



## Making the Case for Community Defense

**Innovation, Energy, and  
\$5,000 in Louisiana**

In 2007, the Louisiana Legislature passed the Louisiana Public Defender Act, bringing comprehensive structural reform to a system long suffering from too many cases, too few resources, limited oversight, and pervasive political interference. The newly created Louisiana Public Defender Board (LPDB) and staff have the ability, diversity, and commitment not only to improve the delivery of public defense services, but also develop criminal justice policy that improves the entire justice system and elevates the public defense function to become an equal and valued partner among other agencies. This article describes a collaborative project between LPDB, the Louisiana Justice Coalition, and Public Defender Offices throughout Louisiana to create a “Legal Needs Assessment Instrument and Protocol.” The “Legal Needs Assessment” was conceived to create public and financial support for a defense delivery system that embraces a community-oriented model.

This project has its origins in the Louisiana Justice Coalition (LJC), a nonprofit reform organization that is profoundly aware of the financial constraints on

Louisiana’s and other states’ public defender systems. One of LJC’s goals was to provide defender leadership in the field with information that would argue for their value as community advocates and improve their ability to procure resources to address critical needs among the client population.

LJC seeks to ensure access to qualified, appropriately resourced counsel for all indigent persons accused of crime in order to prevent wrongful convictions, over-incarceration, and excessive sentencing. LJC is a broad-based coalition committed to the achievement of high-functioning public defense in Louisiana in order to improve the performance of the entire criminal justice system, leverage state resources more efficiently, and strengthen communities throughout the state. Through public education, media, research, and targeted community outreach, LJC protects the constitutional right to counsel and ensures the respect and dignity of each practitioner and every client by improving the delivery of public defense services and creating a receptive climate for positive change.<sup>1</sup>

Founded in 2004, LJC diversifies the voices calling for public defense reform in Louisiana by implementing media and public education campaigns promoting the community benefit from a strong public defense system built on a foundation of national standards. The efforts of LJC supplemented pre-existing systemic litigation (of which NACDL was a major coordinator) and legislative efforts. After many years of effort, and the blistering media attention that followed Hurricane Katrina’s effect on the New Orleans criminal justice system, Louisiana passed comprehensive reform — the Louisiana Public Defender Act<sup>2</sup> (Act 307) that became effective on August 15, 2007.

BY HEATHER H. HALL, CELESTE LOFTON-BAGERT,  
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## Public Defense in Louisiana

The Louisiana Public Defender Act dissolved the 41 local indigent defender boards that had been administering the public defender systems in Louisiana. The Act replaced the local boards with a singular, diverse 15-member board (the Louisiana Public Defender Board) to oversee the state agency and implement numerous statutory responsibilities for an efficient and effective system of delivering public defense services. The first chairman of the Louisiana Public Defender Board was Frank X. Neuner Jr., the outgoing president of the Louisiana State Bar Association, who had served as president throughout the chaos of Hurricanes Katrina and Rita in 2005.

During the same session, the Louisiana Legislature appropriated \$29.4 million to the LPDB for fiscal year 2008-2009. This appropriation followed the trend in increased funding that had begun in 2005, when the state public defender budget was only \$7 million. Most local public defender offices in Louisiana had previously received the vast majority of funds (80-85 percent across the majority of districts) to provide public defense services from court fees. Louisiana was one of only two remaining states in the country to attempt to fund the majority of their constitutional obligation to provide public defense services through locally derived revenue. This conflict-laden and highly erratic funding scheme spurred much media attention, even prompting the *Washington Post* to call Louisiana's public defense system "perhaps the country's most bizarre."<sup>3</sup> However, the increased appropriation for fiscal year 2008-2009, accompanying the Public Defender Act, made advocates hopeful that the burden for public defense services would be (for the present year and all years beyond) shared almost equally between state funds and local fees. The additional state funds (which are distributed through LPDB) increased the budgets of every public defender district in the state and gave LPDB leverage to demand compliance from the districts.

With increased funding and an independent board capable of implementing state public defender standards as required by law, LJC turned its attention to promoting an emerging public defense delivery model — the "community oriented defender" model. In 2007, LJC successfully secured funds from local foundations in Shreveport, La. (the Charles T. Beard Foundation) and New

Orleans (Baptist Community Ministries) to create capacity for social work staff within the Caddo Office of the Public Defender and the Orleans Public Defenders. To support this work, LJC provides technical support for innovative projects within public defender offices to enhance the quality of representation for adult and juvenile clients and proactively facilitates effective, collaborative relationships between public defenders, service providers, and advocates.

Louisiana jails have increasingly become the centers of communities, housing individuals who are unable to get the assistance that they need to avoid becoming court-involved, and processing large numbers of residents within particular communities. The first step for transforming the model of public defense and related court agencies is to gain an increased appreciation for and sensitivity to the legal and extralegal needs of incarcerated clients.

## About Community Defense

An individual's first contact with the criminal justice system offers a public defender a rare moment in which to assess many of that individual's most salient needs, including those that lie outside of the immediate realm of the legal system. Holistic defense seeks to replace the inevitability of incarceration with effective alternatives achieved through a strong collaboration between community service providers and the public defender office. The presence of social workers, when effectively used in a community-oriented public defender office, addresses the social service needs of select clients so that they do not cycle back and forth through the criminal justice system. By aggressively resolving unmet social service needs, the community defense model increases public safety and decreases criminal justice costs while supporting individuals and their families to become healthy members of the community.

The Louisiana Public Defender Act offers a tremendous opportunity to create a high-quality public defense system. LJC believes that quality defense mandates a community defense model in which public defenders are committed to achieving better outcomes for their clients and work collaboratively with social workers and social service providers.

With a number of projects supporting community-oriented defender projects underway in other offices, LJC submitted an application to the Baton Rouge Area Foundation for \$50,000 to

fund a single licensed clinical social worker in the East Baton Rouge Public Defender's Office. The social worker was needed to address the surge of misdemeanor arrestees that continued to sap the office following Hurricane Katrina and the diasporic population grown in Baton Rouge.

The Baton Rouge Area Foundation denied that application, but its review board was interested enough in the idea to give LJC \$5,000 in unrestricted funds to support an alternate project. With the \$5,000, LJC partnered with a doctoral student and a statistician at the Louisiana State University (LSU) School of Social Work to commission an "assessment instrument" and protocol that could be uniformly applied in any prison in Louisiana to capture a holistic picture of the indigent, incarcerated defendants who were guaranteed legal services from the public defender.

LJC chose this alternate proposal because it felt that the original proposal had lacked the statistics and data to justify the value of a social worker in the Baton Rouge Public Defender Office. While national prison population statistics existed and research studies were available, LJC felt its case would be undeniable if it were able to present a potential funder with data about the needs of the local prison population. With this in mind, work on the Legal Needs Assessment was underway.

The Brennan Center for Justice made six broad recommendations to guide public defender offices toward the implementation of the community defense model.<sup>4</sup>

1. Reinvent defender culture.
2. Reach out to client communities.
3. Investigate police misconduct and help clients avoid negative police interaction.
4. Make contacts with social service providers and, where appropriate, divert clients at first appearance.
5. Improve communication with clients.
6. Facilitate client re-entry at the front and back ends of the criminal justice process.

## About the Legal Needs Assessment

In a matter of 4-6 weeks, by the middle of summer 2008, the two LSU students working on this project had created a final version of the survey instrument, protocol, and PowerPoint training. Simultaneously, the Calcasieu Public Defender's Office in Lake Charles, La., was approaching its summer recess when district court holds no trials. During this time, the office takes advantage of the relative lull to clean up records, ensure proper closure of appropriate case files, and do an "annual jail sweep" to make sure that no one has slipped through the cracks. Once it was aware of the Legal Needs Assessment, the office wondered if it could implement the assessment in all Calcasieu jail facilities during this time.

The Legal Needs Assessment addresses the following areas: demographic information; arrest/criminal background; educational background/literacy; living situation; family information; physical abuse; sexual abuse and assault; employment and income; substance abuse; mental health; physical health; and current legal status.

The instrument has approximately

200 questions and takes 30-45 minutes to administer. The protocol requires that at least one-third of the total qualifying population be sampled, unless the pool is fewer than 125 possible interviews. If the number is under 125, the instrument is implemented to the entire population. The Legal Needs Assessment is always done with the support of the district defender, who provides permission to interview clients who have been appointed lawyers who work (as staff or by contract) for the Public Defender Office. If a client reports having a private attorney, the interview is terminated. The attorney name, if known, is written on the front page of the interview sheet (where no sensitive information is recorded). If the attorney is a non-conflict attorney, the information is copied and put in a file for the district defender to review. Defendants receive a standardized introduction to the assessment, are given the opportunity to review a consent form, and sign for permission to share the information with their attorney. All information is kept confidential since interviewees are considered agents of the public defender office, and information gained during the assessment is protected attorney-client work product.

LJC enters all data into its database where it is kept confidential. Paper files are returned as promptly as possible to the district defender who uses them at his/her discretion.

## The Legal Needs Assessment in Calcasieu

The Calcasieu Public Defender's Office suffers from perhaps the highest caseloads of any public defender office in Louisiana, an impressive — if terrible — distinction in the state with the highest incarceration rate of any jurisdiction in the world. Lake Charles law enforcement promotes its "27th largest" police force in the country, even though Lake Charles is a small city with about 70,000 residents. Despite its location on the I-10 corridor (usually a boon to public defender offices dependent on fees derived from surcharges on traffic tickets), the Lake Charles economy depends on its casinos, creating a culture where crime is high but traffic crimes are rarely enforced. As a result, Calcasieu has reliably been one of the most severely underfunded public defender offices in the state.

The National Association of Criminal Defense Lawyers (NACDL) filed a civil rights class action lawsuit in September 2004, seeking to remedy fundamental defects in the system providing public defense services to indigent defendants in Calcasieu Parish.<sup>5</sup> The lawsuit alleges a lack of oversight and inadequate funding by the state, resulting in excessive caseloads that prevent effective advocacy. Related issues include lengthy charging decisions, arrest-to-disposition periods three times the national average, an almost complete lack of jury trials, excessive backlogs in the system resulting in prolonged incarceration, and internal policies that trample defendants' rights to file *pro se* motions.

While the Legal Needs Assessment was originally scheduled first for East Baton Rouge, the situation in Calcasieu presented a unique opportunity. Upon the request from the Calcasieu Public Defender's Office, LJC approached NACDL for additional funding to implement the assessment in Calcasieu, with an expanded section addressing current legal status and attorney contact. NACDL awarded LJC \$7,500 to survey approximately 300 randomly selected, pretrial, public defender-appointed prisoners incarcerated in the Calcasieu prison facilities.

In August 2008, the Legal Needs Assessment had its inaugural run. Three LJC staff members, an LSU doctoral student, and five staff members from

### Legal Needs Assessment in Calcasieu Parish

#### Summary of Findings<sup>6</sup>

- 1. Addiction:** 55 percent reported that they wanted drug or alcohol treatment.
- 2. Mental illness:** 26 percent were diagnosed with a mental health problem.
- 3. Homelessness:** 13 percent reported being homeless at least once in their lives.
- 4. Prior experience in jail:** 82 percent had a prior adult conviction.
- 5. Foster care:** 16 percent of prisoners reported having been in the foster care system as a child.
- 6. Literacy and special education:** 16 percent reported attending special education classes; 60 percent did not graduate from high school.
- 7. Employment:** 68 percent of prisoners reported that they worked during the month prior to arrest.
- 8. Families:** 74 percent had children and 22 percent were the primary source of income for the children living with them prior to arrest.
- 9. Local problem:** 65 percent of prisoners had lived in Calcasieu Parish all their lives.
- 10. Demographics:** 33 was the average age of defendants interviewed; 12 percent were women; and 63 percent were African American.

the Calcasieu Public Defender's Office interviewed 257 prisoners over three long, hot days. The assessment had immediate results.

First, prison staff, while conditioned to the annual "jail sweep," was not prepared to efficiently move 100 clients a day for meetings with public defender staff. The bulk of the first day was spent negotiating an expedient way to facilitate client contact with their attorneys. After only completing 30 interviews the first day, adjustments were made, and the next two days were extremely productive (110 interviews each day).

Second, the attention generated by the Legal Needs Assessment created some direct results for prisoners. In one case, one of the clients interviewed was a middle-aged man in the secured pod who sobbed through the entire interview. Deputy Director Mitchell P. Bergeron (now district defender) looked into the client's file after leaving the interview. Bergeron discovered that the man had been in solitary confinement for nearly 18 months, waiting for a bed at the state's only forensic psychiatric hospital after being declared incompetent to stand trial. Other interviews raised flags for a man accused of manslaughter who reported no attorney contact since 2003 and an 18-year-old boy who was ordered "released on recognizance" the week before but was still detained because he could not pay the \$30 processing fee. The funds were raised immediately and he was released from prison to his family. Other lessons from this Legal Needs Assessment revealed themselves many weeks later, after nearly 50,000 bits of information had been entered into spreadsheets and released.

The information gathered in Calcasieu Parish reinforces the idea that the public defender is one of the community's most valuable assets. When adequately resourced, public defenders seek enduring solutions to their clients' legal issues. By providing high quality defense services, public defenders minimize the likelihood of recidivism and convicting the innocent — saving tax dollars, protecting public safety, and giving clients the best opportunities to become valuable members of the community.

District Defender Bergeron convened a meeting with the Southwest Louisiana Legislative Delegation to apprise them of the overwhelming challenges facing the Calcasieu Public Defender's Office and inform policy makers of the impact of the threatened budget cuts on public defense services. Armed with information about the legal

and extralegal needs of the clients and data about the gaps in care in the Calcasieu community, Bergeron was able to transcend unsupported speculation about the Calcasieu client community and offer real recommendations about how to decrease criminal justice costs across all agencies while helping residents in the local community. He commented, "While legislatures continue to pass stricter laws that create longer, mandatory sentences around this country, public defenders are aware that the persons that we represent are more than the sum of the crime with which they have been charged. The LJC Legal Needs Assessment and report of findings allow us an invaluable opportunity to put a human face on our clients and give us another tool to push for systemic reform in our parish and in this state."

### Louisiana Public Defender Board

Since implementation of the Calcasieu Legal Needs Assessment, LPDB and LJC have coordinated on two more jail surveys. In January 2009, the Natchitoches Public Defender's Office (10th JDC) initiated contact with LJC to do the assessment for the entire prison population in Natchitoches Parish Prison. Seventy-eight interviews were conducted (every eligible and agreeable male). (No interviews of females were conducted because females are not housed in Natchitoches.) The result of the assessment in Natchitoches revealed a number of subtle differences from the findings in Calcasieu. The results (not yet published) included some significant findings: much higher incidence of clients in Natchitoches who had been through the foster care system; almost no reports of homelessness; and a higher than expected number of clients with high school diplomas or some/completed higher education.

While only about 15 of the nearly 300 invited defendants interviewed in Calcasieu Parish refused the interview, nearly 30 defendants in Natchitoches refused. Natchitoches has always delivered its public defense services through a contract program. There was no consistent public defender leadership, no office, and a low-bid-wins system for procuring counsel. As a result, client contact was extremely minimal. The district defender in Natchitoches (appointed by the new Louisiana Public Defender Board in September 2008) speculated that defendants in Natchitoches had almost no expectation that the public defender would provide any significant advocacy, and that was the cause of the

high refusal rate.

The Legal Needs Assessment also quantified troubling criminal justice practices in the 10th JDC, including the incarceration of indigents for failure to pay fees and fines, and no appointment of counsel for misdemeanor arrests in violation of the Louisiana Constitution's guarantee of counsel for any crime that carries a possible penalty of incarceration. The public defender's office has a policy of mailing copies of all motions filed to the defendant, and the assessment revealed client appreciation for this practice. Defendants showed an increased awareness of the name of their lawyer, status of their case, and next court date/proceeding.

In mid-April, Caroline Johnson, an Equal Justice Works Fellow (sponsored by the Louisiana Bar Foundation at Louisiana State University's Paul M. Hebert Law Center) coordinated with LPDB, LJC, and the East Baton Rouge Public Defender's Office (19th JDC) to conduct the assessment for the entire female prison population. Recruiting about 20 first- and second-year law students from Louisiana State University, Johnson supervised 49 interviews of female defendants. (This was the entire qualifying and willing pretrial, public defender-appointed female prisoner population on the days of the interviews.) Johnson also facilitated feedback between all parties to improve the instrument when implemented for a female population. The results from this survey will be posted on the LJC Web site as soon as they are completed.<sup>7</sup> In East Baton Rouge, the study will provide support for a pending grant proposal to fund additional support and re-entry services to female defendants appointed to public defender offices in Louisiana who are facing criminal charges related to documented history of physical, mental, or sexual abuse.

Finally, the Louisiana Public Defender Board has embraced the Legal Needs Assessment instrument as part of its developing site visit protocol. John Di Giulio, the trial-level compliance officer for LPDB, said, "Sometimes the most telling information about an indigent defense delivery system comes from a survey of incarcerated defendants. Local practices on bail and on speedy trial are often best exposed by such a study." A critical component of measuring Louisiana's progress in the public defense delivery system is to evaluate clients' perception of their lawyers and the quality of their representation. While only one part of an effective evaluation

mechanism, the Legal Needs Assessment creates the opportunity for client feedback and provides a baseline against which to measure improvement.

## Conclusion

LJC and LPDB capitalized on a unique opportunity to leverage a small grant into work product to advance the mission of both organizations. Through creativity, innovation, and aggressive efforts to increase volunteer capacity, the Legal Needs Assessment has become a valuable tool to ensure high-quality representation that best serves clients and empowers defenders to respond to the unique needs of their communities. The information that the assessment reveals gives public defenders critical information in order to bridge the gap between advocates, social service providers, and clients in order to provide the most comprehensive service model that resources will allow.

Though often unrecognized, public defenders serve the best interest of both their clients and their communities by applying the community-oriented model. Through its performance standards and commitment to data-driven (evidence-based) policies, the Louisiana Public Defender Board will be accountable to the policy makers who supported the vision of fair public defense for all, the taxpayers who fund our programs, the defenders who keep the system running, the clients who depend on public defenders to protect and defend their rights, and to the Louisiana community who will be safer and stronger because it exists.

## Notes

1. Louisiana Justice Coalition mission statement, [www.lajusticecoalition.org](http://www.lajusticecoalition.org).
2. <http://www.legis.state.la.us/billdata/streamdocument.asp?did=449902>.
3. WASH. POST, April 12, 2005.
4. These recommendations are found in *A Case for Community Defense in New Orleans* (December 2006), online at [http://www.lajusticecoalition.org/doc/BC\\_Community\\_Defense\\_NO.pdf](http://www.lajusticecoalition.org/doc/BC_Community_Defense_NO.pdf).
5. The complaint can be read online at [http://www.lajusticecoalition.org/doc/Calcasieu%20Complaint\\_NACDL.pdf](http://www.lajusticecoalition.org/doc/Calcasieu%20Complaint_NACDL.pdf).
6. The link to the entire report, *Behind Bars in Calcasieu Parish: An Assessment of Legal Needs of Pretrial Defendants Appointed to the Calcasieu Public Defender's Office*, is online at <http://www.lajusticecoalition.org/community+defense/ljc+calcasieu>.
7. <http://www.lajusticecoalition.org/community+defense/ljc+east+baton+rouge>. ■

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Heather H. Hall joined the Louisiana Public Defender Board staff as special projects advisor in November 2008. Before joining LPDB, she worked as the director of the Louisiana Justice Coalition. Prior to that, she worked on criminal justice issues as the legislative & public education associate at the ACLU of Louisiana.



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Ukiah, Calif., and has held numerous senior public defender positions in Nevada and California. Jeff has also worked in private practice at various points in his career and is an accomplished lecturer. He is a faculty member at the National Drug Court Institute, president of the National Community Sentencing Association, and a member of the Board of Governors of NACDL's California affiliate, the California Attorneys for Criminal Justice (CACJ). In recent years, Jeff has performed outstanding service to NACDL as the chair of the highly acclaimed Forensic Seminar that is held in partnership with CACJ.



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is a partner and co-chair of the White Collar Crime Defense Group at Barnes & Thornburg LLP in Washington, D.C. Sol has extensive white collar criminal defense experience going back more than a dozen years. Before joining the law firm, he was first associate and then deputy independent counsel in the Office of Independent Counsel with major responsibilities in the investigation into the Whitewater and Lewinsky matters. Before that, Sol was an assistant U.S. Attorney in the Eastern District of North Carolina and the Western District of Texas. Early in his career, Sol, who has written on many white collar crime topics, served as a law clerk to the Hon. Tom G. Davis of the Texas Court of Criminal Appeals and to Hon. J. Daniel Mahoney of the U.S. Court of Appeals for the Second Circuit.

A detailed biography of all NACDL directors can be read online at [www.nacdl.org](http://www.nacdl.org). ■

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