



Louisiana Public Defender Board Report of the State Public Defender

To: The Board
Date: March 7, 2014

CAPITAL DIVISION

Currently, Christopher Sepulvado has a reprieve from the United States District Court in the Middle District of Louisiana. He was under a warrant of execution scheduled for February 13, 2014, when Judge James Brady issued a temporary restraining order putting off the execution 90 days, to no earlier than May 4, 2014. There is an April 7 trial date on the preliminary injunction testing the constitutionality of the state's execution protocol.

There are 98 appointed capital cases at the trial court level where the death penalty has not been withdrawn. This number includes pre-indictment, post-indictment and motion for new trial cases.

Performance Standards

Using the Louisiana Legislative Auditor's Report on the Capital Division as a springboard, the Capital Working Group (CWG), Chaired by Ms. Rebecca Hudsmith, met after the last Board meeting. The CWG was presented with two draft versions of the Capital Performance Standards. After considerable discussion it was decided that the authors of the two versions would work together to combine portions of each set of standards. The completed document was circulated last week to the CWG which voted to present the Capital Performance Standards contained in the materials to the full Board for adoption. Should the Board move to adopt the Performance Standards, subsequently, they will be vetted to various members of the criminal justice system, absent significant changes, the standards will be submitted for promulgation.

Capital State Plan

All of the District Capital Plans were redrafted and/or conformed to the original template sent out to the districts in 2011. The plans have been updated to reflect indigent capital defense demand statistics for the preceding five years, collecting the following pertinent data: the average capital arrests per year; the average capital indictment per year; the average capital trials per year and the average number of death sentences per year. The districts were also asked to report the current trial level indigent capital cases in the district based on whether the cases were pre or post-indictment along with the total number of non-conflict cases, conflict cases and

overflow cases. Nearly half of the district plans have been submitted, we are awaiting the district plans from 22 districts which either did not respond or did not respond properly.

Program Assessments

As part of the ongoing Capital Project of Louisiana (CAPOLA)¹ Assessment, staff has conducted to in-depth post-verdict file reviews of two cases in which the death penalty was returned. The files were located off-site in the offices of Capital Appeals Project (CAP)² and Louisiana Capital Assistance Center in New Orleans. The file reviews took several days in January and February to go through each file and document their contents and organization. The Assessment, with its numerous attachments, is nearly complete. When finished the document will be sent to Mr. Goorley and the CWG for review and comment.

Certification and Re-Certification

Pursuant to the Louisiana Capital Guidelines an Application for Re-Certification was created. January 31, 2014 was the deadline for receipt of the Applications for Re-Certification in currently held roles. Those attorneys seeking to be approved for a different role, e.g., from trial associate counsel to trial lead counsel, had to apply for certification in the new role. Nine attorneys are applying for Certification and 115 are applying for re-certification. The list of all applicants' names will be submitted to the Office of Disciplinary Counsel and all applications materials will be made available to the Capital Certification Advisory Committee (CCAC) which consists of James Boren, John Di Giulio, Rebecca Hudsmith, John Landis, Tom Lorenzi, John Reed, Herschel Richard, and Rick Schroeder. John Holdridge, with whom LPDB contracts for his expertise and assistance in the Capital Division, staffs this committee along with the capital case coordinator.

As during the last certification process, CCAC members will be paired and assigned equal numbers of applications to review in-depth and the entire committee will vet all of the applicants over the course of several weekend teleconferences. It takes a tremendous amount of work to go through this process and division staff is extremely grateful for the dedication and hard work the committee members donate to this important process. John Holdridge, with whom LPDB contracts for his expertise and assistance in the Capital Division, staffs this committee along with the capital case coordinator.

Division Staff Changes

Since the January 7, 2014 Board meeting the Division's Administrative Coordinator, Michele Burbank, moved to Lafayette and recently obtained a new position with a significant pay raise. We wish her well, but will miss her hard work and good humor. The Administrative Coordinator position, shared with the Juvenile Division is being advertised and we hope to have it filled very soon. Currently, Terre Hazlewood, who is currently doing our timekeeping and payroll is ably assisting the capital case coordinator.

¹ CAPOLA is located in Shreveport, LA. Mr. Richard Goorley is the Executive Director. Pursuant to its contract, CAPOLA delivers capital trial representation to Caddo (1st JD); Winn (8th JD); LaSalle (28th JD); Grant (35th JD); Red River (39th JD) and in other parishes statewide as needed.

² In addition to covering all of the capital appeals, pursuant to its contract CAP provides resource services, motion for new trial practice, and representation in post-conviction capital cases where there is a conflict with Capital Post Conviction Center of Louisiana (CPCPL). CAP's Executive Director is Ms. Sarah Ottinger. Their offices are located in New Orleans.

Litigation

As most of the case specific litigation is based on the lack of Expert Witness Funding, the capital case coordinator has been working with the State Public Defender to cover all of the subpoenas and court orders to appear. Since the last Board meeting either the Public Defender of the Capital Case Coordinator has testified in *State v. Brian Smith*, *State v. Wilbert Thibodeaux*, *State v. Lee Turner*, *State v. Brian Horn*. We are currently under subpoena in *State v. Landon Broussard* for March 31 in Lafayette. A ruling is expected in *Edge v. LPDB* in April.

Updates and specifics regarding the pending litigation will be discussed in Executive Session.

INFORMATION TECHNOLOGY & MANAGEMENT DIVISION

The ITM staff produced the annual report to the Joint Legislative Committee on Budget which was submitted before deadline and subsequently published it on the LPDB.LA.GOV website. The office also completed analyses on the district by district costs of handling cases arising from correctional or detention facilities. The division also produced an analysis and corresponding map of capital case capacity within each district overlain with a map of the average number of new capital cases each year expected to arise within each district to establish the vulnerability of each district in the event of program budget cuts. The ITM staff also developed analyses and charts for an upcoming Louisiana Campaign for Equal Justice presentation at the Louisiana Bar Association's CJS Funding Summit. The office also produced analyses and heat maps on the districts' changes in revenue pre-and post-Act 578 and assisted the SPD in a survey of each of the 31 districts reporting less than expected increases in revenue. (The results are being analyzed currently.)

JUVENILE DIVISION

Since January 7, 2014, the Juvenile Division has been busy planning the annual Juvenile Defender Training to be held May 14-16, and assisting with planning Defender Leadership Training, to be held March 13-14. The Juvenile Defender Training is the first JDT session to be held since DPD-DJDS Richard M. Pittman and JJCO Dr. Tiffany Simpson were hired last year, and they are looking to use the training to communicate to the field their vision for juvenile and family defense in the State of Louisiana in the years to come.

On February 20, 2014, DPD-DJDS Richard M. Pittman was part of the panel for the Juvenile Justice Act Implementation Commission, also attended by Dr. Simpson. The Commission heard presentations by Dr. Mary Livers of the Office of Juvenile Justice regarding the controversial closure of the Jetson secure care facility. Jetson was the only secure care facility located in the Baton Rouge area. Early in the new year, OJJ vans arrived at Jetson without warning or notice at around 10:00pm, the children were shackled and herded to the vans, and taken by police escort through the night to facilities either in Monroe or New Orleans. Families were not notified until the next morning.

This closure has had far-reaching ramifications. Most importantly, it has been a hinderance to keeping family involved in the children's lives. Family involvement during the incarceration of a child has been found to be an important factor in smooth re-entry to the community following release. Also, it has reduced attorney access to the children, which makes it difficult for our defenders to do effective post-disposition advocacy. Further, the method of transfer, with a long

ride in the middle of the night while shackled, was likely upsetting to many of the children involved.

DPD-DJDS Pittman questioned Dr. Livers on these matters. Dr. Livers explained that the children were moved because the Jetson facility was not an appropriate facility for the care of children, and that it was not conducive to a therapeutic environment, because the atmosphere was too prison-like. She further stated that the method of transfer was done to promote security, both to preventing parents from coming to the facility to hinder the move and to avoid day-time interstate traffic. Dr. Livers stated that OJJ has made arrangements to transport families from Baton Rouge to the Swanson and Bridge City facilities for visitation.

The Juvenile Division remains concerned about this situation. While it may be true that Jetson was an inappropriate facility, it is unacceptable to have children from the Baton Rouge area incarcerated in Monroe. It is simply impractical for many families to see and visit their child or sibling when they are housed several hours away, even if OJJ is providing the transportation. It is also difficult for our public defenders to effectively engage in post-dispositional advocacy under these circumstances.

The Juvenile Division has re-organized the Juvenile Defender Advisory Council and held its first meeting on February 3, 2014, in Lafayette hosted by the 15th Judicial District Public Defender Office. In addition to DPD-DJDS Pittman and JJCO Simpson, seven defenders attended the meeting, including Josh Perry of LaCCR, Kay Franks of LAP, Mike Courteau of the 4th district, Janet Brown of the 15th, Pete Holmes of the 19th, Necole Williams of the 14th, and Kristen Bernard of the 1st. It is expected that this organization will become and remain a vital resource for sharing information throughout the field of juvenile defense.

The Juvenile Division has remained active in the Representation of Children in Child In Need of Care Task Force. Its report and proposed legislation will soon be distributed to the legislature. The Juvenile Division has pushed this task force to support early appointment of representatives for parents in CINC proceedings.

The Juvenile Division continues to maintain and monitor a list serve for juvenile and parent attorneys to share ideas and request for support. Since January 7, 2014, there have been 50 posts to the list serve.

SPECIAL PROJECTS

Since the last meeting of the Board of Directors for LPDB, the Special Projects Advisor has continued to work on the following projects: writing, editing and facilitating the dissemination of the LPDB e-newsletter to 900+ subscribers (volume 5, issue 2 was released in February and issue 3 is slated for release next week); employment opportunities (and collecting application materials), events and information; and, participating in staff meetings and other discussions/projects as a member of the executive team.

She has devoted significant energy to the 2013 and 2014 LCLE grants, working with Corlis Green to monitor her programmatic deliverables (specifically follow-up from her four site visits), coordinating the dissemination of *Trial Court Performance Standards* (CINC and Delinquency) and *Capital Defense Guidelines*, at the 2014 Defender Leadership Training, creating a compilation of policies passed by LPDB 2008-present (with Anne Gwin), and preparing

contracts and other materials for the continuation of this grant to begin April 1, 2014 (specifically geared toward CMS development).

She has created an outreach material for the State Public Defender's legislative outreach, a training brochure for job fair/recruitment and worked with Tiffany Simpson on a guide for parent-clients in Child in Need of Care/Termination of Parental Rights Cases. She conducted expenditure research for the Joint Legislative Committee on the Budget Report, supported the training development/implementation for the Defender Leadership Training and the Juvenile Defender Training, and is part of the staff sub-group tackling the cost-effectiveness study prescribed by SCR 99.

TRAINING DIVISION

During the week of January 12-17, 2014, the staff held an intensive 6-day training for new public defenders through the Defender Training Institute. We invited thirty attendees as students before nationally recognized instructors to provide client-centered, high quality skills training. Over this period, attendees were instructed in criminal investigation, theory and theme building, voir dire, opening statements, plea negotiations, cross-examination, direct examination, trial tactics, impeachment, and closing arguments. These are just the basic skills presented. The attendees were also trained to see how all of these areas are connected and how to provide a defense that includes all aspects of the training to provide a client-centered defense.

Staff has been preparing for the Defender Leadership Training on March 13-14, 2014. Instructors from New York and Florida have been invited to help District Defenders expand funding sources and provide hone their leadership skills. Further, staff has already begun to prepare for the Juvenile Defender Training scheduled for May of 2014.

STATE PUBLIC DEFENDER

The period since the January 2014 Board meeting has been an educational experience. Working with staff in all divisions of the office has been extremely helpful in getting up to speed. The first subject to be addressed is that of the legislative audit. As you may recall, their initial report was written in such a way as to be considered hostile to the Board. After discussions with the legislative auditor, they agreed to curb the language in a manner we found acceptable. While there were elements of the report that remained critical, on the whole it emphasized our funding and staffing shortage. On February 19, 2014, I was given the opportunity to address the Legislative Auditor Advisory Council at the capitol and was able to provide our position with respect to the report and emphasize, again, our lack of funding and staffing.

Using the legislative auditor's report for guidance, our office has been able to address many of the problems cited therein. First, the Capital Working Group has been presented with Capital Performance Standards and has voted to present them to the Board for adoption. Second, the District Capital Plans issued to the districts in 2011 have been updated to conform to one another for uniformity throughout the state. Finally, a detailed program assessment has been conducted to review the performance of the Capital Project of Louisiana (CAPOLA). We are working hard to address all issues raised in the report and have been very successful, thus far, in addressing them.

We have been preparing for the Defender Leadership Training set for March 13th and 14th. We have experts coming from New York and Florida in the hope of providing new tools for our District Defenders in their search for funding, honing of leadership skills, and pursuit of community defense. We are also looking to the District Defenders, themselves, to provide tips on what has worked in their districts in the pursuit of these goals.

I have been a participant in many of the various boards and committee in which our office participates. With my appointment to the Louisiana Sentencing Commission has come the opportunity to participate in discussions concerning a number of statutory provisions that will benefit our clients. At the Joint Human Traffic Study Commission, I was able to point out that unless social workers were provided to the public defense in these matters, it would be very difficult to advance the goals of the committee. I have attended two meeting with the Pelican Center Board of Directors, which is focused on ways to assist children in our justice system. I have also met with Court Rules Committee of the Louisiana Supreme Court.

On the staffing front, Lori Honore has jumped into the position of Budget Officer with both feet. She has been working long hours to get up to speed in our budgeting process and has provided valuable insight to the budgeting process throughout state government. Since her hire, we have been delayed in our search for staff by the governor's hiring freeze. We have met with the Division of Administration and have been cleared to resume our staffing search.

We have also been threatened with the removal of an Information and Technology (IT) position. The state is trying to bring all IT under one state agency. This was extremely alarming to us, as we have confidential information in DefenderData that cannot be accessed by anyone outside our agency for obvious ethical and constitutional reasons. We conducted a teleconference with the Interim Chief Information Officer for the state. As a result, the state has requested a letter from our office so that they might consider exempting us from the statewide consolidation of IT personnel.

Finally, the Defender Training Institute was held the week of January 12-17, 2014. We brought in experts and instructors from throughout the United States to provide our young attorneys a framework and foundation from which to prepare their cases for trial. The staff was excellent and the students were both enthusiastic and engaged. The feedback from the attendees was excellent. Further, weeks after the course, we began to receive reports from attendees who had used the tools offered in the course to successfully defend their indigent clients.