



2016 TCDLA Long Range Plan

TCDLA Long Range Planning Committee Members, 2015–2016: Edward Mallett (Chair), William Harris (Co-Chair), Marjorie Bachman, Craig Jett, and Stephanie Patten.

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Preamble

This Long Range Plan seeks to provide a proactive institutional guide for TCDLA during the next five years. While TCDLA has and will continue to respond to issues in the criminal justice system as they arise, the Long Range Planning Committee has identified several areas in which the organization may best fulfill

its mission by setting specific and identifiable goals to better serve our members, the citizen accused, and society at large. These issues include: membership growth; organizational funding; increasing diversity both in membership and leadership; developing relationships with bar associations and law schools; and strengthening TCDLA's participation in the development of public policy.

Goals at Committee Findings and Recommendations

The Committee has identified the following areas of particularized Long Range concern for TCDLA. The Committee believes these ideas should be adopted by the Board. Where appropriate, the Committee has recommended specific actions to implement the stated goals.

I. Public Policy and Guiding Principles—Long Range Plan

GOAL: Taking a position and speaking out on the most important issues facing criminal justice in Texas and the United States.

The goals of TCDLA should include publishing and presenting public statements on those issues on which nearly all criminal defense lawyers can agree. We value diversity of opinion, and minority views should not be suppressed. We recognize that a minority opinion can become the majority. However, we believe that as of the adoption of this Report, TCDLA can proudly say it stands for something: for a more just society, for protection of our members, and legislation and administration of the criminal law to benefit society. The goals include supporting these policies:

1. The purpose of TCDLA is to protect and ensure by rule of law those individual rights guaranteed by the Texas and Federal Constitutions in criminal cases; to resist the constant efforts which are now being made to curtail such rights; to encourage cooperation between lawyers engaged in the furtherance of such objectives through education programs and other assistance; and through such cooperation, education, and assistance to promote justice and the common good.
2. The duty of TCDLA members representing the poor is based on the Constitutional promise of effective assistance of counsel, enshrined in the United States and Texas Constitutions. We, criminal defense lawyers, should be paid in amounts commensurate with prosecutors and consistent with court-approved attorney compensation in civil cases. The same courts that pay lawyers appointed to represent the poor, in criminal cases, frequently approve civil attorney fees, including statutory and ad litem fees. Every courthouse observer knows that fees in civil cases are frequently in the hundreds of dollars per hour—namely, the billing rates for private attorneys in civil cases. At the same time, many public defender offices are structured to pay staff counsel in parity with prosecutors, in addition being provided offices and related medical insurance, federal or state employee

retirement benefits, etc. TCDLA's goals include establishing income parity with civil rates and fees for lawyers appointed to represent indigent defendants.

3. Opposition to Capital Punishment: Every person in the United States knows that there are frequent reports of death row defendants who have been exonerated. Death, because of its finality, is different: TCDLA opposes the death penalty.
4. Offender Registration Laws: We note that politicians, victim advocates, and the news media have not yet proposed lifetime registration for drunk drivers, thieves, and drug abusers—though all those offenses have higher rates of recidivism than statutory sex offender offenses. For their “prurient interest,” sex crimes have become a distinct class. TCDLA opposes offender registration and community notification laws. The Supreme Court has, so far, held that sex-offender registration laws were written as “health and safety regulations,” and not as punishment. Every practicing defense attorney knows that this is total fiction. Of course, it’s punishment. The states and the Congress have established schemes holding that “reportable convictions,” include remote-in-time deferred adjudications that began before the registration laws were passed, despite plea agreements reciting “no registration required.” Registrants often can often obtain neither jobs nor housing. The historical principle that a convict pays a debt to society, and is allowed re-entry after rehabilitation, has been replaced with lifetime servitude under a web of state and federal laws. TCDLA opposes all offender registration laws.
5. Civil Commitment After Completion of Sentence: Since 1999, there have been over 400 men civilly committed to a so-called “outpatient treatment” after completing their “sex offense” punishment, in Texas prisons. The American Psychiatric Association vigorously opposed the creation of civil commitment laws, stating that this unacceptable misuse of psychiatry results in violations of individual civil rights and double jeopardy and creates a slippery slope, leading to the future incarceration, without proper legal grounds, of other groups deemed to have undesirable “mental disorders.” The world has seen this before, notably in Nazi Germany. The commitment process has been marketed to the courts as “treatment,” not punishment, and necessary for the protection of the public. The State of Texas invented the term “behavioral abnormality” to encompass the class of people they believed were in need of “treatment,” through civil commitment. The State of Texas found experts willing to testify for \$300 an hour that such a diagnosis exists though it is not recognized by psychiatry. There is no such classification in the DSM-V. To date, not one civilly com-

mitted man has been discharged from “treatment,” except by death. Although recent publicity may result in a token discharge to indefinite supervision by parole officials, the State systematically confines the selected group in for-profit facilities around the state. There is no data to support that there has been any increase in public safety as a result of these civil commitments. The commitment statutes also criminalize otherwise innocent conduct by providing that any violation, even one of the hundreds of conditions of a civil commitment order, is a third-degree felony.

TCDLA opposes the indefinite civil commitment of offenders who have already served their sentences as an unconstitutional form of indefinite preventive detention. This system is, in fact, punishment, and violates the Constitutional prohibitions against double jeopardy, is an ex post facto criminal law, and punishes without due process of law.

6. The Long Range Plan is intended to help strengthen TCDLA’s participation in public policy. This goal of TCDLA encourages member discussion, study, and debate. From time to time TCDLA should state our formal opinion on the most important issues associated with justice and crime in America.

II. Finances—Long Range Plan

GOAL: Sustained growth, with stability.

Recommendations:


1. Member Dues: The last dues increase, in 2014, which was the first increase in 20 years, was not followed by a decline in membership. However, TCDLA recognizes that the combined cost of TCDLA and State Bar dues, plus the cost of memberships in local affiliates and other bar groups such as the NACDL and ABA, is a significant amount that some lawyers can hardly afford. We recommend that dues not be increased before 2024.
2. Membership Size: TCDLA has grown from the original 17 Charter Members, meeting in the Chaparral Room of the Adolphus Hotel in 1971, to more than 3,400 members. The duties of Board Members should include helping to increase and diversify our membership. We recommend that the Board set, at the time of each annual meeting, the next year’s goal for new members that takes into consideration

growth in population and the number of new lawyers in Texas. Every Board member should sign up at least one new member. Records of who recruits our new members, and how many, should be reported to the Nominating Committee. Whether we have achieved our membership goals should be reported to the Board.

3. Financial Grants: TCDLA, and the closely related TCDLEI, have benefited from the Texas Legislature’s commitment to lawyer training. We are grateful to receive Court of Criminal Appeals–administered grants from the court fees and

costs that are collected by municipal, county, and district clerks. In 2014, about 4.84% of all of those funds were administered by the Court of Criminal Appeals and shared by TCDLA, the District and County Attorneys Association, and other groups for lawyer training. This grant from the CCA now amounts to almost half of TCDLA’s total expenditures and staff time. We recommend that (1) our officers should be fully informed about the statutory and appropriation procedures by which court fees and costs are collected and shared with TCDLA for defense lawyer training; (2) it should be the policy of TCDLA to hold court costs collected from defendants, and especially indigent defendants, to a minimum, and TCDLA should oppose new or increased fees; and (3) the President or Executive Director, annually, should report on TCDLA’s efforts to obtain additional grants from new sources.

4. Additional Grants and Other Income: TCDLA must explore additional funding sources. Where appropriate, TCDLA can also be promoted as a gift and grant recipient. We are aware that NACDL has “partnered” with other organizations on common interests, such as the Koch Foundation (“over-criminalization” and a need for a proof of criminal intent) and the ACLU (Death Penalty). Many nonprofits employ a “grant writer.” TCDLA should assign, or hire, staff to “prospect” for similar grants. When practical, overhead expenses should be built into grant administration as general support so that all expenses are recovered. TCDLA should also encourage individual commitments for bequests, gifts, and other donations, much like the fundraising conducted by charities and private universities.
5. Money Management: TCDLA’s discretionary cash is in a savings account earning ordinary interest on about \$350,000. TCDLA also has about \$100,000 in a so-called investment account (which is not invested), also in savings. We recom-



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mend that the Executive Committee select, and recommend for Board approval, an outside financial advisor who will invest these savings in a diversified holding of stocks and bonds, with benchmarks recommended by the advisor. We further recommend that additional savings, for reserves, remain a line-item in the budget, and that TCDLA set aside an amount that is approximately 4% of TCDLA's net revenue from NACDL-sponsored CLE and gross revenue from dues each year. The purpose is to have a sufficient "rainy day fund" so that TCDLA can survive if we ever faced economic catastrophe, and which also might allow the TCDLA to take advantage of a fortuitous opportunity to make a substantial investment, such as when purchasing our next home office. A suggested goal is to have about 12 months cost of administering our affairs in reserve.

6. Home Office: TCDLA first used the offices of its founders, then rented office space, and then bought a small residential-type building on 12th Street in Austin. We grew. TCDLA is now paying off an \$800,000 mortgage to TCDLEI on our 6,000-square-foot building at 6808 Meadow Hill Drive in Southwest Austin. The Home Office, though adequate in size, is located 30–60 minutes from the Texas Capitol building, the Court of Criminal Appeals, and Travis County's state and federal courts. It is not a convenient place for use for committee meetings in Austin, TCDLA lobbying activity, or use by individual members. However, recent highway construction has possibly made our building an attractive location for business offices needing space in the rapidly developing suburban area along both Highway 290, west to Dripping Springs, and Highway 71, north to Lake Travis. We are "selling" part of the highway frontage because of eminent domain. Soon it might be profitable to sell, especially if there is a buying opportunity closer to downtown. The strategy is to sell high and buy low. The purpose is to move the home office to a central location so that members, committees, and the Board can use it.

III. Diversity—Long Range Plan

GOAL: TCDLA must have a policy of affirmative action to increase and maintain diversity in TCDLA's membership, leadership and CLE programs.

TCDLA values the differences in people. Diversity recognizes that people with different backgrounds, skills, attitudes, and experiences bring fresh ideas and perceptions. TCDLA should encourage and harness these differences to make TCDLA programs relevant and useful. TCDLA should draw upon the widest possible range of views and experiences so it can listen to and meet the changing needs of its members and the public. The encouragement of diversity benefits TCDLA.

The Long Range Plan recognizes that the composition of our membership changes over time.

We started with 16 men and one woman. TCDLA has worked hard to include rural, suburban, and urban lawyers, solo practitioners and members of a firm. At times there has been attention to what the law calls "cognizable groups," including women and people of color.

The appointment, in 2016, of a TCDLA Woman's Caucus demonstrates TCDLA's commitment to diversity in membership and leadership. We need to encourage the inclusion of Asians, the LGBTQ community, and groups whose distinct identity is not yet clearly established.

The Long Range Plan proposes adoption of a bylaw amendment to encourage more diversity, as follows: The nominating committee should be instructed to consider the composition of the Board and encourage, or recruit, lawyers for nomination who, if elected, will increase diversity. Now "recruits" should also be encouraged to write for the *Voice* and considered as seminar speakers.

To increase diversity, the formal nominations meeting should be moved from the second quarterly meeting to the third. This will allow more time for directors to work to be of service, and for directors seeking re-nomination (as well as potential new directors) to be evaluated. In 2015–2016, for example, nominations were solicited in October, decided in November, and the new leaders selected on that calendar will start their terms in June. Anyone passed over was "out," or a "lame duck," after November 2015.

The Long Range Plan is to reduce the period between nomination and inauguration—and to allow for affirmative action and recruitment to increase diversity, as well as to encourage more attendance and more active participation. TCDLA has the most up-to-date information technology, including the ability to inform members through the internet. If necessary, TCDLA can hold elections online, using our listserv, as well as the *Voice*. A shorter nomination inauguration schedule can be



easily achieved, will help develop “doers” as new leaders, and enhance overall diversity.

IV. State Bar and Specialty Bars

The goals of TCDLA include encouraging our members to actively participate and seek leadership roles in other lawyer organizations.

TCDLA is the pre-eminent organization for criminal defense lawyers in Texas. The Long Range Planning Committee recognizes that there are many professional organizations that provide service to lawyers and the public. We believe that the long-term interests of lawyers, other bar groups, and the public are entirely consistent with the mission of TCDLA.

The 2014 election of TCDLA Charter Member Buck Files as President of the State Bar was historic: Never before had a full-time criminal defense attorney been elected to lead all the lawyers in the state of Texas. His example should encourage our members to consider offices in the State Bar for its Board of Directors, as well as local bar associations and specialty bars throughout the state of Texas and the United States.

TCDLA should be a source of information for our members considering leadership in other groups. The *Voice* can publish helpful information. Either a staff member or a TCDLA committee should provide, or publish, the answers to obvious questions, such as: How do I get on the State Bar Board? What about the Young Lawyer’s Association? The ABA Criminal Justice Section? NACDL? A grievance committee? And so on.

At the same time, TCDLA must enforce its conflict of interest policy. This is a practical, legal, and ethical rule: Essentially, our Officers and Directors should not use TCDLA’s proprietary information for the financial advantage of some other organization in direct competition with TCDLA, except when disclosed and approved by the Board or the members.

V. Technology—Long Range Planning

GOAL: TCDLA must provide member support in the use of advanced information technology.

TCDLA has made considerable progress over the past decade by providing technological assets that benefit our membership. Our listserv provides a means to communicate on a regular basis, sharing news and information relevant to the practice of criminal law. We have developed an online *Voice for the Defense* with numerous features including the functionality of allowing for computer searches of the site for relevant past articles. We provide free apps for tablets and smart phones with the text of most of the rules and statutes relevant to criminal practice. We

provide seminar material in digital format and have discussed, for some time, providing CLE via the internet. We maintain a sophisticated website for the benefit of our members and the public.

Moving forward, there are at least three areas in which we could advance our use of technology. First, we can develop the capacity to make first-rate CLE available on the internet. In conjunction with this advance, we should develop an app that allows members to access current and past CLE video content via their computers, laptops, tablets, and smart phones. The success of webinars by NACDL and other CLE providers should be studied and considered. We suggest that this app be separate from and in addition to our current app in order to avoid compromising the function of either.

Most filings and research are now conducted over the internet. This trend is being mandated by the courts and will only continue to grow. Most trials now involve some level of technology to be competitive with the prosecution in communicating with the jury. As time passes, jurors will come to expect competency in this realm of communication. Nothing is gained by professing and demonstrating ineptitude in the use of technology the prosecution uses to communicate with the jury.

The practice of law increasingly requires computer literacy. We should consider providing regular training to allow our members to improve their computer skills and increase their understanding of the function of the vast array of media available, now and in the future, in the practice of criminal law. Computers, software, and the internet are still “new” to many lawyers who did not have these tools available until relatively recently. This type of training is different from the typical CLE lecture format. It can only be meaningful if we provide an opportunity to learn by doing, rather than simply lecturing our members on the magic available to them if only they learn how to use it. Finally, we cannot provide the services we currently provide nor advance our goals without developing a robust Information Technology capacity for TCDLA. In the short term this may involve a larger budget for contract services. We need to study the Austin market and decide whether to employ full-time staff or regularly reviewed contractors to maintain the technological products and support that we provide, and to implement new technological benefits, for the organization and the members, whenever possible. The Long Range Plan is always to stay up-to-date, in the short run and in the future as well.

VI. Long-Term Relationship With Law Schools

GOAL: The Long Range Plan goal is to establish an ongoing, cooperative and mutually beneficial relationship with each law school in Texas.

Our efforts to achieve TCDLA's mission not only can, but should, start when future lawyers receive their initial legal, academic, and ethical training. If we can start there, we can help the law schools produce better-trained lawyers and introduce them to the practice of criminal law.

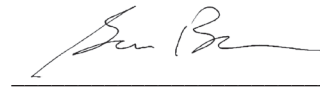
There are ten law schools in the state of Texas. There are three in Houston: the University of Houston, South Texas College of Law, and Thurgood Marshall School of Law; two in Dallas: Southern Methodist University and the University of North Texas School of Law; one in Austin, University of Texas; one in Lubbock, at Texas Tech; one in Waco, at Baylor; one in Fort Worth, Texas A & M School of Law; and one in San Antonio, at St. Mary's University.

TCDLA should do the following:

1. Establish a relationship with each law school by regular contact with the administration, and particularly with the faculty and student organizations that are involved in criminal law.
2. Promote and publicize our training programs to the students at the law schools.

3. Allow law students to attend our training programs without charge.
4. When we have continuing legal education events in or near a city that has a law school, we should particularly publicize the event to the law students and invite them to attend. Try to have, whenever possible, CLE events at or near one or more of our law schools each year.
5. Offer TCDLA members as speakers and teachers to the law schools and as judges at law school competitions.
6. Donate publications to law schools libraries, particularly to clinical programs.
7. Each year, at least one Board Member should be appointed as liaison to each law school in Texas, and asked to submit an annual Report on TCDLA's relations with the school.

Approved this the 1st day of March, 2016.



Sam Bassett
President, TCDLA



TCDLA Member Benefit

iPhone/iPad Application

The TCDLA apps are mobile-device applications for use on Apple's iPhone, iPad, iPod Touch, as well as Android devices. The apps contain 15 of the most popular criminal law codes, rules, statutes and resources for Texas and federal criminal lawyers. The TCDLA apps are free for members of TCDLA and not available to the general public.

To download the TCDLA iPhone app, please visit Apple's "App Store" on your mobile device. For Android devices, go to the "App Market." Search for "TCDLA" and download your free app. You will need your TCDLA username and password to login to the app.

The TCDLA iPhone app is not currently compatible with Google Android, Blackberry, Palm or any other non-Apple smart phone device. The TCDLA Android App only works on Android devices.