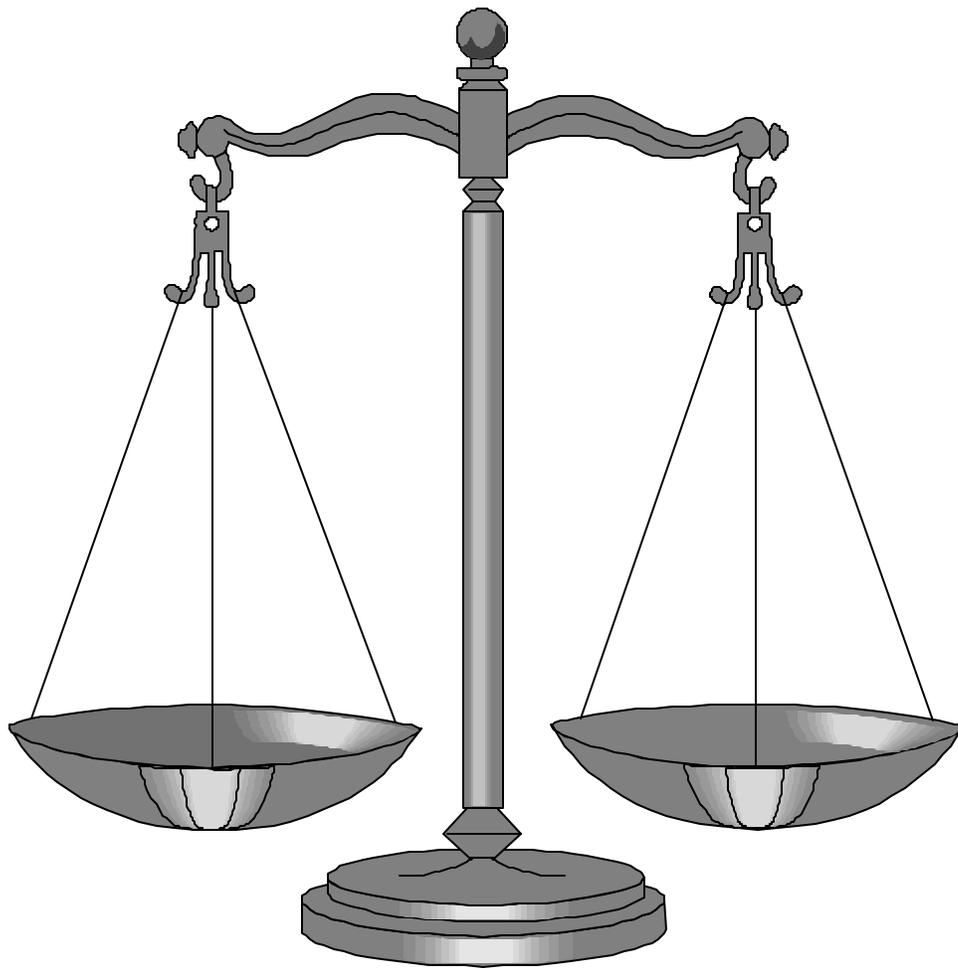


OKLAHOMA

INDIGENT DEFENSE SYSTEM



2000
Annual
Report

. . . to provide indigents with legal representation comparable to that obtainable by those who can afford counsel and to do so in the most cost-effective manner possible.

Oklahoma

Indigent Defense System



FRANK KEATING
GOVERNOR

BOB A. RICKS
CABINET SECRETARY
SAFETY AND SECURITY

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Executive Director

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January 19, 2001

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It is our privilege to submit a report concerning the duties, activities and accomplishments of the Oklahoma Indigent Defense System for the fiscal year ending June 30, 2000, in accordance with 22 O.S. § 1355.3B and 22 O.S. § 1355.4C.14.

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The Oklahoma Indigent Defense System is grateful for the support that it received during Fiscal Year 2000 from the Governor and his staff, from the Legislature, and from the Judiciary.

KEN FEAGINS, ESQ.
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As we move forward in Fiscal Year 2001, we also acknowledge the professionalism of the staff at OIDS and the private attorneys, investigators, and experts who have demonstrated their dedication to our clients.

It is only through all of our efforts that the right to counsel is preserved and the interests of justice are assured.

Sincerely,

Benjamin Curtis
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–Mission & History

The Oklahoma Indigent Defense System (OIDS) was created by the Oklahoma Legislature in the Indigent Defense Act, Sections 1355 through 1369, Title 22 of the Oklahoma Statutes, effective July 1, 1991.

The agency's mission is to provide indigents with legal representation comparable to that obtainable by those who can afford counsel and to do so in the most cost effective manner possible.

OIDS fulfills the majority of the State's obligations under the Oklahoma and United States Constitutions to provide legal representation to certain Oklahoma citizens who are charged with criminal offenses.

OIDS was created after the Oklahoma Supreme Court decided *State v. Lynch*, 796 P.2d 1150 (Okla. 1990). The Supreme Court held that Oklahoma's method of compensating private attorneys in court-appointed criminal cases at the trial level was unconstitutional under the State Constitution.

In response to *Lynch*, the Oklahoma Legislature undertook sweeping reform of the State's delivery of criminal defense services. Legislative action resulted in the Indigent Defense Act, effective July 1, 1991, which created OIDS as a new state agency. The Act instituted major changes in the funding and

delivery of defense services at trial and on appeal.

Before the enactment of the Indigent Defense Act, criminal appeals in court-appointed cases were the responsibility of the Oklahoma Appellate Public Defender System (APD). The APD began in 1979 as a federally-funded project at the Oklahoma Center for Criminal Justice and by 1988 had evolved into a small state agency that represented indigents on appeal in state court and, in death penalty cases, in federal court.

The APD became a part of OIDS under the Indigent Defense Act in 1991 and continued its representation of indigents on appeal. The Act also created a division within OIDS to represent indigents at trial who were charged with capital murder offenses and directed OIDS to begin accepting court appointments to provide legal representation in non-capital cases in 75 counties beginning July 1, 1992, its second year of operation.

OIDS's responsibilities are defined by the Indigent Defense Act and have changed with statutory amendments over the nine-year history of the agency. The agency's fundamental duty is to provide trial, appellate, and capital post-conviction criminal defense services to persons who have been judicially

determined to be entitled to legal counsel at State expense. OIDS is appointed by the trial and appellate courts of Oklahoma after an indigency determination is made by the court. OIDS is subject to being appointed to provide legal representation in non-capital criminal cases in 75 of Oklahoma's 77 counties and, in some instances, to capital cases in Oklahoma and Tulsa Counties, which are served by county public defenders.

OIDS contracts with private Oklahoma-licensed attorneys to handle the indigent non-capital trial caseload in 61 counties. In 14 counties, staff attorneys employed by the System handle the non-capital indigent caseload. In two of these counties, responsibility for the non-capital trial indigent caseload was shared between contract attorneys and staff attorneys. Private attorneys handle the majority of the System's conflict cases.

In death penalty cases and non-capital appeals, attorneys employed by OIDS are assigned the case after OIDS has been appointed by a district court or the Oklahoma Court of Criminal Appeals.

~ Capital Trial Division _____

The Capital Trial Division-Tulsa was created at the beginning of Fiscal Year 1997 to represent clients in counties in the Eastern-Northeastern area of the State. In Fiscal Year 1998, the staffing level in the Capital Trial Division-Tulsa was increased to permit the Division to accept appointments in 31 counties in the Eastern third of the State, including Tulsa County when the public defender has a conflict of interest.

~ Non-Capital Trial Division _____

In June 1997, due to problems in securing fiscal-year contracts covering the entire caseload in twelve counties and a portion of the caseload in two others, the agency's governing Board directed management to open three non-capital trial offices to begin accepting the

System's appointments in the affected counties as of September 1, 1997. In Fiscal Year 1999, the Board expanded one office to cover a 15th county because no private attorney offered to contract for the work after offers were solicited a second time.

~ Capital Appeals Division _____

Since November 1995, post-conviction applications in a death penalty case are filed in the Court of Criminal Appeals while the capital direct appeal case is still pending. Before the statutory changes, post-conviction applications in a death penalty case were treated like non-capital post-conviction cases and filed in district court after the capital direct appeal case was decided by the Court of Criminal Appeals.

~ Funding _____

At the time of its creation in 1991, OIDS received federal funding as a federal resource center responsible for providing state and federal post-conviction and habeas representation in death penalty cases. This funding ended in October 1995, when Congress closed all of the federal resource centers in the country. OIDS was forced to seek State appropriations to replace the federal funds that had been used for state post-conviction representation.

During its nine-year history, OIDS repeatedly has been forced to seek supplemental appropriations from the Legislature. The first, received in early 1992, averted a shutdown of the agency soon after it was created. The original funding mechanism, a \$13.00 increase in statutory court costs on traffic tickets issued by the Oklahoma Highway Patrol, did not generate enough revenue for OIDS to meet its payroll.

OIDS funding for Fiscal Year 1993, through direct appropriations, included an additional \$6 million to finance the cost of contracting with private attorneys around the State to initiate

OIDS's statewide defender services in non-capital trial cases in 75 counties. These fiscal-year contracts are awarded by the OIDS Board after considering offers to contract submitted by private attorneys on a county-by-county basis.

In Fiscal Year 1994, the Legislature reduced OIDS's appropriation by \$1 million based on a prediction that the difference in prior and current-year appropriations would be made up by revolving fund collections of OIDS's share of fees assessed against criminal defendants.

In Fiscal Year 1995, OIDS received no additional appropriated funds except for a state pay plan. Revolving fund income fell drastically, from \$1.5 million in Fiscal Year 1992 to \$94,079 in Fiscal Year 1995. This, combined with a 2.5% reduction in appropriated funds for Fiscal Year 1996 and a loss of federal funding in October 1995, resulted in a supplemental appropriation in the amount of \$240,000 in the Spring of 1996, \$1.4 million less than OIDS had requested.

In Fiscal Year 1997, OIDS suffered its worst funding crisis, caused by the combination of events that began in Fiscal Year 1996 and a veto of an appropriation of \$919,155 for Fiscal Year 1997. OIDS was unable to award county contracts for non-capital trial representation in Fiscal Year 1997, forcing OIDS to assign cases to private attorneys on a case-by-case basis at an hourly rate and much higher cost to the agency. In March 1997, OIDS received a supplemental appropriation in the amount of \$2.1 million for non-capital trial representation. For Fiscal Year 1998, OIDS received \$566,000 to annualize the supplemental appropriation.

At a meeting on August 8, 1997, the agency's governing Board accepted the resignation of the agency's executive director, who had served as agency head for five years. The current executive director selected by the Board assumed his duties on December 1, 1997. As a result of the change in management, the agency underwent an intensive review of all of

its programs and identified deficiencies in the agency's capability to perform its duties.

For Fiscal Year 1999, the Legislature appropriated \$652,521 in additional funds for increased staffing in the Executive Division, new telephone system, annualization of the costs of offices opened by the Board to represent clients in those counties where acceptable contracts with private attorneys could not be obtained, and to pay for state raises and benefits. Additional staff were added to address deficiencies in the agency's ability to track and report financial and caseload data, to provide data processing support, and to improve the agency's ability to comply with state and federal law.

By the fall of 1998, the Executive Director recognized that OIDS would not be able to meet its Fiscal Year 1999 obligations because of the continued effect of the non-capital trial representation crisis in Fiscal Year 1997. Management projected a \$1.3 million shortfall in funds needed for Fiscal Year 1999 professional services for both the Trial Program and the Appellate Program, including funds for private-attorney expenses, experts, and investigators in both capital and non-capital cases. A supplemental appropriation in that amount was obtained in the Spring of 1999 and annualized in the OIDS appropriation for Fiscal Year 2000.

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– *Executive Program*

The Executive Division is charged with the responsibility of managing and operating the agency and implementing the Indigent Defense Act. By statute, the Executive Director is selected by and serves at the pleasure of the agency's governing Board. The five members on the Board are appointed by the Governor with the advice and consent of the Senate.

~ *Administration*

To aid the Executive Director in the implementation of the Indigent Defense Act and agency operations, the Executive Division is staffed with administrative, finance, and computer operations personnel.

OIDS provides legal representation through the services of staff members and by contracting with private attorneys, experts and investigators. OIDS employs 130 full-time staff members at its main offices in Norman and its satellite offices in Sapulpa, Okmulgee, Mangum, and Clinton.

In Fiscal Year 2000, the agency entered into over 500 professional services contracts with private attorneys, experts, and investigators to provide defense services in court-appointed cases. The Executive Division services these

contracts in addition to providing support services to its staff attorneys and investigators.

~ *Statutory Duties*

- È Budget
- È Claims
- È Contracts with private attorneys
- È Improve State's criminal justice system
- È Training for attorneys
- È Defense representation
- È Employ necessary personnel
- È Set rates for attorneys who accept court appointments
- È Set maximum caseloads
- È Advise OIDS Board
- È Conferences and training seminars
- È Serve in advisory capacity to criminal defense attorneys
- È Recommend legislation
- È Track costs
- È Adopt policies & procedures
- È Support efforts to recoup costs of representation
- È È Expert and investigator services

~ *Funding*

OIDS is funded by the Oklahoma Legislature through appropriations from the State's general revenue fund. OIDS also receives a varied and unpredictable amount of funds from the costs of representation assessed against a criminal defendant in certain cases. These assessments, authorized by Section 1355.4 of the Indigent Defense Act, if collected, are deposited in the Indigent Defense System Revolving Fund.

Each year, about half of OIDS's entire budget finds its way back into the Oklahoma economy through expenditures to private firms and individuals for professional and support services.

~ *Goals*

- Ⓒ To meet constitutional, statutory, and professional standards for competent legal representation.
- Ⓒ To provide legal representation in the most cost effective manner possible.

chapter

3

– *Trial Program*

The Trial Program consists of three Divisions that provide legal representation to agency clients who have been judicially determined to be unable to afford counsel to defend against criminal charges brought by the State in district court. OIDS is appointed by the district courts to represent these defendants.

The three Divisions in the Trial Program are appointed by the Oklahoma district courts to represent clients in accordance with the Indigent Defense Act, Sections 1355 through 1369 of Title 22 of the Oklahoma Statutes. The right to counsel at State expense was established by the United States Supreme Court in *Gideon v. Wainwright*, 371 U.S. 335 (1963). The right to expert assistance at State expense was established by the United States Supreme Court in *Ake v. Oklahoma*, 470 U.S. 68 (1985).

~ *Capital (Death Penalty) Trials* _____

The Capital Trial Division-Norman is the agency's original Division assigned the task of representing indigent defendants in cases where the State is seeking the death penalty. The Division represents defendants in capital cases filed in 46 counties, including Oklahoma County when the public defender has a conflict

of interest. Legal services are provided by salaried attorneys and investigators, assisted in some cases by private attorneys under contract to serve as co-counsel and by contracts with expert witnesses.

The Capital Trial Divisions in Norman and Tulsa operate as separate law firms for conflict purposes. If one of the Divisions cannot accept a court appointment because of a conflict of interest arising from another court appointment, the case is assigned to the other Division in most instances. If neither Division can accept the court appointment, the System contracts with private counsel to represent the client under the provisions of the Indigent Defense Act, Sections 1355.7 & 1355.8.

~ *Non-Capital Trials* _____

The Non-Capital Trial Division is responsible for providing defense representation for the agency's largest group of clients, with new court appointments ranging from 25,000 to 30,000 criminal cases a year. Non-Capital Trial criminal cases carry a potential sentence up to life imprisonment without the possibility of parole. The Division is responsible for legal defense services in seventy-five (75) counties.

~ Delivery of Non-Capital Trial Legal Services

The agency's Non-Capital Trial Division (NCTD) is responsible for providing trial level indigent defense representation in all criminal cases where the potential sentence includes incarceration. In accordance with the Indigent Defense Act, NCTD provides legal representation in the seventy-five (75) counties for which it is responsible in three ways:

- (1) flat-rate fiscal year contracts with private attorneys;
- (2) satellite offices with salaried staff attorneys; and
- (3) assignment of conflict and over-load cases to private attorneys who have agreed to accept such cases at established agency hourly rates, subject to statutory maximums set by the Indigent Defense Act.

In Fiscal Year 2000, the Division's caseload was handled as follows:

- (1) Flat-rate Fiscal Year Contracts: In fifty-nine (59) counties, all NCTD representation was provided via such contracts. In two (2) additional counties, Blaine and Woodward, a portion of the Division's representation was provided by such contracts.
- (2) Staffed Satellite Offices: NCTD operated four (4) satellite offices: Clinton, Mangum, Okmulgee, and Sapulpa. These offices handled the entire caseload in fourteen (14) counties and part of the caseload in two (2) others. The Clinton Satellite Office provided representation in all indigent (delinquent) juvenile, misdemeanor and traffic cases in Blaine County and handled 25% of all NCTD appointments in Woodward County.
- (3) Conflict/Overload Counsel: NCTD assigned 841 conflict cases to conflict counsel.

Discussion

The OIDS Board awards fiscal-year contracts to private attorneys to provide non-capital trial defense services on a county-by-county basis. In response to the agency's solicitations each year, private attorneys offer to provide criminal defense services in felony, misdemeanor, traffic and (delinquent) juvenile cases in one or more counties for a flat rate. The Board awards fiscal-year contracts in June, after the System's appropriation bill has been signed into law but only a week or two before the contract term begins on July 1. The contracting process is volatile, not only in terms of the number of offers, if any, received for any particular county, but also the cost of any contract awarded. As a result, the agency's ability to provide contract coverage in many counties, especially the smaller, more rural ones, is unpredictable. Historically, the agency has spent one-third to one-half of its total budget on these fiscal-year contracts to provide non-capital legal representation.

When the agency is unable to obtain a fiscal-year contract for indigent criminal defense work in a county the Board has two options: (1) establish a satellite office with salaried attorneys to accept the System's appointments in the affected county under Section 1355.9 of the Indigent Defense Act or (2) assign the System's appointments in that county to private attorneys who have agreed to accept cases on a case-by-case basis at established agency rates (\$60/hr for in-court legal services; \$40/hr. for out-of-court legal services) under Section 1355.8(F)(6) of the Indigent Defense Act.

In Fiscal Year 2000, the Board authorized a separate office in Sapulpa because of problems in serving Creek County's three courthouses from the Okmulgee office.

In Fiscal Year 2000, the Non-Capital Trial Division's satellite offices served the following counties:

Clinton Office

- C Custer
- C Dewey
- C Ellis
- C Roger Mills
- C Washita
- C Woodward (*25% of caseload*)
- C Blaine (*all of the Division's delinquent juvenile, misdemeanor, and traffic caseload*)

Mangum Office

- C Beckham
- C Greer
- C Harmon
- C Kiowa
- C Jackson
- C Tillman

Okmulgee Office

- C Okfuskee
- C Okmulgee

Sapulpa Office

- C Creek

~ **Goals** _____

- C To meet constitutional, statutory, and professional standards for competent legal representation at trial.
- C To provide trial-level legal representation in the most cost effective manner possible.

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–Appellate Program

The Appellate Program consists of three Divisions that provide legal representation to agency clients who have a right under State law to appeal their convictions and sentences and who have been judicially determined to be unable to afford appellate counsel.

The right to an appeal in a criminal case is guaranteed by Article 2, Section 6, of the Oklahoma Constitution, Section 1051 of Title 22 of the Oklahoma Statutes, and, in death penalty cases, by Section 701.13 of Title 21 and Section 1089 of Title 22 of the Oklahoma Statutes. The right to counsel at State expense on direct appeal was established under the Federal Constitution by the United States Supreme Court in *Douglas v. California*, 372 U.S. 353 (1963). The right to counsel at State expense in capital post-conviction proceedings is found in Section 1089 of Title 22.

The Appellate Program is appointed to represent clients in accordance with the Indigent Defense Act, Sections 1355 -1369, and the Uniform Post-Conviction Procedure Act, Section 1089 (capital cases), of Title 22 of the Oklahoma Statutes.

~ Non-Capital Appeals _____

The General Appeals Division is appointed by the district courts of Oklahoma to represent clients on direct appeal from the trial court to the Court of Criminal Appeals in cases where the defendant has been sentenced to a term of imprisonment up to life imprisonment without the possibility of parole.

The Division is appointed in seventy-five (75) counties and in Oklahoma County and Tulsa County when the public defenders have a conflict of interest or where the defendant was represented by retained counsel at trial and is judicially determined to be indigent on appeal. Legal services are provided by salaried attorneys and, in rare cases, by a private attorney under contract at a flat rate after a case has been remanded to the trial court for a hearing. The cost of expert assistance and investigative services, if any, are funded in the Division budget.

If the General Appeals Division has difficulties meeting court deadlines because of an unusually high number of court appointments, the agency enters into flat-rate contracts with private attorneys on a case-by-case basis to represent Division clients on appeal. The filing of General Appeals Division cases

cannot be delayed because of the decision by the Tenth Circuit Court of Appeals in *Harris v. Champion*, 15 F.3d 1538 (10th Cir. 1994). The agency was a defendant in the *Harris* class action litigation, brought by agency clients who alleged prejudice from delays in filing their briefs on appeal. The Tenth Circuit held there is a rebuttable presumption of a Due Process violation if a non-capital appeal has not been decided within two years of judgment and sentence, making it mandatory for the appellate attorney to file a brief within the deadlines established by the Court of Criminal Appeals.

If the General Appeals Division is unable to accept court appointments because of a conflict of interest arising from a prior court appointment, the agency enters into a flat-rate contract with a private attorney on a case-by-case basis to represent the clients on appeal.

~ *Capital (Death Penalty) Appeals* _____

The Capital Direct Appeals Division is appointed by the district courts of Oklahoma to represent clients on direct appeal from the trial court to the Court of Criminal Appeals in cases where the defendant is sentenced to die. Direct appeal in a capital case also includes filing a petition for a writ of certiorari in the United States Supreme Court if the case is affirmed by the Court of Criminal Appeals.

The Capital Direct Appeals Division is appointed by the district courts in 75 counties and in Oklahoma County and Tulsa County when the public defenders have a conflict of interest or where the defendant was represented by retained counsel at trial but is judicially determined to be indigent on appeal. Legal services are provided by salaried attorneys and investigators, assisted in some cases by a private attorney under contract at a flat rate after a case has been remanded to the trial court for a hearing.

The Capital Post-Conviction Division is appointed to represent all death-sentenced defendants in post-conviction proceedings. By statute, the Capital Post-Conviction Division must represent all death-sentenced defendants, including those who were represented by the Oklahoma County or Tulsa County public defenders on direct appeal. Legal services are provided by salaried attorneys and investigators.

If the Capital Direct Appeals Division or the Capital Post-Conviction Division is unable to accept court appointments because of a conflict of interest arising from a prior court appointment, the agency enters into a flat-rate contract with a private attorney on a case-by-case basis to represent the clients on appeal.

~ *Goals* _____

- C To meet constitutional, statutory, and professional standards for competent legal representation on appeal.
- C To provide appellate legal representation in the most cost effective manner possible.

– *The Year in Review*

OIDS began Fiscal Year 2000 on uncertain financial grounds after having been appointed by the District Court of Oklahoma County to provide a defense in the Alfred P. Murrah Federal Building Bombing case, a case that would have destroyed the agency’s ability to represent its other 30,000 clients. A supplemental appropriation in Fiscal Year 1999, annualized for Fiscal Year 2000, had created some optimism that the agency could finally recover from prior year financial crises. The bombing case threatened those prospects. After OIDS was permitted to withdraw from the case, the agency settled into a more stable regimen.

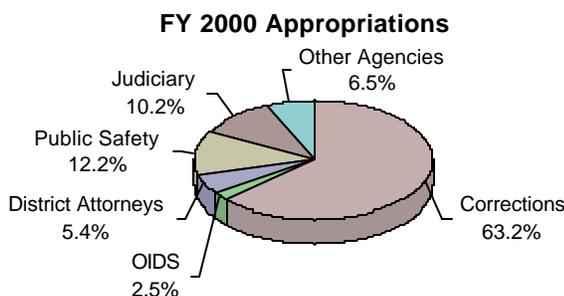
The OIDS appropriation for Fiscal Year 2000 was \$13,986,560. This amount is 2.5% of the total amount appropriated by the State of Oklahoma for all aspects of the criminal justice system in Fiscal Year 2000.

~ *Withdrawal from Representation of Terry Nichols in the Alfred P. Murrah Federal Building Bombing Case*

In Fiscal Year 1999, the 46th Oklahoma Legislature created the Alfred P. Murrah Federal Building Revolving Fund to be administered by OIDS. The statutory language of the legislation designated the fund to be expended “for the purpose of providing for the defense required by the United States and Oklahoma Constitutions of defendants charged in Oklahoma in a court of this state with the bombing of the Alfred P. Murrah Federal Building.” The Legislature appropriated \$1 million dollars to the revolving fund. OIDS requested \$3 million dollars to begin defending the bombing cases in Fiscal Year 1999.

On April 20, 1999, the District Court of Oklahoma County, appointed OIDS to provide counsel to defendant Terry Lynn Nichols in Oklahoma County Case No. CF-99-1845. OIDS was appointed to defend against 161 capital murder charges arising out of the April 19, 1995, bombing of the

Judiciary, Safety & Security Agencies



Alfred P. Murrah Federal Building. OIDS was unable to represent Mr. Nichols because, without additional funding, the agency's representation of Mr. Nichols would be materially limited by OIDS's responsibilities to its other clients. OIDS also declined the appointment because, without adequate funding, the representation of Mr. Nichols would result in violations of the Oklahoma Rules of Professional Conduct and other law applicable to the representation of persons accused of capital offenses.

In May 1999, after OIDS was appointed to represent Terry Nichols, the 47th Legislature voted to transfer \$900,000 out of the Alfred P. Murrah Federal Building Revolving Fund. On June 9, 1999, the Governor signed Senate Bill 173, enacted by the 47th Legislature, which mandated that the Director of State Finance transfer \$900,000 out of the Alfred P. Murrah Federal Building Revolving Fund and into the Governor's Contingency and Emergency fund to be used to provide emergency assistance to disaster victims. A week later, in a special session, the Oklahoma House of Representatives voted 76-13 *not* to appropriate funds to the Alfred P. Murrah Federal Building Revolving Fund. On the first day of Fiscal Year 2000, the Office of State Finance transferred \$900,000 out of the revolving fund.

OIDS challenged the appointment and was allowed to withdraw from the case after a hearing in August 1999. After allowing OIDS to withdraw from the case, the District Court initiated the process of selecting private counsel to represent Mr. Nichols at the expense of the Oklahoma County court fund.

~ *Other Court Appointments* _____

OIDS received a total of 29,100 new court appointments in Fiscal Year 2000 in all Divisions of the agency. The breakdown by Division is as follows:

Capital Direct Appeals	48
Capital Post Conviction	45

Capital Trial - Tulsa	51
Capital Trial - Norman	51
General Appeals	799
Non-Capital Trial Staff	5,180
Conflicts	841
Contracts	<u>22,085</u>
TOTAL	29,100

Given the nature of criminal cases, most cases span more than one fiscal year. In complex cases, such as death penalty cases, OIDS may represent a client for three or more years. Accordingly, the total number of cases handled during a fiscal year includes the prior year appointments in addition to the current year court appointments.

~ *Attorney Salary Parity Plan* _____

Historically, OIDS attorneys have been paid far less than the attorneys who represent the State in the same criminal cases. The disparity in salaries has led to a high turnover rate at OIDS. In 1999 OIDS sought appropriations to achieve salary parity with assistant district attorneys. The agency's efforts resulted in additional funds for Fiscal Year 2000 that allowed OIDS to move in the direction of paying its attorneys the same salaries as their counterparts in the criminal justice system. OIDS continues to make attorney salary parity a top priority for the agency.

~ *DNA Forensic Testing Program* —

After salary parity, OIDS's primary legislative objective during Fiscal Year 2000 was to obtain authorization and funding to investigate, screen, and present factual innocence claims based on DNA or other forensic evidence. OIDS presented its legislative proposals to other agencies in the criminal justice system. The DNA Forensic Testing Act was signed into law in June 2000, creating a new program at OIDS that is available to indigent persons who are presently incarcerated on felony offenses and have a claim of factual innocence based on scientific evidence. The program is staffed with two attorneys and an investigator, who began developing procedures for screening cases in August 2000.

~ *OIDS Website* —

OIDS built a new website during Fiscal Year 2000 to provide information about the agency, answers to most frequently asked questions, resources for public defenders and others interested in criminal law issues, and notices of training opportunities. The website can be accessed at www.state.ok.us/~oids or through the State website at www.state.ok.us, by scrolling to the Oklahoma State Agency Directory and selecting Public Safety.

~ *Training Program* —

The Indigent Defense Act requires OIDS to provide training for its staff members and private attorneys who are under contract with OIDS to accept court appointments. Because of previous staffing deficiencies, the agency had been unable to comply with this statutory mandate. In Fiscal Year 2000, OIDS studied training programs at other public defender systems and conducted an extensive needs assessment within the agency. A training plan has been proposed that focuses on utilizing in-state and out-of-state experts to conduct seminars at Oklahoma locations for OIDS staff members and private attorneys.

The Criminal Defense Institute, sponsored by the University of Oklahoma College of Law in cooperation with the College of Continuing Education, co-sponsored by OIDS, the Oklahoma County Public Defender, Tulsa County Public Defender and the Oklahoma Criminal Defense Lawyers Association, was held in June 2000.

~ *Non-Capital Trial Representation*

Overall Caseload

Between Fiscal Year 1998 and Fiscal Year 2000, the overall Non-Capital Trial Division caseload, including both contract and staffed office appointments, increased 22.9%, from 22,862 to 28,106 cases annually.

Contract Caseload

Appendix A shows the Non-Capital Trial Division annual contract appointments for Fiscal Years 1998, 1999, and 2000. This chart reveals that the contract caseload rose from 19,640 in Fiscal Year 1998 to 22,085 in Fiscal Year 2000, an increase of 12.4%. This increase would be slightly higher (14.5%) if the figures for Jackson and Tillman Counties, covered by contracts in Fiscal Year 1998, but covered by satellite office staff in Fiscal Year 2000, were deducted from the Fiscal Year 1998 total.

Appendix A also shows the Fiscal Year 2000 distribution of cases among the 75 Non-Capital Trial Division counties. Pottawatomie County had the highest number of cases (1,230), and Beaver County the lowest (18). The top ten counties accounted for over 40% of the caseload, and the top twenty accounted for almost 66%.

Satellite Office Caseload

Between Fiscal Year 1998 and Fiscal Year 2000, the total satellite office caseload skyrocketed from 2,119 to 5,180 cases per year, a 244% increase in annual caseload. During the same period, satellite office attorney staffing increased only 42.8%, from 14 to 20. As a result, individual annual caseloads ballooned from 151 cases per attorney in Fiscal Year 1998 to 259 cases per attorney in Fiscal Year 2000.

Conflicts Caseload

Since Fiscal Year 1998, OIDS has made a concerted effort to ensure that Non-Capital Trial Division fiscal-year contracts are adequately staffed by giving weight, during the contracting process, to the number of law firms participating in an offer. In addition, as caseloads permit, the satellite offices, and in particular the Okmulgee and Sapulpa offices, continue to handle one another's conflict cases.

Bryan County Cases

In Fiscal Year 2000, OIDS assumed responsibility for providing non-capital trial defense services in Bryan County. Court appointments in Bryan County had been paid for by the Bryan County District Court Fund under a pilot project authorized in 1997 by Section 1355.8(M) of the Indigent Defense Act. OIDS entered into a fiscal-year, flat-rate contract effective July 1, 1999, with private attorneys to provide trial level indigent defense representation in Bryan County.

~ Capital Trial Representation —

NORMAN OFFICE

The Capital Trial Division-Norman served 46 counties in the state and had primary responsibility for conflicts in 11 additional

counties.

In Fiscal Year 2000, the staff of the Capital Trial Division-Norman consisted of a chief attorney, with administrative duties and a limited caseload, six first-chair trial attorneys and one second-chair trial attorney. The division employed seven investigative staff and three support staff.

Caseload

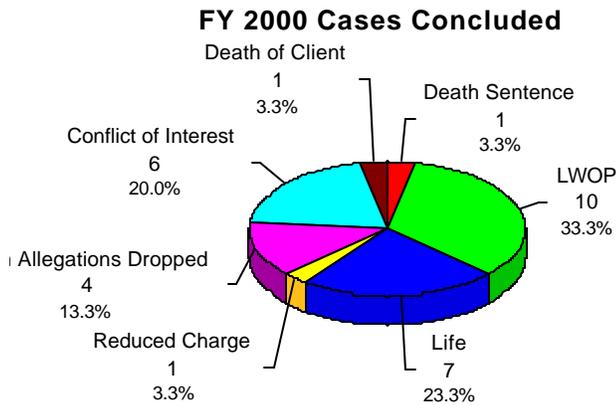
The Capital Trial Division-Norman began Fiscal Year 2000 with 26 pending death penalty cases. The Division received appointments in 25 new cases during the fiscal year, bringing the total caseload for Fiscal Year 2000 to 51 cases, up from 46 total cases in Fiscal Year 1999. By the end of the fiscal year 30 cases were concluded and 21 cases were carried over into Fiscal Year 2001.

Case Activity

The following list reflects the results of the 30 cases concluded in Fiscal Year 2000.

• Guilty Pleas	12
• Jury Trials	6
• Death Penalty Allegations (Bill of Particulars) Dropped	4
• Charge Reduced to Murder in the Second Degree at Preliminary Hearing;	1
• Conflict of Interest Grounds	6
• Suicide	1

Capital Trial Division-Norman



Results

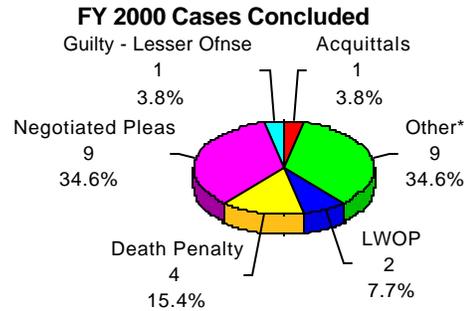
Of the six cases tried in Fiscal Year 2000, one resulted in a death sentence, three resulted in life without parole sentences and two resulted in life sentences. Of the cases in which a guilty plea was entered, seven resulted in life without parole sentences and five in life sentences.

TULSA OFFICE

The Capital Trial Division - Tulsa served 31 counties in Eastern / Northeastern Oklahoma and had primary responsibility for conflicts in four additional counties. Fiscal Year 2000 was marked by unprecedented case load growth for this division. The year began with a carryover of 20 cases pending from the previous fiscal year, as compared to nine pending cases at the beginning of Fiscal Year 1999. The Division opened 31 new cases during the year. Final disposition was made in 26 of the cases.

Highlights for the year included an office move to a larger facility with the addition of much needed staff, including an attorney who is also a Ph.D Psychologist and a second chair staff attorney. The division began a juror survey program in cooperation with Tulsa University Law School whereby information is obtained from capital case jurors concerning cases in which they participated. The division's goal is to learn more about the dynamics of juries

Capital Trial Division-Tulsa



* Other (Conflicts, case dismissed by state, etc.)

input as to "what works and what doesn't" from the decision makers. The Capital Trial Division - Tulsa also began an in-house training program inviting other lawyers and professionals from other disciplines to present a variety of topics pertinent to the agency's mission.

~ Non-Capital Appeals

Incoming Caseload

The General Appeals Division received 418 new cases during Fiscal Year 2000. By the end of the fiscal year, 169 of these cases remained open awaiting briefing. Another 134 cases had been briefed, and 89 of those remained open awaiting a decision from the Court of Criminal Appeals. The remaining cases received in Fiscal Year 2000 were closed for various reasons, as follows:

- Rejected or Dismissed
(at client request, due to improper appointment or lack of jurisdiction) 68
- Contracted to outside Counsel 30
- Outside Counsel Retained by Client 8

Eight first-degree murder cases with a penalty of life, or life without parole were transferred to the Capital Direct Appeals Division in a cooperative effort.

Types of Cases Received

Two-thirds of the cases received by the General Appeals Division were Direct Appeals arising from felony convictions at either jury or bench trials. Eighteen percent (18%) of the cases were automatically assigned to the Court's fast track procedure. These cases primarily include revocation of suspended sentences, acceleration of deferred sentences, and juvenile/youthful offender cases. Thirteen percent of the cases received arose from cases in which the defendant pleaded guilty or no contest and sought to withdraw that plea.

Trial Counsel

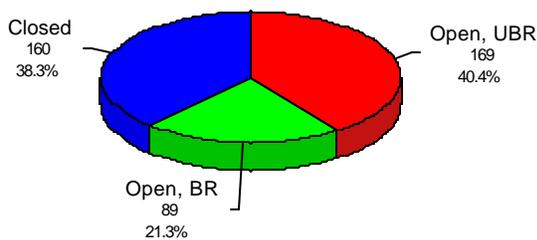
Of the cases in which a determination was made as to whether trial counsel was court-appointed or privately retained, thirty-five percent involved privately retained counsel at the trial level. The division received one case from Capital Trial Division-Norman, and none from the Capital Trial Division-Tulsa.

Statewide Distribution

Twenty-two percent of the cases received arose from Oklahoma and Tulsa Counties. The Division received cases from 62 of the state's 77 counties.

FY 2000 Non-Capital Appeals Incoming Cases

Disposition of Cases



UBR - Unbriefed
BR - Briefed

Case Activity - Briefs Filed

Attorneys in the General Appeals Division filed 295 briefs during Fiscal Year 2000, contracted 36 to outside counsel, and transferred eight cases to the Capital Direct Appeal. Outside representation was obtained in five additional cases where the Division had a conflict of interest that precluded agency representation.

Other Significant Case Activity

Division attorneys appeared for 60 oral arguments before the Court of Criminal Appeals in fast track cases. Additionally, division attorneys filed 40 reply briefs, 4 supplemental briefs and 11 petitions for rehearing during the fiscal year.

Cases Closed

The General Appeals Division closed a total of 505 cases during Fiscal Year 2000. Seventy-three percent (73%) were closed because a final decision was rendered in the case by the Court of Criminal Appeals. The Capital Direct Appeals Division handled eight first-degree murder cases transferred to that division in a cooperative effort.

<u>Reason for Closing</u>	<u>Number of Cases</u>	<u>%</u>
Decision of Court of Criminal Appeals	367	73%
Contracted to Outside Counsel (Conflict & Backlog)	41	8%
Transfer Case to Another Division	8	1%
Rejected or Dismissed for Lack of Jurisdiction	22	4%
Dismissed at Client Request after Consultation	22	4%
OIDS not properly appointed	23	5%
Outside Counsel Retained by Client	9	2%
Other (client death; appeal moot)	13	3%
Total	505	100%

Total Caseload

The General Appeals Division opened Fiscal Year 2000 representing clients in 381 cases in various stages of appeal before the Court of Criminal Appeals. The Division received 418 new cases during the fiscal year, bringing the total division caseload for the year to 799. Because 505 cases were closed during the year for various reasons, the Division ended Fiscal Year 2000 with 294 open, active cases.

~ Capital Appeals _____

The Capital Direct Appeals Division represents indigent defendants who have been convicted of murder in the first degree and given sentences of death in Oklahoma District Courts. This includes defendants who have been convicted at jury trials, bench trials, and after entering pleas of guilty.

Although the Division's primary responsibility is to represent these defendants in their direct appeal to the Oklahoma Court of Criminal Appeals (OCCA), it often serves them in three different courts.

The Division is appointed by the District Court to represent the client in his direct appeal from that court's judgment and sentence. In many cases the Division will file a supplemental designation of the record with that court, and on occasion will represent the client at an evidentiary hearing in the District Court when OCCA remands the case back to the trial court for such a hearing. Of course the direct appeal is heard and decided by OCCA. If OCCA affirms the judgment and sentence, the Division will represent the client in his attempt to obtain direct review in the United States Supreme Court. This representation entails the filing of a Petition for a Writ of Certiorari and further briefing and oral argument in the Supreme Court if the writ is granted.

In the normal course of events the Division's representation does not end until relief is either obtained for the client or is denied in the Supreme Court. The usual exceptions are waivers of appeals by the client, or the death of a client.

While the Division's workload is normally limited to capital cases, in Fiscal Year 2000, for purposes of organizational economy and inter-divisional cooperation, the Division accepted appeals from first degree murder convictions where the sentence of death was not imposed. The statistics below include information regarding the Division's non-capital cases, but the illustrations primarily concern capital cases, which constitute the main focus of the Division.

Caseload

In Fiscal Year 2000, the Capital Direct Appeals Division was involved in 40 capital cases and 8 cases in which the appellant had been convicted of murder in the first degree but sentenced to life or life without parole. By the end of the year 14 capital cases were closed while all of our non-capital cases remain open, leaving the Division with 34 active cases, 26 of these being capital, and 8 non-capital.

Source of New Cases for Fiscal Year 2000

Geographic Location. The Capital Direct Appeals Division takes cases from all 77 counties of the State. Although Oklahoma and Tulsa Counties have their own public defender organizations which represent appellants who were represented at trial by lawyers from those agencies, this Division will occasionally receive cases from those counties when the appellants were represented at trial by private counsel, or when a conflict of interest prevents the Oklahoma County or Tulsa County public defenders from representing these clients in their direct appeals. Last year the overwhelming weight of our cases came from counties in Eastern Oklahoma:

Eastern Oklahoma Counties:

• Tulsa	29%
• McIntosh	18%
• Pittsburg	6%
• Rogers	6%
• Osage	6%
• Creek	6%
• Okmulgee	6%
• Comanche	6%
Total	83%

All other counties case percentage:

• Oklahoma	12%
• Cleveland	6%
Total	18%

The impact of this distribution is even more pronounced if the non-capital cases are excluded, as follows:

County

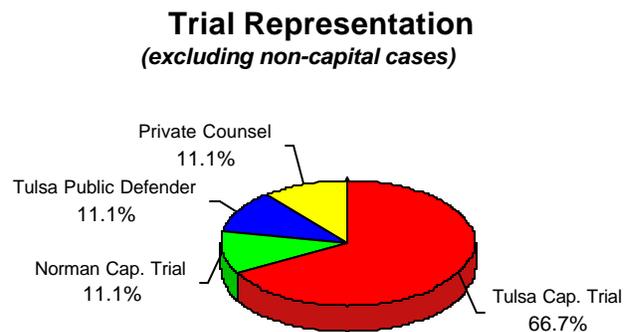
C Cleveland	11%
C McIntosh	22%
C Osage	11%
C Pittsburg	11%
C Rogers	11%
C Tulsa	33%

Type of representation at trial.

New cases received by the Division during Fiscal Year 2000 were tried as follows:

Tulsa Capital Trial Div.	41%
Private Counsel	24%
Norman Capital Trial Div.	12%
OIDS Contract Attorneys	12%
OIDS Okmulgee Satellite Ofc.	6%
Tulsa Public Defender's Ofc.	6%

The following chart shows the breakdown when the non-capital cases are removed from consideration.



Disposition of Cases

No non-capital cases were closed in Fiscal Year 2000. Of the fourteen capital cases closed last year, 3 (21%) were closed after

relief was obtained for the client in OCCA. In two cases OCCA modified the death sentence to life without parole, and in a third case the court reversed and remanded the case for a new trial. Two cases (14%) were closed because they were contracted out to private counsel. The remaining nine (64%) were closed after being affirmed by OCCA and being turned down for certiorari by the United States Supreme Court.

~ Capital Post Conviction _____

Thirteen post-conviction applications were filed on behalf of death row prisoners in Fiscal Year 2000. Of those cases, six are still pending before the Court of Criminal Appeals. Additionally, attorneys for the post-conviction division conducted the first evidentiary hearing in Muskogee County ever granted by an Oklahoma appellate court on a successor application for post-conviction relief in a capital case.

Claims which were first developed in capital post-conviction proceedings still have far-reaching effects in subsequent stages of capital appeals. For the first time in over a dozen years (in October), the Tenth Circuit Court of Appeals in Denver granted a petition for rehearing en banc to an Oklahoma death row inmate to further examine a procedural due process claim which was first raised in the application for capital post-conviction relief. The claim may result in a new trial for this client.

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Appendix

APPENDIX A

OKLAHOMA INDIGENT DEFENSE SYSTEM NON-CAPITAL TRIAL DIVISION 3-YEAR HISTORY OF CONTRACT APPOINTMENTS

COUNTY	FY-1998					FY-1999					FY-2000				
	Fel	Juv	Misd	Traf	All	Fel	Juv	Misd	Traf	All	Fel	Juv	Misd	Traf	All
Adair	122	17	42	17	198	125	12	38	24	199	117	29	38	24	208
Alfalfa	18	2	11	0	31	22	1	7	0	30	30	3	10	3	46
Atoka	203	33	18	1	255	204	28	29	0	261	171	15	39	3	228
Beaver	10	1	1	0	12	19	1	4	0	24	14	1	3	0	18
Blaine (Fels only)	55	0	13	0	68	55	0	13	2	70	64	0	14	1	79
Bryan											327	19	107	9	462
Caddo	285	247	133	3	668	318	90	167	0	575	29	81	152	0	523
Canadian	266	124	170	65	625	277	119	229	67	692	291	158	281	101	831
Carter	446	23	117	13	599	446	38	130	24	638	362	25	141	10	538
Cherokee	177	164	29	32	402	122	88	32	40	282	163	109	41	20	333
Choctaw	193	4	83	13	293	198	10	94	18	320	245	8	69	12	334
Cimarron	17	0	1	0	18	11	0	4	0	15	16	1	7	0	24
Cleveland	858	103	360	0	1,321	742	120	267	0	1,129	803	120	268	3	1,194
Coal	70	19	29	15	133	59	12	31	3	105	80	5	67	37	189
Comanche	354	204	225	42	825	332	169	200	44	745	363	311	169	38	881
Cotton	25	14	20	0	59	15	24	31	0	70	34	7	42	1	84
Craig	114	40	60	0	214	139	22	111	19	291	124	18	105	2	249
Delaware	238	33	205	0	476	170	41	158	0	369	271	34	188	0	493
Garfield	404	140	170	0	714	472	99	202	0	773	495	121	202	0	818
Garvin	218	109	188	41	556	238	63	226	50	577	312	97	212	62	683
Grady	249	209	85	0	543	308	253	140	0	701	246	150	84	0	480
Grant	35	6	10	0	51	29	0	23	0	52	14	0	18	0	32

**OKLAHOMA INDIGENT DEFENSE SYSTEM
NON-CAPITAL TRIAL DIVISION
3-YEAR HISTORY OF CONTRACT APPOINTMENTS**

COUNTY	FY-1998					FY-1999					FY-2000				
	Fel	Juv	Misd	Traf	All	Fel	Juv	Misd	Traf	All	Fel	Juv	Misd	Traf	All
Harper	33	0	2	0	35	20	2	9	0	31	19	2	7	0	28
Haskell	87	0	62	0	149	99	4	37	2	142	74	0	24	0	98
Hughes	117	10	15	0	142	124	12	28	0	164	129	11	18	0	158
Jackson	135	85	9	0	229										
Jefferson						38	2	12	0	52	44	0	7	0	51
Johnston	115	18	85	16	234	72	1	25	3	101	78	4	46	0	128
Kay	460	159	127	40	786	482	138	120	37	777	484	172	166	12	834
Kingfisher	45	8	51	2	106	71	7	58	0	136	51	6	27	7	91
Latimer	84	23	173	10	290	88	17	156	8	269	89	10	177	11	287
LeFlore	269	10	35	5	319	298	22	81	19	420	357	12	64	27	460
Lincoln	131	19	36	0	186	134	21	23	0	178	154	13	41	0	208
Logan	119	34	56	0	209	92	25	38	0	155	122	33	53	4	212
Love	38	2	9	0	49	45	5	10	23	83	40	0	23	12	75
Major	21	7	29	0	57	22	11	20	0	53	24	6	20	0	50
Marshall	49	6	14	0	69	56	2	18	1	77	63	10	17	1	91
Mayes	162	49	73	19	303	203	74	75	7	359	185	52	74	1	312
McClain	237	18	131	0	386	278	92	191	0	561	219	100	155	0	474
McCurtain	314	35	19	5	373	319	38	37	3	397	424	28	34	1	487
McIntosh	145	39	46	3	233	167	31	76	13	287	184	45	70	3	302
Murray	91	58	42	26	217	176	25	47	15	263	132	6	33	3	174
Muskogee	640	49	45	1	735	766	89	66	0	921	772	57	72	0	901
Noble	39	16	39	0	94	51	13	50	0	114	79	9	38	0	126
Nowata	64	12	36	0	112	81	13	23	1	118	64	8	52	3	127

**OKLAHOMA INDIGENT DEFENSE SYSTEM
NON-CAPITAL TRIAL DIVISION
3-YEAR HISTORY OF CONTRACT APPOINTMENTS**

COUNTY	FY-1998					FY-1999					FY-2000				
	Fel	Juv	Misd	Traf	All	Fel	Juv	Misd	Traf	All	Fel	Juv	Misd	Traf	All
Osage	186	14	11	0	211	251	41	31	8	331	257	45	31	14	347
Ottawa	326	39	77	0	442	357	70	178	0	605	386	85	142	0	613
Pawnee	90	15	91	2	198	100	10	69	1	180	94	11	34	3	142
Payne	485	72	259	0	816	408	93	317	6	824	416	39	315	0	770
Pittsburg	371	47	122	0	540	436	54	160	0	650	506	74	125	0	705
Pontotoc	246	46	37	4	333	219	44	40	3	306	285	34	51	4	374
Pottawatomie	332	96	89	0	517	560	277	334	33	1,204	543	238	384	65	1,230
Pushmataha	70	16	46	2	134	67	6	45	9	127	91	6	41	8	146
Rogers	274	70	86	4	434	238	50	131	16	435	181	54	40	3	278
Seminole	245	46	92	56	439	294	49	93	78	514	327	32	144	114	617
Sequoyah	219	21	6	0	246	259	40	16	0	315	353	33	14	0	400
Stephens	241	27	134	1	403	182	31	126	1	340	297	29	141	1	468
Texas	146	28	28	0	202	154	39	31	0	224	146	26	18	0	190
Tillman	56	30	37	6	129	61	70	18	0	149					
Wagoner	185	98	62	4	349	200	127	69	0	396	224	93	51	0	368
Washington	374	135	156	0	665	515	212	226	0	953	419	133	233	0	785
Woods	38	9	28	0	75	29	16	32	0	77	21	14	20	0	55
75% Woodward	86	27	18	2	133	142	23	52	6	223	130	26	40	0	196
TOTALS	11,722	2,985	4,483	450	19,640	12,455	3,086	5,304	584	21,429	13,034	2,868	5,299	623	22,085

