

**THE CASE  
FOR COMMUNITY DEFENSE  
IN NEW ORLEANS**

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**CHRISTOPHER MULLER**

**CRIMINAL JUSTICE  
PROGRAM**

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**BRENNAN CENTER  
FOR JUSTICE  
AT NYU SCHOOL OF LAW**



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## ACKNOWLEDGMENTS

Interviews for this report were conducted by Christopher Muller, Policy Research Associate at the Brennan Center for Justice at NYU School of Law, and Kate Rubin, Reentry Net Coordinator at The Bronx Defenders. The report was authored by Christopher Muller.

All reports come with debts, and this one is no different. Credit is due, first, to the women and men of New Orleans who agreed to participate in our focus groups and interviews. Their collective vision animates and gives structure to this report. Barry Gerharz, along with the entire staff of Safe Streets, Strong Communities, advertised the project around the city, helped us schedule and coordinate our interviews, and provided us spirited advice (and many car rides) along the way. He also offered incisive commentary on various drafts of the report. Judson Mitchell, pro bono coordinator at the Loyola Law Clinic, arranged our access to the Municipal Court and introduced us to idiosyncrasies of the city's criminal justice system. We thank Judges Calvin Johnson and David Bell for their candor and commitment to justice. Thanks to Professor Pamela Metzger of Tulane Law School for her participation in the Brennan Center's June 2006 COD meeting, her indefatigable support and guidance, and her fundamental belief in the importance of hearing from the "consumers" of New Orleans's indigent defense system. We greatly benefited from both the inspiring vision and warm hospitality of Jelpi Picou, Director of the Capital Appeals Project, and Ilona Picou, Disaster Relief Coordinator at the Orleans Parish Juvenile Court. We are also grateful to Xochitl Bervera, Derwyn Bunton, Sheldon Escher, Jordan Flaherty, Ucy Long, Evelyn Lynn, Ursula Price, and Gina Bennett Womack.

This report simply wouldn't exist if it were not for the lawyers of the Brennan Center's Community Oriented Defender (COD) Network, whose continued innovation and unflagging advocacy inspired us to write it in the first place. Their projects give life to what might otherwise be commonplace recommendations. Thanks, in particular, to participants in the June 2006 meeting – Edwin A. Burnette, Sharon Cole, Heather Dorsey, Natalie Finegar, Richard Greenberg, Sara Gurwitch, Jose Guzman, Jana Heyd, James Hingeley, Bob Hirsh, Dawn Jenkins, Ken Mandel, Joyce McGee, Linda McLaughlin, Pamela Metzger, Jeremy Mussman, Timothy Roundtree, Alan Rosenthal, Mary Siegfried, Lauren B. Simon, McGregor Smyth, Robin Steinberg, John Terzano, Heidi van Es, and Marsha Weissman – and to those who provided extensive feedback: Steve Binder, Sharon Cole, Natalie Finegar, and Jeanie Vela. We greatly benefited from Robin Steinberg's sage advice and ready humor throughout.

Brennan Center colleagues Michael Waldman, Lynn Lu and Amal Bouhabib each read iterations of the report and contributed thoughtful and wise comments. In particular, Lynn's keen eye, honed over many years as an editor at South End Press, greatly contributed to the document's readability. The report wouldn't have been ready on time were it not for the fastidious transcription and remarkable

avidity of Sarah Rosen from Paul, Weiss, Rifkind, Wharton & Garrison LLP. We thank Professor Ari Kelman of the University of California at Davis for permitting us to use a map from his terrific book, *A River and Its City* (University of California Press, 2003). Finally, thanks to Kirsten Levingston, who believed in this project from the beginning and had the percipience to envision a new role for the COD Network. We also thank Chitra Aiyar, Anmol Chaddha, Siobhán McGrath, Ana Muñoz, Ryan Murdock, Jennifer O’Neal, McGregor Smyth, and Rosten Woo.

Of course, any errors of judgment or substance are the author’s alone.

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## EXECUTIVE SUMMARY

New Orleans's system of public defense is broken. This much has been known for a long time. The city's provision of counsel to its criminally accused poor has been condemned by entities ranging from the Louisiana Supreme Court to the Louisiana State Bar Association; the National Legal Aid and Defender Association (NLADA) to the Department of Justice's Bureau of Justice Assistance. In the words of Calvin Johnson, former chief judge of the New Orleans criminal court, "[t]he public defender situation was bad before [Hurricane] Katrina. Now it's a full-blown disaster."

The city's predicament, then, is less one of identifying the problem than of deciding what to do about it. New Orleans, and in particular the Board of the Orleans Public Defender (BOPD), has two clear options before it: (1) focus strictly on the structural issues of funding, vertical representation, caseload limits, and the like, or (2) work from the outset to establish a model community defender office that will address clients' needs inside and outside the courtroom. Though there are many strong arguments to support the former course of action, this report concludes that the latter is the best option if the city hopes to stanch the excessive flow of cases running through its criminal justice system, cut costs, and address the most exigent problems experienced by its former clients. Building a strong system of community defense today will help prevent more onerous and expensive steps tomorrow.

Our conclusions are based on two primary sources. First, in accordance with the precepts of community defense, researchers from the Brennan Center for Justice at NYU School of Law and The Bronx Defenders interviewed former clients of the Orleans Indigent Defender Program (OIDP) in order to pinpoint problems with the old system and solicit solutions to those problems. We also interviewed judges, law professors, and other advocates.

Second, one month after we returned from New Orleans, we convoked a meeting of the Brennan Center's Community Oriented Defender (COD) Network. The COD Network brings together representatives from defender offices pursuing community-based outreach and systemic reform in jurisdictions around the country. Our aim was to find current defender projects to match the concerns voiced by interviewees and focus group participants in New Orleans. At the conclusion of this report, we describe many of the efforts undertaken by current network members, and how those efforts might address the most salient issues raised by OIDP's former clients. Supplemental materials are available at [http://www.brennancenter.org/subpage.asp?key=42&init\\_key=35696](http://www.brennancenter.org/subpage.asp?key=42&init_key=35696).

Though our interview and focus group participants identified deficiencies in many realms of the New Orleans criminal justice system, they found, with striking unanimity, the following four areas to be the most important: indigent defense culture, law enforcement and misdemeanor arrests, attorney-client communica-

tion, and reentry. The nature of their concerns and the types of solutions they posed suggest that the grave situation of indigent defense in New Orleans cannot be addressed through structural reform or zealous courtroom advocacy alone. Accordingly, we make the following six broad recommendations:

- Reinvent defender culture.
  - Draft a mission statement.
  - Establish a physically separate office, the design of which reflects the agency's mission.
  - Form interdisciplinary hiring committees.
  - Hire, or secure volunteer, investigators and social workers to collaborate with legal staff.
  - Tie performance evaluations to cross-staff collaboration and community outreach.
- Reach out to client communities.
  - Contact community groups and seek collaboration.
  - Form a community advisory committee.
  - Perform legal services in client communities.
- Investigate police misconduct and help clients avoid negative police interaction.
  - Establish an internal police misconduct database.
  - Conduct legal and “Know Your Rights” trainings.
- Make contacts with social service providers and, where appropriate, divert clients at first appearance.
  - Conduct a survey of local social service providers.
  - Where appropriate, divert clients at first appearance and tabulate the short- and long-term court- and jail-related savings.
  - Play a greater role in the design of specialty courts.
  - Where appropriate, encourage the use of diversion at arrest over post-plea specialty courts.
- Improve communication with clients.
  - Work with the city to improve the jail visitation system.
  - Where possible, contact clients' family members at clients' request.
  - Enable clients to review their police report upon its release.
  - Develop an office-wide protocol for maintaining communication with clients while they are incarcerated.
- Facilitate client reentry at front and back ends of the criminal justice process.
  - Advise clients of the collateral consequences of sentencing and plea arrangements and negotiate with judges and prosecutors to avoid the conferral of civil sanctions.
  - Support legislation that increases employment opportunities and reduces civil barriers for people with criminal convictions.



- Where applicable, provide criminal-record expungement services.
- Aid clients in procuring non-prison identification.

As many of our focus group participants contended, in the most perverse of ways, Hurricane Katrina has offered the city a rare opportunity to build anew its broken system of public defense. In the words of one,

There were a lot of flaws pre-Katrina, and I think Katrina has provided us with an opportunity to get it right, or at least to make it better. So that I hope those powers that be will not just be trying to recreate what existed because it didn't work on any level. I don't even think it worked for the judges or anybody else.

These recommendations, of course, are strictly advisory, and we make them with recognition that the city faces formidable barriers to achieving even the most fundamental reforms. While the speedy adoption of the first recommendation is necessary for community defense to take hold, the following five can be gradually implemented as BOPD sees fit. Community defense is an ongoing and evolving project, and New Orleans, like defender agencies around the country, will need to chart its own path on its way there.



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## INTRODUCTION

New Orleans's system of public defense is broken. This much has been known for a long time. The city's provision of counsel to its criminally accused poor has been condemned by entities ranging from the Louisiana Supreme Court to the Louisiana State Bar Association; the National Legal Aid and Defender Association (NLADA) to the Department of Justice's Bureau of Justice Assistance.<sup>1</sup> In the words of Calvin Johnson, former chief judge of the New Orleans criminal court, "[t]he public defender situation was bad before [Hurricane] Katrina. Now it's a full-blown disaster."<sup>2</sup>

The city's predicament, then, is less one of identifying the problem than of deciding what to do about it. New Orleans, and in particular the Board of the Orleans Public Defender (BOPD), has two clear options before it. The first is to focus on the bare essentials of providing adequate indigent defense. Given the dire situation of scarce resources and backlogged cases, structural deficiencies and enervated attorneys, there are many strong arguments to support this course of action. Process outstanding cases, establish caseload limits, alter the current funding structure, even institute a system of vertically integrated representation: in the current context of Louisiana Indigent Defense, these are radical proposals all.<sup>3</sup>

Yet the second option proposes more. It holds that providing truly effective assistance of counsel requires something in excess of even these significant structural reforms: It requires a shift in the culture of indigent defense. It requires an office that will address clients' needs both inside and outside the courtroom. In short, it requires community defense.<sup>4</sup> This report endeavors to make the case that establishing a model community defender office in New Orleans – from the outset – is the best option if the city hopes to stanch the excessive flow of cases running through the criminal justice system, cut costs, and address the most exigent problems experienced by its former clients.

To be sure, community defense will seem anathema to many stakeholders and veteran administrators of the New Orleans criminal justice system. The very phrase conjures images of a system worlds apart from that which currently exists in New Orleans. The Orleans Indigent Defender Program (OIDP) gives new meaning to the familiar claim that indigent defense is underfunded.<sup>5</sup> In this context, can the problem truly be one of defender culture? Moreover, won't expending valuable attorney time to address clients' problems with substance abuse, mental health, or other extralegal issues detract from the zealous advocacy with which OIDP is charged? To many, calls for community defense in New Orleans, particularly given the current climate, will seem hopelessly naïve and optimistic.

Though there is now a rich academic tradition buttressing the concept, our confidence in community defense stems from elsewhere.<sup>6</sup> It springs instead from the experience of defenders around the country who have successfully implemented their own variations of the community defense model. Their success stories speak

## WHAT IS COMMUNITY DEFENSE?

Though it gains some definition through its association with the much discussed "community justice" movement, the precise meaning of the term community defense, like any criminal justice practice modified by the term "community," is often unclear. As sociologist Robert Sampson has noted, "if community has come to mean everything good, as a concept it loses its analytical bite and therefore means nothing."<sup>7</sup> By "community defense" we mean something very specific.

First, the type of work we describe herein can be labeled "community defense" insofar as participating defenders seek collaboration with neighboring community members, community groups, and local social service providers, rather than simply waiting for clients to appear alongside them in court. Community defenders recognize that an individual's initial contact with the criminal justice system offers a rare moment in which to address many of that individual's most salient needs, including those that lie outside the immediate realm of the legal system. Yet such advocacy is seldom strictly extralegal, for it is often through their established contacts with community groups and service providers that defenders are able to most significantly improve their clients' case outcomes – often through diversion, sentence mitigation, and the avoidance of civil sanctions –

*continued, next page*

## WHAT IS COMMUNITY DEFENSE?

*continued*

and reduce the burden of overwhelming caseloads and needlessly large court dockets.

Second, community defenders advocate on behalf of their clients as a community or collective constituency rather than as a mere collection of individual cases. Through various kinds of advocacy and systemic reform efforts, they attempt to improve the social standing of the communities from which many of their clients come, and to which many eventually return.

In February 2002, the Brennan Center conducted a survey of defender agencies to gauge the extent and kind of extralegal practices they undertake. The survey found that of the 127 respondents,

- 90% report that they speak at community forums;
- 55% report they are currently engaged in collaboration with community residents and concerned citizens in their jurisdiction on policy or systemic issues;
- 85% said community collaboration was an important aspect of their practice, with 18% calling it essential.<sup>8</sup>

While these percentages can only tell us about the respondents, and not indicate larger nationwide trends, they show that a great many defenders are already engaged in community defense without recognizing it as such.<sup>9</sup>

louder than any abstract theory or reasoned conviction can for how tailored community defense can work in New Orleans just as it has worked in jurisdictions nationwide. These stories illustrate how minute and incremental changes to office culture can have surprisingly significant effects on case outcomes. And they confirm that, far from diminishing everyday representation, extralegal defender advocacy augments it.<sup>10</sup> It is these stories we draw upon to make our case.

## ■ THE PROJECT

For three days in late May 2006, researchers from the Brennan Center for Justice and The Bronx Defenders traveled around New Orleans to conduct interviews and focus groups. We held focus groups with formerly incarcerated youths, mothers of imprisoned children, and men and women recently released from Orleans Parish Prison (OPP). We spoke with a group of former prisoners organized to secure voting rights for people with felony convictions, and with clients in substance abuse treatment programs. We also interviewed judges, law professors, and other advocates.<sup>11</sup>

The impetus for these interviews came from a gap we detected in the existing literature. As we mention above, deficiencies in public defense in Louisiana and New Orleans are well-documented. A number of reports, many of which are listed at note 1, clearly and cogently delineate structural inadequacies in the state's provision of counsel, laying bare the indigent defense system's failure to meet accepted national standards. Many draw upon the insights of local experts and criminal justice officials. Few of them, however, consider the observations of people who have prior experience with the Louisiana public defense system as clients.

It is a fundamental precept of community defense that defenders can be guided by clients' self-identified needs without abdicating their authority to advise clients about how to proceed in their cases. With this in mind, it was clear to us that before we made recommendations about how to rebuild the Orleans Indigent Defender Program, we needed first to interview some of its former clients.

Our findings are necessarily incomplete and impressionistic. They relate the experiences of a limited number of individuals and cannot be extrapolated to account for the universe of indigent defense experience in New Orleans. Our focus groups were neither representative nor randomly selected. As such, they cannot be said to express the wishes of the New Orleans "community," however narrowly one might define that most nebulous of terms.

The stories we heard tell us quite a bit, however, about what it can be like to be a client cycling through the harrowing maze of New Orleans's criminal justice system. Indeed, we found an unsettling similarity in the imparted experiences of our focus group participants. We also found that the stories of former clients accorded with the testimony of the judges and advocates with whom we spoke – a pattern that is in some ways reassuring and in other ways disquieting.

The client's perspective is not one that can be easily synthesized or replicated. As their comments below illustrate, former clients, by virtue of their experience, have become experts of a kind in identifying problems with, and formulating solutions to, New Orleans's indigent defense crisis.<sup>12</sup> If they place the greatest demands on a system as overwhelmed as that of New Orleans, they also afford it insights that cannot be attained elsewhere. Their ideas, taken in aggregate, suggest that the grave situation facing New Orleans's criminally accused poor cannot be addressed through structural reform or zealous courtroom advocacy alone.

If our interviews tell us only one thing, however, it is that the New Orleanians with whom we spoke are anything but inured to the excesses of their criminal justice system. Our observations of the city are marked by stark tensions: between a tremendous dearth of resources and an unyielding political will for reform; between a pointed disdain for the experiences of the past and an unlikely hope for change in the future. We were struck, as have been so many, by both the physical bleakness of the city and the fabled resiliency of its people.

## ■ JUNE 2006 COD MEETING

One month after we returned from New Orleans, the Brennan Center held its biannual meeting of the Community Oriented Defender (COD) Network.<sup>13</sup> The COD Network brings together representatives from defender offices pursuing community-based outreach and systemic reform in jurisdictions around the country. Out of their day-to-day experience, these defenders have amassed a vast arsenal of knowledge about how to address clients' legal and extralegal needs. Yet because of funding limitations and excruciating schedules, they seldom have the opportunity to share that knowledge with colleagues in other cities and states. The biannual meetings of the COD Network aim to provide a forum for defenders to share resources and devise solutions to the problems they face every day in their respective jurisdictions.

We dedicated the first day of the June meeting to discussing New Orleans's indigent defense crisis. After presenting our findings, we opened the discussion and solicited ideas from participating defenders. We have since followed up with those defenders to expand upon the proposals that surfaced during the discussion. Those proposals, presented alongside the community-identified problems that spurred them, constitute much of this report's content.

## FOCUS GROUPS

- Youth Empowerment Project
- Friends and Families of Louisiana's Incarcerated Children
- Orleans Parish Prison
- Voice of the Ex-Offender
- Bridge House
- Odyssey House

## INTERVIEWS

- David Bell  
Chief Judge  
Orleans Parish Juvenile Court
- Derwyn Bunton  
Associate Director  
Juvenile Justice Project  
of Louisiana
- Calvin Johnson  
Former Chief Judge  
Orleans Parish Criminal Court
- Professor Pamela Metzger  
Tulane Law School
- Judson Mitchell  
*Pro Bono* Coordinator  
Loyola Law School
- Jelpi Picou  
Executive Director  
Capital Appeals Project
- Ilona P. Picou  
Disaster Relief Coordinator  
Orleans Parish Juvenile Court

## HURRICANE KATRINA

One kid passed out from dehydration...I started to get really dizzy, like the roadrunner when he gets knocked down, with the birds flying all around his head. I felt like I was about to die.

*T.G., 16-year-old boy trapped in the Community Youth Center at Orleans Parish Prison<sup>14</sup>*

On the night of Friday, August 26, 2005, Hurricane Katrina gained strength and took a sharp westward turn towards the Gulf Coast.<sup>15</sup> The unexpected shift in the storm's direction prompted Governor Kathleen Blanco to issue a state of emergency. On Sunday morning, New Orleans Mayor Ray Nagin ordered the first-ever mandatory evacuation of the city.<sup>16</sup> As intense rainfall buffeted the city, many area residents evacuated.<sup>17</sup> Many others made their way to New Orleans's designated "refuges of last resort" – 26,000 of them finding shelter in the Superdome.<sup>18</sup> Though the storm surged through Monday morning, ravaging the city and killing dozens, by the afternoon many survivors took solace in the belief that the worst of it was over.<sup>19</sup>

Then the levees breached – first at the Industrial Canal, then at the 17th Street and London Avenue Canals.<sup>20</sup> The floodwaters inundated the city, taking unsuspecting residents – particularly the sick and elderly – by surprise. Hurricane Katrina left 80% of the city underwater and killed, at latest count, nearly 1,500 Louisianans, the majority of them African-American.<sup>21</sup>

Among those unable to flee were prisoners held at the Templeton III facility of Orleans Parish Prison. According to a report by Human Rights Watch (HRW), on Monday morning, just as the levees collapsed, the sheriff's department completely abandoned Templeton III. Generators and toilets broke, leaving prisoners in rising, feculent water with no lights or air circulation. According to HRW researcher Corrine Carey, "[p]risoners were abandoned in their cells without food or water for days as the floodwaters rose to the ceiling."<sup>22</sup> Many attested they saw floating bodies; Criminal Sheriff Marlin Gusman has denied any such claims.<sup>23</sup> It took four days after the waters reached chest-level for the Templeton III prisoners to be evacuated. Like much of the general population of Orleans Parish Prison, a significant number of those trapped in Templeton III were pre-trial detainees held on charges of criminal trespass, public drunkenness, or disorderly conduct.

Youths in juvenile detention faced similarly terrifying circumstances. A report by the Juvenile Justice Project of Louisiana (JJPL) found that on Sunday the 28th, as the storm raged on, authorities at two local juvenile detention facilities sent a group of children to OPP. There, they were taken to the South White Detention Center, known as the Community Youth Center (CYC), where they swelled the ranks of total incarcerated children to between 100 and 150. Based on their interviews with youths trapped in the CYC during Katrina, JJPL concluded "these



**INCARCERATION IN NEW ORLEANS**

The place for convicted criminals in New Orleans cannot be called a prison: it is a horrid sink, in which they are thronged together, and which is fit only for those dirty animals found here together with the prisoners.<sup>24</sup>

*Alexis de Tocqueville  
and Gustave de Beaumont, 1833*

Orleans Parish Prison sits in “a low-lying wedge of land off Broad Street between Interstate 10 and Tulane Avenue.”<sup>25</sup>

Since its construction in 1929, what today is known as “Old Parish Prison” has been surrounded by a bevy of satellite jails, which together fill seven square city blocks. In 1974, when then-Criminal Sheriff Charles Foti was elected, the state faced a menacing overcrowding crisis.<sup>26</sup> To ease the strain, Foti began an expansion that would allow OPP to temporarily absorb some of the population in state custody. He also landed a number of contracts to house federal prisoners.<sup>27</sup> Under Foti’s watch, the jail’s capacity grew from 800 people in 1974 to 8,500 in early 2004.<sup>28</sup> Before the storm, OPP was the ninth-largest local jail jurisdiction in the country, housing nearly 6,500 people in 2002.<sup>29</sup> According to the Orleans Parish Criminal Sheriff’s office, individuals held on attachments, traffic, or other municipal charges make up 60% of OPP’s population.<sup>30</sup> The rest are people in federal and state custody.<sup>31</sup>

Though perhaps an extreme case, OPP is by no means aberrant in this

regard. In Louisiana, 47.3% of all state prisoners are housed in local jails.<sup>32</sup> In 2003, the Louisiana Department of Corrections paid state sheriffs \$153.9 million to house approximately 17,000 people.<sup>33</sup> The state’s \$24 per-person, per-day rate represents significant cost savings for the Department of Corrections, which normally expends \$38 per-person per-day to house a state prisoner.<sup>34</sup> Yet because of the meager wages sheriffs receive to house pre-trial detainees and short-sentence misdemeanants, parish jails are able to realize a significant profit by housing state prisoners.<sup>35</sup> Many focus group participants pointed to the fact that they were released one

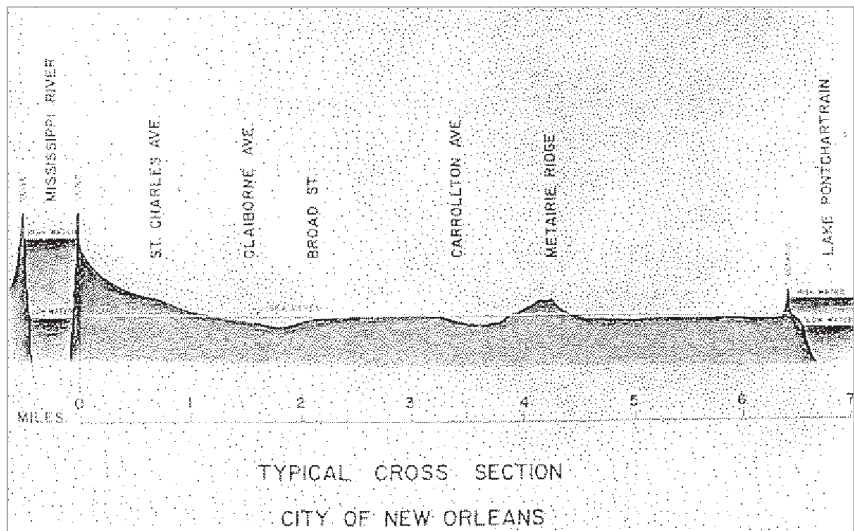
minute past midnight so sheriffs could charge for the extra day:

*I know from reading the law books that the Parish is getting paid so much money per-day, per-inmate. So of course you’re not going to want to let me go, because you get paid. [Interjects] They make sure to release you after 12:01 to get that extra day [Original speaker] Right. They get paid. So, “let’s push her court date back.” You done push my court date back so many times that when I finally make it to court, you let me go.<sup>36</sup>*

The judges averred.

FIGURE 1

TOPOGRAPHICAL MAP OF NEW ORLEANS, 1895



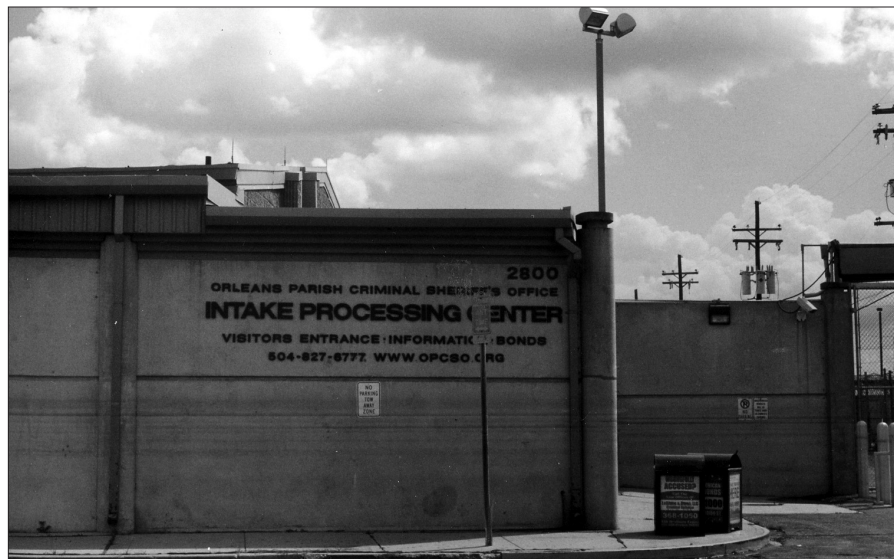
This map from 1895 clearly depicts the topographical depression in which Orleans Parish Prison, at Broad Street, sits. Source: Ari Kelman, *A River and Its City: The Nature of Landscape in New Orleans* (University of California Press 2003). Adapted from the *Report on the Drainage of the City of New Orleans* (1895), courtesy of G. Joseph Sullivan, General Superintendent, Sewerage and Water Board of New Orleans. Reprinted with permission from the author.

children – a substantial percentage of whom had only just been arrested and not adjudicated of any crime – would endure flooding, exposure to toxins, food deprivation, water deprivation, medical care deprivation, heat exposure, violence and significant psychological stress.”<sup>37</sup>

Orleans Parish Prison eventually took in 6 to 10 feet of water, as “each of the lockups,” in the words of the *Times-Picayune*, “became islands surrounded by toxic water.”<sup>38</sup> After the general evacuation began on Tuesday the 30th, it took more than three days to ferry greater than 7,000 people, four to six at a time, to the Interstate 10 overpass that rises above OPP to the west. Today, the water line remains inscribed on the jail’s exterior walls, a chilling reminder of what passed there just over one year ago.

FIGURE 2

ORLEANS PARISH PRISON, MAY 2006



Floodlines gird the exterior walls of Orleans Parish Prison.  
Photograph: C. Muller

Within days, rescued prisoners and detainees were scattered about the state, some landing in prisons over 400 miles from the city.<sup>39</sup> Many were taken to the state’s most infamous maximum security prison in Angola.<sup>40</sup>

## ■ “LONGSTANDING DEFICIENCIES”

In March of 2006, the Southern Center for Human Rights, in conjunction with New Orleans coalition Safe Streets, Strong Communities, released a report on the status of over one hundred of the 4,500 pre-trial detainees arrested in New Orleans and still awaiting trial. “Most of these indigent defendants, along with new post-Katrina arrestees,” the report found, “remain locked up with no access to counsel.”<sup>41</sup>

The release of SCHR's report followed the rapid decimation of the Orleans Indigent Defender Program – largely due to a precipitous decline in indigent defense funding. [See Appendix 1.] In October 2005, 25 public defenders were laid off in Orleans Parish, leaving 10 lawyers, a staff member, and an investigator.<sup>42</sup> By February 2006, the public defender agency had been reduced to seven attorneys, down from an original staff roster of 42; all investigators and support staff had been laid off.<sup>43</sup>

Given the status of Post-Katrina indigent defense, many of SCHR's conclusions, however alarming, were unsurprising. Yet their most important finding had little to do with the impact of Hurricane Katrina on the city's provision of counsel to its poor: "What SCHR discovered was not just that none of the indigent detainees had seen a lawyer since Katrina – within the last six months – but that the vast majority of the defendants interviewed had not seen a public defender outside of Court in the six months prior to Hurricane Katrina."<sup>44</sup> SCHR's report instead served to vindicate the long-held opinions of many in the indigent defense community, which had decried the state of public defense in Louisiana for years. David Carroll, director of research and evaluations at NLADA, perhaps best captures their position: "Katrina was not the cause of the indigent defender crisis. It was a catalyst that accelerated the longstanding deficiencies."<sup>45</sup>

## THE FOCUS GROUPS

Over the course of our interviews in New Orleans we learned much about those longstanding deficiencies. We asked focus group participants questions about their experiences with the criminal justice system, about their opinions of indigent defense, and about what, if anything, they would like to see changed. Our questions began at participants' initial point of contact with the criminal justice system and concluded with their release.

Though interviewees and focus group participants touched upon a wide array of problems with the criminal justice system in New Orleans, they focused in particular on issues of law enforcement and misdemeanor arrests, attorney-client communication, reentry, and indigent defense culture. In what follows, we present our findings, organized in a chronological sequence that roughly follows a defendant's experience of the New Orleans criminal justice system from arrest to reentry. At the conclusion, we offer recommendations and examples of how each recommendation has been implemented by a defender agency elsewhere in the country. Together, the recommendations form a broad menu of community defense projects; OIDP may choose to investigate only a few.

### ■ LAW ENFORCEMENT AND MISDEMEANOR ARRESTS

We have a limited number of jail spaces, and we can't fill them with people charged with minor offenses such as disturbing the peace, trespassing or spitting on the sidewalk. I'm not exaggerating. There were people in jail for spitting on the sidewalk.

*Calvin Johnson, Former Chief Judge, Orleans Parish Criminal Court<sup>46</sup>*

Judges and formerly incarcerated people alike painted a somber picture of pre-Katrina policing in New Orleans. With universal agreement, they described invidious police practices that amount to “zero-tolerance” policing in poor communities of color and lax enforcement in rich and white communities.<sup>47</sup> David Bell, Chief Judge of the Orleans Parish Juvenile Court, was unabashedly candid about the city's two *de facto* policing regimes:

If you live in a ritzy neighborhood, they have what's called “Neighborhood Crime Prevention Programs,” and the purpose of those policing districts is to prevent crime. If you live in a housing development, they have community policing. The purpose of that police district is to arrest anyone who commits any crime at all. Zero tolerance. And so literally we have kids who are coming in here for obstruction of a public passage, for sitting on a neighbor's porch – that's criminal trespass if they don't have permission. Well, if you live in a housing development and you're sitting on the wrong side of the stoop, you're arrested for trespassing.<sup>48</sup>

Focus group participants familiar with the latter practice agreed:

There's a small percentage of kids who are committing those crimes that you see on the six o'clock news, but there are far more kids who are introduced to the juvenile

justice system for just being kids.<sup>49</sup>

You can go to jail for anything. You walk out the door right now, you can go to jail for something.<sup>50</sup>

Other participants attested that past criminal history has a greater influence than race or class on police conduct. One focus group participant explained to us, “I’ve been harassed just because I get pulled over, and my name, I mean, as soon as they run my name, they...pull you over and make you spread-eagle against the car.”<sup>51</sup> Another participant confirmed that such practices live on in post-Katrina New Orleans:

The problem is, is that they have this perception that they want to clean up the city post-Katrina...If they would stop one of us for the same traffic violation you have, they would give you a citation. We’re going to jail. And the reason we’re going to jail is primarily because we’ve been to jail before.<sup>52</sup>

Historically, in New Orleans, this type of police practice has had two primary effects. First, it has contributed to racial polarization and engendered community distrust.<sup>53</sup> For many of our focus group participants, police misconduct topped their list of grievances. Some felt the public defender should compile and investigate claims of police misconduct. For example, this participant, speaking of the New Orleans Police Department (NOPD), noted,

They have some rogue policemen. When guys got arrested, they really got arrested bad. I feel as though if a public defender would have had a unit that investigated those kind of complaints, that would really be wonderful because like if a cop is a rogue cop and he’s out there arresting people and a guy stood there saying, “I’m telling you, he got me bad. This is how it went down,” if they had a unit that could possibly investigate that allegation, that would really help ...because me as a citizen, or me as a defendant, or me as an ex-convict, I can’t really do it. I’m going to get stopped by the police officer – you understand? – if he found out I’m trying to do something that can get him screwed. But now if it were a lawyer doing it or somebody with legal protection, more or less, they can come out there and they won’t get none of this action from him.<sup>54</sup>

Second, the city’s selective zero tolerance policy has resulted in scores of excessive arrests, glutting the courts and the jail.<sup>55</sup> Available statistics bear this out. According to the Metropolitan Crime Commission (MCC), “49% of the criminal charges made at the time of arrest are later refused (42%) or dismissed (7%).”<sup>56</sup> This dismal rate exacts a tremendous monetary and human toll on the city. According to the Louisiana Code of Criminal Procedure, individuals arrested and jailed must be indicted within 60 days for a felony offense and 45 days for a misdemeanor offense.<sup>57</sup> On average, the New Orleans Police Department required 23 days from the date of arrest to prepare police reports that met the District Attorney’s standards for formal consideration. The District Attorney’s office, in turn, took, on average, an additional 18 days to make a final billing or charge decision.<sup>58</sup> Together, the processing times amount to an average of 41 days

from arrest to billing decision. These rates are actually a drastic improvement upon previous years. Between 1999 and 2000, it took police and prosecutors 41 and 19 days, respectively, to charge detainees, for a total of 60 days from arrest to final billing or charge decision.<sup>59</sup> As an earlier MCC report points out, between 1999 and 2000, such bureaucratic inefficiency added more than \$1.5 million to New Orleans's expenditure for the pretrial incarceration of defendants awaiting disposition of their cases.<sup>60</sup>

More important, however, is the daily impact even short bouts of incarceration have on detainees' lives. One focus group participant described a typical jail experience:

If they bring you to jail, they bring you to jail bad. Now you have car notes, you have mortgages, rent. Now you're sitting in jail on something you shouldn't even be in there on, no bond [to] get out. You sitting in two months, well, you done lost your apartment, you know. You sit in jail three, four, five months, well, they're repossessing your vehicle. You see what I'm – I mean, and then you have to spend money to get out of jail, and they stick you with a public defender that don't come see you, and don't come tell you nothing that's going on. You in with guards who won't tell you, who won't look into the computers for you and let you know nothing that's going on. You call the jail system, and the lines is always busy. You can't never get through. You call the clerk of the court, they telling you stuff, but the stuff that they have in their computers is not the same stuff that they have in the computers at the jailhouse, you know what I mean?<sup>61</sup>

Defenders have an opportunity to obviate long periods of pre-arraignment incarceration at their client's first appearance by arguing for bond reduction. According to the Bureau of Justice Assistance, however, "in the vast majority of cases, the bail amount requested by the prosecutor is granted."<sup>62</sup> High bonds were a source of great frustration among focus group participants. In the words of one, "our system has become a debtor's jail really, because people are in jail primarily because they can't make bond. That's the other thing that the PD's office can help with: trying to mitigate bonds."<sup>63</sup>

Many of our focus group participants identified drugs to be a major reason for arrest in New Orleans, and available statistics support this claim.<sup>64</sup> According to the MCC, "[s]ixty-five percent (65%) of New Orleans arrests are for drug offenses, compared to the national rate of 31%."<sup>65</sup> The Commission's analysis of cases passing through the Criminal District Court between October 2003 and September 2004 found that 60% of all convictions were for misdemeanor offenses, 47% percent of which were for misdemeanor drug possession or drug paraphernalia.<sup>66</sup> Fully two-thirds of all convictions were for simple drug possession, and more than two-thirds of felony convictions were for drug offenses.<sup>67</sup>



### THE PROBLEM WITH PROBLEM-SOLVING COURTS

In September 1997, Judge Frank Marullo received a Department of Justice grant to establish Orleans Parish's first drug court.<sup>68</sup> According to Calvin Johnson, the court took its cue from a sense that New Orleans "needed a new model...where you actually deal with the individual who presents themselves."<sup>69</sup> Touting a 12 % recidivism rate among its graduates, Orleans Parish drug court has been celebrated by the state Supreme Court, among other entities.<sup>70</sup> In December 2003, the parish opened a Mental Health Court on a similar model.<sup>71</sup>

Yet the program is not without its critics. Many of our focus group participants expressed frustration with the structure of the drug court regimen. One participant bemoaned a drug court rule requiring program participants to both hold down a regular job and attend drug court sessions during the work week. "I had to go to my employment and go around drug court schedule, which didn't give me an adequate timeline," he told us.<sup>72</sup> Another participant added that drug-court-related fees are prohibitively high.

Further, because the program excludes all but first- and second-time offenders with no violent criminal history or charges, many advocates accused the court of

"cherry-picking" – selecting the clients most likely to succeed in order to give the program a good name, without addressing the needs of those who most need treatment. Indeed, the court's post-plea arrangement can have a sweeping effect, unnecessarily conferring criminal records on defendants accused of the least serious offenses.

Though the desire for a new model has not yielded perfect results, it has evinced a judicial amenability to change. The clients and advocates with whom we spoke were far more enthusiastic about the prospect of hiring in-office social workers and, where appropriate, diverting clients at arrest. In the words of one participant,

*They have some people that are, like, mentally challenged, I want to say. It doesn't make sense to keep them locked up. Why can't you come and talk to them...or do some investigating. Let it be known that...they need to be in a mental hospital instead of being behind bars...Find a place to put this man...or this woman, and give them the help that they need instead of constantly locking them up because all you're doing is locking them up, getting a little weight back on them. You know, as soon as they go free, they're going right back out there to do drugs. If they want help, let the social worker be the one to give them the things*

*that they need to be productive in society, not to return back to the same thing they used to do.*<sup>73</sup>

Judge Johnson agreed:

*Anything that serves to reduce the recidivist rate benefits the court, benefits the DA, benefits society as a whole. It makes more sense to spend the money on the front end, especially when you start incorporating juvenile[s] into the process. It costs such a great sum of money to incarcerate.*<sup>74</sup>

## ■ **ARRAIGNMENT AND PRE-ARRAIGNMENT INCARCERATION**

If you go 60 days without a lawyer you've missed a critical point in your representation.

*Calvin Johnson, Former Chief Judge, Orleans Parish Criminal Court*<sup>75</sup>

Focus group participants felt particularly abandoned by defense attorneys during periods of pre-arraignment incarceration. In New Orleans, public defenders rarely consult with clients in the period between their first and second court appearances.<sup>76</sup> Instead, a defendant is assigned one courtroom-bound attorney at his or her bail hearing and another at arraignment. Participants voiced frustration with this arrangement:

They don't visit the guys. They don't. In other words, if you see an indigent defender lawyer when you're down in the courtroom, that's it. The next you see him again when you go back to court, then when you're ready for trial.<sup>77</sup>

You never really know who your public defender is until once you get into court, and you're sitting there with your handcuffs wondering, like, "okay, which one is for me?"<sup>78</sup>

You can go in there to the court where the judge is sitting and they have all these people that's up. And minutes before they see the judge, "oh, how do you plead, da, da, da. This is what's going to happen," and it's over. I mean, that's a person's first time and only time probably seeing that attorney.<sup>79</sup>

One participant described her own post-Katrina experience:

The public defender I had was no longer my defender anymore. All the sudden, this guy comes up to me on the 18th: "I'm your public defender. This is the deal I'm going to make with you. Take this here." And I was just so frustrated for being in jail for 14 months and not being able to talk to anyone.<sup>80</sup>

Jelpi Picou, Director of the Louisiana Capital Appeals Project, maintained that such lack of communication and discontinuity of service typifies indigent defense in New Orleans. He succinctly summarized the usual routine:

You get arrested. You get your initial bail hearing. A public defender is appointed for the purposes of that hearing only. And I mean those are *en masse* hearings so you may have 60, 70 guys in there. There's a public defender who is there who doesn't say anything, who hasn't interviewed the client, and the only person he talks to is the DA... Then bail is set. If you cannot afford bail, which most of the people cannot, and we have high bail here, you sit in jail until the state formally charges you. They have... 45 days for a misdemeanor and 60 days for a felony. You sit in jail unrepresented. If you were charged – now almost half the cases there's no charges so you are eventually released, you've done what we call DA time, right? You're never charged, but you've lost your job, your wife may have left you by then, your kids are pissed off at you, all those other things that could happen, you know your bank, your car has been repossessed, those types of things. Those people who get charged, then get assigned to a court section. The court section then will refer it to the IDB.<sup>81</sup>



**VIOLATIONS OF PROBATION AND PAROLE**

Louisiana’s incarceration rate is the highest in the nation. At 1,138 people per 100,000, the state incarcerates over 1% of its residents.<sup>82</sup> Though Louisiana is the nation’s 24th most populous state, its 37,254-strong prison population is the tenth largest in the country.

A significant portion of the growth in the state prison system is attributable to parole violations. In 2001, parole violators constituted 61% of all admissions in Louisiana, dwarfing the national average of 28%.<sup>83</sup> In the ten-year period between 1990 and 1999, the percentage of parole violators among prison

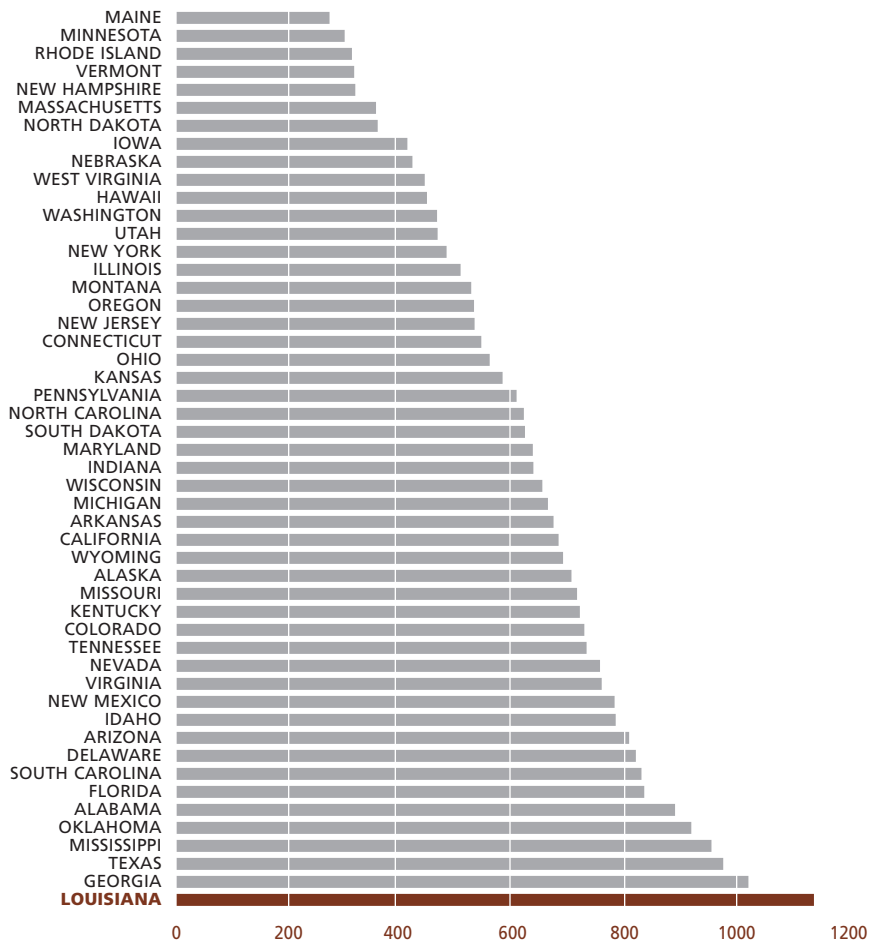
admissions in Louisiana grew from 14.7% to 53.1%.<sup>84</sup> According to a 2002 report by the Institute on Crime, Justice and Corrections at George Washington University, in Louisiana, “[t]he proportion of new felony commitments among admitted offenders has dropped every year since 1994, with a corresponding increase in the proportion of offenders returned to prison due to revocation.”<sup>85</sup> Almost half of all revocation admissions in 2001 were for purely technical violations.<sup>86</sup> In Louisiana, parole violators serve an average of 19 months in prison.<sup>87</sup>

Under Louisiana law, indigent parolees are required to receive representation at revocation or

prerevocation hearings, to be assigned and paid for by the Department of Corrections.<sup>88</sup> This critical opportunity for diversion or sentence mitigation, however, is often overlooked by defense attorneys in New Orleans. As Derwyn Bunton, assistant director of the Juvenile Justice Project of Louisiana told us, “you’re entitled to a hearing, but our system is geared more...it’s more court and process oriented than it is client or defender oriented. So it is almost pro forma.”<sup>89</sup> Based on his courtroom experience, Bunton estimated that 35-45% of prisoners in New Orleans were incarcerated for violations of probation.<sup>90</sup>

FIGURE 3

STATE INCARCERATION RATES (TOTAL NUMBER OF PEOPLE IN PRISON OR JAIL PER 100,000 RESIDENTS)



Source: Paige M. Harrison & Allen J. Beck, *Prison and Jail Inmates at Midyear 2005 at 9 tbl. 12* (Bureau of Justice Statistics, May 2006).

Our visit to a municipal court section – temporarily housed in the lineup room of the House of Detention – corroborated these accounts.<sup>91</sup> As we stood in the back of the room, 15 shackled men were marched in and seated on the linoleum floor. The public defender assigned to the court part addressed the entire group of defendants at once, explaining in less than two minutes how to fill out a plea form and, alternatively, how to enter a plea of not guilty. Charges ranged from public intoxication and public urination to criminal trespass. The ODP attorney spent much of the remaining time conversing with the prosecution and had to be repeatedly admonished by the judge to pay attention to the proceedings. The judge’s assertions that “this is a criminal court [where] we do not take pleas of guilty just to get cases over with,” were belied by everything we saw before us – an observation that was not lost on defendants. In our focus groups, perceptions of collusion between defenders, prosecutors and judges abounded:

Partners of the state, more or less, is what I think of when I think of an indigent defender. Overworked, underpaid, and I think in my heart of hearts that they always advocate for a plea bargain.<sup>92</sup>

My public defender was up here at the bench with the judge. Now if you’re representing me, you should be talking to me.<sup>93</sup>

I personally think the public defender worked with the state. I do believe in my heart – I think they work with the state. They got to say something that will influence you that they be on your side, because I think it’s hand to hand, you know. If I’m a DA, you’re a public defender, and I tell you, “Well, look here John, I know you’re trying to make a name, but I got to have a name too.”<sup>94</sup>

He just trying to get the DA a conviction.<sup>95</sup>

This is what I feel and I may be wrong: I feel like him and the DA got something in cahoots or something.<sup>96</sup>

Participants’ frequent references to what they know “in their heart,” indicate that they recognize the formally adversarial role defenders play. Yet, regardless of whether their suspicions are accurate, their perception of courtroom collusion erodes their confidence in the entire justice system.<sup>97</sup>

## ■ REENTRY

I did twenty-five years, you know. I ran into a guy in the same situation. He didn’t do twenty-five years, but he had been released. No matter how much time you do, they’re going to release you with ten dollars for a twelve-dollar bus ticket. In twenty-five years, I was fortunate enough that I had people, you know?

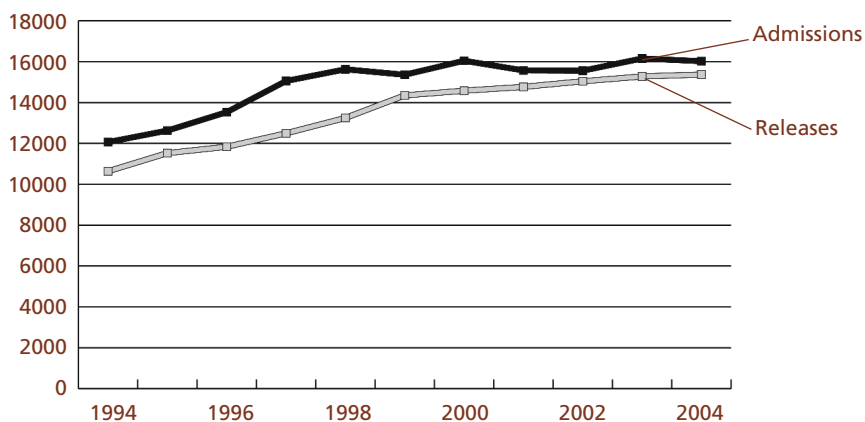
*Focus Group Participant, Voice of the Ex-Offender*

Since 1995, Louisiana’s prison population has grown by 46%. Admissions to prison have grown by 27% over that same period, with the number of releases trailing closely behind.<sup>98</sup>

Admissions and releases in Louisiana mirror a trend that, on a national level, is

FIGURE 4

## RELEASES FROM AND ADMISSIONS TO LOUISIANA STATE PRISONS, 1994–2004



Source: Louisiana Department of Public Safety and Corrections,  
*INCARCERATION ONLY: Admissions/Releases Comparison 1994-2005.*

now widely accepted: “the more people we put in prison, the more will eventually come out.”<sup>99</sup> Although most of them were surprised to hear that some defender offices around the country address reentry issues, participants largely invited the prospect of defender assistance in these areas.

Numerous researchers and national advocacy groups have shown that the fact of having a criminal record significantly impedes a formerly incarcerated person’s chance of successful reentry.<sup>100</sup> Criminal records, as we have seen, can increase the incidence of police stops, and, in turn, repeat incarceration.<sup>101</sup> Though some studies suggest that employment may play a role in reducing recidivism, criminal records frequently prevent formerly incarcerated people from getting jobs.<sup>102</sup> Furthermore, in New Orleans, the presence of certain categories of crime on an individual’s record can preclude him or her from a number of treatment programs, trades, and, crucially, FEMA services.<sup>103</sup>

Louisiana, like many states, prohibits people with felony convictions from working certain licensed jobs. Under Louisiana law, licensing boards are required to show that the “conviction directly relates to the position of employment sought.”<sup>104</sup> In practice, however, the link between the conviction and the proscribed trade can be tenuous. As one participant pointed out, “in Louisiana, you cannot become a barber if you’ve been convicted of a felony. Now what does cutting a person’s hair have to do with a criminal conviction?”<sup>105</sup>

People with certain categories of criminal convictions are also eligible for pardon or expungement of various kinds: first offender pardon, executive pardon, judicial sealing or expungement of adult felony convictions, or administrative restoration.<sup>106</sup> Yet people with criminal convictions rarely seek restoration. “I think none of the kids go back and get their records expunged,” Ilona Picou, Disaster Relief Coordinator, Orleans Parish Juvenile Court, told us. “They don’t think about it.

I think kids don't because they don't have good, quality counsel to really explain this to them. And it's complicated, you know, what information is confidential; what's not."<sup>107</sup>

Focus group participants were further chastened by complications with identification. As one participant explained, "you get kind of intimidated with your prison ID because if I go somewhere now, the only piece of identification I've got is this." Equipped only with an ID that – on its face – negatively brands them, former prisoners are often either discriminated against or discouraged from seeking employment and other benefits for fear of such discrimination.<sup>108</sup>

## ■ THE OFFICE AND ITS CULTURE

I think the greatest need, more than anything else from the public defender's office, is, one, losing the mentality that my client is guilty. You know, you've got to lose that mentality.

*Focus Group Participant, Voice of the Ex-Offender*

Focus group participants had much to say about ODP's lack of a formal office and the sort of culture such a lack encouraged.<sup>109</sup> There are several physical factors that impede contact between ODP defenders, their clients, and their clients' families, many of which could be overcome by commonsensical office-level reforms. Focus group participants placed strong emphasis on two: having a functioning telephone line with a regular receptionist, and establishing an office in a centrally-located building physically separate from both the District Attorney's office and the court. The lack of these two basic services diminished the trust of clients and their families, leaving them feeling that public defenders were ultimately unaccountable to them.

My family try to reach out and touch the lawyer – "look, so and so's my lawyer," you know. [But they] never return your calls, so it's really – I think the biggest thing is trying to make sure that the office is user-friendly.<sup>110</sup>

When we asked participants what would increase their trust in their appointed counsel, we received a variety of answers. Some stressed the importance of staffing the office with members of client communities:

If people work in the offices that come in contact with the "us's" that are utilizing the system, they become more empathetic to what's going on and they understand. But if we're looked at as just chattel that's come into a system, whereas, you know, at the end of the day, I won't see these people no more. But if at the end of the day, well I got to tell his mom he came to court today because his mom is my neighbor, that's accountability.<sup>111</sup>

I believe if the community gets involved with these public defenders, the public defenders can say, okay, they might not be family, but they're my neighbors.<sup>112</sup>

Others emphasized criminal defense experience over community familiarity.

[Having staff from my neighborhood] would always be a plus because they would relate better to you. But, in the same sense, you know, I would like someone that really knows the criminal system and has a background in criminal justice to provide the services for me.<sup>113</sup>

For focus group participants, ensuring that the office is physically separate from the District Attorneys office and the court had practical as well as symbolic significance. One participant, for example, spoke of infelicitous run-ins with Assistant District Attorneys at ODP's former courthouse office:

At ODP, when I was in there, they got the DA office and the public defender office all on one floor like. So we could be just lying down one day, we just come from court, and the DA could just walk in your attorney's office and just talk to you. And you thinking it's good.<sup>114</sup>

Supporting the case for clear physical separation, one participant argued that a trustworthy public defender would be "someone who is not intimidated by the police and the judges that's in there because they're not friends with the DA. We're not friends in this courtroom."<sup>115</sup>

Another set of participants took stances on what they called "cultural sensitivity" or "cultural competence." When asked, one participant – a supporter of the concept – explained that "cultural competence" means

That the attorney doesn't bring his values to the situation. If he's dealing with a kid who comes from a female-headed household, it doesn't mean that everything's wrong in that household because the attorney grew up in a household that was like "Father Knows Best." ...If a kid lives in a housing development, it doesn't necessarily mean that all people are automatically guilty if they live in a housing development.<sup>116</sup>

Others denigrated the "cultural sensitivity" concept, calling it a distraction from more fundamental mores of human decency and respect:

They always talk about this culturally sensitive shit and it pisses me off to no end because if you are a human being, you treat every human being like you would want to be treated...All humans deserve certain basic rights.<sup>117</sup>

Participants also held competing opinions on the importance of the physical character of the office. Opinions divided roughly along lines of gender.<sup>118</sup> A mother from Friends and Families of Louisiana's Incarcerated Children said the office should be

bright and light...And I think that there needs to be the rooms in the facility that will allow the evaluations and what-not to take place there so that they could be done immediately and not have to wait to schedule in to go somewhere else.<sup>119</sup>

Another participant in a group of men, however, told us that the office environment was unimportant:

I don't think that really matters much to the client if he's been arrested. He wouldn't – [he] probably wouldn't care if he was in a shack somewhere if he had an attorney that has good experience.<sup>120</sup>

With near unanimity, however, participants stressed the importance of physically concentrating services so as to improve efficiency and reduce transportation costs.

If somebody got the best mouse trap, I ain't going to try to build another one. So, if for social services you can tell me to go down to the corner and turn left, ring the bell, they got you: I'm going down the street, around the corner, and ring the bell. We don't need to overburden the office because the office is there primarily to represent people that has a problem criminal in nature to start off with. That's how you activate the system initially. But to be user-friendly to the extent that you point me in the direction that I need to go, that's helpful. If that place happens to be in the same building, that's wonderful, you know, because then I won't have to run all over the place, you know.<sup>121</sup>

[The office should be] right there outside the courthouse, you know. Everything is there, and people can come and go from court back and forth to their office. Convenience. You know, a lot of people don't have transportation.<sup>122</sup>

Advocates raised another set of issues: namely, defenders' tendency to eschew collaboration and denigrate the expertise of non-lawyers.<sup>123</sup> Indeed, if resistance to community defense shares any affinity with resistance to its nominal counterpart in policing, it is an aversion to "social work" of any kind.<sup>124</sup> Many of the advocates with whom we spoke found this resistance to be a more salient problem than even the serious structural impediments discussed above. For example, Judson Mitchell, pro bono coordinator at the Loyola Law Clinic, noted, "you're going to hear a lot of lawyers say, 'I'm not a social worker.'"<sup>125</sup> Jelpi Picou voiced his sharp distaste for this position:

You know I hear a complaint all the time with defenders, particularly ones in juvenile court, when I go over to Orleans and it pisses me off, it's like, "We're not social workers." And my answer to that is, you know what? You fucking are, and if you don't like it, you go somewhere else. And that's my answer, I don't sugar coat it, I don't tell them well, you know it's part of the job, and it's indigent defense with kids, and it's more broad, none of this sugar coat. I know professors have great answers for it, but they are fucking social workers. And they're lecturers, and they're mentors, and they're fathers, and they're mother figures, and they are heroes, and they are good attorneys.<sup>126</sup>

## RECOMMENDATIONS

At times the interests, structural and fiscal deficiencies, and cultural issues undermining the provision of adequate counsel in New Orleans seem so convoluted that they appear impossible to unravel. Our interviews and focus groups helped us isolate and bring to the fore the issues that groups of former clients and their families found most pressing: law enforcement and misdemeanor arrests, attorney-client communication, reentry, and indigent defense culture. That many of their frustrations overlapped with those of judges and advocates only strengthens the case for concentrating on this set of concerns. In what follows, we make recommendations based on the issues most commonly taken up in our focus groups and interviews.

No defender office, no matter how well-resourced, could begin implementing all of these recommendations right away. Nor would we recommend that it try. While the speedy adoption of the first recommendation is necessary for community defense to take hold, the following five can be gradually implemented as BOPD sees fit. Moreover, as the first recommendation comprises mainly office-level procedural reforms, it will not require additional funds to implement.

The recommendations are also deliberately broad. Orleans Parish, like jurisdictions around the country, will need to develop its own variety of community defense to suit local dynamics and circumstances. Under each recommendation, we highlight apposite work being undertaken by current community defenders. We intend the listed projects simply to give OI DP and BOPD a sense of what, within the realm of identified needs, is possible. At Appendix 3, we list the contact information for each office identified. Supplemental materials are available at [http://www.brennancenter.org/subpage.asp?key=42&init\\_key=35696](http://www.brennancenter.org/subpage.asp?key=42&init_key=35696). Should OI DP or BOPD take interest in any of the projects below, we encourage them to contact the listed network members.

### ■ REINVENT DEFENDER CULTURE.

The community defense mandate to transform office culture may be the tallest order a defender office is given. Yet New Orleans has a distinct advantage over other defender agencies in this regard. Indeed, at the June 2006 meeting of the Brennan Center's COD Network, many defenders were envious of New Orleans's opportunity to build its office anew. Natalie Finegar, of Maryland's Office of the Public Defender, went so far as to call New Orleans's clean slate a "luxury." Robin Steinberg of The Bronx Defenders agreed: "give me the choice between starting from scratch or having to move something like the system we've had for 50 years in a different direction; I'll take ground-level always." The Board of the Orleans Public Defender has a rare opportunity to build a physical space that encourages attorneys to abide by new principles and incorporate some of the community defense models successfully developed in other jurisdictions.

Reinvent defender culture.

- Draft a mission statement.
- Establish a physically separate office, the design of which reflects the agency's mission.
- Form interdisciplinary hiring committees.
- Hire, or secure volunteer, investigators and social workers to collaborate with legal staff.
- Tie performance evaluations to cross-staff collaboration and community outreach.



To the extent possible, defendants in New Orleans should be represented by a single lawyer or team of lawyers, investigators, social workers, and translators. Client-centered representation requires lawyers to be accountable to clients rather than judges, and client teams enable an office to tackle a client's various needs in a collaborative setting.

Former clients and former defenders both emphasized the need for investigators. Investigators are especially crucial, Derwyn Bunton told us, because "it's very hard to impeach a witness as a lawyer, if they choose to act up, [because] I'm the only one who heard what they said."<sup>127</sup> Because of the nature of their work, investigators are often the staff members most familiar with client communities. Social workers are just as necessary. As Robin Steinberg and David Feige of The Bronx Defenders explain, "[i]n a client-centered office, courtroom goals are accomplished by allowing social workers to help convince judges and prosecutors to offer appropriate case dispositions, while also helping clients address the problems that brought them into the criminal justice system – whether case related or not."<sup>128</sup>

Though a tight budget may prevent OIDP from immediately hiring social workers, many defenders have arranged mutually beneficial agreements with local universities to secure qualified volunteers. For years, Society of Counsel Representing Accused Persons (SCRAP) in Seattle has accepted not only social work volunteers from the University of Washington, but legal interns from Seattle University, and paralegals from local community colleges. According to Co-Director Jana Heyd, social work students often do their practicum work at SCRAP, visiting and conducting interviews with clients, and connecting them with social services.<sup>129</sup> "It's a great investment," she claims, "because many of our volunteers end up at local social service providers, public defender agencies, or law firms looking for pro bono work."<sup>130</sup> In another arrangement, the Office of the Appellate Defender (OAD) in New York City employs a licensed MSW to supervise social work interns.<sup>131</sup> Jelpi Picou described a similar volunteer program established by the Louisiana Indigent Defense Assistance Board (LIDAB):

When I was at the LIDAB, I used to place four or five [social workers] just from making a call over to LSU and saying, "you know, you gotta have some students in there who live in New Orleans, gee whiz, let them do a practicum here." They've got to do one. It's required. How cool. How hard would it be to set up a program with the clinics and the MSW schools and even the undergraduates to say, "look at what we have to offer you?"<sup>132</sup>

At the June 2006 COD Meeting, Robin Steinberg offered some pointed advice about how to combat defenders' tendency to denigrate social work or other "soft services" and eschew cross-staff collaboration.<sup>133</sup> She used the example of The Bronx Defenders's office procedures and physical layout.

First, Steinberg urged, the office must begin with a mission. Once the mission has been established,



every single person you hire and every single position you create for staffing should reflect and feed back to the original mission. And if it doesn't, or that person doesn't, it's the wrong hire or the wrong role...And that means file clerks; it means the person who cleans your offices; it means every single person, because you do not want to get a dynamic of having the receptionist treating your clients in a way that is inconsistent with the vision and mission of the office.

Next, Steinberg recommended that the office develop interdisciplinary hiring committees composed of various types of staff: social workers, investigators, receptionists, etc. This way, she claimed, the hiring committee will be able to assess a candidate's willingness to interact with staff at all levels:

if [during the interview] they're ignoring your social worker in the room, or they're ignoring your investigator in the room, get rid of them. They're probably going to do that when they're practicing as well. Don't tell them that when they come in – that's a secret for us. But I think it really helps in the hiring process with new lawyers.

To ensure that defenders hew to all aspects of the office mission, Steinberg further recommended tying performance evaluations to a defender's community outreach and collaboration with non-legal staff, in addition to their trial performance:

It's abundantly clear to people that in my office, if they're not working with the social worker in an appropriate way, they're in deep trouble in their evaluations. And that's not going to fly. So if the evaluations are tied to the vision of the mission, and that can mean how much community outreach people do, and it's part of the evaluation for criminal defense lawyers, you'd be amazed at how many of them start to volunteer to do stuff they would never do. And it sounds awful, but sometimes that's the only way to do it. If you tie your evaluations to the vision of the mission, and you tie those evaluations to promotions...it actually begins to make sense and nobody feels slighted because it was really clear at the initial interview; it was really clear while you were practicing; it was really clear in the evaluation. So if you're not a believer in community defense, your evaluation is going to show it, even if you are a fantastic trial lawyer.

Finally, Steinberg pointed to The Bronx Defenders' practice of conducting trainings that draw broadly upon staff expertise. Civil lawyers and social workers, for instance, give regular trainings to all staff. "Social workers," she added, "are the best people to train lawyers how to interview clients."

In a later interview, Steinberg spoke of the importance of designing internal office architecture to mimic the agency's structural vision. For an office that aims to reduce needless hierarchy and engender cross-staff collaboration, this means creating a "non-hierarchical layout."

At The Bronx Defenders, social workers, investigators, legal and non-legal staff work in clusters; computer and desk quality does not improve with position. "Placing lawyers, social workers, and investigators in equal spaces, assigned not

by role but by work group,” Steinberg and Feige claim, “supports a culture that strongly values social and investigative work.”<sup>134</sup> The Bronx Defenders’s office privileges face-to-face meetings over communication via memoranda. It maintains an open-door policy allowing potential clients not only to call and be received by a lawyer, but also to drop in for consultation. Receptionists specialize in remembering the names and faces of each client. The reception area is comfortable, with phones for client use and toys for clients’ children.

Reach out to client communities.

- Contact community groups and seek collaboration.
- Form a community advisory committee.
- Perform legal services in client communities.

## ■ REACH OUT TO CLIENT COMMUNITIES.

Of course changing defender culture cannot fully be achieved within the confines of an office. The practice of waiting for community involvement rather than seeking it out rests upon a consumer model of service provision and betrays the fact that, as one participant told us, “I don’t think anybody thinks about a public defender until they’re arrested.”<sup>135</sup> Indeed, as Kim Taylor-Thompson, New York University Law Professor and former director of the Public Defender Service (PDS) in Washington, D.C., notes, in most places, “[c]ommunities themselves may not welcome defenders as partners in any effort to address broader political issues. Only in rare instances will a community even consider its local public defender as a resource when tackling problems of community justice.”<sup>136</sup> Thompson’s contention exactly predicts the response we elicited when we asked focus group participants to tell us what came to mind when they heard the term “public defender.” Defenders were invariably associated with poor defense. Not a single participant said that they would voluntarily go to a public defender for services.

Clearly, it will take time for ODP to gain the trust of its clients and their communities. This will require outreach; it will require, as one participant put it, “going to these neighborhoods that you wouldn’t normally visit on a bright day with a flashlight.”<sup>137</sup> Accordingly, we take the dichotomy some establish between robust criminal defense experience and community familiarity to be a false one. “Trial skills and aggressive courtroom advocacy,” argue Steinberg and Feige,

remain a mainstay of a client-centered defender organization. The goal is not to diminish zealous legal practice, but to augment it. Because much of the client-centered work occurs outside the hallways and stairwells of the courthouse and inside the communities and families of the client, it does not interfere with courtroom advocacy. So, by bringing to bear all the weapons in the arsenal of criminal defense work and blending them with the humanizing and compassionate elements of the client-centered approach, powerful advocates find themselves even better equipped to simultaneously engender compassion from judges and acquittals from juries.<sup>138</sup>

Defenders in the COD Network have undertaken a variety of efforts to bolster their community ties and use those ties to improve case outcomes. Public Defenders at the Clark County Office of the Public Defender in Las Vegas, for example, have traveled to the Buena Vista Springs Community Center to help local residents seal records and resolve bench warrants.<sup>139</sup> Soon after

it implemented its community outreach project, the Clark County Office reported,

The response to this program was overwhelming. To date, we have helped or are helping over 300 individuals who have outstanding bench warrants. We have been able to get over \$80,000 in Bench Warrant Fees excused, and saved these folks over \$30,000 in reduced fines... We have been able to persuade the Clark County Clerks Office to waive filing fees for Petitions to Seal Records (\$133.00 per filing). We have also convinced the District Courts to accept motions to dismiss and seal in cases where the Nevada Department of Parole and Probation claims to not have the resources or time to take care of Dismissals and Sealings where they are warranted in specific cases where the defendant is honorably discharged from probation.<sup>140</sup>

The Clark County project was spurred by clients' complaints that their criminal records kept them from well-paying jobs and their unresolved warrants prevented them from obtaining driver's licenses. Though, as Clark County defenders claim in a project email, the office already had a tradition of helping clients, "[w]hat is different now is that we are not just helping them in the courtroom."<sup>141</sup>

The Charlottesville-Albemarle Office of the Public Defender in Virginia has the unique distinction of being an office born directly of community concern. In 1992, *Charlottesville Daily Progress* reporter Bob Gibson published a series of articles about racial disparities in sentencing in Charlottesville.<sup>142</sup> One of the articles focused on Charlottesville's lack of a public defender. Galvanized by the coverage, a group of concerned community members, including Drewary Brown and Grace Tinsley, lobbied local leaders and then-Governor George Allen for an office.<sup>143</sup> After four years of legislative efforts, their demands were met in 1998 when newly-elected Governor James Gilmore signed a law calling for establishment of the Charlottesville office.<sup>144</sup>

When Lynchburg, Virginia, public defender James Hingeley was hired to head the office, he sought a way to institutionalize the community impulse that had brought it into being. He created a Citizens Advisory Committee (CAC) composed of Tinsley and community members appointed by the Charlottesville City Council, the Albemarle County government, the Thomas Jefferson Area Community Criminal Justice Board, local legislative delegates, the local NAACP, and the public defender itself. CAC bylaws prohibit lawyers from participating because, as Tinsley explains, non-lawyer community members "are the people that are heard the least, and affected the most."<sup>145</sup> In its short history, the CAC has lobbied the legislature for increased resources and defender capacity; spearheaded efforts to recruit lawyers of color; and convened a forum on racial profiling, fees paid to court-appointed attorneys, and the restoration of civil rights to formerly incarcerated people. It has also led a successful effort to liberalize Virginia's process of restoring voting rights to people with criminal convictions.<sup>146</sup>

Outreach efforts by the Rhode Island Office of the Public Defender (RIOPD) led to similar results. When John Hardiman became the state's public defender, he

developed a list of agencies and organizations serving Rhode Island communities of color and wrote each a letter “describing the racial injustice he saw in the criminal justice process, explaining his office’s role in the process, and extending an invitation to community leaders to come discuss their concerns with him and his staff.”<sup>147</sup> The partnerships that emerged from his ensuing discussions with community leaders encouraged Hardiman to establish an in-house “Community Partnership Council,” consisting of attorneys, social workers, intake personnel, and support staff. The Council meets monthly to plan community outreach and education events, build public relations, and discuss developments in the provision of client-centered services. In 2004, RIOPD was awarded a grant to hire a full-time community liaison.

Investigate police misconduct and help clients avoid negative police interaction.

- Establish an internal police misconduct database.
- Conduct legal and “Know Your Rights” trainings.

### ■ INVESTIGATE POLICE MISCONDUCT AND HELP CLIENTS AVOID NEGATIVE POLICE INTERACTION.

Because defenders are often the first impartial observers of clients after arrest, they are uniquely positioned to collect testimony about, and observe the effects of, police misconduct. It was for this reason that Joseph Lopez, a public defender previously at the Bridgeport public defender in Connecticut, proposed to build a “copwatch” database “to document cases of suspected excess force by police and to compile data regarding the circumstances of a defendant’s arrest and injury.”<sup>148</sup> Such data, Lopez claims, would “afford the public defender the ability to track excess force incidents, analyze the data and illustrate trends that may be associated with particular police officers and/or departments.”<sup>149</sup> As the database grew, he claimed, it would aid defenders in their cases:

the copwatch database will provide the public defender a tool to document questionable arrests due to search and seizure issues. The database will allow the public defender to collect and document a police officer’s suspicious conduct, actions, incriminating behavior, boilerplate language, and/or “scenarios” in police reports, etc. Having the means to summarize such information on officers will provide a valuable tool to assist the public defender in preparing for a suppression hearings, justifying an in-camera review of a particular police officer’s personnel records and/or providing impeachment material during a trial.<sup>150</sup>

Lopez was promoted to an office dealing with part A – the most serious – cases before the project could be launched in Bridgeport, but his proposal and basic project infrastructure still exist.<sup>151</sup> When we spoke to him for this report, he told us that he planned to broach his idea with the new chief public defender so that the project could be developed in a part B office where attorneys have broader and more immediate access to a large client base.

Bridgeport defenders also regularly visit housing projects to conduct “Know Your Rights” trainings with residents. An article in the *Fairfield County Weekly* described a training at the P.T. Barnum public housing project in Bridgeport: to many, “the lessons on protective orders, search and seizure and police brutality were a much needed primer on basic civil rights, rights that are violated on a regular basis by

agents ranging from the local gendarmes to the federal government.”<sup>152</sup>

Bridgeport is not alone in its outreach: a number of defender agencies have undertaken community-based efforts to prevent inimical community-police interaction. Community outreach workers at the Neighborhood Defender Services of Harlem (NDS) in New York, for example, have long conducted trainings about police conduct and community relations. A National Institute of Justice report profiling the office describes NDS’s efforts:

Eddie Ellis, an ex-convict and former minister of information for the Black Panther Party in New York, has led a popular workshop called “Know Your Rights,” where he has answered questions about search-and-seizure rules, warrantless arrests, probable cause, and other issues of police conduct.<sup>153</sup>

Attorneys, investigators, and social workers at NDS are required to participate in outreach programs:

At the Neighborhood Defender Service of Harlem (NDS) every attorney, investigator, and social worker participates in community educational programs designed to help young people avoid arrest or injury during encounters with the police. A 10-session course, “Coping with Cops,” trains African-American teens to make it through a police encounter safely. Educational work is included in the office’s mission statement and given equal weight with legal representation in individual cases.<sup>154</sup>

### ■ **MAKE CONTACTS WITH SOCIAL SERVICE PROVIDERS AND, WHERE APPROPRIATE, DIVERT CLIENTS AT FIRST APPEARANCE.**

Given the round enthusiasm for diversion exhibited by judges, former clients, and their families, OIDP’s success will largely turn upon its ability to keep eligible clients from unnecessarily going to prison. Diversion makes particular sense in New Orleans, where large numbers of defendants are arrested for minor infractions, detained for long periods of time, and let go without formal charge. As the work of a few community defenders has shown, diversion of clients facing certain types of charges cuts down on jail costs, prevents the emergence of civil and employment problems attending even short terms of incarceration, and forstalls repeat arrests on the basis of previous criminal justice involvement, all without compromising public safety.

Diversion programs, by definition, require robust and reliable service providers to which clients can be referred. Drug treatment and mental health services in New Orleans are scarce, and defenders looking for viable alternatives for their clients will be forced to face this ineluctable reality. Speaking of mental health services, one focus group participant explained, “you had to be homicidal, suicidal, or gravely disabled in order to get not only admitted to one of the hospitals, but even to be treated in one of the community mental health centers... The focus, regrettably, has not been a lot of preventative kinds of services available.”<sup>155</sup>

Make contacts with social service providers and, where appropriate, divert clients at first appearance.

- Conduct a survey of local social service providers.
- Where appropriate, divert clients at first appearance and tabulate the short- and long-term court- and jail-related savings.
- Play a greater role in the design of specialty courts.
- Where appropriate, encourage the use of diversion at arrest over post-plea specialty courts.

There are a number of new initiatives springing up in the wake of Katrina that show promise. One such program was started by Ucy Long of Odyssey House, a residential substance abuse treatment program.<sup>156</sup> Long's program, Louisiana Community Prisoner Restoration (CPR), helps formerly incarcerated people who have not been convicted of a violent or sex-related offense to find work, housing, and transportation.<sup>157</sup> Defenders should conduct a broad survey of available services and establish contacts at each. For, as defenders in the COD Network have learned, a client's chances of diversion often depend upon an attorney's ability to tell a judge that there is space for his or her client at a trusted local service provider. The Maricopa County Public Defender's Office (MCPD) in Phoenix, Arizona conducted just such a survey in its own office. According to MCPD's Special Assistant Public Defender, Jeremy Mussman, the survey accomplished the following three objectives:

First, it encouraged MCPD staff involved in community activities to think about how their private interests and activities related to the agency's mission, and vice versa. Second, it revealed that the agency is in close proximity to a range of potential contacts in the community that MCPD may enlist in the future to better serve clients. Finally, the very act of distributing the survey sent a message to staff that the agency acknowledges and even values their lives outside the office.<sup>158</sup>

Diversion comes in many forms and at many stages in the criminal process. Defenders themselves can intervene at first appearance; they can support police initiatives to divert clients at arrest; or they can arrange for diversion through mediation before a client goes before a judge.

As researchers like Michael Jacobson and Joan Petersilia and groups like the Council of State Governments have shown, states can stem costly and unnecessary prison growth with minor parole and probation reforms.<sup>159</sup> The Rhode Island Office of the Public Defender (RIOPD) has heeded this lesson in its own advocacy. In September 2003, RIOPD launched a diversion program for parole and probation violators and clients unable to make bail. RIOPD Public Defender, John Hardiman, describes their project, dubbed the Defender Community Advocacy Program (DCAP):

we have lawyers at arraignment and social workers at intake evaluating clients, trying to evaluate people who are going to go to jail at arraignment, either because they can't make bail or because they've violated their probation. What we try to do is use our contacts with social workers and treatment providers to get them into treatment or counseling. We try to convince the judge that we would dispose of the case either with something less than jail (diversion into some sort of program) or reduce the time they spend in jail, on the condition that they attend a treatment program immediately after.<sup>160</sup>

Key to the program's success has been RIOPD's careful records of successful diversions. The office used fastidiously-kept internal data to tabulate state savings associated with its advocacy. In a 2006 letter to William J. Murphy, Speaker of the Rhode Island House, Hardiman reported:



The Public Defender DCAP program undoubtedly has saved the State as well as cities and towns thousands, if not several million, dollars in that less people are going to jail and those who do go to jail are going for much less a period of time. The pre-trial and trial calendars in Providence County District Court from our own personal caseloads have been reduced some 25%. The district court violation calendar has been cut to more than half of the workload it was previously. Where it was usual for the Office of the Public Defender to have more than 100 clients a month, we now average 35-50 a month on the District Court violation calendar. Our intervention at arraignment has resulted in 654 probation/bail violations being withdrawn or not filed. Of that number, 410 of those clients were potential Superior Court violators. This has resulted in less court congestion and saved cities and towns from having to send police officers and other witnesses to court to testify.<sup>161</sup>

Because of its significant and measurable success, the DCAP Program, which was initially funded by a federal grant, now receives an annual state appropriation. According to Hardiman, the additional money allowed RIOPD to hire two social workers, another lawyer, and a data processor.

A major theme of the June 2006 COD meeting was the relationship between community defense and problem-solving courts. Defenders were leery of the regularity with which the problem-solving court has come to be treated as a panacea for any criminal justice ill. Competition between defender agencies and problem-solving courts is not imagined: as Robin Steinberg of The Bronx Defenders pointed out, “we’ve seen in the Bronx some of the judges tending towards, ‘I’m not listening to your social workers, in your community, your office. I have the court social worker.’ And that tension is growing.” Whether problem-solving courts and defender agencies can play complementary roles in improving the lives of clients remains to be seen.

One solution to this incipient problem is for defenders to play a greater role in designing problem-solving courts. Cait Clarke and Christopher Stone describe the case of Los Angeles County Chief Public Defender Michael Judge, who “took a leading role in the development of the first local drug court, despite his misgivings about some aspects of these courts in other states.”<sup>162</sup> Because of Judge’s involvement, the pilot program was made available to defendants prior to adjudication, and the planning group reached consensus that urinalysis would be used solely for treatment purposes.

Steve Binder, a public defender in San Diego, took this example one step further by spearheading his own problem-solving court: the San Diego Homeless Court Program (HCP). The HCP takes referrals from local shelters and service agencies. It seeks homeless defendants looking to resolve outstanding warrants and misdemeanor offenses. As Binder explains,

[t]he court order for sentencing substitutes participation in agency programs for fines and custody. The majority of cases that come before the HCP are dismissed while the court sentence is “credit for time served” in homeless service agency program

activities...The court acknowledges each participant's accomplishments. It is with this understanding that the HCP states, "No one is going into custody."<sup>163</sup>

Between 1989 and 1992, the HCP resolved almost 4,900 cases involving nearly 950 people. Binder's Homeless Court Program has been replicated in 14 communities in California and 13 jurisdictions around the country, including in Phoenix, Arizona, where the Maricopa County Public Defender's Office played a central role in the design phase. Before Katrina hit, New Orleans lawyer Meghan Garvey was in communication with Binder about developing a Homeless Court in New Orleans.

Other defenders have used their sway to turn problem-solving court proposals into diversion-at-arrest programs. At the June 2006 COD Meeting, James Hingeley shared with the group a letter from Charlottesville Sentencing Advocate Albert LaFave to the Citizens Advisory Committee. The letter described the genesis of Charlottesville's mental health project:

Some of our project participants believed the mental health court was a good model which (with varying specifics) has demonstrated success elsewhere in the country and worldwide. Some collaborators, specifically the mental health professionals, were strongly opposed to this model. They believed that this model "stigmatized" individuals suffering from mental illness, labeled them as criminals, and significantly compromised personal confidentiality by revealing mental health information in a public courtroom. The reality is that most mental health courts tend to prioritize voluntary compliance with medical management. Some mental health professionals feel that this model makes medication compliance mandatory.<sup>164</sup>

Following a thorough consideration of whether to support the development of a mental health court in Charlottesville, the Committee instead settled upon a "Crisis Intervention" model wherein police officers are trained to identify mentally ill potential arrestees and defuse parlous situations. The program also provides police officers access to a "crisis stabilization unit," to which they can transport mentally ill potential arrestees in lieu of imprisoning them. The crisis stabilization unit is a non-secure facility where drop-offs are free to leave at any time.<sup>165</sup> In September 2006, the Committee was formally notified that it had received a grant to begin developing the program.

Sharon Cole of the Maryland Office of the Public Defender was also recently awarded a grant, this one to train defenders and other employees in community and internal office mediation. Mediation, Cole argues, provides defenders a means for settling neighborhood disputes before they escalate and enter the criminal justice system. Trained defenders and other staff members have begun mediating conflicts at 120 sites around Baltimore, and Cole's program, though only a few months old, has been sufficiently well-received that she has convinced prosecutors to divert cases to mediation. Under the arrangement Cole has established in the court where she practices, prosecutors periodically agree to postpone criminal prosecution until mediation occurs. Mediation takes place in a neutral envi-



ronment, where clients and their complainants are on equal footing. If, together, the two parties arrive at an agreement outside of the criminal justice system, the prosecutor can agree to drop charges. If not, the case is sent back to the court. All mediation proceedings are confidential and cannot be used in court. In an email, Cole described a recent mediation between a client and his arresting sergeant:

It was the most difficult mediation (really more of a facilitation) I have ever performed. Very contentious. It was great. Good solutions for change were offered. It was only one hour but my client made one suggestion that they both agreed on. It was beautiful. I can't disclose the agreement but I did write their suggestion down exactly as it was proposed. (good mediator, yes?) (curse words and all!). Not only was my client pleased that the prosecutor dropped the charges but the sergeant definitely saw the benefit of a dialogue with a member of the neighborhood he patrols.<sup>166</sup>

While mediation can neither supplant routine criminal adjudications nor take the place of strong courtroom advocacy, it can, as in the case above, promote outcomes that work for both parties, raise the defender's community profile, and enhance defenders' trial and interview skills. As Cole explained at the June 2006 COD Meeting, mediation "really sharpens your listening skills. Not only did I become a trained community mediator, but I also became a better advocate. The number one complaint I hear from clients is the lack of communication with their defenders. So I really think it makes you a better lawyer." As of this writing, Cole's first class of mediators had been filled with volunteers from her office.

## ■ IMPROVE COMMUNICATION WITH CLIENTS.

Communicating with clients would seem so central an aspect of routine public defense that community defenders would feel no need to mention it. Yet as David Feige, speaking of a former client dissatisfied with the quality of his representation, explains,

he, like many jailed clients, actually hasn't talked to his lawyer in months. Even in a reasonably well-funded system like the one in New York City, this is a common complaint. Between the daily crush of the courtroom and the pressure to get cases done, lawyers often don't bother to see clients – some adjourn cases without even bringing them up to the courtroom.<sup>167</sup>

New Orleans has already come under fire for its system of horizontal representation, particularly where it induces defense attorneys to adhere to the "work patterns of the particular judge...rather than [focus] on the indigent defendants who pass through the court."<sup>168</sup> Part of the problem is structural. As Judson Mitchell explained to us,

Right now there's no place to interview clients. If you have 300 cases, you could spend all year trying to interview each one. It takes you half an hour just to get in front of a client. No, the only time you see a client is right before their appearance.<sup>169</sup>

Improve communication with clients:

- Work with the city to improve the jail visitation system.
- Where possible, contact clients' family members at clients' request.
- Enable clients to review their police report upon its release.
- Develop an office-wide protocol for maintaining communication with clients while they are incarcerated.

Switching to a system of vertical representation, where attorneys or defense teams are assigned to clients, rather than to court sections, should be among the Board's top priorities.<sup>170</sup> Working with the city, as it determines the future of Orleans Parish Prison, to develop a physical space and visitation system that better facilitates client interviews should be another.

Attorney-client communication is essential in New Orleans, where many defendants are held in jail for long periods of time without knowledge of the formal reasons for their arrest. In each of our focus groups, participants underscored this point:

I think at the beginning, the public defender needs to communicate with his client more. He needs to visit him and keep him abreast of his case as to how it's going and, you know, what he's facing. A lot of times a guy will be in jail and he don't have a clue as to what's going on until you go to court. And I think they need to communicate more with their clients. That would be the number one thing.<sup>171</sup>

Although the general importance of simple communication played a central role in each of our focus group discussions, over time two specific themes emerged. First, participants highlighted the importance of family notification and contact. One participant said that the most important thing to a person in jail is "knowing that your family will be all right [when you are] locked in jail."<sup>172</sup>

Second, participants emphasized the importance of receiving the police report pertaining to their case. When asked what would be the most important service a defender could provide, one participant responded, "getting my police report so I can look at the evidence they got."<sup>173</sup> Another participant, in a different group, agreed: "I always get a copy of my police report because I want to see just what you looking at, what you looking at, judge, DA, public defender. I want to know what you all are looking at so I can see it, too."<sup>174</sup> Although, as the research of the Metropolitan Crime Commission makes clear, sluggishness in police reporting will undoubtedly delay a defendant's receipt of his or her police report, focus group participants, with striking unanimity, insisted that a defender's ability to provide and explain the police report upon its release would greatly increase their trust in that defender: "They show me they're working with me – that would make me trust them."<sup>175</sup>

The Bronx Defenders protocol requires attorneys, at the initial client interview, to explain all charges and show the client the complaint. A training manual distributed to all attorneys instructs them to "[l]et your client understand the papers are as much hers as yours."<sup>176</sup> According to Heather Dorsey of the Office of the Public Defender in Cambridge, Maryland, all clients receive copies of their statement of probable cause. Defenders in Dorsey's office schedule visits with clients to avoid interfering with family visits and change of guard shifts. Clients also fill out visit request sheets that are delivered to defenders by correctional officers a few times a week. Mail correspondence is frequent and documented in clients' files.<sup>177</sup>

Neighborhood Defender Services of Harlem has at least one Spanish-speaking employee at each staff level: attorney, investigator, social worker, paralegal, etc. Lawyers are required to return to the office (located in Harlem, where most of their clients live) after court (in downtown Manhattan) in order to meet clients face-to-face. Though court dockets often dictate the kind and extent of their meetings, NDS attorneys make frequent visits to Rikers Island to meet with clients.<sup>178</sup>

## ■ FACILITATE CLIENT REENTRY AT FRONT AND BACK ENDS OF THE CRIMINAL JUSTICE PROCESS.

“As a collective,” notes University of Maryland Law Professor Michael Pinard, “defense attorneys – as well as trial judges and prosecutors – are generally unaware of the existence and scope of collateral consequences.”<sup>179</sup> Increasingly, however, community defenders have overcome the tendency to overlook all but the immediate circumstances of a client’s case.<sup>180</sup> At the June 2006 COD Meeting, Robin Steinberg explained the habits defenders in her office have tried to break:

We’re trained to define for others what their problems are instead of hearing from them their definition of what the problems are, and what they want to work on, and what they don’t want to work on, if, indeed, they want to work on anything. And listening to clients, and the counter-intuitive sense that perhaps liberty interests are not even the most important – perhaps in criminal cases it’s the least important thing on the client’s mind and losing custody of their kids is the most important.<sup>181</sup>

Defenders can intervene to reduce the impact of the civil sanctions accompanying a criminal conviction in a number of ways: First, they can prevent the conferral of a criminal conviction on charges they know will reduce a client’s reentry prospects. If a defender knows, for example, that a certain type of conviction will preclude a client from returning to his or her profession, the defender can negotiate with prosecution to adjust a charge and better advise clients facing plea decisions. McGregor Smyth, Director of the Civil Action Project at the Bronx Defenders, describes a pertinent case study:

Joanne F. had worked hard to get a steady job as a security guard. In a domestic incident with her boyfriend, she was charged with Assault and Harassment. The initial plea offer would have resulted in the loss of her security guard license and her job. The defense attorney used this disproportionate consequence to convince the prosecutor to offer an adjournment in contemplation of dismissal. Joanne kept her job, and her stability.<sup>182</sup>

Similar negotiations can prevent the onset of drastic civil sanctions in the realms of immigration, public housing, and education, among many others.<sup>183</sup>

Second, defenders can support legislation that increases employment opportunities and reduces civil barriers for people with criminal convictions.<sup>184</sup> As one par-

Facilitate client reentry at front and back ends of the criminal justice process.

- Advise clients of the collateral consequences of sentencing and plea arrangements and negotiate with judges and prosecutors to avoid the conferral of civil sanctions.
- Support legislation that increases employment opportunities and reduces civil barriers for people with criminal convictions.
- Where applicable, provide criminal-record expungement services.
- Aid clients in procuring non-prison identification.

ticipant noted, “we’ve got over sixty-five, seventy laws on the books that prohibit us from viable trades.”<sup>185</sup> The Bronx Defenders’ Reentry Net project has submitted testimony on proposed national regulations to implement background checks for all port workers with access to secured areas and on the Uniform Collateral Sanctions and Disqualifications Act (UCSDA), among other things.<sup>186</sup> Reentry Net also collaborated with the New York-based Interfaith Coalition of Advocates of Reentry and Employment (ICARE) to successfully promote the passage of an amendment to the New York State penal law that adds successful reintegration to the goals of sentencing in all criminal cases. Defenders at RIOPD were central to an effort to pass a recent ballot initiative in Rhode Island that restored voting rights to approximately 15,000 parolees and probationers.<sup>187</sup>

Third, as Ilona Picou mentions above, defenders can help eligible clients achieve pardons or secure record expungement. The County of San Diego Public Defender, for example, has trained paralegal Mary Ann Knuttila to serve as the office’s expungement clerk. The office posts eligibility criteria and expungement information in its office and on its website.<sup>188</sup>

Finally, defenders can help their clients procure non-prison identification. Linda McLaughlin, previously of the Community Law Office (CLO) in Knoxville, Tennessee, explains that CLO has developed a working relationship with the Department of Safety such that it can obtain information about the status of a client’s ID or driver’s license within twenty-four hours, including what additional steps a client must take to secure it.<sup>189</sup>

All four forms of advocacy are crucial in New Orleans, where the proliferation of criminal records is exacerbated by the number of defendants who plead credit for time served after spending significant time in jail. Further, as many of our interviewees and focus group participants attested, New Orleans’s vast labor shortage has made employers more amenable to hiring people with criminal records.<sup>190</sup> If the current situation of labor in New Orleans presents new challenges, it also offers a crucial opening for people with criminal convictions.<sup>191</sup>

## WHY COMMUNITY DEFENSE MAKES SENSE NOW

Like defenders at the June 2006 COD Meeting, many of our focus group participants looked optimistically upon New Orleans’s rare moment to make anew its system of public defense. In the words of one participant,

There were a lot of flaws pre-Katrina, and I think Katrina has provided us with an opportunity to get it right, or at least to make it better. So that I hope those powers that be will not just be trying to recreate what existed because it didn’t work on any level. I don’t even think it worked for the judges or anybody else. But to try to look at and develop some new models.<sup>192</sup>

To see opportunity in such destruction and devastation is truly an audacious sort of hope. But here, as elsewhere in our interviews, this participant’s optimism was conditioned on a single proviso: “I think for it to work, there would need to be some community involvement even at the thought of it, and not just create this and then say, ‘come, we want y’all to be involved’ after the process is already developed.”<sup>193</sup>

On our first day in New Orleans, Jelpi Picou made a compelling case for why the city is particularly well-suited for community defense:

I get calls all the time from community people, organizers, that are like, “there’s this bill in the legislature and we want to testify to get kids parole-eligible” – kids who were convicted in the adult system. We just had hearings. People are calling saying, “how do we do it? How do we do it?” I mean, they’re ready to do it. They want to do it. It needs to be more organized. Can that be part of a defender office? I think it needs to be. You know, if we’re going to call ourselves community-based, client-based, our clients are in communities... It’s not anathema in a public defender office and it shouldn’t be, particularly in a place like Orleans, which is so community-driven.<sup>194</sup>

Even skeptics – those who maintained that New Orleans must strictly focus on the bare essentials of structural reform – when pressed, conceded that the storm had opened a window in which to remake and redefine the public defender agency. “Now is the only time it’s got a shot in the world,” Judson Mitchell told us. “Connections are being made.”<sup>195</sup>

It is our hope that through this document we have, in a small way, enabled the opinions of a few community members and former clients to enter the discussion of what a renewed Orleans Parish Indigent Defender might look like. Their comments, in aggregate, suggest that the problems clients face cannot be addressed through structural reform or zealous courtroom advocacy alone. Moreover, the existing community defense projects we highlight demonstrate that there are existing models by which ODP can respond to their concerns, and a network of defenders from which it can draw support.

Our recommendations, of course, are strictly advisory, and we make them with recognition that the city faces formidable barriers to achieving even the most fundamental reforms. While the speedy adoption of the first recommendation is necessary for community defense to take hold, the following five can be gradually implemented as BOPD sees fit. Community defense is an ongoing and evolving project, and New Orleans, like defender agencies around the country, will need to chart its own path on its way there.

## ENDNOTES

<sup>1</sup> As early as 1993, Calvin Johnson, who was chief judge of New Orleans criminal court between February 2004 and June 2006, declared Louisiana's system for securing indigent defense "unconstitutional as applied in the City of New Orleans." *State v. Peart*, 621 So. 2d 780, 784 (1993). On appeal, the Louisiana Supreme Court reversed Johnson's ruling, but instructed the court on remand, in the absence of significant improvement in indigent defense services, to apply a rebuttable presumption that indigent defendants were not receiving constitutionally effective assistance. Absent this, the Supreme Court ruled that "the [lower] court should not permit the prosecution to go forward until the defendant is provided with reasonably effective assistance of counsel." *Peart*, 621 So. 2d at 792. The court's decision ultimately led to the establishment of the Louisiana Indigent Defense Assistance Board (LIDAB). Interview with Jelpi Picou, May 24, 2006. As recently as April 2005, in a case involving the use of local parish funds to fund indigent defense, the Supreme Court again instructed that "unless adequate funds are identified and made available in a manner authorized by law as expressed in this opinion, upon motion of the defendants, the trial judge may halt the prosecution of these cases until adequate funds become available to provide for these indigent defendants' constitutionally protected right to counsel." *State v. Citizen*, 898 So. 2d 325, 339 (2005). Although the court applauded advances the state had made in establishing the LIDAB and the Louisiana Task Force on Indigent Defense (in January 2004), it nevertheless held that the duty of securing the representation of indigent defendants falls "squarely on the shoulders of the legislature." *Id.* at 335, 339. *See also* LA. CONST. ART. III § 1. Numerous advocacy and oversight groups have also criticized the city's and state's method of providing effective assistance. *See, e.g.*, THE SPANGENBERG GROUP, *STUDY OF THE INDIGENT DEFENDER SYSTEM IN LOUISIANA* (1992); THE SPANGENBERG GROUP, *THE ORLEANS INDIGENT DEFENDER PROGRAM: AN OVERVIEW* (1997); THE NATIONAL LEGAL AID & DEFENDER ASSOCIATION (NLADA), *IN DEFENSE OF PUBLIC ACCESS TO JUSTICE: AN ASSESSMENT OF TRIAL-LEVEL INDIGENT DEFENSE SERVICES IN LOUISIANA 40 YEARS AFTER GIDEON*, (2004) available at <http://www.nlada.org/DMS/Documents/1078863541.49/Avoyelles%20Parsh%20Body%20Text.pdf>; SAFE STREETS, STRONG COMMUNITIES, *WHO PAYS THE PRICE FOR ORLEANS PARISH'S BROKEN INDIGENT DEFENSE SYSTEM? A SUMMARY OF INVESTIGATIVE FINDINGS* (2006) available at <http://www.alternet.org/pdf/SSSCReportNarrative.pdf>; SOUTHERN CENTER FOR HUMAN RIGHTS, *A REPORT ON PRE- AND POST-KATRINA INDIGENT DEFENSE IN NEW ORLEANS* (2006) available at [http://www.schr.org/indigentdefense/Press%20Releases/press\\_new\\_%20orleans\\_prepost\\_katrina.htm](http://www.schr.org/indigentdefense/Press%20Releases/press_new_%20orleans_prepost_katrina.htm); NICHOLAS L. CHIARKIS, D. ALAN HENRY & RANDOLPH N. STONE, BUREAU OF JUSTICE ASSISTANCE, *AN ASSESSMENT OF THE IMMEDIATE AND LONGER TERM NEEDS OF THE NEW ORLEANS PUBLIC DEFENDER SYSTEM* (2006); STUDENTS OF THE DOMESTIC DISASTER PRACTICUM, NORTHWESTERN SCHOOL OF LAW, *ACCESS DENIED: PRE-KATRINA PRACTICES IN POST-KATRINA MAGISTRATE AND MUNICIPAL COURTS* (2006) available at <http://www.law.northwestern.edu/legalclinic/docs/NewOrleansReport06.pdf>; YALE LAW SCHOOL AND THE LOUISIANA STATE BAR ASSOCIATION, *CONFERENCE REPORT: PUBLIC DEFENSE IN LOUISIANA*, (2006). Even before the storm, the Louisiana District Attorney's Association admitted, "[t]he fact that Louisiana's system for providing criminal lawyers for indigent defendants needs work is beyond debate." James Gill, *Indigent Defense as Unpopular as Ever*, *TIMES-PICAYUNE*, June 3, 2005, at 7. *See also* DAVID COLE, *NO EQUAL JUSTICE* 81 (1999); Stephen Bright, *Counsel for the Poor: The Death Penalty Not for the Worst Crime but for the Worst Lawyer*, 103 *YALE L. J.* 1835, 1851 (1994).

<sup>2</sup> Michael Perlstein, *Public defender cases in limbo; Indigent program broken, judge says*, *TIMES-PICAYUNE*, Feb. 11 2006, at 1. In a telling historical echo, defense attorney Rick Tessier, who stood before Johnson when he declared the system unconstitutional thirteen years earlier, concurred: "It was broke before, now it's rubble. It's like the Lower 9<sup>th</sup> Ward. It's completely ravaged of even the appearance of a public defender's office."

<sup>3</sup> *See especially Jail without representation*, *TIMES-PICAYUNE*, March 20, 2006 ("unless the state enforces limits on defenders' caseloads and requires local boards to be independent from political



pressure – among other reforms – there’s a limit to how much the extra money can accomplish”); CHIARKIS, HENRY & STONE, *supra* note 1 (recommending the following: “1. Change the public defender program from court-and-process-centered to a client-centered public defender program; 2. Address the detainee backlog—represent all defendants waiting for hearings; 3. Gather five months of solid, accurate minute-by-minute data upon which the future (long term recommendations) can be based. [...] 4. Appoint a professional committed board; 5. Begin hiring full-time; client-centered public defenders; and 6. Create an atmosphere in which the criminal justice system is working together as a system instead of cloistered and disconnected parts.”).

<sup>4</sup> We are far from the first to advocate for such a measure in print. See, e.g., Billy Sothern, *Left to Die*, THE NATION, Jan. 2, 2006 (“Here as elsewhere, such institutions do not need heaps of money. They require instead a change of attitude—whereby people deprived of their personal liberty are still valued and protected by society. In the legal defense context, this means dedicated, full-time public defenders insulated from political pressure, like the Public Defender Service in Washington, DC, or the Bronx Defenders in New York City—offices of true believers who make the adversarial process a challenge to the state’s immense power to incarcerate and even kill its citizens.”).

<sup>5</sup> See Kim Taylor-Thompson, *Taking it to the Streets*, 29 N.Y.U. REV. L. & SOC. CHANGE 153, 165 (2004), (“When we examine those jurisdictions that actually have public defender offices, the norm is that they are underfunded, overloaded, and incapable of providing anything that approaches what either the Warren Court envisioned, or more importantly, what a client expects from her lawyer.”). See also the discussion of Louisiana indigent defense funding at Appendix 1.

<sup>6</sup> See especially U.S. DEP’T OF JUSTICE, IMPROVING CRIMINAL JUSTICE SYSTEMS THROUGH EXPANDED STRATEGIES AND INNOVATIVE COLLABORATIONS, REPORT OF THE NATIONAL SYMPOSIUM ON INDIGENT DEFENSE (1999) available at <http://www.ojp.usdoj.gov/indigentdefense/icjs.pdf>; Kim Taylor-Thompson, *Tuning Up Gideon’s Trumpet*, 71 FORDHAM L. REV. 1461, 1509 (2003); Cait Clarke & Christopher Stone, *Bolder Management for Public Defense: Leadership in Three Dimensions*, 29 N.Y.U. REV. L. & SOC. CHANGE 113 (2004); Mark H. Moore, Michael P. Judge, Carlos J. Martinez & Leonard Noisette, *The Best Defense is No Offense: Preventing Crime Through Effective Public Defense*, 29 N.Y.U. REV. L. & SOC. CHANGE 57 (2004); McGregor Smyth, *Bridging the Gap: A Practical Guide to Civil-Defender Collaboration*, 37 CLEARINGHOUSE REV. (2003); Charles J. Ogletree, *Beyond Justifications: Seeking Motivations to Sustain Public Defenders*, 106 HARVARD L. REV. 6 (1993).

<sup>7</sup> Robert J. Sampson, *Transcending Tradition: New Directions in Community Research, Chicago Style*, 40 CRIMINOLOGY 2, 215 (2002).

<sup>8</sup> See Brennan Center, *Community-Oriented Defense Fact Sheet* (2002) available at: [http://www.brennancenter.org/programs/cj/factsheet\\_cji.html](http://www.brennancenter.org/programs/cj/factsheet_cji.html).

<sup>9</sup> The 127 defenders would be a biased sample of all those surveyed. It stands to reason that those with the best community defense practices are the most likely to respond to such a survey.

<sup>10</sup> As Kim Taylor-Thompson, New York University Law Professor and former director of the Public Defender Service (PDS), notes, “[w]ithin these offices, rather than being perceived as a dilution of the duty to clients, working with communities is seen as central to defenders’ work.” See Thompson, *supra* note 5 at 174.

<sup>11</sup> Focus groups took place May 24-26, 2006 at various locations in New Orleans. In all, we interviewed 35 people over three days. We complimented our on-site interviews with telephone interviews conducted with attorneys and advocates over the following five months. Interviews with affiliates of Friends and Families of Louisiana’s Incarcerated Children and Voice of the Ex-Offender, youths participating in programs through the Youth Empowerment Project, and individuals recently released from Orleans Parish Prison took place in conference rooms at the Juvenile Justice Project of Louisiana. Focus groups with residents of Bridge House and Odyssey House were held on-site.

<sup>12</sup> Anthropologist Donald Braman, who has spent considerable time interviewing families deeply affected by incarceration, notes, “[i]t should come as no surprise that ordinary people know



more than experts do about what it is they want from the law, but it is puzzling to see the theory and practice of punishment in America so unmoored from the experiences and concerns of people who are the object of the law's protection." Donald Braman, *Punishment and Accountability: Understanding and Reforming Criminal Sanctions in America*, 53 UCLA L. REV. (2006) 1143, 1146.

<sup>13</sup> [Hereinafter "the June 2006 COD meeting."] The COD Meeting was held June 27-29, 2006 at New York University School of Law. A list of participants is included at Appendix 2.

<sup>14</sup> JUVENILE JUSTICE PROJECT OF LOUISIANA (JJPL), TREATED LIKE TRASH: JUVENILE DETENTION IN NEW ORLEANS BEFORE, DURING, AND AFTER HURRICANE KATRINA 15 (2006) available at <http://www.nicic.org/Library/021530>.

<sup>15</sup> Mark Schleifstein, *Katrina Puts End to Lull; Storm's Westward Path Puts N.O. on Edge*, TIMES-PICAYUNE, Aug. 27, 2005, at 1.

<sup>16</sup> Gordon Russell, *Nagin orders first-ever mandatory evacuation of New Orleans*, TIMES-PICAYUNE, Aug. 28, 2005.

<sup>17</sup> According to Blanco, approximately 1.3 million residents (80%) of the greater New Orleans area successfully evacuated. Joe Gyan, *Southeast La. hurricane evacuation guide mirrors 2005 plan*, THE ADVOCATE, May 16, 2006.

<sup>18</sup> *26,000 shelter at Superdome*, TIMES-PICAYUNE, Aug. 28, 2005. Evacuation patterns were greatly influenced by racial segregation and class. "In a city with so many residents living in poverty," reported the *New York Times*, "the hurricane came at the worst possible time: the end of the month, when those depending on public assistance are waiting for their next checks to be mailed on the first of the month. Without checks, many residents didn't have the money for gasoline, bus fare or lodging." Scott Shane & Eric Lipton, *Government Saw Flood Risk but Not Levee Failure*, N.Y. TIMES, Sept. 2, 2005, at 1.

<sup>19</sup> Deaths were reported to be in the dozens. The opening sentence of the *New York Times's* Tuesday story characterized coverage around the country: "Hurricane Katrina pounded the Gulf Coast with devastating force at daybreak on Monday, sparing New Orleans the catastrophic hit that had been feared but inundating parts of the city and heaping damage on neighboring Mississippi, where it killed dozens, ripped away roofs and left coastal roads impassable." Joseph B. Treaster & Kate Zernike, *Hurricane Slams into Gulf Coast; Dozens are Dead*, N.Y. TIMES, Aug. 30, 2005.

<sup>20</sup> This turn of events is eerily presaged in both ARI KELMAN, *A RIVER AND ITS CITY: THE NATURE OF LANDSCAPE IN NEW ORLEANS* (2003) and JOHN MCPHEE, *THE CONTROL OF NATURE* (1989), not to mention explicitly forecasted in numerous studies by the Army Corps of Engineers. See Joel K. Bourne, Jr., *Gone With the Water*, NATIONAL GEOGRAPHIC (2004); A FAILURE OF INITIATIVE: FINAL REPORT OF THE SELECT BIPARTISAN COMMITTEE TO INVESTIGATE THE PREPARATION FOR AND RESPONSE TO HURRICANE KATRINA 87 (U.S. Government Printing Office 2006) available at <http://www.gpoaccess.gov/congress/index.html>.

<sup>21</sup> Josh Peter, *Astrodome full of survival stories: Those who tried to stay join rabbis, single moms, others in Houston*, TIMES-PICAYUNE, Sept. 2, 2005, at A10; Louisiana Department of Health and Hospitals, *Katrina Missing: Reports of Missing and Deceased*, available at <http://www.dhh.louisiana.gov/offices/page.asp?ID=192&Detail=5248> (last visited Nov. 20, 2006). According a report by John R. Logan, Professor of Sociology at Brown University, "an analysis of FEMA storm damage data shows that the storm's impact was disproportionately borne by the region's African American community, by people who rented their homes, and by the poor and unemployed." JOHN R. LOGAN, *THE IMPACT OF KATRINA, RACE AND CLASS IN STORM-DAMAGED NEIGHBORHOODS* (2006) available at <http://www.s4.brown.edu/Katrina/report.pdf>.

<sup>22</sup> Human Rights Watch (HRW), *New Orleans: Prisoners Abandoned to Floodwaters* (2005) available at <http://hrw.org/english/docs/2005/09/22/usdom11773.htm>.

<sup>23</sup> American Civil Liberties Union (ACLU), *Men and Women at Orleans Parish Prison Detail Chaos Following Katrina* (2005) available at <http://www.aclu.org/prison/conditions/21620prs20051117>.

html (last visited May 4, 2006); *Allegations of neglect at jail are 'fiction,' sheriff says*, ST. PETERSBURG TIMES, Oct. 6, 2005, at 5A.

<sup>24</sup> GUSTAVE DE BEAUMONT & ALEXIS DE TOCQUEVILLE, *ON THE PENITENTIARY SYSTEM IN THE UNITED STATES AND ITS APPLICATION IN FRANCE* 195 (Southern Illinois University Press 1964) (1833). Beaumont and Tocqueville made their comments long before the construction of the current OPP facilities, but their words well describe the later institution's sordid history.

<sup>25</sup> Michael Perlstein, *Prison became island of fear and frustration*, TIMES-PICAYUNE, Sept. 23, 2005. If, as geographer Neil Smith contends, "[i]n New Orleans...topographic gradients doubled as class and race gradients," OPP was no exception. Neil Smith, *There's No Such Thing as a Natural Disaster*, SOCIAL SCIENCE RESEARCH COUNCIL, Sept. 26, 2005, available at <http://understanding.katrina.ssrc.org/Smith/pf/> (last visited June 9, 2006).

<sup>26</sup> See the website of Louisiana Attorney General Charles Foti, available at <http://www.ag.state.la.us/Bio.aspx> (last visited 4 May 2006).

<sup>27</sup> David Morton, *Empire Falls: The Rise and Decline of the New Orleans Jail*, NEW REPUBLIC, Aug. 10, 2006.

<sup>28</sup> Barry Gerharz & Seung Hong, *Down by Law: Orleans Parish Prison before and after Katrina*, DOLLARS AND SENSE, March/April 2006.

<sup>29</sup> PAIGE M. HARRISON & ALLEN J. BECK, BUREAU OF JUSTICE STATISTICS, U.S. DEP'T OF JUSTICE, BULL. NO. NCJ 208801, *Prison and Jail Inmates at Midyear 2004* 10 tbl.12 (2005).

<sup>30</sup> Orleans Parish Criminal Sheriff's Office, *Analysis of Daily Cost Per Inmate, 2003-2006*, attached to Letter from Sheriff Marlin N. Gusman to Members of New Orleans City Council, Nov. 10, 2005, cited in American Civil Liberties Union (ACLU), *Orleans Parish Prison: A Big Jail with Big Problems*, available at <http://www.aclu.org/prison/conditions/23419res20060111.html> (last visited 4 May 2006).

<sup>31</sup> According to the ACLU's National Prison Project, when Hurricane Katrina hit, OPP housed nearly 2,000 state prisoners and over 200 federal detainees. AMERICAN CIVIL LIBERTIES UNION (ACLU), *ABANDONED & ABUSED: ORLEANS PARISH PRISONERS IN THE WAKE OF HURRICANE KATRINA* 14 (2006) available at <http://www.aclu.org/prison/conditions/26421prs20060810.html>.

<sup>32</sup> PAIGE M. HARRISON & ALLEN J. BECK, BUREAU OF JUSTICE STATISTICS, U.S. DEP'T OF JUSTICE, BULL. NO. NCJ 210677, *Prisoners in 2004* 6 tbl.7 (2005). Louisiana is highly anomalous in this respect: the national average stands at five percent. Kentucky, the state with the next highest percentage, holds 28.5% of its state prisoners in local jails.

<sup>33</sup> Louisiana Department of Public Safety and Corrections, *Sheriffs Payments Projection FY 2002-03*, available at [http://www.corrections.state.la.us/Statistics/PDF\\_BB/05Office%20of%20Management%20and%20Finance/5H.PDF](http://www.corrections.state.la.us/Statistics/PDF_BB/05Office%20of%20Management%20and%20Finance/5H.PDF) (last visited May 4, 2006).

<sup>34</sup> ACLU, *supra* note 31. Sheriffs notoriously bristle at the discrepancy between their reimbursement and the \$38/day rate it costs to house an inmate in state prison. Covering a 2003 gubernatorial race, *Times-Picayune* reporter James Gill described sheriffs' demands: "[t]he sheriffs want more supplemental pay for their employees, and bigger fees for housing state prisoners in their jail-houses. Candidates took turns licking the sheriff's boots." James Gill, *Honesty makes a shaky campaign platform*, TIMES-PICAYUNE, Aug. 1, 2003, at 7. David Carroll has suggested tapping into sheriffs' and district attorneys' revenue reserves to help fund indigent defense. Laura Maggi, *Public defenders strapped, study says; Financing from state called inadequate*, TIMES-PICAYUNE, March 10, 2004, at 5. Orleans Parish Prison receives about twice the \$24 per-day rate to house federal prisoners. Gerharz and Hong, *supra* note 28.

<sup>35</sup> See NLADA *supra* note 1 at 65 ("without state prisoners, Sheriffs are more typically paid only \$3.50 per day by the local police jury to house those arrested for misdemeanor crimes or those awaiting trial."). According the ACLU's National Prison Project, the state now pays local sheriffs

\$4.50 per day per prisoner. ACLU, *supra* note 31, at 14.

<sup>36</sup> Orleans Parish Prison focus group, May 26, 2006. See also Laura Maggi, *N.O. prison critics grill sheriff, Incarceration rate high, they point out*, TIMES-PICAYUNE, November 15, 2006 (“[Criminal Sheriff Marlin] Gusman used to argue that Foti ran up the city’s bill by keeping prisoners in jail until after midnight to collect an extra per diem.”).

<sup>37</sup> JJPL *supra* note 14, at 5.

<sup>38</sup> Perlstein, *supra* note 25.

<sup>39</sup> SOUTHERN CENTER FOR HUMAN RIGHTS, *supra* note 1. The Louisiana Department of Public Safety and Corrections also assembled a makeshift lockup in Union Station, a train and bus depot off Loyola Avenue, which was soon dubbed “Camp Greyhound.” See Gwen Filosa, *Bus depot becomes city’s hottest set of bars*, TIMES-PICAYUNE, Sept. 30, 2005; Dan Baum, *Deluged: When Katrina hit, where were the police?* NEW YORKER, Jan. 9, 2006.

<sup>40</sup> Gwen Filosa, *Inmates fighting for their freedom; Hurricanes delay court hearings*, TIMES-PICAYUNE, Oct. 15, 2005, at 1.

<sup>41</sup> SOUTHERN CENTER FOR HUMAN RIGHTS, *supra* note 1. See also Gwen Filosa, *Katrina leaves inmates in limbo; Many still jailed are ‘doing Katrina time.’* TIMES-PICAYUNE, March 18, 2006.

<sup>42</sup> Paul Purpura, *Cupboard bare for poor’s legal aid: Jefferson parish public defenders to see salaries halved*, TIMES PICAYUNE, Nov. 2, 2005, at 1.

<sup>43</sup> Perlstein, *supra* note 2.

<sup>44</sup> SOUTHERN CENTER FOR HUMAN RIGHTS, *supra* note 1.

<sup>45</sup> Susan Saulny, *New Orleans Moves to Repair Its Legal System*, N.Y. TIMES, Aug. 8, 2006.

<sup>46</sup> Gwen Filosa, *Inmates ordered freed at prison; Nonviolent suspects clog Orleans jail*, TIMES-PICAYUNE, May 25, 2006.

<sup>47</sup> “Zero-tolerance” traces its origin to the “broken windows” theory of crime popularized by James Q. Wilson and George Kelling. See James Q. Wilson & George Kelling, *Broken Windows*, THE ATLANTIC MONTHLY, March 1982, at 29 (“public drunkenness, street prostitution, and pornographic displays can destroy a community more quickly than a team of professional burglars”). For empirical assessments of the broken windows theory, see Bernard Harcourt, *Reflecting on the Subject: A Critique of the Social Influence Conception of Deterrence, the Broken Windows Theory, and Order-Maintenance Policing New York Style*, 97 MICH. L. REV. 291, 308 (1998); Robert Sampson & Stephen W. Raudenbush, *Seeing Disorder: Neighborhood Stigma and the Social Construction of “Broken Windows,”* 67 SOCIAL PSYCHOLOGY QUARTERLY 4, 319 (2004).

<sup>48</sup> Interview with Judge David Bell, May 26, 2006.

<sup>49</sup> Friends and Families of Louisiana’s Incarcerated Children focus group, May 25, 2006.

<sup>50</sup> Youth Empowerment Project focus group, May 24, 2006.

<sup>51</sup> Odyssey House focus group, May 26, 2006.

<sup>52</sup> Voice of the Ex-Offender focus group, May 26, 2006.

<sup>53</sup> According to the ACLU’s National Prison Project, though African-Americans make up 66.6% percent of Orleans Parish, they constitute nearly 90% of the population of Orleans Parish Prison. ACLU, *supra* note 31, at 17. More than 72% of people in Louisiana’s prisons are African-American. Louisiana Department of Public Safety & Corrections, *Quarterly Statistical Performance Report, October 2003-March 2005*, 7 (2005). African-Americans, by far, have the highest rate of incarceration in the state. PAIGE M. HARRISON & ALLEN J. BECK, BUREAU OF JUSTICE STATISTICS, U.S. DEP’T OF JUSTICE, BULL. NO. NCJ 213133, *Prison and Jail Inmates at Midyear 2005* 11 tbl.14 (2006).

<sup>54</sup> Voice of the Ex-Offender focus group, May 26, 2006. For more on NOPD’s history of abuse see Human Rights Watch (HRW), *Shielded from Justice: Police Brutality and Accountability in the*

*United States* (1998) available at <http://www.hrwatch.org/reports98/police/uspo92.htm> (last visited Sept. 2, 2006); Baum, *supra* note 39.

<sup>55</sup> Harcourt reports that order maintenance policing produces a similar effect in New York City. See Harcourt, *supra* note 47, at 340.

<sup>56</sup> METROPOLITAN CRIME COMMISSION (MCC), PERFORMANCE OF THE NEW ORLEANS CRIMINAL JUSTICE SYSTEM 2003-2004 22 (2005) available at [http://www.metrocrimeno.org/2Perf\\_of\\_the\\_NO\\_Criminal\\_Justice\\_System\\_2003-20041.pdf](http://www.metrocrimeno.org/2Perf_of_the_NO_Criminal_Justice_System_2003-20041.pdf). If a charge on arrest never results in a formal charge, it is considered “refused.” If a charge is formally filed and later *nolle prossed*—dismissed by the state—it is considered “dismissed.”

<sup>57</sup> LA. CODE CRIM. PROC. ANN. art. 701 (2006).

<sup>58</sup> MCC, *supra* note 56, at 5. To put this in perspective, consider that British antiterrorism laws hold that suspects can be held for up to 28 days—just over half the time suspects can be held for misdemeanor charges in New Orleans—without formal charges being brought. Eric Pfanner, *Pakistan Says it Played a Key Role in Inquiry*, N.Y. TIMES, Aug. 11, 2006.

<sup>59</sup> MCC, *supra* note 56, at 5.

<sup>60</sup> METROPOLITAN CRIME COMMISSION, ANALYSIS OF THE PROCESSING OF STATE FELONY AND MISDEMEANOR CHARGES IN NEW ORLEANS: ARREST THROUGH THE BILLING DECISION 1 (2002) available at <http://www.metrocrimeno.org/august202.pdf>.

<sup>61</sup> Orleans Parish Prison focus group, May 26, 2006.

<sup>62</sup> CHIARKIS, HENRY & STONE, *supra* note 1, at 7.

<sup>63</sup> Voice of the Ex-Offender focus group, May 26, 2006.

<sup>64</sup> “The main thing people get arrested for here is drugs,” one participant, echoing popular sentiment, told us. Voice of the Ex-Offender focus group, May 26, 2006. New Orleans was the first city in the United States to outlaw the sale of marijuana. HENRY RUTH & KEVIN R. REITZ, THE CHALLENGE OF CRIME 208 (2003).

<sup>65</sup> MCC, *supra* note 56, at 3.

<sup>66</sup> *Id.* at 4.

<sup>67</sup> *Id.* at 17. See also MICHAEL DUFFY, DRUG ABUSE PATTERNS AND TRENDS IN LOUISIANA: PROCEEDINGS OF THE LOUISIANA STATE EPIDEMIOLOGY WORK GROUP, 14 (2004), available at <http://www.dhh.louisiana.gov/offices/publications/pubs-23/LSEWG%202003%20Full%20Report.pdf>.

<sup>68</sup> See Orleans Parish Criminal Court, [http://www.criminalcourt.org/programs/drug\\_court.htm](http://www.criminalcourt.org/programs/drug_court.htm) (last visited 7 September 2006); see also Katy Reckdahl, *Disorders in the Courts*, GAMBIT WEEKLY, Oct. 8, 2002.

<sup>69</sup> Interview with Judge Calvin Johnson, May 25, 2006.

<sup>70</sup> See *Court Column*, A NEWSLETTER OF THE JUDICIARY OF THE STATE OF LOUISIANA, Fall/Winter 2001, at 5. It is important to emphasize that this recidivism rate reflects the desistance of only those clients who have successfully completed the program. This makes the rate susceptible to charges of selection bias. See, e.g., Mark A.R. Kleiman, *Faith-Based Fudging*, SLATE, Aug. 5, 2003 (“inmates who stick with a demanding program of self-improvement through 16 months probably have more inner resources, and a stronger determination than the average inmate”). See also MICHAEL REMPEL, RECIDIVISM 101: EVALUATING THE IMPACT OF YOUR DRUG COURT 5 (Center for Court Innovation 2005).

<sup>71</sup> See the Consensus Project at the Council of State Governments, [http://consensusproject.org/programs/one?program\\_id=413](http://consensusproject.org/programs/one?program_id=413) (last visited Sept. 7, 2006).

<sup>72</sup> Odyssey House focus group, May 26, 2006.

<sup>73</sup> Orleans Parish Prison focus group, May 26, 2006.

<sup>74</sup> Interview with Judge Calvin Johnson, May 25, 2006.

<sup>75</sup> Interview with Judge Calvin Johnson, May 26, 2006.

<sup>76</sup> See CHIARKIS, HENRY & STONE, *supra* note 1, at 7 (“during this period of detention, the defendant has no contact with any attorney unless s/he has been able to hire one”)

<sup>77</sup> Voice of the Ex-Offender focus group, May 26, 2006.

<sup>78</sup> Orleans Parish Prison focus group, May 26, 2006.

<sup>79</sup> Friends and Families of Louisiana’s Incarcerated Children focus group, May 25, 2006.

<sup>80</sup> Orleans Parish Prison focus group, May 26, 2006.

<sup>81</sup> Interview with Jelpi Picou, May 24, 2006. The Indigent Defender Board (IDB) is the former name of BOPD.

<sup>82</sup> HARRISON & BECK, *supra* note 53, at 9 tbl.12.

<sup>83</sup> MICHAEL JACOBSON, *DOWNSIZING PRISONS: HOW TO REDUCE CRIME AND END MASS INCARCERATION 205* (2005). In most of the state, the Louisiana Department of Public Safety and Corrections contains both parole and probation functions; probation officers handle both parole and probation cases.

<sup>84</sup> TIMOTHY A. HUGHES, DORIS JAMES WILSON & ALLEN J. BECK, BUREAU OF JUSTICE STATISTICS, U.S. DEP’T OF JUSTICE, BULL. NO. 184735, *Trends in State Parole, 1990-2000* 13 tbl.19 (2001).

<sup>85</sup> WENDY NARO, LOUISIANA DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONS: TEN-YEAR ADULT SECURE POPULATION PROJECTION 2001-2012, 9 (George Washington University Institute on Crime, Justice and Corrections 2002) *available at* [http://www.corrections.state.la.us/Statistics/AdultPopulationProjection\(REPORT\).pdf](http://www.corrections.state.la.us/Statistics/AdultPopulationProjection(REPORT).pdf).

<sup>86</sup> *Id.* at 11, tbl. 2.

<sup>87</sup> JACOBSON, *supra* note 83.

<sup>88</sup> La. Rev. Stat. Ann. § 15:149 (2006). Local indigent defender boards are responsible for assigning counsel for probation hearings.

<sup>89</sup> Interview with Derwyn Bunton, May 26, 2006.

<sup>90</sup> Interview with Derwyn Bunton, May 26, 2006. See also ERIC CADORA & LISA KURGAN, JUSTICE REINVESTMENT NEW ORLEANS, (2005) *available at* [http://www.arch.columbia.edu/SIDL/MEDIA/PDF\\_03.pdf](http://www.arch.columbia.edu/SIDL/MEDIA/PDF_03.pdf).

<sup>91</sup> We visited Municipal Court on May 24 with the assistance of Judson Mitchell, pro bono coordinator at the Loyola Law Clinic.

<sup>92</sup> Friends and Families of Louisiana’s Incarcerated Children focus group, May 25, 2006.

<sup>93</sup> Orleans Parish Prison focus group, May 26, 2006.

<sup>94</sup> Voice of the Ex-Offender focus group, May 26, 2006.

<sup>95</sup> Youth Empowerment Project focus group, May 24, 2006.

<sup>96</sup> Orleans Parish Prison focus group, May 26, 2006.

<sup>97</sup> See generally TOM TYLER, WHY PEOPLE OBEY THE LAW 110 (2006) (“[i]f the procedure is experienced by defendants as unfair...it may weaken their support for the legal system.”).

<sup>98</sup> HARRISON & BECK, *supra* note 30, at 4 tbl.4; Department of Public Safety and Corrections, *INCARCERATION ONLY: Admissions/Releases Comparison 1994-2005*, *available at* [http://www.corrections.state.la.us/Statistics/PDF\\_BB/02-Office%20of%20Adult%20Services/](http://www.corrections.state.la.us/Statistics/PDF_BB/02-Office%20of%20Adult%20Services/)

2Y.PDF (last visited May 4, 2006).

<sup>99</sup> JEREMY TRAVIS, AMY L. SOLOMON & MICHELLE WAUL, FROM PRISON TO HOME: THE DIMENSIONS AND CONSEQUENCES OF PRISONER REENTRY 4 (Urban Institute 2001).

<sup>100</sup> See, e.g., Jeremy Travis, *Invisible Punishment: An Instrument of Social Exclusion*, in INVISIBLE PUNISHMENT: THE COLLATERAL CONSEQUENCES OF MASS IMPRISONMENT 15 (Marc Mauer & Meda Chesney-Lind, eds., 2002); LEGAL ACTION CENTER, AFTER PRISON: ROADBLOCKS TO REENTRY: A REPORT ON STATE LEGAL BARRIERS FACING PEOPLE WITH CRIMINAL RECORDS (2005) available at <http://www.lac.org/lac/index.php>.

<sup>101</sup> MCC, *supra* note 56, at 15.

<sup>102</sup> See Christopher Uggen & Jeremy Staff, *Work as a Turning Point for Criminal Offenders*, 5 CORRECTIONS MANAGEMENT QUARTERLY 4, 3-6 (2001) (“research on correctional effectiveness continues to suggest that work may play some role in reducing recidivism”); Devah Pager, *The Mark of a Criminal Record*, 108 AM. J. SOCIOLOGY 937, 937 (2003) (“a criminal record presents a major barrier to employment, with important implications for racial disparities”). See also Katherine Beckett & Bruce Western, *How Unregulated is the U.S. Labor Market? The Penal System as a Labor Market Institution*, 104 AM. J. SOCIOLOGY 1030, 1031 (1999) (“U.S. incarceration lowers conventional measures of employment in the short run by concealing joblessness among able-bodied, working age men, but it raises unemployment in the long run by damaging the job prospects of ex-convicts after release.”).

<sup>103</sup> Both Bunton and Judge Bell pointed to JobCorps as an example of a program that prohibits people either with violent convictions or on parole from participating. For a detailed account of the denial of hurricane relief to people with criminal convictions, see Kirsten D. Levingston, *Help Storm Refugees Find Shelter: Denying Housing to Those With Criminal Records Will Perpetuate Cycles of Crime*, CHRISTIAN SCIENCE MONITOR, March 8, 2006.

<sup>104</sup> La. Rev. Stat. Ann. § 37:2950 (2006).

<sup>105</sup> Odyssey House focus group, May 26, 2006. A similar law is the subject of much contention in New York. See Clyde Haberman, *He Did Time, So He's Unfit To Do Hair*, N.Y. TIMES, March 4, 2005, at B1; Clyde Haberman, *Only at Grave Does Barber Get a Break*, N.Y. TIMES, Nov. 22, 2005, at B1.

<sup>106</sup> MARGARET COLGATE LOVE, RELIEF FROM THE COLLATERAL CONSEQUENCES OF A CRIMINAL CONVICTION (Sentencing Project 2006).

<sup>107</sup> Interview with Ilona Picou, May 25, 2006.

<sup>108</sup> For more on the stigma associated with a criminal conviction, see ERVING GOFFMAN, STIGMA: NOTES ON THE MANAGEMENT OF SPOILED IDENTITY (1963); DONALD BRAMAN, DOING TIME ON THE OUTSIDE: INCARCERATION AND FAMILY LIFE IN URBAN AMERICA (2004).

<sup>109</sup> As Robin Steinberg and David Feige argue, “[h]ow an office creates and uses space speaks volumes. The space reflects the vision, assumptions, and commitments of the public defender office.” Robin Steinberg & David Feige, *Cultural Revolution: Transforming the Public Defender's Office*, 29 N.Y.U. REV. L. & SOC. CHANGE 123, 127 (2004).

<sup>110</sup> Voice of the Ex-Offender focus group, May 26, 2006.

<sup>111</sup> Voice of the Ex-Offender focus group, May 26, 2006.

<sup>112</sup> Orleans Parish Prison focus group, May 26, 2006.

<sup>113</sup> Odyssey House focus group, May 26, 2006.

<sup>114</sup> Youth Empowerment Project focus group, May 24, 2006.

<sup>115</sup> Orleans Parish Prison focus group, May 26, 2006.

<sup>116</sup> Friends and Families of Louisiana's Incarcerated Children focus group, May 25, 2006.



117 Youth Empowerment Project focus group, May 24, 2006.

118 When we explained our findings to Barry Gerharz of Safe Streets, Strong Communities, he pointed out that it is most often women who attempt to contact the defender agency on behalf of their male partners or relatives.

119 Friends and Families of Louisiana's Incarcerated Children focus group, May 25, 2006.

120 Odyssey House focus group, May 26, 2006.

121 Voice of the Ex-Offender focus group, May 26, 2006.

122 Bridge House focus group, May 25, 2006.

123 According to Kim Taylor-Thompson, "defenders often perceive themselves as outsiders in the justice system. The individuals who dedicate themselves to public defender practice often choose this path in part because of a certain degree of irreverence and discomfort with authority. They treasure being able to win a hard fought battle against all odds, relying not on outside help, but instead on their own ingenuity. Of course, seeing themselves as underdogs in an uneven battle does not inexorably lead defenders to shun allies. But more often than not, it defines and delineates a mode of practice that prides itself on independence and finds less value in working with others." Thompson, *supra* note 5, at 168.

124 In his study of another natural disaster exacerbated by government folly—the Chicago heat wave in July 1995—sociologist Eric Klinenberg describes his conversations with Chicago Police officers about Chicago's Alternative Policing Strategy (CAPS): "Most of the police officers I met in my fieldwork are skeptical about the new duties assigned to them as community officers, and they have resisted the push to give up their old ways. Officers often told me that they had joined the force because they wanted to 'do something good' or 'help the community,' yet few had expected or desired to do the neighborhood relations work that they considered to be the soft labor of feminine social workers. Police organizations cultivate an ethos of masculine toughness and risk taking in its officers, and the introduction of community service responsibilities threatens this style." ERIC KLINENBERG, *HEAT WAVE: A SOCIAL AUTOPSY OF DISASTER IN CHICAGO* 152 (2002). Similarly, in most defender offices, note Steinberg and Feige, "[s]ocial work is left to the 'girls,' not the real men." Steinberg & Feige, *supra* note 109, at 126.

125 Interview with Judson Mitchell, May 24, 2006.

126 Interview with Jelpi Picou, May 24, 2006.

127 Interview with Derwyn Bunton, May 26, 2006.

128 Steinberg & Feige, *supra* note 109, at 126.

129 Social work schools often require students to compliment their coursework with volunteer work in a social service setting.

130 Telephone interview with Jana Heyd, Co-Director of Society of Counsel Representing Accused Persons (SCRAP), in Seattle, WA (Oct. 6, 2006).

131 For more on the role of the social worker in an appellate defender office, see Melissa Rothstein, *Reaching Through the Prison Walls: Social Work in an Appellate Defender Office*, THE CHAMPION, April 2006, at 30.

132 Interview with Jelpi Picou, May 24, 2006.

133 Many of Steinberg's comments are further elaborated in Steinberg & Feige, *supra* note 109.

134 Steinberg & Feige, *supra* note 109.

135 Bridge House focus group, 25 May 2006. Sociologist Eric Klinenberg quotes welfare historian Robert Halpern on this point: "it has become a truism that those most in need of supportive services are precisely those least likely to have access to or participate in them." ROBERT

HALPERN, FRAGILE FAMILIES, FRAGILE SOLUTIONS: A HISTORY OF SUPPORTIVE SERVICES FOR FAMILIES IN POVERTY 14 (1999), *quoted in* KLINENBERG, *supra* note 124, at 158.

<sup>136</sup> Thompson, *supra* note 5, at 161.

<sup>137</sup> Voice of the Ex-Offender focus group, May 26, 2006.

<sup>138</sup> Steinberg & Feige, *supra* note 109, at 124.

<sup>139</sup> Email from David Gibson, Deputy Public Defender at the Clark County Office of the Public Defender, to Chelsea Slosky, Public Affairs Associate at the Brennan Center (May 1, 2003 15:22:41 EST) (on file with the Brennan Center).

<sup>140</sup> Clark County Public Defender Outreach Initiative to Establish a Program/Process to Help with Unassigned Indigent Legal Problems, Focusing Primarily on Sealing of Criminal Records and Resolution of Outstanding Bench Warrants (unpublished manuscript, on file with the Brennan Center).

<sup>141</sup> *Id.*

<sup>142</sup> James Hingeley, *Gideon Belongs to the Community in Virginia*, THE CHAMPION, January/February 2003, at 48.

<sup>143</sup> Toby Fey, *Working With the Community, For the Community: The Citizens Advisory Committee, Charlottesville, Virginia* (National Defender Leadership Institute) *available at* [http://www.nlada.org/Defender/Defender\\_NDLI/Defender\\_NDLI\\_Success/Virginia](http://www.nlada.org/Defender/Defender_NDLI/Defender_NDLI_Success/Virginia) (last visited Oct. 27, 2006).

<sup>144</sup> VA. CODE ANN. § 19.2-163.04 (1998).

<sup>145</sup> Fey, *supra* note 143.

<sup>146</sup> Hingeley, *supra* note 142.

<sup>147</sup> KIRSTEN D. LEVINGSTON, BRENNAN CENTER FOR JUSTICE, GETTING STARTED: FOUR THINGS DEFENDERS CAN DO TO CONNECT WITH COMMUNITIES 8 (2004).

<sup>148</sup> “[P]ublic defenders,” explains Lopez, “are the first to see/hear of these injured defendants and have the unique opportunity to start documenting these incidents.” Email from Joseph Lopez, Assistant Public Defender at the Connecticut Division of Public Defender Services, to Kirsten Levingston, Director of Criminal Justice at the Brennan Center (July 29, 2003 11:27:51 EST) (on file with the Brennan Center).

<sup>149</sup> Defenders at the Seattle-King County Defender Association, for example, collaborated with sociologist Katherine Beckett to assess local racial disparity in drug law enforcement. *See* KATHERINE BECKETT, RACE AND DRUG LAW ENFORCEMENT IN SEATTLE (Racial Disparity Project 2004) *available at* <http://www.soc.washington.edu/users/kbeckett/Enforcement.pdf>.

<sup>150</sup> *Supra* note 148.

<sup>151</sup> *Id.* The project, Lopez told us, would not have worked in his new office because he and his colleagues take only a small percentage of cases, once they have been identified as the most serious. The defender’s advantage in early documentation and vast exposure, then, would not apply to his current workplace.

<sup>152</sup> Joe Miksch, *Know Your Rights: How to Avoid Becoming a Victim of Police Brutality*, FAIRFIELD COUNTY WEEKLY, July 31, 2003.

<sup>153</sup> David C. Anderson, *Public Defenders in the Neighborhood: A Harlem Law Office Stresses Teamwork, Early Investigation*, NATIONAL INSTITUTE OF JUSTICE, March 1997. Ellis is now director of the Center for NuLeadership on Urban Solutions at Medgar Evers College in Brooklyn.

<sup>154</sup> Cait Clarke & Christopher Stone, *Bolder Management for Public Defense: Leadership in Three Dimensions*, 29 N.Y.U. REV. L. & SOC. CHANGE 113, 114 (2004).



155 Friends and Families of Louisiana's Incarcerated Children focus group, May 25, 2006.

156 See Odyssey House, <http://ohinc.org/programs/res.htm/>. Odyssey House has capacity for 120 residents.

157 See PBS Nightly Business Report, *Work in Progress: Giving Former Prisoners A Chance*, May 24, 2006, available at <http://www.pbs.org/nbr/site/onair/transcripts/060524c/> (last visited 30 July 2006).

158 LEVINGSTON, *supra* note 147, at 6.

159 JACOBSON, *supra* note 83; Joan Petersilia, *Parole and Prisoner Reentry in the United States*, in PRISONS 501 (Michael Tonry & Joan Petersilia, eds., 1999); JAMES AUSTIN, WENDY NARO, ROGER OCKER & KEIGH HARDISON, GENERATING SAVINGS AND INCREASING PUBLIC SAFETY: OPTIONS FOR RHODE ISLAND POLICYMAKERS (Council of State Governments 2006) available at <http://www.csgeast.org/pdfs/justicereinvest/RI.JR.onepager.FINAL.pdf>; JAMES AUSTIN & ERIC CADORA, OPTIONS FOR POLICYMAKERS CONSIDERING A JUSTICE REINVESTMENT INITIATIVE IN LOUISIANA (Council of State Governments 2004) available at <http://www.csgeast.org/pdfs/justicereinvest/LAjustreinvestmentreport.pdf>.

160 Telephone interview with John Hardiman, Public Defender, Rhode Island Office of the Public Defender in Providence, RI. (May 30, 2006).

161 Letter from John Hardiman, Public Defender, Rhode Island Office of the Public Defender, to Rhode Island Speaker of the House William Murphy (May 9, 2006) (on file with the Brennan Center).

162 Clarke & Stone, *supra* note 154, at 117.

163 Steve Binder, *The San Diego Homeless Court Program*, COD NETWORK NEWS: A NEWSLETTER OF THE COMMUNITY DEFENDER NETWORK, Brennan Center for Justice, August 2006, at 1.

164 Letter from Albert Lafave, Sentencing Advocate at the Charlottesville-Albemarle Office of the Public Defender in Charlottesville, Va., to the Citizens Advisory Committee of the Charlottesville-Albemarle Office of the Public Defender (June 13, 2006) (on file with the Brennan Center).

165 The letter makes special note of the fact that mental health "consumers" were included in the design and planning stages of the project.

166 Email from Sharon Cole, Supervising Attorney at the Wabash District Courthouse in Baltimore, Md., to Kirsten Levingston, Director of Criminal Justice at the Brennan Center (Aug. 22, 2006, 15:13 EST) (on file with the Brennan Center).

167 DAVID FEIGE, INDEFENSIBLE: ONE LAWYER'S JOURNEY INTO THE INFERNO OF AMERICAN JUSTICE 115 (2006).

168 CHIARKIS, HENRY & STONE, *supra* note 1, at 10.

169 Interview with Judson Mitchell, May 24, 2006.

170 BOPD should be applauded for prohibiting defenders from taking private cases. See Gwen Filosa, *Indigent board to have day in court; Defenders ordered to appear Oct. 25*, TIMES-PICAYUNE, Sept. 23, 2006, at 1. This problem came up in many of our interviews. Former clients claimed that whatever benefit might be gained by increasing total defender salaries is vitiated by the preference defenders give to paid clients. As one participant put it, "one of the real drawbacks is that the same guy can represent me as an indigent defender or he can represent Ben because Ben is willing to pay him as a private practitioner. I get lost in the shuffle, you know?" Voice of the Ex-Offender focus group, May 26, 2006. Judson Mitchell claimed that the competition between private and public defense work can compromise defender integrity. "PDs can practice privately in other sections of court," said Mitchell. "They need to stay friendly with everybody." Interview with Judson Mitchell, May 24, 2006.

171 Voice of the Ex-Offender group, May 26, 2006.

<sup>172</sup> Youth Empowerment Project focus group, May 24, 2006.

<sup>173</sup> Youth Empowerment Project focus group, May 24, 2006.

<sup>174</sup> Orleans Parish Prison focus group, May 26, 2006.

<sup>175</sup> Youth Empowerment Project focus group, May 24, 2006.

<sup>176</sup> *The Path of the Bronx Criminal Case*, Bronx Defenders, 15 (unpublished manuscript, on file with the Brennan Center).

<sup>177</sup> Email from Heather Dorsey, Assistant Public Defender at the Office of the Public Defender in Cambridge, Maryland to Kirsten Levingston, Director of Criminal Justice at the Brennan Center (Nov. 20, 2006 9:45 EST) (on file with the Brennan Center).

<sup>178</sup> Telephone interview with Leonard E. Noisette, Executive Director of Neighborhood Defender Services of Harlem, in New York, NY (Nov. 20, 2006).

<sup>179</sup> Michael Pinard, *Broadening the Holistic Mindset*, 31 *FORDHAM URB. L.J.* 1067, 1080 (2004).

<sup>180</sup> For example, Maricopa, Arizona, Defender Christopher Johns has extensively documented the range of collateral sanctions facing clients in Arizona. See Christopher Johns, *Collateral Consequences of Convictions: The Unseen Impact on Clients, Families and Barriers to Community Reentry*, 14 *FOR THE DEFENSE: TRAINING NEWSLETTER OF THE MARICOPA COUNTY PUBLIC DEFENDER'S OFFICE 2* (Maricopa County Public Defender, Phoenix, AZ), February 2004.

<sup>181</sup> “Holistic advocacy or ‘whole-client’ representation,” Thompson explains, “recognizes that working effectively with the client in advancing her goals and preventing future involvement with the criminal justice system requires assistance and counseling that extends far beyond fact-specific courtroom advocacy.” Thompson, *supra* note 5, at 166.

<sup>182</sup> McGregor Smyth, *Holistic is Not a Bad Word: A Criminal Defense Attorney's Guide to Using Invisible Punishments as an Advocacy Strategy*, 36 *U. TOL. L. REV.* 479, 495 (2005).

<sup>183</sup> See also Gabriel J. Chin & Richard W. Holmes, Jr., *Effective Assistance of Counsel and the Consequences of Guilty Pleas*, 87 *CORNELL L. REV.* 697, 718 (2002).

<sup>184</sup> If Judge Johnson's comments are any indication, legislative efforts to improve employment protections for formerly incarcerated people may have the sympathetic ear of influential members of the judiciary. When we asked Judge Johnson about employment protections in Louisiana, he responded, “employment protections? We don't have that. That's something we need to look at putting in place...It's too late to file this year but not too late to file next year.” Interview with Judge Calvin Johnson, May 25, 2006. Defenders' ongoing community outreach often complements their legislative advocacy. In the words of Carlos Martinez, Chief Assistant Public Defender in Miami, “[b]uilding strong ties with community-based organizations gives our office more leverage with legislators. For example, a bill pending in the legislature called for taking delinquency cases away from public defender offices. We mobilized community-based organizations and groups that recognize our public value, and the bill has been amended to delete that provision. We succeeded because of our active participation in community and bar activities and our lobbying efforts. Legislators understand the public defender's function, the support we enjoy in our community, and our expertise with issues beyond criminal justice.” *Quoted in* KIRSTEN D. LEVINGSTON, *TAKING PUBLIC DEFENSE TO THE STREETS* (Brennan Center for Justice 2002).

<sup>185</sup> Voice of the Ex-Offender focus group, May 26, 2006.

<sup>186</sup> See Letter from Kate Rubin, Reentry Net coordinator & McGregor Smyth, Project Director of The Civil Action Project at the Bronx Defenders, to the U.S. Department of Transportation, (July 6, 2006); letter from Kate Rubin & McGregor Smyth to the National Conference of Commissioners on Uniform Collateral Sanctions and Disqualifications Act (March 14, 2006) (both on file with the Brennan Center).

<sup>187</sup> See *Hot-Button Vox Pop*, *N.Y. TIMES*, Nov. 10, 2006.

188 Information about record expungement in San Diego is available at [http://www.co.sandiego.ca.us/public\\_defender/expungement.html](http://www.co.sandiego.ca.us/public_defender/expungement.html) (last visited Sept 10, 2006).

189 Email from Linda McLaughlin, consultant at the Brennan Center, to Kirsten Levingston, Director of Criminal Justice at the Brennan Center (Nov. 20, 2006 11:28 EST) (on file with the Brennan Center).

190 For example, Judson Mitchell told us, “There are tons of jobs right now. You could have a whole list of felonies on your record and still get a job. Before Katrina, you couldn’t get hired if you had something on your record.” Interview with Judson Mitchell, May 24, 2006. Many focus group participants affirmed Mitchell’s claim. Said one, “employment is kind of easy right now after the storm. I mean, you can get a job making decent money, good money, might I say, pretty easily since the storm.” At the time of our interviews, a number of focus group participants had already taken advantage of day labor networks in New Orleans. Bridge House focus group, May 25, 2006; Odyssey House focus group, May 26, 2006.

191 For a study of changing demographics and conditions of employment in New Orleans, see LAUREL E. FLETCHER, PHUONG PHAM, ERIC STOVER, & PATRICK VINCK, REBUILDING AFTER KATRINA: A POPULATION-BASED STUDY OF LABOR AND HUMAN RIGHTS IN NEW ORLEANS (International Human Rights Law Clinic, Boalt Hall School of Law, University of California, Berkeley, Human Rights Center, University of California Berkeley, Payson Center for International Development and Technological Transfer, Tulane University, June 2006).

192 Friends and Families of Louisiana’s Incarcerated Children focus group, May 25, 2006.

193 Friends and Families of Louisiana’s Incarcerated Children focus group, May 25, 2006.

194 Interview with Jelpi Picou, May 24, 2006.

195 Interview with Judson Mitchell, May 24, 2006.

196 La. Rev. Stat. Ann. § 15:144 (2006).

197 Yale Law School and Louisiana State Bar Association, *supra* note 1.

198 Legislation was recently introduced to revise the statute accordingly.

199 La. Rev. Stat. Ann. § 15:145 (2006).

200 NLADA, *supra* note 1, at 12.

201 *Supra* note 199; NLADA, *supra* note 1, at 13.

202 La. Rev. Stat. Ann. § 15:146 (2006). In 2003, Louisiana passed Act 288, which requires defendants seeking free legal counsel to pay a \$40 application fee. Meghan Gordon, *Fee has provided \$44,000 to public defender; Small profits may not outweigh work costs*, TIMES-PICAYUNE, July 20, 2004, at 1.

203 NLADA, *supra* note 1, at 13, 21.

204 At the June 2006 COD Meeting, Pam Metzger of Tulane Law School called the \$35 assessment a “two-way conflict of interest: it’s a conflict of interest between different clients, because every time you stand up and don’t object to the \$35 for one client, you’re hurting that client; every time you do object, all the other guys sitting there in the orange jumpsuits are saying, ‘oh my god, there’s not going to be a public defender next week because they’re waiving all these fees.’ And, of course, it’s also directly adverse to the attorneys’ interests to challenge the fees since they’ve all been laid off.”

205 NLADA, *supra* note 1, at 22.

206 *Id.* at 24.

207 *Id.* at 24.

208 *Id.* at 23.

209 *See* Peart, 621 So. 2d 780.

<sup>210</sup> COLE, *supra* note 1.

<sup>211</sup> See Peart, 621 So. 2d at 784.

<sup>212</sup> In 2000, Picou, who headed the board since its inception, stepped down, decrying the condition of an indigent defense system he called “woefully underfunded.” Gordon Russell, *Director to Quit Indigent Defender Board*, TIMES-PICAYUNE, Aug. 25, 2000, at 11.

<sup>213</sup> NLADA, *supra* note 1, at 15.

<sup>214</sup> Gill, *supra* note 1. According to the *Times Picayune*, local courts collect about \$23 million annually. Laura Maggi, *Courts look at indigent defense; State, not localities, must pay, ruling says*, TIMES-PICAYUNE, April 14, 2005. This is in stark contrast to the \$75.7 million district attorneys across the state spent on prosecution costs. Laura Maggi, *Public defenders strapped, study says; Financing from state called inadequate*, TIMES-PICAYUNE, March 10, 2004, at 5.

<sup>215</sup> Laura Maggi, *Better indigent defense urged; Lawyer warns suit over problem*, TIMES-PICAYUNE, Oct. 8, 2004, at 3.

<sup>216</sup> Henry Weinstein, *2,500 arrested before Katrina are still in limbo; At the heart of the problem is a public defender system almost too broke to function*.

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## APPENDIX 1

### THE STRUCTURE AND FUNDING OF INDIGENT DEFENSE IN LOUISIANA

Louisiana comprises 41 judicial districts spanning 64 local parishes. Each judicial district is required by Louisiana law to have an indigent defender board (IDB) selected by the district court and nominated by each district's bar association.<sup>196</sup> In practice, however, this rule is often flouted. Until recently, judges seldom solicited nominations from the local bar association; more often, they appointed friends and colleagues.<sup>197</sup> By statute, each board is composed of three to seven members, although the current Orleans board has nine.<sup>198</sup> Each board is required to reflect the racial and gender makeup of its jurisdiction.

Louisiana Indigent Defender Boards are charged with appointing counsel in one of three ways: (1) by consulting a list of volunteer attorneys licensed to practice law in the state; (2) by entering into contracts with attorneys licensed in the state; or (3) by appointing a chief defender and assistants, effectively establishing a public defender program.<sup>199</sup> Only ten of Louisiana's 41 districts have full-time public defender programs; Orleans is one of them.<sup>200</sup> The IDB sets the salary of the chief indigent defender, all assistants, and personnel. The board may accept, receive, and use public or private grants, though it rarely has done so in the past.<sup>201</sup>

Each IDB administers the local indigent defender fund. Approximately 80% of the board's revenues are collected in the form of court fees. According to Louisiana law, a sum of \$35 shall be assessed in cases where "a defendant is convicted after a trial, a plea of guilty or nolo contendere, or after forfeiting bond."<sup>202</sup> Though one other state, Alabama, attempts to fund its indigent defense services through a combination of state funds and court costs, Louisiana uniquely cloisters revenues in the jurisdictions where they were collected.<sup>203</sup> This unusual financing system creates a patchwork of funding discrepancies in defense services, where the amount of available funds varies widely from one judicial district to another. If, at the end of a fiscal year, there is a surplus in a given district, it cannot be expended to support public defense in other districts. While a high-poverty district may assess a larger number of fees than an affluent district, if clients are unable to pay such fees, their districts will not generate the necessary revenue.<sup>204</sup> As the National Legal Aid and Defender Association (NLADA) has duly noted, "because less affluent jurisdictions have a higher percentage of people eligible for public defense services, the need for indigent defense funding is in fact inversely correlated with the ability to generate revenues."<sup>205</sup>

The largest percentage of local revenue comes from fees on traffic violations, ostensibly because they are the easiest to collect. Because of local variations in transit infrastructure, however, this source of revenue also produces arbitrary funding discrepancies across districts. For example, at the close of 2002, the 20th Judicial District, through which a major highway passes, had a surplus of

\$305,000 in its account, while other, mostly poor, districts fell far short of their yearly expenditures.<sup>206</sup> According to NLADA, at the end of 2002, while many districts with deficits struggled to provide adequate defense counsel, “over \$9 million of unused funding sat in IDB bank accounts across the state.”<sup>207</sup> Fifty-nine percent of judicial districts that year were unable to raise enough revenue to offset public defense costs. Orleans Parish, with annual costs of about \$2.6 million, came up \$365,000 short.<sup>208</sup>

The current financing system leaves public defender agencies vulnerable to circumstances completely unrelated to the need for adequate defense services. It was precisely these susceptibilities that crippled the public defense system in the wake of Hurricane Katrina. With a marked decline in the number of traffic citations, the system was deprived of its primary source of sustenance.

The other 20% of public defense funds is funneled through the state-level Louisiana Indigent Defense Assistance Board (LIDAB), run out of the Executive Office. The LIDAB owes its provenance to a 1993 Louisiana Supreme Court case, *State v. Peart*.<sup>209</sup> The case concerned a young but experienced ODP attorney named Rick Tessier who was charged with representing Leonard Peart, a 20-year-old man charged with multiple felonies. At the time he was assigned the case, Tessier was handling 70 felony cases, and in the previous seven months, he’d represented 418 clients.<sup>210</sup> Arguing that these conditions rendered it impossible for him to adequately represent Peart, Tessier filed a pretrial motion requesting that the judge declare his own legal assistance ineffective before trial. Calvin Johnson, then the trial judge, declared the system unconstitutional.<sup>211</sup> On appeal, the Supreme Court issued an emergency rule setting up an interim board called the Louisiana Indigent Defender Board (LIDB), which would eventually become the LIDAB when it moved to the executive branch in 1999.

According to Jelpi Picou, who headed the LIDAB from its inception in 1994 through 2000, about 96% of state-appropriated funds running through the LIDAB are distributed directly or indirectly to assist local IDBs.<sup>212</sup> Slightly more than 50% goes to direct assistance; the remaining 40-46% provides indirect assistance to local boards by absorbing juvenile and capital cases and appeals. Recognizing deficiencies in the local systems, the LIDAB has gradually folded these aspects of defense into its mission. In so doing, it spawned the following projects:

- Louisiana Appellate Project (LAP)
- The Capital Appeals Project (CAP)
- The Capital Post-Conviction Project of Louisiana (CPCPL)
- Regional Capital Conflict Panels (RCCP)
- Juvenile Justice Project of Louisiana (JJPL)

Direct assistance is disbursed through the Direct Assistance Fund (DAF) to offset trial costs. The receipt of DAF grants is contingent upon a local board’s imple-

mentation of LIDAB standards, which closely mirror those of NLADA and ABA.<sup>213</sup>

Just months before Hurricane Katrina, an editorial in the Times-Picayune noted that Louisiana is “the cheapest state in the nation, allocating less than \$10 million a year to the indigent defense fund, which also receives fees of up to \$35 a head levied on defendants convicted in state and local courts. That leaves us \$20 million short of the \$50 million a year that proponents of reform regard as the bare minimum required for some semblance of justice.”<sup>214</sup> As a result, many public defenders regularly have caseloads in excess of 400, far above the 150 case limit recommended by legal experts.<sup>215</sup> Even before Katrina hit in late August 2005, the dire situation of public defense in Louisiana prompted the state Supreme Court to issue a unanimous decision stating that “Louisiana had failed to adequately fund a program to provide attorneys for poor defendants, as required by the constitution.”<sup>216</sup> Noting that the indigent defense system represents roughly 80% of the state’s defendants, the Court concluded that the obligation to provide a functioning system falls “squarely on the shoulders of the Legislature.”<sup>217</sup> After announcing plans to cut \$500,000 from the indigent defense budget in November 2005, in March 2006 Governor Kathleen Blanco relented and proposed to double the indigent defense appropriation from \$10 million to \$20 million.<sup>218</sup>

In June 2006, Criminal District Court Judge Arthur Hunter made clear that the increased state appropriation would not be sufficient: “If the public defender’s office in New Orleans is not adequately funded,” Judge Hunter wrote in a June ruling, “then the question will be not if, but when the criminal justice system will cease to function.”<sup>219</sup>

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