



Chair:  
The Honorable Sharon Keller  
Presiding Judge, Court of Criminal Appeals

Vice Chair:  
The Honorable Olen Underwood

Ex Officio Members:  
Honorable Sharon Keller  
Honorable Wallace B. Jefferson  
Honorable Roberto Alonzo  
Honorable Abel Herrero  
Honorable John Whitmire

Members Appointed by Governor:  
Honorable Jon Burrows  
Mr. Don Hase  
Mr. Anthony Odiorne  
Honorable Sherry Radack  
Honorable Olen Underwood  
Honorable B. Glen Whitley

Executive Director:  
James D. Bethke

## Report from the Texas Indigent Defense Commission for June 7<sup>th</sup> Texas Judicial Council meeting:

Since the Texas Indigent Defense Commission's last report to the Texas Judicial Council meeting on November 9, 2012, the Commission has had three meetings, December 13, 2012, March 21, 2013, and June 6, 2013. The next proposed Commission meeting date is August 23.

Also during this time two magnanimous events occurred simultaneously--the legislative session and the 50<sup>th</sup> anniversary of the Supreme Court's *Gideon v. Wainwright* decision. While strategizing about testifying at committee hearings about the Commission's Legislative Appropriations Request (LAR) and meetings with legislative staff and members, multiple *Gideon* events were being held not only here in Texas but around the nation. You'll see more about session and *Gideon* events below.

### ***Member Updates:***



Representative  
Abel Herrero

Representative **Abel Herrero** replaces former Commission member **Pete Gallego**. He is Chair of the House Criminal Jurisprudence Committee. His district includes part of Nueces County where he also has a civil litigation practice in Corpus Christi. We also want to extend our sincere thanks to Judge **Laura Weiser** and wish her the best of success in her new role as Judicial Resource Liaison at the Texas Center for the Judiciary. Governor Perry appointed Mr. Don Hase to the Commission. Mr. Hase is a defense attorney in Arlington and is no stranger to the Commission. He has been actively involved in TIDC matters over many years, has presented at past trainings with TIDC, and he is a past recipient of the Commission's Robert O. Dawson Distinguished Indigent Defense Award. The Governor also reappointed Tony Odiorne. Judge Keller appointed Mr. Odiorne as Chair of the Policies and Standards Committee and appointed both Mr. Hase and Judge Underwood as members of that committee as well.

### ***Texas Commemoration of the 50<sup>th</sup> Anniversary of Gideon:***



Don Hase

Close to 200 gathered in person or watched live-streaming on the internet as the 50<sup>th</sup> Anniversary of *Gideon v. Wainwright* was celebrated at the Capitol on March 18<sup>th</sup>. *Gideon v. Wainwright* is the landmark Supreme Court decision requiring states to provide counsel to those too poor to hire counsel. Presenters included [Professor Bruce Jacob](#), former Assistant Attorney General of Florida who argued *Gideon v. Wainwright* before the U.S. Supreme Court; [Deborah Leff](#), Acting Senior Counselor for Access to Justice at the U.S. Department of Justice; Honorable Sharon Keller, Presiding Judge, Texas Court of Criminal Appeals; Honorable Rodney Ellis, Texas State Senator; [Buck Files](#), President, State Bar of Texas; and [Lydia Clay-Jackson](#), President, Texas Criminal Defense Lawyers Association.

In case you missed it, [video downloads](#) are available, including a [commemorative program](#) with agenda.

## Legislative Update:

We were truly honored on March 18th following the Texas Gideon Commemoration (article on page one), when both the House (Representative Turner and Representative Herrero) and Senate (Senator Ellis) passed Resolutions commemorating the 50<sup>th</sup> anniversary of *Gideon*: [HR808](#) (and [archive video](#), go to 45:25-51:16) and [SR479](#) (and [archive video](#), go to 5:05-11:15). The photo is from the Senate presentation when speakers at the Commemoration were recognized on the Floor of Senate Chamber and exonerees and Commission staff were recognized in the Senate Gallery.



I'm happy to report that both the senate and house committees approved the Commission's request to restore estimated appropriation authority and unexpended balance authority. If included in the final budget these changes are estimated to generate an additional \$16.7 million in funding for indigent defense. We have also prepared summaries of [3 key indigent defense bills](#) that passed this session. See also, [Chief Justice Jefferson's State of the Judiciary 2013](#) wherein he emphasized the importance of adequately funding indigent defense. For complete information on legislation pending final outcome at the Governor's desk, please see pages 10-28 of the June 6<sup>th</sup> [Commission meeting book](#).

## Grants: \$20 Million in Formula Grants Awarded to Texas Counties

The Commission adopted the FY2013 Formula Grants with \$20 million in funds using a new formula based 50% on population and 50% on indigent defense expenses. The formula takes into consideration reported administrative cost, regional programs and discretionary grants in the final calculation so that counties are neither harmed nor provided special benefit for these expenses. Finally, counties under 10,000 in population as of 2000 will no longer have a baseline used in the grant calculation. The new formula grants increase the portion of grants funds that counties can budget for most counties.

The formula grants and their calculations have evolved over the years. In October 2012 the Commission and its staff convened at a strategic planning session to discuss whether there may be a better formula calculation to distribute the limited state funds available to counties pursuant to Section 79.037, Texas Government Code. Five new/proposed formulas were considered. There are wide variances among counties in elements such as per capita spending before and after 2001, population, geographic location, prosecutorial filings, and market prices for legal services. No formula can capture all iterations of fairness. The Grants and Reporting Committee met on November 1, 2012 and recommended adoption of this new formula and directed staff to review the formulas to identify all issues for the full Commission to meet and discuss on December 13, 2012.

The final Formula is:

- The sum of \$5000 plus;
- A calculation applied to the funds budgeted for FY2013 formula grants by the Commission based:
  - 50 percent on the County's percent of state population; and
  - 50 percent on the County's percent of statewide FY2012 direct indigent defense expenditures (as defined in Title 1, Part 8, Texas Administrative Code Sec. 173.202(1)-(3)):
    - less discretionary funds provided by the Commission for expenditures defined in Title 1, Part 8, Texas Administrative Code Sec. 173.202(1)-(3)
    - less the reimbursed costs of operating a regional program
    - the baseline requirements contained in Section E of the Request for Applications do not apply to counties with a 2000 Census population of less than 10,000 but do apply to all other counties.
- The County shall not receive more in funds than what was actually spent by the county in the prior year.

The formula provides three major advantages. First, counties have a larger portion of formula grant funds that can be budgeted each year. The two part population and equalization formula left most counties guessing on how much funding they would receive. This often had more to do with skyrocketing expenses in other counties than their own expenses. Second, the new formula ensures that more counties now qualify for funds. Many counties could not surpass

their baseline even though they spent thousands or tens of thousands on indigent defense costs. Finally, the new formula is simple. Any person can calculate their grant using the formula above. Since the new formula is simple it will be easy to add funds to the grant program if more become available later in the year.

### **Commission Publications since last update:**

- [April 2013 e-Newsletter of Texas Indigent Defense Commission](#)
- [Justice for All: How Texas Was Ahead of the Landmark Gideon v. Wainwright Decision](#), article by Presiding Judge Sharon Keller and Jim Bethke in the Texas Bar Journal (March 2013)
- [FY12 Annual and Expenditure Report](#)
- ["Message For You"](#) published in *County* (published by Texas Association of Counties)
- [December 2012 e-newsletter](#)

### **Articles featuring the Commission:**

- [Texas Indigent Defense Commission: Helping Counties Implement What Works For System-Wide Cost Savings, by Texas Criminal Justice Coalition](#) (January 2013)
- [Hill Country News article featuring Commission's upcoming Gideon event on 3/18/13](#)

### **New Gideon Recognition for Counties:**

The Gideon Recognition program is inspired by the landmark U.S. Supreme Court case *Gideon vs. Wainwright*. Counties are recognized based on how well their programs meet the principles of the Fair Defense Act and the American Bar Association's Ten Principles of a Public Defense Delivery System. Counties may receive recognition for programs or achievements that demonstrate a significant level of innovation, such as a new solution to a problem, significantly streamlining a process, a measurable and significant increase in productivity, or improved service to indigent defendants or other stakeholders. Recognition may also be given to counties with exceptionally high performing indigent defense systems. In recognizing a county, the Commission seeks to promote innovative, high performing policies that are replicable in other counties. There have been two counties to receive this award since last December:

- Wichita County (December 2012) see [article in County magazine](#) and [TIDC e-Newsletter](#) and [Press Release](#)
- Burnet County (March 2013) see [Press Release](#) and [article in County magazine](#)



### **Indigent defense trainings:**

- **January 15: "The Ethics of Client Care and Procedural Justice: Practice Tips."** The program focused on the procedural aspects of effectively interacting with a client. Materials for the program included: [Procedural Justice and the Courts](#), by Professor Tom R. Tyler; [The Public Defender's Duty to Effectively Communicate with Clients](#), by Alexander Bunin; and, [Client Care: Interacting With The Client](#), by Don Hase. Panel speakers included: Jim Bethke, Texas Indigent Defense Commission, Austin; Alex Bunin, Harris County Chief Public Defender, Houston; Lydia Clay-Jackson, Law Office L. Clay-Jackson, PLLC, Conroe; David Gonzalez, Sumpter & Gonzalez, Austin; Don Hase, Attorney, Arlington; Kameron Johnson, Travis County Juvenile Chief Public Defender; Cynthia Orr, Goldstein, Goldstein & Hilley, San Antonio; and, Jack Stoffregen, Chief Public Defender, Regional Public Defender for Capital Cases, Lubbock
- **January 17:** TIDC sponsored a **Primer on Indigent Defense for Newly Elected Officials** which was also live streamed by Senate Media. The event was attended by several house members and staff. Here is a link to the [audio/video recording - two hours in length, recorded January 17, 2013](#) (requires [RealPlayer](#)). Also, links to the

[agenda](#), [PowerPoint](#). Approximately 100 persons, including 65 online viewers, onsite attendees and speakers participated in this event.

- **March 12:** Jim Bethke was invited to participate on a panel of distinguished speakers, including former U.S. Attorney General Edwin Meese, in DC. The event was sponsored by The Heritage Foundation and the National Association of Criminal Defense Lawyers (NACDL) and was entitled [Gideon v. Wainwright: 50 Years of Constitutional Protection](#). The event was live-streamed and NACDL arranged travel.
- **March 15:** U.S. Department of Justice “50 Years Later: The Legacy of Gideon v. Wainwright.” I was invited by U.S. Attorney General Holder to attend a Gideon ceremony and two hour training event that took place in The Great Hall, Robert F. Kennedy Main Justice Building, Washington, D.C. Among those joining General Holder in speaking was Former Vice President Walter Mondale and U.S. Supreme Court Justice Elena Kagan.
- **March 18:** The Texas Commemoration of *Gideon* (see information above).

### ***Staff activities/updates:***

**West Garrett** began work on February 1 as the new Research Specialist (position formerly held by Jennifer Willyard).

**Carol Conner**, Fiscal Monitor, resigned in April. We are grateful for her service and we wish the best success in her new position with the Texas Veterans Commission. The job posting was published, closed and applications are being reviewed. Interviews will be taking place immediately.

**Thalia Dubose** joined TIDC as a law student intern with the Texas Legislative Internship Program (TLIP) in January and was with us until the end of May. She is a law student at Thurgood Marshall School of Law, Texas Southern University.

Two new UT Law interns started May 28<sup>th</sup> : **Allison Cunningham** was born and raised in Austin. Her interests include watching movies, reading, and taking in the great outdoors. She majored in English and minored in Philosophy during undergrad at UT. Now a rising 2L at UT Law. This summer she hopes to further develop her legal research and writing skills and learn more about the process of appointment of defense counsel to indigent defendants. **Brittany Long** was born and raised in Houston. During her undergraduate studies at UT majoring in Government and minoring in Philosophy, Brittany interned at the Criminal Justice Division of the Office of the Governor as a member of the Governor's Fellowship Program. She was appointed to the Juvenile Justice Advisory Board at the conclusion of her fellowship and continues to serve as a board member for the state of Texas. After receiving her bachelor's degree in 2012, Brittany began pursuing a juris doctor at UT. In her free time, Brittany enjoys playing classical and jazz piano and spending time with her energetic puppy, Levi.

### ***Other news:***

From Pleading the Sixth: **Williamson County, Texas** settled a class action lawsuit alleging that judges engaged in a "systematic and deliberate scheme" to deprive "persons accused of misdemeanor offenses of their right to be represented by counsel." By agreeing to set up systemic assurances that appointment procedures will be transparent and that defendants will no longer be encouraged to talk to a prosecutor without a defense attorney, Williamson County ends their "no-counsel courts." Perhaps other jurisdictions can learn from their past mistakes. To read more about this, go to: <http://sixthamendment.org/williamson-county-tx-settles-no-counsel-court-lawsuit/> [Contact: David Carroll, Executive Director, Sixth Amendment Center, (617)512-4946]

Also, from Pleading the Sixth: **The United Nations take the Ten Principles international:** The United Nations General Assembly adopted new *Principles and Guidelines* for how member states should deliver indigent defense services. Drafted to help emerging nations grappling with equal justice concerns, the U.N. document can help us hold a mirror up to our own deficient indigent defense systems here at home, as many of the U.N. principles mirror – or exceed – the ABA *Ten Principles*. To read more about this, go to: <http://sixthamendment.org/the-united-nations-takes-the-ten-principles-international/> [Contact: David Carroll, Executive Director, Sixth Amendment Center, (617)512-4946]

## ***Around the Nation:***

Fifty Years since *Gideon*: Federal Sentencing Reporter on the Challenges of Underfunded Indigent Defense. The latest issue of the Federal Sentencing Reporter (FSR) focuses on the ethical and legal ramifications of America's overburdened, underfunded public defense system. It also features commentary on *Lafler v. Cooper* and *Missouri v. Frye*, two recent U.S. Supreme Court cases that highlight the importance of access to effective counsel in the plea bargaining process. By special arrangement with the University of California Press, the Editors' Observations and Professor Erica Hashimoto's article, *Abandoning Misdemeanor Defendants*, can be read for free on Vera's website: <http://www.vera.org/project/federal-sentencing-reporter>.

The National Juvenile Defender Center has released "National Juvenile Defense Standards." The standards provide comprehensive information about the role and duties of the juvenile defenders in the modern juvenile court system and provide a framework for representation anchored in law, science, and professional codes of responsibility. <http://www.njdc.info/pdf/NationalJuvenileDefenseStandards2013.pdf>

Innocence Project report looks at the difference that a lawyer makes to the outcomes of serious criminal cases in Philadelphia.

[http://www.innocenceproject.org/Content/New\\_Report\\_on\\_Indigent\\_Defense\\_Examines\\_Philadelphia\\_Homicide\\_Verdicts.php](http://www.innocenceproject.org/Content/New_Report_on_Indigent_Defense_Examines_Philadelphia_Homicide_Verdicts.php)

Film by Former In-House Counsel looks at 50 years after *Gideon* – Sundance film festival entrant!! Funded by the Ford Foundation: <http://gideonsarmythefilm.com>. Article:

<http://www.law.com/corporatecounsel/PubArticleCC.jsp?id=1361435026759&slreturn=20130201145200>

The National Association of Criminal Defense Lawyers announced the release of a new report that examines the low rates paid to assigned counsel and the impact that has on legal representation for defendants. According to the report, assigned counsel compensation rates often fail to cover basic overhead costs. Because of this, attorneys who work on indigent defense cases often lose money in the process. On top of low hourly rates, more than half of all states have maximum compensation fees, with any additional hours of work going uncompensated. The report, titled *Rationing Justice: The Underfunding of Assigned Counsel Systems*, is available for download here: <http://www.nacdl.org/reports/gideonat50/rationingjustice/>

In commemoration of the 50th anniversary of *Gideon*, The Constitution Project and the New Media Advocacy Project released the documentary "Defending *Gideon*." Narrated by noted actor Martin Sheen, the film highlights the importance of a system that guarantees skilled and well-resourced representation for all - and the dire consequences when that system fails. Watch and order the video at [www.constitutionproject.org](http://www.constitutionproject.org) and help educate the public about this vital right.

The Department of Justice Access to Justice Initiative recently launched a new website <http://www.justice.gov/atj/gideon/> which has information about the Justice Department's efforts to ensure effective legal assistance for all persons charged with crimes. The website includes video from the Department's March 15th commemorative event, information on grants, training and technical assistance, as well as a recent blog on indigent defense research opportunities.