**Interview – Wednesday, December 9, 2015: Will Holgate (by phone)**

**(This interview was conducted with an earlier draft of the Interview Protocol and the numbers correspond with the numbers in the prior draft)**

Resides in Austin.

Graduated law school in 1970.

30-40 years as a criminal defense lawyer. Solo practice.

Works from his home; no separate office.

19. Been taking cases in Comal Co. since about 2004.

20. Only accepts felony appointments; claims he is qualified for the most serious cases.

21. Travis, Caldwell, and Hays Counties.

22. No.

22. Private Practice / Felonies and Misdemeanors

23. Not many cases in CC. Has 3 now pending. Caldwell – 1; Hays – 3; Travis – 10 felonies and 5 misdemeanors.

24. 10 retained criminal cases.

25. No employed staff. Will hire persons to do typing for him when necessary.

26. Believes caseload is about right.

27. Been selected by several clients since CC started.

28. 2 or 3 felony cases.

29. 4 other appointed cases through rotation system.

30. Believes choice clients “seem to be better clients;” more receptive to their defense lawyer. [Later suggested that he obtained “good results” for clients that selected him and that this may account for their attitude.]

31. No effect on prosecutors.

32. No real expectations before CC began.

33. Told by judges about CC before it began. Did not receive correspondence about the program in advance. [Most likely not accurate.]

34. Does not know what defendants were told.

35. It was consistent.

Yes. He is not aware of how the assignment process has changed since CC was begun.

In felony cases: Ds don’t proceed w/o a lawyer; they either are assigned counsel or have a retained lawyer. Proceeding w/o a lawyer and then requesting counsel later does not arise in felony cases. (Seemed to suggest that “standby counsel” would be designated but that term was not used.)

Lawyers receive notice from the court administrator’s office informing them that the case to which they are appointed is a CC case. You will continue to receive cases until you advise the court administrator’s office that you want off the list.

Not observed any changes in number of defendants who proceed pro se.

No idea whether more retained cases since CC was begun.

No information whether there have been changes in the number of defendants who have requested a change of counsel since CC began

Declining new cases is done by notifying Court Administrator’s office, as noted above.

Can’t recall any cases where he has sought to w/draw since CC was begun. As a matter of practice, if a grievance is filed against him by a defendant, he will seek to w/draw.

No change noted in the way vouchers are processed since CC was begun.

Re fees for retained criminal cases are 5 times as much as paid for assigned counsel work.

Takes cases because defendants need a lawyer and the fees paid is “all the market will bear.” All counties are low in terms of what they pay. Hays, Caldwell, and Comal pay better than Travis.

Difference in representation for indigent cases vs. retained: “I don’t baby people” in indigent defense cases; will spend more time with retained clients. But all defendants receive the same representation, indigent or not.

37. No. Same representation provided to both.

38. “With retained clients, I hold their hand more. I explain things better.” With court appointed cases not so much. [NL Comment: obviously, the representation is not quite the same since communication is greater with retained clients, and communication is a prerequisite in representing clients.]

39. 1 or 2 days.

40. Client initial interviews last 1 to 1 and ½ hours; does not have set questions, but he has been representing persons for 30 to 40 years.

41. Does consider and apparently asks about collateral consequences. Mentioned housing, voting, etc.

42. Appears that he does not seek pretrial release of defendants charged with felonies in jail because defendants don’t typically have the money to make a lower bond. Comal County is slow in indicting and if no charges filed in 90 days he can file a writ and will do so to obtain the defendant’s release.

43. Has had some defendants (mentioned 2, I think) who did bond out, but he met them in the jail before they made bond.

Claims to investigate all of his cases. Does it either by himself or will seek funds for an investigator from the court. Mentioned a case in Hayes county of aggravated kidnapping where an investigator was used.

Judges in Comal County are good about granting investigator requests. Usually in the amount of $1,000. Investigators make out better than the lawyers.

Has sought funds for experts; mentioned a rape case where he did so. Response of judges for funds for experts characterized as “excellent.”

Believes he tries a high % of his cases, estimated 5%. Does 1 to 3 trials a year.

Wants to know the cases he tries very well.

For sentencings: brings in witnesses. Does not do sentencing memorandums. Defense lawyers do not attend presentence interviews of defendants.

45. He thinks that because of CC defendants trust him more. Referenced two cases where he received a good result for the clients, and this may account for the attitudes of the clients. In general, clients don’t trust defense lawyers; it takes them awhile to open with the defense lawyer.

46. His CC clients were “really satisfied” with him. See number 45.

47. About the same.

48. None. Mentioned that he was not sure if the judges knew which cases were CC and which were not.

49. No.

50. “All equally satisfied.” [NL comment: This answer is somewhat inconsistent with what was said earlier. See numbers 45 and 46.]

51. No.

52. He thinks CC has worked well for defendants.

53. No.

54. Does not know if CC should be continued. He feels “like the patients are running the asylum.” Good effect is that client may be more satisfied. Bad effect is that “lawyers may be bad mouthed by defendants” but it may not be the lawyers fault that a better result was not achieved. He also mentioned that some lawyers may get too many CC cases, but he acknowledges that lawyers can take themselves off the list.

**The following interviews were done in New Braunfels in the District Court building and were in-person interviews unless otherwise noted. The revised Interview Protocol was used for all of the interviews.**

Monday, December 14

Sara Hartin

N.B.

Works out of house

Years since law school – said 15 years. Actually: she graduate law school in1981.

1. Since 2010. About 5 years.
2. Only misdemeanors
3. 98% of cases are assigned. Rarely retained.
4. Only class C misdemeanors; mainly DWIs; handles no felonies. [was a prior municipal court judge in Comal County]
5. Has 2 assigned cases now that are both client choice.
6. No.
7. Yes. Not too many. Planning to retire next year. Does not practice in other counties.
8. Yes.
9. About 15 cases.
10. Does not know.
11. No expectations. “Believes because of CC clients listen better to their lawyers; they are more satisfied. It’s a very good system”
12. Does not recall receiving info. about CC. [But did attend training program where I spoke about CC.]
13. No idea.
14. Does not know.
15. Receives notice through the clerk’s office. There is a sentence on the form.
16. Not sure how you decline an appointment if you want to take your name off the list.
17. A – does not know; B – does not know; C – not aware
18. No.
19. Not aware of it. Does not think it happens.
20. Compensation for retained compared to assigned cases – “about the same” / usually her retained cases are traffic offenses.
21. Yes. But spends more time on a case than for what she is paid. So her payment should be higher. $350 is what she receives for misdemeanor cases, and suggested that this is always or normally her fee.
22. NOT ASKED.
23. She stated two things in conflict. Her representation has not changed. But she also said that she goes to the jail more often; writes more letters; wants to be sure they understand things and show up at court. Thinks that some individuals do not understand why it is taking so long. B. No C. No. But has never taken a case to trial whether a bench trial or a jury trial.
24. Visits jail immediately after being appointed. 1 to 2 days at the most.
25. All defendants are in custody.
26. One hour. No set list of questions.
27. Yes. E.g., DWI cases; but efforts to get her to list Collateral consequences were unsuccessful.
28. No. Does her own investigations, if necessary.
29. No.
30. Has had none.
31. Yes. Increased level of trust because they are choosing the lawyer. Clients talk to one another in advance of selections.
32. Re satisfaction – yes, because clients make the selection. “Somewhat.”
33. Somewhat. Believes other lawyers agree: talked to Gina Jones and John Esman.
34. Does not know.
35. No change since CC began.
36. Does not know.
37. A – Yes. She would think so. Other groups – does not know.
38. No answers.
39. “Definitely” re continuance of client choice
40. Wishes other counties had the same program of CC.

Monday, December 14

Edwin Matias (Eddie)

San Antonio residence

Works from home but has a “virtual office” with a fax and place that gets his mail

Graduated law school 1986

Practicing as a crim. defense lawyer for 2 years. Has handled felonies for about 1 and 1 and ½ years. Previously was an attorney for the city of San Antonio

1. Taking cases in Comal C. for about 1 and ½ years.
2. Also takes cases in three other counties. Handles state jail felonies and 3rd degree felonies in Comal. In Hayes County only takes misdemeanors.
3. Answered above.
4. Takes only assigned cases. No retained cases. This is a kind of retirement job.
5. Has now about 30-35 assigned cases in all counties. Has only about 4-5 in Comal County.
6. None
7. It’s o.k. now – right about now. It will be too few cases as he becomes more proficient. Attends all kinds of seminars in order to learn about being a better defense lawyer. This is a kind of “retirement job” for him. Wants to be active.
8. Maybe chosen once or twice in Comal County. In one, he was the second choice.
9. See above.
10. Has received about 20 cases through regular rotation.
11. Believe CC “creates a greater bond with client than when court selects counsel, and he feels a greater sense of responsibility.”
12. Yes. Got mailings about the program. Also, he read about the program in the NY Times. Had read that implementation of the program was delayed.
13. No idea.
14. No idea.
15. Learns of appointments through faxes sent to virtual office. Knows the notification system for learning about assigned cases through the wheel and when a case is through client choice.
16. Knows that lawyers can take themselves off the list for appointments.
17. A – “No clue.” B – Believes not more retained cases, but perhaps fewer because defendants figure out that they can obtain lawyers for free. [e.g., Gina Jones situation]. C – No knowledge
18. “No problem with clients wanting to replace him.”
19. Not seen this in Comal County
20. No clients represented for a fee.
21. Did not complain about fees.
22. Not applicable.
23. No idea. A – No; B – Not applicable; C – Not applicable re retained cases and few cases in which he has been chosen.
24. 70% of clients when appointed. Sees them within a few days; sends a letter if going to be delayed.
25. If defendants not in custody, calls them if he has a number. Sometimes cannot reach defendants.
26. At least 30 minutes. It’s a “meet and greet” meeting. If he does not have information about the state’s case, he will merely get the defendant’s version of what happened.
27. Does not inquire much about collateral consequences. Usually only immigration issues, if any. Knows of the ABA website.
28. Most cases are not complicated so not a great deal of investigation. Police will not talk to him so does not pursue them. Has not asked for funds for an investigator.
29. Has not asked for experts at court expense. Plans to ask for funds to hire an expert re a breathalyzer.
30. No trials. One case came close but judge pushed prosecutor for a better deal.
31. Re level of trust: “does not have sufficient basis to judge. Trust comes from a lawyer spending a lot of time with the client and explaining things to them.”
32. Yes. But he has only a limited basis to make this judgment. [Has had few CC cases]
33. “I feel a greater obligation to get them the result that they want.” “If you pick me, it’s like they retained me.” Leads to a sense of “connection with the client.”
34. Not asked
35. Not asked
36. Not entirely applicable – no retained cases and few client choice cases
37. No real knowledge
38. Not answered.
39. “Thinks it is a good idea.” But concerned that it does not work well for new lawyers because they do not yet have a reputation among clients and makes it more difficult for such lawyers. Once went to see Jeanie because he was not getting any appointments through the wheel and clients were not choosing him. Also, he would have preferred a questionnaire completed by lawyers where more information could have been provided. Perhaps some cases should not be included with client choice so that in these types of cases new lawyers could be appointed through the wheel.
40. Major effect of CC – some lawyers will get fewer cases than they would have received through the regular rotation process. But also realizes that CC gives defendants “a greater sense of control.”

Monday, December 14

Joe Garcia

Lives near NB

Has separate office

Graduated law school in 1981.

Practiced criminal defense since 1983.

Solo Practice

1. Indigent defense in CC since 1997.
2. Qualified for the most serious cases.
3. Has some cases in other counties.
4. About 60% of his cases are private. Estimates that 40% of cases are indigent. Among his workload are CPS cases and family law private practice cases.
5. Currently has about 125 criminal cases; about 80 misdemeanors and 45 felonies. These are about 60% privately retained and 40% indigent.
6. No staff support.
7. Concedes probably too many cases. It would be more comfortable with about 60-75 cases.
8. Yes.
9. Selected by defendants in approximately 50 – 60 cases. This is an estimate.
10. Has received relatively few cases from the wheel.
11. Did not have expectations about CC.
12. Not applicable; [Joe Garcia is one of the lawyers with whom Edwin and I met on several occasions to discuss CC.]
13. He assumes defendants were adequately advised about the program since if you are the “lawyer du jour” because you just won a case, you get a flood of CC cases. (Joe is referring to a jury trial that he won in May, was written up in local paper, and was followed by a number of new CC cases.) Thus, as Joe states: all of a sudden “it’s a good thing, but then a bad thing,” meaning you get a lot of new cases very quickly.
14. No knowledge.
15. Receives Fax from courts that informs whether new case is CC or he was selected through wheel.
16. Yes. He took himself off the list for appointments in felonies in about September but then about a month or a month and half ago asked to be reinstated since his caseload was in better shape.
17. A – no increase since CC began; B – No idea; C – has no idea whether more or less
18. No. Joe once tried to “dump a client,” believing they were not getting along; judges will listen to him with such a request. But this case was not in any way related to CC.
19. He suspects that it might happen. But he does not really know. Has seen prosecutors and defendants discussing dispositions but does not know whether or not counsel may have been waived.
20. No comparison in payments for retained vs. indigent cases. “Oh lord, 500 to 1,000 percent more for retained cases.”
21. No. Obviously, lawyers are underpaid. Lawyers are “incentivized not to do the best job for the client.” Compensation from CPS is better than in indigent defense cases. You receive $70 per hour and vouchers are not cut.
22. “I have a bar card. I am not going to leave persons who need a lawyer in the lurch.”
23. No real changes in representation due to CC; but he has introduced some case management reforms, such as trying to obtain discovery from the prosecutor sooner. A, B, and C – No distinctions.
24. 1 to 3 days. Not more than 5. Sometimes files motions for reductions.
25. Depends. Some defendants are diligent in wanting to meet; others are not. Meetings are held in his office.
26. 1 and ½ hours; sometimes more.
27. Yes re collateral consequences.
28. “Not as often as I should.” During past year has asked for an investigator “maybe four times.”
29. During the past two years, he has applied for an expert 6 times. E.g., forensic, psychiatrist; ballistics; Id identification. Has had as much as $5,000 authorized; but he has to complain, carry on, if necessary, to get sufficient funding for experts.
30. Has had 11 jury trials during the past year; has had very good outcomes. Rarely ever has a bench trial. Reason for so many trials is the difficulty of negotiations with prosecutors
31. Re increased level of trust because selected: “Would like to think so.” Relates back to lawyer du jour comment. Recent victory may elevate trust.
32. “Hopes so” re elevated level of trust because he was selected. But does not actually think it matters.
33. Clearly, even when defendant’s situation is dire, it is gratifying to know client wants you.
34. No.
35. No.
36. Just goes about his work – does not keep track whether the case on which he is working is a CC case.
37. “No” as to all personnel. Has not seen anything that CC has effected.
38. What can be improved: beyond seeking more bar participation and higher fees, CC has worked well. Think it’s a fine program.
39. “I don’t see any reason not to continue the program.” He is interested to see what clients think. From his personal situation, it does not matter. He plows ahead no matter with same representation regardless of whether a client choice case or appointed by the wheel. Problems with the CJ system but not with client choice. Probably the program does squeeze out a few marginal lawyers.

Monday, December 14

David Nigh

Lives in NB

Separate office near courthouse

Graduated law school in 1980

Criminal defense since 1992

Sole Practice

1. Indigent defense representation in Comal since 1992.
2. Handles Misdemeanors and Felonies. Also handles family law cases and termination of parental rights.
3. Handles cases in two other nearby counties
4. 40% of cases are criminal; 40% are family law; 20% probate and real estate; of the 40% criminal cases, about 75% of the cases are indigent, whereas about 25% are retained cases.
5. Has about 20 – 30 pending cases in Comal County. Of his misdemeanors, probably 50% are client choice; of his felonies, probably 30% are client choice.
6. Employs one paralegal.
7. Thinks his caseload is “about right.”
8. Yes. Has received CC cases. See above
9. Covered earlier.
10. Covered earlier. In discussing number 10: he stated that we was told that that there is a wall in the jail with lists of lawyers; one list is of good lawyers and the other of bad lawyers. If you are on the bad lawyer list, it’s going to be tough to be selected, Nigh comments. [Don’t know if the “wall story” is true, but obviously quite interesting. Probably should ask others if they have heard of this.]
11. No expectations.
12. Yes. Info. about CC was adequate. Understood the basic concept.
13. Believes defendants are adequately advised. He has personally witnessed Waldrip, Stephens and Gray give advisements re CC
14. No knowledge
15. Understands that he receives a FAX from the court’s office and is told whether the appointment is client choice or through the wheel.
16. Understands the process for declining cases. Has not used this process and thus never asked to be taken off the list of lawyers.
17. A, B, and C: has not observed any changes.
18. No client has asked that he be removed from the client’s case.
19. No personal knowledge; has not heard of it happening.
20. Great difference in payments between fees for retained and indigent defense cases. 5 times more charged for retained criminal cases; later put the multiplier at between 4X – 6X. Pleas in felony indigent cases are usually paid at about $650.
21. No. But “does not take cases for the money. He likes helping people. It’s a fun area of law.”
22. See above.
23. A, B, and C: Denies any differences in how he practices whether case is CC, retained, and assigned through the wheel. It would be “wrong” to make distinctions on that basis. Commented that it’s always easier to communicate with clients when they are not in jail.
24. Within 7-10 days before interviewing jailed clients; may vary and be longer if holidays involved.
25. Most on bond call the office and set up an appointment. Very few have to be chased down. He meets with defendants in his office.
26. ½ hour to one hour.
27. Some discussion of collateral consequences.
28. Has not applied for funds for investigators during the past year.
29. Maybe one or two expert witness requests. Maybe one psychiatrist.
30. 98.5% are guilty. Tries maybe 1.5% of his cases. Maybe 1% of his cases. During the past two years he has had 2 jury trials. One in 2015.
31. “Trust is probably higher” with CC. Reason for this is because you have been chosen from the “good lawyer list.”
32. “Depends on their maturity perhaps.” Defendant’s satisfaction “is not up to the lawyer.” If client receives a bad outcome, it’s difficult for the lawyer to overcome it.
33. “Tries to treat all clients the same. If you treat clients well, they will return it – that’s how client satisfaction is derived – through the lawyer’s treatment.”
34. None observed.
35. No. Jail visitations have not changed.
36. No direct answer. Commented that if a case takes a long time to resolve, this can lead to client dissatisfaction. Also, the result of immaturity. Not really due to client choice.
37. A through D – No opinion.
38. No real recommendations about the CC project. Believe “that it was set up well.”
39. “Probably would favor its continuation because he gets chosen a lot.” But it comes back to the purposes of the program. [At the conclusion of the interview, I explained various rationales for the program, and he thought they all made sense, such as independence, autonomy for the defendant, etc.

Tuesday, December 15

Paul Finley

New Braunfels.

Has separate office

1975 law grad.

Asst. DA for nine years

Is part of a 7 person law firm; he’s a shareholder in the firm; only person in firm who does indigent defense work.

1. Since 1985
2. Felonies and Misdemeanors; probably on the most serious felony list
3. Indigent defense comprises about 30% of his law practice.
4. 70% is private practice cases. Family law and probate is the bulk of it.
5. Has about 50 cases in Comal County. Felonies are 1/3rd of them; misdemeanors are 2/3rd. Has very few retained criminal cases. Great majority of his criminal cases are appointed. Does not take indigent defense cases in other counties.
6. Has a secretary; a paralegal; no investigator.
7. Caseload is “just right.”
8. Has been chosen through CC. His cases have been about 50/50 – CC vs. the wheel since project began.
9. Received about 60 new cases since February 2015; broken down 50/50 between CC and the wheel.
10. Covered above.
11. No expectations for the program. Figured that some people would be advantaged by the program and able to obtain the lawyer they wanted.
12. Yes. He received adequate information; remembered my speaking at the September 2014 seminar about the program explaining how it would operate.
13. Does not know. Assumes that the advice to defendants has been adequate – they make lots of selections.
14. No knowledge.
15. Understands the notification system; receives FAX from the court that informs about type of appointment
16. Understands that you can take yourself off the list. Has not done so.
17. A through C – No knowledge.
18. Rare event for client to ask for a different lawyer. Had a homicide case just last week where the defendant wanted a different lawyer; judge instead appointed a second lawyer to work with him; defendant still was not satisfied and ultimately he was excused and a female lawyer appointed. Only time this year that anything like this has happened.
19. Did not ask / oversight on my part.
20. Charges $250 per hour in retained cases. Fees in retained cases are 2.5 X more than in indigent defense cases.
21. Regards fees in indigent defense cases as “reasonable” for “public sector compensation. This is about all you can expect.”
22. Wants to provide “service.” “It’s the Christian thing to do.” His law partners tolerate his indigent defense work. Probably they would prefer that he not take indigent defense cases.”
23. No to A, B, and C.
24. Knows that they want you to interview in 24 hours; does get it done within 2 days of appointment.
25. Contacts Ds who are released and leaves it up to them if they want a prompt meeting or want to wait until discovery is complete.
26. 45 mins to one hour in felonies; less in misdemeanors.
27. Covers some collateral consequences.
28. Does not often use investigators. Maybe in sex offense and homicide cases. During past two years, investigators sought in perhaps six cases. Amount allowed ranges between $500 and $1500. Always there is a cap on expenditures.
29. Occasionally has sought experts. Examples are DWI cases and the need for a psychological evaluation.
30. 2 jury trials in 2015; 2 in 2014 – probably. [Seemed uncertain about last year.]
31. Trust questions: no to both about changes due to client choice.
32. No.
33. “Maybe there is a greater sense of satisfaction when you know the client has selected you.”
34. No.
35. No.
36. Believes that “some clients may feel better [i.e., more satisfaction] with CC [since they selected the lawyer. But does not really know.
37. A – he knows that Waldrip supports CC. No knowledge re B, C, and D.
38. Does not know what we could have done differently in implementing the program.
39. Yes. Believes it may help “efficiency” in that Ds may me more accepting of the defense lawyer since they made the selection.
40. Nothing to add.

Tuesday, December 15

Shortened interview because Jennifer said at the beginning she did not have much time!

Jennifer Dillingham

Graduated law school Dec. 2009

Criminal defense since May 2010

Practices with Frank Suhr; she is his associate; they do have an office.

1. Covered above.
2. For indigents, they handle only misdemeanor cases; some retained felony cases.
3. Takes cases by appointment in one other county.
4. Retained felony cases.
5. Not pinned down.
6. They have 3 administrative assistants.
7. Between Frank and Jennifer, they have about 500 pending cases. More than 200 of these are misdemeanors. They also handle estates and apparently some other civil cases. States that they could handle additional cases. Things have been slower this year than in the past. Only about 10% of their caseload is appointed misdemeanor cases.
8. Yes.
9. Does not know the number of CC cases. States that there are “quite a few.”
10. Yes – also appointed cases through regular process.
11. Not covered.
12. Not covered.
13. Not covered.
14. Not covered.
15. Not covered.
16. Not covered.
17. Not covered.
18. Not covered.
19. She does not think this happens. Judges are good about making sure there is a waiver on file.
20. Retained fees more than 10 times that of appointed counsel cases. So if there is a $270 appointed counsel fee, the payment charged in retained case would be about $2700.
21. Not answered.
22. “I was an indigent kid.” Parents did not have much money. Views indigent defense work “as a courtesy to the court.” “You do get some bad people.”
23. Not covered.
24. Not covered.
25. Not covered.
26. Not covered.
27. Not covered.
28. Not covered.
29. Not covered.
30. Not covered.
31. Does not think so [re level of increased trust]
32. No.
33. Re lawyer’s personal satisfaction: “Makes you feel better because client selected you.”
34. Not covered.
35. Not covered.
36. Not covered.
37. Not covered.
38. Not covered.
39. “It’s nice that they [defendants] have an opportunity to choose their lawyer.” Some names infrequently appear; so these lawyers used to receive more cases.
40. Believes that some lawyers have been weeded out from receiving cases because they do not have positive reputations. Regards CC as a great program for the justice system. Believes that perhaps more information about the lawyers should be made available to defendants. Also, mentions that defendants may need more time to decide upon a lawyer and suggests two weeks for a decision making period. [NL comment: this potentially cuts against prompt appointment of counsel, investigation of cases, pretrial release, etc.]

Tommy Vaughn – Wednesday, December 16, 2015

NB

Yes – separate office

2007 law graduate

4 years as a crim. defense lawyer

SP

1. 4 years.
2. Serious felonies and below
3. Yes – Now in Hayes; Old cases in other cases
4. Private practice only in criminal defense
5. Cases in Comal: 40 estimate; approximately 75% misdemeanors; 25% felonies – this includes retained and appointed cases. Indigent defense cases would be 15, i.e., about 5 misdemeanors and 10 felony assigned cases
6. No staff support.
7. Cases in other jurisdictions – 40 other cases; so a total of 80 cases and a mixture of appointed and retained. Caseload is about right.
8. Yes – defendants have selected him.
9. Since CC began: Removed self from felony list in April or May and thus no new client selection cases since then. Early part of CC – received probably about a dozen new misdemeanors and about a dozen new felonies during early mos. – estimate. [Previously told me during an interview in May 2015 that this was more cases within two months or so than he had received during all of 2014.]
10. Has received no new indigent defense cases through rotation or CC once taken off list.
11. Expectations for the program: small no. of lawyers would receive about 80% of the cases. And this happened in the early stages. But then he and Gina removed themselves. He guesses that appointments now are more spread out – just a guess, especially in misdemeanors.
12. Knew about the program in advance since he was part of small group with which Edwin and I periodically met. Thought program was reasonably well publicized.
13. Believes Ds are adequately advised of the program.
14. Knowledgeable about notifications of appointments.
15. Covered.
16. Familiar with way to take self off list. Has done so. Does not plan to declare himself eligible for more CC appointments, which also excludes rotation appointments.
17. A and B and C – No opinion.
18. No
19. Never seen it. Never heard talk about it.
20. Retained cases are paid far more than court appointed fees. Felony case – retained is likely to be $5,000 and a court appointed case between $500 and $1,000. A misdemeanor DWI -- $3,000 for retained vs. $300 for appointed.
21. No.
22. Fees are not reasonable, which is why he takes no more appointed cases. Does take them in Hays. Low fees and frequent client selection were ruining his private practice and that’s why he is off the list. He “ran the numbers and payments on his cases,” and he was earning $38 per hour. Keeps time on all cases, including indigent defense cases.
23. Now representing fewer defendants. What he does on cases has not changed. And now does not seek indigent defense appointments, which he used to do when he started. Works just as hard on all of his cases. But with a DWI case he will represent D at driver’s license hearing, but not in an appointed case. [See May 2014 notes re Tommy.]
24. ASAP. Typically within 48-72 hours. Other lawyers: no personal knowledge. Probably some who delay the visit to the jail.
25. Initial interview: 45 minutes.
26. Collateral consequences: “Oh sure.” Driver suspension. Enhancements to penalty. Licensing. Familiar with ABA database. Has it bookmarked it. Familiar, too, with Texas Punishment Manual. TCDLA – Author is Keith Hampton – very handy! Lists all Texas collateral consequences.
27. Investigators – never seeks in misdemeanors – in felonies seeks investigator in 20 to 25% of the cases.
28. Experts – misdemeanors – zero; felonies – 10% of cases. Examples: Mitigation, DNA expert.
29. Trials during past two years in Comal County – 15 to 18. Gina and Joe go to trial more than Tommy, but Tommy thinks he is catching up. Susan Schone would likely be next in frequency. Reason: “we are not part of the get along gang.” Also, believes that they know their cases better. Client said to me: “you did more for me than I expected from a court appointed lawyer.”
30. Somewhat more trust. Some family and friends do internet research, and he has been told that he was selected due to website. So when this occurs, they have more trust in you from the beginning. But in many CC cases that he received, neither D nor family did research about him. And in those no increase in trust.
31. Yes, more client satisfaction due to CC, but hard to have personal knowledge of this.
32. No. As cases proceed, he forgets which cases are CC and which are not.
33. Not that he knows.
34. Not asked.
35. Not asked
36. A – D – has heard court personnel complain of workload. No effect on others.
37. Should be continued. Because of the principles that motivated the program. No suggestions that occur to him. But no major changes that he can think of at the moment. Some appointments are simply due to the alphabet. “Andy Adams” – fictitious name – if this is the first name in binder.
38. See above.
39. I was impressed at how seamless the transition to CC was. Some persons thought the sky would fall. But it did not. Once CC started, the lawyers in the County were barely aware that it was underway.

Wednesday, December 16, 2015

Barbara Ancira

Comal County / Near NB – but 21 miles away.

In city where she lives.

Graduated in 1991.

Since 1992.

SP

1. Indigent defense in Travis for first nine years. Came to Comal County in 1998.
2. Felonies and Misdemeanors in Comal. Has had very serious felonies in the past. Recently less serious felonies.
3. Minimal representation outside of Comal County
4. Case types: family law, probate, general civil, probate, indigent defense, CPS. She does not take a lot of retained criminal cases.
5. Comal County criminal cases: 40 estimated at present.
6. Has a legal assistant.
7. Total matters or cases: 100 different matters – estimated. Cases are at various stages. She can keep up with her workload.
8. Has received CC cases
9. Majority of current pending cases are CC. Of her approximately 40 appointed cases, probably 35 are client choice.
10. Balance of cases appointed through the wheel. Some of the cases may precede CC – Feb. 2015.
11. Expectations for the program: had some concerns because her name is at the top of the list lawyers. But defendants have told her that they had heard of her. That’s why she was chosen.
12. Understood the program. Recalls my speaking at fall 2014 seminar in NB.
13. No knowledge. In Gray’s court, they have a list up on a screen.
14. No.
15. Receives FAX – information discloses whether appointment is CC or regular appointment.
16. Yes; but has not taken self off list.
17. It sometimes seems to be a matter of what the first person says. If the first person elects to go pro se, others will follow suit. Yes, she has had Ds who want to change their lawyer after choosing their CC lawyer. There is this effect of CC, in which the D tells the lawyer that “since I chose you, you need to pay more attention to me.” If a D is not paying for your services, Ds do not sometimes appreciate what you are doing. [NL comment: If true, is this not a failure of lawyer communication with the client?]
18. See above.
19. No knowledge. Seen negotiations with Ds but assumed that counsel has been waived. In Bexar County, she had seen this sort of thing but it was a long time ago.
20. Retained case would be 6 times more expensive than what is paid for indigent defense work.
21. Are fees reasonable? It depends. In misdemeanors, flat fees are fair. $250 for a plea is not so bad. Fees in felony courts are terrible. It’s a disincentive to do much work for the client. The more you work, the less you are paid. In felony courts, she keeps time. In felony cases, based on hours, less than $50 per hour is received. Won’t cover even her travel time.
22. “Because I like the practice. It keeps me in the courtroom. Became a lawyer to be a litigator.”
23. A, B, and C are hard questions. But sometimes she may go see a client who has chosen her. Recounted case where client was visited because she wanted to protect herself from being criticized by the client among other defendants; in other words, because of CC she wanted to protect her reputation. But generally does not distinguish in her practice among retained and appointed cases. In the situation she recounted, she did not really have anything to tell the client but knew from a letter or phone call that client wanted to see her.
24. Within a few days. Do my best. 4 days, sometimes a week. It’s a two-hour disruption of her schedule as jail makes you wait. And she is not paid for waiting.
25. If not in custody: writes them a letter. But I leave it up to them about when we meet. Half the cases she meets client in court and half in her office.
26. Not asked
27. Not asked
28. Yes. But probably not as often as I should. No discovery until indictment and that can be a long time. If you can’t get a writ after 90 days, the def. sits in jail.
29. Experts – even less. D must want to fight the case. Ds sometimes just want to plead.
30. Not often. Maybe one jury trial over the past year. Probably more misdemeanors
31. No. They are more demanding.
32. No.
33. I would not call it satisfaction.
34. No.
35. No. But has gone to jail on two occasions when she PERHAPS would not have done so absent CC. See answer to number 23.
36. No. Not more satisfaction. But more concern with CC cases because you don’t want to piss off the D. “A little more concern with not pissing off the CC defendants. And the CC Ds have more of an expectation of you.
37. Not asked.
38. Not asked.
39. Yes. Because CC will eventually weed out the bad lawyers.
40. The system needs to compensate lawyers better to be more competitive with retained work so good lawyers don’t abandon providing indigent defense.

Wednesday, December 16, 2015

Julissa Vela

NB

Office / NB / across from courthouse

2001 graduation

For 4 years (previously was a probation officer in Comal County before law school); was on maternity leave for 9 months; returned to Comal County as indigent defense lawyer some months ago.

SP

1. Since graduation.
2. All misdemeanors and 3rd degree felonies and state jail felonies
3. In 2 other counties she takes appointments.
4. Private practice. Just does criminal defense.
5. Total caseload: between 60 – 70 appointed and retained criminal cases. More appointed cases than retained. Perhaps 25% retained. In Comal County – 20 total cases, though this is an estimate. So a fair number in other counties also.
6. No support staff.
7. It’s about right. Majority are misdemeanors so not too time consuming.
8. Yes. Received CC cases.
9. Between 10 and 15 times. Was off on maternity leave when program started.
10. Hard to estimate number of wheel appointments.
11. No expectations, but figured that if she did a good job, the word would spread and she would be selected.
12. Adequate info. provided to understand the program.
13. Believes defendants are adequately advised about the program. But has not actually witnessed the process.
14. No knowledge.
15. Receives fax from the court. Informs of CC or rotation.
16. Yes. They can remove name from list if inundated with cases.
17. A – No. B – No. C – No.
18. No.
19. For a state jail felony: $500 if appointed case vs. $2,000 for a retained case. Multiplier of 4 for retained work. Misdemeanors will be paid at $250; will charge a retained client $1,000.
20. Believes that male lawyers may be paid better than females. Thinks it’s because she’s a woman. Gets $500 for a state jail felony; in Comal County believes males get $600. And payment in Guadeloupe is $650. It’s reasonable for doing indigent defense work.
21. Re whether fess are reasonable: see above.
22. “Good opportunity to learn” as reason for taking indigent defense cases.
23. Re CC: “I find Ds in these cases more willing to explore issues than they would previously and that’s due to a greater trust level.” That’s her perception at least. No to A, B, and C.
24. Within 24 hours, if at all possible.
25. 30 to 45 minutes.
26. Skipped.
27. Yes. Licenses. Has TCDLA book re collateral consequences.
28. Yes. One time.
29. No.
30. 7 trials in 2015. 3 felony trials; 4 misdemeanors. Won all three felonies. With the misdemeanor cases, she lost three and one was a mistrial.
31. Yes. Definitely perceives she is trusted more in CC cases. Sometimes they know of her in advance of their meeting. One defendant knew someone who went to High School with her so Defendant had heard about her.
32. Represents both retained and CC cases.
33. Yes. CC is sometimes more satisfying because clients are more willing to pursue issues that Julissa identifies.
34. No re changes in the processing of cases.
35. Yes – does visit jail more frequently. Because people know me, and I see clients who have put their trust in me by choosing me, and I don’t want to let them down.
36. Not Asked.
37. No to all categories. Some lawyers have been more busy, but nothing further to add. Knows one attorney who she had heard has not gotten any appointments.
38. Nothing to add.
39. Yes. Thinks it’s a good program. A def. has a say in their lawyer rather than receiving someone who is not to their liking.
40. Nothing further to add.

Wednesday, December 16, 2015

Wade Arledge

NB

Office / NB

1985

Since graduation

SP

1. In Comal since 1985.
2. Only Misdemeanors. No felonies.
3. 4 other counties in addition to Comal.
4. 75% of work is criminal; also does probate and guardianships.
5. Has about 100 criminal cases. 25% of his work is appointed. Rest is retained. Appointed accounts for 25% of income.
6. Has one paralegal for 25-30 hours per week.
7. Caseload is about right.
8. Yes – has received CC cases.
9. Quite a few CC cases. Cannot estimate the number.
10. Thinks he has had many more CC case than regular appointments.
11. He liked the idea of the program when he first heard about it. He was Pres. of the local bar. Promoted the project. Budget for court appointed lawyers has not increased for years. Hoped that project would lead to greater fees in the felony area. Misdemeanor payments are more reasonable.
12. Yes – received information about the program.
13. Believes that Ds are adequately advised about the program. Thinks Ellen has done a good job.
14. Not aware of any changes since implementation began.
15. FAX. Clarifies whether it is CC or appointed.
16. Yes. Has not taken self off list but has thought about it.
17. A and B – no knowledge; C – No
18. No.
19. “I don’t think it happens here.”
20. Court appointment fees are 25% of a retained change. “But I am cheap.” “I don’t give a shit about money.”
21. Fees are only reasonable for cases in which a client pleads. For a contested case, they are not reasonable. Charges a flat fee for court appearance. Does a lot of uncompensated work, e.g., to avoid driver license suspension when he has represented the defendant on the underlying traffic offense. But some cases may be disposed of by two court appearances, and a $300 fee is reasonable.
22. “Compassion for people.” “I like to fight with the Government.”
23. No to A, B, and C.
24. Always writes a letter to D in jail within 2 days. Visits with DA and gets discovery before visiting the D. If no hold on D, will apply for a PR bond. Usually Wade gets D’s out on a PR bond. Most of the time Ellen will let them out on a PR bond. But many have felony cases charged, etc. If he does not get them out, he sees them within two weeks.
25. Not asked.
26. See above.
27. Yes.
28. Not in misdemeanor cases. But some requested in felonies.
29. Mental health experts; competency.
30. No jury trials in 2015: 2 or 3 court trials in misd. cases involving only legal issues.
31. Ds like to be able to pick their lawyer. Some people feel empowered to choose their own lawyer. Some Ds have come to Wade for representation, they could not pay his fee, and he has told them to go to court and choose him.
32. Difference in satisfaction among Defendants: “I would hope so. But no evidence to support it.”
33. “Makes me feel good to be chosen. But it does not affect what I do in providing representation.
34. Not asked.
35. No. I am pragmatic – does not like being forced to visit the jail when nothing is going to be accomplished by doing it.
36. No. “We’re all independent but we never sit down enough and talk with another.”
37. No.
38. From a lawyer’s standpoint it has been seamless. Hard on court staff re recordkeeping. It has not been a burden for lawyers.
39. I see no reason not to continue CC. From the standpoint of lawyers, there are probably some who have gotten fewer cases. Would favor it elsewhere in Texas.
40. Nothing else to add.

Jennifer Gonzales

NB

May 2013 law grad

Office

Associate of Susan Schone

1. Early 2014 began in Comal County
2. Takes only misdemeanors
3. Only in Comal County
4. Private cases: family law. Only 1 retained case.
5. 15 – 20 criminal cases
6. One sec. shared with Susan.
7. Caseload is manageable – could take on more work.
8. Yes – has received CC cases.
9. Probably about half of her cases are client choice – 7 cases – 3 are Spanish speakers
10. Yes. The other half of her cases are through the wheel
11. Anticipated that she would get fewer cases
12. Yes. Received info. about the program.
13. Re defendants being adequately advised: One time in court when she heard bailiff or Kim tell a about the binder of lawyers who could be selected. Seemed reasonable in informing Def. about CC.
14. No knowledge.
15. Only one time did she ever receive a letter from a def. for whom she was appointed and who was in jail. About two weeks later she received something from the court about her case.
16. Knows you can take yourself off the list.
17. A and B – No. Can’t say. C – No.
18. No.
19. No. Seen prosecutors in Judge Gray’s courtroom talking to Ds but does not know if they had waived the right to counsel.
20. Jennifer has had retained misdemeanors – her fee for these is 3 X times larger than for appointed cases.
21. Re: are fees reasonable? I really can’t say. More would be nice. Still new as a lawyer, so she can live with the fee; does not know what the fee would be in a trial case.
22. One of the reasons: my brother got in trouble; heard complaints about defense lawyers – wants to help people out.
23. Now more familiar with process than at the beginning. But this is independent of client choice. “It’s nice knowing that someone has picked you. I appreciate it….” No difference in handling case based on whether its CC or wheel. She has not had many Ds who have been in jail. Maybe just two or three from the jail.
24. Within 48 hours or receiving notice of an appointment: Asst. will write to the defendant immediately.
25. At least 30 minutes.
26. Not asked.
27. Yes re collateral consequences.
28. No.
29. No.
30. None have gone to trial. One has been set but it got bumped. Has a DWI case: blood alcohol was .09; D denied alcohol use. Will apply for an expert for the blood if it goes to trial.
31. Thinks CC makes a difference in trust. But it’s hard to pin down. For some it may make a difference because they have selected a lawyer with a good reputation.
32. If they – Ds – select someone by reputation, they are likely to feel a greater sense of satisfaction.
33. It’s always nice to see when you learn that you were selected. There’s a sense of personal satisfaction; but after a while you tend to forget which case is through regular rotation and which is CC. The way she obtains the case does not change her level of effort.
34. No changes in way cases are processed.
35. Re visiting jail more frequently, that’s hard to say because most of her clients have been released.
36. In general, has had positive feedback from clients, but that’s not necessarily due to CC.
37. A – D; believes that it may have reduced the number of defendants who ask for a change of lawyer.
38. Not asked. But volunteers that she thinks it is working great.
39. Yes. Think it’s important for defendant’s to have the option.
40. Organization of the binder: had questions about it.

Thursday, December 17

Gary Churak (by phone)

Spring Branch / part of Comal County

Office in SA

Graduated 1982 / criminal defense ever since

SP

1. Since 1982.
2. Felonies only
3. Has taken cases all over Texas; Bexar County is where the Majority of his cases are.
4. Takes private practice criminal felony cases; indigent defense is only 15% of his caseload. Rarely takes civil cases
5. Open cases: maybe 50 -75. Does not know the number.
6. Comal County – has 3 or 4 pending cases. Several have been CC; maybe 3- 5 CC cases. Has one assistant.
7. You always want more cases; he’s in court everyday anyway.
8. –
9. –
10. Before CC, received perhaps ten cases per year through the wheel
11. No expectations about the program in advance. Ds whine whether it’s CC or rotation. They want out; want to know what’s happening, etc.
12. Received info. about the program in advance; understood it; not complicated.
13. Does not know.
14. Does not know.
15. Comal sends fax / indicates whether it’s client choice or wheel appointment.
16. Knows that you can tell the court that you won’t accept any more cases.
17. Skipped.
18. Not sure since program began whether any D asked to change him as their lawyer.
19. See 20.
20. Assigned counsel fees are about 10% of retained fees.
21. But fees are reasonable – County has only so much in the way of resources. Indigent pop, has grown so County is stretched to pay for indigent defense.
22. Why take indigent defense cases? “It’s income. And if he has to be in court anyway, it’s nice to receive a ck. now and then.”
23. CC has made no difference in how he defends indigent defendants. Then he added: You definitely spend more time with clients who are paying you. If paying you $5,000, you are going to give them more time then indigent cases; go to the jail to see them. “Hold their hands.” “For me: it does not work that to devote the same time an indigent compared to what I do when someone is paying me my fee.”
24. Meeting with clients in custody: “The difference is between a Lamborghini vs. a Kia; you are going to expect more from the Lamborghini than the Kia. I get to the jail as soon as I can. Usually it’s within a week or so after I am notified of my appointment.” [The cars were used to compare paid clients with indigent defendants.]
25. If D is not in custody, sends a letter and asks that D call for an appointment. Half of Ds respond.
26. Could be ten minutes or more; in Comal County, Defendants have not been indicted. In 90 days, you can get Ds out on a PR bond. DA’s office is difficult.
27. Collateral consequences: potential difficulties if prior convictions, but he does not go into collateral consequences. [Actually, did not seem to understand what I meant by the term collateral consequences.]
28. Occasionally I do. There are not many in which I can use an investigator. Maybe 1 or 2 through the years in Comal. Don’t do it all that often.
29. I have had experts for sanity evaluations. Mainly medical experts.
30. Probably 3 or 4 trials per year. 95% plead out. Comal is a small part of lawyer’s docket. No trials in Comal during the past two years.
31. Does not believe CC impacts client’s trust of the lawyer. Acknowledges this is his speculation.
32. Re greater satisfaction with client choice: No one is satisfied when they go to prison. Overall: No.
33. No.
34. Not asked.
35. No.
36. No.
37. Does not think CC matters. Same results – does not think it impacts anything. But says it may give some lawyers more cases than they would otherwise receive.
38. Not asked.
39. Re continuing CC: “Probably not. It does not accomplish anything. Does not add anything to the wheel system. The program can deceive Ds into thinking they are going to be better off because they chose their lawyer.”

40. Nothing to add. Comal’s flat fees are somewhat better than Bexar’s but overall fees are not as good.

Eric Rosen – Thursday, December 17

Austin

Office

Graduation 1978

33 years doing criminal defense

1. Felonies / most serious cases
2. Travis and Hays
3. Very little private practice / retained work.
4. Pending cases: estimated number is 35-50 felony cases.
5. Comal County: virtually all client choice cases. Total cases in the county is maybe about a dozen; these are mainly client choice cases. Most of his cases are in Travis.
6. His son is his law partner; do all of their cases together. Wife works as a paralegal. Cases are handled jointly with son.
7. Caseload is about right.
8. See above.
9. See above.
10. No expectations about the program.
11. Yes. Received info. and understood how it would work.
12. No knowledge re advice to defendants about CC.
13. No knowledge re whether procedures have changed.
14. Receives a FAX. Identifies if a CC on the FAX. Seems like they are all CC.
15. No information recalled about taking self off list.
16. Skipped.
17. No.
18. N.A. – does not handle misdemeanors
19. So few retained cases; so comparing fees with fees paid by the court is not really something he can do.
20. N.A.
21. N.A.
22. No changes in his representation due to CC
23. 3 days – is his estimate
24. If Defs. not in custody: tries to phone or text; occasionally will write. Goal is an appointment to be arranged.
25. 50 mins. To 1 hour.
26. Skipped
27. Applications for investigators: Yes. Applies for an investigator in about one-third of his cases. Generally obtains court approval. E.g., in sexual offense may want to investigate reputation of victim
28. Experts. Sentencing mitigation in a case – hired psychologist. Judges are receptive. Does not know whether or not other lawyers pursue mitigation in sentencing.
29. Trials: maybe prepares for cases to go to trial once a month. Four went to completion last year.
30. Believes that CC may impact trust in the lawyer; perhaps more trust because they chose the lawyer about whom they heard good things.
31. Re satisfaction among clients: maybe. Not really sure. Probably has a lot to do with the result.
32. Lawyer’s satisfaction is enhanced only “in the sense that the D has heard good things about me.”
33. No.
34. No.
35. Skipped.
36. But hopes that Ds have increased trust in their counsel.
37. No suggestions for improving CC. “For me it has worked well because I get more cases. Has been rewarding for me.”
38. Favors continuation of CC. You have lawyers about whom you hear bad things. But CC has a tendency to weed out more marginal. But concedes that some clients are hard to satisfy.
39. Nothing to add. Has heard from one attorney who was disappointed because he was not getting many appointments.

Elvira Mendez

Lives in Hays County

Office is in home

SP

Graduated 2002

About 10 years of criminal defense practice

1. Covered
2. In Comal County, does only felonies in Dist. Court
3. Travis, Hays, Lubbock etc. / practices in 5 total counties.
4. Private practice: retained cases in family law; very rarely probate; has lretained criminal cases.
5. Has now about 18-20 total criminal cases.
6. Hires part-time staff as needed.
7. Caseload is about right; could handle more cases.
8. Has received CC cases.
9. 3 CC cases is an estimate
10. And had received cases through rotation – maybe 4 or 5
11. No expectations about CC
12. Recalls receiving information re CC; felt that the program was adequately explained.
13. Re advice to Ds: saw one case where the program was explained to the defendant; thought it was explained well by the judge. Beyond this no knowledge.
14. No knowledge
15. Receives phone call; or receives a FAX; recalls one instance where CC was noted on the FAX. Does not recall that information with other appointments.
16. Does not recall the process for taking self off the list.
17. Skipped
18. No client has asked that she be removed from a case
19. NA
20. Court fees for indigent work not nearly the same re retained fees. Receives 8 to 10 times more for a retained case. Got 1,600 in an assigned case. Would have charged $10,000.
21. The fees paid in Comal are reasonable for modest cases; but overall not really reasonable at all.
22. “Ds need adequate representation. Will not hurt me financially. Could get along without them. But I enjoy criminal defense.”
23. No change in representation since CC was begun.
24. No difference in what she does with her cases depending on whether CC, retained, or appointed through the wheel. Motivated by not wanting disciplinary complaints filed against her.
25. Within 3 days gets to the jail.
26. Phones defendants not in custody; seeks an appointment with them. Interviews clients for about 1 hour; but it sometimes varies.
27. Collateral consequences: not covered in initial interviews. But deals with it later.
28. Investigators – she has sought them. Judges are pretty good about approving requests. During the past two years, has probably sought an investigator about 5 times.
29. Experts -- during past two years – sought about 12 times.
30. No trials in CC within past 18 months; twice in other counties.
31. With CC, believes more trust in her “because they have chosen me.” No illustrations provided. “Perhaps these clients [who have chosen me] are more willing to be forthcoming.
32. Does not know if clients more satisfied with CC lawyers.
33. Does not keep track of whether client has selected me.
34. Not noticed any changes in processing cases.
35. Does not know which are her client choice cases.
36. Skipped.
37. No Difference to a – d.
38. No suggestions. No problems with how CC has worked.
39. Yes, favors continuation of the program. Ds should have a say about who should represent them. It’s important that a def. feel that they can trust their lawyer.
40. Nothing to add.

Thursday, December 17 (by phone)

David Collins

SA

Office

Graduated law school 2004

Since 2004 practicing criminal defense

Husband and Wife practice together

1. Since 2012 doing indigent defense in Comal County
2. Felony cases only
3. Bexar / plus Wilson and one other – total of four counties
4. Private practice: criminal is the bulk and CPS
5. Pending Cases: criminal and CPS: 38 CPS active cases; criminal cases are about 45 (includes 10-15 misdemeanors.
6. No staff
7. About right.
8. Have gotten about 4 or 5 CC cases
9. 2 or 3 off the wheel
10. Covered above.
11. Expectations of CC – concerned with how it might work out. Would expectations of clients be disappointed? He wondered about that.
12. Information about the program in advance was adequate
13. No knowledge about how well clients were informed of the program
14. No knowledge about program changes
15. Fax is received. Informs him about whether the case is a client choice case or from the wheel
16. Aware that you can request to be taken off the list.
17. Skipped – N.A.
18. No
19. N.A. / Skipped question
20. Retained fees are 2 or 3 times greater than appointed counsel fees.
21. Fees paid by CC – in most cases it is ok; in line with other jurisdictions; “It is income, which is nice. The check won’t bounce.”
22. “It’s income; it is giving back to the community.”
23. No differences in representation depending on CC or appointment from the wheel. “Each case is different but what I do will not depend on how I got the case,” meaning whether it is a CC case, retained, or from the wheel
24. Sees jailed clients within the next few days after notified of appointment; has to file more writs in Comal than elsewhere to seek client’s release. Lab results do not come back soon. Can get a PR bond with conditions after 90 days. But then Ds often get rearrested. In two cases, he got cases dismissed because no indictment after a year.
25. If defendants not in custody, he calls them; talks to them; emails them. If not indicted, Gary does not have much information to share with Ds so will not necessarily seek appointments.
26. Interviews with Ds in jail: probably 20 to 30 minutes in length. Usually no information to share with Ds because no discovery has occurred. Purpose of meeting to establish a relationship with the Def.
27. Collateral Consequences come up when there is a plea bargain. Not much attention paid to such matters early in the process.
28. Has not applied for an investigator in Comal County. No requests in other counties either.
29. No experts sought in Comal County.
30. Had one trial in 2014 [not sure if Comal County or elsewhere]. And one trial in Caldwell in 2013. Likely to have one in Comal in 2016. In CPS cases, bench trials are frequent. Usually these are termination of parental rights cases.
31. Has not seen anything different re trust level between CC cases and appointments from the wheel.
32. Re client satisfaction: no basis to think CC makes any difference
33. Re his personal satisfaction: if another client had recommended me, I would feel good about that. But he never really knows why a client chooses him. Would like to think that he had been recommended by clients he had previously represented.
34. No basis to believe that there have been any changes in the processing of cases since start of client choice.
35. Client choice has not impacted his representation of clients; does not visit jail any more frequently, for example.
36. Satisfaction of client’s is a function of the outcome of the case.
37. No knowledge re a through d.
38. “From what I have seen, it seems that it has worked o.k. No suggestions for improvements.”
39. Re continuing CC: “It’s so new that I don’t know. But if I was the def., I would like to make the decision about my lawyer. But in the end, if a bad result this will cancel out the exercise of choice, in David’s opinion. The total of his appointments in CC have been about the same since CC began. He does not object to the program.
40. Nothing more to add.

Thursday, December 17

Atancio “Nacho” Campos / Did not show!

Thursday, December 17

Anton Hajek (by phone)

Resides in SA

Office in SA

Graduated from law school in 1977

Practicing as a criminal defense lawyer since 1982

Solo practitioner

1. Six years taking cases in Comal County
2. Felonies only
3. Bexar plus other counties; 6 total counties
4. Civil cases include family law and CPS
5. Ballpark caseload number at present: 50 cases
6. Has a secy.
7. His caseload is about right
8. Yes – has received CC cases
9. Total of 4 CC cases
10. Since CC began, has received fewer than four through the wheel
11. Expected that there were some attorneys in Comal County who were pushing for the program
12. Yes – adequate info. about the program in advance
13. No knowledge re how Ds were advised of the program
14. Skipped
15. Seemed quite aware of the notification process re CC and the wheel
16. Knows that lawyers can take self off the list and the process for doing so
17. N.A. asked
18. Re whether any clients asked for his removal: one client hired a new attorney as family came up with the money to pay private lawyers fee; does not know if it was a CC case.
19. N.A.
20. Fees in felony cases are 5 times greater than sums received in indigent defense cases.
21. Are the fees reasonable? No. Judges pay to the low end. CPS pays $70 per hour, which is better.
22. Does not have a big practice so willing to take indigent defense cases.
23. His representation has not changed as a result of CC. Tries to do the best for all of his clients. But concedes that he will do things for a retained client that he will not do in an indigent case. E.g., in an indigent case, will limit the number of phone calls that he will take from the family. When asked about “differential representation” in a retained case, he immediately stated, “oh sure” I do things differently in a retained case where there is a substantial fee. E.g., he stated that he give more time and thought to a retained case than an indigent’s case. But he does not distinguish in this regard between a CC choice case and one where the case is derived from the wheel.
24. Not asked
25. Not asked
26. Not asked
27. Not asked
28. Twice in the past two years he has sought an investigator. But states that his cases are of a type that do not need investigators
29. No use of experts; never hired an expert; not in other counties either
30. Trials: once every four months; couple of times in Comal County; has had three trials In Comal County. [I am doubtful if it was that many given the way in which he made the statement.] He also characterized his trials as infrequent; states that he gets good deals. He’s a good negotiator.
31. He thinks that clients may have greater trust in the lawyer with CC because defendants have chosen the lawyer; and they have done this supposedly because they have heard good things about the lawyer.
32. Does not know.
33. Yes. Feels a greater sense of personal satisfaction. This is derived from the fact that he was chosen by the client.
34. Not asked.
35. Not asked.
36. Not Asked.
37. Not asked
38. Believes CC has worked ok. But information sheet filled out by lawyers has very little information on it. Thus, defendants do not have much to go on in making their decision about which lawyer to choose.
39. Does not think he can evaluate the program re whether it should be continued. But then when asked to take a position on the matter, he said that he objected to its continuation, explaining that he does not see anything wrong with the wheel. And client choice constricts the appointment power of the judges.
40. Had nothing to add.

Friday, December 18

Gina Jones

Residence: NB

Office: Near Courthouse / NB

Graduation from Law School: 2002

Number of years as criminal defense lawyer: since 2002 (about 13 years)

SP

1. See above
2. Felonies and Misdemeanors
3. 2 other counties besides Comal
4. Private practice – Crim and Family
5. Open pending cases – 50-60 felonies; same for misdemeanors, i.e., 50-60 case; plus 15 family law cases. Includes both assigned and retained. More than 100 pending cases.
6. Has one paralegal/asst. and a part-time person (paralegal)
7. Caseload is about right
8. Has been chosen by defendants through CC
9. Felonies – about 40; Misdemeanors – no idea/maybe 75-100. [Estimated number of cases should be checked against actual records. Clearly, these estimates are quite high, especially since she was off the felony list for about four months.]
10. Very few appointments through the rotation system/has received a few sex cases through the wheel which surprised her. [Perhaps judges did not follow the rotation and took her out of order since she has handled a number of sex offense cases. Sex offense cases are excluded from CC.]
11. No real expectations re CC. But the extent to which she received CC when the program started was more overwhelming than anticipated. She took herself off the list for several months beginning maybe in April; when she came back on the list in September, the cases did not come to her with the same speed as at the beginning. Gina speculates that perhaps the information list furnished to defendants was not up to date and her name did not appear immediately after she put her name back on the felony list. The number of new cases that she has received since coming back on the list have never been as overwhelming as they were when the program first got underway.
12. Yes. She understood the program before it launched.
13. D’s understand the program, she thinks. She notes, however, that she has seen defendants write the names of lawyers who are not on the approved panel or any list. [Does this reflect defendants’ lack of understanding of the CC program or inadequate advisements? Query.]
14. Does not know if program has changed since first started.
15. Receives fax from Jeanie or misdemeanor assts. Process seems to have run smoothly. Fax has informed whether the case is CC or from the wheel.
16. Knows she can take self off the list and has done it.
17. A – No knowledge; B – Probably the same as before CC; C – Not more than normal.
18. Re if clients have asked that she be removed: “No one wants to get rid of Gina.” Other Ds want her.
19. Never seen it happen. Judge is not always on the bench when waivers are entered.
20. Re fees for retained work: her fees are 10 times more felonies than the court pays; fees are 5 times more than court pays for misdemeanors.
21. “Reasonable”? Fees are not reasonable on cases in which client pleads. Referred to an arson case in which there were several thousand pages of discovery; received $600 for the plea. $60 was the hourly rate she was paid.
22. Why does she take indigent cases: “Ds need good lawyers.” But also stated that she could get along without assigned work. A reason that she takes cases in other counties: may want to run for a judgeship at some point so wants to be well known in other counties in the district.
23. CC has not changed how she represents clients. But concedes she is less tolerant of taking calls from defendants and family of indigent defendants than in the past. Will take the calls from clients who have retained. Does not make jail visits as often as she should. Tough on Ds who have retained her, too, in terms of “hand holding.” Even retained Ds sometimes think that she is not as responsive as she should be. Tries to treat them all the same, especially if I go to trial.
24. Seeing clients in jail: sends a letter to D immediately; tries to see D within a week.
25. If D is not in custody, client is asked to make an appointment. Or if a prompt court date, Gina will see them in court and by that time will have the police report.
26. Skipped
27. Collateral consequences: driver’s license suspensions; employment; etc. etc. Numerous CCs mentioned. TCDLA – handbook has been published re collateral consequences and Gina is familiar with it.
28. Investigators: has applied many times. Applied for 14 investigators with Judge Robison. Judges are receptive to Gina’s requests because they realize that she has a lot of cases. Gina does not necessarily say that this is true with all other defendants. During the past year in felony cases, she estimates that she has made about 25 requests
29. Experts sought usually only in trials.
30. Has tried 8 felonies; has beaten offer in all but one. Two acquittals.
31. Ds trust her; but she does not attribute it to CC. Has not observed changes in trust level since CC introduced.
32. Re satisfaction of Ds: She can give clients more “tough love” because they are choice case. Because they picked her and seemingly trust her.
33. Re her satisfaction: Clients are easier to deal with and she attributes this to CC. Ds are patient with her because they selected her, she thinks. They had confidence in her from the beginning. Has not experienced defendants being more demanding of her because they chose her.
34. Re processing of cases: CC has not made any difference
35. Probably visits less than she did before CC; so goes over to jail less but sees more clients when she goes.
36. Skipped.
37. A through D. No real response. But she mentioned her ease at getting investigator requests approved. During the first three months of CC her income dropped by a third as she received a high number of CC cases and less retained work.
38. Outside of major problems at the beginning with being chosen so frequently, no concerns with CC
39. So long as a “pause button” is possible, CC is o.k. But it should be tried in other counties. Gina believes that there now in Comal County are perhaps more cases going to trial than previously and she believes this is due to client choice. [NL comment: not clear that to me that this is a function of CC except if clients trust Gina and willing to let her take the cases to trial because, as Gina says, “they think I have a magic wand.” Would be good to have data to see if Gina’s impressions are borne out by the facts.]

Friday, December 18

Brooke Rudeloff

NB

Office in NB; she is an associate with Deb Wittington

May 2012 law grad

Since November 2012 practicing criminal defense

Two-person firm/associate; gets a salary from Deb

1. Covered
2. Only represents misdemeanor cases / also handles Deb’s misdemeanor cases, too.
3. Practices only in Comal county
4. Has a private practice: family law and criminal misdemeanors
5. 30% of cases are criminal; 70% are family law cases; almost all of her criminal cases are indigent clients. She has some CPS cases but plans to get off the list.
6. Office has one asst. and an office manager who works three days a week
7. Caseload is about right.
8. Has received CC cases. .
9. Maybe 5 to 10 CC cases.
10. Maybe 20 cases from the wheel.
11. Thought concept of CC was interesting; if she had been practicing on her own, would have been concerned that she would not have gotten much work.
12. Yes – received adequate information about the program in advance.
13. Instructions apparently are adequate for defendants; they have exercised CC
14. No idea of changes since CC was first implemented.
15. FAX – tells you about the appointment/indicates whether or not it is a CC case or through the wheel; but apparently the system has worked imperfectly in providing notice to lawyers in misdemeanor cases.
16. Aware that you can take self off list and the method for doing so.
17. A – No; B – No – maybe a decrease; C – No
18. One client wanted to replace Brooke; but client w/drew the motion
19. Skipped
20. Fees in retained cases at least 10 times higher than in appointed cases. Retainer is usually $2,500 in a misdemeanor case.
21. No. Fees are not reasonable
22. But takes cases to get experience; and sometimes there are cases where little work is required. So there is some balancing out. Submits itemized bills in cases that are pled and that sometimes results in getting a higher payment. $50 is the hourly fee paid in misdemeanor cases.
23. Since CC was implemented, she has not done anything differently in representing clients.
24. Within 3 days of appointment notification seeks to interview jailed clients.
25. If clients are released, mails client an information sheet. Does not try to interview defendant in advance. Wants to obtain discovery prior to a meeting with the client. So when she does meet with the client she will have the offense report; test results; and prosecutor’s plea offer with recommended sentence
26. Skipped
27. Collateral consequences covered; showed an awareness of the issue.
28. Not very often that she seeks an investigator
29. Nor are experts requested, but she did have one case where an expert was sought regarding person with ADHD
30. Has had no trials in misdemeanor cases
31. Re trust level of Ds due to CC: Clients tend to trust you more because they picked the lawyer. But D expectations are high, and if they don’t like what they hear, they will be very disappointed.
32. Probably clients are more satisfied unless they are dissatisfied with the outcome.
33. Brooke’s personal satisfaction is greater if she knows client has selected her.
34. Not aware of changes in case processing or dispositions CC was begun.
35. Skipped
36. Skipped
37. Skipped
38. Thinks CC has worked smoothly. The idea of CC makes defendants feel better because they have a choice about their lawyer.
39. I do favor its continuation. Clients feel better about being able to choose.
40. Nothing to add

**Interview notes prepared by NL**

**January 19, 2015**

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