EXHIBIT 6
DATE 1.18.05
SB 146

Expert Report

An Assessment of Indigent Defense Services In Montana

SUBMITTED IN THE CASE

White v. Martz
CDV-2002-133

August 4, 2004

BY

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SENATE JUDICIARY
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Executive Summary

After conducting intensive site visits and interviews and reviewing the deposition and document discovery from the litigation in *White v. Martz*, the National Legal Aid & Defender Association (NLADA) has concluded that the provision of indigent defense services in Montana is unconstitutional in at least the following respects:

- Montana has failed to adequately fund the provision of indigent defense services. It has not assumed responsibility for the funding of indigent defense services in the misdemeanor courts and is not meeting its responsibility to fund such services in the district courts. The State's own budget projections indicate a total shortfall of between $4.2 and $4.6 million for the 2004-2005 fiscal period. This shortfall is from a budgeted number that does not come close to covering the costs of a constitutionally adequate indigent defense system. *See infra*, Section II.A.1; ABA *Ten Principles*, Number 2.

- Montana's failure to adequately fund indigent defense services has resulted in woefully inadequate resources for indigent defense, particularly as compared to those available to the prosecution. Public defenders in many counties must pay for their own office overhead, computers, software, telephones, photocopying, secretarial and paralegal assistance — items they cannot afford they go without. The State's public defender offices are also under-resourced. Nine attorneys in the Missoula County Public Defender Office, for example, must all share one investigator, one paralegal and three secretaries. The County Attorney's Office, in contrast, has the resources of the police and sheriff's department, three paralegals and seven secretaries. *See infra*, Section II.A.2; ABA *Ten Principles*, Number 8.

- Indigent defense services in Montana are not sufficiently independent and free from undue political interference. The judiciary largely controls indigent defense in many counties by appointing counsel, approving attorney compensation and reviewing the use of experts and investigators. Judges are free to (and often do) appoint counsel as they see fit rather than pursuant to objective guidelines, deny public defenders additional compensation for complex cases, and subject the use of experts and investigators to limits not applicable to prosecutors. Although it is relatively free from such judicial control, the Missoula Public Defender Office is also insufficiently independent — the County Attorney in that County, for example, often reviews the Office's budget. *See infra*, Section II.B; ABA *Ten Principles*, Number 1.

- Montana has failed to ensure that only qualified counsel represent indigent defendants and that public defenders receive the training necessary to perform competently. Many attorneys are assigned to cases pursuant to strict rotational systems with no regard for their level of experience. Attorneys are often forced to learn on the job, or not at all, as the State does not provide any orientation program for newly hired public defenders, any systematic and comprehensive training, or any technical assistance. County attorneys, in contrast, have access to

an office created by the State specifically to provide them with training and technical assistance. *See infra*, Section II.C; ABA *Ten Principles*, Numbers 6 and 9.

- There is no uniform system for determining eligibility for indigent defense and appointing public defenders in a timely manner in Montana. Screening for indigency varies from county to county but is done on an ad hoc basis in all counties, resulting in abuses of the system. Delays in appointment and initiation of client contact are also rampant. Defenders in Missoula County often do not see their clients for the first time until several weeks after appointment. *See infra*, Section II.D; ABA *Ten Principles*, Number 3.

- Public defenders in Montana do not have adequate time to meet with their clients and often fail to ensure that the meetings that do occur are confidential. There are no uniform policies or procedures for establishing and maintaining a working client relationship and many public defenders do not have regular and periodic substantive meetings with their clients. Letters from clients indicating that weeks, if not months, had passed since they had last heard from their attorneys are not uncommon, particularly in Missoula County. *See infra*, Section II.E; ABA *Ten Principles*, Number 4.

- There are no policies or procedures in Montana limiting the number or type of indigent defense cases to which public defenders may be assigned or any policies or procedures for collecting caseload data. Although the NLADA was unable to secure reliable caseload data, deposition testimony by public defenders indicates that are uniformly overworked. *See infra*, Section II.F; ABA *Ten Principles*, Number 5.

- Public defenders in Montana are not supervised in any meaningful way or monitored for compliance with any performance standards. There are no standards governing a defender's obligations to his or her client, conflicts of interest, the use of investigators and experts, the right to a speedy trial, plea bargaining, or the requesting of continuances. Although judges are involved in the appointment of indigent defense counsel and review attorney compensation, they do not provide any direct supervision because doing so would violate the Canons of Judicial Ethics. *See infra*, Section II.G; ABA *Ten Principles*, Number 10.

These failings have resulted in significant harm to indigent defense clients in Montana, who pay the price in the form of attorneys who take cases despite clear conflicts of interest, inappropriate waivers of probable cause hearings, lack of meaningful contact with their attorneys, failures to investigate or to use experts, infrequent motion practice and trials, pressure to take guilty pleas and to sign speedy trial waivers, and infrequent appeals. *See infra*, Section II.H.

Constitutional rights extend to all Americans, not merely those of sufficient means. Although state and local governments must balance other important demands on their resources, the Constitution does not allow for justice to be rationed to the poor due to insufficient funds. Montana has failed to deliver the constitutional right to effective assistance of counsel promised over forty years ago by the United States Supreme Court.