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DA-judge setup adds fire to defense debate Prosecutor helps jurist pick lawyers for poor

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LAMESA, Texas - Ricky Smith not only prosecutes people accused of crimes, he also arranges attorneys for defendants who can't afford one.

The district attorney and his staff routinely contact lawyers to notify them of defendants who need representation and ask if they will accept the assignment. The prosecutor's office also prepares the order that a judge signs to make the appointment of its courtroom opponent official.

Mr. Smith and state District Judge George Hansard said their arrangement is appropriate. The prosecutor said he is simply lending a hand to the only felony court judge in the four-county district south of Lubbock.

"The judge is the one who signs the appointment and pays the fee," Mr. Smith said. "I don't sign anything like that."

But several lawyers familiar with Mr. Smith's role alleged that Judge Hansard is allowing the prosecutor to assume the judge's exclusive power of appointment and, in effect, handpick his courtroom adversaries.

"It's like the fox feeding the chickens," said Bill Wischkaemper of Lubbock, a past president of the Texas Criminal Defense Lawyers Association who has practiced for 25 years in Mr. Smith's district.

Judge Hansard's approach to attorney appointments, while unusual, is an outgrowth of the wide discretion that Texas criminal court judges have in providing lawyers for poor people accused of crimes.

The absence of a statewide system of indigent defense has spawned a variety of approaches that often vary from judge to judge.

Most counties rely on private attorneys to take appointments. Some contract with lawyers for defense services. A handful have public defender offices. Even fewer use a "buy out" system that allows lawyers to pay an annual fee to be exempted from appointments.

The state Code of Judicial Conduct directs judges to make their appointments impartially and based on merit. State Bar rules prohibit lawyers from helping judges to violate their conduct code.

Margaret Reaves, executive director of the state Commission on Judicial Conduct, said she was unaware of Judge Hansard's appointment practices but questioned its propriety.

"The judge seems to have subrogated and delegated his authority to somebody who has an interest in the outcome of the case," Ms. Reaves said. "I think that would be a real concern."

Frank Newton, dean of Texas Tech University's law school and a leading state expert on lawyer ethics, said that however practical and well-intentioned it is, Mr. Smith's participation in appointments could be perceived as giving him an unfair advantage.

"You've got something that while not technically wrong, raises the specter that there could be either collusion or favoritism or lack of independence on the part of defense counsel," Mr. Newton said.

Judges statewide have argued against legislative proposals to lessen their roles in selecting defense lawyers. The judges contend they can best ensure that disadvantaged defendants receive equal justice.

"Most judges do a very good job," said state District Judge Robert Dinsmoor of El Paso, a member of the State Bar of Texas' Committee on Legal Services to the Poor.

"You can always find some anecdotal stories out there where some things have been done wrong," he said. "But just because there are some anecdotal stories does not necessarily mean you should throw the whole system out."

Rural challenge

The 4,200-square-mile area over which Judge Hansard has presided since 1971 typifies problems faced by many rural judicial districts in the state.

The most populous city in the district, Lamesa, is home to a dozen licensed lawyers. Almost all practice civil law; none is taking court appointments to represent criminal defendants.

The rate of compensation that the counties pay to court-appointed attorneys makes it a challenge to attract lawyers from Lubbock or Midland who are willing to make the hourlong drive to Lamesa.

In 1999, the four counties where Judge Hansard operates spent a combined total of about \$120,000 on attorneys for poor defendants. Dallas County, by comparison, paid each of 11 lawyers that amount or more last year.

Mr. Smith, the district's chief prosecutor since 1985, said Judge Hansard's workload and lack of support staff drew the district attorney's office into the struggle to find qualified lawyers to take appointments.

"The judge is one individual for four counties with a coordinator and a part-time secretary," Mr. Smith said. "We have all the information."

He said prosecutors routinely help judges in rural, multicounty judicial districts. But a judge in an adjacent district said he did not involve prosecutors in appointments and did not consider it proper.

"We have an adversary system," said Judge Kelly Moore of Brownfield, who also oversees administrative matters for courts in 45 Panhandle counties. "Even if we have what we call 'friendly cases,' you just can't start it off on that front."

Dan Hurley, a Lubbock defense lawyer who used to take appointments in Judge Hansard's district, contended that the practice of allowing prosecutors to arrange for lawyers to defend poor people stemmed from the judge's lack of interest in the task.

"Judge Hansard is involved in this as little as possible," Mr. Hurley said. "It's a function of him being lazy and just letting somebody else handle that."

'Ministerial act'

The judge, who reaches the mandatory retirement age of 75 in October, acknowledged that he allows Mr. Smith to contact defense attorneys about taking cases. Like Mr. Smith, he said he saw nothing improper about the prosecutor's involvement.

"I wouldn't think anything about it if they made phone calls because I asked them to," Judge Hansard said during a brief phone conversation.

Asked whether Mr. Smith and his assistants made appointments of defense attorneys, the judge replied, "I didn't think they did."

Mr. Wischkaemper said Mr. Smith's insistence that he does not make appointments of defense attorneys has a hollow ring.

"I think when they are contacting the lawyer and telling him, 'Go over and see the defendant,' that they are actually making the appointment," he said. "It's just a ministerial act for the judge to sign the order."

Signing off

Six lawyers, including a former assistant in Mr. Smith's office, agreed that Mr. Smith influenced Judge Hansard's appointments.

"The district attorney contacts the defense attorneys to see if they are willing to be court-appointed on these particular cases. We do that and present it to the judge for his signature," said Lynn Haltom, who worked for Mr. Smith as a prosecutor until last year.

Lawyer Jay Napper said that when he first approached Judge Hansard about indigent defense work in 1994, the judge's court coordinator told him to let the district attorney's office know that he was interested in appointments.

"I did, and I began getting them," said Mr. Napper, now a county attorney in Lynn County, which is in Mr. Smith's district.

Mr. Napper said the judge normally endorsed the "suggestion" from prosecutors about which attorney should be appointed.

"I don't think most districts run it that way," he said.

A tale of two lawyers

A review of court appointments made during the last fiscal year in three of the four counties where Judge Hansard presides showed that the bulk of the defense work went to two Lubbock lawyers, Ron McLaurin and Dwight McDonald.

Mr. McLaurin, 48, is a former Texas assistant attorney general and a past president of the Lubbock Criminal Defense Lawyers Association. He and Mr. McDonald, 34, an active player in civic affairs, are law partners.

Mr. Smith said that at Judge Hansard's request, he contacted Mr. McLaurin about a year ago to see whether he knew of lawyers in Lubbock who might be willing to take court appointments.

"His Mr. McLaurin response to me was there just wasn't anybody who wanted to do that on a consistent basis," Mr. Smith said. "He said he and Dwight would do it."

Auditor's records in the two largest counties, Dawson and Gaines, show that Mr. McLaurin and Mr. McDonald were appointed to 94 felony cases last year and earned a combined \$20,100. The next highest paid lawyer made \$3,200.

All payment requests submitted by the two Lubbock lawyers were for \$200 or \$250 - typical for a plea-bargain case, Mr. Smith said.

Mr. McLaurin agreed to an in-person interview but later declined to talk. Mr. McDonald said he had a policy of not giving interviews.

Records show that Judge Hansard signs the appointment order at the same time a poor defendant enters a guilty plea and is sentenced. The fee amount - and often the defense attorney's name - is typed on the form before court by the district attorney's office.

Defendants routinely meet their appointed attorneys for the first time at events known in courthouse parlance as "plea days."

It is not uncommon for a single attorney to be appointed on several cases and have his clients enter guilty pleas on the same day. Mr. McDonald billed for

disposing the cases of 11 clients on one day last year, auditor records in Lamesa show.

'A quick paycheck'

Tommy Williams met Mr. McDonald on a Thursday and entered a plea the following day. Mr. McDonald had 14 other clients who entered pleas those two days.

Mr. Williams, 21, said during their only conversation, Mr. McDonald never asked any questions, then urged him to accept a prosecution offer of 10 years' probation for sexual contact with an underage date.

"I don't really feel that he was representing my best interests. I feel he was just doing what he did to get paid a quick paycheck," Mr. Williams said.

Mr. Williams was 19; the girl he touched was 13. He had no criminal record and had graduated with honors from Lamesa High School the year before the incident.

The victim told police that the touching was consensual and she did not want Mr. Williams prosecuted. But her mother insisted that charges be filed, records show.

As far as he knows, Mr. Williams said, Mr. McDonald never attempted to investigate the case, other than reading his court file. He never asked Mr. Williams about his background or attempted to interview potential character witnesses.

Mr. Williams said he agreed to the deal because he thought he could still go to medical school. He said he did not know that he would be required to register for life as a sex offender and did not realize until later that he had to pay for counseling.

"I assumed he Mr. McDonald knew what he was doing. Since he was doing so many cases so fast, I figured he had experience doing this," Mr. Williams said.

Had he known the full implications of a plea, he said, he would not have agreed to it.

Less than a year after being put on probation, Mr. Williams was jailed for failing to register a new address and missing a series of counseling sessions, which he said he couldn't afford.

He spent nine months in the Dawson County Jail before the district attorney's office agreed to reinstate his probation.

Mr. Smith first contacted Mr. Williams' new attorney, Bill McNamara, about releasing him two days after a reporter for The Dallas Morning News interviewed Mr. Williams in jail.

In the case of pleas

Jim Caton, a lawyer in Seminole, in Gaines County, said he quit taking appointments last year because he could no longer tolerate being pressured by prosecutors to plead clients or risk losing future appointments.

"Lawyers do it until they get fed up, until they figure out that they have an ethical problem," Mr. Caton said.

Other lawyers said the pressure for an appointed lawyer to plead his client quickly was based on simple economics. Cases are usually routine, and the fees do not encourage lengthy negotiations, they said.

"I know Ron McLaurin and Dwight McDonald well enough that they will tell Ricky Smith or one of his assistants to jump in a lake" if they dislike a plea offer, said Cal Huffaker, a lawyer in the Lynn County town of Tahoka who said he occasionally accepts appointed criminal work.

"I think the problem is that those guys are trying to make a living, and they're having to push it through as fast as they can. And sometimes it ends up with people not getting the best representation."

Mr. Smith laughed at the notion that he could coerce Mr. McDonald or Mr. McLaurin to enter a plea that was not in their client's best interest.

"They're always coming back to you with something different than what you offered," he said. "I can't recall a time when they didn't, which is what you like to see."

It is in the best interest of all parties, he said, for a defense attorney to be competent and vigorously defend his clients.

"You want them clients to have their rights protected. Certainly, you don't want them convicted of something they didn't do and sent to the pen," Mr. Smith said.

Even though the prosecutor decided to drop his demand that Mr. Williams be imprisoned, the young man's hopes for a medical career are dashed.

"It hurts," he said, wiping at his eyes. "That's all I ever wanted to do. That's why I took all these classes in high school. I really wanted to help people. They just took that dream away from me. Now, I can't do that."

Staff writer Diane Jennings contributed to this report.