

Oklahoma

Indigent Defense System



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SAFETY AND SECURITY

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Executive Director

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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, 2002, in accordance with 22 O.S. § 1355.3(B) and 22 O.S. § 1355.4(C)(14).

PAUL BRUNTON, ESQ.
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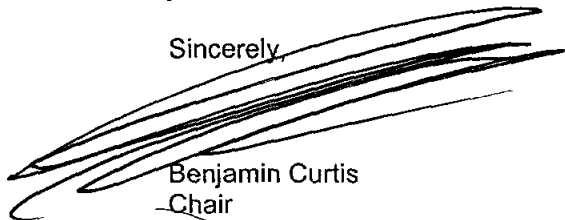
The Oklahoma Indigent Defense System is grateful for the support that it received during Fiscal Year 2002 from the Governor and his staff, from the Legislature, and from the Judiciary.

JAKE JONES
Driskill & Jones
2350 Bank One Center
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Oklahoma City, OK 73102

As we move forward in Fiscal Year 2003, 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.

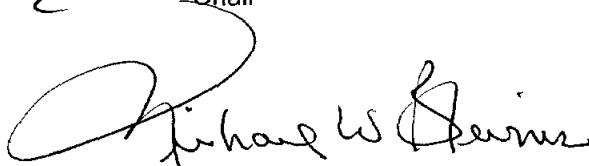
Sincerely,



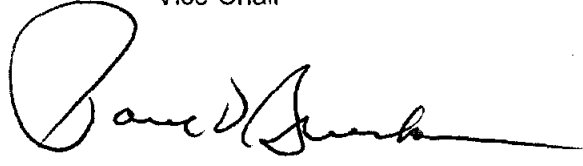
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Michael Blevins, Esq.



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chapter 1

— Introduction

The mission of the Oklahoma Indigent Defense System 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 (Okl. 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 which created OIDS as a new state agency under *Title 22 O.S. §§ 1355 et seq.*, effective July 1, 1991. 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 ten-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. The agency consists of four program areas: the General Operations Program, the Trial Program, the Appellate Program, and the DNA Forensic Testing Program. The Trial Program consists of the Non-Capital Trial Division and two capital trial divisions: Capital Trial Norman and Capital Trial Tulsa. The Appellate Program contains the General Appeals Division, the Capital Direct Appeals Division and the Capital Post-Conviction

Division. These programs and divisions are discussed in more detail throughout this report.

OIDS represented a total of 38,953 court appointments in Fiscal Year 2002 in all divisions of the agency. The breakdown by division is as follows:

Capital Direct Appeals	19
Capital Post Conviction	29
Capital Trial - Tulsa	46
Capital Trial - Norman	43
General Appeals	702
Non-Capital Trial	
Staff	5,674
Conflicts	1,724
Contracts	30,694
Executive Division Conflicts	22
TOTAL	38,953

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.

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 100% of the indigent non-capital trial caseload in 60 counties and a portion of the caseload in one county. In 15 counties, staff attorneys handled 100% of the indigent caseload, and in one county they handled a portion of the indigent caseload. In two of these counties, responsibility for the non-

capital trial indigent caseload is 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.

~ 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 ten-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, a 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.

The original Fiscal Year 2002 appropriations to OIDS was \$16,042,393. However, after allocation reductions due to a state-wide budget shortfall commencing in January 2002, the actual appropriation was \$15,415,569. 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 2002. During the 2002 legislative session, the appropriation to OIDS was further reduced by \$802,120, leaving the agency with a total funding shortfall of \$1,428,944 at the beginning of Fiscal Year 2003.

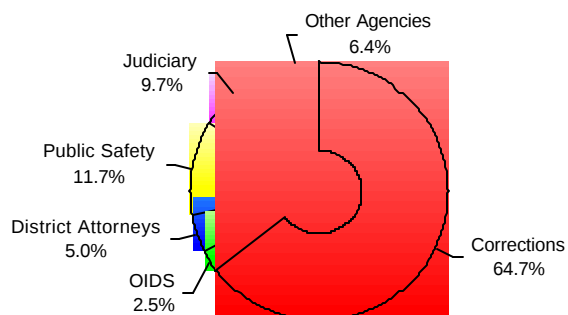
OIDS is funded by the Oklahoma Legislature through appropriations from the State's general revenue fund. OIDS also receives a varied and unpredictable amount of funds from the costs of representation assessed against a criminal defendant in certain cases. These assessments, authorized by Section 1355.14 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.

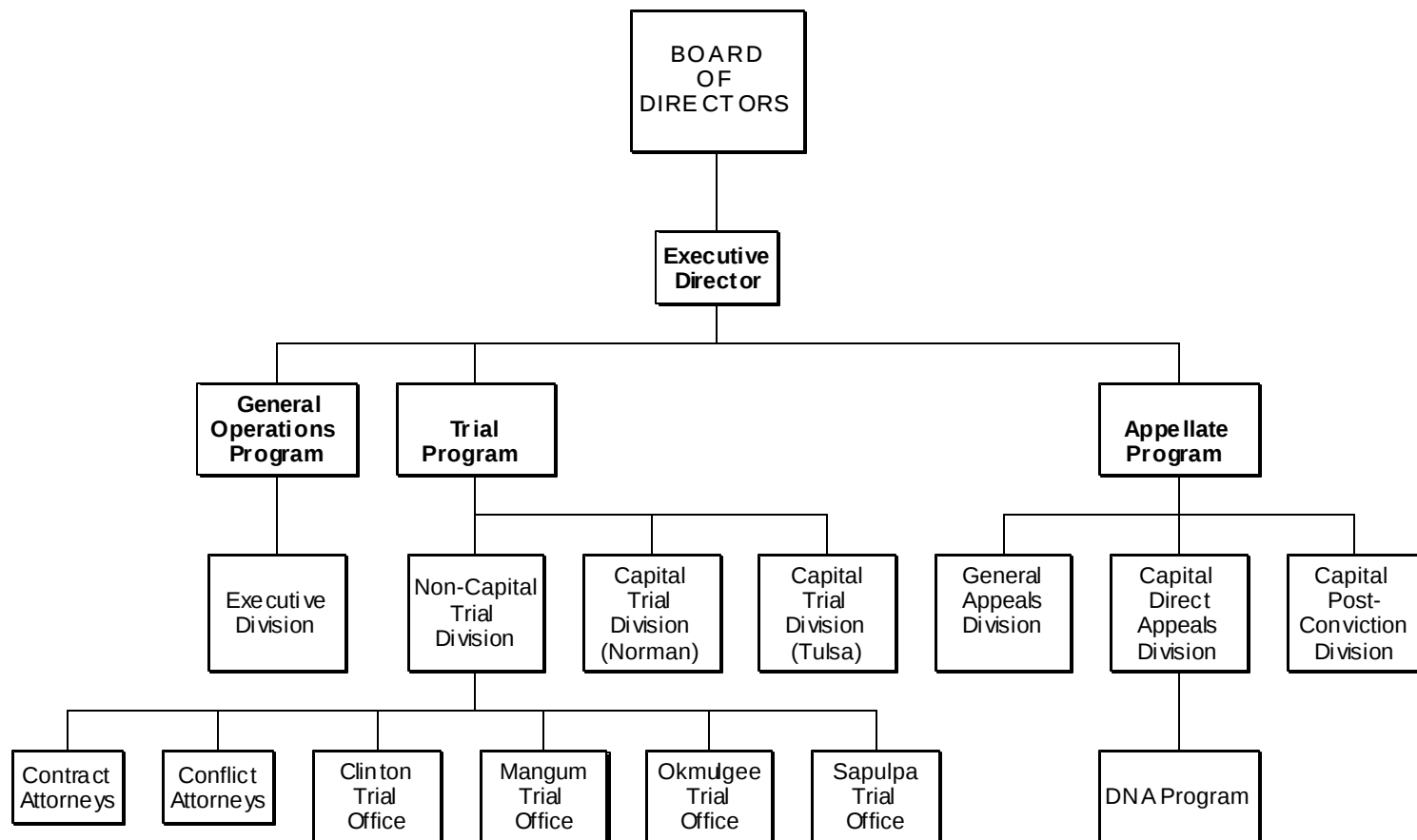
Historically, OIDS attorneys have been paid far less than the attorneys who represent the State in the same criminal cases. The disparity in salaries has led to a high turnover rate at OIDS. In 1999 OIDS sought appropriations to achieve salary parity with assistant district attorneys. The agency's efforts resulted in additional funds for Fiscal Year 2000 and Fiscal Year 2001 that allowed OIDS to move in the direction of paying its attorneys the same salaries as their counterparts in the criminal justice system.

Judiciary, Safety & Security Agencies FY2001 Appropriations \$632,621,730



Oklahoma Indigent Defense System

Organization Chart



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chapter 2

— General Operations Program

~ Executive Division

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.

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 employed 150 full-time staff members at its main offices in Norman and its satellite offices in Sapulpa, Okmulgee, Mangum, and Clinton.

In Fiscal Year 2002, the agency entered into 552 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

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

~ 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." The site contains many links, including those for legal research, unpublished Court of Criminal Appeals opinions issued since July 2000, and official agency forms used by OIDS contractors, experts and investigators.

~ 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. A training plan has been implemented that focuses on utilizing in-state and out-of-state experts to conduct seminars at Oklahoma locations for OIDS staff members and private attorneys.

Training during the year included seminars entitled "Juvenile Forensic Assessment," Overview of Forensics" and "Serology," with the latter two presented at three separate locations. OIDS also co-sponsored the Criminal Defense Institute held on June 27-28, 2002.

chapter 3

— Trial Program

The Trial Program consists of three Divisions which 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 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).

~ Non-Capital Trial Division

The Non-Capital Trial Division (NCTD) is responsible for providing defense representation for the agency's largest group of clients, with new court appointments now exceeding 26,500 criminal cases annually. NCTD is responsible for providing trial level indigent defense representation in all criminal cases where the potential sentence includes incarceration, up to life without the possibility of parole. The Division is responsible for legal defense services in seventy-five (75) counties.

In June 1997, due to problems in securing

fiscal-year contracts covering the entire caseload in twelve counties¹ and a portion of the caseload in two others², the agency's governing Board directed management to open three non-capital trial offices (Clinton, Mangum and Okmulgee) to begin accepting the System's appointments in the affected counties as of September 1, 1997. In Fiscal Year 1999, the Board expanded the Mangum satellite office to cover a 15th county (Jackson) because no private attorney offered to contract for the work after offers were solicited a second time. In Fiscal Year 2000, the Board expanded the Mangum office to cover a 16th County (Tillman) after one contractor was allowed to cancel his contract. The Board also created a fourth satellite office (Sapulpa) for Creek County in September 1999, removing that county from the Okmulgee office caseload. In Fiscal Year 2000, OIDS also re-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

¹ Beckham, Creek, Custer, Dewey, Ellis, Greer, Harmon, Kiowa, Okfuskee, Okmulgee, Roger Mills and Washita.

² Blaine and Woodward.

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.

In prior fiscal years, the Clinton office handled only 25% of the Non-Capital Division appointments in Woodward county. In Fiscal Year 2001, the Board decided not to renew the flat-rate contract covering 75% of the Woodward County caseload, electing instead to have the Clinton satellite office assume responsibility for 100% of the Woodward County caseload.

The Non-Capital Trial Division satellite offices are staffed with 22 attorneys who handled 5,674 cases during Fiscal Year 2002.

DELIVERY OF NON-CAPITAL TRIAL LEGAL SERVICES

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 2002, 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 one (1) other county (Blaine County), 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 fifteen (15) counties and part of the caseload in one (1) other. The Clinton Satellite Office provided representation in all indigent (delinquent) juvenile, misdemeanor and traffic cases in Blaine County.

- (3) Conflict/Overload Counsel: 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. During Fiscal Year 2002, NCTD assigned 821 new 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 annual 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(D)(6) of the Indigent Defense Act.

In Fiscal Year 2002, 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
- 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

As a result of budget cuts imposed during the second half of Fiscal Year 2002, the satellite office began handling each other's conflict cases as well as conflicts cases arising in adjoining counties covered by fiscal year contracts, where there existed sufficient resources to do so.

Since State revenues continued to fall at the close of the Fiscal Year, it was anticipated these and other belt-tightening measures would continue throughout Fiscal Year 2003.

OVERALL CASELOAD

In Fiscal Year 2002, the Non-Capital Trial Division received a total of 22,387 new contract cases, of which 268 resulted in conflicts. As a result, 22,119 new cases were handled under the county contracts. OIDS Non-Capital Trial Division satellite offices received 4,255 new cases, of which 553 arose as conflicts. Thus, the division satellite offices handled 3,702 new cases in Fiscal Year 2002. Total new cases for the division equaled 26,642, which represents an approximate caseload increase of 3.6% over Fiscal Year 2001.

The list of counties in order of descending caseload shows that Cleveland County had the highest number of cases (1,470), while Harmon had the lowest (18).

**Non-Capital Trial Division
Actual FY-2002 Appointments
July 1, 2001 through June 30, 2002**

SUMMARY OF ALL CATEGORIES OF APPOINTMENTS

TYPE OF APPOINTMENT		FELONY	JUVENILE	MISDEMEANO R	TRAFFIC	TOTAL
FY-2002 Contract <i>LESS</i> Conflicts		13,665	2,438	5,529	487	22,119
Contract Carry-Over from FY-2001³		5,275	1,136	1,988	176	8,575
Total Contract Workload		18,940	3,574	7,517	663	30,694
Satellite Office <i>LESS</i> Conflicts		1,989	355	1,137	221	3,702
Satellite Office Carry-Over from Prior Fiscal Years		958	530	438	46	1,972
Total Satellite Office Workload		2,947	885	1,575	267	5,674
FY-2002 Conflicts	Contracts	212	19	36	1	268
	Satellite Offices	404	69	74	6	553
Conflicts Carry-Over from Prior Fiscal Years		571	213	112	7	903
Total Conflicts Workload		1,187	301	222	14	1,724
TOTAL FY-2002 NCT Workload		23,074	4,760	9,314	944	38,092

³ Contract carry-over figures from FY-1998 through FY-2000 were unavailable at the time this report was prepared.

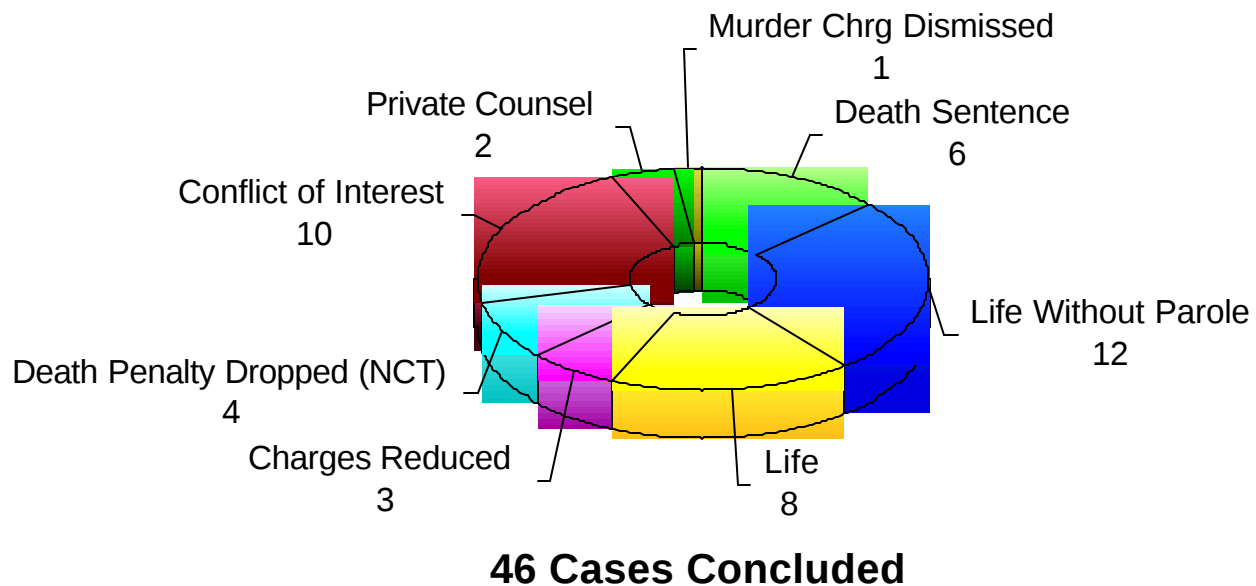
~ Capital (Death Penalty) Trial Representation

The Capital Trial Divisions in Norman and Tulsa are assigned the task of representing indigent defendants in cases where the State is seeking the death penalty. They further represent clients in Oklahoma and Tulsa Counties 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 generally assigned to the other Division. 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.

The Capital Trial Divisions began Fiscal Year 2002 with 48 pending cases. A total of 94 cases were handled during this time with 46 cases completed. Results of the capital trial cases concluded during Fiscal Year 2002 are shown in the chart below, and are further discussed by each division in the following sections.

Capital Trial Case Results Norman and Tulsa Divisions



~ Capital Trial Division - Norman Office

The Capital Trial Division-Norman, was the agency's original Division to represent clients in death penalty cases. The Division represents defendants in capital cases filed in 46 counties (including Oklahoma County when the public defender has a conflict of interest) and has primary responsibility for conflicts arising in the remaining counties. At the beginning of Fiscal Year 2002, the staff of the Capital Trial Division-Norman consisted of a chief attorney with administrative duties and a limited caseload, five first-chair trial attorneys, two second chair trial attorneys and four defense counsel for trial and appellate duties. The division employed seven investigative staff and three support staff. In the fourth quarter of Fiscal Year 2002, the division staff was reduced due to the untimely death of the Deputy Chief and the resignations of the Chief Capital Counsel and a Senior Investigator.

CASELOAD

The Capital Trial Division-Norman began Fiscal Year 2002 with 23 pending death penalty cases. The Division received appointments in 17 new cases during the fiscal year, bringing the total caseload for Fiscal Year 2002 to 40 cases. By the end of the fiscal year, 22 cases were concluded and 18 cases were carried over into Fiscal Year 2003.

RESULTS OF CASES CONCLUDED

Result	No. Cases
Death Sentence	1
Life Without Parole	6
Life With Parole	2
Charges Reduced (Murder II)	2
Referred to Non-cap Trial	3
Conflict of Interest	5
Dismissals	1
Private Counsel Retained	2
Total	22

Results of *four cases* tried in Fiscal Year

2002:

- " one death sentence
- " one life without parole sentence
- " two life without parole pleas during trial

Results from cases in which a *guilty plea* was entered:

- " three life without parole sentences
- " two life sentences
- " two reduced to murder in the second degree (one 25-year and one 35-year sentence)

APPELLATE CASELOAD

The Capital Trial Division-Norman began Fiscal Year 2002 with one (1) pending death penalty appeal. The Division retained appointments for appeals in two (2) cases during the fiscal year, bringing the total caseload for Fiscal Year 2002 to three (3) cases. Capital Trial-Norman had no appeals concluded by the end of the fiscal year and three (3) cases were carried over into Fiscal Year 2003.

~ Capital Trial Division - Tulsa Office

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. Historically, that region produced a significantly higher number of first degree murder charges than the remainder of the state, and the new Division was necessary to reduce the expense for conflict counsel and provide better geographical availability for OIDS clients and the courts. The Division represents clients in 31 counties in the Eastern third of the State (including Tulsa County when the public defender has a conflict of interest), in addition to having primary responsibility for conflicts arising in the remaining counties. In Fiscal Year 2002, the staff of the Capital Trial Division-Tulsa consisted of a chief capital counsel with a full caseload, five first-chair trial attorneys, and three attorneys with second chair and appellate responsibilities. The Division employed

five investigative staff and three support staff.

CASELOAD

Fiscal Year 2002 began with a carryover of twenty-five 25 cases pending from the previous fiscal year. The Division opened twenty-one (21) new cases, bringing the total caseload for the year to forty-six (46) cases. The Division concluded twenty-four (24) cases and carried over into Fiscal Year 2003 twenty-two (22) cases.

The Division tried nine (9) cases in Fiscal Year 2002, resulting in:

- " three life sentences
- " one life without parole sentence
- " five death sentences

Dismissal of the bill of particulars was negotiated in five (5) cases, resulting in:

- " one plea to a reduced charge
- " two pleas to a life sentence
- " one plea to a life without parole sentence
- " one case was returned to the regional satellite office for conclusion

Negotiated pleas in an additional five (5) cases resulted in:

- " one life sentence
- " four life without parole sentences

The remaining five (5) cases were conflict cases and were referred out of the Division.

FINAL RESULTS OF CASES CONCLUDED *

Result	No. Cases
Death Sentence	5
Life Without Parole	6
Life With Parole	6
Charges Reduced	1
Conflict of Interest	5
Dismissals	0
Referred to Non-cap Trial	1
Total	24

**As set forth above, four categories - LWOP, Life, Charges Reduced and Referred to Non-Cap Trial - include negotiated dismissals of Bill of Particulars.*

APPELLATE CASELOAD

One (1) appeal was carried over from Fiscal Year 2001. Six (6) new appeals were initiated during the fiscal year, bringing the appellate caseload for Fiscal Year 2002 to a total of seven (7).

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chapter 4

— Appellate Program

The Appellate Program consists of three Divisions which 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 II, Section 6 of the Oklahoma Constitution, Section 1051 of Title 22 of the Oklahoma Statutes, and, in death penalty cases, 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.

~ General Appeals Division (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 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.

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 client 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.

The General Appeals Division began Fiscal Year 2002 with 316 open cases in various stages of appeal before the Court of Criminal Appeals, and received appointments in 386 additional cases during the fiscal year. The Division closed 386 cases, ending the fiscal year with 316 open cases carried into Fiscal Year 2003.

Attorneys in the General Appeals Division filed Briefs-in-Chief on behalf of 294 clients during Fiscal Year 02, and responded on behalf of the client in two appeals brought by the State (seeking to reinstate charges). Of the cases briefed by Division attorneys, twenty involved clients convicted of first-degree murder. Division attorneys also handled reverse certification/youthful offender or juvenile adjudication appeals on behalf of six clients in five cases where juveniles were charged with first degree murder. In addition, Division attorneys appeared for 35 oral arguments before the Court of Criminal Appeals in fast track cases, filed 22 reply briefs, two supplemental briefs

and seven petitions for rehearing. Five evidentiary hearings ordered by the Court of Criminal Appeals were also handled by the Division.

The Division closed 386 cases during the year, most due to the Court of Criminal Appeals reaching a final decision in the case. The Court decided 275 Division cases, and granted some type of relief in 53 of those cases. Additionally, 7 cases were consolidated; 18 cases were closed because they were contracted to outside counsel; 49 appeals were dismissed either at the client's request or because the Court of Criminal Appeals lacked jurisdiction to hear them; 24 cases were closed because the System was not properly appointed to handle them; 10 cases were closed because outside counsel was retained by the client; and 3 cases were transferred to another division within the agency.

INCOMING CASES

New cases were received from 58 of the State's 77 counties. Cases arising from Oklahoma and Tulsa counties accounted for almost one-fifth the incoming caseload. The number of cases received from each county is shown in Appendix B, Page B-1.

CASES CLOSED

<u>Reason for Closing</u>	<u>Number of Cases</u>	<u>%</u>
Decision of Court of Criminal Appeals	275	71%

Contracted to Outside Counsel (Conflict & Backlog)	18	5%
Rejected or Dismissed for Lack of Jurisdiction	49	13%
OIDS not properly appointed	24	6%
Outside Counsel Retained by Client	10	3%
Transferred to another Division	3	1%
Other (consolidated with another case)	7	2%
TOTAL	386	100%

~ Capital (Death Penalty) Appeals~

The Capital Direct Appeals Division represents indigent defendants who have been convicted of murder in the first degree and sentenced to 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), the Division often serves clients in three different courts.

OIDS 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 all 77 counties where the defendant was represented by retained counsel at trial but is judicially determined to be indigent

<u>Reason for Closing</u>	<u>Number of Cases</u>	<u>%</u>
on appeal, or where OIDS' capital trial divisions or Oklahoma County or Tulsa County public defenders have a conflict of interest.		

At the beginning of Fiscal Year 2001, in an effort to reduce the need to raise ineffective assistance of counsel claims against agency attorneys and to enhance capital representation at the trial level, OIDS restructured the Capital Appellate Program. Personnel and resources were internally transferred from the Capital Direct Appeals Division to the two Capital Trial Divisions. Both the Capital Trial Division-Norman and Capital Trial Division-Tulsa began handling the direct appeals of cases tried by their respective Divisions which resulted in a sentence of death or life without parole. The Capital Direct Appeals Division will continue to handle the direct appeals of cases in which the client retained private counsel at trial but is judicially determined to be indigent on appeal or when the two capital trial divisions have a conflict of interest and an OIDS contract attorney is hired to represent the client at trial.

The appellate attorneys in the Capital Trial Division-Norman are appointed to perfect capital direct appeals in 46 counties (including Oklahoma County when the public defender has a conflict of interest), in addition to primary responsibility for conflicts arising in the remaining counties. Appellate attorneys in the Capital Trial Division-Tulsa are appointed by the district courts of 31 counties in the Eastern third of the State (including Tulsa County when the public defender has a conflict of interest), in addition to primary responsibility for conflicts arising in the remaining counties.

If the appellate attorneys in the two Capital Trial Divisions, the Capital Direct Appeals Division, or the Capital Post-Conviction Division are 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.

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.

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.

Legal services in both Divisions 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.

~ Capital Direct Appeals Division

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 the Oklahoma Court of Criminal Appeals (OCCA) remands the case back to the trial court for such a hearing. 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 began accepting appeals from first degree murder convictions where the sentence of death was not imposed.

CASELOAD

The Capital Direct Appeals Division began Fiscal Year 2002 with thirteen (13) pending capital cases and two (2) cases in which the client was convicted of murder in the first degree but sentenced to life or life without parole. During the fiscal year, one (1) new capital case and three (3) new noncapital cases were opened. By the end of the year, nine (9) capital cases and two (2) non-capital cases were closed, leaving the Division with eight (8) active cases, five (5) of these being capital, and three (3) non-capital cases.

SOURCE OF NEW CASES FOR FISCAL YEAR 2002

Statewide Distribution

The Capital Direct Appeals Division receives death penalty cases tried by private or conflict counsel from all 77 counties of the State. Beginning in Fiscal Year 2001, the direct appeals of death penalty cases tried by OIDS' two Capital Trial Divisions were handled by these respective Divisions unless a conflict of interest developed. Although Oklahoma and Tulsa Counties have their own public defender organizations which handle appeals of cases tried by lawyers from those agencies, the Capital Direct Appeals Division will occasionally receive

cases when a conflict of interest prevents the Oklahoma County or Tulsa County public defenders from representing these clients in their direct appeals. The following is a breakdown of the distribution of Division cases among the various counties:

County

(1) Comanche	7%
(2) Creek	7%
(3) McIntosh	7%
(4) Oklahoma	22%
(5) Osage	7%
(6) Rogers	14%
(7) Stephens	7%
(8) Tulsa	29%

The statewide distribution of the non-capital cases handled by the Division is as follows:

County

C Oklahoma	60%
C Sequoyah	20%
C Tulsa	20%

DISPOSITION OF CASES

Of the two (2) non-capital cases closed during Fiscal Year 2002, relief was obtained for both clients who received new trials from OCCA. Of the nine (9) capital cases closed during Fiscal Year 2002, OCCA reversed and remanded four (4) cases for new trials. Five (5) capital cases were closed after being affirmed by OCCA and denied certiorari by the United States Supreme Court.

~ Capital Post Conviction Division

At the beginning of Fiscal Year 2002, the Capital Post Conviction Division was appointed in nineteen (19) cases. During

this time, the Division acquired ten (10) new cases and closed eight (8) cases. The Division began Fiscal Year 2003 with twenty-one (21) cases.

During this fiscal year, a new Division Chief was appointed effective February 4, 2002.

In June 2002, the United States Supreme Court issued two landmark decisions: *Atkins v. Virginia* and *Ring v. Arizona*. The Executive Director directed the Capital Post Conviction Division to ascertain which death row inmates would be affected directly by these decisions. It was determined twenth-three (23) death row inmates have colorable claims that they are mentally retarded, therefore, their executions would be unconstitutional under *Atkins*. Eight (8) other cases were affected directly only by *Ring*. These issues are anticipated to be raised in the Oklahoma Court of Criminal Appeals in each of these cases. Five (5) of the *Atkins* cases are currently on appeal, either direct or post conviction, with the Oklahoma Court of Criminal Appeals. The remaining eighteen (18) *Atkins* cases are in various stages of federal review. After this analysis was completed, the Executive Director authorized the Division to undertake the representation of these eighteen (18) clients in successor post conviction applications. The Division is attempting to secure a scheduling order with the Oklahoma Court of Criminal Appeals for the *Atkins* cases. The Division had a conflict with one of the *Atkins* cases, and two of the *Ring* cases.

Although the Court of Criminal Appeals has rejected every capital post-conviction claim presented since 1995 (the date of the revised Post Conviction Act), the federal courts continue to grant relief on post-conviction claims in federal habeas corpus proceedings.

– DNA Forensic Testing Program

The DNA Forensic Testing Act, Title 22 O.S. §§ 1371, *et seq.*, became effective July 1, 2000, creating the DNA Forensic Testing Program. The Program is affiliated with the Capital Direct Appeals Division and 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 currently staffed with two attorneys, an investigator and a full-time office aide.

TOTAL CASES

Since its inception, the Program has distributed 572 applications in response to initial inquiries and requests. In Fiscal Year 2002, the Statewide Program received 103 new applications. Thus far, a total of 188 applications have been rejected. One hundred three (103) of these applicants were not eligible because they were convicted in jurisdictions outside the State of Oklahoma. Eighty-five (85) Oklahoma inmates were rejected either because their case did not meet Program criteria or viable test samples could not be obtained. The remaining

cases are in various stages of the assessment process.

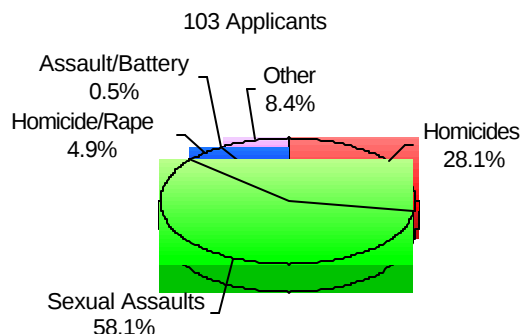
In Fiscal Year 2002, the Program successfully conducted DNA testing on behalf of two Oklahoma inmates. As a result of this testing, one Wagoner County inmate obtained a new trial after testimony concerning the origin of hair evidence used to obtain his conviction was shown to be false. A Tulsa County inmate was exonerated of the 1988 robbery, kidnapping, rape and sodomy of a woman after DNA testing on the biological evidence revealed he did not commit the rape. He was released from prison after serving fourteen years of a 298-year sentence. The Program also tested biological evidence in an Oklahoma County case. Favorable results have been obtained and the case is currently being assessed by the Oklahoma County District Attorney's Office. Evidence in a second Oklahoma County case was submitted for DNA testing but the laboratory has not yet completed the testing. By the end of Fiscal Year 2002, the investigations in several other cases neared completion and the Program expects to formally request testing in these cases soon.

STATEWIDE DISTRIBUTION OF APPLICATIONS

Official applications to the Program came from counties in Fiscal year 2002, as shown in the "Program Applications" chart.

PROGRAM APPLICATIONS	
COUNTY	# APPS
Blaine	1
Bryan	1
Caddo	1
Canadian	2
Carter	2
Cherokee	2
Choctaw	1
Cleveland	4
Coal	1
Comanche	4
Craig	2
Creek	3
Custer	1
Delaware	1
Garfield	1
Garvin	2
Grady	1
Haskell	1
Kingfisher	1
Kiowa	1
Logan	3
Mayes	3
McIntosh	1
Murray	1
Muskogee	6
Noble	2
Oklahoma	24
Osage	1
Payne	2
Pontotoc	3
Pottawatomie	1
Sequoyah	1
Stephens	1
Texas	1
Tulsa	17
Wagoner	1
Washita	2
TOTAL	103

Types of Cases DNA Applicant Crimes



In May 2001, the DNA Forensic Testing Program joined the Oklahoma State Bureau of Investigation and the Office of the Attorney General in forming a multi-agency task force to investigate the work of Oklahoma City Police Department Forensic Chemist, Joyce Gilchrist.

OSBI'S REVIEW OF GILCHRIST FILES

The OSBI received 1,448 case files when the Gilchrist investigation began. At that time, case files from 1980, 1981 and 1990 were missing. Of these 1,448 cases, 424 were "no analysis" cases meaning that Gilchrist did not do any forensic work in the case. An additional 400 to 500 files were marked "hold" which means there was only limited analysis performed. At the end of June 2001, the OSBI received an additional 203 case files from 1990. Of these 203 cases, 70 were "no analysis" cases.

In total, the OSBI received 1,651 case files of which 494 were not reviewed because no analysis had been performed by Gilchrist. The OSBI team reviewed 1,193 total case files, of which they recommended further review in 195 cases.

PROGRAM'S REVIEW OF GILCHRIST FILES

The DNA Forensic Testing Act requires that the defendant must be "presently incarcerated." Of the 1,193 cases reviewed by the OSBI, only about 500 of those cases are ones in which a suspect was arrested and eventually prosecuted.

~ **Multi-Agency Investigation of
Oklahoma City Police Chemist
Joyce Gilchrist**

In many of these case files, the suspect was unknown. While the OSBI can still review Gilchrist's forensic work in these cases, the Program cannot retest the case because there is no corresponding convicted defendant. Of those 500 cases where a defendant could be identified, approximately 300 of these individuals are no longer incarcerated. From the entire OSBI case file list, the Program was only able to identify 203 inmates who are currently incarcerated. Applications were sent to all of these individuals. During Fiscal Year 2002, 83 of these applications were returned (72 noncapital and 12 capital).

PROGRAM'S REVIEW OF 195 RECOMMENDED CASES

Of the 195 cases on the OSBI's recommended list, the Program was only able to identify 72 individuals who are still incarcerated. Applications were sent to those 72 inmates and 35 submitted applications during Fiscal Year 2002.

TOTAL NUMBER OF GILCHRIST CASES REVIEWED DURING FISCAL YEAR 2002

- T** Applications sent to incarcerated inmates identified on OSBI lists totaled **203**.
- T** Applications submitted to date (capital and noncapital cases) totaled **84**.

CAPITAL CASE APPLICANTS:

Cases Closed Or Testing Rejected by State	5
Testing Authorized (Agreement reached with State)	4
Testing Currently in Progress:	1
Testing Completed and Outcome:	2
1 Testing Confirmed State's Case	
1 Testing Inconclusive	
Total	12

NONCAPITAL CASE APPLICANTS:

Cases Closed or To Be Closed	41
Cases in Assessment	19
Cases Recommended by Program for Testing	10
Testing Authorized (Agreement Reached with State)	2
Total	72

Appendix A

Appendix A

Non-Capital Trial Division

FY-2002 Ranking of Caseloads by Counties

(Conflict Cases Included)

County	# of Appts	County	# of Appts	County	# of Appts
1 Cleveland	1,470	31 McClain	338	61 Washita	102
2 Pottawatomie	1,334	32 Delaware	320	62 Jefferson	79
3 Creek	1,095	33 Sequoyah	316	63 Kingfisher	74
4 Muskogee	1,016	34 Osage	284	64 Major	73
5 Kay	977	35 Adair	278	65 Woods	68
6 Payne	861	36 Murray	267	66 Grant	63
7 Washington	837	37 Lincoln	265	67 Dewey	62
8 Garfield	820	38 Pushmataha	256	68 Beaver	55
9 Custer	777	39 Beckham	251	69 Cotton	51
10 Canadian	741	40 Choctaw	243	70 Alfalfa	48
11 Pittsburg	708	McIntosh	243	Harper	48
12 Garvin	671	42 Logan	220	72 Ellis	42
13 Bryan	640	43 Kiowa	205	73 Cimarron	33
14 Comanche	603	44 Pawnee	190	74 Roger Mills	32
15 McCurtain	598	45 Hughes	189	75 Harmon	18
16 Carter	567	46 Blaine	187		
17 Ottawa	555	47 Okfuskee	185	75-County TOTAL	26,642
18 Caddo	506	48 Atoka	179		
19 LeFlore	487	49 Latimer	177		
20 Mayes	476	50 Haskell	165		
21 Rogers	453	51 Noble	164		
22 Seminole	427	52 Nowata	160		
23 Jackson	409	53 Coal	158		
24 Okmulgee	404	54 Marshall	147		
25 Wagoner	386	55 Craig	142		
26 Cherokee	381	56 Texas	140		
27 Grady	376	57 Love	126		
28 Stephens	372	58 Johnston	124		
29 Woodward	363	59 Greer	110		
30 Pontotoc	345	Tillman	110		

Appendix B

Appendix B

GENERAL APPEALS DIVISION

FY 2002 INCOMING CASES

<u>County</u>	<u>New Cases Received</u>		
Adair	2	Love	2
Alfalfa	0	Major	0
Atoka	0	Marshall	1
Beaver	0	Mayes	5
Beckham	0	McClain	1
Blaine	1	McCurtain	5
Bryan	4	McIntosh	4
Caddo	9	Murray	2
Canadian	2	Muskogee	19
Carter	7	Noble	6
Cherokee	0	Nowata	0
Choctaw	6	Okfuskee	2
Cimarron	0	Oklahoma	54
Cleveland,	16	Okmulgee	7
Coal	1	Osage	3
Comanche	17	Ottawa	5
Cotton	2	Pawnee	1
Craig	0	Payne	8
Creek	10	Pittsburg	8
Custer	11	Pontotoc	1
Delaware	5	Pottawatomie	17
Dewey	1	Pushmataha	6
Ellis	0	Roger Mills	2
Garfield	12	Rogers	2
Garvin	1	Seminole	3
Grady	10	Sequoyah	2
Grant	0	Stephens	21
Greer	0	Texas	3
Harmon	0	Tillman	0
Harper	0	Tulsa	24
Haskell	6	Wagoner	0
Hughes	3	Washington	6
Jackson	9	Washita	0
Jefferson	4	Woods	0
Johnston	1	Woodward	2
Kay	4		
Kingfisher	1		
Kiowa	0		
Latimer	1		
Leflore	9		
Lincoln	4		
Logan	5		
		TOTAL	386

County New Cases
Received