



Texas Task Force on Indigent Defense

March 2007

Volume 5, Number 2

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[Link](#) to the FY06 Annual and Expenditure Report of the Task Force on Indigent Defense

Dr. Fabelo Awarded

The Task Force presented the “Robert O. Dawson Indigent Defense Distinguished Service Award” to Dr. Tony Fabelo at its March 9, 2007 meeting. The award acknowledges the late Professor Dawson’s contributions to improving Texas’ indigent defense system and honors outstanding service and contribution to the improvement in the way Texas provides counsel for its poorest citizens accused of crimes. Dr. Fabelo received the 2006 award for his continuing service to help the Task Force develop its long term strategic goals and assist it with numerous research projects.



Court of Criminal Appeals Presiding Judge Sharon Keller, Chair of the Task Force, and Dr. Tony Fabelo

Dr. Fabelo is the former Executive Director of the Criminal Justice Policy Council. He is currently Senior Research Consultant with the Counsel of State Governments and helps the legislatures of four states (Pennsylvania, Connecticut, Kansas and Texas). He is on the National Right to Counsel Committee for Representation in Indigent Defense. As she presented the award, Judge Keller said, “He is an extraordinary person who never ceases to surprise me with what he knows and how helpful he is to us in so many ways.”

Message from the Chair

The *Chief Justices’ Criminal Justice / Mental Health Leadership Initiative* is a national project designed to assist state supreme court chief justices in guiding efforts in their state to improve the response to people with mental illnesses in the criminal justice system. As presiding judge of the Court of Criminal Appeals, and Chair of the Task Force on Indigent Defense, I felt strongly that Texas should participate in this project, and so I applied. This initiative will complement the work being done currently with our Task Force on mental health defense services. I am extremely pleased and excited that Texas was recently chosen.

Task Force Members:

Chair:

Sharon Keller
Presiding Judge, Court of
Criminal Appeals

Vice Chair:

Olen Underwood, Presiding
Judge, 2nd Administrative
Judicial Region of Texas

Jon Burrows
Bell County Judge

Knox Fitzpatrick
Dallas Attorney, Fitzpatrick,
Hagood, Smith & Uhl, L.L.P.

Wallace Jefferson
Chief Justice, Supreme
Court

Orlinda Naranjo
419th Judicial Civil District
Court

Tony Odiorne
First Assistant Public
Defender, Wichita Co.

Aaron Peña
State Representative

Sherry Radack
Chief Justice, First Court of
Appeals

Todd Smith
State Representative

Jeff Wentworth
State Senator

Glen Whitley
Tarrant County Judge

John Whitmire
State Senator



The mental health task force members (**in bold**) are, from right to left: **Sharon Keller**, Presiding Judge, Court of Criminal Appeals and Chair of the Task Force on Indigent Defense; **Dee Wilson**, Director, Texas Correctional Office on Offenders with Medical or Mental Impairments; Dr. Tony Fabelo (consultant); **John Bradley**, Williamson County District Attorney; **Mary Anne Wiley**, Deputy General Counsel, Office of the Governor; Lisa Kaufman, General Counsel to **Robert Duncan**, State Senator; **Jim Bethke**, Director, Texas Task Force on Indigent Defense; Jason Bryl, Council of State Governments; **Mike Maples**, Texas Department of State Health Services, Director Mental Health/Substance Abuse; and **David Gutierrez**, Lubbock County Sheriff.

According to a 2006 report by the U.S. Bureau of Justice Statistics, nearly a quarter of both state prisoners and jail inmates who reported they had a mental health problem had served three or more prior sentences to incarceration. This makes them familiar faces in our nation's courtrooms.

The Texas Department of Criminal Justice reports that 30% percent of the people incarcerated in the state have a prior service history with the public mental health system. The number of people with mental illness appearing in criminal courts, and the frequency with which these people cycle through our prisons and jails, has significant implications for the administration of our judicial system.

The mental health task force that I will now be leading will be reviewing court processes to make recommendations that can facilitate the identification of mentally ill persons in the court system and help courts more effectively address, as appropriate to the particular case, the mental health needs of this population. Here is a link to the [press release](#) regarding this program. We had our first meeting recently and with the assistance of Dr. Fabelo's strategic planning abilities, we mapped out a preliminary course of action for the mental health task force. We will examine options for early diversion of mentally-ill offenders, and consider possibilities for standardizing the transfer of mental health information to the courts. I thank Dr. Fabelo for his contributions, hard work, and service towards the overall mission of improving Texas' criminal justice system.

Sincerely,

Sharon Keller, Presiding Judge, Court of Criminal Appeals

Special note concerning this newsletter, please

read: Due to the large number of newly-elected officials, we may not have all updated email contact data at this time, although we are working on it. Please take a moment to forward this newsletter onto any newly-elected officials and please have them take a moment to email Darby Johnson at PPRI to update their contact information. The Task Force is mandated to do business electronically with county officials and personnel to ease the burden and offset costs to the counties by doing electronic filings, applications, etc. concerning the Indigent Defense Plans and Grants. This is only possible if we have the correct contact data. Thank you for your help! Darby's email is: <mailto:mdjohnson@ppri.tamu.edu>.

Message from the Director

March 19th marked the mid-point of the 80th Regular Legislative Session. Filing deadline for bills was March 9th (special permission is required to file bills past this deadline). Regular Session concludes May 28th and the Governor has until June 17th to sign or veto bills. Our Legislature has been busy. So far 5,960 bills have been filed – almost 700 more than last session. All of the Task Force legislative recommendations have been filed and most have had a least one hearing. A more detailed legislative update is provided under the Policies and Standards Update and on the Task Force [website](#).

New public defender offices funded by the Task Force on Indigent Defense (Task Force) in 2005 were found to be strongly effective by professional outside evaluators. The report on the public defender offices in Bexar and Hidalgo counties was completed by The Spangenberg Group, a nationally respected research and consulting firm that specializes in improving indigent defense systems. The Bexar County office focuses exclusively on appeals of criminal cases and was found to have successfully sped up the appellate process while providing high quality defense for indigent appellants. The Hidalgo County Public Defender concentrates on representation in misdemeanor cases and has been able to successfully shorten the time from arrest to pre-disposition release and final disposition, thus reducing the pretrial jail population and subsequently the amount of money spent on housing inmates in the Hidalgo County Jail. The report is titled: “*Second Interim Report: An Evaluation the of Bexar and Hidalgo County Public Defender Offices After One Year of Operation*” is available [here](#) on the Task Force website.

For counties interested in determining whether or not a public defender office would be right for your jurisdiction or region, please refer to the [Blueprint for Creating a Public Defender Office in Texas](#). This is a valuable tool for Texas local and state officials who seek a deeper understanding of what a "public defender" is and whether creating one makes sense. More reading on the subject is a study entitled [Evidence for the Feasibility of Public Defender Offices in Texas](#).

My best,
James Bethke, Director

Policies and Standards Update

Legislative Update

The General Appropriations Act, or HB 1, as introduced in the legislature appropriates \$15,698,768 to the Task Force on Indigent Defense each year of the FY08/09 biennium. This amount is based on the comptroller's Biennial Revenue Estimate and does not include funding from the legal services fee. If the bill repealing the Sunset provision on the legal services fee passes (HB 1406/SB 168), additional revenue will be available for discretionary grants and other activities that promote innovation in providing indigent defense services. The bill initially included funding for only three of four universities for innocence projects (University of Texas, Texas Tech, University of Houston), but Texas Southern University was added in the House Appropriations Committee. Senate Finance has taken testimony on the Office of Court Administration's budget but has not yet issued their version of the bill. The funding for the Task Force on Indigent Defense is contained within the Office of Court Administration's budget in Article IV of the bill, which begins on page 502 of 947 in the [document](#).

There are a number of bills filed that would make changes to the substantive law related to indigent defense. The most significant bills are listed on the Task Force website on the [Legislative Status page](#).

For additional information please call Wesley Shackelford, Special Counsel at (512) 936-6997.

Court of Criminal Appeals Decision on Indigence Determination

On February 7th the Court of Criminal Appeals issued a unanimous opinion in *Tuck v. State*. The case examined whether an appellant must prove the reasonableness of his expenses and financial obligations in order to obtain a free record for appeal. The unanimous court hold that an inquiry into the reasonableness of a appellant's expenses and financial obligations is proper in order to adequately determine whether a defendant is capable of paying for or entitled to a free appellate record. The court also vacated the court of appeals' decision because its rejection of the appellant's evidence of indigence was unsupported by the record. The court directed the trial court to reassess the appellant's finances and the reasonableness of his expenses. It indicated that if the trial court finds that the appellant's expenses are unreasonable and, but for the unreasonable expenses, the appellant would be able to pay or give security for the appellate record, then the trial court may deny the appellant access to a free appellate record. You may see the court's full opinion [here](#).

For additional information please call Wesley Shackelford, Special Counsel at (512) 936-6997.

The mission of the Task Force on Indigent Defense is to improve the delivery of indigent defense services through fiscal assistance, accountability and professional support to State, local judicial, county, and municipal officials. The purpose of the Task Force is to promote justice and fairness to all indigent persons accused of criminal conduct, including juvenile respondents, as provided by the laws and constitutions of the United States and Texas.

See the [Task Force's Strategic Plan](#).

Reimbursement for Capital Habeas Corpus Representation

Article 11.071, Code of Criminal Procedure, sets out the procedures for post conviction writs of habeas corpus in death penalty cases. The article provides for the appointment of counsel in these cases, as well as a mechanism for the state to cover the expense of counsel. Under Section 2A of the article a county may certify to the comptroller the amount of expenses incurred for attorneys fees, experts and investigative services up to \$25,000 per application for a writ of habeas corpus. The comptroller will then pay the county the amount certified, while the county is responsible for any expenses above \$25,000. This program is currently funded with a line item of \$500,000 each year of the biennium in the comptroller's judiciary section of the General Appropriations Act.

After the 11.071 writ is complete and the county has paid for the attorneys and other costs the county auditor/treasurer may file for reimbursement from the Comptroller of Public Accounts, Judiciary Section, P.O. Box 13528, Austin, Texas 78711. To request a form for reimbursement call Leonard Higgins at (512) 936-6100 (or e-mail leonard.higgins@cpa.state.tx.us) or call Peter Gilfillan 512-463-1694 (or e-mail peter.gilfillan@cpa.state.tx.us).

For additional information please call Wesley Shackelford, Special Counsel at (512) 936-6997.

Program Monitoring Report: Recommended Practice for Maintaining Magistration Data

The Fair Defense Act requires that magistration is conducted without unnecessary delay, but not later than 48 hours after the person is arrested. At magistration, the arrestee is to be informed in clear language of the following:

- the accusation against him/her and of any affidavit filed;
- the right to retain counsel;
- the right to remain silent;
- the right to have an attorney present during any interview with peace officers or attorneys representing the state;
- the right to terminate the interview at any time;
- the right to have an examining trial; and
- the person's right to request the appointment of counsel if the person cannot afford counsel.

The magistrate is to inform the person arrested of the procedures for requesting appointment of counsel. If the person does not speak and understand the English language or is deaf, the magistrate shall inform the

The program and fiscal monitors have a [webpage](#) with helpful information.

person in a manner consistent with Articles 38.30 and 38.31, as appropriate. The magistrate is to ensure that reasonable assistance in completing the necessary forms for requesting appointment of counsel is provided to the person at the same time. Tex. Code Crim. Proc. Art. 15.17(a). If the arrestee requests appointed counsel, the arrestee is required to complete under oath a questionnaire concerning his financial resources. Tex. Code Crim. Proc. Art. 26.04(n).

If the person arrested is not a US Citizen, he/she has the right to request that the consulate for his/her native country is informed that he/she is in jail. The consulate is to keep the family informed of the arrestee's situation and to make sure that the arrestee's rights are protected. The magistrate is to ask, "Do you request that the court notify the consulate for your native country that you are in jail at this time?" This is a continuing legal right that the arrestee may exercise at any time. (If the accused requests notification of his/her consulate, the magistrate must determine the country of origin and send notice to consulate by fax, if possible.) For more information regarding this subject please go to: http://www.oag.state.tx.us/AG_Publications/pdfs/vienna_guidebook.pdf (*Magistrate's Guide to the Vienna Convention on Consular Notifications*).

Tex. Code Crim. Proc. Art. 15.17(e) requires a record of magistration proceedings which includes:

- (1) the magistrate informing the person of the person's right to request appointment of counsel;
- (2) the magistrate asking the person whether the person wants to request appointment of counsel; and
- (3) whether the person requested appointment of counsel.

Section (f) allows this record to consist of written forms, electronic recordings, or other documentation as authorized by procedures adopted in the county under Article 26.04(a).

For all persons magistrated for Class B or Class A misdemeanors and/or any level of felony, it is recommended that the magistrate's warning form containing the three data elements listed above be centrally maintained in the defendant file and stored electronically, if possible.

Please call Joel Lieurance at the Task Force office, toll free in Texas at (866) 499-0656, if you have any questions about the program monitor program. There is also a webpage with [information about the monitoring programs](#).

Grants and Reporting Update

Grant Information Links

Have you ever heard about a grant issued by the Task Force and wanted to see the plan or the documents to help you decide if you should copy the program? The Task Force public pages now offer several options to see grant information that your county can use. The public pages are located at <http://tfid.tamu.edu/public>. You can see lots of useful information about funded (and not funded) grants.

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read: Due to the large number of newly-elected officials, we may not have all updated email contact data at this time, although we are working on it. Please take a moment to forward this newsletter onto any newly-elected officials and please have them take a moment to email Darby Johnson at PPRI to update their contact information. The Task Force is mandated to do business electronically with county officials and personnel to ease the burden and offset costs to the counties by doing electronic filings, applications, etc. concerning the Indigent Defense Plans and Grants. This is only possible if we have the correct contact data. Thank you for your help! Darby's email is:

<mailto:mdjohnson@ppri.tamu.edu>

If you are looking for information on what other counties have planned, go to the website and click on the various years' discretionary grants on the left side of the page (Example... "Discretionary Grant 2007 Applications). When a new screen opens use the pull down menu to see the grants or look at specific sections of all of the grants. The title of the grant indicates whether the project was funded. The "not funded" next to the project name means that the project did not get funding in that year. It does not mean that the project was bad. It just means that according to the reviewers the funded projects were better. That is life in a limited funding world.

Other items you can see are the documents and job descriptions that arose from grants. Grant recipients are asked to share information about their grant beyond the report metrics. Under the section "Discretionary Grant - Progress Report Documents" you can peruse the various supporting documents that counties submit to support the effectiveness of their program. Some of these supporting documents are more useful than others. Equipment lists of a video-teleconference system, screen shots of a software system, and report summaries may be useful in devising a new program in your county.

Call Ms. Darby Johnson at Texas A&M Public Policy Research Institute at 979-845-2003 whenever you need help navigating the grants and plan database.

Please call Bryan Wilson, at the Task Force office, toll free in Texas at (866) 499-0656, if you have any questions about grant programs.

Distribution of FY07 Formula Grant Payments

Two hundred twenty-five counties were awarded \$12 million for the FY07 Formula Grant. This grant will be distributed in four quarterly payments. First quarter payments have been distributed. Thirty-four counties did not receive a quarterly payment because they did not expend any of their FY06 Formula Grant or expended less than 75% of their FY06 Formula Grant. Each of these counties must submit a Mid-Year Expenditure Report before it is eligible to receive quarterly payments.

The Mid-Year Expenditure Report covers a county's expenditures from October 1, 2006 through March 30, 2007. The submission date for this report is May 1, 2007. The report will be available after April 1, 2007. It does not require the same level of detail as the annual report. It is only used to help Task Force staff determine whether to begin sending payments at mid-year or wait until the county has submitted the annual report. If the mid-year report shows expenditures over the county's FY01 baseline, the county will begin receiving its quarterly payments, and the first of those payments will be sent out by May 31. If the mid-year report shows expenditures less than the county's FY01 baseline, the county must wait until after the Indigent Defense Annual Expenditure Report (submitted on November 1 of each year) before receiving a grant payment.

As a reminder, the distribution schedule for second quarter payment is by the end of April, third quarter payment is by end of July and fourth quarter payment will be distributed in late November after receipt of the FY07 Indigent Defense Annual Expenditure Report.

For more information, please contact Sharon Whitfield, Budget and Accounting Analyst at Sharon.whitfield@courts.state.tx.us or toll free in Texas at (866) 499-0656 (936-6998 in Austin).

Fiscal Monitoring Program

Summary of Fiscal Monitoring Visits

Nine on-site visits were conducted October 1, 2006 – March 2007:

County	Date of Site Visit	Status of Report
Webb	Oct 10-13, 2006	Final pending
Limestone	Dec 5, 2006	Complete
Bexar	Jan 30, 2007	Complete
Moore	Feb 20, 22, & 23, 2007	Draft pending
Dallam	Feb 21, 2007	Draft pending
Hartley	Feb 21, 2007	Draft pending
Sherman	Feb 22, 2007	Draft pending
Guadalupe	Feb 27 – Mar 1, 2007	Draft pending
Gonzales	Mar 2, 2007	Draft pending

Indigent defense fiscal issues:

There were four indigent defense fiscal issues identified for improvement.

1. Indigent defense expenditure information. Some counties are not capturing the total amount spent on other direct litigation expenses for each court. Other direct litigation expenses are expenditures paid by the county to a person or entity for material, supplies, or services determined to be necessary by the qualified attorney or court, in order to prepare an adequate defense for an indigent defendant. Texas Government Code,

The program and fiscal monitors have a [webpage](#) with helpful information.

For a complete listing of all currently scheduled meetings please go to the website [calendar](#).

Section 71.0351(c) requires that all counties report expenditures and case information regardless of the appointment system – assigned counsel, contract defender, or public defender.

The Task Force and the Texas Legislature use the data contained in the Indigent Defense Expenditure Report (IDER) as the basis for policy evaluation and decisions. The Task Force also uses the IDER to determine whether counties have expended formula grant awards. It is crucial that counties institute payment procedures that accurately collect fiscal and case data of each court.

The IDER is only accurate to the extent that counties maintain good record keeping systems in accordance with government generally accepted accounting principles as required in Title 4, Chapter 112, Local Government Code. The Task Force relies on the counties' data to accurately report the state of indigent defense. The link to the Procedure Manual for the Indigent Defense Expenditure Report FY2006 is available at: <http://www.courts.state.tx.us/tfid/>, see Expenditure Reporting” and “Fiscal Reports.

2. Approval of qualified attorneys. The appointment of counsel was not adequately documented. The appointment of counsel in each court must be made from a pool of qualified attorneys approved by a majority of the judges by formal action pursuant to Article 26.04(d)-(e), Code of Criminal Procedure. The formal action by the majority of judges serves as the basis for selection and payment of attorneys.

3. Attorney application. Some counties are not maintaining attorney applications or documentation of the Request for Qualifications on file. The documentation validates the qualifications of appointed counsel and the attorney application process with specific objective qualifications (e.g., years of criminal experience, number of jury trials, number of appeals, etc). The Code of Criminal Procedure requires that only attorneys who apply and qualify may be on the public appointment list. The applications would demonstrate that attorneys paid were qualified under the county's plan. Link to the Texas Comptroller of Public Accounts, Model Purchasing Manual for Texas Cities and Counties is available at: <http://www.cpa.state.tx.us/lga/purchasing/96-449.pdf>

4. Continuing Legal Education (CLE) Requirement. The CLE requirements were not consistently documented for attorneys. Attorneys appointed to represent indigent defendants or juvenile respondents must complete a minimum of 6 hours of CLE pertaining to criminal or juvenile law, respectively, during each 12-month reporting period in accordance with Title 1, Chapter 174, Texas Administrative Code. CLE may include activities of self-study, teaching at an accredited continuing legal education activity, attendance at a law school class, or legal research-based writing. In addition, the judges in each county may require attorneys to complete more than the minimum 6 hours of criminal CLE. Therefore, attorney CLE requirements must meet the Task Force standards and county local plan. The documentation may include a copy of the annual verification

report with the attorney's CLE courses in criminal or juvenile law from the State Bar of Texas for the requisite number of hours. The link to the Texas Administrative Code is available at: <http://www.sos.state.tx.us/tac/>.

For questions or technical assistance, please contact: Carol Conner, Fiscal Monitor; direct line: 512/936-7561; In Texas 866/499-0656; fax: 512/475-3450; email: carol.conner@courts.state.tx.us.

Hold the Date for the Annual Indigent Defense Workshop

Each year in October the Task Force has presented an annual workshop. In 2003-2004 the workshops were geared towards educating newly funded or created indigent defense coordinators. Since 2005 the workshop format has been modified to address county elected officials and the workshop requires a 'team' of a cross-section of county division leaders (court, law enforcement, prosecution, defense, etc.). We have learned from past workshops that all counties basically share four common issues:

- Disconnected criminal justice systems;
- Determining indigence and verification;
- Attorney accountability issues; and
- Technology (software and tracking systems)

The workshop is becoming an increasingly popular event and we apologize not being able to accommodate every county across the state who may wish to attend. This year in July (the application will be in the next newsletter), counties wishing to attend will be required to apply to register and those applications approved, based on counties' ability to assemble a team of division leaders and demonstration of technical assistance need and contribution, will be registered on a first-come, first-serve basis. Seating is limited at 100. We will notify counties of their confirmed registration by September 1. The dates to hold for the workshop are October 18 and 19th in Austin. Please stay tuned for more information concerning the workshop in a future newsletter.

Also please remember that, if at any point in time, if your county needs information on best practices and processes, to contact the Task Force for [Technical Assistance](#) provided by staff.

Please call Terri Tuttle, at the Task Force office, toll free in Texas at (866) 499-0656, if you have any questions about this program.

Program Spotlight

Bexar County Appellate Public Defender Office

A BETTER WAY

By: Angela J. Moore, Bexar County Chief Appellate Public Defender



“There has got to be a better way of doing this.” This was my main thought as I ventured out into solo practice upon leaving the U.S. Attorney’s Office. To my dismay, I discovered that defense attorneys are not always treated similarly with the prosecutors, nor did they have the same resources available to them. Fortunately, SB7 had gone into effect in 2002, and I was emboldened with the idea that all the things that were wrong with the system were finally being addressed. Unfortunately it was a rude awakening. Most of you reading this article are familiar with the problems, but let me share some of the solutions that a public defender’s office can provide to your community.

SETTING GOALS

Once a county has decided to invest in the concept of a public defender’s office, it is important to set out goals for this office. The first goal should be quantifying the scope of the office’s representation. Our office was tasked with handling only indigent direct appeals in criminal cases for Bexar County. While initial figures provided to the County suggested we should anticipate approximately 120 appeals for the next fiscal year, we handled nearly twice that amount, with only four attorneys. It is also important when setting goals, to consider quality of representation and not just quantity or financial savings. To achieve this goal, the task force and the County agreed to follow national standards and set ceilings for the number of cases handled per year, per attorney. Determining caseload standards depends on factors that may be unique to each office. Regardless, a safety valve measure must be installed in your framework. Our safety valve is that the Chief has the ability and responsibility to notify the district courts when we are at our caseload maximum and then the appointments return to the private attorney list. Additional goals included accountability to the clients. We keep our clients informed, and try our best to meet with each new client face to face. Initially this goal was very workable. However, the clients with longer sentences are moved to TDCJ very quickly. If we are unable to meet with the clients via video teleconference (another cool thing we were able to achieve), then we write them and furnish them with detailed information on their case. Then we are usually able to at least discuss their case with them by telephone.

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We're on the Web!
www.courts.state.tx.us/tfid

BEYOND THE JOB DESCRIPTION

As I began my tenure as Chief, I had to become a grant specialist and an office manager extraordinaire, a budget analyst, along with an appellate specialist. I felt confident in my legal abilities however, my new duties were daunting. Administrative duties are difficult to manage while maintaining a full caseload. To be effective, a Chief must utilize the talents of the team and delegate where possible, but ultimately, the “buck stops here.” Assemble a team that has a variety of talents where possible, with different backgrounds and experiences. A good leader should not be afraid to listen to new ideas or responsible critiques. This will give you a full service team. Excellence must be accomplished through clear communication. Discussion amongst your team in developing systems for filing, dating, and coordination of your work product is vital. Listen to your team members when systems are not working and adapt your system accordingly, or adapt with the growth or technology leaps your county is making.

FRUGALITY, RECYLING, AND RESOURCEFULNESS ARE NECESSARY

The TFID has been very generous with our county, and its tremendous foresight, guidance, and monetary assistance shows faith our program. While the buck may stop here, you have to stretch your bucks very far. Our office has learned to be frugal with paper and other supplies. Anything our office can get for free, we use it. We have recycled office furniture disposed of by other county offices. We accept legal treatises and books and supplies that other entities cast off. If necessary, we buy supplies at the dollar store out of our own pockets. We recycle our binding combs with the Fourth Court of Appeals. Less meager ways of stretching our budget dollars include utilizing our county family and legal community.

Within the county family here in Bexar, we can utilize the county infrastructure which contains experts in many fields. We have been able to use the talents of the auditor and budget professionals; the county has technical support for all the computers and software, and other specialists in the areas of jail population, public health, mental health, and many others. These individuals can be very helpful and it is usually at no cost out of your budget. We know now who to call, who to ask and who not to call. Our commissioner's court has been very supportive of our endeavors. It is helpful to keep the commissioners abreast of breaking news and of the projects your office is involved with.

After one and one half years, we now have a place at the “grownups table” when the county is discussing jail overcrowding, mentally ill defendants, and ways we can serve the county's interest as well as our clients. As a chief defender, my job description requires wearing many hats, along with that of lawyer. It is important that the defender office functions as part of the bigger picture in creating a dialogue regarding justice, poverty, and the rights of the accused. I serve on many boards and bar associations and also sit on a national board for chief defenders. This group has provided

exceptional training and guidance for legal and policy issues.

We are fortunate to be located in a large metropolitan area which is still a small close legal community. The “big civil firms” have been a great ally for us. I have asked six of our biggest firms to lend an appellate specialist to write a pro bono brief. “Just take one” is my mantra. All six have agreed and their appellate specialists working under our close supervision have written briefs. These talented attorneys would not have felt comfortable taking these cases on their own. With our guidance and supervision, excellent thorough briefing on behalf of the client has resulted. Further, we have an excellent law school, St. Mary’s University, nearby. As a St. Mary’s graduate, I asked a favor of one of my favorite criminal law professors: help us set up a clerkship with the law students. Thanks to the Dean, Professor John Schmolesky, and Chief Justice Alma Lopez, we have had four students work without pay, in order to receive class credit. We have sponsored two other students from out of state schools as well. This provides an excellent opportunity for the students, for us, and the law school. Our hope is that in the future, this program may expand into a full clinical program.

At the outset, our legal community was skeptical, and some were blatantly opposed to our existence. However, once the private attorneys found us to be approachable, useful, and a resource, our value has been recognized. We continue to serve as a resource to our legal community by contributing to list service discussions; speaking at CLE’s; taking questions from practitioner’s who would like our opinion on strategy and procedure; and being available when we can. For example, a local attorney was in a car accident and his daughter was killed. He was severely injured and emotionally distraught. He contacted us to check on deadlines for his pending appeals, while he was hospitalized. This may not technically fall under our purview, but a community helps one another. This gesture only took a few minutes, but we have helped a colleague, and served the ends of justice. The appellate section at the District Attorney’s Office has been very supportive and collegial. Through the coordination and discussion between the two sections, many administrative headaches for the Court of Appeals have been streamlined through active discussion and problem solving. This approach has also proved effective for the disposition of frivolous appeals, and ensuring that no indigent person’s case falls through the cracks.

The services we provide our clients can be measured by tangible statistics and intangible benefits. The financial savings benefits the taxpayers. Through the economy of scale, we can handle far more cases and more difficult cases, than a solo practitioner. We talk to worried mothers about who to contact and how to visit their family member at the jail. We assist our clients in understanding and navigating the appellate system and process. If we cannot help a particular person, we try to send them where they can get the information and assistance they need. Finally, there is a resource for defendant’s families and indigent clients who before, may have never met their appellate attorneys. We are a face, a voice, and a name for our clients. One solo attorney’s voice alone can be drowned out, but when we all speak with one clear voice, real change can occur.

**Would you like to see
your county featured in a
Task Force e-Newsletter
or the 2007 Annual
Report?**

If so, please give us your idea for a success story. Photos are also welcome. Articles will describe a creative way on how a county overcame a challenge after the Fair Defense Act went into effect. When we share these stories and best practices it becomes a model for other counties and helps Texas overall. Please contact Terri Tuttle at (866)499-0656 or email terri.tuttle@courts.state.tx.us.

FROM ADMINISTRATION'S PERSPECTIVE

By: Melissa Barlow-Fischer, Bexar County's Criminal District Court Administrator

The idea for an Appellate Public Defender's Office was actually conceived on the patio of the Mexican Manhattan restaurant on the historic San Antonio Riverwalk. As the Criminal District Courts Administrator, I am responsible for the budget of the criminal district courts, including the expenditures for all felony court appointed attorneys. For years the courts had been intensely scrutinized by our Commissioners Court over the rising costs of court appointed counsel, especially since the implementation of the new SB7 requirements in 2002. For years the budget office had suggested looking at the possibility of a public defender's office, and for years this suggestion was met with great opposition by both the courts and the defense bar. But for a variety of reasons, the stars seemed to align that evening on the patio of the Mexican Manhattan.

One of the most important factors that came into play that day was the fact that if we applied for grant money from the Task Force on Indigent Defense to start a public defender's office, there seemed to be a good chance we could get it. We knew that would appeal to the budget office and Commissioners Court, to start an office with seed money from a grant footing most of the bill at the beginning. Then the county could evaluate the cost savings over time, with the option to discontinue the office if they felt it was not cost effective. The discretionary grant we were considering applying for would extend over 4 years, with the state initially footing the bill for 80% of a new public defender's office, and the county gradually taking over the costs of the office. By the fifth year, the county would exclusively fund the office.

Another important factor in the decision to pursue this possibility was a receptive Local Administrative Judge for the District Courts, Philip A. Kazen, Jr. Historically, the courts had been less than enthused at the thought of a public defender's office, presumably because they did not want their discretion to appoint defense counsel taken away. However, with the new county indigent defense "plan" in conformance with SB7, almost all appointments were now made on a rotational basis anyway. The trick was to come up with a concept that could be pitched to the remainder of the judges as well as the defense bar, with the chance of meeting the least amount of resistance.

We decided to start small. We discussed potential specialized caseloads, including juvenile cases, cases involving mental health issues, and child support/abuse and neglect cases. We figured that the courts and the defense bar would be more likely to support a project that would affect the smallest number of attorneys, and for some time most criminal appeals were being handled by a handful of court appointed criminal defense attorneys. All of us at the table were in agreement that an Appellate Public Defender's Office could be the answer. Judge Kazen went to work talking to the other district court judges as well as the county court-at-law judges about the concept and getting their input as to how it should be set up. I poured over

Article 26.044 of the Code of Criminal Procedure, and worked with staff from Commissioners Court to determine the proper procedures for the county to go through in order for this to happen. One of the principles we all committed to from the start was the need for some sort of “oversight board” comprised of representatives from all affected county departments as well as representatives of the judiciary and the defense bar.

The provisions of the CCP were somewhat confusing, because they did not seem to contemplate a county desiring to set up a public defender’s office as a county department. There is a bill currently before the legislature that will fix the problems we encountered, so hopefully future endeavors by other counties to do this will not be so convoluted. With guidance from the TFID, we determined that the statute as written at the time required the purchasing agent of the county to submit a “Request for Proposals” for an Appellate Public Defender’s Office. My office submitted a proposal to create the office as a county department; two other proposals were submitted by private defense counsel. By this time the “Appellate Public Defender’s Office Oversight Board” had been created, and included the county judge and a county commissioner, a criminal district court judge, a rotating county court/juvenile court judge, a justice from the Fourth Court of Appeals, and the juvenile district courts administrator. It also included a rotating position between a criminal defense attorney who was on the felony court appointed attorney list, and a criminal defense attorney who did not take appointments. The proposals were presented to the board, and the board made a recommendation to the Commissioners Court. Commissioners Court decided to create the office as a new county department, and the next step in the process was to find the perfect person to lead the office as chief.

Many competent, seasoned appellate lawyers applied, and the list was narrowed down to a final two. These two participated in rather intense interviews with the oversight board, and Angela Moore was chosen as the Chief Appellate Public Defender. From that point on, Angela grabbed the bull by the horns and built the Appellate Public Defender’s Office from the ground floor up, making it the success it is today.

Texas Innocence Projects

[Note: During FY 2006, the Task Force began implementing a rider to the appropriations bill that directs up to \$800,000 over two years to innocence projects for the law schools at the University of Houston, the University of Texas, Texas Southern University and Texas Tech University to assist people wrongly convicted of crimes. When an investigation reveals a potentially provable case of actual innocence the projects then work to pursue remedies for the inmate through the courts or clemency procedures. Innocence projects involve law students working under supervision of professors. Each school is eligible to receive up to \$100,000 per year from money the Legislature approved during the 79th Legislative Session. The law schools at the University of Houston, University of Texas, and Texas Tech University each have an operational innocence project. As of this writing, Texas Southern University has not established an innocence project. Please read a law student’s account below.]

The Role of Innocence Projects in Texas – A Student Perspective
By: M. Andrew Garbe, Law Student, The University of Texas School of Law, J.D. Candidate, May 2008

Participating in the Actual Innocence Clinic at the University of Texas School of Law has been the high-point of my experience as a law student. In the past few months I have learned more about how criminal law actually operates in the “real world” than in all my other classes combined. By introducing law students to issues surrounding post-conviction innocence claims, students have the unique opportunity to “back-track” through the case, dissecting everything that led to the conviction—trial records, witness statements, arrest reports, etc.—as well as re-interviewing inmates, witnesses, and attorneys. Even where a claim of innocence cannot be proved with new evidence, the process serves both to educate law students and provides a cost-effective review to ensure that the system functions properly and that justice is served.

While I am thankful on a personal level for the wealth of experience the Actual Innocence Clinic provided me, my participation also taught me that the clinic serves broader purposes. Even though there have been several exonerations of convicted individuals in Texas due to actual innocence in the past few years, the benefit of the projects’ work does not rest solely on the number of exonerations they achieve. The criminal justice system in Texas frequently receives criticism for its failure to ensure an adequate level of representation for those charged with a crime, especially in the case of indigent individuals.

Utilizing the skills of law students and the *pro bono* participation of licensed attorneys, innocence programs address this concern by providing an additional layer of oversight to the criminal justice system. Even in the absence of frequent exonerations, the ongoing review of claims of actual innocence ensures that the system functions properly. Why wouldn’t a system welcome review of its performance? Corporations recognized this long ago and regularly institute independent audits. If everything is going well, then outside review serves as a validation of their policies and operation. If the review identifies systemic problems, these can be remedied before costly litigation and loss of public faith in the system result. When an entity such as the Texas criminal justice system welcomes external review of its policies and operations, it increases its credibility among both the citizens of this state as well as those across the nation.

Some may view the innocence projects as a waste of tax-payer funds because incarcerated individuals have already had their day in court and been duly convicted. Instead of considering the post-conviction review process as simply another device for extending the appellate options for convicted individuals, it is better viewed as an inexpensive mechanism for ensuring that the system works properly, while simultaneously providing outstanding educational opportunities for law students. Even the staunchest advocate of harsh punishments for criminal offenders does not favor keeping an innocent individual in prison, especially when doing so means

that the real perpetrator remains unpunished and free to commit additional crimes. Innocence projects and the law students that staff them serve the dual aims of the criminal justice system - validating the convictions of the guilty while protecting the innocent.

The Task Force seeks nominations for the 2007 Robert O. Dawson Award



Bob Dawson was a beloved law professor and an important reformer (Photo credit: Wyatt McSpadden).

The Robert O. Dawson Indigent Defense Distinguished Service Award honors and acknowledges the late Professor Robert O. Dawson's outstanding contributions and symbolizes his lasting impact on the Texas Fair Defense Act and the Task Force. Each year the award will recognize outstanding service by a group or an individual that makes an outstanding contribution to the improvement in the way Texas provides counsel for its poorest citizens accused of crimes.

A complete Award Nomination Form must be submitted for each award. Award Nomination Forms may be obtained from the Task Force on Indigent Defense website www.courts.state.tx.us/tfid. Award Nomination Forms and supporting materials should be submitted for the 2007 award beginning April 1, 2007 and through the final deadline of July 16, 2007 (5:00 p.m.).

Additional materials such as news stories, magazine articles, or other appropriate commentaries may be included with a nomination. However, please limit each nomination to 10 pages, including supporting materials. Please do not submit videotapes or tape recordings.

Please send completed Award Nomination Forms to:

Task Force on Indigent Defense
Post Office Box 12066
Austin, Texas 78711-2066
Physical Address: 205 West 14th Street, Suite 700, Austin, Texas 78701

The 2007 award will be presented at the year-end Task Force meeting.

For more information, contact Terri Tuttle, Executive Assistant at terri.tuttle@courts.state.tx.us or 866-499-0656 (936-6994 in Austin).