

Narrative

Harris County Public Defender's Office (Houston, TX)

Project: Future Appointed Counsel Training Program

a. Statement of the Problem

Harris County is the largest county in the state of Texas, with a population of over four million people.¹ It is the third largest county in the United States, and is part of the most ethnically diverse region in country.² With a large population comes a criminal justice system of significant proportions as well. In FY 2011, Harris County courts added over 46,000 felonies, nearly 78,000 misdemeanors, and nearly 10,000 juvenile charges to its docket.³ Many of these defendants were indigent and represented by appointed counsel. Over 28,600 felony (62.3%), 38,400 misdemeanor (49.3%), and over 7,500 juvenile cases (75.2%) were represented by appointed counsel, with total indigent defense expenditures of over \$26.7 million for FY 2011.⁴

Despite this sizable investment and indigent defense population, Harris County only spent \$6.53 per county resident on indigent defense in FY 2011.⁵ This was below the \$7.89 per capita spending by the state of Texas,⁶ a state that ranked 48th out of 50 among states in per capita indigent defense spending in 2008.⁷ Harris County did not establish a public defender

¹ U.S. Census, <http://2010.census.gov/news/releases/operations/cb11-cn37.html>

² Jeannie Kever, "Houston region is now the most diverse in the U.S.," *Houston Chronicle* (March 5, 2012). Online at: <http://www.chron.com/news/houston-texas/article/Houston-region-is-now-the-most-diverse-in-the-U-S-3382354.php>.

³ "Harris County Data Sheet," <http://tidc.tamu.edu/public.net/>. Accessed May 2, 2012.

⁴ *Id.*

⁵ Data provided by Joel Lieurance, Texas Indigent Defense Commission.

⁶ Data provided by Joel Lieurance, Texas Indigent Defense Commission, based on state-by-state indigent defense expenditure data collected by the Spangenberg Group.

⁷ *Id.*

office until late 2010. Until that time, it was the most populous county in the nation without a public defender office.⁸

Although the Harris County Public Defender's Office (PDO) has been established, it has been designed to accept only a small fraction of the appointed cases, in part because the office has caseload limits imposed on it as a condition of a grant from the Texas Indigent Defense Commission. The PDO's caseload limits are based on the limits established by the National Advisory Commission on Criminal Justice Standards and Goals: 150 felony, 200 juvenile, and 25 appeals per attorney per year. Based on those caseload limits, the PDO is expected to handle approximately 5.8% of felony, 3.6% of misdemeanor, 20% of juvenile, and 95% of appellate cases that require appointed counsel in Harris County every year.

Considering that private counsel is responsible for representing the vast majority of indigent defendants in Harris County, it is imperative that standards for private counsel be high, their caseloads be limited, and they be systematically reviewed for quality and efficiency.⁹ Relatedly, it is also particularly important that new lawyers who receive appointed cases be properly trained and supervised, both prior to and during their early introduction to representing indigent defendants. It is highly questionable any of these conditions are being met in Harris County today.

⁸ Chris Moran, "Harris County taps experienced hand for public defender," *Houston Chronicle* (November 9, 2010). Online at: <http://www.chron.com/news/houston-texas/article/Harris-County-taps-experienced-hand-for-public-1702895.php>.

⁹ See ABA *Ten Principals of a Public Defense Delivery System*, Principle 5 (Defense counsel's workload is controlled to permit rendering of quality representation); Principle 6 (Defense counsel's ability, training, and experience match the complexity of the case), and Principle 9 (Defense counsel if provided with and required to attend continuing legal education), and Principle 10 (Defense counsel is supervised and systematically reviewed for quality and efficiency according to national and locally adopted standards).

Harris County does have standards in place for qualifying to be appointed to represent indigent defendants. In misdemeanor cases, appointed counsel must (among other requirements): be licensed by the State Bar of Texas (SBOT) for three consecutive years; show a history of commitment to and proficiency in practicing criminal law; have represented a defendant as first-chair, in not less than 50 cases punishable as a Class “A” or “B” misdemeanor; and tried to verdict as first-chair, not less than five trials, acted as second-chair in not less than 10 trials, or a combination of both.¹⁰ To receive felony appointments, a lawyer must (among other things): be licensed and in good standing with the SBOT; have practiced criminal law for three year; pass a certification test with a score of at least 75; and average at least 10 hours a year of continuing legal education in criminal law. In addition to the above “base-line” criteria, an attorney must have tried to conclusion at least three criminal jury trials to be on the third-degree felony list; tried to verdict at least four felony jury trials as lead counsel and have at least four years of criminal law experience to be appointed to represent defendants charged with second-degree felonies; and tried to verdict at least eight felony jury trials as lead counsel and practiced criminal law for at least five years to be appointed to represent defendants charged with first-degree felonies. Lawyers on the post-conviction list must have personally authored and filed at least five criminal appellate briefs or post-conviction writs or may submit a writing sample for approval by a committee of judges.

While these standards do impose some basic level of knowledge and trial experience, the fact remains that appointed counsel in Harris County has received its fair share of criticism in

¹⁰ “Harris County Criminal Courts at Law Alternative Plan Implementing the Texas Fair Defense Act; Standards and Procedures Related to Appointment of Counsel for Indigent Defendants,” effective November 5, 2009, p.6.

recent years for its lack of quality and excessive caseloads.¹¹ Attorneys may have the necessary trial experience to receive appointments, but that doesn't mean they have provided effective counsel. There are no formal training or mentoring requirements prior to receiving appointments. There is no formal supervision or feedback for appointed counsel, particularly new attorneys. There are no caseload standards.

New criminal defense attorneys seeking to get on the appointment list in Harris County typically get their trial experience in one of three ways: 1) be a former assistant district attorney, 2) be in private practice and get retained to try a case, or 3) go to a neighboring jurisdiction with lower standards. Many new, aspiring criminal defense attorneys have no desire to work for the District Attorney's Office, so they cannot get trial experience in that fashion. Many are solo practitioners who are stuck in the unenviable "Catch 22" situation of not having the necessary trial experience in order to be placed on the appointment list, but can't get the trial experience because clients are reluctant to hire them because of their lack of experience. The result is that many people eligible to represent indigent defendants are former prosecutors and an exclusive cadre of lawyers, many of whom are exceeding national caseload standards due to the limited number of attorneys qualified to take appointments, greed, and/or low pay rates.

While upfront training, mentoring, and supervision may be fairly common for new lawyers being hired by public defender offices throughout the country, it is less common (and less rigorous) for private appointed counsel. The Public Defender Service (PDS) in Washington, DC, widely seen as the best public defender in the country, has a rigorous, eight-week training

¹¹ See "Experts: Harris County Taking Risks with Lawyer Appointment System," KHOU-TV, May 19, 2009. Online at: <http://www.khou.com/news/local/66161012.html>; Adam Liptak, "A Lawyer Known Best for Losing Capital Cases," *New York Times*, May 17, 2010. Online at: <http://www.nytimes.com/2010/05/18/us/18bar.html>; Sarah Viren, "A Select Few Get the Cases, and the Cash," *Houston Chronicle*, April 20, 2008. Online at: <http://www.chron.com/news/houston-texas/article/Lawyers-picked-for-juveniles-give-campaigns-cash-1759443.php>.

program for new public defenders, as well as a mentorship program and significant supervision.¹² PDS is also involved in training private lawyers who are on the CJA (Criminal Justice Act) panel, but upfront training is only two-and-a-half days long.¹³ Unlike lawyers at PDS, there is no mentorship program or ongoing supervision for CJA lawyers.

Massachusetts' Committee for Public Counsel Services (CPCS) has a four-week, in-house training program for new public defenders,¹⁴ while its Private Counsel Division has a one-week training program for private attorneys who would like to become certified to represent indigent defendants and juvenile delinquency cases.¹⁵ CPCS also has a paid mentorship program for lawyers providing representation in District Courts (low-level felonies and misdemeanors) and supervising attorneys who conduct performance reviews of private assigned counsel.¹⁶

San Mateo County's (CA) Private Defender Program (PDP) is a "coordinated assigned counsel" program that is charged with assigning private counsel to represent indigent defendants, as well as providing training and mentors. New lawyers attend a four-day, "Basic Trial Skills" conference organized by the California Public Defenders Association, as well as ongoing continuing legal education.¹⁷ All new PDP lawyers are assigned a paid mentor with more than ten years of experience who thoroughly review mentees' cases, "attend interviews and various types of hearings in which mentees provide representation, and critique their performances."¹⁸

¹² *Securing Reasonable Caseloads*, p. 209-213; Conversation with Julian Leighton, General Counsel, Public Defender Service for the District of Columbia, May 7, 2012.

¹³ Julia Leighton conversation, May 7, 2012.

¹⁴ *Securing Reasonable Caseloads*, p. 201.

¹⁵ See http://www.mcle.org/program-calendar/program-catalog.cfm?product_code=2110018P02.

¹⁶ *Securing Reasonable Caseloads*, p. 203-4.

¹⁷ Conversation with John Digiacinto, Chief Defender, San Mateo Private Defender Program.

¹⁸ *Securing Reasonable Caseloads*, p. 223.

Every year, all lawyers receiving appointments through the PDP receive a performance evaluation by the PDP's chief and assistant chief.¹⁹

Other states have recently implemented mentoring programs for all new lawyers, civil and criminal alike. In New Mexico, the "Bridge the Gap joins new attorneys, who have recently been admitted to practice, with experienced attorneys who serve as mentors for a twelve month period. Mentors and new lawyers meet in person a minimum of seven times a year to discuss the practice of law and work on activities they choose from a mentoring plan."²⁰ In May 2011, the Oregon State Bar launched the New Lawyer Mentoring Program for all incoming bar members.²¹ "The program is loosely modeled on programs in Georgia and Utah, which have received accolades for giving all new bar members meaningful access to experienced lawyers and a well-developed mentoring program in their first year."²²

b. Project Design and Implementation

The Harris County Public Defender's Office (PDO) will establish the Future Appointed Counsel Training Program (FACT) to provide comprehensive training, mentoring, and supervision for new private lawyers to ensure that they have the skills and knowledge necessary to effectively represent indigent defendants. The program also seeks to increase the number of attorneys who are qualified to be appointed by the courts to represent indigent defendants. This project is primarily focused on promoting Principles 2, 6, 9, and 10 of the ABA Ten Principles.

¹⁹ *Id.* at 224.

²⁰ Bridge the Gap Mentorship Program, online at: <http://www.nmbar.org/attorneys/mentorship/mentorship.html>.

²¹ Oregon New Lawyer Mentoring Program, online at: <http://www.osbar.org/programs/mentoring>.

²² *Id.*

Initial Program Design and Implementation Planning

The PDO will work with the Southern Public Defender Training Center (SPDTC), area law schools, and others to create a comprehensive design of the FACT program. A review of training, mentoring, and supervision programs from around the country will be conducted to fully develop the program's structure and content. It is anticipated that the program will last one year, from initial training to graduation.

The Justice Center of the Council of State Governments (JCCSG) will help develop a methodology to evaluate the program's effectiveness as part of their present work evaluating other components of the PDO. Changes in attorney knowledge and skills that result from participation in the FACT program will be measured using a survey instrument provided to program participants, mentors, supervisors, and possibly judges. Participants' baseline knowledge will be measured through the provision of a test at the beginning of the program. Test questions will be based on the ABA Ten Principles, the State Bar of Texas' "Performance Guidelines for Non-Capital Criminal Defense Representation," and materials tested on Harris County's certification test for appointed counsel. FACT Program graduates will be tested on similar material upon exiting the program. Case outcome data can be collected using the PDO's case management system, Defender Data.

Recruitment

The PDO will work with local law schools – the University of Houston Law Center, South Texas College of Law, and Thurgood Marshall School of Law – and others to identify highly qualified candidates for the FACT program. Ten graduates from December 2012 and May

2013 would be targeted for acceptance to the first year of the program. Ten graduates from December 2013 and May 2014 would be targeted for the second year of the program.

Orientation

New lawyers accepted into the FACT program will attend an orientation program to fully describe the program's requirements and benefits. The previously mentioned baseline test will be provided at the orientation to measure baseline knowledge of participants.

Initial Training for FACT Participants

New lawyers accepted into the FACT program will attend the SPDTC Summer Institute or a significantly similar program at the SPDTC in the summer of 2013 as part of their introduction to the program. The second class of new lawyers accepted into the program will attend the SPDTC Summer Institute in the summer of 2014. This 14-day intensive training program in Birmingham, Alabama is widely viewed as one of the best trial practice clinics in the country. Tuition and participant travel will be paid for by the grant.

In addition to the two-week training at the SPDTC, participants will also attend a two-day (possibly more) training session on the Harris County courts and criminal justice system, Texas criminal law, the ABA Ten Principles, and the State Bar of Texas' "Performance Guidelines for Non-Capital Criminal Defense Representation." The "Performance Guidelines" explain the duties of non-capital criminal defense counsel in Texas, and will serve as the measure by which attorney performance ultimately will be measured.

Paid Mentors

Mentoring programs in other jurisdictions such as Massachusetts, San Mateo, and New Mexico will be examined for best practices. These programs will also serve as a basis for the design of the FACT Program's mentoring component. Mentors will be paid a stipend, as that appears to be an important incentive for keeping mentors engaged.²³

Mentors will be recruited through the membership of the Harris County Criminal Lawyers Association (HCCLA) in the spring and early summer of 2013 for the first class of FACT Program, and the spring and early summer of 2014. PDO Assistant Public Defender, Sarah Wood, currently serves as the Second Chair Coordinator for HCCLA, which is a volunteer mentorship program. Ms. Wood has surveyed attorneys who have been mentored through HCCLA's Second Chair Program, so she knows which mentors have good reputations. Those attorneys with good mentoring reputations will be recruited, as well as others with excellent reputations as attorneys, especially those who take appointed cases. An orientation for mentors will occur in the early summer of 2013.

Ongoing Continuing Legal Education

Principle 9 of the ABA Ten Principles requires defense counsel to be provided with and required to attend continuing legal education. The PDO has an existing in-house training program which is open to both PDO attorneys and private defense counsel. In-house trainings have included: Robert C. Bennett, Dan Cogdell and Letitia Quinones on "Cross-examination;" Tyrone Moncriste on "Story Telling, Opening and Closing;" Connie Williams, Jed Silverman,

²³ Conversation with Norman Lefstein, Professor of Law and Dean Emeritus, Indiana University School of Law.

Michelle Beck, and Ron Estefan, on “Conducting Voir Dire;” and Chris Downey on “Preparing for Trial.”

Attorneys in the FACT Program will be required to attend PDO in-house training programs, and special in-house training programs will be developed with FACT participants in mind. We anticipate that there will be one in-house training provided per month for participants in the 2013 and 2014.

Supervision and Performance Reviews

As Principle 10 of the ABA’s Ten Principles notes, “Defense counsel [should be] supervised and systematically reviewed for quality and efficiency according to nationally and locally adopted standards.” While supervision and performance reviews are more prevalent in public defender offices, private indigent defense counsel is supervised only to the extent that it occurs in private law offices.

This grant would result in the establishment of a supervision and performance review process for new private attorneys that will be provided by the PDO. Private attorney supervision programs in other jurisdictions such as Massachusetts and San Mateo, California, will be examined for best practices, as will well-regarded public defender supervision programs like in the DC Public Defender Service. Performance review processes and standards from these jurisdictions and others will be reviewed as well. These programs will serve as a basis for the design of the FACT Program’s supervision and performance review process.

Supervisors will meet with FACT Program participants on a monthly basis and provide a performance review after the first six months and at the end of the one-year program (unless best

practices would suggest otherwise). Performance reviews will be based on supervisor observations and conversations with participants and mentors.

Program Evaluation

At the end of the program, JCCSG will collaborate with the PDO to conduct an evaluation of the program. As previously mentioned, changes in attorney knowledge and skills that result from participation in the FACT program will be measured using a survey instrument provided to program participants, mentors, supervisors, and possibly judges. Participants' baseline knowledge will be measured through the provision of a test at the beginning of the program. Test questions will be based on the ABA Ten Principles, the State Bar of Texas' "Performance Guidelines for Non-Capital Criminal Defense Representation," and materials tested on Harris County's certification test for appointed counsel. FACT Program graduates will be tested on similar material upon existing the program.

JCCSG and the PDO will also determine how many FACT Program graduates attempt to become qualified to receive appointed cases and how many pass the certification exam. FACT Program graduates' success in passing the certification exam will be compared with other applicants who did not participate in the FACT Program.

Advocacy for Changes to Appointed Counsel Qualifications

If successful, the PDO will use the results of the FACT program to advocate for changes to Harris County's appointment qualification process to allow new lawyers who graduate from the FACT Program to receive indigent defense appointments. The courts may be interested in requiring all attorneys seeking to be added to the appointment list to complete the FACT Program.

c. Capabilities and Competencies

The following agencies and organizations will be primarily charged with developing and implementing the FACT Program:

Harris County Public Defender's Office

The PDO is an agency within the county government of Harris County, Texas. The Chief is [REDACTED], who was appointed by the Harris County Commissioners Court in November 2010. Prior to becoming the Chief of the PDO, he was the Federal Public Defender for the Northern District of New York, which he established in 1999, along with the Federal Public Defender Office in Vermont. In 1995, before relocating to New York, he established and managed the federal defender organization in the Southern District of Alabama in Mobile. The PDO uses Defender Data to track its cases and evaluate case outcomes. The PDO has a dedicated case manager, [REDACTED], to collect and analyze case data. Prior to joining the PDO, [REDACTED] worked for the Harris County District Clerk's Office for 19 years as the Criminal Business Process Analyst. Other staff who will be involved in the FACT Program are Legal and Policy Analyst, [REDACTED], Assistant Public Defender and coordinator of the Harris County Criminal Lawyers Association Second Chair program; [REDACTED], Felony Trial Division Chief; and [REDACTED], Appellate Division Chief. The PDO will be hiring an administrator of the program with the grant funding.

Justice Center of the Council of State Governments

JCCSG is currently conducting an outcome evaluation of the Harris County Public Defender's Office as part of a state grant that established the office. CSG has agreed to partner with the PDO in evaluating the FACT Program as part of its existing outcome evaluation of the

PDO. The Justice Center is lead [REDACTED], who is the Director of Research and expert on indigent defense issues, having assisted the state of Texas in the development of Fair Defense Act on 2001 and in the continuation of policies and strategies to strengthen indigent defense since then. [REDACTED] has participated in major evaluations of indigent defense programs in Texas conducted in collaboration with Texas A & M Public Policy Research Institute. Most recently, [REDACTED] participated in a two-year evaluation of indigent defense policies conducted by the National Right to Counsel Committee of The Constitution Project. This prestigious bipartisan panel issued a national report in 2009 that is shaping national improvement policies in this area. [REDACTED] received his B.A. in Political Science from Loyola University, and his M.A. and Ph.D. from the University of Texas at Austin.

[REDACTED], Senior Legal and Policy Advisor, will also assist with this project. [REDACTED] helps manage and develop projects related to court initiatives, corrections, sentencing reforms, and juvenile justice issues for JCCSG. Previously [REDACTED] served as director of the Texas Office of Court Administration. From 1997 to 2005 he was general counsel for the Texas Department of Criminal Justice (TDCJ), responsible for prisons, probation, and parole. He also was general counsel to the Texas Board of Criminal Justice—the governing body for TDCJ. Prior to that position, he was the executive director of the Texas Punishment Standards Commission, general counsel to the Texas Senate Committee on Criminal Justice, director of the Senate's redistricting staff, and a briefing attorney for the Texas Court of Criminal Appeals. Among other projects, he works on the establishment, evaluation, and replication of public defender offices and on Justice Reinvestment strategies. Carl holds a J.D. from the University of Texas School of Law, a master's degree from the Lyndon B. Johnson School of Public Affairs, and a B.A. from the University of Cincinnati.

Southern Public Defender Training Center

The SPDTC is widely viewed as the best training available for new public defenders. [REDACTED] is the President/Founder of the SPDTC. [REDACTED] is the Director of the Honors Criminal Justice Program at Atlanta's John Marshall Law School, where he also teaches criminal law and criminal procedure. He is the former Training Director of the Public Defender Service for the District of Columbia (PDS), an office nationally known for its training program.

Harris County Criminal Lawyers Association

HCCLA has over 650 criminal defense lawyer members. The association has a volunteer mentorship program in place, which is coordinated by [REDACTED], assistant public defender at the PDO.

d. Plan for Collecting the Data Required for this Solicitation's Performance Measures

The PDO and JCCSG have an existing data collection and analysis relationship that will be extended to complete this project. The program's effectiveness will be demonstrated by comparing FACT Program participants' knowledge and skills related to indigent defense prior to starting the program, to their knowledge and skills afterward. Participants, mentors, supervisors, and judges will be surveyed to get their views of the effectiveness of the program.

CSG and the PDO will also examine how many FACT Program graduates attempt to become qualified to receive appointed cases and how many pass the certification exam. Their success in passing the qualification exam will be compared with other applicants who are not FACT Program graduates.

Performance Measures

Performance Measure	What Data Will Be Collected and How	How Data Will Be Assessed and Analyzed	Process for Reporting Findings and Outcomes
Knowledge of FACT participants regarding criminal law and indigent defense standards	Test administered re knowledge of ABA 10 Principles, the State Bar of Texas’ “Performance Guidelines for Non-Capital Criminal Defense Representation,” and material on Harris County’s certification exam for appointed counsel.	The PDO, with the assistance of the SPDTC will develop the test. The PDO will administer the test. Pre-program test results will be compared with post-program results, as analyzed by CSG.	CSG and the PDO will include these findings and outcomes in its final report.
Trial and negotiation skills of FACT participants	Surveys of participants, mentors, supervisors, and judges on changes in trial and negotiation skills of FACT participants.	PDO and CSG will develop surveys; survey results analyzed by CSG.	CSG and the PDO will include these findings and outcomes in its final report.
Number/percentage increase in attorneys qualified to receive indigent defense appointments	<p>Past data on annual number of new attorneys who attempt, pass, and fail Harris Co. certification exam to become qualified to represent indigent defendants. Data will be gathered from court administration.</p> <p>Number of persons from FACT program who attempt, pass, and fail Harris Co. certification exam and become qualified to receive indigent defense appointments after completing the program. Data will be gathered from court administration or surveys of FACT program participants.</p>	Number of persons passing and passage rates for non-FACT lawyers attempting to pass the certification exam will be compared to FACT participants to determine if FACT program participants have a higher passage rate for the certification exam.	CSG and the PDO will include these findings in its final report.