TOO MUCH MONEY, TOO LITTLE JUSTICE:

The Potter County Misdemeanor System

Jeff Blackburn

August 2015
FROM THE CHAIR

After I witnessed the vicious beating of a young man well known in my community, Robert Johnson, I decided to form the Amarillo Citizens for Open Government (ACOG) with members of the Amarillo Ministerial Alliance, the Law Office of Blackburn and Brown, and other community leaders. Our hope was to take the first step in addressing dysfunction in our local criminal justice system.

ACOG is proud to sponsor the release of the following report, which focuses on our concerns with the way justice is carried out in Potter County. We see this report as a way to spotlight routine injustice and the resulting financial waste. This system is in dire need of effective checks, balances, and community control.

This document is not exhaustive. It is, however, the most comprehensive assessment the county has of its criminal justice system to date. Our report also offers suggestions, solutions, and ways forward to make our community great. We welcome you to read it, react to it, and implement it. We also hope it encourages a full, bottom up examination of the county’s criminal justice system.

Reverend Herman Moore
Chairman
Amarillo Citizens for Open Government
ABOUT THE AUTHOR

Jeff Blackburn, 58, is a lawyer from Amarillo, Texas and a partner in Blackburn and Brown, LLP. His firm handles criminal defense and civil rights cases throughout Texas.

In 1999, 46 people were arrested in the small town of Tulia, Texas for distributing cocaine. Out of these 46 people, 40 were black. These people were convicted based solely on the testimony of a crooked cop.

Blackburn mounted a five-year campaign to overturn all of the convictions. With the support of volunteer lawyers from the NAACP and ACLU, he eventually got pardons and civil damages for all those arrested. The victory in the Tulia case, which resulted in the largest mass exoneration in U.S. history, caused permanent reforms to be made to the Texas criminal justice system.

Blackburn founded the Innocence Project of Texas (IPTX) in 2005. He served as its Chief Counsel until 2015.

In 2009, he represented the family of Tim Cole. Mr. Cole had been falsely convicted of rape in Lubbock, Texas in 1986 and died in prison. Blackburn and his students at Texas Tech law school got Mr. Cole exonerated in a first-ever court of inquiry and eventually obtained for him the first posthumous pardon in Texas history.

Mr. Cole’s case led the Texas legislature to create the Tim Cole Advisory Panel on Wrongful Convictions, the Tim Cole Compensation Act, and, most recently, the Tim Cole Exoneration Review Commission.

The State Bar of Texas named Blackburn “Criminal Defense Lawyer of the Year” for 2002/2003. He has received the Frank Spurlock award, the Henry B. Gonzales award, and the Maury Maverick award for his civil rights work. He was named “Freedom Fighter of the Month” by High Times magazine and has been listed as a Texas Monthly “Super Lawyer” for 11 years. He has been board certified in criminal law by the Texas Board of Legal Specialization since 1988.
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Introduction and Executive Summary

This is a report about the way that Potter County, Texas is currently handling Class “A” and “B” misdemeanor cases. It is based on a detailed study of thousands of such cases filed in calendar year 2012.

What Are Class “A” and “B” Misdemeanors?

Class “A” and “B” misdemeanor charges are for criminal offenses that can be sentenced to either a year or six months in county jail respectively, a fine, court costs, and no prison time for punishment. In Potter County, they are prosecuted by an elected County Attorney (Scott Brumley, 2005-Present) and adjudicated by two county court at law judges.

Why Do They Matter?

The way Potter County handles these cases is critically important both to the thousands of people accused of them and the community as a whole.

For the individual accused of one of these crimes the charges are extremely serious. Persons convicted of a Class “A” or “B” misdemeanor faces not only jail time and fines but also may find themselves in trouble for the rest of their lives.

A misdemeanor conviction in this state can cause, among other things:

1. Loss of job opportunities;
2. Loss of professional licenses;
3. Eviction;
4. Suspension of a driver’s license;
5. Loss of federal and state assistance;
6. Loss of child custody;
7. Registration as a sex offender;

Class A misdemeanors can result in up to one year in county jail and Class B misdemeanors in up to six months.
8. Increased punishment for future charges;
9. Deportation.¹

The way that these charges are handled is extremely important to the community. Misdemeanor prosecutions carry heavy costs, both direct and indirect, to the taxpayers of Potter County.

**How Much Do These Cases Cost?**

The direct cost to the taxpayers is huge: they must pay the expense of arrests, incarceration, and case resolution. This report discusses those actual costs in detail.

The indirect, or collateral, cost of the misdemeanor system is equally large.

The Texas legal system can exact a heavy price from people who have been convicted of misdemeanors. Such punishment - whether direct or collateral - often removes people from the mainstream of society. Many of them lose their jobs, educational opportunities, and the ability to work and live successfully. Though that cost may be hard to quantify it is easy to see, and it is not small.

The way that we handle these cases also affects our perception of law and justice. When a legal system disregards fundamental fairness and due process simply in order to “process” defendants because they were arrested it loses the right to be respected. Eventually, it loses the right to be obeyed. In the end, that might be the highest cost of all.

**Results of This Study**

The results of this study are deeply disturbing. They show the Potter County misdemeanor system is broken and in need of extreme repair. For citizens accused of these offenses, the system is unfair and unjust. For taxpayers, the system is wasteful and
expensive. Potter County citizens are getting very little justice at very high cost.

**Which Way Forward for Potter County?**

The county is currently embroiled in a debate over whether to build a new county jail. Building this facility is expected to cost hundreds of millions of dollars. This report shows that the real discussion should be about building a better justice system, not a new and bigger jail. It shows that fixing our system by making it more fair and just would also make it much less expensive—so much less expensive that we likely will not need another jail.

**Proposals for Change**

**What the Potter County Commissioners and Judge Should Do**

This report urges the Potter County Commissioners Court and the County Judge to take the following actions, each of which would greatly improve the system by revealing the truth, creating checks and balances, and saving money:

1. **Hire an Outside Agency to Perform an Audit**

    Potter County should hire a non-profit organization to do a complete, thorough and independent audit of its misdemeanor system. This audit should analyze the data presented here, along with information from at least the years 2013 until the present concerning jail usage and case resolutions, in much more detail. It should contain policy recommendations. Then, and only then, can the elected leadership of Potter County make informed decisions about what to do.

2. **Create a Pretrial Release System**

    Potter County should immediately create a pretrial release system to ensure that the majority of people accused of these offenses do not stay in jail while their cases are pending. Such a system would save the taxpayers millions of dollars in jail costs now
and in the future. It would also free up jail space for serious offenders that belong there.

3. **Create a Public Defender System**

Potter County should immediately create a public defender system to ensure that indigent people accused of misdemeanors are given proper representation. For the amount of money the county is spending now on court-appointed lawyers it could afford it. Such a system would operate as a check and balance on the prosecutors in the short run and would save taxpayers money in the long run.

4. **Create a Citizen’s Oversight Board for the Potter County Attorney’s Office**

Potter County should create a citizen’s review board, representative of average people, to oversee the Potter County Attorney. Since many of the unfair and wasteful practices detailed in this report are a direct result of that office’s actions, the citizens of Potter County need to bring it under control.

**What the Potter County Attorney Should Do**

This report urges the Potter County Attorney to take the following actions immediately:

1. **Agree to an Independent Audit**

Mr. Brumley should agree to a thorough and complete audit of his office in conjunction with a top-to-bottom, independent examination supported by the Potter County Commissioners Court for the reasons outlined above.

2. **Stop the Police from Jailing People Accused of Marijuana Possession**

There is no reason why people accused solely of marijuana possession should be taken to jail. Doing so is costing hundreds of
thousands of tax dollars. State law provides for police officers to cite and release such offenders if they are residents of the county. As the chief law enforcement officer of Potter County, the county attorney should take immediate steps to ensure that police officers follow this law.

3. **Speed Up and Toughen the Initial Review of Charges Filed by the Police**

The Potter County Attorney’s Office is causing people accused of misdemeanors to stay far too long in jail at great cost to taxpayers. This is because it delays the initial review of cases brought by the police. It is the prosecutor’s job to quickly and energetically act as a check on the police by reviewing and often rejecting cases brought to him. The Potter County Attorney should start doing that job.

4. **Stop Pressuring Unrepresented People to Plead Guilty**

This practice is wrong to the people accused and costly to taxpayers. The Potter County Attorney should stop encouraging people ignorant of the law to act against their own interests by pleading guilty. Lawyers from the Potter County Attorney’s office who deal with the accused should be telling people who are unrepresented to get lawyers instead of telling them to plead guilty without one.

5. **Stop Jailing People for Low-Level, Non-Violent Misdemeanors**

The offers being made by the Potter County Attorney to defendants in misdemeanor cases, especially to unrepresented ones, are typically harsh and usually involve jail sentences. These offers and the sentences that result from them are costing taxpayers millions of dollars, unduly penalizing poor people, and severely under-utilizing the community supervision system already in place in Potter County.
Why I Wrote This Report

In the fall of 2014, I had been a practicing lawyer for 31 years, 26 of them as a board certified specialist in criminal law. I was then Chief Counsel to the Innocence Project of Texas (IPTX). I had also just ended my term as Chair of the Texas State Bar’s Standing Committee on Legal Services to the Poor in Criminal Matters.

After years spent representing defendants, exonerating the falsely accused and trying to improve the Texas system I was convinced that problems in the way our courts handle misdemeanor cases were by far the most overlooked area in Texas criminal justice reform. As Professor Alexandra Natapoff comprehensively explained in her groundbreaking work *Misdemeanors*, 85 S. Cal. L. Rev. 101 (2012), misdemeanor prosecutions affect large numbers of ordinary citizens, likely cause many of them to be wrongfully convicted, and is an area of criminal justice that has received little attention.  

My Experience as a Practicing Lawyer

My experience as a practicing criminal defense lawyer for thirty-two years has borne this out. In the last decade, I have seen increasingly large numbers of misdemeanor cases in Potter County handled more as one-sided and crooked business transactions than as legal proceedings, with the majority of defendants pleading guilty without a lawyer and suffering lifelong legal problems as a result. A trip to the Potter County Courthouse on a “plea day”, where dozens of unrepresented defendants are falsely led to believe over and over again that what they are getting from a prosecutor is a “great deal”, is enough to turn the stomach of anyone who believes in justice.

My Experience as an Innocence Project Lawyer

My experience as a founder and leader of the IPTX further convinced me that the cavalier attitude of many county justice systems toward misdemeanor defendants produced large
numbers of false convictions. In my ten years of heading the IPTX, I investigated hundreds of cases in which people had been railroaded into pleading guilty to misdemeanors, often without a lawyer, just to get out of jail. Many of the people I represented and exonerated found themselves falsely accused of serious felonies later because of the record they had gotten as a result of such misdemeanors.

**My Experience with the State Bar of Texas**

My experience as a committee chair and activist with the State Bar of Texas dealing with indigent defense issues allowed me to see the larger implications of indigent defense for the public view of the legal system. This experience showed me that we have cheapened our justice system and brought the legal profession into disrepute by dishonorably turning the misdemeanor courts into assembly lines.

**The Need for Hard Evidence**

Because misdemeanors are regarded as “unimportant”, there is currently very little statistical data on this subject. I decided to compile such evidence by carefully examining the records of one county for a one-year period. Potter County, given its size and my location in Amarillo, was a logical choice. I was able to recruit an able young researcher, Andrew Boyd, to assist me and we began what would become a seven-month-long process of combing through individual records.

**The Need for Public Debate**

By the time that collection was done, I concluded that our findings should be made public. Potter County needs a real debate about the present and future of its justice system. Accordingly, I took what I had learned to my friends and colleagues in Amarillo Citizens for Open Government (ACOG), a local reform group. They agreed, and now this report - under ACOG’s sponsorship - has become a reality.
No one paid me to do this report. I did it because I believed it was the right thing to do and worth the time, effort, and expense.

This is the first time such a report has been done in Potter County, and it is likely the first time it has been done in this way in Texas. I hope it will not be the last. I sincerely hope it will lead to a real discussion, vigorous debate, and constructive change.
What I Looked At and Why: The Scope of this Report

Why Cases From 2012?

I decided to look only at misdemeanor cases filed in the year 2012 in Potter County. This was because I wanted to see how the cases played out over time. If I had attempted to examine charges filed in 2013 or 2014 it would have been impossible to gain a complete picture of what was happening because many of them would still be pending even now.

There have been no discernible changes to Potter County’s system, policy, or procedures since 2012. The same judges and prosecutors are in office, the county’s approach to indigent defense is unchanged, and the system has not been audited. It is safe to say that what the county was doing in 2012 is being done now. If that is not the case, of course, the report will need to be considered in light of any such changes.

Cases That Were Not Studied

I did not examine juvenile cases because those cases are not considered matters of public record and are not accessible. I also did not examine the way in which the Potter County mental health system works because that data is difficult, if not impossible, to obtain and cases involving mental impairment are in a special category outside the scope of this study.

Collecting the Data

Mr. Boyd started collecting information in November of 2014. He read each misdemeanor case file, beginning with those filed on January 1, 2012 and ending on December 31, 2012. He took information from each physical folder kept at the Potter County Clerk’s office and entered it into a spreadsheet that
contained 50 variables as well as ample room for notes and impressions.

This process took hundreds of hours to complete. After seven months of Mr. Boyd reviewing and categorizing each file, I had a complete dataset.

**Problems with the Data**

I am neither a trained data analyst nor a statistician. As I point out below, there are plenty of such experts and the government of Potter County should have hired some of them to do this work a long time ago. Consequently, there may be mathematical errors in this report. At the same time, I can say that I have carefully checked, re-checked, and audited the information below and I believe it to be as accurate as the data allows.

**Working With the Data**

*Making Sense of What I Had*

I started with 2,950 cases. It became clear that there were several things to do in order to understand what these cases meant.

My first task was to trim some of the charges from the dataset because they did not logically belong there. I explain below why and how that was done.

*Reducing the Numbers*

Some of the cases that Mr. Boyd collected were not really “cases” at all. I trimmed our initial group of 2,950 cases by removing those that told nothing about the way the system worked. I cut out cases that were still not finally resolved at the time of the data being collected. I also removed criminal record expunction and non-disclosure cases, appeals from justice courts, and cases that had no names attached to them.
Then, I collapsed the cases using “person” and “disposition date” categories so that I could analyze results by person rather than case filings. One person, although facing multiple charges, only takes up one jail bed or needs one pretrial supervisor. That is why it made sense to do that for this study.

After these procedures were followed, I had 2,899 cases to analyze. These cases belonged to 2,560 people. Although it is entirely possible that some of these individuals showed up multiple times in 2012, the base measurement became the “case packet” - every case disposed on the same date for the same defendant.

Table 1, below, shows the number of charges filed per case packet. The majority of people faced only one misdemeanor charge.

Table 1: Number of Charges Per Person in 2012 and Resolved by 2014

<table>
<thead>
<tr>
<th>Charges</th>
<th>Number</th>
<th>Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>One</td>
<td>2,289</td>
<td>89.4%</td>
</tr>
<tr>
<td>Two</td>
<td>219</td>
<td>8.6%</td>
</tr>
<tr>
<td>Three</td>
<td>42</td>
<td>1.6%</td>
</tr>
<tr>
<td>Four</td>
<td>7</td>
<td>0.3%</td>
</tr>
<tr>
<td>Five</td>
<td>1</td>
<td>0%</td>
</tr>
<tr>
<td>Six</td>
<td>1</td>
<td>0%</td>
</tr>
<tr>
<td>Seven</td>
<td>1</td>
<td>0%</td>
</tr>
<tr>
<td>Total</td>
<td>2,560</td>
<td>100%</td>
</tr>
</tbody>
</table>
Questions That Needed Answers

My next task was to analyze this data.

As I did, it became clear that there were seven questions that mattered:

1. What offenses were these people being prosecuted for?
2. How long were they in jail before their cases were resolved?
3. How much did their pretrial detention cost taxpayers?
4. How were people accused of misdemeanors being represented?
5. How much did court-appointed lawyers cost taxpayers?
6. What were the legal results in these cases?
7. What difference did lawyers make in those results?
What the Data Showed

The data provided the answers to those seven questions.

Some of it was surprising. Some of it was shocking. Some of it was simply depressing. All of it revealed the workings of a broken system badly in need of repair.

This will be clear below.

**Question 1: What Offenses Were These People Prosecuted For?**

This question is important because the answer shows what types of offenses the Potter County Attorney spends time and taxpayer money to prosecute. It also shows how many cases are being brought by police officers and prosecuted by the Potter County Attorney because the officer alleges that someone did not cooperate with them in some way.

The most common charges included Possession of Marijuana, Theft, Driving While Intoxicated, and Assault – Domestic Violence. In these cases, along with many others, there is objective, verifiable evidence of a crime. Taken together, these fairly obvious sorts of charges were a majority of the cases.

There were a large number of charges, however, that can collectively be categorized as “police officer opinion” crimes. In these cases, the “evidence” almost always consists solely of the officer’s word about what happened and his or her opinion of what it meant. As opposed to cases like marijuana possession and DWI, where verifiable evidence exists, these cases are highly subjective. These “opinion” charges include the following offenses, ranked here by the number of them filed in 2012:

1. Failure to Identify (196);
2. Evading Arrest (109);
3. Resisting Arrest (92);
4. Interference With Public Duties (23);
5. Fleeing or Attempting to Elude a Police Officer (5);
6. Hindering Apprehension or Prosecution (4);
7. False Report to a Peace Officer (4); and
8. Escape (1).

Table 2 shows the number and proportion of each of the charges filed in 2012. Charges filed less than 20 times in 2012 were lumped together and listed as “miscellaneous”.

<table>
<thead>
<tr>
<th>Offense</th>
<th>Number</th>
<th>Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Possession of Marijuana</td>
<td>484</td>
<td>17%</td>
</tr>
<tr>
<td>Theft</td>
<td>431</td>
<td>15%</td>
</tr>
<tr>
<td>Assault Domestic Violence</td>
<td>353</td>
<td>13%</td>
</tr>
<tr>
<td>DWI</td>
<td>320</td>
<td>11%</td>
</tr>
<tr>
<td>Failure to Identify</td>
<td>196</td>
<td>7%</td>
</tr>
<tr>
<td>Trespassing</td>
<td>180</td>
<td>6%</td>
</tr>
<tr>
<td>Evading Arrest or Detention</td>
<td>109</td>
<td>4%</td>
</tr>
<tr>
<td>Resisting Arrest, Search, or Transportation</td>
<td>92</td>
<td>3%</td>
</tr>
<tr>
<td>Assault</td>
<td>60</td>
<td>2%</td>
</tr>
<tr>
<td>Interfering with Emergency Call</td>
<td>52</td>
<td>2%</td>
</tr>
<tr>
<td>Criminal Mischief</td>
<td>36</td>
<td>1%</td>
</tr>
<tr>
<td>Possession of a Controlled Substance</td>
<td>31</td>
<td>1%</td>
</tr>
<tr>
<td>DWLI</td>
<td>38</td>
<td>1%</td>
</tr>
<tr>
<td>Burglary of a Vehicle</td>
<td>36</td>
<td>1%</td>
</tr>
<tr>
<td>Prostitution</td>
<td>32</td>
<td>1%</td>
</tr>
<tr>
<td>Possession of a Prohibited Weapon</td>
<td>32</td>
<td>1%</td>
</tr>
<tr>
<td>Possession of a Dangerous Drug</td>
<td>29</td>
<td>1%</td>
</tr>
<tr>
<td>Terroristic Threat/Family Violence</td>
<td>29</td>
<td>1%</td>
</tr>
<tr>
<td>Unlawfully Carrying a Weapon</td>
<td>27</td>
<td>1%</td>
</tr>
<tr>
<td>Interference with Public Duties</td>
<td>22</td>
<td>1%</td>
</tr>
</tbody>
</table>
Table 3 below shows the number of and proportion of cases based on objective, verifiable evidence versus those that were based on an officer’s subjective opinion:

**Table 3: Number of Filings by Offense “Evidence” Type**

<table>
<thead>
<tr>
<th>Offense</th>
<th>Number</th>
<th>Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cases With Objective, Verifiable</td>
<td>2,400</td>
<td>85%</td>
</tr>
<tr>
<td>Evidence</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Cases Based on Subjective Opinion of</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Law Enforcement Officer</td>
<td>432</td>
<td>15%</td>
</tr>
<tr>
<td>Total</td>
<td>2,832</td>
<td></td>
</tr>
</tbody>
</table>

The percentage of the “subjective” cases might not seem unduly high at first glance. However, when one understands the raw number of such charges—hundreds of them, including the especially dubious ones of “failure to identify” and “evading”—it becomes clear that law enforcement officers are filing these “opinion” cases as a matter of routine.

**Question 2: How Long Were People in Jail Before Their Cases Were Resolved?**

This question is important because the answer gives us a clear picture of whether the current system is efficiently disposing of cases and how much money is being spent on housing pretrial detainees.
There were 2,504 people with a “booking date” in the data that I looked at. There was also information on their bond amount, when they made bond, and what bonding company they used.

The average bond amount for a misdemeanor in Potter County in 2012, set by individual courts, was $2,224.00.

Over a quarter of the people charged -670 individuals- were unable to make bond. The remaining 1,834 people paid money to bail bond companies to get out of jail before their trial date.

Table 4 shows these figures.

<table>
<thead>
<tr>
<th>Bond</th>
<th>Number</th>
<th>Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>1,834</td>
<td>73%</td>
</tr>
<tr>
<td>No</td>
<td>670</td>
<td>27%</td>
</tr>
<tr>
<td>Total</td>
<td>2,504</td>
<td>100%</td>
</tr>
</tbody>
</table>

The important issue here is how long people were spending in jail as “pretrial detainees”. These were people who had not been found guilty of any offense and, with few exceptions, were entitled to release while they waited for trial.

The data revealed that:

1. The 1,834 people who made bond spent an average of 12.9 days in jail as pretrial detainees; and

2. The 670 people who were unable to make bond spent an average of 92.7 days in jail as pretrial detainees.
Question 3: How Much Did Their Pretrial Detention Cost Potter County Taxpayers?

The Vera Institute, a national non-profit organization, published a report entitled “The Price of Jails: Measuring the Taxpayer Cost of Local Incarceration” in May 2015. Potter County participated in the survey that became the basis of the Institute’s report. According to the report, based on figures Potter County gave the authors, Potter County currently spends $57.68 per day per incarcerated person.6

Using that rate, I calculated that Potter County taxpayers paid a total of over $4.9 million to lock up people accused of misdemeanors who had not been found guilty in 2012. If the rate of $57.68 per day was more or less in 2012, of course, it will affect the final numbers- but that figure seems to be the most sensible place to start.

The breakdown of those costs is illustrated in Table 5 below:

<table>
<thead>
<tr>
<th>Bond</th>
<th>Time Before Leaving Pretrial Incarceration</th>
<th>Number</th>
<th>Pretrial Incarceration Cost at $57.68</th>
</tr>
</thead>
<tbody>
<tr>
<td>No</td>
<td>92.7</td>
<td>670</td>
<td>$3,582,447</td>
</tr>
<tr>
<td>Yes</td>
<td>12.9</td>
<td>1,834</td>
<td>$1,364,628</td>
</tr>
<tr>
<td>Total</td>
<td>34.2</td>
<td>2,504</td>
<td>$4,947,077</td>
</tr>
</tbody>
</table>

The most popular charges prosecuted by the Potter County Attorney in 2012 - 484 - were for possession of marijuana. (See Table 2 above.)

Table 6 shows that of the 484 people with a marijuana case filed, there were 411 who only faced that charge. The majority of defendants, 85 percent, were able to bond out of jail. They paid an average $1,178 for bond after waiting in jail for 7.7 days. For the 15 percent who did not bond, Potter County paid just under $0.5 million to house them in jail awaiting trial.
Table 6: Cost for Defendants Facing Only a Marijuana Charge

<table>
<thead>
<tr>
<th>Bond</th>
<th>Pretrial Days Incarcerated</th>
<th>Number of Defendants</th>
<th>Proportion of Defendants</th>
<th>Pretrial Incarceration Cost at $57.68</th>
</tr>
</thead>
<tbody>
<tr>
<td>No</td>
<td>95.52</td>
<td>63</td>
<td>15%</td>
<td>$330,990</td>
</tr>
<tr>
<td>Yes</td>
<td>7.7</td>
<td>348</td>
<td>85%</td>
<td>$147,290</td>
</tr>
<tr>
<td>Total</td>
<td>21.16</td>
<td>411</td>
<td></td>
<td>$478,280</td>
</tr>
</tbody>
</table>

This expense was almost completely unnecessary.

In 2007, the Texas Legislature passed a law popularly called "cite and release" with overwhelming approval in both the Texas House (132 for, 0 against) and Senate (29 for, 1 against). This law allows for law enforcement to issue tickets to county residents accused of marijuana possession and some other misdemeanors instead of arresting them. 

By simply following this law, Potter County would likely have avoided jailing most of these people. Following that law in 2012 could have saved Potter County taxpayers $501,664. Since there was no data about the residence of the people charged with marijuana, I am assuming here that they were Potter County residents- a fairly safe proposition. There is little other choice given the lack of information in the records. No matter: a great deal of money could have been saved by “citing and releasing” these people.

Question 4: How Were People Accused of Misdemeanors Being Represented?

This is a critical question. Answering it shows important facts about the overall quality of justice in Potter County and whether the current system spends taxpayer money wisely.

The data showed that:
• 1,423 people who were prosecuted by the Potter County Attorney in 2012 had no legal help;

• 675 people had court-appointed lawyers; and

• 403 people had private lawyers.

These numbers translate into the percentages shown in Figure 1 below:

**Figure 1: Attorney Type for Disposed Cases Filed in 2012**

---

**Question 5: How Much Did Court-Appointed Lawyers Cost Taxpayers?**

The average rate of pay for court-appointed attorneys in fiscal year 2012 was $364 per disposed case. The county paid out a total of $261,515 in fees for these lawyers in that period. [8]

The county also paid $1,535.00 in expert witness fees that fiscal year, $185.95 in "other expenditures" and nothing for investigative expenses. [9]
Potter County also paid a full-time employee to be its “Indigent Defense Coordinator”. The position’s salary and benefits cost the taxpayers $48,457.  

In fiscal year 2012, then, Potter County taxpayers paid a total of $311,692.95 in indigent defense costs for misdemeanor cases.

**Question 6: What Were the Legal Results in These Cases?**

The majority of people facing misdemeanor charges filed in 2012 were found “guilty” in one or more cases.

- 1,887 of them were sentenced to jail;
- 425 people had their cases dismissed or were acquitted of all charges; and
- Only 245 people received some form of probation.

This is remarkable. It shows that even for the lowest-level, least-violent crimes the Potter County Attorney is not moving people out of the criminal system or the jail through the use of diversion programs. It also shows that the Potter County Attorney is severely underutilizing the probation system Potter County has in place.

These data show that in Potter County most people accused of offenses like marijuana possession, criminal mischief, or reckless driving receive a costly jail sentence. Rather than paying back taxpayers through probation programs, they are costing taxpayers the high expense of being locked up.
Question 7: What Difference Did Lawyers Make In These Results?

The answer to this question is examined below through a series of charts and tables. It reveals a great deal.

First, it shows that defendants who hired lawyers had a much better chance at getting found “not guilty”, having their charges dismissed, or getting probation than other defendants.

Second, it shows that defendants who had court-appointed lawyers did worse than defendants who hired lawyers.

Finally, it shows that defendants who represented themselves did much worse than defendants who had lawyers of any kind, appointed or hired.

Table 7, below, shows the results by attorney type:

Table 7: Results by Attorney Type

<table>
<thead>
<tr>
<th></th>
<th>Appointed</th>
<th>Hired</th>
<th>Pro Se</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Dismissals and Acquittals</strong></td>
<td>176</td>
<td>117</td>
<td>132</td>
<td>425</td>
</tr>
<tr>
<td><strong>Deferred Adjudication</strong></td>
<td>45</td>
<td>70</td>
<td>130</td>
<td>245</td>
</tr>
<tr>
<td><strong>Guilty on Any</strong></td>
<td>463</td>
<td>216</td>
<td>1,208</td>
<td>1,887</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>684</td>
<td>403</td>
<td>1,470</td>
<td>2,557</td>
</tr>
</tbody>
</table>
Figure 2 shows the proportion of outcomes by attorney type. Here, we see clearly that a defendant who hires a lawyer has a much greater chance at receiving deferred probation (17%) or getting charges dismissed or acquitted (29%):

Looking at these data one might conclude that people who had no lawyers had nine percent of their cases dismissed. However, a closer look at those cases reveals that a number of them were dismissed because the cases got too old or they were convicted on a more serious crime. In addition, there were 40 defendants that skipped bond. After the Potter County Attorney’s Office decided it would not be able to serve a warrant on those defendants, the cases were dismissed.
Table 8 shows the new figures with those dismissals cut out from the data. Now, it is clear how few dismissals unrepresented defendants get compared to other attorney types. It also shows that the likelihood of getting found guilty if one is a defendant without a lawyer is 85 percent.

Table 8: Disposed Cases Correcting for Dismissals by Attorney

<table>
<thead>
<tr>
<th></th>
<th>Appointed</th>
<th>Hired</th>
<th>Pro Se</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>All Dismissed or Acquittals</td>
<td>176</td>
<td>117</td>
<td>85</td>
<td>378</td>
</tr>
<tr>
<td>Deferred</td>
<td>45</td>
<td>70</td>
<td>130</td>
<td>245</td>
</tr>
<tr>
<td>Guilty</td>
<td>463</td>
<td>216</td>
<td>1,208</td>
<td>1,887</td>
</tr>
<tr>
<td>Total</td>
<td>684</td>
<td>403</td>
<td>1,423</td>
<td>2,510</td>
</tr>
</tbody>
</table>
These tables, graphs and figures clearly show that in Potter County legal results are determined by money: if a defendant can afford a private lawyer he or she will do better than with a court-appointed lawyer. If a defendant has no lawyer at all he or she will do much worse in this system.

The data above show the differences in legal results people get depending on the type of lawyer they had. Another finding is that the quality of outcome - the type and length of punishment - also depends on the kind of lawyer a defendant gets or whether he or she gets one at all.

As we saw above, hiring a private lawyer resulted in more dismissals and more deferrals. Table 6 below shows that the outcome - the punishment - on “guilty” cases also varies widely by attorney type, both in proportion and length of sentence. Virtually
all defendants who have been connived into defending themselves got jail time.

The proportion of jail to supervision (deferred adjudication and probation) sentences for appointed and unrepresented defendants were equivalent: 87 percent of both representation types received jail time and 13 percent received a probation sentence. Court-appointed lawyers, then, did the same as unrepresented defendants by this standard- a telling fact about the quality of court-appointed counsel in Potter County.

People who represented themselves got notably shorter sentences than they would have if they had gotten a court-appointed lawyer. They received, on average, a sentence 19 days shorter in jail. The supervision sentences were effectively equivalent, though appointed attorneys came out slightly better here- appointed clients received two days less on average than unrepresented ones.

Hired attorneys, who as we have seen had far fewer guilty verdicts and dispositions, got supervision sentences for 41 percent of their clients. These sentences were substantially shorter than the 380 days that appointed attorneys got. These were the only sentences of under one year. The 59 percent of defendants who hired lawyers and received jail sentences had the shortest average sentence- 54 days. The difference is more striking when one considers the amount of time an unrepresented defendant spends in jail before trial in comparison to a defendant with retained counsel (36 days versus 20).
Table 9 shows this clearly:

### Table 9: Punishments by Attorney Type

<table>
<thead>
<tr>
<th></th>
<th>Appointed</th>
<th>Hired</th>
<th>Pro Se</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Jail Sentence Number</strong></td>
<td>441</td>
<td>168</td>
<td>1,150</td>
</tr>
<tr>
<td><strong>Jail Sentence Proportion</strong></td>
<td>87%</td>
<td>59%</td>
<td>87%</td>
</tr>
<tr>
<td><strong>Jail Sentence Length Average</strong></td>
<td>74 Days</td>
<td>54 Days</td>
<td>55 Days</td>
</tr>
<tr>
<td><strong>Supervision Sentence Number</strong></td>
<td>65</td>
<td>119</td>
<td>174</td>
</tr>
<tr>
<td><strong>Supervision Sentence Proportion</strong></td>
<td>13%</td>
<td>41%</td>
<td>13%</td>
</tr>
<tr>
<td><strong>Supervision Sentence Length Average</strong></td>
<td>380 Days</td>
<td>336 Days</td>
<td>382 Days</td>
</tr>
<tr>
<td><strong>Total Sentenced</strong></td>
<td>506</td>
<td>287</td>
<td>1,324</td>
</tr>
</tbody>
</table>
Too Little Justice

The information analyzed in the earlier section shows that the Potter County misdemeanor system is delivering a shockingly low quality of justice.

In the American legal order, we consider a criminal system “just” if it has three features:

1. Criminal laws that define specific rules;

2. Sufficient evidence in individual cases to believe that a particular defendant has violated a particular rule; and

3. Procedures to ensure that law and evidence actually do the work of determining case outcomes. 11

Is the Potter County misdemeanor system “just” by this standard?

No.

The information I analyzed shows that people are being prosecuted in Potter County for far too many poorly-defined crimes that are based strictly on an officer’s subjective opinion, which in turn shows a pattern of people being convicted without sufficient evidence. It also shows that the system suffers from a serious procedural breakdown - one that enables unjust results to be delivered on an assembly-line basis.

System Failure: Poor Review of Police Charges by Prosecutors

In a justice system that works, police officers bring charges to prosecutors who quickly review the case and decide whether it is a valid charge. This is the first check and balance in the system, and one of the most important.

I had no statistics for police cases that were refused by the Potter County Attorney in 2012 so I cannot say what percentage of
charges made by police officers were never prosecuted. This is another number that must be discovered by a professional data analyst as part of an audit. I can say, however, that whatever checking or review was being done is taking far too long.

Personal experience handling cases and the experience of other lawyers I have interviewed indicate that it takes weeks, or sometimes even months, for the Potter County Attorney to conduct an initial review of charges. Meanwhile, the person arrested sits in jail - a fact demonstrated by the long periods of time that elapse before bond is able to be made. As we discovered, it took 12.9 days on average for people that could make bond to get out of jail (See Table 5). This shows that the Potter County Attorney was, and is, doing a poor job of acting as a preliminary check and balance on the police. It should never take nearly two weeks for a charge to be filed and a bond to be set in a misdemeanor case.

Pro Se defendants are not told about consequences of a conviction, not allowed to examine the state’s file, not allowed to question the evidence against them.

System Failure: No Defense Lawyer

The next, and probably most important, check and balance in a system that works is the defense lawyer. It is the lawyer’s job to investigate the facts, apply the law, and zealously work to get his or her client released. In a healthy legal system, the accused can rely on a trained lawyer to assert his or her rights, test the evidence, and operate as a strong check on the power of the government.

There is no effective check or balance like that in Potter County. In the majority of cases, people “represent” themselves - see Figure 1. These people are not told about the consequences of a misdemeanor conviction, not allowed to examine the state’s file, not allowed to question the evidence against them. They have no legal knowledge or expertise. They are forced to rely on statements made by their adversary- the prosecutor- to decide what to do with their case. That is a system that works on trickery and deceit, not fairness and justice. No decent person could call such a system right, good or deserving of respect.

It is apparent from the length of time people are spending in jail before their cases are resolved (see Table 5) that they are
pleading guilty simply to get back to their jobs, families, and homes. This is not a system in which evidence is being tested or checked. This is a system in which “evidence” means little or nothing and just being arrested means a near-certain conviction.

How many false or unprovable charges did people without counsel plead “guilty” to just to go home? How many innocent people with no lawyer pled guilty? The numbers are likely quite high. We know this because of the large numbers of dismissals and “not guilty” verdicts obtained by lawyers, even court appointed ones, versus the poor results obtained by unrepresented defendants- see Figures 2 and 3.

Put another way: if you were an unrepresented person accused of a misdemeanor in Potter County in 2012 there was an 85 percent chance you would be convicted of a crime. If you were represented by a court-appointed lawyer there was a 68 percent chance. If you were defended by a private lawyer, there was only a 54 percent chance of a conviction.

In a fair system these numbers would not look so lopsided. In a fair system with checks and balances in place, dismissals and “not guilty” verdicts would be distributed far more equally.

**Injustice for All: Some Other Consequences of These Failures**

It is clear from the data I have analyzed that the Potter County misdemeanor system is grossly unfair to the people who have the bad luck to be caught in it. They are not the only ones who suffer from it, however. There are at least two serious ripple effects from it that harm all of the citizens of this county.

**Ripple Effect: Too Much Police Power**

This system winds up giving extraordinary power to the police.
There is currently a large amount of concern in Amarillo and Potter County about abuses perpetrated by the Amarillo Police Department (APD).

In late March of 2015, APD officers beat Robert Johnson, a mentally disabled African-American man, after arresting him for the “crime” of riding a bicycle without a headlight in front of police cars. In response to this incident, which was videotaped, several of us formed a community group called Amarillo Citizens for Open Government (ACOG). ACOG organized a massive community forum on police brutality held on July 9, 2015. At that meeting, multiple victims of the APD - many arrested and charged with the sort of subjective, opinion-based crimes that are widely prosecuted in Potter County (see Table 3) - spoke out about abuses they had suffered.

This led to a growing call for the City of Amarillo to create a system of police oversight, especially after the police department “exonerated” its officers of wrongdoing despite the video evidence.

Predictably, the Potter County Attorney’s office has handled the situation by siding with the police and prosecuting Mr. Johnson for possession of marijuana, despite strong evidence that it was planted on him.

Why did the APD act in such a brazen manner in this case? Why are so many people complaining of brutality by this department?

The data in this report goes a long way to show why. The Potter County Attorney’s office does not act as a check on the police. By creating a system that prosecutes a large number of police opinion crimes and deprives the people accused of them of any meaningful defense, the Potter County Attorney has encouraged and facilitated such abuse.

Police in Amarillo know that their charges, no matter how subjective or unfounded, will likely be accepted. They also know
those charges will likely result in a conviction. For most of the poor people the APD accuses of crimes like “Resisting Arrest” or “Failure to Identify”, the old phrase “you can beat the rap, but not the ride” should be modified to “you can’t beat either one in Potter County.”

By effectively eliminating a fair system of checks and balances, the Potter County misdemeanor system has helped create a police department that through its brutality and lack of oversight has lost the confidence of a large number of citizens.

**Ripple Effect: Poor Respect for the Justice System**

The data show that the Potter County misdemeanor system is fundamentally careless about checking and balancing the power of the police, searching for the truth of the charges against individuals, and about the punishments meted out.

Professor Natapoff describes well what this kind of system does to the citizenry as a whole:

> Because the routine processes by which we produce misdemeanor convictions are lax, there is little guarantee that any individual convict actually committed the offense.....

A system that punishes without bothering to check whether a particular defendant actually “did it” is one that does not much care about fault.....

......When [a criminal system] lets go of evidence, by failing to require it upon arrest in the first instance, or failing to check whether it exists later on, it relinquishes the claim that criminal punishment is driven by fault. Without fault, however, the state’s authority to deprive individuals of their liberty loses its special status. Instead of a legal regime of justified punishment, the criminal process starts to look increasingly ad hoc, a practice of social control in search of a justification. 15

The data reveal that this is precisely what Potter County has created: an *ad hoc* system in which fairness and justice mean little and convictions are a near-certainty for anyone unlucky enough to be poor and accused.
A legal system this cynical is bad for everybody. It causes people to lose faith in the police, the government, and the law. That harm cannot be measured by data or statistics, but it surely can be measured by the attitude of the people toward our legal and political institutions. People have a right to have confidence in their legal system. That right is being violated every day in Potter County.
Too Much Money

The most truly astonishing aspect of Potter County’s sub-par misdemeanor system is how much it is costing taxpayers.

It would be one thing for the county government to be saving money by having such a system. That is not the case, however. This system, broken as it is, is costing taxpayers millions in needless costs. Some of these costs are plainly visible. Others are hidden. All of them are too high.

Visible Costs

In 2012, taxpayers paid the following plainly visible amounts for this system:

Pretrial Detention Expenses

As I noted in Table 5 above, Potter County’s practice of jailing misdemeanor arrestees and holding them for long periods before their court dates cost taxpayers:

- $3,582,447 for those who could not make bond;
- $1,364,628 for those who did eventually post bond.

The total expense:

$4,947,075

Potter County’s decision to not follow the “cite and release” law in marijuana cases in 2012 likely cost taxpayers:

$501,664

Nearly all of this expense could have been avoided if Potter County had created a pretrial release system that cut bail bondsmen out of the picture. In counties that have such systems, it
costs an average of $3.00 per day to supervise a defendant awaiting trial. This is far cheaper than locking people up.

For example: if Potter County had decided to release non-violent misdemeanor offenders through a pretrial release system that got them out of jail within three days of being arrested, it would have saved jail expense of:

$3,254,967

Table 10 shows the difference:

<table>
<thead>
<tr>
<th>Bond</th>
<th>Violent</th>
<th>Days of Pretrial Incarceration</th>
<th>Number</th>
<th>Cost at $57.68 per day</th>
<th>Savings if Released on Day 3</th>
</tr>
</thead>
<tbody>
<tr>
<td>No Violent</td>
<td>130.16</td>
<td>124</td>
<td>$930,946</td>
<td></td>
<td></td>
</tr>
<tr>
<td>No Non Violent</td>
<td>84.14</td>
<td>546</td>
<td>$2,649,845</td>
<td>$2,555,365</td>
<td></td>
</tr>
<tr>
<td>Yes Violent</td>
<td>24.89</td>
<td>275</td>
<td>$394,805</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Yes Non Violent</td>
<td>10.78</td>
<td>1,559</td>
<td>$969,371</td>
<td>$699,602</td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td></td>
<td></td>
<td>$3,254,967</td>
<td></td>
</tr>
</tbody>
</table>

This is only one example of what a pretrial release system, as opposed to a private bonding system, could save taxpayers—millions of dollars.

**Indigent Defense Expenses**

In 2012 Potter County paid a total of $311,692.95 for court-appointed lawyers, resources, and a full-time county employee to be the indigent defense coordinator.
This amount only paid for the defense of 27 percent of the people accused of misdemeanors. This was far too much money to pay for the mediocre representation of a small percentage of people.

**How To Save Money on Indigent Defense and Get a Lot More Justice**

This $311,693 could have been much better spent on a public defender system.

Creating such a system would, of course, provide a legal defense for indigent defendants and thus create a check on the power of the Potter County Attorney. It would also save money for the taxpayers.

To understand why, it is necessary to look at some facts:

- The Office of Court Administration reported 490 misdemeanor cases with appointed counsel in Potter County in calendar year 2012;\(^\text{16}\)

- The Texas Indigent Defense Commission’s *Weighted Caseload Study* sets a standard for the delivery of reasonably competent and effective representation. According to those standards, attorneys should carry an annual full-time equivalent caseload of no more than 236 Class B Misdemeanors and no more than 216 Class A Misdemeanors;\(^\text{17}\)

- A Texas Workforce Commission posting indicates the first year annual salary for an Assistant County Attorney – Criminal Division in the Potter County Attorney’s Office pays $51,000 per year as of February 2015.\(^\text{18}\)

Assume, for ease of calculation, that there is an even distribution of Misdemeanor A and B case assignments to a public
defender. This means a public defender can do a competent job handling 226 misdemeanors per year. It also means a public defender office would need 2.2 (490 assigned cases divided by 226 cases per lawyer) full-time employees to handle the cases.

The American Bar Association’s *Ten Principles of a Public Defense Delivery System* lists the eighth principle as:

There is parity between defense counsel and the prosecution with respect to resources and defense counsel is included as an equal partner in the justice system.19

Following that principle, Potter County would pay the same to 2.2 public defenders as it would to 2.2 Potter County prosecutors. Assuming that the same benefits were paid, a 27% additional cost, this would mean that each public defender would receive $64,770 annually.

The 2.2 full-time public defenders would therefore cost $142,494 - substantially less than Potter County paid in 2012. This would leave $169,199 for facilities, administration, investigators, and expert witnesses. It also means that the county could expand representation to 590 more cases ($169,199 is equivalent to 2.6 fulltime employees, each of which can work on 226 cases) without additional expense.

This option would be a much more cost-effective way for the county to handle the problem of indigent defense. Potter County paid $364 per case to appointed counsel in the small number of cases they handled. With a public defender system a full-time attorney would cost $64,770 for 226 cases or $287 per case. That is a savings of $77 per case.

This is only a preliminary analysis. A non-profit organization hired to do a proper audit of the county and make policy recommendations would certainly do a better job at this than I have. Even so, these rough calculations prove that a public defender system would be a far better, less expensive alternative than the non-system now in place.
Hidden Costs

By allowing the misdemeanor prosecution system to go unchecked for so long, Potter County has cost its taxpayers even more money than the amounts that are quantified above.

How many unnecessary cases have been filed based only on a police officer’s subjective opinion? How many prosecutors have been necessary to handle such cases? How many jail costs could have been avoided if the Potter County Attorney had acted more promptly to review and reject cases?

If the Potter County Attorney had chosen to divert or place on deferred probation people with petty and non-violent cases such as marijuana possession, misdemeanor drug offenses, and a host of other charges how much money would the county have saved?

The data here cannot answer those questions. Still, it does not take a genius to understand that a careless, bloated prosecution system such as this is costly to taxpayers in many ways. Creating real checks and balances in this system would significantly cut down the number of people in jail in Potter County. It would also likely eliminate the need to build a larger jail.
Which Way Forward for Potter County?

This report plainly shows that Potter County’s misdemeanor justice system is in crisis. It is delivering inferior justice at an extremely high cost.

If Potter County continues on the path it is on this crisis will deepen.

Tax revenues will continue to be squandered on jails, guards, and law enforcement. More people will likely be arrested, convicted and jailed. Few of them will have lawyers. Many of them will be innocent. All of them will receive assembly-line treatment in a system that no thinking person could call “just” or “fair”.

Potter County can and should choose a better way.

The Potter County Commissioners and County Judge Should Take Action

There are several immediate actions that the government of Potter County should take:

1. Perform an Audit

Potter County should immediately hire an independent organization to perform a thorough audit of its criminal justice system in order to make sound policy recommendations and decisions. Businesses, individuals, and government agencies audit themselves all of the time. They do it to save money and improve performance. Why should Potter County’s expensive and unjust misdemeanor system be exempt from such a process?

An objective examination of the system - one done with much more data and expertise than I could muster for this report - would reveal to the taxpayers exactly how to improve the system and save money.
The expense of such an audit would be a tiny fraction of the money now being wasted. An independent examination of this system would be a much better investment in Potter County’s future than an enormous and expensive jail.

2. **Create a Pretrial Release System**

Potter County should immediately create a pretrial release system.

This would ensure that the majority of people accused of misdemeanors do not stay in jail while their cases are pending. Such a system would save the taxpayers millions of dollars in jail costs now and in the future.

3. **Create a Public Defender System**

Potter County should immediately create a public defender system.

This would ensure that poor people accused of misdemeanors are given proper representation. For the amount of money the county is spending now on court-appointed lawyers it could afford a system that defended many more people both ethically and effectively.

4. **Create a Citizen’s Oversight Committee for the Potter County Attorney’s Office**

Potter County should immediately create a citizen’s review committee, representative of the taxpayers, to oversee and advise the Potter County Attorney.

The Potter County Attorney is largely to blame for many of the unfair and wasteful practices detailed in this report. The citizens of Potter County need to bring it under control.
The Potter County Attorney Should Take Action

The Potter County Attorney’s Office is the direct cause of most of the problems identified in this report. Assuming, for the sake of argument, that Mr. Brumley is actually interested in improving the system, he should take the following actions right away:

1. **Agree to an Independent Audit**

Mr. Brumley should agree to a thorough and complete audit of his office in conjunction with a top-to-bottom, independent examination conducted by the Potter County Commissioners Court for the reasons outlined above.

2. **Stop the Police From Jailing People Accused of Marijuana Possession**

The Potter County Attorney should stop law enforcement from jailing Potter County residents accused only of marijuana possession.

There is no reason why people accused solely of this offense should be taken to jail. Imprisoning these people is costing hundreds of thousands of tax dollars. The law provides for police officers to cite and release such offenders. As the chief law enforcement officer of Potter County, the county attorney should take measures to get the police to follow this law.

3. **Speed Up and Improve the Initial Review of Charges Filed by the Police**

The Potter County Attorney should start acting as a check and balance on the police by speeding up and improving its intake and review procedure.

By unreasonably delaying the initial review of cases brought to it by law enforcement, the Potter County Attorney’s Office is
causing people accused of misdemeanors to stay in jail for too long and at too much cost to taxpayers. It is the prosecutor’s job to quickly and energetically act as a check on the police by critically reviewing cases brought to him. The Potter County Attorney should start doing that job immediately.

4. Stop Pressuring Unrepresented People to Plead Guilty

The Potter County Attorney should stop pressuring people without lawyers to plead guilty.

This practice is grossly unfair and ultimately costly to taxpayers. The Potter County Attorney should stop encouraging people ignorant of the law to act against their own interests by pleading guilty. Instead, he and his assistants should be encouraging them to get lawyers.

5. Stop Jailing People for Low-Level, Non-Violent Misdemeanors

The Potter County Attorney should stop jailing people for these offenses.

The offers being made by the Potter County Attorney to defendants in misdemeanor cases, especially those without lawyers, are frequently harsh and unjust. These plea “bargains” and the sentences that result from them are costing taxpayers millions of dollars, unduly penalizing poor people, and severely underutilizing the community supervision system already in place in Potter County. The Potter County Attorney should stop these punitive practices right away and begin finding ways to keep people out of, rather than in, jail for such offenses.
Conclusion

The Potter County misdemeanor system is broken.

It perpetuates injustice. It wastes huge amounts of taxpayer money. It needs to be repaired now before it becomes bigger, worse and more expensive.

It is up to the elected leadership of this county to repair this system. I sincerely hope that this report will help show them how to do that.
Endnotes

1 State Bar of Texas, *Defending Yourself in a Criminal Case: The Dangers of*

2 I founded the Innocence Project of Texas, headquartered at Texas Tech School of Law, in 2005 and served as volunteer Chief Counsel. I resigned over political differences in June 2015. See http://blog.simplejustice.us/2015/06/17/innocence-inc/

3 Natapoff, *Misdemeanors*, 85 S. Cal. L. Rev. 101 (2012). This brilliant article presents the best scholarly analysis available of misdemeanor “justice” in the U.S. Any judge, lawyer, or citizen would benefit from reading it. I did, and it inspired me to do this study.

4 B.A., St. John’s College (Santa Fe), 2012.

5 ACOG was formed in May of 2015. See http://www.blackburnbrownlaw.com/acog/ for ACOG statements and position papers.


9 *Id.*

10 Potter County, Texas, 2012 Budget http://tools.cira.state.tx.us/users/0480/docs/Financials/Budgets/2012/FY12%20Adopted%20Budget.pdf

11 Natapoff, *supra*, at 142.


15 Natapoff, supra, at 155.

16 Office of Court Administration, County Level Courts - Misdemeanor Activity Detail for Potter County in Calendar Year 2012 (2012). http://card.txcourts.gov/oca_ReportViewer.aspx?ReportName=County_Level_Courts/CL_Misdemeanor_Activity_Detail_N.rpt&ddlFromMonth=1&ddlFromYear=2012&txtFromMonthField=@FromMonth&txtFromYearField=@FromYear&ddlToMonth=12&ddlToYear=2012&txtToMonthField=@ToMonth&txtToYearField=@ToYear&ddlCountyPostBack=188&txtCountyPostBackField=@CountyID&chkAggregateMonthlyReport=0&export=1706. The Texas Indigent Defense Commission reports number of indigent cases by fiscal year (October to September). They reported 718 cases for FY 2012; however, our dataset and OCA were much closer, reporting just under 500 cases. Therefore, I used the TIDC numbers for cost per case, but used the OCA number for the cost benefit analysis.


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Cover photo: Potter County Courthouse, from a postcard of the 1930’s. http://texasescapes.com/TOWNS/Amarillo/PotterCountyCourthouseAmarilloTexasPCTem.jpg

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