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Harris County Can Uphold Constitution, Save Money With Public Defenders

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By Cynthia Hujar Orr and Norman Lefstein

In 1963, the U.S. Supreme Court unanimously decided *Gideon v. Wainwright*, ruling that indigent defendants have a “fundamental right” to counsel to ensure a fair trial. More than 46 years later, *Gideon's* promise of fair trials and a constitutional right to counsel has not been fulfilled in states and localities around the country. Harris County is one of those places where the fundamental right to counsel has not been effectively recognized.

A broken indigent-defense system has far-reaching consequences, the most obvious being that an innocent person could be wrongfully convicted, the county could be sued and the taxpayers would have to pick up the tab. Texas has had 41 DNA exonerations thus far, Harris County accounting for seven. One of those Harris County wrongful convictions was Ricardo Rachell, who served six years of a 40-year sentence for a sex offense against a child before being released from prison last December. It is an issue of grave public safety that while Rachell was wrongly imprisoned, the true perpetrator was free to commit further crimes in the community.

Numerous reports have documented the continuing problems with Harris County's indigent-defense system. The system's problems are deep and varied.

The *Houston Chronicle* has reported that a “relatively small group of attorneys, some of them old friends and all financial backers of judges handing out work, regularly receives close to half of all the tax-funded appointments to represent the poor in the juvenile courts.” Several attorneys exceeded national case-load standards and made between \$100,000 and \$200,000 a year for appointments.

The Constitution Project's “Justice Denied” report earlier this year criticized Harris County's indigent-defense system, noting that the district attorney's budget is more than twice the amount for indigent defense and includes 30 investigators compared with no investigators for attorneys assigned to cases by judges. KHOU-TV Channel 11 News investigated Harris County's indigent-defense system in May, finding case loads for appointed attorneys greatly exceeding national standards and attorneys making significant sums of money off of the appointed counsel system. These imbalances create a flawed system that simply can't provide the efficient, effective justice that Harris County residents deserve.

In light of these ongoing problems with Harris County's indigent-defense system, it is apparent that something needs to be done quickly to improve the situation. One option is to establish a public defender office — a county agency devoted to defending indigent defendants in criminal cases. Harris County is by far the largest jurisdiction in the country without a public defender system. This would complement — not replace — the adept and active members of the private bar. A nexus of coordinated assigned counsel

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working with the public defender would allow for a more comprehensive indigent defense system capable of furnishing experienced and zealous representation.

Almost a year and a half ago the Harris County Commissioners Court ordered a study to determine if a public defender office could improve indigent representation. The Commissioners Court now has before it a plan to establish a public defender office to represent indigent defendants in five courts, and eleven courts for appeals. While this proposal is modest, the plan is a good start. Assuming the office can be expanded in the future, and reasonable case-load standards are in place, the plan should lead to improved representation while being cost effective.

By implementing the public defender proposal, the Commissioners Court can prove that it is serious about upholding the constitutional rights of the citizens of Harris County. A public defender office is a win-win opportunity — for defendants and taxpayers — and the Commissioners Court should implement it without further delay.

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