



## **INDIGENT DEFENSE TASK FORCE**

*Alex N. Levay Jr., chair*

The Virginia State Bar's Indigent Defense Task Force hosted for a second consecutive year a forum-style gathering, at the Virginia State Bar's 2006 Annual Meeting. The June 15, discussion allowed representatives of the VSB, voluntary bars, government agencies and public interest groups to update activities related to indigent defense reform. The exchange also offered an informal opportunity for the task force to carve out a flexible agenda that will dovetail with other groups' efforts.

Due to important activities on several fronts, this report also cites efforts by entities other than the task force. These entities share goals and concerns regarding indigent defense. Coordinating information about parallel initiatives gives perspective and context, and allows the task force to avoid duplication and redundancy.

The task force agreed at its June 2006 meeting to continue efforts to remove or substantially alter nonwaivable caps on court-appointed fees and to support substantive procedural reform, such as discovery reform, that will aid the fair administration of justice. The goal is to be well-positioned to share information with major players prior to the next session of the Virginia General Assembly and to answer questions about the fiscal impact of proposed reforms. This is consistent with VSB Executive Director Thomas A. Edmonds's request that the task force respond to certain preliminary recommendations he excerpted for its review from the preliminary report of the Supreme Court of Virginia futures commission, formally known as the Commission on Virginia Courts in the Twenty-First Century: To Benefit All, To Exclude None.

The task force is pleased to join the work of other bar committees asked to respond to different preliminary recommendations, and it appreciates the expressions of concern voiced by John E. Lichtenstein, 2006–2007 chair of the VSB Criminal Law Section. These views will be in September with VSB President Karen A. Gould and the VSB Executive Committee. The task force is grateful for the executive committee's decision to respond formally to the futures commission with respect to matters deemed central to its regulatory and other missions.

Among other reforms, the futures commission's preliminary recommendations call for an adequately staffed statewide public defender system (1.11) supplemented by adequately compensated appointed counsel and removal of the fee caps (1.8). Additionally, the commission's preliminary report recommends that public defender offices receive

funding at a level comparable with those of commonwealth's attorneys' (1.9). These were all issues previously considered and recommended by the task force in 2004.

2006–2007 President Gould has offered to write and secure signatures for a letter to legislators and the Governor on behalf of past presidents of the VSB in support of indigent defense reform. She takes as her model an April 2006 letter from past Virginia attorneys general to members of the General Assembly who sit as budget conferees for indigent defense matters. Ms. Gould's letter will not be submitted without precedent. The Criminal Law Section Board of Governors Annual Report noted the letter written by 2005–2006 VSB President Phillip V. Anderson that discussed the critical need for greater funding of indigent defense in Virginia. Ms. Gould's letter will be a timely addition to the momentum building among the bar's allies and partners in reform. We look forward to a similar campaign from members of the Virginia Association of Commonwealth's Attorneys.

Task Force members Betsy W. Edwards and James M. Hingeley Jr. met, on behalf of the Virginia Indigent Defense Coalition, with representatives of the Supreme Court and the Department of Planning and Budget. It is Jim's impression that the Court will try to work with representatives of the Virginia Indigent Defense Commission to arrive at estimates costing out certain indigent defense reforms. Jim anticipates this joint effort to be undertaken even though a proposed budget amendment that would have mandated the effort did not make it all the way through this year's legislative process. Research outcomes may provide more reliable figures than the back-of-the-envelope numbers that the task force was encouraged to explore on behalf of the bar last year.

Retired Judge Alan E. Rosenblatt has been named the interim executive director of the Virginia State Crime Commission. He has also been named by the General Assembly to fill one of the vacancies on the Virginia Indigent Defense Commission. Legislation in 2006 increased the number of members of the commission from twelve to fourteen.

It appears that the tide may be turning, once again, away from the filing of a lawsuit to compel increases in compensation paid to appointed counsel in Virginia. One reason may be the numerous favorable preliminary recommendations in the futures report. Another may be the expressed willingness of the current Governor and Attorney General to form a working group to try to tackle these problems. The Governor's 2006 Special Session Executive Amendment (to House Bill 5002) demonstrated his concern over inadequate court-appointed counsel fees. A working group with broad representation would be a positive bipartisan approach to what a subject that otherwise might be avoided.

The Virginia Criminal Justice Conference is scheduled for September 29 and 30, 2006, in Richmond. It will strive to build a working relationship between the prosecutor and defender sectors of the criminal bar. The conference will stress substantive law reforms as opposed to funding reforms. Modeled on the Boyd-Graves Conference, the Virginia Criminal Justice Conference is intended to be an annual event. In future years, indigent defense reforms may have a place on the conference agenda. The conference hosts ten study committees covering the following substantive issues: discovery; procedural defaults in the appellate courts; search warrants; subpoenas; standards for appointing investigators in court-appointed cases; not-guilty-by-reason-of-insanity competency; bond hearings; translators and interpreters; voir dire; and motions to suppress.

Finally, the Virginia State Crime Commission has been directed to conduct a two-year study of juvenile justice as a result of 2006 House Joint Resolution 136, sponsored by Delegate Brian J. Moran. Among other subjects, the crime commission will study improvement of "the quality of and access to legal counsel" in the juvenile and domestic relations court. The crime commission likely will focus on court-appointed compensation and the importance of specialized training for attorneys who handle cases involving juveniles.

