



Insurance

Regional Capital Public Defender's Office implements innovative approaches to give counties budget predictability

By Maria Sprow

July 22 was like no other day had been in the last 20 years in Crane County, a small county in West Texas with fewer than 4,000 residents. Sheriff 's deputies had responded to a 911 call at 6:35 p.m. from a local resident – reportedly a father of two children – who told dispatchers that a man was holding a knife to his chest. By the time deputies were able to get to the home, the man had been stabbed and the suspect had fled. The victim died at the local hospital less than four hours later.

Deputies searched the area and spotted the suspect – a 42-year old Colorado man named Gillie Thomas Thurby Jr. – driving a truck. Thurby rammed the truck into a patrol vehicle before taking off on a high-speed chase that began north on Highway 385 then headed back down south through the small town. The chase continued along into Upton County, which is east of Crane, and somehow ended in Pecos County, southwest of Crane, when the suspect drove his vehicle into a pasture and ran away. He was found hours later – by then it was afternoon on July 23 – in the small town of Iraan, in the attic of a warehouse. Thurby claimed during questioning that he had planted bombs around Crane, but those threats were unsubstantiated.

Thurby was eventually charged with capital murder, aggravated assault on a public servant, aggravated assault with a deadly weapon and assault.

Crane County Judge John Farmer said it had been 20 years since somebody had been charged with capital murder in his county. "This guy wasn't even a local guy," Farmer said. "He just shows up here."

The incident means that the county must pay for Thurby's prosecution, as well as his defense. Area attorneys had previously told the judge the price tag for defense in a capital murder case could send the county into debt. They estimated such a case could cost up to a million dollars, since attorneys would have to come in from out-of-town. "None of them or anybody on the court could ever remember having a capital murder case," Farmer said. "That's a million dollars we don't have. We would have had to borrow some money."

But through some supreme fortune, the county had just signed on to a new pilot program, a regional capital public defender's office started through a Task Force for Indigent Defense grant that plugs itself as a type of capital murder insurance for counties. That office is overseeing Thurby's defense, and the cost for attorney and defense investigation fees to Crane County will be dues paid to the office, somewhere around \$4,000 a year.

'An unparalleled level of cooperation'

The West Texas Regional Capital Public Defender Office started taking cases in January, after several years of discussion and planning between the Task Force on Indigent Defense and other stakeholders, including Lubbock County officials, the region's attorneys and district judges, as well as the 85 eligible county commissioners courts. "This is exceptional and represents an unparalleled level of cooperation among local governments," said Jim Bethke, executive director of the Task Force on Indigent Defense. "What makes this amazing is that it was spearheaded by one county and two regional presiding judges."

A selection committee chose Lubbock-based attorney Jack Stoffregen to serve as the chief public defender; his staff includes four attorneys, three mitigation specialists, a facts investigator and two legal assistants. Two of the attorneys work in satellite offices, one in Midland and the other in Amarillo.

The idea of creating a regional capital public defender office generated immediate support from both sides of the political line, for several reasons: lack of qualified attorneys, political ideologies and cost-effectiveness.

While there are many qualified attorneys around the state to handle misdemeanor and felony cases, capital defense cases require additional expertise and experience. Many areas, especially rural counties, have few attorneys to choose from when assigning counsel in capital cases. The areas covered by the regional capital defender office – which encompasses the Seventh and Ninth Administrative Judicial Regions – only had a total of 14 qualified lead counsel attorneys. (The problem is not as glaring in other judicial regions, though it's still present: the 22 counties in the Fourth Administrative Judicial Region only have 29 qualified lead attorneys, almost all of whom are based out of San Antonio, while the 26 counties in the Third Administrative Judicial Region have 15 qualified lead attorneys, most based out of Austin.) Politically, supporters felt that Texas would be able to better defend its executions and death penalty position if capital murder defendants are guaranteed a top-notch defense. However, capital defense cases take so much time and energy that private attorneys may struggle with the responsibilities, and with the necessary teamwork involved in working with assistant defense attorneys and mitigation specialists. So starting a fully-funded office in which qualified attorneys could focus entirely on capital defense cases seemed like a good way to ensure that the state's most controversial suspected criminals receive a fair defense.

The most obvious benefit for counties was financial: it's impossible to predict when a violent crime will hit a rural area, and how much finding justice for such a crime will cost. The office gives commissioners courts some level of budget stability, no matter what heinous crime occurs.

Lubbock County and other stakeholders in the office created a cost-share formula to ensure that membership to the office would be fair and cost-effective for all counties. The formula takes into account a county's population, the average number of capital cases filed during a 10-year period, and the office's overall budget needs.

Due to Task Force for Indigent Defense grant funding, counties that signed the interlocal agreement to join the office paid nothing for the first year, and are expected to only pay a portion of their dues for the next three years. By 2012, however, counties will be paying the full formula amount.

Lubbock County will be spending the most in annual dues paid to the office, with an eventual contribution of around \$145,000. David Slayton, Lubbock's court administrator who was a key player in creating and promoting the office, said the average capital case costs \$50,000 if it's plead out and never goes to trial; the average capital case that goes to trial costs between \$100,000 and \$500,000. Already the county has had three cases assigned to the regional office, so the insurance has been a wise investment. Smaller counties get even better odds: Deaf Smith County, which has fewer than 19,000 people, will eventually pay the office around \$6,000 annually. At that rate, if it had one capital murder trial every 50 years, the investment would pay off, assuming the office continued to operate as-is; \$300,000 for defense costs is still a good deal. But commissioners don't have to wonder if they made a good decision: after deciding it would join, but before turning in the paperwork, the county was rocked by news that a 17-month-old toddler had been killed. Prosecutors charged a local resident with capital murder, and the regional office took the case.

"We simply thought it was the prudent thing to do," Deaf Smith County Judge Tom Simons said about the commissioners' decision to join the office. "Whether we had used it or not, I still think it's good insurance."

The office does have its limitations. It cannot cover all costs associated with capital defense. It's possible that a capital murder case could involve more than one defendant, in which case the regional office could only serve as counsel for the main defendant. Other defendants would have to be assigned to qualified private attorneys. And, certain medical evaluations or tests requested by the office would have to be funded by the county. The office also cannot handle appeals.

Initial surveys indicated that most county officials agreed with the Deaf Smith commissioners' court; those close to the project said they expected or hoped for a 100 percent participation level. "We never really experienced any real resistance to it, which was kind of shocking," Slayton said. "Nobody provided any roadblocks to it. We've always had support from district attorneys and judges." But ultimately, despite Herculean efforts by stakeholders, 16 of the 85 eligible counties chose not to join the office, as of Aug. 27. All 16 of those counties have populations under 25,000. Officials said penny-pinching and long track records of not having a death penalty case arise kept them from signing the necessary interlocal agreements. Across the state, more than 450 capital cases have been filed in each of the last three years. Urban counties – Bexar, Collin, Dallas, Tarrant – do account for most of the load, but a Jackson County jury sentenced Kersean Ramey to death last year for murdering three people during a home robbery in 2005. The small county, with a population of less than 15,000 people, must also pay for prosecution and defense costs related to Ramey's co-defendant, who will be tried this year. None of the counties that chose not to participate in the regional office currently have an inmate on death row. Department of Criminal Justice records dating back to 1976 show only Jones and Wilbarger counties as having any recent history with death row. All three of those convicted inmates have been executed. Records dating back to 1923 show that 11 of the non-participating counties have not executed a defendant.

"We have not had a capital murder case here since the mid-60s and we just didn't think we could afford to with our budget," said Hansford County Judge Benny Wilson, adding that the commissioners court is scrounging for every dollar and hedging their bets on trends not changing. "We have a population less than 6,000. We just don't have that many people, and I guess the ones we have, they are all getting along right now."

'The cutting-edge of capital litigation'

As with any pilot program, the office will have to prove itself in its first few years. But stakeholders say they have no doubts it will do so, especially under the leadership of Stoffregen, who has 30 years of legal experience under his belt. "Jack has a lot of respect from around the region, from judges, prosecutors, the defense bar," Slayton said.

Stoffregen and his team have already dispelled of two cases – one from Hale County, in which the defendant plead guilty to capital murder and received life without parole, and the other from Lubbock, in which the defendant plead guilty to murder and received seven

years imprisonment. As of August, nine more cases – from Taylor, Tom Green, Crane, Lubbock, Deaf Smith, Randall and Potter counties – have been assigned to the office and are currently going through the system; the death penalty has been removed as a possible sentence in four of those cases.

“It was a chance to start something new and be on the cutting edge of capital litigation, to try some things that I always wished I could try when I was in private practice, but it was either cost prohibitive or the time to do it wasn’t there,” Stoffregen said about his decision to give up private practice in order to become the state’s first regional capital public defender. “We’re trying to set up some programs through the office that we’d never be able to do in private practice, like volunteer programs.”

The staff focuses on ensuring that defendants get the best-quality defense team possible.

“Usually the same day we are appointed, we have one person and sometimes two or three who are able to go and see the client,” Stoffregen said.

Cases are divided up between the attorneys based on caseload and geography, but traveling still takes up a large chunk of the office’s budget, especially since the staff made a decision to see all clients in person. Originally, the office had intended to buy video conferencing equipment, but decided face-to-face time was more advantageous.

“Our travel is just incredible. Our time with our client, especially with the mitigators, their job is to develop a personal relationship with the client, and that has to be done face-to-face. We had anticipated that we would purchase some video equipment so that we could communicate with the attorney in Midland and Amarillo, but as an office we decided that no one wanted it. No one thought that we would use it. There’s not an attorney here in the office that would have felt comfortable discussing the facts of a case over video.”

Stoffregen and his staff have formed several unique partnerships, particularly with Texas Tech University. The office utilizes three law school students as unpaid “externs,” and the two entities will partner to form a new capital defense clinical course to train more law students in capital defense. In addition, the office is working with a university linguist who is researching attorney-jury communication, and a management specialist visits the team almost weekly to discuss teamwork and goals.

Office personnel are also ironing out answers to difficult operational questions: what to do if a defendant is originally charged with capital murder, but those charges are later reduced; should local counsel be appointed to defendants until filing decisions have been made; what will happen if the office ever reaches its maximum caseload.

Bethke, from the Task Force on Indigent Defense, said it’s unlikely the office will ever reach its maximum caseload capacity. The office has five attorneys, and according to the grant requirements, each attorney’s capacity is five cases at a time, or 25 total. “If the office were to reach that caseload, it would have to refuse to accept another appointment until it had sufficient resources and staff to adequately handle the case,” he said.

The office’s supporters are hopeful that they will eventually have 100 percent participation. While all counties in the area did receive information about the office prior to the membership deadline, office staff were not able to make presentations at all commissioners court meetings, as hoped. “If you try to go to 85 different commissioners court meetings, we didn’t think about the fact that commissioners courts all meet on the same day,” Slayton admitted. As of late August, stakeholders were still determining when nonparticipating counties who decide they want to join the office will again be allowed to enroll. “Even though they said no, we’re not giving up on them. I think every region in the county that would look at this office would find it very beneficial to them,” Slayton added.

Legal Thriller

Public Defender Office Utilizes Storytelling Management Technique

Anytime a group of people work together toward the same goal, it’s important to be on the same page.

Hans Hansen, an assistant professor with Texas Tech’s Rawls College of Business Management Department, believes teams may function more efficiently if they take the metaphor more literally: Instead of merely being on the same page, write the same page. Hansen studies and promotes what he calls a “narrative”-based management approach: instead of working as part of a hierarchy, team members are instructed to work together as part of a story. They decide what they want to accomplish, then determine what needs to be done, by who, when, and how, and then set those motions into play, much like an author writing a book will outline plot points for different characters.

That’s the approach being taken by staff of the new West Texas Regional Capital Public Defender’s Office. The staff includes five attorneys, three mitigation specialists, a facts investigator and two legal assistants.

Hansen first offered to volunteer his management expertise and theory to the office because of its unique design and purpose, and the office wanted input in team building. “This is the first team of its type, it’s not been done anywhere where you have a permanent defense team that handles capital cases,” Hansen said. “It provides a better defense if the attorneys and mitigators and staff members all work together from the get-go.”

Narrative theory, Hansen said, may be different from the approach that most management teams take, but it’s not complicated to understand because it’s generally the strategic way people go about living their personal lives and working in their personal relationships, if unknowingly. “It’s a different way of thinking, so it’s a different way of working,” Hansen said. “If you all kind of create a story together, everyone has a place.” Trial lawyers are already familiar with the art of storytelling; the team just had to practice team storytelling. “You could think of a trial as a kind of competition between compelling stories, so it’s about who can tell the most compelling stories,” he added.

Staff and law school students volunteering with the office meet weekly to discuss cases, and Hansen helps the team look at each case as a narrative. What do they want to happen, in the end? How will that happen? Who will the characters be? What will the district judge and district attorney do in this instance, or that one? How will the media react? “It gets everybody that’s on the team on the same page, and we know what to expect from other team members,” said Jack Stoffregen, the office’s chief public investigator. “We are able to find some things that I promise would never have been found,” he added. “We are able to anticipate what other team members are doing,

better than I ever could with (capital defense) teams when I was in private practice.

"It's been a great aid and an eye-opener to all of us."

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