

Indigent Defense in Five Southern States: Factors that Influence State Administrative Oversight

by

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Abstract

The right to legal representation for those accused of crime is now a constitutional right across the American legal system. State oversight of indigent defense programs in the American states has not been the subject of systematic study. Today most defendants charged and convicted of crimes are guaranteed the right to counsel during all criminal justice proceedings. State indigent defense programs are strained by the growing number of cases requiring state appointed indigent defense counsel. This research explores the history of indigent defense in the American states and the administrative structures and reform efforts in Alabama, Georgia, Louisiana, Mississippi and Texas. This study draws upon the literatures of diffusion and agenda setting to identify and explore factors that have encouraged reform and influenced the pattern of state oversight of indigent defense programs across five Southern states. Data are drawn from interviews with elected and appointed court officials, state and local public administrators, advocates, and representatives of the legal community in Alabama, Georgia, Louisiana, Mississippi, and Texas. This research establishes a foundation for further research on the administrative structure and decision processes that states use when making decisions about indigent defense representation.

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CHAPTER I

AN EXAMINATION OF INDIGENT DEFENSE IN THE AMERICAN STATES

Introduction

This research explores the history of indigent defense in the American states and the administrative structures and reform efforts in Alabama, Georgia, Louisiana, Mississippi and Texas. This study draws upon the literatures of policy diffusion and agenda setting to identify and explore factors that have encouraged reform and influenced the pattern of state oversight of indigent defense programs across five Southern states. This research establishes a foundation for further research on the administrative structure and decision processes that states use when making decisions about indigent defense representation. Public administrators and officials may use findings to improve the provision of public services and administrative activities at the state level in the area of indigent defense.

An indigent defender system has been defined as “a method of providing indigent defense services where an attorney or group of attorneys, through a contractual arrangement or as public employees, provides legal representation for indigent criminal defendants on a regular basis” (Benner 1975, 669). The Supreme Court has imposed considerable obligations upon state courts to provide attorneys for indigent defendants but has not firmly established standards for indigent defense systems. The responsibility of implementing, funding and administering the provision of defense services for the poor has been left to the states (Bureau of Justice Statistics 1996).

In response to the constitutional guarantee of assistance of counsel, state and local governments have established various methods of providing representation for indigent defendants. Services are usually delivered by one of three methods: 1) traditional public defender programs in which salaried attorneys provide representation in indigent cases; 2) court assignments of indigent cases to private attorneys who are compensated on a case-by-case basis; and 3) contracts in which private attorneys agree to provide representation in indigent cases (Davies and Worden 2009; Spangenberg and Beeman 1995).

State support of indigent defense is important because the right to counsel is a fundamental constitutional right guaranteed under the Sixth and Fourteenth Amendments to all defendants regardless of their income (Knight 1998; Rackow 1954). United States Attorney General Eric Holder recognized this right at a national symposium on indigent defense in February 2010. Attorney General Holder said:

I stand with you and with anyone who is committed to ensuring the Sixth Amendment right to counsel. Last year, when I became Attorney General, I took an oath to support and defend the Constitution of the United States. I also made a promise...to guard the rights of all Americans and made certain that in this country, the indigent is not invisible.

The Justice Department hosted the conference to address the unequal representation afforded to poor defendants in state and local courts. According to Attorney General Holder, the Justice Department is committed to focusing on indigent defense issues with a "sense of urgency and a commitment to developing and implementing the solutions we need."

In 1942, Rhode Island became the first state to implement a state-funded public defender system. Since then, forty-one states have established various methods of administrative oversight. Many states have created state commissions to oversee and enforce performance standards and attorney qualifications and monitor caseloads and costs. The level of authority and

effectiveness of each commission varies by state and is typically linked to the funding provided by the state (Constitution Project 2009; Spangenberg 2005, 2006a).

While the Supreme Court has required states to provide lawyers for indigent defendants in the vast majority of criminal and juvenile delinquency cases, the Court has not addressed the funding of indigent defense programs (Constitution Project 2009). Therefore, states have adopted various methods for funding indigent defense services (Bureau of Justice Statistics 1996). Disparities in levels of state oversight and funding affect the quality of representation afforded to indigent defendants (Constitution Project 2009; Spangenberg 2005, 2006a).

Statement of Problem

State indigent defense programs are strained by the growing number of cases requiring state appointed indigent defense counsel. The administration of indigent defense is expensive, and some states have been more successful than others at administering and funding indigent defense services (Constitution Project 2009; Davies and Worden 2009; Desimone 2006; Lee 2004; Spangenberg 2005).

Over the years, the Supreme Court has expanded the Sixth Amendment provisions regarding the right to counsel. Today most defendants charged and convicted of crimes are guaranteed the right to counsel during all criminal justice proceedings. The steady expansion of the right to counsel has increased the number of cases requiring state appointed indigent defense counsel (Albert-Goldberg and Hartman 1983).

The number of indigent defendants entitled to state-provided counsel has also increased due to policy trends over the last thirty years (Albert-Goldberg and Hartman 1983; Constitution Project 2009). The expansion of criminal justice systems across the American states has made

crime policies more expensive and increased the demand for indigent defense counsel (Davies and Worden 2009; Garland 2001; Scheingold 1984). Expansion is the result of increased criminalization of conduct and increased penalties for crimes (Mauer 1999). Furthermore, the cost of criminal justice policies strain state budgets already pressured by a declining economy. Total state budget spending for fiscal year 2010 is projected to be the worst state expenditure growth in the past thirty-two years (National Association of State Budget Officers 2009). A weak economy decreases tax revenues which results in less money for government agencies. Historically, as economies deteriorate, enrollments in social programs for the poor increase, resulting in a simultaneous increase in spending pressures for these services (Greene 2005). A weak economy will impact the provision of legal services for the poor. Many states have already begun reducing fiscal year 2010 funding for indigent defense services (Kentucky Governor Press Release 2009; Missouri Division of Budget and Planning 2009; Tennessee Administrative Office of the Courts 2009).

The quality of indigent defense representation varies by state and has been linked to the adoption and enforcement of statewide standards regarding the provision of defense services for the poor. The lack of standards and accountability has made it difficult for states to defend their programs against claims of inadequacy. National organizations in the indigent defense policy network have observed wide disparities in the professional independence of the defense role, caseload limits, parity and accountability within state indigent defender programs. These disparities may also have equated to inadequate representation and have led to claims of ineffective assistance of counsel. To reduce these disparities and ensure accountability, many states have established independent oversight committees. A state oversight commission is most responsible for ensuring the defense function by safeguarding indigent defense systems from

political and judicial influence. In addition, independence and state oversight may ensure the quality of services delivered within a state's system. State oversight bodies can monitor caseloads and costs and develop and enforce attorney performance standards (Constitution Project 2009; Desimone 2006; Lee 2004; Spangenberg 2005, 2006a).

Accountability and oversight appear to be evolving concepts in the indigent defense reform movement. States continue to reform their indigent defense programs. From 2000 to 2008, new and reformed methods of administrative oversight were established in ten states (Constitution Project 2009; Spangenberg 2005, 2006a).

Research Questions

The following research questions guided this study:

1. What is the history of indigent defense in the American states? Who are the actors, organizations and institutions involved in the indigent defense reform movement across the American states? What are the current concerns facing indigent defense programs across the American states?
2. How is indigent defense provided in Alabama, Georgia, Louisiana, Mississippi and Texas? What is the level of state administrative oversight in each state? What is the history of indigent defense reform, and who are the actors, organizations and institutions involved in indigent defense reform in these five states?
3. What was the process by which state administration of indigent defense programs became an institutional agenda item? What factors influenced the patterns of state oversight of indigent defense and encouraged reform in these five states?

Methodology

Indigent defense is a pressing issue nationwide and reform is occurring across the American states (Constitution Project 2009; Spangenberg 2005, 2006a). A multiple-case study design can be used to compare variations between units of analysis (Yin 2003). Therefore, “states” constitute the unit of analysis in this research. This comparative, qualitative, multistate study regarding the provision of indigent defense services and decision making provides a foundation for further research on the administrative structure and decision processes used by state officials when making decisions about indigent defense representation.

These particular states were chosen for study because they share a common political culture and regional network but seem to be responding to pressures for indigent defense reform differently (Constitution Project 2009; Elazar 1984; Spangenberg 2005, 2006a). Differences in timing of adoption of state administrative oversight and indigent defense program design indicated different decision processes and therefore influenced case selection. Case selection was also influenced by common sentencing and correctional policies shared across the five states.

The research design developed for this study is consistent with methods defined by the literature (Creswell 2007; George and Bennett 2004; Patton 1990; Schutt 2004; Yin 2003). This project was completed in three stages. The first stage of data collection included the analysis of documentation and archival records such as academic journal articles, court cases, newspaper articles, state statutes, and formal studies. This stage of the research occurred from 2007 to 2009 and validated information obtained from other sources.

The second stage of data collection included an exploratory study of the organizations and individuals involved in indigent defense reform at the national level. This stage involved phone interviews with key informants in the indigent defense policy network. These interviews

identified the dominant themes in indigent defense and other individuals and organizations involved with indigent defense reform across the American states.

The third stage consisted of a comparative case study analysis of indigent defense programs in five Southern states. Data were collected through original interviews with 46 key informants involved with indigent defense in the five Southern states. A total of 30 on-site and 16 telephone interviews were conducted. Interviews were completed in Birmingham, AL, Montgomery, AL, Atlanta, GA, Perry, GA, New Orleans, LA, Jackson, MS, and Austin, TX during 2009.

Overview of Chapters

The literature review provided in Chapter II presents the theoretical frameworks used in this research. The concepts of political culture and policy diffusion are used to explore the factors that influence the agenda setting process. The focus states share a common history as Southern states and share the common traditionalistic political culture (Elazar 1984). However, these states have responded differently to pressures for indigent defense reform. Therefore, the literature review focuses on additional formulations of political culture by examining common themes in the South including ethnic diversity and race. The broad categories of factors that influence the diffusion of ideas may also explain agenda setting. Agenda setting theory is used in this study to identify and analyze factors that have influenced the operation and oversight of indigent defense programs across five Southern states. The following theories are reviewed: (1) policy streams model, (2) previous literature on policy entrepreneurs, (3) internal and external “trigger” theory, (4) issue-attention cycle, and (5) incrementalism

Chapter III presents the methodology and approach used to conduct this research. It provides an initial description of the background and significance of the research topic and details the process by which cases were selected. It also presents the research design and method of data collection. Chapter III concludes with a discussion of the weaknesses and limitations of the study.

Chapter IV presents a historical review of indigent defense across the American states. It provides an initial examination of the right to counsel, followed by an analysis of its subsequent expansion. This chapter concludes with a detailed discussion of various methods of state administrative oversight and current concerns facing state indigent defender programs.

Chapter V presents five cases studies of indigent defense programs in the South. Included in this section is a comparative analysis of the five systems and an examination of the history, description and current concerns of the respective programs. In addition, the case studies identify the actors, organizations and institutions involved in indigent defense reform and analyze the level of state administration in each state.

Chapter VI presents the major findings of this research by detailing the process by which state administration of indigent defense programs became an institutional agenda item. Chapter VI also identifies and analyzes the factors that have influenced the pattern of state oversight and encouraged reform across the five indigent defense programs. Chapter VI closes with an examination of policy implications, areas for future research and conclusions of this research.

CHAPTER II

LITERATURE REVIEW

Indigent defense is a pressing issue nationwide and reform is occurring across the American states (Constitution Project 2009; Spangenberg 2005, 2006a). In February 2010, Attorney General Holder hosted a two day national symposium on indigent defense representation. He claimed that access to counsel for the poor was the “current crisis in our criminal defense system.” He also underscored the critical component of the defense function by noting:

Problems in our criminal defense system aren’t just morally untenable. They’re also economically unsustainable. Every taxpayer should be seriously concerned about the systemic costs of inadequate defense for the poor. When the justice system fails to get it right the first time, we all pay, often for years, for new filings, retrials, and appeals. Poor systems of defense do not make economic sense.

The Department of Justice has initiated the *Access to Justice* program to immediately begin addressing these perceived inadequacies.

Since 1942, forty-two states have adopted various methods of administrative oversight of their indigent defense systems (Constitution Project 2009; Spangenberg 2005, 2006a). This research focuses on the influence of different explanations for agenda setting. The diffusion of administrative oversight of state indigent defense programs has not been the subject of systematic study in diffusion literature. Policy diffusion theory provides a framework for identifying factors that have influenced agenda setting. The focus states have similarities and differences in their institutional structures, actors and demographics. These broad categories of

factors that influence the diffusion of ideas may also explain agenda setting. This review begins with an examination of the theoretical association between diffusion theory, agenda setting process and state administrative reform. The next section focuses on policy diffusion literature to identify and explore factors that promote the transfer of policies throughout the American states.

The final section of this review examines the agenda setting process. Agenda setting theory is used in this study to identify and analyze factors that have influenced the operation and oversight of indigent defense programs across five Southern states. All of the agenda setting theories share common themes including political environments, resources available to the state to confront the agenda item, and pressures created by needs and demands that relate to the demographics of the state. This section includes a review of the following agenda setting theories: (1) policy streams model, (2) policy entrepreneurs, (3) internal and external “trigger” theory, (4) issue-attention cycle, and (5) incremental theory.

Diffusion Environment and Agenda Setting

To examine explanations for differences across state administrative oversight methods, this study considers the concept of state administrative oversight as a form of policy innovation. Rogers (1995) defines innovation in terms of the novelty of the idea to the user—an innovation is any idea that is new to the adopter, regardless of whether the idea is in practice elsewhere. Innovative ideas are thought to flourish in environments that are resource-rich and politically amenable, and where a demand exists for change that is addressed at least in part by the innovation. The innovation environment of state policy decisions is influenced by within-state measures of political support or opposition, resources available both to explore the idea and to

effectuate change, and demands for policy adjustment (Berry and Berry 1990; Mooney and Lee 1995; Savage 1985; Walker 1969).

In the public arena, the transformation of an innovative idea into actual policy change also requires political action through established institutions. This political action occurs through the process of agenda setting. Significant research has been devoted to the study of agenda setting and the method by which an existing condition is defined as a problem for which government action is demanded (Baumgartner and Jones 1993; Cobb and Elder 1983; Cohen, March, and Olsen 1972; Downs 1972; Kingdon 1995; Schattschneider 1960). An agenda is “the list of subjects or problems to which government officials, and people outside the government closely associated with those officials, are paying some serious attention at any given time” (Kingdon 1995, 3). Although numerous issues compete for the attention of policymakers and the public, public officials lack the time, knowledge and resources to consider the many issues constantly competing for their attention (Simon 1986).

It is important to link agenda setting and the spread of ideas. As the concept of state administrative oversight diffused across the states, it developed into a diverse range of programs. Conferences, publications, professional organizations and the Internet have increased direct contact and information sharing between the states. The volume and speed of information diffusion facilitates the exchange of information regarding state administrative oversight of indigent defense programs. The level, variety and content of diffused information influence the degree of informed decision making in the states. Differences in agenda setting approaches may result in various policy decisions regarding state administrative oversight of indigent defender programs. Finally, state agenda setting approaches demonstrate how states with widely different

resources, political contexts, and citizen demands are dealing with U.S. Supreme Court decisions, i.e. *Strickland*.

The focus states have similarities and differences in their institutional structures, actors and demographics. This study draws upon policy diffusion and agenda setting literature to explore the information environment within each state. Policy diffusion theory provides a framework for identifying factors that may be influential in spreading ideas and in explaining the process of agenda setting. Figure 2.1 presents the conceptual relationship between diffusion, agenda setting and state policy decisions.

[Figure 2.1 about here]

The concepts of a state innovation environment and an agenda setting process can be linked sequentially into a framework for analyzing the spread of state administrative reform. Figure 2.1 illustrates the sequential relationship between a diffusion environment, the agenda setting process and state administrative reform.

In this framework, an idea moves from the general information environment of state decision makers into a model of agenda setting when the diffusion environment contains favorable political conditions, sufficient resources to entertain new ideas, and sufficient demand for change. These broad categories of factors that influence the diffusion of ideas also contribute to the agenda setting process. Figure 2.1 also identifies the major agenda setting theories. All of these agenda setting theories share common themes that engage political environments, resources available to the state to confront the agenda item, and pressures created by needs and demands that relate to the demographics of the state. From an agenda setting process, an innovative idea may successfully emerge as a change in state policy—here, as state administrative oversight of

indigent defense services. This administrative reform takes shape in one of several broad categories that have emerged over time as this concept has diffused across the states.

Policy Diffusion Theory

This study uses diffusion literature to identify and explore factors that promote the transfer of policies and innovations throughout the American states. Rogers (1995) defines innovation as “an idea, practice, or object that is perceived as new by an individual or other unit of adoption” (12). Previous research suggests that innovative states are wealthier, more populated and urbanized while other studies conclude that innovation is both issue-specific and time-specific (Gray 1973; Walker 1969).

Existing research on policy diffusion suggests that states emulate the policy decisions of neighboring states or states within the same region (Berry and Berry 1990; Hays and Glick 1997; Mintrom 2000; Mooney and Lee 1995). These peer states usually share economic, geographic and demographic characteristics; as a result, risk-averse states will often follow the policy decisions of regional leaders (Walker 1969).

State innovation has routinely followed a three-phase, S-curve distribution pattern whereby states apply the social learning process to adoption decisions. In this process, the policy is initially adopted by a few early adopters. After monitoring the success or failure of the policy, the second wave of adopters rapidly adopt the policy. For example, during the 1980s and 1990s, the majority of state legislatures passed one or more hate crime laws. The criminalization and diffusion of hate crime legislation was largely a product of the state’s internal political culture and relationship with its regional peers (Grattet, Jenness and Curry 1998). Policy innovation is affected by regional influences as pressure to adopt increases as a greater number of neighboring

states adopt the policy (Berry and Berry 1990). Therefore in the final phase of this pattern, the remaining laggard states adopt the policy (Rogers 1995; Walker 1969). This trend also acts as a time-saving mechanism as policymakers copy the policy decisions of their peer states instead of evaluating numerous alternatives (Mooney and Lee 1995).

The diffusion environment encompasses internal factors that explain the transfer of ideas and policies throughout the American states. The following section explores contextual factors that influence the diffusion of indigent defense policy and may explain the process of agenda setting in five Southern states.

Internal Factors

The concepts of diffusion and agenda setting are used in this research to understand the differences across the American states. This research considers the concept of state administrative oversight as a form of policy innovation. Previous diffusion research explores the internal variables that explain state policy adoption (Berry and Berry 1990; Savage 1985). Depending on the policy type, policy diffusion and state innovation can be explained through measures of politics, resources and demands (Mooney and Lee 1995). All of the agenda setting theories share common themes including political environments, resources available to the state to confront the agenda item, and pressures created by needs and demands that relate to the demographics of the state. These broad categories of factors that influence the diffusion of ideas also influence the innovation environment of state policy decisions. These contextual factors reflect variations in the conditions within each state and may influence the degree of informed decision making in the states.

Politics can be operationalized by measuring state characteristics such as political culture, government and citizen ideology, interest group strength, party competition, governorship power, state supreme court ideology, state court professionalism and judicial ideology. The focus states share a common political culture but have adopted various methods of providing indigent defense services. These intrastate variations suggest the importance of the political culture context in regards to indigent defense policy. The following review explores the relationship between political culture, racial/ethnic diversity and state policy adoption decisions, particularly in regards to social welfare and criminal justice policies. This review is followed by an examination of other political factors that may influence the diffusion of ideas and agenda setting.

A significant body of existing research suggests that state policy decisions are associated with state political culture and the racial/ethnic diversity of its citizenry (Elazar 1984; Hero and Tolbert 1996). In his seminal work on political culture, political scientist Daniel Elazar (1984) found that the United States could be divided into three dominant political cultures: individualistic, moralistic and traditionalistic. Furthermore, Elazar concluded that the cultures could explain variations between policies and programs at the state and local level. These political cultures are strongly associated with particular regions of the country and the values, attitudes and migration patterns of the original settlers.

Elazar's political culture classification is based on the geographical distribution of the original settlers. As colonists moved westward, culture patterns also diffused in a westward direction. Migration groups established pure cultures or combinations of cultures in each of the fifty American states. These cultures are associated with explicit views about government, bureaucracy and politics. The moralistic culture began in New England and expanded across the

top of the country, while the individualistic culture originated in the mid-Atlantic states and spread to the Midwest. Finally, the traditionalistic culture was established in the Southern states and has since extended to the Southwest (Elazar 1984).

According to Elazar's typology, the five states included in this research have a traditionalistic political culture. Government is viewed as a mechanism for maintaining the status quo and furthering the interests of the elites. Political power is held among a small group of people whose family connections and social standing afford them the privilege to govern. Citizens outside of the established elite are discouraged from participating in politics and government. The political systems within the traditionalistic culture are predominately influenced by the political values of the elite; therefore party competition is low and is usually dominated by a single party (Elazar 1984).

The traditionalistic culture seeks to preserve the status quo. Unless pressured from the outside, political leaders in the traditionalistic culture rarely initiate change or establish new programs, as both have the potential to disrupt the conventional order. The culture is intuitively antibureaucratic and discourages the development of government agencies (Elazar 1984).

Elazar does not address all aspects of political culture. Additional research has expanded upon the Elazar theory. Political culture can also be measured by Ira Sharkansky's operationalization of Elazar's typology. This measure provides additional insight into the variation within the Elazar theory. Sharkansky (1969) ranks the three typologies along a continuum, with moralistic and traditionalistic culture types at opposite ends of his political culture scale. Each state was assigned a culture rating: 1 is a purely moralistic culture, 5 is a purely individualistic culture and 9 is a purely traditionalistic culture. These scores are correlated

with twenty-three variables reflecting political participation, government size, and government functions.

Political culture has been accepted as a significant explanatory variable in comparative state policy literature (Johnson 1976; Lieske 1993; Sharkansky 1969). Each culture in his classification expresses a different understanding as to the extent of public participation and governmental responsibilities. Lowery and Sigelman (1982) conducted a study on the direct association between political culture and state policymaking and found a weak correlation between the two variables. However, in explaining their results, the authors conclude that variations in state policies may indicate differences between “elite cultures,” those making policy decisions, instead of variations in mass public opinion across cultures (Lowery and Sigelman 1982). Fitzpatrick and Hero (1988) found that traditionalistic states were less innovative and had less party competition than moralistic and individualistic states. The authors further conclude that states within the traditionalistic culture have higher rates of income inequality, suggesting a distinct divide between the elites and the rest of the citizenry. These findings are consistent with Elazar’s theory that traditionalistic states facilitate hierarchical class systems, avoid change and resist competition among political parties.

Political culture is also a significant determinant in state and local expenditures and is used in numerous studies to explain variations in public expenditure levels across the states (Johnson 1976; Miller 1991). Koven and Mausolff (2002) measured public expenditure levels among the three cultures from 1992 to 1996 and found that average per capita spending was lowest in traditionalistic states. Traditionalistic states prioritized spending on functions that serve to maintain order, such as police and corrections expenditures, as opposed to redistributive

expenditures including as health care, public welfare, and education programs. These findings support the Elazar theory that traditionalistic states share a more restrictive view of government.

Existing studies indicate a relationship between political culture and social welfare spending in the American states. In their research on policies supporting low income children, Meyers, Gornick and Peck (2001) and Mead (2004) found that traditionalistic states afford the least financial support, do not significantly reduce tax burdens for the poor, and implement harsher welfare work requirements than in the other two cultures. Similarly, previous research concludes that traditionalistic states have lower government expenditures per capita on social welfare programs than do individualistic and moralistic states (Johnson 1976; Kincaid 1980). These conclusions reflect the Elazar theory that traditionalistic states are more concerned with maintaining their hierarchical societies and less concerned about correcting inequalities.

Additional research expands upon Elazar's theory and includes measures of race/ethnic diversity to explain variations in state policy adoption decisions. These studies suggest that Elazar's typology may largely reflect differences in social diversity. The following section explores the relationship between the racial and ethnic composition of the state and social policy adoption decisions.

Racial/ethnic Diversity

A significant body of research suggests that minorities are disproportionately impacted by criminal justice policies (Hero 2003; Mauer 1999). The impact of race and ethnicity within the criminal justice system underscores the importance of state racial/ethnic context in regards to indigent defense policy.

Existing literature indicates that race and racial attitudes impact policy decisions and explain the intrastate variations in state policies within the American states (Hero and Tolbert 1996; Soss et. al 2003; Wright 1976). Furthermore, levels of racial and ethnic diversity and inequality continue to shape public opinion, public policies and social outcomes (Hero and Tolbert 1996; Key 1949; Meier, Stewart and England 1989; Meier and Stewart 1991).

Particularly in the South, the literature suggests that states with large minority populations have increased racial tension and are therefore more likely to adopt less desirable policies affecting respective minority groups (Glaser 1994; Johnson 2001; Key 1949). In addition, the size of the minority population is related to the social outcomes affecting their population. Hero (1998) found that heterogeneous states adopt policies more favorable to minorities, while states with homogeneous white populations and those with larger minority populations adopt policies less favorable to minorities.

Key (1949) suggests that attitudes about race and the political culture of the South are closely related. Key determines that Southern political culture is a result of a concern about the maintenance of white supremacy in small regions defined as “black belts.” Blacks constitute over forty percent of the population in black belt regions. Although small in number, whites in these black belts counties have historically been highly unified, politically-skilled and largely motivated by a desire to preserve white rule. Therefore, Southern whites have had a disproportionate impact on state policymaking in Southern states.

Furthermore, Key concluded that the structure of Southern political institutions has ensured the subordination of the black population. In particular, the one-party system was encouraged by the black belt whites as a mechanism to maintain the status quo and undermine the political strength of progressives. With a black majority, whites in black belt counties feared

that a two-party system could result in the election of black public officials. In addition, suffrage restrictions such as literacy tests and poll taxes further disenfranchised blacks in the South.

Key suggests that although the South shares a common history and culture, Southern unity and Southern political regionalism has been overstated. Instead, racial demographics explain differences between state policy decisions within the region. Southern states such as Florida and Texas have a smaller black population and therefore deviate from the conventional political attitudes of the South. Race only becomes a political factor when race relations are threatened. Within these states and counties, the white majority is less concerned with maintaining white rule and therefore makes policy decisions without regard to race. Key notes that Southern political institutions will slowly be altered by the decline of the black population and the growth of cities and industry, suggesting the future effect of urbanization on state policy adoption decisions.

Although the South shares a number of key characteristics, a wealth of research provides evidence to show political and socioeconomic variation among these Southern states. The political landscape in Alabama transformed from a one-party system to a more politically competitive environment during the mid-1900s. This competition was largely due to the increase in participation and political influence of black voters over the last fifty years (Menifield, Shaffer and Brassell 2005). From 1971 to 1993, the number of black elected officials in Alabama grew from 105 to 699. This increase in black elected officials is one of the highest across the American states. In addition, Alabama voters have routinely voted Republican in presidential elections and Democratic in state and local elections. The growth of the Republican Party was slower in Alabama than in other Southern states. Scholars attribute this lag to the polarizing effect of George Wallace throughout the 1960s, 1970s and 1980s (Stanley 1998). However, this

trend appears to be slowly changing as Republicans controlled a majority of state offices throughout the 1990s. Accordingly, recent research indicates that although Alabama is politically competitive, it is possible that the state will slowly transition back to a one-party Republican-controlled state (Cotter 2007).

Party competition also increased in Georgia during the 1990s. During this time, partisan strength was equally divided among Republicans, Democrats and Independents. Democrats historically retained the support of African Americans, voters in central cities of metropolitan areas and a portion of voters in rural counties. Redistricting and the elimination of the straight-ticket punch have contributed to the growth in Republican control (Bullock 1998). The current political environment is dominated by the Republican Party. After the 2004 election, Republicans controlled the governorship, seven of thirteen congressional seats and both houses of the state legislature (Bullock 2007).

A wealth of research has addressed Louisiana's electoral politics. Although it shares many sociodemographic and economic characteristics with its neighboring states, Louisiana politics is considered unique and distinct. The state mirrors Alabama and Mississippi in variables including income, education levels and racial diversity. However, unique cultural characteristics such as its populist history, large urban population and significant Catholic population have distinguished Louisiana from other Southern states (Menifield, Shaffer and Brassell 2005). Unlike the remainder of the Deep South, Louisiana Democrats have remained highly competitive in a Republican dominated region. Partisan strength and black political influence in Louisiana have increased over the last sixty years and contributed to the highly politically competitive environment. In 1998, Louisiana was the only state in the Deep South with two Democratic senators. For the first time in Louisiana history, a Republican governor was reelected in 1999. In

another surprising turn of events in 2000, the Republican candidate for president easily won the state in one of the most contested races in history. However, Democrats were able to retain one U.S. Senate seat in 2002 and 2008. Although Democrats recaptured the governorship in 2003, Republican Governor Bobby Jindal was elected in 2007 (Parent and Perry 1998, 2007).

The political landscape in Mississippi was transformed during the 1960s. Since then, Mississippi has been redefined from a one-party Democratic state to a two-party competitive state. This competition is a reflection of the trend over time in the party and ideological separations among adult Mississippians. This trend is consistent with Key's (1949) observation of the regional factionalism among Mississippi voters. Republicans have recently been more successful at the federal level while Democrats have historically dominated state and local offices. Research suggests that the success of Democrats at the local level may be a reflection of the individual candidates rather than party issues (Breux, Slabach and Dearing 1998). Studies also suggest that the Democratic-controlled state legislature has been more successful at enacting progressive legislation than its Republican-dominated peer states (Breux, Shaffer and Gresham 2007; Shaffer and Menifield 2005). However, party competition remains high. During the 1990s, Mississippi Republicans occupied a number of national leadership posts. These high-profile positions may have contributed to the development of two-party system in the state.

Texas has remained a one-party state since Key's seminal study in 1949. The Democratic Party dominated Texas politics until the 1980s. The state has since transitioned from a Democratic to a Republican state. Two major factors continue to transform the political environment in Texas. One is the continued influence of the Republican Party at the local, state and federal levels. The other factor is the increasing influence of the minority population, particularly the Mexican American population. Texas history has influenced its electoral politics.

Ideals such as conservatism and a fierce sense of independence have dominated the political ethic of the state. In addition, race and ethnicity have historically played a role in Texas politics. Although African Americans and Mexican Americans have gained political power since the Voting Rights Act was extended to Texas in 1975, their representation is not proportionate to their percentage of the population. However, population figures suggest that the minority population will soon be the numerical majority; scholars predict that this demographical change will likely result in another political power shift (Lamare et al. 2007; Lamare, Polinard and Wrinkle 1998).

Expanding upon Key's typology, Lieske (1993) developed a new measure of American subcultures at the county level. His study includes forty-five measures of racial origin, ethnic ancestry, religious affiliation, and socioeconomic variations. His research divides the United States counties into ten distinct categories based on the racial-ethnic and religious identities of citizens. Lieske concludes that his measure of American subculture can explain variations in social and political behavior. The counties within the five states explored in this research are categorized based on their particular cultural characteristics.

Other research suggests that social diversity is a significant determinant of state policy adoption decisions. Hero and Tolbert (1996) and Hero (1998) conclude that race and ethnic diversity levels explain variations state policy adoption decisions among states. Based upon the type and degree of racial/ethnic diversity in the population, the states are categorized as: homogeneous, heterogeneous, and bifurcated. Homogenous states have populations that are primarily white and have small black, Latino, Asian and white ethnic populations (nonnorthern and nonwestern European whites). Heterogeneous states have large white ethnic populations, as well as significant black, Latino and Asian populations. Finally, bifurcated states have both large

minority populations, usually black and Latino, and a large white, non-ethnic population. The authors correlate their classifications with Elazar's typology, generally connecting homogeneous and moralistic states, heterogeneous and individualistic states and bifurcated and traditionalistic states.

In addition, the racial and ethnic composition of a state is a significant determinant of social policy adoption. Regarding state welfare policy, the degree of welfare benefits is inversely related to the size of a state's black population. States with a larger proportion of minorities are less tolerant of extending welfare benefits (Howard 1999; Wright 1976). However, Fording (2003) concluded that welfare policies are more generous in states where African Americans are better represented in government. Other studies indicate that welfare benefits decrease as the percentage of black recipients of welfare increases (Fording 2003; Howard 1999; Orr 1976). Increased minority diversity is correlated with lower measures of education such as graduation rates and suspension ratios, infant mortality rates, and Medicaid expenditures and higher incarceration rates (Hero 2003; Hero and Tolbert 1996). Similarly, Soss et. al (2003) concluded that states with more restrictive welfare policies also had higher incarceration rates. Finally, Hero (1998) found that incarceration rates were higher in states with larger minority populations.

Table 2.1 presents the political culture of each state as defined by Elazar, Hero and Tolbert and Sharkansky.

[Table 2.1 about here]

The Elazar theory classifies the five states explored in this research as traditionalistic. Sharkansky (1969) operationalizes Elazar's typology by ranking the three typologies along a continuum. Each state was assigned a culture rating: 1 is a purely moralistic culture, 5 is a purely individualistic culture and 9 is a purely traditionalistic culture. These scores are correlated with

twenty-three variables reflecting political participation, government size, and government functions. According to Sharkansky's typology and consistent with Elazar's classification, the five states included in this research are traditionalistic. The traditionalistic culture is strongest in Mississippi and lowest in Texas.

The level of ethnic and racial diversity within each state is captured by Hero and Tolbert's (1996) index reflecting diversity within the states. Data from the 1980 and 1990 census were used to create the index and incorporates a state's black, Hispanic and Asian population. A higher score indicates greater minority diversity or greater degree of bifurcation. Bifurcation or minority diversity is high in the focus states. Texas is the most bifurcated of the five states and is the third most bifurcated state in the nation (behind New Mexico and California). The level of diversity is second highest in Mississippi and followed by Louisiana, Georgia and Alabama.

It is important to note that according to Key (1949), Southern states like Texas have a smaller black population and therefore deviate from the conventional political attitudes of the South. In addition, level of minority diversity may not be a significant contextual factor, given the high levels of diversity in all five focus states.

Research illustrates that traditionalistic states are less innovative and share a more restrictive view of government (Fitzpatrick and Hero 1988; Johnson 1976; Koven and Mausolff 2002; Mead 2004). Finally, states with greater minority diversity, or greater degree of bifurcation, are less likely to provide services to poor populations (Davies and Worden 2009; Hero 2003; Hero and Tolbert 1996).

Given the legal focus of this research, it is important to note the historical development of the criminal justice system within this region. Applying the typologies of both Elazar and Sharkansky, political culture is a significant determinant of state implementation of capital

punishment and frequency of executions (Fisher and Pratt 2006; Norrander 2000). Existing research indicates that traditionalistic states are more inclined to adopt death penalty laws and to execute inmates more frequently (Fisher and Pratt 2006).

Likewise, previous research suggests a strong relationship between race and punitive sentences. Studies consistently indicate that African American defendants are disproportionately sentenced to death and executed (Blume, Eisenberg and Wells 2004). The incarceration rates in the five states explored in this research are considerably higher than the national rate of incarceration (Pew Center 2008). In addition, these states consistently lead the nation in death row inmates, death sentences and executions (Death Penalty Information Center 2009a).

The shared sentencing and corrections policies among the focus states further provides a context for the diffusion environment and agenda setting process within each state. According to 2006 prison population estimates on the number of state inmates per 100,000 residents, the focus states are ranked among all fifty states as follows: Louisiana (1), Georgia (2), Texas (3), Mississippi (4) and Alabama (7) (Pew Center 2008).

To further reflect the sentencing policies of the five states explored in this research, Table 2.2 presents the state incarceration rates from 1995 to 2005. It is important to explore this issue in a national context; therefore the national incarceration rate for state inmates across the American states is included in Table 2.2.

[Table 2.2 about here]

From 1995 to 2000, Texas consistently had the highest incarceration rate among the five states. The number of persons incarcerated in Mississippi has notably increased, with approximately 840 people per 100,000 residents in state custody in 2005. The rate of incarceration in each of the five states is well above the national average in the eleven year time period presented in

Table 2.2. In 2005, the incarceration rate across the American states was 423 sentenced inmates per 100,000 U.S. residents. This national average is significantly below that of Georgia (519), which had the lowest incarceration rate of the focus states in each of the eleven years. Table 2.2 illustrates the common punitive sentencing policies of the five states explored in this research.

Death penalty statistics further reflect common criminal justice policies that are much more severe than the nation as a whole. Likewise, these states consistently lead the nation in death row inmates, death sentences and executions. Table 2.3 presents the total number of death row inmates in these states and the state ranking among the thirty-six active state death rows as of January 1, 2009.

[Table 2.3 about here]

Texas ranks third in the nation in the number of inmates currently held on its death row while the remaining states rank among all fifty states as follows: Alabama (5), Georgia (9), Louisiana (12), and Mississippi (15). Similarly, 35 percent (1160) of the total number of death row inmates (3297) in the country are incarcerated in death rows in these five states (Death Penalty Information Center 2009a).

From 1976, when the death penalty was reinstated, to 2007, state court systems have imposed 7236 death sentences; almost 60 percent (4174) of those death sentences were imposed in Southern courts, further reflecting the region's common punitive criminal justice policies (Death Penalty Information Center 2009b).¹

The total number of death sentences imposed from 1977 to 2007 is reported in Table 2.4.

[Table 2.4 about here]

¹ The states categorized as 'Southern' by the Death Penalty Information Center include the following states: Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Maryland, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, Texas and Virginia.

Nationwide, Texas courts have imposed the greatest number of death sentences, followed by Alabama (5th), Georgia (11th), Mississippi (15th), and Louisiana (17th). Approximately 25 percent (1854) of the total number of death sentences during the thirty year period were imposed in these five state court systems (Death Penalty Information Center 2009b).

Of the 1168 executions since 1976, almost 83 percent (966) occurred in the South. The total number of executions in the five states since 1976 and their ranking among all fifty states is presented in Table 2.5.

[Table 2.5 about here]

Texas also leads the country with 439 total executions, with the remaining states ranking between seventh and nineteenth nationwide. The executions in these five states constitute 48 percent of the nation's total executions since 1976 (Death Penalty Information Center 2009c).

These state policy trends may be a reflection of the traditionalistic political culture rather than anti-black sentiment. However, statistics suggest that the death penalty is not related to deterrence. State homicide rates do not vary based on the state's use of the death penalty (Bailey and Peterson 1989; Bowers 1980; Cochran, Chamlin, and Seth 1994). Therefore, it appears that states do not adopt death penalty laws as a means to reduce crime. On the contrary, existing research suggests that states adopt capital punishment statutes as a method to maintain social order, consistent with the hierarchical patterns of the traditionalistic culture (Fisher and Pratt 2006).

This review underscores the relationship between political culture, racial/ethnic diversity and state policy adoption decisions, particularly in regards to social welfare and criminal justice policies. The five states explored in this research share a common political culture and regional heritage but have responded to pressure for indigent defense reform differently. These intrastate

variations suggest the importance of state racial/ethnic context in regards to indigent defense policy.

The literature suggests that public policy is closely related to the political preferences of the elected representatives and the public opinion within each state (Erickson, Wright, and McIver 1993; Hero and Tolbert 1996). Existing research suggests a link between ideology and state policy adoption decisions regarding state social welfare spending (Hill and Leighley 1992), state funding of abortion (Meier and McFarlane 1992) and state education spending (Wood and Theobald 2003). Citizen and government ideology is captured through Berry et al's (1998, 2001) measure. This index consists of roll call votes of state legislatures, congressional election outcomes, party competition of state legislatures, party of the governor and assumptions about voters and political elites. Scores range from zero (most conservative) to 100 (most liberal). Liberal citizen and government ideology is expected to encourage state administration of indigent defense.

Figure 2.2 illustrates the change in government ideology in the focus states from 1995 to 2006.

[Figure 2.2 about here]

The difference in the ideological preferences of government officials vary by state and year. Over the eleven year period, government ideology has increased and decreased in each of the five states. However, one trend is worth noting. Since 1999, elected officials in Georgia have become significantly more conservative.

Figure 2.3 presents the change in citizen ideology in the focus states from 1995 to 2006.

[Figure 2.3 about here]

The level of liberalism among citizens in the five states is moderately weak to weak during the eleven years displayed in Figure 2.3. Although citizen ideology varies slightly by state and year, public opinion in the focus states appears more stable and consistent over time than government ideology.

Interest group power is another key contextual factor which reflects the influence of interest groups on agenda setting and policymaking. Table 2.6 presents the classification of the overall strength of interest groups in the five focus states from 2006 to 2007.

[Table 2.6 about here]

Table 2.6 incorporates an updated measure of interest group strength which categorizes the state according to level of interest group influence. The impact of interest groups within each state is classified as dominant, dominant/complementary, complementary, complementary/subordinate, and subordinate. The updated measure is derived from the Hrebenar-Thomas study which uses a combination of qualitative and quantitative methods to compare the impact of interest groups in the fifty states over time. Although interest group strength is high in all five states, it is most dominant in Alabama. Previous research illustrates the positive influence of interest groups on indigent defense legislation (Constitution Project 2009; Davies and Worden 2009; Worden and Worden 1985). However, studies suggest that the South is the region most dominated by powerful interest groups which are predominately affiliated with business and private sector interests. Nownes, Thomas and Hrebenar (2008) classified the fifty states according to the overall impact of interest groups. According to their classification, Alabama is one of four states in which interest groups consistently and overwhelmingly influence policymaking.

Klarner's (2003) measure of state party control and interparty competition is another key contextual factor which reflects the level of partisan balance in state governments over time.

Existing research suggests that competition and innovation are positively correlated (Walker 1969) and that competitive states tend to spend more on social programs for the poor (Barrilleaux, Holbrook and Langer 2002; Gray 1973). Studies regarding hate crime legislation (Hayes and Glick 1997), state welfare spending (Hero and Tolbert 1996; Key 1949) and education policy (McLendon, Heller and Young 2005) indicate that competitive states are more innovative. Given the focus of this research, it is important to note that existing research suggests that in conservative states with politically competitive environments, policymakers are less likely to adopt innovative criminal justice policies (Stucky, Heimer and Lang 2005). Table 2.7 illustrates the indices of state party control from 1995 to 2007.

[Table 2.7 about here]

Party competition was highest in Alabama, with the party of the governor and the party of the legislature shared only four times during the thirteen year period presented in Table 2.7. Party competition was next highest in Mississippi and Texas, as both states experienced split party control eight times during the thirteen year period. In Georgia, party control of the governorship and the legislature differed only twice.

The level of gubernatorial power within each state is also a key contextual factor. Previous research suggests the influence of powerful governors on state policy decisions regarding state spending (Barrilleaux and Berkman 2003) and health care policy (Karch 2007). The power of the governorship is reflected in Beyle's (2009) index which accounts for powers given to the executive by the state constitution and state statute. Included in this index are six measures of institutional power including: tenure potential, appointment power, the number of other statewide elected officials, budget power, veto power and party control of state governorships over time. Each measure is scored on a scale of 1 to 5. The sum of the scores on

the six individual indices is averaged. A higher score indicates a higher degree of gubernatorial power.

Figure 2.4 presents the level of gubernatorial power in the fifty states and in the focus states from 2000 to 2007. It is important to note that data for 2006 was missing.

[Figure 2.4 about here]

The institutional power of the governors in these five Southern states is moderately weak. The average power of governors across the American states is included in Figure 2.4 for comparison. Gubernatorial power in the focus states was lower than the national average in every year but 2003. In that year, the power of the governor in Mississippi peaked and was slightly higher than the national average. Since 2003, the Louisiana governorship has steadily gained more power, while gubernatorial strength in Alabama has remained consistently low.

State supreme court power is another internal characteristic that provides a context for the diffusion environment and agenda setting process. Existing research confirms the positive influence of state supreme courts on indigent defense legislation (Constitution Project 2009; Spangenberg 2005). Significant research examines the use of courts to establish policy change (Cortner 1968; Olson 1990; Unah 2003). Recent research explores state court involvement in education policy. As with indigent defense, education policy has been historically left to state and local control. Funding and quality vary from location to location due to variations in local property taxes, and research indicates that state courts are more inclined to mandate education reform when there is greater funding inequality (Roch and Howard 2008; Wilhelm 2007; Wood and Theobald 2003).

State judicial power is another key contextual factor and is captured through Squire's (2008) measure of state supreme court professionalization. Existing research suggests that these

measures reflect the role of state courts within their particular judicial and political structures (Brace, Langer and Hall 2000; Hall 2008; Langer 2002). This index incorporates measures of judicial salaries, staff, and docket control, which includes mandatory and discretionary jurisdictions and caseload data. Table 2.8 presents the indices of state supreme court professionalism in 2004.

[Table 2.8 about here]

The level of state supreme court professionalism is highest in Texas and Louisiana and is followed by Georgia, Alabama and Mississippi respectively. The national average is included in Table 2.8 for comparative purposes. The state supreme courts in Texas, Louisiana, and Georgia were more professional than the national average in 2004.

Judicial ideology is another contextual factor that may explain the policy diffusion environment and the agenda setting process. Previous studies have underscored the influence of judicial ideology. A wealth of research has focused on judicial preference in the United States Supreme Court (Tate 1981), federal courts (Goldman 1966, 1975; Songer and Davis 1990; Songer 1982), and state courts (Hall and Brace 1992; Kilwien and Brisbin 1997; Ulmer 1962). Securing a valid and reliable measure of state supreme court ideology has been challenging for researchers (Brace and Hall 1990; Glick and Pruet 1986; Hall and Brace 1989). Measures such as party affiliation and content analysis have been successful determinants of federal court ideology but were less applicable at the state-level. Partisan affiliation does not adequately capture the ideological differences between state supreme courts. In addition, content analysis is stymied by the limited number of judicial speeches or newspaper editorials written prior to appointment (Brace, Langer and Hall 2000).

Brace, Langer and Hall (2000) operationalize the ideological preferences of state supreme court justices through an index measuring justices' party affiliations, the ideology of the states at the time they took office and the method of judicial selection in the state. Table 2.9 displays the indices of state supreme court ideology in the focus states from 1960 to 1993.

[Table 2.9 about here]

Table 2.9 presents the means, minimums, maximums and differences of the party-adjusted judicial ideology score. A higher score indicates a greater degree of liberalism. The national rankings of state court liberalism are included in Table 2.5. It is important to note that the data presented in Table 2.5 incorporates 52 state high courts. Oklahoma and Texas have essentially two state supreme courts. The Texas Court of Criminal Appeals is the court of last resort for criminal cases while the Supreme Court of Texas is the highest court for civil matters. Given the focus of this research, Table 2.5 reflects information regarding the Texas Court of Criminal Appeals. The average ideological preferences of the state justices are comparable. Although the supreme courts in each of the focus states have remained conservative over time, the degree of judicial liberalism is highest in Texas and lowest in Mississippi. The difference between the maximum (most liberal) and minimum (most conservative) scores are also illustrated in Table 2.5. This score reflects the degree of heterogeneity within the high courts. State courts in Alabama, Georgia, Louisiana and Texas are not ideologically diverse. However, the Mississippi state supreme court is significantly more heterogenic than the other focus states.

Economic measures are other internal characteristics that may influence the diffusion of indigent defense policy and may explain the process of agenda setting in the focus states. Economic indicators, termed "slack resources," have been associated with state policy decisions (Gray 1973; Rogers 1995; Walker 1969). Wealthier states are expected to provide a greater level

of support for state administration of indigent defense. State wealth is reflected through measures of legislative professionalism (Squire 1993, 2007), levels of educational attainment, per capita gross state product, and levels of urbanization.

State legislative professionalism may also influence the diffusion of ideas and the agenda setting process. Previous research suggests that legislative professionalism is an indicator of general professionalism of state government (McNeal et al. 2003). Studies regarding the deinstitutionalization in juvenile corrections (Downs 1976) and e-government (McNeal et al. 2003; Tolbert, Mossberger, and McNeal 2008) suggest a positive association between legislative professionalism and innovative policies. Table 2.10 presents indices of state legislative professionalism in the five states from 1979 to 2003.

[Table 2.10 about here]

Squire's index (1993, 2007) accounts for legislative salary, session length and staffing and presumes that more professional legislatures are better able to participate in the policymaking process. It is predicted that higher levels of administrative oversight will be positively associated with legislative professionalism. The state legislatures in every state except Texas became less professional from 1979 to 2003. In the four years the legislatures were measured, the Texas legislature was the most professional while the Alabama legislature was the least professional in every year except 1986. The national average is included in Table 2.10 for comparative purposes. The national average was higher than the levels of state legislative professionalism in the five focus states in 1979 and 1986. The Texas state legislature was more professional than the national average in 1996 and 2003.

Levels of educational attainment, gross state product and urbanization are economic indicators that have been associated with state innovation (Gray 1973; Rogers 1995; Walker

1969). These factors also illustrate the diffusion climate in the five states. Data for these factors were obtained from the U.S. Bureau of the Census for various years. Per capita gross state product data were compiled by the author using population figures from the U.S. Bureau of the Census.

The percentage of the population with a high school degree or higher level of education in 1990 and 2000 is presented in Figure 2.5.

[Figure 2.5 about here]

The levels of educational attainment in the focus states are lower than the national average in both 1990 and 2000. The variation in educational attainment across the five states is low. As compared to the other focus states, the percentage of the population with a high school degree or higher level is slightly higher in Georgia and Texas.

State-level data on gross state product from 1995 to 2005 is illustrated in Figure 2.6.

[Figure 2.6 about here]

Per capita gross state product in Texas and Georgia closely follows the national average. Over the eleven year period, state wealth in Louisiana, Alabama and Mississippi is lower than the national per capita gross domestic product.

The percentage of the population living in urban areas in each state in 1990 and 2000 is presented in Figure 2.7.

[Figure 2.7 about here]

In each census year, Texas was the most urban state, followed by Louisiana, Georgia, Alabama and Mississippi. Texas was also more urban than the national average in both years.

Measures of demand refer to the severity of a problem or degree of need for a solution in a particular policy area (Mintrom 2000). These factors also provide a context for the diffusion

environment and agenda setting process. In previous research on state lottery adoptions, Berry and Berry (1990) operationalized demand by measuring the number of neighboring states that had adopted the lottery. Similarly, in a recent study on electronic government (e-government), demand was measured by Internet use of state residents (McNeal et al. 2003; Tolbert, Mossberger, and McNeal 2008). The demand for indigent defense reform may be operationalized as the percentage of crime per state resident, state expenditures for correctional activities per capita, and percentage of persons living in poverty. States with higher crime and poverty rates may increase the demand for legal services for the poor. Expenditure levels for correctional activities may indicate increased demand for indigent defense representation. States with higher demand may be more likely than other states to support state oversight of the provision of defense services for the poor.

Data on state-level direct correctional expenditures were obtained from the *Sourcebook of Criminal Justice Statistics* for various years. Direct expenditures for correctional activities include state spending for correctional institutions and other corrections. Correctional institutions are any facilities for confinement of convicted adults or adjudicated and delinquent juveniles. Other correctional spending incorporates costs associated with non-institutional correction activity including parole boards and programs, pardon boards, and halfway houses. Poverty level and crime rate data is obtained from the United States Bureau of the Census for various years.

Figure 2.8 illustrates the offenses known to police per 100,000 populations from 1995 to 2005.

[Figure 2.8 about here]

Crime rates dropped nationwide and in each focus state from 1995 to 2005. Louisiana experienced the largest decline in crime, followed by Georgia, Mississippi, Texas and Alabama

respectively. However, the rates of crime in Louisiana, Georgia and Texas were consistently higher than the national average over the eleven year period. From 1998 to 2005, levels of crime in Alabama were higher than the national average.

Figure 2.9 presents state expenditures for correctional activity per capita.

[Figure 2.9 about here]

The national average is included for comparison. Direct expenditures on correctional activities have increased over the six year period nationally and in each of the focus states. Georgia, Texas and Louisiana spent the most per capita on correctional activities over the six year period as compared to the other focus states. From 2002 to 2006, per capita correctional expenditures in Georgia were higher than the national average. Direct expenditures per capita in Texas closely followed the national average since 2004. Correctional expenditure levels per capita were lowest in Alabama over the six year period.

Figure 2.10 presents the percentage of individuals below poverty line from 1995 to 2005.

[Figure 2.10 about here]

From 1995 to 2005, the poverty rates of the focus states were consistently higher than the national poverty rate. As compared to the other five states, the rates of poverty were highest in Mississippi and Louisiana and lowest in Georgia and Texas.

This review included an examination of the internal characteristics that provide a context for the diffusion environment and agenda setting process. The contextual factors reflect variations in the conditions within each state and may explain the decision making process used by state administrators. The following section identifies various policy types that have recently been explored in diffusion literature.

Policy Typologies

The factors that affect state innovation are often associated with the particular policy issue (Gray 1973; Mooney and Lee 1995; Savage 1985). State policies have been categorized as developmental, redistributive, and allocational (Hwang and Gray 1991; Peterson 1981). Developmental policies, such as highway systems, are innovations that improve a state's economic situation and are closely linked to state economic characteristics. Welfare programs and other redistributive policies are more politically salient and therefore affected by political variables. Allocational policies, such as education, are not as economically or politically significant and are therefore more difficult to categorize (Hwang and Gray 1991).

A significant body of research has been devoted to the diffusion pattern of emotion-inducing policies such as homosexual rights, capital punishment and abortion. These "morality policies" have a distinctively different diffusion pattern than less controversial policies and are politically significant (Mooney and Lee 1995, 1999). Morality policies have been determined to be affected by factors such as interest group activity, political ideology, citizen religious affiliation, and public opinion of the state population (Mooney and Lee 1995). Morality policies have been compared to redistributive policies in that the former allocate or redistribute moral values while rejecting others. While both policy types are politically significant, existing research suggests that morality policies threaten the fundamental moral principles of some in the state population and consequently invoke a deeper reaction than redistributive policies (Meier 1994; Mooney and Lee 1999).

The variables that affect a state's propensity to adopt economic policies will greatly differ from those affecting the adoption of morality policies. Legislation concerning value-laden issues such as euthanasia and gun control are usually inexpensive and therefore has little connection to

a state's level of urbanization, per capita income or other economically-linked variables. The diffusion of morality policies is heavily dependent upon public opinion. If the majority of citizens are satisfied with the status quo, there is little incentive for politicians to seek a new policy. However, when the current policy conflicts with the values of the majority, change is less politically risky and therefore quickly diffuses. Depending on public opinion, policymakers will vary their position on these divisive issues (Mooney and Lee 1999).

Issues involving right and wrong are often so value-laden, compromise is impossible. In order to enact change, advocates must reframe less popular policies so that they are "demoralized" or free from their moralistic component (Pierce and Miller 1999). As citizens begin to perceive these policies as technical and incremental, the policies become less politically polarizing. As a result, demoralized policies will diffuse in the expected S-curve distribution pattern. Morality policies that are not successfully demoralized quickly become politically salient again and assume a different diffusion pattern. These policies often conflict with the value system of the state citizenry. Regardless of the adoption history of neighboring states, these policies will never be adopted (Mooney and Lee 1999; Mooney and Lee 1995).

Finally, administrative reform is another category of policies that has recently been explored in diffusion literature (McNeal, Schmeida and Hale 2007; McNeal et al. 2003; Tolbert, Mossberger, and McNeal 2008). The diffusion of reform that depends on administrative practices has been linked to the presence of specific institutional characteristics of states including professional networks and legislative professionalism within the state (McNeal et al. 2003). Economic and political factors are less likely to influence the diffusion of administrative reform policies as these policies are more technical and affect administrative officials instead of citizens (McNeal, Schmeida and Hale 2007; McNeal et al. 2003).

Agenda setting theory is used in this study to identify and analyze factors that have influenced the operation and oversight of indigent defense programs across five Southern states. The next section includes a review of the following agenda setting theories: (1) policy streams model, (2) policy entrepreneurs, (3) internal and external “trigger” theory, (4) issue-attention cycle, and (5) incrementalism.

Agenda Setting

Significant research has been devoted to the study of agenda setting and the method by which an existing condition is defined as a problem for which government action is demanded (Baumgartner and Jones 1993, 2005; Cobb and Elder 1983; Cohen, March, and Olsen 1972; Downs 1972; Kingdon 1995; Schattschneider 1960). An agenda is “the list of subjects or problems to which government officials, and people outside the government closely associated with those officials, are paying some serious attention at any given time” (Kingdon 1995, 3). Agenda setting is competitive and time-sensitive and can appear random, as in Kingdon’s model, or deliberate, as in Lindblom’s model (Anderson 2006). While numerous issues compete for the attention of policymakers and the public at any given time, public officials lack the time, knowledge and resources to consider the many issues constantly competing for their attention (Simon 1986). This review explores various theories of agenda setting to better understand the method by which issues become public problems.

Policy Streams Model

In exploring the process by which ideas make their way onto policy agendas, John Kingdon (1995) concludes that an issue reaches the agenda of government officials when three

independent processes or “streams” of activity (problems, policies and politics) collide at crucial points. The most significant policy changes are formed as a result of this collision.

The problem stream involves issues that people, either inside or outside of government, consider to be worthy of attention. Media coverage and government reports are significant resources for highlighting the extent of a problem. Conditions are recognized as problems and are subsequently brought to the attention of people in and around government through specific indicators. A crisis or change in a well accepted policy may bring attention to a problem. Kingdon (1995) cites disasters such as airplane crashes or increases in health care costs as examples of such events.

The policy stream consists of possible solutions for the multitude of problems pressing the agenda. Policy specialists including analysts, interest group members, academics, bureaucrats and public officials are constantly accumulating knowledge and drafting policy proposals. Some of these ideas are grounded in science and knowledge while others are unsubstantiated and quickly dismissed. Although ideas are continuously generated, serious consideration is only given to those proposals that are technically feasible, cost-effective, and publicly and politically acceptable (Kingdon 1995).

The politics stream includes events such as election results, shifts in public opinion, turnover in Congress and changes in administration. Issues that are supported by the public and interest groups and are congruent with the current legislative and administrative policy agendas are more likely to receive considerable attention at this stage of the agenda process (Kingdon 1995).

Policy change is further encouraged when windows of opportunity are created during the convergence of the three processes. Kingdon (1995) concludes that opportunity for change

occurs when a condition becomes a problem or a change occurs in the political stream, thereby opening the window. When windows of opportunity are opened, it is possible for solutions to be joined to problems. During this window of opportunity, politicians and advocates can draw attention to the prevailing issue, thereby placing it on the agenda of government officials and the public. However, if the window of opportunity is lost, stakeholders must wait for the streams to unite again.

Subsequent research supports Kingdon's model. The agenda setting process for child abuse laws (Karch 2007; Nelson 1984), traffic safety and drug enforcement laws (Baumgartner and Jones 1993) and the creation of enterprise zones (Mossberger 2000) is consistent with Kingdon's policy streams model. Likewise, global gender-specific issues such as violence against women and health and reproductive rights have followed a similar pattern (Joachim 2003). Finally, existing research suggests that state adoption of performance information systems was also a result of the agenda setting process described by Kingdon (Moynihan 2005).

Policy Entrepreneurs

The agenda-setting process is also affected by political actors, deemed "policy entrepreneurs," who devote their time, energy and resources to a particular issue or policy proposal. Policy entrepreneurs can be policymakers, citizens, advocates or administrators who may be motivated by self-interest, ideology or general concern (Anderson 2006; Mintrom 2000).

The actions of policy entrepreneurs affect political stability (Baumgartner and Jones 1993). In Kingdon's model, these individuals are responsible for joining solutions to problems and subsequent solutions and problems to politics and are crucial to the survival and success of an idea. Therefore, policy entrepreneurs are often defining and manipulating dominant

understanding of the issue in order to push their item to the public agenda. In an effort to force change, policy entrepreneurs seek to generate and influence media coverage of their particular issue. When attention is brought to their issue, entrepreneurs often manipulate public opinion to encourage support for their specific policy proposal. In addition, the American federalist system of government offers numerous opportunities for policy entrepreneurship. If the entrepreneur is unable to garner support at the state or local level, he or she may appeal to the court system or federal agency (Baumgartner and Jones 1993).

In citing the effect of entrepreneurs and problem definition, Kingdon (1995) describes the process by which the issue of urban mass transit systems was defined and subsequently redefined in the 1970s and 1980s. As different problems appeared on the agenda, entrepreneurs redefined urban mass transit systems as a solution for traffic congestion, air pollution and energy conservation. Baumgartner and Jones (1993) document a similar trend for pesticide policy whereby policy entrepreneurs redefined the issue from economic terms to include health and environmental concerns.

Previous research has confirmed the influence of policy entrepreneurs on public policymaking. Baumgartner and Jones (1993) explored the relationship between entrepreneurs and the agenda setting process for nuclear energy, pesticide and smoking policies. In his research on school choice, Mintrom (2000) further confirmed the effect of policy entrepreneurs on state policy adoption decisions regarding school choice. Finally, Jenkins and Eckert (2000) document the participation of key policy entrepreneurs in developing the conservative economic policies of the 1980s.

Internal and External Trigger Theory

Cobb and Elder (1983) developed a theory which associated internal and external “triggers” with agenda setting. Events such as natural disasters or international disputes are examples of such triggers. For an issue to become an agenda item, stakeholders must be able to link the trigger to an existing problem.

These triggers also help the mass media to frame an issue and capture the public’s attention, which subsequently leads to issue expansion. For an issue to become an institutional agenda item, it must be expanded through various levels of public awareness. Issue expansion is dependent upon the following five criteria: (1) degree of specificity, (2) scope of significance, (3) temporal relevance, (4) degree of complexities, and (5) categorical precedent (Cobb and Elder 1983).

Degree of specificity refers to the concept that an issue defined in concrete and specific terms is more appealing to the general public. In regards to scope of social significance, an issue affecting a large number of people will generate more public interest. A problem with long-term effects or temporal relevance is more likely to expand, as will non-technical or non-complex problems. Finally, categorical precedent refers to the concept that unique and new issues are expected to better stimulate and maintain public interest. Although the groups most affected by the condition are first to recognize the problem, the issue subsequently expands to specialists, to a coalition of interest groups, to the informed public and finally to the general public (Cobb and Elder 1983).

Cobb and Elder (1983) emphasize the importance of symbols in expanding an issue. Symbols can be used to invoke strong positive or negative reactions and to portray a sense of

urgency. Therefore, the proper use of meaningful people, places and things is beneficial to expanding the issue and increases the likelihood that it will become an agenda item.

The association of trigger events and policy change is explored throughout the agenda setting literature. Existing research suggests that the 1986 death of college basketball player Len Bias prompted the War on Drugs; the 1989 Exxon Valdez oil spill led to the passage of environmental legislation; and the short NBC news film about Ethiopia generated and focused public attention to the African famine (Dearing and Rogers 1996). Intense media coverage of rare occurring airline disasters has triggered reactive government regulation in regards to the airline industry (Cobb and Primo 2003). Similarly, the terrorist attacks of September 11th resulted in a wide range of policy reforms concerning immigration and aviation security (Birkland 2004; Schildkraut 2002)

Issue-Attention Cycle

Anthony Downs (1972) concluded that American public attention does not sustain intensive interest for prolonged periods of time. Downs held that public awareness moves in a systematic “issue-attention” cycle in which public attention rapidly intensifies around an issue and then gradually fades and focuses attention on another problem. The issue-attention cycle consists of the following five stages: (1) pre-problem stages, (2) alarmed discovery and euphoric enthusiasm, (3) realization of the cost of significant progress, (4) gradual decline of intense public interest, and (5) post-problem stage.

In the pre-problem stage, interest groups and experts may be aware of the problem, but the issue has not yet received public notice. Alarmed discovery and euphoric enthusiasm occurs when a dramatic event or catastrophe suddenly galvanizes public attention around an issue. The

public becomes both aware of and alarmed about the problem and demands government action. Recognition gradually spreads that solving the problem will involve high costs and sacrifice by the large group of people presently benefiting from the current arrangement. For example, while increased automobile usage has contributed to the smog problem, millions of Americans also benefit from the mobility provided by automobiles. Downs (1972) concluded that the most pressing social problems usually involve deliberate or unintentional exploitation of one group in society by another. Intense public interest begins to gradually decline, as more and more people become aware of the costs and difficulties associated with the solution. The public may become discouraged, some feel threatened, and others become bored. Consequently, public interest in the problem declines and another issue reaches the alarmed discovery and euphoric enthusiasm stage. Finally, the issue reaches the post-problem stage, whereby although the problem has lost public attention, the institutions, programs and policies created to help solve the issue continue to have impact. Downs (1972) concluded that a problem that has gone through the cycle is likely to capture public interest again, either in its original form or attached to some other problem in the future.

Issues that go through the issue-attention cycle usually share three characteristics. First, these issues do not affect the majority of people in America. Because only a minority of people is affected by problems such as unemployment and poverty, the public is less likely to focus long-term attention to these issues. In addition, these dilemmas usually involve social arrangements that provide considerable benefits to a majority or powerful minority. For example, even though a mass transit system would benefit the urban poor, car owners, automobile manufacturers and highway construction companies benefit from restrictions on the use of motor-fuel tax revenue for the financing of public transportation systems. Therefore, considerable attempts to resolve the

problem threaten important groups in society. Lastly, to compete for attention, the problem must be impressive and stimulating to sustain the interests of both the public and the media (Downs 1972).

The pattern of public concern over a number of issues is consistent with the Downsian model. Existing research suggests that public interest regarding environmental problems passes through the issue-attention cycle (Downs 1972; Hannigan 2006; McComas and Shanahan 1999; Trumbo 1996). Social problems such as drugs, poverty and racial tensions have historically followed a similar pattern across the America states (Fischer 2003; Neuman 1990). Likewise, from 1978 to 1995, increased media attention heightened public concern over drunk driving. Policymakers responded by passing tougher laws and by funding education and prevention programs (McCarthy 1994; Yanovitsky 2002). Most recently, the intense media attention and subsequent public interest surrounding several corporate corruption scandals in 2001 and 2002 resulted in the adoptions of significant corporate governance reforms (Jones and Baumgartner 2005).

Incrementalism

Charles Lindblom (1959) suggests that incrementalism is a rational decision-making model for public policymakers. Incrementalism describes the steady progression of proposals or policy changes and views public policy as an extension of past government action with only incremental variations (Dye 2008; Kingdon 1995). Due to their time constraints and limited knowledge, public officials cannot effectively evaluate the costs and benefits associated with each policy alternative (Simon 1986). To account for this limitation, policymakers often make

incremental decisions whereby limited changes or additions are made to existing policies or programs (Lindblom 1959).

Lindblom suggests that incrementalism is a political tool that reduces conflict and maintains stability. Minor policy modifications are less likely to cause political tension among stakeholders. Policymakers lack the time and resources to investigate all possible alternatives and consequences to existing policy. Therefore, incremental decision-making reduces the level of uncertainty, thereby making the process more politically salient. Lastly, incrementalism is a practical decision-making tool that yields acceptable policy options, and a number of incremental decisions can result in fundamental policy changes (Anderson 2006; Lindblom 1959, 1979).

The incremental model of policymaking is regularly used to describe economic policymaking such as budget decisions and government expenditures (Dezhbakhsh, Tohamy, and Aranson 2003). Budget decisions are made incrementally, as policymakers lack the time, knowledge and resources to thoroughly review every annual budget request. Instead, decisions makers generally consider the past year's budget as a base for the current year's appropriations (Dye 2008; Wildavsky 1992). Incrementalism is also used to describe the gradual growth in government spending. The cost of entitlement programs has slowly increased over time as more Americans become entitled to government programs. Government spending has increased to account for the increase in entitlements (Dye 2008; Anderson 2006).

Existing research explores the incremental model of policymaking in other policy areas. A recent study suggests that state government reorganization, specifically executive branch restructuring, has occurred incrementally over a forty year period (Berkman and Reenock 2004). The incremental model has also been applied to explain the evolution of state death penalty sentencing policies over time (Norrander 2000). Finally, other research argues that forest policy

development, including guidelines for annual harvest rates and endangered species preservation in the American Pacific Northwest, has followed a classic incremental pattern (Cashore and Howlett 2007).

Summary

Chapter II presents the theoretical frameworks used in this research. This chapter incorporates the theories of diffusion and agenda setting to identify contextual factors that may influence the operation and oversight of indigent defense programs across five Southern states. The focus states share a common history as Southern states and share the common traditionalistic political culture. However, these states have responded differently to pressures for indigent defense reform. Therefore this study draws upon policy diffusion and agenda setting literature to identify factors that promote the transfer of policies throughout the American states. Finally, this chapter provides a framework to explain the process by which state administration of indigent defense programs has become an institutional agenda item.

Chapter III presents the methodology and approach used in this research to explore the administration of indigent defense across the five states. It also includes the weaknesses and limitations of this study.

CHAPTER III

METHODOLOGY AND APPROACH

This chapter presents the research method used to collect data on the administration of indigent defense and the comparative analysis of indigent defense reform in five Southern states. The background and significance of the problem, research design, method of data collection and weaknesses and limitations are also discussed.

Background and Significance

Although news accounts suggest that the quality of representation provided to indigent defendants in state courts is not adequate, state administration of indigent defense programs in the American states has not been the subject of systematic study. State support of indigent defense is important because the right to counsel is a fundamental constitutional right guaranteed to all defendants regardless of their income (Knight 1998; Rackow 1954).

The Sixth Amendment's right to counsel guarantee was incorporated to include state criminal proceedings by the Supreme Court decision in *Gideon v. Wainwright* (1963). As a result of the decision, states were required to provide counsel for indigent defendants but were allowed discretion in establishing mechanisms for the funding and administration of defense services for the poor (Bureau of Justice Statistics 1996).

In 1942, Rhode Island became the first state to implement a state-funded public defender system. Since then, forty-one additional states have established various methods of

administrative oversight. These state programs vary widely by degree of state oversight and state funding support (Constitution Project 2009; Spangenberg 2005, 2006a).

Indigent defense is a pressing issue nationwide and reform is occurring across the American states (Constitution Project 2009). This research discusses the history of indigent defense and explores the administrative structures and reform efforts in Alabama, Georgia, Louisiana, Mississippi and Texas.

Case Study Method and Case Selection

A multiple-case study design can be used to compare variations between units of analysis (Yin 2003). Therefore, “states” constitute the unit of analysis in this research. This comparative, qualitative, multistate study regarding the provision of indigent defense services and decision making will provide a better foundation for further research on the administrative structure and decision processes that states use when making decisions about indigent defense representation

Qualitative research involves a study of people and places in their natural settings for the purpose of interpreting or explaining social phenomena (Creswell 2007; Denzin and Lincoln 2005). Qualitative research begins with philosophical assumptions about a social problem and continues with the collection of data through various qualitative approaches to inquiry (Creswell 2007). Creswell (2007) suggests that after collecting the data on a problem, qualitative researchers conduct data analysis to establish potential patterns or themes. Creswell further concludes that researchers should include a description and interpretation of the problem organized around a theoretical framework and indicate areas for future research in their conclusion.

The case study is one accepted method of conducting qualitative social science research (Creswell 2007; George and Bennett 2004; Yin 2003). George and Bennett (2004) define case study research as the comprehensive examination of a historical event or phenomenon to develop or test historical explanations that may be applied to other episodes. Schutt (2004) determines that a case study is a setting or group that is studied holistically by an investigator and regarded as an integrated social unit. Yin (2003) suggests that the case study approach is the preferable method of examining real-world events for explanatory and descriptive purposes. Creswell (2007) finds that case study research is a qualitative approach in which the researcher investigates a case or cases over time using various sources of information and concludes with a case description including contextual themes.

These particular states were chosen for study because they share a common political culture and regional network but seem to be responding differently to pressures for reform (Constitution Project 2009; Elazar 1984; Spangenberg 2005, 2006a). Although the South shares a number of key characteristics, a wealth of research provides evidence to show political and socioeconomic variation among the five Southern states (Bullock 1998; Menifield, Shaffer and Brassell 2005; Parent and Perry 1998, 2007). This variation was a contributing factor in case selection.

Diffusion literature suggests that neighboring states would adopt similar policies (Berry and Berry 1990; Mintrom 2000; Walker 1969), and these states have historically adopted similar criminal justice policies. However, the operation and oversight of the indigent defense programs in the five Southern states vary widely. Variations in indigent defense program design and in timing of adoption of state administrative oversight indicated different decision processes and therefore influenced case selection.

The shared sentencing and corrections policies among the five states further influenced case selection. Each state included in this study has acquired a tough-on-crime reputation. The incarceration rates and death penalty statistics in these five states illustrate a similar approach to criminal justice that is much more severe than the national average. These five states were chosen for study because they share a common political culture and sentencing and corrections philosophy but have responded differently to pressures for indigent defense reform. Therefore, a purpose of this research is to explore factors that have encouraged state-level support of indigent defense and encouraged reform in these five states.

Research Design

This study seeks to explain state oversight of indigent defense, devoting particular attention to the primary actors, organizations and institutions involved in reform. In addition, this research documents the decision processes that states use when making decisions about indigent defense representation and explores the factors that have influenced the patterns of state oversight of indigent defense programs across five Southern states.

The research design developed for this study is consistent with the methods defined by existing research (Creswell 2007; George and Bennett 2004; Patton 1990; Schutt 2004; Yin 2003). This project was completed in three stages. The first stage of data collection included the analysis of documentation and archival records. The second stage of data collection involved an exploratory study of the organizations and individuals involved in indigent defense reform at the national level. The third stage consisted of a comparative case study analysis of indigent defense programs in five Southern states. To explore these issues, this research utilizes the theoretical

framework of agenda setting and explores various factors suggested by the agenda setting and diffusion literatures to explain differences between these five states.

The dependent variable is the extent to which states have taken steps to institutionalize the oversight of indigent defense. Measures of state-level support are drawn from the literature (Constitution Project 2009; Spangenberg 2005, 2006a) and in key informant and case study interviews. Existing research has divided methods of administrative oversight of indigent defense programs into six distinct categories: (1) state public defender system with a commission; (2) state public defender system without a commission; (3) state commission and state director; (4) state commission with partial authority; (5) state appellate commission or agency; and (6) no oversight at all (Constitution Project 2009; Spangenberg 2005, 2006a).

Data from state-specific research is analyzed using the determinant approach from policy diffusion which suggests that diffusion and state innovation can be explained through measures of politics, resources and demands (Mooney and Lee 1995). A number of socioeconomic and political factors may influence agenda setting. This research hypothesizes that key explanatory variables include: liberal government ideology, interest group strength and measures of state wealth. Table 3.1 presents the hypothesized association between the level of state administrative oversight of indigent defense and each independent variable.

[Table 3.1 about here]

It is expected that these three explanatory factors will have a positive influence on state administrative oversight of indigent representation within the focus states. A wealth of research suggests that the political environment within each state will influence state policy decisions (Gray 1973; Key 1949; Mooney and Lee 1995; Walker 1969). This research anticipates that government ideology and interest group strength are two key political indicators positively

associated with state administrative oversight. Existing literature suggests that public policy is closely related to the political preferences of the elected representatives (Erickson, Wright, and McIver 1993; Hero and Tolbert 1996). Research suggests a link between government ideology and state policy adoption decisions regarding state social welfare spending (Hill and Leighley 1992), state funding of abortion (Meier and McFarlane 1992), an state education spending (Wood and Theobald 2003). Citizen and government ideology is captured through Berry et al's (1998, 2001) measure. This index consists of roll call votes of state legislatures, congressional election outcomes, party competition of state legislatures, party of the governor and assumptions about voters and political elites. Scores range from zero (most conservative) to 100 (most liberal). Liberal government ideology is expected to encourage state oversight of indigent defense.

Interest group strength is a dominate force in state politics (Baumgartner and Leech 1998; Gray and Lowery 1996, 2001; Thomas and Hrebener 1992, 2004). Previous research illustrates the positive influence of interest groups on the level of state administrative oversight (Constitution Project 2009; Davies and Worden 2009; Worden and Worden 1989). This research incorporates an updated measure of interest group strength which categorizes the state according to level of interest group influence. The impact of interest groups within each state is classified as dominant, dominant/complementary, complementary, complementary/subordinate, and subordinate. The updated measure is derived from the Hrebener-Thomas study which uses a combination of qualitative and quantitative methods to compare the impact of interest groups in the fifty states over time. It is expected that interest group strength will have a positive influence on state administrative oversight.

Finally, a considerable body of research suggests that economic indicators are associated with state policy decisions (Gray 1973; Rogers 1995; Walker 1969). The literatures suggest that wealthier states have more slack resources to devote to innovative policies. Wealthier states are expected to provide a greater level of support for state oversight of indigent defense. The intergovernmental funding distribution within each state may also be important.

The following section details the data collection methods used in this research. In addition, this section examines the affiliates of key informants interviewed from national organizations and in the five focus states

Data Collection

Yin (2003) identifies six commonly used sources of evidence for case study research. These include: documentation, archival records, interviews, direct observations, participant observation, and physical artifacts. Documentary information includes letters, minutes of meetings, administrative documents, formal studies and newspaper articles. Archival records include organizational records, such as organizational charts and budgets, survey data and personal records. Interviews are guided conversations between the researcher and key respondents whereby the respondents provide information regarding the facts of a matter and their opinions about events. The direct observation method is conducted in the field for the purpose of documenting relevant behaviors or environmental conditions, while the participant observation technique requires the researcher to assume a more active role within a case study situation. Finally, physical artifacts, such as instruments or works of art, can be collected and observed as a source of information (Yin 2003). Similarly, Creswell (2007) suggests multiple

sources of information can include: observations, interviews, audiovisual material, documents and reports.

The first stage of data collection for this study involved the analysis of documentation and archival records including academic journal articles, court cases, newspaper articles, state statutes, and formal studies. Most of these documents were found by accessing academic databases and search engines. The reference lists for these documents were used to locate other sources. This stage was conducted in 2007 and 2008. As provided by Yin (2003), the combination of documentation and archival records established the basis for further study and validated specific details gathered from other sources. These materials also verified the actors, institutions and organizations involved with indigent defense reform at the national level and provided information regarding the dominant themes in indigent defense.

The second stage of data collection for this study involved interviews with key informants in the indigent defense national policy network. Documents and analysis from the first phase helped to locate these organizations. Representatives from the organizations were contacted by phone and asked to identify potential key informants within their organization. As provided by Yin (2003), key informants were defined as individuals with specialized knowledge of indigent defense systems across the American states. This stage of the research was approved by Auburn University's Office of Human Subjects Research Institutional Review Board (#09-039). The phone interviews were conducted in early 2009. Potential informants were contacted by phone or email and asked whether they wished to consider participating in this research. An information letter indicating the purpose and benefits of this project was sent to each person who agreed to participate in the interview. This information letter can be found in Appendix A.1.

Fifteen individuals from national organizations involved in indigent defense reform across the American states were interviewed for the purpose of identifying the dominant themes in indigent defense. Intensive interviewing is one qualitative technique used to gather information (Aberbach and Rockman 2002; Manheim et al. 2006; Patton 1990; Yin 2003). Schutt (2004) suggests that intensive interviewing involves open-ended, unstructured questions to collect information about the feelings, experiences and perceptions of the interviewee. The interviews included both closed- and open-ended questions concerning their views about reforming indigent defense representation. The key informant interview questions are located in Appendix A.2. A “snowball” technique was utilized during the interview whereby respondents were asked to identify other individuals and organizations involved with indigent defense reform in the American states. Effort was made to identify all participants in the indigent defense national policy network; therefore after respondents began to name the same individuals and organizations, the process to locate these groups was completed.

The last stage of data collection for this study involved interviews with key informants involved with indigent defense in Alabama, Georgia, Louisiana, Mississippi, and Texas. This stage of the research was also approved by Auburn University’s Office of Human Subjects Research Institutional Review Board (#09-087). Interviews, documents and public reports from the previous stages helped to identify participants. Informants were selected on the basis of their knowledge and experience in indigent defense in the five states. Sixty potential informants were contacted by phone and email and asked if they were willing to participate in this research. Fifty informants responded to the inquiry. The phone and email script used when contacting potential participants is included in Appendix A.3. Finally, an information letter identifying the purpose and benefits of the project was sent to each person who agreed to participate in the interview and

effort was made to schedule in-person interviews. The information letter can be found in Appendix A.4.

Table 3.2 presents the affiliates of key informants interviewed from national organizations and in the five focus states.

[Table 3.2 about here]

The types of individuals who were interviewed varied by state but included legislators, legislative staff, administrators, elected judges, public defenders, criminal defense attorneys, appointed bureaucrats, and advocates. The variety of perspectives obtained from the respondents strengthens the reliability of the findings of this research. A total of 46 on-site (30) and telephone interviews (16) were conducted in Birmingham, AL, Montgomery, AL, Atlanta, GA, Perry, GA, New Orleans, LA, Jackson, MS, and Austin, TX from early to mid-2009. The snowball method was also used in the state interviews to identify relevant actors involved in the provision or oversight of indigent defense services or individuals that participated in policy formulation. Interviews were scheduled before traveling to the state, and each of the five states were visited for several days. Several telephone interviews (16) were conducted with respondents who were unable to meet during the schedule visit to the state.

The semi-structured interviews included both closed- and open-ended questions concerning the history of reform and oversight of indigent defense in the respective states. The questionnaire used in the interviews can be found in Appendix A.5. Many of the individuals interviewed in each state were involved in the development of the administrative structure and decision processes concerning indigent defense representation. Therefore, questions were slightly altered or additional questions were sometimes added for participants involved in these particular processes.

Weaknesses and Limitations

In this study, data was primarily collected through the analysis of documents and archival records and through interviews with key informants. The documentary analysis included the review of academic journal articles, court cases, newspaper articles, state statutes, and formal studies. The irretrievability and inaccessibility of certain documents presented a problem, as the availability of indigent defense data varied by state. Furthermore, the reporting bias of the documentary evidence was also recognized. To validate the findings, all effort was made to verify information through a variety of sources.

In addition, the recall and reporting bias of respondents created a challenge. Many individuals interviewed were asked to recall events which occurred eleven years prior to the interview. To supplement information and provide a cross-respondent validity check, several participants were interviewed from each state. Furthermore, it is well understood that many of the respondents' answers were a reflection of their respective professional orientations. Therefore, key informant interviews were supplemented with data from other sources of information including written documents analyzed in stage one of this research and through other participants. Written documents included court cases, official reports, newspaper articles, academic journals, and state statutes. Participants included defense attorneys, public defenders, judges, elected and appointed public officials, policymakers, state administrators and advocates in the indigent defense policy network. The use of multiple sources and the variety of perspectives obtained reinforced the findings of this research. All effort was made to interview a representative range of perspectives from different professional orientations in each state to ensure the validity and reliability of the responses.

Summary

This research seeks to establish a foundation for further research on the administrative structure and decision processes that states use when making decision about indigent defense representation. This objective is achieved through analysis of documents and archival records and through interviews with key informants in the indigent defense policy network at the national and state-level.

The following three chapters present the findings of this research. Chapter IV presents a historical review of indigent defense across the American states. It provides an initial examination of the right to counsel, followed by an analysis of its subsequent expansion. This chapter concludes with a detailed discussion of various methods of state administrative oversight and current concerns facing state indigent defender programs. Chapter V presents five case studies of indigent defense programs in the South. Included in this section is a comparative analysis of the five systems and an examination of the history, description and current concerns of the respective programs. In addition, the case studies identify the actors, organizations and institutions involved in indigent defense reform and analyze the level of state oversight in each state. Chapter VI presents the major findings of this research by detailing the process by which state oversight of indigent defense programs became an institutional agenda item.

CHAPTER IV

HISTORY OF INDIGENT DEFENSE IN THE AMERICAN STATES

Oliver Wendell Holmes, an influential Supreme Court justice and jurisprudence scholar recognized the relationship between law and history (Beth 1961). In *The Common Law* (1881) Holmes writes: “In order to know what it is, we must know what it has been, and what it tends to become” (1). This chapter presents a historical review of indigent defense across the American states by examining the evolution of the right to counsel. This chapter concludes with a detailed discussion of various methods of state administrative oversight and current concerns facing indigent defense programs across the American states.

Foundation of Indigent Defense

English Influence and U.S. Constitution

The right to counsel in the United States is firmly rooted in English precedents. By 1300, litigants in England could pay professionals for legal advice and representation. While representation was not afforded to those accused of felonies or treason, defendants facing civil suits or misdemeanor charges were guaranteed assistance of counsel.² Furthermore, English defendants charged with treason were not afforded the right to counsel until the Treason Act of 1695 (Beattie 1991; Knight 1998; Langbein 2005; Rackow 1954).

² A felony is a serious crime and may be punishable with imprisonment for one year and a day or more. A misdemeanor is considered a ‘lesser’ crime and may be punishable with incarceration for 365 days or less.

Defendants in the New World were not initially extended this right to counsel as colonists only retained and reformed English common laws that were most applicable to colonial needs. In the beginning, the colonies had an undeveloped legal system that lacked professionally trained lawyers. The need for a more systematic rule of law increased as the populations grew, and states began to welcome the concept of the right to counsel. Consequently, this right to representation became a source for debate during the framing of the United States Constitution (Beattie 1991; Knight 1998; Langbein 2005).

States refused to ratify the Constitution unless it included a bill of rights that would ensure individuals were protected from government. The New York and Virginia conventions ratified the Constitution only after approving a bill of rights proposal that included the right to assistance of counsel. On June 8, 1789, James Madison furthered this notion before the House of Representatives by introducing a list of proposed changes, one of which became the foundation to the Sixth Amendment of the Constitution (Langbein 2005; Rackow 1954).

Early Case Law and Evolution of Right to Counsel

Many scholars interpret the Sixth Amendment to be a guarantee that courts would provide a defendant assistance of counsel.³ However, the Sixth Amendment did not automatically guarantee the provision of defense services (Langbein 2005).

Concern over the right to counsel for indigent defendants in the United States began over one hundred fifty years ago. In *Webb v. Baird* (1853), the Indiana Supreme Court held that the right to an attorney for a defendant who cannot afford to pay is grounded in the values of a

³ The Sixth Amendment of the United States' Constitution guarantees: "In all criminal prosecutions, the accused shall enjoy the right...to have the assistance of counsel for his defense."

sophisticated society. The Court recognized that providing indigent defendants with representation was essential in a democratic society and was the responsibility of the state. While some states provided ad hoc representation to poor criminal defendants in capital cases, at the time of the *Webb* decision, poor defendants in most states relied on pro bono legal counsel. While programs such as the New York Legal Aid Society and the Los Angeles public defender office became available to indigents in the late 19th century, these resources were limited to poor defendants living in major cities at that time (Albert-Goldberg and Hartman 1983; National Legal Aid 2008).

Over time, the United States Supreme Court began incorporating Sixth Amendment guarantees into its decisions regarding state criminal procedure. The right to counsel in state capital cases was addressed in 1932 in the infamous “Scottsboro Boys” case (*Powell v. Alabama*). Nine young black males were found guilty of raping two white women on a freight car passing through Alabama in 1931 and were sentenced to death. Rushing the defendants through the justice system, the state of Alabama completed three capital trials in one single day. Even though the Alabama Constitution required that counsel be provided in capital cases, their attorneys did little to represent the defendants at trial. The United States Supreme Court ruled that “the failure of the trial court to give them reasonable time and opportunity to secure counsel was a clear denial of due process” (71). Although the Court backs off of the requirement in the last few paragraphs of the ruling, the case has been interpreted as requiring representation in all state capital cases or in unusual cases such as *Powell*.

In 1938 the Supreme Court again confirmed the right to counsel to those accused of federal crimes. In *Johnson v. Zerbst*, the Court ruled that by failing to provide the defendant counsel, the federal court had denied him his Sixth Amendment right. In 1942 the indigent

defense cause received a setback when the Supreme Court held in *Betts v. Brady* (1942) that the state of Maryland was not constitutionally required to provide representation for indigent defendants. Justice Owen Roberts, writing for the majority, held that the lack of representation in state criminal proceedings did not deny indigent defendants due process of law. In his dissent, Justice Hugo Black cites the *Webb*, *Powell*, and *Johnson* cases and highlights the fact that *Betts* would have been afforded an attorney had the case been tried in federal court. Urging the incorporation of the Sixth Amendment, Justice Black writes: “I believe that the Fourteenth Amendment made the Sixth applicable to the states. But this view, although often urged in dissents, has never been accepted by a majority of this Court and is not accepted today” (474). Twenty-one years later, Justice Black would write the opinion that would transform the provision of indigent defense services across the American states.

Betts was overruled by a unanimous decision in *Gideon v. Wainwright* (1963).⁴ The Supreme Court held that Gideon had a constitutional right to counsel afforded to him by the Sixth and Fourteenth Amendments and therefore had a right to state-appointed representation. As a result of the decision, states were required to provide counsel for indigent defendants. In the majority opinion, Justice Hugo Black conveyed the conviction of the Court by writing: “[Because] government hires lawyers to prosecute and defendants who have the money hire lawyers to defend are the strongest indications of the widespread belief that lawyers in criminal courts are necessities, not luxuries” (344). Almost half of the American states supported extending the right to counsel to all individuals accused of felonies in state courts. Twenty-two

⁴ In 1961 the state of Florida charged Clarence Earl Gideon with breaking and entering. Unable to afford a private attorney, Gideon requested and was denied court-appointed counsel. He was forced to represent himself, was convicted and sentenced to five years in prison.

attorneys general filed amicus curiae briefs supporting Gideon's right to counsel while Alabama and North Carolina submitted briefs in opposition to his claim (*Gideon v. Wainwright*).

The Sixth Amendment does not establish a standard for adequate representation; however the Court has held that the right to assistance of counsel encompasses effective assistance of counsel.⁵ In *Strickland v. Washington* (1984), the Supreme Court established a two-prong test to determine this effectiveness. The Court held that to prove ineffectiveness, a defendant must show that: 1) the performance of counsel was ineffective and 2) the ineffective performance resulted in an unfair trial.

Expanding the Right to Counsel

Several Supreme Court cases have expanded state governments' duties to provide representation for indigent defendants. The Court extended the right to court-appointed counsel in *Argersinger v. Hamlin* (1972) by holding that defendants (both felons and misdemeanants) facing incarceration had a constitutional right to counsel. Referring to a study conducted by the American Civil Liberties Union, the Court ruled in *Argersinger* that the presence of counsel is needed in misdemeanor trials to protect defendants from "assembly-line justice" (36). The *Argersinger* holding financially impacted the majority of state and local governments as most jurisdictions did not provide counsel to indigent defendants charged with offenses less serious than felonies (Albert-Goldberg and Hartman 1983).

The right to counsel has recently been extended to misdemeanor cases in which incarceration is not immediately imposed. In 2002, the Supreme Court again increased the number of indigent defendants entitled to state-appointed counsel in *Alabama v. Shelton* by

⁵ "It has long recognized that the right to counsel is the right to the effective assistance of counsel" (*McMann v. Richardson*, 397 U.S. 759, 771, n. 14, 1970).

holding that a court may not impose a suspended or probated sentence that could result in jail time unless a defendant is given the right to counsel.⁶ Every state probation system utilizes suspended sentences (probation) as a form of punishment. A sentence of probation suspends or postpones incarceration as long as the defendant abides by the terms of his probation. This decision greatly affected state indigent defense programs; at the time of the decision, only twenty-four states provided counsel to all indigent misdemeanants receiving suspended jail sentences (Hashimoto 2007).⁷

The time frame for appointment of counsel in the United States was potentially impacted in 2008 by a Supreme Court decision in *Rothgery v. Gillespie County, Texas*.⁸ In *Rothgery*, the Court held that a defendant's Sixth Amendment right to counsel is triggered at his initial appearance regardless of whether a prosecutor is involved in the proceedings. Before the *Rothgery* decision, Texas had a policy of appointing counsel after grand jury indictments and arraignments, long after the initial appearance.

⁶ A suspended sentence is defined in *Black's Law Dictionary* as "a conviction of a crime followed by a sentence that is given formally, but not actually served. A suspended sentence in criminal law means in effect that a defendant is not required at the time sentence is imposed to serve the sentence" (1979, 1297). The indigent defendant in *Shelton* was charged with third degree misdemeanor assault and was convicted without counsel. His 30 day jail sentence was suspended, and he was fined and placed on two years' unsupervised probation. If Shelton successfully completed probation, he would not be required to serve his 30 day jail sentence.

⁷ The twenty-six states that did not provide counsel to all indigent misdemeanants were Alabama, Arizona, Arkansas, Colorado, D.C., Florida, Georgia, Idaho, Kansas, Maine, Maryland, Michigan, Mississippi, Montana, Nevada, New Jersey, New Mexico, North Carolina, North Dakota, Ohio, Pennsylvania, Rhode Island, South Carolina, South Dakota, Texas, and Utah (Skove 2003).

⁸ Rothgery was arrested in Texas and mistakenly charged as a felon in possession of a firearm. He waived his right to have appointed counsel present at his initial appearance and was released on bond. After a grand jury indictment, his bail was increased, and he was rearrested. Rothgery was indigent, and although he made oral and written requests for appointed counsel, counsel was not provided for a week. Upon being provided representation, his attorney was able to secure his release after proving Rothgery was not a felon. He subsequently brought suit against the county for violating his Sixth Amendment right to an attorney (*Rothgery v. Gillespie County, Texas* 2008).

Since *Gideon*, the Supreme Court has recognized the right to appointed counsel at other important stages of the criminal justice process.⁹ Today most defendants charged and convicted of crimes are guaranteed the right to counsel during all criminal justice proceedings. The constant expansion of the right to counsel has increased the number of cases requiring state appointed indigent defense counsel (Albert-Goldberg and Hartman 1983).

Attorney General Holder acknowledged the expansion of the right to counsel at the national indigent defense symposium in February 2010. However, he insisted that the right to counsel extended in *Gideon* has not been adequately implemented. He argued:

Nearly half a century has passed since the Supreme Court's decision in *Gideon v. Wainwright*. The Court followed with other decisions recognizing the right to counsel in juvenile and misdemeanor cases. Today, despite the decades that have gone by, these cases have yet to be fully translated into reality.

The right to counsel is an evolving concept that has been expanded for centuries. American indigent defense systems and the wide variation across states today have been shaped by English law, the United States Constitution and its subsequent judicial interpretations. The following section examines state oversight of indigent defense and details the current concerns facing these programs.

Indigent Defense in the States

States provided indigent defense prior to *Gideon*'s mandate. Most jurisdictions provided representation to defendants in felony cases; however the appointment of counsel was informal,

⁹ Post-arrest interrogations (*Miranda v. Arizona* 1966 and *Brewer v. Williams* 1977); line-ups (*United States v. Wade* 1967); preliminary hearings (*Coleman v. Alabama* 1970); arraignments (*Hamilton v. Alabama* 1961); juvenile delinquency proceedings (*In re Gault* 1967); plea negotiations (*Brady v. United States* 1970 and *McMann v. Richardson* 1970); sentencing proceedings (*Townsend v. Burke* 1948); and certain probation and parole hearings (*Mempa v. Rhay* 1967)

and most states lacked a systematic method of delivery. Instead, judges appointed ad hoc representation and relied on the private bar to provide attorneys for indigent defense cases. After *Gideon*, the number of indigent defendants entitled to state-provided counsel increased, and states were unable to administer the service without a more organized delivery system (Albert-Goldberg and Hartman 1983; Beaney 1955; Davies and Worden 2009).

The indigent defender system has been defined as “a method of providing indigent defense services where an attorney or group of attorneys, through a contractual arrangement or as public employees, provides legal representation for indigent criminal defendants on a regular basis” (Benner 1975, 669). While the Supreme Court imposes considerable obligations upon state courts to provide attorneys for indigent defendants, it has not firmly established standards for state indigent defense systems. Since *Gideon*, the responsibility of designing, funding and administering the provision of defense services for the poor has been left to the states (Bureau of Justice Statistics 1996).¹⁰

In response to the constitutional guarantee of assistance of counsel, state and local governments have established an array of indigent defense systems. Services are usually delivered by one of three methods: 1) traditional public defender programs in which salaried attorneys provide representation in indigent cases; 2) court assignments of indigent cases to private attorneys who are compensated on a case-by-case basis; and 3) contracts in which private attorneys agree to provide representation in indigent cases (Davies and Worden 2009; Spangenberg and Beeman 1995).

¹⁰ States are permitted variation under the 14th Amendment. This research cannot reach a conclusion about whether indigent defense is a constitutional right or a question of division of powers under the principles of federalism. However, this tension runs throughout the dual system (federal/state) of criminal justice and should be a question for future research.

In 1942, Rhode Island became the first state to implement a state-funded public defender system. Since then, forty-one additional states have established various methods of administrative oversight. Table 4.1 presents the timeline of adoption of state administrative oversight of indigent defense from 1942 to 2008 within the forty-two states.

[Table 4.1 about here]

Table 4.1 includes key Supreme Court cases that illustrate shifts in judicial interpretation. States are listed in chronological order by decade of adoption. The number of Supreme Court cases in the 1960s and 1970s expanding the right to counsel appears to have influenced the adoption of state administrative oversight during those decades. States continue to reform their indigent defense programs. From 2000 to 2008, new and reformed methods of administrative oversight were established in ten states (Constitution Project 2009; Spangenberg 2005, 2006a).

Figure 4.1 presents the cumulative increase in state oversight since 1942.

[Figure 4.1 about here]

Forty-two states had adopted a form of administrative oversight of state indigent defense programs by 2008. It is expected that states would reform their indigent defense systems immediately after *Gideon* in 1963; instead, accountability and oversight appears to be an evolving concept in the indigent defense reform movement. The following sections explore the various levels of administrative oversight and funding of indigent defense programs throughout the American states.

Level of Oversight

States have adopted various methods of state administrative oversight. Many states have created state commissions to oversee issues such as performance standards, attorney

qualifications, caseloads and costs. The level of authority and effectiveness of each commission varies by state and is typically linked to the funding provided by the state. Table 4.2 presents the type of oversight by state.

[Table 4.2 about here]

The following methods of administrative oversight of indigent defense have been adopted: (1) state public defender system with a commission; (2) state public defender system without a commission; (3) state commission and state director; (4) state commission with partial authority; and (5) state appellate commission or agency (Constitution Project 2009; Spangenberg 2005, 2006a).

Twelve states have adopted a state public defender program with an indigent defense commission (Constitution Project 2009; Spangenberg 2005, 2006a). The commissions' levels of responsibility, membership and appointment authority vary by state. In 1970, the state of Hawaii established the Office of the Public Defender to provide legal services to indigent defendants. A five-member Defense Council appointed by the Governor oversees the Office and is charged with appointing a State Public Defender. Council members serve at the pleasure of the Governor. One member from each county is represented on the Council (Hawaii Revised Statutes §§802-1 to 802-11). Similarly, in 1997 Arkansas adopted a state-funded, state-administered public defender system that is governed by a seven member public defender commission appointed by the Governor to five year terms. Membership must include at least four licensed Arkansas criminal defense attorneys and one county judge. The commission establishes and enforces standards concerning caseloads, costs, and attorney qualifications and evaluates the performance of the executive directors (Arkansas Code §§16-87-201 to 16-87-204). The Connecticut Public Services Commission established in 1974 is responsible for appointing the Chief Public

Defender and Deputy Chief Public Defender and overseeing and administering the provision of legal services. The seven members are appointed for three year terms by the Governor, the Chief Justice, the Speaker of the House, the President Pro Tem of Senate, the minority of the House, and minority leader of the Senate. Three members must be current or retired judges. Two of the four non-judicial members must be non-attorneys. No more than three of the members, other than the chairman, may be members of the same political party. Public defenders are not allowed to serve on the commission (Connecticut General Statutes §§51-289 to 51-300)

Eight states have established a state public defender office without an indigent defense commission. In these eight states, the chief public defender is appointed by the governor and is charged with administering the state indigent defense system (Constitution Project 2009; Spangenberg 2005, 2006a). Rhode Island, the first state to establish a state public defender system, created the Office of the Public Defender to represent indigent defendants and as of this writing, is supported by forty-four attorneys in six state offices (Rhode Island General Laws §§12-15-1 to 12-15-3; Rhode Island Office of the Public Defender 2010).

Seven states have a state indigent defense commission and a state director with statewide authority to oversee the provision of indigent defense services (Constitution Project 2009). North Dakota established the seven-member Commission on Legal Counsel for Indigents in 2005. The commission is charged with establishing and enforcing standards for determining indigency, attorney qualifications, job performance, caseloads and costs. Members are appointed by the North Dakota Supreme Court, the State Bar Association, the Legislature and the Governor's Office to serve staggered three year terms. Individuals appointed to the commission should have experience or demonstrated a commitment to quality indigent defense representation. Active judges, state's attorneys, assistant state's attorneys, contract counsel, public defenders, and law

enforcement officers are not allowed to serve on the commission (North Dakota Century Code §§54-61-01 to 54-61-03). Similarly, in 2004 Virginia established the Virginia Indigent Defense Commission to supervise the indigent defense program. The fourteen members include: the chairmen of the House and Senate Committees for Courts of Justice, the chairman of the Virginia State Crime Commission, the Executive Secretary of the Supreme Court, two attorneys appointed by the Virginia State Bar, two persons appointed by the Governor, and three persons appointed by the Speaker of the House and Senate Committee on Rules. At least three members must be private attorneys who have demonstrated an interest in indigent defense. Members serve three year terms or hold terms concurrent with their terms of office. The commission establishes and enforces attorney qualification standards, develops attorney training courses, and maintains a list of attorneys qualified to serve as court-appointed counsel for indigent defendants. The commission is also authorized to hire an executive director to assist with the administration of the state indigent defense system (Code of Virginia §§19.2-163.01 to 19.2-163.02).

Commissions in nine states have only partial authority, leaving some indigent defense responsibilities with the counties. The organization and administration of the systems vary by state, with some commissions providing supplemental funding while others oversee certain types of cases (Constitution Project 2009; Spangenberg 2005, 2006a). In Ohio, a nine-member commission supervises the Office of the Public Defender by establishing guidelines for determining indigency, attorney qualifications, compensation, and caseloads. Therefore, the commission is considered to have “partial authority” over the indigent defense system. Members are appointed by the Governor and Ohio Supreme Court to four year terms. Generally members are private attorneys with experience in providing indigent defense representation. The Office of

Public Defender provides representation at the trial level when requested by the courts but is primarily involved with appeals and post-trial activities (Ohio Revised Code Chapter 120).

Six states do not have a statewide public defender system or commission but have adopted a state appellate or post-conviction commission or agency to represent indigent defendants in appellate proceedings.¹¹ In Illinois, the Office of the State Appellate Defender is a state agency that provides representation to indigent persons on appeal in criminal cases when appointed by the Illinois Supreme Court, the Appellate Court or the Circuit Court (725 Illinois Compiled Statutes, Act 105).

Eight states have no method of state administrative oversight. These states are Alabama, Arizona, Florida, Maine, New York, Pennsylvania, South Dakota, and Utah (Spangenberg 2005, 2006a). Oversight and administration is provided at the local level. However, the provision of indigent defense within these eight states varies by state and sometimes county; therefore this research does not explore these programs (other than in Alabama) in extensive detail. The oversight of indigent defense in the other seven states could be explored in future research.

Table 4.2 illustrates key differences in the organizational arrangement of the state oversight bodies. However, these descriptive categories do not reflect all of the administrative or political differences between the states. For example, Florida and Tennessee are the only two states that elect public defenders. Florida has not established a state commission or appellate agency, while Tennessee has chosen to establish a state post-conviction defender office. This

¹¹ *Black's Law Dictionary* defines post-conviction remedies as: "A federal [or state] prisoner, attacking the constitutionality of his sentence, may move the court which imposed the sentence to vacate, set aside or correct the same. This motion, under 28 U.S.C.A. section 225, must normally be made before the prisoner can seek habeas corpus relief...Almost every state has one or more post-conviction procedures that permits prisoners to challenge at least some constitutional violations. A substantial group of states have adopted special post-conviction statutes or court rules, roughly similar to section 2255 of 28 U.S.C.A., that encompasses all constitutional claims" (1979, 1049).

research includes Florida in the list of states for which administrative oversight of indigent defense services is lacking. Although the system in Florida is unique, the state has not adopted a method of administrative oversight and is therefore included in this category of the classification.

Funding

While the Supreme Court has required that states provide lawyers for indigent defendants in the vast majority of criminal and juvenile delinquency cases, the Court has not established standards for the funding of indigent defense programs (Constitution Project 2009). Therefore, each state has also adopted its own method for funding indigent defense services (Bureau of Justice Statistics 1996). The authority and effectiveness of each oversight body varies by state, and both indicators are typically linked to the funding provided by the state. Indigent defense systems may be organized at the state, county, judicial district, or other regional level. Funding for the services varies by source and amount and may originate from state, counties, cities, court fees or a combination of sources (Constitution Project 2009; Spangenberg and Beeman 1995). Table 4.3 illustrates the division of funding between states and localities in the fifty states.

[Table 4.3 about here]

Twenty-eight indigent defense systems are fully funded by the states while the localities provide full-funding in two states. The remaining programs receive funds from both state and local sources.

The disparities in funding and oversight can affect the quality of representation afforded to indigent defendants. Generally, indigent defense commissions are more influential in states that fully-fund their systems. Moreover, indigent defense representation is typically more uniform in states which fully fund their systems as funding is consistent from county to county

(Desimone 2006; Spangenberg 2005, 2006, 2006a). The quality of systems funded at the local level tends to vary by county and can be adversely affected by local political and budgetary pressures. The poorest counties, which often have the highest crime rates but lowest revenues, are unable to adequately fund their indigent defense systems. Similarly, the expense associated with the prosecution and defense in one capital case can financially deplete a poorer county. Variations in the levels of statewide standards and state funding results in an assortment of local indigent defense systems which often provide inadequate representation (Abel 2006; Constitution Project 2009).

Current Concerns

Key informants in the indigent defense policy network were contacted for the purpose of identifying the dominant themes in indigent defense. The interviews included both closed- and open-ended questions concerning their views about reforming indigent defense representation. These interviews also identified other individuals and organizations in the indigent defense policy network. Effort was made to identify all participants in the indigent defense national policy network. After respondents began to name the same individuals and organizations, the process to locate these groups was completed. Figure 4.2 presents the fifteen national organizations identified and contacted in the indigent defense policy network.

[Figure 4.2 about here]

The mission statement of each member organization is included in Figure 4.2. Mission statements were obtained from the respective websites. Some of the organizations indicated that they had no current involvement in indigent defense reform. It appears that a small number of national organizations are currently focusing on indigent defense. Figure 4.3 illustrates the

primary (actively involved) and secondary (no current involvement) groups in the indigent defense policy network.

[Figure 4.3 about here]

Seven of the organizations contacted are actively involved with indigent defense policy. The following section details the current agenda items of the seven primary member organizations.

The National Association of Criminal Defense Lawyers (NACDL) is a professional bar association committed to preserving fairness within the nation's criminal justice system. The NACDL emphasized its commitment to improving and reforming the criminal justice services provided to indigent defendants. The indigent defense reform priorities of the NACDL include: 1) standards to govern indigent defense providers; 2) oversight of indigent defense services; 3) state funding for indigent defense services; 4) caseload challenges; 5) ensuring access to experts and investigators; and 6) methods of determining indigency. The NACDL believes that adequate representation is the primary safeguard of a defendant's rights within the criminal justice system. It maintains that the Sixth Amendment ensures that all constitutional rights, such as the right to be free from unlawful search and seizure, the right against self-incrimination, and right to a jury trial, are protected. The group believes that the lack of standards, oversight and funding in many states affects the quality of representation provided to indigent defendants. The NACDL supports a state administered and state funded indigent defense system and actively assists states in their reform efforts. Affiliates can receive information on the process by which defense reform has been achieved in other states. Such information includes model bills, national and other state standards and pleadings from reform litigation. Representatives from the NACDL will also review and provide testimony concerning proposed indigent defense reforms. Lastly, the

NACDL recognizes the importance of litigation in achieving indigent defense reform and will provide assistance with litigation strategy.

The American Bar Association (ABA) also provided information regarding indigent defense reform. The ABA's Standing Committee on Legal Aid and Indigent Defendants assists in the reform and improvement of indigent defense systems across the country. According to the ABA, the most pressing issues facing state indigent defense systems are funding and caseloads. The ABA representative cited pending litigation filed by public defenders in Kentucky, Tennessee and Florida regarding their excessive caseloads. Noting another national trend in response to caseloads, the representative said that public defenders in other states have started withdrawing from cases.

The Brennan Center for Justice at New York University School of Law is a non-partisan public policy and law institute that focuses on fundamental issues of democracy and justice. The Brennan Center supports a "community oriented defender" model to promote a fairer criminal justice system. In this model public defenders provide a "holistic defense" that addresses the criminal charges and the specific needs of the clients. The "community oriented defender" model also provides clients with social service providers who assist with reentry programs and alternative sentencing options. A representative from the organization cited funding, resource parity, oversight and accountability as the most pressing issues facing indigent defense programs. According to the representative, indigent defense program budgets have been systematically reduced. In the opinion of the informant, the inadequate funding is not a reflection of the recession but instead reflects a disregard for the defense function by many state officials. In addition, the Brennan Center representative maintained that the lack of state oversight produces systems that are not independent from the judiciary and function without state performance

standards. Finally, due to the lack of resources to provide this “fundamental public service,” the key informant suggested the need for federal funding for all state indigent defense programs.

The NAACP Legal Defense and Educational Fund (LDF) focuses on ensuring the fair and equitable treatment of African Americans in the criminal justice system. A representative from the organization cited caseloads and the lack of independence, oversight and training as current concerns facing state indigent defense programs. The key informant maintained that the issue is both economical and political. In her opinion, most taxpayers oppose the allocation of scarce resources to indigent defendants. The LDF representative held that indigent defense was not a human rights issue but a “bottom line” issue. She argued that economic interests were the driving force behind opposition to indigent defense reform. The LDF representative claimed that the expense of criminal justice policies further politicizes the issue of indigent defense. The key informant noted that high incarceration rates and death penalty cases have contributed to the cost of criminal justice administration. Finally, the key informant held that public officials responsible for establishing or reforming state indigent defense programs should refer to the *ABA Ten Principles of a Public Defense Delivery System* as a guide.

The National Legal Aid and Defender Association (NLADA) is a nonprofit advocacy organization representing legal aid and defender programs. The NLADA was instrumental in the development of the ABA principles and encourages state officials to use the principles as an assessment tool. According to the NLADA, caseload control and professional independence of the judiciary are the most pressing issues currently facing indigent defense programs. The NLADA advocates for a system in which judges are less involved with the selection and supervision of indigent defense counsel. In the opinion of the NLADA representative, it is vital that state indigent defender programs operate without political or judicial interference. Finally,

the NLADA representative claimed that the economic downturn has negatively impacted state indigent defense programs. State defender programs are forced to provide more services with less funding. This lack of funding further exacerbates the caseload crisis.

The Spangenberg Project conducts research on the right to counsel and indigent defense delivery systems and provides technical assistance to indigent defense systems across the nation. For over ten years, the Spangenberg Group has conducted program evaluation in the area of indigent defense for state and local governments.

The Constitution Project is a criminal justice policy group that provides reports and other resource materials for experts and the general public. The Constitution Project also files amicus curiae briefs in important cases regarding criminal justice reform. The group's National Right to Counsel Committee recently released an extensive report documenting the need for indigent defense reform across the American states.

Certain threads emerged from these discussions. Representatives recognized a number of leading and lagging states in the indigent defense reform movement. Massachusetts, Connecticut, Montana, North Dakota, and Louisiana were recognized for making significant reforms to their respective indigent defense program. Informants noted that Massachusetts recently passed legislation that increased the hourly compensation rates for court-appointed counsel and increased the appropriation for indigent defense services. In addition, national key informants highlighted the state's creation of a commission to study the effects of decriminalizing certain misdemeanors. Stakeholders in Massachusetts and Connecticut were praised for recent policy decisions aimed at reducing racial biases in the system. Montana was commended for passing legislation in 2005 that replaced its locally controlled indigent defense system with a centralized statewide office to oversee the provision of indigent defense. With the passing of the bill,

Montana became the first state to reform its indigent defense system based on the American Bar Association's *Ten Principles of a Public Defense Delivery System*. North Dakota was also recognized for passing legislation in 2005 that established a statewide commission to oversee the provision of indigent defense in the state. The national organizations noted that the legislation also significantly increased the appropriation for indigent defense. According to the informants, the increase in funding was made possible by the oil revenue recently generated in the state. Finally, representatives also supported recent reform initiated in Louisiana but agreed that the state's indigent defense system was still in transition.

Key informants cited Michigan, Georgia, Alabama and New York the states in most need of indigent defense reform. Representatives from several national organizations were scheduled to testify before the U.S. House Judiciary Committee in a hearing to investigate Michigan's indigent defense system. Informants noted the lack of state oversight and adequate funding in the Michigan indigent defense system. In addition, several informants argued that racial disparities remained at every stage of the criminal justice system in Michigan and across the American states. The Georgia statewide public defender system was also cited as an example of an underfunded, failing system. However, representatives did note that the situation in Georgia was unique, in that one high profile capital case excessively strained the system. Finally, key informants claimed that the locally administered systems in Alabama and New York lacked oversight and adequate funding.

Many national key informants mentioned the economic downturn and its subsequent effect on indigent defense. State and local budget cuts reduce the amount of resources available for the provision of indigent defense services. Several informants recommended that states discontinue prosecuting nonviolent misdemeanor offenses such as curfew violations and

loitering. In addition, representatives argued that many nonviolent misdemeanor cases should be diverted from the criminal justice system. Instead of incarcerating offenders, misdemeanants should pay civil fines or conduct community service. They claimed that these reforms will reduce the number of indigent defense caseloads and the cost of misdemeanor prosecutions.

Information obtained in key informant interviews and from the literature (Constitution Project 2009; Davies and Worden 2009; Desimone 2006; Lee 2004; Spangenberg 2005, 2006, 2006a) indicates that some states have been more successful than others at administering and funding indigent defense services. Although the economic downturn has affected most state indigent defense programs, a number of key informants cited North Carolina as a model state for the provision of indigent defense services. North Carolina created the Commission on Indigent Defense Services and Office of Indigent Defense Services in 2000 to oversee the provision of indigent defense representation. The thirteen member Commission is appointed by Chief Justice of the North Carolina Supreme Court, Governor, President Pro Tempore of the Senate, Speaker of the House of Representatives, North Carolina Public Defenders Association, and six State Bar organizations. Membership is comprised of judges, attorneys and nonlawyers who have demonstrated a commitment to indigent defense. The Commission establishes statewide standards, determines the delivery of indigent defense services throughout the State, establishes compensation rates and appoints a Director of the Office of Indigent Defense Services. The Director is appointed to a four year term and is responsible for assisting the Commission in developing standards and supervising compliance with the standards (North Carolina General Statutes §§7A-498.2 to 498.8).

A number of specialized offices have been established to improve the provision of indigent defense representation. The Office of Appellate Defender represents indigent persons

following conviction in trial courts. This Office was established in 1981 and transferred to the Office of Indigent Defense Services in 2000. The Office of Capital Defender and several regional capital defender offices provide legal representation to indigent defendants accused of capital crimes. The Office of Capital Defender began operations in 1999 and continues to expand its regional offices. The Office of the Juvenile Defender was established in 2004 to provide services and support to juvenile defense attorneys and to oversee the quality of representation in juvenile delinquency court (North Carolina General Statutes §§7A-498.2 to 498.8; North Carolina Office of Indigent Defense Services 2010).

Indigent defense in North Carolina is funded entirely by the state. The budget of the Office of Indigent Defense Services is part of the Judicial Department's budget (North Carolina General Statutes §§7A-498.2). Indigent defense was appropriated approximately \$136 million in fiscal year 2009-2010. Like indigent defense programs in other states, its budget was reduced sharply in fiscal year 2009-2010 to \$120 million (General Assembly of North Carolina Senate Bill 202 2009).

Twenty-six of the state's 100 counties employ the public defender model (North Carolina Office of Indigent Defense Services 2010). A \$50 appointment fee is imposed on indigent criminal defendants who are appointed counsel and have been convicted or plead guilty to one or more charges. Forty-five dollars of each fee collected is credited to the Indigent Persons' Attorney Fee Fund. Private attorneys are compensated \$95 per hour in capital cases and \$75 per hour in non-capital cases (North Carolina General Statutes §§7A-455.1; North Carolina Office of Indigent Defense Services 2009).

The Office of Indigent Defense Services began a number of initiatives in 2009. The agency continues to consult with other stakeholders in the state criminal justice network to

establish strategies to reduce the demand for indigent defense representation. A possible reform advocated by a number of stakeholders in North Carolina is to decriminalize minor misdemeanor offenses for which jail sentences are rarely or never imposed. In partnership with the University of North Carolina School Of Government, the Office will offer eight different training programs for public defenders and private attorneys in 2010. The Office staff regularly analyzes cost data to determine the most cost-effective method of delivering indigent defense services. Finally, the Office continues to modify attorney and staff performance guidelines and qualification standards to improve the quality of indigent defense representation throughout the state (North Carolina Office of Indigent Defense Services 2009).

Although each state is confronted with various challenges, the economic constraints and lack of oversight and standards are common concerns facing currently indigent defense programs in the American states.

Economic Constraints

Expense

Criminal justice administration is expensive, and states have made crime justice policies more expensive by criminalizing behavior and increasing penalties for drug use. The expansion of the criminal justice system, specifically in regards to law enforcement, prosecution and punitive sentencing, has resulted in a fundamental shift in crime policy over the last thirty years (Davies and Worden 2009; Garland 2001; Scheingold 1984). Figure 4.4 presents the direct expenditures per 100,000 residents on criminal justice by state and local governments from 1982 to 2006.

[Figure 4.4 about here]

As indicated in Figure 4.4, state and local governments have consistently increased spending for police, judicial and correctional functions. From 1982 to 2006, criminal justice administration spending per capita for state and local governments increased by more than 337 percent. The yearly rate of change is also presented in Figure 4.4. It is important to note the decreasing rate of change. The largest percent increase in spending per capita occurred in the early 1990s and has since only increased between 2 percent and 6 percent.

Similarly, state courts nationwide have experienced growing caseload pressures over the last two decades due to an increase in criminal prosecutions (Bureau of Justice 2007). Total state non-traffic case filings for years 1987, 1993, 1998, and 2004 are presented in Table 4.4

[Table 4.4 about here]

The case filing data included in Table 4.4 consist of felonies, misdemeanors, and infractions filed in the respective years. From 1987 to 2004, total non-traffic caseloads in state appellate and trial courts per capita increased by more than 25 percent. These policy trends have generated a greater number of criminal defendants and consequently a proportionately greater number of indigent defendants entitled to state-provided counsel (Albert-Goldberg and Hartman 1983; Constitution Project 2009).

Further impacting the cost of criminal justice administration and the demand for indigent defense counsel was the shift in drug policy that occurred during the 1980s. While Nixon was the first president to use the phrase “war on drugs,” federal and state drug-control policy became more proactive during the Reagan administration. President Reagan appointed a “drug czar” to lead the newly created Office of National Drug Control Strategy. The administration and agency attempted to reduce drug supply through increased law enforcement activity and criminal sanctions (Benoit 2003; Whitford and Yates 2003). Consequently, from 1981 to 1995, federal

spending on drug control programs increased from \$1.5 billion to \$13.3 billion (Office of National Drug Control Policy 1995).

The issue became sensationalized and consequently politicized as accounts of drug-related crime were consistently covered by the media during the 1980s (Reinarman and Levine 1995). Responding to public support of the drug war, policymakers increased the penalties for distribution and possession and passed mandatory minimum sentences for drug crimes that were equivalent to sentences for murder. Notwithstanding the cost of incarceration, this shift in drug policy exponentially increased criminal justice expenses, as law enforcement devoted more resources to the arrest and prosecution of drug offenders. Arrests and convictions for drug offenses have since skyrocketed (Blumstein and Piquero 2007; Kleiman and Smith 1990; Schneider 1998). Figure 4.5 presents the total estimated number of arrests for state and local drug abuse violations for adults and juveniles per capita from 1980 to 2006.

[Figure 4.5 about here]

The Bureau of Justice Statistics defines drug abuse violations as “state or local offenses relating to the unlawful possession, sale, use, growing, manufacturing, and making of narcotic drugs” (2009). Drug violation arrests by state and local law enforcement officials per capita increased by more than 146 percent from 1980 to 2006. The most significant increases in the total estimated number of drug arrests occurred in the 1980s and mid-90s. After a decrease in the early 2000s, drug arrests per capita have slightly increased from 2003 to 2006.

As a result of these changes in policy, local police, prosecutors and corrections officials devoted more resources to enforce the new drug laws. In 1986, drug offenders accounted for only 8.6 percent of state prisoners. By 1998, 21 percent of those in state prison were incarcerated for drug violations. “Three strikes” laws, enacted by a majority of states have also contributed to

the prison population. Generally under this mandatory law, offenders are sentenced to life after their third serious felony conviction (Blumstein and Piquero 2007). Figure 4.6 presents the number of persons under jurisdiction of state correctional authorities by most serious offense per 100,000 residents from 1980 to 2005.

[Figure 4.6 about here]

The data in Figure 4.6 indicates the exponential growth in state prison population in the last two decades. Over the twenty-five year period, the total state prison populations increased by more than 235 percent while the population by offense per capita increased by the following: violent (204%); property (113%); drug (919%); and public order offense (507%).¹² It is important to note the discrepancy between drug and public order violators over time. While the number of persons incarcerated for drug and public order offenses were comparable in the early 1980s, the number of drug law violators increased substantially in the late 1980s. This trend is consistent with Figure 4.5 which illustrates the increase in drug law violation arrests from 1983 to 1989.

Figure 4.7 presents the rate of change in the number of persons under jurisdiction of state correctional authorities by offense per 100,000 from 1980 to 2005.

[Figure 4.7 about here]

The rate of change has remained fairly constant for violent, property, and total offenses. However, the rate of change is most varied for persons incarcerated for public offenses while persons incarcerated for drug crimes dramatically increased in the 1980s and has since stabilized.

¹² Violent offenses include murder, negligent and non-negligent manslaughter, rape, sexual assault, robbery, assault, extortion, intimidation, criminal endangerment, and other violent offenses. Property offenses include burglary, larceny, motor vehicle theft, fraud, possession and selling of stolen property, destruction of property, trespassing, vandalism, criminal tampering, and other property offenses. Drug offenses include possession, manufacturing, trafficking, and other drug offenses. Public-order offenses include weapons, drunk driving, escape/flight to avoid prosecution, court offenses, obstruction, commercialized vice, morals and decency charges, liquor law violations, and other public-order offenses (Bureau of Justice Statistics 2009a).

Not surprisingly, state correctional expenditures levels have increased with the growth in state inmate population. State correctional expenditures grew in 2001 constant dollars from \$15.6 billion in fiscal year 1986 to \$38.2 billion in fiscal year 2001, resulting in a 145 percent increase (Bureau of Justice 2001). Since the 1960s, the costs associated with indigent defense systems have also increased. In 1979, state and local governments spent approximately \$350 million to provide legal counsel to indigent defendants in both criminal and civil cases. By 1990, spending for these services had increased to over \$1.3 billion (Bureau of Justice Statistics 1996).

Table 4.5 presents total indigent defense expenditure and per capita spending by state in fiscal year 2005.

[Table 4.5 about here]

State and local governments spent approximately \$3.4 billion on indigent defense across the American states, resulting in a cost per person of \$11.73 in 2005. Total expenditures were highest in the five most populous states, California, New York, Florida, Texas, and Illinois. Alaska, Oregon, New York and Massachusetts spent the most per capita on indigent defense representation while spending per person was lowest in North Dakota, Mississippi, Utah and Missouri respectively (Spangenberg 2005, 2006, 2006a).¹³

Factors other than state economic characteristics affect the spending levels between states. Indigent defense costs are higher in states that extend the right to counsel in more case types, and the types of cases included in indigent defense expenditures vary by state. For example, Massachusetts and Ohio provide representation in certain child welfare cases, while other states do not (Massachusetts General Laws Chapter 119, §29; Ohio Revised Code §2151.352). Similarly, because traffic offenses can carry a sentence of imprisonment in New

¹³ Alaskan public defenders must travel by air for many court appearances thereby increasing the state's cost per capita (NLADA 2008).

York, the right to counsel is statutorily required in traffic cases (New York State Criminal Procedure Law §170.10). Also affecting state and local expenditure levels are the expenses incurred in death penalty cases. The thirty-five states with death penalty laws will have considerably higher indigent defense costs than states without death penalty statutes.¹⁴ Lastly, expenditure levels by state are further affected by differences in public defender salaries and staff size (Spangenberg 2006, 2006a).

The cost of criminal justice policies strain state budgets already pressured by a worsening economy. State budgets are shrinking due to faltering revenues in fiscal years 2008 and 2009, and expenditure and revenue forecasts indicate further deterioration (Center on Budget and Policy Priorities 2009; National Association of State Budget Officers 2008). A weak economy decreases tax revenues which results in less money for government agencies (Greene 2005). When the economy deteriorates, states must increase revenue, reduce spending, withdrawal from reserves or use federal stimulus dollars to reduce budget gaps (McNichol and Lav 2009).

The Center on Budget and Policy Priorities, a nonpartisan policy organization, has forecasted that most states will struggle to find the revenue needed to fund important public services for the next several years. Total state general fund spending for fiscal 2010 is projected to be 2.5 percent less than the estimated spending in fiscal year 2009, resulting in the worst expenditure growth in the past thirty-two years (National Association of State Budget Officers 2009). As of mid-August 2009, at least forty-eight states have addressed or are still facing budget shortfalls for fiscal year 2010. These budget shortfalls total \$165 million, which amounts to 24

¹⁴ The fifteen states without the death penalty are Alaska, Hawaii, Iowa, Maine, Massachusetts, Michigan, Minnesota, New Jersey, New Mexico, New York, North Dakota, Rhode Island, Vermont, West Virginia and Wisconsin. However, New Mexico voted to abolish the death penalty in March 2009, and the figures presented in Appendix III include expenses incurred in capital cases (Death Penalty Information Center 2009).

percent of state budgets. Approximately thirty-four states have already projected deficits for 2011, and total budget shortfalls for fiscal years 2009, 2010 and 2011 are estimated to reach \$350 billion to \$370 billion (Center on Budget and Policy Priorities 2009).

Enrollments in social programs for the poor have historically increased as revenue growth declines. This results in a simultaneous increase in spending pressures for these services. In fiscal year 2009, forty-two states enacted budget cuts that reduced services for their residents, including programs for the elderly, poor, disabled and children. In comparison, thirteen states enacted budget cuts in fiscal year 2008 while only three reduced enacted budgets in 2007 (Greene 2005; National Association of State Budget Officers 2009).

These budget reductions are likely to impact the provision of legal services for the poor. Many states have already begun reducing fiscal year 2010 funding for indigent defense services. The scarce resources available to indigent defense programs often lead to inadequate training and unmanageable caseloads. Overworked attorneys are unable to devote adequate time and resources to address the needs of their client; therefore these budget reductions will presumably impact the quality of representation afforded to indigent defendants.

The Kentucky Department of Public Advocacy, a state agency responsible for representing indigent defendants, implemented a hiring freeze, gave early retirement to twenty-five employees, and imposed a mandatory furlough for a number of employees after the agency received approximately \$5 million less in funding in fiscal year 2008 (*Lewis v. Hollenbach, et al.* 2009). In an open letter to Kentucky Legislators in spring 2009, Public Advocate Ed Monahan indicated that without additional funding, the agency would be depleted of funds by April or May 2009. Although his office received \$2 million in mid-April to avoid agency shutdown,

expenditure and hiring restrictions were placed on his agency through the remainder of fiscal 2009 (Kentucky Governor Press Release 2009).

The economic downturn has affected indigent defense systems in other states. The American Recovery and Reinvestment Act provided \$1 million to the Kansas State Board of Indigent Defense Services in fall 2009, allowing the agency to maintain public defender positions (Kansas Office of the Governor 2009). An additional \$5 million was added to the Tennessee indigent defense fund for fiscal year 2010 to compensate attorneys and experts that have not yet been paid for fiscal year 2009 (Tennessee Administrative Office of the Courts 2009). Although the Missouri Office of State Public Defender has requested approximately \$51 million for fiscal year 2010 and 700 full-time equivalent employees, the Governor approved roughly \$13 million less in funding and 160 less in full-time equivalent employees (Missouri Division of Budget and Planning 2009).

Finally, as our understanding of effectiveness assistance has evolved, it has become more expensive. The Supreme Court has recognized the need for state-funded experts, particularly psychiatrists for mentally ill defendants (Constitution Project 2009). In *Ake v. Oklahoma* (1985), the Supreme Court held that an indigent defendant facing the death penalty had the right to request a psychiatric evaluation at the state's expense. Writing for the majority, Justice Thurgood Marshall cited the Court's precedent of ensuring that indigent defendants were allowed to adequately present their defense. The Court ruled that by providing a psychiatric evaluation to a defendant facing the death penalty, the state was allowing the indigent "meaningful access to justice" (77). Similarly, the American Bar Association asserts that states should assist in providing resources including technology, experts, and investigators to their indigent defense programs (2004).

The scarce resources available to indigent defense systems often lead to inadequate training, unmanageable caseloads and conceivably ineffective assistance of counsel. Existing research suggests that state oversight and standards can mitigate the effects of these conditions (Constitution Project 2009; Spangenberg 2005, 2006a). The following section explores the use of standards and guidelines to ensure state indigent defense programs are providing constitutional representation.

Oversight and Standards

The lack of statewide standards results in an assortment of local indigent defense systems that often provide varying degrees of representation for the poor within the same state. Standards and guidelines concerning attorney qualifications, caseloads, conflict of interest, indigency screening, attorney performance and administration of indigent defense systems vary widely from state to state. Depending on the state, these standards are determined by state and local legislation, state supreme court rule, national, state and local public defender organizations, and indigent defense commissions (Constitution Project 2009; National Association of Criminal Defense Lawyers 2008; Spangenberg 2005, 2006a).

In 2002 the American Bar Association (ABA) released the *ABA Ten Principles of a Public Defense Delivery System* to serve as a guide for policymakers responsible for establishing or reforming state indigent defense programs. Decision-makers lack the time and knowledge to interpret the multitude of standards that exist concerning the provision of criminal defense services. Further emphasizing the need for an indigent defense guidebook, state policymakers responsible for creating and funding public defender systems are often unfamiliar with criminal defense law. The principles provide fundamental standards for policymakers “in order to design

a system that provides effective and efficient, high quality, ethical, conflict-free legal representation” for indigent defendants (American Bar Association 2002, 107). Figure 4.8 presents the principles as adopted by the ABA in 2002.

[Figure 4.8 about here]

The ABA principles were to serve as a practical manual for state policymakers responsible for establishing or reforming indigent defense systems. Attorney General Eric Holder underscored the importance of the ABA principles during his speech at the national symposium on indigent defense in February 2010. It is important to note that the five states explored in this research have not adopted these principles. Although several key informants indicated that they were aware of the principles, many claimed that the guidelines were unrealistic for state administrators given the current economic conditions. An Alabama circuit court judge claimed:

It would be impossible for the state of Alabama to meet all of these principles.

In his opinion, the standards provided suggestions for reform but were impractical in their entirety. A key informant in Texas argued that support for the standards was mixed among stakeholders. In her opinion:

Many of the principles are too vague. Texas does not have judicial independence. Not all of the principles are on the list of priorities for the legislature. The Fair Defense Act (indigent defense reform legislation passed in Texas in 2001) is too new. The legislature thinks it has fixed the problem and is proud of it.

A public official who was actively involved in writing the indigent defense reform legislation in Georgia in 2003 also suggested the possible impracticality of the ten principles. Instead, she claimed that stakeholders reviewed and combined the standards into six applicable principles. Figure 4.9 presents a list and description of the six principles as formulated by the State Bar of Georgia Indigent Defense Committee.

[Figure 4.9 about here]

The first principle emphasizes that adequate and effective indigent defense representation is a state responsibility guaranteed under both the United States and Georgia Constitutions. The second principle reflects the belief that the defense function is an essential part of the criminal justice system. The last four principles suggest the need for parity, adequate funding and professional independence to ensure adequate and effective legal representation of indigent persons.

Key informants from national organizations in the indigent defense policy network helped to identify several of the ABA principles that were important for this research. The following section explores the principles of independence, caseload limits, parity and accountability.¹⁵

Independence

As indicated by the first principle, the ABA advocates for an independent public defender system that is free from undue political pressures. The ABA and other reformers advocate for a system whereby defense attorneys are able to perform their duties without unnecessary political or judicial interference. In the states in which judges have the authority to appoint counsel in indigent defense cases, judges have more influence over indigent defense attorneys than private defense attorneys. This relationship jeopardizes the professional independence of the defense role. Professional independence is fostered when judges are less involved with the selection and

¹⁵ It is important to distinguish between state and local oversight in Table 4.2 and the potential methods of “good” practice advanced by the ABA. The systematic study of indigent defense is relatively new; the distinctions between intergovernmental arrangements for oversight and the actual metrics of desirable programs (i.e. caseloads, independence, etc.) may come into sharper focus as this topic receives greater attention from policy makers and scholars.

supervision of indigent defense counsel (American Bar Association 2004; Constitution Project 2009; Spangenberg 2005, 2006a).

Many states have established independent oversight committees to reduce these disparities and ensure accountability (Constitution Project 2009; Spangenberg 2006a). These various methods of state administrative oversight are reviewed in more detail in the earlier section exploring levels of oversight. A state oversight commission is most responsible for ensuring the defense function by safeguarding indigent defense systems from political and judicial influence. Depending on the state and scope of responsibility, a commission or oversight body may also monitor caseloads and costs and develop attorney performance standards.

Caseloads

The fifth principle underscores the need to reduce excessive caseloads. In 1973 the National Advisory Commission (NAC) set annual maximum caseload limits to 150 felonies, 400 misdemeanors, 200 juvenile cases, 200 mental health cases, or 25 appeals. According to the ABA, national caseloads should not be exceeded and counsel has an ethical responsibility to decline appointments if necessary. Because they are often overworked and underpaid, the short supply of attorneys willing to represent indigent clients leads to excessive caseloads (American Bar Association 2004). Excessive caseloads hinder the effective representation in each case, as overworked attorneys are unable to devote adequate time and resources to address the needs of their clients (Lee 2004).

Public defender offices in several states are refusing to take more cases due to their overwhelming caseloads and budget cuts. The Miami-Dade County Public Defender Bennett Brummer sued the state of Florida in June 2008 after his budget was reduced 9 percent. The

attorneys in his office averaged 436 cases per year and claimed that accepting more felony cases would compromise their ethical duties (Eleventh Judicial Circuit Miami-Dade County 2008; Public Defender of the Eleventh Judicial Circuit of Florida 2009). Excessive caseloads continue to be a problem in the Miami-Dade County Public Defender Office. On August 3, 2009, Assistant Public Defender Jay Kolsky filed a motion to withdraw due to excessive workload (*State of Florida v. Antoine Bowens* 2009). Caseload limits have also been an issue in Kentucky over the past several years. The Kentucky Department of Public Advocacy received fewer resources but higher caseloads in fiscal year 2007, with each attorney assigned an average of 436.3 felonies annually (Kentucky Department of Public Advocacy 2007). In fiscal year 2008, the average per attorney caseload at the Kentucky Department of Public Advocacy exceeded the national standards by over 200 percent, with each attorney averaging 486.7 cases per year (Kentucky Department of Public Advocacy 2008). In July 2009, Missouri Governor Jay Nixon vetoed a bill that would have allowed the Missouri Public Defender Commission to establish maximum public defender caseloads (Missouri Senate Bill 37 2009).

Parity between prosecution and defense functions

The eighth principle reflects the concept of parity between defense counsel and the prosecution. According to the ABA, workload, salaries, and resources afforded to the prosecutor should also be afforded to the public defender.¹⁶ The constitutional guarantee of effective legal representation is practically unattainable without proper financial support. Adequate compensation is necessary to recruit and retain qualified attorneys and staff members (Constitution Project 2009; Spangenberg 2005, 2006a). Nationwide, prosecutors are

¹⁶ Resources included benefits, technology, facilities, legal research, support staff, paralegals, investigators, and access to forensic services and experts.

compensated more than public defenders, and the funding provided to prosecutors and their staff outmatches those afforded to most indigent defense offices (Lee 2004). A considerable body of research examines the effects of this imbalance (Cole 1999; LaFave 1970; Ohlin and Remington 1993).

Accountability

Another concern is accountability. The ABA highlights the need for performance standards and periodic evaluations of counsel and staff responsible for providing defense services in the final principle. Indigent defense program reformers argue that independence and oversight are necessary to ensure the quality of services delivered within that state's system (Constitution Project 2009; Spangenberg 2005, 2006a). Performance standards help to distinguish between effective and ineffective representation (Lee 2004). In 2008, the Nevada Supreme Court approved indigent defense performance standards establishing basic guidelines for the representation of indigent defendants. Included in the standards are requirements that defense counsel appropriately investigate cases and adequately maintain contact with clients throughout the duration of cases (Nevada Supreme Court 2008).

The lack of standards and the lack of accountability have resulted in successful challenges on the basis of ineffective assistance of counsel. Cases involving the death penalty particularly underscore the need for effective assistance of counsel.¹⁷ Indigent defendants lack the resources and political power necessary to challenge the system. An indigent defendant has

¹⁷ Ernest Ray Willis served 18 years on Texas' death row before a U.S. District Judge ordered the state to either release him or retry him due to a number of claims, one of which was ineffective assistance of counsel (*Willis v. Cockrell* 2004). Similarly, Glen Edward Chapman was released in 2008 after spending 14 years on death row after a North Carolina Superior Court Judge ordered a new trial due to ineffective assistance of counsel and other claims. Prosecutors dropped all charges (*State of North Carolina v. Chapman* 2007).

few options when faced with an ineffective attorney, and the *Strickland* standard is a difficult threshold to meet. (The *Strickland* standard is used when evaluating effectiveness. To prove ineffectiveness, a defendant must show that: 1) the performance of counsel was ineffective and 2) the ineffective performance resulted in unfair trial). Most importantly, *Strickland* only applies to cases that have been litigated. Since many cases never reach the litigation stage and are instead settled by plea-bargains, standards and oversight are of utmost importance (Lee 2004).

Summary

In summary, the right to counsel is an evolving concept that has been expanded throughout the years. American indigent defense systems and the wide variation across states today have been shaped by English law, the United States Constitution and subsequent judicial interpretations (Albert-Goldberg and Hartman 1983; Hashimoto 2007). Since *Gideon*, states have implemented various systems to provide indigent defense services. In 1942, Rhode Island became the first state to implement a state-funded public defender system. Since then, forty-one states have established various methods of administrative oversight (Constitution Project 2009; Spangenberg 2005, 2006a).

States have adopted various levels of administrative oversight to ensure the delivery of quality indigent representation. The cost of administering indigent defender programs continues to rise. In addition, the economic downturn has reduced state budgets and forced states to provide more social services for the poor. The increase in the number of indigent defendants entitled to state-appointed representation will further strain state programs. This chapter highlights the current concerns facing state indigent defender programs and the methods by which some state administrators are addressing these concerns.

Chapter V details the history, description and current concerns of the five indigent defense programs explored in this research. In addition, it explores the level of state oversight in each state.

CHAPTER V
INDIGENT DEFENSE PROGRAMS IN FIVE SOUTHERN STATES

Chapter V details the history, description and current concerns of the five indigent defense programs explored in this research. These case studies identify the actors, organizations and institutions involved in indigent defense reform and analyze the level of state oversight in each state. The chapter begins with a comparative description of the five states and is followed by a detailed examination of the indigent defense systems in each state.

Comparative Description

Table 5.1 presents the adoption of state administrative oversight of indigent defense programs by state and year.

[Table 5.1 about here]

Of the five indigent defense programs explored in this research, Alabama is the only state that has not yet adopted a method of state administrative oversight. While the remaining four states oversee the provision of indigent defense services, the level and focus of administrative oversight varies by state. In 1998, Mississippi established a statewide, state-funded indigent defense system that included a statewide commission. The legislation establishing the oversight body was abolished in 2000, making Mississippi the first state in the country to repeal a state indigent defense commission. Since 1998, various levels of state administrative oversight were adopted in Texas, Georgia and Louisiana (Constitution Project 2009; Spangenberg 2005, 2006a).

Table 5.2 illustrates the respective level and focus of the state oversight bodies in each of the five states.

[Table 5.2 about here]

Existing research has divided methods of administrative oversight of indigent defense programs into the six distinct categories presented in Table 5.2. Alabama has not adopted a state indigent defense commission, while Mississippi has adopted a state appellate and post-conviction agency to represent indigent defendants in appellate proceedings. Both Georgia and Texas has adopted a state commission with partial authority. Louisiana is the only state explored in this research that has adopted a state commission headed by a state director (Constitution Project 2009; Spangenberg 2005, 2006a).

The level of state funding provided for indigent defense also varies by state. Table 5.3 presents the total expenditure and per capita expenditure by state in fiscal year 2005.

[Table 5.3 about here]

While Texas' total expenditure level was significantly higher than the other states, per capita spending in Texas was lower than in Georgia and Alabama. In addition, Georgia ranked highly in both total expenditures and per capita spending. Finally, Mississippi had the lowest total expenditure and per capita expenditure in fiscal year 2005.¹⁸ It is important to explore total indigent defense spending in the context of total state expenditure in a given year. Table 5.3 also presents the total indigent defense spending per \$100,000 of the total state budget for fiscal year 2005. For every \$100,000 budgeted in Georgia in 2005, \$322.87 was budgeted for indigent

¹⁸ It is important to note that these expenditure levels precede the passage of the Louisiana Public Defender Reform Act in 2007. However, it is difficult to collect reliable state-level indigent defense expenditure data. Given the availability of the information for fiscal year 2005, a comparative analysis was made using data from that year.

defense, the highest amount of the five states. Regarding this measure of indigent defense spending, Mississippi again ranks last as compared to the other states explored in this research.

Table 5.4 presents the level of state and local funding for the indigent defense systems explored in Alabama, Georgia, Louisiana, Mississippi and Texas.

[Table 5.4 about here]

All five indigent defense programs receive funds from both state and local sources. According to a public official, as of 2007 the state of Louisiana provides approximately 40 to 50 percent of the funding for indigent defense. In the remaining states, the localities provide the majority of indigent defense (Constitution Project 2009; Spangenberg 2005, 2006, 2006a).

Given these variations in administration and funding, it is important to explore indigent defense in a historical context. The following review is a detailed examination of the history and description of the respective indigent defense systems. The states are described in chronological order of adoption of state administrative oversight. Using data obtained in original interviews with public officials and key informants, each examination concludes with an analysis of current concerns confronting each system.

Mississippi

History and Description

In 1998, the Mississippi Statewide Public Defender Act established a statewide, state-funded indigent defense system that included a statewide commission on indigent defense, district defender offices in every judicial circuit and an executive director to oversee the offices. The commission was charged with establishing and enforcing standards regarding: caseloads, qualifications and performance standards for attorneys and guidelines for determining indigency.

Each judicial circuit was to have a public defender, appointed by the commission, who would employ a staff of assistant district defenders, investigators and paralegals. The district defender offices were charged with advising, representing, and defending indigent persons accused of felonies in the circuit court district. The salary of the district defender was to be equal to that of the district attorney, and the commission would establish the salaries of the investigators, paralegals and other support staff within the public defender system. Furthermore, the legislation provided that the legislature would appropriate funds for the statewide system (Mississippi Statewide Public Defender System Act of 1998).

Prior to the legislation, the provision of indigent defense services in Mississippi was funded and supervised entirely at the county level. Indigent defense services were delivered through full-time public defenders, contract attorneys and court appointed counsel, depending on the county. The use of part-time public defenders increased in the 1990s due to a Mississippi Supreme Court decision which held that court-appointed attorneys had a right to be reimbursed for overhead at an hourly rate of \$25 per case (*Wilson v. State* 1990). In a cost-saving measure, many counties began using part-time public defenders instead of court appointed attorneys, as the former were contracted to represent indigent defendants for a fixed annual price and did not include the overhead rate.

Although the Mississippi Statewide Public Defender System Act of 1998 required the legislature to appropriate funds to the commission, funding for indigent defense was still being provided by the counties after the legislation was passed. A high level state administrator indicated that the Administrative Office of the Courts provided office space for the commission and funding for an executive director and an administrative assistant. The state provided no other appropriations pursuant to the legislation.

In 2000, the legislature repealed the Mississippi Statewide Public Defender Act of 1998 and charged the counties with administering and funding indigent defense services. By repealing the legislation, Mississippi became the first state in the country to abolish a state indigent defense commission (Spangenberg 2005, 2006a). Counties in the state can choose to utilize a public defender, assigned counsel or contract counsel system (Mississippi Code §99-15-17). Mississippi currently has four full-time public defender offices, while the remaining seventy-eight counties either employ part-time public defenders or appointed counsel.

After repealing the legislation in 2000, Mississippi created two statewide, state-funded agencies to assist in death penalty cases. The Office of the Capital Defense Counsel and the Office of Capital Post-Conviction Counsel were established to provide representation to indigent persons charged and convicted in death penalty cases (Mississippi Death Penalty Defense Litigation Act 2000).

The Capital Defense Counsel received the first case on September 12, 2001. The Office employs three staff attorneys and five support staff. The Capital Defense Counsel can provide assistance in fifteen new death penalty cases per year, leaving the counties to fully fund the remaining cases. Appointed counsel may be used in death penalty cases if the Capital Defense Counsel or the Capital Post-Conviction Counsel cannot effectively represent the indigent defendant due to caseload or conflict of interest issues. Both statewide agencies are financed through special funds in the state treasury generated from court costs (Mississippi Code §§99-18-3 to 99-18-17). The Capital Defense Counsel has been unable to substantially relieve local governments of the financial burden incurred in death penalty cases, given that the state has not provided adequate funding. According to case tracking information obtained from a key public administrator, Mississippi prosecutors will seek the death penalty in approximately sixty cases a

year. Retained counsel will be used in roughly fifteen of these cases. The Council is subsequently able to address one-third of the remaining state capital cases each year.

The two state agencies charged with representing indigent defendants in capital cases continue to be underfunded. Table 5.5 presents statewide funding for the Capital Defense Counsel and Capital Post-Conviction Counsel from 2005 to 2006.

[Table 5.5 about here]

Funding for the Capital Defense Counsel consistently increased from 2005 to 2008 but decreased from 2008 to 2009. Similarly, funding for the Capital Post-Conviction Counsel in 2009 was \$20,000 less than its level of funding in 2005 (Mississippi Department of Finance and Administration 2009).

In 2005 the Office of Indigent Appeals was created with the purpose of providing legal representation on appeal for indigent persons convicted of felonies but not under death sentences. As is the Capital Defense Counsel, the office is funded by court fines and fees and was intended to be the counterpart of the Criminal Division of the Attorney General's Office (Mississippi Code §99-40-1).

Current Issues

Several reforms have been initiated in recent years as a result of the Mississippi Public Defender Task Force. The Task Force was created in 2000 to make annual recommendations to the legislature regarding the operation of the Mississippi public defender system. The thirteen-member Task Force include: presidents of the Mississippi Public Defender Association and the Mississippi Prosecutors Association, representatives from the Administrative Office of the Courts, Mississippi Supreme Court, Conference of Circuit Judges, Mississippi Attorney

General's Office, and Mississippi Association of Supervisors, and chairmen of the Senate Judiciary Committee, Senate Appropriations Committee, House Judiciary En Banc Committee, and House Appropriations Committee (Mississippi Code §25-32-71).

In 2007, the Task Force successfully lobbied for the formation of a training component for public defenders in Mississippi. The Division of Public Defender Training, a branch of the Office of Indigent Appeals also supported through court costs and fees, provides training and services to public defenders throughout the state (Mississippi Code §99-40-1). A state administrator actively involved with the training program claimed that the Division of Public Defender Training was intended to "mirror" the training supplied to those in the Attorney General's Office. However, parity between the two offices is still a problem. According to the same administrator, in 2008 prosecutors were budgeted \$1 million for training programs while the public defender training program was budgeted only \$300,000. A chief public defender interviewed said that the training opportunities may have inadvertently contributed to the high turnover rate in his office. In his experience, public defenders are able to receive valuable training and work experience for a few years before they advance to higher paying jobs.

The Task Force is currently working on legislation that will create an adequately funded and administered indigent defense system. Most stakeholders interviewed favored a system funded primarily by the state but were divided as to the administration of the system. The failures of the Georgia public defender system are fresh, and a statewide system is not fully supported in Mississippi. A circuit judge claimed that he was not opposed to a state funding but believed the local judges should maintain control. According to the judge:

Circuit court judges are better equipped to provide oversight than someone in Jackson [the state capital] because there is a commitment by state judges to provide indigent defense.

Another key administrator involved with indigent appeals said that she would support a structure that allowed districts to opt in or out of the statewide system. Although she believed that a full-time public defender office would be ideal, she recognized that Mississippi judges want to maintain control over their courtroom. She believed “it is important to pick your battles.” Finally, a public defender active in drafting reform legislation maintained that it was essential for the state to provide more indigent defense funding. In his opinion:

It is fundamentally unfair to ask the county to pay for the defense when the state is paying for the prosecution... *Gideon* has not been accepted. When I go to the legislature, I do not appeal to their sense of right and wrong. Counties are angry and need funding.

One member of the Task Force believes an independent state agency should oversee the hiring and firing within the public defender system but does not favor complete centralization. He believes that judges, many of whom have never been trial attorneys, cannot provide proper oversight and lack the expertise to approve vouchers. The public official claimed that certain judges routinely deny pay vouchers to private attorneys. In many of these cases, he has encouraged public defenders to file judicial performance complaints. Because senior circuit judges appoint public defenders, in his opinion many judges view the public defenders as “employees.” Therefore, the public official favors the creation of an independent voucher review committee.

Specifically, the Prosecutors Association and the Judicial Association have vocally opposed the creation of a state agency or oversight committee. One chief public defender maintained that district attorneys were politically powerful in this “pro-prosecution” area of the country; they did not want competition from more qualified and well-funded public defenders. Furthermore, he and other key informants asserted that it was politically popular for district

attorneys and prosecutors to oppose indigent defense reform. As indicated by one indigent defense attorney who was once a prosecutor:

The prosecutor's office is a political office, and they are pressured by victims. No one cares about the defense [function]. The Mississippi Bar is mainly concerned with civil attorneys and civil cases. The Bar is currently pushing for raises for prosecutors and judges. Prosecutors point to Georgia as an example of the failure of a statewide system. There is this perception that [with reform] the guilty will be able to get away with the crime.

According to another member of the Task Force, prosecutors and judges want to maintain control over the system and therefore resist deviation from the status quo.

Part-time public defenders have also resisted indigent defense reform. In addition to their indigent defense caseloads, part-time public defenders operate private practices. According to one Task Force member:

There are eighty-two counties in Mississippi. We have four full-time public defender offices. The rest of the counties *claim* to have part-time public defender offices. They really are contract systems. The Public Defender Association has shown some opposition to reform. They are worried about a bureaucrat in Jackson having too much power. Judges are practically hiring public defenders who are content with their job and work well with the judge.

Echoing this sentiment, one chief public defender instrumental in garnering support for reform said that part-time public defenders have shown opposition to centralization. In his opinion, part-time public defenders "have it made" in parts of Mississippi and oppose a statewide system for fear of losing business.

Many stakeholders believe judicial independence in Mississippi is compromised by the undue influence of judges on public defenders. Senior circuit judges appoint local public defenders, and this relationship between judge and public defender created inertia and affected the level of judicial independence in many circuits. In the circuit of one judge interviewed, five part-time public defenders represent indigent persons accused of crimes. "His" part-time public

defenders operate a private practice but also receive a salary and benefits from the county. When asked the salary of his part-time public defenders, the circuit court judge called his secretary. Through the phone the author heard her say that one part-time public defender made \$3600 a month, but the judge did not share this information with the author. In the opinion of many observers, the part-time public defender system is essentially a contract system. In addition to their \$3600 monthly stipend from the state, these part-time public defenders also maintain a private practice. Many key informants at the state and national level oppose contract systems for fear that indigent defendants will receive less adequate representation than the more profitable private clients.

During the 2009 regular session, several Task Force members were instrumental in drafting legislation that would have created five state-level district defender offices (Mississippi House Bill 840 2009). The offices would have mirrored the district attorney offices in staff and pay and acted as pilot projects for future offices across the state. House Bill 840 failed to pass in the Regular Session, largely due to the opposition from part-time public defenders who feared losing business in these five pilot counties.

Citing the funding shortfalls in Georgia, several key informants were not convinced that a statewide public defender system would be more cost-effective. A circuit court judge interviewed was skeptical of the notion that state centralization was a mechanism by the state to relieve indigent defense costs from the counties. He held that:

The state is not going to pick up the tab without getting it back from the counties in another way.

The issue of parity has created conflict among many stakeholders. According to a chief public defender, the high turnover rate in his large public defender office is largely a result of the inequities in pay, staffing and funding between his office and the local district attorney's office.

In his county, assistant public defenders are paid approximately \$20,000 a year less than assistant district attorneys. However, the Prosecution Association opposes parity, claiming that prosecutors must run for office while public defenders are appointed and therefore are entitled to more compensation. In response to the prosecutors' opposition, one Task Force member claimed that he suggested that public defenders also run for election. He maintained that the politicians in the meeting were strongly opposed to his suggestion. In his opinion, politicians would have to compete with another group of "politicians" for campaign funds if the position of public defender became political and required an election.

Texas

History and Description

Prior to 2001, indigent defense services in Texas were administered and funded at the county level. Localities utilized the assigned counsel, contract and public defender systems to provide legal services for indigent defendants. In many counties, the number of attorneys willing to accept appointed cases was limited due to the lack of funds available for compensation. Subsequently, local bar associations established systems whereby attorneys who were unwilling to accept court appointments were assessed fees. These fees were deposited into the county's indigent criminal defense fund and were used to compensate attorneys willing to accept indigent cases. As of 2000, some counties in Texas were still utilizing this method of providing indigent defense; for example, in El Paso County the \$600 assessment fee levied against attorneys who refused to accept court appointments was deposited in the local Indigent Defense Criminal Fund. This system of providing indigent defense led to the creation of Texas' first county-paid public defender office in 1969 (Butcher and Moore 2000).

The Fair Defense Act (FDA) became law in January 2002 and created the thirteen-member Texas Task Force on Indigent Defense (Task Force) to oversee the provision of indigent defense services and enforce guidelines concerning: data reporting, qualifications, caseloads, performance standards, determining indigency, and compensation. The Task Force is composed of eight ex officio members and five appointive members. The ex officio members are: the chief justice of the supreme court, the presiding judge of the court of criminal appeals, the member of the senate appointed by the lieutenant governor, the member of the house of representatives appointed by the speaker of the house, one of the courts of criminal appeals justices appointed by the governor, one of the county court judges appointed by the governor, the chair of the Senate Criminal Justice Committee, and the chair of the House of Criminal Jurisprudence Committee. The remaining five members are appointed by the governor with the advice and consent of the senate. These members include: one district judge, one county court judge or county commissioner, one criminal defense attorney, one public defender, and one county judge or county commissioner of a county with a population of 250,000 or more. The members serve staggered two year terms. The Task Force also includes ten staff personnel who are responsible for implementing the FDA. The mission of the Task Force is to improve the provision of legal services to all indigent persons accused of criminal conduct (Texas Fair Defense Act 2001). Recognizing the importance of local control, Task Force members claim that the agency has maintained a policy of providing state and local officials evidence-based research to assist them in the administration of their programs.

While the FDA allows local officials flexibility in organizing their indigent defense systems, all systems are required to meet minimum statewide standards. Every court must adopt and submit for approval a county-wide indigent defense plan. Copies of the plan are available

locally and are published on the Task Force website. The local indigent defense plan must include the method by which counsel is provided. Counties are allowed to use assigned counsel system, contract system or public defender system to administer legal services to indigent defendants. Appointed counsel must apply for appointment on a public list, meet qualification standards established in the FDA and be approved by a majority of the judges responsible for determining the appointment list. Similarly, contract counsel must meet the same qualifications specified in the FDA and must be approved by a majority of the judges. Furthermore, the legislation allows local officials discretion in implementing their public defender systems provided that the system adheres to the FDA standards (Texas Fair Defense Act 2001).

Although the counties are still largely responsible for funding and managing their indigent defense programs, the Task Force will provide state funding to counties that meet certain standards (Texas Fair Defense Act 2001). Counties that meet the provisions of the FDA are eligible for state funding through six methods: formula grants, discretionary grants, direct disbursements, reimbursement for extraordinary expenses, funds for technical assistance, and equalization disbursements. In fiscal year 2008, the Task Force awarded over \$21 million to the 254 counties through these six methods. The Task Force awards formula grants to counties based on population figures or any other measures established by the Task Force. In fiscal year 2008, \$11.7 million in formula grants was awarded, representing 67 percent of total grant funding (Texas Task Force on Indigent Defense 2008).

To encourage improvement, discretionary grants are awarded on a competitive basis to counties that meet certain requirements. In fiscal year 2008, eleven counties were awarded approximately \$3 million in state funds to operate particular projects (Texas Task Force on Indigent Defense 2008). As of this writing, counties have already submitted applications for

fiscal year 2010. Awards will be given to counties that establish public defender offices and programs that provide mental health and juvenile defender services.

Direct reimbursement grants are used to assist small counties with low indigent defense costs. Based upon the conditions of the formula grants, these counties do not have sufficient expenses or populations to earn formula grants. Therefore, direct reimbursement grants provide funding for small counties that do not qualify for formula grants. In fiscal year 2008, \$171,384 was available for direct disbursement and thirty-three counties were eligible to receive direct reimbursement grants. To qualify for extraordinary grants, counties must demonstrate indigent defense services resulted in undue financial hardship for the county in the current or preceding year. The state provided over \$450,000 in extraordinary funds to local indigent defense programs in fiscal year 2008. Technical assistance grants are available to counties that develop technical assistance projects that improve indigent defense services. For example, in fiscal year 2008, Harris County received a \$5000 technical assistance grant to develop an educational curriculum for attorneys representing mentally ill indigent defendants. As indicated by the requirements of the grant, Harris County will produce a video of the program which will be made available to other counties. Lastly, equalization disbursements provide additional state funds to the counties with the lowest percentage of state reimbursements compared to indigent defense costs. In fiscal year 2008, the state provided \$6 million in equalization disbursements and awarded eighty-eight counties payments ranging from of \$28 to over \$900,000 (Texas Task Force on Indigent Defense 2008).

The total amount of grants awarded to localities increased in 2008. Total grants awarded in fiscal years 2007 and 2008 are presented in Table 5.6.

[Table 5.6 about here]

The state granted approximately \$4 million more in total grants in 2008 than in 2007. With the exception of technical assistance, funding was increased in all categories in fiscal year 2008 (Texas Task Force on Indigent Defense 2008).

The Task Force is primarily funded through court costs and fees assessed in misdemeanor and felony cases. In 2005 and 2006, the Texas legislature created two new funding sources for indigent defense services. A \$4.00 court cost is charged to all persons convicted of any offense, except pedestrian or parking related offenses. These funds are then deposited into a jury service fund, and when this account exceeds \$10 million, the excess is transferred to the Fair Defense Account (Texas Senate Bill 1704 2005). In 2006, another new funding source was created whereby an additional \$2.00 fee is assessed in all criminal convictions and is strictly used to fund indigent defense services (Texas House Bill 1267 2007). The revenue generated in fiscal year 2008 exceeded total cost by approximately \$3.3 million, thus providing carryover funds for fiscal year 2009 (Texas Task Force on Indigent Defense 2008).

In the opinion of Task Force members, the agency has consistently showed its commitment to providing support to local indigent defense programs. In fiscal year 2008, the Task Force published several reports to assist county governments in administering and improving their indigent defense systems. The reports included information for creating public defender offices and implementing indigent defendant screening programs.

Current Issues

Texas has taken an incremental approach in reforming its system. Many key informants agree that while the state continues to maintain a county system with local control, the process has become more transparent, with the Task Force serving as a clearinghouse of information.

County plans are now published and accessible on the Task Force website, whereas before, data on caseloads and funding was lacking. In the opinion of one key informant, the new system ensures a sense of transparency.

A few key informants agree that the Task Force needs to improve its assessment procedures. Officials from the Task Force concede that measuring FDA compliance has been difficult, and it has yet to withdraw county funding for noncompliance. One official from the Task Force conceded that:

Noncompliance is hard to measure. Have they submitted their plan? If they haven't, we can withhold funding. What is harder to measure is the quality of service. Is it fair, neutral and nondiscriminatory? How do you measure the quality of representation? By outcome? This is difficult to measure. These are the things we are moving towards. Three years ago, we would have never mentioned it. We need benchmarks and thresholds. We don't have those yet.

Therefore, the Task Force and the Fair Defense Project, a local indigent defense advocacy organization, are working together to establish objective measures to assess the county systems. One key informant maintained that the resistance to change is entirely financial, as counties are hesitant to modify policies for fear that the changes will produce more costs. According to one key informant involved with compliance, many counties are not appointing lawyers for misdemeanants because of the potential expense. This informant also maintains that some counties initially viewed the new system as an "unfunded mandate." In the opinion of these county officials, the Task Force was imposing excessive costs on the local governments without providing adequate funding. However, the key informant asserts that funding and assistance from the Task Force has encouraged change. She acknowledged that the culture has shifted for individuals incarcerated in local facilities. According to the key informant, counties recognize that the appointment of counsel for jail inmates reduces incarceration costs and facilitates docket flow.

Incremental reform appears to be continuing in Texas. One key informant who has been actively involved with reform maintained:

[She] used to be really jealous of the major reform efforts in Georgia. Texas has taken an incremental approach to reforming its system. The Texas law is a weaker law. Our law is a more stable law. The Task Force acts as a “good cop” and has been able to pick up more money each year while many state offices are losing money. More perspective comes with time. The long-term goal is have 100 percent state funding.

A similar notion was echoed by a Task Force member who said that a state public defender system was a long-term goal of some stakeholders. The state administrator conceded that resistance to a statewide system persists due to the failures in Georgia. However, the administrator was adamant that certain components of the adversarial system, such as the adjudication of capital or appellate cases, would be centralized in the future. An example of such a system began in 2007 when approximately seventy counties banded together to form the West Texas Regional Public Defender for Capital Cases Office. This office regionalized the representation of indigent defendants accused of capital crimes by providing public defenders, mitigators and investigators in capital cases within the office’s region. Funding is provided by the Task Force and by each participating county who pays annual fees based on its population and the number of capital cases it filed within the last decade. Key informants maintain that the office has been well-received by the counties in which it serves and may expand to other regions.

The Task Force created a number of indigent defense legislative ideas for 2009 to improve the provision of indigent defense services throughout the state. One such measure proposed would have simplified the process of establishing public defender offices to make it easier and less confusing for localities (Texas Senate Bill 625 2009). To promote long term employment in the public sector, the Task Force also supported legislation to authorize and provide longevity pay for public defenders (Texas House Bill 199 2009). A similar program was

implemented for Assistant District Attorneys and Assistant County Attorneys and would provide additional pay per month for each year of added service.

Eighteen bills affecting indigent defense were introduced during the 2009 Legislative Session, and while support was high, only one was signed by Republican Governor Rick Perry. Key informants agreed that the majority of legislation would have passed had the legislative process not stalled for weeks as Republicans and Democrats contested the Voting Rights Act, thus preventing the other indigent defense bills from passing.

Indigent defense reform is slowly spreading across the state. At the time of our interviews, the Task Force had staff members in a number of jurisdictions. In Cameron County, staff was assisting officials in appointing representation for people in jail who were eligible for counsel. Stakeholders in Harris County were trying to implement a public defender system, and staff from the Task Force was working to reach a consensus. Lastly, staff was also investigating whether a judge in a particular county was appointing personal friends instead of panel attorneys. Many key informants are still concerned about the level of oversight provided by local judges throughout the state. In the opinion of one key informant, she believes that:

Texas does not have judicial independence. Indigent defense is no longer at the top of the list of priorities for the legislature. The Fair Defense Act is too new. The legislature thinks that they have “fixed” the system and are proud of it.

Indigent defense reform in Texas remains an evolving concept. Currently, key informants involved with reform understand the complexities of local control and have advocated for incremental changes. Furthermore, the Task Force has aligned itself with the interests of local officials, thereby garnering a mutual sense of respect and trust. This relationship between the Task Force and the localities has resulted in effective and efficient reform.

Georgia

History and Description

In 1968, five years after *Gideon*, Georgia legislators passed the Criminal Justice Act which charged each of the state's 159 counties with establishing local indigent defense programs. Ten years later, the Georgia Indigent Defense Act of 1979 created the Georgia Indigent Defense Counsel (GIDC) as a separate agency within the judicial branch to oversee the state's local indigent defense programs. Primarily serving as an advisory role, the purpose of the GIDC was to ensure the provision of indigent defense services was uniform and adequate. Staff members routinely met with administrators throughout the state to assist with the administration of indigent defense services (Georgia Administrative Office of the Courts 2004; Spangenberg 2002).

Before 2003, indigent defense programs in Georgia were organized and primarily funded at the county level. Depending on the county, indigent defense services were delivered through one of three methods: panel system, contract system, or public defender system. The most commonly used method was the panel system whereby an attorney is appointed by a circuit court judge from an approved list of attorneys. Under the contract system, an attorney is paid a flat fee to represent all indigent defendants or all indigent defendants in a particular category. The public defender system, the least commonly used method of providing indigent defense service, utilizes a full-time government employee to provide legal representation for indigent defendants (Georgia Administrative Office of the Courts 2004; Spangenberg 2002).

The Georgia Indigent Defense Act of 2003 replaced the county-funded and county-controlled system with a statewide indigent defense system. This legislation created the Georgia Public Defender Standards Council (GPDSC), a fifteen member independent agency within the

judicial branch, to oversee the provision of indigent defense services. The GPDSC is comprised of ten members appointed by the Governor, Lieutenant Governor, the Speaker of the House of Representatives, the Chief Justice of the Supreme Court of Georgia, and the Chief Judge of the Georgia Court of Appeals to serve four year terms. The eleventh member is a circuit public defender elected by a majority vote of all circuit public defenders to serve a two year term. The last four members of the council are elected county commissioners appointed by the governor to four year terms (Georgia Indigent Defense Act 2003).

A public defender office, along with a public defender supervisory panel, was to be established in each of the forty-nine judicial circuits. Each public defender supervisory panel would appoint a circuit public defender to begin serving a four year term beginning January 1, 2005. The eleven-member GPDSC staff was responsible for supervising the forty-nine public defender offices and creating standards for the statewide system. As provided by the legislation, six jurisdictions opted out of the statewide program and maintained the public defender offices already in place prior to the legislation. However, these six offices were overseen by the GPDSC and were required to meet the statewide standards (Georgia Indigent Defense Act 2003).

Key informants contend that compromises between stakeholders resulted in significant modifications to the original bill. One key informant who was actively involved in the legislative process maintains that the 2003 Act was a product of intense negotiation between stakeholders. Reformers had advocated for a fully-funded, state administered public defender system that provided parity between the district attorneys and public defender. In the opinion of many key informants, the final bill maintained too much local control and lacked the parity for which reformers had originally advocated. However, the legislation that passed in the spring of 2003 established a statewide public defender system.

In the summer of 2004, the Georgia General Assembly passed legislation that created a funding mechanism for the new indigent defense system. Funding for the new indigent defense system was to be provided through additional fines, fees and surcharges added to court proceedings. Key informants disagreed as to whether the funds collected through these additional fees were to be earmarked for the new indigent defense system; nevertheless, two years after the legislation, the legislature began reducing the council's funding (Georgia House Bill 1EX 2004).¹⁹

Reformers and advocates at the state and national level initially viewed the Georgia Indigent Defense Act as model legislation. However, key informants contend that the system was mismanaged, underfunded and failed to provide the reforms established in the legislation. Several key informants claim that the GPDSC never were able or willing to obtain thorough information on caseloads throughout the state. One defense attorney interviewed maintained that cases are counted differently depending on the jurisdiction; some case counts are based on the indictment while others are based on the original charges. In order to obtain reliable information on caseloads, GPDSC staff would have had to meticulously examine each circuit's case-counting process. One key informant contends that:

They never could justify resources and did not know what to ask for. No one ever got a good case count.

Several key informants agreed that caseload information was never properly compiled by GPDSC staff.

¹⁹ The filing fee in all civil action cases increased by \$15, and those seeking indigent defense services were required to pay a \$50 application fee. However, depending on their financial circumstances, this application fee could be waived by the court. Furthermore, a 10 percent surcharge was added to all bail and bond decisions and to fines levied in criminal or traffic cases.

Additionally, many public officials and advocates alleged that the failures of the GPDSC were largely due to poor management. Stakeholders in the legal community were unhappy with what they perceived to be a lack of access to the GPDSC and its misallocation of funds. Several early decisions by the agency were criticized by many key informants. Either by mistake or by refusal, GPDSC did not compile information on caseloads and costs and therefore was unable to justify its budgetary requests to the General Assembly.

Friction for control between the three branches of government increased during 2004. As a result, the agency was moved from the judicial to the executive branch that same year. Its budget subsequently had to be approved by the governor prior to being presented to the legislature. In addition to complicating the budgetary process, the move further politicized the issue of indigent defense. A public official claimed that the agency's budget was dramatically reduced once it was moved to the executive branch.

The GPDSC was also unable to contain indigent defense costs. The cost of providing representation for indigent defendants continued to increase after the Georgia Indigent Defense Act was passed. A public official maintained that the agency's inability to control costs led some legislators to believe the GPDSC had mismanaged funds. The funding for indigent defense services for fiscal years 2000 to 2008 is presented in Table 5.7.

[Table 5.7 about here]

Prior to the 2003 legislation, counties contributed approximately 90 percent of the total state indigent defense costs. After the creation of the statewide public defender system, the state has contributed approximately 40 percent of the total costs from 2004 to 2008. From 2000 to 2008, the total cost of indigent defense in Georgia has almost doubled, increasing from \$54 million to \$107 million. Since the adoption of a statewide public defender system, total costs increased by

roughly \$20 million. Accordingly, lawmakers charged the GPDSC with maximizing costs and ignoring the budget parameters established annually by the legislature, thereby forcing the legislature to provide emergency funding appropriations (Georgia Public Defenders 2008).

By the middle of fiscal year 2008, the GPDSC requested emergency funds to cover the approximately \$4.5 million budget deficit it was running in January 2008. According to GPDSC, this deficit is largely due to the expense associated with “conflict cases” (Georgia Public Defenders 2008). Pursuant to Georgia Code §17-12-22, the GPDSC can establish policies regarding legal representation in cases in which the public defender has a conflict of interest. One such policy involves the appointment of a private attorney who bills the state at an hourly rate. The GPDSC reported in the middle of fiscal year 2008 that it had contracted with private attorneys in over 9200 conflict cases. Accusing the GPDSC of mismanagement and fiscal irresponsibility, the legislative oversight committee reported that conflict cases cost the state approximately \$367 per case in 2005. Three years later, the cost of contract counsel had increased in excess of \$1000 per case (Georgia Public Defenders 2008).

Most significantly, the GPDSC had been unable to control costs associated with the capital case of Brian Nichols. While in custody and awaiting trial for a rape charge in 2005, Nichols escaped and murdered the presiding judge, the court reporter, a deputy sheriff and a federal customs agent. The Nichols trials became the most expensive in Georgia history and resulted in numerous reforms to the state’s public defender system.

As provided by law at the time of Nichols’ trial, indigent defendants in capital cases were afforded two attorneys. However, because the Nichols’ case was both a capital and conflict case, Senior Superior Court Judge Hilton Fuller approved the appointment of one public defender and

three private attorneys.²⁰ A number of key informants from Georgia reported that the private attorneys' fees combined with the cost of experts, paralegals, investigators and office expenses drained the GPDSC of scarce resources. As a consequence, by the end of 2007, the GPDSC had eliminated a number of employees and approximately a dozen death-penalty cases were postponed due to inadequate funding. After a three year delay and extensive media attention, the trial concluded with a guilty verdict and a life-without-parole sentence for Nichols.

Opponents of the GPDSC cited the Nichols' case as evidence of a broken system. However, several key informants emphasized the extent to which the Nichols' case had been politicized and as a consequence, made more expensive. According to the informants, the expensive and lengthy trial could have been avoided had the state accepted Nichols' lawyers' early offer to plead guilty in exchange for life in prison without parole.

In response to the Nichols' trial, in 2008 the General Assembly passed legislation charging that the counties share the cost of death penalty cases with the state.²¹ In addition, the legislation recommended that the GPDSC implement a flat fee for private attorneys in indigent capital cases instead of allowing private attorneys to hourly bill. Lastly, in reaction to Judge Fuller's handling of the case, the legislation prohibits senior judges from presiding over capital cases. As a senior judge, Judge Fuller was not running for election and therefore was considered to be less fiscally responsible than would be an elected judge (Georgia House Bill 1245 2008).

²⁰ The Nichols' case presented extraordinary circumstances for the Georgia court system. Three of Nichols' victims worked within the Georgia criminal justice system. The other victim was a federal law enforcement officer. To ensure that Nichols' received a fair trial that was free from any conflicts of interest, the judge appointed two out-of-state private attorneys to represent Nichols alongside his two Georgia attorneys.

²¹ For each death penalty case, the GPDSC will provide a maximum of two attorneys, and the state will finance the first \$150,000. In cases totaling between \$150,000.01 and \$250,000 per case, the state pays seventy-five percent while the county pays twenty-five percent of the total expenses. The state and county equally share the cost of death penalty cases totally more than \$250,000 (Georgia House Bill 1245 2008).

Current Issues

The GPDSC has been responsible for setting standards and for making financial decisions concerning the statewide indigent defense system. In early February 2009, the council voted to request \$1.4 million in emergency funding for fiscal year 2009 in order to continue operations through the fiscal year. The council also voted to request \$48.3 million for fiscal year 2010, exceeding Governor Perdue's recommendation by more than \$12 million. Accordingly, these budgetary requests angered lawmakers who argued that other state agencies were asked to reduce their budgets. However, members of the GPDSC maintained that the council only requested the minimum amount required to meet its constitutional obligations and that the legislature had withheld funding. In the opinion of several informants, money allocated for the public defender system decreased while the amount collected by court fees increased, suggesting the Republican-controlled legislature was using resources intended to fund indigent defense for other projects (Georgia Public Defenders 2008)

On February 19, 2009, the Senate voted 32-21 to pass legislation that would further revise the Georgia Indigent Defense Act. Under this new legislation, the Georgia Public Defender Standards Counsel would be renamed the Georgia Public Defender Agency and would serve as an advisor to a state director. The director of the agency, appointed by the Governor, would assume the administration of the state public defender system from the 15-member council. While the bill passed in the Senate and House committee, it was not voted on by the House during the 2009 legislative session (Georgia Senate Bill 42 2009). On February 23, 2009, the National Legal Aid and Defender Association (NLADA) issued a press release opposing the legislation. The NLADA considers the provisions in Senate Bill 42 to be in direct violation with the American Bar Association's *Ten Principles of a Public Delivery Service*. The group is most

concerned that the legislation would delegate administrative responsibilities to a state director appointed by the governor. According to the NLADA, Senate Bill 42 would allocate administrative duties to a politically appointed director instead of an independent oversight body. The NLADA urged the Georgia House of Representatives and Governor Sonny Perdue to reject Senate Bill 42. The legislation failed to pass in the 2009 legislative session (National Legal Aid and Defender Association 2009).

The current economic conditions are likely to impact the provision of legal services for the poor by increasing the demand for state-appointed counsel. Some key informant maintain that the weakening economy will result in more economic crimes, thereby increasing the number of cases requiring state appointed indigent defense counsel. This notion was reflected by a Georgia public defender who reported an increase in economic crimes such as shoplifting and theft in her jurisdiction. She maintained that her jurisdiction does not have the money to provide out-patient treatment to mentally ill patients who are released from hospitals due to a lack of funding. The public defender claimed:

They are let out of mental hospitals. They steal cigarettes. For their fourth shoplifting offense they are facing one to five years in prison.

The public defender contended that offenders who are convicted of a fourth shoplifting offense must serve at least the one year mandatory sentence. In her opinion, many crimes which may be misdemeanors in other states are felonies in Georgia.

The expansion of the criminal justice system in regards to law enforcement, prosecution and punitive sentencing has led to an exponential growth in caseloads and indigent defendants. A public official in Georgia claimed that the state's severe traffic penalties have increased the number of indigent defendants entitled to state-appointed representation. However, a chief public

defender in Georgia maintained that voters are concerned about education and police protection; they do not support a “Cadillac defense for rapists and murders.”

At the close of 2009, the Georgia indigent defense system remains in a transitional period, as lawmakers consider the fate of the state oversight commission. While the sweeping reforms initiated in 2003 were revered by advocates throughout the American states, indigent defense has become a politicized issue. One key informant who is actively involved with reform maintains that politicians criticized the GPDSC while simultaneously refusing to adequately fund the agency. Additionally, one public official claimed that by 2005, the bipartisan group of politicians who had supported the 2003 Act was no longer in state government. In addition, several key informants claim that the number of acquittals increased while the number of death sentences decreased in the initial phase of the state public defender system. This trend was not politically popular. By 2005, Republicans had control of the State House, Senate, governorship and lieutenant governorship and advanced their tough-on-crime conservative agenda by marginalizing the GPDSC. Other key informants attest that the failure of the GPDSC is attributed to mismanagement.

As a result of the political power struggle, many local indigent defense systems within the state remain underfunded. According to a public defender, as of mid-2009, counties throughout the state are running out of money. Many circuits are reducing or delaying compensation for private attorneys while some have begun furloughing staff and reducing training opportunities.

While reform efforts have been delayed, indigent defense continues to be addressed in the Georgia court system. In April 2009, SCHR filed a class action lawsuit on behalf of indigent defendants accused of crimes in five northeast Georgia counties. According to the lawsuit,

approximately 300 poor people have been denied counsel due to the lack of available contract attorneys in the Northern Judicial Circuit (*Cantwell v. Crawford* 2009). The Supreme Court of Georgia began hearing arguments on September 21, 2009 about a case which raised issues about a defendant's right to counsel and the statutory fees for public defenders. At issue is whether or not the county solicitor had assisted the defendant in deciding not to seek counsel before entering her plea. The petition also argues that the \$50 fee charged to defendants seeking to use a public defender is unconstitutional due to its effect on poor defendants who may feel pressured into proceeding without counsel (*Jones v. Harrelson* 2010).

Louisiana

History and Description

Until 1994, indigent defense services in Louisiana were primarily administered and funded at the local level. The system was reformed as a result of a lawsuit filed by Rick Tessier, a public defender in the New Orleans indigent defense program in 1993. Tessier contended that his excessive caseloads and lack of available resources affected his ability to effectively represent his indigent defendants. The Louisiana Supreme Court agreed with Tessier and called upon the legislature to enact reforms that would increase funding and provide adequate representation to indigent defendants (*State of Louisiana v. Peart* 1993).

As a result of the lawsuit, in 1994 the Louisiana Supreme Court created the Louisiana Indigent Defender Board (LIDB) to establish and enforce statewide standards for the provision of indigent defense services. The agency was comprised of nine members appointed by the governor, president of the Senate, and speaker of the House of Representatives (Louisiana Senate Bill 323 2005). Four years later, LIDB became an executive branch agency entitled the Louisiana

Indigent Defense Assistance Board (LIDAB) (Louisiana Revised Statutes §15:146). The state of Louisiana provided inadequate support to LIDAB, thereby shifting the burden of funding indigent defense service programs to the parishes. The legislature budgeted \$5 million for LIDAB its first year and approximately \$7.5 million a year for the next three years. During the same three year period, the responsibilities of LIDAB expanded to include the provision of defense services in post-conviction and capital cases while funding levels remained the same (NLADA 2004).²²

Indigent defense systems continued to be locally administered after reforms were initiated in 1994. An indigent defense board (IDB), selected by the circuit court, was established in each Louisiana judicial district and charged with overseeing the provision of indigent defense services within the district. Counsel for indigent defendants was provided through assigned counsel, contract system or public defender system. Each IDB was also responsible for funding the local indigent defense fund. Funds were primarily garnered through fines and fees assessed in traffic cases. Key informants maintained that funding levels varied widely from parish to parish due to this funding mechanism.

The state would also contribute funds to local IDB's through an incentive program called the District Assistance Fund (DAF). Judicial districts that complied with LIDAB's qualification and performance standards could apply for DAF grants. However, money available for local districts continued to decrease. In 1999, \$3.5 million in DAF grants was dispersed while only

²² Since 1998, the LIDAB increased its indigent defense services by creating the following agencies: the Louisiana Appellate Project (LAP), the Capital Appeals Project (CAP), the Capital Post-Conviction Project of Louisiana (CPCPL), Regional Capital Conflict Panels (RCCP), and Juvenile Justice Project of Louisiana (JJPL). While the legislature approved the expansion of LIDAB's responsibilities and services, these new agencies were not adequately funded (NLADA 2004).

\$2.9 million was dispersed in 2003. Furthermore, DAF grants did not encourage reform as the LIDAB continued to distributed funds to IDBs that were not in compliance with the standards (NLADA 2004).

The public defender system in New Orleans was left destitute after Hurricane Katrina. According to one former official at the Orleans Public Defenders, defender offices were ill-equipped and unable to track defendants who were scattered throughout the state after the jails were evacuated. Because traffic tickets were not being issued, the system's funding mechanism was suspended. In the weeks and months after the storm, forty-two part-time public defenders were laid off and more than a thousand jailed defendants had still not met with an attorney. A public defender in western Louisiana maintained:

Hurricanes Katrina and Rita were devastating storms that helped to spotlight the issues. After the Katrina, prisoners were relocated all over the state. Attorneys did not know who or where their clients were.

Approximately six months after Katrina, all but one member of the Orleans Parish Indigent Defense Board (Board) had resigned, leaving the Criminal District Court judges to appoint new members from a slate approved by the New Orleans Bar Association. These nine lawyers, serving pro bono, were independent of the judges and charged with reestablishing the criminal defense function for poor defendants in Orleans Parish. Before Katrina, the appointed counsel system was used in other parishes within the state. However, the limited amount of funding available for private appointed attorneys in Orleans parish resulted in a part-time public defender system until 2005. According to a public official who was instrumental in reestablishing the Orleans Public Defender Office, one of the first decisions made by the new Board was to require that public defenders work full-time. This decision abolished the old system of allowing public defenders to operate private practices in addition to their part-time

work. Several public defenders resigned due to this change, thereby aggravating the already strained dockets.

Prior to Katrina, judges had one to two part-time public defenders assigned to each courtroom, and cases moved quickly. To make the system more client-oriented, the Board began assigning public defenders to specific cases instead of courtrooms. This new process, called vertical representation, ensured that the same attorney represented the same client throughout the legal process, no matter the courtroom. One public official contended that vertical representation created a new culture that ensured public defenders worked for their clients instead of the local judges. These changes created tension between the Board and local judges, many of whom believed the changes further clogged the system and therefore denied poor defendants their constitutional right to counsel. A public defender in the Orleans office claimed that:

We went from a horizontal to a vertical system. Many of the institutions in New Orleans liked the status quo. Judges have to work a little harder with the new system. Their days are a little longer.

In the opinion of several key informants, the period of time after Katrina was a transition for many within the criminal justice system. Judges and public defenders were required to make adjustments as the new reforms were slowly implemented.

The shortage of attorneys after Katrina prevented indigent defendants from receiving timely representation. In 2006, Judge Arthur L. Hunter of Orleans Parish received nationwide attention after he granted a petition to free a prisoner facing felony charges who had not been provided counsel. Acknowledging the shortage of attorneys, a key informant who worked at the Orleans Public Defenders Office at the time maintained that the Board lacked the funding to hire necessary staff. Several key informants agreed that tension between the reformers and judges continued to increase. In 2007, the New Orleans' Indigent Defender Board filed a lawsuit against

the city's Criminal District Court judges after the judges removed four of the Board's members. The lawsuit was dropped after the passage of the Louisiana Public Defender Reform Act in 2007.

The indigent defense system in Louisiana was reformed and restructured in August 2007 with the passage of the Louisiana Public Defender Reform Act. Pursuant to the legislation, the legislature agreed to: 1) ensure adequate funding; 2) ensure that the public defender system was free from undue political interference; 3) establish a flexible system that is responsive to local community needs; 4) provide that the right to counsel is provided by qualified and competent counsel in a uniform manner; and 5) provide oversight to ensure indigent defendants receive effective representation (Louisiana Public Defender Reform Act 2007).

Prior to the Act, public defenders reported to a board that was appointed by judges. In the opinion of many key informants, this arrangement resulted in undue judicial influence. To create a more independent process for judges and public defenders, the legislation dissolved the forty one indigent defense boards and the LIDAB and created the fifteen-member Louisiana Public Defender Board (LPDB). The LPDB is an independent agency within the executive branch. Members serve staggered four year terms and are selected as follows: the governor appoints six members (one member from each of the four in-state law schools and two members who have significant experience in criminal defense proceedings); the chief justice appoints two members (one member must be a juvenile justice advocate and one must be a retired judge with criminal law experience); the president of the Senate and the speaker of the House of Representatives appoints one member each; the president of the Louisiana State Bar Association appoints two members; the president of the Louisiana Chapter of the Louis A. Martinet Legal Society appoints one member; the chairman of the Louisiana State Law Institute's Children Code Committee appoints one member; and the executive director of the Louisiana Interchurch Conference

appoints one member. All appointments to the LPDB must be confirmed by the Senate (Louisiana Public Defender Reform Act 2007).²³

The LPDB is responsible for supervising and administering the state public defender system and enforcing the provisions of the Act. The agency is charged with hiring a state public defender, a deputy public defender-director of training, a deputy public defender-director of juvenile defender services, a budget officer, a technology and management officer, a trial-level compliance officer, and a juvenile justice compliance officer (Louisiana Public Defender Reform Act 2007). While the LPDB also has authority to create a maximum of eleven regional offices with regional directors to supervise the district offices, no regional offices have been established.²⁴

One public official contends that a compromise to the legislation allowed for prior leadership to be grandfathered into the new system. Thirty previous chief public defenders became district defenders, while twelve new district defenders were appointed. Going forward, district defenders will be appointed by the LPDB.

Pursuant to the legislation, the Louisiana Public Defender Fund was created in the state treasury, and money within the fund can only be used for purposes of the Louisiana Public Defender Act. Any unspent money remains in the fund each fiscal year. The LPDB will arrange

²³ The four in-state law schools represented on the Board include: Louisiana State University Law Center, Loyola University School of Law, Southern University Law Center, and Tulane University School of Law.

²⁴ With approval from the Board, the regional office may provide capital defense services, expert witness resources, and conflict counsel. The Board employs or contracts with a district public defender to manage the district office and supervise public defender services within his judicial district. The district public defender is responsible for hiring and supervising district personnel, preparing the budget, and ensuring that public defender assignments comply with standards. With approval from the Board, each district can provide indigent defense services through appointed counsel, contract system, or a full-time public defender office (Louisiana Public Defender Reform Act 2007).

for counsel on direct appeal and post-conviction in state and federal court. The LPDB may approve funding for services such as experts or investigators if provided with a written request justifying the expense. Indigent defender funds were also created in each judicial district and are administered by the district public defender. Funding is generated through courts costs and fees and is used exclusively for the purposes of delivering indigent defense services in that judicial district (Louisiana Public Defender Reform Act 2007).

Current Issues

The forty-two judicial districts are charged with determining the method of service. The cost of indigent defense is now shared between the state of Louisiana and the localities. A public official at the Louisiana Public Defender Board claimed that the localities fund approximately 40 to 50 percent of indigent defense costs. Local districts continue to garner revenue for public defense through fees and fines assessed in court cases. The public official maintains that funding levels still vary from parish to parish due to local court cost collection.

Many key informants agreed that local interests continue to dictate the level of funding available for indigent defense. Calcasieu parish has several casinos and relies heavily on its tourism industry for revenue. Two public officials maintain that law enforcement is reluctant to issue speeding tickets for fear that it will reduce tourism. One key informant in Calcasieu parish contends that the lack of traffic citations consequently decreases the money available for indigent defense. Litigation is currently pending in the parish.

In fiscal year 2008, \$28.5 million was appropriated for indigent defense, an increase of \$8.5 million from the previous year (Louisiana House Bill No. 1 2007). On June 2, 2008, Louisiana's first State Public Defender took office. While staffing was delayed due to a hiring

freeze ordered by Republican Governor Jindal in November 2008, as of this writing, fourteen staff positions in the LPDB have since been filled. Pursuant to the Louisiana Public Defender Reform Act 2007, the LPDB has until August 15, 2011 to implement the Act statewide.

The Louisiana legislature continued to provide funding for indigent defense in 2009. Although the total state budget for fiscal year 2009 was reduced by 13.2 percent, the Louisiana Public Defender Board was appropriated \$29.5 million, an increase of \$1 million (Louisiana Senate 2009).

Staff from the LPDB has started visiting districts to assist local officials with the administration of their indigent defense systems. To facilitate compliance, the LPDB has begun gathering data about workloads and costs. However, according to one official, the LPDB has been unable to hold offices accountable for noncompliance due to the lack of available resources in many parishes.

A similar notion was echoed by other public defenders in Louisiana who claimed that indigent defense is misunderstood. In their opinion, many citizens in Louisiana do not consider the representation of poor defendants a critical component of the criminal justice system.

Key informants in Louisiana also are concerned about drug forfeiture laws and the influence that forfeiture programs have on criminal justice policy decisions. A public defender in Louisiana argued that:

Law enforcement is big business. Law enforcement has become addicted to money. With this phony war on drugs, police seize drug money and property.

Key informants believe that forfeiture practices generate a greater number of criminal defendants and consequently a proportionately greater number of indigent defendants entitled to state-provided counsel. This politicalization trend is especially apparent in Calcasieu parish where litigation over caseloads and funding is currently pending. The NACDL is again initiating

litigation in the parish, claiming that the quality of representation afforded to defendants has worsened since the 2007 legislation. While increased funding in 2007 allowed the Calcasieu Public Defender's Office to hire four additional lawyers, the additional lawyers were unable to relieve the excessive caseloads which continued to mount as arrests increased. The growth in caseloads in Calcasieu coincided with a growth in law enforcement. According to one public official in Calcasieu, the local sheriff "proudly" maintains that the parish has the 27th largest police force in the nation. The official claims that although the parish is economically strapped, the sheriff continues to expand its jail capacity and encourage arrests. He also maintained that public defenders in the Calcasieu Parish Public Defender's Office handled 400 to 546 active felony cases in comparison to the ABA recommendation of 150. The public official argued that the problem in Calcasieu has reached such a critical level that public defenders are considering refusing new cases.

One public official in Louisiana conceded that stakeholders are contemplating reclassifying nonviolent misdemeanors. She contends that many stakeholders in Louisiana acknowledge that:

It's not enough to be tough on crime. It's necessary to be smart on crime.

She and several other key informants recognize the social and economic consequences of the tough on crime legislation of the 1990s.

Reforms initiated after Hurricane Katrina are slowly being implemented. Many fear that the system in Louisiana remains understaffed and underfunded. Litigation over caseloads and funding is currently pending in three districts. A public defender in the Orleans office contends that his office is staffed with forty full-time attorneys, thirty attorneys short of the standard set by the Department of Justice after Katrina. Furthermore, while the Department of Justice

recommended an \$8.2 million annual budget, the Orleans office was budgeted \$6.5 million for fiscal year 2009. Parity between the prosecutorial and defense functions remains an issue. One public defender asserts that district attorneys received \$800,000 in federal stimulus money while public defenders received \$50,000. Moreover, several key informants believe that the fiscally and socially conservative Governor Jindal has slowed the process of change. One state administrator cited recent postings on the governor's website as evidence of his political agenda. She noted:

He brags about recent sex offender laws. This should tell you where he stands on crime. According to these key informants, indigent defense reform is not a pressing agenda item for Governor Jindal or his administration.

Hurricane Katrina acted as a catalyst for criminal justice reform in Louisiana. It remains to be seen if the reforms initiated under the Louisiana Public Defender Reform Act 2007 will be properly implemented and administered. Even though resistance to change was initially strong, several public defenders indicated that support for the LPDB is increasing. One public defender claimed that many stakeholders view the LPDB as an ally that can ensure uniformity and lobby for funding. The 2007 legislation provided structure where there were inconsistencies; however, the uncertainty of funding is still a major concern for many key informants.

Alabama

History and Description

Alabama is the only state explored in this research and one of the eight states in the country that has not adopted any form of administrative oversight of indigent defense. Attorney

General Holder addressed the lack of state oversight in his speech at the national symposium on indigent defense representation in February 2010. He argued:

The problem is about more than just resources. In some parts of the country, the primary institutions for the delivery of defense to the poor – I’m talking about basic public defender systems – simply do not exist.

It is very likely that he was referring to Alabama and the other seven states that lack administrative oversight of indigent defense programs.

The delivery of indigent defense services in Alabama varies from county to county but most localities utilize the appointed counsel system. Indigent defense services are statutorily mandated to be delivered through one of three methods: appointed counsel, contract counsel or public defender (Code of Alabama §15-12-1). The presiding circuit court judge and the local indigent defense commission within each circuit determine the type of indigent defense system to be used in each county within the forty-one circuits (Code of Alabama §15-12-2). The five members of each indigent defense commission are appointed by the presiding circuit judge to serve a six year term and must include: two Alabama-licensed attorneys, one member of the county commission within the circuit, one mayor or member of a governing body within the circuit, and one nonlawyer citizen. Commission members are not compensated and are primarily responsible for advising the presiding circuit judge on the indigent defense system administered in each county (Code of Alabama §15-12-4). This local control is a bit unusual given the lack of local power otherwise allocated under the Alabama constitution.

Compensation for indigent defense counsel in Alabama is determined by the legislature. Pursuant to Code of Alabama §15-12-21, total fees paid to one attorney for one case is limited

and dependent upon the severity of the original charge. From the time of appointment through the trial of the case, fees are limited according to the original charge.²⁵

The appointed system is the most popular method within the sixty-seven counties and forty-one judicial circuits. According to a key informant at the Administrative Office of the Courts, the contract system is used in twelve circuits and at least four circuits utilize a public defender office. The circuit indigent defense commission, with approval from the presiding circuit judge, is responsible for choosing one or more contract counsel and for determining their compensation rate (Code of Alabama §§15-12-26 and 15-26-27). Likewise, in circuits that utilize a public defender system, public defenders are selected and can be removed by the indigent defense commission (Code of Alabama §15-12-4). The circuit commission also determines the salary and term of appointment of public defenders (Code of Alabama §§15-12-41 and 15-12-43).

Alabama's indigent defense system is financed through the Fair Trial Tax Fund, which is garnered through court fees assessed in civil and criminal cases. The State Comptroller withdraws money from the Fair Trial Tax Fund every ninety days to pay the fees of appointed counsel, contract counsel, public defenders, court reporters, clerks and other necessary expenses. If the cost of administering Alabama's indigent defense system exceeds the amount available in

²⁵ Class A felony, total fee cannot exceed \$3500; Class B felony, total fee cannot exceed \$2500; Class C felony, total fee cannot exceed \$1500; juvenile cases, total fee cannot exceed \$2000; and all other cases, total fee cannot exceed \$1000. On October 1, 2000, maximum compensation rates in capital cases were eliminated and appointed counsel rates were increased to \$60 for each hour spent in court and \$40 for each hour spent out of court. The court may approve fees that exceed statutory limits if counsel can prove "good cause." Counsel may also be reimbursed for expenses, such as expert fees, provided that the expenses were preapproved by the trial court (Code of Alabama 15-12-21).

the Fair Trial Tax Fund, the General Fund in the State Treasury is required by law to supply the difference (Code of Alabama §§12-19-71 and 12-19-252).

The operating cost for indigent defense in Alabama was increased in 1993 when the Court of Criminal Appeals interpreted attorney overhead fees to include “reasonable expenses” (*May v. State* 1993). Pursuant to Code of Alabama §15-12-21, attorneys representing indigent clients have a right to be “reimbursed for any expenses reasonably incurred in the defense of his or her client” if the expenses are preapproved by the trial court. This ruling had a significant impact on the cost of administering indigent defense in Alabama. According to an official in the Comptroller’s office, while overhead rates are determined by the presiding judge and range from \$10 per hour to \$50 per hour, the state average is \$30 to \$35 per hour billed.

On February 1, 2005, Alabama Attorney General Troy King issued an opinion about compensation for attorney fees that was contradictory to the *May* decision, declaring that state law did not require the state to pay the additional overhead expense (King 2005). As a result, the State Comptroller suspended overhead payments from February 2005 to December 2006. In a 2006 unanimous decision, the Alabama Supreme Court ruled that criminal defense attorneys who represented indigent defendants had a right to be paid for overhead expenses. The Court restored the overhead fees and ordered the State Comptroller to repay the more than \$19.2 million in overhead expenses incurred from February 2005 to December 2006 (*Wright v. Childree* 2006).

Current Issues

Key informants agree that the cost of administering indigent defense services in Alabama continues to rise. Table 5.8 presents the numbers of claims paid, total expenditures and revenue sources for indigent defense in Alabama from 2004 to 2008.

[Table 5.8 about here]

During the five year period presented in Table 5.8, the administration of indigent defense cost the state of Alabama almost \$258 million. Total expenditures dropped in fiscal year 2006 due to the suspension of overhead fees but increased by almost \$30 million in fiscal years 2007 and 2008 after the fees were reinstated. In each of the five years, total expenditures exceeded receipts in the Fair Trial Tax Fund, thereby forcing the state to contribute over \$162 million from the General Fund to pay for defense services for the poor. Excluding fiscal year 2006, revenue from the Fair Trial Tax Fund provides 30 to 40 percent of the total revenue; the state funds the remaining 60 to 70 percent of the total cost (Alabama State Comptroller's Office 2009).

During her tenure, Alabama Chief Justice Sue Bell Cobb has made indigent defense reform a top legislative priority and has supported the creation of a state oversight committee to provide accountability and oversight. The concept of a state oversight indigent defense commission is not new to the state of Alabama. In February 2004, the Alabama State Bar, the Alabama Appleseed Center for Law and Justice and other public interest groups held a seminar to identify the pressing inadequacies of the indigent defense system in Alabama. At the conclusion of the conference, Alabama Appleseed endorsed the creation of an oversight body to supervise the delivery of indigent defense services within the state (Alabama Appleseed 2004).

Key informants maintain that previous Chief Justices have attempted to make changes to the legal services provided to poor Alabamians. In 2005, Chief Justice Drayton convened a task force of attorneys, judges, legislators and advocates who also approved establishing a statewide commission. The Alabama State Bar Association and the Alabama Criminal Defense Lawyers Association (ACDLA) worked with the Chief Justice's Indigent Defense Study Commission to formulate legislation in 2006 that would create a centralized oversight commission to both

monitor and advocate for indigent defense services within the state. Key informants held that the Bar and ACDLA initially supported the legislation, but both groups withdrew support after the bill failed to include a clause affirming the payment of overhead expenses and failed to provide adequate local control. The Indigent Defense Commission Bill, sponsored by Representative Maurcel Black, D-Tuscumbia, was introduced without the groups' support on January 24, 2006, but failed to make it out of committee (Alabama House Bill 490 2006). Black introduced a similar bill in 2008 that would have created a fourteen member indigent defense commission and an Office of Indigent Defense Services within state government. This bill also failed to make it out of committee (Alabama House Bill 930 2008).

Effectiveness of representation, costs and caseloads are not uniform across the state, and many key informants believe that a centralized agency would provide oversight and ensure uniformity. One public defender held that:

The Office of Indigent Defense would provide an oversight and centralized body in Montgomery. This office could keep data and crunch the numbers. Right now, we have no idea about the stats concerning cost and caseloads. The office would provide standards that would be "suggestions" similar to the sentencing standards currently used by judges throughout the state... When the Sentencing Commission began, the prisons were 200 percent overcapacity. The Commission got records and data together and shared information between the prisons and the parole board.

Furthermore, many key informants agree that Alabama is not efficiently managing the cost of indigent defense and that the current open-ended system overburdens the General Fund. Some informants believe that many private attorneys are profiting from the current system and are therefore opposed to centralization.

An Alabama circuit court judge suggested a possible conflict regarding the funding of indigent defense. He claimed:

These court fees are paid by indigents and are used to pay for the system. This is a dangerous system, and I have thought so for a while. When you are actually funding the

system by charging people creates an incentive to prosecute. When you raise money by filing cases – when you actually have to raise money by increasing your caseloads – this is a dangerous situation.

The judge and key informants in other states question whether certain policies may economically motivate prosecutors and law enforcement to overcharge.

On February 3, 2009, legislation establishing the Alabama Indigent Defense Commission and the Office of Defense Services was introduced and referred to the House of Representatives Committee on Government Appropriations. The bill failed to pass during the 2009 Regular Session. The legislation called for the creation of a statewide oversight commission and the elimination of overhead fees. Under the current system attorneys receive \$60 per hour worked inside the courtroom, \$40 per hour worked outside the courtroom and bill the state for overhead expenses. High level state administrators contend that it is difficult to verify an attorney's actual overhead expenses. The proposed system would impose an \$85 compensation rate for each hour worked both in and out of the courtroom, regardless of overhead (Alabama House Bill 214 2009).

Supporters of the legislation contend that the Office of Indigent Defense Services would offer another level of fiscal responsibility by approving expenses consistent with the procedures adopted by the commission (Alabama House Bill 214 2009). The legislation would have allowed for local control but would have implemented a state oversight committee to assist localities with the administration of their programs. A key informant who has been a member of several task forces on indigent defense contends that centralization would provide budgetary accountability. The agency could analyze the number of cases, costs and expenses within each circuit. He maintains that this information could then be used in each circuit to determine the best method of providing indigent defense.

One elected official interviewed insisted that local control was imperative, as needs vary by jurisdiction. Some jurisdictions have more capital cases while other jurisdictions have extremely low caseloads. Depending on the county, this representative acknowledged that certain circuits within the state may maintain the systems already in place. Therefore, included in the bill is a provision for the creation of a five member indigent defense advisory board in each judicial circuit. This local committee would make recommendations to the state commission about the system or systems of indigent defense to be employed in each county (Alabama House Bill 214 2009).

Support for the 2009 legislation was initially high. According to many key informants, the Chief Justice actively sought consensus from the majority of the stakeholders, but she was ultimately unable to gain support from those within Jefferson County. The cost of indigent defense in Jefferson County was \$7 million more than any other county in the state. Many believe that private attorneys within the county are profiting from the current system and therefore opposed to reform. According to one Task Force member, representatives from the Jefferson County local bar requested that Jefferson County be exempt from the bill, a claim that officials from the Jefferson County Bar staunchly deny.

According to a representative from the Alabama Criminal Defense Lawyers Association (ACDLA), support for the legislation is divided among its membership. The organization realizes that Alabama is one of only a few states with no state oversight of indigent defense, but the parties involved cannot agree on a solution. Members who oppose reform claim that bureaucracies are expensive and believe that a state agency would take money away from the inadequate amount of funds currently available for indigent defense. Another representative from the ACDLA argued that centralization would lead to inadequate funding. He cited that:

Agencies for the “poor and powerless” – mental health, prisons, Department of Youth Services, and Department of Human Resources – have been under federal control for several years. The only thing that has not is indigent defense. A statewide system will need a budget. We all will be fighting for limited funds. Who is going to win? Someone will end up filing a lawsuit, and the system will be under federal control.

A difference of opinion also exists between the ACDLA and the National Association of Criminal Defense Lawyers (NACDL). The NACDL supports the legislation and the creation of a centralized agency to oversee the provision of indigent defense services in Alabama.

Representatives from the ACDLA claim its affiliate does not understand the complexity of Alabama’s state and local issues and therefore cannot foresee the risk of an underfunded contract system. Members worry that lawmakers, in an effort to cut costs, will choose the “cheapest” method and implement contract systems. During the drafting of the legislation, a representative from the ACDLA maintains that the Chief Justice conceded to every ACDLA request except for the removal of possible contracts. Many members also fear that a statewide system would create another ineffective bureaucracy in Montgomery and that the quality of representation for indigent defendants in Alabama would be adversely affected.

Stakeholders disagree as to the applicability and effectiveness of public defender offices. Representatives from the Greater Birmingham Defense Lawyers believe that a public defender or contract system is not the most effective and efficient method of providing indigent defense. In their opinion, the Shelby County Public Defender Office is a “plea mill” with excessively high caseloads.²⁶ According to a Shelby County public official, indigent defense has been a contentious issue between the neighboring counties for over twenty years. In the late 1980s, indigent defense costs in Shelby County had grown exponentially as a result of private attorneys from Jefferson County taking appointed cases in Shelby County. The public official claims that

²⁶ Birmingham is the largest city in Jefferson County. Jefferson County is bordered on the southwest by Shelby County.

many of these attorneys were inexperienced and unwilling to plead cases. At the time, average felony cases were taking 18 to 24 months to reach disposition and the cost-per-case had grown to \$435, more than twice the state average. The local bar, unhappy with the appointment of Jefferson County attorneys and the exorbitant cost of indigent defense, voted unanimously to establish the Shelby County Public Defender Office in 1991. In the opinion of the public official, a state-funded public defender system would be most effective and economically responsible. A circuit court judge agreed that a public defender system is more cost-effective. He said:

The public defender office spends approximately \$300 per felony case. The private bar cost the state approximately \$1200 per felony case. I am not concerned with quality, but I do have an issue with cost. The quality of service provided by the private bar is equal to that of the public defender office. However, a public defender office cost the state and localities much less money. It becomes a question of efficiency.

While the ACDLA is not opposed to accountability, representatives from the organization maintain that oversight is already provided at the local level by circuit judges who are responsible for approving all fee declarations. A number of key informants held that locally elected judges should not oversee the defense function. They maintain that judges should be removed from the adversarial process.

A circuit court judge interviewed provided a unique perspective, as he had experience with both a public defender office and court-appointed system. Regarding the provision of oversight, the judge maintained that:

It is hard to monitor the work and effectiveness of the private bar. This places judges in a touchy position when you are expected to question the fee declaration of a lawyer who practices in your courtroom week to week. The public defender can monitor the assistant public defenders who work in the office instead of relying on judges to oversee the defense function. It takes some responsibility away from the judge. The public defender can act as supervisor.

This judge favored a public defender office over a court-appointed system, as he believes the former is more efficient and cost-effective. According to the judge, the public defender office is

conveniently located inside the courthouse and exclusively handles indigent cases at a flat rate.

Lastly, in his experience, public defenders are also more inclined to settle cases, thereby reducing costs associated with unnecessary trials and appeals. The judge held that:

Public defenders settle cases more often. Is that because there isn't an incentive to overbill? I'm not sure. But I do know that they (public defenders) tend to remember how the judge ruled last time. [They realize that] they better settle. This is what is best for [their client]. I tend to find that the private bar, for whatever reason, is less likely to settle and more likely to take it to trial. That is not necessarily a good thing. Alan Dershowitz (a well known criminal defense attorney) wrote a book in which he noted that the number one rule in criminal defense is that your client is probably guilty. The number two rule is that the police, prosecutor and judge know about rule number one.

A public defender echoed a similar opinion about the possibility the private bar is economically motivated. He emphasized that money was not an issue for the public defenders in his office. He held that unlike private attorneys, he and his staff are paid the same whether they settle or try a case.

Acknowledging instances of abuse, the ACDLA supports the use of a panel of local lawyers to review vouchers. Representatives from the Jefferson County Bar Association contend that the thirty-two attorneys in Jefferson County with questionable billing practices in 2008 should be held accountable by the state and the Alabama State Bar Ethics Committee. The group believes the Attorney General's office should prosecute an individual for theft of state if it is determined that an attorney overbilled or double-billed the state.

Key informants on both sides of the argument agree that the death penalty is overused in Alabama. According to representatives from the ACDLA and the Birmingham Defense Lawyers, the large number of death penalty cases distorts the cost of indigent defense in the state, as these cases are both expensive to prosecute and defend. Furthermore, capital cases often take years to reach disposition, and attorneys are not compensated until the case is disposed. Several key

informants contend that while complaining of excessive fee declarations, some lawmakers are not aware that the vouchers may be a result of recently adjudicated capital cases.

Representatives from the Birmingham defense bar argue that local officials are better able to administer indigent defense, as every county is different. According to the ACDLA, reformers support the implementation of a yearly indigent defense budget. Citing Georgia as an example, many in the group believe that more politically popular programs would win the fight for limited funding. One defense lawyer argued:

A bureaucracy wants a yearly budget. If we have to go back to the legislature each year for money for the rapists and murders, it's not going to happen. Appointed work is almost viewed as pro bono by some people. The indigents will suffer under this bill. Look at other departments. If we are not going to fund our education system, then we sure are not going to fund the defense of indigents.

A similar notion was echoed by representatives from the ACDLA who argued that some lawmakers view indigent defense as a service that should be provided pro bono. The representatives contend that these attorneys have families, staff and overhead and must be justly compensated for their work. To illustrate their position on fair compensation, one ACDLA representative noted that lawyers paid by the state to condemn property receive \$98 an hour, while lawyers paid by the state to condemn people receive \$40 to \$60 an hour.

Furthermore, several key informants have concerns about the experience, political motives and judicial independence of Chief Justice Cobb. They argue that she has been a judge since the beginning of her law career, has never tried a case and therefore has little knowledge about the defense function. Furthermore, they contend that given her husband's former career as a lobbyist, Chief Justice Cobb is politically savvy and has many contacts within the legislature. A few key informants believed that she would run for governor in 2010 until she announced otherwise in early July 2009. Others doubt her level of judicial independence and claim that she

injected and exceeded her role in the legislative process by actively garnering support for the indigent defense reform bill.

Alabama is one of eight states that does not oversee the provision of indigent defense services. Compared to the other states explored in this research, state oversight of indigent defense seems to be a more politically charged issue in Alabama. Thus far, it appears that the Jefferson County criminal defense bar is largely responsible for defeating the proposed legislation that would have provided a method of state administrative oversight. However, as indicated by a number of key informants, Chief Justice Cobb is committed to criminal justice reform; it is therefore expected that state administration of indigent defense will indefinitely remain a primary agenda item for many stakeholders.

Summary

In conclusion, the states explored in this research have implemented various methods of state administrative oversight of indigent defense programs. A purpose of this research was to identify factors that have influenced the pattern of state oversight of indigent defense programs.

Existing research has divided methods of administrative oversight of indigent defense programs into the six distinct categories: (1) state public defender system with a commission; (2) state public defender system without a commission; (3) state commission and state director; (4) state commission with partial authority; (5) state appellate commission or agency; and (6) no oversight at all (Constitution Project 2009; Spangenberg 2005, 2006a).

The findings suggest that state-level support of indigent defense is highest in Louisiana, followed by Texas, Georgia, Mississippi and Alabama. In 2007 Louisiana became the only state explored in this research to adopt a state commission headed by a state director to oversee the

provision of indigent defense services. Both Texas and Georgia established a state commission with partial authority. State administration of indigent defense in Texas has occurred incrementally, with the state oversight body respecting the issue of local control by providing evidence-based research to assist localities in the administration of their programs. In contrast, Georgia adopted sweeping changes to the administration of indigent defense services in 2003 but failed to adequately implement and fund the program. Although Mississippi repealed its statewide, state-funded indigent defense system that included a statewide commission in 2000, a state appellate agency and post-conviction agency to represent indigent defendants in appellate proceedings were later adopted. Incremental changes to the provision of indigent defense services in Mississippi continue and have included the creation of the Public Defender Task Force and Division of Public Defender Training. Finally, Alabama has not adopted a method of administrative oversight of indigent defense.

Chapter VI presents the major findings of this research. It explores the various decision processes used by state policymakers and the factors that have influenced the pattern of state oversight and encouraged reform in indigent defense programs across the five states.

CHAPTER VI

FINDINGS AND CONCLUSION

Chapter VI presents the major findings of this research. This chapter explores the process by which state oversight of indigent defense programs became an institutional agenda item and identifies factors that have influenced the pattern of state oversight and encouraged reform across the five indigent defense programs. This chapter also presents the policy implications of this study and directions for future research.

Methods of Agenda Setting

State agenda setting approaches demonstrate how states with widely different resources, political contexts and citizen demands are dealing with U.S. Supreme Court decisions, i.e., *Strickland*. It is well understood that the political process will shape agenda setting, and there is no reason to expect the process to be the same in each state. An idea moves from the general information environment of state decision makers into a model of agenda setting when the diffusion environment contains favorable political conditions, sufficient resources to entertain new ideas, and sufficient demand for change. The level, variety and content of diffused information influence the degree of informed decision making in the states. Here, as the concept of state administrative oversight diffused across the states, it developed into a diverse range of programs. Differences in agenda setting approaches resulted in various policy decisions regarding state administrative oversight of indigent defender programs.

In the public arena, the transformation of an innovative idea into actual policy change requires political action through established institutions. This political action occurs through the process of agenda setting. Table 6.1 illustrates the agenda setting methods across the five focus states.

[Table 6.1 about here]

The agenda setting processes in Alabama and Georgia is associated Downs' issue-attention cycle. The method by which state oversight of indigent defense became an institutional agenda item in Louisiana followed Cobb and Elder's internal and external "trigger" theory. The agenda setting process in Mississippi is unique and can be explained in two stages. The first stage followed Kingdon's policy streams model while Lindblom's incremental model can be used to explain the second stage. Finally, the agenda setting process in Texas is also associated with Kingdon's policy streams model. The following section details the process of agenda setting in each focus state.

Alabama

The agenda setting process in Alabama is associated with Downs' issue-attention cycle. State-level support of indigent defense remains in the pre-problem stage. In this stage, experts and stakeholders are aware of the problem, but the issue has not been expanded to the public agenda. Issues that go through the issue-attention cycle usually share three characteristics. First, these issues do not affect the majority of the population; therefore the public is less likely to focus long-term attention to these issues. In addition, these dilemmas usually involve social arrangements that provide considerable benefits to a majority or powerful minority. Significant attempts to resolve the problem threaten important groups in society. Lastly, to compete for

attention, the problem must be impressive and stimulating to sustain the interests of both the public and the media (Downs 1972).

The indigent defense system in Alabama is unique as compared to the other states explored in this research. The state lacks a method of administrative oversight of indigent defense, yet state expenditures on indigent defense continues to increase as costs exceed revenues from the Fair Trial Tax Fund. While the lack of state funding encouraged reform in the other four states explored in this research, the state of Alabama has consistently contributed to the provision of indigent defense services. Therefore the lack of state funding is not driving the adoption of state administrative oversight. In contrast, the findings of this research suggest that the rising cost of indigent defense is an impetus for reform. Many key informants consider state oversight as a possible institutional structure to control costs. However, it appears that the rising cost of the provision of indigent defense has not become a public problem.

The findings of this research confirm the influence of the private bar, namely the criminal defense bar, in defeating the indigent defense reform bill. It is important to note a distinction of the Alabama private bar and its effect on adoption. Many key informants maintained that the Alabama criminal defense attorneys' opposition to state oversight is economically motivated. Consistent with the issue-attention cycle, recognition gradually spreads that solving the problem will involve high costs and sacrifice by the large group of people presently benefiting from the current arrangement (Downs 1972). In the opinion of some key informants, many defense attorneys rely on court-appointed cases for income and fear a new system would have economic consequences. It is important to note that the private bar in the other states explored in this research did not actively oppose reform. In these states, court-appointed cases are not as profitable, and judges often cut pay vouchers for private attorneys. Consequently, key informants

in Georgia, Louisiana, Mississippi and Texas claimed that many jurisdictions have difficulty finding private attorneys to take indigent defense cases.

The findings also demonstrate that the cohesion and power of the Jefferson County criminal defense bar has discouraged the adoption of state administrative oversight methods in Alabama. In particular, the group has focused attention on key political figures influential in the legislative process. Many informants claim that Alabama Senator Rodger Smitherman, Chairman of the Judiciary Committee and attorney from Jefferson County, was largely responsible for defeating the legislation. One representative from the Greater Birmingham Defense Lawyers stated that:

Senator Smitherman is a friend of defense attorneys. The indigents he has represented in the courtroom are now his constituency, and he realizes that this bill is not good for Jefferson County and is therefore not good for the state.

However, key informants on the other side of the issue maintain that Senator Smitherman's lack of support was due to the lobbying efforts of the Jefferson County criminal defense bar.

Finally, national interest groups have not been as actively involved in indigent defense reform in Alabama compared to other states in this study. The lack of involvement by national groups may be a reflection of the following conditions: (1) the adequate representation provided in Alabama as compared to its regional peers or (2) the absence of internal or external events necessary for issue expansion. Compared to the other four states, egregious stories involving ineffective assistance of counsel or denial of representation have not been systematically documented by the media or interest groups. One public defender echoed this sentiment by stating:

We are not Louisiana. Indigent defense and the quality of defense are under the radar here.

Unlike in Louisiana and Texas, an internal or external event has not occurred that expanded indigent defense to the public agenda. A representative from the Alabama Criminal Defense Lawyers Association (ACDLA) emphasized a similar trend and claimed:

ACDLA is the only interest group involved with this issue. Issue-oriented groups (in Alabama) are more involved with the death penalty.

Downs maintains that in the pre-problem stage interest groups and experts may be aware of the problem, but the issue has not yet received public notice. While inadequacies likely exist within the system, the issue of indigent defense in Alabama has not been expanded to national interest groups. Moreover, it appears that state oversight of indigent defense has not reached the public agenda.

The findings suggest that the law and order mentality in Alabama have also impeded reform. Several key informants maintain that the demand for indigent defense counsel increases as state legislatures criminalize more behavior. An Alabama circuit court judge noted the criminalization trend and claimed:

Cases have come before my court where I have thought, 'this really should be handled in civil court.' Why is this act a crime? You learn in law school about intent. Some things are accidents and should be tried in civil court. People should be held liable but maybe not incarcerated.

The significance of this over-criminalization to indigent defense programs was conveyed by an Alabama criminal defense attorney who said:

The legislature is going to continue adding new laws. More activity is criminal. As a result, we need more lawyers. In election years, we see tougher sanctions. The sex offender laws are a perfect example. Something happens in New Jersey, there is a knee-jerk reaction in Alabama. We overreact to crimes.

One Alabama defense attorney claimed that victims' rights groups and prosecutors push for more severe crime legislation. Referring to this notion, he contended:

What else could the legislature do when you have five mothers screaming about their children being molested?

Somewhat surprisingly, several key informants claimed that the excessive criminalization of behavior is a reflection of the shortage of attorneys in state legislatures. An Alabama circuit court judge reported that due to Alabama's low legislative pay, attorneys cannot afford to leave their jurisdictions and travel to Montgomery for several months. At the time the interviews were conducted, two focus states had recently passed severe sex offender laws; several key informants had law degrees and indicated that these and other sentencing laws were unconstitutional and may not have passed had attorneys been better represented in state legislatures.

Criminal justice reform in the five Southern states is often politicized. An Alabama elected official maintained that stakeholders reviewed indigent defense reform efforts in other states. He conceded:

We even looked at the federal system. We looked at the hourly rate. We thought about using it. I think it's something like \$85 per hour. The Governor was for it until someone punched him and said, 'Governor, Alabama would be paying the highest rate in the Southeast.' He said, "Well, we can't do that. Nevermind."

The elected official argued that public opinion about criminals and criminal defense attorneys also impedes reform. He argued:

If you look at TV shows today, it is a lot different than from when I decided to go to law school. The shows that were popular then were *Matlock* and *Perry Mason*. Those were defense attorneys. They were the good guys. They were our heroes. Now we have *CSI* and *Law and Order*. Who do they portray? The police and the prosecution.

He and other key informants maintain that there is a lack of education about the criminal justice system. Indigent defense is therefore misunderstood and underappreciated. According to these informants, the public obtains much of their information about the court system through television.

Georgia

The agenda setting process in Georgia closely followed Anthony Downs' issue-attention cycle. In this model, public attention rapidly intensifies around an issue and then gradually fades and focuses on another problem. Consistent with the model, indigent defense reform had endured a pre-problem stage prior to the Georgia Indigent Defense Act of 2003. Since the 1990s, organizations such as the Southern Center for Human Rights (SCHR) and the American Civil Liberties Union (ACLU) initiated litigation claiming that state and local governments were denying indigent defendants in Georgia their right to counsel (*Luckey v. Miller* 1992; *Stinson v. Fulton County* 1994).

Key informants claimed that the Georgia State Bar and Supreme Court began to take notice. In 2000 Wilson Dubose, chair of the State Bar's Indigent Defense Committee, studied the indigent defense system in Georgia and formulated a list of principles necessary for the development of a reformed indigent defense system. As a result of Dubose's list of principles, on December 27, 2000, the Georgia Supreme Court established the Chief Justice's Commission on Indigent Defense to include judges, attorneys from private practice, public defenders, academics and business leaders. The Chief Justice appointed Charles Morgan, a top-level executive at BellSouth Corporation, to serve as Chairman. A number of public officials contend that his appointment and the inclusion of other members of the business community expanded the issue to the general public and framed it in an economic context. As one former member of the GPDSC indicated:

The argument was made that businesses were not going to come to Georgia if they saw these stories of injustice on *60 Minutes*.

Key informants claimed that the commission studied the indigent defense system and interviewed representatives from all parts of the criminal justice system from 2000 to 2002. In

addition, informants maintain that the State Bar funded the Spangenberg Group, a criminal justice research firm, to conduct a statewide study of Georgia's indigent defense system.

A number of key informants noted the important role of the SCHR in drawing attention to the inadequacies within the Georgia criminal justice system. In the midst of the hearings, the SCHR sent observers to courtrooms throughout the state to actively document systematic flaws within the state court system. The SCHR filed lawsuits in Coweta County and Cordele Circuit that further highlighted the need for indigent defense reform. These lawsuits received statewide attention. Key informants agree that the *Atlanta-Journal Constitution's* coverage of the issue expanded it to the general public and defined it as a problem for which government action was required. A defense attorney maintained that this attention was largely due to the work of established journalists, namely Cynthia Tucker and Bill Rankin, who began covering the issue for the *Atlanta Journal-Constitution*. The subsequent editorials and newspaper articles continued to expand the issue of indigent defense and facilitate the "alarmed discovery" phase cited by Downs.

Administrative changes in the state judicial and political institutions also influenced reform. In 2001, Judge Norman Fletcher succeeded Justice Bonham as Chief Justice, and key informants agree that Judge Fletcher was instrumental in garnering support for the commission from the legal community. Additionally, a key informant actively involved in the legislative process held that initial support from newly elected Republican Governor Sonny Perdue further legitimized the work of the commission. However, a few key informants indicated that Governor Perdue's early support was purely political, as he perceived public opinion to be in favor of reform. They maintain that Governor Perdue was not supportive after the state public defender system began to fail.

At the conclusion of the study, the commission affirmed that the Georgia indigent defense system failed to meet constitutional standards primarily due to a lack of funding, accountability and oversight. The commission maintained that the counties were unable to adequately fund their respective indigent defense programs. Stakeholders concluded that in order to ensure the system was free from political pressures the provision of legal services for indigent defendants would best be financed at the state-level. Therefore, the commission determined that a statewide public defender system would provide the most uniform and quality representation for indigent defendants (Georgia Administrative Office of the Courts 2004; Spangenberg 2002).

Based upon the commission's findings, the Indigent Defense Committee of the State Bar drafted legislation establishing a fully-funded statewide public defender system. A key informant who helped draft the legislation claimed that the committee recognized the importance of garnering support from the civil attorneys within the State Bar. To gain this needed support, members of the committee educated civil attorneys in small groups at the annual State Bar meeting about the need for indigent defense reform. Georgia civil attorneys subsequently pledged their support for the legislation.

As detailed in Chapter V, the state public defender system in Georgia has since deteriorated due to mismanagement and underfunding. Consistent with Downs' model, many stakeholders have recognized the cost of significant progress and have become disenchanted with the issue. Furthermore, according to one public official, public interest surrounding indigent defense has gradually declined due to reductions in the *Atlanta Journal-Constitution's* circulation throughout the state.

Findings suggest that a distinct cultural characteristic of the state also encouraged the adoption of state oversight. Several public officials indicated that Georgia could be divided into two separate regions. Reflecting this concept, one official indicated:

We have Atlanta, and then we have the rest of the state.

The public official maintained that with its major airport and the diversity that it generates the city of Atlanta perceives itself as the progressive “new South.” This attitude helped to promote a sense of urgency and consequently facilitate the adoption of state administrative oversight of indigent defense.

Louisiana

The method of agenda setting in Louisiana followed the Cobb and Elder (1983) theory which associated internal and external “triggers” with agenda setting. Hurricane Katrina was the trigger or impetus behind the adoption of state oversight of indigent defense and expanded the issue to the general public. However, key informants claim that indigent defense reform had gained momentum two years prior to the hurricane. While Hurricane Katrina was the primary catalyst, other factors encouraged indigent defense reform. Interest groups such as the National Association of Criminal Defense Lawyers (NACDL), National Legal Aid and Defenders Association (NLADA), Louisiana Bar Association (LBA) and the Louisiana Justice Coalition (LJC) advocated for change prior to 2005 and continued to do so after Hurricane Katrina.

In 2003, the LBA began advocating for change; to honor the 40th anniversary of *Gideon*, the Bar passed a resolution urging the governor, chief justice and legislature to establish a commission to study the Louisiana indigent defense system and recommend needed reforms. In passing the resolution, the LBA noted that Louisiana’s system failed to meet the majority of the

ABA's *Ten Principles* adopted in 2002 (Louisiana Bar Association 2003). In response to the resolution, the Indigent Defense Services Task Force (Task Force) was created in 2004 to study the Louisiana criminal justice system and to recommend policy changes to the legislature (Louisiana House Bill 151 2003).

In the years preceding the disaster, a public administrator maintained that the LJC conducted a public education campaign to include the publication of several reports and twenty-eight editorials highlighting the need for indigent defense reform. Pressure from the LBA led to the creation of the Indigent Defense Services Task Force in 2003.

National interest groups initiated litigation to encourage reform. In 2004, the NLADA released a report documenting Louisiana's failure to meet nine of the American Bar Association's *Ten Principles*. With support from the NACDL, nine defendants filed a class-action lawsuit in 2004 against the state of Louisiana, Governor Blanco and the legislature for failing to provide adequate representation in Calcasieu parish (*Anderson v. State*). The lawsuit stated that the Calcasieu Public Defender Office was significantly underfunded and understaffed thus creating an environment in which defendants were denied their constitutional right to counsel.²⁷

In 2005, the Louisiana Supreme Court again recognized the deficiencies in the state's indigent defense system and the need for adequate funding in a unanimous decision. The public defender in the case asserted that the inadequate funding provided to him and other public defenders created unconstitutional conditions and urged the court to hold the legislature to its obligation to fund the LIDAB (*State of Louisiana v. Citizen* 2005).

²⁷ This case is currently being reviewed to determine the effect of the Louisiana Public Defender Reform Act on the quality of representation provided by the Calcasieu Public Defender Office.

Key informants agree that the disaster brought nationwide attention to the state of Louisiana both because of the devastation it caused and the deficiencies it uncovered within Louisiana's criminal justice system. Consistent with Cobb and Elder's theory, stakeholders were able to link the events surrounding Hurricane Katrina to existing problems. At the time, these problems included the treatment of the poor and the inadequate Louisiana criminal justice system.

Cobb and Elder (1983) also emphasize the importance of symbols in expanding the issue and increasing the likelihood that it will become an agenda item. Symbols can be used to invoke strong positive or negative reactions and to portray a sense of urgency. Examples of the inadequacies within the Louisiana public defender system were used to portray this sense of urgency. The public defender system collapsed after the disaster. Key informants held that public defenders were unable to track defendants who were scattered throughout the state after jails were evacuated. As mentioned in Chapter V, Judge Arthur L. Hunter of Orleans Parish received nationwide attention after he granted a petition to free a prisoner facing felony charges who had not been provided counsel. These examples received national attention that further expanded the issue to the general public and helped place indigent defense high on the legislative agenda.

Key informants agree that reform was also driven by key policy entrepreneurs committed to reforming the public defender system in Louisiana. Many key informants contend that the organizational structure and culture established by the new board was a critical component to the reform efforts in New Orleans. Several key informants cite Steve Singer, the first chief of trials for the New Orleans Public Defender's Office after Katrina, as an essential leader during the transitional period after the storm. One public defender argued that Singer was willing to initiate reforms that angered many powerful people.

Several factors particular to Louisiana discouraged indigent defense reform. A number of key informants who were involved in transitioning Louisiana from a locally administered indigent defense system claimed that the state's engrained political system is resistant to change. The Orleans Public Defender Office began recruiting nationally to bring in outsiders and create a new culture. Public defenders in this new system no longer worked for local judges but were solely devoted to their clients. Many informants from national organization indicated that the Orleans Office is now considered a model office and admired nationally for its reform efforts. Reflecting this perception, one such recruit who is now an Orleans Public Defender, said that he made the decision to come to New Orleans because of the "trailblazers for indigent defense reform" within its system. Key informants contend that the culture of change began in New Orleans and spread throughout the rest of Louisiana.

Other factors initially discouraged indigent defense reform. The findings suggest that opposition to reform originally came from local judges who were suspicious of outsiders and preferred the status quo. Reforms such as vertical representation created tension between the boards and local judges. Key informants maintained that many judges believed the changes further clogged the system and therefore denied poor defendants their constitutional right to counsel. Finally, several key informants indicated that there is a division between New Orleans and the rest of the state. Many of the smaller towns initially opposed sharing state tax dollars with the city. However, opposition to state oversight of indigent defense appears to be weakening; key informants reported that public defenders across the state are beginning to view the LPDB as an ally that can ensure uniformity and lobby for state funding.

Nevertheless, the lack of funding has affected the implementation of the Louisiana Public Defender Reform Act. According to an official at the LPDB, it has been unable to address

noncompliance due to the lack of available resources in many parishes. A state administrator indicated that the NACDL has reinitiated litigation claiming that the quality of representation afforded to defendants has worsened since the 2007 legislation. It appears the issue of inadequate funding will subsequently be addressed in the courts.

Hurricane Katrina acted as a catalyst for criminal justice reform in Louisiana when it made landfall in August 2005. Indigent defense reform had become a priority two years before the disaster. While advocates feared that indigent defense reform would be postponed after Katrina, the issue seemed to gain momentum as the nation became aware of the inadequacies within the state's criminal justice system.

Mississippi

The history of state administration of indigent defense in Mississippi is unique. In 2000 Mississippi became the first state to repeal a state indigent defense commission. Therefore, this research explores agenda setting in Mississippi in two phases. The first phase encompasses the time before the Mississippi Statewide Public Defender Act was adopted in 1998. The second phase spans from the repeal of the Act in 2000 to the time of this writing in 2010.

The first phase of the agenda setting process followed the policy streams model. Indigent defense representation had risen on the government agenda but had failed to become an institutional agenda item. The window of opportunity for reform was created when public officials and other stakeholders viewed state oversight of indigent defense as a possible solution to other agenda items.

Several unlikely stakeholders formed a coalition to support state oversight of indigent defense. According to a high level state administrator, the 1998 Act was supported by death

penalty proponents, the Sheriff's Association and county Boards of Supervisors. The public administrator maintains that death penalty supporters viewed the 1998 legislation as a mechanism to streamline the justice system. Prior to the legislation, the Mississippi Supreme Court was unwilling to affirm certain death sentences, given the poor quality of representation and lack of post-conviction relief afforded to indigent capital defendants. The administrator, echoing the sentiment of death penalty proponents, claimed:

If we can't execute people without a better indigent defense system, by God let's get reforms underway so that we can.

Support for reform also came from the Sheriff's Association and county Boards of Supervisors. The public administrator maintains that at the time of the legislation, overcrowded jails were jeopardizing the safety of officers and were draining county resources. In the opinion of the administrator, the Sheriff's Association believed that reform could reduce the backlog of indigent defendants awaiting representation in the local jails and alleviate budgetary pressures. The state administrator reported that the county Boards of Supervisors wanted to increase state funding of indigent defense and therefore supported reform.

Key informants contended that litigation and media coverage drew attention to the failures within the state's indigent defense system before the 1998 Act was passed. Two attorneys in Jones County filed suit in 1992, claiming that they would be found ineffective in all cases as a result of their excessive caseloads and inadequate funding.²⁸ A member of the Task

²⁸ In 1992, Jones County hired two contract attorneys to provide representation for indigent defendants within the county. The county allocated \$32,000 annually for indigent defense services; the attorneys were paid \$13,000 a piece and were provided \$6000 for expenses. When they were originally hired, neither attorney was aware of the extensive caseload they would be expected to handle. The previous contract attorney had already been compensated for 400 pending felony cases for which the new contract attorneys were now responsible. While the case was pending, Jones County agreed to increase the contract to \$118,000 (U.S. Department of Justice 2000).

Force claimed that Jackson's daily newspaper, the *Clarion-Ledger*, had consistently supported indigent defense reform by highlighting exonerations and other inadequacies within the Mississippi criminal justice system (U.S. Department of Justice 2000).

Several key informants reported that stakeholders had been working with the legislature for several years to pass legislation to improve the provision of defense services for the poor. Although these stakeholders advocated for more state involvement in indigent defense, according to a Task Force member, the adoption of the Mississippi statewide public defender system occurred by mistake. In 1998 a bill came before the legislature that would have created a commission to study indigent defense representation. The key informant reported that legislators and stakeholders compromised on a proposal to fund the commission for one year so that it could make a recommendation to the legislature the following year. The bill in its entirety was passed, and unbeknownst to many who voted for it, it included a provision for the creation of a statewide public defender system. The legislature eliminated the commission's appropriations in 1999 when the commission report recommended funding the statewide system as passed the previous year. The Task Force member maintained that the commission continued to meet and attempted to obtain private grants to fund its work. In 2000 the legislature repealed the Mississippi Statewide Public Defender System Act, thereby eliminating the commission.

The second phase of the agenda setting process occurred after the repeal of the 1998 Act. This agenda setting stage follows the incremental model. Even though legislation establishing a statewide, state-funded indigent defense system was repealed in 2000, various levels of administrative oversight have since been adopted. State-level support of indigent defense appears to be an evolving concept in Mississippi, with stakeholders advocating for incremental reforms. The Office of Capital Defense Counsel and the Office of Capital Post-Conviction Counsel were

created in 2001. The Office of Indigent was established four years later. A number of stakeholders acknowledged that they used an incremental approach to achieve reform. In the opinion of one Task Force member, the pilot project establishing state-level district defender offices will gradually increase the level of state oversight of indigent defense in Mississippi.

Many key informants indicated that reform was also driven by a key policy entrepreneur committed to improving the Mississippi's criminal justice system. Justice Waller, the current Chief Justice of the Mississippi Supreme Court, served as Chairman of the Mississippi Public Defender Task Force from 2000 to 2005. Key informants reported that he was actively involved in the creation of the Office of the Capital Defense Counsel and the Office of Capital Post-Conviction Counsel.

Other factors may have contributed to the adoption of administrative oversight procedures. Although these offices were established to provide state funding to assist in death penalty cases, some key informants maintained that the creation of these agencies also helped to expedite the death penalty process. Before the Office of the Capital Defense Counsel and the Office of Capital Post-Conviction Counsel were established, the Mississippi Supreme Court had started ordering lawyers for post-conviction relief cases. Key informants reported that the Court was not comfortable affirming death sentences without proper representation. Similarly, although the Office of Indigent Appeals was created for the purpose of providing legal representation on appeal for indigent persons, the promise of cost-efficiency may also have contributed to its creation. Many stakeholders contend that the office streamlines and professionalizes the appeals process, subsequently saving the state money over time.

Reform in Mississippi was also encouraged after Hurricane Katrina. A public official reported that the criminal justice system was in chaos after the storm. In the opinion of one high-

level administrator, many Mississippi stakeholders realized that indigent defense facilitated the criminal justice process. She maintained that after Katrina, the public and policymakers understood that the justice system did not operate effectively and efficiently without the defense function.

Key informants indicated that reform is currently discouraged by a number of factors. The findings suggest that opposition to state oversight of indigent defense in Mississippi is strongest among part-time public defenders and local judges. Part-time public defenders operate private practices but also receive compensation from counties for indigent cases. Therefore, key informants maintain that part-time public defenders have opposed state oversight of indigent defense for fear that they will be adversely affected by reform. Likewise, in the opinion of many key informants, state judges have resisted reform efforts due to their desire to maintain control of their local circuits.

Several key informants noted the law and order culture of their respective states. A high-level state administrator in Mississippi contended that the tough on crime mentality in his state has discouraged reform. He maintained that many judges were former prosecutors and in some instances former police officers. In his opinion, the law and order mentality is encouraged by Mississippi judges who have spent their entire career in law enforcement. Implying a similar sentiment, a judge in Mississippi termed the police in his jurisdiction, the “para-military” and claimed that drug forfeiture laws have turned law enforcement into a business.²⁹ The judge claimed that:

If someone coming through town with Texas license plates is arrested, the police can seize and profit off of the seized items.

²⁹ Pursuant to Mississippi Code §41-29-153, anything of value, including real estate, money, vehicles and aircrafts, which can be connected to the sale of a controlled substance can be forfeited to state or local law enforcement, depending on jurisdiction.

In his opinion, a conflict arises when law enforcement economically benefits from drug arrests. Another public official maintained that the indigent defense system is misunderstood. According to her, the public mistakenly has the perception that guilty individuals are more likely to be exonerated in well-funded indigent defense systems.

Several key informants claimed that recent policies have addressed the tough on crime policies passed during the 1990s. A state administrator maintained that in 2008 the legislature repealed the state's truth-in-sentencing law for nonviolent offenders. The truth-in-sentencing law requires all persons convicted of a felony to serve at least 85 percent of their sentence. Due to prison overcrowding, nonviolent offenders are now exempt from the law. However, it is important to note that the passage of the legislation was largely politicized. According to one public defender, private prison groups lobbied for the passage of the truth-in-sentencing law. This legislation increased the time of incarceration and therefore financially benefitted private prisons.

Litigation initiated by national interest groups, specifically NAACP, NACDL and SCHR, continue to encourage reform efforts in Mississippi. In December 1999 and January 2000, three Mississippi counties and one public defender filed lawsuits against the state for its failure to fund the state indigent defense system.³⁰ In particular, Quitman County filed suit against the state for failing to provide adequate funding for indigent defense after a death penalty case left the county

³⁰ The part-time public defender who filed suit, J.B. Van Slyke, was the only attorney in Forrest County, Mississippi who represented indigent defendants. According to Van Slyke, he handled 700 felony cases in fiscal year 2000 but was unable to provide effective representation due to his excessive caseload and lack of available funding. In the three years that Van Slyke contracted with the county, he took seven of his 2000 cases to trial. All seven resulted in guilty verdicts. Although Van Slyke sued the county for providing inadequate funding that he claimed resulted in his ineffectiveness, the case was dismissed after Van Slyke voluntarily resigned as public defender of Forrest County (*Van Slyke v. State of Mississippi* 1999).

financially strained.³¹ The NAACP's Legal Defense Fund, NACDL and seven former state court judges filed amicus briefs in support of the counties. The trial court applied the *Strickland* standard and ruled that the county had not proven that the absence of state funding resulted in complete ineffective assistance of counsel. The county appealed to the Mississippi Supreme Court, arguing that the use of the *Strickland* test was inappropriate, but the court upheld the trial court's decision in 2005 (*Quitman County v. State* 2005).

Several key informants reported that the NAACP continues to drive reform through litigation. In July 2005, the NAACP and the SCHR filed suit against the city of Gulfport, Mississippi for incarcerating indigent misdemeanants for failure to pay fines and for violating the misdemeanants' right to counsel. The plaintiffs voluntarily dismissed the case after Gulfport resolved most of the problems introduced in the lawsuit (*Thomas v. City of Gulfport* 2005).

Texas

The agenda setting process in Texas closely followed the policy streams model. State oversight of indigent defense gained agenda status when a window of opportunity opened. In the years preceding the Fair Defense Act (FDA), state oversight of indigent defense had risen on the government agenda but had failed for a number of years. The findings from this research suggest that the agenda entry for state oversight of indigent defense in Texas was a result of the convergence of three processes. Due to the influence of key policy entrepreneurs and media attention, the oversight of indigent defense became an institutional agenda item. Furthermore, political changes in administration helped to create a window of opportunity whereby a policy

³¹ Officials in Quitman County claimed that they were forced to raise taxes and take out a \$250,000 loan to pay for the death penalty trials and appeals for two men convicted of killing four people. The two men did not live in Quitman County but because the crime occurred within its borders, Quitman County was legally responsible for funding their defense.

solution, state oversight of indigent defense, was attached to the problem, the provision of indigent defense services in Texas.

Before the FDA was passed in 2001, local interest groups such as the State Bar of Texas and Texas Appleseed continued to draw attention to the inadequacies within the state criminal justice system and emphasized the need for indigent defense reform. The State Bar of Texas recognized the need for reform and in 1994, created the Committee on Legal Services to the Poor in Criminal Matters. After studying the provision of indigent services in Texas for six years, the Bar released a report which detailed the failures within the indigent defense system and insisted upon reform (Butcher and Moore 2000).

Key informants reported that criminal justice reform was a priority of one key policy entrepreneur. Texas Senator Rodney Ellis introduced legislation in 1999 to reform Texas' indigent defense system (Texas Senate Bill 247). According to one public official who worked in the Office of the Governor during George W. Bush's administration, the Governor's office received a steady stream of phone calls from judges throughout the state, opposing the legislation. While the bill passed both chambers of the Texas legislature, it was subsequently vetoed by then-Governor Bush after a successful lobbying campaign by trial judges. Nevertheless, Senator Ellis continued advocating for indigent defense reform until the passage of the FDA in 2001.

Key informants claimed that the presidential campaign of then-Governor George W. Bush and subsequent media attention provided the window of opportunity by exposing injustices within the Texas criminal justice system. Key informants also maintained that reports of ineffective assistance of counsel in Texas death penalty cases received national media attention. Ernest Willis spent seventeen years on death row before his case was dismissed and he was

released in 2004. The story received extensive media attention after it was reported that Willis' court-appointed lawyer had only spent three hours with his client before his capital trial. In 1999 another 1984 capital murder conviction was overturned due to ineffective assistance of counsel. Key informants reported that the case received extensive media coverage after it was determined that the defendant's court appointed attorney routinely slept during court proceedings. Another high profile death penalty case in Texas was overturned in August 2000. Citing prosecutorial misconduct and ineffective assistance of counsel, U.S. District Judge David Folsom overturned the death sentence of Delma Banks Jr. and ordered the state of Texas to reduce Banks' sentence or retry him. The Fifth Circuit Court of Appeals reinstated his death sentence after determining that the state of Texas had enough evidence to convict. Moments before he was to be executed, the U.S. Supreme Court issued a stay of execution and agreed to hear his case. Delivering a strong criticism of Texas officials and lower courts, the Court overturned his death sentence and ruled that Banks' had a right to appeal his conviction (*Banks v. Dretke* 2004). As of February 24, 2010, Banks is still on Texas' death row list (Texas Department of Criminal Justice 2010).

Key informants indicated that these well-publicized cases assisted local advocacy groups in obtaining funding for systematic documentation of the Texas criminal justice system. In the last few months of 2000, the State Bar of Texas and Texas Appleseed, a nonprofit public interest law center, released comprehensive reports documenting the status of indigent defense in Texas and the need for reform. Texas Appleseed concluded that the Texas indigent defender system lacked uniformity as programs varied from county to county. Appleseed concluded that the state provided no funding and little oversight. Judges were given wide discretion over attorney selection and compensation, and few counties implemented standards or guidelines regarding training, experience, caseloads or performance (Texas Appleseed 2000).

Consistent with Kingdon's model, political factors, particularly Senator Ellis' new position as Chairman of the Senate Finance Committee, helped to place indigent defense high on the legislative agenda. A high ranking public official claims that Senator Ellis' powerful new position impacted trial judges. Judicial officials were now more inclined to participate in the legislative process given Senator Ellis' influence in state government. The coalition of judges, attorneys and advocates coupled with the attention of the local and national press led to the passage of the Fair Defense Act in 2001.

Other factors have since affected state-level support of indigent defense. The transition from a locally administered and funded system to one that includes state oversight and funding was facilitated by the flexibility of the Fair Defense Act (FDA) and the Texas Task Force on Indigent Defense (Task Force). Providing the system meets established standards, the FDA allows local officials flexibility in organizing their indigent defense systems. This flexibility and respect for local control is significant, given the unique cultural characteristics of the state. As indicated by a number of key informants, Texas can be divided into five separate regions. These regional distinctions are a reflection of the geographical and cultural variations within the state.

The Task Force recognizes the importance of local control. A state administrator held that implementation would have been difficult had the Task Force mandated instead of encouraged compliance. A key informant maintained that with "over 3300 judges, 80,000 lawyers and 254 jurisdictions," the Task Force is unable to "police" every county. Instead, a risk assessment tool is used for fiscal and policy monitoring and county plans are audited for compliance. Task Force members claim that staff is routinely in the field, providing local officials with technical support and other necessary resources for implementation of the FDA.

Most key informants agree that the Task Force has been successful at positioning itself as facilitator instead of enforcer. To ensure FDA compliance, it has aligned itself with the Fair Defense Project (Project). The Project, a nonprofit advocacy organization, has been instrumental in implementing and enforcing provisions of the FDA. According to one key informant, this partnership allows the Task Force to remain “the good cop” and avoid further conflict with local officials. A defense attorney maintained that staff from the Project routinely visits courtrooms and document FDA violations. Similarly, the Project works directly with the Task Force to ensure that written county plans coincide with the FDA and uses litigation to help implement the law. Most recently, the Project sued counties for failing to provide lawyers for misdemeanor indigents.

To further encourage compliance and improvement, the Task Force awards grants to counties that meet particular standards. In the opinion of one public administrator, the consistent financial support from the state mitigates resistance by local officials and facilitates the implementation of the FDA.

Most key informants agree that the success of the Task Force is also a reflection of the continued support from the legislature and governor. In 2005 and 2006, the Texas legislature created two new funding sources for indigent defense services. The revenue generated in fiscal year 2008 exceeded total cost by approximately \$3.3 million, thus providing carryover funds for fiscal year 2009 (Texas Task Force on Indigent Defense 2008). Key informants maintain that the Task Force and its Director are well respected within the state political system. Citing the collapse of the state public defender system in Georgia, one official underscored the Task Force’s ability to manage money and accomplish goals.

It appears that the state of Texas is slowly moving towards a state public defender system. However, resistance to a completely centralized system is high, and some key informants are not convinced that a statewide system is practical, given the low caseloads in the smaller counties. Nevertheless, indigent defense reform has occurred incrementally. The FDA allows for flexibility and local control provided that the system meets established state standards. Moreover, state-level support of indigent defense, particularly financial support, continues to encourage reform at the county level.

Factors Influencing Pattern of State Oversight

One purpose of this research was to explore factors influencing the pattern of state oversight of indigent defense across five Southern states. The following section details the explanatory variables affecting the extent to which states have taken steps to institutionalize the oversight of indigent defense. Factors that have encouraged administrative reform are drawn from agenda setting theory and include political, cultural and socio-demographic differences suggested by the literature.

Table 6.2 presents the list of explanatory variables that influenced the agenda setting process and the level of administrative oversight of indigent defense programs across the five Southern states.

[Table 6.2 about here]

A summary of the statements by key informants is included in Table 6.2 to underscore the positive, negative or lack of influence of each explanatory variable. Table 6.3 presents examples of interview statements that support my summary findings.

[Table 6.3 about here]

Findings suggest that state oversight of the indigent defense function is linked to interest group strength, ideology within different branches of government, and intergovernmental funding structures.

Table 6.4 presents a comparison between the hypothesized association and findings.

[Table 6.4 about here]

It was expected that interest group strength, liberal government ideology, and intergovernmental funding structures would have a positive influence on state administrative oversight. However, findings suggest that interest group strength, liberal government ideology, and intergovernmental funding structures have both a positive and negative influence on state administrative oversight.

The diffusion pattern of state oversight of indigent defense does not follow a particular policy typology, suggesting that state-level support of indigent defense may be a unique policy typology. Similar to redistributive and morality policies, the findings indicate that the extent to which states have taken steps to institutionalize the oversight of indigent defense is politically salient and therefore is affected by political variables. This research suggests that state oversight of indigent defense may be linked to state economic characteristics. However, the findings are not consistent with the suggestion that wealthier states have more resources to apply to policy innovations. Instead, this research indicates that intergovernmental funding structures are important and have both positively and negatively influenced state oversight of indigent defense. Similar to administrative reform policies, state oversight of indigent defense has been linked to specific institutional characteristics of states.

Interest group strength appears to have a positive and negative association with the level of state administrative oversight between the focus states. Table 6.5 illustrates the dominant interest group activity on indigent defense in the focus states.

[Table 6.5 about here]

National groups encouraged and facilitated indigent defense reform in Georgia, Louisiana and Mississippi while state and local groups advocated for reform in Texas. State and local groups influenced indigent defense reform in Alabama but not in the anticipated direction. Previous research indicates that the South is the region most dominated by powerful interest groups. Interest group strength had a negative influence on reform in Alabama. Although interest group strength is high in all five states, it is most dominant in Alabama (Hrebenar and Thomas 1992; Nownes, Thomas and Hrebenar 2008).

This finding may be a significant explanation for the lack of state administrative oversight in Alabama as interest group effort is not only directed at supporting the passage legislation but also motivated to prevent the adoption of legislation. Key informants throughout the state emphasized the influence of the criminal defense bar in defeating indigent defense legislation. In particular, the cohesion and power of the Jefferson County criminal defense bar has discouraged the adoption of state administrative oversight methods in Alabama. Key informants maintain that the group has focused attention on key political figures influential in the legislative process. Many informants claim that Alabama Senator Rodger Smitherman, Chairman of the Judiciary Committee and attorney from Jefferson County, was largely responsible for defeating the legislation due to the lobbying efforts of the Jefferson County criminal defense bar.

This trend is consistent with existing research suggesting the power and influence of interest groups within the state. Nownes, Thomas and Hrebenar (2008) classified the fifty states according to the overall impact of interest groups. According to their classification, Alabama is one of four states in which interest groups consistently and overwhelmingly influence policymaking.

This research argues that the lack of involvement by national organizations has also stymied indigent defense reform in Alabama. Key informants acknowledged that national interest groups have not been actively involved in indigent defense representation in the state. The lack of involvement by national groups may be a reflection of the following conditions: (1) the adequate representation provided in Alabama as compared to its regional peers or (2) the absence of internal or external events necessary for issue expansion. Compared to the other four states, findings indicate that egregious stories involving ineffective assistance of counsel or denial of representation has not been systematically documented by the media or interest groups.

The strength of interest groups in Georgia, Louisiana, Mississippi and Texas had a positive influence on the adoption of state administrative oversight in these states. A number of key informants noted the important role of the Southern Center of Human Rights (SCHR) and the Georgia State Bar in drawing attention to the inadequacies within the Georgia criminal justice system. Since the 1990s, the SCHR has initiated litigation claiming that state and local governments were denying indigent defendants in Georgia their right to counsel. While the legislation was debated in 2002, the SCHR sent observers to courtrooms throughout the state to actively document systematic flaws within the state court system. The SCHR filed lawsuits in Coweta County and Cordele Circuit that further highlighted the need for indigent defense reform and received statewide attention. The media coverage generated from these lawsuits helped to expand the issue of indigent defense to the general public.

Indigent defense reform was also encouraged by the Georgia State Bar. While the details of the legislation were debated by stakeholders throughout 2002, the State Bar funded the Spangenberg Group, a criminal justice research firm, to conduct a statewide study of Georgia's indigent defense system. At the conclusion of the study, stakeholders agreed that the provision of

legal services for indigent defendants would best be financed at the state-level. The Indigent Defense Committee of the State Bar subsequently drafted the legislation which established a fully-funded statewide public defender system.

Findings suggest the positive influence interest groups at the national and state level had on indigent defense reform in Louisiana. Groups such as the National Association of Criminal Defense Lawyers (NACDL), National Legal Aid and Defenders Association (NLADA), Louisiana Bar Association (LBA) and the Louisiana Justice Coalition (LJC) advocated for change before and after indigent defense reform legislation was passed. In the years preceding Hurricane Katrina, informants maintain that the LJC conducted a public education campaign to include the publication of several reports and twenty-eight editorials highlighting the need for indigent defense reform. Pressure from the LBA led to the creation of the Indigent Defense Services Task Force in 2003. In 2004, the NLADA released a report documenting Louisiana's failure to meet nine of the American Bar Association's *Ten Principles of a Public Defense Delivery System*. Likewise, the NACDL coordinated class-action litigation in Calcasieu parish in 2004, alleging that indigent defendants were being denied their right to counsel. Findings indicate that these efforts by state and national interest groups encouraged state administrative oversight of indigent defense programs in Louisiana.

Litigation by national interest groups, specifically the NAACP, NACDL and SCHR encouraged reform efforts in Mississippi and continue to drive reform in the state. The NAACP and NACDL submitted amicus briefs in 2000 in support of counties that filed lawsuits against the state for its failure to fund the state indigent defense system. In July 2005, the NAACP and the SCHR filed suit against the city of Gulfport, Mississippi for incarcerating indigent misdemeanants who failed to pay fines and for violating the misdemeanants' right to counsel.

Interest groups at the state-level generated reports and initiated litigation to encourage state oversight of indigent defense in Texas. The State Bar of Texas recognized the need for reform and in 1994, created the Committee on Legal Services to the Poor in Criminal Matters. After studying the provision of indigent services in Texas for six years, the Bar released a report which detailed the inadequacies of the indigent defense system and insisted upon reform. In the last few months of 2000, the State Bar of Texas and Texas Appleseed, a nonprofit public interest law center, released comprehensive reports documenting the status of indigent defense in Texas and the need for reform. Key informants agree that the Texas Fair Defense Project (Project) is instrumental in implementing and enforcing provisions of the Texas Fair Defense Act (FDA). Staff from the Project routinely visits courtrooms and documents violations of the FDA. Similarly, the Project works directly with the Task Force to ensure that written county plans coincide with the FDA and uses litigation to help implement the law. Most recently, the Project sued counties for failing to provide lawyers for misdemeanor indigents.

Government ideology is the next explanatory variable. Table 6.6 illustrates the dominant theme of government ideology in the focus states.

[Table 6.6 about here]

State-level ideology mattered, although not in the way that was expected. Government ideology extended across branches of government and included the courts. This finding may not be revolutionary but judicial ideology is usually not separated in diffusion and agenda setting literature. It was expected reforms would be driven by liberal ideology of government officials; findings suggest that the conservative and liberal ideologies of judicial officials as well as policymakers influenced state oversight of indigent defense.

The Alabama judicial branch has influenced state administration of indigent defense in Alabama. Key informants argue that indigent defense reform in Alabama has been encouraged by several supreme court chief justices. This research argues that the conservative ideology of the Alabama state supreme court has driven reform. During her tenure, the current Alabama Chief Justice Sue Bell Cobb has made indigent defense reform a top legislative priority and has supported the creation of a state oversight committee to provide accountability and oversight. Several key informants have concerns about the experience, political motives and judicial independence of Chief Justice Cobb. They argue that she has been a judge since the beginning of her law career, has never tried a case and therefore has little knowledge about the defense function. Furthermore, they contend that given her husband's former career as a lobbyist, Chief Justice Cobb is politically savvy and has many contacts within the legislature. A few key informants believed that she would run for governor in 2010 until she announced otherwise in early July 2009. Others doubt her level of judicial independence and claim that she injected and exceeded her role in the legislative process by garnering support for the indigent defense reform bill. One informant maintained that although the legislation was once again defeated, indigent defense reform remains a top agenda item for Chief Justice Cobb. According to the key informant, at the time of our interview staff from her office is planning visits to judicial circuits throughout the state to garner support for indigent defense reform.

Reform was both encouraged and stymied by the ideologies of judicial officials and policymakers in Georgia. The conservative ideology of several stakeholders stymied reform in Georgia. Key informants argued that the support from newly elected Republican Governor Sonny Perdue initially legitimized indigent defense reform efforts in the state. However, a few key informants indicated that Governor Perdue's early support was largely political, as he

perceived public opinion to be in favor of reform. Governor Perdue withdrew his support after the state public defender system began to fail. After the GPDSC was unable to justify its budgetary requests to the General Assembly due to a lack of information on caseloads and costs, key informants claim that Governor Perdue insisted that the GPDSC be placed under the executive branch. When the agency was moved to the executive branch, its budget subsequently had to be approved by the governor prior to being presented to the legislature. In addition to complicating the budgetary process, the move further politicized the issue of indigent defense. Findings indicate that the agency's budget was dramatically reduced once it was moved to the executive branch.

Findings suggest that the Georgia statewide system became politically unpopular throughout 2005 and this unpopularity contributed to system's demise. Several key informants maintain that conservative politicians criticized the GPDSC while simultaneously refusing to adequately fund the agency. Additionally, findings suggest that the bipartisan group of politicians who had supported the 2003 Act was no longer in state government. By 2005, Republicans had control of the state house, senate, governorship and lieutenant governorship and advanced their tough-on-crime conservative agenda by marginalizing the GPDSC.

Findings also indicate the liberal ideology of a few Georgia state supreme court justices influenced the adoption of a statewide system. In 2000, the Georgia Supreme Court established the Chief Justice's Commission on Indigent Defense to include judges, attorneys from private practice, public defenders, academics and business leaders. Chief Justice Bonham appointed Charles Morgan, a top-level executive at BellSouth Corporation, to serve as Chairman of the Commission. A number of public officials contend that his appointment and the inclusion of other members of the business community expanded the issue to the general public and framed it

in an economic context. Chief Justice Bonham was succeeded by Chief Justice Fletcher in 2001. Chief Justice Fletcher was cited by a number of key informants as instrumental in garnering support for the statewide system from the legal community.

Conservative government ideology of public officials had a negative impact on indigent defense reform in Louisiana. Findings suggest that state oversight of indigent defense was hindered by entrenched political attitudes and by Republican Governor Jindal. Key informants maintain that opposition to reform originally came from local judges who were suspicious of outsiders and preferred the status quo. These key informants agreed that tension between the reformers and judges stymied reform. In 2007, the New Orleans' Indigent Defender Board filed a lawsuit against the city's Criminal District Court judges after the judges removed four of the Board's members. The lawsuit was dropped after the passage of the Louisiana Public Defender Reform Act in 2007.

Several informants argued that the fiscally and socially conservative Governor Jindal has slowed the process of change. These key informants maintain that indigent defense reform is not a pressing agenda item for Governor Jindal. They argue that sex offender laws and other severe criminal justice policies are institutional agenda items of Governor Jindal and his administration. In addition, these informants noted that staffing for the Louisiana Public Defender Board was delayed due to a hiring freeze ordered by Governor Jindal in November 2008.

The judiciary also influenced indigent defense reform in Mississippi. Findings indicate that conservative state supreme court ideology drove reform efforts in Mississippi. Death penalty supporters viewed the 1998 legislation as a mechanism to streamline the justice system. Prior to the legislation, the Mississippi Supreme Court was unwilling to affirm certain death sentences, given the poor quality of representation and lack of post-conviction relief afforded to those

facing capital crimes. Several key informants also maintained that the creation of the Office of the Capital Defense Counsel and the Office of Capital Post-Conviction Counsel helped to expedite the death penalty process as well. Before these agencies were established, the Mississippi Supreme Court started ordering lawyers for post-conviction relief cases. Key informants reported that the Court was not comfortable affirming death sentences without proper representation.

The liberal government ideology of one state senator encouraged indigent defense reform in Texas. Key informants agree that the passage of the Texas Fair Defense Act (FDA) was made possible by the efforts of a key policy entrepreneur. Criminal justice reform has historically been a priority of Democratic Texas Senator Rodney Ellis. Senator Ellis first introduced indigent defense reform legislation in 1999. He continued to advocate for reform until the FDA was passed in 2001. Findings suggest that Senator Ellis' position of Chairman of the Senate Finance Committee helped to place indigent defense high on the legislative agenda in 2001. Key informants argued that his powerful new position impacted trial judges. Judicial officials were more inclined to participate in the legislative process given Senator Ellis' influence.

The intergovernmental funding structures in these five states also influence state-level support of the oversight of indigent defense. The dominant funding structures of the indigent defense systems in the focus states are illustrated in Table 6.7.

[Table 6.7 about here]

The intergovernmental funding structure refers to the dedicated budget, fees, or other institutional support from more than one source for indigent defense within each state. Funding for indigent defense in Alabama and Texas is shared between the state and local governments. The funding structure in Alabama is both positively and negatively associated with indigent

defense reform, while the Texas intergovernmental funding arrangement has encouraged indigent defense reform. Although the state of Louisiana currently contributes to the funding of indigent defense, funds initially were garnered locally. This original intergovernmental funding structure encouraged indigent defense reform in Louisiana. The Georgia indigent system was primarily state-funded. This funding arrangement had a negative influence on indigent defense reform in the state. Finally, the intergovernmental funding structure in Mississippi had no influence on indigent defense reform.

The intergovernmental funding structure in Alabama has both encouraged and hindered indigent defense reform. The General Fund in the State Treasury is required by statute to supply the difference if the cost of administering Alabama's indigent defense system exceeds the amount available in the Fair Trial Tax Fund. The state lacks a method of administrative oversight of indigent defense, yet state expenditures on indigent defense continues to increase as costs exceed revenues from the Fair Trial Tax Fund. The current funding structure strains the overburdened state budget and encourages indigent defense reform. Many stakeholders consider state oversight as a possible institutional structure to control costs. While the lack of state funding encouraged reform in the other four states explored in this research, the state of Alabama has consistently contributed to the provision of indigent defense services. Therefore the lack of state funding is not a driving force encouraging state oversight. In contrast, the findings of this research suggest that the rising cost of indigent defense and the intergovernmental funding structure hinder reform.

Findings also suggest that indigent defense reform in Alabama is stymied by private attorneys who benefit from the current funding structure. Key informants maintain that opposition from criminal defense attorneys is driven by their economic self-interests. In the

opinion of some key informants, many defense attorneys rely on court-appointed cases for income and fear a new system would have economic consequences. Findings suggest that Alabama is not efficiently managing the cost of indigent defense and that the current open-ended system overburdens the General Fund. Some informants believe that many private attorneys are profiting from the current system and are therefore opposed to centralization. It is important to note that the private bar in the other states explored in this research did not actively oppose reform. In these states, court-appointed cases are not as profitable, and judges often cut pay vouchers for private attorneys. Accordingly, key informants in Georgia, Louisiana, Mississippi and Texas claimed that many jurisdictions have difficulty finding private attorneys to take indigent defense cases.

The intergovernmental funding structure in Georgia has contributed to the breakdown of the statewide public defender system. A number of key informants agree that the statewide program lacks the necessary funding to meet its constitutional obligation. However, the explanation for this funding shortfall is a source of contention for key informants.

In the summer of 2004, the Georgia General Assembly passed legislation that created a funding mechanism for the new indigent defense system. Funding for the program was to be provided through additional fines, fees and surcharges added to court proceedings. These funds were not earmarked for the provision of indigent defense. Key informants disagree as to whether the funds collected through these additional fees were to be used exclusively for the purposes of delivering indigent defense services; nevertheless, two years after the legislation, the legislature began reducing the council's funding. Key informants disagree about the motivation behind this budgetary reduction. Some stakeholders argue the GPDSC was unable to contain indigent defense costs due to mismanagement. Other key informants claim that stakeholders were

politically motivated and therefore withheld funding. These informants argued that the Republican-controlled legislature used resources intended to fund indigent defense for other projects.

As previously noted, the budgetary process was further politicized after the GPDSC was moved to the executive branch. As an executive branch agency, its budget had to be approved by the governor before it could be submitted to the legislature. Key informants argue that the funds available for indigent defense were reduced after the agency was moved to the executive branch.

The intergovernmental funding structure for capital cases also stymied reform. Capital cases were entirely funded by the state under the initial funding structure. Findings suggest that the excessive costs associated with the high-profile capital case of Brian Nichols drained state funds and further politicized state oversight of indigent defense. Key informants indicated that the private attorneys' fees combined with the cost of experts, paralegals, investigators and office expenses drained the GPDSC of scarce resources. As a consequence, by the end of 2007, the GPDSC had eliminated a number of employees and approximately a dozen death-penalty cases were postponed due to inadequate funding. Opponents of the agency cited the Nichols' case as evidence of a broken system. The Nichols trial became the most expensive in Georgia history and resulted in numerous reforms to the state's public defender system.

The intergovernmental funding structure in Louisiana also acted as a catalyst for reform. Prior to 2007, each judicial district was entirely responsible for funding and administering its local indigent defense fund. Funds were primarily garnered through fines and fees assessed in traffic cases. Key informants maintained that funding levels varied widely from parish to parish due to this funding structure. Additionally, the lack of traffic citations issued during and after Hurricane Katrina decreased the amount of money available for indigent defense. Because traffic

tickets were not being issued, the system's funding mechanism was suspended. In the weeks and months after the storm, forty-two part-time public defenders were laid off and more than a thousand jailed defendants had still not met with an attorney. Hurricane Katrina highlighted the inadequacies within the Louisiana criminal justice system and brought nationwide attention to the state. However, the dilapidated condition of the Louisiana public defender system was significantly due to its inadequate funding structure. This lack of funding drove litigation, encouraged media attention and led to the passage of the Louisiana Public Defender Reform Act.

The intergovernmental funding structure implemented in Texas has been successful at encouraging reform at the local level. The Fair Defense Act (FDA) became law in January 2002 and established statewide standards for the provision of indigent defense services. The legislation allows local officials discretion in implementing their public defender systems provided that the system adheres to the FDA standards. Although the counties are still largely responsible for funding and managing their indigent defense programs, the Task Force will provide state funding to counties that meet certain standards. Findings indicate that the resistance to change is largely financial, as counties fear reform will produce more costs. Key informants claim that funding and assistance from the Task Force has encouraged change at the county level.

The consistent level of funding has had a positive influence on indigent defense reform in Texas. The state has adequately funded indigent defense since the passage of the FDA. Most key informants agree that the success of the Task Force is a reflection of the continued support from the legislature and governor. The consistent financial support from the state mitigates resistance by local officials and facilitates the implementation of the FDA. The Task Force is primarily funded through court costs and fees assessed in misdemeanor and felony cases. In 2005 and 2006, the Texas legislature created two new funding sources for indigent defense services. The

revenue generated in fiscal year 2008 exceeded total cost by approximately \$3.3 million, thus providing carryover funds for fiscal year 2009.

Texas continues to implement policies to improve the provision of indigent defense. Many of these policies include innovative funding structures. The West Texas Regional Public Defender for Capital Cases Office was created in 2007 to regionalize the representation of indigent defendants accused of capital crimes by providing public defenders, mitigators and investigators in capital cases within the office's region. This office was formed by approximately seventy counties. Key informants argue that stakeholders in Texas have learned from the failures of the Georgia public defender system. The successful funding structure of the office has encouraged other counties throughout the state to consider regionalizing the representation of indigent defendants accused of capital crimes. Funding for the Capital Office is provided by the Task Force and by each participating county who pays annual fees based on its population and the number of capital cases it filed within the last decade.

This section explored factors influencing the pattern of state oversight of indigent defense across five Southern states. Explanatory variables that have encouraged administrative reform are drawn from agenda setting theory and include political, cultural and socio-demographic differences suggested by the literature. The findings suggest that state oversight of indigent defense may be linked to interest group strength, conservative and liberal ideology and intergovernmental funding structures. The following section underscores the possible policy implications of this research.

Policy Implications

This research provides insight into the spread of ideas and reforms across the American states. The diffusion of administrative oversight of state indigent defense programs has not been the subject of systematic study in diffusion and agenda setting literature. The right of legal representation for those accused of a crime is now a constitutional right across the American legal system. State support of indigent defense is important because the right to counsel is a fundamental constitutional right guaranteed under the Sixth and Fourteenth Amendments to all defendants regardless of their income (Knight 1998; Rackow 1954). Despite that fundamental premise, states vary widely in their ability to deliver this basic right.

A wealth of research suggests common policy recommendations for states when making decisions about indigent defense representation. These policies often recommend the creation of a state board or commission to oversee the provision of indigent defense services, the establishment of qualification, performance and workload standards for defense counsel and the collection of data on indigent defense cases. These and similar policy recommendations are easily supported by those in the indigent defense policy network. Figure 6.1 presents six policy recommendations that deserve special attention and can be used by practitioners.

[Figure 6.1 about here]

This research recommends that states: 1) decriminalize low-risk conduct; 2) promote incremental change; 3) avoid duplication; 4) involve interest groups as experts; 5) cultivate judicial support and 6) implement planned or systematic funding structures.

State legislatures should decriminalize or reclassify conduct that presents little to no risk to public safety. Findings suggest that the demand for indigent defense counsel increases as state legislatures criminalize more behavior. The expansion of the criminal justice system in regards to

law enforcement, prosecution and punitive sentencing has led to an exponential growth in caseloads and indigent defendants. Decriminalization and reclassification would reduce the number of defendants and thus the need for and cost of indigent defense representation. At the time these interviews were conducted, two focus states had recently passed severe sex offender laws. Key informants indicated that these and other sentencing laws were unconstitutional and may not have passed had attorneys been better represented in the legislature. This politicalization trend is also reflected in the drug forfeiture laws in the focus states which allow law enforcement to economically benefit from drug arrests. These criminal justice policies generate a greater number of criminal defendants and consequently a proportionately greater number of indigent defendants entitled to state-provided counsel.

The current economic crisis exacerbates the need for decriminalization and reclassification of low-level conduct. The cost of criminal justice policies strains state budgets which are already pressured by a worsening economy. Furthermore, during economic downturns, states are expected to provide more services with fewer resources. As revenue growth declines, enrollments in social programs for the poor have historically increased. This condition results in a simultaneous increase in spending pressures for these services. In addition, the findings suggest that the weakening economy will result in more economic crimes (such as theft and shoplifting), thereby increasing the number of cases requiring state appointed indigent defense counsel. The current economic conditions are likely to impact the provision of legal services for the poor by increasing the demand for state-appointed counsel. By decriminalizing low-risk conduct, states may divert funds to other programs.

States officials can learn from the successes and failures of the five indigent defender programs explored in this research. The findings confirm that incremental changes to the

provision of indigent defense services have been more accepted and long-lasting across these five traditionalistic states. The relationship between state policy decisions and political culture underscores the importance of recognizing the cultural differences between states. Cultures are associated with explicit views about government, bureaucracy and politics, and the rejection or reluctance of a state to accept certain policies or programs is often a reflection of its political culture. Elazar (1949) finds that the traditionalist culture of the focus states is intuitively antibureaucratic and discourages the development of government agencies. Unless pressured from the outside, political leaders in the traditionalistic culture rarely initiate change or establish new programs, as both have the potential to disrupt the conventional order. It is reasonable to assume that traditionalistic states would resist adopting methods of state administrative oversight of indigent defense programs. However, stakeholders in Mississippi and Texas have been more receptive to incremental changes to the provision of indigent defense services.

Public officials in other states should particularly note the successful implementation of the Texas Fair Defense Act (FDA). A key informant who is considered a national expert on indigent defense recognized Texas as a national leader in the movement to institutionalize the oversight of indigent defense. This success is largely due to its stakeholders recognizing and respecting the unique cultural characteristics within the state. The FDA allows officials flexibility in organizing their indigent defense programs, therefore recognizing the importance of local control. In contrast, Georgia adopted sweeping changes to the administration of indigent defense services in 2003 but failed to adequately implement and fund the policies. It is reasonable to assume that the comprehensive reforms initiated under the Georgia Indigent Defense Act were inconsistent with the traditionalistic values of many of its political elites. This attitude likely contributed to its failure.

States administrators should avoid duplication. Methods of oversight may not be as important as what is used to measure success. States should be wary of adopting a new state administrative agency under these economic conditions. Government bureaucracies often seek to increase powers and maximize budgets. State officials should learn from the events that preceded the collapse of the Georgia state public defender system. The system was underfunded, mismanaged and poorly executed. The costs associated with an administrative bureaucracy will strain overburdened state budgets. However, if needed, this research supports the creation of a state task force or study commission to support training, conduct research and make reform recommendations to improve the ability of states to deliver legal defense as a public service.

It is important for stakeholders to involve interest groups as experts. Interest groups are instrumental in cultivating media attention. This research highlights the importance of the media and interest groups in expanding and framing issues concerning indigent defense. Particularly in Texas, Georgia and Louisiana, the media was active in the agenda setting process. Newspaper coverage of inadequacies within the state criminal justice systems expanded the issue of indigent defense to the general public and defined it as a problem for which government action was required. Moreover, interest groups at the state and national level encouraged reform through litigation and systematic documentation. These reports and court cases promoted a sense of urgency and consequently facilitated the adoption of state administrative oversight of indigent defense in Georgia, Louisiana, Mississippi and Texas. Interest groups have also affected the level of state oversight in Alabama, as the Alabama Criminal Defense Lawyers Association and the Jefferson County criminal bar have actively campaigned against indigent defense legislation. Furthermore, the findings of this research suggest that the lack of involvement by national

groups in the indigent defense reform movement in Alabama has contributed to the defeat of the legislation.

State administrators should cultivate judicial support for state oversight of indigent defense. The methods of agenda setting explored in this research provide a framework for state officials. It is important for stakeholders to set an agenda that is effective and can be used in the political context of their respective states. Politics played a role in decision making in all five states. The political process will shape agenda setting, and there is no reason to expect them to be the same process. However, states can learn from each other. Indigent defense representation is not a politically popular agenda item. This research suggests that there is a lack of education about the criminal justice system. In the opinion of many key informants, voters do not consider the representation of poor defendants a critical component of the criminal justice system. The public mistakenly has the perception that guilty individuals are more likely to be exonerated in well-funded indigent defense systems. Victims' rights groups and prosecutors push for more severe crime legislation. Lawmakers have a strong incentive to appear tough on crime. Many of the stakeholders who make decisions regarding indigent defense are policymakers, judges and district attorneys. These politicians are often reluctant to support criminal justice reform policies. However, unique political forces shape legislation in this policy area. Administrative oversight of indigent defense was driven by state supreme courts in Alabama, Georgia and Mississippi. This is an area of judicial administration and agenda setting that is understudied.

It is important that states implement planned or systematic funding structures. States can and should provide adequate funds for competent indigent representation. States with inadequately funded systems may be forced to pay catastrophic costs. This research underscores that adequate funding is vital to the success of state indigent defender programs. Unlike many

public services, indigent defense representation is a fundamental constitutional right guaranteed under the Sixth and Fourteenth Amendments to all defendants regardless of their income. States lawmakers make choices regarding criminal justice policies and should therefore be willing to assume the costs associated with these policy decisions. They determine the funding levels of courts, corrections and law enforcement. They also decide which behaviors will be criminalized and determine degrees of punishment. These policy decisions drive individuals into the criminal justice system. As the number of indigent defendants entitled to state-provided counsel increases, states may be unable to effectively administer and fund indigent defense services. Through litigation, state governments will be held responsible for failing to abide by the Sixth Amendment. States with inadequately funded systems can either increase funding or reduce the number of criminal cases requiring indigent representation. The current economic conditions make the first choice improbable. To mitigate these conditions, states should work to reduce caseloads and decriminalize low-risk behaviors.

Future Research

This exploratory study provides a foundation for further research on state oversight of indigent defense programs. Future research should explore judicial administration and agenda setting. In addition, this research cannot reach a conclusion about whether indigent defense is a constitutional right or a question of division of powers under the principles of federalism. However, this tension runs throughout the dual system (federal/state) of criminal justice and should be a question for future research.

Additional research should also focus on the significance of policy networks to state-level support of indigent defense systems. Existing research confirms that state innovation is also

affected by external factors such as policy networks. Furthermore, the diffusion of reform that depends on administrative practices has been linked to the presence of specific institutional characteristics including professional networks within the state (McNeal et al. 2003). Policy networks offer state officials an avenue of communication whereby information is gathered and used to make policy decisions (Baumgartner and Jones 1993; Walker 1969). Public officials from different states exchange information through annual professional meetings and associations such as the National Governors Association and the National Center for State Legislatures (Karch 2007; McNeal et al. 2007). These professional networks influence policy diffusion, adoption and implementation (McNeal et al. 2003; Mintrom 2000; Mossberger 2000; Mossberger and Hale 2002).

Additionally, future research should be devoted to incorporating social construction framework into the research. Existing research suggests a link between social construction and policy decisions. The social construction of target populations helps to explain the lack of well-funded opposition to certain policies. The theory contends that public officials are pressured to allocate beneficial policies to influential, positively constructed target populations and to formulate punitive, punishment-oriented policies for negatively constructed groups (Schneider and Ingram 1993; Sneider and Sidney 2009).

Finally, future research should focus on the indigent defense systems in other regions of the American states. The study could identify the actors, organizations and institutions involved in indigent defense reform, analyze the level of state oversight in each state and compare findings to this research.

Conclusion

State oversight of indigent defense programs in the American states has not been the subject of systematic study. State support of indigent defense is important because the right to counsel is a fundamental constitutional right guaranteed to all defendants regardless of their income (Knight 1998; Rackow 1954). Today most defendants charged and convicted of crimes are guaranteed the right to counsel during all criminal justice proceedings. The constant expansion of the right to counsel has increased the number of cases requiring state appointed indigent defense counsel (Albert-Goldberg and Hartman 1983). In addition, the current economic climate and policy trends over the last thirty years have also increased the number of indigent defendants entitled to state appointed representation which further strains state budgets.

While the Supreme Court imposes considerable obligations upon state courts to provide attorneys for indigent defendants, it does not firmly establish standards for implementing, funding and administering the provision of defense services for the poor. These responsibilities have been left to the states (Bureau of Justice Statistics 1996). In response, states have adopted various methods of administrative oversight (Constitution Project 2009; Spangenberg 2005, 2006a).

This study explores the history of indigent defense in the American states and the administrative structures and reform efforts in Alabama, Georgia, Louisiana, Mississippi and Texas. This research identifies and explores factors that have encouraged reform and influenced the pattern of state oversight of indigent defense programs across five Southern states. Moreover, this study establishes a foundation for further research on the administrative structure and decision processes that states use when making decisions about indigent defense representation.

This area of public administration has not been the subject of systematic study; findings may suggest avenues for improving the ability of states to deliver legal defense as a public service.

REFERENCES

- Aberbach, Joel D. and Bert A. Rockman. 2002. Conducting and coding elite interviews. *PS: Political Science and Politics* 35(4):673-676.
- Abel, Laura K. 2006. A right to counsel in civil cases: Lesson from *Gideon v. Wainwright*. *Temple Political Science and Civil Rights Law Review* (15):527-555.
- Alabama Appleseed. 2004. *Alabama Appleseed seeks indigent defense reform*. Available [Online] <http://www.appleseednetwork.org/bIntheNewsb/tabid/1110/EntryId/33/Alabama-Appleseed-Seeks-Indigent-Defence-Reform.aspx>
- Alabama State Comptroller's Office. Email message to author, February 9, 2009.
- Alabama House Bill 490. 2006. Available [Online] <http://alisondb.legislature.state.al.us/acas/searchableinstruments/2006RS/Printfiles//HB490-int.pdf>
- Alabama House Bill 930. 2008. Available [Online] <http://alisondb.legislature.state.al.us/acas/searchableinstruments/2008RS/Printfiles//HB930-int.pdf>
- Alabama House Bill 214. 2009. Available [Online] <http://alisondb.legislature.state.al.us/acas/searchableinstruments/2009RS/Printfiles//HB214-int.pdf>
- Albert-Goldberg, Nancy and Marshall J. Hartman. 1983. The public defender in America. In *The Defense Counsel*, ed. William F. McDonald. Beverly Hills, CA: Sage Publishing.
- American Bar Association. 2002. *Report to the ABA House of Delegates*. Available [Online] <http://www.abanet.org/legalservices/downloads/sclaid/10principles.pdf>
- _____. 2002a. *Ten principles of a public defense delivery system*. Available [Online] <http://www.abanet.org/legalservices/downloads/sclaid/indigentdefense/tenprinciplesbooklet.pdf>
- _____. 2004. *Gideon's broken promise: America's continuing quest for equal justice*. Available [Online] <http://www.abanet.org/legalservices/sclaid/defender/brokenpromise/fullreport.pdf>
- Anderson, John E. 2006. *Public policymaking*. 6th Ed. New York: Houghton Mifflin.

- Arkansas Code. 2010. Available [Online]
<http://www.arkleg.state.ar.us/assembly/2009/2010F/Pages/Home.aspx>
- Bailey, William C. and Ruth D. Peterson. 1989. Murder and capital punishment: A monthly time series analysis of execution publicity. *American Sociological Review* (54):722-743.
- Barrilleaux, Charles and Michael Berkman. 2003. Do governors matter? Budgeting rules and the politics of state policy making. *Political Research Quarterly* (56):409-417.
- Barrilleaux, Charles, Thomas Holbrook and Laura Langer. 2002. Electoral competition, legislative branch, and American state welfare policy. *American Journal of Political Science* 46(2):415-427.
- Baumgartner, Frank R. and Bryan D. Jones. 1993. *Agendas and instability in American politics*. Chicago: University of Chicago Press.
- Baumgartner, Frank R and Beth L. Leech. 1998. *Basic interests: The importance of groups in politics and in political science*. Princeton, NJ: Princeton University Press.
- Beaney, William M. 1955. *The right to counsel in American court*. Ann Arbor, MI: University of Michigan Press.
- Beattie, J.M. 1991. Scales of justice: Defense counsel and the English criminal trial in the eighteenth and nineteenth centuries. *Law and History Review* 9(2): 221-267.
- Benoit, Ellen. 2003. Not just a matter of criminal justice: States, institutions, and North American drug policy. *Sociological Forum* 18(2):269-294.
- Benner, Laurence A. 1975. Tokenism and the American Indigent: Some perspectives on defense services. *American Criminal Law Review* 12:667-688.
- Berkman, Michael B. and Christopher Reenock. 2004. Incremental consolidation and comprehensive reorganization of American state executive branches. *American Journal of Political Science* 48(4):796-812.
- Berry, Frances Stokes and William D. Berry. 1990. State lottery policy adoption as policy innovation: An even history analysis of living-will laws. *American Political Science Review*. 84:395-415.
- Berry, William D., Evan J. Ringquist, Richard C. Fording and Russell L. Hanson. 1998. Measuring citizen and government ideology in the American states, 1960-1993. *American Journal of Political Science* 44:327-48.
- _____. 2001. Measuring citizen and government ideology in the United States. ICPSR study 1208. Available [Online] <http://icspr.umich.edu>.

- Beth, Loren. 1961. The Supreme Court and the future of judicial review. *Political Science Quarterly* 76(1):11-23.
- Beyle, Thad. 2009. *Gubernatorial power*. Available [Online]: <http://www.unc.edu/~beyle/gubnewpwr.html>
- Birkland, Thomas A. 2004. The world changed today: Agenda-setting and policy change in the wake of the September 11 terrorist attacks. *Review of Policy Research* 21(2):179-200.
- Black, Henry C. 1979. *Black's law dictionary*. 5th ed. St. Paul, MN: West Publishing.
- Blume, John, Theodore Eisenberg, and Martin T. Wells. 2004. Explaining death row population and racial composition." *Journal of Empirical Legal Studies* (1):165-207.
- Blumstein, Alfred and Alex R. Piquero. 2007. Restore rationality to sentencing policy. *Criminology and Public Policy* 6(4): 679-687.
- Bowers, William J. 1980. Deterrence or brutalization: What is the effect of executions? *Crime and Delinquency* (26):453-484.
- Brace, Paul and Laura Langer and Melinda Gann Hall. 2000. Measuring the preferences of state supreme court judges. *Journal of Politics*. 62(2):387-413.
- Brace, Paul and Melinda Gann Hall. 1990. Neo-institutionalism and dissent in state supreme courts. *Journal of Politics* 52(1):54-70.
- Breaux, David A., Don E. Slabach, and Daye Dearing. 1998. Mississippi: A synthesis of race, region and Republicanism. In *The New Politics of the Old South*, eds. Charles S. Bullock III and Mark J. Rozell, 85-104. Lanham, Maryland: Rowman and Littlefield Publishers.
- Breaux, David A., Stephen D. Shaffer, and Hilary B. Gresham. 2007. Mississippi: Emergence of a modern two-party state. In *The New Politics of the Old South 3rd edition*, eds. Charles S. Bullock III and Mark J. Rozell, 95-114. Lanham, Maryland: Rowman and Littlefield Publishers.
- Bullock, Charles S. 1998. Georgia: Election rules and partisan conflict. In *The New Politics of the Old South*, eds. Charles S. Bullock III and Mark J. Rozell, 49-65. Lanham, Maryland: Rowman and Littlefield Publishers.
- _____. 2007. Georgia: The GOP finally takes over. In *The New Politics of the Old South 3rd edition*, eds. Charles S. Bullock III and Mark J. Rozell, 49-74. Lanham, Maryland: Rowman and Littlefield Publishers.
- Bureau of Justice Statistics. 1996. *Indigent defense*. Available [Online] <http://bjs.ojp.usdoj.gov/content/pub/pdf/id.pdf>

- _____. 2001. *State prison expenditures, 2001*. Available [Online]
<http://www.ojp.usdoj.gov/bjs/abstract/spe01.htm>
- _____. 2006. *Prisoners in 2005*. Available [Online] <http://www.ojp.gov/bjs/pub/pdf/p05.pdf>
- _____. 2007. *State court organization, 1987-2004*. Available [Online]
<http://www.ojp.usdoj.gov/bjs/pub/pdf/sco8704.pdf>
- _____. 2009. *Estimated arrests for drug abuse violations by age group, 1970-2006*.
Available [Online] <http://www.ojp.usdoj.gov/bjs/glance/tables/drugtab.htm>
- _____. 2009a. *Number of persons under jurisdiction of state correctional authorities by most serious offense, 1980-2005*. Available [Online]
<http://www.ojp.usdoj.gov/bjs/glance/tables/corrtyptab.htm>
- Butcher, Allan K. and Michael K. Moore. 2000. *Muting Gideon's trumpet: The crisis in indigent criminal defense in Texas*. Available [Online]
<http://www.uta.edu/pols/moore/indigent/whitepaper.htm>
- Cashore, Benjamin and Michael Howlett. 2007. Punctuating which equilibrium? Understanding thermostatic policy dynamics in Pacific Northwest forestry. *American Journal of Political Science* 51(3):532-551.
- Center on Budget and Policy Priorities. 2009. *New fiscal year brings no relief from unprecedented state budget problems*. Available [Online] <http://www.cbpp.org/files/9-8-08sfp.pdf>
- Cobb, Roger W. and Charles D. Elder. 1983. *Participation in American politics: The dynamics of agenda-building*. 2nd Ed. Baltimore: John Hopkins University Press.
- Cobb, Roger W. and David M. Primo. 2003. *The plane truth: Airline crashes, the media, and transportation policy*. Washington, D.C.: Brookings.
- Cochran, John K., Mitchell B. Chamlin, and Mark Seth. 1994. Deterrence or brutalization? An impact assessment of Oklahoma's return to capital punishment. *Criminology* (32):107-134.
- Code of Alabama. 2010. Available [Online]
<http://www.legislature.state.al.us/acas/alisonstart.html>
- Code of Virginia. 2009. Available [Online] <http://leg1.state.va.us/000/src.htm>
- Cohen, Michael, James March and Johan Olsen. 1972. A garbage can model of organizational choice. *Administrative Science Quarterly* (17):1-25.
- Cole, David. 1999. *No equal justice: Race and class in the American justice system*. New York: New Press.

- Connecticut General Statutes. 2010. Available [Online]
http://search.cga.state.ct.us/dtsearch_pub_statutes.html
- Constitution Project. 2009. *Justice denied*. Available [Online]
<http://www.constitutionproject.org/manage/file/139.pdf>
- Cortner, Richard C. 1968. Strategies and tactics of litigants in constitutional cases. *Journal of Public Law* (17):287-307.
- Cotter, Patrick R. 2007. Alabama: From one party competition, and maybe back again. In *The New Politics of the Old South 3rd edition*, eds. Charles S. Bullock III and Mark J. Rozell, 75-94. Lanham, Maryland: Rowman and Littlefield Publishers.
- Creswell, John W. 2007. *Qualitative inquiry and research design: Choosing among five traditions*. 2nd Ed. Thousand Oaks, CA: Sage.
- Davies, Andrew L. B. and Alissa P. Worden. 2009. State politics and the right to counsel: A comparative analysis. *Law & Society Review* 43(1):187-220.
- Death Penalty Information Center. 2009. *Death penalty policy by state*. Available [Online]
<http://www.deathpenaltyinfo.org/death-penalty-policy-state>
- _____. 2009a. *Death row inmates by state*. Available [Online]
<http://www.deathpenaltyinfo.org/death-row-inmates-state-and-size-death-row-year>
- _____. 2009b. *Death sentences in the United States from 1977 to 2008*. Available [Online]
<http://www.deathpenaltyinfo.org/death-sentences-united-states-1977-2008>
- _____. 2009c. *State execution rates*. Available [Online]
<http://www.deathpenaltyinfo.org/state-execution-rates>
- Dearing, James W. and Everett M. Rogers. 1996. *Agenda-setting*. Thousand Oaks, CA: Sage.
- Denzine, Norman K. and Dr. Yvonna Lincoln. 2005. *The Sage handbook of qualitative research*. Thousand Oaks, CA: Sage.
- Desimone, Jessa. 2006. Bucking conventional wisdom: The Montana Public Defender Act. *The Journal of Criminal Law and Criminology* 96(4): 1479-1507.
- Dezhbakhsh, Hashem, Soumaya M. Tohamy, Peter H. Aranson. 2003. A new approach for testing budgetary incrementalism. *The Journal of Politics* 65(2):535-558.
- Downs, Anthony. 1972. Up and down with ecology: The issue-attention cycle. *Public Interest* (28):38-50.

- Downs, George. 1976. *Bureaucracy, innovation, and public policy*. Lexington, MA: Lexington Books
- Dye, Thomas R. 2008. *Understanding public policy*. 12th Ed. Upper Saddle River, NJ: Pearson.
- Elazar, Daniel J. 1984. *America federalism: A view from the states*. 3rd Ed. New York: Harper & Row.
- Eleventh Judicial Circuit Miami-Dade County. 2008. *Administrative order no. 08-14*. Available [Online] http://www.pdmiami.com/ExcessiveWorkload/Excessive_Workload_Motions-Circuit_Court_Consolidation_Order.pdf
- Erikson, Robert S, Gerald C. Wright and John P. McIver. 1993. *Statehouse democracy: Public opinion and policy in the American states*. Cambridge University Press: New York.
- Fischer, Frank. 2003. *Reframing public policy: Discursive politics and deliberative practices*. New York: Oxford University Press.
- Fisher, Patrick and Travis Pratt. 2006. Political culture and the death penalty. *Criminal Justice Policy Review* (17):48-60.
- Fitzpatrick, Jody L. and Rodney E. Hero. 1988. Political culture and political characteristics of the American states: A consideration of some old and new questions." *Western Political Quarterly* 41(1):145-153.
- Fording, Richard C. 2003. Laboratories of democracy or symbolic politics. In *Race and the politics of welfare reform*, eds. Sanford Schram, Joe Soss and Richard Fording, 298-319. Ann Arbor, Michigan: University of Michigan Press.
- Garland, David. 2001. *The culture of control: Crime and social order in contemporary society*. Chicago: University of Chicago Press.
- General Assembly of North Carolina Senate Bill 202. 2009. Available [Online] <http://www.ncga.state.nc.us/Sessions/2009/Bills/Senate/PDF/S202v8.pdf>
- George, Alexander L. and Andrew Bennett. 2004. *Case studies and theory development in the social sciences*. Cambridge, Massachusetts: MIT Press.
- Georgia Administrative Office of the Courts. 2004. *The status of indigent defense in Georgia*. Available [Online] http://www.georgiacourts.org/aoc/press/idc/idc_Report_II090104.pdf
- Georgia House Bill 1EX. 2004. Available [Online] http://www.legis.state.ga.us/legis/2004_ss/versions/hb1EX_HB_1EX_AP_9.htm
- Georgia House Bill 1245. 2008. Available [Online] http://www.legis.state.ga.us/legis/2004_ss/versions/hb1EX_HB_1EX_AP_9.htm

- Georgia Indigent Defense Act. 2003. Available [Online] <http://www.gpdsc.com/docs/aboutus-enabling-legislation-HB1245rev.pdf>
- Georgia Public Defenders Standards Council. 2008. *Annual report*. Available [Online] http://www.legis.state.ga.us/legis/2007_08/senate/publications/gpdsclegislative_oversight_annual_report.pdf
- Georgia Senate Bill 42. 2009. Available [Online] http://www.legis.state.ga.us/legis/2009_10/pdf/sb42.pdf
- Georgia State Bar. 2010. Indigent defense principles revisited. Available [Online] <http://www.gabar.org/public/pdf/leg/Revised%20Principles%20Indigent%20Defense.pdf>
- Glaser, James M. 1994. Back to the black belt: Racial environment and white racial attitudes in the South. *Journal of Politics* (56):21-41.
- Grattet, Ryken, Valerie Jenness, and Theodore R. Curry. 1998. The homogenization and differentiation of hate crime laws in the United States, 1978 to 1995: Innovation and diffusion in the criminalization of bigotry. *American Sociological Review*, 63(2): 286-307.
- Glick, Henry R. and George W. Pruet, Jr. 1986. Dissent in state supreme courts: Patterns and correlates of conflict. In *Judicial conflict and consensus: Behavioral studies of American appellate courts*, eds. Sheldon Goldman and Charles Lamb. Lexington, KY: University Press of Kentucky.
- Goldman, Sheldon. 1966. Voting behavior on the United States Courts of Appeals, 1961-1964. *American Political Science Review* 60(2):374-383.
- _____. 1975. Voting behavior on the United States Courts of Appeals revisited. *American Political Science Review* 69(2):491-506.
- Gray, Virginia. 1973. Innovation in the states: A diffusion study. *The American Political Science Review*, 67(4):1174-1185.
- Gray, Virginia and David Lowery. 1996. *The Population Ecology of Interest Representation: Lobbying Communities in the American States*. Ann Arbor: University of Michigan Press.
- _____. 2001. The institutionalization of state community and organized interests. *Political Research Quarterly* (54):265-284.
- Greene, Jeffrey D. 2005. *Public administration in the new century*. Belmont, CA: Thomson Wadsworth.
- Hall, Melinda Gann. 2008. State courts: Politics and the judicial process. In *Politics in the American states*, eds. Virginia Gray and Russell L. Hanson, 229-255. Washington, D.C.: Congressional Quarterly Press.

- Hall, Melinda Gann and Paul Brace. 1989. Order in the courts: A neo-institutional approach to judicial consensus. *Western Political Quarterly* 42(3):391-407.
- _____. 1992. Toward an integrated model of judicial voting behavior. *American Politics Quarterly* 20(2):147-168.
- Hannigan, John. 2006. *Environmental sociology*. 2nd Ed. New York: Routledge.
- Hashimoto, Erica J. 2007. The price of misdemeanor representation. *William and Mary Law Review* 49(2):461-513.
- Hays, Scott P. and Henry R. Glick. 1997. The role of agenda setting in policy innovation: An event history analysis of living-will laws. *American Politics Quarterly* 25(4):497-516.
- Hawaii Revised Statutes. 2009. Available [Online]
<http://www.capitol.hawaii.gov/site1/hrs/default.asp>
- Hero, Rodney. 1998. *Faces of inequality: Social diversity in American politics*. New York: Oxford University Press.
- _____. 2003. Racial ethnic diversity and states' public policies: Social policies as context for welfare policies. In *Race and the politics of welfare reform*, eds. Sanford Schram, Joe Soss and Richard Fording, 298-319. Ann Arbor, Michigan: University of Michigan Press.
- Hero, Rodney and Caroline Tolbert. 1996. A racial/ethnic diversity interpretation of politics and policy in the states of the U.S. *American Journal of Political Science* (40):851-871.
- Hill, Kim Q. and Jan E. Leighley. 1992. The policy consequences of class bias in state electorates. *American Journal of Political Science* 36:351-365.
- Holmes, Oliver Wendell. 1881. *The common law*. Boston: Little, Brown, and Company.
Available [Online] http://www.law.harvard.edu/library/collections/special/online/collections/common_law/index.php
- Howard, Christopher. 1999. Field essay: American welfare state or states? *Political Research Quarterly* (52):421-442.
- Hrebemar, Ronald J. and Clive Thomas. 1992. *Interest group politics in Southern states*. Tuscaloosa, AL: University of Alabama Press.
- Hwang, Sun-Don and Virginia Gray. 1991. External limits and internal determinants of state policy. *Western Political Quarterly* (44):277-298.
- Illinois Compiled Statutes. 2010. Available [Online]
<http://www.ilga.gov/legislation/ilcs/ilcs2.asp?ChapterID=54>

- Jenkins, J. Craig and Craig M. Eckert. 2000. The right turn in economic policy: Business elites and the new conservative economics. *Sociological Forum* 15(2):307-338.
- Joachim, Jutta. 2003. Framing issues and seizing opportunities: The UN, NGOs, and Women's Rights. *International Studies Quarterly* (47):247-274.
- Johnson, Charles A. 1976. Political culture in American states: Elazar's formulation examined. *American Journal of Political Science* (20):491-509.
- Johnson, Martin. 2001. The impact of social diversity and racial attitudes on social welfare policy. *State Politics and Policy Quarterly* (1):27-49.
- Jones, Bryan D. and Frank R. Baumgartner. 2005. *Politics of attention: how government prioritizes problems*. Chicago: The University of Chicago.
- Kansas Office of the Governor. 2009. *Recovery Act protects more than 1,000 public safety jobs in Kansas*. Available [Online] <http://www.governor.ks.gov/News/NewsRelease/2009/nr-09-0807a.htm>
- Karch, Andrew. 2007. *Democratic laboratories: Policy diffusion among the American states*. Ann Arbor: The University of Michigan Press.
- Kentucky Department of Public Advocacy. 2007. *Realizing justice: Defender caseload report fiscal year 2007*. Available [Online] <http://apps.dpa.ky.gov/library/DefenderCaseloadReport07.pdf>
- _____. 2008. *Annual litigation report*. Available [Online] http://dpa.ky.gov/NR/rdonlyres/1140A71A-FE51-464D-A2BD-20E1E79B7B11/0/DPA_2008_CaseloadReport.pdf
- Kentucky Governor Press Release. 2009. *Funds allocated to help public defenders continue services this year*. Available [Online] <http://migration.kentucky.gov/Newsroom/governor/20090416pda.htm>
- Key, V. O., Jr. 1949. *Southern politics in state and nation*. New York: Knopf.
- Kincaid, John. 1980. Political cultures of the American compound republic. *Publius* (10):1-15.
- King, Troy. 2005. *Opinion of Attorney General No. 2005-063*. Available [Online] <http://www.ago.alabama.gov/pdfopinions/2005-063.pdf>
- Kingdon, John W. 1995. *Agendas, alternatives and public policies*, 2d Ed. New York: HarperCollins.
- Klarner, Carl E. 2003. "Measurement of Partisan Balance of State Government." *State Politics and Policy Quarterly* 3 (Fall):309-19.

- Kleiman, Mark A. R. and Kerry D. Smith. 1990. State and local drug enforcement: In search of a strategy. In *Drugs and crime*, eds. Michael Tonry and James Q. Wilson, 69-108. Chicago: University of Chicago Press.
- Koven, Steven G. and Christopher Mausolff. 2002. The influence of political culture on state budgets: Another look at Elazar's formulation. *The American Review of Public Administration* 32(1):66-77.
- Knight, Alfred. 1998. *Life of the law: The people and cases that have shaped our society, from King Alfred to Rodney King*. New York: Oxford University Press.
- LaFave, Wayne R. 1970. The prosecutor's discretion in the United States. *American Journal of Comparative Law* (18):532-533.
- Lamare, James W., J.L. Polinard, and Robert D. Wrinkle. 1998. Texas: Lone star (wars) state. In *The New Politics of the Old South*, eds. Charles S. Bullock III and Mark J. Rozell, 245-258. Lanham, Maryland: Rowman and Littlefield Publishers.
- Lamare, James W., J.L. Polinard, James Wenzel and Robert D. Wrinkle. 2007. Texas: Lone star (wars) state. In *The New Politics of the Old South 3rd edition*, eds. Charles S. Bullock III and Mark J. Rozell, 187-212. Lanham, Maryland: Rowman and Littlefield Publishers.
- Langer, Laura. 2002. *Judicial review in state supreme courts: A comparative study*. Albany, NY: State University of New York Press.
- Langbein, John. 2005. *The origins of the adversary criminal trial*. New York: Oxford University Press.
- Lee, Kyun M. 2004. Reinventing *Gideon v. Wainwright*: Holistic defenders, indigent defendants, and the right to counsel. *American Journal of Criminal Law* 31(3):367-432.
- Lieske, Joel. 1993. Regional subcultures of the United States. *The Journal of Politics* 55(4):888-913.
- Lindblom, Charles E. 1959. The science of muddling through. *Public Administration Review* (19):79-88.
- _____. 1979. Still muddling, now yet through. *Public Administration Review* (39):517-526.
- Louisiana Bar Association. 2003. *Gideon resolution*. Available [Online]
http://www.nlada.org/Defender/Defender_Evaluation/la_app.pdf
- Louisiana House Bill No. 1. 2007. Available [Online]
<http://www.legis.state.la.us/billdata/streamdocument.asp?did=450256>

- Louisiana House Bill 151. 2003. Available [Online]
<http://www.legis.state.la.us/billdata/streamdocument.asp?did=317229>
- Louisiana Public Defender Reform Act. 2007. Available [Online]
<http://www.legis.state.la.us/billdata/streamdocument.asp?did=449902>
- Louisiana Revised Statutes . 2010. Available [Online]
<http://www.legis.state.la.us/lss/lss.asp?folder=75>
- Louisiana Senate Bill 323. 2005. Available [Online]
<http://www.legis.state.la.us/billdata/streamdocument.asp?did=316875>
- Louisiana Senate. 2009. *Fiscal year 2009 budget summary*. Available [Online]
<http://senate.legis.state.la.us/Fiscalservices/Publications/FY08-09/FY09BudgetSummary.pdf>
- Lowery, David and Lee Sigelman. 1982. Political culture and state public policy: The missing link. *The Western Political Quarterly* 35(3):376-384.
- Manheim, Jarol. B., Richard C. Rich, Lars Willnat, and Craig L. Brians. 2006. *Empirical political analysis: Research methods in political science*. 6th Ed. New York: Pearson Longman.
- Massachusetts General Laws. 2009. Available [Online] <http://www.mass.gov/legis/laws/mgl/>
- Mauer, Mark. 1999. *The race to incarcerate*. New York: The New Press. The Sentencing Project.
- McCarthy, John D. 1994. Activists, authorities, and media framing of drunk driving. In *New social movements: From ideology to identity*, eds. Enrique Larana, Hank Johnston, and Joseph R. Gusfield, 133-167. Philadelphia: Temple University Press.
- McComas, Katherine and James Shanahan. 1999. Telling stories about global climate change: Measuring the impact of narratives on issue cycles. *Communication Research* (26):30-57.
- McLendon, Michael K, Donald E. Heller and Steven P. Young. 2005. State postsecondary policy Innovation: Politics, competition and the interstate migration of policy ideas. *The Journal of Higher Education* 76(4):363-400.
- McNeal, Ramona S., Caroline J. Tolbert, Karen Mossberger, and Lisa J. Dotterweich. 2003. Innovating in digital government in the American states. *Social Science Quarterly* 84(1):52-70.
- McNeal, Ramona S., Mary Schmeida, and Kathleen Hale. 2007. E-disclosure laws and electronic campaign finance reform: Lessons from diffusion of e-government policies in the States. *Government Information Quarterly* (24):312-325.

- McNichol, Elizabeth and Iris J. Lav. 2009. *State budget troubles worsen*. Center on Budget and Policy Priorities 2009. Available [Online] <http://www.cbpp.org/files/9-8-08sfp.pdf>
- Mead, Lawrence M. 2004. State political culture and welfare reform. *The Policies Studies Journal* 32(2):271-296.
- Meier, Kenneth, Joseph Stewart Jr., and Robert England. 1989. *Race, class, and education: The politics of second generation discrimination*. Madison: University of Wisconsin Press.
- Meier, Kenneth and Joseph Stewart Jr. 1991. *The politics of Hispanic education*. Albany: State University of New York Press.
- Meier, Kenneth and Deborah McFarlane. 1992. State policies on funding abortions: A pooled cross-sectional analysis. *Social Science Quarterly* (73):690-698.
- Meier, Kenneth J. 1994. *The politics of sin*. Armonk, NY: M.E. Sharpe.
- Menifield, Charles E., Stephen D. Shaffer, and Brandi J. Brasswell. 2005. An Overview of African American representation in other Southern state. In *Politics in the new South*, eds. Charles E. Menifield and Stephen D. Shaffer, 157-178. Albany: State University of New York Press.
- Meyers, Marcia K., Janet C. Gornick, and Laura R. Peck. 2001. Packaging support for low-income families: policy variation across the United States." *Journal of Policy Analysis and Management* 20(3):457-483.
- Miller, David Y. 1991. The impact of political culture on patterns of state and local expenditures. *Publius: The Journal of Federalism* (21):83-100.
- Mintrom, Michael. 2000. *Policy entrepreneurs and school choice*. Washington, D.C.: Georgetown University Press.
- Mississippi Code. Available [Online]
<http://michie.com/mississippi/lpext.dll?f=templates&fn=main-h.htm&cp=>
- Mississippi Death Penalty Defense Litigation Act. 2000. Available [Online]
<http://billstatus.ls.state.ms.us/documents/2000/pdf/SB/2900-2999/SB2988CS.pdf>
- Mississippi Department of Finance and Administration. 2009. Available [Online]
<http://www.dfa.state.ms.us/Offices/OBFM/Forms/FY2009Budget.pdf>
- Mississippi House Bill 840. 2009. Available [Online]
<http://index.ls.state.ms.us/isysnative/UzpcRG9jdW1lbnRzXDlwMDlccGRmXGhiXDA4MDAtMDg5OVxoYjA4NDBjcy5wZGY=/hb0840cs.pdf#xml=http://10.240.72.35/isysquery/irla19d/41/hilite>

- Mississippi Statewide Public Defender System Act. 1998. Available [Online]
<http://billstatus.ls.state.ms.us/documents/1998/SB/2200-2299/SB2239SG.htm>
- Missouri Division of Budget and Planning. 2009. *The Missouri budget: Fiscal year 2010*. Available [Online] <http://oa.mo.gov/bp/budg2010/>
- Missouri Senate Bill 37. 2009. *Modifies provisions relating to the public defender system*. Available [Online]
http://www.senate.mo.gov/09info/BTS_Web/Bill.aspx?SessionType=r&BillID=512750
- Mooney, Christopher Z. and Mei-Hsen Lee. 1995. Legislating morality in the American states: The case of pre-Roe abortion regulation reform. *American Journal of Political Science* 39(3): 599-627.
- _____. 1999. The temporal diffusion of morality policies. *Policy Studies Journal* 27(4):766-780.
- Mossberger, Karen. 2000. *The politics of ideas and the spread of the enterprise zones*. Washington, D.C.: Georgetown University.
- Mossberger, Karen and Kathleen Hale. 2002. Polydiffusion in intergovernmental programs: Information diffusion in school-to-work program. *The American Review of Public Administration*, 4(32):398-422.
- Moynihan, Donald P. 2005. Why and how do state governments adopt and implement “managing for results” reforms? *Journal of Public Administration Research and Theory* 15(2):219-243.
- National Association of Criminal Defense Lawyers. 2008. *Indigent defense: Standards and guidelines*. Available [Online] <http://www.criminaljustice.org/indigent/guides.htm>
- National Association of State Budget Officers. 2008. *The fiscal survey of states*. Available [Online]
<http://www.nasbo.org/Publications/PDFs/Fiscal%20Survey%20of%20the%20States%20June%202008.pdf>
- _____. 2009. *The fiscal survey of states*. Available [Online]
<http://www.nasbo.org/Publications/PDFs/FSSpring2009.pdf>
- National Legal Aid and Defender Association. 2004. *Indigent defense services in Louisiana: 40 years after Gideon*. Available [Online]
http://www.nlada.net/sites/default/files/la_nladaavoyelles03-2004_report.pdf
- _____. 2008. *A race to the bottom*. Available [Online]
http://www.michbar.org/publicpolicy/pdfs/indigentdefense_report.pdf

- _____. 2009. *Bill passed by Georgia Senate threatens to remove independence*. Available [Online] http://www.nlada.org/News/News_Press_Releases/2009022325308682
- Nelson, Barbara J. 1984. *Making an issue of child abuse: Political agenda setting for social problems*. Chicago: University of Chicago Press.
- Neuman, W. Russell. 1990. The threshold of public attention. *The Public Opinion Quarterly* 54(2):159-176.
- Nevada Supreme Court. 2008. *In the matter of the review of issues concerning representation of indigent defendants in criminal and juvenile delinquency cases*. Available [Online] http://www.naacpldf.org/content/pdf/indigent/Nevada_Supreme_Court_Recommendations.pdf
- New York State Criminal Procedure Laws. 2009. Available [Online] <http://public.leginfo.state.ny.us/LAWSSEAF.cgi?QUERYTYPE=LAWS+&QUERYDATA=@LLCPL+&LIST=LAW+&BROWSER=BROWSER+&TOKEN=25721467+&TARGET=VIEW>
- Norrander, Barbara. 2000. The multi-layered impact of public opinion on capital punishment implementation in the American states. *Political Research Quarterly* 53(4):771-793.
- North Carolina General Statutes. 2009. Available [Online] <http://www.ncga.state.nc.us/gascripts/statutes/statutes.asp>
- North Carolina Office of Indigent Defense Services. 2009. *Report of the commission on indigent defense services*. Available [Online] <http://www.ncids.org/Reports%20&%20Data/Prior%20GA%20Reports/ids%20leg%20report,%20final,%202009.pdf>
- _____. 2010. *North Carolina public defender directory*. Available [Online] <http://www.ncids.org/State%20Defender%20Offices/Directory%20Pages/Public%20Defender%20Directory.pdf>
- North Dakota Century Code. 2009. Available [Online] <http://www.legis.nd.gov/information/statutes/cent-code.html>
- Nownes, Anthony J., Thomas S. Clive and Ronald J. Hrebener. 2008. Interest groups in the states. In *Politics in the American States*, 8th Ed., eds. Virginia Gray and Russell Hanson, 98-126. Washington, D.C.: CQ Press.
- Office of National Drug Control Policy. 1995. *Drugs and crime data*. Available [Online] <http://www.druglibrary.org/Schaffer/govpubs/dds1.pdf>
- Ohio Revised Code. 2009. Available [Online] <http://codes.ohio.gov/orc/120>

- Ohlin, Lloyd and Frank Remington, eds. 1993. *Discretion in criminal justice: The tension between individualization and uniformity*. Albany: State University of New York Press.
- Orr, Larry L. 1976. Income transfer as a public good: An application to AFDC. *American Economic Review* 66(3):359-371.
- Patton, Michael Q. 1990. *Qualitative evaluation and research methods*. 2nd Ed. Newbury Park: Sage.
- Parent, Wayne and Huey Perry. 1998. Louisiana: African Americans, Republicans, and party competition. In *The New Politics of the Old South*, eds. Charles S. Bullock III and Mark J. Rozell, 105-120. Lanham, Maryland: Rowman and Littlefield Publishers.
- _____. 2007. Louisiana: African Americans, Republicans, and party competition. In *The New Politics of the Old South 3rd edition*, eds. Charles S. Bullock III and Mark J. Rozell, 115-138. Lanham, Maryland: Rowman and Littlefield Publishers.
- Peterson, Paul. 1981. *City Limits*. Chicago: University of Chicago Press.
- Pew Center on the States. 2008. *One in 100: Behind bars in America 2008*. Available [Online] http://www.pewcenteronthestates.org/uploadedFiles/8015PCTS_Prison08_FINAL_2-1-1_FORWEB.pdf
- Pierce, Patrick A. and Donald E. Miller. 1999. Variations in the diffusion of state lottery adoptions: How revenue dedication changes morality politics. *Policies Studies Journal*, 27(4):696-706.
- Public Defender of the Eleventh Judicial Circuit of Florida. 2009. *Response to request for information in court's February 26, 2009 order*. Available [Online] http://www.pdmiami.com/ExcessiveWorkload/Response_to_Courts_Request_for_Information.pdf.
- Rackow, Felix. 1954. The right to counsel: English and American precedents. *The William and Mary Quarterly* 11(1):3-27.
- Reinarman, Craig and Harry G. Levine. 1995. The crack attack: America's latest drug scare, 1986-1992. In *Images of issues*, ed. Joel Best, 149. New York: Aldine de Gruyter.
- Rhode Island General Laws. 2009. Available [Online] <http://www.rilin.state.ri.us/Statutes/>
- Rhode Island Office of the Public Defender. 2010. *General department overview*. Available [Online] <http://www.ripd.org/general.htm>
- Roch, Christine H., and Robert M. Howard. 2008. State policy innovation in perspective: Courts, legislatures, and education finance reform. *Political Research Quarterly* 66(2):333-344.

- Rogers, Everett. 1995. *Diffusion of innovations*, 4th ed. New York: The Freedom Press.
- Savage, Robert L. 1985. Diffusion research traditions and the spread of policy innovations in a federal system. *Publius: The Journal of Federalism* (15):1-27.
- Schattschneider, E. E. 1960. *The Semi-Sovereign People*. New York: Holt, Rinehart, and Winston.
- Scheingold, Stuart. 1984. *The politics of law and order: Street crime and public policy*. New York: Longman.
- Schildkraut, Deborah J. 2002. The more things change: American identity and mass and elite responses to 9/11. *Political Psychology* 23(3):511-535.
- Schneider, Anne and Helen Ingram. 1993. Social construction of target populations: Implications for politics and policy. *American Political Science Review* 87(2):334-347.
- Schneider, Cathy Lisa. 1998. Racism, drug policy and AIDS. *Political Science Quarterly* 113(3):427-446.
- Schutt, Russell K. 2004. *Investigating the social world: The process and practice of research*. 2nd Ed. Thousand Oaks, CA: Sage.
- Shaffer, Stephen D. and Charles E. Menifield. 2005. Representation of African Americans in contemporary Mississippi legislature. In *Politics in the new South*, eds. Charles E. Menifield and Stephen D. Shaffer, 107-129. Albany: State University of New York Press.
- Sharkansky, Ira. 1969. The utility of Elazar's political culture." *Polity* (2):66-83.
- Simon, Herbert A. 1986. Theories of bounded rationality. In *Decision and organization*. 2nd Ed., eds. C.B. McGuire and Roy Radner, 161-176. Minneapolis, MN: University of Minnesota Press.
- Skove, Anne. 2003. The right to counsel in misdemeanor cases resulting in suspended or probated sentence. *National Center for State Courts*. Available [Online] http://www.ncsconline.org/WC/Publications/KIS_IndDefSheltonRes.pdf
- Sneider, Anne and Mara Sidney. 2009. What is next for policy design and social construction theory. *Policy Studies Journal* 37(1):103-119.
- Songer, Donald R. 1982. Consensual and nonconsensual decisions in unanimous opinions of the United States Court Appeals. *American Journal of Political Science* 26(2):225-239.
- Songer, Donald R. and Sue Davis. 1990. The impact of party and region on voting decisions in the United States Court of Appeals, 1955-1986. *Western Political Quarterly* 43(2):317-334.

- Soss, Joe, Sanford F. Schram, Thomas P. Vartanian, and Erin O'Brien. 2003. The hard line and the color line. In *Race and the politics of welfare reform*, eds. Sanford Schram, Joe Soss and Richard Fording, 298-319. Ann Arbor, Michigan: University of Michigan Press.
- Sourcebook of Criminal Justice Statistics. 2009. *Persons under correctional supervision*. Available [Online] http://www.albany.edu/sourcebook/toc_6.html
- Spangenberg, Robert L. and Marea L. Beeman. 1995. Indigent defense systems in the United States. *Law and Contemporary Problems* 58(1):31-49.
- Spangenberg Group. 2002. *Status of indigent defense in Georgia*. Available [Online] www.georgiacourts.org/aoc/press/idc/idchearings/spangenberg.
- _____. 2005. *Statewide indigent defense systems: 2005*. Available [Online] <http://www.abanet.org/legalservices/downloads/sclaid/indigentdefense/statewideinddedsystems2005.pdf>
- _____. 2006. *State and county expenditures for indigent defense services in fiscal year 2005*. Available [Online] http://www.abanet.org/legalservices/sclaid/defender/downloads/FINAL_REPORT_FY_2005_Expenditure_Report.pdf
- _____. 2006a. *State indigent defense commissions*. Available [Online] http://www.abanet.org/legalservices/sclaid/defender/downloads/state_indigentdefense_feb07.pdf
- Squire, Peverill. 1993. Professionalism and public opinion of state legislatures. *Journal of Politics* (55):479-491.
- _____. 2007. Measuring legislative professionalism. *State Politics and Policy Quarterly* (7):211-227.
- _____. 2008. Measuring the professionalization of state courts of last resort. *State Politics and Policy Quarterly* (8):223-38.
- Stanley, Harold W. 1998. Alabama: Republicans win the heart of Dixie. In *The New Politics of the Old South*, eds. Charles S. Bullock III and Mark J. Rozell, 67-83. Lanham, Maryland: Rowman and Littlefield Publishers.
- Stucky, Thomas D., Karen Heimer, and Joseph B. Lang. 2005. Partisan politics, electoral competition, and imprisonment. *Criminology* (43):211-247.
- Tate, C. Neal. 1981. Personal attribute models of voting behavior of United State Supreme Court Justices: Liberalism in civil liberties and economic decisions, 1946-1978. *American Political Science Review* 75(2):355-367.

- Tennessee Administrative Office of the Courts. 2009. *Governor approves supplemental money for Indigent Defense Fund*. Available [Online]
<http://www.tsc.state.tn.us/geninfo/PRESSREL/2009/092pr.htm>
- Texas Appleseed. 2000. *Fair defense report: Analysis of indigent defense practices*. Available [Online] http://www.texasappleseed.net/pdf/projects_fairDefense_fairref.pdf
- Texas Department of Criminal Justice. 2009. *Offenders on death row*. Available [Online]
<http://www.tdcj.state.tx.us/stat/offendersondrow.htm>
- Texas Fair Defense Act. 2001. Available [Online] <http://www.sado.org/publicdefense/texas.pdf>
- Texas House Bill 1267. 2007. Available [Online]
<http://www.legis.state.tx.us/tlodocs/80R/billtext/html/HB01267F.HTM>
- Texas House Bill 199. 2009. Available [Online]
<http://www.capitol.state.tx.us/BillLookup/History.aspx?LegSess=81R&Bill=HB199>
- Texas Senate Bill 247. 1999. Available [Online]
<http://www.legis.state.tx.us/billlookup/History.aspx?LegSess=76R&Bill=SB247>
- Texas Senate Bill 1704. 2005. Available [Online]
<http://www.legis.state.tx.us/tlodocs/79R/billtext/pdf/SB01704F.pdf>
- Texas Senate Bill 625. 2009. Available [Online]
<http://www.journals.senate.state.tx.us/sjrnl/81r/html/81RSJ03-19-F1.HTM>
- Texas Task Force on Indigent Defense. 2008. *Upholding the Constitution: 2008 annual report Texas Task Force on Indigent Defense*. Available [Online]
<http://www.courts.state.tx.us/tfid/pdf/FY08AnnualReportTFID.pdf>
- Thomas, Clive S., and Ronald L. Hrebenar. 1992. Changing patterns of interest group activity: A regional perspective. In *The Politics of Interest*, ed. Mark P. Petracca. Boulder, CO: Westview.
- _____. 2004. Interest groups in the states. In *Politics in the American States*, 8th ed. ed. Virginia Gray and Russell L. Hanson. Washington DC: CQ Press.
- Tolbert, Caroline, Karen Mossberger, and Ramona McNeal. 2008. Innovation and learning: Measuring e-government performance in the American states 2000-2004. *Public Administration Review* 68(3):549-563.
- Trumbo, Craig. 1996. Constructing climate change: Claims and frames in U.S. news coverage of an environmental issue. *Public Understanding of Science* (5):269-283.

- Ulmer, S. Sidney. 1962. The political party variable in the Michigan supreme court. *Journal of Public Law* (11):352-362.
- Unah, Isaac. 2003. Explaining corporate litigation activity in an integrated framework of interest mobilization. *Business and Politics* 5(1):65-94.
- United States Bureau of the Census. 2009. *Annual population estimates*. Available [Online] <http://www.census.gov/popest/states/NST-ann-est.html>
- United States Department of Justice. 2000. *Contracting for indigent defense services: A special report*. Available [Online] <http://www.ncjrs.gov/pdffiles1/bja/181160.pdf>
- Walker, Jack L. 1969. The diffusion of innovation among the American states. *American Political Science Review*, 63(3):880-899.
- Whitford, Andrew B. and Jeff Yates. 2003. Policy signals and executive governance: Presidential rhetoric in the “War on Drugs.” *The Journal of Politics* 65(4):995-1012.
- Widavsky, Aaron. 1992. *The new politics of the budgetary process*. 2nd Ed. New York: HarperCollins.
- Wilhelm, Teen. 2007. The policymaking role of state supreme courts in education policy. *Legislative Studies Quarterly* 23(2):309-333.
- Wood, B. Dan and Nick A. Theobald. 2003. Political responsiveness and equity in education. *Journal of Politics* 65(3):718-738.
- Worden, Alissa P. and Robert E. Worden. 1989. Local politics and the provision of indigent defense counsel. *Law and Policy* (11):401-24.
- Wright, Gerald C. 1976. Racism and welfare policy in America. *Social Science Quarterly* (57):718-730.
- Yanovitsky, Itzhak. 2002. Effects of news coverage on policy attention and actions: A closer look into the media-policy connection. *Communication Research* (29):422-451.
- Yin, Robert K. 2003. *Case study research design and methods*. 3rd Ed. Thousand Oaks, CA: Sage Publications.

Cases Cited

- Ake v. Oklahoma*, 470 U.S. 68 (1985)
- Alabama v. Shelton*, 535 U.S. 654 (2002)
- Anderson v. State*, 916 So.2d 341 (La. App. 3 Cir. 2005)

Argersinger v. Hamlin, 407 U.S. 25 (1972)

Banks v. Dretke, 540 U.S. 668 (2004)

Betts v. Brady, 316 U.S. 455 (1942)

Brady v. United States, 397 US 742 (1970)

Brewer v. Williams, 430 U.S. 387 (1977)

Cantwell v. Crawford, Civil Action Case No. 09EV275M, Superior Court of Elbert County, Georgia (filed April 7, 2009).

Coleman v. Alabama, 399 US 1 (1970)

Gideon v. Wainwright, 372 U.S. 335 (1963)

Hamilton v. Alabama, 368 U.S. 52 (1961)

In re Gault, 387 U.S. 1 (1967)

Johnson v. Zerbst, 304 U.S. 458 (1938)

Jones v. Harrelson, 286 Ga. 665, No. S09A1625 (Ga.2010)

Lewis v. Hollenbach, No. 2009-SC-000164-TG (Ky. dismissed as moot May 13, 2009)

Luckey v. Miller, 976 F. 2d 673 (11th Cir. 1992)

May v. State of Alabama, 672 So. 2d 1307 (Ala. Crim. App. 1993)

McMann v. Richardson, 397 US 759 (1970)

Mempa v. Rhay, 389 US 128 (1967)

Miranda v. Arizona, 384 U.S. 436 (1966)

Powell v. Alabama, 287 U.S. 45 (1932)

Quitman County v. State of Mississippi, 910 So.2d 1032, 1037 (Miss. 2005)

Rothgery v. Gileispie County, Texas, 554 U.S. ____ (2008)

State of Florida v. Antoine Bowens, F09-019364, Assistant Public Defender's Motion to Withdraw and to Declare Section 27.5303(1)(d), Florida Statutes, Unconstitutional, Florida 11th Circuit Court (filed August 3, 2009).

State of Louisiana v. Citizen, 898 So.2d 325 (La. 2005)

State of Louisiana v. Peart, 621 So. 2d 780 (La. 1993)

State of North Carolina v. Chapman, In the General Court of Justice Superior Court Division, 92-CRS-18186, 93-CRS-11980, Order Allowing Motion for Appropriate Relief (Filed 2007).

Stinson v. Fulton County, US Dist. Ct., N.D. Ga., No. 1:94-CV-75

Strickland v. Washington, 466 U.S. 668 (1984)

Thomas v. City of Gulfport, No 1:05-CV-349-LG-RHW (S.D. Miss. July 2005)

Townsend v. Burke, 334 U.S. 736 (1948)

United States v. Wade, 388 US 218 (1967)

Van Slyke v. Mississippi, 764 So. 2d 440 (Miss. 2001)

Webb v. Baird, 6 Ind. 13 (1853)

Willis v. Cockrell, 2004 WL 1812698 (W.D.Tex. 2004)

Wilson v. State, 574 So.2d 1338 (Miss. 1990)

Wright v. Childree, CV-05-1544 (Ala. 2006)

APPENDIX

METHODS

A.1 Key Informant Information Letter for a Research Study entitled *“Indigent Defense in the American States”*

You are invited to participate in a research study to that seeks to collect, describe and analyze data about actors, organizations and institutions involved in indigent defense reform in the fifty states. The study is being conducted by Amanda Luckey Hodnett, Doctoral Candidate under the direction of Dr. Kathleen Hale, Assistant Professor in the Auburn University Department of Political Science. You were selected as a possible participant because you are a key informant at a national organization involved with indigent defense reform.

What will be involved if you participate? If you decide to participate in this research study, you will be asked to discuss questions about indigent defense reform in the American states. I will call you to ask about your interest in participating. If you are interested in participating, I will send you discussion questions by email or fax and schedule a time to talk with you about them. Your total time commitment will be approximately 20 minutes.

Are there any risks or discomforts? There are no risks or discomforts. You may choose NOT to respond or to skip any questions. You are also free to NOT respond to any follow-up contact about the discussion questions.

Are there any benefits to yourself or others? If you participate in this study, you can expect to help the researchers gain a better understanding of the actors, organizations and institutions involved in indigent defense. Participants can receive the results of the analysis, which will compare administrative structure and decision processes in the fifty states. From this, you can learn what other national organizations are doing on the topic of indigent defense reform, which can provide points of comparison and benchmarks for your own research. I cannot promise you that you will receive any or all of the benefits described.

Will you receive compensation for participating? There is no compensation for participating in this study. Your participation in this research will be acknowledged in publications that result from this project.

Are there any costs? There are no costs association with the research project other than the donation of your time in answering questions about the actors, organizations and institutions involved in indigent defense.

If you change your mind about participating, you can withdraw at any time during the study. Your participation is completely voluntary.

Any data obtained in connection with this study will remain anonymous. We will protect your privacy and the data you provide by recording data as “anonymous.” Information collected through your participation will be used in my dissertation and may be published in academic scholarly journals and presented at professional conferences such as the annual meetings of the American Political Science Association, the Southern Political Science Association and State Politics and Policy Association.

If you have questions about this study, contact Amanda Luckey Hodnett at 205-422-8255 or at luckeak@auburn.edu.

If you have questions about your rights as a research participant, you may contact the Auburn University Office of Human Subjects Research or the Institutional Review Board by phone (334)-844-5966 or e-mail at hsubjec@auburn.edu or IRBChair@auburn.edu.

HAVING READ THE INFORMATION PROVIDED, YOU MUST DECIDE IF YOU WANT TO PARTICIPATE IN THIS RESEARCH PROJECT. IF YOU DECIDE TO PARTICIPATE, THE DATA YOU PROVIDE WILL SERVE AS YOUR AGREEMENT TO DO SO. THIS LETTER IS YOURS TO KEEP.

Investigator's signature Date

Print Name

Co-Investigator Date

Printed Name

A.2 Key informant interview questionnaire

1. How is your organization involved in indigent defense?
2. How is your organization involved in indigent defense reform?
3. What does your organization mean by reform?
4. How does your idea of reform compare to the idea of state centralization?
5. How does your idea of reform compare to the idea of state oversight?
6. If your idea of reform includes the concept of oversight, what individuals or groups are/should be involved in oversight?
7. Are there any reforms currently going on that are particularly interesting? Why?
8. Are there other organizations either for or against indigent reform?
9. What factors do you think encourage/discourage reform?
10. What would you like to add about the topic of indigent defense reform?
11. Who else should I talk to on this issue?

A.3 Key informant email/phone script

My name is Amanda Luckey Hodnett, a graduate student from the Department of Political Science at Auburn University. I would like to invite you to participate in my research study on “Indigent Defense in the American States.”

As a participant, you will be asked to answer closed- and open-ended questions concerning indigent defense in the American states. The question/answer period should take approximately 20 minutes. You can choose to participate or not.

No compensation will be given to participants of this research. Participants can receive the findings of this study, which will provide points of comparison and benchmarks for their research and other work. This study will contribute to a larger project that will provide information about different approaches to indigent defense reform in these five states and may improve the provision of public services and administrative activities in the area of representation of indigent defendants.

There are not risks or discomforts. All potential participants may choose NOT to respond or to skip any questions. All persons are also free to not respond to any follow-up telephone calls. Participants will not be identified by name. Data will be collected as confidential. No names or identifiers will be recorded and maintained. This includes phone numbers, e-mails, or location information that would identify an individual.

Would you like to participate in this research study? If you need more time to decide, please contact me at amandahodnett@gmail.com or 205-434-4550.

Do you have any questions now? If you have questions later, please contact me at amandahodnett@gmail.com or 205-434-4550 or you may contact my advisor, Dr. Kathleen Hale, at halekat@auburn.edu.

A.4 Case study information letter

INFORMATION LETTER
for a Research Study entitled
“Indigent Defense in the American States”

You are invited to participate in a research study that seeks to collect, describe and analyze data about indigent defense reform in the fifty states. The study is being conducted by Amanda Luckey Hodnett, Doctoral Candidate under the direction of Dr. Kathleen Hale, Assistant Professor in the Auburn University Department of Political Science. You were selected as a possible participant because you are a key informant involved with indigent defense reform and are of adult age in your state.

What will be involved if you participate? If you decide to participate in this research study, you will be asked to answer questions about indigent defense reform in your state. I will call you to ask about your interest in participating. If you are interested in participating, I will e-mail you a link to the survey. Your total time commitment will be approximately 20 minutes.

Are there any risks or discomforts? There are no risks or discomforts. You may choose NOT to respond or to skip any questions. You are also free to NOT respond to any follow-up contact about the discussion questions.

Are there any benefits to yourself or others? If you participate in this study, you can expect to help the researchers gain a better understanding of the actors, organizations and institutions involved in indigent defense in your state. Participants can receive the results of the analysis, which will compare administrative structure and decision processes in the fifty states. From this, you can learn what other states are doing on the topic of indigent defense reform, which can provide points of comparison and benchmarks for your own research. I cannot promise you that you will receive any or all of the benefits described.

Will you receive compensation for participating? There is no compensation for participating in this study.

Are there any costs? There are no costs association with the research project other than the donation of your time in answering questions about the actors, organizations and institutions involved in indigent defense in your state.

If you change your mind about participating, you can withdraw at any time during the study. Your participation is completely voluntary. If you choose to withdraw, your data can be withdrawn as long as it is identifiable. Your decision about whether or not to participate or to stop participating will not jeopardize your future relations

with Auburn University, the Department of Political Science.

Any data obtained in connection with this study will remain confidential. We will protect your privacy and the data you provide by recording data as “confidential.” Information collected through your participation will be used in my dissertation.

If you have questions about this study, contact Amanda Luckey Hodnett at 205-422-8255 or at luckeak@auburn.edu.

If you have questions about your rights as a research participant, you may contact the Auburn University Office of Human Subjects Research or the Institutional Review Board by phone (334)-844-5966 or e-mail at hsubjec@auburn.edu or IRBChair@auburn.edu.

HAVING READ THE INFORMATION PROVIDED, YOU MUST DECIDE IF YOU WANT TO PARTICIPATE IN THIS RESEARCH PROJECT. IF YOU DECIDE TO PARTICIPATE, THE DATA YOU PROVIDE WILL SERVE AS YOUR AGREEMENT TO DO SO. THIS LETTER IS YOURS TO KEEP.

Investigator's signature Date

Print Name

Co-Investigator Date

Printed Name

A.5 Case study questionnaire

1. How are you/your office involved in indigent defense?
2. How would you describe the indigent defense system in your state?
3. What factors have been the most influential in establishing the indigent defense system in your state?
4. What do you see as the biggest challenges facing representation of indigent defendants in your state?
5. How can these challenges be addressed?
6. Are there any reforms currently underway in your state that are particularly interesting? Why? How is your organization involved?
7. What do you/your organization mean by reform?
8. How does your idea of reform compare to the idea of state centralization?
9. How does your idea of reform compare to the idea of state oversight?
10. If your idea of reform includes the concept of oversight, what individuals or groups are/should be involved in oversight?
11. What factors encourage/discourage reform in your state? Why?
12. Do you/your organization follow the reform efforts in other states? Which ones? Why?
13. Which state(s) do you/your organization consider to be leading the indigent defense reform movement? Why?
14. Are you aware of the American Bar Association's "Ten Principles?"
15. If so, how did you hear about them?
16. Does your state use the "Ten Principles" as an assessment tool in reforming your indigent defense system? Why or why not?
17. If not the "Ten Principles," what standards does your state use to measure the effectiveness of your indigent defense system?
18. What would you like to add about the topic of indigent defense reform?
19. Who else should I contact about this topic?

TABLES

Table 2.1 Measures of political culture

State	Elazar	Hero/Tolbert	Sharkansky
Alabama	Traditionalistic	0.403	8.6
Georgia	Traditionalistic	0.446	8.8
Louisiana	Traditionalistic	0.478	8.0
Mississippi	Traditionalistic	0.481	9.0
Texas	Traditionalistic	0.673	7.1

Source: Elazar 1984, Hero and Tolbert 1996, and Sharkansky 1969

Table 2.2 Incarceration per 100,000 population, 1995-2005

	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005
Alabama	471.2	495.9	509.2	514.7	558.3	581.2	598.9	618.6	617.8	587.2	609.9
Georgia	444.7	456.0	459.9	465.6	488.8	509.7	522.7	546.3	539.0	545.0	519.4
Louisiana	533.7	554.9	592.1	610.4	617.7	624.9	608.4	626.1	655.4	655.6	616.5
Mississippi	459.8	504.0	528.4	570.9	633.1	645.4	725.5	772.6	818.0	831.2	839.6
Texas	672.5	676.8	702.3	713.8	714.7	721.2	679.4	668.4	670.8	671.2	666.3
National Average	371.0	382.9	393.8	403.3	415.9	416.5	413.6	419.7	419.8	423.4	423.3

Source: Compiled by author from Bureau of Justice Statistics 2001, 2006, U.S. Bureau of the Census various years, and information from State Departments of Corrections 2009

Note: Data on state inmate population from 1995 to 2005 was collected from each State Department of Corrections while population figures were collected through the U.S. Census Bureau for various years. Finally, national inmate population estimates were provided through the Bureau of Justice Statistics 2001, 2005. This figure includes prison and jail inmates.

Table 2.3 Total number of death row inmates as of January 1, 2009

State	Number of death row inmates	Death row inmates per 100,000 residents
Alabama	207	4.4
Georgia	109	1.1
Louisiana	84	1.9
Mississippi	62	2.1
Texas	358	1.5

Source: Compiled by author from Death Penalty Information Center 2009a and U.S. Bureau of the Census 2009

Table 2.4 Total number of death sentences imposed from 1977-2007

State	Number of death sentences	Nationwide ranking (n=40)
Alabama	412	5
Georgia	225	11
Louisiana	147	17
Mississippi	163	15
Texas	907	1

Source: Death Penalty Information Center 2009b

Table 2.5 Total number of executions since 1976 to June 11, 2009

State	Number of executions	National ranking (n=34)
Alabama	43	8
Georgia	45	7
Louisiana	27	10
Mississippi	10	19
Texas	439	1

Source: Death Penalty Information Center 2009c

Table 2.6 Classification of the overall strength of interest groups, 2006-2007

State	Classification
Alabama	Dominant
Georgia	Dominant/Complimentary
Louisiana	Dominant/Complimentary
Mississippi	Dominant/Complimentary
Texas	Dominant/Complimentary

Source: Nownes, Thomas and Hrebenar 2008

Table 2.7 State party control, 1995-2007

State		1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007
Alabama	Governor	Rep	Rep	Rep	Rep	Dem	Dem	Dem	Dem	Rep	Rep	Rep	Rep	Rep
	Legislature	Dem	Dem	Dem	Dem	Dem	Dem	Dem	Dem	Dem	Dem	Dem	Dem	Dem
Georgia	Governor	Dem	Dem	Dem	Dem	Dem	Dem	Dem	Dem	Rep	Rep	Rep	Rep	Rep
	Legislature	Dem	Dem	Dem	Dem	Dem	Dem	Dem	Dem	split	split	Rep	Rep	Rep
Louisiana	Governor	Dem	Rep	Rep	Rep	Rep	Rep	Rep	Rep	Rep	Dem	Dem	Dem	Dem
	Legislature	Dem	Dem	Dem	Dem	Dem	Dem	Dem	Dem	Dem	Dem	Dem	Dem	Dem
Mississippi	Governor	Rep	Rep	Rep	Rep	Rep	Dem	Dem	Dem	Dem	Rep	Rep	Rep	Rep
	Legislature	Dem	Dem	Dem	Dem	Dem	Dem	Dem	Dem	Dem	Dem	Dem	Dem	Rep
Texas	Governor	Rep	Rep	Rep	Rep	Rep	Rep	Rep	Rep	Rep	Rep	Rep	Rep	Rep
	Legislature	Dem	Dem	split	split	split	split	split	split	Rep	Rep	Rep	Rep	Rep

Source: Klarner 2009

Table 2.8 State supreme court professionalism, 2004

State	Professionalism of state supreme court
Alabama	0.51
Georgia	0.64
Louisiana	0.67
Mississippi	0.36
Texas	0.67
National	0.58

Source: Squire 2008

Table 2.9 State supreme court ideology, 1970-1993

State	State mean	State minimum	State maximum	Difference (Maximum-Minimum)	National ranking of state court liberalism ^a
Alabama	33.24	17.36	37.88	-20.52	40
Georgia	32.85	12.26	33.56	-21.30	41
Louisiana	32.56	24.73	49.76	-25.02	42
Mississippi	25.39	1.80	62.90	-61.10	51
Texas	33.94	31.34	44.97	-13.63	38

Source: Brace, Langer, and Hall 2000

^aInformation displayed in Table 2.5 incorporates 52 state high courts. Oklahoma and Texas have essentially two state supreme courts.

Table 2.10 State legislative professionalism, 1979-2003

State	1979	1986	1996	2003
Alabama	0.085	0.158	0.067	0.071
Georgia	0.142	0.133	0.107	0.116
Louisiana	0.150	0.185	0.144	0.129
Mississippi	0.185	0.160	0.127	0.107
Texas	0.191	0.210	0.215	0.199
National	0.209	0.221	0.182	0.185

Source: Squire 1993, 2007

Table 3.1 Hypothesized associations with greater levels of state oversight of indigent defense

Independent variables	Hypothesized association
Politics	
Government ideology (liberal)	+
Interest group strength	+
Resources	
State wealth	+

Table 3.2 Affiliates of key informants interviewed

Organizations

Alabama Administrative Office of Courts
Alabama Appleseed
Alabama Criminal Defense Lawyers Association
Alabama Office of the State Comptroller - Indigent Defense Section
Alabama Circuit Court Judge
Greater Birmingham Defense Lawyers
Alabama State Representative - Judiciary Committee
Alabama Supreme Court
American Bar Association
American Civil Liberties Union of Alabama
Brennan Center
Cato Institute
Constitution Project
Crime and Justice Institute
Georgia Association of Criminal Defense Lawyers – Indigent Defense Committee
Georgia Indigent Defense Council
Georgia Justice Project attorneys
Louisiana Capital Assistance Center attorney
Louisiana Public Defender Board
Mississippi Capital Defense Counsel
Mississippi Chief Public Defender
Mississippi Circuit Court Judge
Mississippi NAACP Legal Defense Fund
Mississippi Office of Indigent Appeals
NAACP Legal Defense Fund
National Association of Criminal Defense Attorneys
National Center for State Courts
National Judicial College
National Legal Aid and Defender Association
Sentencing Project
Southern Center for Human Rights attorneys
Southern Poverty Law Center
Southern Public Defender Training Center
Spangenberg Project
Texas Appleseed
Texas Chief Public Defender
Texas Criminal Defense Lawyers Association
Texas Fair Defense Project
Texas Regional Public Defenders for Capital Murder
Texas Senate – senatorial senior policy advisor
Texas Task Force on Indigent Defense
Urban Institute
Vera Institute of Justice

Table 4.1 Adoption of state administrative oversight of indigent defense programs, 1942-2008

Decade	1940-1949	1950-1959	1960-1969	1970-1979	1980-1989	1990-1999	2000-2010
State Oversight Adopted	Rhode Island	Delaware	New Jersey Colorado Michigan	Maryland Nevada Kentucky New Hampshire Vermont Hawaii Illinois New Mexico Connecticut Wisconsin Wyoming	Alaska Iowa Kansas Missouri Massachusetts Ohio Minnesota Indiana Tennessee	Oklahoma Nebraska Arkansas California Idaho Mississippi	North Carolina Oregon Texas Georgia Virginia Montana North Dakota Washington Louisiana South Carolina West Virginia
United States Supreme Court Decisions	<i>Powell v. Alabama</i> (1932); <i>Johnson v. Zerbst</i> (1938); <i>Townsend v. Burke</i> (1948)		<i>Hamilton v. Alabama</i> (1961); <i>Gideon v. Wainwright</i> (1963); <i>Miranda v. Arizona</i> (1966); <i>In re Gault</i> (1967); <i>Mempa v. Rhay</i> (1967); <i>United States v. Wade</i> (1967);	<i>Brady v. United States</i> (1970); <i>Coleman v. Alabama</i> (1970); <i>McMann v. Richardson</i> (1970); <i>Argersinger v. Hamlin</i> (1972); <i>Brewer v. Williams</i> (1977)	<i>Strickland v. Washington</i> (1984)		<i>Rothgery v. Texas</i> (2008)

Source: Constitution Project 2009 and Spangenberg 2005, 2006a

Table 4.2 Level and focus of administrative oversight by state

State public defender office with commission	State public defender office without commission	State commission with state director	State commission with partial authority	State appellate commission or agency	No state commission
Arkansas	Alaska	Louisiana ^a	Georgia ^a	California	Alabama ^a
Colorado	Delaware	Massachusetts	Indiana	Illinois	Arizona
Connecticut	Iowa	North Carolina	Kansas	Idaho	Florida
Hawaii	New Jersey	North Dakota	Nebraska	Michigan	Maine
Kentucky	New Mexico	Oregon	Nevada	Mississippi ^a	New York
Maryland	Rhode Island	South Carolina	Ohio	Tennessee	Pennsylvania
Minnesota	South Carolina	Virginia	Oklahoma		South Dakota
Missouri	Vermont	Washington	Texas ^a		Utah
Montana	Wyoming				
New Hampshire					
Wisconsin					
West Virginia					

Source: Constitution Project 2009 and Spangenberg 2005, 2006a

^aIndicates focus states.

Table 4.3 State and local funding of indigent defense in the American states

Source of support	Full state funding	More than 50% state funding	More than 50% local funding	Full local funding
State	Alaska	Kansas	Alabama ^a	Pennsylvania
	Arkansas	Louisiana ^a	Arizona	Utah
	Colorado	Oklahoma	California	
	Connecticut	South Carolina	Georgia ^a	
	Delaware		Idaho	
	Florida		Illinois	
	Hawaii		Indiana	
	Iowa		Michigan	
	Kentucky		Mississippi ^a	
	Maine		Nebraska	
	Maryland		Nevada	
	Massachusetts		New York	
	Minnesota		Ohio	
	Missouri		South Dakota	
	Montana		Texas ^a	
	New Hampshire		Washington	
	New Jersey			
	New Mexico			
	North Carolina			
	North Dakota			
	Oregon			
	Rhode Island			
	Tennessee			
	Vermont			
	Virginia			
	West Virginia			
	Wisconsin			
	Wyoming			

Source: Constitution Project 2009 and Spangenberg 2005, 2006, 2006a

^aIndicates focus states.

Table 4.4 State court case filings, 1987-2004

Year	Criminal	Domestic relations	Juvenile	Appellate ^a	Total	Total cases per 100,000 residents
1987	13,857,948	3,348,881	1,363,886	207,366	18,778,081	7750.3
1993	16,322,247	4,071,650	1,768,393	253,258	22,415,548	8624.1
1998	19,602,562	5,184,896	2,212,032	291,569	27,291,059	9893.3
2004	20,483,327	5,627,970	2,134,036	272,983	28,518,316	9726.9

Source: Bureau of Justice Statistics 2007

^aAppellate court filing data includes civil case types.

Table 4.5 Total indigent expenditure and per capita spending by state, fiscal year 2005 (dollars)

State	Total Expenditure	Per Capita Spending
Alabama	41,791,344	9.21
Alaska	27,183,800	40.66
Arizona ^b	103,990,243	17.44
Arkansas	16,472,395	5.95
California	572,877,808	15.96
Colorado	47,473,830	10.18
Connecticut	35,547,327	10.22
Delaware	10,621,400	12.67
Florida	232,700,000	13.15
Georgia ^a	94,227,081	10.36
Hawaii	10,530,386	8.33
Idaho ^b	11,186,992	7.86
Illinois ^b	124,777,783	9.82
Indiana	42,467,000	6.80
Iowa	43,194,649	14.63
Kansas ^b	23,422,991	8.54
Kentucky	31,498,410	7.56
Louisiana ^a	25,943,529	5.77
Maine	10,841,372	8.27
Maryland	70,330,970	12.61
Massachusetts	120,033,457	18.66
Michigan	78,856,113	7.81
Minnesota	65,610,000	12.85
Mississippi	12,821,040	4.42
Missouri	30,156,416	5.21
Montana	13,786,495	14.75
Nebraska	23,539,687	13.44
Nevada ^b	27,532,286	11.46
New Hampshire	15,718,938	12.09
New Jersey	104,552,000	12.11
New Mexico	30,798,000	16.10
New York	402,479,830	20.81
North Carolina	85,526,000	9.87
North Dakota	2,549,663	4.01
Ohio	111,458,380	9.73
Oklahoma ^b	28,440,098	8.06
Oregon	88,123,000	24.33
Pennsylvania ^b	100,652,582	8.15
Rhode Island	9,326,000	8.76
South Carolina	22,640,113	5.33
South Dakota	9,001,007	11.55
Tennessee	55,460,308	9.27
Texas	144,683,654	6.34

State	Total Expenditure	Per Capita Spending
Utah ^b	12,896,632	5.16
Vermont	9,019,910	14.57
Virginia	90,129,365	11.94
Washington	84,727,200	13.55
West Virginia	29,565,009	16.39
Wisconsin	68,088,536	12.29
Wyoming	6,155,248	12.16
State Total	3,461,406,277	11.73

Source: Spangenberg 2005, 2006, 2006a and author's compilation of data from U.S. Bureau of the Census 2005

^aData from calendar year.

^bFigure represents an estimate.

Table 5.1 Adoption of state administrative oversight of indigent defense programs

State	Year
Mississippi	1998
Texas	2001
Georgia	2003
Louisiana	2007
Alabama	-

Source: Constitution Project 2009 and Spangenberg 2005

Table 5.2 Level and focus of administrative oversight by state

	Alabama	Georgia	Louisiana	Mississippi	Texas
State public defender office with commission					
State public defender office without commission					
State commission with state director			X		
State commission with partial authority		X			X
State appellate commission or agency				X	
No state commission	X				

Source: Constitution Project 2009 and Spangenberg 2005, 2006a

Table 5.3 Total indigent defense expenditure by state, fiscal year 2005 (dollars)

State	Total expenditure	Per capita spending	Total state expenditure	Spending per \$100,000
Alabama	41,791,344	9.21	17,406,000,000	240.10
Georgia ^a	94,227,081	10.36	29,184,000,000	322.87
Louisiana ^a	25,943,529	5.77	15,236,000,000	170.28
Mississippi	12,821,040	4.42	11,947,000,000	107.32
Texas	144,683,654	6.34	64,964,000,000	222.71

Source: Author's compilation of data from Spangenberg 2005, 2006, 2006a and U.S. Bureau of the Census 2008

^aTotal expenditure for Georgia and Louisiana is from calendar year 2005

Table 5.4 State and local funding of indigent defense systems in focus states

	Alabama	Georgia	Louisiana	Mississippi	Texas
Full state funding					
More than 50% state funding			X		
More than 50% local funding	X	X		X	X
Full local funding					

Source: Constitution Project 2009 and Spangenberg 2005, 2006a

Table 5.5 Statewide funding for death penalty cases in Mississippi, 2005-2009 (dollars)

	2005	2006	2007	2008	2009
Capital Defense Counsel	804,154	960,783	994,701	1,059,769	1,047,357
Capital Post-Conviction Counsel	757,677	1,035,023	1,070,552	772,491	736,853

Source: Mississippi Department of Finance and Administration 2009

Table 5.6 Total grants awarded fiscal years 2007 and 2008 (dollars)

Grant Category	Comparative Total FY 2007	Total Expended FY 2008
Formula Grant	11,507,931	11,742,978
Discretionary Grant	2,340,576	3,047,124
Equalization Disbursement	3,000,000	6,000,000
Extraordinary Disbursement	200,000	450,565
Direct Disbursement	132,280	140,213
Technical Assistance	200,000	5000
Total	17,380,787	21,385,880

Source: Texas Task Force on Indigent Defense 2008

Table 5.7 Georgia indigent defense funding, fiscal years 2002-2008

Fiscal Year	State General Funds (\$)	Agency Funds (\$)	Total State (\$)	% State	Total County (\$) ^a	% County	Total Costs (\$)
2000	5,262,000	0	5,262,000	9.7%	48,935,814	90.3%	54,197,814
2001	5,821,227	16,161	5,837,388	9.5%	55,419,947	90.5%	61,257,335
2002	7,259,946	0	7,259,946	10.1%	64,314,561	89.9%	71,574,507
2003	7,682,177	0	7,682,177	9.8%	70,534,144	90.2%	78,216,321
2004 ^b	9,304,145	0	9,304,145	-	-	-	-
2005	29,808,043	1,200,000	31,008,043	35.5%	56,310,197	64.5%	87,318,240
2006	37,079,060	3,359,775	40,438,835	37.6%	67,123,428	62.4%	107,562,263
2007	36,341,079	1,972,832	38,313,911	36.5%	66,773,894	63.5%	105,087,805
2008	35,430,140	4,835,038	40,265,178	37.6%	66,773,895	62.4%	107,039,073

Source: Georgia Public Defenders 2008

^aFY00 – FY03, Actual county expenditures/state budgeted amounts; FY05 – FY08, Amounts budgeted (actual expenditures are only partly available).

^bFY04, Expenditures and amounts budgeted are not available

Table 5.8 Alabama indigent defense history, 2004-2008 (expenditures and revenues in thousands)

	2004	2005	2006	2007	2008
Number of Claims Paid	64,460	62,252	60,085	63,607	81,358
Total Expenditures	\$45,143	\$41,791	\$36,572	\$66,522	\$67,913
Total Revenue	\$45,132	\$42,683	\$35,664	\$68,536	\$70,433
Fair Trial Tax Fund	\$17,372	\$17,723	\$19,881	\$21,536	\$23,433
Percent of Revenue	38	42	54	32	35
General Fund	\$27,760	\$24,960	\$15,783	\$47,000	\$47,000
Percent of Revenue	62	58	46	68	65

Source: Alabama State Comptroller's Office 2009

Table 6.1 Agenda setting method across the states

State	Method
Alabama	Issue-attention cycle
Georgia	Issue-attention cycle
Louisiana	Internal or external trigger theory
Mississippi	Policy streams model (1 st stage) Incremental model (2 nd stage)
Texas	Policy streams model

Table 6.2 Factors associated with greater levels of state oversight of indigent defense

Explanatory Variable	State	Direction	Findings
Interest Group Strength (National/State/Local)	Alabama	-	Opposition from private bar; lack of involvement from national interest groups
	Georgia	+	Lawsuits filed by the SCHR; support from the Georgia State Bar; Spangenberg Project involvement
	Louisiana	+	Reports generated by NLADA and the Louisiana Justice Coalition; pressure from State Bar; class action lawsuits filed by NACDL
	Mississippi	+	Lawsuits filed by NAACP, NACDL, and SCHR
	Texas	+	Reports generated by Texas Appleseed and State Bar; lawsuits filed by Texas Fair Defense Project
Government Ideology (Liberal)	Alabama	-	Reform driven by conservative Supreme Court Chief Justice
	Georgia	+/-	Reform driven by liberal Supreme Court Chief Justice; Reform stymied by Republican Governor and Republican controlled State Legislature
	Louisiana	+	Reform stymied by entrenched conservative political attitudes and Republican Governor
	Mississippi	-	Reform driven by conservative state supreme court ideology
	Texas	+	Reform driven by politically powerful liberal policy entrepreneur
State Wealth (Intergovernmental Funding Structure)	Alabama	+/-	Reform drive by the rising costs of indigent defense and the subsequent strain on the overburden state budget; Reform stymied by private attorneys who benefit from current funding structure
	Georgia	+	Funding was not earmarked for indigent defense; legislature cut funding two years after legislation was passed; excessive costs association with high-profile capital case drained state funds

Explanatory Variable	State	Direction	Findings
State Wealth (Intergovernmental Funding Structure)	Louisiana	+	Funds primarily garnered through fines and fees assessed in traffic cases; funding mechanism was suspended after Hurricane Katrina which led to the collapse of the indigent defense system
	Mississippi	x	
	Texas	+	State funding has encouraged change at the local level; state has adequately funded Task Force and counties that meet state standards; this has encouraged reform at the county-level; the successful funding of the West Texas Regional Public Defender for Capital Cases Office encourages reform

Table 6.3 Interview statements that support findings

Explanatory Factor	State	Influence		
		Positive	Negative	None
Interest Groups Strength (National/State/Local)	Alabama		<p>“The private bar opposes reform...there was support for this recent bill... The Jefferson County Bar Association was able to kill this bill.”</p> <p>“Alabama Criminal Defense Lawyers Association is the only interest group involved with this issue. Issue-oriented groups are more concerned with the death penalty”</p>	
	Georgia	<p>“The Southern Center for Human Rights filed lawsuits in a number of counties. The group also sent observers to courtrooms to document inefficiencies within the criminal justice system.”</p> <p>“The Georgia State Bar and the American Bar Association funded the Spangenberg Group to come down and study the state’s indigent defense system.”</p>		
	Louisiana	<p>“The Louisiana Justice Coalition (LJC) is a public education campaign funded by the Open Society. LJC orchestrated a public relations campaign before Katrina. Twenty-eight editorials were published before the storm highlighting the need for indigent defense reform.”</p> <p>“Class action lawsuits coordinated by the National Association of Criminal Defense Lawyers and other big name, national firms based on caseloads encouraged reform.”</p>		
	Mississippi	<p>“The <i>Van Slyke</i> lawsuit (in 1999) encouraged reform. The NAACP worked behind the scenes in that case.”</p>		

		<p>“Groups like the NAACP and the Southern Center for Human Rights provide support as <i>amicus curiae</i> in litigation.”</p>	
	Texas	<p>“There were horrible cases of sleeping attorneys. The issue had been discussed for years, but the Texas criminal justice system was exposed when George Bush ran for president. Texas Appleseed was then able to receive funding to produce their report which documented the systematic flaws within the system. This report received media attention.”</p> <p>“The Fair Defense Project acts as a watchdog for state and local governments. It has sued counties and used litigation to implement the Fair Defense Act...The Fair Defense Project is more the enforcer. Staff will go into the courtroom and watch and document what is going on.”</p>	
Government Ideology (Liberal)	Alabama	<p>“The Chief Justice was smart this time. She is a Democrat and this time she reached a consensus among all stakeholders. There was support for this recent bill.”</p> <p>“The Chief Justice position is very political. She is politically savvy. Her husband used to be a lobbyist and she has contacts in the legislature. This leads to a question of judicial independence. You really don’t see a judge, let alone a Chief Justice, hyping ‘my bill.’ We believe it crosses the line.”</p>	
	Georgia	<p>“Chief Justice Norman Fletcher helped to drive reform in our state.”</p> <p>“Chief Justice Norman Fletcher supported indigent defense reform. He held a series of hearings on indigent defense.”</p>	<p>“The GPDSC was moved to the executive branch. The Governor (Republican) wanted more control and that has been a disaster. The budget has since been cut dramatically.”</p> <p>“Public defenders started winning cases and filing motions to suppress. This made conservative</p>

Louisiana	<p>legislators mad.”</p> <p>“Reform was not supported because public officials here are extremely conservative. The affluent and social conservative public and the tough on crime mentality [of government officials] slowed the process.”</p> <p>“Governor Bobby Jindal is a fiscal and social conservative. He has slowed the process of change. On his website, he brags about the sex offender laws. This tells you where he stands on crime.”</p>
Mississippi	<p>“In 1998 we passed the Statewide Public Defense Act. There were no appropriations. It was model legislation. If we can’t execute people without a better indigent defense system, by God let’s get reforms under way so that we can. The Supreme Court was slow to affirm death sentences, given the representation and the lack of post-conviction relief.”</p> <p>“The Supreme Court stepped in and started ordering lawyers for post-conviction relief cases. The Court supported the creation of the Indigent Appeals Office as well. [The Court] was not comfortable affirming death sentences without representation.”</p>
Texas	<p>“Under Gov. Bush, reform failed. Judges were hugely opposed to reform. When he ran for president, the national media placed a spotlight on our criminal justice system. The attention highlighted some embarrassing stories. When Bush was elected [president], there was a change in leadership at the state level. Senator Ellis (Democrat) became chairman of the Senate Finance Committee. Senator Ellis became one of the most powerful members of Congress and forced judges to the table. Without saying it</p>

		aloud, his powerful position forced members to the table. Ellis would not have let anything out of the Senate Finance Committee had they [the judges] not met. Senator Ellis is a champion and a well-respected senator.”	
		“Senator Ellis continued advocating for indigent defense reform until the passage of the FDA in 2001.”	
State Wealth (Intergovernmental Funding Structure)	Alabama	“The indigent defense system in Alabama needs to be reformed. From a cost standpoint, it especially needs to be reformed.”	“Ingrained in the system is a resistance to change. The private attorneys oppose change. They are paid at an hourly rate and are making money from this system.”
		“The General Fund has to pick up the remaining costs. The current system overburdens the General Fund. The current system is open-ended. We need to be more efficient with our money.”	“There is more money involved with trials, and this creates an incentive for private attorneys to try cases instead of settling them. There are many unnecessary appeals and trials and Rule 32’s.”
	Georgia		“The Indigent Defense Fee, a 10 percent fine, was to be earmarked for indigent defense. Two years went by, and they took away the earmark and started reducing the budget...then one capital case drained the entire system”
	Louisiana	“Traffic tickets funded indigent defense entirely. There is more money now.”	“Brian Nichols (and his high-profile, expensive capital case) became a poster child for why the system does not work.”
		“Hurricane Katrina and Rita were devastating storms. They spotlighted the issues. Prisoners were relocated all over the state and attorneys did not know who or where their clients were...the lack of speeding tickets issued decreased the money for indigent defense.”	

Mississippi

X

Texas

“Money from the Task Force has encouraged change. Culture has shifted for those in jail. Counties now understand that it saves money and keeps the cases moving by appointing counsel to those in jail. There is consensus among stakeholders.”

“Send us your plan and if it contains certain things, then you get money from the state... Texas has taken an incremental approach. Our law is a more stable law. The Task Force has been able to pick up more money each year while many offices are losing money.”

Table 6.4 Comparison between hypothesized associations and findings

Independent Variables	Anticipated Direction	Findings
Interest group strength (national/state/local)	+	+/-
Government ideology (liberal)	+	+/-
State wealth (intergovernmental funding structure)	+	+/-

Table 6.5 Dominant interest group activity on indigent defense in focus states

State	National groups	State/local Groups	No Influence
Alabama		X	
Georgia	X		
Louisiana	X		
Mississippi	X		
Texas		X	

Table 6.6 Dominant theme of government ideology in focus states

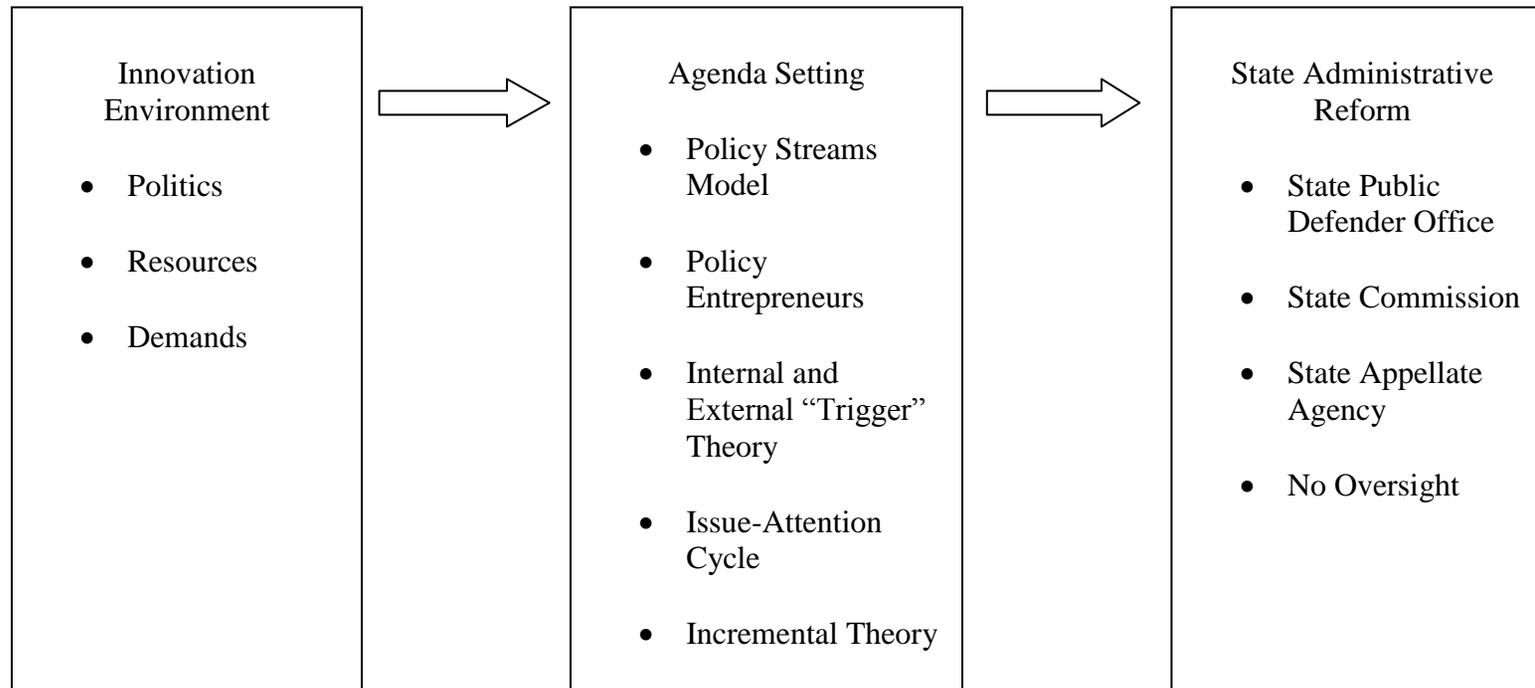
State	General Government	Judiciary
Alabama		X
Georgia	X	X
Louisiana	X	
Mississippi		X
Texas	X	

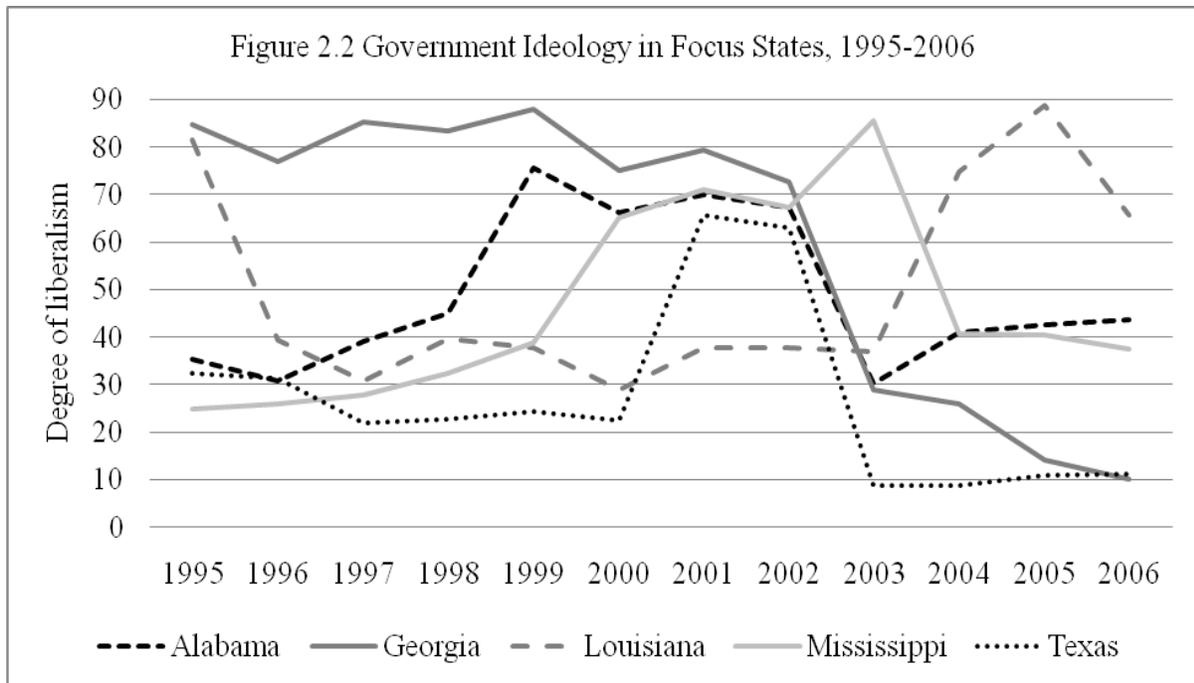
Table 6.7 Dominant funding structure of indigent defense in focus states

State	State	Local	No Influence
Alabama	X	X	
Georgia	X		
Louisiana		X	
Mississippi			X
Texas	X	X	

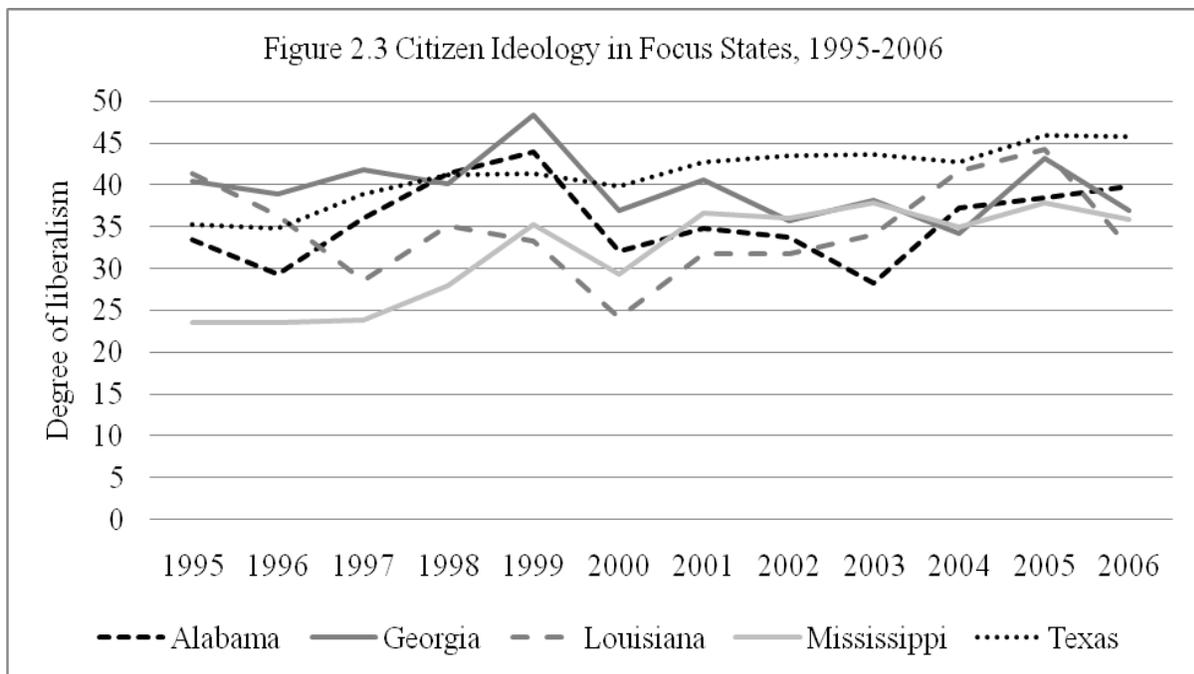
FIGURES

Figure 2.1 Conceptual relationships between innovation environment, agenda setting and state administrative reform

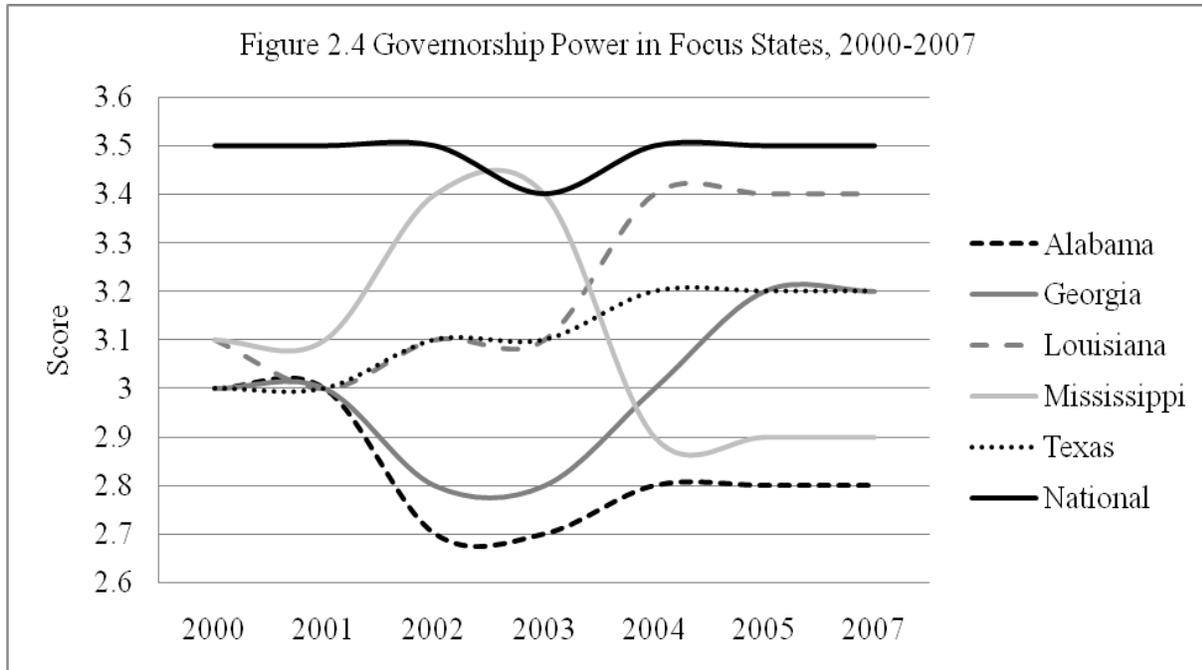




Source: Berry et al 1998, 2001

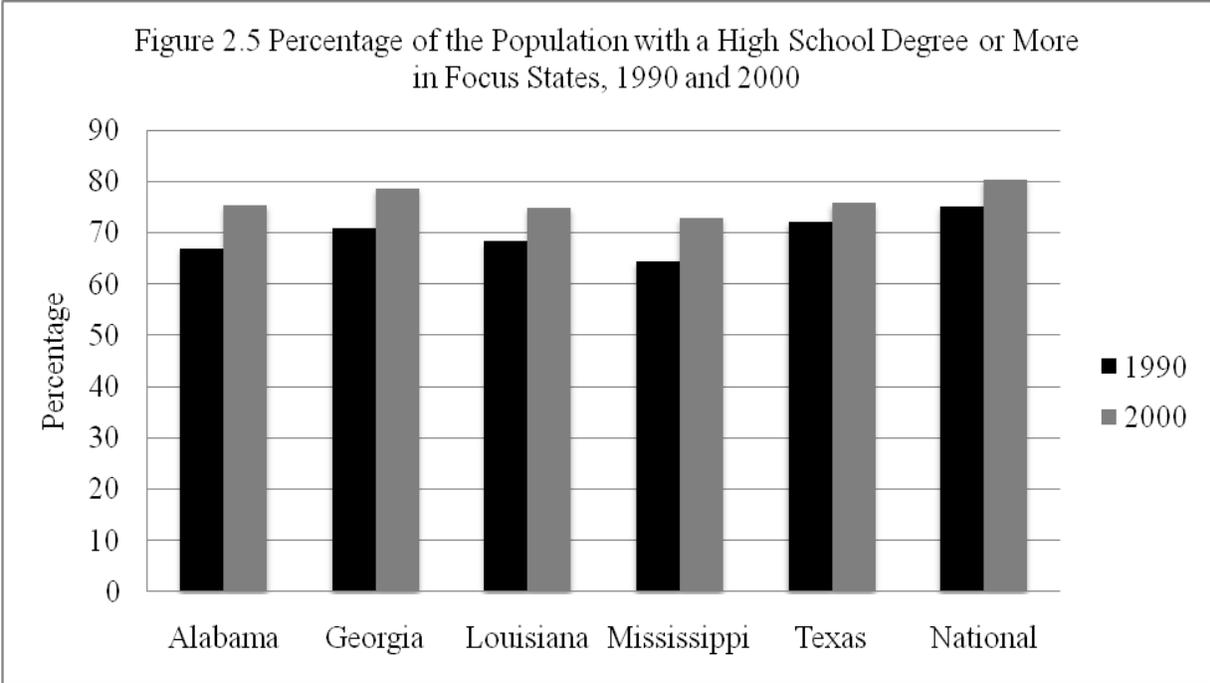


Source: Berry et al 1998, 2001

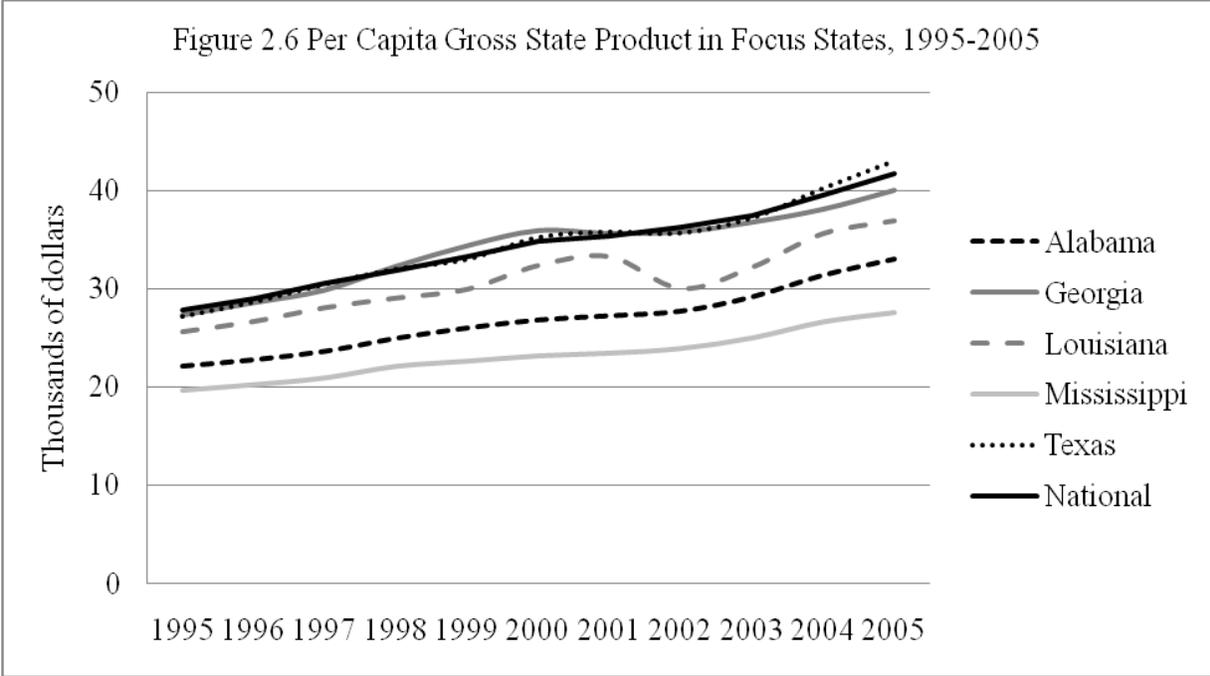


Source: Beyle 2009

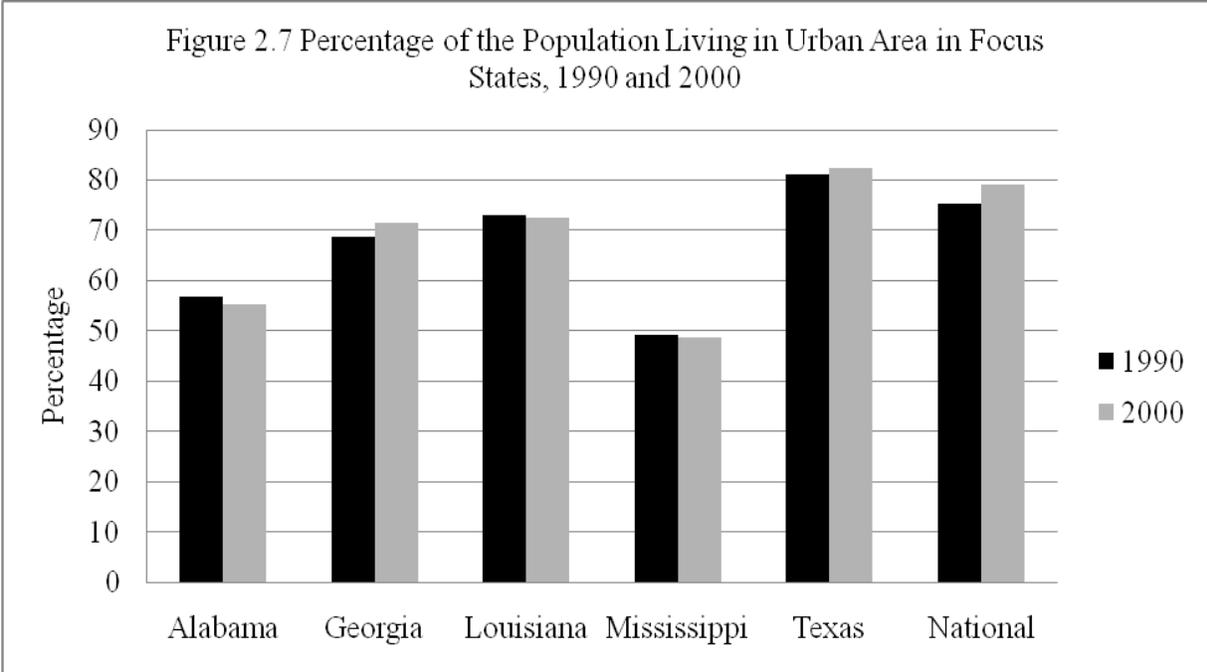
Note: Included in the score are six measures of institutional power including: tenure potential, appointment power, the number of other statewide elected officials, budget power, veto power and party control of state governorships over time. Each measure is scored on a scale of 1 to 5. The sum of the scores on the six individual indices is averaged. A higher score indicates a higher degree of gubernatorial power.



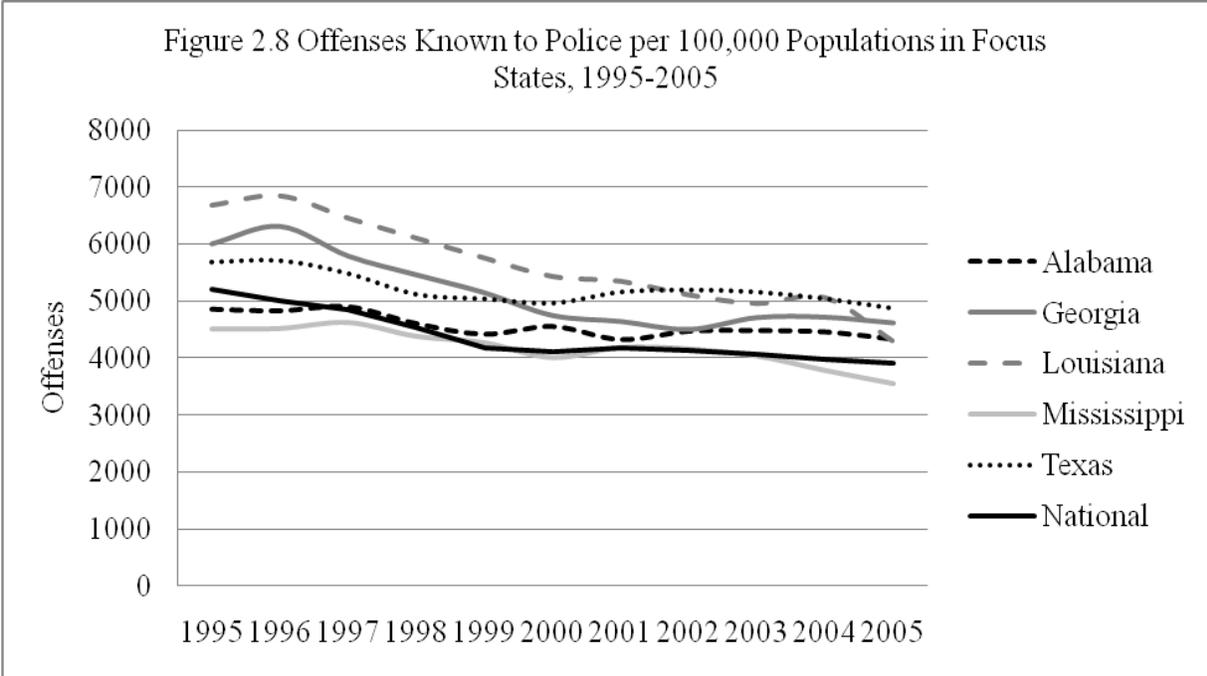
Source: U.S. Bureau of the Census various years



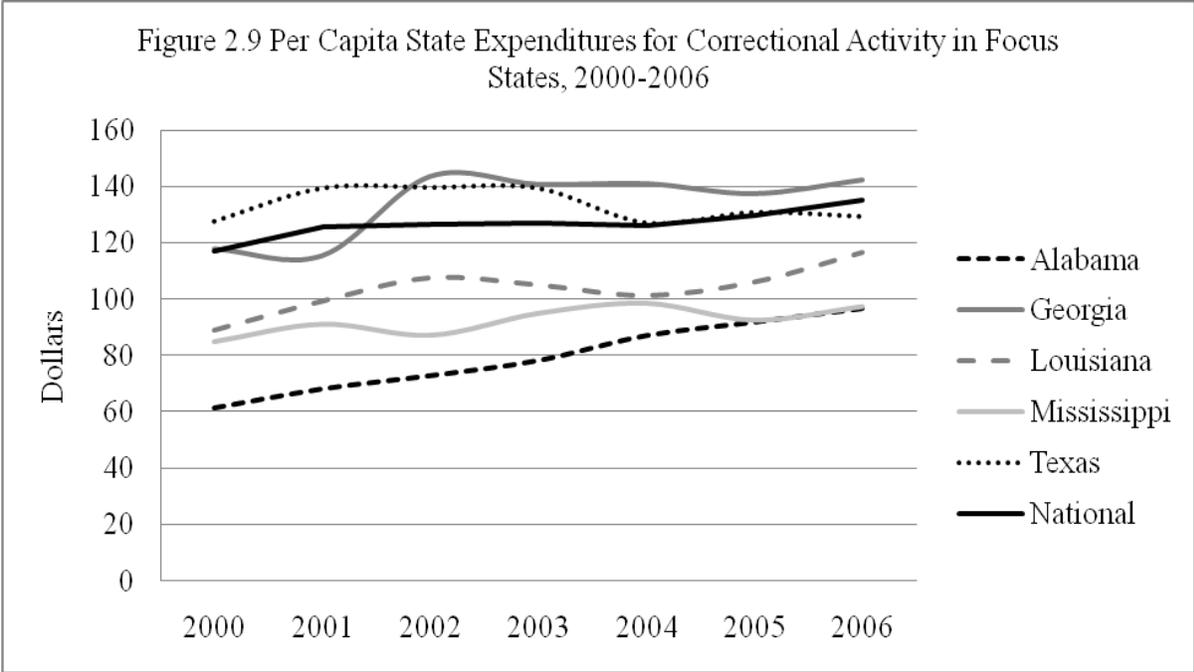
Source: U.S. Bureau of the Census various years



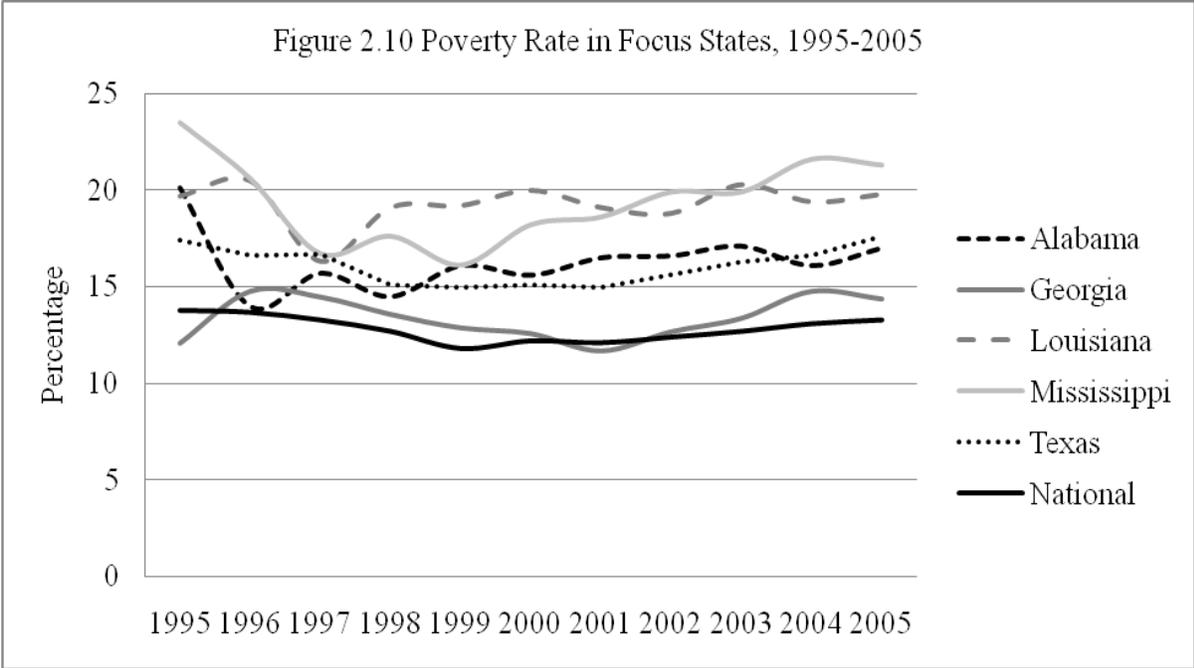
Source: U.S. Bureau of the Census various years



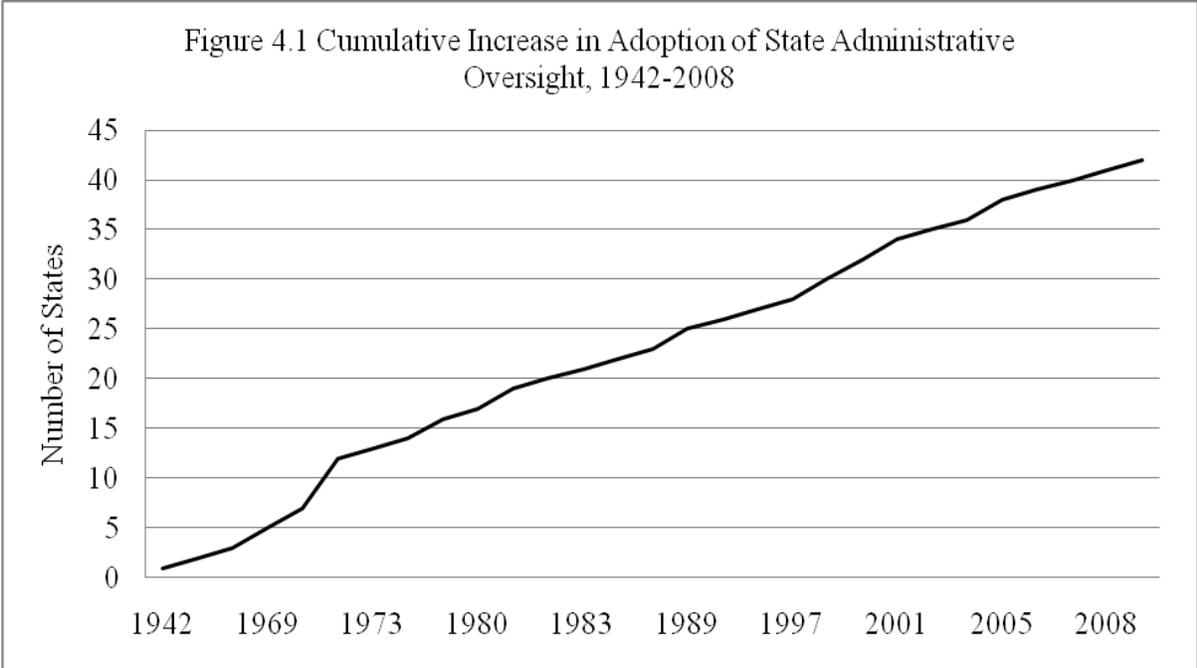
Source: Soucebook of Criminal Justice Statistics various years



Source: U.S. Bureau of the Census various years



Source: U.S. Bureau of the Census various years



Source: Compiled by author from Spangenberg 2005

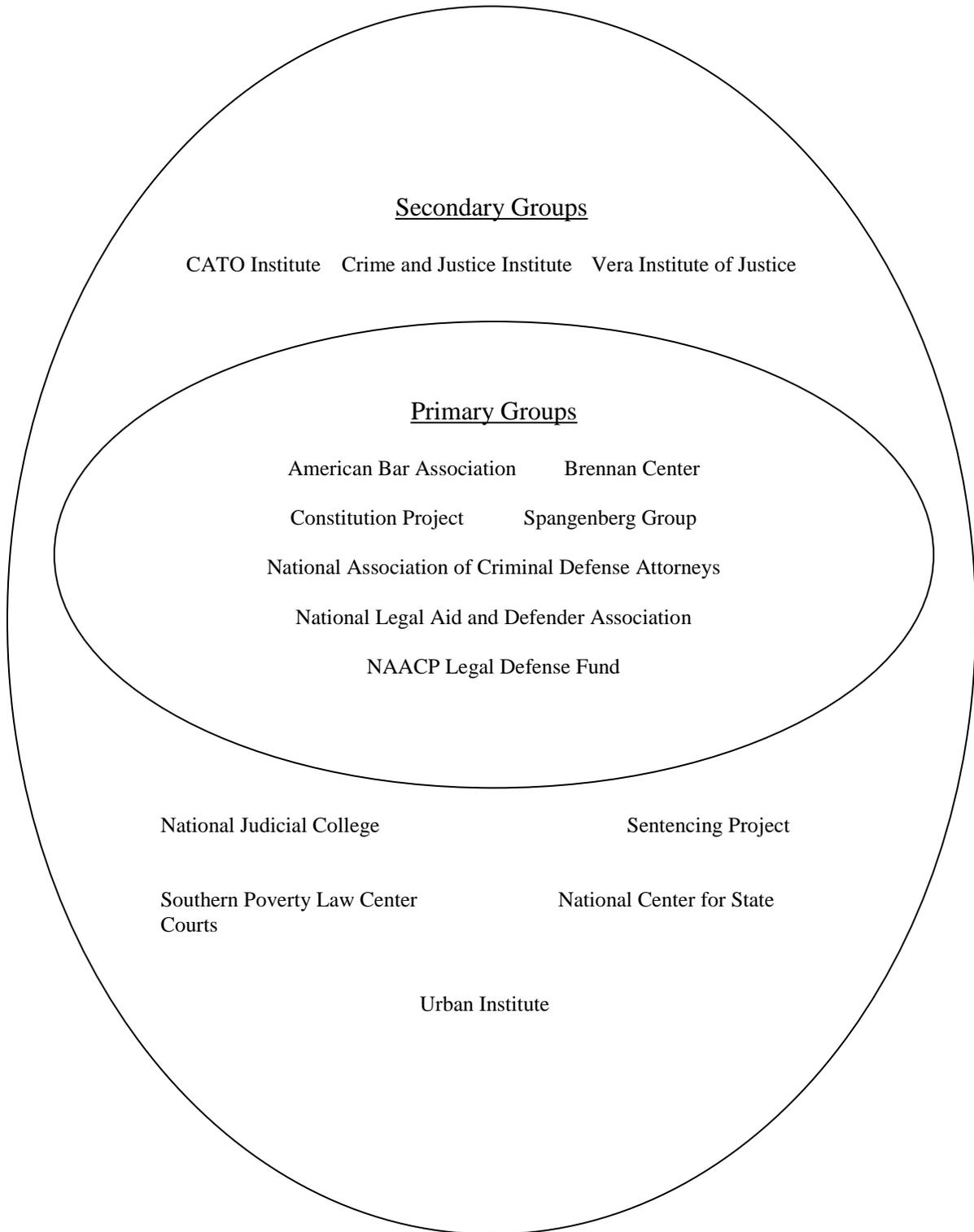
Figure 4.2 Missions of the member organizations in the national indigent defense policy network

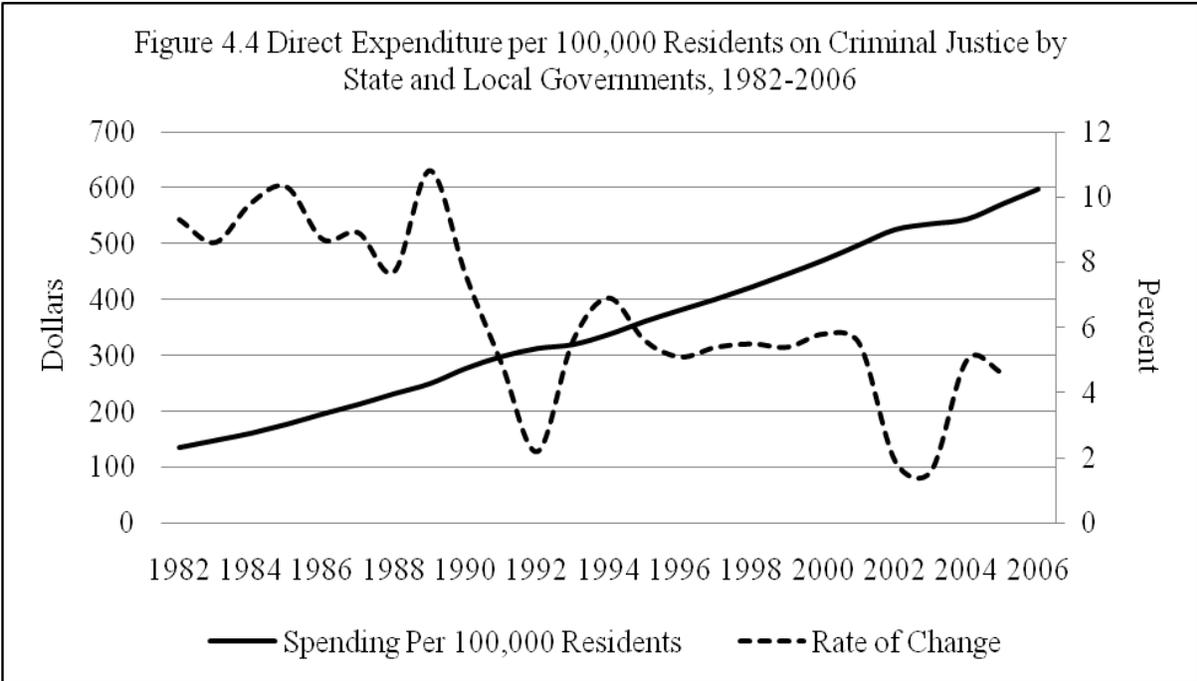
National Organizations	Mission Statement
American Bar Association	The ABA is the largest voluntary professional association in the world. The mission of the ABA is to serve equally its members, its profession and the public by defending liberty and delivering justice as the national representative of the legal profession.
Brennan Center	The Brennan Center for Justice at New York University School of Law is a non-partisan public policy and law institute that focuses on fundamental issues of democracy and justice.
Cato Institute	Cato Institute is a non-profit public policy research foundation headquartered in Washington, D.C. The mission of the Cato Institute is to increase the understanding of public policies based on the principles of limited government, free markets, individual liberty, and peace.
Constitution Project	The Constitution Project seeks consensus solutions to difficult legal and constitutional issues. It does this through constructive dialogue across ideological and partisan lines, and through scholarship, activism, and public education efforts.
Crime and Justice Institute	CJI provides nonpartisan consulting, policy analysis, and research services to improve public safety throughout the country. Its primary goal is to make criminal and juvenile justice systems more efficient and cost effective to promote accountability for achieving better outcomes.
National Association of Criminal Defense Attorneys	NACDL is a professional bar association dedicated to advancing the mission of the nation's criminal defense lawyers to ensure justice and due process for persons accused of crimes or other misconduct. NACDL and its members are committed to preserving fairness within America's criminal justice system.
National Legal Aid and Defender Association	NLADA is the nation's leading advocate for front-line attorneys and other equal justice professionals. NLADA serves the equal justice community in two major ways: providing first-rate products and services and as a leading national voice in public policy and legislative debates on the many issues affecting the equal justice community.
NAACP Legal Defense Fund	The NAACP Legal Defense and Educational Fund is America's legal counsel on issues of race. Through advocacy and litigation, LDF focuses on issues of education, voter protection, economic justice and criminal justice.

Figure 4.2 Missions of the member organizations in the national indigent defense policy network

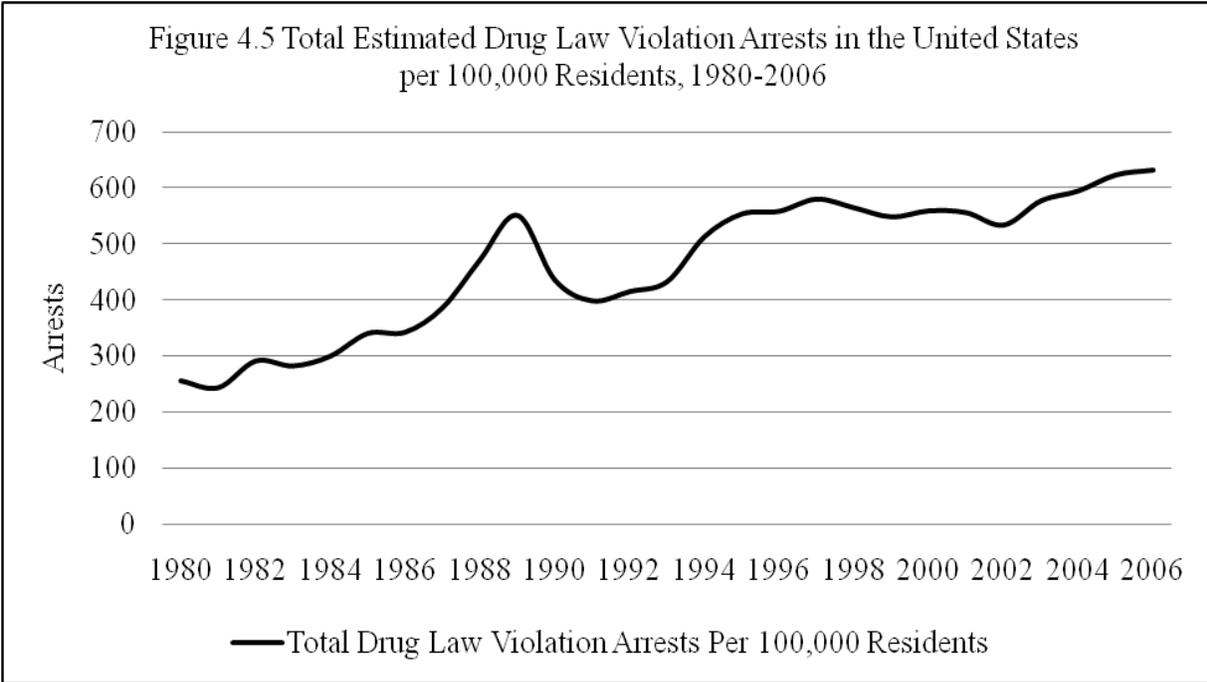
National Organizations	Mission Statement
National Center for State Courts	NCSC is an independent, nonprofit court improvement organization that provides research, information services, education and consulting to support improvement in judicial administration in state courts. These services are focused on helping courts plan, make decisions, and implement improvement that save time and money, while ensuring judicial administration that supports fair and impartial decision making.
National Judicial College	The NJC is a judicial training institution that holds courses onsite, across the nation and around the world.
Sentencing Project	The Sentencing Project is a national organization working for a fair and effective criminal justice system by promoting reforms in sentencing law and practice, and alternatives to incarceration. The Sentencing Project has become a leader in the effort to bring national attention to disturbing trends and inequities in the criminal justice system with a successful formula that includes the publication of research, aggressive media campaigns and strategic advocacy for policy reform.
Southern Poverty Law Center	The Southern Poverty Law Center is a nonprofit civil rights organization dedicated to fighting hate and bigotry, and to seeking justice for the most vulnerable members of society.
Spangenberg Project	Spangenberg Project conducts research on the right to counsel and indigent defense delivery systems and provides technical assistance to indigent defense systems across the nation.
Urban Institute	The Urban Institute gathers data, conducts research, evaluates programs, offers technical assistance overseas, and educates Americans on social and economic issues to foster sound public policy and effective government.
Vera Institute of Justice	The Vera Institute of Justice is an independent, non-partisan, nonprofit center for justice policy and practice. Vera combines expertise in research, demonstration projects, and technical assistance to help leaders in government and civil society improve the systems people rely on for justice and safety.

Figure 4.3 Indigent Defense Policy Network: Primary and Secondary Groups

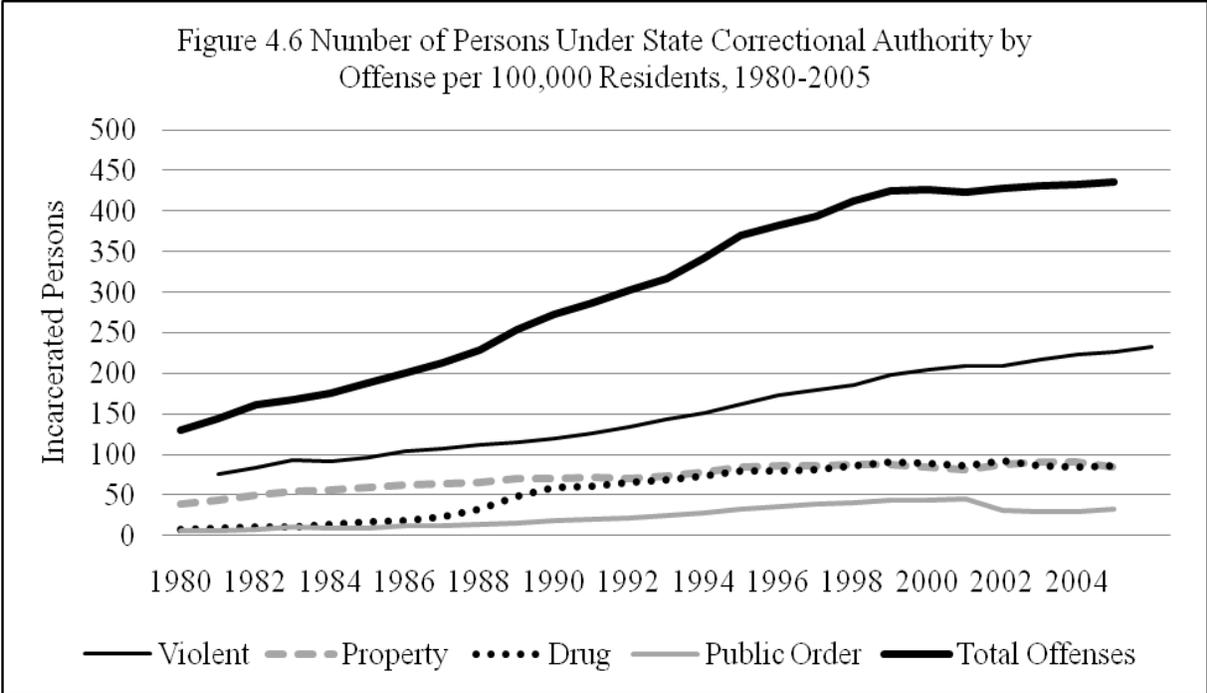




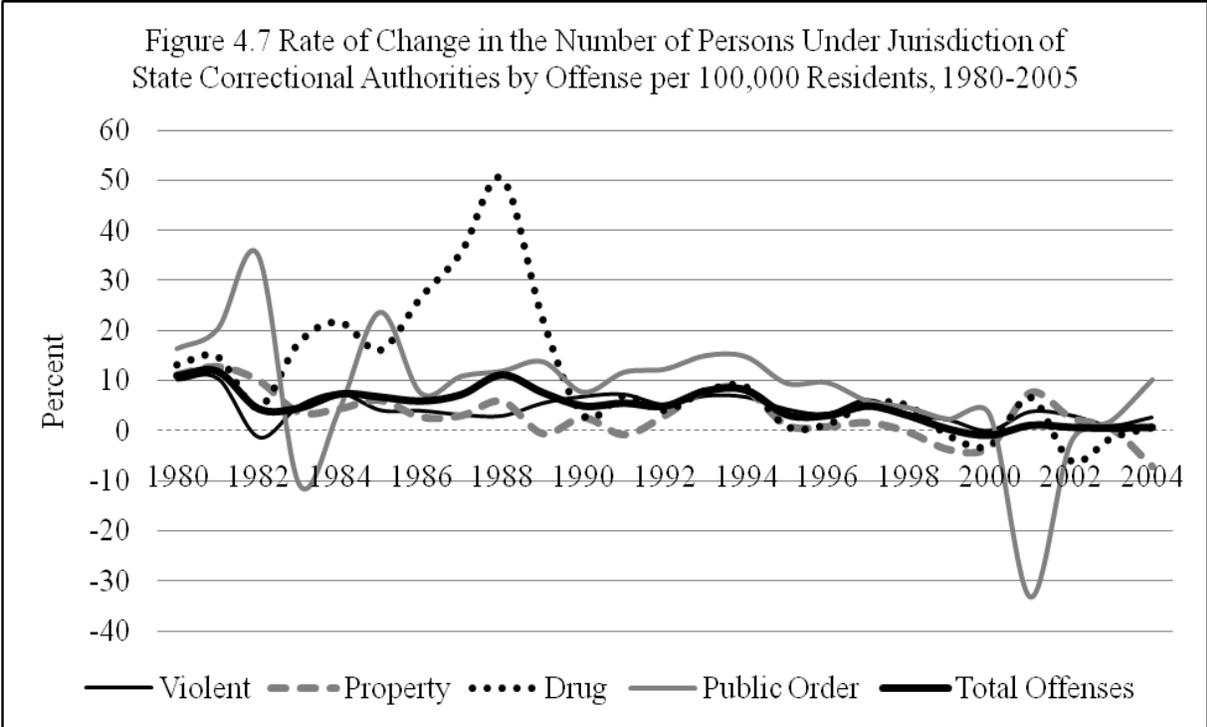
Source: U.S. Bureau of the Census various years



Source: U.S. Bureau of the Census various years



Source: Compiled by author from Bureau of Justice Statistics 2001, 2006, U.S. Bureau of the Census various years, and information from State Departments of Corrections 2009



Source: Compiled by author from Bureau of Justice Statistics 2001, 2006, U.S. Bureau of the Census various years, and information from State Departments of Corrections 2009

Figure 4.8 American Bar Association 10 Principles of a public defense delivery system

1. The public defense function, including the selection, funding and payment of defense counsel is independent.
 2. Where the caseload is sufficiently high, the public defense delivery system consists of both a defender office and the active participation of the private bar.
 3. Clients are screened for eligibility, and defense counsel is assigned and notified of appointment, as soon as feasible after clients' arrest, detention, or request for counsel.
 4. Defense counsel is provided sufficient time and a confidential space within which to meet with the client.
 5. Defense counsel's workload is controlled to permit the rendering of quality representation.
 6. Defense counsel's ability, training, and experience match the complexity of the case.
 7. The same attorney continuously represents the client until completions of the case.
 8. There is parity between defense counsel and the prosecution with respect to the resources and defense counsel is included as an equal partner in the justice system.
 9. Defense counsel is provided with and required to attend continuing legal education.
 10. Defense counsel is supervised and systematically reviewed for quality and efficiency according to nationally and locally adopted standards.
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Source: American Bar Association 2002a

Figure 4.9 Indigent defense principles adopted by the State Bar of Georgia

1. Meeting Georgia's Constitutional Obligation. *Adequate and effective indigent defense is a state responsibility required by the United States and Georgia Constitutions. Providing counsel to indigent defendants, not only gives effect to the right to counsel, but also ensures that poverty has no weight on the scales of justice.*
 2. Ensuring an Effective Criminal Justice System. *Indigent defense is an integral component of a properly functioning criminal justice system. When adequately provided, indigent defense protects the rights of the accused and helps to avoid wrongful convictions. The presence of counsel also advances the integrity, fairness, and accuracy of criminal proceedings. Counsel also helps to avoid needless delays and the unnecessary expense of retrying criminal cases that have been reversed due to constitutionally ineffective assistance.*
 3. Providing Sources of Adequate Funding. *The special court fees established in 2003 for the sole purpose of funding indigent defense should be used to fund indigent defense.*
 4. Ensuring the Right to Conflict-Free Representation. *The right to effective representation includes the right to an attorney unencumbered by a conflict of interest.*
 5. Achieving Parity and Maintaining Independence of Counsel. *Indigent defense counsel and prosecutors should be comparably compensated, and indigent defense attorneys should have the same degree of professional independence as privately retained defense attorneys.*
 6. Eliminating Political Influence and Private Interests from Indigent Defense. *The Georgia Public Defender Standards Council and its director should continue to act independently of political considerations or private interests to assure adequate and effective legal representation to indigent persons.*
-

Source: Georgia State Bar 2010

Figure 6.1 Policy recommendations

1. Decriminalize low-risk conduct
 2. Promote incremental change
 3. Avoid duplication
 4. Involve interest groups as experts
 5. Cultivate judicial support
 6. Implement planned or systematic funding structure
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