Toward Gideon's Orchestra: The Fair Defense Act, *Rothgery* and Their Application in Tarrant County

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By

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Introduction

The purpose of this paper is to give an overview of the progress that has been made in how Tarrant County complies with the Texas Fair Defense Act (formerly known as "SB7"). Three key sources are relied upon. The first is a law review article written by Tarrant County Magistrate Allan Butcher and his two co-authors: "In Pursuit of Independent, Qualified, and Effective Counsel: The Past and Future of Indigent Criminal Defense in Texas," 42 S. Tex. L. Rev. 595 (Summer, 2001), by Catherine Greene Burnett, Michael K. Moore and Allan K. Butcher [hereinafter cited as "Butcher"]. Another key source is the March 10, 2006 "Review of Tarrant County Indigent Defense System" prepared for the Texas Task Force on Indigent Defense by Special Counsel Wesley Shackelford, published at www.courts.state.tx.us/tfid/Resources.asp [hereinafter cited as "Shackelford"]. The other key source is the United States Supreme Court opinion in *Rothgery v. Gillespie County, Texas*, 128 S.Ct. 2578 (June 23, 2008). The paper will also include a look at some legislation now being considered in Austin related to this area.

Judge Butcher's article was written when the FDA had been passed into law, but the effective date had not yet arrived. The authors noted that the United States Supreme Court ruled that "indigents accused of criminal offenses that carry a possible punishment of confinement are entitled to an attorney and the support needed to mount a defense to those charges. [*Gideon v. Wainwright*, 372 U.S. 335 (1963)]. Despite early leadership in the area of indigent representation, it is questionable whether the current system of delivering legal services in Texas to indigent defendants fosters or even permits effective representation….[T]he right to have legal counsel is hollow unless that counsel is independent, qualified, and effective…To the extent that Texas's current system comes up short when measured against the ideal, Gideon's trumpet has been effectively muted. The changes contemplated by Texas Fair Defense Act may shatter that silence; however, it is only a first chord, not a symphony." (Butcher pp. 597-98).

Thus, 2001, 2006 and 2008 are landmark years that can be used to measure Tarrant's progress (and lack thereof) in the area of indigent defense.

The FDA has many lofty goals, including the prompt appointment of counsel.[1] As Judge Butcher's article notes, this right is "hollow unless that counsel is independent, qualified and effective." Also, the FDA leaves much to individual counties to determine how they structure their own indigent defense plans, within certain parameters. How is this working in Tarrant, and how do Tarrant practices compare to other counties? The United States Supreme Court recently examined the practices in one Texas county: Gillespie. On September 9, 2008, the Tarrant County Criminal Justice Coordinating Board was briefed on this Supreme Court decision. The Board was presented the following overview:

[1] In CCP Article 1.051, the FDA allows two extra days for appointment of counsel to indigent criminal defendants in rural counties as opposed to their urban counterparts. Tarrant County Senator Chris Harris has introduced legislation removing this distinction and giving urban counties the same time requirements currently enjoyed by rural counties. (SB 1579)

Rothgery Facts

On July 15, 2002, Walter Rothgery was arrested by Texas police officers for the offense of felon in possession of a firearm. He was promptly brought before a magistrate in Gillespie County for an Article 15.17 hearing (which combines the Fourth Amendment's required probable-cause determination with the setting of bail, and is the point at which the arrestee is formally apprised of the accusation against him). The magistrate determined that probable cause existed. Rothgery requested counsel at the 15.17 hearing, but the magistrate informed him that the appointment of counsel would delay setting bail (and hence his release from jail). Given the choice of proceeding without counsel or remaining in custody, Rothgery waived the right to have appointed counsel present at the hearing. Bail was set at $5000, and Rothgery was released from custody. He had no money for a lawyer and made several oral and written requests for appointed counsel, which went unheeded. Six months later he was indicted by the grand jury for unlawful possession of a firearm by a felon. He was rearrested and was unable to post the new $15,000 bond. He remained in jail for three weeks. On January 23, 2003, Rothgery was finally assigned a lawyer, who promptly obtained a bail reduction, and assembled paperwork confirming that Rothgery had never been convicted of a felony—the original felony charges had been dismissed after he completed a diversionary program. Counsel provided this information to the DA, who filed a motion to dismiss, which was granted. [slip opinion pp.1-3]

Rothgery then sued the County in federal court, claiming that if the county had provided a lawyer within a reasonable time after the Article 15.17 hearing, he would not have been indicted, rearrested or jailed for three weeks. [p. 4] He also alleged that after the initial appearance, he was "unable to find any employment for wages" because "all of the potential employers he contacted knew or learned of the criminal charges pending against him." [p. 15] Rothgery did not challenge the County's written policy for appointment of counsel, but argued that the County did not follow its policy in practice; he claimed that the County had an unwritten policy of denying appointed counsel to indigent defendants out on bond until at least the entry of an information or indictment. The federal district court granted summary judgment in favor of the County and the Fifth Circuit affirmed. [p. 4] The U.S. Supreme Court, in an 8-1 decision, reversed the case and ruled against the County.

Discussion by Supreme Court

The Court noted that if it is proven that the County has a policy of denying appointed counsel to on-bond defendants before indictment or information, this would arguably also be a violation of Texas law, which appears to require appointment of counsel for indigent defendants released from custody, at the latest, when the "first court appearance" is made. [CCP 1.051(j)] [p. 4]

The Court rejected the County's argument that until a case is filed and there is actual prosecutorial involvement, that there is no right to counsel at that point. The Court noted that once a suspect is arrested, the State is committed to prosecution although the State "may re-think its commitment at any point…but without a change of position, a defendant is subject to accusation after initial appearance is headed to trial and needs to get a lawyer working, whether to attempt to avoid that trial or to be ready with a defense when the trial date arrives." [p. 17]

The Court held that "a criminal defendant's initial appearance before a judicial officer, where he learns the charge against him and his liberty is subject to restriction, marks the start of adversary judicial proceedings that trigger attachment of the Sixth Amendment right to counsel." The Court sent the case back for the lower courts to determine "whether the six month delay in appointment of counsel resulted in prejudice to Rothgery's Sixth Amendment rights, and have no occasion to consider what standards should apply in deciding this." [p. 20] The Court spoke in general terms of "the consequent state obligation to appoint counsel within a reasonable time once a request for counsel is made." [p.5] [Note: The Supreme Court opinion is over 40 pages long, counting majority, concurring and dissenting opinions. Only excerpts from the majority opinion are included here.]

Tarrant's Response to *Rothgery*

During the Coordinating Board meeting, suggestions were made to help insure that Tarrant County is in compliance with *Rothgery*. Some of those suggestions were adopted by the judges of the criminal courts in Tarrant County, but not all were. On November 3, 2008, the judges ordered that all defendants released from jails in Tarrant County receive a document entitled "Notice to Defendant Released Prior to Appointment of Lawyer." [Attachment A] On November 19, 2008, the judges revised the "Election of Counsel" form to include a reference to the "Notice to Defendant." [Attachment B]

The Harvard Law Review has discussed *Rothgery* at length. See 122 Harvard Law Review 276-316. There, it is noted that in Texas, this decision "will protect a subset of defendants—those charged and released on bail—who currently do not have their right to counsel activated when the prosecutor is unaware of the their charges." (p. 312). [This article also noted that in Colorado, "misdemeanor defendants' right to counsel will no longer be conditioned on the defendant first speaking directly with the prosecutor to discuss a potential plea." (p. 312).]

Clearly the Supreme Court found that Gillespie County put various roadblocks in place to discourage a person in Walter Rothgery's situation from obtaining appointed counsel. The new Tarrant forms represent an effort to show defendants that Tarrant will not establish similar roadblocks.

The Importance of Public Confidence in the Indigent Defense System

The FDA [in CCP Article 26.04(n)] requires defendants who request appointed counsel to sign under oath a statement that the person is without means to retain counsel and/or respond under oath to questioning by a judge or magistrate. Tarrant County has hired Financial Information Officers who meet with defendants who wish to receive appointed counsel. The FIOs are to assist defendants with their financial questionnaires. Judge Butcher and his co-authors noted that "The process of determining whether the defendant is indigent is arguably one of the most important decisions the courts will make in resolving the issue of representation." (Butcher p. 616). They wrote that "Consistent standards for determining whether the defendant is indigent should be adopted." They suggested an examination of tax returns and food stamp qualification. (Butcher p. 653). They also suggested examination of W-2 forms. Consistent

results across various government entities will enhance public confidence in the system. (Butcher p. 680).

Having FIOs and magistrates review applications of defendants applying for appointed counsel helps enhance public confidence in Tarrant's indigent defense system. This was a specific recommendation of the 2006 Task Force Review of Tarrant County's Indigent Defense System. (Shackelford p. 8). The review recommended that county magistrates conduct Initial Appearance hearings on behalf of all of the courts in Tarrant County for all on bond defendants: "These hearings could be set for all unrepresented defendants to review indigency status, supervise defendant attempts to retain counsel, and appoint counsel to eligible defendants. The result of moving this process to the magistrates would be to minimize use of courts' valuable time while providing a meaningful review of the indigency status of defendants. [This] would also provide for more countywide uniformity, which is a key principle of the FDA. This process would also enhance public trust and confidence by assuring that only the indigent receive appointed counsel, whereas those that can afford it will be responsible for hiring his or her own counsel." (Id.) That is what the Task Force recommended in 2006. Some Tarrant courts have consistently followed this procedure, but not all.

Lack of Countywide Uniformity

In Tarrant County, there are nine felony courts and ten misdemeanor courts. Each judge is elected countywide; and is sovereign in his/her court. In the felony courts, all defendants are required to appear in Magistrate Court for the Initial Appearance Docket, shortly after release from custody. Defendants who hire counsel before the IA date are often excused from that court appearance. Those who wish to apply for appointed counsel do so at the IA setting. In some of the misdemeanor courts, this same procedure is followed, except misdemeanor defendants report to Auxiliary Court for their IA. But not all misdemeanor courts use this procedure. Thus, there is no countywide uniformity in determining indigency in Tarrant County, even though this is what the FDA calls for. Some of the courts have consistently used this procedure, some rarely, some not at all; some use variations of this procedure. But not many people in the Tarrant County criminal justice system have the big picture—that is not many stakeholders know which courts use which procedures. Few if any of the judges know what procedure all of the other judges use. Even though the procedure is good; the problem is, not all of the courts use this procedure. Since judges are sovereign, they cannot be forced to use this procedure. And until all of the courts use this procedure, there will be no countywide uniformity in Tarrant, in spite of the fact that, as the 2006 Review noted, countywide uniformity is "a key principle of the FDA."

Any lawyer who regularly practices criminal law (from either side of the docket) knows that different judges have different policies for different issues. Some have special requirements for interlocks on DWIs. Some have different rules as to when or whether they give credit for time spent in the county jail when a defendant is convicted on a State Jail Felony. Some courts put greater emphasis on getting cases to trial quickly. These are all examples (and there are many more) where the legislature has envisioned that each elected judge should have the power to do things the way s/he wants, as long as the law is followed. This is not the case with the FDA. The legislature expected the judges of each county to come up with an indigent defense plan and then all judges get on board with that plan. The legislature envisioned countywide uniformity in the implementation of indigent defense, from how determinations of indigency are

made to how attorneys qualify for appointments to how the lawyers are appointed. (Shackelford p. 8).

No one can make a legitimate complaint that Tarrant County has not established a countywide plan. In fact, Tarrant County has a very good plan. The problem is that the plan is not followed uniformly. [As noted above, the Supreme Court accepted Walter Rothgery's argument that even though Gillespie County had a good plan, the problem was that the plan was not followed.]

Under the IA system using Magistrates and FIOs, there are no prosecutors or defense attorneys present. The only issue is that of representation. When a defendant is determined to be indigent, an appointment is made via the Office of Attorney Appointments 'wheel' (Tarrant's attorney rotation system). The Task Force Review noted that "while the OAA makes a majority of the attorney appointments overall, a significant number of appointments are made directly by the courts. This is especially true in the county courts where those courts make a majority of appointments….An appointment made by a judge happens immediately after the judge makes a finding of indigency. A judge generally appoints an attorney who is present in the courtroom at the time of appointment, perhaps representing another defendant. These types of appointments provide the defendants immediate access to an attorney in the hope that the case might be disposed of that day. Although a few courts use the OAA even in these cases, the only significant use of the OAA for appointments following a determination of indigency by the judge appears to be when the case does not appear likely to be disposed of that day." (Shackelford p. 10). Under "Recommendations to Improve the Attorney Selection Process," it was suggested that all appointments should be made through the OAA wheel. This is consistent with Tarrant's plan. However this solution "*may* result in delay in the disposition of the case while the attorney contacts the client and the case is reset. Such a delay would facilitate advanced review of the case by the appointed attorney. The attorney could review the prosecutor's file using the new internet based system and meet the client before appearing in court with them. This would allow the attorney to hear the defendant's perspective on the case, check some of the facts of the case, and consider possible defenses to the charges." (Shackelford pp. 12-13; emphasis in original).

The reviewer had been told that some judges preferred to make immediate bench appointments, using lawyers who were present in court, and that the "rationale for making bench appointments of immediately available attorneys is that it fosters immediate attorney client contact. It is further posited that this will in turn lead to faster dispositions and ultimately *reduced jail populations* since cases will be settled more quickly." (Shackelford p. 12; emphasis added). The Review went on to demonstrate that statistically, this argument was simply not true.

"Reduced jail populations." The issues in *Rothgery* centered around on-bond defendants, not those in jail. The "reduced jail population" argument that some judges communicated to Mr. Shackelford was simply not a valid argument.

The FDA requires that counties use appointment procedures that "ensure that appointments are allocated among qualified attorneys in a manner that is fair, neutral, and nondiscriminatory." [CCP 26.04 (b)(6)]. This is exactly what the OAA wheel does. When bench appointments are repeatedly made, judges open themselves up to complaints that they are

not fair, neutral or nondiscriminatory. In a pre-FDA survey of judges, Judge Butcher and his co-authors reported that "Nearly half of the judges surveyed reported that their peers sometimes appoint counsel because they have a reputation for moving cases, regardless of the quality of the defense they provide, and a comparable number indicated that the attorney's need for income influences the appointment decision." (Butcher p. 622). The article went on to state: "In the view of the judicial participants, personal and political factors also play a role in the appointment process. Nearly four in ten judges indicated that their peers occasionally appoint an attorney because he or she is a friend, while roughly one-third of judges sometimes consider whether the attorney is a political supporter or has contributed to their campaign." The article then quoted a defense lawyer form Harris County: "I have been refused appointments because I cannot afford to give money to the judge's re-election campaign…Those attorneys who contribute the most money receive the most work. Surely, this is a conflict of interest situation and an appearance of impropriety, at the very least." The authors then call "unsettling" the use of "personal, political, and expediency factors." (Butcher p. 623-24). Repeated and systematic use of bench appointments opens current judges up to the same criticisms from the pre-FDA era. [And as noted below in the section on "Revocations," judges who use "Wheels of One" open themselves up to this exact criticism as well.]

The bottom line is this: Some of misdemeanor courts in Tarrant County properly use Tarrant's FIO-Magistrate-OAA wheel system, some do not. In courts that properly utilize this system, there are no prosecutors or defense lawyers present. There is no way the case can be "moved" (i.e. plead) that day. As the Review notes, not having the lawyer present that day [especially for defendants who are on bond, and thus are not "jail population" issues] facilitates "advanced review of the case by the appointed attorney;" including reviewing the prosecutor's file and meeting the client before court. "This would allow the attorney to hear the defendant's perspective on the case, check some of the facts of the case, and consider possible defense to the charges." (Shackelford pp. 12-13). In other words, the lawyers can do their jobs: criminal defense attorneys can be criminal defense attorneys. Sometimes, people who work in the system lose the perspective of the defendants. But under the "meet 'em and plead 'em" system that is encouraged in some courts, many defendants (who a few minutes earlier asked for a "free" lawyer) then walk out of court thinking they must be the raw ingredients on the conveyor belt at a sausage factory. The criminal court system has enough of the sausage factory feel in many ways, anyway. This procedure that some courts use, that was condemned in the 2006 Review by the Texas Task Force on Indigent Defense, makes a mockery of criminal justice. It also provides fertile ground for sloppy lawyering, and grievances. Furthermore, under "meet 'em and plead 'em," courts are able to give the *appearance* of having a real, viable indigent defense system, but in reality, for many defendants in courts that do not utilize the FIO-Magistrate-OAA wheel, the system is a joke.

Bond

The Texas Task Force on Indigent Defense has presented several "Indigent Defense/Criminal Procedure Legislative Ideas" to be considered in the current session. Idea Number 6 calls for a Pretrial Release Study: an independent study of pretrial release from custody laws in criminal cases. The rationale is: "The current system in many counties leads to incarcerated people having to choose between paying a bondsman to get out (and then having to be appointed an attorney because they don't have any money left) or hire an attorney and stay in

jail. As would be expected, most choose to pay the bondsman. Alternatively, they do not currently have any money, but if they could get out they would be able to get a job and make enough to hire one. Since they can't, this leads to counties having to pay to give them a court appointed attorney, as well as pay to feed and house the accused for much greater lengths of time. From the accused's standpoint, he feels he has to plead guilty for time served or else spend several more weeks in jail waiting for his chance to go to trial."

The Texas Legislature is considering adding a new Article 17.025 to the CCP which would provide for Release on Bail in a Partial Amount. This bill provides in part: "A magistrate may release a defendant on bail by permitting the defendant to deposit an amount of cash bond or to submit a surety bond in an amount that is less than the total amount of bail set in the case if the magistrate determines that requiring the defendant to deposit a cash bond or to procure a surety bond in the full amount of bail would impose an unreasonable hardship on the defendant." (SB 498).

Clearly the effect of increased bond lead to Walter Rothgery having to make choices discussed above in the Task Force's Legislative Ideas.

Since the inception of the FDA, criminal judges in Tarrant County have frequently heard on-bond defendants say words similar to these: "My bondsman told me to ask the judge for a free lawyer." This is precisely the reason why, when the Tarrant County Criminal Justice Coordinating Board was briefed September 9, 2008, they were told that part of the document given to defendants who exit jail should include language about not only how to ask for an appointed attorney, but also give full disclosure to defendants about how the appointment system really works. The Board was advised that defendants should be told about repayment of attorney fees. This is because the law allows for defendants to be ordered to make payments to the county to help offset the cost of appointed counsel. Tarrant criminal judges routinely order such payments. This is a smart move for many reasons, not the least of which taxpayers understand and often expect elected judges to do this, as guardians of county money. However, it is highly doubtful that bondsmen ever tell defendants of this requirement. The Board was also advised that defendants should be told they must bring their financial documentation with them, as Tarrant bond conditions routinely require, and the Butcher article recommended. This is also something taxpayers understand; and also something bondsmen likely do not tell defendants. It was also recommended that defendants be told that appointments are made on a rotating wheel system. It is not likely that bondsmen tell this to defendants. It only makes sense that defendants be given full disclosure up front about how this system works. Instead, many defendants are surprised when they appear in court and are ordered to start making payments for what many thought was a 'free' lawyer. Many defendants are further surprised when they end up back in jail for contempt of court when they miss a payment.

Even though the Coordinating Board was advised that these items should be included in the paper given to all defendants who are released from custody, these matters were omitted. As can be seen on Attachment A, no such language exists. However, it would be in the best interests of everyone, especially defendants and taxpayers, if this language is added. It is not too late to correct this mistake. Attachment C shows how this can be done, and still fit on the same

size paper. [One excuse heard for omitting this language was that there was not enough room on the form.]

This language should be added: "If you believe you are too poor to afford an attorney, you must complete a financial questionnaire about your financial circumstances. You must bring your financial documents (paystub, W-2) to court with you. The judge will rule on whether or not under the law you qualify for a court-appointed attorney. Tarrant County considers the Federal Poverty Guidelines when making this determination. Attorney appointments are made on a rotating 'wheel' system. The lawyer appointed to represent you will be the next name up on the wheel. Defendants with court-appointed counsel may be ordered to re-pay Tarrant County for legal fees paid to the appointed attorney, depending on a defendant's future financial circumstances."

If this language is added to the form, all defendants at least have an opportunity to learn the truth about the system. Bondsmen will also see this form, and they will know that if they are telling defendants to ask for a 'free' lawyer, they are not speaking the whole truth to defendants. Once bondsmen realize that Tarrant County is now requiring defendants to bring financial documents, they will have an opportunity to become allies with the County in Tarrant's FDA system—that is bondsmen can tell defendants that they must bring their documentation when applying for appointed counsel.

Correcting this omission from the Notice form given to defendants by switching to the form on Appendix C is the simplest and cheapest fix Tarrant can make to improve its FDA system. It can also be the quickest. Once this change is made, all defendants will know the truth about how the system works. Some will gather their financial documents and come to court and request counsel. Some will decide to shop for an attorney, and either hire one, or later apply for an appointed attorney. Every time a defendant chooses to hire an attorney, that defendant is not an FDA issue for the County. Even though this change should be made as soon as possible; for the taxpayers to get maximum benefit, it is incumbent upon those misdemeanor courts that do not use the FIO-Magistrate-OAA wheel system to get on board and take advantage of the resources the County has provided. And as noted in the 2006 Review, this will also free up more valuable time for judges to devote to the actual adjudication and disposition of cases. (Shackelford p. 8).

Legislation is pending in Austin which would amend CCP 26.05(g) to allow judges to order defendants to make payments to offset county legal costs even when the person is acquitted. (HB 228). Current law only allows the judge to recoup attorney fees during the pendency of charges and upon conviction but not if the person is acquitted. Whether this legislation passes or not, judges will still be able to order payments, and defendants should be so advised before they decide to apply for court appointed counsel. The best way to advise defendants is by use of the form on Appendix C.

One of the other aspects of criminal justice in Tarrant County which must be mentioned is the fact that over 40 different entities (mainly city judges) set bond amounts. Sometimes the county's recommended bond schedule is followed. But not always. Some municipalities have reputations for setting extremely high bonds, which are often later reduced by county magistrates

(creating more work at the county level). As noted above by Task Force Legislative Idea Number 6, this often leads to otherwise non-indigent defendants needing appointed counsel. Although it is beyond the scope of this paper, centralized Tarrant County magistration would help solve this problem.[2]

However, solving the "too high" bond problem will mean very little unless it is coupled with the implementation of the language in Appendix C, and all courts get on board with the FIO-Magistrate-OAA wheel system.

Statistics

The Tarrant County website publishes the "Judicial Dashboard." This provides statistics on all nine felony courts.[3] There the public can learn about how many cases each felony court is handling, how many cases are going to trial, etc. The County website does not publish a judicial dashboard for the ten misdemeanor courts.

Each month, the OAA provides statistics to the courts showing, among other things, how many wheel appointments each court is making, and how many bench appointments each court is making. The 2006 Task Force Review recommended that most appointments should be made using the OAA wheel. These statistics show the judges every month how they are each doing in this regard. However, these statistics are not published. They should be. These statistics should be made part of judicial dashboards (for both felony and misdemeanor courts) and published on the county website.

The Auditor's page of the Tarrant County website posts the last year's worth of payments made to appointed counsel. Case numbers are posted with payment amounts. However, court numbers are not posted. The public can do the math and figure out if certain courts are paying unusually large amounts to certain attorneys. However, the County should post these numbers with court numbers, so the public can readily see if any judges are favoring certain lawyers. One of the purposes of the FDA was to eliminate patronage. If these numbers were posted as a matter of course, the public could see how the judges are doing in this regard. These numbers should be posted in a way that is easily searchable.

The legislature should amend the FDA to require that counties (especially urban counties) post these numbers on their websites. If this is done, patronage would be exposed, and ultimately disappear.

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[2] One other unique aspect to the Tarrant County criminal justice system is the fact that for years the Sheriff's office has refused to accept custody of a city-arrested defendant until the DA's office has accepted and filed charges against that defendant. This is in spite of this language in CCP Article 2.18: "When a prisoner is committed to jail by warrant from a magistrate or Court, he shall be placed in jail by the Sheriff," If/when this charge is ever made, FIOs can operate downtown, and County Magistrates can set bail according to the schedule.

[3] The dashboard is published by order of the criminal district judges. It is updated daily at 3:00 a.m.

The Role of Politics in Indigent Defense

The Butcher article noted that "judges feel political pressure from county commissioners to control expenses related to indigent criminal defense. The pressure is very real." (Butcher p. 639). The article then quoted a judge: "Commissioners look at the criminal justice system as a drain on their assets, thus depriving their constituents of better roads." The article noted that judges "Clearly feel pressure from county commissioners to control costs." According to the article: "Four in ten judges report that budget considerations sometimes influence their decision to compensate appointed counsel and similarly impact the decision to approve support services. Financial disincentives and the lack of necessary services have detrimental consequences on the quality of representation provided to indigent defendants." (Butcher p. 640).

On March 21, 2009, the *Fort Worth Star-Telegram* published a story with the headline: "Downturn has some choosing jail time, community service over paying fines." The article quoted several municipal officials from throughout Tarrant County saying that because of the current bad economy, many municipal defendants are sitting in jail rather than spending money on fines. It follows that the current economic situation in the U.S. will cause more Tarrant defendants to ask for appointed counsel. This is all the more reason why Tarrant should fix its FDA problems discussed here. Also, it is possible that judges in 2009 will feel the pressure discussed in the 2001 Butcher article to hold down indigent defense costs. If (when?) this happens, the criminal defense bar will suffer (as will indigent defendants). And, as Judge Butcher and his co-authors noted pre-FDA: "The consequences of under compensating defense attorneys are very real." The authors then noted that a State Bar survey revealed that "lawyers are human and will respond to the very same economic realities that affect those employed in other lines of work." Judge Butcher's article then noted that defense lawyers representing "indigent clients often feel as if they are subsidizing the [government's] obligation to provide legal representation to indigents in criminal matters. Members of the civil bar, judges, police and prosecutors would likely bristle at the notion that they should work for less money when the defendant is indigent. Yet that is precisely what happens to defense counsel assigned to represent indigent clients." (Butcher p. 626-27; emphasis added). Keep in mind, this article was written pre-FDA; the article heralded how the FDA would fix things. Obviously the authors of this article could not have envisioned that not all members of at least one county's judiciary would be divided among themselves; with some (not all) actively looking for ways to make more bench appointments, and fewer OAA wheel appointments. Even though members of the criminal bar do not make decisions on whether Tarrant County fixes its FDA system, they have a stake in this. Others also have a stake, notably taxpayers and the defendants found to be indigent.

Revocations

The 2006 Task Force Review of the Tarrant County Indigent Defense System had two primary recommendations. One was the use of the FIO-Magistrate-OAA wheel system as discussed above. The primary focus of this recommendation was the misdemeanor courts. Again, many courts use this system; the problem is that not all do.

The other main recommendation focused on the procedure many felony courts used at that time for probation revocations. [Since probationers facing revocation are often in custody

with "holds," these cases seldom involve *Rothgery* issues.] The Review recommended that the County should carve off a seventh wheel devoted to felony revocations. Currently, there are six wheels which have Public Application and Qualification procedures (PAQ). Those six wheels are: Capital; First Degree; Second & Third Degree; State Jail; Appeal; and Misdemeanor. At the time of the 2006 Review, most of the felony courts had their own revocation wheels. The Review recommended doing away with that practice. Now, in seven of the nine felony courts, revocations are included as part of the Second & Third Degree wheel.

According to the Review: "The district courts also carve out in their indigent defense plan an exception to the standard wheel system for motions to revoke or adjudicate community supervision. The plan authorizes each judge to designate specific attorneys from the main appointment lists to handle revocations. The judges report that this is a specialized type of practice and they rely on attorneys that are experts in alternatives to incarceration. This system as applied appears to violate the provisions of Art. 26.04, Code of Criminal Procedure, because it does not specify how the attorneys are selected for such appointments. Because the system of selection varies by judge, this alternative system does not apply to all attorney appointments as required. The lack of definition also means that there is no way to 'ensure that appointments are allocated among qualified attorneys in a manner that is fair, neutral, and nondiscriminatory' as the statute requires. The current practice of judges directly appointing attorneys from the bench without following the rotation system appears to contradict the provisions of the indigent defense plan of the district courts. The plan envisions all appointments, except those related to revocations, going through the wheel system maintained by the OAA." (Shackelford p. 11; emphasis added).

In its Recommendations section, the Task Force Review states: "As to the revocation appointment system in use by the district courts, it is recommended that the courts consider establishing a new wheel made of attorneys specifically qualified to handle revocations. This way the judges would collectively and by majority vote approve the list of attorneys for these types of cases. It is also recommended that the method of appointing attorneys from this list be elaborated so that the appointment system can be readily understood. Of course, any type of system needs to allocate appointments in a method that is fair, neutral, and nondiscriminatory. These changes would require an amendment to the existing plan. A limited scale public defender office might also handle revocations. Revocations could be one part of an overall caseload or a specialized program could be developed for these types of cases. The latter would probably work best if revocation proceedings were centralized to a limited number of courts." (Shackelford p. 13; emphasis added).

The Tarrant County District Courts Felony Court-Appointment Plan (effective May 1, 2006) states that "the district judges hearing criminal cases in Tarrant County, Texas, are committed to timely providing quality legal representation to indigent criminal defendants, to guaranteeing fair and neutral procedures for attorney selection, and to establishing minimum competency standards for court-appointed attorneys; while at the same time ensuring that public funds are wisely spent." The plan then says that the district judges seek to comply with both the *Texas Code of Criminal Procedure* and the *Texas Code of Judicial Conduct.* The Plan also states: "A qualified attorney will be appointed to each indigent defendant based on a rotating felony appointment wheel consisting of the names of qualified attorneys approved by a majority

of the district judges hearing criminal cases…Each qualified attorney will be appointed to represent one indigent defendant per rotation through the felony appointment wheel as maintained by the OAA."

Under "Ad Hoc Distribution of Appointments in the Trial Court," the Plan states: "The judge of a district court hearing criminal cases or the judge's designee may deviate from the rotation system and appoint an attorney in that court who is specifically qualified under the Plan on an ad hoc basis to represent indigent defendants upon a finding of good cause to deviate from the rotation system. The judge of a district court hearing criminal cases or the judge's designee may deviate from the rotation system and appoint an attorney in that court who is specifically qualified under the Plan on an ad hoc basis to represent indigent defendants who are charged in a motion to revoke or adjudicate community supervision in that court." (Emphasis added.)

Applying the FDA to felony revocations is a controversial issue. The March 21, 2007 *Fort Worth Weekly* quoted Tarrant County Criminal Courts Administrator Clete McAlister saying that the felony judges ignore the wheel about 40 percent of the time, although they appear ready to more closely follow the spirit of the FDA [than the misdemeanor judges]: "I think all of them will be changing that practice if they haven't already. They believed they had latitude to appoint attorneys for probation revocations that they had a lot of confidence in, and they thought they had that authority, and now they're questioning whether they do. Some of them have already stopped that practice and are appointing directly from the wheel now." [Emphasis added.]

The Tarrant wheel application process for attorneys who desire appointments is in the Plan. The Tarrant County Application for Felony Court Appointments allows attorneys to apply for appointments on four different "wheels"—(1) State jail felonies and extraditions; (2) Second and third degree felony, and petition to revoke or adjudicate community supervision; (3) First degree felony and non-death capital murder; and (4) Appeal and post judgment writ. The application then goes on to ask 17 questions which each applicant must answer. These questions all relate to the level of skill and training the applicant has, as well as any sanctions against the applicant and conflicts of interest. Each applicant must attach CLE reporting forms as well as other documents, such as supporting evidence of experience. The applicant must then sign an oath stating all of the information provided is true and that the applicant does in fact meet all of the qualifications under the Tarrant County District Courts Felony Court Appointment Plan. The applicant also states that s/he understands that s/he must be approved by a majority of the district judges hearing criminal cases and that s/he may be removed for failure to meet the qualifications. This application form, effective May 1, 2006, was signed by all nine felony judges in office at that time.

This application process comports with the letter and spirit of the FDA. It gives assurance to the public that attorneys receiving court appointments in Tarrant County have attained a level of competence and are able to adequately represent indigent defendants. This allows the public to have confidence in the system.

Additionally, attorneys can apply for the capital/death penalty wheel and the misdemeanor wheel. Those application processes are similar to the felony process described above.

Thus, the Tarrant County application process allows for attorneys to apply for a total of six different wheels. These six wheels are listed in Tarrant County's Electronic Case Filing System (ECFS) which most criminal defense lawyers use. Also listed on ECFS are two separate revocation wheels for two of the felony courts.

However, beyond ECFS, nowhere is it publicly listed which two courts have their own revocation wheels (i.e. "Wheels of One"), and which ones use the regular revocation wheel (which, as noted above is combined with the Second and Third degree felony wheel).

For the first six wheels, there is a public application and qualification process. These Public Application & Qualification wheels (PAQ) assure the public that attorneys representing indigent defendants at taxpayer expense have attained certain minimum qualifications. For the courts which do use revocation wheels specific to that court, there is no public application process. Those judges rely on the "Ad Hoc" language in the Plan: "The judge of a district court hearing criminal cases or the judge's designee may deviate from the rotation system and appoint an attorney in that court who is specifically qualified under the Plan on an ad hoc basis to represent indigent defendants who are charged in a motion to revoke or adjudicate community supervision in that court."

As noted above, the March 10, 2006 "Review of the Tarrant County Indigent Defense System" by the Texas Task Force on Indigent Defense said that judges not using the OAA wheel in probation revocations was not a good practice: "There is no way to 'ensue that appointments are allocated among qualified attorneys in a manner that is fair, neutral and non-discriminatory' as the statute requires. The current practice of judges directly appointing attorneys from the bench without following the rotation system appears to contradict the provisions of the indigent defense plan of the district courts." The report recommended the establishment of <u>a separate wheel</u> for revocations since "judges report that this is a specialized type of practice and they rely on attorneys that are experts in alternatives to incarceration."

Nowhere did the Task Force report suggest that Tarrant establish separate <u>wheels</u> for each individual court for which there is no public application and qualification screening process. As Clete McAlister told the *Fort Worth Weekly*: some judges have questioned whether they do have the authority to appoint counsel to indigent defendants facing revocations without the wheel.

The controversy concerning revocations can really be broken down into several issues: The Tarrant Plan clearly gives the judges the authority to make Ad Hoc appointments; but does this practice comply with Article 26.04 of the Code of Criminal Procedure? The statute requires "fair, neutral and non-discriminatory" appointments; is this practice consistent with that requirement? According to the Task Force report: no. Does this practice <u>specify</u> *how* attorneys are selected to represent indigent defendants facing revocation? Again, according to the Task Force report, the answer is no. Is this practice one that can be "readily understood" as the Task

Force report recommends? Another issue: even if this practice does not violate the FDA, is it a good practice? Is it a practice that builds public confidence and trust into the Tarrant FDA system? Also, does this practice lend itself to providing indigent defendants with attorneys who are independent, or beholden to the judge? The first American Bar Association Principle of an Indigent Defense Delivery System provides that appointed counsel must be 'independent.' The authors of the Butcher article say the same thing: "Independent" is part of their title. Also, is this practice consistent with all of the participants avoiding the appearance of impropriety? One of the purposes of the FDA was to eliminate patronage. Does this practice make judges more or less open to charges of patronage? And how is this practice from the perspective of the indigent defendants? One requirement of the FDA was county-wide uniformity in the defense of indigent defendants. Does this practice provide for more or less countywide uniformity? As this controversy continues, these are all issues that must be addressed.

Senator Rodney Ellis, author of the FDA, has introduced SB 2162 in an effort to further clarify that the FDA is supposed to apply to probation revocations and appeals, and that OAA wheels should be used for those cases to ensure that attorneys are appointed in ways that are "fair, neutral, and nondiscriminatory."

Another area of concern appears to be court efficiency: it is arguable that the practice of having one attorney handle revocations in a given court is more efficient. If the felony judges do decide to move to one revocation wheel as recommended by the Task Force, they should consider borrowing a page from the misdemeanor judges: there, each attorney receives five appointments at one time under the misdemeanor wheel system. The felony judges could create one single countywide felony revocation wheel which gives five (or whatever number is chosen) appointments to an attorney at one time—all in the same court; this would continue to allow the judges to bring multiple probationers facing revocation to court at one time; however appointments would be (in the words of the Task Force report) "'allocated among qualified attorneys in a manner that is fair, neutral and non-discriminatory' as the statute requires."

Lastly, "Wheels of One" cause statistics to be misleading. In the two courts that use Wheels of One, what appear to be OAA appointments are in reality bench appointments, because the attorney is not selected in the fair, neutral and nondiscriminatory way required by the FDA.

A Public Defender's Office

The Texas Legislature is considering a bill which would streamline the process for creating public defender's offices. (SB 625). [The same bill would change the name of the Texas Task Force on Indigent Defense to the Texas Indigent Defense Council.] It is beyond the scope of this paper to discuss Public Defender's Offices, except to note that the leading authority in the U.S. on indigent defense has long stated that where a PD office is created, its staffing, budget, etc. should be proportionate to the local prosecutor's office. (Spangenberg Report). If such an office ever comes to Tarrant County, facilities will need to be found on a proportionate level to that of the DA's Office. If such an office is ever created, it is likely that political pressures would force more courts to use the more efficient and effective means of screening: FIOs and Magistrates.

Conclusion

The FDA is a huge step forward for Texas. With the FDA, this state has clearly made strides toward filling this dire need. However, more must still be done to give Texas in general, and Tarrant County in particular, an indigent defense system of which all can be even more proud, a system which goes beyond the *appearance* of providing effective representation to the indigent, but does this in reality. The suggestions offered above will lead to a more fair system, one in which all of the constituents can have confidence. This includes the taxpaying public as well as those who serve in the criminal justice system, and the defendants too. Also, these ideas lay the groundwork for far fewer instances in the future when defendants will be heard to complain "My appointed lawyer didn't do anything in my case except plead me out." This will translate into far fewer writs, grievances and other complaints. When the FDA was written, it is not likely that the authors envisioned defendants being found indigent, counsel being appointed and pleas taken within minutes. "Eyeglasses in about an hour"—OK. "Pleas in about an hour" is not a practice that increases anyone's confidence in the criminal justice system.

While court efficiency is important, it should not come at the expense of due process. Courts should strive to be "proficient." That is, courts should strive to be both efficient and effective. Courts should also strive to be places where lawyers can provide effective representation to all defendants. By using Wheels of One or sausage-factory/meet 'em and plead 'em techniques, there may be efficiency: defendants may be processed quickly through court. But speed is not the key. Justice is. And sometimes justice takes longer. As Judge Butcher and his co-authors noted, counsel must be independent, qualified and effective. Short-cuts like the Wheels of One may give rise to speed, but they damage the cause of justice. They clearly give the appearance of not independence, but of counsel being beholden to the judge. And they also give rise to more grievances and less confidence in the system.

"Meet 'em and plead 'em" is a joke that cannot withstand the scrutiny of enterprising investigative reporters. The practices suggested in this paper will lead to increased odds of adequate defense and effective representation in all cases. And if the idea of the FDA is to truly eliminate patronage and provide adequate/effective/good defense to the indigent, government should heed these words of U.S. Supreme Court Justice Brandeis (in his 1914 book *Other People's Money*): "Sunlight is said to be the best of disinfectants." The time has come to apply sunlight to the entire indigent defense system, by keeping public statistics on which courts are using the OAA wheels and which courts fully utilize the services of FIOs. This will also go a long way to having countywide uniformity in indigency findings. These suggested practices allow judges to visibly demonstrate to the public that they take the FDA seriously and are making every effort to comply. This will also lead to less litigation.

The main thing Tarrant County needs to do is make its existing indigent defense system more transparent to everyone. Tell the defendants the truth about how the Indigent Defense System works by replacing the form in Appendix A with the form in Appendix C. All of the courts should use the FIO-Magistrate-OAA wheel system. The felony courts should create a countywide revocation wheel. All of these moves will make for a more transparent system.

Creating transparency "is about being open. It's about being real and genuine and telling the truth in a way people can verify. It's based on the *principles* of honesty, openness, integrity, and authenticity…The opposite of Create Transparency is to hide, cover, obscure, or make dark. It includes hoarding, withholding, having secrets, and failing to disclose. It includes hidden agendas, hidden meanings, hidden objectives. The antonym for transparent is opaque—meaning something that is impervious to light and through which images cannot be seen. The *counterfeit* of transparency is illusion. It's pretending, 'seeming' rather than 'being,' making things appear different than they really are." Stephen R. Covey, *Speed of Trust: The One Thing That Changes Everything.* (Pages 153-54; emphasis in original).

When the federal government indicted various Dallas officials for public corruption, the October 2, 2007 *Dallas Morning News* quoted Mayor Tom Leppert stating that he will make good on his campaign promise to overhaul the antiquated campaign finance disclosure system and create an easily searchable campaign contribution and expenditure database. "It's easier. It's more transparent," the mayor said.

This is exactly what Tarrant needs to do with its FDA system. Stats should be searchable and public. There is no reason these stats cannot be kept and published monthly on judicial dashboards. This is in everyone's best interest: the public, the defendants and all of those who work within the Tarrant County criminal justice system. No legitimate reason exists not to have a completely transparent FDA system.

Building search-ability and transparency into the indigent defense system will make litigation far less likely. Making the system fully transparent also avoids the possibility of enterprising reporters writing stories about what is <u>wrong</u> with the Tarrant FDA system, and instead allows them to focus on what is <u>right</u>.

Non-transparent government is a hot media topic. The November 14, 2007 *Fort Worth Star-Telegram* column by Reader Advocate David House quoted a *Star-Telegram* managing editor on this topic: "While paying homage to transparency, government officials have become increasingly savvy about ways to prevent unwanted scrutiny," she said. "They are less likely to deny the information outright -- they just find ways to discourage public information." The column concluded: "The preface to a report for the People for the American Way Foundation and OpenTheGovernment.org notes: 'Citizens deprived of relevant information cannot participate in their government's decisions or hold their leaders accountable. Without this check, government officials are more likely to make decisions contrary to the public interest, abuse their authority, and engage in corrupt activities. In words that ring prophetic today, James Madison warned in 1822, "A popular Government, without popular information, or the means of acquiring it, is but a Prologue to a Farce or a Tragedy; or, perhaps both."'"

The cries for government transparency have only grown louder as the economy has gone south. Who in the Spring of 2009 has not seen members of Congress express public outrage when AIG executive bonuses see the light of day, part of this with government bailout money? What about the sight of automobile industry, banking and other executives being grilled about their non-transparent actions and how they played a role in getting the economy to this point?

Clearly the Tarrant Indigent Defense System does not compare to national economic issues. But this is the part of the world that Tarrant judges have control over. They (and all of us) should make every effort to be stewards of public money. Tarrant has a great Indigent Defense System; much progress has been made since the initial missteps involving use of the municipal judges in the screening process. However, a few more changes are needed. The County needs to make this system fully transparent. Once these improvements are made, Tarrant will have an FDA system of which all of its citizens can be proud. And no one could be heard to complain of patronage or discrimination or any other ills which the FDA was designed to cure. Once these improvements are made, Tarrant's indigent defense system will all be able to withstand public scrutiny.

Prediction: There will come a day when the Tarrant County indigent defense system is totally transparent. The public will demand it. That is the trend of government. But the public will ask why this wasn't done sooner; why were the clear recommendations of the 2006 Task Force Review ignored (not by all, but by some). The public will want to know who let this happen. And how much tax money was squandered.

How will the Tarrant County indigent defense system to get total transparency? By one or more of the following:

1. Judges: Tarrant judges voluntarily agree to make changes. For those who repeatedly follow Tarrant procedures and only rarely deviate from the plan to make an occasional bench appointment, this will make it easier for the public to see they are following the law. For those who currently do not follow Tarrant procedure, this would require a change of position. Just as the Tarrant felony judges issued an order which put the judicial dashboard on the county website, those same judges could order that the OAA vs. bench appointment stats be made part of the dashboard. The misdemeanor judges have the power to do the same thing.

2. Open Records: Open records requests can be made for the OAA vs. bench appointment stats. Auditor records (beyond those on the website) can also be made. Revealing patterns by tying auditor records to specific courts will be labor intensive.

3. Commissioners: Tarrant County Commissioners Court has established the Tarrant County Criminal Justice Coordinating Board in order to hear of issues such as these, and keep the commissioners apprised. As guardians of tax dollars, citizens expect commissioners to be attuned to these issues. Commissioners can be apprised either through the Coordinating Board or with one-on-one input from citizens.

4. Litigation: Judges in Tarrant County have on occasion been defendants in civil litigation. None like it. As noted above, some have embraced the ideas of the 2006 Task Force Review. Others have spent the last three years looking for ways to avoid compliance. With state law requiring that appointments be "allocated among qualified attorneys in a manner that is fair, neutral, and nondiscriminatory"

and the Task Force noting in 2006 that the practice of some Tarrant judges "appears to contradict" the judges' own plan, this area appears to be fertile ground for litigation. And with litigation, will come depositions. Possible questions could include: "Judge, what steps did you take to ensure 'fair, neutral and non-discriminatory' selection for your Wheel of One attorney?" "What application process does your Wheel of One attorney go through in order to qualify?" "Is it true that your Wheel of One attorney is your campaign treasurer?" "How do you explain County Auditor records that show vast sums from your court going to a particular attorney?" Those are sample questions. There will be more.

5. Legislation: The Texas Legislature enacted the FDA to eliminate patronage and ensure that indigent defendants receive independent, effective and qualified counsel. Wheels of One and sausage factory appointments of judges' friends insure that indigent defendants are not receiving independent counsel. This also raises the question of effectiveness, as well as the issue of qualifications. One day the Legislature will realize that many of these ongoing problems related to the FDA revolve around some judges looking for ways to circumvent the FDA in order to let the old ways of patronage continue. One day, the Legislature will decide enough is enough and they will end the practices of some judges who go around this law for their own ends. That is the day the Legislature adds sunlight/transparency requirements to the FDA. When that day comes, Texas will truly be much closer to the optimistic ideals set forth in the Butcher article. That is the day Texas will have moved beyond the first chord, and much closer to the full symphony. Gideon will then have not only a trumpet, but a full orchestra. In many areas, the legislature's intent is for each judge to do as s/he sees fit. But not with the FDA. The FDA envisions the beautiful music of members of a symphony all playing the same music. Until that happens, the sound will instead be clanging gongs of courts marching to the beat of their own drums. Not a pretty sound. And it is defendants and the taxpayers who pay the price.

Notice to Defendant Released Prior to Appointment of Lawyer

You must Show Up in Person today or tomorrow

Because you are being released before your request for appointment of a lawyer has been fully processed, **no attorney** has yet been appointed. You must qualify under the county financial guidelines to obtain a court appointed attorney.

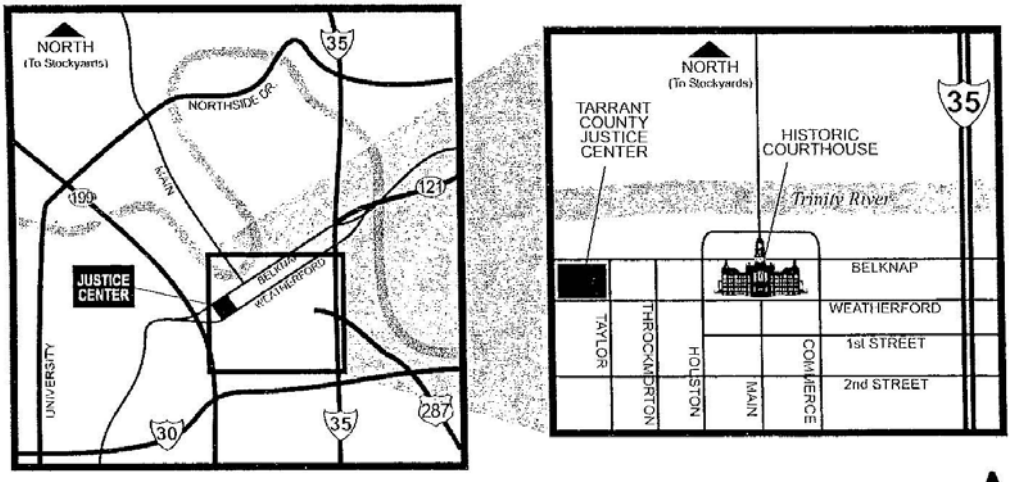
Attorneys are appointed by the end of the business day following your request; therefore you must report in person **today or the next business day (Monday through Friday) between the hours of 9:00 am and 3:00 pm.** If tomorrow is a Saturday, Sunday, or courthouse holiday, by the next business day.

Report to the following location:

Tarrant County Justice Center
Auxiliary Courtroom, 6th floor
401 West Belknap Street Fort Worth, Texas 76102
Telephone (817) 884-2369
Website: http://www.tarrantcounty.com
Hours: 9:00 am – 3:00 pm

Parking – There is paid metered parking around the Justice Center and there are paid parking lots within walking distance. THERE IS NO FREE PARKING AT THIS LOCATION.

Directions to Justice Center



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ELECTION OF COUNSEL Name _ DOB:

NO, I AM NOT ENTITLED TO AN APPOINTED TO AN APPOINTED LAWYER.
I have been warned by the magistrate that I have the right to request a determination of indigency to decide whether 1 am entitled to the appointment of a lawyer and I understood the warnings given to me by the magistrate, I will hire my awn lawyer.

I DO NOT WANT TO MAKE THIS DECISION **AT** THIS **TIME.**

YES, I BELIEVE THAT I AM ENTITLED TO AN APPOINTED LAWYER.
I have been advised by the magistrate of my right to request a determination of indigency to determine if I qualify for a court-appointed lawyer. I certify that I am without means to employ to employ a lawyer of my own choosing and I now request the to select and appoint a lawyer for me. I understand that I may be required to repay Tarrant County for a court-appointed lawyer at a later time, under such terms as a court may determine based on my future financial status; **and,**

I UNDERSTAND that if I bond out of jail before meeting with the Tarrant County Financial Information Officer, I must follow the directions **of the Notice to** Defendant Released prior to Appointment **of Lawyer** form which will be given to me upon my release from **jail so** that **a lawyer can be appointed for me.**

_____ Date:
Arrested Person

ORDER SETTING CONDITIONS OF BOND

IT IS THE ORDER OF THE COURT that if you make bond and receive an appointed lawyer that you must comply with following additional terms and conditions of bond. Any violations of these conditions may result in your bond being held insufficient and you being placed back in jail.

1. You must bring to your Initial Appearance Setting Copies of all your financial information, including: your last income tax return together with all W-2 forms for that year; your two most recent paychecks or pay stubs; your most recent Social Security or disability payment stubs; your most recent stock account statements; proof that you have been found to indigent or eligible for benefits by a government agency; proof of your expenses such as rent or mortgage payments; utility bills; day care costs; grocery costs; AND if you own your own home, proof of its value which can be found at: www.tad.org.
2. You must keep all appointments with your lawyer.
3. You must attend all court settings.
4. You must notify your lawyer's office and bondsman of any e anges in y[P]cfi residence address. *business* address *or* telephone *numbers* within *24* hours , *o f * , a.nge.*

_____
Judge/Magistrate
Date:

B

Notice to Defendant Released Prior to Appointment of Lawyer

If you want to request an appointed attorney, you must Show Up in Person today or tomorrow

Because you are being released before your request for appointment of a lawyer has been fully processed, **no attorney** has yet been appointed. You must qualify under the county financial guidelines to obtain a court appointed attorney.

If you believe you are too poor to afford an attorney, you must complete a questionnaire about your financial circumstances. You must bring your financial documents (paystub, W-2) to court with you. The judge will rule on whether or not under the law you qualify for a court-appointed attorney. Tarrant County considers the Federal Poverty Guidelines when making this determination. Attorney appointments are made on a rotating 'wheel' system. The lawyer appointed to represent you will be the next name up on the wheel. Defendants with court-appointed counsel may be ordered to re-pay Tarrant County for legal fees paid to the appointed attorney, depending on a defendant's future financial circumstances

Attorneys are appointed by the end of the business day following your request; therefore you must report in person **today or the next business day (Monday through Friday) between the hours of 9:00 am and 3:00 pm.** If tomorrow is a Saturday, Sunday, or courthouse holiday, by the next business day.

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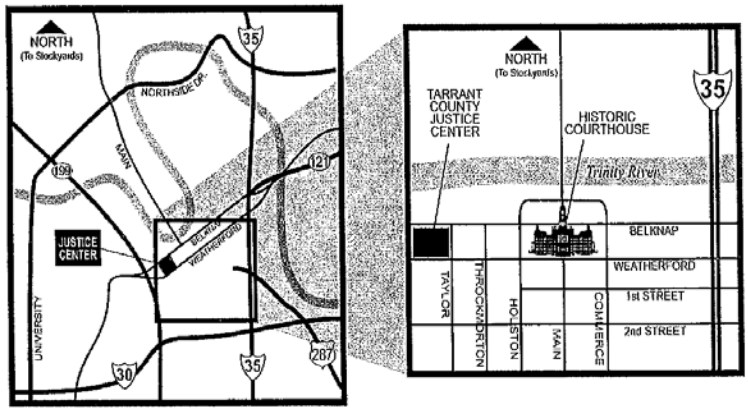

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