



Indigent Defense Standards

Jim Bethke
Executive Director, TIDC

**CSG West Public Safety
Committee Meeting**
May 19-20, 2016

Salt Lake City, Utah



The mission of the Texas Indigent Defense Commission is to provide financial and technical support to counties to develop and maintain quality, cost-effective indigent defense systems that meet the needs of local communities and the requirements of the Constitution and state law.

Who We Are

Thirteen-member governing board administratively attached to the Office of Court Administration. Jim Bethke is the Executive Director. The Commission has eleven full-time staff.

OFFICERS:

Honorable Sharon Keller	Chair – Presiding Judge, Court of Criminal Appeals
Honorable Olen Underwood	Vice-Chair – Presiding Judge, 2 nd Administrative Judicial Region of Texas

EX OFFICIO MEMBERS:

Honorable Sharon Keller	Austin, Presiding Judge, Court of Criminal Appeals
Honorable Nathan Hecht	Austin, Chief Justice, Supreme Court of Texas
Honorable Sherry Radack	Houston, Chief Justice, First Court of Appeals
Honorable Brandon Creighton	Conroe, State Senator
Honorable John Whitmire	Houston, State Senator
Honorable Andrew Murr	Kerrville, State Representative
Honorable Abel Herrero	Robstown, State Representative

MEMBERS APPOINTED BY GOVERNOR:

Honorable Olen Underwood	Conroe, Presiding Judge, 2 nd Administrative Judicial Region of Texas
Honorable Jon Burrows	Temple, Bell County Judge
Honorable Linda Rodriguez	Hays County
Anthony Odiorne	Burnet, Assistant Public Defender, Regional Public Defender Office for Capital Cases
Don Hase	Arlington, Attorney, Ball & Hase

What We Do

Our Purpose

Is to provide financial and technical support to counties to develop and maintain quality, cost-effective indigent defense systems that meet the needs of local communities and the requirements of the Constitution and state law.

Our Grant Program

In FY 2015 \$30.9 million awarded to Texas counties.
Formula grant awards totaled \$24 million (254 Counties).
Discretionary grants totaled \$6.9 million (18 Counties) .

Our Fiscal and Policy Monitoring Program

The Commission monitors each county that receives a grant to ensure state money is being properly spent and accounted for and to enforce compliance by the county with the conditions of the grant, as well as with state and local rules and regulations.

Our Innocence Program

Since 2005 the Commission has provided up to \$100,000 annually to the University of Texas School of Law, the Texas Tech University School of Law, the Thurgood Marshall School of Law at Texas Southern University, and the University of Houston Law Center to operate innocence clinics. This funding has contributed towards 11 exonerations. In 2015 the 84th Legislature expanded funding to include \$100,000 per year for two new public law schools at the University of North Texas Dallas College of Law and the Texas A&M University School of Law in Fort Worth.

Gideon vs. Wainwright

DIVISION OF CORRECTIONS
CORRESPONDENCE REGULATIONS

APR 21 1962
OFFICE OF THE CLERK
SUPREME COURT, U.S.

MAIL WILL NOT BE DELIVERED WHICH DOES NOT CONFORM WITH THESE RULES

No. 1 -- Only 2 letters each week, not to exceed 2 sheets letter-size 8 1/2 x 11" and written on one side only and if ruled paper, do not write between lines. Your complete name must be signed at the close of your letter. Clippings, stamps, letters from other people, stationery or cards must not be enclosed in your letters.

No. 2 -- All letters must be addressed to the complete prison name of the inmate. Cell number, where applicable, and prison number must be placed in lower left corner of envelope, with your complete name and address in the upper left corner.

No. 3 -- Do not send any packages without a Package Permit. Unauthorised packages will be destroyed.

No. 4 -- Letters must be written in English only.

No. 5 -- Books, magazines, pamphlets, and newspapers of reputable character will be delivered only if mailed direct from the publisher.

No. 6 -- Money must be sent in the form of Postal Money Orders only. In the inmate's complete prison name and prison number.

INSTITUTION _____ CELL NUMBER _____

NAME _____ NUMBER _____

*In The Supreme Court of the United States
October Term, 1961
No. 890 misc.
Clarence Earl Gideon, petitioner
-VS-
H.G. Cochran, Director, Division of
Corrections, State of Florida respondent.*

*"Answer to respondent's response to petition
for writ of certiorari."*

*Petitioner, Clarence Earl Gideon received
a copy of the response of the respondent
in the mail dated sixth day of April, 1962.
Petitioner, can not make any pretense
of being able to answer the learned
attorney General of the state of Florida
because the petitioner is not an attorney
or versed in law nor does not have the
law books to copy down the decisions of
this Court. BUT the petitioner knows
there is many of them nor would the
petitioner be allowed to do so.
according to the book of Revised
Rules of the Supreme Court of the
United States sent to me by Clerk of
the same court the response of the
respondent is out of time (Rule 24)*

NATIONAL ARCHIVES
TM 61-100
REV. 1-5-61

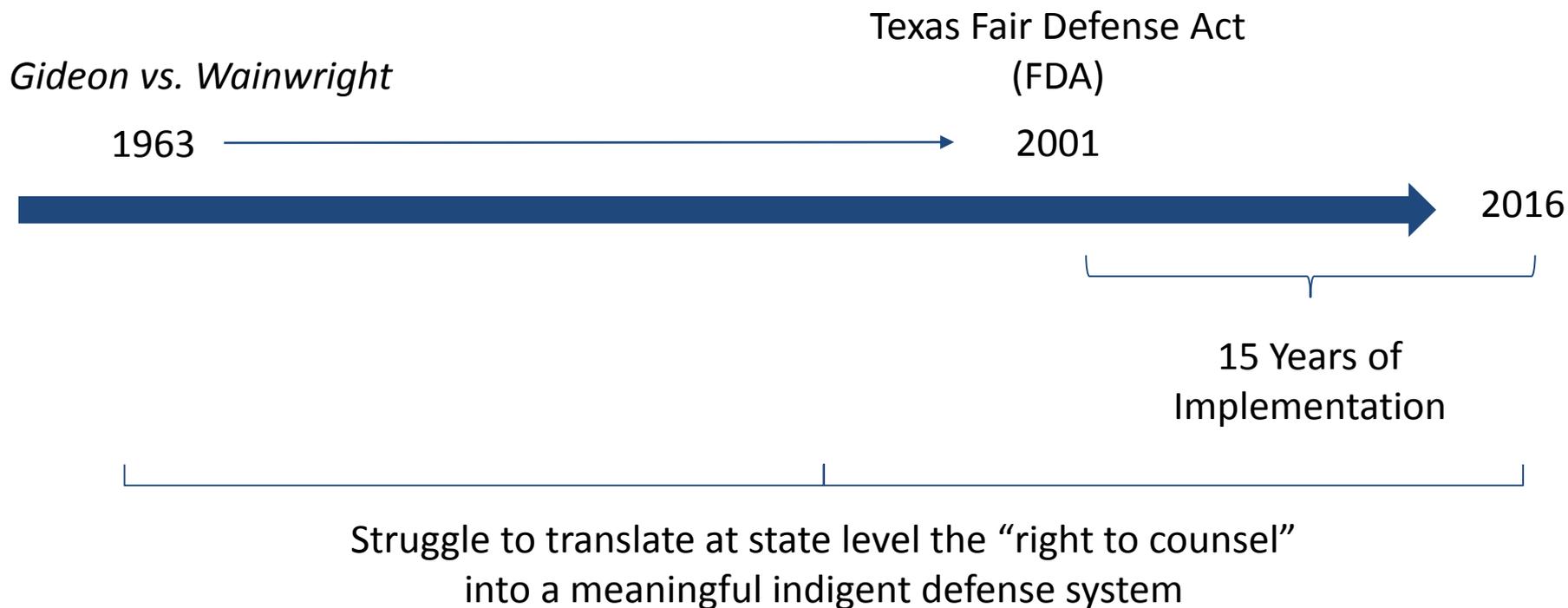
In our adversarial system of criminal justice....

With government “quite properly” spending “vast sums of money to establish machinery to try defendants accused of crime”.....you need

.....“procedural and substantive safeguard designed to assure fair trials before impartial tribunals in which defendants stands equal before the law”

“This noble ideal cannot be realized if the poor man charged with crime has to face his accusers without a lawyer to assist him.”

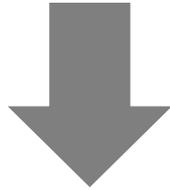
Long Road to Make Indigent Defense Meaningful



Fair Defense Act of 2001 Adopted to Address Major Grievances with Texas Indigent Defense

Texas Indigent Defense Commission

(formerly Texas Task Force on Indigent Defense)



Set infrastructure to address grievances and implement FDA in 2001

No uniformity in local indigent defense appointment practices

Judges' discretion to select counsel, pay fees and determine who is indigent fueled appearance of cronyism

No consistent standards regarding training and experience

No state funding or oversight

Few Public Defender's Offices

Appearance of inconsistencies in qualifications for death penalty cases

No reporting on budget/performance

Fair Defense Act Put Structure in Place for Improving Indigent Defense in Texas

Process Standards

Timing of Appointment

Method of Appointment

Compensation

Qualifications

State Funding

State Provides Some Funding to Support Indigent Defense

Grants for Improvements

Oversight

Required Plans

Transparency & Data from New Reports

Fiscal & Program Monitoring

Improve Quality of Representation

Meets Constitutional Standards

Heightens “prima facie” legitimacy

Improves “Justice Outcomes”

Highlights of Accomplishments

Key Process Standards Implemented

Prompt appointments

“Fair, neutral and non-discriminatory” appointment processes

Prompt payment process and standardized fee schedules

Qualification process

Ten exonerated through TIDC funded Innocence Projects

New Programs Established

Regional Capital Public Defender Office

Harris County Public Defender Office

12 New Programs Serving the Mentally Ill

New Vet Defender Program and Publication

Office of Capital Writs

First Client-Selection Program to be tested in the country (Comal County)

Expansion of Public Defender Programs

Oversight in Place

Local plans with agreed method of appointment, fee schedules and qualifications in place

Plan and expense reporting to State routine

Compliance audits routinely conducted

Legislative initiatives developed with Commission direction

Funding and Model Approaches in Your States



	Idaho*	Montana	New Mexico	Oregon	Utah	Washington
Funding Type	State & Co	State Funded	State Funded	State Funded	State & Co	State & Co
Model	County contract w/ PD, Assign, Contract or Combo	State PD & Conflict Coordinator	PD Offices Urban & Assigned/Contract Rural	County Contract w/ PD, bar, or Assigned or Combo	Nonprofit PD in 5 counties and Contract or Assigned Rest	Nonprofit PD Office Contracts & Appointed
Annual Funding State	\$2.5 m Request FY15	\$32 m (est FY 2015)	\$44.5 m (FY 2015)	\$123 m (FY 15 Gov Bgt)	\$33,900 (FY 15 Approp)	\$30.3 m (FY 15 Gen Fund App)
Annual Funding County	\$26.5 m Estimate FY 15				\$28 m (FY 15****)	\$130.5 m (FY 13****)
% State	8.5% - Appeals	100%	100%	100%	0.1% Post Conv Integrity	19%
% County	91.5%				99.9%	81%
Per capita spending (est 2015 Census pop)	\$17.52	\$30.98	\$21.34	\$30.53	\$9.36	\$22.43

*Idaho passed a \$5.5 million bill in 2016 to reform how the state provides indigent defense, so this is already outdated.

Washington appropriation subtracts parent representation program funding from state appropriation

*** Most recent report was for 2013, Douglas County used the 2015 budget number as they did not report in 2013 and 2013's budget doesn't include a line item, and the \$130.5 million county is actually \$6.3 m city and \$124 m county funds

**** The smallest county didn't have a budget line, so estimated at per capita expenditure for that county.

ABA Ten Principles in Texas



ABA 10 Principles

Texas

Harris County Public Defender (Justice Center Project 2013)

(1) The public defense function, including the selection, funding, and payment of defense counsel is independent.

TIDC

Yes

(2) Where the caseload is sufficiently high, the system consists of a defender office and active participation of the private bar.

No public defender in most counties, but active participation of the bar

Yes

(3) Clients are screened for eligibility, and defense is assigned and notified as soon as feasible.

Admin Code has requirements, but depends on county

Yes – defender data

(4) Defense counsel is provided sufficient time and a confidential space within which to meet with the client

Depends on County

Not at the jail

(5) Defense counsel's workload is controlled to permit the rendering of quality representation

Depends on County and Delivery method

Yes

(6) Defense's ability, training, & experience match the complexity of the case.

Requirements set by county and attorneys must meet them

Yes

(7) The same attorney continuously represents the client until completion of the case.

Yes

Yes

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

No

HCPD salary consistent with DA; exact parity hard to assess

(9) Defense counsel is provided with and required to attend continuing legal education.

Required, not always provided

Required and provided

(10) Defense counsel is supervised & systematically reviewed for quality and efficiency according to national and local standards.

Depends on County

Yes

Data Collection

Yes!

Yes! Even more than state requirements

Impact of High Quality Public Defender Offices

Improving Indigent Defense: Evaluation of the Harris County Public Defender

September 30, 2013

Dr. Tony Fabela
Carl Reynolds
Jessica Tyler

*Prepared by the Council of State Governments Justice Center,
with the support of the Harris County Public Defender Office*

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JUSTICE CENTER
THE COUNCIL OF STATE GOVERNMENTS
Collaborative Solutions to Public Safety

Outcome Analysis for Felony Clients

Felony HCPD counsel achieved for clients a greater proportion of dismissals, deferred sentences, and acquittals, and a smaller proportion of guilty, than assigned counsel

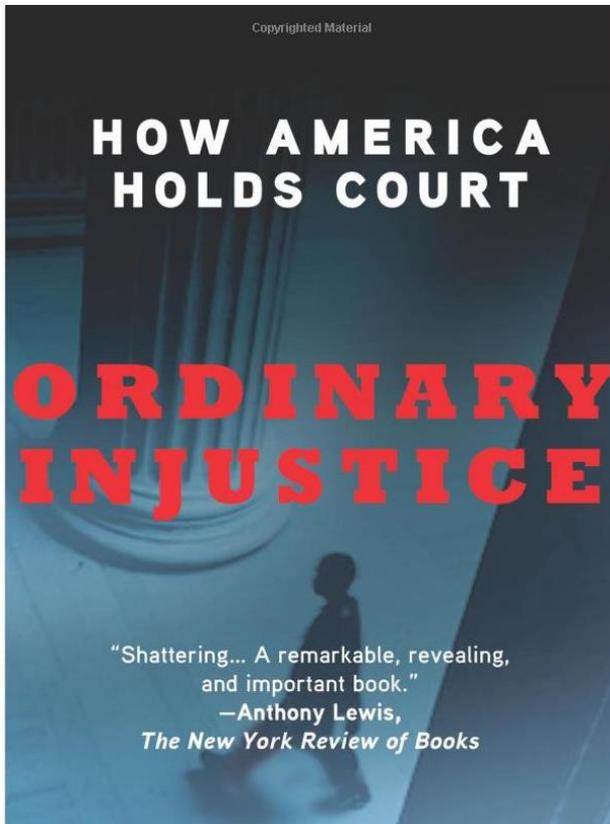
	HCPD	Assigned Counsel
Dismissals	17%	11%
Deferred	21%	17%
Acquittals	0.3%	0.1%
Guilty	61%	72%

ABA 10 Principles



Principle	Idaho	Montana	New Mexico	Oregon	Utah	Washington
Independent (1)	Pub Def Comm Since 2014	Office of Public Defense	State PD (78) & PD Comm (05)	Off of Public Defense Services	Some offices maybe, but in general no	Office of Public Defense
Private Bar Participation (2)	No req for private bar	Yes – PD and Conflict Coord.	Yes – mix PD and contract	Yes	Yes – all contract	Yes – mix PD, contract by CO
Prompt Notification (3)	Location Specific	In JustWare	Screened, no info on notif	Screened, no info on notif	Locat Specific	Screened, no info on notif
Sufficient Time and Confidential Space (4)	Location Specific	Location Specific	Statute, locat specific	Location Specific	Location Specific	Yes -WSBA Standard
Workload Controls (5)	Up to lawyer	Yes MCA 47-1-202	Yes. NMSA, Sec 31-15-2.3	State Bar Ethics Opinion 2007-178	Maybe in PD Counties, no for Contracts	<i>Wilbur</i> & 1-15 SC Misd Standards
Ability, Training, Experience match case complexity (6)	No req	Yes	Comm req standards	Training protocols	Location Specific	Yes – WSBA Standard
Continuous Representation (7)	Not mandated	Not mandated	Yes: 31-15-10	Have rule	???	WSBA Standard
Parity in Resources (8)	No	No	No	No	No	No
CLE Provided and Required (9)	Req, unclear provided	Req, unclear provided	Req, unclear provided	Req, some provided	Req, unclear provided	Yes – Regional Training Pgm
Defense Counsel is Reviewed (10)	Standards, no review	Yes	Yes – 2014 perf standards	Review policies	Location Specific	Yes – WSBA Standard
Info on 10 Principles beyond PD websites	'15 testimony	ABA Summ Dec 2015	ABA Summ Dec 2015	'10 Best Practices	ACLU, 6 th Amend, CSGJC	WS Bar Assoc 2011
Data Collection	IC 19§864	Yes – reported	Yes – reported	County Dependent	County dependent	OPD statewide report, WSBA

“Ordinary Injustice” Culture with 95% Pleas of Guilty



“Attorney and journalist Amy Bach spent eight years investigating the widespread courtroom failures that each day upend lives across America. What she found was an assembly-line approach to justice: a system that rewards mediocre advocacy, bypasses due process, and shortchanges both defendants and victims to keep the court calendar moving.”

“Here is **the public defender who pleads most of his clients guilty with scant knowledge about their circumstances**; the judge who sets outrageous bail for negligible crimes; the prosecutor who habitually declines to pursue significant cases; the court that works together to achieve a wrongful conviction. Going beyond the usual explanations of bad apples and meager funding, *Ordinary Injustice* reveals a clubby legal culture of compromise, and shows the tragic consequences that result when communities mistake the rules that lawyers play by for the rule of law. It is time, Bach argues, to institute a new method of checks and balances that will make injustice visible—the first and necessary step to reform.”

<http://www.amazon.com/Ordinary-Injustice-America-Holds-Court/dp/0805092277>

Bach, Amy. 2009. *Ordinary Injustice*. Holt.

http://books.google.com/books?id=TGcxvQRT5swC&pg=PP7&lpg=PP7&dq=ordinary+injustice+data&source=bl&ots=ul2UbmLZTw&sig=Gvzc7d2SPGf71NpeZPSq9KKkb5Q&hl=en&sa=X&ei=kaUjUb_aHMFUqAGO8YGoCA&ved=0CGIQ6AEwBg

References by State

ABA Ten Principles

http://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls_sclaid_def_tenprinciplesbooklet.authcheckdam.pdf

Idaho

http://www.pdc.idaho.gov/documents/PDC_JFAC_2-9-16.pdf

https://legislature.idaho.gov/sessioninfo/2015/interim/151016_pdf_03_Ltr%20to%20IAC.pdf

Montana

<http://publicdefender.mt.gov/>

<http://leg.mt.gov/content/Committees/Interim/2015-2016/Public-Defender/Meetings/Feb-2016/8JurisdictionsComps.pdf>

New Mexico

<http://www.lopdnm.us/>

<http://leg.mt.gov/content/Committees/Interim/2015-2016/Public-Defender/Meetings/Feb-2016/8JurisdictionsComps.pdf>

Oregon

<https://olis.leg.state.or.us/liz/2013R1/Downloads/CommitteeMeetingDocument/10305>

<http://courts.oregon.gov/OPDS/pages/index.aspx>

<https://www.oregon.gov/OPDS/docs/Reports/BestPracticesMarch2010Revision.pdf>

Utah

http://le.utah.gov/lfa/reports/cobi2014/LI_FKA.htm

Budgets: http://auditor.utah.gov/audit_reports/financial-reports-of-local-governments/

Committee Report: https://www.utcourts.gov/knowcts/adm/docs/Indigent_Defense_Committee_Report.pdf

Washington

<http://ofm.wa.gov/budget/decisionpackages/1517/056.pdf>

WA Standards: <http://www.defensenet.org/resources/publications-1/wda-standards-for-indigent-defense>

Budget: <http://apps.leg.wa.gov/documents/billdocs/2013-14/Pdf/Bills/Session%20Laws/Senate/5034-S.SL.pdf>

Douglas Co: http://www.douglascountywa.net/docs/default-source/auditor/finance/budget_2016.pdf?sfvrsn=20

http://www.wsba.org/~media/Files/Legal%20Community/Committees_Boards_Panels/Council%20on%20Public%20Defense/Standards%20for%20Indigent%20Defense%20Services%20Approved%20by%20BOG%20as%20of%209%202022%2011.ashx



STAFF MEMBERS

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