

San Antonio Express-News (TX)

Metro and State News Page 09B

Bexar DA's open file policy called 'inferior' by state's defense lawyers

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Publication Date : September 30, 2007

The Tarrant County District Attorney's Office would call Bexar County's Open File Policy progressive -- for the 1970s.

The policy governs how much access defense lawyers have to the goods the state has on their clients, and local defense lawyers want to see it changed to better fit, in their view, the meaning of the word "open."

"It's far inferior to almost every other place in Texas," said lawyer **Mark Stevens**, describing the policy that lets defense lawyers view, but not copy, prosecutors' files. "(Recently) I just spent an hour and a half in an office dictating a file. My secretary is probably going to have to spend seven or eight hours on that transcription."

David Montague, the Tarrant County DA's staff attorney, as well as many defense lawyers, cite two reasons for sharing information -- justice is better served when both sides know what's in the state's file and fewer cases go to trial, thereby saving everyone money.

Although Stevens and other lawyers are quick to note that District Attorney Susan Reed gives them more than the law demands -- prosecutors must turn over exculpatory evidence and a few other things -- they say the files should be more accessible.

"She lets us look at more than she has to let us look at, I'll acknowledge that," Stevens said. "I just don't see why she doesn't let us make copies."

Reed said she's working on it, but she's in no hurry.

"What can I say? I don't make it as easy as everyone else," she said.

The issue, she said, is mostly a matter of time and expense, but philosophically she's not inclined to help the defense.

"It's going to be costly and personnel-intensive, but I have some things in the works for that," Reed said, adding that defense lawyers already get an information advantage under the current policy.

"They get to know what we've got, like we don't get to know what they've got," she said.

Expense, defense lawyers said, is not an issue.

George Taylor, president of the San Antonio Criminal Defense Lawyers Association, said if Reed would allow a copy machine, defense lawyers would shoulder the cost.

Trend toward openness

While official legal requirements don't force prosecutors to give defense teams much, the statewide trend is toward openness. Often, district attorneys say they view

the gift of access as an advantage to themselves and to the justice system as a whole.

From smaller offices like Comal County to urban Tarrant County, defense lawyers get copies of files, and sometimes even online access.

"We just ask for them to pay for the cost of a CD or a DVD and we'll make a copy for them," said Comal County District Attorney Geoff Barr.

Tarrant County District Attorney Tim Curry began letting defense lawyers see files -- without making copies -- when he was first elected in 1972, said Montague.

"I think this was a very innovative policy in the '70s," he said.

Montague said the policy evolved to letting defense lawyers have their own copier. Two years ago, Tarrant County moved to a Web-based system that puts files at defense lawyers' electronic fingertips. As in other counties, some documents remain off limits, including trial strategies and certain victim information, he said, but the policy has always been to push for openness.

"We believe that it ensures justice in that kind of absolute sense," Montague said. "But we also believe it's just as important in making the system work efficiently, without a lot of wasted time trying to figure out, what do they have and what are they going to do with it."

One of Reed's former employees, ex-appellate prosecutor Ed Shaughnessy, echoed Montague's "absolute" argument, in terms of being able to fight appealed convictions.

When in the DA's office, Shaughnessy said he had recommended that other prosecutors be more open, rather than less -- it made things easier if the case was appealed.

"If you had allegations that the state had withheld evidence, and could put prosecutors up to say, 'We disclosed everything,'" Shaughnessy said, "it's easier to knock down that argument."

Expedited justice?

Reed has a reputation as a fan of technology. She's aware of the Tarrant County system and has dispatched people to look into it. And she says she'd love to be able to download her office's files onto a disk. But advancing technology is a lonely battle for her office, she said, with little support from Bexar County's information services department.

She also doubts the claim that more access would translate into more plea deals.

But almost every defense lawyer interviewed volunteered that having copies of files would make it easier for them in many cases to persuade clients they should plead instead of going to trial.

Defendants don't always want to believe a lawyer who tells them the state has a rock-solid case, they said. So if a lawyer can show the defendant a copy of the full police report, witness statements, and the sky-high lab results of his blood alcohol test, he or she is more likely to be convinced that a trial is a bad gamble. And that, they say, saves time and money for everyone.

"I've had clients tell me they don't believe what they've got in the file," Stevens said. "The more information I have, the easier it is for me. I'm not on a suicide mission here."

In other cases, the defense might learn something that helps their case -- and in a system that is supposed to presume innocence, they argue, that's only fair.

"If you can't honestly show someone everything you've got on them and still convict them, maybe you shouldn't be convicting them," said lawyer Alan Brown.

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