
**HOUSE COMMITTEE ON JUDICIAL AFFAIRS
TEXAS HOUSE OF REPRESENTATIVES
INTERIM REPORT 2002**

**A REPORT TO THE
HOUSE OF REPRESENTATIVES
78TH TEXAS LEGISLATURE**

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Committee On
Judicial Affairs

January 9, 2003

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The Honorable James E. "Pete" Laney
Speaker, Texas House of Representatives
Members of the Texas House of Representatives
Texas State Capitol, Rm. 2W.13
Austin, Texas 78701

Dear Mr. Speaker and Fellow Members:

The Committee on Judicial Affairs on of the Seventy-Seventh Legislature hereby submits its interim report including recommendations and drafted legislation for consideration by the Seventy-Eighth Legislature.

Respectfully submitted,

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INTRODUCTION

During the interim, Speaker of the House Pete Laney charged the Committee on Judicial Affairs to study the following issues and report back to the Legislature:

- 1) Review the Uniform Durable Power of Attorney Act, including witnessing, notarization, and notification; possible abuse of elders; refusal of financial institutions to accept Texas' law; and accounting and liability issues concerning attorneys-in-fact.
- 2) Develop a plan for judicial redistricting as required by the Texas Constitution, Article V, Section 7a.
- 3) Evaluate the rules of ethical conduct, conflict and disclosure for briefing clerks of the appellate courts.
- 4) Study the feasibility of creating a statewide sexual assault prevention program.
- 5) Make an assessment of all issues related to the current organization of the Texas Judicial Council and the Office of Court Administration. Consider the efficiency, responsiveness and accountability of the current organization, and make any appropriate recommendations for change.
- 6) Monitor the progress of efforts to enable the filing of court documents of all kinds by facsimile or other electronic means, including the use of electronic signatures, actual or electronic notarization, and the need for verification.
- 7) Assess the current state of judicial campaigns in regard to financing, accountability, immunity and candidate qualification. Make any appropriate reform recommendations.
- 8) Study the fees assessed by district and county clerks for filing and processing civil cases and consider the establishment of a uniform schedule of fees.
- 9) Actively monitor agencies and programs under the committee's oversight jurisdiction, including the new Court Interpreter's Board.

The committee has oversight jurisdiction over the following state agencies: the Supreme Court, the Courts of Appeals, the Court of Criminal Appeals, the State Commission on Judicial Conduct, the Office of Court Administration of the Texas Judicial System, the State Law Library, the Texas Judicial Council, the Office of the Attorney General, the Court Reporter's Certification Board and the Board of Law Examiners.

The Committee held four public hearings. The first meeting was held in Corpus Christi on April 3, 2002, the second in San Antonio on August 15, 2002, the third in Harlingen on September 6, 2002, and the last meeting was held in Austin on October 22, 2002.

The 18 recommendations made by the committee are being drafted into legislation and will be presented to the 78th Legislature scheduled to begin January 14, 2003. No recommendations were made regarding court interpreters, fax filing and judicial campaign reform. Unlike past interim studies, no recommendations were made regarding child support enforcement.

The Committee would like to thank Veronica Morales from State Representative Carlos Uresti's office and Isabel Barberil from State Representative Jim Solis' office for their help in making our San Antonio and Harlingen hearings run smoothly. We appreciate all the work they did in securing meeting location, video and audio taping services, transportation, parking, refreshments and meals.

In addition, the Committee would like to express its appreciation to Craig Adams, from the Real Estate Probate Trust Law Section of the State Bar of Texas, who provided the committee a voluminous state-by-state study on the Durable Power of Attorney, and, then, followed us around the state as a resource witness.

The committee owes a debt of gratitude to Will Harrell of the Texas ACLU for bringing the committee's attention to the plight of the Tulia defendants (see Recommendation # 18) at our first oversight hearing on the Office of Attorney General. We also want to recognize Jeff Blackburn, the Amarillo attorney, who has spent more than \$30,000 of his own funds and organized other attorneys in the Panhandle to aid the appeals of the Tulia defendants still in prison. Mr. Blackburn and Mattie White spent an entire day traveling to our committee hearing in Harlingen in order to enlighten committee members further.

As always, we thank First Assistant Attorney General Howard Baldwin for his insight and forthrightness. This year, the committee pays special tribute to him.

In addition, we express our thanks to Chris Lippincott of the Texas Association Against Sexual Assault and Sarah Wheat of the Texas Abortion Rights Action League for providing the committee with so many materials on sexual assault prevention.

Finally, the Committee expresses its upmost appreciation to Patrick Johnson, committee counsel, for his tireless efforts and dedication in writing this report.

Milda Mora
Chief Clerk

Howard Baldwin, Public Servant

First Assistant Attorney General Howard G. Baldwin, Jr., will retire from state employment at the end of this year, after 25 years of service to the State of Texas. Nearly all that service was on behalf of the children of Texas.

Baldwin's humble resumé does not adequately reflect his depth of experience or influence in Texas. A certified family law attorney, Baldwin serves on the legislative committee of the Family Law Section of the State Bar of Texas. He is also an influential member of the Child Abuse and Neglect Committee and the Family Law Council of the State Bar.

Baldwin was our state's first president and a founding member of CASA, Court-Appointed Special Advocates, in San Antonio, a program benefitting children with independent, unbiased legal representation that has been replicated statewide. His proudest award, among many, is the Dan R. Price Award for Outstanding Contribution to Family Law which was presented far too late in 1998.

Baldwin has taken on many jobs; but, all have been in the service of children and families. He was a private attorney in family law, a family law and child support master, a regional director in child support enforcement at the Texas Department of Human Resources, and a deputy chief attorney general in child support litigation.

As a deputy director for the Texas Department of Protective and Regulatory Services, Texas started genuine enforcement efforts to protect children from abusive guardians and parents. During his tenure, with the support of many other groups, filing for protective orders in Texas became free and easy to obtain; the cooperation and support by numerous advocacy groups, law enforcement, and prosecutors have reinforced Texas' efforts to ensure the safety of children.

This committee has conducted biennial oversight hearings on the Attorney General's Child Support Enforcement Division since 1993. Until Howard Baldwin assumed the position of deputy attorney general for child support in the Office of Attorney General, complaints about the OAG's Child Support Enforcement Division were the most frequently received complaints by any Texas legislator, often on simple issues like service of citation. Baldwin created a legislative liaison for child support, forced through a request for new child support caseworkers, improved citation, created a better tracking program in compliance with federal law, improved technology, reduced phone time on hold dramatically; and, most importantly, reduced complaints by nearly 80%.

The facts above hardly tell the story of Baldwin's influence on legislation, appropriations or management. Baldwin has worked with all groups in Texas to improve child support collection and children's connections to and support from parents and guardians. During a previous administration, Texas insisted on 12% interest on unpaid child support in order to comply with existing computer fields; though, that law was rarely enforced and often led to noncompliance. Baldwin's innovative programs, in contrast, have reduced or even forgiven arrearages when noncustodial parents comply with visitation and monetary support orders; the result has been increased compliance and connection to children, true child *support*.

More than any other single state agency employee, Howard Baldwin has influenced family law policy in Texas for more than a decade, primarily as an advocate for Texas children. He is known to every legislator who has filed a bill touching upon family law. His breadth of knowledge, honesty and insight has been a valuable resource to every legislative committee dealing with issues of abuse, child support, visitation and parenting. In too many instances, a simple question

posed to Howard Baldwin has resulted in new legislation to better protect children, to increase child support collection, or to improve the quality of life for Texas families.

RECOMMENDATION NO. 1

The Legislature should pass a concurrent resolution commending Howard Baldwin for his years of service to the children of Texas and wishing him well in retirement.

Principal Protection Issues and the Durable Power of Attorney Act

The Texas Department of Protective and Regulatory Services, Adult Protective Services Division, confirmed 1276 cases of exploitation against Texas elders or Texans with disabilities in FY 2001.¹ Many of these cases involve financial exploitation through a durable power of attorney.

Many elderly principals are conned by their own paid caretakers, particularly when children or relatives are in a different city.² Of course, some cases of exploitation are deliberate acts of stealing by the principal's own heirs or children who are reluctant to wait for probate or to share a future estate with other heirs; this is sometimes referred to as the "Evil Son."³

Many cases of exploitation through a durable power of attorney are not reported because the principal may fear coming under state supervision through legal guardianship proceedings, possibly resulting in removal from the principal's home. Others are reluctant to report their own children to law enforcement authorities or bring suit against them in civil court.⁴

At the urging of a coalition of groups, including the Texas Silver-Haired Legislature, Texas Rural Legal Aid, and the Texas Probate Judges' Association, the Texas House passed major reforms to the Texas Durable Power of Attorney Act in 2001.⁵ The Texas Senate stripped out most of the reforms, and the final result was a new accounting provision for the attorney-in-fact.⁶

Texas is listed as generally in compliance with the Uniform Durable Power of Attorney Act by the National Conference of Commissioners on Uniform State Laws, Joint Editorial Board for Uniform Trusts and Estate Laws.⁷ There are, however, significant differences between states that are in general compliance with the Uniform Durable Power of Attorney Act. For

¹http://www.tdprs.state.tx.us/Not_Forgotten/5-Specialfeatures/pdf/APSkit-Eng-2002L7.pdf

²Testimony of Kelly Cross. Tex. House Comm. on Judicial Affairs. Public hearing, Aug. 15, 2002.

³Testimony of Jerry Jones. Tex. House Comm. on Judicial Affairs. Public hearing, Aug. 15, 2002.

⁴Testimony of Kelly Cross. Tex. House Comm. on Judicial Affairs. Public hearing, Aug. 15, 2002.

⁵See H.B. 1883 (engrossed version), Tex. Leg. (77th Reg.), 2001.

⁶H.B. 1883 (enrolled version), Tex. Leg. (77th Reg.), 2001.

⁷Review of the Uniform Durable Power of Attorney Act and State Legislation. Memorandum to the Joint Editorial Board for Uniform Trusts and Estates Acts from the Advisory Committee on Durable Powers of Attorney, Feb. 12, 2002 (*hereinafter*, Review of the Uniform Durable Power of Attorney); *and*, Testimony of Craig Adams. Public hearing, Tex. House Comm. on Judicial Affairs, Apr. 3, 2002.

instance, 23 states allow the attorney-in-fact to continue to act following the court appointment of a guardian; five states statutorily terminate a power of attorney if a court appoints a guardian for the principal;⁸ Texas infers that a court-appointed guardian terminates the power of attorney.⁹ Only eight states, not including Texas, authorize liability for failure to honor a durable power of attorney. Ten states, not including Texas, authorize joint attorneys-in-fact; only Illinois statutorily prohibits joint attorneys-in-fact.¹⁰

Some states offer significant additional protections to principals. Seventeen provide for fiduciary standards of care or require the attorney-in-fact to act in the best interest of the principal.¹¹ Of the 18 states that specifically allow the attorney-in-fact to make gifts, all but two provide for statutory limitations on that power.¹²

States that require fiduciary standards of care vary widely. Several states require the attorney-in-fact to maintain all records of transactions related to the principal's property. Several states require the attorney-in-fact to follow the prudent person rule. Florida law specifies that an attorney-in-fact has the same fiduciary duties as a trustee. Some states grant relatives or a next friend the right to demand an accounting. Missouri law prohibits self-dealing, conflicts of interest, and imposes a duty to keep the principal's property segregated.¹³ Penalties for violations of these duties vary from requiring the attorney-in-fact to pay attorneys' fees, treble damages and criminal penalties to disinheritance.¹⁴

Some states require specific authority to allow the attorney-in-fact to make gifts. A few states limit the size of gifts. Many states, like Texas, limit the authority to make gifts.¹⁵

Other issues were debated during our hearings. One issue is how the principal should designate individual powers. Some advocates believe that the principal should initial each power designated, as used to be done in Texas.¹⁶ These advocates argue that initialing powers is more intuitive.¹⁷ The Texas Academy of Probate Attorneys, however, argues that crossing out powers not

⁸Review of the Uniform Durable Power of Attorney at 3.

⁹*Id.*, Chart B, at 2a.

¹⁰*Id.* at 4 and Chart B.

¹¹*Id.* at 5-6.

¹²*Id.* at 5.

¹³*Id.* at 6.

¹⁴*Id.* at 7.

¹⁵*Id.*, Chart B, at 4a.

¹⁶This was changed in 1997 by S.B. 620 (75th Leg.).

¹⁷Testimony of Gaston West. Tex. House Comm. on Judicial Affairs, Pub. hearing, Apr. 3, 2002.

designated is more fraud-proof.¹⁸

Requiring powers of attorney to be filed with the county clerk would make it easier to enforce acceptance by institutions within Texas, like banks, which are often reluctant to accept such powers. Many principals prefer not to file their powers of attorney, however.¹⁹

Requiring two witnesses, in addition to notarization, as with attorney-drafted wills, is already done by a number of Texas attorneys. This action further demonstrates to the principal the sweeping powers granted by a power of attorney. An additional bold-faced notice to the principal, separately signed, would also give better notice to the principal of the serious nature of a durable power of attorney.²⁰

In addition, some have suggested that the appointed attorney-in-fact be required to sign the power of attorney as an acknowledgment detailing the attorney's duties with a separate warning concerning fiduciary and accounting duties.²¹

Another common fear of elderly principals is having their residence sold by their appointed attorney. The House addressed this point last session by separating out general powers over real property and the ability of the attorney-in-fact to sell the principal's primary residence.²²

Because of the nature of a durable power of attorney and the sweeping powers granted by principals, exploitation by attorneys-in-fact cannot be eliminated. An appointed attorney should always be someone of the highest integrity and financial acumen whom the principal trusts absolutely to carry out the principal's wishes. Despite the enormous savings compared to a court-appointed guardianship, some principals should be advised not to sign durable powers of attorney.

Still, some reasonable, additional protections can be passed by the next Legislature to better protect trusting principals.

RECOMMENDATION NO. 2

Durable Powers of Attorney should require two independent witnesses.

Several witnesses testified that requiring two witnesses, as is commonly done in wills, would help principals to understand the importance of powers of attorney.

RECOMMENDATION NO. 3

¹⁸Testimony of Jerry Jones. Tex. House Comm. on Judicial Affairs, Pub. hearing, Aug. 15, 2002.

¹⁹Testimony of Craig Adams. Tex. House Comm. on Judicial Affairs, Pub. hearing, Apr. 3, 2002, *and* Testimony of Jerry Jones. Tex. House Comm. on Judicial Affairs, Pub. hearing, Aug. 15, 2002.

²⁰*See* H.B. 1883 (77th Leg.), engrossed version.

²¹Testimony of Craig Adams. Tex. House Comm. on Judicial Affairs, Pub. hearing, Apr. 3, 2002.

²²*See* H.B. 1883 (77th Leg.), engrossed version.

An accounting of transactions by the attorney-in-fact should be available to the persons authorized by the principal in the durable power of attorney.

Currently, the principal may demand an accounting of the attorney-in-fact. Committee members discussed authorizing family members or next friends to demand an accounting. Jerry Jones, of the Real Estate, Probate and Trust Law Section of the State Bar, suggested allowing the principal to designate who might be able to demand an accounting on the principal's behalf.

RECOMMENDATION NO. 4

The Durable Power of Attorney form should be amended

- (1) to require that principal initial each power granted;
- (2) to separate powers on general real estate transaction and powers authorizing sale of the principal's primary residence; and,
- (3) to create a new power authorizing transactions over \$50,000.

One of the worst abuses of the durable power of attorney against older principals is the sale of the principal's residence. This is often the principal's largest asset and often designated to heirs in a will.

RECOMMENDATION NO. 5

The Durable Power of Attorney statute should be amended to make the attorney-in-fact subject to the fiduciary standards of a trustee.

This recommendation would raise the standard of care for an attorney-in-fact.

RECOMMENDATION NO. 6

The Durable Power of Attorney statute should be amended to prohibit the attorney-in-fact from self-dealing.

This prohibition is standard in many states and will help recover assets from attorneys-in-fact who use the principal's assets to increase their own worth.

Preventing Sexual Assault and Revictimization

by Patrick M.W. Johnson*

After decades of campaigns for greater public awareness, strengthened laws, law enforcement training, and the development of institutionalized support groups, the statistics on sexual assault remain disheartening. The number of reported assaults is astoundingly high, yet few survivors report sexual assaults, especially among those most often the targets of sexual assault, children. Ignorance about what constitutes a sexual assault and services available for survivors remains high. Despite strengthened laws and law enforcement training, few perpetrators are ever arrested, and only a tiny number are prosecuted, despite the fact that nearly all perpetrators are known to their victim. There are almost no educational programs addressing sexual assault prevention, and many of these have significant barriers in accessing public school students.

Even worse, survivors are often revictimized by the various services designed to help and protect them: the judicial system and hospital emergency rooms.

Background: The Survivors of Sexual Assault

One of every five college women reported being forced to have sexual intercourse,¹ but the most common rape victim is a female under the age of 18. Nearly two million American teens have been the victim of a sexual assault. One-third of sexual assaults on children are committed against children younger than six years of age. One in three girls and one in six boys will be victims of sexual abuse.² More than 40% of girls have experienced sexual abuse by age 16; more than 7% of boys have experienced sexual abuse by age 14; most never report the offender.³

Most rapes are planned. Rapes most often occur in one's own home or in a familiar place. The rapist is usually known to the victim and is of the same race or culture.⁴ The typical child sex offender who is caught molests an average of 117 children.⁵

In one case study for 2000 in Austin, just over three persons per day reported a sexual assault (a total of 1165). More than 70% of reported sexual assaults in Austin were against children 17 or younger. One-third involve children ages 12-16. One of every 6 sexual assaults involved a male victim (see Table 1 below).⁶

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¹Sexual Assault Prevention and Response in Texas. Austin: Tex. Ass'n Against Sexual Assault, 2000, at 4 (*hereinafter*, Sexual Assault Prevention and Response).

²*Id.* at 5.

³*Id.* at 19.

⁴*Id.* at 6-7.

⁵*Id.* at 19.

⁶ Elusive Justice. *Austin American-Statesman*, Mar. 24, 2002, at A1, 19 (*hereinafter*, Elusive Justice).

Table 1. Reported Sexual Assaults in Austin, Texas, in 2000, by victim.⁷

Female, under 18	Female, over 18	Male, under 18	Male, over 18
59.0%	29.3%	10.4%	1.3%

The City of Austin reported that the number of rapes declined 8% in 2001, yet calls from sexual assault victims to crisis centers increased by more than 50% in the last five years.⁸ In fact, reported sexual assaults in the city declined by only 19 cases, from 1,184 cases in 2000 to 1,165 attacks in 2001. That's because required reports to the FBI do not include statutory rape or victims who were sodomized, assaulted by other objects or who were male. Rapes fitting the narrow FBI definition made up only one-fifth of the sexual assaults in Austin.⁹

Reporting Sexual Assault Rare

The number of sexual assaults in Texas is astounding. Yet, according to the Texas Association Against Sexual Assault, between 82 and 93 percent of assaults are never even reported. Children, the most typical victims, are even more reluctant to report a sexual assault.¹⁰ One survey found that only five percent of sexual assault victims report the crime to the police.¹¹

Ignorance of the law is a major factor. Because of the traumatic after-effects on survivors, and the imbalance of power and threats often involved in sexual assaults, the law recognizes sexual assault as a violent crime, even though sexual assaults are not typically accompanied by physical violence. Many survivors and perpetrators do not believe they have been the victim or perpetrator of a crime because their particular assault did not include physical injury.¹²

One of the major reasons sexual assaults are under-reported is that few sexual assault perpetrators and predators are ever charged or convicted. Following national trends, Austin police forward only about 20% of sexual assault reports to prosecutors. Only 16% of adult cases are cleared by police by arrest. Many of these cases are dropped. Of the cases where charges are brought, grand juries decline to indict in 6% of the cases; another 22% are dismissed by prosecutors. Less than 10% of the sexual assault reports in Austin in 2000 were accepted by prosecutors; over half of those were dismissed because of lack of evidence of forced sexual activity, legal insufficiency, or the weakness of the case.¹³

By 2002, only 6 of 1,184 sexual assault cases reported in 2000 in Austin were still

⁷*Id.* at A18.

⁸ *Id.* at A19-20.

⁹*Id.* at A19.

¹⁰*Id.* at A19.

¹¹Sexual Assault Prevention and Response at 4.

¹²Testimony of Diana Cuellar. Public hearing. Tex. House Comm. on Judicial Affairs, Sept. 6, 2002.

¹³ Elusive Justice at A19.

active and being investigated by police.¹⁴ A majority of those cases which have never resulted in an arrest languish in a suspended file.¹⁵

Table 2. Sexual Assaults in Austin, 2000, Through the Legal System (as of March 2002).¹⁶

Sexual Assaults Through the System	Number
Estimated number of sexual assaults in Austin	6472
Reports to police	1165
Victims choosing to prosecute	947
Received by district attorney's office from police	252
Arrests	180
Reviewed by prosecutors	38
Pending	214
Presented to grand jury	30
Dismissed	8
Indictments	18
Guilty pleas (plea bargains)	18
Trials	0

In the few cases resulting in a prison sentence, the median sentence for a rapist in Austin is five years, about the same as robbery.¹⁷

A large number of cases that never result in an arrest or charges of a known perpetrator involve hard-to-prove sexual assaults between former partners, date-rape, uncooperative witnesses and acquaintance rape which may involve he-said, she-said accusations or love-turned-bitter relationships.¹⁸

Cases involving child sexual assault are five times more likely to be declined or

¹⁴*Id.* at A1.

¹⁵*Id.* at A19.

¹⁶*Id.* at A18.

¹⁷*Id.* at A20.

¹⁸*Id.* at A19-20.

dismissed often because children recant their stories after realizing that a relative or close family friend might be sent to prison, because they have feelings of guilt or because they are pressured by family members.¹⁹

Despite the fact that sexual assault is a felony, societal attitudes continue to impede prosecution. More than one-in-four middle school students believe that a woman who is drunk deserves to be raped. More than one-third of 8th and 9th grade boys believe they would not be arrested if they forced a dating partner to have sex.²⁰

On the other hand, more than 2800 registered sex offenders in Texas, almost 10% of the total, committed their crime as a juvenile; yet, almost 90% of juvenile cases involve suspension from registration. According to sex offender treatment counselor, Ezio Leite, "There's only a small minority of juvenile sex offenders that grow up to be adult sex offenders." According to Rep. Toby Goodman (R-Arlington), chair of the House Committee on Juvenile Justice and Family Issues, "We ended up with a lot of kids being registered on what are minor kid offenses." One sex offender case involved a 12-year old convicted because his female eight-year old cousin touched his penis while playing pool; the male offender is now eligible for admission to college.²¹

Sexual Assault Prevention: The Little Utilized Tool

Despite the fact that most rape victims are minors, little or no education on sexual assault prevention is provided to Texas children. Even where such programs are available, schools often exclude prevention educators from appearing on campus, particularly in districts which present abstinence-only education programs in sexuality.²² In other districts, demand for such education, particularly at the elementary level, far exceeds the ability to provide education which could save the emotional lives of hundreds of thousands of Texas children.²³

The state appropriates only \$304,000 per year for sexual assault prevention and response, a figure that has remained at nearly the same level for more than a decade. Some state grant funding is also available, most recently through the Crime Victims Compensation Fund.²⁴

The Texas Association Against Sexual Assault is the state's leading training organization in sexual assault prevention and response. Yet, only \$21,000 was spent in its FY 2000

¹⁹*Id.* at A19.

²⁰Sexual Assault Prevention and Response at 19.

²¹Eiserer, Tanya. Young sex offenders kept off lists. *Fort Worth Star-Telegram*, Mar. 26, 2002.

²²Testimony of Diana Cuellar. Public hearing. Tex. House Comm. on Judicial Affairs, Sept. 6, 2002.

²³Testimony of Pennie Koopman. Public hearing. Tex. House Comm. on Judicial Affairs, Aug. 15, 2002.

²⁴Sexual Assault Prevention and Response at 10.

budget for youth outreach.²⁵ It has begun a pilot peer program, Students Taking Action for Respect, to train high school students in sexual assault prevention.²⁶ One very popular program, *Yellow Dyno*, is presented to elementary children in the San Antonio area by the Rape Crisis Center of San Antonio.²⁷

The State is failing Texas children, the primary targets of sexual assaults. Ignorance leaves children vulnerable to predators and reinforces the beliefs of many adolescents that sexual assault is often justified.

Survivor Symptoms & Preventing Revictimization

The after-effects of a sexual assault on a survivor are often compared to post-traumatic stress syndrome. Thirteen percent of sexual assault victims report contemplating suicide. More normal reactions include depression, numbness, shock, embarrassment, shame, guilt, denial, anxiety and anger.²⁸

Overall, the State appears to have done at least a minimally adequate job in supporting counseling and support services for survivors. More could be done for survivors through the Crime Victims Compensation Fund; as one example, authorization could be given to allow victims to apply for moving expenses following an assault.²⁹

Fear of pregnancy is one of the most common fears cited by female sexual assault survivors.³⁰ Each year, over 32,000 women become pregnant as the result of a reported rape; approximately 50% of these pregnancies are terminated by abortion.³¹

The use of emergency contraception by female sexual assault survivors would help women from being victimized twice. In fact, the American Medical Association standards of emergency care require that sexual assault survivors be counseled about the risk of pregnancy and

²⁵Sexual Assault Prevention and Response at 21.

²⁶Testimony of Chris Lippincott and Joe De La Cerda. Public hearing. Tex. House Comm. on Judicial Affairs, Aug. 15, 2002.

²⁷See testimony of Pennie Koopman. Public hearing. Tex. House Comm. on Judicial Affairs, Aug. 15, 2002.

²⁸Sexual Assault Prevention and Response at 8.

²⁹Testimony of Chris Lippincott. Public hearing. Tex. House Comm. on Judicial Affairs, Aug. 15, 2002.

³⁰Nat'l Victim Center & Crime Victims Research and Treatment Center. Rape in America: A Report to the Nation, 1992.

³¹Holmes, M. et al., "Rape-Related Pregnancy: Estimates and Descriptive Characteristics from a National Sample of Women." *Am. J. of Obstetrics & Gynecology*, Aug. 1996, at 322.

offered emergency contraception.³²

Despite the AMA standards, 67% of hospital emergency rooms in Texas do not provide emergency contraception to sexual assault survivors. Of the Texas hospitals that do not offer emergency contraception, more than half do not even provide referrals for emergency contraception.³³ Yet, nearly all hospitals provide precautionary treatment for sexually-transmitted disease.³⁴

Nationwide, it is estimated that 80% of rape victims are not offered emergency contraception. Rep. Connie Morella (R-Maryland) has introduced federal legislation to require all hospitals to provide emergency contraception to sexual assault survivors, but currently only three states mandate access to emergency contraception or info on emergency contraception for sexual assault survivors.³⁵

Emergency contraception avoids the moral dilemma female sexual assault survivors must face following unprotected sexual relations: choosing between (1) possible pregnancy by a stranger, relative or predator and (2) termination of a pregnancy by abortion. Besides the normal risks of pregnancy, the risks of a pregnancy following a sexual assault are considerably higher and include riskier pregnancies and delivery due to the typical and normal mental and physiological reactions of victims to a sexual assault and developmental disabilities often associated with sexual assault by a relative or by untreated sexually-transmitted diseases, including HIV.³⁶

Emergency Contraception: Use, Availability and Access

Emergency contraception has been available for forty years. Yet, only one in ten women aged 18-44 have heard of emergency contraception.³⁷ Only 1 to 2% of American women

³²Am. Medical Ass'n. Strategies for the Treatment and Prevention of Sexual Assault. Washington, D.C.: AMA, 1995, at 18.

³³Wheat, Sarah et al. Where Can A Woman Go? Reproductive Services in Texas Hospitals. Austin: TARAL Education Fund, Sept. 2001.

³⁴ Testimony of Pennie Koopman. Public hearing. Tex. House Comm. on Judicial Affairs, Sept. 6, 2002.

³⁵Rape treatment denied! *Glamour*. Sept. 2002 at 198.

³⁶A study by Johns Hopkins Bloomberg School of Public Health found that 65% of sexual assault victims are not screened for sexually-transmitted disease and 77% are not screened for HIV as recommended by the US Centers for Disease Control. See Amey, A. and Bishai, D. Measuring the Quality of Medical Care for Women Who Experience Sexual Assault With Data From the National Hospital Ambulatory Medical Care Survey. *Annals of Emergency Medicine*. June 2002, 631-638.

³⁷Emergency Contraception: Is the Secret Getting Out? (Summary of Findings). Menlo Park, California: Kaiser Family Foundation, 1997, at 7-8.

have ever used emergency contraception.³⁸ More than 100 medical women's organizations have begun a campaign to increase Americans' awareness of emergency contraception, often called "the best-kept secret in women's health."³⁹

Emergency contraception, sometimes called back-up contraception or the morning-after pill, is nothing more than a high dose of oral contraceptives. The most common forms of emergency contraception today are Plan B (progestin) and Preven (progestin and estrogen). Nonetheless, directives for using common oral contraceptives as emergency contraceptives are available (see Table 3).⁴⁰

Unlike RU-486 which terminates a pregnancy, use of emergency contraception does *not* terminate a pregnancy; but, it can, in the early hours and days after unprotected sex prevent a pregnancy.⁴¹ Its effectiveness in pregnancy prevention, however, decreases every hour following intercourse. (See Table 4). It is often cited that 72-hours is the outside limit.⁴²

According to a Scripps-Howard poll, more than four of every five Texans support requiring hospital emergency rooms to make emergency contraception available to all rape and incest victims.⁴³ Another survey by Catholics for a Free Choice showed 78% of women support requiring such legislation.⁴⁴ The *Houston Chronicle* and the *Dallas Morning News* support legislation to require emergency rooms to provide all sexual assault survivors information of emergency contraception.⁴⁵

³⁸Parker-Pope, Tara. New Push Tries to Put The Morning-After Pill In Every Woman's Hand. *Wall Street J.*, Mar. 1, 2002, at B5 (2%); *see also* Am. Col. of Obstetricians & Gynecologists. ACOG Background Paper: Providing Emergency Contraceptive Pills Over the Counter. Washington, D.C.: ACOG, February 23, 2001, at 2 (1%).

³⁹*See* www.backupyourbirthcontrol.org and Page, Clarence. Birth control's secret. *Dallas Morning News*, March 27, 2002, at 19A.

⁴⁰*See* Table 3 for examples; *also see* www.not-2-late.com.

⁴¹Parker-Pope, Tara. New Push Tries to Put The Morning-After Pill In Every Woman's Hand. *Wall Street J.*, Mar. 1, 2002, at B5.

⁴²Rape Treatment Denied! *Glamour*, September 2002, at 198; *see also* Piaggio, G. et al. Timing of emergency contraception with levonorgestrel or the Yuzpe regimen. Task Force on Postovulatory Methods of Fertility Regulation. *Lancet*, 1999, v. 353 at 721.

⁴³Fall 2001 Texas Poll. Scripps-Howard Data Center, Nov. 2001.

⁴⁴Religion, Reproductive Health and Access to Services: A National Survey of Women (Washington, D.C.: Belden Russonello & Stewart, Apr. 2000).

⁴⁵Information Please: Tell women about morning-after pills to limit abortions. *Houston Chronicle*, Nov. 16, 2001, at 46A; *and* Scorecard. *Dallas Morning News*, Nov. 3, 2001, at 30A.

Table 3. Directions for Using Common Oral Contraceptives as Emergency Contraception.⁴⁶

Pill brand	Manufacturer	1st dose	2nd dose
Alesse®	Wyeth-Ayerst	5 pink pills	5 pink pills
Levlen®	Berlex	4 light orange pills	4 light orange pills
LevLite®	Berlex	5 pink pills	5 pink pills
Levora®	Watson	4 white pills	4 white pills
Lo/Ovral®	Wyeth-Ayerst	4 white pills	4 white pills
LowOgestrel®	Watson	4 white pills	4 white pills
Nordette®	Wyeth-Ayerst	4 light orange pills	4 light orange pills
Ogestrel®	Watson	2 white pills	2 white pills
Ovral®	Wyeth-Ayerst	2 white pills	2 white pills
Ovrette®*	Wyeth-Ayerst	20 yellow pills	20 yellow pills
Plan B®*	Woman's Capital Corp.	1 white pill	1 white pill
PREVEN®	Gynetics	2 blue pills	2 blue pills
Tri-Levlen®	Berlex	4 yellow pills	4 yellow pills
Triphasil®	Wyeth-Ayerst	4 yellow pills	4 yellow pills
Trevora®	Watson	4 pink pills	4 pink pills
*Progestin only			
With a regular 28-pill birth control pack, use any of the first 21 pills for emergency contraception. Don't use the last seven pills in a 28-day pack. They are only reminder pills that contain no hormones. With Triphasil or Tri-Levlen, use only the yellow ones. With Trivora, use only the pink ones.			

Besides the unavailability of emergency contraception at hospital emergency rooms, significant barriers to obtaining emergency contraception exist. In a study using college-educated women posing as women who had a condom break the previous night, only three of every four attempts were successful in obtaining a prescription for emergency contraception within the critical

⁴⁶Planned Parenthood Federation of America, Inc. Emergency Contraception. 1996. Publication No. 11/00-125.

72-hour window.⁴⁷ Most pharmacies don't even stock emergency contraception.⁴⁸ Yet, time is the of the essence for emergency contraception to be effective since it does not prevent pregnancy.

Table 4. Pregnancy Rate by Delay in Use of Emergency Contraception.⁴⁹

Hours After Intercourse	Rate of Pregnancy
0	0.5%
14	1.5%
28	1.75%
42	2.6%
56	3.0%
70	4.0%

Besides women who have been sexually assaulted, the most common reasons women give for seeking emergency contraception are failure of a barrier method of contraception (usually condoms) or failure to use any method.⁵⁰

The American College of Obstetricians and Gynecologists has endorsed over-the-counter distribution of emergency contraception.⁵¹ ACOG has called emergency contraception

⁴⁷Am. Col. of Obstetricians & Gynecologists. Providing Emergency Contraceptive Pills Over the Counter. ACOG Background Paper. Washington, D.C.: ACOG, Feb. 23, 2001, at 3.

⁴⁸Parker-Pope, Tara. New Push Tries to Put The Morning-After Pill In Every Woman's Hand. *Wall Street J.*, Mar. 1, 2002, at B5.

⁴⁹from Brown, H. Emergency Contraceptive Pills. *The Female Patient*. March 2001 at 21.

⁵⁰Am. Col. of Obstetricians & Gynecologists. Clinical Management Guidelines for Obstetrician-Gynecologists. ACOG Practice Bulletin Number 25. Washington, D.C.: ACOG, March 2001, at 1.

⁵¹Am. Col. of Obstetricians & Gynecologists. ACOG Supports Safety and Availability of Over-the-Counter Emergency Contraception. Washington, D.C.: ACOG, Feb. 28, 2001; *and*, Am. Col. of Obstetricians & Gynecologists. Statement of the American College of Obstetricians and Gynecologists Supporting the Availability of Over-the-Counter Emergency Contraception. ACOG News Release. Washington, D.C.: ACOG, Feb. 14, 2001.

“safe, efficacious, and ... easy to administer.”⁵² Emergency contraception is available for free to teenage girls in Great Britain, Canada, Belgium, Denmark, Israel and South Africa.⁵³

Moreover, nearly three of every five Texans support making emergency contraception widely available to Texas women. At least three states have made emergency contraception available from pharmacists without a doctor's prescription (Alaska, California and Washington).⁵⁴ A pending petition before the Federal Drug Administration seeks over-the-counter approval of emergency contraception in all states.⁵⁵

Nearly 50% of the 6.3 million annual pregnancies among women in the United States are unintended. Nearly half of these pregnancies occur in women who did not use any method of birth control.⁵⁶ Making emergency contraception widely available has the potential to halve the abortion rate (currently, 1.4 million a year) in the U.S., according to James Trussell, population scientist at Princeton University.⁵⁷

Emergency contraception avoids the treatment costs of subsequent induced abortions, spontaneous abortions, ectopic pregnancies and pregnancies carried to fetal viability.⁵⁸

Although women who have emergency contraception on hand are more likely to use this method following unprotected sex or a condom break or other birth control failure, studies have shown that women do not abandon other methods of birth control.⁵⁹

For sexual assault survivors, the immediate dispensing of emergency contraception

⁵²Am. Col. of Obstetricians & Gynecologists. Providing Emergency Contraceptive Pills Over the Counter. ACOG Background Paper. Washington, D.C.: ACOG, Feb. 23, 2001, at 7.

⁵³Page, Clarence. Time to bring morning-after pill out of the shadows. *Chicago Tribune*, March 24, 2001.

⁵⁴Support Builds for Emergency Contraception. Nat'l Public Radio, Mar. 18, 2002.

⁵⁵*Id.*

⁵⁶Am. Col. of Obstetricians & Gynecologists. Providing Emergency Contraceptive Pills Over the Counter. ACOG Background Paper. Washington, D.C.: ACOG, Feb. 23, 2001, at 2.

⁵⁷Support Builds for Emergency Contraception. Nat'l Public Radio, Mar. 18, 2002; *see also* Page, Clarence. Time to bring morning-after pill out of the shadows. *Chicago Tribune*, March 24, 2001; *and*, Am. Col. of Obstetricians & Gynecologists. Providing Emergency Contraceptive Pills Over the Counter. ACOG Background Paper. Washington, D.C.: ACOG, Feb. 23, 2001, at 2.

⁵⁸Am. Col. of Obstetricians & Gynecologists. Clinical Management Guidelines for Obstetrician-Gynecologists. ACOG Practice Bulletin Number 25. Washington, D.C.: ACOG, March 2001, at 2.

⁵⁹Am. Col. of Obstetricians & Gynecologists. Providing Emergency Contraceptive Pills Over the Counter. ACOG Background Paper. Washington, D.C.: ACOG, Feb. 23, 2001, at 7.

during the hospital examination following the assault avoids revictimization. If hospitals will not dispense emergency contraception to victims of sexual assault, then another method of easy access, available within the tight time-line necessary for emergency contraception to be effective should be available to avoid the emotional, physical and monetary costs of unintended pregnancies to sexual assault survivors.

RECOMMENDATION NO. 7

Emergency contraception should be available behind-the-counter in pharmacies on request. The pharmacy should be able to require the requestor to fill out a simple form which might reveal contraindications for emergency contraceptives. Pharmacists who dispense emergency contraception without a prescription should be required to obtain certification through a continuing education class.

Pharmacists should be required to enter into a protocol with a licensed medical doctor before dispensing emergency contraception.

Emergency contraception is available without a prescription in California, Washington, and Alaska.

RECOMMENDATION NO. 8

Information on emergency contraception should be required to be given to all females who report to a hospital emergency room, that receives any state funding or is licensed by the state, as a victim of sexual assault to prevent the additional trauma of an unintended pregnancy.

Some states require hospital emergency rooms to dispense emergency contraception to female sexual assault survivors.

RECOMMENDATION NO. 9

Crime Victims Compensation Fund guidelines should be revised to include moving costs for sexual assault victims.

This was a request by the Texas Association Against Sexual Assault. In many cases, sexual assault survivors have a psychological need to move to a more a secure apartment or home. In extreme cases that involve continuing threats or stalking, it may be physically prudent to move to a new location or even a new city or state.

RECOMMENDATION NO. 10

Every 7th grade student in an accredited Texas school should be required to participate for two hours in a sexual assault prevention class approved by the Attorney General and the Texas Association Against Sexual Assault.

The most likely sexual assault victims, and the least likely to report sexual assaults, are adolescents. Many such victims believe that they are to blame; others suffer silently in shame or guilt; still others believe that, if they were not physically injured, they were not assaulted.

The committee learned that many schools, even some entire school districts, will not allow children to learn about sexual assault and prevention methods. This puts children at extreme risk.

RECOMMENDATION NO. 11

Each school district in Texas should be required to appropriate \$0.10 for each child enrolled in grades K-6 for sexual assault prevention training. Funds shall be transferred to the nearest sexual assault prevention program for public school students certified by the Texas Association Against Sexual Assault.

Funding for sexual assault prevention programs is extremely small. This minimal level of mandated funding would provide an incentive for school districts to allow sexual assault prevention programs in schools and funding for nonprofit organizations to further develop age-appropriate curriculum, like Bexar County's *Yellow Dyno* program for young elementary school children. In most districts, this level of funding would not reach the level of funding even one part-time instructor, forcing districts to share a traveling instructor by pooling funds.

Trouble Following Mandates for Drug Courts in Texas

Five counties in Texas currently operate what are commonly known as "drug courts:" Dallas, Jefferson, Montgomery, Tarrant and Travis.

"Drug courts" are commonly defined as

(1) the integration of alcohol and other drug treatment services in the processing of cases in the judicial system;

(2) the use of a nonadversarial approach involving prosecutors and defense attorneys to promote public safety and to protect the due process rights of program participants;

(3) early identification and prompt placement of eligible participants in the program;

(4) access to a continuum of alcohol, drug, and other related treatment and rehabilitative services;

(5) monitoring of abstinence through weekly alcohol and other drug testing;

(6) a coordinated strategy to govern program responses to participants' compliance;

(7) ongoing judicial interaction with program participants;

(8) monitoring and evaluation of program goals and effectiveness;

(9) continuing interdisciplinary education to promote effective program planning, implementation, and operations; and

(10) development of partnerships with public agencies and community organizations.¹

Four additional counties were required to establish new drug courts by September 1, 2002, under House Bill 1287 (77th Regular Session): Bexar, El Paso, Harris and Hidalgo. None have done so.

These same counties were required to submit a federal grant application for funds to establish a drug court as recognized by the US Department of Justice. None of them did so.

Residential drug rehabilitation programs, as required under programs in Bexar, Harris and Hidalgo counties, are not typically required by drug court programs, except as a last resort. In fact, the concept is in violation of a drug court's goal to keep the offender employed or in school while undergoing treatment and testing.

Residential treatment rarely lasts the 12 to 18 months that drug court participation requires. Treatment centers typically have a success rate of 18%, while drug court participation has a success rate of 65%.²

¹Drug Court Standards Comm., The Nat'l Ass'n of Drug Court Professionals. *Defining Drug Courts: The Key Components*. Washington, D.C.: US Dep't of Justice, Jan. 1997, *placed into* H.B. 1287 (77th Leg., 2001) *and codified as* Tex. Health & Safety Code § 469.001. For a more detailed analysis and description of drug courts, *see* Johnson, Patrick M.W. *The Case for Drug Courts*. Interim Report to the 77th Leg., Tex. House Comm. on Judicial Affairs (Oct. 2000) at 16-26.

²SHORT Program Performance Summary. Travis County (Mar. 6, 2000) at 5.

In Harris County, duties of the drug court program planned there call for numerous judges to spend a few minutes a week on drug court program participants; this is not done anywhere else in the country. Residential treatment is to be required; again, this method of rehabilitation has a far higher rate of recidivism and is typically not used by drug courts.

Bexar County is attempting to comply and county officials should soon undergo training; preparation for a federal grant application has begun. Once that has been done, problems with their system, such as requiring residential treatment, may be averted.

Hidalgo County simply ignored the law.

These counties are in violation of current statutes. Current law states that these counties are ineligible for state funds for (1) a community supervision and corrections department; and (2) grants administered by the criminal justice division of the governor's office.³

RECOMMENDATION NO. 12

The Governor's Criminal Justice Division should be required to assist counties in establishing drug courts with federal funds.

Testimony pointed out the need for more aggressive state oversight in complying with mandates to establish drug courts. While federal money is available, there is little incentive for county governments to actively apply for such funds since drugs typically save the State, not the county, money.

RECOMMENDATION NO. 13

State prison funds should be diverted to fund existing drug courts.

One drug diversion court, serving one hundred clients, saves the State approximately \$2.5 million per year, according to Senate Research and Planning. Adding state funds to the pool ensures the continuation of local drug courts once federal grants have been exhausted.

RECOMMENDATION NO. 14

Existing drug courts should be expanded in counties with an existing drug court and in counties with a population of over 1,000,000

RECOMMENDATION NO. 15

A constitutional amendment should be approved to allow the Legislature to establish true drug courts, modeled on those in Dallas and Travis counties.

The committee heard testimony from several counties on proposed drug courts which comport neither with the letter nor the spirit of the current law.

³Tex. Health & Safety Code § 469.006(d).

A Fair Distribution of Justice? (Revisiting Judicial Redistricting)

This committee conducted an extensive study of judicial districts in 1992 in preparation for the first-ever, required judicial redistricting in 1993.¹ That study included a comprehensive analysis of factors required by enabling legislation: caseloads, populations, and geographic distribution of district courts.² It also included a survey of all district judges in Texas.³

In 1993, this committee developed a bill for a statewide reapportionment of judicial districts. That bill did the following:

- (1) all districts were contiguous;
- (2) no county was in more than one district;
- (3) no district had fewer than two judges;
- (4) historic geographic lines and numbers were used where possible;
- (5) no judge would have been required to sit in more than four counties;
- (6) no more than seven counties were in any one district;
- (7) disparities in populations per judge and cases filed per court were greatly narrowed; and,
- (8) nearly all incumbent judges were provided a district.⁴

In 1993, House Bill 449 was not voted out of the Calendars Committee to be placed on the Floor Agenda. The Senate took no action on judicial reapportionment.

As prescribed by the state constitution, the task of required judicial reapportionment next fell to the Judicial Districts Board, a constitutionally-created board, to reapportion the district courts. That board held numerous hearings and approved two alternate plans, often referred to as Plan A and Plan B. According to the constitution, the Judicial Districts Board plan had to be

¹Tex. Const. art. V, § 7a, was approved by voters in 1985 and requires reapportionment of district court judicial districts in the third year following every census. Should the Legislature fail to reapportion districts during the regular session, the Judicial Districts Board convenes on the first Monday of June until August 31 to recommend a reapportionment plan to be adopted by the next Legislature by filing an “order” with the Secretary of State. If the Judicial Districts Board fails to file an order for reapportionment by August 31, the Legislative Redistricting Board has 150 days to adopt a binding reapportionment plan. The Committee’s 1992 report on judicial reapportionment runs more than 160 pages. The Judicial Districts Board held extensive hearings on reapportionment in 1993.

²Tex. Gov't Code § 24.941 et seq.

³Johnson, Patrick M.W. Toward a Fair Distribution of Justice. Interim Report to the 73d Leg. Tex. House Comm. on Judicial Affairs, July 1992, at 25-38, *and* Appx. A.

⁴Bill Analysis. Committee Report on C.S.H.B. 449 (73d Leg., 1993).

considered and approved by the next Legislature.

Despite the Judicial Districts Board order of two alternate plans, the Legislative Redistricting Board treated this action as action and did not meet to consider judicial reapportionment.

The task next fell to the Legislature to approve the order of the Judicial Districts Board. No legislator in the 74th Legislature introduced either Plan A or Plan B. Judicial redistricting was not considered by either house in the Legislature in 1993 or in 1995. The mandate of the Texas Constitution has never been fulfilled. It is arguable that Texas' current judicial districts are unconstitutional except for the fact that such an argument would have to be argued before Texas judges selected by the current system.

This interim, the Committee on Judicial Affairs was assigned the task of studying district court redistricting in anticipation of the constitutional mandate to reapportion judicial districts in the third year following every census. Notices for hearings were sent to every district judge in Texas, and to numerous organizations which follow the judiciary in Texas. Unlike hearings in 1992 and 1993, there was little response this year. A few judges responded in testimony or in writing that judicial redistricting was unnecessary or that their particular districts needed to be divided. In addition, the committee received a few communications indicating support for creating suburban county districts that are currently attached to urban counties.

Little has changed in ten years, case filings still vary by more than 600%. Populations per judge still vary by more than 20,000%. Anderson County is still in four different geographic districts. Some counties in a single judicial district are still in different administrative regions and different appellate districts. Some rural judges still have to cover as many as five counties. Some districts still have one judge; Harris County still elects 60. Several suburban counties are still attached to urban counties. A smaller number of districts are noncontiguous. And there is little interest in change.

There is a primary difference from 10 years ago: the Senate Jurisprudence Committee also conducted hearings on judicial redistricting this year.

RECOMMENDATION NO. 16

Any judicial redistricting plan should eliminate

1. noncontiguous districts;
2. overlapping geographic judicial districts;
3. courts in which less than 25% of the statewide average caseload are filed; and,
4. single judge districts.

Additional Recommendations

While reports were not issued on all the topics under study by the committee this interim, the Committee did make two other recommendations, one on judicial campaign reform and one on the ongoing investigation by the Office of the Attorney General on the Tulia drug crime investigations conducted by former informant Tom Coleman.

RECOMMENDATION NO. 17: JUDICIAL VOTER GUIDES

The Secretary of State should be authorized to mail every registered voter statements provided by judicial candidates 30 days before a general election.

This measure has been approved by the committee on more than one occasion. Its primary advocate, Henry Cuellar, was both a former member of this committee and a former secretary of state. The Legislature has passed legislation authorizing the secretary of state to publish such a voter guide online.

RECOMMENDATION NO. 18: TULIA

If evidence is discovered that any of Tulia convictions, resulting from the undercover investigation by Tom Coleman, were unjustly obtained, the Office of the Attorney General shall notify all interested officers of the court of these findings, so that any and all appropriate measures are taken to ensure that justice is carried out for those unjustly convicted, as well as for those involved in the apprehension and prosecution of the cases.

Forty-five African-Americans or persons related to African-Americans in the tiny West Texas town of Tulia, more than 10% of the African-American population, were arrested for distribution of cocaine as the result of an investigation by undercover informant Tom Coleman in 1998 and 1999. During the investigation, Coleman was charged with abuse of official capacity and theft for his previous work in Cochran County.

The initial defendants pleaded not guilty and were convicted primarily on the testimony of one witness, Tom Coleman. Their sentences ranged from 20 to hundreds of years. The physical evidence in more than a majority of cases was 1.3 grams of cocaine. Defendants were refused requests to determine if all or some of the cocaine were from the same source. In some cases, Tom Coleman reported buying cocaine from Tulia defendants and, in other cases, buying cocaine minutes later from defendants in Amarillo, more than 90 minutes away.

The second wave of defendants entered into plea bargains, again with harsh sentences.

Finally, one defendant, Tonya White, thanks to an Oklahoma City bank camera, was able to prove that she was depositing a check hundreds of miles away at the time she allegedly sold cocaine.

Subsequent cases were dismissed.

A few of the original defendants have finished serving their sentences. Thirteen

remain in prison.

The US Justice Department opened an investigation into the Tulia cases at the end of 2000. This year, it stated that the investigation was closed; then, it subsequently denied its previous statement.

Following the committee's August hearing, Attorney General John Cornyn announced a state investigation into the Tulia cases. Further testimony was taken at the committee's September hearing in Harlingen. An update was issued to the committee at its final hearing in Austin in October.

Hundreds of articles about Tulia, Texas, have been published world-wide since the first cases were heard in 2000. For further information, review the committee's tapelogs for August 15 and September 6, 2002. In addition, interested parties may wish to consult the following articles:

Apple, L. Some Justice in Tulia. *Austin Chronicle*, Sept. 1, 2002.

Cornyn to begin inquiry into Tulia drug sting. *Austin American-Statesman*, Aug. 28, 2002.

Gonnerman, J. Tulia Blues. *Village Voice*, Sept. 1, 2002.

Herbert, B. A Confused Inquiry. *N.Y. Times*, Aug. 22, 2002.

Herbert, B. Justice Goes Into Hiding. *N.Y. Times*, Aug. 12, 2002.

Herbert, B. 'Lawman of the Year.' *N.Y. Times*, Aug. 1, 2002.

Herbert, B. Railroaded in Texas. *N.Y. Times*, Aug. 9, 2002.

Herbert, B. Tulia's Shattered Lives. *N.Y. Times*, Aug. 5, 2002.

Hockstader, L. Texas To Review Tulia Drug Sting. *Washington Post*, Aug. 28, 2002 at A2.

Huffington, A. Tulia and Beyond: Taking Drug Task Forces To Task, Apr. 15, 2002, at <http://www.arianaonline.com/columns/files/041502.html>.

Huffington, A. Tulia's Witch Trials. *salon.com*, Oct. 11, 2000, at <http://dir.salon.com/news/feature/2000/10/11/tulia/index.html>.

Marshall, T. Delivering a Tulia progress report. *Houston Chronicle*, Aug. 26, 2002.

Marshall, T. Drug sting probe a political ploy. *Houston Chronicle*, Aug. 30, 2002.

NAACP, ACLU Charge "Ethnic Cleansing" in Mass Arrests of Black Residents of Tulia, Texas, at <http://www.aclu.org/news/2000/n101300.html>.

Navarette, R. Cornyn too late to be serious about Tulia. *Dallas Morning News*, Aug. 30, 2002.

Newly Uncovered Evidence Frees Defendant in Tulia Drug Sting, Apr. 10, 2002, at <http://www.mapinc.org/drugnews/v02/n715/a02.html?160>.

Sting Still Burns: Coleman Shorts Long Arm of the Law. Aug. 26, 2002, at <http://www.mapinc.org/drugnews/v02/n125/a11.html?160>.

Texas Attorney General Opens An Inquiry Into '99 Drug Sweep. *N.Y. Times*, Aug. 29, 2002.

Tulia Breaks! *Texas Observer*, Aug. 26, 2002.

Tulia Justice: State should pursue West Texas case. *Dallas Morning News*, Aug. 29, 2002.

Also see Friends of Justice at <http://www.fojtulia.org>.