

## Message from the Chair

The Commission held a meeting of the full board on March 28. At the meeting we thanked Carl Reynolds, who served for seven years as the Executive Director of the Office of Court Administration. From the start, Carl was generous in sharing with the Commission his extensive experience and knowledge. It was great to work with him over the years and, on behalf of the Commission members and staff, I wish him well.

*Sharon Keller, Chair,  
Texas Indigent Defense  
Commission, Presiding Judge,  
Court of Criminal Appeals*



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**April 2012**

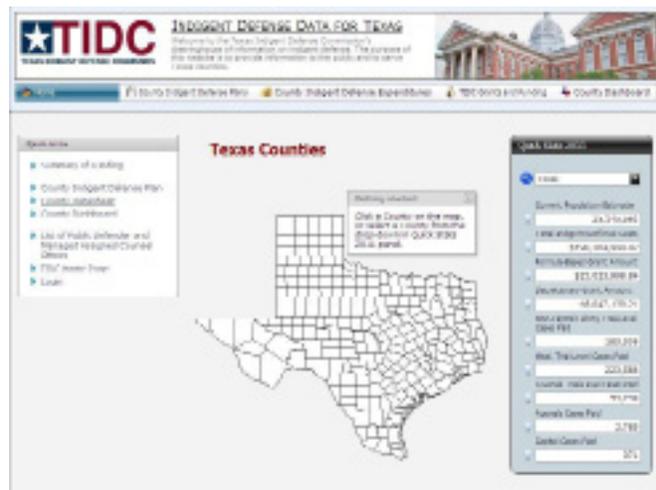
# indigent defense news in Texas

[www.txcourts.gov/tidc](http://www.txcourts.gov/tidc)

## IMPROVED ACCESS TO INDIGENT DEFENSE DATA ONLINE

In March the Texas Indigent Defense Commission (TIDC) unveiled a new format for its public data site. Restructured from the ground up with the help of the Public Policy Research Institute at Texas A&M, the site aims to make it easier for county and state officials to navigate the extensive amount of data maintained by the Commission. The Commission collects information on a wide variety of indigent defense expenditures and appointment trends, as well as the state indigent defense funds distributed to counties through formula and discretionary grant programs. With ten years' worth of data in the archives the new format was needed to improve the accessibility of the data. The new streamlined site was developed over the course of the previous year, and the Commission believes that the added value will be well worth the effort. County data sheets are useful tools for county users and others to see a snapshot of a county(ies)'s indigent defense program and data elements such

as cases added, cases paid and percent of charges defended with appointed counsel for felony, misdemeanor and juvenile cases, total indigent defense expenditures, and grant disbursements. In addition, indigent defense plans for each county are more accessible and it is easier for counties to submit, update, and compare plans. The public may visit the new TIDC data site at: <http://tidc.tamu.edu/public.net/> (note: the image below is a screenshot of the new site)



# Message from the Executive Director

Yesterday, the **2011 Robert O. Dawson Indigent Defense Distinguished Service Award** winner, **David Slayton** (pictured right with **Judge Keller**), Director of Court Administration, Lubbock, Texas, was named the next Administrative Director of the Office of Court Administration. I first met David in 2004. He was new to Lubbock and the Task Force on Indigent Defense (now the Texas Indigent Defense Commission) was relatively new to Texas.



We were only in our second year of operation as result of the passage of the Fair Defense Act (FDA). The passage of this law did not guarantee a better criminal justice system or a local jurisdictions' compliance with the requirements of this law. Effort, energy, and a strategy are required to bring about these results. I had the opportunity to watch and work with David as he worked with his local courts and county officials to develop a strategy and plan to help Lubbock not only fulfill its statutory requirements under the law, but to make a meaningful impact on those being served by this legislation. His efforts and energy, coupled with strong judicial leadership and an outstanding Commissioner's Court, have brought Lubbock County well deserved national accolades and statewide awards from Texas Association of Counties for developing cost-effective innovative indigent defense programs. These programs serve not only Lubbock but the entire State of Texas.

In particular, the Regional Public Defender for Capital Cases, headquartered in Lubbock, now serves about 120 counties across the state. This quite likely is the single largest intergovernmental collaboration in the history of Texas. As you will see in the [press release](#) issued by the Texas Supreme Court, David's leadership at both the local and state level is evident. I look forward to working with David in his new role as Administrative Director of the Office of Court Administration.

Speaking of innovation and effective programs, last month I visited Bell County to observe first hand its newly implemented web-based indigent defense portal. Judge **Jon Burrows** and the entire Commissioner's Court, along with Judge **Fancy Jezek**, District Judge and the rest of Bell County judiciary, have implemented an indigent defense case management system that among other things automates the:

- appointment of attorney based on wheels and qualifications;
- attorney notification process;
- entry of time and activity from the appointed attorney;
- submission of the attorney voucher;
- routing of the voucher to the approving judge for review, edit and approval
- tracking of time between arrest to magistration;
- tracking of time from appointment counsel to initial jail visit;
- completion of the Financial Affidavit based on local rule; and
- much, much, more.

This program solves many of the time consuming snags in the process, thus saving resources and frustration. It results in attorneys being paid more promptly and eliminates the need for redundant data entry. I also met with two local bar leaders, **Thomas Seigman** and **Jeff Parker**, who are testing the electronic attorney fee voucher system. Their demonstration was insightful and to me seems like a program that offers much promise. They also discussed the criminal defense mentoring program that Bell County has recently implemented. In short, the mentoring program is offered to any lawyer who represents indigent defendants and wants to increase his or her level of expertise. The mentor is an experienced and respected member of the local bar and has been identified as an attorney willing to assist other attorneys to enhance skills to provide the best representation possible to indigent defendants. To learn more about this outstanding program, check-out: [Lone Star Solutions: Bell Indigent Defense Web Portal: Creating Transparency and Measuring Performance](#).

Best,  
*Jim Bethke*  
*Executive Director*

# GRANTS AND REPORTING UPDATE

## Counties Continue Interest in Indigent Defense Improvements

There were 16 counties that responded to the FY2013 Request for Applications with 17 different programs. In addition to Formula type grants, the Commission has available once per year a grant application process for counties that want to develop specific ideas into programs. Often these ideas are model or pilot programs designed to improve the local indigent defense system. The summary of all of the Intent to Submit FY2013 Discretionary Applications are below:

County	Grant Proposal Title	Estimated Amount
<b>Proposed FY2013 Multi-Year Discretionary Grants</b>		
Collin	Mental Health Managed Counsel Program	\$488,696
El Paso	Specialty Court Attorney	\$56,000
Kaufman	Mental Health Attorney/Advocate Team	\$121,710
Kleberg	Regional Checkpoint Defender	\$224,000
Rockwall	Managed Assigned Counsel Program	\$220,000
Wichita	Mental Health/Social Worker	\$60,000
<b>6 Counties Total New Multi-Year</b>		<b>\$1,170,406</b>
<b>Proposed FY2013 Single Year Discretionary Grants</b>		
Bexar	Inmate/Attorney Video Visitation	\$350,000
Cass	Indigent Defense and Court Coordinator	\$20,000
Delta	Delta County Indigent Defense Coordinator	\$5,000
El Paso	Technology Re-engineering for Public Defender's Office	\$24,000
Fannin	Improved efficiency and service to indigent defendants	\$72,500
Harrison	Video Conferencing for Indigent Inmates	\$10,000
McLennan	Indigent Defense Coordinator	\$37,500
Runnels	Magistration by video	\$5,000
Tarrant	Automating Tarrant County's Indigent Defense Program	\$15,000
Williamson	Improvements for a more Effective and Efficient Indigent Defense System	\$37,500
Victoria	Indigent Defense Verification and Eligibility Program	\$33,000
<b>11 Counties Total New Single Year</b>		<b>\$609,500</b>
<b>Total Requests from 16 Counties</b>		<b>\$1,779,906</b>

These counties have been authorized to proceed to the full application stage. The full applications are due from these counties by April 24, 2011. The Commission has a two-step process to reduce paperwork on counties. The first step is the Intent to Submit process to allow the county to provide a miniature version of an idea. Grant staff review the idea and make sure that it meets indigent defense principles in the RFA and is allowable. The counties will then proceed to the full application process. The Commission will make decisions on the full applications in June.

Contact Bryan Wilson  
Grants Administrator

## Formula Grant Payments

By now, two hundred- six (206) counties out of two hundred twenty-five (225) that were awarded a 2012 Formula Grant have received their first quarter payment and will be receiving their second quarter payment by the end of May.

If your county has not received a payment, it could be because of the special conditions that were listed on your Statement of Grant Award. Special condition(s) that could have been listed on your statement are: a) plan requirements b) expenditure requirement c) previous year award balance.

Review your statement of Grant Award and if there is a special condition(s), check to see if that special condition(s) are still outstanding. Once your special condition(s) are met, you may be able to receive payments. As always if you have questions please contact TIDC staff.

Contact Sharon Whitfield  
Budget and Accounting Analyst

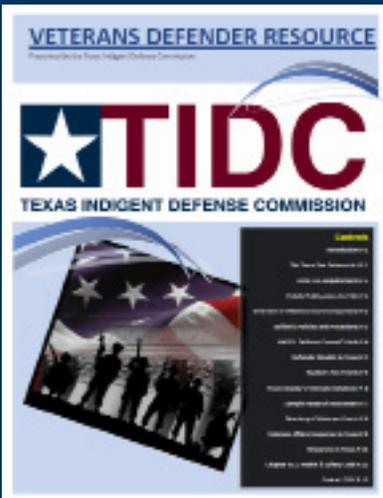
## Veterans Defender Resource Published

The Commission published the Veterans Defender Resource for county and court officials who are interested in the creation of a new Veterans Court or enhancing their existing problem solving courts with the addition of a defender component. A law recently passed by the Texas legislature authorized counties to establish a Veterans Courts. According to Senator Leticia Van de Putte, "Senator Rodney Ellis and I authored legislation to create Veterans Courts in Texas counties because we saw the need to recognize the unique challenges faced by service members who have endured the stresses of combat. Our war fighters have sacrificed so much for us; they deserve special consideration in helping deal with the complexities within the criminal justice and legal system."

Defendants are eligible to participate in a veterans court program only if the attorney representing the state consents to the defendant's participation in the program and if the court in which the criminal case is pending finds that the defendant is a veteran or current member of the United States armed forces, including a member of the reserves, national guard, or state guard; and suffers from a brain injury, mental illness, or mental disorder, including post-traumatic stress disorder, that resulted from the defendant's military service in a combat zone or other similar hazardous duty area and materially affected the defendant's criminal conduct at issue in the case.

The Commission provides an array of support to counties that wish to implement initiatives that will improve access to the right to counsel. The Veterans Defender Resource provides information about how counties can access this support through the Commission's discretionary grant programs. Additionally, the Resource includes a directory of the currently operating Veterans Courts programs throughout the state. Many of the judges who have chosen to run Veterans Courts may be valuable sources of wisdom and advice as a new court is formed. According to Judge Brent Carr of Tarrant County, "The veteran's court has been an incredible experience. This program is not a gift to a veteran, it is an opportunity. By completing a professionally designed course of therapy and treatment, the veteran has the opportunity to correct destructive behavior and have his or her good name restored. This is good for the veteran, the veteran's family, and the community. It's the least we can do."

The Veterans Defender Resource is available on the Commission's website: [http://www.courts.state.tx.us/tidc/pdf/VetDefenderMarch28Publication\(Final\).pdf](http://www.courts.state.tx.us/tidc/pdf/VetDefenderMarch28Publication(Final).pdf)



Also...



The Texas Access to Justice Foundation has released a Request for Proposals for Free Civil Legal Aid for Low-Income Veterans. The date for submission of proposals is Thursday, May 31, 2011 by 5:00 PM.

Contact Dominic Gonzales  
Grant Program Specialist

# POLICIES AND STANDARDS UPDATE

## Improving the Process – Reasonable Assistance with Affidavits of Indigence

The Fair Defense Act sets a requirement (per Article 15.17 of the Code of Criminal Procedure) that the magistrate must advise the defendant of various rights and must ask the defendant whether he/she would like to request counsel. If the defendant requests counsel, the magistrate must ensure that reasonable assistance in completing the necessary forms for requesting counsel is provided at the time of the request. If the magistrate is not authorized to appoint counsel, the request must be transmitted to the appointing authority within 24 hours of the request being made. Although the requirements are clear, their implementation may vary according to local practices.

**The Assistance** - Article 15.17(a), Texas Code of Criminal Procedure

*"... The magistrate shall ensure that reasonable assistance in completing the necessary forms for requesting appointment of counsel is provided to the person at the same time. ..."*

**The Transmittal** - Article 15.17(a), Texas Code of Criminal Procedure

*"(a) ... If the magistrate is not authorized to appoint counsel, the magistrate shall without unnecessary delay, but not later than 24 hours after the person arrested requests appointment of counsel, transmit, or cause to be transmitted to the court or to the courts' designee authorized under Article 26.04 to appoint counsel in the county, the forms requesting the appointment of counsel. ..."*

### The Challenge

People often need help in completing the forms necessary to request counsel. Multiple departments must competently perform their roles in order to meet Article 15.17 requirements. Law enforcement and jailers have a duty to promptly bring the defendant to the magistrate. The magistrate (who is typically a justice-of-the-peace) administers the warnings but is often too busy to assist defendants in completing affidavits of indigence. The magistrate may not even be present when the affidavit of indigence is completed, and so may not transmit the request for counsel to the appointing authority within 24 hours of the request being made.

### The Solution

Broad stakeholder involvement is required if counties desire to demonstrate their compliance with Article 15.17. A county may wish to hold deliberate stakeholder meetings to identify current processes and to map out improvements. For instance, if a magistrate does not have available time to assist defendants with affidavits of indigence, a county may assign other personnel to the task. Many different methods have been developed to meet the requirements. Counties have used Indigent Defense Coordinators, jailers, financial interviewers, and pre-trial service personnel. Getting stakeholders together to identify how local practices compare with statutory requirements can result in the county being able to remedy any compliance gaps.

Contact Wesley Shackelford  
Deputy Director/Special Counsel

# Improving the Process – Prompt Magistration Warnings

Next meeting dates:

Grants and Reporting,  
June 8, 10:00 a.m.

Policies and Standards,  
June 21, 8:30 a.m.

TIDC, June 21, 10:00 a.m.

Location: Texas Association  
of Counties, Austin

The Fair Defense Act sets a requirement (per Article 15.17 of the Code of Criminal Procedure) that a defendant is to be taken before a magistrate within 48 hours of arrest. The magistrate must advise the defendant of various rights, must ask the defendant whether he/she would like to request counsel, and must record whether the defendant is requesting counsel. The Commission requires as a condition of the agency's grants that a county has processes in place that ensure prompt magistrate warnings.

## **Timeliness of Warnings** - Article 15.17(a), Texas Code of Criminal Procedure

*(a) In each case enumerated in this Code, the person making the arrest or the person having custody of the person arrested shall without unnecessary delay, but not later than 48 hours after the person is arrested, take the person arrested or have him taken before some magistrate of the county where the accused was arrested or, to provide more expeditiously to the person arrested the warnings described by this article, before a magistrate in any other county of this state. ...*

## **The Record** - Article 15.17(e), Texas Code of Criminal Procedure

*“(e) In each case in which a person arrested is taken before a magistrate as required by Subsection (a), a record shall be made of:*

- (1) the magistrate informing the person of the person's right to request appointment of counsel;*
- (2) the magistrate asking the person whether the person wants to request appointment of counsel; and*
- (3) whether the person requested appointment of counsel.”*

## **The Challenge**

Counties and courts need to develop methods to evaluate whether they meet the statutory requirement. Often, the record of the proceeding may not demonstrate statutory compliance. For instance, the date and time of arrest as well as the date and time of the warnings may not be included on the form used by the magistrate. There is not a better time to collect the data than at the magistrate hearing. After the warnings, the completed forms may not be kept in a centralized case file. Often the record may be maintained by each justice-of-the-peace.

## **The Solution**

A primary goal of county processes is to ensure compliance with statutory requirements. The best obtainable goal is to demonstrate compliance with regular record keeping. To achieve this goal, counties should utilize magistration forms that include all required elements and should maintain these forms in a central location (preferably the clerk's case file). In 2002 the Commission worked with many jurisdictions and stakeholders to develop a [model magistrate warning form](#). The model form contains all of the Article 15.17 elements on one page. Several counties have incorporated part or all of the elements of the form into their processes and occasionally into their software. In addition to the model magistrate warning form, counties can use the Commission's website to examine their [indigent defense plans](#) and to examine historical [county expense data](#).

Contact Wesley Shackelford  
Deputy Director/Special Counsel

# Indigence Determination Standards

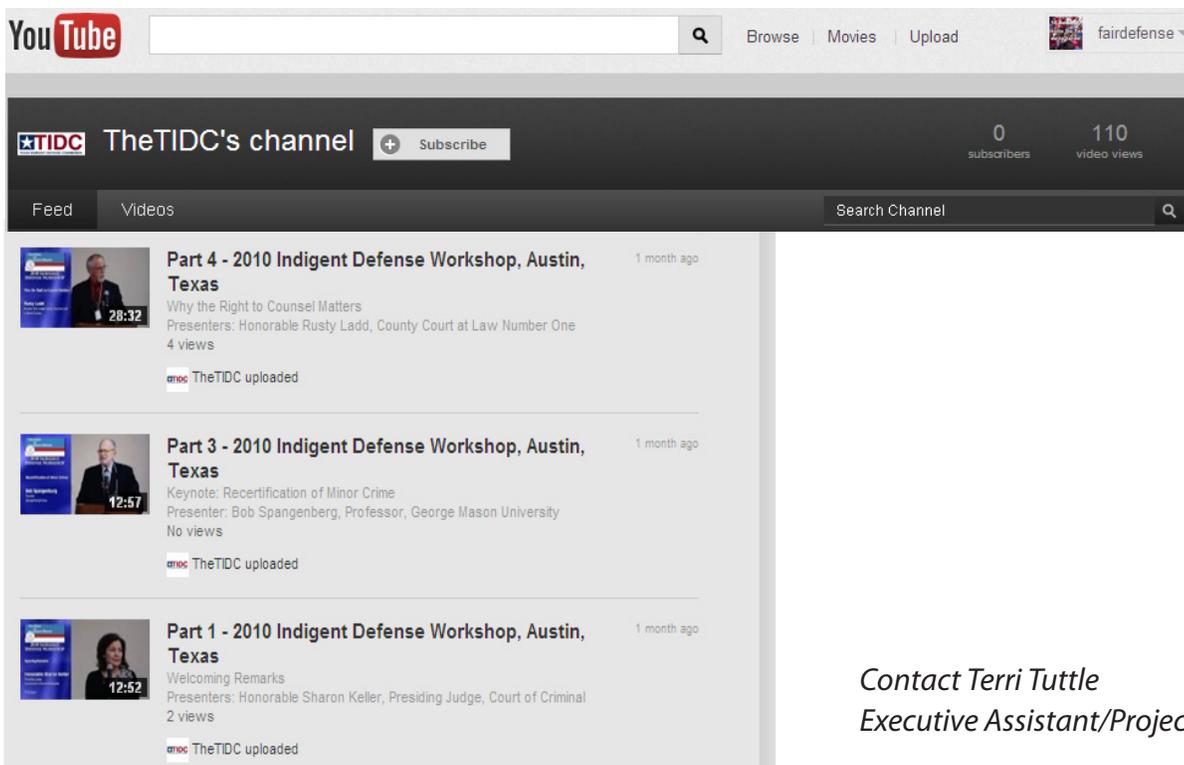
As part of the indigent defense plan review process, staff recently assessed what financial standards are used to determine indigence in the 370 indigent defense plans currently on file. The top three categories of standards each appear in the vast majority of plans. The most used standard is a multiple of the federal poverty guidelines income level, which appears in 352 plans. The most common percentage used is 125%, although large numbers of plans also use 100% and 150% of the poverty guidelines income level. Qualification for a means test public benefit program, such as Medicaid or the supplemental nutrition assistance program (SNAP), is the second most common standard and is found in 317 plans. Rounding out the top three for determining indigence is a defendant who resides in a correctional or mental health institution. These three standards appeared in the primary template we issued as part of the then new plan submission process in 2009 and also form the basis of model guidelines the State Bar of Texas issued a few years ago. A relatively small number of plans also contain a maximum assets test, a net income test (income minus necessary expenses), or some other standard.

## TIDC Resources Now Available on YouTube

The Commission has digitally recorded its Indigent Defense Workshops and Symposium presentations and the collection of these over the past four years are available not only on its website but also on YouTube. These presenters and the messages they deliver contain a wealth of information for those who are interested in keeping abreast with the latest best practices, both in the state and nationally. Not only will county officials (commissioners, judiciary) benefit from the information but policy makers, defense lawyers, and the public in general will see how much has been accomplished and the importance of the work that lies ahead. All share the importance message that the right to counsel under the 6th Amendment is a fundamental one and a basic cornerstone to our justice system and democracy. Be prepared to be truly inspired as you watch and share these with others!

Video downloads on the Commission website: <http://www.txcourts.gov/tidc/archivesworkshops.htm>

Also on YouTube: <http://www.youtube.com/user/TheTIDC?feature=watch>



The screenshot shows the YouTube channel page for 'TheTIDC's channel'. The channel has 0 subscribers and 110 video views. The video feed is displayed, showing three videos:

- Part 4 - 2010 Indigent Defense Workshop, Austin, Texas** (1 month ago)  
Why the Right to Counsel Matters  
Presenters: Honorable Rusty Ladd, County Court at Law Number One  
4 views  
TheTIDC uploaded
- Part 3 - 2010 Indigent Defense Workshop, Austin, Texas** (1 month ago)  
Keynote: Recertification of Minor Crime  
Presenter: Bob Spangenberg, Professor, George Mason University  
No views  
TheTIDC uploaded
- Part 1 - 2010 Indigent Defense Workshop, Austin, Texas** (1 month ago)  
Welcoming Remarks  
Presenters: Honorable Sharon Keller, Presiding Judge, Court of Criminal  
2 views  
TheTIDC uploaded

Contact Terri Tuttle  
Executive Assistant/Project Manager

# Supreme Court Extends Right to Effective Counsel to Plea Bargain

On March 21st the U.S. Supreme Court decided two cases that held a defendant in a criminal case has a Sixth Amendment right to effective assistance of counsel in the plea bargaining process. The cases, *Missouri v Frye* and *Lafler v Cooper*, were 5-4 decisions with the majority opinions written by Justice Anthony Kennedy. In *Frye*, the defendant's attorney did not inform him of plea offers from the prosecution and he later plead guilty without an agreement and received a substantially longer sentence than the earlier offers. The court held that generally "defense counsel has the duty to communicate formal offers from the prosecution to accept a plea on terms and conditions that may be favorable to the accused." Justice Kennedy reasoned that because our system relies heavily on plea bargains, "the negotiation of a plea bargain, rather than the unfolding of a trial, is almost always the critical point for a defendant." In order to show prejudice, the majority held that "defendants must demonstrate a reasonable probability they would have accepted the earlier plea offer had they been afforded effective assistance of counsel. Defendants must also demonstrate a reasonable probability the plea would have been entered without the prosecution canceling it or the trial court refusing to accept it, if they had the authority to exercise that discretion under state law."

The Texas Court of Criminal Appeals reached a similar conclusion in the *Ex Parte Lemke* decision in 2000. The court held that "[f]ailure of defense counsel to inform a criminal defendant of plea offers made by the State is an omission that falls below an objective standard of professional reasonableness." The court found that the defendant was prejudiced by counsel's failure to inform defendant of plea offers of 20 and 16 years confinement and instead plead guilty to a term of confinement of 40 years. The court ordered the trial court to withdraw the defendant's pleas, require the State to reinstate its 20 year plea bargain offer, and allow defendant to re-plead to the indictments in these causes.

In the *Lafler* case, the attorney transmitted the plea offer to the client; however the client rejected the offer based on the erroneous advice of counsel. After the plea offer had been rejected, there was a full jury trial resulting in a harsher sentence than the one offered in the rejected plea deal. Justice Kennedy once again writing for the majority held that to gain relief "a defendant must show that but for the ineffective advice of counsel there is a reasonable probability that the plea offer would have been presented to the court (i.e., that the defendant would have accepted the plea and the prosecution would not have withdrawn it in light of intervening circumstances), that the court would have accepted its terms, and that the conviction or sentence, or both, under the offer's terms would have been less severe than under the judgment and sentence that in fact were imposed." Fashioning an appropriate remedy in such cases will potentially be challenging. In his dissenting opinion, Justice Scalia noted the decisions open "a whole new field of constitutionalized criminal procedure: plea-bargaining law."

*Contact Wesley Shackelford  
Deputy Director/Special Counsel*

## Interactive Features:

If you're viewing this as a PDF, be sure to take advantage of many of this newsletter's interactive features. Many of the stories feature hyperlinks to additional material, including videos, reports, national news items.

Please contact any of the following staff members for assistance:

James D. Bethke	Executive Director
Edwin Colfax	Project Manager
Carol Conner	Fiscal Monitor
Dominic Gonzales	Grant Program Specialist
Marissa Kubinski	Administrative Assistant
Joel Lieurance	Policy Monitor
Wesley Shackelford	Deputy Director/Special Counsel
Terri Tuttle	Executive Assistant/Project Manager
Sharon Whitfield	Budget and Accounting Analyst
Jennifer Willyard	Program Research Specialist
Bryan Wilson	Grants Administrator

Archived e-newsletters are available [online](#).

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## Raising the Bar in Representation

Pictured are three newly board certified lawyers in the area of Criminal Appellate Law from the Harris County Public Defender's Office.

Left to right, is Bob Wicoff, Chief of the Appellate Division, Jani Maselli, Assistant Public Defender in the Appellate Division, and Alex Bunin, Chief Public Defender. Wicoff and Bunin are also Board Certified in Criminal Law by the Texas Board of Legal Specialization.

On the web at <http://harriscountypublicdefender.org/>



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