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Harris County Public Defender's Office Activities and Accomplishments (2011-2012)

The Harris County Public Defender's Office (PDO) represents persons accused of crimes in Harris County, Texas, who cannot afford an attorney. The PDO is appointed by judges to represent mentally ill misdemeanor defendants, felony defendants, persons appealing their convictions or sentences, and juveniles accused of acts of delinquency.

Brief History

Between 2008 and 2010, Harris County studied the concept of a public defender and appointed a team to develop an implementation plan. In September 2009, the Commissioners Court approved the creation of the office. In June 2010, a grant proposal was submitted to the Task Force on Indigent Defense (now the Texas Indigent Defense Commission (TIDC)) to establish the PDO. The Task Force approved the County's grant proposal in August 2010.

The Harris County Commissioner's Court accepted the \$4.1 million grant in September 2010 and appointed 15 members to serve on the Harris County Public Defender Board. The board is comprised of commissioners; county, juvenile, and district court judges; court administrators; attorneys; and community members.

The Public Defender Board's first order of business was to decide who should lead the new office. It recommended to the Commissioner's Court that Alex Bunin, the federal public defender for the Northern District of New York, be hired as the chief public defender. In November 2010, the Commissioner's Court approved the board's recommendation, and on December 6, 2010, Mr. Bunin started work.

Operations and Staffing

The PDO is divided into four divisions: appellate; felony trials; misdemeanor mental health; and juvenile.

The appellate and misdemeanor mental health divisions began taking cases February 1, 2011. The felony trial division began accepting cases on October 1, 2011, and the juvenile division began taking cases on December 1, 2011.

As of February 29, 2012, the Public Defender's Office has 56 employees. That includes the chief, an administrative officer, 11 appellate attorneys, five mental health attorneys, 10 felony trial attorneys, nine juvenile attorneys, three social workers, four investigators, and 12 support staff.

An independent evaluation of the PDO's operations is being conducted by the Council of State Governments' Justice Center. An initial report should be completed by Fall 2012.

Caseloads

The caseloads of the Public Defender's Office are limited to the caseload standards established by the National Advisory Commission on Criminal Justice Standards and Goals. Those standards limit caseloads to 150 felonies, 200 juvenile cases, or 25 appeals per attorney per year. These caseload limits are included in the grant agreement with the TIDC.

Between February 1, 2011 and February 29, 2012, the PDO was appointed to handle 221 appeals, closing 37.

During that same period, the PDO was appointed to handle 1,144 misdemeanor cases involving mentally ill defendants. Of those, the office had closed 1,011 cases by the end of the period.

Between September 28, 2011 and February 29, 2012, the PDO was appointed to handle 1,293 felony cases, and had closed 641 cases during that time.

The office was appointed to handle 146 juvenile cases, closing 65, between December 1, 2011 and the end of February 2012.

Funding

The Task Force on Indigent Defense awarded Harris County \$4.1 million to establish the Harris County Public Defender's Office in August 2010. Additional funding was provided by the County for the construction of the public defender's office space on the 13th Floor of the Criminal Justice Center, as well as additional equipment and furniture.

In July 2011, Harris County received the second installment of its four-year discretionary grant from the Task Force for \$6.4 million. That represented 80 percent of the Office's \$8.1 million budget for FY 2012.

In FY 2013 and 2014, Harris County will be responsible for 80 percent of the office's costs, and thereafter the County will be solely responsible.

Holistic Defense

"Holistic defense" is a client-centered and interdisciplinary model of criminal defense that addresses the circumstances bringing persons into the criminal justice system and their consequences by offering comprehensive legal representation, support and advocacy.

The PDO strives to bring a holistic defense approach to cases. By combining the skills of seasoned defense attorneys with experienced investigators, psychosocial staff, mitigation

specialists, and other specialties, the office has achieved some notable victories that would not have been possible without a group effort.

Accomplishments

Following is a summary of some of the accomplishments of the PDO during its first year of operations.

Excellent staff

Alex Bunin's first order of business was hiring experienced managers and staff to ensure that the office was quickly functioning, and immediately respected in Harris County courtrooms. The division chiefs have a combined 71 years of criminal law experience between them. The appellate division includes some attorneys with upwards of 15 years of legal experience, in addition to competent, younger lawyers who have worked at the Texas Court of Criminal Appeals, State Counsel for Offenders, and the Texas Defender Service. The felony trial division has many attorneys with decades of experience, both as defense lawyers and prosecutors. While the majority of attorneys in the office have spent the bulk of their careers in Harris County, there are also attorneys with experience working in public defender offices from other parts of the country, including Florida and Arizona. The misdemeanor mental health division is comprised of attorneys and social workers who are skilled in working with defendants with acute mental illness and intellectual disabilities. The juvenile division is made up of attorneys who specialize in representing accused youths. Investigators are critically important in gathering crucial evidence that has meant the difference in cases in all divisions.

Representing the defense perspective

Bunin regularly meets with judges and other county criminal justice stakeholders to discuss ways in which the criminal justice system can be improved, both in terms of efficiency and justice for defendants. Regular county policy meetings include the Harris County Criminal Justice Coordinating Council, the Justice Management Committee, and ad hoc committees on the jail, technology, court programs, and other criminal justice issues.

Educating the community

Bunin has made numerous presentations to audiences around Texas and the United States about the importance of quality indigent defense, the advantages of a public defender system, and the operations of his office. He has made presentations and media appearances before:

- Red, White and Blue, Houston PBS (January 20, 2011)
- 2nd Annual Texas Indigent Defense Summit (Austin-March 1, 2011)
- Reasonable Doubt, Houston HMS TV (June 23, 2011)
- Crime Stoppers of Houston Quarterly Luncheon (September 2011)
- Building a Stronger Community: Advocates for Health and Human Services, One Voice Texas (Houston-September 26, 2011)
- Symposium on Indigent Defense, Texas Indigent Defense Commission (Austin-October 27, 2011)

In-house trainings for staff and private appointed counsel

In order to make its staff and the defense bar the best that it can be, the PDO sponsors legal education trainings on a regular basis. Every week or two, the appellate division meets to discuss recent criminal cases that were handed down from the U.S. Supreme Court, Texas Court of Criminal Appeals, and the courts of appeal. MCLE credits are provided.

The felony trial division has invited guest speakers for continuing legal education, including:

- Tyrone Moncriste, "Story Telling, Opening and Closing" (March 8, 2012)
- Connie Williams, Jed Silverman, Michelle Beck, and Ron Estefan, "Conducting Voir Dire" (February 14, 2012)
- Chris Downey, "Preparing for Trial" (January 19, 2012)
- Sargent Tommy Shelton, Harris County Sheriff's Office, "House Arrest Program" (December 15, 2011)
- Jana McGee, Cenikor, Presentation on Cenikor's residential treatment program (December 15, 2011)

The office has also co-sponsored CLE with other organizations:

- Karen A. Newirth, Innocence Project of New York: Eyewitness Identification: Leading Causes for Wrongful Convictions and Strategies for Effective Advocacy (HCCLA) (February 23, 2012)
- First Annual Hon. Craig Washington and Senator Rodney Ellis Criminal Law Seminar (TCDLA & Thurgood Marshall School of Law) (February 24, 2012)

Supporting the private appointed bar

Part of the PDO's mandate is to act as a resource to assigned private counsel. In addition to providing continuing legal education, the PDO also provides the following services to private appointed counsel to assist them in getting the best possible outcome for their clients:

Criminal law advice: The PDO has established a program to provide advice to private appointed counsel with questions about the law, including during trial.

Immigration advice: The PDO offers all defense attorneys the opportunity to speak with a staff immigration attorney about consequences implicated in their cases, from the availability of bond from the immigration court to substantive issues regarding removability.

Forms: The PDO has various motions and forms available for appointed counsel. Among the forms the PDO will offer are a motion for continuance and a writ of habeas corpus for bond reduction.

Clothing: The PDO maintains a closet full of men's and women's clothing for clients of the private bar who need appropriate clothing to wear in court.

Legal articles: Staff of the PDO have written numerous articles for legal periodicals, including *The Defender*, the magazine of the Harris County Criminal Lawyers Association, to inform the local bar about important legal issues and the resources that the PDO has available for private appointed counsel.

Site Visits

PDO staff have visited a number of facilities to learn more about treatment and rehabilitation opportunities available to their clients. Site visits have included:

- Harris County Psychiatric Center and Oasis Program (March 19, 2012)
- Gulf Coast Trades Center, juvenile rehabilitation facility, New Waverly (March 12, 2012)
- Harris County Juvenile Detention Center, Houston (February 20, 2012)
- Cenikor, residential substance abuse treatment facility, Deer Park (January 5, 2012)

Website

The PDO launched its website in February 2012. <http://www.harriscountypublicdefender.org> The website provides the public and private bar with information about: the PDO's operations, staff, and employment/internship opportunities; holistic defense; guest speaker opportunities; and resources for the private bar.

Appellate Division

The Appellate Division has had a number of successes. Here are some examples:

*New trial granted in murder case:*¹ Assistant Public Defender Sarah Wood won a motion for new trial. The motion was based on the fact that a witness missing from the trial would have testified that the defendant was not the shooter. The motion was granted "in the interest of justice." (May 24, 2011)

Pro se guilty plea overturned on motion for new trial; sentence reduced 2 years: Judge Marc Carter granted Sarah Wood's motion for new trial in a case involving a mentally ill defendant who pled guilty – without counsel – to a five-year sentence. The enhancement to his sentence turned out to be invalid. He then pled to three years, two years less than his original sentence. (Dec. 8, 2011; March 6, 2012)

Conviction overturned then dismissed: Nick Hughes won a motion for new trial granted by Judge Larry Standley. The conviction was overturned thanks to evidence uncovered by Nick and PDO investigator Eric Baumgart which discredited the State's trial testimony. The case was then dismissed on the State's motion. (January 30, 2012)

Oral arguments on eyewitness identification case: Sarah Wood presented oral argument in a novel case involving flawed eyewitness identification procedures. Ms. Wood presented the court with the recently adopted model eyewitness identification policy developed pursuant to state law by the Law Enforcement Institute of Texas (LEMIT) and explained how the "show up" identification in her appeal violated many provisions of the model policy. Scott Ehlers, the PDO's Legal and Policy Analyst, served on LEMIT's working group that developed the model policy, and assisted Ms. Wood in planning for her presentation. (February 16, 2012)

¹ Brian Rogers, *Houston judge dumps jury verdict, calls new trial in '06 killing*, Houston Chronicle (May 24, 2011-5:30 a.m.), <http://www.chron.com/news/houston-texas/article/Houston-judge-dumps-jury-verdict-calls-new-trial-1691386.php>.

Deaf man granted new trial based on ineffective assistance of counsel: Judge Jan Krockner granted a deaf, mute, illiterate defendant a new trial thanks to a motion written by Sarah Wood. The defendant allegedly violated the terms of deferred adjudication (no contact with minors) by seeing his own infant son. Hired counsel never met with the client before the motion to adjudicate hearing. Nor did hired counsel admit into evidence the family court order explicitly ordering the defendant to pick up the child at certain times and places. Retained counsel believed the client did not understand what was going on the day of the hearing, but failed to request a continuance. (January 20, 2012)

Felony Trial Division

The Felony Trial Division has obtained a number of victories for clients, including:

*Charge dropped in 41-year-old murder case:*² Assistant Public Defenders Jules Johnson and Tanya Terry secured a dismissal from Judge Mary Lou Keel of a murder charge against Mary Ann Rivera, who was accused of killing her husband in 1970. Ms. Rivera was 76 years old and living on an oxygen tank when she was brought to Texas from rural Georgia, where she had raised three children and worked as a waitress. The case was dismissed on speedy trial grounds. (November 4, 2011)

Not guilty for possession of less than a gram: Monica Gonzalez secured a not guilty verdict for her client charged with possession of less than a gram of cocaine. Trial Division Chief Mark Hochglaube recognized the officer who made the arrest and knew from previous cases that the officer had been untruthful. The court allowed him to testify as a character witness, which helped convince the jury that the evidence against the defendant was unreliable. PDO Investigator Carmen Laffey, and Assistant Public Defender Cecelia Valentine, assisted at trial. (November 8, 2011)

Aggravated assault charges dismissed during trial: Assistant Public Defenders Craig Still and Scott Pope were assigned to represent a defendant after his retained attorney became ill shortly before trial. The defendant was charged with aggravated assault in connection with a stabbing of a family member. The defendant was facing a sentence of 25 years-to-life and he was also on parole. With minimal information in the client's file, Still and Pope prepared with the help of PDO Investigator Cynthia Patterson. During trial, after the complaining witness refused to testify, the prosecutor dropped the case. (December 6, 2011)

Grand jury "no bills" aggravated sexual assault: A 17-year-old young man with no prior convictions avoided being branded as a sex offender for life thanks to the efforts of Assistant Public Defender Frances Bourliot and Felony Trial Division Chief Mark Hochglaube. The young man had sexual relations with a girl who misled him and others about her age. Bourliot and Hochglaube assembled a grand jury packet that included four witness statements describing how she misled others about her age, a copy of her Facebook page, and 17 character letters from teachers, friends, coaches and family, on behalf of the young man. After the "no bill" his case was expunged. (February 22, 2012)

² James Pinkerton, *Charge dropped in 41-year-old murder case*, Houston Chronicle (November 5, 2011-12:10 a.m.), <http://www.chron.com/news/houston-texas/article/Charge-dropped-in-41-year-old-murder-case-2252193.php>.

String of “no bills” and dismissals: Recently lawyers in the office have obtained seven other dismissals after grand juries found there was insufficient evidence to indict those cases. Assistant Public Defenders Te’iva Bell, Juanita Barner, Cecelia Valentine, and Tanya Terry, each put together grand jury presentation packets that helped defeat indictments in those cases. Cecelia Valentine obtained two other post-indictment dismissals.

Motion to dismiss granted on 31-year-old murder case: After two days of testimony, Judge Mike Wilkinson dismissed the 31-year-old murder charge against the client of Assistant Public Defender Monica Gonzalez. The client lived openly in Houston, throughout Texas, and Georgia during that time, and was brought back to Texas to face charges he didn’t know existed. Ms. Gonzalez credits Sarah Wood in the appellate division for preparing a memorandum on case law and investigator Joe Acuna for a thorough investigation. (March 2, 2012)

Case dismissed, client innocent: Assistant Public Defender Eric Davis represented a college student accused of robbery. Because PDO investigator Eric Baumgart was able to quickly recover the store’s videotape, Eric Davis was able to show the prosecutor they had arrested the wrong person and charges were dismissed. Absent those fast actions, the client would have likely spent weeks or months in custody.

Mental Health Division

Reducing confinement, increasing treatment: The lawyers in the misdemeanor mental health division succeeded in quickly moving defendants out of the criminal justice system into placement and treatment. Over the last year, they have represented acutely mentally ill clients in 1144 cases. Of those, 321 or 28 percent, were dismissed. Resolutions that minimize the time mentally ill persons spend in the jail saves the County money, as treating mentally ill inmates cost several times more than housing prisoners in general population.

Testimony before the House Criminal Jurisprudence Committee: Dr. Floyd Jennings, Special Counsel to the Mental Health Division, was invited to testify before the Texas House Criminal Jurisprudence Committee on the committee’s interim charge regarding sentencing mentally ill defendants. Dr. Jennings urged the committee to increase the availability of alternatives to confinement for the lowest level offenders; increase resources to provide psychiatric services in jails with the goal of reducing the need for competency restoration and the length-of-stay in jail for persons needing competency restoration; increase availability of post-disposition mental health treatment and housing; and continue funding public defender offices with a mental health focus. (February 29, 2012)

Training district attorneys: Dr. Jennings has made two presentations before attorneys at the Harris County District Attorney’s Office (DAO) on mental illness and the criminal law. In September 2011, he made a presentation on changes to chapter 46B of the Code of Criminal Procedure. This March he made a presentation on “Mental Health for Criminal Attorneys,” with Jennifer Varela, LMSW, of the DAO. (September 2011; March 1, 2012)

Juvenile Division

Newest division: The Juvenile division was the last component of the office to begin taking cases. Since December 2011, those lawyers have begun accepting appointments in the Juvenile District Courts.

Nonsuit for alleged probation violation: Jackie Gravois prevented her client from having his probation revoked. Her client was on probation and was doing well. The D.A. filed a new case on the client for assault after he had been on probation for eight months. However, the alleged assault occurred a month before the client was placed on probation. Jackie argued that her client's probation could not be revoked for an offense that occurred before he was on probation, and the judge agreed. (December 8, 2011)

Women's Court: Assistant Public Defender Leah Shapiro has participated in a court program that seeks to help young women who need special attention because of suffering abuse.