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DEFENDING THE INDIGENT IN SOUTHWEST LOUISIANA

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EXECUTIVE SUMMARY

This study examines the provision of legal services to indigent persons accused of felony crimes in Southwest Louisiana. It considers the funding, staffing and case load of the Calcasieu Parish Public Defender's Office, the amount of contact public defenders have with their clients, the resources available to the District Attorney's Office vis-à-vis the Public Defender's Office, as well as the process for assigning judges to cases and setting the court docket.

We find that there is a lack of client contact, little investigative and/or legal work performed on cases prior to trial, no use of experts, and minimal assertion of clients' legal rights. We identify two reasons for this: one is a lack of resources to carry out the public defense mission, and the other is a judicial process that tolerates delays. The felony caseload of attorneys in the Calcasieu Parish Public Defender's Office is three times greater than state caseload guidelines recommend, and the average time from arrest to disposition of a felony case in Calcasieu Parish is 501 days, compared to a national average of 214 days. This slow pace of justice more than doubles the number of open felony cases in the parish.

It is our conclusion that the Calcasieu Parish Public Defender's Office needs additional funding, but unless this is accompanied by judicial system reform the cost of bringing the office into compliance with state and national guidelines will be extremely high.

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I. INTRODUCTION

This study examines the provision of legal services to indigent adults accused of a serious crime in Calcasieu Parish, Louisiana. Work on the study began in the fall of 2001. At that time nearly everyone involved in the judicial process in the parish—judges, the District Attorney's Office, the Public Defender's Office, private defense attorneys, the Sheriff's Department, and those accused of crimes—acknowledged there were serious problems in the parish. The Public Defender's Office, which represents nearly 90 percent of the approximately 3,000 persons accused of felony crimes in Calcasieu Parish each year, is overburdened. Cases often languish three years or more before they are finally resolved, and then it is almost always by a plea bargain. Thus, innocent people may sit in jail for months awaiting trial if they are unable to make bond, while those who can make bond are forced to live in a prolonged world of uncertainty. This raises serious questions about how well the indigent are being represented in Calcasieu Parish.

Prior to this study, the evidence of these problems was largely anecdotal and everyone had their favorite story to tell. The first task of the study was to gather data and convert it to a form that would lend itself to analysis. To determine the legal experience of indigents we decided to track the cases of all those charged with a felony in March of 1997, 1999 and 2001, a sample of 770 persons. To evaluate the activities of the public defenders we examined a random sample of 182 case files—one out of every 50 they had open—as well as jail visitation records. To evaluate the quality of public defenders compared to private defense attorneys, we surveyed and interviewed local attorneys with an active criminal practice. The results of these surveys are contained in appendices I, II

and III. In addition, we incorporated data from various other studies and from publications put out by the Department of Justice and the Louisiana Supreme Court.

The cooperation we received from all parties was quite remarkable. The Public Defender's Office gave us complete access to their files, as did the District Attorney's Office, which even provided us with on-line access to their files. The Calcasieu Correctional Center was also extremely helpful in providing us their files and visitation records, and the judges were very open and candid in their discussions with us. It is our sincere hope that the findings of this study will provide a foundation upon which these parties can work together to structure a more efficient legal process in Calcasieu Parish.

This study was funded by a grant from the ABA Gideon Initiative, a grant program of the American Bar Association's Standing Committee on Legal Aid and Indigent Defendants, which was supported by an award the ABA received from the Open Society Institute. The purpose of the study was to examine the provision of legal defense to indigents in Southwest Louisiana and recommend changes. It was done under the direction of Michael M. Kurth, PhD (economics) and Daryl Burckel, CPA & DBA with assistance from Gary Proctor and various interns from the Louisiana Crisis Assistance Center. However, Dr. Kurth and Dr. Burckel are solely responsible for the conclusions and recommendations contained in the study.

II. BACKGROUND

A. The Mandate for Indigent Defense

The U.S. Supreme Court, in a series of landmark decisions in the nineteen-sixties and seventies, ruled that the Sixth Amendment to the U.S. Constitution requires free legal counsel be provided to indigent persons charged with a crime that could result in their imprisonment.[1] The states complied in a variety of ways: some established *public defender offices* (hereafter referred to as PDOs) with salaried staff attorneys to represent the indigent; some developed *assigned counsel systems* in which the court appoints private attorneys to represent the indigent; while others awarded contracts to an attorney or group of attorneys to handle indigent cases. Many jurisdictions use a combination of two or all three to meet their obligation.

According to a 1999 Justice Department survey, 82% of all indigent cases in large counties are handled by PDOs, 15% by court-appointed attorneys and 3% by contract attorneys.[2] Less populated counties tend to rely on assigned counsel systems, while contract attorneys are most generally used to handle overflow cases and conflicts of interest (e.g., where there are two defendants charged with the same crime), although in

[1] In Gideon v. Wainwright (1963) the Supreme Court held that states must provide counsel to all indigents accused of a serious crime in their jurisdictions; in Gault (1967) it extended this to juveniles facing possible incarceration; and in Argersinger v. Hamlin (1972) it ruled this included those charged with petty offenses that carried a possible sentence of incarceration.

[2] *Indigent Defense Services in Large Counties, 1999* (Bulletin, Bureau of Justice Statistics, November 2000)

recent years some jurisdictions have replace their assigned counsel systems with contracting.[3]

Table 1

Indigent Defense Delivery Systems Used by Local Jurisdictions, 1992	
Per cent of Prosecutor's Offices Reporting Type of Indigent Defense System, by Jurisdiction	
Public defender program only	28%
Assigned counsel system only	23
Assigned counsel and public defender	23
Contract attorney system only	8
Public defender and contract system	8
Assigned counsel, public defender and contract attorneys	6
Assigned council and contract	3
Other	1

Source: *Indigent Criminal Defense: A National Perspective (A BJS Report),* Bureau of Justice Statistics, Alaska Justice Forum, 13(2), Summer 1996.

The survey also found a great deal of variation within these systems. For example, twenty-eight states had a uniform statewide system; fourteen allowed local jurisdictions to make their own arrangements; and eight used a hybrid system of state and local control. Financing also varied, with twenty-one states relying exclusively on state funds; eleven relying on county funds; and sixteen relying on a combination of state and county funds. Moreover, in recent years there has been a trend towards increased use of filing

[3] *Contracting for Indigent Defense Services: A Special Report* US Department of Justice, Office of Justice Programs, December 2000.

fees, cost recovery, and/or court costs assessments to help meet the demand for free public counsel.[4]

Public defenders appear to be the most cost effective means of providing indigent defense with an average cost per case of $258 (see Table 2). This is likely due to economies of scale where a large number of similar cases can be handle at a lower cost-per-case by one large office, which would not be applicable in smaller jurisdictions. Contracting, on the other hand, tends to have a higher per-case cost, although there is evidence that a properly structured system of contracting may be cost-effective and deliver high-quality services.[5]

Table 2

Expenditures per Case in the 100 Most Populous Counties, 1999

Public Defender	Assigned Counsel	Contract Attorneys
$258	$400	$490

Source: Bureau of Justice Statistics, *National Survey of Indigent Defense Systems, 1999*

[4] Spangenberg, Robert L. and Marea, Beeman L., *Indigent Defense Systems in the United States* (Journal of Law and Contemporary Problems, Duke University School of Law, Volume 58 Winter 1995 No. 1)

[5] *Contracting for Indigent Defense Services: A Special Report,* US Department of Justice, Office of Justice Programs, December 2000.

This hodge-podge of programs has led to very different legal experiences, depending upon the jurisdiction in which one is charged, raising questions as to the fairness of the system. It has been said that "the quality of justice that an innocent person receives should not vary unpredictably among neighboring counties. If two people are charged with identical offenses in adjoining jurisdictions, one should not get a public defender with an annual caseload of 700 while the other has 150; one should not get an appointed private lawyer who is paid a quarter of what the other lawyer is paid; one should not be denied resources for a DNA test, or an expert or an investigator, while the other gets them; one should not get a lawyer who is properly trained, experienced and supervised, while the other gets a neophyte."[6]

But the U.S. Constitution limits the federal courts' power to impose uniform procedures on state and local courts. In February 2002 the House of Delegates of the American Bar Association adopted a set of ten principles that they believed must be met for a public defense system to "deliver effective and efficient, high quality, ethical, conflict-free representation to accused persons who cannot afford to hire an attorney."[7] The Ten Principles are equally applicable to every type of indigent defense system, including assigned counsel programs, contract defender programs, or public defender programs. These principles are reprinted on the following two pages.

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[6] Redefining Leadership for Equal Justice: Final Report of the National Symposium on Indigent Defense, 2000. Office of Justice Programs/Bureau of Justice Assistance, U.S. Department of Justice, 2001, p. 14.

[7] The resolution may be accessed at http://www.abanet.org/legalservices/downloads/sclaid/10principles.pdf

The ABA'S Ten Principles of a Public Defense Delivery System

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

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 private bar participation may include part time defenders, a controlled assigned counsel plan, or contracts for services. The appointment process should never be ad hoc, but should be according to a coordinated plan directed by a full-time administrator who is also an attorney familiar with the varied requirements of practice in the jurisdiction. Since the responsibility to provide defense services rests with the state, there should be state funding and a statewide structure responsible for ensuring uniform quality statewide.

3. Clients are screened for eligibility, and defense counsel is assigned and notified of appointment, as soon as feasible after clients' arrest, detention, or request for counsel. Counsel should be furnished upon arrest, detention or request, and usually within 24 hours thereafter.

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

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

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

ethical, high quality representation.

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

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. There should be parity of workload, salaries and other resources (such as benefits, technology, facilities, legal research, support staff, paralegals, investigators, and access to forensic services and experts) between prosecution and public defense. Assigned counsel should be paid a reasonable fee in addition to actual overhead and expenses. Contracts with private attorneys for public defense services should never be let primarily on the basis of cost; they should specify performance requirements and the anticipated workload, provide an overflow or funding mechanism for excess, unusual or complex cases, and separately fund expert, investigative and other litigation support services. No part of the justice system should be expanded or the workload increased without consideration of the impact that expansion will have on the balance and on the other components of the justice system. Public defense should participate as an equal partner in improving the justice system. This principle assumes that the prosecutor is adequately funded and supported in all respects, so that securing parity will mean that defense counsel is able to provide quality legal representation.

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

10. Defense counsel is supervised and systematically reviewed for quality and efficiency according to nationally and locally adopted standards. The defender office (both professional and support staff), assigned counsel, or contract defenders should be supervised and periodically evaluated for competence and efficiency.

While the obligation to provide free legal counsel to the indigent is not a mandate to provide free public counsel to all who request it, in many jurisdictions the eligibility criteria for receiving public legal services have been continually expanded or even ignored. At the same time, criminal law has become ever more complex, and the cost of retaining private counsel has risen, putting such representation out of reach for many

citizens. Thus, we have reached the point where today it is not uncommon for public defenders to represent up to 90 percent of all felony defendants in a jurisdiction.

Although attorneys have an ethical obligation to not accept additional clients if it will diminish their ability to serve their existing client, many states leave this decision to the PDO. In Louisiana, the chief indigent defender has the authority to request that the court appoint private counsel to represent indigent defendants in the event of inadequate personnel.[8] But self-policing does not always work: some public defenders may feel intense personal and political pressure not to reject cases that have been assigned to them by judges,[9] and often these funds to pay private counsel come from the same indigent defender budget that funds the PDO. Thus, an issue that must be addressed when considering the appropriate funding level for a PDO is the appropriate scope of its services.

B. Indigent Defense in Louisiana

The indigent defense system in Louisiana has been described as fragmented and localized. While the state constitution granted the right of a court-appointed attorney to any indigent person charged with a crime that could result in their imprisonment, it left it to the state legislature to establish "a uniform system for securing and compensating qualified counsel for indigents." The legislature established district Indigent Defender Boards (IDBs) composed of three to seven members appointed by the district court from nominees submitted by the local bar associations. The IDBs have the task of deciding which system of indigent defense is best suited for their districts. Calcasieu Parish, along

[8] Louisiana Criminal Procedure, Section 145(B)(2)(b)
[9] Keeping Defender Workloads Manageable, US Department of Justice, Office of Justice Programs, Bureau of Justice Assistance, 2001.

with Orleans Parish, Caddo Parish and East Baton Rouge Parish, chose to establish a Public Defender's Office augmented by contract attorneys who handle case overloads and conflicts of interest, such as when two or more persons are charged with the same crime. Most of the other parishes utilize contract attorneys to represent the indigent.

In 1994 the Louisiana Supreme Court created the Louisiana Indigent Defense Board, later reconstituted by the legislature as the Louisiana Indigent Defense Assistance Board (LIDAB), an umbrella organization with responsibility for establishing and enforcing indigent defense qualification and performance guidelines throughout the state. Thus far, this board has set the following three mandatory statewide standards:[10]

- The trial of capital cases requires two certified attorneys.
- Appeals cases may be handled only by certified attorneys.
- Private attorneys working as full-time staff members on district boards can not practice criminal law in their respective districts, but may practice civil law if it does not conflict with their duties.

Initially LIDAB had little power to enforce the standards it set, but now it is an agency within the Governor's Office and has a budget of approximately $7.5 million, approximately $3 million of which is distributed to local indigent defender boards that demonstrate they are making strides toward complying with the LIDAB standards. These funds include district assistance grants based upon population and caseload levels. In 1997, the LIDAB implemented a fully-funded statewide appellate project and began

[10] *Redefining Leadership for Equal Justice: Final Report of the National Symposium on Indigent Defense 2000 (Office of Justice Programs/Bureau of Justice Assistance, U.S. Department of Justice, 2001), at 16-17.*

administering a statewide capital project that oversees a small proportion of the state's capital trial cases.[11]

At the local level, the primary source of funds for indigent defense is court costs and fees, the majority of which are for traffic violations. A pilot program using application fees was recently launched in one judicial district and the Calcasieu Parish Indigent Defense Board has been receiving a portion of the forfeiture fees imposed on bail bonds since 1999, but most observers agree that adherence to national caseload standards will require far more funding than the amount currently available.

C. Indigent Defense in Calcasieu Parish

The Calcasieu Parish IDB consists of seven attorneys appointed by the 14th District Court. The board utilizes a Public Defender's Office augmented by contract attorneys, and it is responsible for appointing and supervising the executive director of the PDO as well as setting the salaries of the PDO's attorneys and staff and approving its annual budget. The IDB is also charged with maintaining a list of all attorneys in the district—both volunteers and non-volunteers—who are qualified to represent the indigent. The executive director of the PDO has the obligation to request that the court appoint counsel from this list in the event of a conflict of interest or inadequate personnel to handle their caseload. In addition, the IDB oversees programs to collect child support payments, provide counsel to juveniles accused of crimes, and assist the mentally ill or incompetent with their legal problems.

[11] *Comparative Analysis of Indigent Defense Expenditures and Caseloads in States with Mixed State and County Funding,* (Spangenberg Group/ABA Bar Information Program Report, February 25, 1998).

The Calcasieu Parish Public Defender's Office serves the 14th Judicial District Court of Louisiana. The court assigns approximately 90% of the 2,500 to 3,000 felony charges filed in Calcasieu Parish each year to the PDO, and the PDO has one attorney assigned to represent cases in each of the seven criminal divisions of the court. The main sources of funding for the PDO are court costs assessed on traffic fines and, in the last two years, a portion of the bond forfeitures collected by the court. The annual revenue of the Calcasieu Parish PDO is shown in table 3. In 2000 and 2001 the Calcasieu Parish PDO received grants from the Louisiana Indigent Defense Assistance Board totaling nearly $100,000 but these funds were for felony cases only.

Table 3

Revenues of the Calcasieu Parish PDO, 1997-2001

	1997	1998	1999	2000	2001
Court costs on fines and forfeitures	$840,288	$853,590	$878,514	$875,758	$971,571
Reimbursements to PDO	$4,991	$7,791	$4,019	$9,595	$3,445
Intergovernmental Revenue	$0	$960	$0	$32,631	$66,928
Interest Income	$14,783	$6,834	$7,677	$15,044	$6,120
Other Income	$410	$1,548	$0		
Total	$860,472	$870,723	$890,210	$933,028	$1,048,064

III. Resources of the Calcasieu Parish PDO

A. Staff and Salaries

The Calcasieu Parish PDO has a staff of 17 full-time employees consisting of nine staff attorneys (including Executive Director Ron Ware who handles a full case load plus capital cases), an office administrator, two investigators, four secretaries and a receptionist. The PDO also utilizes two contract attorneys--Leah White who handles worthless checks, and Wade Smith who handles child support payments--as well as four conflict attorneys who handle approximately 200 felony cases apiece. Table 4 shows how the staff of the Calcasieu Parish PDO compares to the Calcasieu Parish District Attorney's Office as well as to national averages for District Attorney's Offices encompassing similar populations.

Table 4

Comparison of Staffing, Budget, and Caseloads: Calcasieu Parish and National Medians, Normalized for Population, 2001

	National Median	Calcasieu Parish DA's Office	Calcasieu Parish PDO
Total Staff	82	88	17
Chief Attorney	1	1	1
Staff Attorneys	26	16	7
Supervisory Atty.	4	2	1
Managers	1	1	1
Victims Advocates	4	2	0
Legal Services	2	0	o
Staff Investigators	7	14	2
Support Staff	26	44	5
Other	11	0	0
Budget	$4,461,345	$3,700,000	$1,123,959
Total Caseload	9,837	6,000	5,100
Felony	2,313	3,000	2,550
Conviction rate	83.2%		
Misdemeanor	7,122		
Conviction rate	80.0%		
Felony Jury Vedicts	67	10	8

Source: Prosecutors in State Court, 2001, US Department of Justice, Office of Justice Programs, National Survey of Prosecutors, May 2002.

In addition to too few staff relative to its caseload, the Calcasieu Parish PDO suffers from inadequate salaries and benefits, contributing to a reduced morale and high staff turnover (salaries of attorneys at the PDO range from $30,000 for new attorneys with no experience to $75,000 for the Executive Director). Because of this, the PDO believes that in order to attract qualified attorneys it must permit them to have private practices on the side. But this makes it very difficult to determine how much time the staff attorneys spend representing their PDO clients, and how much is spent dealing with their personal clients. There are some who advocate that all the PDO attorneys be full-time with salaries commensurate with their counterparts in the DA's office, while others believe that prohibiting private practice would cost the PDO some of its most competent and experienced attorneys. As long as private practices are permitted, some form of monitoring such as an electronic time sheet program should be implemented so the amount of work being done for the PDO can be measured.

B. Caseloads

Similar issues arise with respect to the caseloads of the staff. Table 5 shows the assignment of cases within the Calcasieu Parish PDO. With just 9 staff attorneys and 4 contract attorneys, the PDO is obviously over-burdened. Two of the staff attorneys--Isaac and Rubin--tend to specialize in misdemeanor cases, leaving the seven other staff attorneys to handle and average of 590 felony cases, including capital cases and appeals, and 150 misdemeanor cases; each of the contract attorneys handles approximately 200 felony cases.

Table 5

Open Cases, by Attorney: Calcasieu Parish PDO, 2002

	Caseload Ratio	Court Division	Judge	Felony	Misdmnr	Juvenile	Uresa*
Staff Attorneys							
R. Ware	2.0	E	Minaldi	372	68	2	
B. Van Dyke	4.3	H	Gray	769	186		
D. Ritchie	3.3	G	Canady	589	173		
M. Henrich	3.7	D	Wyatt	655	195	1	
M. Ned	3.3	F	Carter	588	147	2	
S. Williams	3.7	A	Savoy	649	176	1	10
S. Coward	2.9	B	Painter	506	154		
S. Isaac	2.2			10	660	176	
C. Rubin	3.8			8	1,677		
Contract Attorneys							
W. Smith	2.4				47		568
L. White	2.0			376	52		
Conflict Attorneys							
B. Vouguet				200**			
M. Breaux				200**			
T. Barrett				200**			
J. Burkes				200**			
Total Open Cases:				4,522	3,535	182	578

* Child support cases
** estimated caseload

In 1973 the National Advisory Commission on Criminal Justice Standards and Goals set the following guidelines for annual public defender caseloads:

> *"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; Mental Health Act cases per attorney per year: not more than 200; and appeals per attorney per year: not more than 25."*[12]

[12] National Advisory Commission on Criminal Justice Standards and Goals, Task Force on Courts, *Courts* (Washington, D.C., 1973), p. 186. These standards did not include capital cases.

The Louisiana Indigent Defense Assistance Board has adopted its own caseload standards that are more lenient than those of the National Advisory Commission. The LIDAB recommends that "the caseload of a staff, contract, or appointive counsel representing indigent defendants should not exceed the following ranges:"[13]

Capital Cases	3-5
Cases Carrying Automatic Life	15-25
Non-Capital Felonies	150-200
Misdemeanors	400-450
Traffic	400-450
Juvenile	200-250
Mental Health	200-250
Other Trial Cases	200-250
Capital Appeals	3-5
Non-Capital Felony Appeals	40-50

Not all cases require the same amount of time and resources and capital cases are particularly demanding. As the Louisiana Supreme Court has noted, "[d]eath, in its finality, differs more from life imprisonment than a 100-year prison term differs from one of only a year or two."[14] According to records in the Clerk of Court's office, sixteen capital indictments were filed in Calcasieu Parish in 2002 (see Table 6). Of these, notice of the intent not to seek the death penalty was given in only one case and notice of intent to seek the death penalty was given in four cases. No notice had been given either way in the other eleven cases. Because a defense lawyer must act as if the death penalty will be sought until notified otherwise, there were effectively fifteen new cases in 2002 in which

[13] Standard 12-2.1, Standards of Indigent Defense for the State of Louisiana, Louisiana Indigent Defense Assistance Board, http://www.lidab.com/standards.htm.
[14] *State v. Myles*, 389 So. 2d 12, 30 (La. 1980)

TABLE 6

Capital Cases filed in Calcasieu Parish, 2002

Defendant	Charge	Docket number	Counsel(s)
*John Simon	1st Degree Murder		
*Michael Guillory	1st Degree Murder	23415-02E	Ron Ware
*Adrian S. Citizen	1st Degree Murder	22,815-02H	**Judge Gray, Ware**
*Mark A. Dittmer	Aggravated Rape	22,798-02H	Judge Gray, Davidson
*Luther Deel	Aggravated Rape	21,323-02B	Judge Gray, Davidson
*Dustin C. Ducote	Aggravated Rape	20,640-02H	Judge Gray, Davidson
*Daniel Holland	Aggravated Rape	20,639-02H	Judge Painter, Coward
*Wilbert Rideau	1st Degree Murder	15,321-01E	**Ron Ware (Kendall and Murray)**
*Jimmy Dorris+	Aggrevated Rape	15,111-02H	Judge Gray, Davidson
Jonathan E. Boyer	1st Degree Murder	14,005-02B	**Thomas Lorenzi, Stephen Singer**
*Zavier Lewis	Aggravated Rape	14,003-02D	Judge Wyatt, Henrich
*Chester L. Mercantel	1st Degree Murder	12,317-02G	*Not listed*
Ben Tonguis	1st Degree Murder	10,272-02H	**Ron Ware, David Ritchie**
Eric D. Crawford	1st Degree Murder	10,271-02D	**Ron Ware**
Ricky J. Langley	1st Degree Murder	10,258-02H	Clive Stafford Smith, Phyllis Mann
*Rock A. Doucet	Aggravated Rape	7,109-02E	Judge Minaldi, Ware
Frazen Chesson	Aggravated Rape	13601-96G	Thomas Lorenzi, LCAC
Charles Winfree	1st Degree Murder	6359-01	Clive Stafford Smith, Charles St. Dizier
Broderick Turner	1st Degree Murder	6359-01	Thomas Lorenzi, Walter Sanchez
Nathaniel Smith	1st Degree Murder	6359-01	Phyllis Mann, Robert Pastor
Reginald Gauthier	1st Degree Murder		James Boren, Glen Vamvoras
Eddie Mitchell	1st Degree Murder	6308-92D	Clive Stafford Smith, Thomas Lorenzi

* Notice of intent to seek death penalty not yet received

the defendant's life was at stake. Earlier notice by the DA's Office of whether or not a case will be tried as a capital case would allow the PDO to allocate its resources more efficiently.

The Executive Director, Ron Ware, is currently handling four capital cases, including two where notice has been given that the death penalty will be sought (see Table 6). In addition, Mr. Ware has three other cases where capital notice has not been filed. According to LIDAB standards, such a caseload requires the attention of one full-

time attorney, yet Mr. Ware also has 372 felony cases and 68 misdemeanor cases in addition to his duties as Executive Director. In addition, the Calcasieu Parish PDO is currently assigned 30 cases with a mandatory life sentence. The LIDAB standard is that 15 to 20 such cases per attorney should constitute a full caseload.

Thus, the 2002 average caseload in the Calcasieu Parish PDO is more than 3 times the LIDAB standard and more than 4 times the national standard. This heavy caseload does not simply mean that its staff is over-worked and underpaid. We found ample evidence that the clients of the PDO also suffer. As discussed further on in this study, the quality of legal services provided to indigent defendants in Calcasieu Parish is far below national norms and much of this can be traced back to the caseload problem.

In order to meet these standards, either the number of open cases assigned to the Calcasieu Parish PDO must be reduced by two-thirds, or its staff would need to be expanded to 39-46 full-time attorneys: 23-30 attorneys handing felony cases, 10 attorneys handling misdemeanor cases, 3 attorneys to handle capital cases and cases carrying automatic life sentences, one to handle appeals, one to handle juvenile cases, and one to handle Uresa (child support) and "other" cases.

C. The Budget of the PDO

There are various benchmarks that can be used to evaluate the funding levels of PDOs. One is the average expenditure per case handled. According to data published by the U.S. Bureau of Justice Statistics, the average cost per case handled by PDOs in the

nation's 100 most populous counties was $258 in 1999.[15] This figure is obtained by dividing the total operating expenses of the PDO by the number of cases (felonies, misdemeanors and appeals) handled in a year. When this calculation is made for Calcasieu Parish it shows an average cost per case of $110. While costs can vary depending upon the number and type of cases a PDO handles, this is significant evidence that the Calcasieu IDB is under-funded relative to its caseload.

Another benchmark is the *per capita* cost of financing indigent defense. This number is obtained by dividing the budget of the PDO by the population of the area it serves. In 1999 the average cost of indigent defense in the 100 largest counties in the US was about $10 per resident;[16] in Calcasieu Parish it is just $6.12 per resident. Although some jurisdictions have higher crime rates and/or more poverty than others, this measure also suggests the Calcasieu Parish PDO may be under-funded.

Table 7

Budget of the Calcasieu Parish PDO and Benchmarks

Basis	Benchmark	Calcasieu Parish	Needed to Meet Benchmark
Per Case	$258	$110	$2,330,514 *
Per Capita	$10.00	$6.67	$1,828,420
Per DA Budget	$4,267,667	$1,200,000	$3,627,517

* Assumes a reduction of 2,200 backlogged cases

[15] Indigent Defense Services in Large Counties, 1999, US Department of Justice, Bureau of Justice Statistics, November 2000.
[16] Ibid.

Some believe that the most relevant comparison is between the resources of the District Attorney's Office and the Public Defenders Office.[17] In 2002 the Calcasieu Parish District Attorney's Office had a budget of $3.7 million and a staff of 88 fulltime employees, including 19 attorneys and 14 investigators, as well as access to forensic testing, expert witnesses, and the investigative resources of local law enforcement agencies. The Southwest Regional Criminalistics Laboratory is based in Lake Charles and performs analysis for the prosecution without cost to the District Attorney. The prosecution also draws upon the resources of the police departments in each jurisdiction within the parish, as well as the Calcasieu Parish Sheriff's Office and, less commonly, other state agencies and the Federal Bureau of Investigation. By comparison, the budget of the PDO is $1.2 million and it has a staff of 9 staff attorneys and just 2 investigators[18].

Any consideration given to increasing the PDO's budget must focus on identifying specific needs and shortcomings within the PDO; just throwing money at a problem will not solve it. Table 8 provides a breakdown of the PDO's expenditures from 1997-2000 and shows that these funds are principally used for salaries and related benefits (58%), professional service including contract attorneys (23%), and rent (10%). All other expenses, including supplies, travel and utilities, amounted to only

[17] For example, see *"Parity: The Fail-safe Standard,"* by Scott Wallace in Compendium of Standards for Indigent Defense Systems: A Resource Guide for Practitioners and Policymakers, US Department of Justice, Office of Justice Programs, Bureau of Justice Assistance, 2001.

[18] The DA's office has a larger caseload than the PDO because they also prosecute cases where the defendant has a private attorney. Although the DA's office was unable to identify what proportion of their resources were devoted to cases with private attorneys, we suspect it is no more than 25% of their total budget.

Table 8

Calcasieu Parish PDO Expenditures, 1997-2000

Expenditures:	1997		1998		1999		2000	
Salaries & Benefits	$ 535,276	59%	$ 599,065	61%	$ 676,574	62%	$ 714,386	58%
Professional Services	$ 228,303	25%	$ 236,480	24%	$ 257,023	24%	$ 284,747	23%
Litigation Support	$ 9,701	1%	$ 2,444	0%	$ 17,880	2%	$ 9,863	1%
Library	$ 3,846	0%	$ 5,860	1%	$ 6,726	1%	$ 5,999	0%
Materials & Supplies	$ 18,754	2%	$ 21,179	2%	$ 17,939	2%	$ 29,975	2%
Travel	$ 5,547	1%	$ 4,852	0%	$ 3,378	0%	$ 3,833	0%
Rent	$ 64,917	7%	$ 63,858	6%	$ 64,434	6%	$ 118,043	10%
Telephone	$ 9,754	1%	$ 10,651	1%	$ 10,595	1%	$ 12,563	1%
Other Expenses	$ 23,430	3%	$ 26,889	3%	$ 18,909	2%	$ 41,665	3%
Capital Outlay	$ 12,425	1%	$ 12,896	1%	$ 10,706	1%	$ 14,458	1%
	$ 911,953	100%	$ 984,174	100%	$1,084,164	100%	$1,235,532	100%
Change in Fund	$ 208,277		$ 85,653		$ 21,360		$ (302,504)	

3% of their total budget. It also shows that PDO expenses increased by 35 percent from 1997 to 2000, with half of the increase coming in 2000 when the PDO had an operating deficit of $327,605 that it covered by drawing down its fund balance. This level of spending cannot be sustained unless the annual revenue of the PDO is increased.

D. Resource Deficiencies

During the course of this study we have made the following observations regarding the resources of the Calcasieu Parish PDO:

Office Facilities: The PDO doubled its rent in 2000 when it moved into new facilities. It now occupies a two-floor suite of newly renovated offices in what was formerly the Charleston Hotel, which is located one block from the courthouse. These facilities are very appropriate for PDO and present no obstacle to the PDO carrying out its mission, even on an expanded basis.

Computers & Equipment: We found that the Calcasieu Parish PDO has an adequate number of relatively new computers for its current staff, but the staff has not been appropriately trained to use this equipment productively and efficiently. Our experience dealing with both the DA's office and the PDO is that the DA's office is considerably ahead of the PDO in the application of information and computer technology.

Attorneys: As discussed in a previous section, *even if the backlog of cases could be eliminated* the PDO would still need additional attorneys to handle the capital and felony cases assigned to them each year and stay within the LIDAB caseload guidelines, plus additional attorneys to handle misdemeanor cases. If the number of attorneys at the PDO is not increased, then compliance with Louisiana caseload standards requires that either a more stringent screening process be put in place so that fewer cases are assigned public counsel, or the excess cases be assigned to contract attorneys or court-appointed attorneys.

Support Staff: Perhaps the greatest deficiency in the PDO is the number of trained investigators. The PDO presently has just two investigators for its entire caseload of capital cases and 4,500 open felony cases, not to mention misdemeanors. Likewise, the office requires additional support staff such as secretaries.

Expert Witnesses: Legal parity requires that defendants have the same access to experts as the prosecution. The DA's office spends $200,000 a year just on experts in addition to utilizing the resources of the Southwest Regional Crime Lab. The PDO spends approximately $250,000 each year on professional services, but nearly all of this is for contract attorneys to handle conflict of interest cases. In our examination of the PDO's files we could only find two instances in the past three years where experts were used in the defense of their clients. This is obviously not a level playing field.

Professional Development: It is important that public defenders attend conferences and seminars to keep pace with developments in their field. The PDO spends about $4,000 per year for travel, but very little of this is for

professional training and there is no program for professional development. In contrast, the DA's office spends approximate $100,000 a year for its staff to attend seminars and conferences.

According one study by the U. S. Department of Justice, public defender offices that have developed successful caseload programs share a common set of characteristics that include the following:[19]

- A sound management information system based on reliable and empirical data.
- A statistical reporting procedure that has been accepted by the funding source.
- A sound managerial and administrative system.
- The ability to tie caseload standards to budget requests.
- A mechanism (e.g. a statute or court rule) that triggers action once public defender caseloads reach an excessive level.

All of these recommendations should be applied to the Calcasieu Parish PDO. In addition, the application of caseload guidelines should be combined with the establishment of objective criteria for screening applicants for public defender positions because both quality and quantity are elements of the budgeting process.

[19] Performance Audit Report: Office of the Public Defender, Office of Legislative Audits, Department of Legislative Services, Maryland General Assembly, November 2001, p. 10.

IV. The Quality of Services of the Calcasieu Parish PDO

A. Expeditious Resolution of Cases

A basic tenet of American justice is that persons accused of committing a crime are entitled to a speedy trial. In Calcasieu Parish justice is not speedy, and this is the principal reason for the huge backlog of cases. The number of open cases depends not only on the number of cases assigned to the PDO, but also on the *rate* at which cases are resolved.

For example, if the median time-to-disposition is six months, then at any particular time approximately half of the cases assigned during the past twelve months will be open and the other half closed, making the caseload equal to one-half the annually assigned cases. But if the average time-to-disposition is two years, then number of open cases will be twice the number of annually assigned cases.

The felony caseload of the Calcasieu Parish PDO is approximately twice the number of annually assigned cases, which suggests that the average length of time from arrest to disposition in Calcasieu Parish is approximately two years. By comparison, the average time from arrest to disposition for felony cases nationwide is 214 days[20] with 90 percent of all felony cases resolved within one year of the date of arrest.

To verify the time-to-disposition of felony cases we were given access to the computer files of the Calcasieu Parish DA's office to track the case histories of all

[20] *Felony Sentences in State Courts, 1998,* Bureau of Justice Statistics Bulletin, October 2001

persons booked into the Calcasieu Parish Correctional Facility in March of 1997, 1999 and 2001 (we used the DA's data because the computer files of the PDO were incomplete). We found that it takes an average of 501 days to dispose of a felony case in Calcasieu Parish and that only 20 percent of all felony cases were disposed of within one year of the date of arrest. The average length of time between the different steps in the judicial process is shown in Table 9. Each step reflects a significant delay in the process, with different potential solutions.

Table 9

Length of Time to Resolution of Felony Charges, Calcasieu Parish, 1997

	Average Number of Days
From Arrest to Bill of Charges	186
From Bill of Charges to Arraignment	129
From Arraignment to Disposition	186
Total Time to Dispositon	501

The filing of the *bill of charges* is when the defendant first learns the exact crimes charged by the DA's Office (the term "bill of charges" covers both a "bill of indictment" and a "bill of information"). In Calcasieu Parish this does not occur until an *average* of 186 days -- or 6 months -- after an arrest has been made, which means that in many cases it takes much longer. Nationally, half of the felony charges filed have already been disposed of by this time. To assess precisely how the cases break down, we secured data from the Calcasieu Correction Center (CCC). As of December 31, 2002, there were 679

felons being held pre-trial in the CCC.[21] While some of these prisoners carry multiple felony charges, this reflects at least 27% percent of the 2,550 felonies charged in the year 2002.

This delay is extraordinary. The *maximum* time permitted by law for handing down a bill of charges is set out in the Code of Criminal Procedure, Article 701. For felonies where the defendant is in jail, it is 60 days; where the defendant is out on bond, the maximum is 150 days. If this deadline is not met, the person charged may file a motion for release which "shall result in the release of the defendant if, after contradictory hearing with the district attorney, just cause for the failure is not shown."[22]

The use of a "bill of indictment" versus a "bill of information" is significant. An indictment is a more complicated procedure than a bill of information, since evidence must be presented to a Grand Jury before an indictment is handed down. In Louisiana only capital offenses and those offenses punishable by life imprisonment require an indictment,[23] yet in Calcasieu Parish the grand jury appears to be used in a substantial number of cases where it is not required and a bill of information could be used, which is simply a document written out by the District Attorney detailing the charges without resort to the Grand Jury.[24]

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[21] Captain Lavergne of the Calcasieu Correctional Center ("CCC") stated that on January 21, 2003 there were 1,158 people incarcerated at CCC. Of these 679 were pretrial and the remainder (479) were post disposition.
[22] La. C.Cr.P. art. 701(B)(2). If "just cause" is shown, then the court shall "reconsider bail".
[23] La. C.Cr.P. art. 382(a); La. Const. Art. 1, Sect. 15.
[24] La. C.Cr.P. arts. 384, 463.

The reasons why the District Attorney prefers to use a grand jury go beyond the scope of this study. Suffice it to say that those accused of a crime do have a right to a speedy bill of charges, and their attorneys are not enforcing that right. Our review of the files of the PDO found that the attorneys for those who are incarcerated are not filing "701 motions" which would force the District Attorney to file a timely bill of charges, nor are they demanding their client's right to a preliminary examination.

The next major step in the process is arraignment, which is when a defendant first stands before a judge and gets to enter a plea of either "guilty" or "not guilty," and for some indigent defendants it may be the first time they get to meet their attorney. By law, this must take place within 30 days of the bill of charges,[25] but in Calcasieu Parish it takes an average of 129 additional days before this happens.

One reason arraignment is important is that motions such as discovery are not due until at least fifteen days after arraignment. So when the accused does not have a defense lawyer with resources to investigate the case, and where no discovery is forthcoming for the first ten months to a year of the case, the defense is in a poor position to make any judgments about what is in the best interests of the client.

After arraignment, it takes an average of six more months (186 days) before the case is finally resolved, so that the average time from arrest to disposition in Calcasieu Parish is 501 days, nearly *three times* the national experience. Once again, this means that there are a substantial number of defendants whose cases are taking more – or far

[25] La. C.Cr.P. art. 701.

more – than 500 days to reach completion. The recent experience of Sigmund Van Dyke is illustrative of the extreme end of this spectrum. He was arrested on August 17, 1996, and still had not received a trial (originally scheduled to be capital, but reduced in 2002 to non-capital) by January 16, 2003, when the charges were dismissed for want of a speedy trial. The delay of 2,343 days from arrest to dismissal is difficult to reconcile with the state and federal rights to a speedy trial.

The Supreme Court has noted that justice delayed is justice denied. This is especially true for those who are innocent and unable to make bail, because this delay constitutes punishment without benefit of a trial, legal counsel, or in some cases without even knowing the precise charges against them. The law sets limitations on the maximum time allowed for the trial of particular cases. For most felony cases, this *maximum* time is two years,[26] at which point the State forfeits the right even to try the accused. The *average* time in Calcasieu Parish begins to approach this maximum.

In Calcasieu Parish the District Attorney sets the court's docket and decides which cases will be tried on a given day. The decision is based on many factors such as the seriousness of the charges, when attorneys and witnesses are available to come to court, and public awareness of the case. They maintain that public defenders create these delays by not being prepared for trial; that any time they want faster resolution they can file a motion for a speedy trial and they will get one. As we noted earlier, public defenders do not appear to be pressing to speed up the process. This may be due to a lack of resources, or it may be that they believe that, given the circumstances, delay is in the

[26] La. C.Cr.P. art. 578(2).

best interest of their clients. For example, we found that the average time-to-disposition for defendants in Calcasieu Parish represented by private attorneys over the three years chosen in our sample was actually longer (547 days) compared to those represented by public defenders (440 days), which suggests that whatever defendants are paying their private attorneys for, it is not speedier justice.[27] Thus, the problem appears to be a system that tolerates delays, and this applies to the DA's Office, the judges, and the PDO.

B. Client Contact

Louisiana law requires that bail be set within 48 hours of the time a person is arrested and accused of a felony crime. If they cannot make bail or if bail is denied, then they must have a right-to-counsel hearing within 72 hours of their continuous imprisonment.[28] It is at this hearing that cases are assigned to the PDO if the defendant states that they are unable to afford a private attorney. Federal laws are even more stringent in this regard: the United States Supreme Court has held that a person arrested without a warrant is entitled to a probable cause determination by a neutral magistrate within 48 hours, excluding weekends and holidays.[29]

The purpose of these laws is to ensure that an arrestee has counsel available to give advice and to take whatever steps necessary to ensure that the rights of the accused are respected. As the Supreme Court noted in *Riverside*, "prolonged detention based on incorrect or unfounded suspicion may unjustly 'imperil [a] suspect's job, interrupt his

[27] This may be partially explained by the fact that persons who are able to afford to retain a private attorney are more likely to be able to make bail. If a person is on bail the law allows a period of 150 days (rather than 60 if the defendant is incarcerated) in which the accused must be charged with a felony.
[28] La. C.Cr.P. art. 230.1 ("At this appearance, if a defendant has the right to have the court appoint counsel to defense him, the court shall assign counsel to the defendant.").
[29] County of Riverside v. McLaughlin 500 U.S. 44 (1991).

source of income, and impair his family relationships.'"[30] Such considerations have broad ramifications both in the justice system and beyond, since without even considering the societal cost of incarceration, the person who loses a job will be unable to pay for counsel, or support a family. Therefore it is critical that the lawyer play the appointed role in the process.

Immediately following the right-to-counsel hearing a representative from the PDO—sometimes an attorney, but usually an investigator—meets with new clients and has them fill out a form with basic background information. This form is taken back to the PDO and the case is temporarily assigned to an attorney. Because attorneys in the PDO are matched with specific judges, the 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.

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. Once the case has been assigned to a permanent attorney, that attorney is supposed to meet with his/her client, go over the charges and explain their various options to them. But due to the heavy caseload of public defenders, this does not always happen and sometimes a defendant sees his or her attorney for the first time just prior to arraignment.

If a defendant pleads "not guilty" at arraignment, then the case will be placed on a docket and given a motion or trial date. But continuances are common and it appears to

[30] *Riverside*, 500 U.S. at 52

be the practice in the PDO for attorneys to put off any extensive involvement in a case until they believe it has a significant likelihood of going to trial, which, on average, is one-and-a-half years after the date of arrest.

To determine the extent of contact with clients who are incarcerated we obtained the jail visitation logs for March of 1997, 1999 and 2001. (A detailed summary of the visitation logs is contained in Appendix III). We were able to identify a total of 31 trips made by public defenders to visit their clients, an average of 10 visits per month for the entire office. By comparison, we found 236 trips made by private attorneys to visit their clients in jail. This difference is even more dramatic when one considers that private attorneys only handle 15 percent of the felony cases in Calcasieu Parish. The explanation given by the public defenders for this lack of client contact is that they have excessive caseloads.

C. The Filing of Motions

The filing of motions is often taken as one measure of effective legal representation. Motions come in many forms: The lawyer might seek bail, or a reduction in the amount of bail. An Article 701 motion may be filed to force release if the bill of charges is unduly delayed. A preliminary examination might ensure that the charges have substance, and reveal the strength of the state's case. Without discovery motions, the lawyer is ill-placed to advise the client as to the appropriate disposition of the case and delayed filing of discovery motions may seriously prejudice the client. These steps may all be essential to formulating an effective defense strategy as well as engaging in plea-bargaining with the DA's office.

Broadly speaking, there are two types of motions filed by the PDO, which we identify as "standard" and "case specific." Standard motions are those filed in almost every case. The most common example is a discovery motion – i.e., the means by which an accused may discover the nature of the charges against him. At the PDO standard motions are typically generated by a secretary with minimal input required by the attorney and therefore do not necessarily constitute evidence of effective representation; case specific motions on the other hand are tailored to the individual client's circumstances. Examples might be a motion to suppress or a motion to recuse. Due to the complexities of the law, it is necessary for an attorney to draft such motions.

In our tracking-study we obtained data on the number of motions filed by both public defenders and private attorneys. It showed that public defender and private attorneys file approximately the same number of standard motions, but private attorneys filed two to three times as many case specific motions than did public defenders (See Table 10).

Table 10

Number and Type of Motions Filed: PDO and Private Attorneys

	Public Defenders		Private Attorneys	
Year	Standard Motions per case	Case specific motions per case	Standard Motions per case	Case specific motions per case
1997	.87	0.43	.57	0.76
1999	.86	0.65	.84	1.73
2001	1.15	0.27	1.24	0.63

D. Investigators and Experts

The period immediately following arrest is critical for developing an effective defense: this is when the crime scene should be investigated, evidence collected and examined, and witnesses interviewed. As noted above, virtually no action is taken on cases in the first six to ten months they are assigned to the PDO. It also appears that the two investigators in the PDO are used more as runners or assistants for the attorneys—bringing case 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.

The courts have stressed the need for a complete investigation.[31] Indeed, it seems a reasonable proposition that a lawyer cannot make sensible strategic decisions on behalf of the client without knowing the strength and nature of the case. Yet we searched through 172 randomly selected files at the PDO looking for evidence of investigative activity and were able to find only two brief reports.

Our search of the PDO's files also yielded no evidence of the use of experts. The Calcasieu Parish PDO used to be able to apply to LIDAB for funds to hire experts but this was generally done only for capital murder cases and other high profile crimes. Now, due to changes with the LIDAB, that option is no longer available.

In summation, our investigation of the quality of legal services being provided to indigent defendants in Calcasieu Parish revealed that there are delays occurring at every

[31] "At the heart of effective representation is the independent duty to investigate and prepare." Goodwin v. Balkcom, 684 F.2d 794, 805 (11th Cir. 1982)

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.

V. The Judicial Process in Calcasieu Parish

A. The Court

The 14th Judicial District Court serves Calcasieu Parish. It consists of nine elected judges, two of whom hear family court cases exclusively. The other seven judges divide their time between civil and criminal cases with each judge holding criminal court seven weeks a year and motion hearings seven weeks a year. The activity of the 14th Judicial District Court from 1998 to 2001, as reported to the Louisiana Supreme Court[32], is shown in Table 11.

Table 11

Cases Filed and Jury Trials in the 14th Judicial District, 1998-2001

	Cases Filed					Jury Trials	
	Juvenile	Civil	Criminal	Traffic	Total	Civil	Criminal
2001	1,150	7,459	6,950	9,666	25,225	22	10
2000	731	7,412	6,192	10,896	25,231	25	14
1999	827	7,641	5,496	13,973	27,937	28	17
1998	1,490	7,413	4,584	10,323	23,810	25	14

While the number of criminal cases filed in Calcasieu Parish increased 51.6% during this period, the number of criminal jury trials actually declined. This suggests that an increasing proportion of cases are being resolved by plea-bargaining. According to analysts for the Bureau of Justice Statistics, "[a]n indirect measure of how well courts keep pace with a growing workload is the percentage of cases disposed by guilty plea.

[32] Annual Report, 2001, The Supreme Court of Louisiana

Because guilty pleas take less time than trials, a rising workload might exert pressure on prosecutors and judges to dispose of more cases by plea rather than trial."[33]

Table 12 on the following page compares the activity of the 14th Judicial District Court with other judicial districts in Louisiana. While the number of criminal charges filed in the 14th Judicial District is in line with fillings in other districts of similar size, the number of criminal jury trials appears unusually low. In 1996, 5.7% of the felony cases in the nation's 75 largest counties were decided by a trial, 71% were resolved through plea bargaining and 23% of the charges were dismissed[34]. In Calcasieu Parish, there were only 10 felony trials in 2001 out of 2,550 felony filings, which is a trial rate of approximately 0.25%. Nationwide, districts the size of the 14th Judicial District average 67 criminal jury trials per year.[35] As table 12 shows, other judicial districts in Louisiana fall in line with the national average, so this situation appears to be unique to Calcasieu Parish. Moreover, the lack of jury trials appears to apply only to criminal cases: statewide there are three times as many criminal trials as civil jury trials, whereas in the 14th Judicial District there are twice as many civil trials as criminal trials.

The judges of the 14th Judicial District recognized the problem of too many continuances and too few trials and in the fall of 2001 they changed the way that continuances are handled. Under the old system if a criminal case were continued it would go back to the assignment pool, where it would likely be given to a different judge.

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[33] State Court Sentencing of Convicted Felons, 1996, US Department of Justice, Bureau of Justice Statistics, February 2000.
[34] Defense Counsel in Criminal Cases, US Department of Justice, Bureau of Justice Statistics, Special Report, November, 2000.
[35] Prosecutors in State Court, 2001, US Department of Justice, Office of Justice Programs, National Survey of Prosecutors, May 2002.

Thus, it had no impact on the docket of the individual judge if a continuance was granted, since the case simply went to another judge. Under the new system, the case remains in one division, and therefore if it is continued it stays with the same judge. An alternative reform suggested by some is to establish a criminal bench with at least two judges who would hear only criminal cases.

Table 12

Cases Filed and Jury Trials in Louisiana State Courts, 2001

Large Judicial Districts	Population	Criminal Charges		Criminal Jury Trials	Civil Jury Trials	Number of Judges	Criminal Charges per 1,000 residents	Trials per 1,000 Criminal Charges	Criminal Trials per Judge	Ratio of Civil to Criminal Trials
14	182,842	6,[illegible]		16	22	9	38	1.44	1.1	2.20
1	250,760	6,735		60	19	14	27	8.91	4.3	0.32
4	177,353	6,778		30	11	9	38	4.43	3.3	0.37
9	126,566	6,653		27	10	7	53	4.06	3.9	0.37
15	303,465	9,087		31	31	14	30	3.41	2.2	1.00
16	175,544	4,970		25	16	9	28	5.03	2.8	0.64
19	409,667	8,930		56	48	25	22	6.27	2.2	0.86
21	208,547	6,363		24	19	8	31	3.77	3.0	0.79
22	241,755	11,400		107	16	10	47	9.39	10.7	0.15
23	124,354	4,316	*	23	14	5	35	5.33	4.6	0.61
24	451,459	6,772		204	36	19	15	30.12	10.7	0.18
26	140,741	7,067		16	8	5	50	2.26	3.2	0.50
32	105,123	3,298	*	41	17	5	31	12.43	8.2	0.41
41	476,492	8,223		364	66	38	17	44.27	9.6	0.18
Large Districts	3,374,668	97,542		1,018	333	177	29	10.44	5.8	0.33
Small Districts	1,067,391	52,072		177	67	69	49	3.40	2.6	0.38
All Districts	4,442,059	149,614		1,195	400	246	34	7.99	4.9	0.33

* Due to missing data the number of criminal charges filed in these districts had to be estimated

B. The Docket

The District Attorney's Office presently controls the court docket and schedules fifty cases per week for each judge hearing felony cases. They know when they do this that only two or three trials can be held in a week, and that any cases beyond that where the defendant does not plead guilty must be rescheduled for a later date. This rescheduling can occur over and over again for years. Setting an unrealistically large docket has two effects: (1) it maintains the appearance of speedy justice (placing a smaller but more realistic number of cases on the docket would mean pushing back trial dates, revealing an unacceptably long period of time from when one is initially charged with a crime until their case goes to trial), and (2) it keeps the PDO in a state of uncertainty.

Thirty-five of the fifty cases on the docket are designated by the DA's office as priority cases in which witnesses and experts are subpoenaed and must be prepared to testify. This was done at the request of the Sheriff's Department, which does not want to go to the unnecessary expense of delivering subpoenas for witnesses in cases that have no chance of going to trial as scheduled. The PDO typically gets this priority list less than a week ahead of time, which means the PDO--as well as the DA's office--must prepare for thirty-five cases when only one or two (and probably none) will go to trial. Besides wasting resources, the general result is that when a case finally is called, the public defender asks for a continuance on the grounds that they need more time to prepare for trial. The fifteen cases that do not make the priority list are generally window-dressing; ignored by both parties and automatically rescheduled for a later date.

C. Screening Applicants for Public Counsel

The law in Louisiana requires that when citizens accused of crimes state that they are indigent, they must apply for counsel to the local PDO. It is the responsibility of the PDO to "inquire further into the accused's economic status," by looking at earnings, income from public assistance, property owned, outstanding obligations, the number and ages of dependents, employment, job training and level of education, among other matters. The court must then make a determination as to whether or not the person is entitled to free public counsel or they have some ability to pay. Payment may be ordered in installments or in any manner the court deems reasonable and compatible with the person's financial status[36].

At the present time systematic screening for indigency is not being done in Calcasieu Parish. We examined randomly selected forms that were filled out by defendants at the 72-hour court whose cases were subsequently assigned to the PDO. We found numerous instances where the defendant was employed, and at least one instance where they had indicated on the form that they did not need public counsel. While employment by itself should not disqualify someone from public counsel, it does suggest that additional investigation is warranted, as required by Louisiana law[37]. We have been told that some members of the bench do some screening on an ad hoc basis, but 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.

[36] See La.C.Cr.P. Art 517 et seq.
[37] See La.C.Cr.P.Art 513

Screening needs to be done on a systematic basis and according to objective criteria to determine eligibility for public defense, but it is not likely to be a significant source of funds for the PDO. The LIDAB commissioned a study in 1996 by the Spangenberg Group to examine the issue of indigency determination and cost recovery. It concluded that seldom are cost recovery programs in other states cost-effective as generally ten percent or less of the indigent defendants made the assessed payments. One reason for this is that once a determination of indigency has been made, it is neither practical nor constitutional to withhold representation until payment is received.[38]

Presently the PDO does not have the resources properly to screen clients, and even if it did, such a system would place the office in the position of having divided loyalties, required to represent the client zealously in the criminal case, while at the same time litigating against the client for money on the side. Therefore, any cost recovery program would have to be independent of the PDO. Moreover, such a program could not exist in a vacuum. If a person has a job when arrested, he or she is unlikely to maintain it if they are incarcerated. Thus, any such approach must be comprehensive, seeking to ensure the citizen's earning potential by enforcing the right to bail and speedy proceedings.

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[38] *Indigency Determination, "Partial Indigency" and Cost Recovery in Louisiana,* a report by The Spangenberg Group prepared for the Louisiana Indigent Defender Board, 1996.

VI. Recommendations and Conclusions

We believe that the problems of the Calcasieu Parish PDO have two main sources: one is a lack funds, and the other is a judicial process that tolerates delays. In order to improve the quality of indigent defense in Calcasieu Parish both of these issues must be addressed. Below is a list of those problems we believe can be addressed with money, and those problems that must be addressed through judicial system reform.

Deficiencies that can be addressed with more money

- Lack of trained investigators in the PDO.
- Caseloads in excess of state and national standards.
- Lack of client contact.
- No professional development program.
- Inadequate salary and benefits for public defenders.
- Public defenders engaged in private practice.
- Inadequate support staff for the lawyers.
- Inadequate use of information/computer technology.
- Insufficient use of experts.

Deficiencies that require judicial system reform

- Financial screening of applicants for public counsel.
- Immediate and permanent attorney assigned to case from inception.
- Investigators utilized in early stages of the process.
- Discovery as early in the process as possible.
- Bill of charges rendered sooner.
- Timely scheduling of Arraignments.
- Shorter court dockets.

- More days available for felony trials.
- Increased negotiation between DA and PDO prior to arraignment.

There are steps that can be taken to increase the efficiency of the Calcasieu Parish PDO. But we believe that the excessive backlog of felony cases stems as much from the judicial process in Calcasieu Parish as it does from the operations of the PDO, and that attempting to "fix" the PDO without "fixing" the judicial process will be extremely expensive and accomplish little.

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Appendix I

Financial Data Provided by Persons in 72 hour court in Calcasieu in July 2002 for Indigency Determination

VS. RC NO. *	Occupation	Last employer	Last date of employment	Do you own property?	Do you own a car?	List money?	Have you tried to hire your own attorney?	Do you have family or friends that could help?	Where you on bond before arrest and if so, how much?
02-2111	N/A	Student	N/A	N/A	N/A	N/A	NO	NO	NO
02-2112	N/A	N/A	N/A	N/A	N/A	N/A	NO	NO	NO
02-2113	Housewife	N/A	N/A	None	None	None	NO	NO	NO
02-2114	Car Hire	Burger King	7/8/2002	N/A	N/A	N/A	NO	NO	$12,500
02-2115	N/A	N/A	N/A	N/A	N/A	N/A	NO	NO	NO
02-2116	Sales	K-mart	05/?/02	None	None	None	NO	NO	ROR
02-2117	N/A	N/A	N/A	None	None	None	NO	NO	NO
02-2118	Ranch Hand	South Wind Farm	N/A	None	None	$450	NO	NO	NO
02-2119	Ruff Neck	N/A	N/A	None	YES	None	NO	NO	NO
02-2120	Carpet Layer	Carpet Master	Current	None	None	None	NO	NO	NO
02-2121	Construction	CIG Construction	06/?/02	N/A	N/A	N/A	NO	NO	NO
02-2122	Musician	Christ Worsh Center	06/?/02	N/A	N/A	N/A	NO	NO	NO
02-2123	CNA	Holly Hill	5/6/2002	N/A	N/A	N/A	NO	NO	NO
02-2124	Labourer	Will Staff	3/7/2002	None	YES	None	NO	NO	NO
02-2125	Self employed	Self	7/2/2002	YES	YES	None	NO	NO	NO
02-2126	Restaurant	Crosby Tug	Current	None	None	None	NO	NO	NO
02-2127	Carpenter	John Bailey Construc	N/A	N/A	N/A	N/A	NO	NO	NO
02-2128	L&A Paint Body	L&A Paint Body	N/A	N/A	N/A	N/A	NO	NO	YES
02-2129	Car Washer	N/A	N/A	None	None	N/A	NO	NO	NO
02-2130	Mower	SW Lawn and Land	5/7/2002	N/A	N/A	N/A	NO	YES	NO
02-2131	N/A	N/A	N/A	N/A	N/A	N/A	YES	YES	NO
02-2132	N/A	N/A	N/A	N/A	YES	N/A	NO	YES	NO
02-2133	Labourer	Craig Vizinal	10/6/2002	None	None	None	NO	NO	YES
02-2134	Plumber	Terry Verrin Plumbing	06/?/02	YES	YES	None	NO	YES	$25,000
02-2135	Holiday Inn Express	N/A	N/A	None	YES	None	NO	NO	YES
02-2136	Retired	N/A	N/A	YES	YES	$2,000	NO	YES	NO
02-2137	N/A	N/A	N/A	N/A	N/A	N/A	NO	NO	NO
02-2138	Labourer	Will Staff	Current	None	None	None	NO	NO	$8,000
02-2139	Daquri Shop	Paul Welsh	05/?/02	None	None	None	NO	NO	NO
02-2140	N/A	N/A	N/A	N/A	N/A	N/A	NO	NO	NO
02-2141	Labourer	N/A	N/A	N/A	N/A	N/A	NO	NO	NO
02-2142	Labourer	N/A	N/A	N/A	N/A	N/A	NO	NO	$6,000

Continued on next page

Financial Data Provided by Persons in 72 hour court in Calcasieu in July 2002 for Indigency Determination, Continued

VS. RC NO. *	Occupation	Last employer	Last date of employment	Do you own property?	Do you own a car?	List money?	Have you tried to hire your own attorney?	Do you have family or friends that could help?	Where you on bond before arrest and if so, how much?
02-2143	N/A	N/A	N/A	None	None	None	NO	NO	NO
02-2144	Boilermaker	IMC	1/2/2002	N/A	N/A	N/A	YES	NO	NO
02-2145	Crane Operator	Port of Lake Charles	5/7/2002	N/A	N/A	N/A	NO	NO	$15,000
02-2146	N/A	N/A	N/A	None	YES	None	NO	NO	NO
02-2147	Labourer	Sonny's Automotive	05/?/02	None	None	None	NO	NO	$700
02-2148	Unemployed	N/A	N/A	None	None	None	NO	NO	$5,000
02-2149	Testing Technician	Bayou Testers	N/A	None	YES	None	NO	NO	NO
02-2150	N/A	N/A	N/A	None	None	None	YES	NO	$3,000
02-2151	Labourer	Will Staff	10/6/2002	N/A	N/A	N/A	NO	NO	$2,000
02-2152	N/A	N/A	N/A	N/A	N/A	N/A	NO	NO	NO
02-2153	Disabled	N/A	N/A	None	None	None	NO	NO	NO
02-2154	Carpenter	Reeves Construction	8/6/2002	None	None	None	NO	NO	$7,500
02-2155	Truck Driver	N/A	N/A	N/A	N/A	N/A	NO	YES	NO
02-2156	N/A	N/A	N/A	N/A	N/A	N/A	NO	NO	NO
02-2157	None	N/A	N/A	None	None	None	NO	YES	NO
02-2158	Welder	N/A	N/A	N/A	N/A	N/A	YES	YES	YES
02-2159	Unemployed	N/A	N/A	None	None	None	YES	NO	NO
02-2160	N/A	N/A	N/A	N/A	N/A	N/A	NO	NO	NO
02-2161	N/A	N/A	N/A	N/A	N/A	N/A	NO	YES	NO
02-2162	N/A	N/A	N/A	N/A	YES	N/A	YES	YES	$36,500
02-2163	N/A	N/A	N/A	N/A	YES	N/A	NO	YES	NO
02-2164	N/A	N/A	N/A	N/A	N/A	N/A	NO	NO	$250,000

* Names have been withheld to protect confidentialily.

Appendix II

Jail Visitation by Attorneys, March 1997, 1999 and 2001

March 1997

Attorney	Visits	Clients
Alexander	1	1
Babineaux	2	2
Bauman	3	2
Beyer	1	1
Bouquet	2	2
Brown	2	2
Bruce	1	1
Burks	4	2
Chessen	1	1
DeWitt	1	1
Frohn	1	1
Gaharan	3	1
Gill	1	1
Gugliamo	1	1
Guidry	1	1
Hildum	1	1
Jones	2	2
King	1	1
LaVern	1	1
Lemaire	1	1
Lorenzi	1	1
Mathews	3	3
McInnis	1	1
Miller	2	2
Mitchell	1	1
Newman	2	2
Olney	1	1
Palay	1	1
Parkerson	2	2
Recer	1	1
Ritchie	6	6
Roach	1	1
Sanchez	2	2
Sanders	1	1
Sarietto	1	1
Shelton	3	3
Sheets	2	2
Smith	1	1
St. Dizier	4	3
Tousant	6	2
Ware	2	2
Williams	17	10
Total	**92**	**75**
PDO	**8**	
Pvt	**84**	

March 1999

Attorney	Visits	Clients
Austin	2	1
Bergeron	2	2
Bice	1	1
Bouquet	3	2
Burks	7	2
Chason	1	1
Coffman	9	8
Crochet	2	2
DeRosier	3	1
Filo	1	1
Ghia	1	1
Grayson	1	1
Ieyoub	1	1
Johnson	1	1
Jones	2	1
LaVern	4	1
Leckband	1	1
Leger	2	2
Little	1	1
McCann	1	1
Newman	2	2
Nichols	3	2
Odel	1	1
Oubre	1	1
Palay	7	7
Parkerson	1	1
Perry	2	1
Picciane	3	3
Rachal	1	1
Register	1	1
Ritchie	8	7
Rosteet	1	1
Rozas	1	1
Shelton	3	2
Smith	2	2
St Dizier	8	7
Sumpter	10	9
Tibodeaux	6	6
Todd ?	1	1
Tousant	4	2
Ware	1	1
White ?	4	3
Wickels	2	2
Williams	5	5
Total	**124**	**101**
PDO	**9**	
Pvt	**115**	
Contract	**30?**	

March 2001

Attorney	Visits	Clients
Austin	5	5
Barrett	1	1
Bouquet	5	5
Bundy	1	1
Henrich	11	11
Jones	2	2
Lorenzi	1	1
Lyons	6	6
Melton	1	1
Ned	1	1
Oubre	1	1
Palay	2	1
Richard	4	1
Ritchie	2	2
Salter	1	1
Shelton	1	1
Singer	1	1
Thibodeau	5	5
Total	**51**	**47**
PDO	**14**	
Pvt	**37**	

Appendix III

MEMORANDUM

To: Dr. Kurth
From: Gary Proctor
Date: August 14, 2002
Re: Data extracted from Calcasieu PDO files on July 9 – 11 and August 1 – 2, 2002

Methodology:

For details concerning the methodology please see the attached files. Hard copies, signed by the persons that carried out the data extraction have been retained.

Results:

- The total number of case files examined were 171.
- A total of **233 motions** were filed by the Public Defenders Office ("PDO") which translates to an average of **1.36 motions** per case. This figure significantly overestimates the amount of work performed by the PDO. According to the PDO there are four "standard" motions that are routinely filed by them in certain types of cases – a Bill of Particulars, Discovery, Preliminary Examination, and Reduction in Bond. These standard motions contain "pro forma" type requests and do not need to be tailored to the client's individual case-specific circumstances. Such standard motions are typically generated by a secretary, with no more than a very minimal review from the actual Public Defender attorney.
- By contrast a "case specific" motion is one in which the Public Defender makes a filing in court specific to the circumstances of his client's case. **Forty-five specific to the case motions** were filed (i.e. **a case specific motion was filed in approximately one case in every 4). 137 cases (80%) contained no case specific motions at all**. In other words the public defender in each of these cases filed no motions other than standard motions that could easily be generated by a secretary. Perhaps most disturbingly – **in 92 cases (54%) no motions (either standard or case specific) were filed.**
- **Not one case out of 171 contained an investigative memorandum of any description.** One case contained a signed release by a client for the PDO to retrieve his records. This is something that can be generated by a secretary – there is no evidence of the PDO's office actually retrieving and reviewing such records. A further one case saw evidence of a client coming to the PDO and providing their own records from a corresponding civil case.
- **Only 1 case out of 171 employed the use of an expert.** This expert's utilization in the case in question related solely to a crime scene investigation.

- In only **5 cases** is it documented that the judge ordered the public defender to make a supplemental determination of indigency, i.e. **fill out a financial statement regarding ability to hire counsel.** This statistic does not evince the level of inquiry made by the judge at 72 hour court .
- There were **13 client jail visits** evidenced on file (12 cases). This correlates to only **1 case in every 14 did the attorney meet with a client in jail**. It should be remembered that all of the files examined were cases where the client was charged with a felony.
- There is evidence of some client contact attempted on a further 22 occasions (18 cases). Of these 22 occasions, the following was observed:
  Office Interviews/Visits – 11
  Letters – 2
  Telephone Memoranda – 1
  Unknown (i.e. memoranda does not note type of contact) – 8

Thus in 93 % of cases there is no evidence of a meeting between the PDO and §his client in jail. In 82% of cases there is no evidence of contact whatsoever.