



**REPORT ON THE EVALUATION OF THE**  
**OFFICE OF THE ORLEANS PUBLIC DEFENDERS**

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**Summary of the observations, findings, and recommendations prepared by:**

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# REPORT ON THE OFFICE OF THE ORLEANS PUBLIC DEFENDERS

## Background of this Consultancy

This report provides a summary of the observations, findings, and recommendations of the undersigned consultants based upon an extensive review of numerous reports, documents, and data relating to the operation of the office of the Orleans Public Defenders (OPD), and two and one-half weeks of site visits to New Orleans, Louisiana during April and May of 2012. During that time, dozens of interviews were conducted with representatives of virtually every segment of the criminal justice system. This evaluation was performed pursuant to a contract between the consultants and the Louisiana Public Defender Board (LPDB). The scope of the evaluation under the contract included an assessment of the following: the structure of OPD; its leadership, management, and supervision; budget and expenditures; parity of funding with other criminal justice agencies, partners and stakeholders; the quality of legal services provided by OPD, including the effectiveness and efficiency of service delivery; caseloads of staff attorneys and caseload distribution; and compliance with recognized professional benchmarks. Other additional observations and findings were made based upon the data and site visits.

## Consultants

The Louisiana Public Defender Board contracted in the winter of 2012 with two consultants. One of the consultants, **Ernie Lewis**, spent 31 years as a Kentucky public defender. He was an appellate and trial attorney, ran a rural trial office for 13 years, and served as the Public Advocate for Kentucky's statewide public defender system, the Department of Public Advocacy. He served two terms as the Chair of the American Council of Chief Defenders. Since retirement, he has worked with public defender systems in Louisiana, Indiana, Ohio, Tennessee, and Massachusetts. He is presently on the Board of the Southern Public Defender Training Center. He was the recipient of the *Outstanding Lawyer Award* by the Kentucky Bar Association in 2000. He was given the *Champion of Indigent Defense Award* by the National Association of Criminal Defense Lawyers in 2007. He has served as a consultant for BJA over the past 2 years in assessments in two other Louisiana districts, the 22<sup>nd</sup> in St. Tammany and Washington Parishes, and the 14<sup>th</sup> in Calcasieu Parish.

The second consultant is **Dan Goyette**. He has been a public defender for 38 years. He has served as Chief Public Defender and Executive Director of the Louisville-Jefferson County Public Defender's Office since 1982. He is a former President of the Louisville Bar Association (LBA) and a current member of its board of directors. He has been honored by the Kentucky Bar Association with its *Outstanding Lawyer Award*, and he was one of the first recipients of the American Bar Association's prestigious *Dorsey Award*. He is a current member of the ABA's House of Delegates, the ABA Standing Committee on Legal Aid and Indigent Defendants, and a former member of the ABA Standing Committee on Ethics and Professional Responsibility. He was a longtime member of the KBA Ethics Committee and a past chair of the LBA Committee on

Professional Responsibility. Since 1979, he has been a member of the adjunct faculty at the Brandeis School of Law at the University of Louisville, and he was presented the *Dean's Service Award* in 2003. In 2005, he initiated organization of "Louisville Lawyers Helping Louisiana Lawyers" in an effort to assist and support the legal community in New Orleans in the wake of Hurricane Katrina.

### History of the Orleans Public Defender Office

**Pre-Katrina.** As any visitor to New Orleans soon learns, the history of modern New Orleans both ends and begins with Hurricane Katrina. Prior to the storm, the Orleans Indigent Defender Program (OIDP) was a part-time public defender's office. It was run by a local board appointed by the Chief Criminal Court Judge. The office was located in a small area on the first floor of the criminal courthouse at Tulane and Broad. The office itself has been described as "a single room in the courthouse where coats, briefcases, and umbrellas could be left. There was no privacy for attorneys to meet with clients, families, or witnesses, and the attorneys did not have their own computers, telephones, or desks. Of the four working computers, only two had Internet access, and the two phone lines did not have voice mail. The office consisted of a few file cabinets, several shared desks, and a single copier for the entire staff of forty-two attorneys." *Indigent Defense in New Orleans: Better than Mere Recovery* by Steve Singer (2006) [hereinafter *Singer 2006*]. The office had no case management system. The office was led by a Chief Defender, an Assistant Chief Defender, and a Juvenile Chief Defender. There were 42 part-time adult felony lawyers, 6 part-time Traffic and Municipal Court lawyers, and 6 part-time juvenile court lawyers. Lawyers were assigned to a specific section of criminal court. The lawyers all maintained private practices and did not use the office at the courthouse. They had a "perverse financial incentive to spend as little time as possible on their public cases so they could devote more time to private ones." (*Id.*) Cases were "rarely investigated." (*Id.*) OIDP lawyers "almost never met with their clients outside the courtroom to discuss their cases." (*A Report on Pre-and Post-Katrina Indigent Defense in New Orleans, Southern Center for Human Rights* (2006) [hereinafter *SCHR Report 2006*]. A horizontal approach to handling of indigent clients' cases was in effect at the time, resulting in little continuity of representation. Motions that were filed were *pro forma*. Counsel did not take calls from the jail. Overall there was a lack of vigorous representation. (*Id.*) As of 2005, OIDP had changed very little since a similar assessment was made in 1997 by the Spangenberg Group, which observed that OIDP attorneys spent little time on their cases and viewed satisfying the judges as extremely important.

Funding came from the same sources then as they do today. The primary source of funding for the office was from traffic fines and court costs. The state public defender organization was known as the Louisiana Indigent Defense Assistance Board (LIDAB), which had no regulatory authority. It was created in 1993 in response to the case of *State v. Peart*, 621 So. 2d 780 (La. 1993), in which the Louisiana Supreme Court had noted a "general pattern...of chronic underfunding of indigent defense programs in most areas of the state." LIDAB was funded at \$7 million for the entire state. The local OIDP was funded at approximately \$2 million. A later report would conclude that LIDAB "has failed to improve the quality of trial level indigent defense services..." for several reasons, including the fact that the funding system "is reliant on

court costs as the primary revenue stream.” (NLADA Report entitled *In Defense of Public Access to Justice: An Assessment of Trial-Level Indigent Defense Services in Louisiana 40 Years after Gideon* (2004) [hereinafter *NLADA 2004*].

**2006 BJA Report.** Hurricane Katrina struck on August 29, 2005. It “left almost complete devastation of civil infrastructures, including hospitals, schools, and the justice system.” (*SCHR Report 2006*). Virtually the entire city was flooded, as was the public defender’s office. Almost as soon as the flood waters receded, the federal government focused its attention on the devastated civil infrastructure left in the storm’s wake. One of its efforts involved both financial and technical assistance by the Department of Justice’s Bureau of Justice Assistance. This assistance was requested by the Louisiana Commission on Law Enforcement and the Southeast Louisiana Criminal Justice Recovery Task Force. Their efforts resulted in a report entitled *An Assessment of the Immediate and Longer-Term Needs of the New Orleans Public Defender System* (April 2006) [hereinafter *BJA 2006*].

The Report focused on the shortcomings of OIDP. The most significant of these shortcomings were:

- The office was underfunded, primarily because it was dependent upon traffic tickets. This funding mechanism resulted in revenue drying up post-Katrina, causing a severe reduction in staff. The effect was dramatic: “Without indigent defense lawyers, New Orleans today lacks a true adversarial process, the process to ensure that even the poorest arrested person will get a fair deal, that the government cannot simply lock suspects up [sic] and forget about them.”
- The system of indigent defense was “court-based, rather than client-based.” “Under these circumstances, the attorney tends to focus on the preferences and work patterns of the particular judge to whom s/he is assigned and with whom s/he works every day, rather than on the indigent defendants who pass through the courts.”
- Few cases were disposed of at an early point in time in the prosecutorial process.
- OIDP lawyers rarely met their incarcerated clients.
- OIDP lawyers rarely met their clients between first appearance and the subsequent 45-60 days during which the prosecutor made a charging decision.
- OIDP lawyers were paid only \$29,000 per year for a mostly less-than-halftime job. OIDP lawyers were allowed to maintain a private practice.
- Few preliminary hearings were requested or conducted.
- Data regarding the caseload of the office and the workload of individual attorneys were not compiled or kept.
- There were no client files, no office phone number, and clients were not able to come to the office. Attorney performance evaluations were based on judicial satisfaction rather than supervisory reviews and appraisals of the quality of client representation. There was little accountability within the office.

The Report made numerous recommendations. Many of the recommendations attacked the most acute of the problems, including the backlog of cases, the absence of staff, and the lack of

independence of the local board. The most significant of the longer-term recommendations were:

- Change the “philosophy and structure” of the office from “court-and-process-centered to a client-centered public defender program.”
- Hire “full-time, client-centered public defenders.” These full-time defenders “should have parity with the District Attorney’s Office as to pay, benefits and retirement.”
- Create a criminal justice system that is “working together as a system instead of cloistered and disconnected parts.”
- “Ensure the long-term independence of the ODP.”
- The State and the City should work together to provide “funding in a manner that is adequate, predictable, and data-driven.” “Strong consideration should be given to a system of state funding; programs that rely on local funding often result in having the least resources in economically-challenged areas...”
- The office should have “professional offices where staff can conduct legal research, meet with clients and witnesses, and brainstorm cases.”
- “[M]anageable workloads, reasonable performance standards, and skilled and data-driven management.”
- Supervisors with adequate time to perform their necessary function.
- Build training and mentoring within the office, including leadership training.
- Improve the system in which private lawyers are participating. This includes conflict situations as well as caseload overload.
- Full-staffing was recommended. The Report recommended a staff of 70 attorneys to handle 91% of the cases. It further recommended that 23 secretaries should be hired to support the attorneys; 10 investigators (or a ratio of 7 to 1) should be hired; 3 client services specialists were needed, as were 4 attorney supervisors. The Report included a recommendation of 2 Deputy Public Defenders assisting the Chief Public Defender. Funds in the amount of \$770,000 were needed to pay for private attorneys in conflict cases and overload situations. Total recommended program funding was \$8.2 million per year. Additional funding was recommended to purchase computers, to develop a management information system, and to pay private lawyers to handle the backlog of cases.

**NLADA Report.** Several months after the BJA Assessment was released, the NLADA released a report entitled *A Strategic Plan to Ensure Accountability & Protect Fairness in Louisiana’s Criminal Courts* (2006). The report looked at the broader issues of indigent defense reform in Louisiana.

The report also noted the impact of the hurricane on the Orleans criminal justice system: “the New Orleans justice system had to contend with, among other things: a flood damaged evidence room; the shutting down of the district attorney’s office and courthouse; the evacuation of people held in the local jail to available correctional facilities across the state; and, the dispersing of the people of New Orleans – including eyewitnesses, victims, defendants, former police officers, and potential jurors – throughout the country. Many justice employees

lost their jobs as citywide tax revenues disappeared. And those that remained had increased workloads while dealing with their own personal issues - be it the loss of a home, the death of a loved one, or the logistical problems associated with finding their child an appropriate school placing.” The impact of Katrina on the public defender system was also highlighted: “nowhere are the New Orleans systemic justice deficiencies more glaring, both pre- and post-Katrina, than in the delivery of defense services to people of insufficient means.” NLADA placed much of the blame on the funding mechanism used in Louisiana.

The Report’s recommendations that were specific to Orleans Parish included:

- Create reasonable jurisdiction-specific caseload standards.
- Begin vertical representation. Perhaps anticipating conflict with the judiciary over this recommendation, NLADA noted that they recognize that “institution of this recommendation will result in a major cultural change for the criminal courts of New Orleans. OIBD should work in concert with the court to make changes in court structure and administration to reduce the current fragmentation and to facilitate continuous representation. We believe that having a sufficient staff with a full complement of attorneys will ease the court’s trepidation over this move.”
- Emphasize supervision by hiring supervisors with little or no caseload, utilizing performance measures, writing job descriptions for all positions, and adopting the LIDAB Performance Guidelines.
- Create a Juvenile Division with an experienced juvenile supervisor with a small caseload, hire dedicated juvenile attorneys who receive specialized juvenile training, tailor performance evaluations to juvenile practice, and hire a District Defender who appreciates strong juvenile advocacy.
- Establish a full-time office that is client-centered and begins to move toward the community defender model.

**2006-2009.** The rebuilding of OIBD began in the fall of 2005. The situation was chaotic in the days following the hurricane. Persons incarcerated at the time of the hurricane had been dispersed all over the state, and finding them was a complex task. A huge backlog of public defender cases, with few attorneys to staff them, was of immediate concern. Case files for those cases were virtually nonexistent. The office itself was “reduced to six attorneys and one support person to handle more than 6,000 open cases.” The local board resigned.

Gradually, the office began to rebuild. Chief Judge Calvin Johnson appointed a new reform-minded board and the rebuilding of the office started. The office soon changed its name to the Orleans Public Defender office (OPD). Advised by the new reform board, as well as the 2006 BJA Report and the NLADA Report, immediate changes were soon made. New staff was hired to manage the office, including in July 2006 a law professor, who was brought in as a consultant to lead the rebuilding effort. An out-of-courthouse office was opened across Tulane Avenue. It was furnished with donations by the Minnesota Bar Association. Attorneys had private offices to use when interviewing clients. Each attorney had a desk, a telephone with voicemail, a laptop, office-wide email, all of which were donated by the Louisiana Bar Association. The DC Public Defender Service donated a case management system (although it turned out to be

incompatible, unable to be adapted and thus never used). All attorneys were required to give up their private practice and begin to work full-time. Salaries were increased. The juvenile caseload was contracted out to Juvenile Regional Services. Capital cases were contracted out to several local non-profits. Vertical representation was implemented throughout the criminal courts. Attorneys began to represent their clients pre-acceptance (the 45-60 days time period between arrest/first appearance and the filing of charges by the District Attorney). Investigation also began pre-acceptance. Office policies and protocols were developed. Attorneys from around the country, and particularly Minnesota, Philadelphia, and Washington, D.C., volunteered their time to assist with the case backlog. Law students from around the country also agreed to help with the backlog. Gradually, new lawyers were hired and trained by a new training director.

During this time, client representation changed dramatically. While it is not an exaggeration to say that the Constitution was often being violated by ODP and the manner in which it provided representation, this can no longer be said since the creation of OPD (with the exceptions noted elsewhere in this report). One lawyer in leadership reflected that “we’ve changed how New Orleans public defenders are representing clients.”

Significant political pushback to the changes in OPD soon surfaced. The local board was held in contempt on multiple occasions. One of the new OPD leaders was held in contempt because of the judge’s dissatisfaction with how his courtroom was being staffed. Some of the more experienced attorneys quit over the requirement of working full-time. The Criminal District Court attempted to remove and replace the new board, prompting legal action by the board. In November of 2006, the Court issued an order saying that it was the opinion of the collective court that “the failure of [OPD]...to deliver effective assistance of counsel to their clients is in large part due to the policies and practices that it has recently implemented.” A few days later, staff writer James Gill wrote an article entitled *Judges’ Order Defies Law, Reality* in the Friday, November 24, 2006 issue of *The Times-Picayune*, opining that it was “impossible to avoid the conclusion that the judges want to bring back the system as it was before Katrina forced its inadequacies to the forefront...” By May of 2007, the judges of the Criminal District Court voted to remove four members of the newly constituted local board, reduced the size of the board, and appointed new members to the board. The board responded by filing a lawsuit in federal court, accusing the courts of interfering with the provision of indigent defense services.

The political standoff between the local board and the courts ended in August of 2007 when the Louisiana Public Defender Act 307 was passed by the Louisiana legislature. This eliminated the local board and established the Louisiana Public Defender Board (hereinafter LPDB) with significant new powers. LPDB had a significantly increased budget as well as regulatory authority over all of the local public defender systems. Jean Faria was appointed the new Louisiana Public Defender. Christine Lehmann became the first acting District Defender for OPD under Act 307. She left in October of 2008, and was replaced on an interim basis by Christopher Flood.

Staff turnover during these years was significant. In 2006-7, turnover was 80-85%. This was reduced in 2007-2008 to 50-60%, and again in 2009-2010 to 40%. (2009 BJA Report).

**2009 BJA Report.** BJA once again provided technical assistance to OPD during 2009, culminating in a report published in January of 2010. This report observed that the 2006 BJA Report had been used by the local board and by OPD as a “blueprint for change.” The scope of this second BJA assessment was to review the leadership and structure for efficiency, staffing needs, caseloads, and the need for any special positions. The methodology used was similar to the 2006 assessment, including review of the previous report, staff interviews, an interview with one judge and one LPDB Board member, file reviews, and a focus group. A major focus of the 2009 assessment was the case management system then in use at OPD.

The Report compared the service delivery system at OPD to the ABA’s *Ten Principles of a Public Defense Delivery System* (2002). It made the following findings: there was “limited adherence” to Principle #1, that of independence from the judiciary; Principle #2, that of a full-time system with participation by the private bar, was being undercut by unstable funding ; compliance with Principle #3, the screening of clients for eligibility, was said to have greatly improved; Principle #4, sufficient time and confidential space to meet with clients, was not being followed; control of workloads, as required by Principle #5, was not occurring at OPD; Principle #6, assignment of cases based upon the level of expertise of the attorney and the complexity of the case, was said to be in process; Principle # 7, vertical representation, was said to be a “major accomplishment of the Office...a huge change and victory for the OPD.” It was noted, however, that several of the district judges were “still fighting” this change; Principle # 8, parity between the defense and prosecution with respect to resources was said to be lacking; however, the Report noted the progress made in OPD’s becoming more of an equal partner in the criminal justice system; the Report noted that while there was a Training Director, his “talents are being diverted to trying cases,” in contravention of Principle #9 requiring the provision of continuing legal education; finally, it was determined that, the requirement of supervision and systemic review required by Principle #10, was not being followed.

The 2009 BJA Report made numerous recommendations, the most significant of which are as follows:

- Create a Strategic Plan, with a Vision and a Mission Statement.
- Create a Leadership Team consisting of the heads of the various professional and administrative functions.
- Create 5 attorney teams headed by an attorney supervisor as well as a deputy attorney supervisor.
- Create a policy and procedure manual accessible to all staff.
- Develop a budget “based on adequate, relatively stable resources with accurate data and external support.” This budget must be “stable, dependable, and adequate.”
- Improve transparency of OPD with other agencies and with LPDB. The recommendation of transparency with other agencies was made with a significant caveat: “we understand the difficulty and hazards of implementing this



recommendation, given the current self-centered, silo culture of the other criminal justice components.”

- Hold regular staff meetings as well as periodic focus group meetings.
- Improve significantly the case management system.
- Improve the office space.
- Create a competitive salary structure, including retirement benefits. The Report observed that the turnover rate was “destructively high” and that a competitive salary and benefits structure was essential for the long-term growth of the office.
- Add additional staff positions to replace volunteers.
- Add a Training Director, Public Information Officer, Information Technology Director, and a Legislative Liaison.
- Obtain funding for the Defender Services Division, the division that addresses bail, client and family needs.
- Conduct regular staff evaluations “consistent with job descriptions and other expectations.”
- Create a “multi-faceted” training plan for all office staff under the direction of the Director of Training and Staff Development.
- “Juvenile representation should be brought into the OPD.”
- Continue to contract out capital representation.
- Contract out conflict cases.
- OPD should lead the effort to address “dysfunctions” in the local justice system. Included in this recommendation was the establishment of a special litigation section as well as “systemic reform of Municipal Court practice.”
- Develop a “regular communication plan with the State Public Defender.”

**2009-2011.** Derwyn Bunton was hired by the Louisiana Public Defender Board to become the Chief Defender for the 41<sup>st</sup> District in October of 2008. He began serving in his new capacity in January of 2009. At that point in time, there was virtually no structure in OPD and no organizational chart. Staff felt “unsupervised, and with no clear lines of authority, staff morale and commitment were waning.” (See D. Bunton Memo). There was a “subjective” system of evaluating attorneys with no criteria for promotion, which produced “allegations of arbitrariness, favoritism, elitism and incompetence.” (*Id.*). Shortly thereafter, an invitation initially extended by Chris Flood to BJA to perform another assessment of OPD, was renewed by Derwyn Bunton. The assessment was conducted during 2009 and completed in 2010.

During these three years (2009-11), OPD made substantial progress in building a full-time office by adopting written policies, building structure, and creating protocols. By the time the BJA Report was issued, the office had grown to 86 employees, including 45 attorneys and 41 support and investigatory staff. Many of the changes made during these years were in response to the recommendations made in the 2009 BJA Report. Leadership created job descriptions for every position. The attorneys in the criminal district courts were divided into clusters, with supervisors over each of the clusters. Each training class also had supervisors overseeing their work. A Special Litigation Division was created to handle the inordinate

number of attorney contempt citations, as well as to handle writ practice and other systemic litigation. A Leadership Team was created consisting of the Chief Defender, the Deputy Chief, the Chief of Trials, the Training Director, Special Litigation Counsel, and the Director of Administration. A Management Team was created that included the Leadership Team plus all of the supervisors. Leadership created attorney practice levels, from 1 to 5, and began to assign cases based upon the practice levels. Leadership initiated a system of evaluating staff, and used that system in determining the practice levels. Leadership also completed a policy and procedure manual with the help of the private law firm, Phelps Dunbar.

In addition to the policies, structure, and protocols, the professional accomplishments of OPD during these last 3-4 years have been significant. In partnership with LPDB, OPD has increased its funding significantly, particularly through advocacy with the City of New Orleans. In 2009, OPD obtained \$500,000 from the City for the first time. With the assistance of LPDB, this increased to \$750,000 in 2010, and to \$1.2 million in 2011. OPD worked with the City Council to pass an ordinance dedicating a portion of traffic camera revenue to OPD. LPDB and OPD sued the Judiciary to enforce assessments of the \$35 public defender fee. Over a three-year period, OPD obtained over \$1.2 million in grant and fellowship revenue. OPD was able to grow its budget to over \$9 million in 2011. Unfortunately, by February of 2012, OPD had to cut back its expenditures to \$7.2 million, and it appears that this will continue to be the budget level for the near future.

OPD also has been successful at collaboration with numerous entities in the broader community. Specifically, OPD has a position on the board of Unified Non-Profits of New Orleans, the Mayor's Task Force on Criminal Justice, the Mayor's Criminal Justice Working Group, the City of New Orleans Criminal Justice Coordinating Council and the Mayor's Strategic Command to Combat Homicide. OPD participates in the Greater New Orleans Drug Demand Reduction Coalition. OPD has been included as a member of the Louisiana State Bar Association Criminal Justice Committee. Derwyn Bunton has been named to the NLADA Defender Policy Group.

OPD has had considerable success litigating specific systemic issues. In the case of *State v. Wallace*, OPD forced prompt probable cause determinations within 48-hours of first appearance. OPD successfully sued over the use of New Orleans Commissioners in Magistrate's Court. OPD litigated the issue of the independence and authority of OPD related to the power to assign counsel. OPD worked with the District Attorney's Office to change the allotment system, thereby making it possible for public defenders to begin representing their clients earlier in the prosecutorial process while maintaining vertical representation. OPD sued the Orleans Parish Sheriff for the failure to provide constitutionally adequate access to their clients, and is currently operating under a stipulated judgment that provides all the concessions sought by OPD. OPD joined as *amici* in several significant U.S. Supreme Court cases, including *Bullcoming v. New Mexico*, 131 S.Ct. 2705 (2011), and *Smith v. Cain*, 132 S.Ct. 627 (2012).

## **Context for the current evaluation and assessment request**

This consultancy was requested in the late winter of 2012 as a direct result of a financial crisis that developed with OPD's operating budget in the current fiscal year, which reached a critical point toward the end of calendar year 2011. OPD had requested a budget in FY 12 that was similar to its FY 11 budget. That budget request assumed revenues consistent with the previous year, relying upon unusually high levels of contributions from the LPDB, the City of New Orleans, or both. In budget presentations before the City Council in June and November of 2011, Derwyn Bunton informed the Council that because LPDB's contributions were decreasing, it would be necessary for the City to increase its contributions in order to continue services at the previous year's level. Based upon OPD's revenue projections, LPDB approved OPD's proposed FY12 budget, but also made clear that its contribution would be at a lower level than in FY11. OPD continued to spend at the previous year's level of over \$9 million despite LPDB's reduction in funding. In the fall of 2011, OPD brought in a new class of 8 attorneys and began to train them. At almost the same time, the Leadership Team was discussing a plan to begin restricting services and reducing expenditures due to funding concerns. OPD leadership apparently thought there was reason to believe that increased funding would be forthcoming from the City of New Orleans, despite direct communication to the contrary. As for planning and implementing service restrictions, those in leadership at OPD stated they believed LPDB had discouraged such restrictions until after the close of the calendar year. The staff of OPD was kept largely uninformed about what was occurring. As soon as calendar year 2011 ended, the fiscal crisis became acutely worse. Immediate steps had to be taken to ensure that OPD did not significantly overspend its budget. The shortfall amounted to over \$2 million of a \$9.2 million budget. Failure to immediately institute measures to decrease spending earlier in the fiscal year mandated that more draconian corrective steps had to be taken to curtail spending and balance the budget. In late January, Derwyn Bunton announced the layoffs of 27 people and the restriction of various services, the details of which will be discussed below. The Judiciary was alarmed, OPD staff was shocked, and many others in the criminal justice system and the legal community were deeply concerned by these developments. As a result of this course of events, LPDB contacted the consultants and asked them to conduct an evaluation and assessment of OPD, and to make recommendations for improvement.

## **Demographics of Orleans Parish**

OPD is located in Orleans Parish, Louisiana. The population of Orleans Parish as of January 2010 was 343,829 according to the U.S. Census Bureau, a decline of 29.1% over the census figures of 2000. Of that population, 60.2% is Black and 33.0% is White, and 24.4% of the population falls below the poverty line (compared to 18.1% for the State of Louisiana), with 41% of children in Orleans Parish living below the poverty line. Unemployment for adults is at 8.3% in Orleans Parish, compared to 7.1% for the rest of the state (Bureau of Labor Statistics). The median household income is \$35,243.

## Methodology

This report is a summary of our observations, findings, conclusions and recommendations. It is primarily based upon interviews conducted in-person on site, by telephone, and through e-mail communications, all of which are detailed and listed in the Appendix attached to this Report. Previous reports and evaluations were also reviewed and considered, as was caseload, financial and other data provided by both OPD and LPDB. Final recommendations were formulated and submitted only after a consensus decision was reached by the consultants.

## Observations and Findings

**Office Progress.** This report is written at a time of financial crisis and real or perceived leadership problems at OPD. It would be easy to simply attribute this crisis to a failure of the leadership of OPD. However, that would be short-sighted and simplistic considering the complex array of contributing factors involved, not to mention the history and cultural influences that helped produce this serious situation. Rather than just issue criticisms, it is important to recognize LPDB and OPD, their leaders as well as their staffs, for the extraordinary progress made in building a public defender's office that, for the most part, is meeting high standards and effectively achieving compliance with what the Sixth Amendment to the U.S. Constitution requires. This office was built out of the shambles of Hurricane Katrina. Progress has been made despite persistent opposition from the Judiciary, notwithstanding a paucity of resources, and in the face of poverty, despair, and cynicism. In speaking of the post-Katrina office, one longtime staff member said, "Coming in on weekends, seeing attorneys in the conference room working, reading about the trial victories, it's what I always dreamed it would be." One outside observer stated that the biggest achievement is that pre-Katrina, no one in the system had an idea what a properly functioning public defender's office was, and that since 2006, a true public defender's office has been created. Nothing that is said in this report should take away from what we perceive to be an undeniable fact: the leaders and staff of LPDB and OPD have done a phenomenal job building OPD in a short period of time, less than 7 years after Katrina.

**Systems problems.** As stated in a BJA Report on Case Management in 2009, "the most significant issue is the absence of collegial relationships and cooperative problem-solving among the principal actors in the criminal justice system. This is the fundamental problem..." OPD operates in an interdependent system. Its problems are not confined to itself. Rather, just as in 2009, the current problems in OPD are inextricably connected to the problems in the Orleans Parish criminal justice system. Recognition of that fact carries with it many of the solutions to these problems.

**Strengths.** We identified the following general strengths of the OPD (note that both the strengths and weaknesses identified here focus on OPD; how other parts of the criminal justice system relate to OPD will be detailed below):

- The District Defender has a strong vision for creating a high quality client-centered office in Orleans Parish, and the OPD Leadership Team is committed to providing high quality client-centered representation of indigent clients.
- The staff is highly committed to the mission of OPD, which is fundamentally client-centered.
- OPD is able to recruit talented, high quality young lawyers from Louisiana and around the country.
- Staff attorneys are trained extensively during their first year and thereafter. This includes intensive supervision of new lawyers during their first year training period.
- Caseloads are controlled in the felony division.
- The OPD case assignment system is intended to match the seriousness of the case with the practice level and experience of the attorney.
- Staff attorneys are trying and winning many of their cases.
- Attorneys are usually present at first appearance and establish an attorney-client relationship with their clients virtually from the beginning of the case, which continues to final disposition through a vertical representation system.
- Staff attorneys are meeting with their clients, filing motions, investigating their cases, and in general representing their clients zealously.
- Attorneys are regularly holding preliminary hearings.
- A supervisory structure has been created in which supervisors perform their function of oversight and mentoring. Supervision of attorneys has become the norm rather than the exception.
- All staff members are evaluated twice annually utilizing a sound process and evaluation form.
- A new policy and procedure manual has been produced, which is being refined.
- OPD has been responsive to previous reports and has implemented many of the recommendations made by BJA.
- OPD has been successful at increasing its funding, particularly through appropriations from the City.
- OPD utilizes a lot of volunteer services, thereby growing its capacity. This includes a large summer intern class and volunteers in the Defender Services Division. OPD appears to have a good relationship with local law schools.
- OPD has cultivated allies in the wider community, particularly on the City Council as well as with the Business Alliance.
- The number and quality of investigators has improved.

**Weaknesses.** We identified the following general weaknesses of the OPD:

- The budget process is complex and revenue is unpredictable and unreliable. The City of New Orleans and the Louisiana Public Defender Board operate on different fiscal years.
- Far too few attorneys represent far too many people in Municipal Court. As a general matter, attorneys are handling 5 times as many misdemeanor cases as recommended by the National Advisory Commission Standards.

- Despite a well-intended and designed system for the assignment of cases, relatively young and inexperienced lawyers are still handling very serious cases, including those carrying life without parole sentences.
- OPD spends a lot of money on training and much of it is lost by virtue of early attrition.
- Many lawyers feel ground down and burned out. Generally, morale needs to improve.
- There is a high level of turnover among staff attorneys.
- The Leadership Team does not meet on a regular basis.
- The Leadership Team does not communicate well with the staff.
- Leadership permits issues to fester rather than dealing with them on a timely, proactive basis.
- OPD is embattled with the Judiciary.
- All too often collaboration between OPD and LPDB is lacking, with OPD failing to share information on a timely basis, resulting in a tense and often dysfunctional relationship.
- At the time of this evaluation and assessment, there are no provisions for representing conflicts other than an insufficient *pro bono* panel.
- At the time of this evaluation and assessment, representation in capital cases is not provided at OPD.
- At the time of this evaluation and assessment, representation in juvenile cases is not provided at OPD (other than in transfer cases). Rather, JRS, which previously contracted with OPD, now handles juvenile cases in Orleans Parish under a contract with LPDB.
- There are insufficient numbers of social workers to provide alternatives to incarceration.
- The office building and physical space is unattractive, uninviting, and unprofessional in appearance.

**Structure.** OPD has implemented previous BJA recommendations regarding its structure. The structure is relatively simple and appropriate for the size of the organization. At the top of the organization is Derwyn Bunton, Chief District Defender. Below him is Michael Bradley, the Deputy Chief District Defender. On the organizational chart, all major entities in OPD report to the Deputy, including OPD Conflict Representation; Megan Faunce, the Special Projects Administrator; the Contract Programs; the Office and Court Support Services; Kendall (Kenny) Green, the Assistant Chief District Defender and Chief of Trials; William (Willie) Boggs, the Training Director; Jee Park, Special Litigation Counsel; Lindsey Hortenstine, Director of Media and Communications; and Dannielle Berger, Director of Administration. Below the Chief of Trials are four clusters in the Adult Trial Division, each of which is directed by a supervisor. The Child in Need of Care unit is also run by a supervisor who reports to the Chief of Trials. The Investigation Unit is led by a supervisor who reports to the Chief of Trials. OPD has 9 investigators along with 1 supervisor. OPD also has a small Defender Services Division consisting of 1 social worker, 1 social worker intern, and 6 pre-trial services workers. The Defender Services Division reports to the Chief of Trials, although it does not have a supervisor listed on the organizational chart. Three supervisors who oversee 8 attorneys covering Municipal Court report to Willy Boggs, Training Director.

Following the February 2012 layoffs, the Conflict Division was eliminated. Conflict cases are now being handled by *pro bono* counsel, at least until July 1, 2012. Michael Bradley oversees the conflict program and the current method of providing counsel in conflict cases. Juvenile cases are handled by the Juvenile Regional Services Office run by Josh Perry. No one in OPD oversees JRS. Capital cases are handled by two non-profits located in New Orleans. No one in OPD oversees capital representation; rather, that function is being handled by the state. OPD has not filled an IT Manager's position, nor have they filled the Deputy Chief of Trials position. OPD has eliminated the General Counsel's position.

The staff has now been reduced to 83 staff members, including 51 lawyers (50 full-time & 1 part-time), 10 investigators, 17 administrators (business office, social work, court & client support), and 5 volunteers (full-time administrators from Delta Corp and JVC). The volunteers include 1 in Defender Services (case manager for 2 social workers), 1 in Traffic Court (client services and some representation provided by a member of the LA Bar), and 3 in Client Services CDC & Municipal Court.

OPD does not have an advisory board. The Chief District Defender is responsible for reporting to and communicating with the LPDB. He also communicates regularly with the staff of LPDB.

The structure of OPD makes sense. It is reasonably flat and not overly hierarchical. There is nothing inherent in the structure that impedes either internal or external communication. Two structural/organizational issues were noted that deserve attention and reconsideration: (1) the existence of three supervisors over eight attorneys in Municipal appears to be excessive. One attorney should be able to perform that function; (2) the Municipal Court Unit should logically report to the Chief of Trials rather than to the Training Director.

**Leadership and Management.** Pre-Katrina, leadership consisted of a Chief Defender, his Assistant, and a Juvenile Defender. They were overseen by a local indigent defense board. Post-Katrina, the leader of OPD is the District Defender along with those he has chosen to be a part of his leadership team. It is their job to create the vision of OPD, write and implement policies, and oversee the implementation of those policies. The Leadership Team consists of Derwyn Bunton, Michael Bradley, Kenny Green, Willie Boggs, Jee Park, and Dannielle Berger. This team does not meet regularly nor do they have an agenda when they do. There is also a Management Team which consists of the Leadership Team plus the supervisors.

There is a need for strong leadership from the District Defender and his Leadership Team. OPD continues to operate in a post-Katrina environment. The office is still building from the remains of Katrina, creating systems, establishing protocols, and constructing a culture. It is doing so amidst vitriolic criticism from the Judiciary. The Judiciary criticizes OPD leaders for a lack of presence in the courthouse, for their decision-making, for their office structure and method of providing representation, and generally for a failure to lead. Some of the criticism is well-taken; some is unfair and inaccurate. Under the prevailing circumstances, more forceful leadership by the District Defender, as well as his Leadership Team, is absolutely essential. Derwyn Bunton needs to exhibit more strength and presence as a leader; he needs to educate the criminal

justice community about the role and function of the defense in an adversarial legal system, as well as the challenges intrinsic to indigent defense. He also needs to uphold and communicate the vision of OPD within that community. Deputy Michael Bradley needs to be a more visible and complementary partner to the District Defender, assisting the District Defender internally, and strongly asserting OPD's role in the court system as well as with the private bar. Kenny Green, Chief of Trials, plays an important role among the staff. They clearly believe that he "has their backs," and that he is supportive of their zealous advocacy. In many ways, he has become the lightning rod, a position previously occupied by Law Professor Steve Singer when he was Chief of Trials. At present, his major role in the courthouse seems to revolve around protecting the lawyers on his staff from irate judges. This should be converted into a more strategic and focused advocacy for OPD and its mission and values, which will make him less prone to stereotypical complaints from the courthouse and more effective in improving local practice and courtroom culture. Jee Park, Chief of Special Litigation, is a quiet and effective leader. She too needs to strongly assert OPD's mission and value in the courthouse and the broader community, including promptly confronting abusive practices on the part of some judges and litigating systemic violations of the rights of indigent clients. Most of these leaders have gained their leadership positions within the last three years, a time of growth and turmoil. They now need to mature in their leadership roles, and better exercise the wisdom and insight they have gained. Moreover, the Leadership Team needs to move from a siege mentality to a mindset that is more positive, persuasive and assertive about the value of OPD.

There is a definite need for top OPD leadership to be more visible at Tulane and Broad. A constant and almost universal criticism of OPD leadership, specifically directed at Derwyn Bunton and Michael Bradley, is that they are "never present." Judges contrasted this with District Attorney Leon Cannizzaro's almost daily presence in each of the twelve district courtrooms. While "presence" might sometimes seem like window dressing, it is an important issue in the context and environment in which OPD is presently operating. OPD's leaders cannot afford to be viewed as unavailable, disinterested and absent from the courthouse. One or both of them need to commit to being present in every courtroom every week.

The District Defender appears to be exercising good external leadership. We were impressed with how involved the District Defender is in the New Orleans community. In contrast to how he is seen in the courthouse, Derwyn Bunton has substantial support out in the community; he has good contacts and seems to understand the political lay of the land. As an example, in testimony before the City Council Budget Committee, Michael Cowan, Chair of the local Crime Coalition, stated that the "most significant transformation post-Katrina" had occurred at OPD.

It is readily apparent that the Leadership Team needs to function more collaboratively. In the days following Katrina, decision-making appeared to be hasty, often in the middle of a crisis, often with much emotion. OPD is now maturing into a different and more traditional office. It is time for the policy-making-on-the-fly to be replaced by weekly or bi-weekly meetings, all conducted with an organized agenda, and with resulting decisions announced to staff on a regular basis. It is also time for the leaders to work in a less competitive, more collaborative fashion.



**Supervision.** Pre-Katrina there were no supervisors, nor was there a culture of supervision. Rather, lawyers were attached to courtrooms. In a real sense, the judge acted as the supervisor of the part-time public defenders. This has changed dramatically over the last seven years. There is now a formal supervisory structure. More importantly, a culture of supervision exists and has become embedded. Young lawyers routinely provide “prep” to their supervisors, and supervisors routinely work with their young lawyers to improve the final product. There is an expectation and acceptance of supervision. There is also an evaluation process, and an expectation that these evaluations will be used in making promotion decisions. There is also an “LWOP Support Group,” which consists of the upper level attorneys getting together with the Training Director and going into depth on each of the cases carrying a potential life without parole sentence.

For about the last four years, OPD has hired a new “class” of attorneys each year. Those attorneys were trained and mentored by the Training Director. In recent years, they were supervised by attorneys who were located in one of the adult felony clusters. In 2011-12, eight attorneys were part of the new class, supervised by three supervisors. The three supervisors were overseen by the Training Director.

Hiring a new class was appropriate when OPD needed to grow from 6 attorneys in 2006 to more than 40 today, particularly given the high level of turnover. However, today the need for rapid growth is gone. OPD is maturing, and is now in the position of hiring only to fill vacancies. This diminishes the need for the three supervisors overseeing the new class. In addition, it calls for a more permanent placement of attorneys handling Municipal Court cases within the Trial Division, to be overseen by the Chief of Trials.

**Communication.** There is a need for much greater and more effective communication at OPD, both internally and externally. Staff meetings are held on a quarterly basis and these seem to be much anticipated and appreciated. In addition, Derwyn Bunton has instituted an open door policy whereby anyone can come to see him in his office. However, there remains a sense among the staff that they are not informed about the decisions leaders are making and why. There was a universally expressed feeling that staff did not have sufficient notice regarding the layoffs in February. OPD could benefit from a regular e-mail blast from Derwyn Bunton regarding what is happening, what leaders are doing and why. Another alternative would be for OPD to have an internal newsletter, electronic or otherwise, that would regularly update staff on what was occurring in OPD.

There is a need for improvement in communicating externally as well. A universal complaint by judges is that they never see Derwyn Bunton or Michael Bradley. Many judges noted that they see Leon Cannizzaro on an almost daily basis, even though there has been a lot of tension between the D.A. and the Judiciary. They contrasted his presence with that of the OPD leaders, particularly Derwyn Bunton and Michael Bradley. Some of the judges even stated that they did not know Mr. Bunton or Mr. Bradley at all. Judges noted that they saw Kenny Green often, although this usually occurred when there was a perceived problem with one of the felony

attorneys. While communication with the judges has often been strained and the judges have often been hyper-critical, it is absolutely essential that both Mr. Bunton and Mr. Bradley make weekly efforts to see most if not all of the district court judges, if for no more than a 10-minute visit per judge.

Communication also needs to improve with the LPDB. A chronic complaint made about Derwyn Bunton by board members is that he does not communicate well with them, that he regularly fails to document what is going on in Orleans Parish, and doesn't communicate important information to LPDB and staff. This lack of regular communication has been particularly noteworthy during the past year insofar as ongoing budget problems with OPD are concerned. Derwyn Bunton maintains that he believed he had been given a message by LPDB that services were not to be cut during the summer and fall of 2011. However, there is nothing to support that belief in the form of a memo, an e-mail or other written document from LPDB. Communication between Mr. Bunton and LPDB needs to occur regularly and be documented and clear, particularly about budgetary matters.

**Funding of OPD.** The funding situation and resulting crisis in the delivery of services prompted this consultancy. Funding is at the heart of OPD's problems and its instability. Simply put, OPD is not and has never been on a stable revenue footing. Louisiana, unique to all other states, funds its indigent defense system primarily through local traffic tickets and other local fees and costs. This results in some districts having a significant amount of revenue while others do not, often based upon the proximity of an interstate highway. Some districts have a large reserve despite not receiving any state funds. LPDB has no authority to transfer funds from those districts to districts with insufficient local revenues.

This is not a new insight. Each of the assessments by BJA has sharply criticized the manner in which OPD and all other districts in Louisiana are funded. The 2006 BJA Report recommended that the "Louisiana State Legislature and Orleans Parish officials should work together to provide the Orleans Parish defender program with funding in a manner that is adequate, predictable, and data-driven." Thereafter, the State contribution began to increase after Act 307 in 2007 and now constitutes approximately 40% of indigent defense funding. The 2009 BJA Report again called for the development of a "budget based on adequate, relatively stable resources with accurate data and external support...OPD's funding must be stable, dependable, and adequate."

An examination of OPD's FY 12 revenue stream reveals the truth of BJA's assessments. The FY 12 Amended Budget document shows projected revenue from the following multiplicity of sources:

- State--\$4.0 million
- City--\$879,948
- Traffic Court--\$1,300,000
- Traffic Cameras--\$675,000
- Municipal Court--\$125,000

- Juvenile Court--\$1,570
- Criminal District Court--\$80,000
- Condition of Probation--\$20,000
- Bail Bond Revenue--\$200,000
- Criminal Bond Fees--\$17,000
- Application Fees--\$50,000
- Grants/Fellowships--\$350,000
- Total Revenue--\$7,764,490

Not only are the different sources of revenue unstable and unpredictable, but the budget process for OPD is especially difficult and complicated. OPD must work with a State fiscal year that runs from July 1 to June 30 the following year, while at the same time working with a City fiscal year that is based upon a calendar year, from January 1 to December 31. When OPD begins its fiscal year at a particular spending level, they do not know whether the City will provide anticipated funding and meet budget revenue projections. If they spend too much in the first half of the year before knowing what the City will be contributing, the second half of the fiscal year requires significant cuts. In FY 2011, OPD budgeted \$9.5 million, with \$3.5 million expected from the City. This was reduced to \$9.2 million when the City contributed only \$675,000 (with the State having to make up most of the difference with emergency funding). The same sort of over-estimation of revenues and aggressive budgeting occurred in FY12, but this time even more dramatically, leading to the layoffs of 27 employees and preventing timely payments for conflict case representation.

To some extent, OPD has been successful at increasing its funding level. Every year post-Katrina, OPD has been able to increase its revenue to meet the caseload needs. By FY 2011, OPD collected and spent \$9,065,433. The FY 2011 budget was \$9.5 million, amended down to \$9.2 million.

However, FY 2012 was a different story, graphically demonstrating the instability of the revenue stream and the efficacy of the funding scheme. OPD again budgeted \$9.5 million, expecting \$9.3 million in revenue. However, this was amended to \$7.7 million to reflect the fact that the City of New Orleans did not contribute the \$2.6 million expected (instead contributing only \$879,948), traffic court revenue was \$500,000 short of the expected amount, and Municipal Court was \$125,000 less than anticipated. As a result, OPD found itself at the beginning of Calendar Year 2012 in the position of having to cut approximately \$2 million from its spending, resulting in layoffs, salary reductions, increases in employee contribution to health care, and service reductions including the demise of the conflict program. How and why this occurred is addressed below.

Some have alleged that the State is responsible for this situation. We do not agree -- this allegation has no merit. LPDB has not in any way neglected OPD. Indeed, LPDB has worked tirelessly to improve OPD's funding situation. The Board and Staff have worked with OPD to convince judges to assess appropriate fees and to then properly remit them. The Board and

Staff have likewise worked diligently with the City of New Orleans to convince the City to fund OPD similarly to its funding of the D.A. In fact, because of this disparity, it has been necessary for LPDB to fund OPD at a higher level than its population and caseload would warrant (captured in the D.A.F fund). LPDB has been criticized by other jurisdictions for its relatively high level of funding support of OPD.

OPD's operating budget relies heavily on funding from the City of New Orleans. The City is not technically required to contribute to OPD, but it has done so increasingly in recent years due to its recognition of OPD's need and its value to the community and local justice system. However, the City does not contribute an amount equal or even close to the contribution it makes to the D.A.'s Office. While providing a rent-free building to the D.A., they do not provide office space to OPD. An excellent case can be made for funding OPD in parity with the D.A., because OPD plays an essential role in the legal system, it checks the power of the police, seeks alternatives to incarceration, and also contributes in many ways to public safety and a healthier and more just City. Indeed, the policies and practices of Orleans Parish law enforcement and the D.A. determine the caseload of OPD. OPD has no control over its caseload and little control over its revenue. Under these circumstances, it would behoove the City to recognize OPD's role and commit to funding OPD in a manner and amount similar to the D.A.'s Office.

Judges have been remiss in assessing the mandated fees and costs that would have prevented this funding crisis. The most glaring example of judicial neglect in this regard is detailed in the May 2012 report written by LaPorte, CPA's and Business Advisors regarding traffic court. This report is summarized in a May 2012 demand letter written by LPDB Chair Frank Neuner. In his letter, Chairman Neuner summarizes LaPorte's report as establishing that, between 2007 and 2011, Traffic Court failed to pay between \$2.4 and \$6.7 million owed according to statute to OPD. Obviously, had Traffic Court been collecting and remitting the statutorily mandated fees as required, most if not all of OPD's budgetary woes would have been eliminated.

The most recent FY 2013 budget proposed by OPD at this time is for \$7,069,500. It estimates the following sources of revenue for FY 2013:

- \$2.6 million from the State.
- \$1, 057,359 from the City.
- \$2,995,000 from court revenues.
- \$25,000 in application fees.
- \$140,000 in grants.
- Total: \$7, 142,361

This is a realistic budget. It has a small cushion of \$72,861 built in, which is appropriate and responsible. It is not a budget, however, that will provide sufficient resources to fully meet the needs of the Orleans Parish caseload, particularly that which exists in Municipal Court.

**Expenditures.** A review of FY 2011 expenditures reveals, in general, appropriate levels of spending on OPD's part, with some areas of concern. Like most public defender offices, the

great majority of the \$9,210,992 expended in FY 2011 was spent on personnel and benefits such as hospitalization, taxes, workers comp, and malpractice insurance; \$25,845 was spent on the audit and accounting; and \$59,268 was spent on expert witness fees. OPD had an annual audit conducted which noted some material weaknesses, but did not highlight anything of serious concern. Overall, there are no glaring examples of overspending or inappropriate priorities.

One item of concern is the building lease expenditure of \$294,000. The consultants were told that OPD pays over \$18 per square foot for their offices, including over \$30 per square foot for a part of the space. OPD is not getting appropriate value on these expenditures for what is clearly inferior space. The only advantage to their present space is its location. It is ironic that the City provides the D.A. much better space in an even better location at no cost, while OPD pays almost \$300,000 for its inferior space out of a smaller budget. During the site visit, OPD received a proposal for superior space at \$16 per square foot in the CBD (Central Business District). At the same time, staff members voiced serious concerns about and opposition to a potential move due to their desire to be close to the courthouse and jail, notwithstanding the shabby, exorbitantly priced space that OPD currently occupies. Apparently, since the time of the site visits, a more favorable lease has been negotiated that somewhat ameliorates this untenable situation. However, the fact remains that moving to appropriate office space is essential for myriad professional reasons; so is meeting the needs of staff for proximity and convenience. This is a problem that OPD leaders and the City should work together to solve, sooner than later.

OPD also pays a great deal for two areas of representation that have been carved out from OPD's mission of indigent defense representation: capital and juvenile representation. OPD paid \$574,815 in FY 2011 for capital representation and \$450,000 for juvenile representation. Both are critical areas of indigent defense representation. Most urban public defender offices cover both juvenile and capital representation internally. There is an economy of scale that can result in keeping expenditures down while keeping quality high. It is suggested that both areas could be taken back into OPD and money could be saved that could then be used for other needs in the office. Given OPD's budget crisis, it is difficult to justify the high level of expenditures in these two areas.

Another area of concern is the \$941,911 spent on conflicts in FY 12—over 10% of the entire budget. Part of this amount was spent on personnel within OPD, while some was spent on private attorneys. OPD needs to closely examine whether the costs for conflict representation can be lowered while maintaining or improving the quality of representation.

While \$108,529 for training appears to be unusually high, particularly since it does not include the training director's salary, we were informed that most of this amount is funded by grants and is not derived from the operating budget.

**Budget Shortfall attributable to OPD.** The history of the budget shortfall is outlined above and it raises many questions. How did this happen? Was it bad management on OPD's part? And

once the budget shortfall appeared likely, why did OPD bring on a new class of young attorneys, begin to train them and incur the expenses attendant to adding new employees, especially when layoffs were being contemplated? Like many attempts at reconstructing history, who is “to blame” for the \$2 million shortfall depends upon one’s perspective. Suffice it to say that there is plenty of blame to go around. However, more important than assessing blame, it is vital to understand what happened so that it does not happen again.

It is the opinion of the consultants that a number of factors contributed to the dire situation that occurred. It is evident, and OPD Leadership concedes, that OPD engaged in unrealistic optimism about potential funding. One member of the OPD Leadership Team termed it “aggressive budgeting,” while another member characterized it as “wishful thinking.” In the years prior to the FY 2012 cycle, OPD had obtained City funding for the first time. In subsequent years, that funding increased. OPD leadership received what it considered assurances from some people on the City Council that this trend could continue. Whatever level of optimism these so-called assurances generated occurred despite warnings from the OPD Director of Administration in May of 2011 that OPD did not have sufficient revenue for a \$9.5 million budget because LPDB was not going to fund them in 2012 as it had in 2010 or 2011, and the City was not promising that they would make up the shortfall. In fact, e-mail correspondence from the City administration clearly communicated that they were not confident that the City would be able to support significant increases in direct City funding and specifically advised that such increases were unlikely. This communication was received in April 2011, some 12 days before OPD submitted its FY 2012 budget. In addition, before the City Council Budget Committee on June 29, 2011, a councilman explicitly expressed concern that the budget being presented contained a “structural deficit.” The OPD Leadership Team and the District Defender in particular are culpable in moving into FY 2012 with a \$9.5 spending plan without solid assurances from their funders that they would have \$9.5 million in revenue.

Second, the City was convinced to “front” money for FY 12 during the spring of FY 11, with the expectation that OPD would continue to coordinate with the City’s law department to avoid unnecessary disruption of services in municipal and traffic court staffing during the remainder of CY 2011. At the same time the City also explicitly communicated that they were not going to be contributing additional funding to OPD, and that OPD should not rely upon an increase once CY 2012 began. One OPD staff person involved in the budget process said that “It was wishful thinking to believe there were ‘assurances’ from the City – in reality they didn’t exist and weren’t going to come through.” Thus, although the City can be faulted in the sense that its significant contribution to the D.A.’s Office was far in excess of the funding it provided to OPD, it does not share in the “blame” for the budget shortfall that occurred.

Third, OPD continued its customary practice of bringing in a new class of attorneys in the fall. This was part of the culture of OPD by the fall of 2011. OPD developed the concept of bringing in a “class” of new attorneys each fall when they began to rebuild after Katrina. They brought in law students as unpaid interns during the summer before their third year, and afterwards the best and brightest would be offered positions with OPD upon their graduation the following year. This served them well, enabling OPD to obtain services from some of the best new

lawyers in America. It did not serve them so well, however, in the fall of 2012. Offers were made the previous year to 8 new lawyers. When it became apparent in the late summer and early fall of 2012 that the budget was not going to be at the level hoped for, the only reasonable decision to be made at that time was to rescind the offers or condition them on the availability of funds. However, OPD went forward with the new class, and their personnel costs actually increased in October-December. It was during this same period of time that OPD was raising the specter of a budget crisis with a concomitant restriction of services. The irony of that escaped no one—hiring new attorneys while simultaneously preparing to lay off more experienced attorneys than on staff. Bringing the new class onto the staff under the budgetary circumstances extant in the fall of 2011 was imprudent and a poor management decision.

**Systemic causes of the budget shortfall.** OPD is not solely responsible for the shortfall. LPDB and staff bear some responsibility in that they approved OPD's budget request. The process in place, which was utilized in the late spring of 2011, involved submission of budgets by all the defender districts to LPDB for review and approval by LPDB staff. Although LPDB approves budget requests, this "approval" is not what it seems. Everyone involved in the process understood that the budgets submitted by district defenders were based on, at best, a guess as to the anticipated amount of available revenues during the coming year based on revenues received in preceding years. Thus, to a large extent LPDB relied on the figures provided to it by the programs being funded. It was difficult for LPDB to scrutinize and assess how accurate and realistic the revenue projections from a given jurisdiction were because of the unpredictable nature of the revenue sources. Even so, one board member said that while OPD's calculations of revenue were not accurate, "our oversight of their calculations was not adequate. It's a shared responsibility." The budget for FY 12 was similar to FY 11, so there was also a presumption of "regularity" in OPD's budget request. LPDB had made a special appropriation to OPD and to several other districts in FY 11, which it did not have the resources to make in FY 12. In addition, in testimony before the City Council Budget Committee on June 29, 2011, one board member stated that "no retraction of services, uninterrupted service" was expected through the end of the calendar year. To complicate matters further, in the spring of 2011 LPDB had a new and inexperienced budget officer who did not have the ability to make an adequate, proper judgment regarding the soundness of any particular budget request. While certainly not as significant as OPD, LPDB shares some of the "blame" for what occurred.

A major underlying cause of the budget shortfall is that indigent defense at the local level is funded in an unstable manner guaranteeing occasional shortfalls and budget "crises." This is the same conclusion reached in the previous two BJA Reports. It is a systemic issue for the State of Louisiana, not unique to New Orleans. However, it played a significant role in the budget crisis for OPD. There were several local funding sources that simply did not come through as FY 2012 unfolded. The biggest one is the failure of Traffic Court to remit fees that it was collecting, knowingly and illegally diverting that money instead to the operational purposes and coffers of the Court. Auditors with LaPorte, CPAs and Business Advisors, found that the annualized figure was \$2.4 million, more than enough to have prevented the budget crisis in FY 2012. None of the local fines and costs came in at the level anticipated. A successful mandamus action in early 2011 did not result in as much additional revenue from Municipal

Court as predicted. The fault for this lies with the State of Louisiana, which has funded indigent defense in a fragile and unpredictable manner that is completely different than how the prosecution and judicial functions are funded. Equally to blame are those judges who have ignored the requirements of the law and either failed to assess required fees or failed to remit collected fees to OPD.

A recent article in *The Times-Picayune* demonstrates perfectly what happened during the past year. It noted: "New Orleans Traffic Court has been withholding hundreds of thousands of dollars a year designated for public defenders in Orleans Parish, according to a sampling from a newly released forensic audit. According to the audit, the judges also keep hundreds of thousands more for the court by reducing traffic violations to contempt violations or other tickets on which the court collects a fee for itself but isn't required under state law to pass along money to other agencies. The court disputes the exact figures from the audit of more than 14,000 tickets from two months last year. But Robert Jones, the court's chief judge, acknowledged that sometimes the judges keep the money for the court's operational fund. 'To the extent it was done, in rare instances, it was for the sole purpose of keeping the court's operations going,' he said."

Finally, the budget process itself does not lend itself to accurate and conservative budgeting. This is perhaps the biggest "villain" in this scenario. Most governmental budgeting involves a process wherein an agency makes a showing to a budgeting committee with accompanying data that supports the budget request. That committee asks questions, the committee's staff analyzes the underlying data and suggests appropriate action on the request, and the committee then makes a decision. The decision is then recommended to the legislative body, which determines the level at which the governmental entity will be funded. OPD is not a part of such a process. Rather, they are buffeted about, told to ask the State for funding in July, told to ask the City for funding in January, and told to ask judges for funding throughout the year. One board member said that OPD was "caught in a classic political bind." This is a budgeting nightmare, a process rife with pitfalls and uncertainty.

**Restriction of Services.** LPDB has taken the lead among all the states in dealing with the dilemma of excessive caseloads and stagnant or shrinking budgets. LPDB anticipated the shortfall in many of its districts during 2011. Louisiana had previously adopted performance standards mandating that attorneys not accept excessive caseloads. On May 25, 2011, the legislative auditor issued a report entitled "Louisiana District Public Defenders Compliance with Report Requirements" that addressed the fact that 28 of Louisiana's 42 districts had expenditures exceeding their revenues during the previous 18 months. In response, on March 20, 2012, LPDB promulgated a Service Restriction Protocol found in §1701 of Chapter 17 of Title 22 of the Administrative Regulations. The Protocol is noteworthy in its recognition that excessive caseloads threaten compliance with a public defender's ethical responsibilities. The Protocol sets up a process requiring either the LPDB or the district defender to give notice to the other when it is projected that a fiscal crisis or an excessive workload or both will occur during the next 12 months. Detailed responsibilities are set out in the administrative regulation. The essence of the regulation is that excessive workloads cannot be permitted, nor



can expenditures exceed more than a district collects. A more detailed “Guide for Developing a District Service Restriction Plan” has now been developed by LPDB that sets out, step by step, how a district defender is to deal with a restriction of services. The essence of this guide is as follows: “LPDB will support all appropriate Service Restriction Plans that are provided by the districts because LPDB believes that when a public defense service provider breaches the ethical obligations imposed by the Professional Rules of Conduct, the state fails to satisfy its obligation to provide effective assistance of counsel at each critical stage of the proceeding.”

As soon as it became apparent that they would not be receiving \$9.5 million during FY 12, OPD was faced with a major budget crisis that included excessive caseloads. This occurred prior to the finality of the Service Restriction Protocol. The District Defender began to prepare a Restriction of Services plan during the late summer of 2011. This was first revealed in October of 2011. In many ways, it resembled the plan that was ultimately implemented in February of 2012. It proposed implementing the plan as of November 1, 2011. It included instituting a hiring freeze, reducing the salaries of grandfathered lawyers who were holdovers from the previous ODP staff, eliminating expert witness fees, eliminating payment of dues and seminars, eliminating travel and lodging payments, and reducing office supplies, law library expenditures, and other operating expenses. Effective November 15, 2011, it proposed ceasing to provide representation in capital and conflict cases, eliminating the conflict division, eliminating the part-time lawyer positions in Municipal/Traffic Court, canceling the remainder of the Juvenile Regional Services contract, and laying off 12-14 lawyers. It appears that only the hiring freeze was scheduled to be put into effect on November 1, 2011. No documentation was provided to the consultants as to why this plan was not put into effect on that date. It is worth noting that had it been put into effect at that time, the number of layoffs ultimately imposed would not have been as large as they turned out to be. It is also noteworthy that the scheduled implementation of this plan was not to have occurred until after the hiring of 8 new lawyers in the fall class.

Thereafter, at the beginning of 2012, the Restriction of Services Plan was announced at a staff meeting. The plan, including identifying the persons to be laid off, was put together by the Leadership Team with input from the managers. Recommendations for layoffs were based upon performance, seniority, collegiality, cost-efficiency, and commitment to the vision and mission of OPD. The plan included the following provisions:

- Continuing the hiring freeze that began on November 1, 2011.
- Cutting leaders’ salaries by 10% and managers’ salaries by 5%.
- Cutting operating costs.
- Suspending payments to capital and conflict lawyers as of January 16, 2012.
- Eliminating the Conflict Division as of February 15, 2012, which consisted of 7 lawyers and 3 support staff.
- Eliminating the 5 part-time lawyer positions as of February 15, 2012.
- Laying off an additional 13 staff members.
- Requiring employees to contribute 50% of their health insurance premium costs.
- Furloughing all staff for 2 days per month for the remainder of the fiscal year.

- Creating a waiting list for OPD clients as well as conflict clients. Some of these clients would be represented by a *pro bono* panel created by Mark Cunningham of the Jones Walker law firm and overseen by Michael Bradley.
- Moving the training class of new lawyers into Municipal Court effective February 15, 2012.

OPD announced the 27 layoffs to staff members in February of 2012. It further decided not to fill 7 vacant positions. This amounted to an approximate 1/3 (one-third) reduction in staff size. Let there be no mistake, this was a drastic and disruptive action that affected staff, clients and the criminal justice system.

The Restriction of Services plan, while extreme in its effects on the office and others, may have been the only possible choice under the circumstances. The OPD Leadership Team had few good options as of January of 2012. They had to eliminate over \$2 million in spending in just a 6-month period of time. Had they begun their plan earlier in the year and rescinded their offers to their new lawyers, the severity of the plan would have been mitigated. However, as of January 2012, the choices were limited and stark. It was a difficult situation, but the process used in making the decision, and the choice that was ultimately made, reflect a course of action by management that appears reasonably sound given the circumstances.

If implementation of the plan was flawed, it stemmed from the notice given to staff. In our opinion, there was inadequate notice given to the OPD staff. By all accounts, there had been talk of the need for layoffs during the last few weeks of 2011. However, the plan itself was revealed at a staff meeting with only 2 weeks' notice given to staff affected by the layoffs. That is insufficient and is not indicative of good judgment or management practice.

The Restriction of Services is having a serious and unconstitutional impact on indigent clients. There is no other way to say it. As a result of the Restriction of Services Plan, well over a hundred indigent clients, some of them facing serious charges, are without counsel. This is in violation of the Sixth and Fourteenth Amendments to the United States Constitution. In addition, it violates Section 13 of the Louisiana Constitution, which provides in part, "At each stage of the proceedings, every person is entitled to assistance of counsel of his choice, or appointed by the court if he is indigent and charged with an offense punishable by imprisonment. *The legislature shall provide for a uniform system for securing and compensating qualified counsel for indigents.*" The effect of this on the liberty of individual clients is untold and incalculable.

**Quality of representation and compliance with Performance Guidelines.** The quality of representation is a complex determination, an assessment that is usually made on a case-by-case basis by a court in post-conviction review. Our assessment was more modest, consisting of courtroom observation, reviewing case files from each cluster of felony court, and interviews of staff trial attorneys and supervisors. We also talked with numerous judges, prosecutors, law professors, private attorneys, and outside observers regarding this issue. For the most part, it can be said that the quality of representation now being rendered by OPD lawyers is of

reasonably high quality. The attorneys have received what appears to be solid, ongoing training. They are being supervised both before and after events such as pretrial hearings and jury trials. They are seeing their clients early in the process and documenting those interviews. They are filing for and holding preliminary examinations. Motion practice in each of the cases we reviewed appeared to be thorough, aggressive and well done. The file reviews on those cases that went to trial revealed that the attorneys had prepared extensively prior to trial, with outlines for voir dire, opening statement, cross, direct, and closing contained in the file. Interestingly, with few exceptions, even those judges critical of OPD generally were complimentary about the practice of most OPD lawyers. One judge called OPD lawyers “conscientious, overworked, and underpaid.” The District Attorney also praised the quality of OPD attorneys.

**Caseloads – background, history and current status.** In his recently published book, *Securing Reasonable Caseloads: Ethics and Law in Public Defense* (2011) [hereinafter *Lefstein 2011*], Professor Norman Lefstein discusses the problems in providing defense services pre-Katrina and the unprofessional nature of the organizational culture of the New Orleans defender program at the time (*Lefstein 2011* at 102-105; 163-166). While noting that public defense is much improved in New Orleans today due to statutory reforms and the efforts of LPDB, as well as advances in the structure, operation and culture of OPD, Professor Lefstein is still critical of the caseloads at OPD, and the attitudes and defender office culture that he believes allow them to continue (*Id.* at 105-108).

Caseloads indeed remain a problem, but our evaluation and assessment lead us to believe that the organizational culture has changed, and that it continues to change. Both LPDB and OPD have been instrumental in effecting a still evolving culture change that includes dealing with excessive caseloads, at least in district court with respect to felony representation. They have implemented workload standards (as detailed below), restricted felony caseloads, and reduced services when confronted with budgetary problems. We do not detect the sort of futility and attitude of resignation among current OPD staff that is bemoaned by Professor Lefstein concerning excessive caseloads. On the contrary, there is a fervent commitment to the established workload standards on the part of OPD leaders and a real reluctance to depart from them as a result of the budget crisis. There is more to be done, but significant progress has been made in this regard; and the recognition of the need and the commitment to do more are there.

On the other hand, it remains to be seen what will happen, not only at OPD but throughout Louisiana, when enforcement of caseload standards result in service restrictions and clients are in jail without counsel. Additionally, as set forth *infra*, the caseloads in Municipal Court are a source of serious concern that must be addressed immediately.

**Caseloads – current data and practice.** In 2011, OPD handled 30,103 cases. OPD and LPDB require a case count of those cases opened during a calendar year plus the cases pending at the beginning of the year. The breakdown of this caseload is as follows:

- 8,774 non-LWOP felonies
- 103 LWOP felonies
- 37 capital cases
- 20,105 adult misdemeanor cases
- 7 CINC (child) cases
- 133 CINC (parent) cases
- 2 termination of parental rights cases
- 77 FINS cases
- 477 delinquency/misdemeanor cases (JRS handled these cases, rather than OPD)
- 372 delinquency/felony cases (JRS handled these cases, rather than OPD)
- 6 delinquency/life (JRS handled these cases, rather than OPD)
- 9 revocations
- 1 PCR

OPD attorneys conducted 105 felony jury trials in 2011, resulting in 48 acquittals. There were also 75 bench trials, 31 of which were felonies that resulted in a not guilty verdict. This is a 3.3% trial rate, higher than most other states, which usually feature a 1-2% trial rate. The high trial rate combined with the high acceptance rate of the D.A. must be considered when addressing the caseload issue in OPD.

OPD is the rare office that has attempted to control the felony caseloads of their attorneys in compliance with LPDB guidelines. Following Katrina and the 2006 BJA Report, OPD created practice levels rising from 1 to 5 based upon the complexity of the case. Caseloads are set for each of the practice levels. The caseload limits are based not upon new open cases per year but rather the total open cases at any given time. Supervisors are required to monitor the caseloads of the attorneys under their supervision. When an attorney exceeds the caseload limits, the supervising attorney notifies the Chief of Trials and the attorney is no longer assigned additional cases until her total open caseload goes below the limit. The standards were set out most recently in the OPD May 27, 2011 document entitled "Revised Workload Standards and Relief," which established the following workload levels:

- Level 1: 225 cases
- Level 2: 150 cases
- Level 3: 100 cases
- Level 4: 60 cases
- Level 5: 20 cases

Under the workload policy, overflow cases may be assigned out by the Deputy Public Defender to the OPD Conflict Panel "where existing OPD resources won't allow reallocation among Staff Attorneys."

Supervisors are by definition either Level 4 or Level 5 practitioners. A Level 4 supervisor's caseload is set at 35 cases. A Level 5 supervisor's caseload is set at 12 cases.

Neither the District Defender nor the Deputy carries a caseload. As of May 2012, the Training Director was carrying a caseload of 15 felonies, 2 LWOPs, and 9 misdemeanors. Special Litigation Counsel was carrying a caseload of 9 felonies and 2 misdemeanors, as well as an unknown caseload of systemic cases, contempt citations and writs. The Chief of Trials was carrying a caseload of 26 felonies, 2 LWOPs, and 4 misdemeanors. He also intervenes on an almost daily basis in the cases of the attorneys under his supervision.

By all accounts, OPD has made diligent efforts to adhere to their workload policy and control the felony caseloads of their attorneys by monitoring their open cases at any given time. While the open caseloads per attorney are within limits set by OPD, when the totals are viewed on an annual basis they are excessive. Following the layoffs in February 2012, OPD has 28 staff attorneys representing felonies in district court supervised by 4 attorneys. Given the OPD caseload, each attorney handled 317 felonies during 2011 (adding together the LWOP and non-LWOP cases divided by 28). If supervisors are included, that would amount to 277 felonies per lawyer, assuming a full caseload on the part of the supervisor. Whether you exclude or count the supervisors, this overall caseload far exceeds the National Advisory Commission standards of no more than 150 felonies per lawyer per year. These standards have been consistently reaffirmed, including in the ABA Formal Opinion #06-441, the ABA *Ten Principles* (2002), and the American Council of Chief Defenders *Statement on Caseloads and Workloads* (2006). Caseloads of 317 or 277 felonies would also exceed the LIDAB Standards that were in place prior to Act 307.

The most excessive caseloads in OPD are the caseloads handled by their youngest lawyers. Caseloads of attorneys covering Municipal Court are excessive by any definition. In 2011, there were 20,105 misdemeanors. Most of these were handled by the newest lawyers in OPD, first in Magistrate's Court, and then in Municipal Court. There are 8 lawyers assigned to Municipal Court. Each attorney handled 2,513 misdemeanors during 2011. That is over six times the National Advisory Commission standard of no more than 400 misdemeanors per lawyer per year. That means each attorney had less than 1 hour to spend on each of her clients' cases.

It might be said that misdemeanors do not deserve the same level of scrutiny, the same attention, the same degree of lawyering as a felony case. And certainly the national standards do calibrate the seriousness of the offense by setting no more than 150 felonies compared to no more than 400 misdemeanors in a given year. But that does not mean that we should not care about an excessive misdemeanor caseload and not be concerned about properly defending those cases. In an April 2009 report by the National Association of Criminal Defense Lawyers entitled "Minor Crimes, Massive Waste: The Terrible Toll of America's Broken Misdemeanor Courts," it is noted that "There is a prevailing misconception that misdemeanor convictions do not truly affect a person...But, the consequences of a misdemeanor conviction can be dire. As the Supreme Court noted in deciding *Argersinger*, 'the prospect of imprisonment for however short a time will seldom be viewed by the accused as a trivial or "petty"' matter and may well result in quite serious repercussions affecting his career and his reputation.' Indeed, a wrongful conviction, even in a minor case, is pernicious. If the

constitutionally mandatory processes of our criminal justice system cannot determine accurately a person's guilt or innocence of a minor criminal charge, court outcomes are subject to question in all cases." That same source recommends that "To the extent misdemeanor offenses carry a possibility of incarceration, the legislative body with responsibility for funding the public defender program must appropriate funds that permit defenders to maintain reasonable caseload limits. Funding should be based on estimates of the number and types of cases the program is expected to handle in the upcoming year, with the expectation that each defender will have a caseload appropriate for the jurisdiction while not exceeding national standards. In the event that the caseload increases, the program should be permitted to seek supplemental funds, or be permitted to stop accepting cases in order to maintain appropriate caseloads."

What are the consequences of attorneys handling this many cases, exceeding the national standards by 6 times in Municipal Court, or double the national standards for felonies? In the Preface to his book, Professor Norman Lefstein states that, "[W]hen excessive caseloads are the norm, there are insufficient client interviews, motions are not filed for pretrial release and other purposes, investigation of the client's case is either inadequate or nonexistent, and preparation for hearings, trials, and sentencing, to mention just a few of the defense lawyer's basic tasks, are given short shrift. The result is that the accused is not treated fairly, which is the essence of due process of law, and frequently the justice system incurs both damage to its reputation and unnecessary expense." (*Id.* at 6-7).

**Improvement of Service Delivery.** OPD has made immense progress since Hurricane Katrina. This progress is now threatened by the fiscal crisis, the subsequent layoffs, and by excessive caseloads, particularly in Municipal Court. In this context, OPD needs to ensure that they maintain what they have built. They are recruiting excellent lawyers and they are training them through extensive in-house training, sending them to LPDB's Defender Training Institute, and/or sending them to SPDTC. OPD has created a supervisory structure with an appropriate ratio of supervisors to attorneys. OPD has an adequate number of investigators, as well as a small but well-functioning Defender Services Program. The main threat to their service delivery model is that of insufficient resources and excessive caseloads. The problem is most acute in Municipal Court, where attorneys handle over 2,500 misdemeanors a year. Having said that, it should be noted that OPD has actually improved practice in Municipal Court by laying off the part-time lawyers who practiced without client contact and without files, and instead employing full-time, well-trained lawyers who, although young and relatively inexperienced, are actually committed to representing those clients, filing motions and advocating for their clients.

It should also be noted that OPD is not a complete and full-service public defender office. Several practice areas, specifically the representation of capital, juvenile and appellate cases, have been farmed out to contractors. This limits the growth of OPD lawyers by confining them to misdemeanor and felony practices. It contributes to an expressed feeling among OPD lawyers that after several years with the agency there is no opportunity to advance in the

office, engage in different types of litigation and gain more varied experience. The end result is a feeling of burnout that results in a significant turnover rate.

**Attorney-Client Relations.** OPD properly places a high value on client contact. Policy #9 requires a lead attorney to conduct an initial client interview within 48 hours of appointment “in a private setting.” File reviews confirm that effective client interviews are being conducted in felony cases. One felony attorney noted, however, that due to difficult access issues with the detention center, the 48-hour rule is not always followed. Further, the prohibition against conducting initial client interviews in court is violated routinely in Municipal Court, where attorneys are often seeing their clients for the first time.

**Parity with Prosecution Function.** There is a distinct lack of parity with the prosecution function. In CY 10, the D.A. had \$14,726,514 in total revenues. In FY 11, OPD had \$9,152,433 in revenues. Notably, in FY 12, OPD’s budget was reduced to \$7.2 million, and that is likely to be the budget going forward. The D.A. did not experience a similar reduction in resources. Thus, the Orleans Parish D.A. is funded at double OPD’s funding level, while OPD handles 80-90% of the caseload. Further, all D.A. staff have full retirement benefits, while OPD staff have no retirement benefits at all. OPD salaries are slightly slower than D.A. salaries. Starting salaries at OPD are \$42,000 per year while the D.A.’s starting salaries are \$45,000. OPD salaries go up to \$72,000 while the D.A.’s salary range tops out at \$85,000. Both offices are staffed predominantly with young lawyers. The D.A.’s Office has 81 attorneys and 190 total staff compared to OPD’s 51 lawyers and 83 total staff.

**Salaries and benefits.** The salary structure at OPD is reasonable. At \$42,000 per year, starting salaries are competitive with other defender agencies, and increase each year until year 8, when they top out at \$72,000. “OIDP Elders” earn (or were earning) \$80,000. Supervisors receive a \$5,000 “bump.” As it is, there is no incentive to stay at OPD longer than 8 years. It would make sense for OPD to consider at some point reducing the annual salary increase so that there is incentive to stay at OPD. If this is done, OPD should also raise the upper level cap. OPD pays for health and dental insurance for a single person. The recent decision to require contributions of 50% of the premium should be reversed immediately. In addition, OPD should initiate retirement benefits as soon as that can be accomplished. OPD does not have the resources to provide retirement benefits on its own. Other parts of the criminal justice system, as well as the City and the State, should work together to correct this inequity.

Investigator salaries begin at \$32,000 and move up to \$38,000 by year three. This acts as a disincentive to investigators to remain with the office and continue to gain in experience. Administrative and business office salaries appear reasonable, although the cap on administrative salaries should be removed.

**Culture.** “Culture” is basically defined as “how we do things around here.” Pre-Katrina, the “culture” was not conducive to ensuring compliance with the 6<sup>th</sup> Amendment. It was a court-centered culture, with lawyers assigned to and working for the court, representing clients as they came through the court. The “office” consisted of a small room with cubicles at the

Criminal District Courthouse at Tulane and Broad. Attorneys had no privacy and could not conduct private conversations with clients. When attorneys appeared at arraignments, they were often unprepared. Often clients were in detention for 45-60 days without seeing their lawyer. There were no investigators. There was little motion practice, no training, no supervision, no data collected, and by all accounts no client files. Lawyers did not come to the office, and clients seldom visited the office. While there are stories of good lawyering going on pre-Katrina, the system had little to do with that.

Since Katrina, OPD has built a client-centered culture under extraordinarily adverse conditions. Over a seven-year period of time they have moved into a facility where attorneys and other staff have offices, although some are shared. The offices are cluttered and unprofessional in appearance, but at least OPD now has offices. There is a reception area, although it is not client friendly. It has the appearance of innumerable other government offices that poor people are required to frequent. OPD has created policies and protocols from scratch. It has recruited lawyers from all over the country who have a passion for public defender work. It has created a well-designed training and supervision program. It has limited caseloads for felony attorneys. It has changed some of the more unfriendly aspects of the local court system for its clients, including an allotment system that caused a delay in the appointment of counsel and impeded vertical representation, Commissioners hearing misdemeanor cases, and a system in which preliminary examinations were routinely waived. It has established a writ practice that regularly challenges inappropriate rulings from the bench, including a large number of contempt citations. There continue to be elements of the “us against the world” mentality that existed during the years following the destruction wrought by Hurricane Katrina.

This is not to say that the culture at OPD is all good. There is insufficient communication between leadership and staff, and it is a sore spot with many members of the staff. There is an unhealthy rate of turnover in the attorney staff, and a pervasive sense among attorneys that working at OPD is something one does for the short-term—that for a variety of reasons it is not a place to make a career. There is an undercurrent of claims of favoritism and elitism that has existed and persisted for the last four years. Rumors continue to circulate about unprofessional relationships between some leaders and some staff attorneys. There is resentment over the notice given with the recent layoffs, although by and large there is significant consensus about the lay-off decisions.

**Professionalism.** Issues of professionalism are addressed elsewhere in this Report (e.g., p. 58 *et seq.*). Additional issues in this regard that relate to internal procedures and personnel matters will be addressed directly with LPDB and OPD leadership.

**Policy and Procedure Manual.** The OPD Policy and Procedures Manual has been in effect since January of 2007. It should be noted that this manual was produced early on after the hurricane and destruction of the office, which in itself is an impressive accomplishment. It has excellent client-centered policies in it. A new, more detailed Handbook is now under review to take effect this summer. The latter appears to have most of the normal policies contained in a mature government policy and procedure manual. It has a table of contents and is organized in



a much better manner than the preceding version. In contrast to the policy manual, which is directed toward representing clients, the new handbook concentrates more on human resources issues.

**Physical Plant/Office Facilities.** OPD needs to move out of their present office space. The rent paid by OPD at over \$18 per square foot is exorbitant, particularly given its low quality. Amazingly, some of the space costs OPD over \$30 per square foot. As mentioned above, since the time of the site visits, the lease has been renegotiated with somewhat more favorable terms. Unfortunately, the building and office space remain shabby in appearance and downright dirty. The elevator sometimes does not work. It is laid out in a disorganized, inexplicable maze. The reception area is not welcoming to clients, with no room to sit and no child friendly place for families. It has the appearance of just another government office, and a decidedly inferior one at that. It certainly does not look like a lawyers' office. It contrasts dramatically with the physical plant in which the D.A.'s office is located, less than a ¼ mile away on the other side of the courthouse. The D.A.'s office, flooded and closed by Katrina, has reopened and is airy, open, and highly professional in appearance.

**Conflicts.** Prior to February of 2012, conflict cases were being handled both by a Conflict Division and by private lawyers handling cases on assignment. The private lawyers also acted as overload attorneys, receiving cases from the Deputy Chief to enable felony attorneys to comply with OPD caseload limits. In CY 2011, \$941,911 was spent on conflict cases. As of the spring of 2012, OPD was not handling conflict cases. Instead, the Conflict Division had been laid off and payments to private conflict lawyers suspended. Clients who had been conflicted out were being represented by *pro bono* counsel or placed on a waiting list. Based upon our discussions with OPD leadership, consideration is being given to restoring the Conflict Division in the next fiscal year.

**Training.** OPD has developed a comprehensive training program. A large internship class spends its summer at OPD, and many of them apply to work for OPD after law school graduation. New lawyers are recruited from around the country, and some of the best new lawyers in the nation are attracted to work at OPD. Once at OPD, there is a period of training prior to receiving bar results. The curriculum for new lawyers is comprehensive. New lawyers are trained for approximately one year. Supervision is a part of new attorney training, with "prep" being required of the new lawyers prior to going to court. Supervisors go with the new lawyers and watch them in court and thereafter give them feedback. New lawyers also attend the Defender Training Institute put on by LPDB for a week every fall, usually at the beginning of their training. After a year, the lawyers attend SPDTC in Birmingham. Periodically during the year, often on Wednesdays and sometimes on Saturdays, specific training is offered to all of the lawyers in the office. Oftentimes the LWOP Training Group schedules training sessions on Tuesdays. The training offered is one of OPD's more important accomplishments.

One frequently expressed concern is that the recent move from Magistrate's Court to Municipal Court has resulted in attorneys in the training class handling all of the Municipal Court caseload. Many people interviewed said that Municipal Court is a "terrible training ground." Care needs

to be taken to ensure that attorneys in Municipal Court, particularly new attorneys, do not develop bad habits due to the excessive caseloads and the nature of practice and courtroom culture in Municipal Court. This will require constant reinforcement of core values of client-centered representation and close supervision.

**Investigators.** The office has 8 investigators and 1 investigator supervisor. A 3 to 1 ratio is a good attorney to investigator ratio. While our planned interview of one or more of the investigators did not take place due to a scheduling conflict, the attorneys we interviewed in the office seemed more than satisfied with their work. File review showed a great deal of investigation being conducted in virtually every case.

**Development of Future Leaders.** OPD has developed a good system of supervision. There are 4 cluster supervisors and 3 Municipal Court supervisors. However, there is no strategic, intentional plan in place for the development of future leaders. Although none of the supervisors has been sent to national leadership or management training, OPD's supervisors and leadership attend LPDB's annual Defender Leadership Training. OPD is encouraged to devote time, energy and resources to the implementation of a plan focused on developing their future leaders.

**Recruiting.** OPD's recruiting is a success. We heard competing narratives on recruiting, with the Judiciary asserting that OPD is spending a great deal of money to recruit lawyers from the Northeast, and OPD contending that it recruits for the best lawyers available without an inappropriate expenditure of funds. What we found is that approximately half the attorney staff at OPD attended out-of-state schools, that OPD actively recruits at and is open to hiring from Louisiana law schools, that a great deal of money is not being expended on recruiting, and that obtaining free summer internships is OPD's most effective recruiting tool.

**Quality of Staff.** OPD's recruiting is highly successful and brings in numerous high quality young lawyers from Louisiana and beyond who are smart, committed and willing to work extraordinarily long hours under difficult working conditions. OPD has a good blend of attorneys from in-state and out-of-state, including some from the highly acclaimed Prettyman program at Georgetown Law School. Judges for the most part observe that OPD lawyers are doing a good job, are well prepared, well trained, and committed to high quality representation.

**Staff Attorney Turnover.** Successful recruiting does not necessarily lead to a stable work force. While recruiting and quality of staff are two high points of OPD, turnover continues to be a problem. The 2009 BJA Report noted that high rates of turnover post-Katrina had been reversed somewhat. However, turnover remains high at OPD, and interviews revealed that most attorneys did not foresee making OPD a career. Indeed, it appears that many of OPD attorneys intend to remain there a few years, perhaps 3-4 at most, with plans to leave thereafter.

There are several factors that contribute to this turnover level. First and foremost, the work is hard, and made more difficult by hostile relationships in the courthouse. OPD attorneys are regularly working 60-80 hours per week. Many of the young attorneys feel like they “have no life,” and cannot imagine raising a family in the environment in which they find themselves. The caseloads are high and the work is never-ending. There are no alternative types or areas of practice available within the office, such as appeals, juvenile, or even capital, that an attorney might get involved in to round out her skill set while at the same time obtaining a change of scenery and pace in order to reduce the level of stress that comes from a daily, grinding felony trial practice where clients are being sentenced to long prison sentences, including life without parole. Salaries are comparable to other public defender offices, but they are not in parity with the D.A.’s office. Most importantly, OPD’s benefits package is not competitive. After the layoffs went into effect, all staff members were required to pay for half of their health insurance. Even worse, there are no retirement benefits. The absence of a pension plan in and of itself speaks volumes about whether OPD can ever be considered a serious career option for its attorneys. If OPD wants to become a more stable office over time, they will have to focus on turnover, and devote the same level of attention, energy and resources to retention as it does to recruitment.

**Staff Attorney Burnout.** A problem directly related to turnover is that of staff attorney burnout. There is a real sense among many of the OPD lawyers that they and their colleagues are burning out. A general impression conveyed in interviews is that they will only be there for 2-3 years to work 60-80 hours on serious cases and then leave to pursue other opportunities. At OPD, young attorneys move quickly out of handling misdemeanors, and just as quickly move up from levels 1 and 2 to levels 3-5. Lawyers who are 4 years out of law school are trying cases involving life without parole. A lawyer reaching Level 4 or 5 after 3 or 4 years on the job results in the trial lawyer feeling like he has no place to go in the organization, that it will just continue to be more of the same. As previously mentioned, there currently are no other practice areas or options, such as juvenile, appellate, or capital. It must be remembered that behind each of the serious cases is a story, often a story of a violent crime, a victim, and families that have been torn apart. It would be unusual if secondary trauma is not being experienced by the staff attorneys. Supervisory positions are few, and there is no senior litigator status that carries with it additional remuneration. Also, as previously mentioned, this problem is exacerbated by the fact that there is no pension or retirement benefit. And, of course, constant criticism and intimidation by judges, such as their almost cavalier use of the contempt power, plays into the feeling and incidence of burn out.

**Indigence determinations.** Orleans Parish has a high rate of poverty, over 24%, greater than the state average of 18%. Over 40% of Orleans Parish children are poor. It comes as no surprise that most of the persons charged with a crime are indigent. Traditionally, indigency determinations have been made at the first appearance in Magistrate’s Court, often by a Commissioner who does not have an Affidavit of Indigency from the client. OPD’s Defender Services Program later re-examines the indigency determination. Some of the judges “un-appoint” a client if he or she makes bond.

OPD Policy #4 requires OPD lawyers to “vindicate every indigent accused individual’s right to OPD services...” using the criteria established in La. R.S. 15:147. The same policy notes that “the entitlement to OPD services cannot be rescinded based solely on release on bail or employment.”

There was a controversy this past year when private attorneys accused OPD, without any real justification, of trying to represent everyone charged with a crime. It may have stemmed from and been complicated by the Magistrate’s request of OPD lawyers to speak to persons to inform them of their rights at arraignment prior to appointment. The controversy now seems to have quieted. OPD, with excessive caseloads in felony court and massive caseloads in Municipal Court, has no interest in increasing its caseload. OPD needs to assure all parts of the criminal justice system that it wants to serve only those who cannot afford counsel, that it wants to work with the private bar to make sure that happens, while at the same time ensuring that those who are eligible for a public defender are appointed.

There is a promising development on this issue. The Vera Institute has been working on the pretrial release issue for some time, funded by the City. Over the past several months, Vera staff are now making a recommendation on indigency after reviewing a number of factors, including an assessment of risk. This is not being done in public, but instead it is occurring at an in-chambers meeting with the judge and the prosecutor. Vera ensured that the public defender also was invited to these in-chambers determinations. At present, Vera staff is present at about 75% of the first appearances, and they hope to raise their presence and involvement to every arraignment. If Vera’s involvement continues to be funded, this will be a positive development.

**Community defending.** OPD holds itself out as a community defender office. This is a good approach to defending and a proactive vision for the future, where social workers and lawyers work with clients and their families to address underlying criminogenic issues expanding the scope of representation beyond the crime charged in order to work toward a future of non-criminal behavior. OPD is not there yet. At the present time, OPD has on staff 1 social worker and 1 social worker intern in its Defender Services Program. In addition, staff and volunteers in Defender Services work with clients on bond, substance abuse and addiction issues, mental health, and alternative sentencing plans. The need is overwhelming and the resources are few. One attorney, who had been with a community defense office in New York City, said that OPD was a “long way from community defense because of the lack of resources.” She noted that the office needs an immigration attorney to deal with all of the immigration questions now being raised in the office. Housing needs are not being addressed. The OPD’s offices do not appear to be client-friendly or welcoming to the community. The caseload is too high for there to be much neighborhood community outreach. Long-term, OPD needs to educate the greater community on the desirability of community defending and the role community defending plays in improving public safety and the overall health and welfare of the community.

**Salary reductions.** In February 2012, as part of the Restriction of Services Plan, OPD announced a reduction of salary for leaders and supervisors. While this was viewed positively by the staff,

and it was a good symbolic gesture, in the long run it is counter to good business. Leading and managing and supervising at any level is difficult work and should be rewarded in order to attract and retain good people. In a public defender office, where many eschew the work of management and avoid a leadership role, it is essential to build in and provide for adequate compensation for those who are qualified and willing to assume these important, added responsibilities. OPD is encouraged to restore the salaries of the leaders and supervisors at the earliest opportunity .

**Staff Morale and the Employee survey.** Staff morale is something that changes over time. In the years after Hurricane Katrina, staff morale was poor. Turnover was high. There were allegations of favoritism and elitism. Staff did not understand why some attorneys were promoted and others were not. Some African-Americans and some women believed that promotions were based upon favoritism involving questionable, inappropriate relationships. In 2009, some of the staff even engaged in a “sick-out” that rocked OPD. Some staff aired OPD’s dirty laundry with the Judiciary. This low morale seems to have improved somewhat since Mr. Bunton arrived in 2009. On the other hand, in the days and weeks following the layoffs, morale plummeted.

One way to gauge staff morale is through a snapshot, such as an employee survey. OPD leadership conducted an electronic survey in the fall of 2011. They are to be commended for taking this step, and employees welcomed the opportunity to give feedback to their leaders and supervisors. One attorney stated that he liked the survey, that the results of the survey were communicated to all staff by Mr. Bunton and that he did a good job of doing so.

There are many noteworthy findings in the survey. 77% of respondents supported OPD’s mission. 85% believed that people at OPD care about the vision and mission. 71% of the staff responding to the survey felt good about their work with OPD. 73% felt that they could help OPD succeed. On the other hand, 47% did not agree that OPD was committed to diversity. 46% did not agree that OPD supports its non-attorney staff to the same extent and degree as it does attorney staff. 56% did not believe that OPD leadership kept them informed. 85% believed that OPD leaders gave them sufficient autonomy to solve problems, but only 50% believed that they received necessary training to do their work. And, at best, staff reviews of Mr. Bunton’s leadership were mixed.

Even more valuable are the many comments made in the survey. These should be reviewed by the Leadership Team and LPDB in order to address the concerns expressed. As many of the positive suggestions as possible should be implemented.

**Role of the Judiciary.** The criminal justice system is an organic system. What happens in one part of the system affects other parts. One useful metaphor commonly used around the country is that the criminal justice system operates like a three-legged stool composed of the judge, the prosecutor, and the defender, with the need to have each leg equal to and even with the others in order for the stool to be level and stable. The Judiciary in Orleans Parish would reject that metaphor. The Judiciary seems to respect the office of the District Attorney,

although at present they direct much criticism at the D.A.'s Office because of particular policies it has adopted and certain statements the D.A. made to the press about judges. However, with some few exceptions, the Judges do not respect OPD or the District Defender or his leadership. With some exceptions, they harken back to pre-Katrina days when they had the power to appoint the local indigent defender board, and when they had lawyers assigned to their individual courtrooms. Contrary to virtually every study of the public defender system in Orleans Parish, they contend that "things were better" under the pre-Katrina system. The Judiciary criticizes OPD for practically everything they do, from how they recruit, to who they hire, to how they train, to how case assignments are made, to Mr. Bunton's leadership ability and how he spends his time, to how many cases he has tried, to what OPD does with its budget. Judges, with one or two exceptions, do not support the public defender function; rather, they ridicule the office and minimize the importance of the role it plays in the justice system. They do little to support it publicly. In short, they make the job of public defender all the harder.

One particular common complaint is that OPD "promised" that, if the Judiciary changed the allotment system enabling vertical representation, OPD would place two lawyers in each section of court. A leader in OPD, likely Chris Flood, and one from the D.A.'s office, likely Graymond Martin, first Assistant D.A., together visited each district judge to convince the members of the court to change the allotment system. Each judge has a different memory of the conversation, or the so-called "promise." One judge remembers being promised 4 lawyers would be assigned to each section, while another judge remembers being promised 2 lawyers. A close court observer states this never happened and that such a promise was never made. It is likely that OPD did communicate that OPD would reduce the number of courts in which each lawyer was serving, because the cluster system originally placed 8 lawyers in 3 sections of court, and that could have been interpreted as what was supposedly "promised." It is clear that the judges' complaint about this assignment method can be addressed within the cluster system, meeting the interests of both the judges and OPD alike. One of the recommendations listed below is believed to accommodate those respective interests.

It is worthy of special mention that the Judiciary uses its contempt power liberally and indiscriminately against the young lawyers at OPD. It appears that whenever certain judges are annoyed, they threaten contempt of court against OPD lawyers. Lawyers are routinely held in contempt when they are not in a particular courtroom, even though they are required to be in two places at once, and even if they have notified court personnel of the conflict situation in advance or when they are delayed. One contempt citation was imposed when a lawyer held a deposition in a hospital room in order to perpetuate testimony. Another contempt citation occurred when a lawyer and investigator talked with a child witness; the investigator was later charged with kidnapping. Yet another contempt citation occurred when a lawyer declined to go forward on a motion hearing for a client whom the lawyer had never met. The list goes on. A defender was held in contempt for asking a particular question on cross-examination. Another was jailed for refusing to proceed to trial on a murder charge on a Monday after discovery was provided on the previous Friday. In another case, a lawyer found in contempt was roughed up when he was put into handcuffs and led away. The *en banc* district court filed a disciplinary complaint against the District Defender for publicly commenting on his having filed a judicial

complaint. One defender reported being threatened with contempt for asking what was perceived to be an irrelevant question. A defender was held in contempt after appearing in the courtroom, checking in with the assigned D.A. and, after finding that the judge was not present, leaving to attend to a case in another courtroom with the understanding that the D.A. would text her when the judge arrived and they were ready to proceed. When the D.A. failed to text her that the judge had convened court, both she and the D.A. were summarily held in contempt. The judge had her write "I will no longer be late to court," 50 times as her punishment. In the last four years, Orleans Parish district judges have held OPD lawyers in contempt of court over 30 times. Most of those contempt findings were reversed by the 4<sup>th</sup> Circuit Court of Appeal. Not only does such conduct on the part of a judge raise serious questions about ethics, professionalism and abuse of power, but it has a damaging effect on attorney-client relationships, the dignity and fairness of the adjudicative process, and respect for and confidence in the legal system. Moreover, it can have untold detrimental consequences for the defender involved, ranging from the immediate impact on liberty and property interests, to the damage it causes to professional reputations and future careers. For example, each of the aforementioned contempt citations must be reported to professional liability insurance carriers, as well as listed on applications for admission to the bar of federal courts and other state bars, not to mention employment applications, professional associations and ratings organizations. Furthermore, it is devastating to the morale of the defender staff, and it can have a chilling effect on a lawyer's advocacy in the defense of a client. Rather than endeavoring to create a sense of collegiality and professionalism among the bench and bar, such injudicious behavior makes the practice of law dreadful, and leaves lawyers feeling battered and unwelcome. One young lawyer said that "it's extremely frustrating" to be constantly under the threat of contempt. Another agreed, saying it is "very frustrating. It's absurd they threaten us all the time. It makes you wonder whether you even want to practice law."

**Role of the Prosecutor.** "Leon is the second most powerful person in Orleans Parish." This was an oft-repeated refrain during the consultants' visits to New Orleans. It is clear that Orleans Parish has a strong, professional prosecutor's office. The D.A.'s office is large, well-designed, well-located, well-appointed, well-kept and professional in appearance. It stands in stark contrast to OPD's quarters. The building is owned by the City and provided rent-free to the D.A.'s Office. The City's financial support of the D.A.'s office is considerable, resulting in a budget that is twice that of OPD. Leon Cannizzaro served as a prosecutor, a judge in district court and on the court of appeals, and he is now in his fourth year as District Attorney. He is highly knowledgeable about his office's operation, his staff and their performance. He is a hands-on leader. He is a popular prosecutor who is unafraid to wield his power, including against the Judiciary, many of whom are dissatisfied with him but also fear him. He speaks well of OPD and appears to genuinely respect Mr. Bunton. He was not critical of Mr. Bunton's lack of presence in the courthouse, judging it as "a matter of style." He stated that the Judiciary could "be more flexible by remaining on the bench longer during the day to work with OPD." He supports salary parity between public defenders and attorneys in his office. He expressed that, in his opinion, the OPD attorneys work hard, they know the law, and they're prepared. He stated that OPD lawyers "care...they believe in the cause." He compared OPD lawyers to some

private lawyers who “don’t even know the name of a client at his sentencing.” He does not see the role of OPD as similar to his office in terms of problem-solving in the criminal justice system. He did not agree that the District Defender is a “public figure” similar to the D.A. Mr. Cannizzaro appears in most of the courts on an almost daily basis. He requires all plea bargains to go through him, which disempowers his prosecutors, but also centers the power of the office in him. His acceptance rate is over 90%, and is widely criticized. One effect of this acceptance rate is that it causes excessive caseloads for public defenders, clogged courts, and untold damage to citizens who are caught in the net of the criminal justice system. Another effect is that OPD tries a relatively large number of cases and wins a high percentage of its jury trials.

**Role of the System.** OPD operates within a criminal justice system. Ironically, many parts of that system accuse OPD of being inefficient while at the same time causing much of the inefficiency. Specifically, the D.A. accepts an extraordinarily high rate of cases, causing OPD’s caseloads to increase and become excessive. The D.A. specifically requires all assistant prosecutors to seek his approval for a plea bargain. The D.A. has set a goal of 600 jury trials per year. The Sheriff operates a jail that is exceptionally unfriendly to public defenders who want and need ready access to their clients. This not only wastes a great deal of time, but it also affects the quality of the attorney-client relationship. Finally, the Judiciary criticizes the management of OPD, holds public defenders under a constant threat of contempt of court, while at the same time declining to assess and remit the necessary fees that would add to OPD’s revenues, making it possible for them to more effectively handle their caseloads.

**Compliance with ABA 10 Principles.** One of the most important methods for evaluating a public defender system is the ABA *Ten Principles of a Public Defense Delivery System* (2002). The following observations about OPD are made using these benchmarks as a framework.

- **Principle #1. The public defense function, including the selection, funding, and payment of defense counsel, is independent.** The 2009 BJA Report found “limited adherence” to Principle #1, due primarily to the funding instability. This condition continues today, most dramatically with the \$2 million shortfall during 2012. However, the consultants believe that Principle #1 for the most part is being complied with. Structurally, Act 307 has ensured independence of OPD by removing the local indigent defense board that had been selected and influenced by the local judiciary. The District Defender is chosen by LPDB based upon merit. Recruiting of lawyers involves “special efforts aimed at achieving diversity in attorney staff.” (*Id.*, Commentary to Principle #1). LPDB vigorously protects the independence of OPD, evidenced by their filing suit to protect OPD’s funding stream. However, Principle #1 also speaks in terms of independence from “political influence.” In that sense, OPD continues to suffer from a lack of independence, primarily as a result of interference by the Judiciary. The Judiciary has exhibited its political influence by repeatedly holding OPD lawyers in contempt, with constant threat of further contempt citations and other sanctions held over the heads of the lawyers. Much of the Judiciary also criticizes virtually every decision made by OPD. Many of the judges do not work to improve OPD, nor do they support OPD and the vital function played by OPD in the Orleans Parish criminal justice system.



- **Principle #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 consultants believe that OPD meets Principle #2. OPD now has a functioning full-time system. The 2009 BJA Report faulted OPD for its manner of identifying conflict cases and assigning contract lawyers. Until the Restriction of Services plan went into effect in February of 2012, there was active participation by the private bar through the conflict program. It is hoped and assumed that this program will be restored when the new fiscal year begins. The Deputy monitors the *pro bono* program that is now, in part, covering conflict cases.
- **Principle #3. Clients are screened for eligibility, and defense counsel is assigned and notified of appointment, as soon as feasible after clients' arrest, detention, or request for counsel.** The 2009 BJA Report found that "[a]dherence to this principle has greatly improved." We would agree. One of the great improvements made by OPD post-Katrina is that clients are seen early in the process, rather than waiting 45-60 days for acceptance by the prosecution. That alone has improved the local system immeasurably. Public defenders are present at arraignment and staff from the Defender Services Program functions to connect the client and the family to an assigned OPD attorney soon thereafter.
- **Principle #4. Defense counsel is provided sufficient time and a confidential space within which to meet with the client.** The 2009 BJA Report found "little or no adherence to this principle outside of the OPD office setting." Some progress has been made toward meeting this principle. Felony attorneys have limited caseloads, although those caseloads remain too high, and thus have more time than others to handle their cases. In contrast, Municipal Court attorneys are in many instances meeting their clients for the first time in court, and conducting an interview at that time, often resolving the case. They handle over 2,500 cases per attorney/per year. This does not comply with Principle #4. Further, by all accounts the situation in the Orleans Parish Detention Center is abysmal. OPD attorneys waste an extraordinary amount of time trying to get into the jail to meet with their clients. Once there, the space is neither comfortable nor private. Litigation has been pursued successfully, but it is too early to determine whether the Sheriff will assist OPD in complying with this principle.
- **Principle #5. Defense counsel's workload is controlled to permit the rendering of quality representation.** The 2009 BJA Report found OPD lacking on Principle #5, and "strongly recommended that Chief Defender Bunton establish a reasonable caseload." Mr. Bunton complied with this recommendation and established the workload limits for felony attorneys. The *Ten Principles* state that under no circumstances should caseloads exceed national standards. While OPD caseloads exceed national standards, there has been a vast improvement over previous levels. However, no progress has been made limiting the caseloads of public defenders in Municipal Court, where the caseloads are grossly excessive.
- **Principle #6. Defense counsel's ability, training, and experience match the complexity of the case.** The 2009 BJA Report found that this principle was not being followed due to the fact that no process or method for assigning cases was in place, nor was any evaluation of lawyer performance being conducted. This has changed immensely and

for the better. Since that report, OPD has created a system of evaluations involving the placement of attorneys into practice levels. As a result, attorneys are assigned cases consistent with their ability, training and experience, meeting the requirements of Principle #6.

- **Principle #7. The same attorney continuously represents the client until completion of the case.** The 2009 BJA Report found this to be a “major accomplishment of the Office.” This accomplishment has continued, despite the constant criticism of the Judiciary, which wants to return to the pre-Katrina practice when attorneys were assigned to courtrooms and clients bounced from attorney to attorney.
- **Principle #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 2009 BJA Report found that OPD was not in compliance with this principle in that OPD was not “close to parity with regard to salaries and benefits.” The Report also found that OPD “appears to be regarded and included as more of an equal partner than previously.” We find that OPD is not in compliance with this principle. The D.A. has a budget of over \$14 million per year, over double the budget of OPD, despite the fact that OPD handles anywhere between 80 and 90% of the cases handled by the D.A. The D.A.’s office has retirement benefits, as do the judges and the employees of other agencies and components of the criminal justice system. OPD staff stands alone in the system without any retirement benefits. The District Defender is a part of many of the groups that meet to discuss criminal justice issues. However, the District Attorney recognizes and admits that the District Defender is not on a par with him. And the Judiciary for the most part does not treat OPD as an equal partner in the justice system.
- **Principle #9. Defense counsel is provided with and required to attend continuing legal education.** The 2009 BJA Report found that because the Training Director was being diverted to trying cases, BJA was hesitant to find compliance with this principle. This has changed significantly; training is regularly made available in-house, by LPDB Staff, and by SPDTC. In addition, conscientious, active supervision ensures that learning and skills development are ongoing and take place on a continuous, everyday basis in the context of case practice and individual representation. In other words, training and improving skill and competence permeates the office culture, and responsibility for it is not limited to the Training Director. It is spread amongst the Training Director, the Chief of Trials, and the Supervising Attorneys overseeing lawyers in the four clusters in the Adult Trial Division, as well as those assigned to the Municipal/Traffic Division. A policy that requires “prep” review on every felony case set for trial, including completion of a form designed for that purpose, provides “hands-on” assistance and guidance by supervisors that complements more traditional training and instruction in the office. This expands the educational and training function, and allows the Training Director to handle a limited caseload and get into the courtroom, which in turn enables him to better relate to and more effectively teach and develop the trial staff.
- **Principle #10. Defense counsel is supervised and systematically reviewed for quality and efficiency according to nationally and locally adopted standards.** The 2009 BJA Report found that OPD was “not adhering to this principle.” This too has changed since 2009. OPD has 4 attorneys supervising 28 lawyers in their cluster system, and 3

attorneys supervising 8 Municipal Court attorneys. This is not merely *pro forma* supervision either; it is vigorous and continuous. OPD is in full compliance with this principle.

**Compliance with the Eight Guidelines.** The issue of excessive public defender workloads has been gaining in importance. This is highlighted by the ABA's adoption in August 2009 of the *Eight Guidelines of Public Defense Related to Excessive Workloads*. OPD's compliance with these guidelines is addressed below (guidelines are summarized due to the lengthy blackletter statements they contain).

- **Guideline #1. Provider avoids excessive lawyer workloads by assessing whether performance obligations are being met.** OPD appears to be in a minority of public defender organizations that is attuned to the excessive caseload issue. This is likely due to the outstanding leadership of the LPDB. LPDB has adopted performance standards setting out what Louisiana public defenders are expected to do. Included in those standards is the requirement 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 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." [§707(E)]. With one glaring exception, OPD has endeavored to follow LPDB's Standard §707 as well as Guideline #1 of the *Eight Guidelines*. It is in compliance with both in regard to the attorneys that handle felony cases in the four clusters. However, OPD is not in compliance in Municipal Court, where 8 young attorneys are handling grossly excessive caseloads.
- **Guideline #2. Provider has supervisors who monitor workloads.** OPD is in full compliance with this guideline. Their supervision program not only monitors workloads, but also monitors quality of lawyer performance.
- **Guideline #3. Provider trains its lawyers on professional and ethical responsibilities of representing clients.** OPD has a structured training program with a comprehensive syllabus. However, an examination of the syllabus does not reveal specific training on the ethical ramifications of excessive workloads. While they do general training on ethics, it is recommended that they begin to include specific instruction on the ethical components of excessive workloads.
- **Guideline #4. Managers assess whether excessive lawyer workloads are present.** OPD meets this guideline well. Attorneys are routinely taken out of rotation when their caseloads exceed OPD guidelines.
- **Guideline #5. Provider takes prompt action to avoid excessive workloads.** OPD's Service Reduction Plan is an example of action taken to avoid excessive workloads in district court. However, OPD has taken no action to avoid the excessive workloads of its Municipal Court attorneys.

- **Guideline #6. Provider asks court to stop the assignment of new cases and to withdraw from current cases when workloads are excessive.** OPD is in the middle of a service reduction. It has withdrawn from some of its conflict cases and has established a wait list. The situation is in flux and is still developing.
- **Guideline #7. Provider resists judicial directions regarding management of the program that “improperly interfere[s] with their professional and ethical duties in representing clients.”** OPD has been engaged in a struggle for the last 6 years attempting to comply with Guideline #7. OPD has done its part. The Judiciary, however, continues to try to interfere with OPD’s management of its workload situation.
- **Guideline #8. Provider appeals a court’s refusal to stop the assignment of new cases.** OPD has not arrived at this point in the implementation of its service reduction.

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## **Recommendations to OPD, LPDB, and other parts of the Orleans criminal justice community**

### **Structure**

- 1. Continue the cluster system.** OPD heard the criticism from the Judiciary regarding OPD lawyers having to travel between and among 12 different courts and responded with a reasonable compromise. The Judiciary, with few exceptions, wants a return to the old system of having 1 or 2 public defenders assigned to each courtroom, apparently for purposes of efficiency and moving dockets more quickly. In response, OPD created four 7-lawyer clusters, with each cluster serving 3 sections of court. This lessened the conflicts resulting from lawyers handling cases in all 12 sections by reducing coverage to only 3 sections by the lawyers in each cluster. Movement from courtroom to courtroom was minimized by this assignment approach, and it actually provides each section with more than 2 lawyers. This cluster system appears designed to work well, and it represents a practical concession by OPD in the assignment of cases and deployment of its lawyers while maintaining vertical representation; however, judges remains adamant that they want to return to 2 lawyers assigned to each of their respective courtrooms.
- 2. Issues relating to placement of 2 lawyers in individual sections of district court.** The most problematic aspect of assigning lawyers to a specific courtroom is that judges begin to think of those lawyers as “their public defenders” – that view has been demonstrated in the past and it came through in some of our interviews with judges. Moreover, a “team mentality” in processing cases can easily develop among judges, prosecutors and defenders that undermines the principles of the adversary legal system; and, given OPD’s volume of cases, the appearance if not the reality of assembly line justice is given to clients, and becomes the natural impression of those appearing in court as well as the public. There may be ways to refine and develop

the cluster system, and the Judiciary and OPD are encouraged to work together to find those ways, but it should not be done simply to serve the interests of efficiency at the expense of client-centered representation and the perception of justice.

- 3. Establish as part of each cluster supervisor's responsibilities regular communication with the district judges and the coordination of the schedules of the defenders within the cluster to ensure seamless coverage of court.** Most of the judges did not seem to know the identity of the supervisor assigned to their courtrooms. OPD should make it a part of each supervisor's duties to make weekly contact with each of the three judges to whom they have lawyers assigned. These duties should include introducing new lawyers to the judges, reviewing and coordinating dockets and trial schedules, and trouble-shooting.
- 4. Restore the Conflict Division or consider an alternate defender office.** The Conflict Division was a cost-effective means of providing conflict services. Paying conflict lawyers on an hourly basis is an expense OPD can ill afford. This division, which was eliminated during the layoffs, should be reestablished. Consideration might also be given to establishing an alternate public defender's office, which has the benefit of clearly eliminating conflicts. Such an office could be organized as a neighborhood office and provide OPD with a neighborhood presence. However, this is a costly alternative, and is recommended only if OPD receives considerable additional funding. The subject of these recommendations and these potential changes were discussed during the course of our site visits. It should be noted that Mr. Bunton recently stated in a communication to staff following our last site visit that he is restoring the Conflict Division as soon as practicable in FY 2013, albeit with fewer lawyers.
- 5. Restore the conflict panel for 3rd level conflicts with reasonable contracts to ensure cost stability.** Private lawyers should continue to play a role in providing indigent defense. However, handling conflict cases, including capital case conflicts, has been quite expensive in the past, totaling \$941,911 in 2011 alone. Reserving the conflict panel lawyers for third level conflict cases will reduce the cost considerably. Converting from an hourly rate to a contract will further reduce costs. The contract should not be a low-bid contract. Care will need to be taken to ensure that well-qualified lawyers are chosen for the contract panel, and that oversight by the Deputy Chief Defender is properly established and carried out. Again, this subject was discussed with Mr. Bunton at length during the course of our site visits and it should be noted that, in the same staff communication mentioned above, Mr. Bunton announced that the OPD Conflict Panel will transition to a flat fee contract system with fees tied to salaries paid to OPD attorneys performing equivalent case work.
- 6. Move the oversight of the Chief of Trials to the District Defender; leave the oversight of the Conflict Division with the Deputy District Defender.** As it presently exists, there is an internal conflict between having the Chief of Trials answer to the Deputy, while at the same time the Deputy oversees the conflict division and the *pro bono* panel. Conflicts can be avoided by having the Deputy oversee the Conflict Division, while the District Defender oversees the Trial Division. Given our

recommendation that the Deputy also maintain a caseload, albeit a relatively small one, there are possible scenarios that might develop requiring someone other than the Deputy to be responsible for oversight of a specific conflict arising with one of the Deputy's cases. An appropriate screening system should be put in place (if it does not already exist) to identify and avoid such potential conflicts, similar to that which exists in most law firms and defender programs. Other defender systems regularly monitor their supervisors' caseloads to ensure that, in carrying out their oversight duties, additional conflicts are not being generated.

- 7. Establish a capital division that would handle all capital cases in Orleans Parish as well as LWOP cases. LPDB should consider diverting resources that are now going to non-profits to OPD to fund this coverage.** It made sense in the past to have entities other than OPD provide representation in capital cases. Post-Katrina, new leadership found some of the OIDP lawyers handling 20 open capital cases each. OPD needed to hire a large number of new lawyers and train them in felony practice. Very few of the lawyers (one at the present time) have been certified in representing capital cases. However, as OPD matures, capital representation should be taken back into OPD. Several attorneys should become certified as capital defenders. One problem for attorneys with an exclusive capital practice is that those attorneys do not try cases regularly, since most capital cases plead without a trial. As a result, their trial skills can get rusty and they can become out of touch with day-to-day practice in the courtroom. This can be alleviated by also assigning LWOP cases to the capital division. The non-profits now handling Orleans Parish capital cases can use their considerable skill and experience in those parishes where there are more capital cases being pursued by their respective District Attorneys. The \$574,815 that was spent in 2011 on capital representation can be used not only to establish a capital division but also to fund other parts of OPD in need of additional resources. Once again, as with Recommendations #4 and 5 above, this matter and a potential change in approach to capital case representation were discussed with Mr. Bunton during our site visits. Similarly, Mr. Bunton recently revealed plans to launch a Capital Trial Division sometime during FY 2013.
- 8. Establish a juvenile division in the near future.** While we understand there may be funding and political factors to consider in adopting this recommendation and the two that follow, the fact remains that a mature public defender office contains different practice areas that overlap and allow the office to provide full-service, comprehensive representation to its indigent clients in criminal and related matters. This also allows staff attorneys to find their area of greatest of interest and talent, and become better-rounded, skilled advocates. A public defender also has the opportunity to move from one area to another when he or she becomes burned out in one practice area. OPD should not only have a capital division, it also should have a juvenile and an appellate division to provide diversity of practice areas for its attorneys. It should be noted that the D.A.'s Office has a juvenile and an appellate division and handles capital cases as well. OPD already has attorneys who represent children in transfer cases. Expanding this to handling the full array of juvenile cases will be a cost-effective as well as an efficient, effective, high quality way of providing

representation in these cases. As it is, state money is being used to fund another organization that, among other things, has to fund infrastructure and duplicates other expenditures. Housing a juvenile practice inside OPD will provide an economy of scale and allow for a more cost-effective use of the resources (\$450,000 in 2011) that are currently being spent on juvenile representation.

- 9. Establish an appellate division in the near future and merge it with the Special Litigation Division.** Defender offices around the country have found housing an appellate division inside a predominantly trial office has significant benefits for the clients as well as the attorneys. Appellate attorneys are up-to-date on and expert in the law; they can be consulted by the trial attorneys when potential appellate issues come up pretrial. They can brainstorm with the trial attorney in advance of trial, assist with jury instructions and ensure preservation of error. After the trial ends, they are in a better position to effectively represent the defendant on appeal. As mentioned above, broadening the practice areas also has the benefit of providing OPD attorneys with more professional experience, opportunities, and options that encourage them to remain with OPD.
- 10. Continue the Special Litigation Division while maintaining its reduced size.** The Special Litigation Division appears to be a necessary part of OPD, and it should continue until it is merged with a future appellate division. There are numerous contempt citations and writs that provide a steady stream of systemic litigation issues for this division. While 4 attorneys are listed on the organizational chart, it appears that, in addition to the Special Litigation Counsel, only 2 attorneys work in Special Litigation part-time; the rest of their work is done in one of the clusters.
- 11. Move the responsibility for oversight of the Municipal/Traffic Division to the Chief of Trials. Remove direct supervisory responsibilities from the Training Director.** OPD's training program is considered a strength. There needs to be a shift, however, from the tradition of hiring a new "class" each fall. That was a necessary feature of OPD when it was still developing and rapid growth was needed. OPD now must move to the more fiscally responsible and conservative hiring practice of only hiring when there are vacant positions. This move alleviates the necessity of having the Training Director oversee the Municipal Court attorneys, since those attorneys will not necessarily be "new" attorneys. Further, it makes more sense structurally and functionally for all of the trial attorneys to be under the supervision of the Chief of Trials.
- 12. Move the Director of Media and Communications out of the leadership line of authority.** The Director of Media and Communications certainly needs to be aware of what Leadership decides, what the vision of the agency is, and what needs to be communicated internally and externally. As a result, she will need to be present at Leadership Team meetings, except during discussion of confidential personnel or policy matters. Hers is not a supervisory or policy-making position. She should report directly to the Chief District Defender and his Deputy.
- 13. Reduce CINC to one lawyer.** It is recommended that CINC consist of one lawyer rather than continue with the 1 ½ positions now placed there. As a result, there

would not need to be a supervisor in that position. Both of these moves would result in a savings.

### **Leadership, management, and supervision**

- 14. Leadership must become significantly more visible in the courthouse. Leadership should meet at least on a monthly basis with the Chief District Judge. Leadership should also meet individually with all judges on a routine basis, at a minimum bi-monthly.** A universal complaint from Judges is that they do not know, do not see, and never hear from either the District Defender or the Deputy. While this is not necessarily completely accurate, it does appear that the District Attorney is present at Tulane and Broad a great deal more than are either Derwyn Bunton or Michael Bradley. This issue should be taken away from the Judiciary. While both Messrs. Bunton and Bradley are quiet and introverted, they need to push themselves to perform this significant role and leadership duty by being present in each courtroom on a weekly basis. In addition to his physical presence in the courthouse, the District Defender should seek to re-establish a regular monthly meeting with the Chief District Judge to talk about areas of mutual concern and interest. Both of these changes will pay off considerably in the long run.
- 15. The Leadership Team should meet more regularly with an established agenda on at least a bi-weekly basis.** The Leadership Team does not now have a regularly established meeting schedule. When they meet, there is no agenda. Meetings are held on an as-needed basis, which results in management by crisis. This should change. At least twice a month, and preferably every week, the Leadership Team should meet for at least an hour using an established agenda that is circulated in advance of the meeting.
- 16. All leaders other than the District Defender should carry significant caseloads.** At a time when caseloads are high and service reduction is under consideration, every available attorney should be utilized to meet the caseload. It is recommended that the Deputy, the Chief of Trials, and the Training Director should at least temporarily carry a 50% caseload.
- 17. All supervisors should carry 75% caseloads.** At present, supervisors are carrying a one-half caseload. It is recommended that this be increased to a 75% caseload, at least until such time as improved, additional funding enables them to carry less.
- 18. Communicate the job duties of those in leadership to all staff.** One criticism from staff is that they do not know the duties and job descriptions of leadership. We were provided with those job descriptions; they should be communicated to all staff and included in the office handbook.
- 19. Create a policy that delineates the responsibility for the enforcement of fee assessments by leadership, while at the same time allowing for individual lawyers to advocate for relief for those clients who are without resources and unable to pay. This policy should be communicated to the Judiciary.** The Judiciary is critical of OPD's focus on the revenue aspect of the criminal justice system, while at the same time individual staff attorneys are legitimately advocating for relief for their



indigent clients who lack the resources to pay fees, or are otherwise communicating that they do not wish to pursue the fee collection aspect of these cases. It appears, and is argued, that OPD is speaking out of both sides of its mouth. There is natural confusion over this issue, which is not unique to Orleans Parish. Indeed, this is a common misunderstanding in jurisdictions across the country, and it reflects an ignorance of the difference between the legal and administrative duties of a Chief Defender leading an indigent defense organization and the ethical responsibilities of attorneys representing the best interests of individual indigent clients. Other defender offices have handled this successfully by delineating these separate responsibilities in written policies and procedures, and then educating others in the justice system, as well as the public, about these seemingly competing duties and interests. While leadership should be broadly communicating that fees are an important part of OPD's budget, and that the Judiciary should follow the law, at the same time leadership needs to ensure that it is understood that individual public defenders must be free to argue that a particular fee in a specific case may not be appropriate given the circumstances of the individual client. This policy should be written and communicated to and discussed with the Judiciary, as well as the legislative and executive branches of government.

- 20. There should be only one supervisor in Municipal Court.** At the present time, Municipal Court attorneys answer to 3 supervisors as well as the Training Director. As recommended above, the Municipal Court function should be overseen by the Chief of Trials. There should be only one supervisor, who in turn is supervised by the Chief of Trials.
- 21. Send all members of leadership and all supervisors to leadership and management training.** The District Defender is the only individual in the Leadership Team who has received training in leadership, management, and supervision. One former leader at OPD said that the Leadership Team is not effective at implementing Mr. Bunton's vision or at putting systems into place. Some on the Leadership Team eschew leadership and management. This is natural for a relatively new office and common among public defender offices generally. However, each of the leaders needs to either affirm leadership and management or move back into staff attorney positions. And if they want to remain on the Leadership Team, they should be prepared to study and learn how to become better leaders.
- 22. Leadership must commit to interacting more collaboratively in the criminal justice system. Leadership must commit to achieving a better working relationship with the Judiciary.** OPD has operated since Hurricane Katrina in an embattled state. The Judiciary in particular appears to be in a constant struggle with OPD. This is not healthy for the criminal justice system. OPD cannot control what the Judiciary does; however, without compromising its principles, it can resolve to do everything within its power to alleviate the conflict and to begin to co-manage the criminal justice system in concert with the D.A. and the Judiciary.
- 23. Leadership should consider filing judicial complaints where necessary and appropriate.** While this might perhaps seem contradictory to the previous recommendation, it is not necessarily so. As previously mentioned, OPD should do

everything it can to collaborate and work effectively with the Judiciary. However, when a line is crossed, OPD Leadership should be prepared and willing to file judicial complaints. It is a professional responsibility.

- 24. Leadership must become more active and involved in the local bar.** The local bar has been an ally of OPD. Members of OPD leadership should make it a priority to participate in bar activities and lend their time and talent to help achieve the mission and goals of the bar association. Such involvement is not only salutary on its own merits, but it will forge relationships that might not otherwise exist between OPD and the organized bar, and lead to the improvement of the overall practice of law in Orleans Parish.
- 25. Leadership should establish a strategic planning process involving all staff.** The District Defender has communicated that he wants to begin holding strategic planning meetings on a regular basis. This is a good idea, and it should be done sooner rather than later. It will enhance communication, empower staff, improve morale, and result in better decision-making. Whatever method and means is created to accomplish this objective, care should be taken to involve all of the OPD staff in the planning process.
- 26. Reexamine and reevaluate the allegations of favoritism in the office.** Allegations of favoritism, particularly in who is promoted to supervisory positions and who is elevated to the different levels of practice, have been circulating at OPD for years. While these may have been addressed, the Leadership Team is encouraged to evaluate and determine whether there are appropriate policies and standards in place that objectively inform their decisions and prevent such beliefs and claims in the future.
- 27. Be willing to enforce standards and make values meaningful.** There were troubling reports that OPD purports to be client-centered, but that that is more aspiration than reality. For example, one attorney said that there are no repercussions when people don't show up for court or timely visit their clients in jail prior to court. Systems should be devised and put in place to address these issues and ensure accountability, so that attorneys are where they should be, when they should be, and are in compliance with office policies regarding client interviews and visitation (similar matters will be discussed in the Recommendations dealing with Professionalism and Office Culture below). It was also said that there are attorneys at OPD who do not care for their clients and who are rude and insensitive toward them. Leadership needs to communicate firmly and frequently that OPD is a client-centered organization, and it needs to possess and demonstrate the will to enforce professional, client-centered behavior.

### **Communications**

- 28. Leadership must place a high priority on communication with the Judiciary.** This has been discussed in some detail above. Improving communication with the Judiciary must become a high priority of OPD leadership.

**29. Leadership must also place a high priority on communicating internally.**

Communication between leadership and staff is not nearly what it should be and, in fact, is considered very poor by most of the staff, and even by some members of the leadership team. It is recommended that leadership improve communication through continuing quarterly staff meetings, through the use of blast e-mails on a regular basis, and through the institution of an electronic newsletter under the oversight of the Communications Director. In addition, the District Defender and his Deputy need to be more visible among staff, attending cluster meetings, training sessions, or just dropping in on staff to talk. This may not appear to be significant step to take, but it can make a difference, and improving communication with staff is essential.

**30. The District Defender and his Communications Director need to create a communications plan and then implement it among stakeholders in the system.**

OPD does a good job communicating with some parts of the criminal justice system, and a not-so-good job of communicating with other parts. This could be improved considerably if the District Defender worked with his Communications Director to create an overall communications plan. The purpose of such a plan would be to inform all of the stakeholders in the system of OPD's mission and how its leaders are implementing it. A secondary but important purpose is to communicate the needs of OPD and to build support for meeting those needs.

**31. OPD Leadership must commit to improving communication and relations with the LPDB. Leadership must keep LPDB better apprised of developments within the Orleans criminal justice system and, at the same time, routinely document those developments. OPD and LPDB must work toward a relationship that is similar to that which exists in other district offices. A clear delineation of responsibilities between LPDB and OPD needs to be established.**

A great deal of work needs to be done to improve the relationship between OPD and LPDB. Currently, there is palpable tension between the two, and a less than optimal working relationship. OPD must commit to more promptly and fully responding to LPDB requests for data and information; to better communicating and documenting developments in Orleans Parish so that LPDB is never caught unaware and is in the best possible position to anticipate and advocate for the needs of OPD; and to taking proactive steps to avoid unnecessary friction and misunderstanding. Facts, knowledge and information must be shared by both OPD and LPDB so that each can better perform their necessary roles. The lines between the fiduciary, oversight responsibility and the operational function need to be clearly defined, observed and respected. There are a number of ways to address existing problems and improve relations between OPD and LPDB. They should all be explored, sooner than later. For example, a board/leadership team meeting or retreat could be organized with the assistance of experts in business management and delivery of legal services to identify issues and facilitate discussion and solutions. More than anything, both OPD and LPDB must commit to establishing and maintaining a healthy relationship of communication and collaboration.

**32. Educate and communicate with funders and the public about the appropriate level of funding required to accomplish OPD’s mission and discharge its legal and ethical responsibilities.** Use the communications plan to educate the public and all branches of government on the need for and importance of adequate funding. Establish a goal that is based upon solid data and demonstrable need. A goal of \$10 million appears to be the appropriate level necessary to address the duties and obligations of OPD. Hold that level out as an important milestone for the operation and continuing development of OPD. Bring together City and State officials, as well as other stakeholders in the criminal justice system, to establish this as the goal for a mature and well-funded defender office and to collaborate in making it a reality.

### **Budget and expenditures**

**33. Establish a tight, austere, and conservative budget process based upon available resources and historical trends.** The most fundamental role of leadership is to live within the resources that are available during a particular budget cycle. Over the past 7 years, OPD has engaged in what some leadership team members described as “aggressive budgeting,” and others characterized as “wishful thinking” that was unwise and irresponsible. On the one hand, the aggressive approach of OPD leadership to increasing program funding helped grow the OPD budget to meet its caseload needs. On the other hand, this budgeting approach can be risky and dangerous, as demonstrated in the 2011-12 budget cycle, and it caused significant damage to both OPD and LPDB, which cannot be repeated. It is recommended that OPD adopt and enact a budgeting policy that involves conservative estimates of needs and expenditures, as well as expected revenues. The Business Alliance refers to these budgeting estimates as calculated on the “lower side of predictable averages.” They should be based upon a realistic assessment of various trends, rather than overly optimistic projections. Staff positions should only be filled, and offers should only be made, based upon money in hand, rather than money that is hoped for.

**34. LPDB should establish tighter oversight of the budget request from OPD.** LPDB plays an important role in the budget process. While they provide only 40% of the overall funding for OPD, their “approval” of the budget request in April-June at the end of a given fiscal year should not be *pro forma*, but based upon close scrutiny and insistence on submission of objective data to support the request. One OPD staff person involved in the budget process noted that she expected LPDB to reject the \$9.2 million budget submitted for FY 2012 and send it back to OPD to require further substantiation or at least force a conversation. This kind of superficiality and uncertainty should not be present in the budget process.

**35. Establish a “presumption of continuity” in the OPD budget from year to year.** There is no regularity in the OPD budget process, certainly not in terms of funding and revenue. OPD’s budget in 2011 was over \$9 million, and yet there was no expectation or presumption by anyone that a similar budget would be required in 2012. It is highly unusual for an organization to have a \$9 million budget one year

and a \$7 million budget the following year absent a significant change in operations. And, needless to say, continuing to operate at the same level with that sort of reduction in resources, without a corresponding reduction in expenditures, is impossible. Grave consequences follow, and OPD's experience is a testament to that certainty. It appears that more reliable means and methods for funding indigent defense in Louisiana are unlikely in the foreseeable future. If that is the case, then LPDB, the City, and OPD need to work together to establish a process that will result in a more predictable budget from year to year for OPD.

- 36. Hire only when vacant positions exist and are budgeted, or when funds are provided and available to create new positions.** OPD hired the class of 2011 consisting of 8 new lawyers without knowing whether they had the funding to underwrite the class. No contingency plans or precautions were in place. This is part of the reason why 27 staff lawyers had to be laid off in February of 2012. This practice and management decision cannot be justified, and its consequences cannot be repeated.
- 37. The City of New Orleans should support and fund the OPD in a manner and amount similar and proportionate to the D.A.'s office.** Significant disparity exists between the support and resources provided to the D.A.'s Office and that which is given to OPD. The City is to be commended for funding OPD over the last several budget cycles. However, the City needs to look at these two criminal justice entities in context, recognize the essential roles each play in the justice system, and realize that the system cannot function properly and produce just and reliable results unless there is a level playing field and both offices are adequately funded. The importance of a balanced, well-functioning criminal justice system to the New Orleans community cannot be overstated.
- 38. LPDB is urged to seek a more stable funding mechanism for OPD, preferably securing General Fund dollars for the districts.** In *Gideon v. Wainwright*, 372 U.S. 335 (1963), the U.S. Supreme Court issued a constitutional mandate to the States, to wit: under the Sixth Amendment to the U.S. Constitution, states are required to provide counsel in criminal cases for defendants who are unable to afford their own attorneys. It was a unanimous decision of the Court. Simply put, the court held that the right to the assistance of counsel was a fundamental right, essential for a fair trial. Many states, including Louisiana, reacted by shifting the primary responsibility for funding indigent defense to local government, usually to the counties or parishes. Worse, Louisiana chose to fund indigent defense mainly through an assortment of fines and fees. Not surprisingly, this approach to funding has created anomalies and inconsistencies in different parts of Louisiana. A good argument can be made that this is an unconstitutional system as applied to poorer districts in the state. In any event, it has proven to be an unpredictable, unreliable and inadequate method of funding indigent defense, one that is rife with ethical conflicts and subject to political machinations. A more stable, less erratic funding mechanism must be created and implemented. Certainly, OPD would be in a better fiscal position if it received a higher share of its funding from General Fund dollars, collected and distributed by the state. As noted in a recent article in *The Times-*

*Picayune*, "It's nothing short of shameful the way we fund indigent defense around here. If we really cared about justice -- and not just the illusion of it -- we'd make sure that everybody standing before judge or jury had good legal representation. We'd directly fund the public defenders' office and make sure that one person getting out of a traffic ticket doesn't contribute to another person going to prison." ("Get out of a ticket in New Orleans Traffic Court, bankrupt indigent defense," by Jarvis DeBerry, *The Times-Picayune*, May 15, 2012). LPDB should lead the effort to overcome the obstacles standing in the way of sensible public policy in this regard, specifically the proper funding and sound fiscal management of the indigent defense system by the state. If the *status quo* remains in force and goes unchallenged, Louisiana will continue to have problems in complying with *Gideon's* mandate.

- 39. Grow the organization more organically in the future.** Part of the instability experienced by OPD over the past several years related in part to its rapid rate of growth, combined with a high rate of turnover. Now that OPD has grown and become more stable, it is important for the office to continue its growth in an organic way, rather than in fits and starts.
- 40. Maintain a significant reserve of at least 2%, initially by setting aside additional revenue. Hire additional personnel only when a trend of increased revenues has been established.** Part of conservative budgeting is to hold some revenue in reserve. This is particularly of importance in a system that relies in part on chronically fluctuating traffic and court fines and fees. A 2% reserve, or approximately \$140,000, should suffice to provide a level of stability. It is recommended that this reserve be created as revenue increases.
- 41. Create salary and benefit parity with the District Attorney's Office.** Both prosecution and defense play a vital role in a criminal justice system. Attorneys should seek positions based upon their skills and their natural inclinations rather than based upon who supplies a higher salary or a better benefit package. Persons in authority, including OPD, LPDB, the City, the D.A., as well as the Judiciary, should establish as a priority salary and benefit parity, including a pension plan, within the two offices.
- 42. Fund the Defender Services Division.** The Defender Services Division plays a unique and significant role in OPD. It connects the office and client with the client's family. It works on pretrial release and other pretrial issues. It identifies issues such as mental illness, substance abuse, housing and immigration, which are significant but collateral aspects of the client's representation. The entire system would benefit from having a robust Defender Services Division.
- 43. Create an additional administrative position to assist the Director of Administration.** The current Director of Administration at OPD has been functioning in that capacity by herself with virtually no assistance for some 15 or so years, irrespective of the size of the office at any given time during that period, which covers pre and post-Katrina operations,. She has far too many duties and tasks to perform to be fully effective in discharging the significant administrative and financial oversight responsibilities assigned to her. An additional administrative position should be funded.

## Quality of legal services

- 44. Address the excessive caseloads in Municipal Court.** The *status quo* cannot continue in Municipal Court. Individual attorneys there simply cannot continue to represent 2,000+ cases annually. The system has an obligation to ensure that effective assistance of counsel is provided to persons accused of crime whose liberty is threatened. That cannot be guaranteed at the present time by the 8 lawyers handling the Municipal Court caseload. Worse, an informed observer states that most persons in Municipal Court are not represented at all, in violation of *Alabama v. Shelton*, 535 U.S. 654 (2002). OPD is not in a position to represent those additional defendants who are currently going unrepresented in Municipal Court. However, this is a significant constitutional violation awaiting a solution. One temporary solution might be to identify those cases that typically result in a sentence of imprisonment, and only provide representation to those persons. The Judiciary would then have to find some other way to advise persons whose liberty is not going to be taken away, but who are not represented and cannot afford counsel. As long as OPD has insufficient resources to provide effective counsel to all eligible defendants in Municipal Court, the only realistic and somewhat reasonable, professionally responsible method for addressing the situation may be to provide counsel only to those persons who are incarcerated or are expected to be incarcerated. Obviously, this is not an ideal solution, nor is it suggested as a permanent one. The *status quo* presents a serious systems problem that should be addressed by the entire New Orleans criminal justice system. It is not a problem of OPD's making, and the solution should not be the exclusive responsibility of OPD. Recommendations #52 and #58 further address this issue.
- 45. Improve bail advocacy in Municipal Court.** There are a significant number of persons who are in jail when they appear in Municipal Court. At that time, if they plead guilty, they will usually be released. If they plead not guilty, they will usually sit in jail for 30 days awaiting their next court appearance. One observer called this the "Cry Uncle System of Justice." One of the many problems with this, beyond the coercion of guilty pleas, is that some of the offenses are enhanceable. Thus, OPD lawyers are playing a role in this conveyor belt of injustice by pleading at the first appearance, thereby facilitating the prosecution of any subsequent charge for a sentence that will carry more jail time. One of the Municipal Court attorneys referred to this practice as "simple extortion." Apparently, a Pretrial Working Group, which OPD has not participated in recently because of a lack of resources, is reviewing these problems. It is recommended that OPD work with other parts of the criminal justice system to address and improve this situation, particularly release on reasonable bail so that the accused can assert and exercise their rights, and make knowing, intelligent and voluntary decisions about the disposition of their cases and the consequences attendant thereto.
- 46. Elevate the importance of representing persons charged with misdemeanors and low level felonies.** OPD has created a culture in which the most desirable staff positions are those handling the most serious cases. In the past, some newer

attorneys have felt aggrieved by not moving more quickly into those positions. OPD itself appears to have a culture that minimizes the significance of misdemeanor cases. This contradicts OPD's mission and its desire to be a client-centered office. If one were to look at how most poor people in Orleans Parish are affected by the criminal justice system, it would be in Municipal Court. There are serious collateral consequences to being convicted of a misdemeanor. OPD leadership needs to focus on viewing and treating misdemeanor cases as significant matters in order to better serve its clients and achieve its mission.

- 47. Improve arraignment practice in Magistrate's Court.** The Vera Institute has been building a model of pretrial release over the past several years. In this model, Vera staff utilizes risk assessments and consideration of other factors essential to making evidence-based decisions on pretrial release to assist the judge or commissioner in Magistrate's Court at first appearance. A vigorous public defender presence is vital to the success of this model. The public defender's role is to use the information supplied by Vera to argue for pretrial release, as well as in the client's behalf in the determination of probable cause. OPD has stated that they do not have the resources to perform this essential role, stating that they cannot afford to place more than 1 attorney in Magistrate's Court. According to one observer, "that does not comport with competent representation." It should be noted that as many as 30 individuals are arraigned at any given time, with a typical docket numbering 12-13 defendants. It is in everyone's interest, including the City, to incarcerate only those who are dangerous, while ensuring that others return to court. OPD needs to work with Vera, the Court, and the City to educate them about the critical role of OPD at this stage of the proceedings, and the need to fund additional defenders. An overriding issue here is that there are judges who see no role for the public defender at arraignment in Magistrate's Court. Some have gone so far as to prohibit the participation of a public defender in this process. Until judges change their attitudes and policies in this respect, it will matter little how many public defenders OPD assigns to Magistrate's Court for arraignments.
- 48. Address the excessive caseloads in district court.** OPD and LPDB have done excellent work in ensuring that attorneys in Orleans Parish do not have a caseload higher than LPDB and national standards. However, despite their good work, 28 attorneys in district court are each handling over 300 felonies on an annual basis. This is excessive and must be addressed.
- 49. As long as caseloads are excessive, reduce the practice and number of cases being co-counseled.** Most jury trials are conducted by two OPD lawyers. Given how many young lawyers are on the staff at OPD, this practice is somewhat understandable. However, with caseloads as high as they are, and attorney time and resources at a premium, it is difficult to justify this practice in so many cases, especially in light of the extensive training and supervision that is in place. OPD is encouraged to review this practice and consider adjusting it to apply only to the first jury trial of a new attorney and to higher level felony cases in which a need for co-counsel is demonstrated. This recommendation does not include or refer to the use of 2



attorneys for jury selection, which is considered a good policy that should be continued in all cases.

**50. Prepare for litigation over conflicts and excessive caseloads in Municipal Court.**

While OPD needs to do everything possible to increase its funding level by working with the State, the City, and the Judiciary, OPD cannot continue to accept higher and higher caseloads in Municipal Court. Nor can OPD accept or tolerate the number of clients sitting in jail on serious charges without counsel in conflict situations. Although avenues other than litigation should be explored to address these urgent problems, if relief is not immediately forthcoming, litigation may be the only option. OPD leadership should begin working now with LPDB and non-governmental organizations to prepare for litigation that would alleviate and remedy, once and for all, both the overload situation in Municipal Court and the unavailability of counsel in conflict cases.

### **Service delivery**

**51. OPD must immediately address the situation of unrepresented persons who are incarcerated.**

One of the most egregious effects of the Service Restriction Plan is that it has resulted in persons left in jail on serious charges without counsel. This includes some who are charged with a capital crime, and others with a charge involving a sentence of life without parole. At the time of the site visit, there were over 160 cases in which indigent accused had no lawyer. It is probable that this number is now higher. Whatever happens in the future, it cannot include simply cutting off clients without counsel. This constitutional violation must end.

**52. OPD must address the situation in Municipal Court.** Most of the cases handled by OPD occur in Municipal Court, where over 18,000 state and city misdemeanors are processed through those courts. Each of OPD's attorneys assigned to that court is handling over 2,000 cases per year. Little defense advocacy can occur, or is occurring, under these circumstances. OPD is encouraged to work with all of the stakeholders in the system to either improve the representation in Municipal Court or to litigate what is now a clear violation of the 6<sup>th</sup> Amendment to the U.S. Constitution and Section 13 of the Louisiana Constitution.

**53. Consider providing representation only in misdemeanor cases in which clients are likely to receive jail time if convicted.**

One specific strategy that should be explored and considered involves identification of the types of cases in Municipal Court that routinely result in a sentence of jail time. Once that research is done, and there is confidence that it can be relied upon, OPD should announce that it will no longer supply attorneys in all cases, but rather only those identified as involving "jailable" offenses. Care must be taken to cover cases that are not "identified" as non-jailable cases, but nevertheless turn into one. Obviously, this is not an ideal or permanent solution, but merely a stop-gap measure that amounts to the lesser of two evils. It should be employed on a temporary basis until sufficient resources are obtained to provide counsel for all eligible clients.

- 54. OPD should seriously consider bringing back into the organization the provision of representation in juvenile, capital and appellate matters.** This recommendation has been addressed above.
- 55. Special Litigation should continue to litigate the significant issues now impeding due process and professional practice.** It is unusual to have a dedicated unit in an urban office that is devoted to special litigation. However, there are simply too many significant issues that arise in Orleans Parish that necessitate the existence and operation of this unique division. There are an inordinate number of contempt citations issued by the Judiciary that must be addressed and often litigated. There are numerous systemic issues, such as the use of Commissioners, access to clients at the detention center, etc., that require the attention and assistance of this particular unit. And Louisiana has a provision allowing for writs to be taken by both prosecution and defense to an appellate court prior to the end of a case, again necessitating a unit dedicated for that purpose. If OPD creates an appellate division, Special Litigation could be folded into that unit.
- 56. Continue the pro bono plan.** At present, 17 law firms are handling conflict and waiting list cases. This is no substitute for adequate funding of the conflict division and conflict panel system. However, the creation of the pro bono plan has increased awareness of the problems faced by OPD and generated support for OPD among the private bar, and it demonstrates that OPD is making every effort to provide counsel and cover the caseloads.

### **Caseloads**

- 57. Continue to monitor the caseload caps to ensure that OPD does not regress into excessive and unconstitutional caseloads.** OPD has taken a unique and rather contradictory approach to controlling caseloads: they established and zealously protect caseload caps for felony attorneys, while setting no limits on attorneys handling misdemeanor cases, resulting in enormous caseloads for attorneys assigned to Municipal Court. Some defender offices place the burden of excessive caseloads upon all their attorneys. That could easily happen at OPD. Yet LPDB has promulgated regulations that mandate that defenders not have excessive caseloads; LPDB has also promulgated a service restriction protocol. It is recommended that OPD use these regulations to maintain its caseload cap for felony cases, and that it also utilize the service restriction protocol to bring its misdemeanor caseload under control.
- 58. Examine whether the caseload caps can be adjusted upward under some circumstances.** While affirming the importance of caseload caps, it is also critical to protect the interests of vulnerable clients in a time of layoffs and wait lists. Therefore, it is absolutely essential that each OPD attorney perform at the highest level of efficiency and productivity. It is believed that some attorneys could competently handle somewhat higher caseloads. Although this might appear to contradict our observations above expressing concern that OPD lawyers are carrying 300 felonies per year, it is incumbent on leadership, considering the prevailing

circumstances, to carefully examine the caseloads of all felony attorneys in order to determine whether they can handle an increased number of felony cases while at the same time remaining true to the underlying reasons for the case caps set by LPDB, as well as relevant ethical considerations.

- 59. Either get actively involved in the existing Municipal Court Working Group or assemble a Task Force of all the stakeholders to address problems in Municipal Court, particularly the large numbers of cases being processed by the court and the excessive caseloads carried by public defenders. Caseloads in Municipal Court must be significantly lowered.** It is clear that the Municipal Court attorneys have excessive caseloads and that under the LPDB regulations these caseloads cannot be tolerated. At the same time, the court system has a large volume of cases involving indigent defendants who have a right to counsel. These competing challenges and interests are in significant tension in Orleans Parish. The 18,000+ cases in Municipal Court present one of those “wicked problems” that defy a solution. It is in such situations that a multi-disciplinary task force can be of use. One experienced district judge expressed the opinion that OPD should pull its lawyers out of Municipal Court altogether -- that is an action, or reaction, that should be considered. A task force could generate other ideas. It is recommended that the D.A., the District Defender, the Judiciary, the Sheriff, the Bar Association, and the City take the lead in gathering a broad-based group of stakeholders tasked with the responsibility of addressing this problem. The group should address options for reducing or controlling the number of cases that appear on the docket and require the appointment of counsel. The most obvious options that come to mind are increased use of diversion, alternative sentencing or graduated sanctions that do not involve a loss of liberty, better pretrial release decision-making at arraignment and utilization of more extensive pretrial release options, as well as reclassification of certain non-violent, victimless offenses. Can law enforcement address minor offenses at the outset with citations rather than arrests for those offenses for which jail time is unlikely? Can the D.A.’s Office initiate a program that would impose diversion for individuals without their going to court and taking up judicial, defender, and prosecutorial time? Can the City reduce the number of offenses that carry the potential for jail time, thereby freeing the court system, the D.A.’s and OPD to concentrate on more serious cases? All of these possibilities should be discussed with the objective of forming a consensus to at least explore their use on a pilot project, experimental basis. There is little risk in that, and the potential for great reward; a win-win situation for all concerned.
- 60. OPD Leaders and Supervisors should carry a reasonably significant caseload. Leaders should carry a 50% caseload, while supervisors should carry a 75% caseload.** This has been addressed above.

### **Professionalism and Office Culture**

- 61. Create an atmosphere of stability and a return to normalcy.** OPD grew out of the destruction of a hurricane and its aftermath. OPD quickly hired lawyers, moved into

office space, wrote policies, created curriculum, and established a culture so rapidly that, rather than grow organically, it grew up chaotically. For a time there was a leader from out of state, who was then replaced with two interim leaders, who were then replaced with a district defender hired by LPDB. Two BJA assessments have been conducted resulting in numerous recommendations, many of which have now been implemented. This period of dynamism has been impressive, but it has also been frenetic and disordered, and that is, ultimately, unsustainable. One staffer referred to the culture as “go hard and go fast.” It is time for stability and a sense of calm and constancy to replace the chaos. Leadership should establish stability as an organization, and in its working environment and operations, as one of its main objectives over the next two years.

**62. Move to more professional office space, preferably provided at no cost by the City of New Orleans.** OPD is to be commended for moving out of the courthouse seven years ago. However, it is in an office now that is unprofessional in appearance, expensive, and unfriendly to clients. The amount of rent OPD expends should be used to move into an office that is acceptable to staff, more professional, and friendlier to the client community.

**63. Until OPD can be moved, the reception area should undergo major renovation.** There are a number of OPD staffers who are familiar with community defender offices in other parts of the country. They should be used as models to redesign the OPD reception area so that it is welcoming to visitors, professional in appearance, and clearly establishes that the office is a place that respects its clients regardless of their socio-economic standing.

**64. OPD must become more attuned to some of the unique cultural aspects of providing indigent services in Orleans Parish.** One of the criticisms of OPD is that it hires outsiders who do not understand Orleans Parish and especially do not understand the history or appreciate the culture at Tulane and Broad. There is some truth to the criticism, though the importance of the critics’ point may be debatable. However, OPD has strived to hire the best young lawyers possible, regardless of origin or pedigree, in order to have the best and the brightest representing indigents accused of crime. It is hard to criticize the hiring of the best lawyers available. And a fair number of those lawyers are graduates of Louisiana schools. Nevertheless, Leadership should make a concerted effort to blend these two values together, continuing to hire excellent lawyers, including hiring excellent Louisiana lawyers, while at the same time working to educate those lawyers from out-of-state on the unique culture of Orleans Parish. One judge who grew up in the parish volunteered to teach OPD staff about Orleans culture, and that could be valuable in relating to and representing clients, not to mention interesting in and of itself. That is but one idea that could be used to better engage the community and help OPD be perceived as more a part of it. OPD has a stated goal of being a community defender; it cannot reach that goal if it is not considered part of the community, if it does not truly understand the community, and if it does not participate as an active member of the community.

- 65. A pension plan must be created and provided to all staff, preferably one that is equivalent to that of the District Attorney.** The present system in which all parts of the Orleans Parish criminal justice system participate in a retirement system for the benefit of their employees, except for OPD staff, is unconscionable and indefensible. It cannot be allowed to stand, and whatever it takes to get it done should be undertaken as soon as possible, whether it is the City or the State or a combination of both. OPD will never be able to have a stable office without disruptive staff turnover unless a retirement plan is put in place. Attrition will continue at a high rate so long as attorneys do not believe that they can establish a life and family in Orleans Parish and realistically plan their futures there. The plan should be equal to the benefits provided under the D.A.'s plan.
- 66. Make it possible for public defenders who want to make a career of working with OPD to do so.** A consistent pattern seems to be developing among attorneys who join the OPD staff, about half of whom are from out of state: after being recruited and trained, they begin practicing in Municipal Court under conditions that, suffice to say, are not conducive to good lawyering; they then progress to District Court, where they face a generally hostile judiciary, work 60-80 hours a week, benefit from ongoing training, improve their skill set, and gain valuable trial experience; whereupon, with few avenues open to them to expand their practice, limited opportunities to advance their careers, and no real prospect of a better working environment, improved compensation and a more stable personal and professional life, they move on after 2 to 3 years. During the course of staff interviews, that pattern emerged in nearly every instance. Some were burned out, but most cared about their clients and were passionate about the work. However, virtually none of them had any expectation of making a career out of defender work at OPD, and most had no plans to stay with the office beyond 3 years or so. The situation was not much better with the supervisors we interviewed. Such attitudes and sentiments do not bode well for the future of OPD. The described pattern, and the conditions and circumstances that give rise to it, must be addressed and changed radically. The career path and tenure track of new lawyers and existing members of the staff have to be altered in a way that is meaningful and effective. There will always be some lawyers who will work at the office for a few years and then move elsewhere, but a significant number need to be motivated to plan or at least consider a career at OPD and establish a home in Orleans Parish. A decent salary, a retirement plan, better working conditions, the opportunity to move into other practice areas such as capital, juvenile, and appellate, are all important ways to achieve this goal and, in the process transform the staff into one that consists of a balance of seasoned veterans, rising stars, and new attorneys who are prize recruits.
- 67. Create salary incentives for future top litigators.** One current policy that does not encourage lawyers to view OPD as a career is a compensation schedule in which salaries top out at the eight-year mark. There is a \$5,000 supplement for those attorneys willing and able to supervise others, and this is a good incentive that should be maintained. However, if an attorney does not want to supervise, but prefers to concentrate on becoming the best trial lawyer she can be, this too should

be recognized with salary enhancements that are awarded when her potential is realized and that status is achieved. It is recommended that a “top litigator” status be created that entitles the lawyer who reaches that level to a salary increase similar to that of a supervisor.

- 68. Restore health benefits without requiring any contribution for individual employee coverage.** As part of the February service restrictions, all staff had to begin contributing 50% of the cost of their health insurance benefits. This move was particularly difficult for lower paid staff. One staffer said that this was “just like everybody taking a \$200 cut in their paychecks every month.” This particular component of the restriction plan should be eliminated and the requirement should no longer be in effect. OPD must contribute 100% of an individual employee’s single coverage healthcare insurance.
- 69. End the furloughs.** Just as requiring a 50% contribution for healthcare coverage imposed the equivalent of a salary cut, furloughs have the same effect. Additionally, they have a deleterious impact on productivity and the representation of clients. For these reasons, furloughs should be eliminated.
- 70. Consider funding the restoration of health benefits and the elimination of furloughs by suspending or reducing salary increases for attorneys.** In lieu of additional funding, OPD leaders should consider funding the restoration of healthcare benefits and the elimination of furloughs by suspending or reducing salary increases. The financial consequences of this action ultimately inure to the benefit of employees.
- 71. Create rotations within the office that will allow attorneys to reduce stress by periodically changing the area of practice they engage in.** There is considerable burnout among OPD staff lawyers. Once they are trained and move into the felony courts, there is a sense that there is no place else to go. The workload is crushing with long hours, in many cases 60-80 hours per week. That is unsustainable. It is recommended that Leadership strive over the long-term to create rotations that will alleviate some of the burnout, and also enhance the experience and legal abilities of staff.
- 72. Provide routine janitorial service for the office.** OPD must stop requiring office staff to clean up the offices and the bathrooms. A routine janitorial service must be made a part of the budget or incorporated into the lease.
- 73. Require all attorneys to sign an agreement committing to stay with the office for a minimum three-year period of time, and agreeing to pay back a *pro rata* share of training costs if the attorney leaves the office earlier than 3 years.** OPD invests a great deal of time, effort and money in training its lawyers. In all likelihood, the figure is well over \$10,000-\$20,000 per attorney. Some of those lawyers leave within a short period of time after receiving the benefit of their training. They then are able to use that training to enhance their resumes in seeking other employment, as well as utilize the skill set they developed at the expense of OPD in the next phase of their careers. Many public defender offices have implemented a commitment policy whereby attorneys sign an agreement to stay for a specific, minimum period

of time, promising to reimburse the organization for training received if they breach the agreement and leave early.

- 74. Diversity.** Orleans Parish has a highly diverse population. OPD Leadership should welcome diversity in its organization and set a goal of reflecting that value in their staffing and practice. In addition, Leadership should conduct diversity training on a regular basis to ensure that the values of diversity are recognized, understood and implemented.
- 75. Office environment and atmosphere.** Additional professionalism issues relating to internal procedures and personnel matters will be addressed directly with LPDB and OPD leadership.

### **Perception of public defender's office**

- 76. OPD must commit to being a model public defender's office that is respected by all parts of the local criminal justice system and the client community for the quality of its representation and its professionalism.** Given the defense role and function, respect cannot and should not be confused with popularity. It would be nice to have both, but respect is the goal and clear priority, a professional respect of OPD for the proper discharge of its constitutionally based duties and ethical responsibilities. This is further addressed above.
- 77. Develop a communications plan that drives the goal of improving the perception of the office.** This is addressed above.

### **The Judiciary**

- 78. OPD must commit to improving communications and relations with the judiciary.** This is addressed above.
- 79. The Judiciary must respect the role of the OPD as an equal partner in the criminal justice system.** It is clear that the public defense function is not respected by many of the judges. This comes through loud and clear in their criticisms of OPD, in their demeanor, in their liberal use of their contempt power, in their insistence on having their own lawyers in their courtrooms, in expecting OPD lawyers to be in two places at once, and in minimizing the role of the public defender. Judges have an obligation to treat all lawyers who come before them with respect. It was reported by more than one judge that when the District Defender recently appeared before all of the judges at a meeting of the full court, several of the judges "screamed" at him. Judges also have an obligation to improve the system of justice, particularly for those who are indigent. The Orleans Judiciary is encouraged to commit to having better relations with OPD lawyers and OPD leadership. One judge stated that OPD wanted to impose "civil law firm standards" on Tulane and Broad, saying OPD was unwilling to move cases quickly, they were filing too many motions, and they were not adapting to the "ER/triage nature of Tulane and Broad." Change is usually a two-way street. OPD is trying to be more professional, and this affects how the Judiciary wants to run its court. The Judiciary is urged to give some leeway to OPD

as it endeavors to provide more professional representation to its poor and needy clients. Moving from a pre-Katrina model to a “civil law firm model” is not necessarily a bad thing.

- 80. The Judiciary must recognize the independence of OPD.** Principle #1 of the ABA *Ten Principles* states that the indigent defense function must be independent of the judiciary. Historically this principle has been violated in Orleans Parish, particularly prior to Act 307. However, the indiscriminate use of contempt citations, as well as other actions that deride and demean public defenders has the effect of intimidating public defenders to the point where their independence is compromised and their ability to work for and with clients is diminished. The Orleans Judiciary is encouraged to commit to respecting OPD’s independence.
- 81. As long as OPD is funded through fees, fines, and costs, the Judiciary must do everything it can do to assess reasonably and efficiently use accountability measures.** Louisiana has an unstable and unsustainable method of funding its indigent defense system. Orleans Parish is no exception. 60% of OPD’s budget comes from local sources. And yet, these funding sources have proven to be unpredictable and unreliable. OPD is dependent upon revenue that it has no power to generate and no ability to control those who can produce that revenue. After Hurricane Katrina, few traffic tickets were being written, and as a result OPD had fewer funds available at a time when their need was the greatest. Law enforcement can look the other way when traffic violations occur and it affects OPD’s budget. Judges can decline to assess fines and fees when they have some disagreement OPD or with funding indigent defense in a particular way. Judges can decide that funding of their own court needs take precedence over the needs of the public defender’s office, as has been recently done in Orleans Traffic Court. One judge has said that while he will assess the \$35 fee, but he will not collect it. Judges can require that public defender’s fees be collected and paid last in the order of priority. Judges can dismiss traffic offenses and replace them with a contempt of court fine, as is being done in Municipal and Traffic Court, thereby diverting money from OPD to the judiciary fund. These are all derogations of their duty to follow the law, including the assessment, collection and remission of appropriate fees and fines that contribute to the funding of OPD.
- 82. The Judiciary needs to follow the statute regarding indigency rather than “un-appointing” OPD simply because someone posts bond for a public defender client.** OPD has no interest in representing clients who are not indigent and are therefore ineligible for defender services. However, we heard repeated reports and saw examples of judges who “un-appoint” OPD once someone posts bond for an indigent client represented by a public defender. Posting bond might indicate that a client is not indigent, but it also might mean that someone other than the client has posted bond and it has nothing to do with the client’s own resources and his ability to hire a lawyer. While posting bond should be a factor to consider, it should not be the sole factor, nor should it be an automatic disqualifier without further inquiry.



- 83. The Judiciary must cease the liberal use of its contempt power, reserving this extraordinary power for the truly offensive and unprofessional behavior of lawyers.** The use of the contempt power by Orleans judges is unique and oppressive. This practice has few benefits and no real purpose other than to express anger. On the other hand, it has a chilling effect on zealous defense advocacy and ultimately it demeans the system of justice. The Supreme Court of Louisiana and the Louisiana Judiciary Commission are encouraged to address this issue with the Municipal and District Court Judiciary.
- 84. The Judiciary is encouraged to work for the improvement of the public defender system. When the District Defender takes the initiative to become more available and accessible in the courthouse, judges are encouraged to work with him to solve problems.** This report has described the breakdown in the relationship between the Judiciary and OPD. Both parties carry their share of the blame for this situation. Throughout this report, measures that OPD can undertake to improve this vital relationship are suggested. The Judiciary can also take steps to improve the relationship, starting with a willingness and commitment to do so.

#### **The Prosecution**

- 85. The District Attorney is encouraged to support a well-funded and well-managed public defender system; the District Attorneys' Association's recent opposition to legislation providing additional funding for public defenders is shameful, particularly given the funding levels of D.A.'s offices.** The D.A. is a powerful figure in Orleans Parish. He is encouraged to use this power to help ensure that OPD is reasonably funded so that it can play its important and necessary role in the local justice system. To his credit, Mr. Cannizzaro has expressed strong support for a well-funded public defender's office. At the state level, recently the District Attorneys' Association opposed a modest increase in the \$35 fee funding indigent defense. The prosecution function is funded at approximately double that of indigent defense in Louisiana. At the same time, public defense represents anywhere from 70-90% of persons coming before the courts. It is unconscionable for the District Attorneys' Association to use their considerable power to maintain a systemic advantage. Instead, they are encouraged to help build an improved system of justice that is cost-effective, maintains public safety and does justice at the same time.
- 86. The local District Attorney is encouraged to utilize his considerable ability and power to treat the District Defender as a significant partner in managing the criminal justice system.** The D.A. expressed the opinion that he did not view the District Defender as his equal in terms of his position as a public official. That is of course how the power relationships have been viewed historically in Orleans Parish. There are many examples across the country of district attorneys and public defenders being considered equals and viewed as such by the courts and the public, working together to solve problems. A model of equality would work much better than the model of disparity now in effect.

- 87. The District Attorney's Office should examine its high acceptance rates and consider restoring the previous practice of using the acceptance process to screen and cull out less serious cases.** The Judiciary and OPD are critical of the D.A.'s Office for its high acceptance rate, which is described as being above 90%. One judge compared this acceptance rate negatively to a prior D.A.'s rate of 50%. The current acceptance rate has the effect of cluttering the court system with cases of questionable merit and unnecessarily overburdening OPD. The D.A. is encouraged to examine his office's evaluation of cases and to compare it to how D.A.'s offices in other parts of Louisiana make acceptance decisions that effectively protect the public while efficiently using the considerable power of their offices to prosecute those who deserve to be prosecuted and also exercising their discretion to dismiss those cases that do not merit prosecution.
- 88. The District Attorney is encouraged to allow his trial attorneys to negotiate with individual public defenders in order to make the courts function more efficiently.** One reason the system is moving more slowly can be attributed to the D.A.'s policy requirement that all plea bargains must have his approval. Well-qualified, experienced line prosecutors are competent and able to evaluate their cases and decide on an appropriate plea offer in particular cases. In a professional prosecutor's office that is properly run, as Mr. Cannizzaro's appears to be, there should be no reason for this added level of review and approval. It serves only to slow down the proceedings and needlessly consume the precious time and resources of other stakeholders in the system.
- 89. Discovery needs to be processed more efficiently.** One district judge said that the system was not operating efficiently because discovery was not being provided early enough to the defense. While this is often the fault of the police officer, the D.A.'s Office is in the best position to ensure that the police report is completed in a timely manner and provided promptly to the defense.
- 90. The District Attorney is encouraged to work with the District Defender to establish alternatives to incarceration, diversion programs for persons with mental illness and substance abuse, and to reduce the numbers of cases resulting in disproportionately long sentences of imprisonment.** The recent 8-part series in *The Times-Picayune* on incarceration statistics and sentencing practices in Louisiana pointed to the extraordinary number of persons serving long prison sentences. It revealed that Louisiana has an incarceration rate that is double that of the United States at large. One place to begin to change this disturbing trend and explore more effective means of dealing with crime is in Orleans Parish. And two leaders who can help make that happen are the D.A. and the District Defender.

### **The Sheriff**

- 91. The Sheriff is encouraged to work with OPD to improve and increase access to inmates at the various detention centers.** It is imperative that OPD lawyers be able to visit their incarcerated clients in a timely and efficient manner. At the present time, there is an immense and unnecessary waste of time in visiting clients. OPD

lawyers complain that it sometimes takes hours to have a client brought to a place where an interview can occur; one staff attorney stated that it takes 4-5 hours to get in and out of the House of Detention to see one client. It is difficult to see clients at nights and on weekends. This not only wastes taxpayer money but likely violates the Sixth Amendment to the US Constitution and Section 13 of the Louisiana Constitution.

**92. The Sheriff is encouraged to work with OPD to improve the conditions under which interviews are taking place.** Lawyers often have to talk to clients using video equipment at a temporary facility. Contact visits can occur only if the defender calls four hours in advance. In one of the detention centers, lawyers are separated from their clients by plexiglass with holes drilled in it through which they must attempt to communicate. In some areas, the plexiglass is so dirty the defender cannot see the client's face. There is no privacy, and everyone can hear the client speaking to his attorney, a clear violation of attorney-client confidentiality and a potential waiver of the privilege. This is completely unacceptable and, again, a likely constitutional violation.

## Appendix

### Documents Reviewed

The following documents were reviewed as part of this assignment:

- April 10, 2006 report entitled *An Assessment of the Immediate and Longer-Term Needs of the New Orleans Public Defender System*, written by Nicholas L. Chiarkis, D. Alan Henry, and Randolph N. Stone, produced by BJA National Training and Technical Assistance Initiative Project at American University
- January 2010 report entitled *Recommendations to Strengthen the Management and Organizational Structure of the New Orleans Public Defender Office*, written by Bennett Brummer, Edwin Burnette, Nicholas Chiarkas, and Gail Zancha,” produced by BJA National Training and Technical Assistance Initiative Project at American University
- *A Strategic Plan to Ensure Accountability & Protect Fairness in Louisiana’s Criminal Courts* (2006)
- *Access Denied: Pre-Katrina Practices in Post-Katrina Magistrate and Municipal Courts* (April 2006)
- 15 case files, including cases from each cluster in the Adult Trial Division of OPD, were reviewed for content, motion practice, and quality of investigation, research and preparation for trial or other disposition.
- 2007 Policy and Procedure Manual
- New Policy and Procedure Manual now under review
- Job Descriptions for the Deputy Public Defender, Director of Programs and Administration, Director of Training and Development, and Special Litigation Counsel
- An Excel document detailing CY 2012 caseloads at OPD
- Blueprint of Orleans Parish Criminal District Court
- Waiver of Rights Form in New Orleans Municipal Court
- “Orleans Public Defender’s Office, Review & Consultation with Ernie Lewis and Dan Goyette Narrative Requests March 21, 2012,” a 7-page memo by Derwyn Bunton
- Louisiana Public Defender Board Trial Court Performance Standards
- Louisiana Public Defender Performance Standards for Attorneys Representing Parents in Child in Need of Care and Termination of Parental Rights Cases
- Trial Court Performance Standards for Attorneys Representing Children in Delinquency Proceedings
- E-mails regarding Facebook Page: Hostility to OPD
- Nola.com article entitled “Judge taps New Orleans noteworthies to handle criminal cases”
- Nola.com article entitled “Poor defendants in Orleans Parish get some well-heeled help”
- OPD Brochure
- *The Times-Picayune* 8-part series entitled “Louisiana Incarcerated: How We Built the World’s Prison Capital”
- OPD Organizational Chart

- 41<sup>st</sup> Judicial District page from the LPDB 2012 Annual Report
- *The Case for Community Defense in New Orleans*, written by Christopher Muller, Brennan Center for Justice at NYU School of Law (2006)
- *Treated like Trash: Juvenile Detention in New Orleans Before, During and after Hurricane Katrina*, Juvenile Justice Project of Louisiana
- *The Children Left Behind: A Review of the Status of Defense for Louisiana's Children and Youth in Delinquency Proceedings*, ABA Juvenile Justice Center (2002)
- *Conference Report: Public Defender in Louisiana*, Yale Law School (2006)
- Document prepared for the 2007 Kentucky Bar Association devoted to review of the New Orleans Public Defender system (2007)
- Untitled report reviewing the Louisiana Public Defender system
- LPDB Timeline (2007-2011)
- *An Assessment of Trial-Level Indigent Defense Services in Louisiana 40 Years after Gideon*, NLADA (March 2004)
- Public Defender Salary Scale
- Service Restriction Plan Executive Summary consisting of 10 pages
- Substantive Post-ROS Provision Protocols consisting of 3 pages
- Letter dated January 25, 2012 from Frank Neuner to Derwyn Bunton
- Untitled document detailing deadlines for the service restriction plan
- Administrative regulation entitled "Service Restriction Protocol"
- "Orleans Public Defenders Office Restriction of Services: Review of Operating Environment"
- Restriction of Services Plan for FY 2012 dated October 20, 2011
- District 41 Caseload Report 2011
- E-mail from David Newhouse detailing Orleans Parish jury trials
- Orleans Public Defenders "Revised Workload Standards and Relief"
- May 2, 2012 letter from Misty Hizer, Comptroller, and Heather Gillespie, Clerk, Division "B" to Judge Robert E. Jones, Orleans Traffic Court
- "District Attorney Offices—Audit Report Summaries for all LA Judicial Districts—CY10"
- "District Public Defender Offices—Audit Report Summaries for all LA Judicial Districts—FY11"
- D.A. document entitled "Talking Points HB 325"
- Numerous e-mails entitled "Criminal Justice Audit in NOLA"
- Orleans Public Defenders Expenditures January through December 2011
- OPD FY 2011 Original Budget and Budget Amendment
- E-mail string entitled "OPD Budget"
- OPD Proposed FY 2013 Budget--\$7.2 million
- OPD FY 2012 Budget
- OPD FY 2012 Revenue and Expenditures
- OPD CY 2011 Revenue and Expenditures
- OPD FY 2011 Revenue and Expenditures

- Document entitled “Annual Budgets of Louisiana Indigent Defense Assistance Board and its Predecessor Board, Louisiana Indigent Defender Board”
- Payroll Document
- FY 2013 OPD Payroll
- Projected Payroll as of Feb. 1, 2012
- Orleans Public Defenders Financial and Compliance Audit Together with Independent Auditors’ Report for the Year ended June 30, 2011
- FY 11 Income Statement
- CY 11 Income Statement
- FY 12 Income Statement
- 204 e-mails setting up the site visits, clarifying information, attaching documents
- Article in *The Times-Picayune* entitled “Poor defendants in Orleans Parish get some well-heeled help”
- Article in the *The Times-Picayune* entitled “Indigent defense cases accepted by New Orleans politicians, media figures”
- ORLEANS PUBLIC DEFENDERS OFFICE RESTRICTION OF SERVICES: Budget Reductions
- OPD Leadership/Culture Evaluation Survey, short and long reports
- A February 9, 2012 engagement letter between OPD and LaPorte
- Derwyn Bunton’s notes from a May 2011 meeting regarding Municipal and Traffic Court Reorganization
- Copy of the 4<sup>th</sup> Circuit case of *State v. Walker*
- Staff Performance Evaluation Form
- Orleans D.A. Leg. Audit Report 2009 and 2010
- August 17, 2009 BJA Report on caseload management
- Various exhibits and charts in support of LaPorte audit
- D.A. Projected Budget 2012
- June 2011 letter to City Council from D.A.
- *The Times-Picayune* article entitled “Public defenders' operations shortchanged by New Orleans Traffic Court, audit shows”
- ACLU Report entitled *In For a Penny: The Rise of America's New Debtors' Prisons*
- Three power point presentations made by OPD to City Council in November 2010, June 2011, and November 2011
- OPD Training Agenda
- OPD Training Plan
- OPD CY2012 Cases by Attorney and Case Type
- LPDB *Guide for Developing a District Service Restriction Plan (2012)*
- *The Times-Picayune* article entitled “Orleans Parish DA Leon Cannizzaro expresses annoyance with Criminal District Court Judge Benedict Willard,” February 14, 2011
- *The Times-Picayune* article entitled “Public defender mistreated in Criminal District Court, agency chief says,” December 9, 2009

## Persons Interviewed

The following persons were interviewed during the consultants' on-site visits as well as on the phone:

- Derwyn Bunton, District Defender
- Michael Bradley, OPD Deputy
- Kendall Green, OPD Chief of Trials
- Jee Park, OPD Special Litigation Counsel
- William Boggs, OPD Training Director
- Dannielle Berger, OPD Director of Administration
- Carrie Ellis, OPD Supervisor
- Megan Garvey, OPD Supervisor
- Danny Engelberg, OPD Supervisor
- Nzinga Hill, OPD CINC Supervisor
- Jason Ullman, OPD Felony Attorney
- Scott Sherman, OPD Felony Attorney
- Amelia Beskind, OPD Felony Attorney
- Collen Reingold, OPD Felony Attorney
- Aaron Clark-Rizzio, OPD Felony Attorney
- Ashley Georgia, OPD Municipal Court Attorney
- David Ramsey, OPD Pretrial Coordinator in Municipal Court
- Lindsey Hortenstine, OPD Director of Media and Communications
- Frank Neuner, LPDB Chair
- Luceia LeDoux, LPDB Board Member and Vice President of Baptist Community Ministries
- Pam Metzger, LPDB Board Member, Tulane Law Professor
- Julie Kilborn, Deputy Public Defender, LPDB
- John DiGiulio, Trial Compliance Officer, LPDB
- Irene Jo, Assistant Training Director, LPDB
- Dr. Erik Stilling, LPDB
- Chief Judge Camille Buras, Orleans Parish Criminal District Court
- Judge Laurie White
- Judge Franz Zibilich
- Judge Lynda Van Davis
- Judge Keva Landrum-Johnson
- Judge Arthur Hunter
- Judge Frank Marullo
- Judge Karen Herman
- Chief Judge Desiree Charbonnet, New Orleans Municipal Court
- Leon A. Cannizzaro, Jr., Orleans Parish District Attorney
- Robert Kazik, Judicial Administrator of Orleans District Court
- Josh Perry, Director of Juvenile Regional Services
- Joy Dennis, Orleans Parish Municipal Court Minute Clerk

- David Eichenthal—Consultant with The PFM Group
- Blair Gearhart—Director of The PFM Group
- Hardy Fowler, Business Alliance
- John Hope, Business Alliance
- Jay LaPeyre, Business Alliance and Urban League
- Mike Cowan, Chair of the New Orleans Crime Commission
- Mark Cunningham, Private Attorney and Coordinator of Pro Bono Consortium
- Jon Wool, Director, Vera Institute of Justice, New Orleans Office
- Bennett Brummer, Former Miami-Dade County Chief Public Defender
- Steve Singer, Former OPD Attorney, Loyola University Law Professor

**Other**

- Observed proceedings in Municipal Court, Section A, Judge Paul Sens
- Observed proceedings in Municipal Court, Section B, Judge Sean Early
- Observed proceedings in Criminal District Court, Section C, Judge Benedict Willard