case.**

All of the lawyers doing felony work have the experience to match the complexity of the case. There are no capital cases being handled by the CPDO. There are life without parole cases and the attorney who formerly handled only mandatory life cases has been terminated and not replaced. Mandatory life conflict cases are handled by a conflict contract attorney who represents all of the life conflict cases. On the whole, inexperienced attorneys are not being assigned felonies in the CPDO. The only exception to this is with the conflict attorneys, who are not chosen for their ability, training, or experience.

**7. The same attorney continuously represents the client until completion of the case.**

Vertical representation has been addressed by the judiciary with the establishment of divisions as well as early allotments. The result of this action is that shortly after the RC hearing, a case is assigned to a particular judge. Because attorneys are assigned to divisions, this judicial assignment results in the potential for vertical representation. However, the CPDO is not taking advantage of this development because there is little client contact following the allotment.

- 8. 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.**

The violation of this principle is probably the biggest failure in the indigent defense system in Calcasieu Parish. By all accounts, the prosecution function is funded at four times that of indigent defense. There is no possibility of a fair criminal justice system when there is this disparity between these two functions. There is no parity from any perspective. District attorneys have significantly higher salaries than their counterparts in the CPDO. They have retirement benefits while public defenders have no retirement benefits. They have lower caseloads. They have access to law enforcement and forensic labs. There is one public defender often facing four and five prosecutors per division. And the public defender is not treated as an equal partner in the justice system.

- 9. Defense counsel is provided with and required to attend continuing legal education.**

The area of training and education is another significant deficiency in the CPDO. The CPDO funds CLE when requested by attorneys. And the Louisiana Bar Association requires continuing legal education. However, there is no plan for the training of lawyers and there are no steps of professional development that attorneys are required to take as they develop as lawyers.

- 10. Defense counsel is supervised and systematically reviewed for quality and efficiency according to nationally and locally adopted standards.**

There is inadequate supervision in the CPDO. There are no supervisors for the felony lawyers. No one oversees the conflict attorneys. There are no file reviews, case reviews, or performance evaluations. The only supervision provided is of the juvenile and misdemeanor lawyers.

## **B. The ABA Eight Guidelines of Public Defense Related to Excessive Workloads**

Another method for evaluating a public defender system that is in the grips of a caseload crisis is the application of the *ABA Eight Guidelines of Public Defense Related to Excessive Workloads* (2009). The following observations about the CPDO are made, using these benchmarks as a framework. Given their length, some of the guidelines will be in summary form.

- 1. The Public Defender avoids excessive lawyer workloads and the adverse impact that such workloads have on providing quality legal representation to all clients.**

The CPDO has done much to address this guideline, but thus far has done so unsuccessfully. CPDO lawyers, the District Defender, and the LPDB have all implored the powers that be to

fund the CPDO in such a manner as to avoid excessive caseloads. This is a hopeful time, however, with the August 1, 2010, deadline put on hold while the CPDO, the BJA CCTAP, the local judiciary, and the lawsuit all provide an opportunity to work for change.

- 2. The Public Defense Provider has a supervision program that continuously monitors the workloads of its lawyers to assure that all essential tasks on behalf of clients are performed.**

The CPDO does not have a supervisor for the felony attorneys, and there is not an adequate system of case review, file review, in court monitoring, or performance evaluation. Workload is not continuously monitored.

- 3. The Public Defense Provider trains its lawyers in the professional and ethical responsibilities of representing clients, including the duty of lawyers to inform appropriate persons within the Public Defense Provider program when they believe their workload is unreasonable.**

No training has occurred on these professional and ethical responsibilities. However, it is apparent to the consultant that there is an adequate level of knowledge among some of the felony lawyers regarding these responsibilities indicated by their raising of the issues with letters to the District Defender and citing the appropriate standards.

- 4. Persons in Public Defense Provider programs who have management responsibilities determine, either on their own initiative or in response to workload concerns expressed by their lawyers, whether excessive lawyer workloads are present.**

It is uncertain what process the District Defender used to determine that his attorneys had an excessive caseload. It is clear to this consultant that he made the correct determination based upon all of the information he had available to him.

- 5. Public Defense Providers consider taking prompt actions such as providing additional resources, curtailing new case assignments, reassigning cases, arranging for some cases to be assigned to private lawyers, urging prosecutors not to initiate criminal prosecutions, seeking emergency resources, negotiating formal and informal arrangements with courts, and notifying courts that the Provider is unavailable to accept additional appointments.**

The caseload crisis has been ongoing for at least 15 years in Calcasieu Parish. A previous District Defender utilized *Peart* litigation in response to this crisis during the 1990's. The current District Defender Director has notified the courts of the CPDO's unavailability as of August 1, 2010 (date later extended). He has communicated his concerns to the LPDB and the State Defender. He has a management system that allows him to ensure equality of caseloads among his staff. He has not sought emergency resources, nor has he negotiated formal and informal arrangements with courts to obtain relief. The alternatives provided in

Guideline 5 offer a roadmap for the District Defender as he continues to try to navigate through this caseload crisis.

- 6. Public Defense Providers or lawyers file motions asking a court to stop the assignment of new cases and to withdraw from current cases when workloads are excessive and other adequate alternatives are unavailable.**

This is the place in which CPDO now finds itself.

- 7. When motions to stop the assignment of new cases and to withdraw from cases are filed, Public Defense Providers and lawyers resist judicial directions regarding the management of the program that improperly interfere with their professional and ethical duties in representing clients.**

Recently, the judiciary has resisted the withdrawal from cases by conflict counsel. In a letter dated June 24, 2010, Chief Judge Wyatt informed the District Defender that he expected the CPDO to continue to accept appointments unless there were motions filed and orders were entered altering their responsibility. The judge also expressed concern over not having any conflict counsel remaining who could accept cases, saying that the judiciary had not received case counts from conflict counsel. The judge stated that the judiciary would “recommence appointments to **all** conflict attorneys immediately.” While the agreement on delaying the August 1<sup>st</sup> deadline for the CPDO’s refusal to accept additional indigent defense cases did not address appointment of attorneys for conflict cases, the judges should respect the contracts of these attorneys with the CPDO and not make appointments that exceed the number of cases provided for in their contracts and money should be made available to the CPDO to enter into additional contracts. In fact, the CPDO should be making the appointments, either based on qualifications and seriousness of the offense or on a rotating basis. The court should not be making appointments to the conflict attorneys, thereby interfering in the contract relationship between the CPDO and the conflict attorneys.

- 8. Public Defense Providers or lawyers appeal a court’s refusal to stop the assignment of new cases or a court’s rejection of a motion to withdraw from cases of current clients.**

No appeals have been filed at the present time, although significant litigation is now underway in the *Anderson* cases in which all of these issues are raised.

## V. RECOMMENDATIONS AND NEXT STEPS

Based on the findings resulting from the technical assistance site visit and review of available materials relating to the provision of indigent defense services in Calcasieu Parish, the following recommendations and “next steps” are proposed.

### A. Recommendations for the Public Defender’s Office

**Recommendation One: Create a client-centered office.** The LPDB has already taken significant action to enable the implementation of this recommendation. Based upon the LPDB letter raising salaries, it is recommended that each of the trial lawyers be required to reapply for their jobs, and to commit in writing to becoming more client-centered. This commitment should include a pledge to see clients within 72 hours of appointment, to vigorously pursue bond reductions, to commit to regular client contact following appointment, to investigate cases, to use experts where appropriate, to file appropriate pretrial motions, to pursue speedy resolutions of cases short of trial, to take cases to trial where indicated, and to pursue alternative sentencing through motion practice. In addition, all attorneys should be sent to skills-based training irrespective of their level of experience. This recommendation must be taken seriously by leadership or the salutary effect of going full-time, ending private practice, and raising salaries will be lost.

**Recommendation Two: Reduce Caseloads.** This is an absolute necessity, and requires the collaboration of the LPDB, the CPDO, the private bar, and most importantly, the remainder of the criminal justice system, particularly the judiciary and district attorney’s office. Simply put, the office should be funded so that attorneys can meet the caseload limitations established by the LPDB as well as Principle 5 of the *ABA Ten Principles of a public defense delivery system* (2002) and Standard 5-5.3 of the *ABA Standards for Criminal Justice Providing Defense Services* (Third Edition 1992).

**Recommendation Three: Increase Salaries.** The LPDB has already indicated that money is being made available to increase salaries. This should be accompanied by the commitment from staff attorneys to be client-centered attorneys. In addition, the goal for the CPDO regarding salaries should be salary parity with the district attorney’s office, consistent with Principle 8 of the *ABA Ten Principles of a public defense delivery system* (2002). There is no justification whatsoever for an experienced felony public defender to earn \$44,000 per year while his counterpart in the district attorney’s office earns \$110,000 per year. There is simply no excuse for a two-tier justice system in Calcasieu Parish. The CPDO needs to establish a salary structure with steps and incentives for excellence. Juvenile attorneys should earn salaries equal to those for attorneys with similar experience and expertise.

**Recommendation Four: Provide retirement benefits for all staff.** An essential part of creating an office where clients come first includes taking care of all staff through a reasonable salary, health care, and retirement plan. Not having a retirement plan at present is

demoralizing to the older lawyers in the CPDO who face the prospect of losing the ability to have a private practice while at the same time not having a retirement plan. The fact that the DA's office has a generous defined benefit plan while there is no retirement plan in the CPDO is insulting to the staff and as well as demeaning to the Calcasieu criminal justice system.

**Recommendation Five: Hire a supervisor for felony attorneys and create a culture of supervision.** This is another essential step in creating a client centered office. The CPDO needs to increase its supervisory function consistent with Principle Ten of the ABA *Ten Principles*. A supervisor needs to be hired who can try serious felony cases at the highest level while at the same time be a leader in the office. This person must be a mentor, coach, and able to demonstrate how to try cases. He/she must know what a client centered office is and what that means in terms of the operations and services of the office. Hopefully he/she will be an attorney who can inspire zeal and excitement in the attorneys he/she supervises. He/she must have the respect of attorneys in the office, the private criminal defense bar, the judiciary, and the district attorneys. This person would need to be trained in how to be a supervisor, and then given a caseload low enough to be able to perform the supervisory function.

**Recommendation Six: Reform the conflict system by hiring more conflict contractors, lowering their caseloads, requiring annual signed contracts, increasing their pay, and providing oversight.** The conflict system in the CPDO is in serious trouble. Paying private lawyers \$40,000 for 200 serious felony cases, or \$200 per case, ensures that the attorneys will either force pleas after little work, or they will be confined to penury. There is no oversight of the system, no supervision, no qualifications for the attorneys. The District Defender stated that attorneys are not "selected. It's whoever will do the work." And at present, the judiciary is ignoring the contract and assigning unlimited numbers of cases to the conflict lawyers. This is a system that is about to fail.

There are several models that are being utilized to provide quality in conflict situations. Minnesota has full-time offices providing most of the representation, with part-time conflict contractors who are provided a significant salary with benefits, including retirement. Some of the best criminal defense lawyers provide these services, and turnover is low. In Lexington, Kentucky, a second office is being opened that will handle a significant amount of the caseload as well as handling first level conflicts. These lawyers will be full-time, state-salaried with benefits including retirement. Another model is the one used in New Orleans, Louisiana, where the office has a conflict supervisor who assigns cases to panel lawyers and selects them and oversees them. Georgia has created regional conflict offices that provide conflict services to a multi-county area. Given the provisions for regional services contained in Act 307, this too could be a model for the CPDO.

Whatever model is chosen must solve the problems present in the current system and provide quality representation to the clients appointed to a conflict lawyer. First, it must lower the caseloads of the lawyers consistent with the NAC and LPDB standards. Second, it must provide a contracted amount consistent with professional norms. For example, if the *Review of Management and Organization of the Public Defender's Office in Calcasieu Parish (Lake Charles), Louisiana: Observations and Recommendations*, BJA Criminal Courts Technical Assistance Project. Assignment No. 4-145. American University. September 2010.

attorneys are to remain private lawyers with a private practice, they should be provided a minimum of \$75,000 for a 2/3<sup>rd</sup> caseload. Third, there must be someone either within the CPDO or the LPDB whose role it is to choose the conflict lawyers according to experience, training, and expertise. This person should also make case assignments based upon experience, skill, and training, as well as supervise the conflict attorneys in order to ensure that quality representation is being provided. In addition, the oversight lawyer should ensure that annual contracts are signed, that the contracts express the policies of the CPDO, and that they require some assessment of time either through time-keeping or the filing of vouchers that would be reviewed by the oversight lawyer. Fourth, conflict lawyers should be required to go through the same structured training regimen as the remainder of the CPDO attorneys. Fifth, the conflict system should provide for investigative services, as well as experts including social workers who can create alternative sentencing plans. Sixth, conflict attorneys should have access to legal research resources that CPDO attorneys have. Finally, the judiciary must allow the CPDO to monitor these contracts rather than intervene and require private lawyers to handle more cases than they have agreed to accept.

**Recommendation Seven: Mandate that attorneys conduct in-person interviews within 72 hours of appointments.** The present system of having investigators at the RC hearing along with a few public defenders who conduct 15 minute interviews in front of other inmates and jail personnel must end. This practice communicates everything that is wrong about the office and the system. This encounter is the beginning of an attorney client relationship, and must be raised to the highest professional level. The present system can continue only if it is accompanied by having the appointed attorney meet **in person** with the client within 72 hours. The interview should be a significant interview that meets requirements of Guideline 2.2 of the NLADA *Performance Guidelines for Criminal Defense Representation* and Rule 711 of the LPDB Performance Guidelines. The CPDO is fortunate in that its incarcerated clients are not in a distant institution, for the most part, and thus travel is not a significant barrier to implementing this recommendation. Nor is the fact that discovery is not yet available a barrier to implementation. As noted in the commentary to Guideline 2.2 above, “Counsel can at least seek to establish the attorney-client relationship and obtain a good amount of information even if charging documents are not yet available or counsel has not been able to research the charge.”

**Recommendation Eight: Increase contact with clients between the RC hearing and the arraignment.** The initial early client interview is not sufficient to turn around this problem. Attorneys must commit to continue to visit with their clients in jail, to go over discovery with them, to discuss suppression and other motions hearings, and to prepare for the guilty plea or the trial, and the sentencing hearing. Attorneys should not be avoiding their clients in order to wear down their desire to go to trial resulting in an eventual plea to time served. As noted in the commentary to Guideline 1.3 of the NLADA Performance Guidelines, “Adequate communication with clients is an integral part of quality representation; the time necessary for such communication must be included in counsel’s consideration of whether counsel has sufficient time to take on any given case.”

**Recommendation Nine: Work on resolution of cases at an earlier stage.** There is little effort going into the early resolution of cases on the part of prosecutors or defenders. No advocacy is occurring at the RC hearing. There is little bond advocacy. There is little effort to meet with prosecutors while they are mulling over the charging decision in order to resolve cases. All that seems to occur is waiting between the RC hearing and arraignment. There is some indication that at least some prosecutors would be amenable to working out cases at an early stage. One private lawyer stated that he was able to make appointments with the prosecutor and resolve numerous cases prior to the set court date. “PD’s don’t take the time to do that—they say they’re in court everyday.”

**Recommendation Ten: Complete review of the CPDO caseload numbers by the Louisiana Public Defender Board.** At the present time, there is wide and sometimes contentious disagreement regarding the caseload of CPDO lawyers and conflict lawyers. Yet, there is a statutory definition of a case. The LPDB is the expert in the field of counting public defender caseloads. They are required by law to enforce a definition of a case and with counting and analyzing the numbers. They are further charged with enforcing caseload limits. The local criminal justice system should ask the LPDB to use their expertise in arriving at an accurate caseload count and to then take steps to give sufficient resources to meet that caseload. The DA’s office has no role in this caseload dispute. The judiciary should also defer to the LPDB and their determination of caseloads. Ultimately, the LPDB and the CPDO should engage in a case weighting study in order to arrive at case weights.

**Recommendation Eleven: Increase the use of preliminary examinations.** An important part of the process of winnowing out cases is the preliminary examination. It is important for the defendant to confront his/her accusers and to see the strength of the state’s case, and for the prosecution to see whether a case is worth pursuing. This process is superior to waiting 60 days for the prosecutor to decide whether or not to prosecute while the defendant languishes in jail. Guideline 3.2 of the NLADA Performance Guidelines states that the “attorney should take steps to see that the hearing is conducted timely unless there are strategic reasons for not doing so.” This is not being done in Calcasieu Parish. Instead, few preliminary examinations are being held. Where a request is made, the prosecutor makes a decision to charge and then contends that the request is moot. The judiciary usually agrees that once a bill has been filed, that suffices, frustrating the intent of the process. The regular holding of preliminary examinations, initiated by the CPDO, enforced by the judiciary, and respected by the DA’s office, would be a salutary part of this criminal justice system.

**Recommendation Twelve: Use office investigators for investigations rather than as attorney aids.** The investigative function of a public defender office is vital. Active and knowledgeable investigators can obtain evidence early in a case, subpoena witnesses to preliminary hearings, go to crime scenes and make initial assessments, obtain statements before witnesses move away or forget, and perform other vital functions. Guideline 4.1 of the NLADA *Performance Guidelines* states that “counsel has a duty to conduct an independent investigation regardless of the accused’s admissions or statements to the lawyer of facts constituting guilt. The investigation should be conducted as promptly as possible.” The Commentary to Guideline 4.1 notes that “Delay in investigation may result in loss of

potential evidence or testimony that would support a defense. Furthermore, investigation may reveal information that could be utilized in plea negotiations, pretrial motions, and motions concerning pretrial detention.”

The investigative function in the CPDO is not in compliance with this guideline. Rather, the CPDO felony investigators are now being used to interview clients at the RC hearing and to go to court with lawyers to assist them by carrying files, handing them files, and doing other work as assigned. With the number of felonies handled by the CPDO, there should be a mountain of investigative requests for these attorneys. Instead, only murder or rape cases are now being investigated. Other cases go uninvestigated, a factor that contributes to the process that ends in a plea to time served for many clients.

It may be that additional investigators need to be hired. Once the investigators become focused on their jobs as investigators rather than as attorney assistants, an analysis can be made of how many additional investigators are needed. The present practice is ingrained in the culture, and until the culture is changed, hiring additional investigators immediately would not be warranted.

**Recommendation Thirteen: Institute a performance evaluation system for all employees.** Good business practice requires a sound human resources program. Most businesses and state government agencies employ a performance evaluation system. The CPDO does not. A sound employee evaluation plan for the CPDO would involve the writing of position descriptions for all positions. Performance plans would then be created annually that are structured based upon the position descriptions, and that are explained to employees at a formal meeting at the beginning of the process to ensure the employee knows upon what she is going to be evaluated. Supervisors should then monitor performance through a variety of mechanisms such as file reviews, case reviews, going to court, resulting in meeting with employees to go over how well the employee is meeting the expectations and creating performance improvement plans where there are deficits. This process would end with an annual review with consequences such as termination for failing employees and salary increases or other incentives for employees exceeding expectations.

**Recommendation Fourteen: Increase the leadership in the CPDO.** The criminal justice system is hungry for leadership from the public defender’s office. Judges appear to desire aggressive leadership and the CPDO staff wants it as well. A CPDO leader’s voice needs to be heard advocating for the CPDO and its clients in the criminal justice community. The CPDO Director should be an active part of the CJCC. He/she should know and develop a relationship with all parts of the criminal justice system. He/she should know the leaders of the client community and develop a mechanism for meeting with them. Some defender leaders have developed a client council in order to maintain communications with the client community. The District Defender should also speak out on criminal justice issues, particularly in the media and at community and parish meetings. Every opportunity should be used by the District Defender to communicate to the community and the criminal justice system CPDO positions on issues and the role of the public defender’s office in that system.

**Recommendation Fifteen: Separate the bookkeeping, comptroller, check-writing functions from the Executive Director function.** Since the District Defender uncovered a situation in which two employees were stealing, he has assumed the bookkeeping and accounting functions. This suits his skills, as he is very detail-oriented with a good grasp of budgeting. However, this function also takes a lot of time, keeping him from other duties that need to be done such as leading, supervising, and working with other leaders in the criminal justice system. The LPDB has given money to the CPDO for the hiring of a Chief Administrative Officer, and if this works out, the bookkeeping function should be moved to that position.

**Recommendation Sixteen: Clarify supervision of support staff and hold regular meetings with them.** At present, two people supervise the support staff, and there is a lack of clarity regarding who supervises what functions. One person, preferably the new Chief Administrative Officer, should be named the supervisor for all support staff. Lines of authority need to be clear and enforced.

**Recommendation Seventeen: Place the responsibility for supervising the investigators upon the attorney supervisors.** At the present time, supervision of the investigators is being handled by an investigator. This investigator also shares supervisory responsibility of supervising support staff with the misdemeanor/juvenile supervisor. This is confusing and inefficient. It is recommended that investigators be assigned to units and that their supervision be handled by the supervisor of that unit. For example, the felony unit would have two investigators who would be supervised by the Chief of the felony unit. Attorneys are responsible for the ethics and behavior of the investigators investigating their cases. Because of that, it is recommended that the responsibility for supervision rest with an attorney.

**Recommendation Eighteen: Work with the LPDB Deputy to create a training plan.** At present, training is haphazard and unstructured in the CPDO. At the same time, Act 307 created a Deputy position with the LPDB part of whose responsibility is to lead the training effort for Louisiana. It is recommended that a structured training plan be developed for the attorneys in the CPDO with the oversight of the LPDB Deputy. This plan would include a plan for new attorney orientation, skills training—both beginning and advanced—and periodic training updates on developments in the law, forensic evidence, and other similar topics. It would also include leadership, management, and supervisory training. At present, responsibilities for handling capital cases lie elsewhere, so there is no need at the present time to develop a training plan in this subject area.

**Recommendation Nineteen: Develop a salary scale for all positions with opportunity for additional salary increases.** At present, attorneys are hired at a particular level and then the salary remains static. The only opportunity for increasing the salary is to move from handling misdemeanors or juvenile cases to the felony level. This results in poor morale and either high turnover or poor performance. It is recommended that a salary scale be developed that allows for salary increases based upon both experience and changed job duties. It is also

recommended that juvenile attorneys receive salaries that are as high as other attorneys in the office. Finally, a similar salary scale should be developed for support staff and investigators.

**Recommendation Twenty: Create reports on a regular basis, as often as monthly, that allows for adequate oversight of the office.** Employees perform based upon how they are measured. Technology has allowed for efficient reporting thereby enhancing oversight. It is recommended that the District Defender as well as his supervisors obtain reports on at least a monthly basis that shows at least the following:

- number of current open cases carried by each of the attorneys,
- number of persons in jail awaiting trial and
- length of time the person has been incarcerated;
- number of cases that are scheduled for trial in the following month; and
- number of life cases that each attorney is carrying.

It is also recommended that the District Defender as well as his supervisors obtain reports on at least a semi-annual basis that show at least the following:

- number of cases both opened and closed during the previous six months;
- number of in-person client contacts that occurred;
- number of cases tried to a jury and the result;
- number of cases tried to the bench and the result;
- number of bond motions filed;
- number of suppression motions filed; and
- number of sentencing motions filed and the results of sentencing.

**Recommendation Twenty-One: Enhance the community-oriented defender aspects of CPDO by the hiring of at least two social workers.** The District Defender has affiliated himself with the Community-Oriented Defender movement originating out of the Brennan Center. He expressed to the consultant his desire that his office become more community oriented. The LPDB is in full support of these efforts. The office is currently involved in the local drug court and the District Defender is currently involved in the effort to create a mental health court. The community-oriented defender movement is one that puts the client at the heart of public defense rather than “the case.” The defender in such an office looks at the “whole client” and what it would take for him or her to get out of the criminal justice system and into civil society in a law-abiding and productive way. A crucial element of this is the use of social workers to assess clients’ needs and to work with the clients and their lawyers to identify an alternative disposition, either diversion or an alternative sentence, which addresses more than just sentencing. Using social workers has proven in a number of defender offices to result in real overall savings in incarceration, improved employment, and lowered use of public assistance. Given the large number of cases, the small number of cases that go to trial, the evidence of serious drug and alcohol needs, and other indicators, the CPDO is a highly appropriate place in which social workers could work to enhance the dispositions, reduce the jail population, and improve the lives of clients and their families.

**Recommendation Twenty-Two: Create a current organizational chart.** CPDO does not now have an organizational chart. The District Defender needs to create one that reflects the current leadership and supervisory structure. This chart should be available to all staff, and should be changed when the supervisory structure changes. While this may appear to be a small matter, it is reflective of the current loose and confusing structure in CPDO. It will also make quite clear to all what the chain of command is in the office.

**Recommendation Twenty-Three: Complete the revision of the Policy and Procedure Manual and publish it to all staff.** Complete a Policy and Procedure Manual that is both thorough, up-to-date, and given to all staff. A policy and procedure manual plays an important role in an office setting. It is given to new employees and relied upon by them. It reflects the culture of an office. It is useful in employment and other types of litigation. It provides guidance to staff and can be useful in motion practice (when, for example, a judge attempts to require an action that is contrary to office policy). The current policy manual is inadequate, is not being used, and is being updated. When the consultant requested it, some time was taken to locate it. Staff was unaware that such a manual existed. Policies that need to be created include at least the following:

- Mission Statement of the CPDO
- Scope of representation
- Organizational structure
- Conflicts—what they are, when they are assigned to conflict counsel
- Caseload limitations
- Performance evaluation system
- Notice of vacant positions
- Client eligibility
- Adoption of LPDB Performance Guidelines
- Client Contact
- Initial interview
- Returning client phone calls
- Use of an investigator
- Outside practice
- Soliciting employment from the prosecutor's office
- What occurs when an employee is charged with a crime
- Who can speak on office policy matters
- Work schedule
- Worker's compensation
- Equal Employment Opportunities and non-discrimination
- Americans with Disabilities
- Medical Leave Act
- Nepotism
- Personnel files
- Probationary period

- Disciplinary procedures
- Termination of employment
- Benefits
- Vacations
- Leave
- Holidays
- Sexual harassment
- Violence in the workplace
- Budget Preparation
- Reports
- Accounting procedures
- Case management procedures
- Use of computers for work-related tasks
- Contracts
- Training requirements
- Confidentiality
- Archives of files
- Transfer of files to successor counsel
- Unauthorized practice of law
- Sexual or other inappropriate relations with clients
- Client grievance procedure
- Partial fees/recoupment

NLADA has a compilation of public defender office policies that should be consulted in order to put together a complete policy and procedure manual. These are available on the NLADA website or by contacting NLADA for copies.

**Recommendation Twenty-Four: File documentation must be improved.** The files of the CPDO attorneys are not being kept in a professional manner. They need to reflect a thorough first interview, document client contacts, note the full disposition of the case, and be a repository for all investigation requests and reports, motions, and other information gathered during the course of the case

**Recommendation Twenty-Five: Create a system for archiving files.** There is a large room now full of files. The Louisiana Bar Association no doubt has rules for how long law firms need to maintain files. The CPDO needs to research this and adopt a policy for file maintenance.

**Recommendation Twenty-Six: Begin a system of time-keeping for all staff.** Office hours need to be adopted by policy. All staff, including attorneys, needs to comply with a minimum core hour requirement. Staff needs to know where attorneys are when they are not in the office. Because the CPDO is funded with public money, accountability, including time, needs to be a priority.

**Recommendation Twenty-Seven: Consider a dress code at least four days per week.** The CPDO needs to establish professionalism as an important value in the office. This includes how all staff appears, including attorney staff. When a client walks into the office, they need to know by looking at staff that they are in a law office.

**Recommendation Twenty-Eight: Play a role in checking eligibility for public defender services.** One of the problems in the system is that there are doubts about the eligibility of a number of clients appointed to the CPDO. This is not only demoralizing to public defenders with excessive caseloads, but also an inappropriate use of public funds. The District Defender needs to work with the judiciary to ensure that only eligible persons are appointed to the CPDO. A policy needs to be created that addresses the CPDO playing a role, consistent with its resources, in checking the eligibility of its clients.

**Recommendation Twenty-Nine: Consider purchasing an up-to-date case management system that is compatible with the LPDB system.** The CPDO case management system is remarkable for its age. However, there are reports it is not capable of running. There are many systems that are available to meet the needs of the CPDO. The LPDB is in the process of purchasing a case management system. The LPDB is encouraged to work with the CPDO to upgrade its system.

**Recommendation Thirty: At a point in the future, the CPDO needs to conduct a workload study in order to attach case weights to different types of cases and that maintain high quality.** The commentary to Principle #5 of the ABA *Ten Principles* states that “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.” The ACCD *Statement on Caseloads and Workloads* also emphasizes workloads consistent with quality, saying that “Case weighting studies must be implemented in a manner which is consistent with accepted performance standards and not simply institutionalize existing substandard practices.”

## **B. Recommendations addressed to the criminal justice system**

**Recommendation Thirty-One: Implement practices to promote early dispositions for a significant number of cases.** There is a relentless increase of inmates being arrested, coming before the court at the RC hearing, being appointed to the CPDO, and then being ignored by everyone for weeks and months. This situation is harmful to the defendants and exceptionally costly to the taxpayers of Calcasieu Parish. Many jurisdictions resolve a large number of cases early in the process consistent with due process, saving precious jail beds for persons who are serving their time, and saving public defender time for cases that need attention. Persons with mental illness can be diverted out of the criminal justice system entirely. Persons with substance abuse problems can be diverted into treatment. Prosecutors and defenders can then focus on cases where there is a factual dispute or a dispute over the appropriate resolution of the case. To implement fully this recommendation will take a

collaborative effort on the part of the entire criminal justice system. It will require the police to get police reports to prosecutors and public defenders earlier than is now the case. It will require prosecutors to review cases earlier than is currently done. It will also require that the district attorney's office place an experienced criminal justice professional in charge of screening rather than a paralegal or a new prosecutor. It will require public defenders to review the discovery with their clients and to perform an initial investigation.

**Recommendation Thirty-Two: Mandate that prosecutor decisions be communicated to the public defender as early as possible.** This communication is a vital part of the reform needed in this system and has been a recommendation of the *Kurth Report* as well as the BJA CCTAP May 2010 Problem Definition Report. There is simply no justification for decisions being made not to prosecute but not communicated immediately to the CPDO. The result of failure to communicate these decisions has been defendants remaining in jail and defenders continuing to work on cases which the prosecutor has already decided not to pursue. This present situation is costly to the parish housing inmates whose cases are not likely to be prosecuted, costly to the public defender's office, and demeaning to the system of justice. It also contributes to the uncertainty among all parties regarding the number of current open cases handled by the CPDO.

**Recommendation Thirty-Three: Prosecutors should comply with time limits and judges should hold them to it.** The consultant was informed that public defenders have to file habeas petitions in well over 100 cases annually due to prosecutors allowing the accused to languish in jail past the statutory period of 45 days for misdemeanors and 60 days for felonies. This is an immense waste of time, as well as being costly to the parish budget. In addition, prosecutors know that all they have to do once a habeas is filed is to make a filing decision, thereby mooting out the 60 day requirement. Judges should enforce the 60 day time limit by releasing inmates from jail and dismissing the charges against them.

**Recommendation Thirty-Four: Prosecutors should release the "priority list" a month in advance.** It is essential that public defenders with a heavy caseload be able to prepare cases for trial. This is particularly important when defenders carry heavy caseloads and are constantly triaging some cases in order to prepare for trial for other cases. A "priority list" has been developed that requires prosecutors to inform public defenders what cases will be tried and in what order. However, one judge indicated that prosecutors are not providing the priority list to the CPDO a month in advance as is required. As a result, public defenders do not know which cases to prepare for trial. This results in public defenders not being prepared, having to file continuance motions, and justice being delayed for clients.

**Recommendation Thirty-Five: Vigorous efforts should be made to reduce bonds.** Pretrial incarceration is not intended to be punishment or a device to coerce a guilty plea. Rather, the sole purpose of incarceration pretrial is to ensure that the accused person will show up for court. Most persons charged with a crime can be safely released on their own recognizance or on a small bond. At present, far too many people in Calcasieu Parish are being held pretrial on high bonds. This situation is particularly egregious given the lack of contact with clients by the CPDO and the absence of vigorous bond advocacy. One result is

*Review of Management and Organization of the Public Defender's Office in Calcasieu Parish (Lake Charles), Louisiana: Observations and Recommendations.* BJA Criminal Courts Technical Assistance Project. Assignment No. 4-145. American University. September 2010.

increased costs to the parish. A second result is the increased difficulty public defenders have in contacting their clients. Perhaps most significantly, high bonds result in the loss of employment, exacerbating the problems suffered by the accused persons and their families.

**Recommendation Thirty-Six: Scrutinize eligibility more thoroughly.** Public defender resources are precious and should be carefully guarded. This is public money spent to ensure that the Sixth Amendment right to counsel is being upheld. In Calcasieu Parish, appointments are far too often being made without ensuring that the defendant requesting counsel cannot afford counsel. At the RC hearing observed by CCTAP consultants, both for the current public defender office review and the earlier general review of the criminal case process, appointments were being made rapidly, every 15 or so seconds, with no apparent scrutiny of the eligibility criteria, and no questioning, with rare exceptions, of the person. One attorney said, "Basically, if you are in jail and need a lawyer, you are appointed." Judges acknowledge that there is little scrutiny occurring. One judge estimated that the CPDO is appointed to 90% of the cases. It is estimated that 15% or so of the appointments are made for persons who could afford private counsel. Staff from the CPDO stated that they have been appointed to physicians, off-shore workers, and persons earning over \$200,000. While anecdotal evidence is no excuse for the failure to appoint, it is equally wrong to appoint everyone to a public defender thereby increasing the caseload problem for the CPDO. The procedure outlined in LSA-R.S. 15:175 should be followed.

**Recommendation Thirty-Seven: Establish a funding formula to ensure parity with the prosecution function.** Principle # 8 of the ABA *Ten Principles* is that there is "parity between defense counsel and the prosecution with respect to resources..." There is no parity now in Calcasieu Parish. Information should be gathered that would allow for a comparison of the CPDO resources and the DA's resources. Then a formula should be devised that would ensure that the CPDO is funded similarly to the DA's office. One judge said that he had "fundamental issues with funding. Why don't they have a level playing field? We don't treat the CPDO like anyone else. We require them to live off court costs. They're treated like red-headed step-children."

**Recommendation Thirty-Eight: Judges should honor the contracts that are signed between the CPDO and conflict attorneys.** The CPDO has entered into contracts with private lawyers for them to each handle 200 felony cases. Judges should play no role in the enforcement of these contracts. Of course, judges must be assured that the CPDO will meet its responsibility to make available sufficient conflict lawyers to the judiciary for them to be able to make appointments to eligible conflict clients.

**Recommendation Thirty-Nine: Include the CPDO in the criminal justice tax.** There is a Calcasieu Parish criminal justice tax that contributes significantly to funds now accumulating in the offices of the local judiciary and district attorney. The common metaphor for the criminal justice system is a three-legged stool, with the deficit in one of the legs being harmful to the entire system. Such is the situation in Calcasieu Parish. There is no reasonable justification for not including the CPDO as a beneficiary of this tax, particularly since the CPDO represents 90-95% of the persons arrested. A tax to fund the criminal justice

system is an excellent idea. Confining that tax to two legs of the stool is guaranteed to result in a system that underfunds public defense. One of the lawyers with the CPDO expressed a commonly held belief that Calcasieu Parish has the largest law enforcement component comparatively in the nation. If this is true, this provides further justification for including the CPDO in the criminal justice tax.

**Recommendation Forty: Hire a judge, a prosecutor, and two public defenders, using the alleged \$4 million District Attorney's fund now collecting interest and/or resources in the Sheriff's Fund in order to bring the pending caseload current.** The backlog in the CPDO is serious and getting worse every day. One judge told the consultant that he believed that the system would collapse within the year. One important step that could be taken to address this situation would be to bring in additional personnel to work exclusively on the backlog, specifically: a retired judge, prosecutor, and two defense lawyers. This personnel augmentation could be paid for with funds being held at present by the District Attorney's Office and/or the Sheriff's Fund, if the information regarding this fund is correct.

**Recommendation Forty-One: Consider having several district judges exclusively handle a criminal docket.** A suggestion has been made to have several of the district judges handle exclusively criminal cases. This idea was not addressed in the BJA CCTAP May 2010 Problem Definition Report, but the idea was repeated during the consultant's site visit by both public defenders and district judges. The proposal has merit and should be considered, at least during the time when the backlog is being addressed.

**Recommendation Forty-Two: The Criminal Justice Coordinating Council should examine charging practices to determine whether overcharging is occurring.** There are more felonies than misdemeanors in the CPDO caseload. That is unusual and often indicative of charging practices that result in charges that are much too high at the beginning of a case and subsequently reduced at disposition. One attorney said that "every sex offense is charged as an aggravated rape." Another attorney stated that all marijuana possession cases are charged at a higher level. The result is that judges set high bonds, and persons remain in jail far beyond an appropriate time period, costing the system greatly.

**Recommendation Forty-Three: The Sheriff and the District Defender should work together to ensure that jail policies facilitate easy and efficient access to clients by the CPDO staff.** One lawyer noted that the logistics at the jail interfere with the efficient use of attorney time. He stated that you "may be able to meet three clients in a four hour period." If this is the case, it needs to be remedied. High caseload public defender offices play a vital role with the incarcerated population. They are the voice for the client, they monitor jail conditions, they assess clients for mental health issues, and they advocate that clients be released from jail. However, in order for them to play their proper role, they must have easy access to their clients. Waiting times, lunch hours, and such need to be adjusted to give attorneys access to their clients when they need to see them.

**Recommendation Forty-Four: Examine the practice of misdemeanor probation and pretrial diversion being supervised by the District Attorney's Office and develop pretrial release options run by the court or an agency reporting to the court and which do not require defendants to pay fees.** A persistent question raised in Calcasieu Parish is the issue of the DA's office having a source of funds through overseeing probation and pretrial diversion. One private lawyer stated that this practice was the "biggest source of revenue" for the district attorney's office. "Pretrial diversion is the same way." He said that the practice is that if the DA's fee is paid, the client will fare better on probation revocation. One judge stated that district attorneys have a "money machine" in their oversight of pretrial diversion. He had heard that "\$2400 is the price...They are a collection agency." Another private lawyer said that "DA's are taking every case and then diverting cases to make money." This creates conflicts of interest and raises a question of the use of professional discretion on the part of the DA's Office. Pretrial release and diversion should not be run by the prosecutors as a money making proposition. Serious efforts should be made to explore mechanisms to provide pretrial release and supervision options under the supervision of the court or other agency reporting to the court.

**Recommendation Forty-Five: Officials in the CPDO, the courts, and Corrections should work together to ensure that adequate space is provided to counsel for a professional and confidential interview with accused persons, particularly juveniles.** Principle #4 of the ABA *Ten Principles* is that "Defense counsel is provided sufficient time and a confidential space within which to meet with the client." Corrections officials assured the consultant that there were adequate spaces for attorney client visits. The consultant utilized one of the rooms, which was indeed adequate. However, interviews were also being conducted at the RC hearing, which is not a space that allows for professional or confidential communication. In addition, the juvenile lawyers are often required to interview their clients in the hallway. Efforts need to be made to improve the space for lawyers representing juveniles to speak with their clients.

**Recommendation Forty-Six: Take the next step with the BJA Criminal Courts Technical Assistance Project by inviting collaboration of all parts of the criminal justice system to solve the crisis in Calcasieu Parish.** A general review of the criminal case process should be conducted, as recommended in the May 2010 Problem Definition Report, with a view to developing a comprehensive caseflow management plan, with appropriate policies and practices, to promote an efficient caseflow process and the adaptation of acceptable principles of caseflow management. These include: early and continuous judicial supervision of case progress; credible hearing/trial dates; observance of time standards and goals; an information system to support caseflow management; and ongoing interagency communication and consultation.

## APPENDIX

### METHODOLOGY

#### Materials Reviewed

The following materials, compiled by state and local public defender officials, were reviewed prior to or during the site visit:

- A report entitled “Defending the Indigent in Southwest Louisiana” (2004), prepared by Michael Kurth and Daryl Burckel (hereinafter the Kurth Report)
- “An Assessment of Trial-Level Indigent Defense Services in Louisiana 40 Years after *Gideon*” prepared by NLADA (2004)
- “Calcasieu Case Count Report” prepared by Kilborn and Stilling (2010)
- Richard B. Hoffman & Hon. John T. Parnham, *Review of Criminal Caseflow Practices and Impact on Indigent Defense in the Calcasieu Parish 14<sup>th</sup> District Court, Lake Charles, Louisiana* (BJA/AU Criminal Courts Technical Assistance Project: TA Report No. 4-141, May 2010).
- 14<sup>th</sup> Judicial District Public Defender’s Office Annual Reports (2008 & 2009)
- Calcasieu Parish Public Defenders’ Office Employee Manual (undated)
- “Behind Bars in Calcasieu Parish” (2009) prepared by the Louisiana Justice Coalition
- Indigent Defense Board “Profit and Loss” statements for 2006-2009
- Total Current Annual Revenue and Expenditure Budgets for the 14<sup>th</sup> JDC (May and June 2010)
- Budget Request for FY 2011
- List of Personnel written by Mitchell Bergeron
- Employment Agreement (sample)
- Letters from Andrew Casanave to Mitchell Bergeron dated February 3, 2009 and November 4, 2009
- Letter from Andrew Casanave to the Ethics Counsel Richard Lemmler
- Letter from Eric Barefield to Andrew Casanave dated April 22, 2010
- Salary Figures of the District Attorneys Office (undated)
- LPDB Field Report dated May 27-28, 2010
- Statistical Data from the Louisiana District Courts 2009 Annual Report
- Letter to Erik Stilling from Dr. Hugh Collins, Judicial Administrator of the Louisiana Supreme Court
- Letters from Mitchell Bergeron to Jean Faria dated February 5, 2009 and June 15, 2009
- Letter from Jean Faria to Ernie Lewis dated June 17, 2010
- Cooperative Agreement between John Derosier and the District Public Defender
- 2010 Calcasieu Parish Police Jury Annual Budget for the District Judges and the District Attorneys Funds
- 2010 Calcasieu Parish Police Jury Annual Budget for the District Attorney’s Office

- Basic Financial Statements and Independent Auditors' Report of the District Attorney's Office of the 14<sup>th</sup> Judicial District December 31, 2007 and 2008
- Letter from Jean Faria to Mitchell Bergeron dated June 22, 2010
- E-Mail from Erik Stilling dated May 28, 2010
- Letter from Judge Wyatt to Mitchell Bergeron dated June 24, 2010
- Letter from Jean Faria to Judge Wyatt dated November 25, 2009 with attached letters from Mitchell Bergeron and felony staff attorneys
- A wide variety of e-mails
- Personal observations during the Right to Counsel Hearing
- File Reviews of 20+ felony case files in the Public Defender's Office while on site
- Pleadings in the case of *Anderson et al. v. State of Louisiana et al.*, Docket No. C545852, Sec. 24, Parish of East Baton Rouge, State of Louisiana.

### **Interviews Conducted on Site**

In addition, I conducted personal interviews with the following individuals:

- King Alexander, CPDO felony attorney
- Ed Bauman, Conflict Contract Lawyer, CPDO
- Mitchell Bergeron, Executive Director of CPDO
- Eugene Bouquet, Conflict Contract Lawyer, CPDO
- Darren Boyd, Warden, Calcasieu Parish Jail
- Judge Bradbury, 14<sup>th</sup> Judicial District Judge
- Michelle Breaux, former conflict contract lawyer, private criminal defense lawyer in Lake Charles
- Daniel Burkhalter, Deputy Warden, Calcasieu Parish Jail
- James Burks, former conflict contract lawyer, private criminal defense lawyer in Lake Charles
- Judge Mike Cannady, 14<sup>th</sup> Judicial District Judge
- Andrew Casanave, CPDO felony attorney
- John Di Giulio, Trial Compliance Office, LPDB
- Jean Faria, Louisiana Public Defender, LPDB
- Harry Fontenot, Juvenile and Misdemeanor Supervisor, CPDO
- Doug Hall, Conflict Contract Lawyer for CPDO, CINC cases
- Tom Lorenzi, private criminal defense lawyer in Lake Charles
- Thad Minaldi, Conflict Contract Lawyer for CPDO
- Michael Ned, CPDO felony attorney
- Charles St. Dizier, Life Conflict Contract Attorney for CPDO
- Wade Smith, Misdemeanor Contract Attorney for CPDO
- Ron Jackson, Investigator Supervisor for CPDO
- Jennifer Motte, Conflict Contract Lawyer for CPDO
- Judge David Ritchie, 14<sup>th</sup> Judicial District Judge
- Vic Salvatore, Head of Corrections, Calcasieu Parish

- Walt Sanchez, private criminal defense lawyer in Lake Charles
- Judge Kent Savoie, 14<sup>th</sup> Judicial District Judge
- Mike Stratton, CPDO, CINC cases
- Glen Vamvoras, Conflict Contract Lawyer, CPDO
- Clay Walker, Deputy Louisiana Public Defender
- Judge Ron Ware, 14<sup>th</sup> Judicial District Judge
- Necole Williams, Juvenile Attorney for CPDO
- Ralph Williams, CPDO felony attorney

In addition, a group interview was conducted with all CPDO support staff