

## **Task Force on Indigent Defense**

### **Dallas County Policy Monitoring Follow-up Visit**

**May 26 – 29, 2009\***

\*Revisions were made on page 12 to the original report. New language is underlined. Deleted language is indicated by a line running through it.

In addition, the charts on pages 16, 18, 20, and 22 in the Appendix have been replaced.

**Background** ..... 3

**Overview of Follow-up Monitoring Review** ..... 3

**Summary of Recommendations**..... 4

**Timely Appointment of Counsel**..... 6

**Felony Appointments**..... 6

**Misdemeanor Appointments**..... 8

**Fair, Neutral, and Non-discriminatory Attorney Selection Process** ..... 10

**Distribution of Felony Appointments** ..... 11

**Distribution of Misdemeanor Appointments** ..... 13

**Distribution of Juvenile Appointments**..... 14

**Appendix A – Foreign Language Felony Appointment Wheel Distributions** ..... 16

**Appendix B – Non-Foreign Language Felony Appointment Wheel Distributions**..... 20

**Appendix C – Misdemeanor Appointment Distributions** ..... 24

**Appendix D – 304<sup>th</sup> District Court Juvenile Appointment Distributions**..... 26

**Appendix E – 305<sup>th</sup> District Court Juvenile Appointment Distributions** ..... 28

## **Purpose of Task Force Monitoring Visit**

In January 2002, the 77<sup>th</sup> Texas Legislature established the Task Force on Indigent Defense (“Task Force”). The mission of the Task Force is to improve the delivery of indigent defense services through fiscal assistance and professional support to State, local judicial, county, and municipal officials. The purpose of the Task Force is to promote justice and fairness to all indigent persons accused of criminal conduct, including juvenile respondents, as provided by the laws and constitutions of the United States and Texas. The Task Force is given a directive under Tex. Gov’t Code § 71.062(b) to monitor local jurisdictions’ compliance with the Fair Defense Act (“FDA”).

## **Background**

The Task Force conducted a policy monitoring visit of Dallas County between July 16 and July 20, 2007. The Task Force issued a report with recommendations that focused on the timeliness of attorney appointments and the fairness of appointments. The district courts responded to the report and noted that computer system problems had been the main cause of late attorney appointments. The response stated that the courts would research the costs of having a pre-trial services department or magistrate court staff assist arrestees with affidavits of indigence. Concerning the fairness of appointments, the district courts stated that they would have IT Services give them access to wheel appointment data reports. The county courts later adopted the district courts’ response.

On February 26, 2009, the Task Force requested information from the auditor’s office and from the district court administrator regarding the distribution of court appointments. Staff presented the auditor’s office data showing the distribution of felony, misdemeanor, and juvenile appointments at the March 26, 2009 Task Force Policies and Standards Committee meeting. The Committee asked the policy monitor to gather more information and further delineate appointment distributions so that the distribution of each appointment list could be shown.

## **Overview of Follow-up Monitoring Review**

Staff members Wesley Shackelford and Joel Lieurance conducted a follow-up visit to Dallas County between May 26 and May 29, 2009. The purpose of this visit was to examine whether action plans were put in place and whether the recommendations from the July 2007 visit were implemented. On this follow-up visit, Task Force staff met with various statutory county court judges who handle misdemeanor offenses, the district court judges who handle felony offenses, a magistrate judge, the district criminal courts’ manager, the county criminal courts’ manager, the auditor’s first assistant, and the judges who handle juvenile matters. Staff examined:

- Data showing the distribution of attorney appointments by appointment list for FY 2008.
- Data showing the timeliness of felony and misdemeanor appointments during FY 2009.

## **Summary of Recommendations (August 2009)**

**Felony Courts Recommendation 1:** TEX. CODE CRIM. PROC. Art. 1.051 requires courts to appoint counsel within one working day. The felony court coordinators appoint counsel as soon as they receive a request. As the data indicates, this process does not ensure that all eligible defendants receive counsel as required by State law. Hence, the courts must put in place a process that comports with the timely requirements of State law. The County must also put in place a process so that requests are transmitted from municipal courts to the felony court coordinators within 24 hours as required by TEX. CODE CRIM. PROC. art. 15.17.

**Felony Courts Recommendation 2:** In response to the July 2007 monitoring visit, the Dallas felony courts coordinated with IT Services so that they could access appointment wheel reports. The monitor examined the appointment wheel data for FY 2008 and found that appointments were not allocated evenly among qualified attorneys. Some attorneys were getting a significant number of appointments from each wheel, while others were getting very few. TEX. CODE CRIM. PROC. art. 26.04(b) requires the County to ensure that a fair, neutral, and non-discriminatory appointment system is implemented.

**Misdemeanor Courts Recommendation 1:** TEX. CODE CRIM. PROC. Art. 1.051 requires courts to appoint counsel within one working day. This means that the courts must implement a procedure to timely receive and administer requests for counsel. The County must also put in place a process so that requests are transferred from municipal courts to the misdemeanor court coordinators within 24 hours as required by TEX. CODE CRIM. PROC. art. 15.17.

**Misdemeanor Courts Recommendation 2:** The monitor found that misdemeanor appointments in FY 2008 were not allocated evenly among qualified attorneys. Some attorneys were getting a significant number of appointments, while others were getting very few. TEX. CODE CRIM. PROC. art. 26.04(b) requires the County to ensure that a fair, neutral, and non-discriminatory appointment system is implemented. The reason for the discrepancy in the appointment distribution is not documented or noted anywhere by the courts. Moreover, it was reported to us that the misdemeanor courts are unable to track appointment data and so are unable to know which attorneys are due for an appointment under the appointment wheel.

**Juvenile Courts Recommendation:** The Dallas Juvenile Indigent Defense Plan requires a system of rotation in appointing attorneys. Following a system of rotation ensures that appointments are allocated in a fair, neutral, and non-discriminatory manner. Under a rotational system, good cause must be found for skipping an attorney on the wheel. Where attorneys do not wish to receive an equal share of appointments, the courts need to document this fact in some manner. From our review, cases assigned to juvenile defense attorneys were not allocated evenly among qualified attorneys. It was reported to us that the uneven distribution occurs because several attorneys choose to focus on criminal rather than juvenile matters. However, many attorneys qualified for all types of juvenile appointments receive very few appointments. The reason for the discrepancy is not noted or documented.

**Non-Mandatory Recommendation:** Dallas County may wish to have defendants complete a detailed affidavit of indigence before assigning counsel. Collecting data regarding an applicant's financial status can allow for a more accurate determination of whether the applicant is indigent. If a more detailed affidavit is used, under Article 15.17(a), it must be completed at magistration when counsel is first requested. Article 15.17(a) requires that the magistrate ensure reasonable assistance in completing

the necessary forms for requesting appointment of counsel at the time of magistration. The volume of inmates at the Dallas County Jail is too great for a single individual to provide this necessary assistance. In 2007, the Task Force published a document that found screening for indigence to be beneficial for almost every jurisdiction. This screening involves a face-to-face interview with the arrestee to determine the arrestee's ability to afford an attorney. The Task Force publication is attached with this report.

## **Timely Appointment of Counsel**

Under Tex. Code Crim. Proc. art. 15.17 magistrates are required to ask and record whether an arrestee requests appointment of counsel. They are to ensure reasonable assistance in completing the necessary forms for requesting appointment of counsel and are to transmit the requests to the appointing authority within 24 hours of the request being made. Per Article 1.051(c), the appointing judges have one working day from receipt of the request to determine indigence and to appoint counsel for detained persons.

Persons arrested within Dallas County may be arrested by over 60 different arresting agencies. Those arrested by the City of Dallas are sent directly to the Dallas County Jail. Those arrested by other municipalities are booked at their respective municipal jails where they are given magistrate's warnings and can request appointed counsel. These requests are not forwarded to the courts or other appointing authority as required by TEX. CODE CRIM. PROC. art. 15.17(a). The arrestees are then transferred to the Dallas County Jail where they again receive magistrate's warnings. This time, the request is transferred to the courts. Along with the request for counsel, arrestees sign an affidavit stating that they cannot afford counsel. The affidavit does not contain detailed income, asset, or expense data.

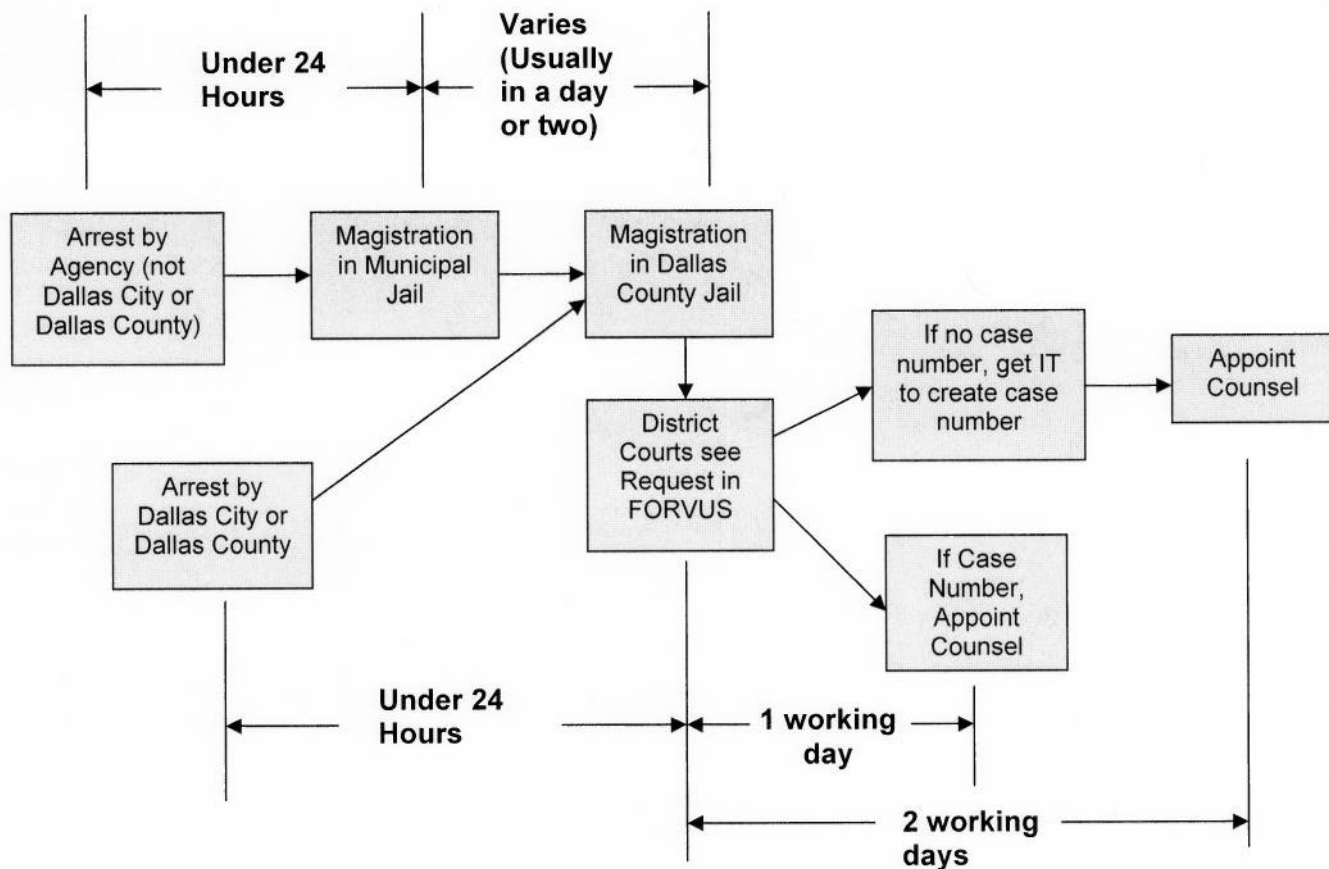
## **Felony Appointments**

Dallas County has an automated system that generates case numbers for felony offenses after arrestees are booked into the Dallas County Jail and typically before cases are filed by the prosecutor. Generating a case number allows a case to be assigned to an individual court before it is filed. Sometimes a case number is not successfully generated, and IT Services must hand-generate the case number upon notice that one was not created. The district courts receive the requests for counsel from the Dallas County Jail with the automated case number. The court administrator for each district court appoints counsel once a request for counsel is received. In a majority of cases, the time to appointment is within one working day plus 24 hours from when the request was made at the Dallas County Jail. When a case number is not automatically generated, the appointment typically occurs one day later than it otherwise would have been made. This results in counsel not being appointed timely.

Moreover, one cannot determine the actual time from when requests for counsel are initially made until counsel is appointed because data from municipal jails (where requests are often initially made) does not go into the case file. These requests must be transferred to the county courthouse to the courts or other appointing authority within the statutorily required 24 hours and subsequently placed in the case file. When counsel is requested at the municipal jails, times to appointment typically are outside statutory time limits. A diagram illustrating how this process works in the felony courts follows.



**Diagram 1: Felony Appointment Process**



**July 2007 Visit**

During the July 2007 visit, the Task Force policy monitor attempted to determine the timeliness of felony appointments. The monitor examined case files for 102 in-custody felony defendants who received appointed counsel. The monitor only examined data showing requests for counsel made at the Dallas County Jail and not requests made at municipal jails. The monitor found that based on available request data that counsel was appointed timely in 78% of these cases. Requests for counsel made at municipal courts other than the City of Dallas were not reviewed. If these cases were reviewed, the percentage of timely appointments would be lower. Dallas is not and has not been able to track requests made prior to book-in at the Dallas County Jail.

The July 2007 report listed the following Task Force recommendation and district courts' response.

**Recommendation:** *Under the current system, appointments for detained persons in the district courts are not timely in approximately 22% of cases. The jurisdiction must establish procedures to ensure that Article 1.051 time deadlines are met. Many of these untimely appointments occurred just past the statutory deadline.*

**Response:** *Dallas continues to have computer problems which cause many delays in information being received from the jail to the courts. The Adult Information System used by the jail does not always communicate with the mainframe used by the Courts. The jail uses the AIS system to process*

defendants and the courts use the mainframe system to determine court appointments. At times there is a delay in importing information from AIS to the mainframe which can delay court appointments.

In addition, at times there is a delay in appointment of counsel because of personnel shortages or absences. This issue was addressed in January 2008. At that time, a system was implemented for continuous coverage of the appointment of counsel in the absence of a court coordinator.

**May 2009 Visit**

As of the May 2009 visit, the district courts are still using the FORVUS mainframe system to make felony appointments but are about to make a transition to making appointments through AIS. The monitor again attempted to determine the timeliness of felony appointments. The monitor examined case files for 44 in-custody felony defendants who received appointed counsel. Appointments occurred between January 2009 and April 2009. Of these 44 files, 37 were timely (84%). The times to appointment ranged from zero to five workdays after the request was made at the Dallas County Jail (plus 24 hours allowed for transferring the request). Requests for counsel made at municipal courts other than the City of Dallas were not reviewed. If these cases were reviewed, the percentage of timely appointments would be lower.

The monitor did not check times to appointment for bonded persons. Under *Rothgery v. Gillespie County*, 128 S. Ct. 2578 (2008), counsel must be appointed within a reasonable time of request for bonded persons. Waiting to appoint counsel until the time of indictment or a later initial appearance does not seem to comport with *Rothgery*.

**Felony Courts Recommendation 1:** TEX. CODE CRIM. PROC. Art. 1.051 requires courts to appoint counsel within one working day. The felony court coordinators appoint counsel as soon as they receive a request. As the data indicates, this process does not ensure that all eligible defendants receive counsel as required by State law. Hence, the courts must put in place a process that comports with the timely requirements of State law. The County must also put in place a process so that requests are transmitted from municipal courts to the felony court coordinators within 24 hours as required by TEX. CODE CRIM. PROC. art. 15.17.

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**Misdemeanor Appointments**

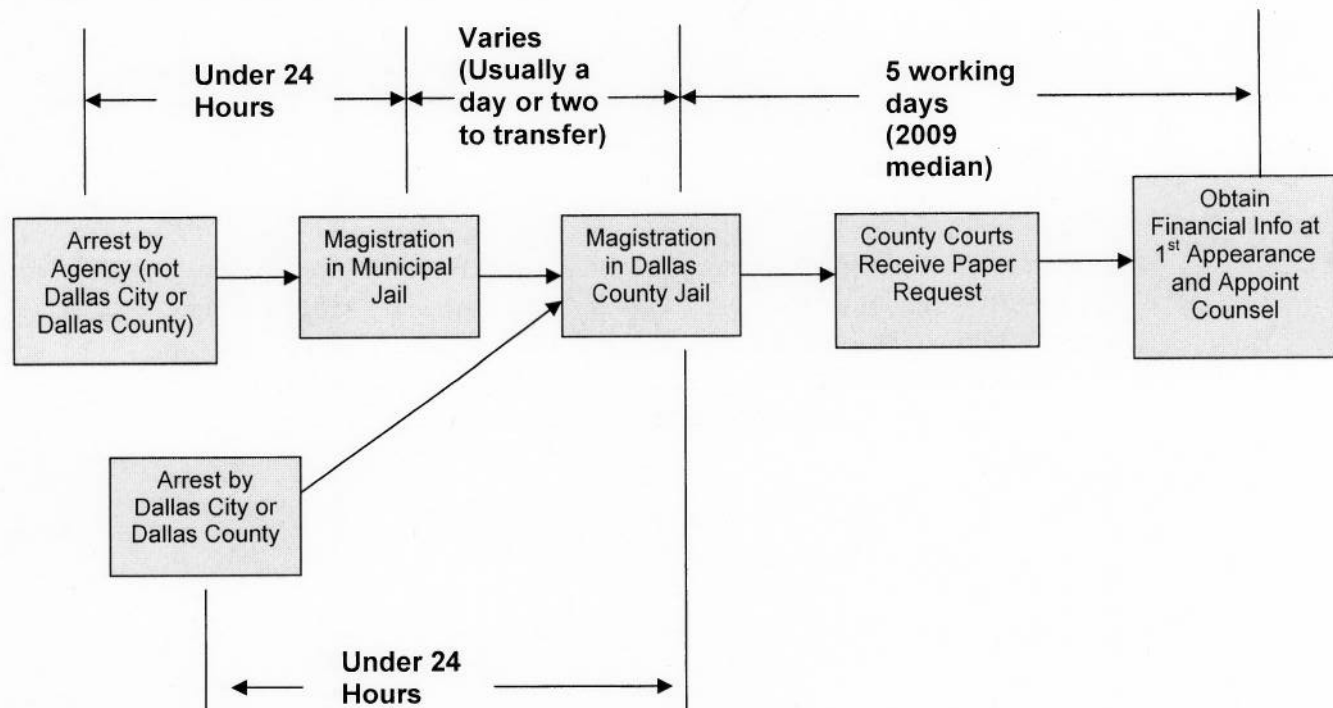
The process for misdemeanor defendants to request and receive counsel is similar to that for felony arrestees. A request for counsel is made to the magistrate, and a statement as to the defendant's inability to afford an attorney is signed. However, misdemeanor courts are unable to use FORVUS to track inmates who have requested counsel. Instead they receive paper requests for counsel from magistrates. These requests do not arrive as fast as the electronic records available to the district courts,



and there may be some question as to whether all requests are delivered to the county courts. The misdemeanor courts do not base indigence on the signed statement of indigence made at magistration, but rather on a more detailed financial affidavit given at the first appearance. While this more detailed affidavit may be useful for accurately determining indigence (see the non-mandatory recommendation on page four), Article 15.17(a) requires that the necessary forms for requesting counsel be provided at magistration.

The first appearance often occurs about a week after book-in at the County Jail. As a result, requests made at magistration result in untimely appointment. The only timely misdemeanor appointments occur when the requests are first made at the initial appearance. The following diagram describes the process for appointing counsel to misdemeanor defendants.

**Diagram 2: Misdemeanor Appointment Process**



**July 2007 Visit**

During the July 2007 visit, the monitor examined case files for 61 in-custody misdemeanor defendants who received appointed counsel to determine whether appointments were timely. The monitor only examined data showing requests for counsel made at the Dallas County Jail and not requests made at municipal jails. Based on available request information, the monitor found that counsel was appointed timely in 61% of cases.

The July 2007 report listed the following recommendation. The misdemeanor courts adopted the felony courts’ response.

**Recommendation:** *Under the current system, appointments for detained persons in the statutory county courts are not timely in approximately 40% of cases. The jurisdiction must establish procedures to ensure that Article 1.051 time deadlines are met.*

**May 2009 Visit**

As of the May 2009 visit, the county courts have not put in place a process to ensure timelines for appointment of counsel are met as required by TEX. CODE CRIM. PROC. arts. 1.051 and 15.17. The county courts are not yet making appointments based on electronic data but are still relying on transfers of paper requests and detailed affidavits of indigence made at the initial appearance. On the May 2009 visit, the monitor examined case files for 62 in-custody misdemeanor defendants who received appointed counsel to determine whether appointments were timely. Appointments occurred between January 2009 and March 2009. Of these files, 39 were potentially timely (63%). Appointments occurred between 0 and 36 workdays after the request was made (plus 24 hours allowed for transferring the request). As with the 2007 visit, requests for counsel made at magistrations at municipal jails were not available and therefore the timeline of appointments in those cases could not be determined.

The monitor did not check times to appointment for bonded persons. Under *Rothgery v. Gillespie County*, 128 S. Ct. 2578 (2008), counsel must be appointed within a reasonable time of request for bonded persons. Waiting to appoint counsel until the time of indictment or a later initial appearance does not seem to comport with *Rothgery*.

**Misdemeanor Courts Recommendation 1:** TEX. CODE CRIM. PROC. Art. 1.051 requires courts to appoint counsel within one working day. This means that the courts must implement a procedure to timely receive and administer requests for counsel. The County must also put in place a process so that requests are transferred from municipal courts to the misdemeanor court coordinators within 24 hours as required by TEX. CODE CRIM. PROC. art. 15.17.

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**Fair, Neutral, and Non-discriminatory Attorney Selection Process**

TEX. CODE CRIM. PROC. art. 26.04(b) requires that appointments are allocated among qualified attorneys in a fair, neutral, and non-discriminatory manner. Article 26.04(a) states: "A court shall appoint an attorney from a public appointment list using a system of rotation, unless the court appoints an attorney under Subsection (f), (h), or (i)." Subsection (f) allows for the court to appoint the public defender. Subsection (h) allows the court to appoint counsel via an alternative program. Subsection (i) allows for appointment of attorneys from the court's administrative judicial region when a person is accused of a felony. When a rotational system is used for appointments, "the court shall appoint attorneys from among the next five names on the appointment list in the order in which the attorneys' names appear on the list, unless the court makes a finding of good cause on the record for appointing an attorney out of order." Art. 26.04(a). When an alternative system is used, procedures are

to ensure that appointments are reasonably and impartially allocated among qualified attorneys. Art. 26.04(g)(2)(D).

### **Distribution of Felony Appointments**

Case numbers are typically assigned to offenses shortly after arrest and before cases are filed by a prosecutor. This early case number generation allows offenses to be assigned to felony courts. Each court coordinator can appoint counsel for a case appearing in that court before the case is ever filed. Coordinators can then assign cases to an attorney by logging on to the appointment wheel or may bypass the wheel by simply assigning an attorney to the case without logging on to the appointment wheel. Separate appointment wheels are used for each level of felony and for foreign language needs. If counsel is assigned by logging on to the appointment wheel, the court administrator is given a choice of five names to choose for a case. If the top name is not picked after three consecutive assignments, the name is automatically assigned to a case on the next assignment.

Dallas is revamping its felony appointment methodology. Current appointments are made through the FORVUS system, but this system has lost all technical support. The new appointments will be made through the AIS system. IT Services is designing the interface for making appointments. All appointments made with the AIS system will go through the appointment wheel. Courts will be given only the top name as a choice for appointment. If this name is not acceptable, the court may appoint another attorney, but must list a good cause reason for doing so.

### **July 2007 Visit**

From the July 2007 visit, the monitor examined the district court payments to attorneys for fiscal year 2006. Two hundred sixty eight (268) attorneys received payments. The annual payments ranged from \$100 to \$238,075. The median amount received by attorneys during the year was \$17,175 as compared to the mean of \$26,937. Felony payment amounts may not be proportional to the number of cases assigned to an attorney. For example, higher level felonies that go to trial cost significantly more than state jail felony pleas.

The July 2007 report listed the following recommendation and response.

**Recommendation:** *While the data reviewed came from FY2006, the distribution of court appointments in the district courts needs to be reviewed to ensure that the system is fair, neutral, and non-discriminatory.*

**Response:** *Completion Date 2009*

*During 2007 and continuing into 2008, the Criminal District Court Judges have been monitoring the current appointment process to include:*

- 1) Requesting and reviewing reports of attorney fees paid so they may regularly monitor and ensure the system is fair, neutral, and non-discriminatory and make changes if needed.*
- 2) Notifying IT Services that the courts need the ability to access reports at any time without having to make a formal request with IT Services for the information. The reports would identify the case number, defendant's name, attorney appointed, date of appointment and magistration date.*

*Additionally, a committee was formed in February 2007 to research the feasibility of the forming of a central appointing authority. Information in regard to this will be discussed with the District Judges on April 4, 2008.*

## May 2009 Visit

In 2009, the monitor examined felony appointments for attorneys as reported by the auditor's office for FY 2008. According to data from the auditor's office, total payments to felony attorneys ranged from \$187 to \$212,516 with the median attorney receiving \$18,395. The monitor also examined appointments made as reported through the court maintained criminal appointment wheel for FY 2008. Appointment wheel data listed appointments under various spellings of attorney names, and so a comparison with auditor data was needed to accurately portray the number of wheel appointments for each attorney.

Appointment wheel data is broken down according to whether a foreign language attorney was used and according to the offense level. The different offense levels are 1<sup>st</sup> degree felony offenses, 2<sup>nd</sup> degree felony offenses, 3<sup>rd</sup> degree felony offenses, and state jail felony offenses. The information reported by appointments from the wheel differs from case payments reported by the auditor. First, where multiple offenses are part of the same indictment, the same attorney gets appointed to all contained offenses, but the wheel will report each appointed offense as a separate appointment. Second, while auditor data includes motions to revoke probation, the appointment wheel data generally does not. A few courts, however, enter probation revocation appointments under the criminal appointment wheel.

The monitor attempted to match case totals of wheel appointments with voucher totals supplied by the auditor's office. The wheel data reported by the district courts administrator had multiple entries for several attorneys with entries having slightly different spellings. The monitor was able to match cases supplied by both sets of data for 217 attorneys (as compared to 279 attorneys reported by the auditor as receiving payment in FY2008). While analysis of wheel data may be missing about 60 attorneys, the 217 attorneys matched between the two data sets represent the vast majority of appointments. The 217 attorneys represent 12,050 of the auditor's 12,785 cases (94% of the auditor's total) and 18,028 of the wheel's 18,583 cases (97% of the wheel's total). In short, only examining wheel appointments where the attorney is also on the auditor's list appears to be a reliable method of examining each wheel's distribution of appointed cases.

The monitor examined the distribution of appointments for each felony wheel for those instances where the appointed attorney also appeared on the auditor's list. One would expect that each appointment list would have a relatively equitable distribution of appointments since each attorney on the list had been approved by the judges as having the requisite skills for the list. However, all wheels had attorneys who received dramatically more cases than the majority of attorneys. Some wheels appeared more equitably distributed than others, but appointments were not being evenly distributed on any of the wheels. The most extreme example of disproportionate felony appointments was the ~~third~~ first\* degree felony wheel for foreign language attorneys. On this wheel, the top 10% of recipient attorneys received 39% of available cases, and the bottom 50% of recipient attorneys received only 11% of available cases. Felony appointment wheel distributions are listed in Appendix A and Appendix B.

Aside from the distribution of appointed cases, the monitor has some concern over the volume of cases appointed to some attorneys. A number of the attorneys who received many cases on one wheel also received a significant number of cases on the other felony wheels. There appears to be no system of monitoring caseloads. These same attorneys may take Dallas misdemeanor cases, cases in other jurisdictions, and also have privately retained cases. For instance, one attorney received ~~122~~ 68 first degree felony cases, 109 second degree felony cases, ~~68-122~~ third degree felony cases, and 154 state jail degree felony cases. This attorney also had 124 misdemeanor appointments. Heavy caseloads

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\* Revisions were made on this page to the original report. New language is underlined. Deleted language is indicated by a line running through it.



are not isolated instances. Twenty-five different attorneys had more than the National Legal Aid and Defender Association recommended maximum annual felony caseload of 150 cases. Eleven of these attorneys also received at least 50 misdemeanor appointments. Seven of the 25 attorneys also received juvenile appointments.

**Felony Courts Recommendation 2:** In response to the July 2007 monitoring visit, the Dallas felony courts coordinated with IT Services so that they could access appointment wheel reports. The monitor examined the appointment wheel data for FY 2008 and found that appointments were not allocated evenly among qualified attorneys. Some attorneys were getting a significant number of appointments from each wheel, while others were getting very few. TEX. CODE CRIM. PROC. art. 26.04(b) requires the County to ensure that a fair, neutral, and non-discriminatory appointment system is implemented.

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### **Distribution of Misdemeanor Appointments**

Misdemeanor appointments in Dallas occur at the initial court appearance. The courts have no method of tracking appointments or of knowing which attorney is at the top of the appointment list. Appointments are spread between attorneys on the appointment list as each court sees fit. The appointment list has special provisions for those attorneys with foreign language skills. If a felony case has an underlying misdemeanor case, the felony attorney is automatically put on the misdemeanor case.

### **July 2007 Visit**

From the July 2007 visit, the monitor examined the statutory county court payments to attorneys for fiscal year 2006. These payments are not current, and may not be indicative of present practices. Two hundred twenty two (222) attorneys received payments. The annual payments ranged from \$100 to \$71,175. The median amount received by attorneys during the year was \$2700. Since a few attorneys received large payment amounts, the mean payment was much higher than the median (\$6238-mean compared to \$2700-median). A number of the attorneys who received more than the mean payment amount were Spanish-speaking attorneys who were appointed to Spanish-speaking defendants. A few of the attorneys that began the year on the appointment list were removed from the list (either by choice or for disciplinary reasons) and so some of the lower annual payment amounts occurred because of this removal.

The July 2007 report listed the following recommendation. The misdemeanor courts adopted the felony courts' response.

**Recommendation:** *While the data reviewed came from FY2006, the distribution of court appointments in the statutory county courts needs to be reviewed to ensure that the system is fair, neutral, and non-discriminatory.*

**May 2009 Visit**

In 2009, the monitor examined misdemeanor appointments for attorneys as reported by the auditor’s office for FY 2008. These appointments include motions to revoke probation. The monitor obtained the list of foreign language attorneys from the county courts manager and compared distributions of misdemeanor appointments among attorneys with foreign language skills and among attorneys without foreign language skills. The foreign language distribution is more equitable than the non-foreign language distribution, but neither one shows a well-balanced appointment process. The top 10% of misdemeanor attorneys receiving foreign language cases received 26% of cases appointed to the foreign language attorneys. The top 10% of non-foreign language attorneys received 41% of the cases appointed to the non-foreign language attorneys. Payments to misdemeanor attorneys in FY 2008 ranged from \$100 to \$66,575 with the median amount being \$2800. Misdemeanor appointment distributions are listed in Appendix C.

**Misdemeanor Courts Recommendation 2:** The monitor found that misdemeanor appointments in FY 2008 were not allocated evenly among qualified attorneys. Some attorneys were getting a significant number of appointments, while others were getting very few. TEX. CODE CRIM. PROC. art. 26.04(b) requires the County to ensure that a fair, neutral, and non-discriminatory appointment system is implemented. The reason for the discrepancy in the appointment distribution is not documented or noted anywhere by the courts. Moreover, it was reported to us that the misdemeanor courts are unable to track appointment data and so are unable to know which attorneys are due for an appointment under the appointment wheel.

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**Distribution of Juvenile Appointments**

Each of the two juvenile courts maintains its own attorney appointment list. Each court’s list contains many attorneys, and juvenile dockets often occur at times when adult criminal dockets are conducted. The juvenile center is in a separate location from the adult courts, and so conflicts often make active criminal defense attorneys unavailable for juvenile matters. According to interviews, many juvenile attorneys have difficulty attending juvenile dockets on a regular basis. Appointments are often made to attorneys who are most available to the juvenile courts.

Juvenile detention hearings are handled by the public defender’s office. Private attorneys handle non-detention matters. The attorney appointment list is broken into six categories of cases, where attorneys available for higher offense cases are eligible to take lower offense cases. The juvenile



appointment lists are further divided according to whether the attorney is fluent in a foreign language (the most common being Spanish). Attorneys are to be appointed using a system of rotation. The active juvenile indigent defense plan submitted with the Task Force (submitted in 2002) states:

Appointing Attorneys To Cases From the Public Appointment List.

*In cases where the Judge (including his/her designees) determines that the appointment of a public attorney is appropriate, the appointment shall be made from the appointment list using a system of rotation. The Judge (including his/her designee) shall determine the proper category (based on the classifications herein established) and shall appoint an attorney from the list using a system of rotation. The Judge (including designee) shall appoint attorneys from among the next five names on the appointment list in the order in which the attorney's names appear on the list for the category involved, unless the court makes a finding of good cause on the record for appointing an attorney out of order. An attorney who is not appointed in the order in which the attorney's name appears on the list shall remain next in order on the list for his/her assigned category.*

The 304<sup>th</sup> District Court appointed 160 attorneys for juvenile matters in FY 2008, 20 of whom are on the Spanish list. The top 10% of Spanish-speaking attorneys in the 304<sup>th</sup> District Court received 43% of cases appointed to Spanish speaking attorneys. The top 10% of non-Spanish-speaking attorneys received 61% of cases appointed to non-Spanish speaking attorneys. Payments to juvenile attorneys in the 304<sup>th</sup> District Court ranged from \$100 to \$83,139 with the median payment being \$1325. See Appendix D for the distribution of juvenile cases in the 304<sup>th</sup> District Court.

The 305<sup>th</sup> District Court appointed 189 attorneys for juvenile matters in FY 2008, 24 of whom are on the Spanish list. The top 10% of Spanish-speaking attorneys in the 305<sup>th</sup> District Court received 28% of cases appointed to Spanish speaking attorneys. The top 10% of non-Spanish-speaking attorneys received 38% of cases appointed to non-Spanish speaking attorneys. Payments to juvenile attorneys in the 305<sup>th</sup> District Court ranged from \$80 to \$32,586 with the median payment being \$1900. See Appendix E for the distribution of juvenile cases in the 305<sup>th</sup> District Court.

**Juvenile Courts Recommendation:** The Dallas Juvenile Indigent Defense Plan requires a system of rotation in appointing attorneys. Following a system of rotation ensures that appointments are allocated in a fair, neutral, and non-discriminatory manner. Under a rotational system, good cause must be found for skipping an attorney on the wheel. Where attorneys do not wish to receive an equal share of appointments, the courts need to document this fact in some manner. From our review, cases assigned to juvenile defense attorneys were not allocated evenly among qualified attorneys. It was reported to us that the uneven distribution occurs because several attorneys choose to focus on criminal rather than juvenile matters. However, many attorneys qualified for all types of juvenile appointments receive very few appointments. The reason for the discrepancy is not noted or documented.

Action Plan:

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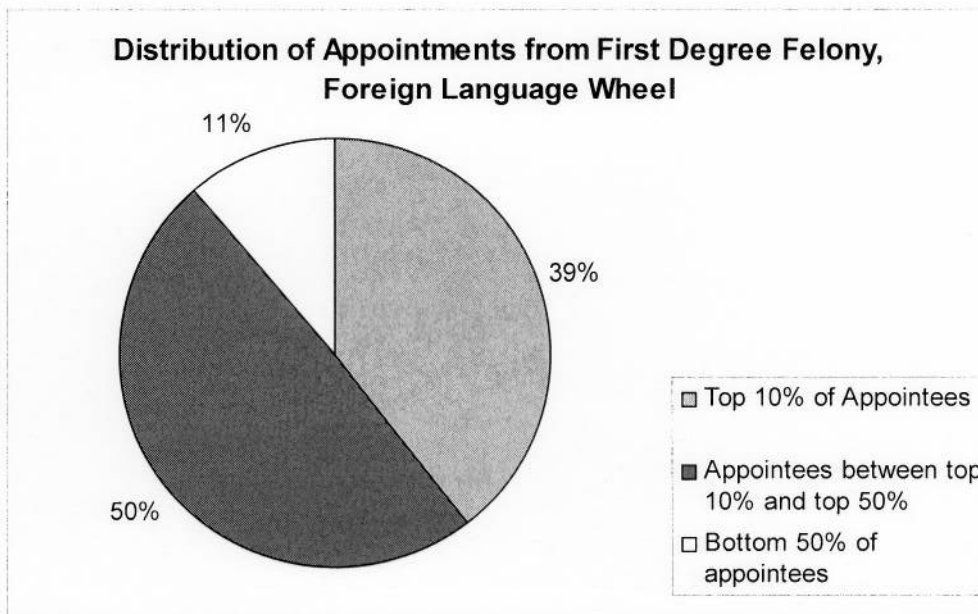
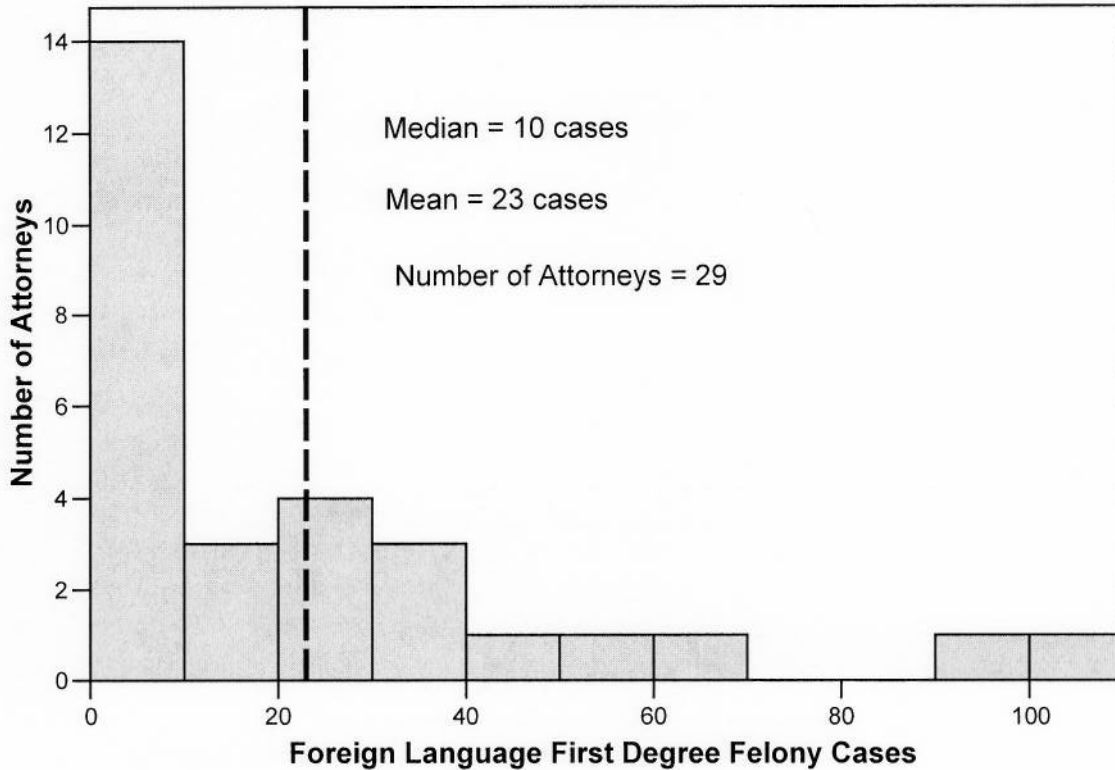
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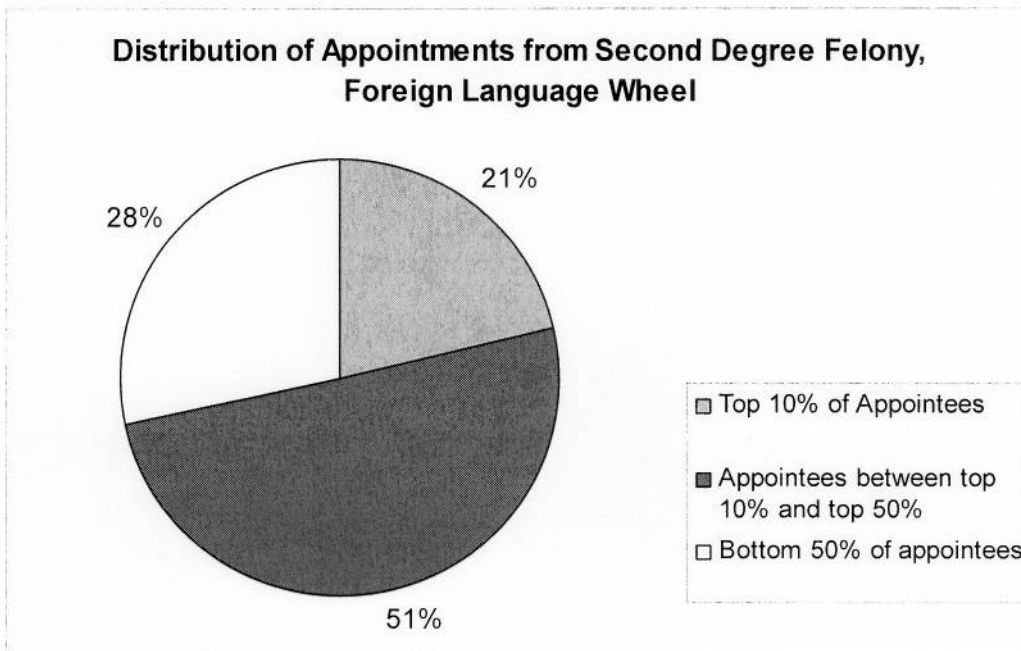
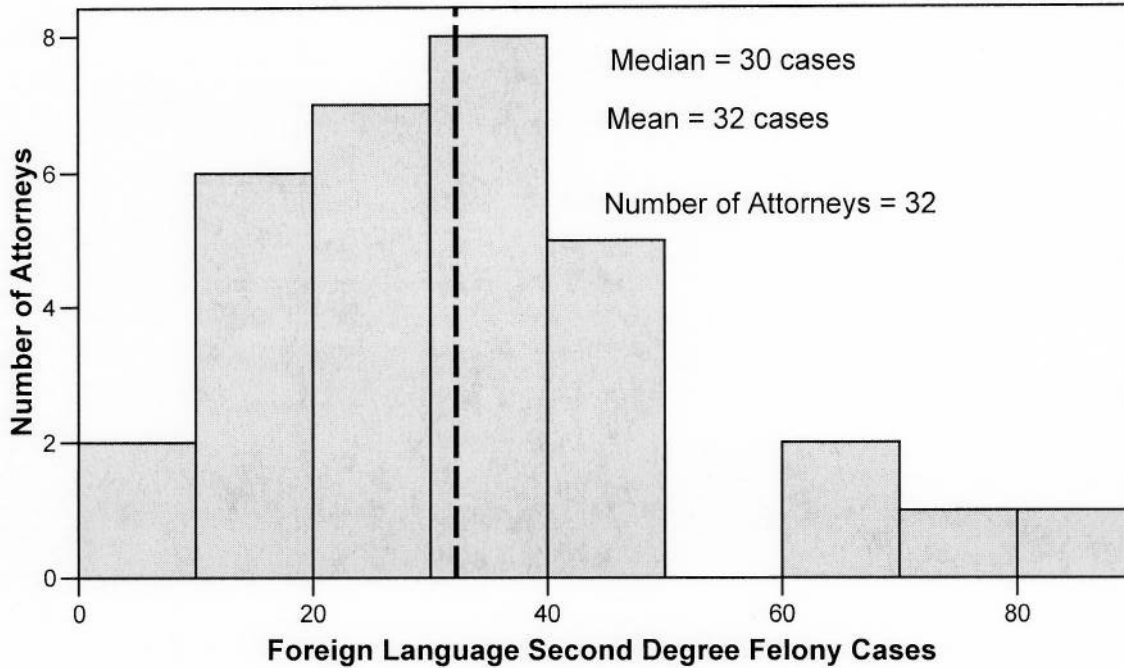
## Appendix A – Foreign Language Felony Appointment Wheel Distributions

A histogram of the first degree felony, foreign language wheel is shown below. The histogram shows 29 attorneys receiving appointments from this wheel, with one attorney receiving between 100 and 110 cases, and fourteen attorneys receiving between one and ten cases. If all attorneys received an equal number of appointments, they all would have received 23 cases as displayed by the dashed line. Below the histogram is a pie chart grouping appointments to attorneys.

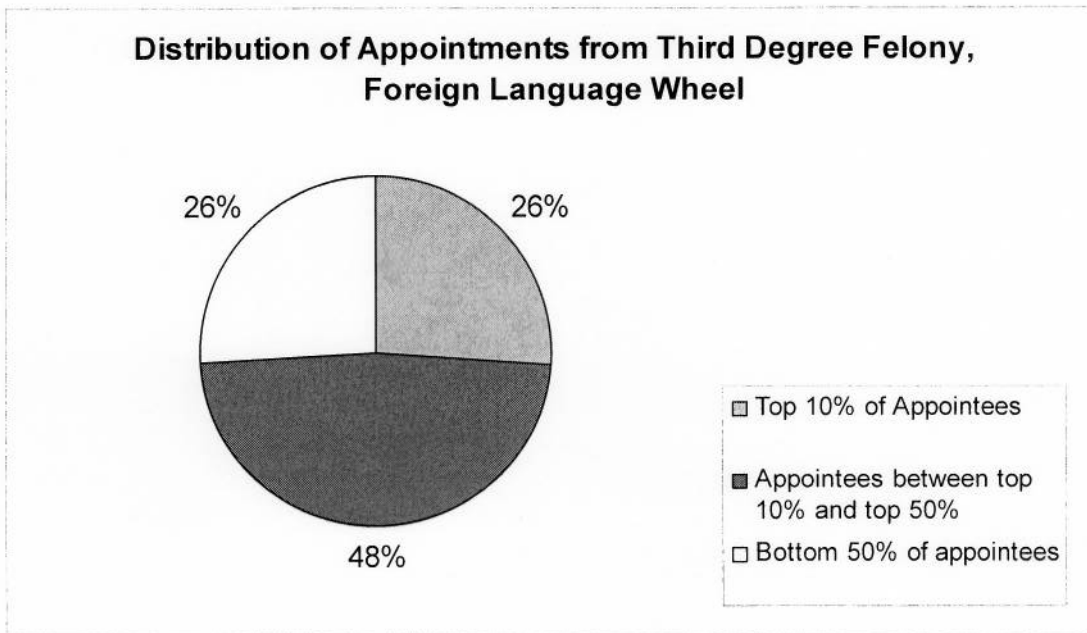
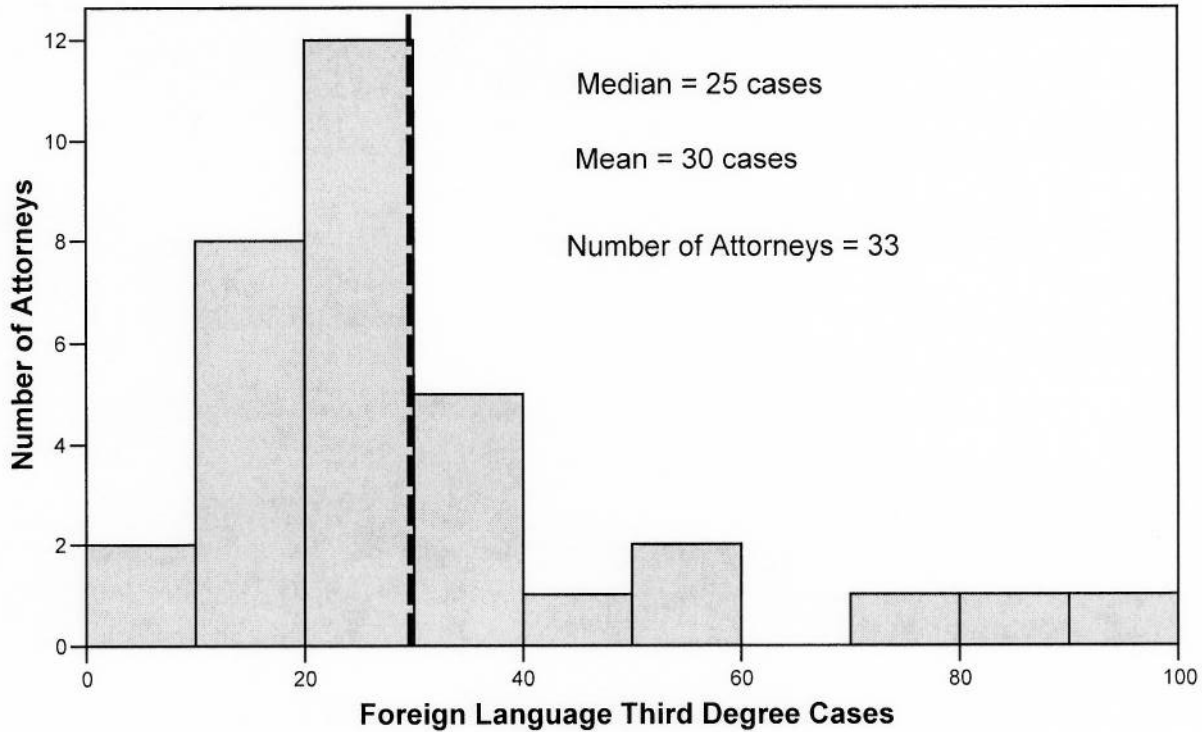


\*Revisions were made on this page to the original report. This is a replacement page.

A histogram of the second degree felony, foreign language wheel is shown below. The histogram shows 32 attorneys receiving appointments from this wheel, with one attorney receiving between 80 and 90 cases, and two attorneys receiving between one and ten cases. If all attorneys received an equal number of appointments, they all would have received 32 cases as displayed by the dashed line. Below the histogram is a pie chart grouping appointments to attorneys.

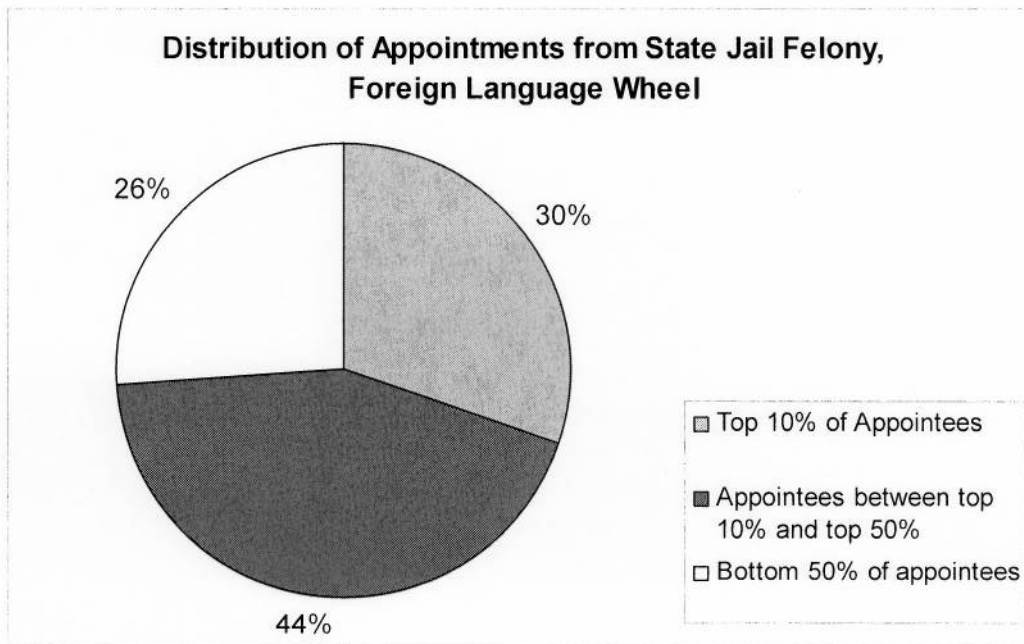
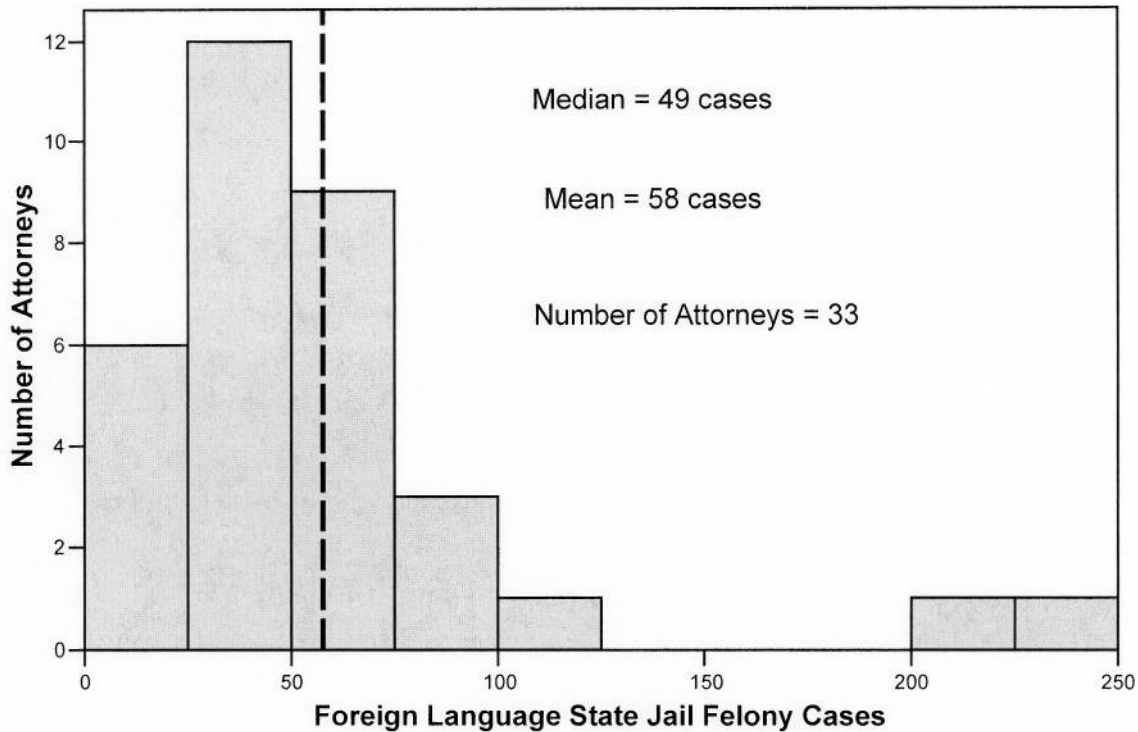


A histogram of the third degree felony, foreign language wheel is shown below. The histogram shows 33 attorneys receiving appointments from this wheel, with one attorney receiving between 90 and 100 cases, and two attorneys receiving between one and ten cases. If all attorneys received an equal number of appointments, they all would have received 30 cases as displayed by the dashed line. Below the histogram is a pie chart grouping appointments to attorneys.



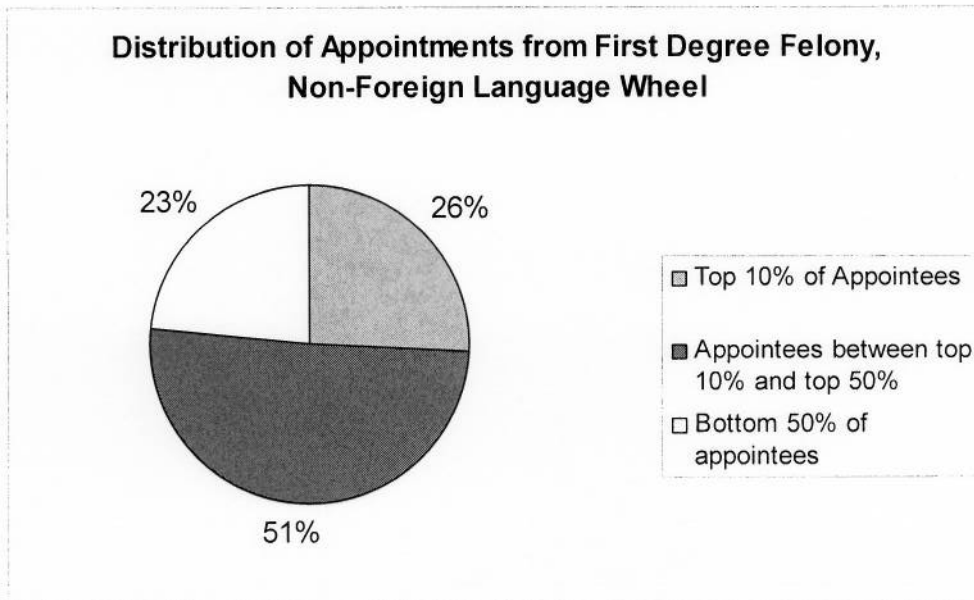
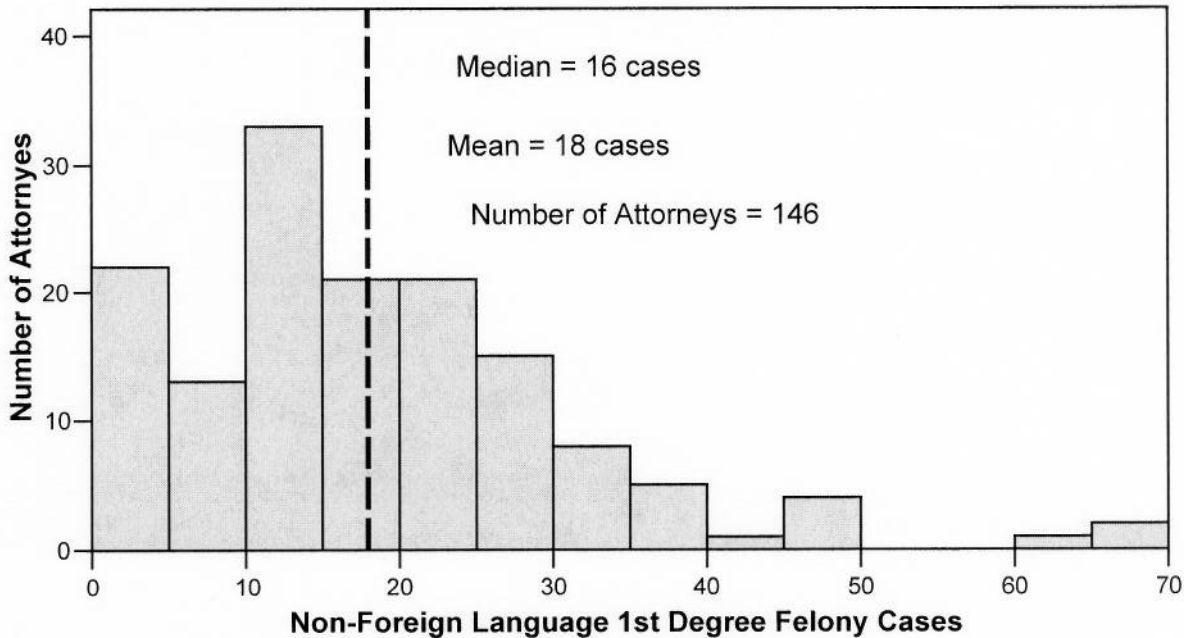
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A histogram of the state jail felony, foreign language wheel is shown below. The histogram shows 33 attorneys receiving appointments from this wheel, with one attorney receiving between 225 and 250 cases, and six attorneys receiving between 1 and 25 cases. If all attorneys received an equal number of appointments, they all would have received 58 cases as displayed by the dashed line. Below the histogram is a pie chart grouping appointments to attorneys.



## Appendix B – Non-Foreign Language Felony Appointment Wheel Distributions

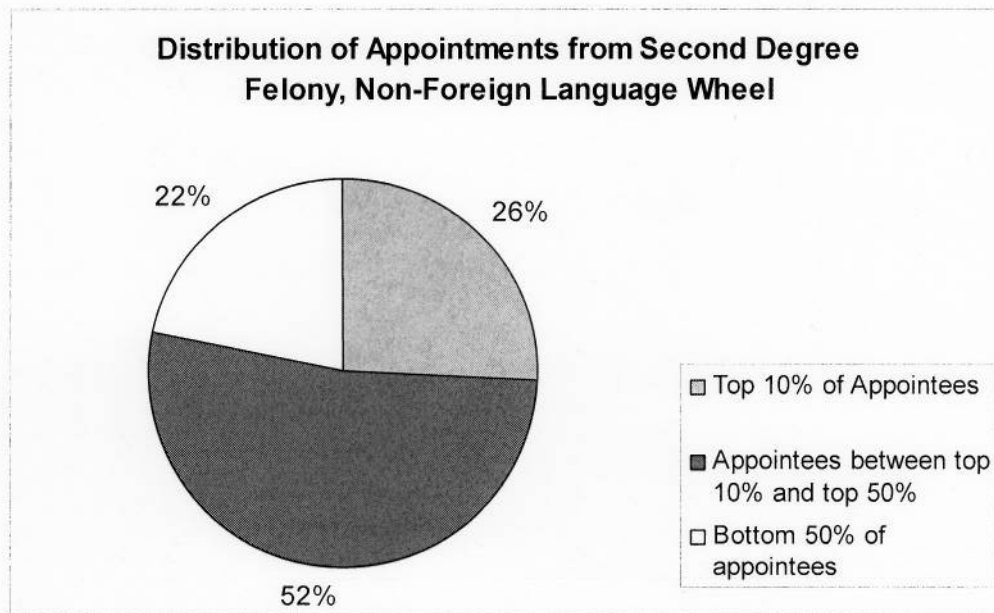
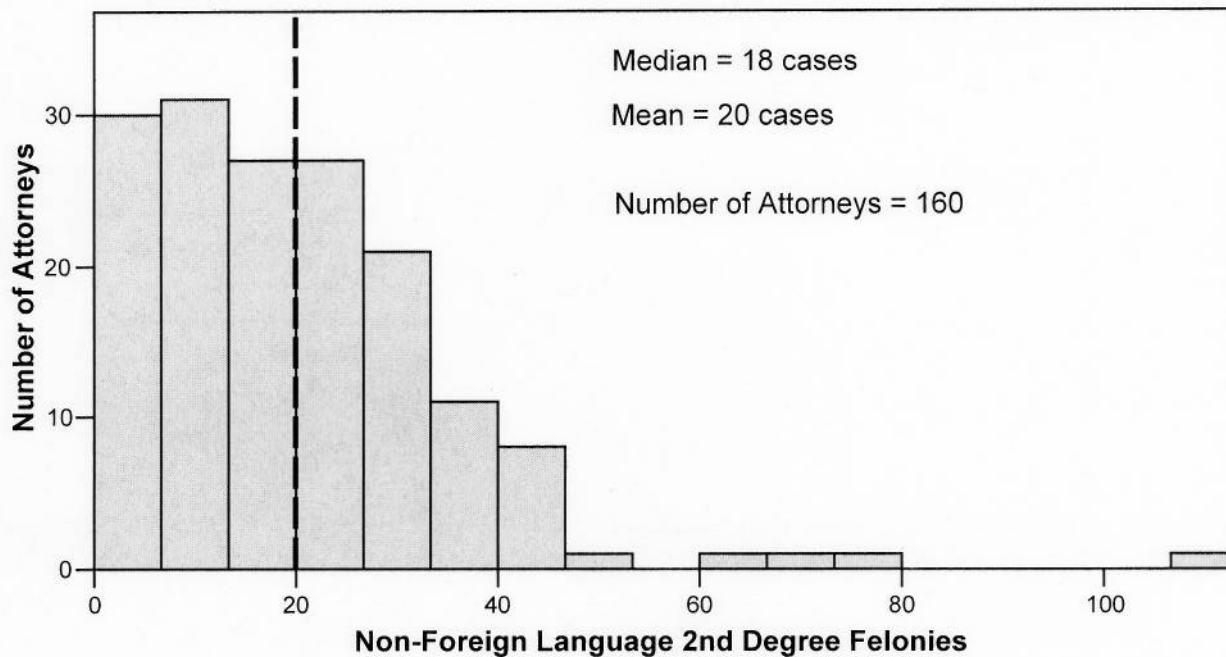
A histogram of the first degree felony, non-foreign language wheel is shown below. The histogram shows 146 attorneys receiving appointments from this wheel, with two attorneys receiving between 65 and 70 cases, and over 20 attorneys receiving between one and five cases. If all attorneys received an equal number of appointments, they all would have received 18 cases as displayed by the dashed line. Below the histogram is a pie chart grouping appointments to attorneys.



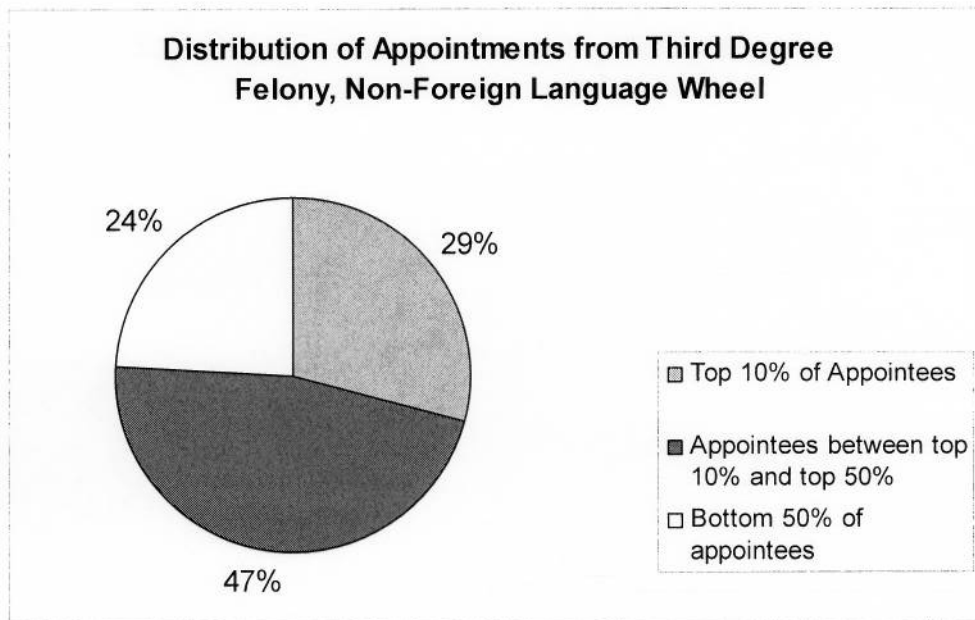
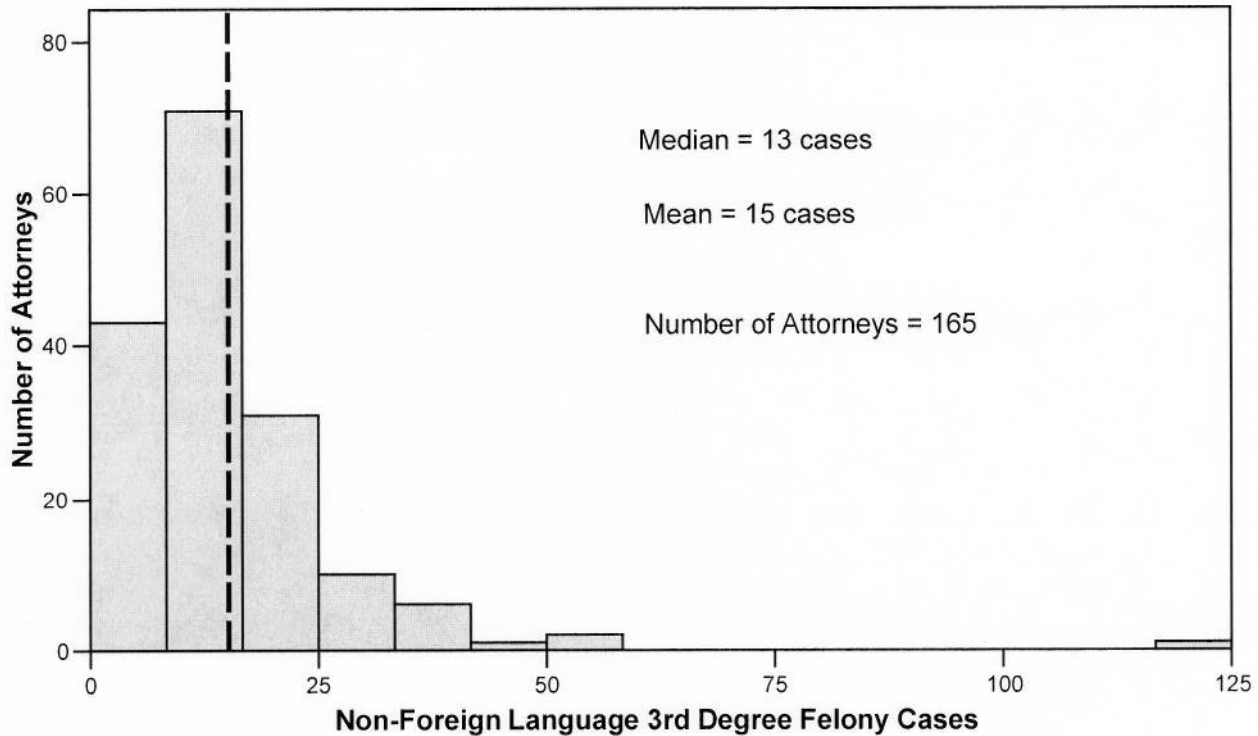
\*Revisions were made on this page to the original report. This is a replacement page.



A histogram of the second degree felony, non-foreign language wheel is shown below. The histogram shows 160 attorneys receiving appointments from this wheel, with one attorney receiving over 105 cases, and 30 attorneys receiving between one and seven cases. If all attorneys received an equal number of appointments, they all would have received 20 cases as displayed by the dashed line. Below the histogram is a pie chart grouping appointments to attorneys.

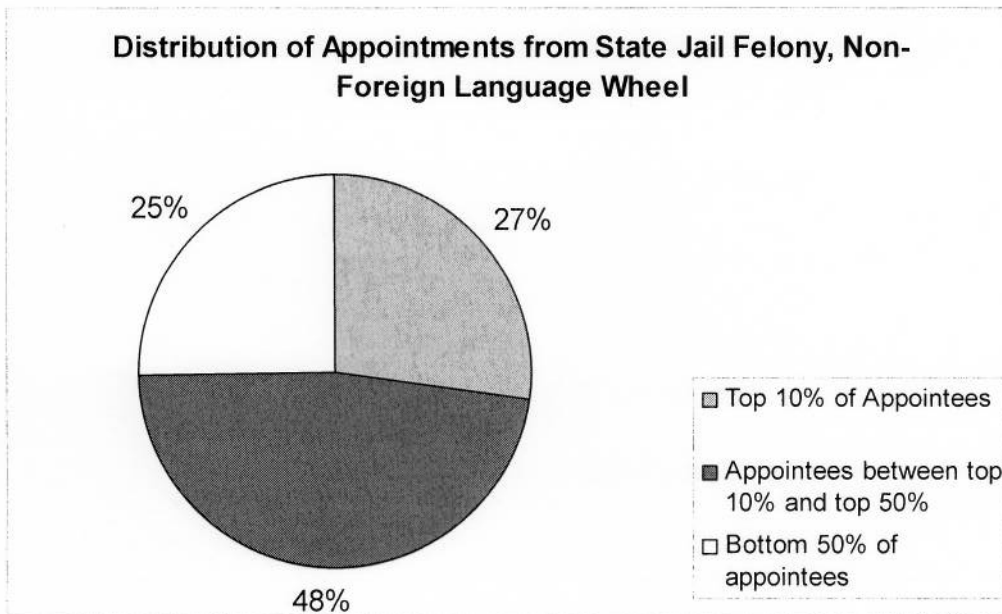
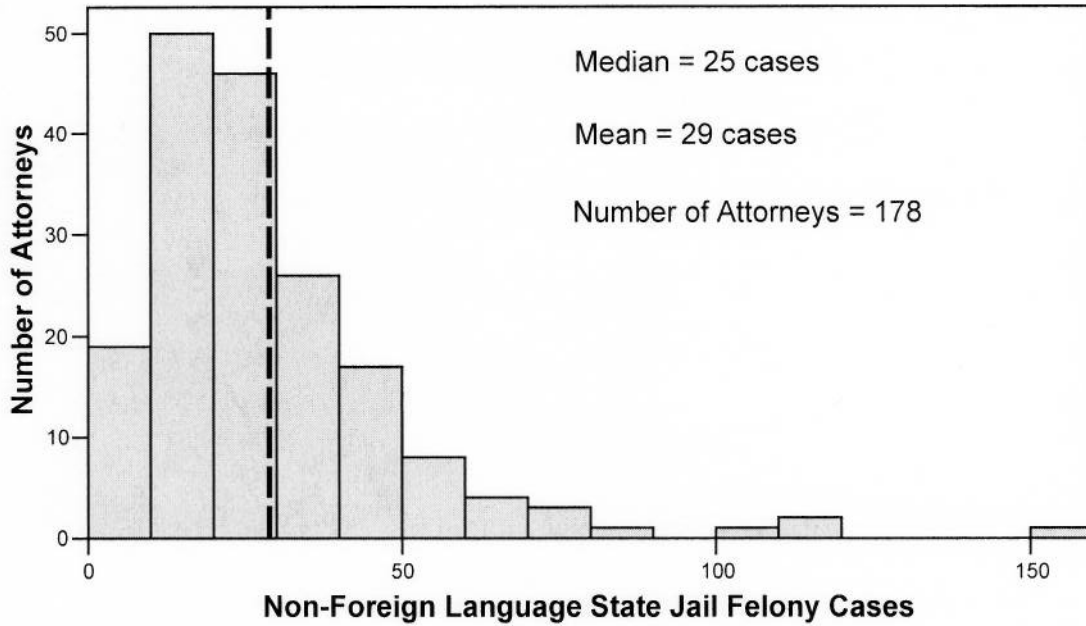


A histogram of the third degree felony, non-foreign language wheel is shown below. The histogram shows 165 attorneys receiving appointments from this wheel, with one attorney receiving just under 125 cases, and over 40 attorneys receiving between one and nine cases. If all attorneys received an equal number of appointments, they all would have received 15 cases as displayed by the dashed line. Below the histogram is a pie chart grouping appointments to attorneys.



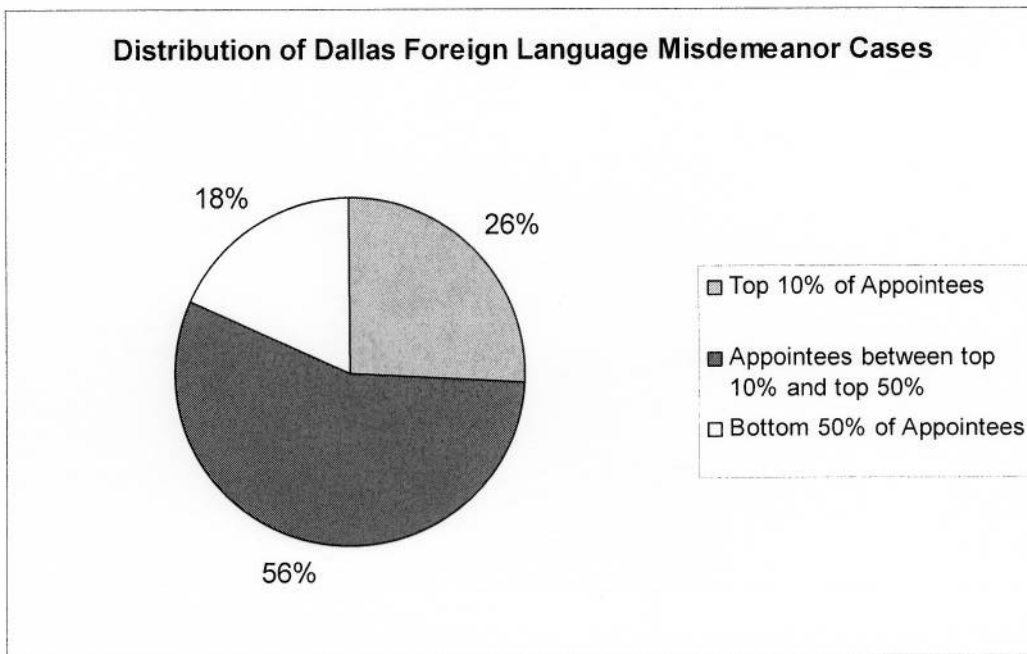
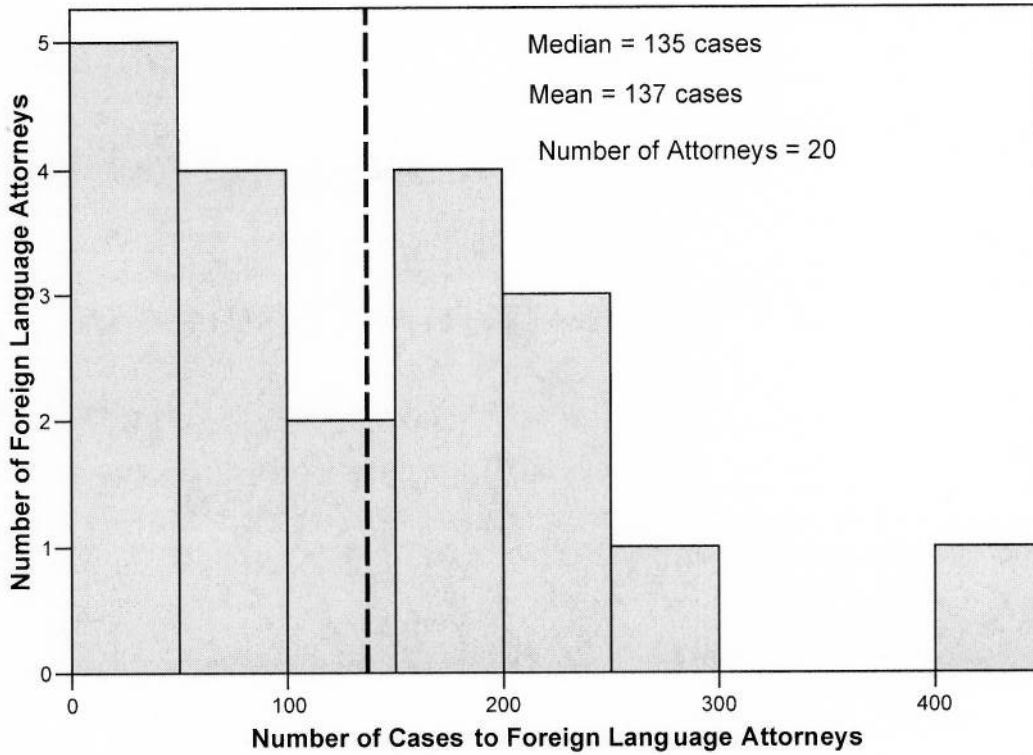
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A histogram of the state jail felony, non-foreign language wheel is shown below. The histogram shows 178 attorneys receiving appointments from this wheel, with one attorney receiving over 150 cases, and just under 20 attorneys receiving between one and ten cases. If all attorneys received an equal number of appointments, they all would have received 29 cases as displayed by the dashed line. Below the histogram is a pie chart grouping appointments to attorneys.

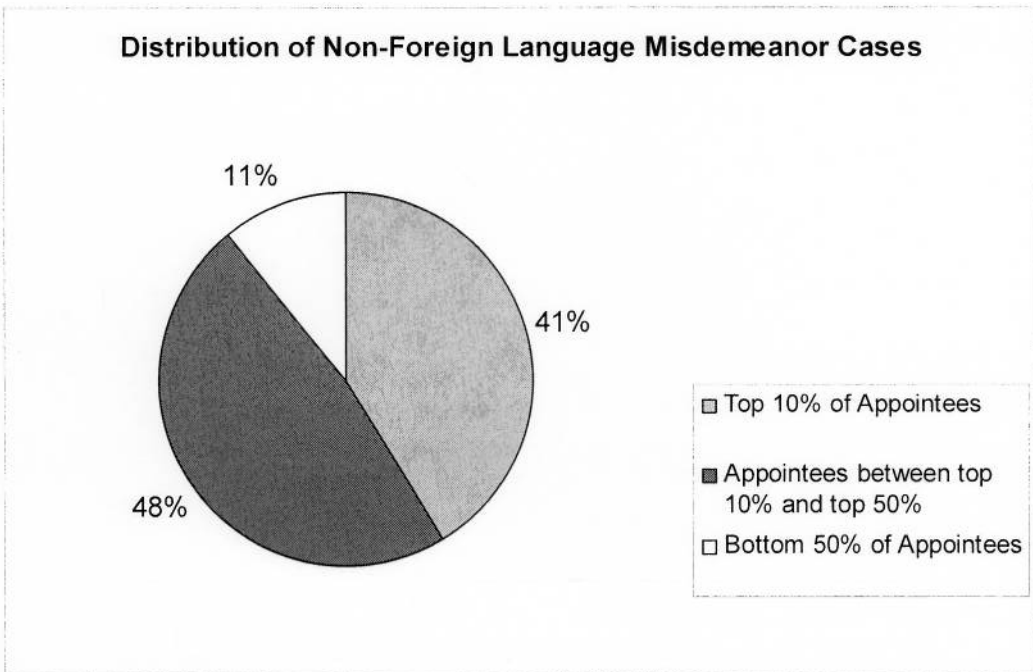
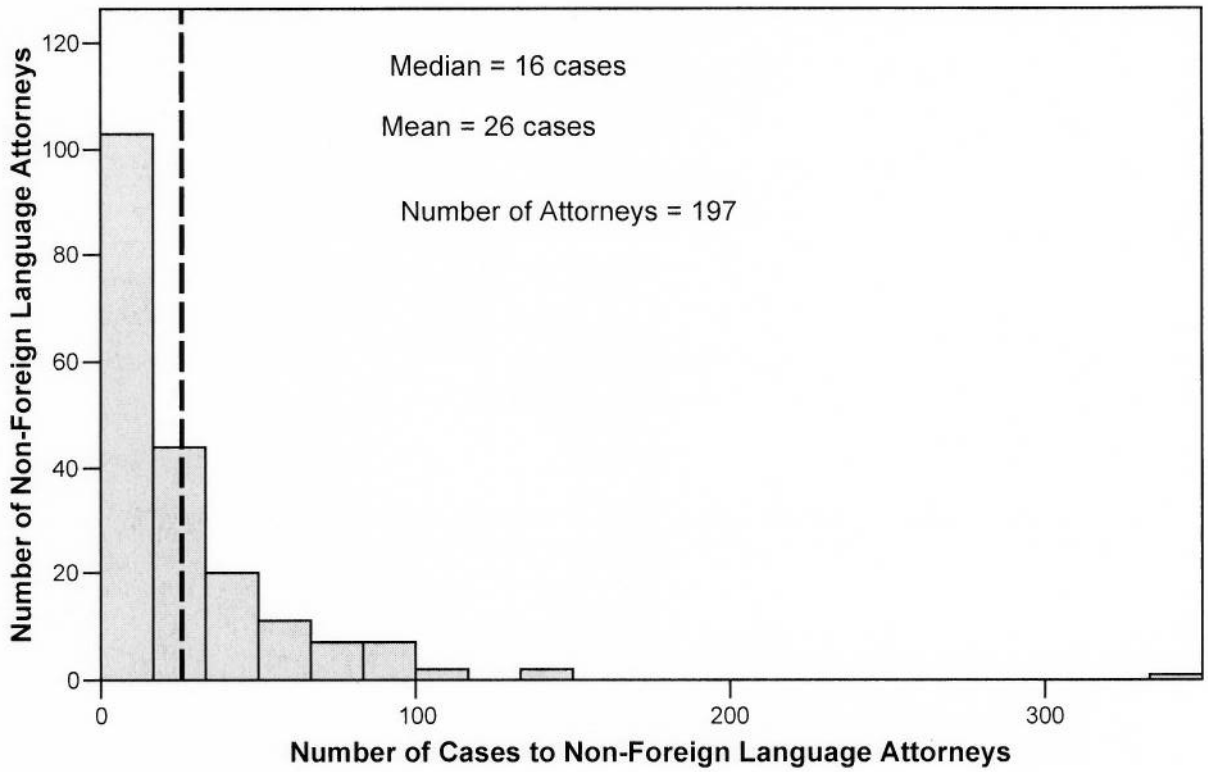


## Appendix C – Misdemeanor Appointment Distributions

A histogram of misdemeanor appointments to foreign language attorneys is shown below. The histogram shows 20 attorneys that received foreign language misdemeanor appointments, with one attorney receiving over 400 cases, and five attorneys receiving between one and fifty cases. If all attorneys received an equal number of appointments, they all would have received 137 cases as displayed by the dashed line. Below the histogram is a pie chart grouping appointments to attorneys.

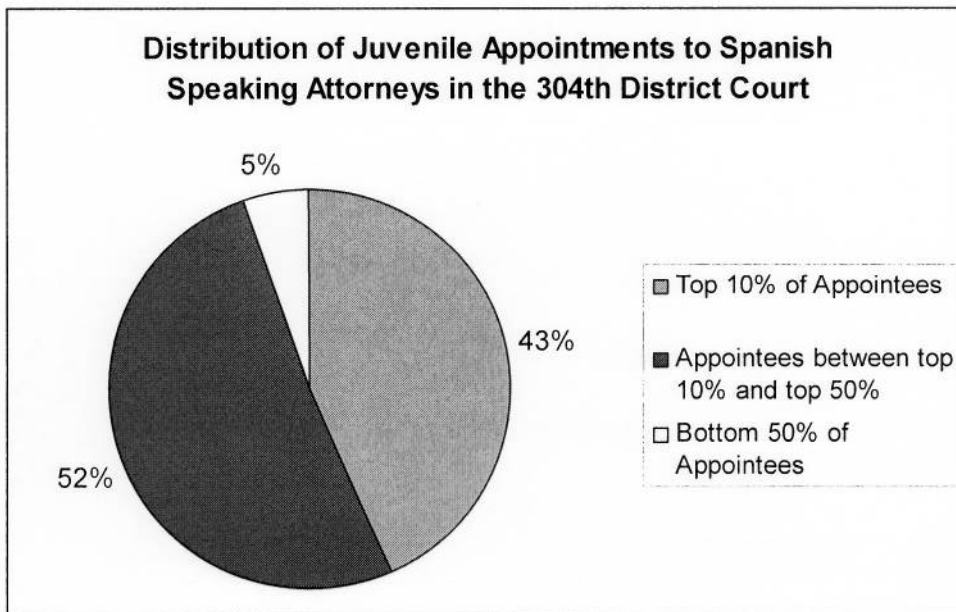
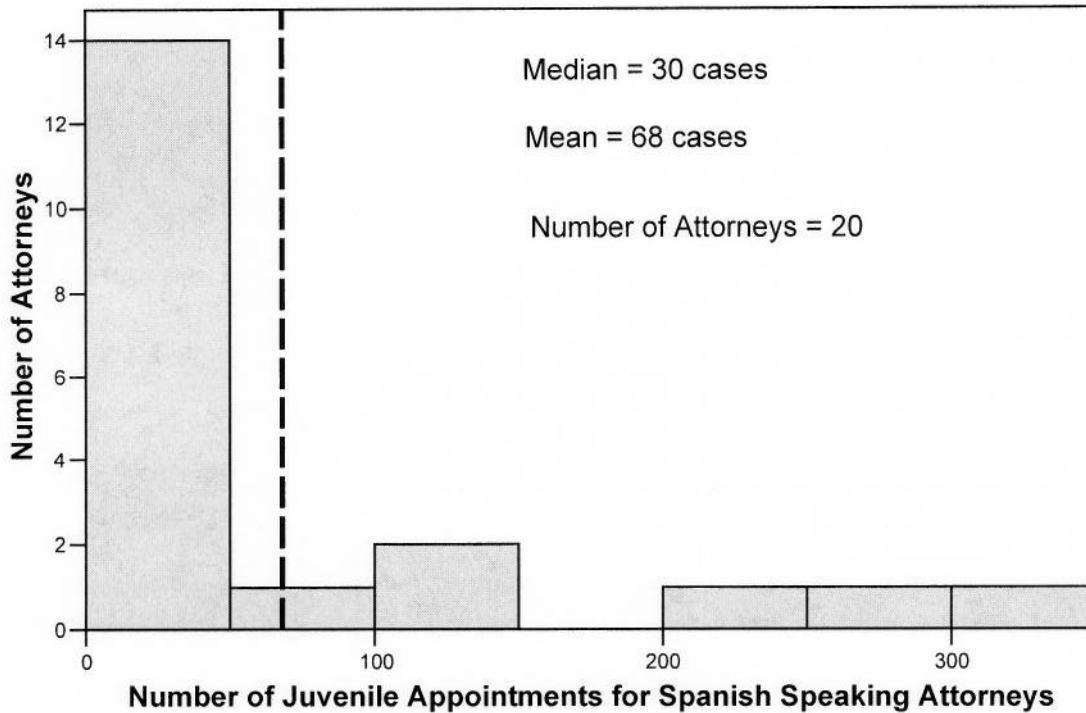


A histogram of misdemeanor appointments to non-foreign language attorneys is shown below. The histogram shows 197 attorneys receiving non-foreign language misdemeanor appointments, with one attorney receiving well over 300 cases, and over 100 attorneys receiving between one and sixteen cases. If all attorneys received an equal number of appointments, they all would have received 26 cases as displayed by the dashed line. Below the histogram is a pie chart grouping appointments to attorneys.



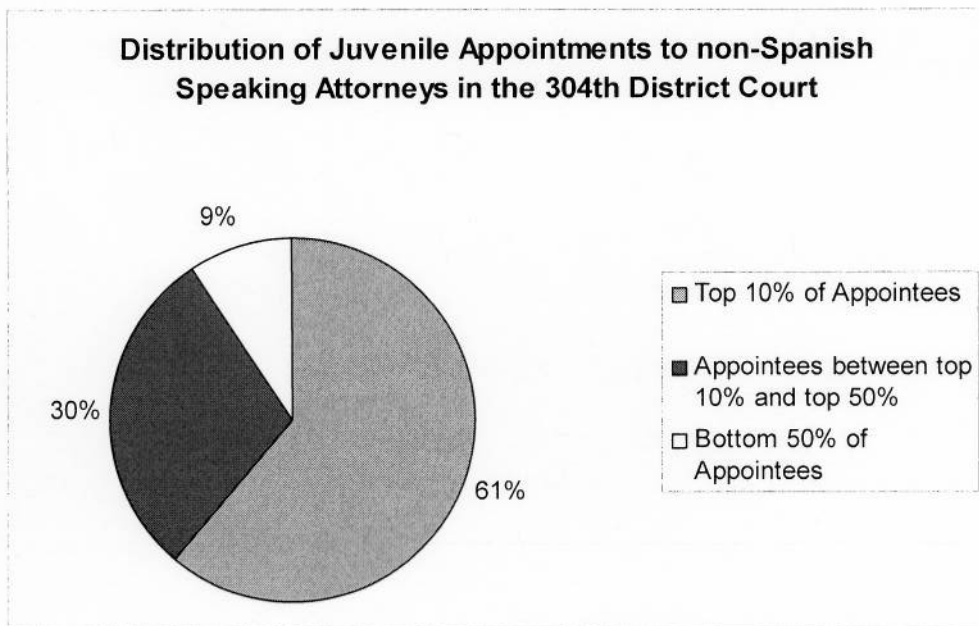
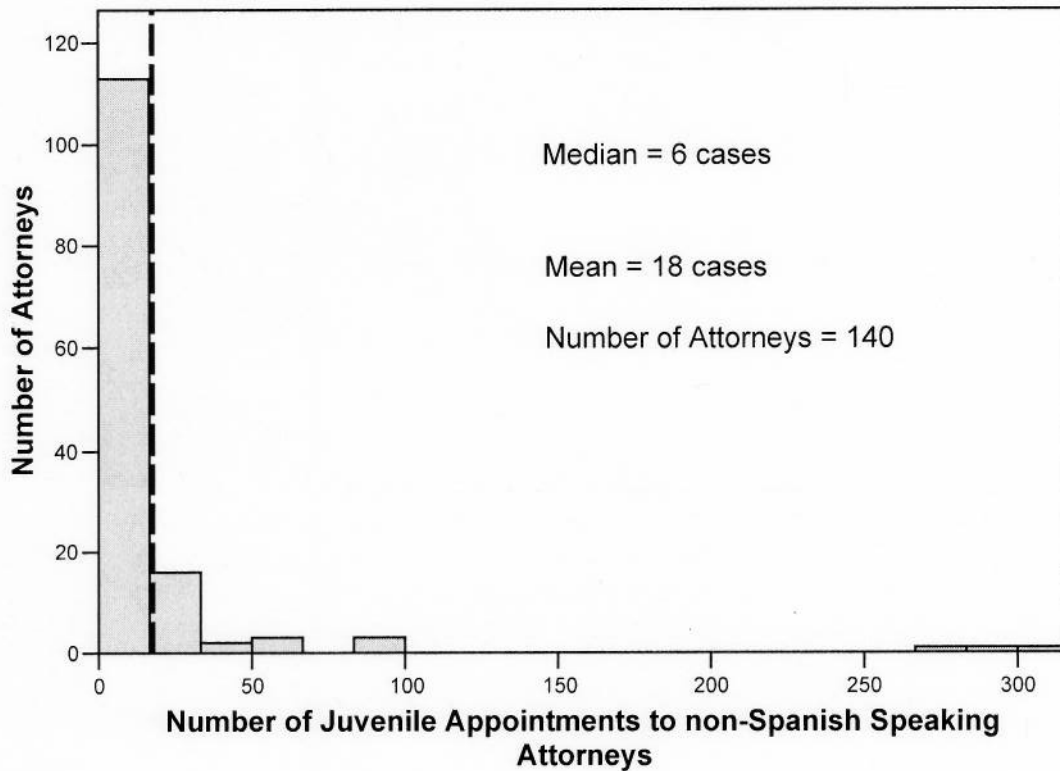
## Appendix D – 304<sup>th</sup> District Court Juvenile Appointment Distributions

A histogram of the juvenile appointments to Spanish speaking attorneys in the 304<sup>th</sup> District Court is shown below. The histogram shows 20 attorneys receiving Spanish-speaking juvenile appointments, with one attorney receiving over 300 cases, and fourteen attorneys receiving between one and fifty cases. If all attorneys received an equal number of appointments, they all would have received 68 cases as displayed by the dashed line. Below the histogram is a pie chart grouping appointments to attorneys.



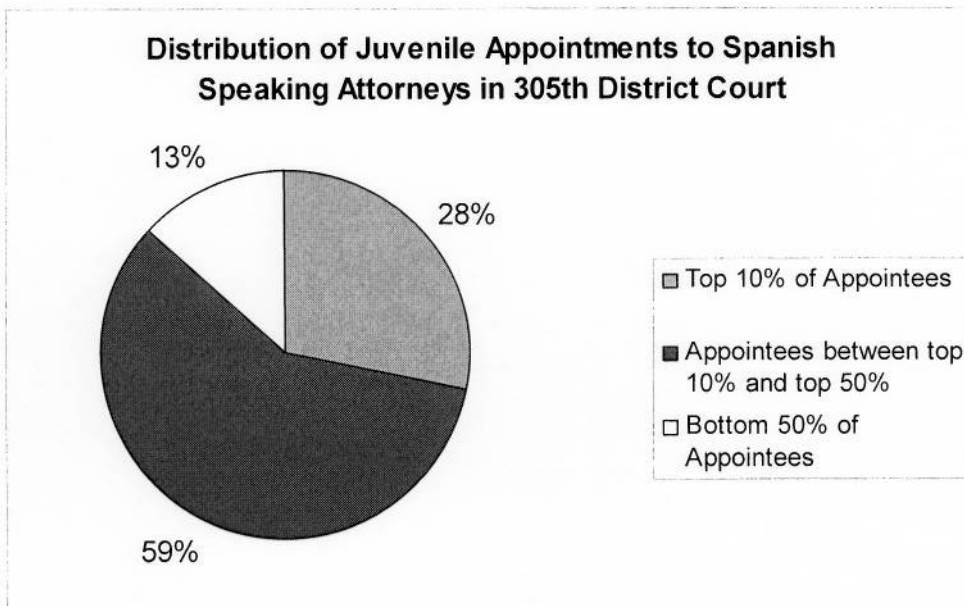
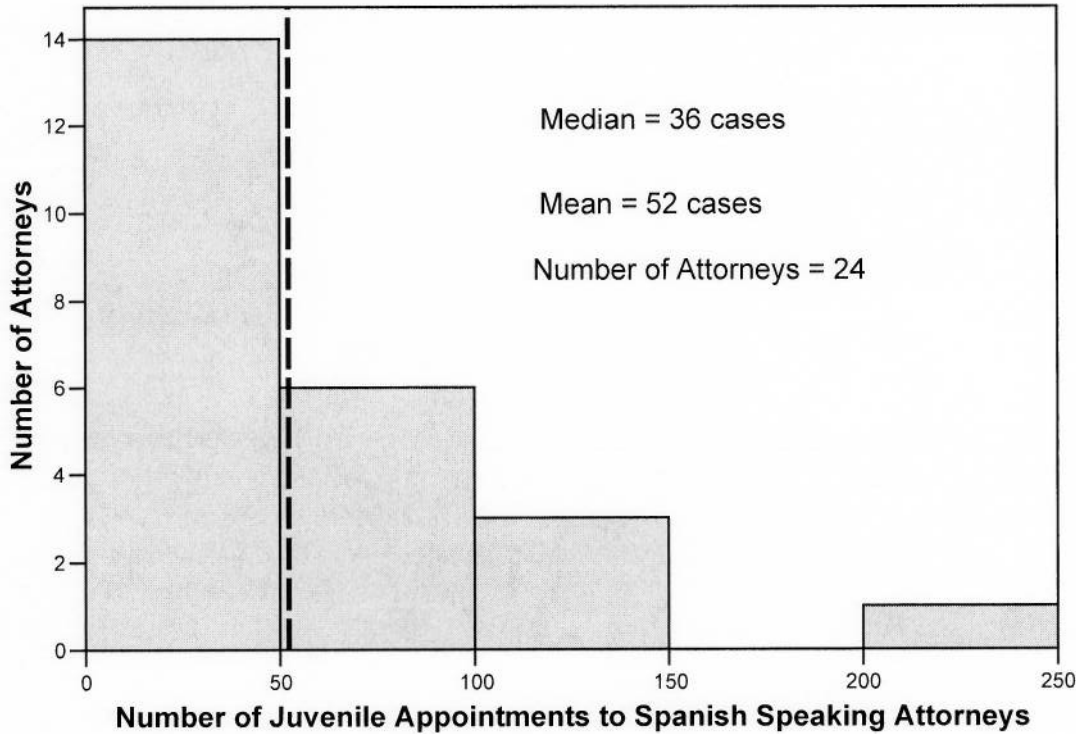


A histogram of the juvenile appointments to non-Spanish speaking attorneys in the 304<sup>th</sup> District Court is shown below. The histogram shows 140 attorneys receiving non-Spanish speaking juvenile appointments, with one attorney receiving over 300 cases, and over 110 attorneys receiving between one and seventeen cases. If all attorneys received an equal number of appointments, they all would have received 18 cases as displayed by the dashed line. Below the histogram is a pie chart grouping appointments to attorneys.



## Appendix E – 305<sup>th</sup> District Court Juvenile Appointment Distributions

A histogram of the juvenile appointments to Spanish speaking attorneys in the 305<sup>th</sup> District Court is shown below. The histogram shows 24 attorneys receiving Spanish speaking, juvenile appointments, with one attorney receiving between 200 and 250 cases, and fourteen attorneys receiving between one and fifty cases. If all attorneys received an equal number of appointments, they all would have received 52 cases as displayed by the dashed line. Below the histogram is a pie chart grouping appointments to attorneys.



A histogram of the juvenile appointments to non-Spanish speaking attorneys in the 304<sup>th</sup> District Court is shown below. The histogram shows 165 attorneys receiving non-Spanish speaking juvenile appointments, with one attorney receiving just under 120 cases, and over 70 attorneys receiving between one and seven cases. If all attorneys received an equal number of appointments, they all would have received sixteen cases as displayed by the dashed line. Below the histogram is a pie chart grouping appointments to attorneys.

