



The Defense Never Rests

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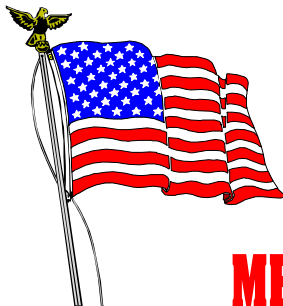
**AT LONG LAST,
RATE INCREASE TAKES EFFECT**

We are happy to report that effective May 1, 2002, the CJA hourly rates increased to **\$90** for **OUT-OF-COURT, AS WELL AS IN-COURT TIME!** Judge Robin Cauthron, who heads the Defender Services Committee, is greatly responsible for this increase. We are only sorry that it took so long to implement this more reasonable rate. The increase will undoubtedly result in a greater number of "excess" vouchers requiring Circuit approval. Our approving Circuit designee, Judge Carl Stewart, was made aware of the exponential increase at the Fifth Circuit Judicial Conference and will make every effort to expedite the review process.

ATTORNEY RATES		
01/01/96 - 12/31/99	In Court:	\$ 65.00
	Out of Court:	\$ 45.00
01/01/00 - 03/31/01	In Court:	\$ 70.00
	Out of Court:	\$ 50.00
04/01/01 - 04/30/02	In Court:	\$ 75.00
	Out of Court:	\$ 55.00
05/01/02 - PRESENT	In Court/ Out of Court:	\$90.00

IN THIS ISSUE:

Welcome New Panel Members	2
Welcome New District Court Judges	3
New Marshal on Board	4
Fifth Circuit Judicial Conference	5
National CJA Conference	
to be held in New Orleans	5
Second National Seminar on	
Forensic Evidence and the Criminal Law	
held in New Orleans	5
Recent Developments:	
Limits on Pretextual Traffic Stops	6
Sentencing Commission Recommends	
Lower Sentences for Crack Cocaine	7
Mississippi FPD Office	7
Panel Members Exempt from PACER Fees	7
2002 CJA Award	8
FPD Law Clerk Honored at	
Tulane Law School Graduation	8
2000 Incarceration Rates	9



MEMORIAL
Day

WELCOME TO NEW CJA PANEL MEMBERS

In conjunction with efforts to continually improve the quality of representation under the Criminal Justice Act, Title 18, United States Code, Section 3006A, Herb Larson and Virginia Schlueter reviewed numerous applications and met with the most qualified applicants for in-depth interviews. Herb and Virginia made their recommendations to District Court Judges Carl Barbier, Jay Zainey, Lance Africk, and Magistrate Judge Louis Moore, the new CJA Committee. The Committee unanimously approved the following new panel members:

MICHAEL DAVIS is associated with the Baton Rouge-based law firm of Sharp, Henry, Cerniglia, Colvin, Weaver & Hymel, which has a local office in the World Trade Center. A former Assistant United States Attorney in the Central District of California and the Middle District of Louisiana, Mr. Davis is an experienced criminal lawyer.

FRANCIS KING has worked for both the Federal Public Defender and the United States Attorney here in the Eastern District of Louisiana. He has recently reentered the private practice of law after completing a Master's of Divinity degree. Mr. King is also a member of the adjunct faculty at Loyola University, where he teaches criminal law.

LINDSAY LARSON is a partner in the firm of King, LeBlanc & Bland. Before joining the firm he practiced criminal law exclusively. He has been an Assistant District Attorney for the Parish of Orleans and an Assistant United States Attorney in the Eastern District of Louisiana. At present, he is representing a death row inmate seeking post-conviction relief. He has also taught criminal procedure for several years at the University of New Orleans.

ARTHUR A. "BUDDY" LEMANN, III is a well known criminal defense lawyer who was the Director of the Loyola Law Clinic for many years. He has been involved in the defense of high profile cases in this district. In addition, he has represented many clients charged with capital crimes.

PAMELA METZGER was an Assistant Federal Public Defender in the Eastern District of New York for five years. Thereafter, she became a member of the New York Criminal Justice Act Panel. After accepting the position of Director of the Tulane Criminal Law Clinic, Ms. Metzger moved to New Orleans. Ms. Metzger has published several articles and made presentations at numerous professional seminars in the area of federal criminal law. She also has capital experience.

CRAIG STEWART, a former Assistant United States Attorney in the Eastern District of Louisiana and Assistant Public Defender in Terrebonne Parish, has entered private practice in Houma. Prior to becoming an attorney, Mr. Stewart was a police officer in that parish. It is anticipated that he will be able to represent many of the residents of Southeast Louisiana in the Houma Federal Courthouse.

NEAL WALKER was an Assistant Federal Public Defender in the Eastern District of Kentucky before specializing in capital defense work. He is presently the director of Louisiana's Capital Appeals Project, representing death row prisoners on direct appeal. His experience includes representation of death row inmates before state and federal courts, including an appearance before the United States Supreme Court in *Sawyer v. Whitley*, 505 U.S. 333 (1994).

ARE YOU AVAILABLE?

The Criminal Justice Act Plan mandates that members make themselves available to take appointments. With only a 24-hour period between the appointment of counsel and the detention hearing, it is imperative that panel lawyers promptly return calls, even if only to report that the case cannot be accepted. As you know, magistrate court is conducted at 2:00 p.m. on Monday through Thursday, and at 10:00 a.m. on Friday. When a conflict arises in a multi-defendant case, telephone contact is made immediately following court.

WELCOME TO NEW DISTRICT COURT JUDGES



KURT D. ENGELHARDT was nominated by President George W. Bush and confirmed on December 13, 2001, as a United States District Judge for the Eastern District of

Louisiana. He was sworn in on December 14, 2001. Following the investiture, the New Orleans chapter of the Federal Bar Association hosted a formal reception in the Great Hall of the John Minor Wisdom Fifth Circuit Court Building.

Judge Engelhardt attended Brother Martin High School in New Orleans, where he graduated with honors in 1978. He attended the University of New Orleans and Louisiana State University in Baton Rouge, from which he graduated with a Bachelor of Arts in history in 1982. During his undergraduate years, Judge Engelhardt was invited to join the Mu Sigma Rho honor fraternity for his academic performance in his field of study. In the Fall of 1982, Judge Engelhardt commenced his legal education at the Paul M. Hebert Law Center at Louisiana State University, from which he graduated in May of 1985.

Judge Engelhardt served a two-year clerkship with Judge Charles Grisbaum, Jr. of the Louisiana Fifth Circuit Court of Appeal. He later became associated with the law firm of Little, Metzger and Lamz (APLC). He practiced commercial litigation, including real estate, bankruptcy, RICO, contract disputes, construction litigation, and succession litigation. In 1992, he joined the law firm of Hailey, McNamara, where he expanded his practice to include personal injury litigation, environmental law, white collar criminal defense work, insurance defense and coverage issues, and, in particular, attorney malpractice defense work. He became a partner in July of 1998.

In 1995, Judge Engelhardt was nominated for a spot on the nine-member Louisiana Judiciary Commission, and was appointed by the Governor to serve a four-year term on that body. As a member of the Judiciary Commission of Louisiana, Judge Engelhardt and the other eight members handled ethical complaints against state judges across the entire state of Louisiana, making recommendations to the Louisiana Supreme Court regarding appropriate actions.

In 1998, he was elected by his fellow commission

members to serve as Chairman of the Judiciary Commission. He presided over the Commission's trials of formal charges lodged against sitting state judges.

Judge Engelhardt also serves on the Board of Directors of the Cancer Association of Greater New Orleans.



JAY C. ZAINNEY is one of three new appointees to the United States District Court for the Eastern District of Louisiana. Before taking the bench, Judge Zainney, a solo practitioner, was an active member of the Federal Public Defender's Criminal Justice Act panel for nearly 20 years. He successfully defended one of the first federal capital prosecutions in the Eastern District. He also



served as a member of the Louisiana Supreme Court's Committee on Judicial Ethics and frequently lectured on ethics and professional responsibility. A former president of the Louisiana State Bar Association, Judge Zainney established a special bar association committee to provide legal services for the disabled, and a community action committee to undertake charitable projects. He served on the Board of Directors of the Advocacy Center for the Disabled and Elderly and the President's Mental Retardation Task Force. Judge Zainney is the recipient of the Legal Services Project Director's Award and the Louisiana State Bar Association Community Action Committee Recognition Award. Judge Zainney received his undergraduate degree at the University of New Orleans and earned his *juris doctorate* at the Paul M. Hebert Law Center at Louisiana State University.

At his investiture on March 15th, New Orleans Federal Bar President Andy Lee presented Judge Zainney with his judicial robe. After his investiture, Judge Zainney was honored at a reception at Gallier Hall which the New Orleans chapter of the Federal Bar hosted.



LANCE M. AFRICK received a Bachelor of Arts and Laws degree from the University of North Carolina at Chapel Hill in 1973, and his J.D. from the University of North

Carolina Law School at Chapel Hill in 1975, where he served as governor of the student bar association, a judge of the moot court board, and as a member of the Order of Barristers, a national moot court honorary society. Following a clerkship with the Honorable James Gulotta of the Louisiana Fourth Circuit Court of Appeal, Judge Africk practiced insurance defense work from 1976 to 1977, plaintiff's personal injury work from 1980 to 1981, and corporate work for McDermott Incorporated from 1981 to 1982. He served as the Chief of the Career Criminal Bureau for the Orleans Parish District Attorney's office from 1977 to 1980 and as the Chief of the Criminal Division for the United States Attorney's office in New Orleans from 1982 to 1990. In 1990, he was appointed as a United States Magistrate Judge for the Eastern District of Louisiana. Judge Africk has appointed counsel in CJA cases and conducted many detention hearings and arraignments. On April 17, 2002, he was confirmed as a United States District Judge for the Eastern District of Louisiana.

Judge Africk has authored articles in the area of criminal law and civil procedure and he has served as a lecturer at the FBI Academy, the University of New Orleans, Tulane University School of Law, and the Loyola University School of Law. Judge Africk has served on the faculty of the National Institute for Trial Advocacy and he has lectured at programs presented by the National Association of Criminal Defense Lawyers, U.S. Attorney General's Advocacy Institute, American Bar Association, Federal Bar Association, and Louisiana State Bar Association. He is a board member of the Federal Bar Association and he serves on the Louisiana State Bar Association's federal court bench bar liaison committee.

Judge Africk is a member of the Sugar Bowl and he is a former member of the Board of Directors of the March of Dimes. Judge Africk has served on the Civil Justice Reform Act Alternative Dispute Resolution Committee for the Eastern District of Louisiana and he is the Court liaison to the Federal Bar Association Rules Committee.

Judge Africk's investiture will take place on June 13, 2002 at 3:00 p.m. Following the investiture, the New Orleans chapter of the Federal Bar Association will host a formal reception in the Great Hall of the John Minor Wisdom Fifth Circuit Court Building.



NEW MARSHAL ON BOARD



THEOPHILE DURONCELET ("Theo" as most know him) was nominated by President George W. Bush to serve as the United States Marshal for the Eastern District of Louisiana. His nomination was confirmed by the Senate and he took his oath of office on March 25, 2002. Theo was born and raised in New

Orleans. He received his bachelor of arts degree in Social Studies from Tulane University. He is also a graduate and fellow of the Court Executive Development Program for the National Center for State Courts, Institute for Court Management, in Williamsburg, Virginia.

Theo began his career as the Records and Jury Clerk for the United States District Court for the Eastern District of Louisiana in 1966. He subsequently worked as a Supervisor for Jury, Files and Records, and Naturalization Divisions; and Deputy Clerk and Courtroom Deputy for the Honorable Lansing L. Mitchell and the Honorable Veronica Wicker. For his service, he received a 25-year distinguished service award.

Theo was subsequently selected to serve as the Clerk of Juvenile Court, Parish of Orleans. He served in that capacity from 1992 until 1996. During his tenure, he was selected to participate on Mayor Marc Morial's Transition Task Force.

In addition to his service to the judicial system, Theo is the Community Relations Liaison to the New Orleans Bar Association. He is the first non-lawyer to serve in that capacity. Theo has served as a Board Member and Vice-President of the Judicial and Justice Credit Union and worked with the World Work Academy, the program that provides mentors for public schools.



FIFTH CIRCUIT JUDICIAL CONFERENCE

This month CJA Panel Representative Herb Larson and Federal Public Defender Virginia Schlueter attended the Fifth Circuit Judicial Conference in Dallas, Texas. Once again, Chief Judge Carolyn Dineen King invited the Fifth Circuit FPDs and CJA reps to meet with her to discuss matters affecting the representation of federal indigent clients, such as pretrial detention, probation and appeals. In a general plenary session, Chief Judge King delivered her the "State of the Fifth Circuit" address to all conference attendees. She paid close attention to criminal matters, reporting that the Fifth Circuit continues to rank first in the nation in the number of drug cases commenced and second (to the Ninth Circuit) in new immigration cases. So too, Louisiana, Texas and Mississippi ranked first, second and third, respectively in the nation, in the number of persons incarcerated per 100,000 residents (and the United States ranks first in the world)(see attached map). Since 1997, criminal cases filed in the Fifth Circuit nearly doubled. While criminal filings nationwide slightly decreased in 2001, they rose 4.1% in the Fifth Circuit.

At Justice Scalia's "State of the Circuit" address, he noticeably neglected to point out that Judge Eldon Fallon should have received the Fifth Circuit award for having had his opinion vindicated by the Supreme Court in *Zadvydas v. Underdown*.

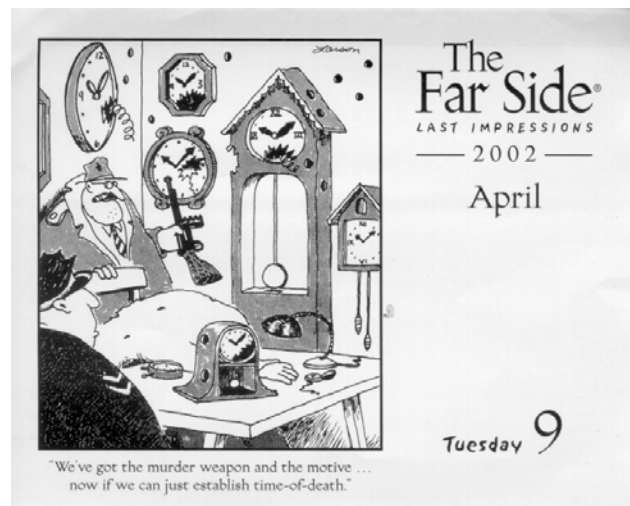
All three of our new District Court Judges, Zainey, Engelhardt and Africk, were formally introduced at the conference. The Eastern District of Louisiana had a special "breakout session" which allowed for both fun and networking. Judges, Zainey, Engelhardt, and Africk enthusiastically attended this session.

NATIONAL CJA CONFERENCE TO BE HELD IN NEW ORLEANS SEPTEMBER 12-14, 2002

Don't forget that the national CJA "Winning Strategies" seminar will be held here September 12-14, 2002. Enrollment is limited to CJA panel attorneys and to be considered, applicants cannot have attended a national CJA seminar in the past two years. All applications must be submitted at least 60 days prior to the seminar. Selections are made on a first-received basis. To apply, complete the form attached and return to:

**Defender Services Division Training Branch
One Columbus Circle, N.E.
Suite G-430
Washington, D.C. 20544
Telephone: 800-788-9908
Fax: 202-502-2911**

SECOND NATIONAL SEMINAR ON



FORENSIC EVIDENCE AND THE CRIMINAL LAW HELD IN NEW ORLEANS

The Administrative Office of the United States Courts and the Habeas Assistance and Training Counsel recently sponsored the Second National Seminar on Forensic Evidence and the Criminal Law in New Orleans. Peter J. Neufeld of Project Innocence was the keynote speaker. Several national experts in the areas of DNA development, crime scene evaluation, and scientific evidence were among those who presented at the seminar. Because the seminar was open only to capital specialists, paralegals, mitigation specialists and investigators who deal primarily with capital representation, we were not able to invite the entire panel. However, several CJA attorneys who are presently representing capital clients attended and found the program excellent.

RECENT DEVELOPMENTS: LIMITS ON PRETEXTUAL TRAFFIC STOPS

Supreme Court approval of pretextual traffic stops¹ has turned the spotlight on the permissible scope of these encounters. Traffic stops resemble **Terry** stops more than formal arrests;² hence, the framework of **Terry v. Ohio**³ governs. **Terry** asks: (1) “whether the officer’s action was justified at its inception, and (2) whether it was reasonably related in scope to the circumstances which justified the interference in the first place.”⁴ The circuits are split with regard to the second query, so the subject is ripe for a cert. grant.

In a recent en banc decision, the Seventh Circuit joined the Fifth in holding that the only relevant consideration is duration: a stop may last no longer than necessary to verify or dispel the suspicion that prompted the stop, but during that time, officers may ask questions about unrelated matters.⁵ These circuits reason that police questioning is not a seizure because the person questioned is not obliged to answer. But concurring in the Seventh Circuit decision, Judge Cudahy asks: “How many times have you refused to answer questions asked by a police officer who has pulled your car over for a traffic offense? . . . There is simply all the difference in the world in the nature of the relationship between a police officer detaining someone for questioning and a police officer striking up a conversation on the bus.”⁶

Of course, if reasonable suspicion of another crime develops during the investigation of the initial suspicion, the stop may be extended. Still unresolved is the issue whether refusal to answer questions unrelated to the initial suspicion justifies further detention. The Tenth Circuit would not recognize such a refusal “as the basis for a more intrusive search, but the officer would certainly be permitted to use that information to justify prudent safety-related measures.”⁷

The Eighth, Ninth and Tenth Circuits hold that the scope of a traffic stop is limited not only by duration but also by the nature of permissible questioning.⁸ The questions must be reasonably related to the justification for the stop. In the case of a traffic stop, that includes asking for license and registration, and it may include asking about travel plans.⁹ In the interest of personal safety, the officer may order the driver and passenger out of the vehicle,¹⁰ and the Tenth Circuit also permits the officer to ask if a loaded gun is in the vehicle.¹¹

The circuits also are divided about computer checks. The Tenth Circuit permits background checks for outstanding warrants and criminal history, even though the stop was unrelated.¹² But the Fifth Circuit has held that a stop could not be extended for completion of a computer check when the officer had already determined that the traffic violations prompting the stop had not occurred.¹³

¹**Arkansas v. Sullivan**, 532 U.S. 769 (2001); **Whren v. United States**, 517 U.S. 806 (1996).

²**Knowles v. Iowa**, 525 U.S. 113 (1998).

³392 U.S. 1 (1968).

⁴392 U.S. at 19.

⁵**United States v. Childs**, 277 F.3d 947 (7th Cir. 2002); **United States v. Valadez**, 267 F.3d 395 (5th Cir. 2001); **United States v. Machuca-Barrera**, 261 F.3d 425 (5th Cir. 2001); **United States v. Jones**, 234 F.3d 234 (5th Cir. 2001); **United States v. Dortch**, 199 F.3d 193 (5th Cir. 1999), *revised on other grounds on denial of rehearing*, 203 F.3d 883 (5th Cir. 2000); **United States v. Shabazz**, 993 F.3d 431 (5th Cir. 1993).

⁶277 F.3d at 960.

⁷**United States v. Holt**, 264 F.3d 1215, 1224 (10th Cir. 2001) (en banc).

⁸**United States v. Ramos**, 42 F.3d 1160 (8th Cir. 1994); **United States v. Murillo**, 255 F.3d 1169 (9th Cir. 2001); **United States v. Holt**, 264 F.3d 1215 (10th Cir. 2001) (en banc).

⁹**Ramos**, 42 F.3d at 1163; *compare Holt*, 264 F.3d at 1221 (opinion of Ebel, J.) with 264 F.3d at 1228 n.2 (opinion of Briscoe, J.).

¹⁰**Knowles**, 525 U.S. at 117.

¹¹**Holt**, 264 F.3d at 1223.

¹²**Holt**, 264 F.3d at 1221.

¹³**Valadez**, 267 F.3d at 398.

***SENTENCING COMMISSION
RECOMMENDS LOWER SENTENCES
FOR CRACK COCAINE***

The U.S. Sentencing Commission will ask Congress to reduce the penalties for crack cocaine offenses. Finding the current disparity between sentences for powder cocaine and crack “not supportable,” the Commission will propose changing the current 100-to-one ratio to 20-to-one. This would mean raising the statutory trigger for the five-year mandatory minimum sentence to 25 grams of a cocaine base mixture from the current five grams.

The recommendations are supported by an extensive year-long study that collected federal cases, gathered expert testimony, and surveyed federal judges. Based on this study, the Commission is scheduled to submit a report to Congress later this month.

This is not the first time that the Commission has expressed disapproval of the cocaine/crack disparity. In 1995 and 1997 it also tried to narrow the disparity but without success. This time, though, there is support from Senators Orrin Hatch (R-Utah) and Jeff Sessions (R-Ala.), who have introduced the “Drug Sentencing Reform Act of 2001,” S. 1874, 107th Cong. § 101 (2001), which would reduce the punishment disparity by raising powder penalties and lowering crack penalties and more broadly focus the punishment on the seriousness of the offense and the culpability of the offender.

If you are going to trial in an appointed case please be aware that assistance is available. Several attorneys who are not currently on the panel have expressed an interest in second-chairing a trial at no cost in order to gain experience in federal court. Contact our office for more information.

***MISSISSIPPI
FEDERAL PUBLIC DEFENDER OFFICE***

As you will recall from our last newsletter, Samuel Dennis Joiner, a general practitioner with extensive panel experience as the CJA Panel Representative for the Southern District, has been selected as the Federal Public Defender for the Southern District of Mississippi. His appointment is pending the requisite FBI and IRS background investigation which is almost complete. At present, his office is located at 105 North College Street in Brandon, Mississippi 39042, telephone: 601-824-3211. When the Defender Office is opened, it is anticipated that Mr. Joiner will operate a main office in Jackson with one Assistant Federal Public Defender, an investigator and an administrative assistant. It is also anticipated that there will be a satellite office in Biloxi with one Assistant Federal Public Defender and a legal secretary until 2003, when the office will be relocated to Gulfport.

***PANEL MEMBERS
EXEMPT FROM PACER FEES***

Effective immediately, CJA attorneys are now automatically exempt from payment of electronic public access (EPA) fees for work that is performed pursuant to appointment in all federal courts. Although appointed attorneys have been exempt since 1994 from EPA fees for work related to CJA cases in the jurisdictions where such cases are pending, they have had to apply for credit to the Public Access to Court Electronic Records (PACER) service center for charges related to those cases that were incurred in using PACER in other jurisdictions. Of course, attorneys are permitted to use their fee-exempt accounts only for work related to services authorized under the CJA and related statutes. For more information, contact the PACER Service Center at 800-686-6756.

2002 CJA AWARD

Beginning this year, a CJA panel member who has done outstanding work will be honored at the LACDL's annual awards banquet. The recipient will be selected by the Federal Public Defenders in Louisiana and the representatives of their respective panels. The award was created to recognize the CJA panel member who best embodies the true spirit of advocacy. This year LACDL's banquet will be held on December 6, 2002.

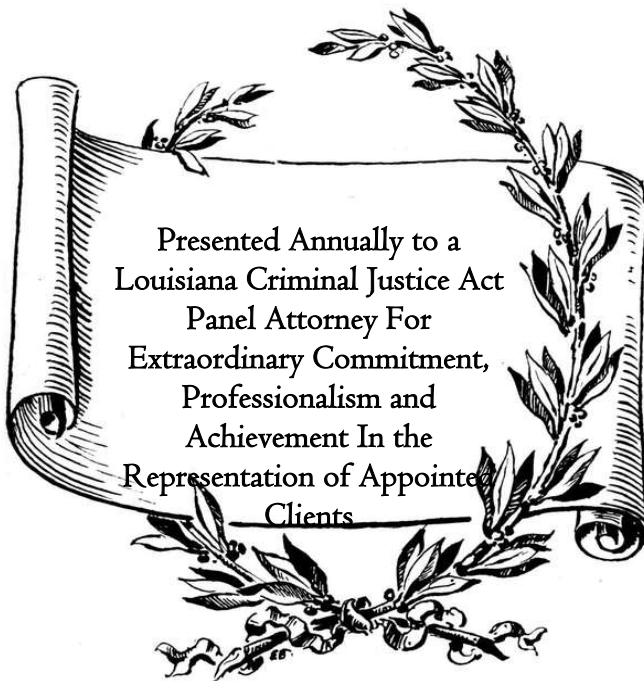


Stephanie, second from left, with her family and friends.

STEPHANIE SHANLER FPD LAW CLERK HONORED AT TULANE LAW SCHOOL GRADUATION

We are proud to report that Stephanie Shanler, a student intern with the Federal Public Defender's Office, received Tulane Law School's General Maurice Hirsch Award for 2002. The award is presented annually to a law graduate in recognition of service to the community and the university. Stephanie has worked at our office since January 2001, when she reported to do *pro bono* work in fulfillment of Tulane's community service requirement. With a Master's of Public Health Degree from Tulane's School of Public Health and Tropical Medicine, Stephanie was extremely helpful to the office and our clientele. We offered her employment under Tulane's work study program and she continued to be an asset to our organization until she graduated this month. As a clerk, Stephanie accrued over 100 hours, working under the supervision of our former Research and Writing Specialist, Gary Clements.

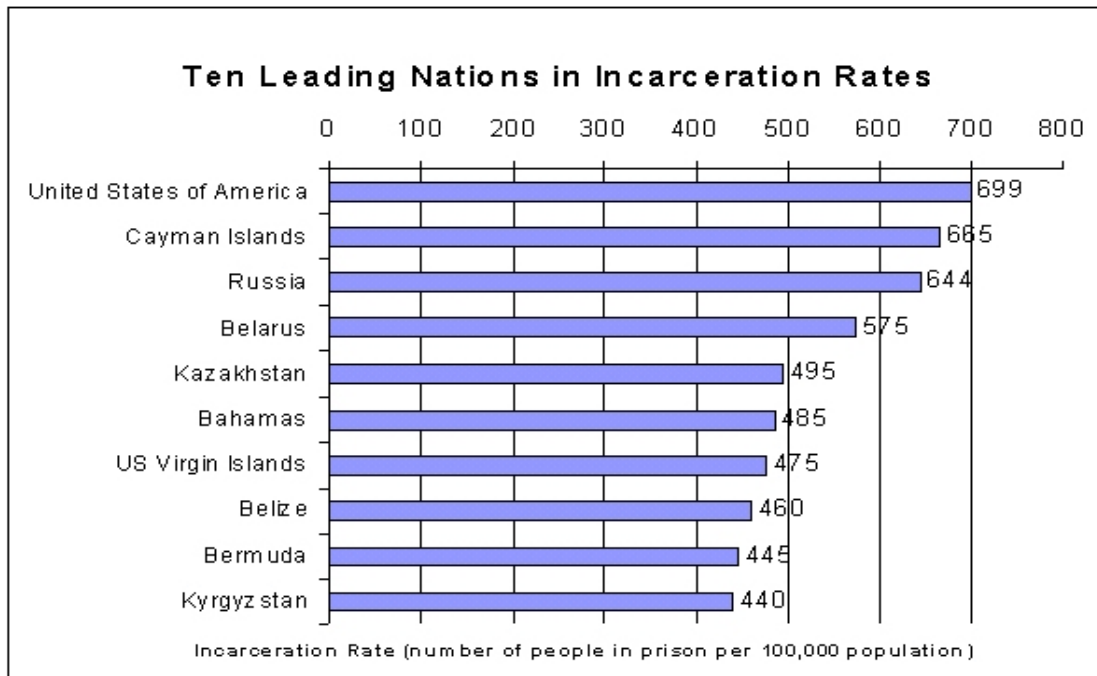
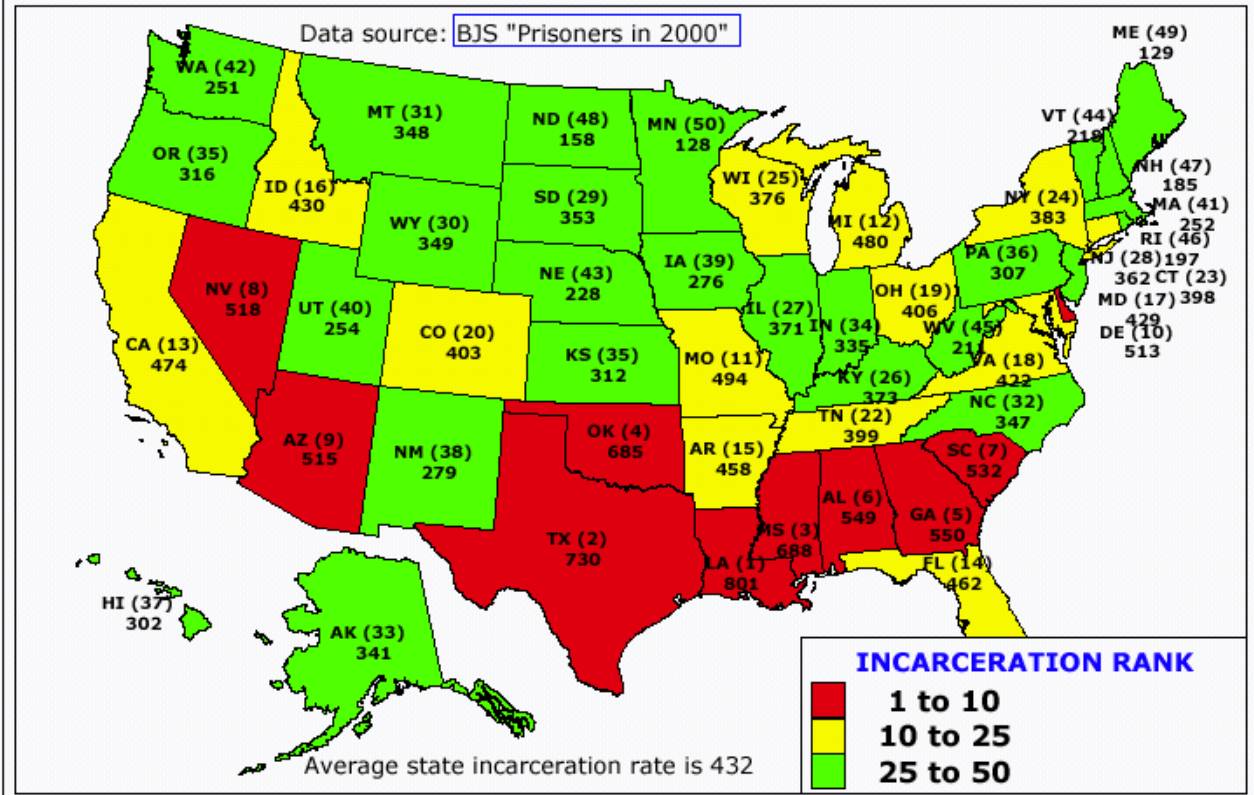
Second and third year law students at Tulane are required to complete twenty hours of *pro bono* work prior to graduation. Panel lawyers interested in the services of Tulane law students who are meeting their *pro bono* obligations should contact Dean Julie Jackson or Ms. Eileen Ryan at 865-5733.



Dean Lawrence Tonoroff, panel member and clinical instructor, Sheila Myers, new panel member and law clinic director, Pamela Metzger, and Federal Public Defender, Virginia Schlueter at Tulane Law School's Graduation

We welcome articles from panel lawyers. If you have researched or written an article on novel questions of law that you would like to share with other panel members, please do not hesitate to send it in.

2000 Incarceration Rates (Rank) Per 100,000 Population



Source: The Sentencing Project, 514 Tenth Street, NW, Suite 1000, Washington, DC 20004
www.sentencingproject.org



They that can give up essential liberty to obtain a little temporary safety deserve neither liberty