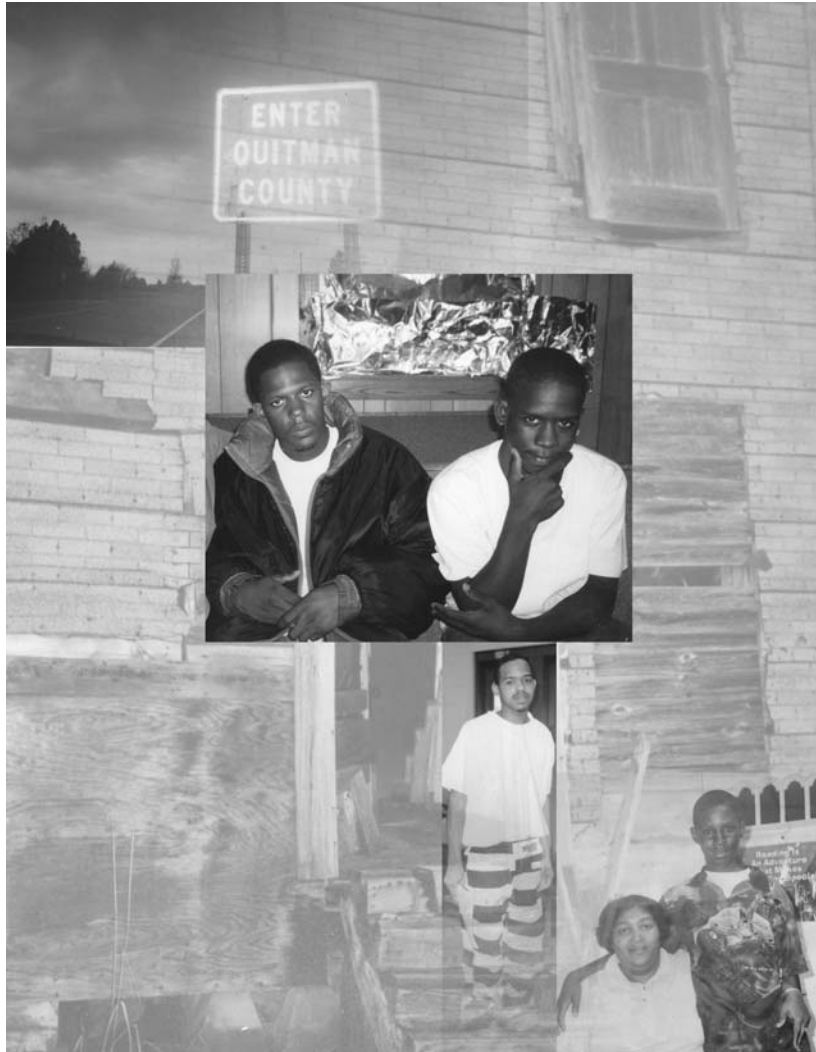


ASSEMBLY LINE JUSTICE



MISSISSIPPI'S INDIGENT DEFENSE CRISIS



NAACP LEGAL DEFENSE AND EDUCATIONAL FUND, INC.

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## P R E F A C E

This report chronicles the experiences of poor Mississippians who are charged with a crime and do not have the means to hire a lawyer to defend them. It contains accounts of legal representation so deficient as to make a mockery of the concept of equal justice under the law. The report also highlights the hidden costs to counties and taxpayers that inevitably accompany an outdated and broken-down system of justice.

In an effort to raise awareness about the crisis in indigent defense in Mississippi, the NAACP Legal Defense and Educational Fund, Inc. (LDF) has undertaken a comprehensive study of the public defender system. LDF staff and cooperating attorneys interviewed over 150 current and former criminal defendants, observed court proceedings in ten counties, and consulted with public defenders, district attorneys, judges, county supervisors, sheriffs, and community members from around the State.

LDF's findings demonstrate that, although the State has a constitutional duty to assure equal justice to rich and poor alike, in Mississippi justice is available only to those with the means to pay for it. And sadly, our country's shameful history of racial discrimination is still readily apparent in the low quality representation provided to the State's poor, predominately black defendants. Forty years after the Supreme Court's decision in *Gideon v. Wainwright*, the State of Mississippi continues to ignore its mandate to provide constitutionally adequate counsel for the poor.<sup>1</sup>

February 2003

*This report is based on research conducted by LDF cooperating attorney Sarah Geraghty. She and LDF assistant counsel Miriam Gohara are co-authors of the report. They may be reached at the NAACP Legal Defense and Educational Fund, Inc., 99 Hudson Street, Suite 1600, New York, NY 10013, (212) 965-2200.*

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## **Misdemeanant Shoplifter Incarcerated for Fourteen Months Before Trial**

**Gulfport, Mississippi**

At age 50, Gail Chester<sup>1</sup> was one of the older female inmates at the Harrison County Jail. A petite, soft-spoken woman, she kept to herself in the jail while she waited patiently for her day in court on a shoplifting charge. It would be a long wait. Court records show that Chester sat in jail for 11 months before a lawyer was appointed to look into the facts of her case. No discovery motion was filed until a year after the offense. And she never actually talked to a lawyer about the crime for which she was arrested until 13 months after the incident. In fact, the first time she spoke to the lawyer assigned to defend her was in court on the day her case was supposed to go to trial. In June of 2002, nearly 14 months after her arrest, Chester pled guilty to misdemeanor shoplifting and was released from the jail.

Chester's indictment charged her with taking a clock radio, a walkman, and a package of batteries from the WalMart, valued at approximately \$72. The cost to the taxpayers of Harrison County of incarcerating Chester for nearly 14 months before her case made it through the courts?

Approximately \$12,090.

## **Four Years After A Crime, Defendants Wait for Trial**

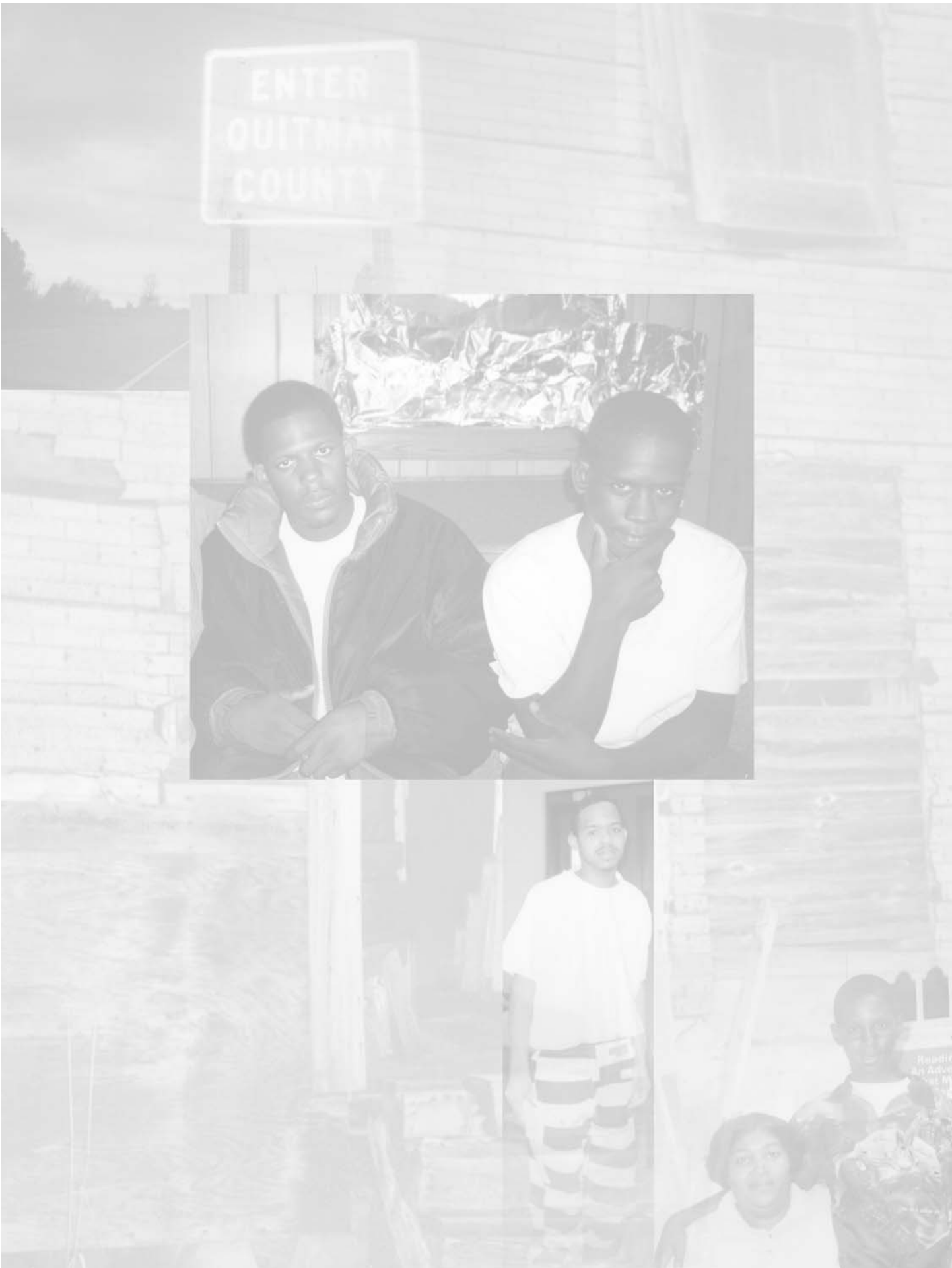
### **Biloxi, Mississippi**

In China or Russia, criminal defendants sometimes sit in jail for four or five years before going to trial. That's not supposed to happen in the United States of America. But in Biloxi, Mississippi, it did.

Charles Gary was 15 when he was arrested and charged with the murder of an elderly man. That was January 1998. More than four-and-a-half years later, he and his two co-defendants<sup>2</sup> were still in the county jail waiting for their day in court. It was eight months before any of the defendants were arraigned. Then came multiple changes in attorneys, and multiple requests to postpone hearings. Add to that a docket jam-packed with cases, and judges who handle more than 1,000 cases per year—the highest volume in the State.

In the end, the taxpayers of Harrison County paid more than \$150,000 to incarcerate the three defendants, only for a judge to dismiss the case against them. The boys' confessions were illegally coerced and could not be used at trial; without them, there was insufficient evidence to link the defendants to the crime. On August 16, 2002, the defendants, now men, were released from the jail.

Prosecutors and defense attorneys disagree about why it took so long to reach this result. But they do agree on two things. First, that the defendants, the victim's family and the community paid a high price for this delay in the justice system. And second, that an adequately funded public defender program would ease docket congestion, make the administration of criminal justice in Harrison County more efficient, and prevent similar miscarriages of justice in the future.<sup>3</sup>



## I N T R O D U C T I O N

In the United States of America, everyone accused of a felony crime is entitled to a lawyer. This has been the law of the land since the Supreme Court of the United States decided the landmark case of *Gideon v. Wainwright* in 1963.<sup>4</sup> Mississippi's constitution and statutes also obligate the state to provide counsel for indigent defendants.<sup>5</sup> These paper guarantees, however, are functionally meaningless in Mississippi, a state which provides almost no regulation, oversight, or funding for indigent defense.

With the exception of death penalty cases, the State of Mississippi does not contribute one dollar towards the representation of poor defendants. Instead, it requires counties to shoulder the full obligation of providing lawyers for the poor. It is an obligation that many counties cannot or will not honor.

The state's failure to contribute to the defense of the poor has created a system that consistently ranks among the most poorly funded in the nation. According to the most recent estimates, only one other state—North Dakota—spends less on the defense of its poorest citizens.<sup>6</sup>

Inadequate funding leads to a poorly organized, patchwork system. Currently, only three out of 82 counties in Mississippi have an office staffed by one or more full-time public defenders.<sup>7</sup> The vast majority of counties contract with part-time defenders who maintain private practices, or appoint private attorneys to represent poor defendants on a case-by-case basis. The combination of inadequate funding and structure has caused a crisis in indigent defense that affects thousands of people across the state.

Among the system's weaknesses:

- Some pre-trial detainees spend months—even years—in overcrowded county jails, awaiting resolution of their cases. Many charged with non-violent property crimes spend more

time in jail awaiting trial than they spend serving the sentence they eventually receive.

- Children as young as 14 are locked up in adult jails where they wait for months to speak to a lawyer.

- In some counties, an indigent defendant may wait up to a full year before he has his *first* conversation about his case with a court-appointed lawyer.

- Many lawyers for the poor never meet their clients until the day of trial. Meetings between lawyer and client are brief, and often take place in the courtroom, just minutes before critical hearings.

- Many lawyers for the poor struggle with excessive case-loads—several hundred felony cases per year for a single part-time defender. In Mississippi, there is *no limit* on the number of cases a court-appointed attorney may handle.

- Hundreds of juvenile defendants in youth court proceedings are represented by lawyers who never file motions, interview witnesses, or challenge the state's evidence in any way.

- Lawyers for the poor lack funds to conduct the most basic investigation, to conduct legal research, or to hire experts. In many counties, hiring an investigator or a psychiatrist in a non-death penalty case is only possible if the lawyer pays for it out of his or her own pocket.

- Some counties charge defendants hundreds of dollars in court costs and attorneys fees, leaving indigent people saddled with years of debt. Those defendants who do not pay are routinely sent to prison—some for years—after perfunctory probation revocation hearings at which they are not represented by counsel.

- Inexperienced or overburdened counsel often fail to explain the terms of plea agreements, misinform clients about the length of sentences, and give other erroneous information on important points of law.

- Some court-appointed lawyers pressure poor families to pay them a fee, stating or implying that the service they provide will be substandard unless the family can supplement their county salaries.

None of this is news to attorneys who represent indigent defendants, or to the defendants and victims who have experienced criminal justice for the poor first-hand. Inadequacies in the current system have been recognized by courts and legislators, documented in newspaper articles, and made the subject of lawsuits, studies, and reports.

- The Mississippi Supreme Court has repeatedly found fault with the funding of indigent defense,<sup>8</sup> admonished counties against “endeavoring to get too much out of a single defender,”<sup>9</sup> and rebuked lawyers for the poor for ineffective advocacy in criminal cases.<sup>10</sup>

- Three cash-strapped counties—Quitman, Noxubee and Jefferson—sued the state in an attempt to force it to contribute to the cost of indigent defense.<sup>11</sup> In 2001, the Mississippi Supreme Court held that Quitman County stated a sufficient cause of action to justify a trial.<sup>12</sup> Others counties are likely to bring similar suits in the future.

- The District Attorney of Harrison County and several other district attorneys have called for reform of the public defender system.<sup>13</sup>

- The Mississippi Association of Supervisors, the sheriffs of 11 counties, and the Mississippi Bar Association have all voiced support for state funding of indigent defense.<sup>14</sup>

- Reports commissioned by the Mississippi Bar Association in 1995, 1997, and 1998 found that “funding for indigent defense in Mississippi is totally inadequate,” and “results in poor quality service and representation.”<sup>15</sup>

- Two overburdened public defenders sued the state and the county that employed them, alleging that inadequate funding forced them to provide constitutionally deficient representation.<sup>16</sup>

At a time when other states such as Georgia,<sup>17</sup> Louisiana,<sup>18</sup> and Texas<sup>19</sup> are reforming ailing public defender systems, Mississippi has seemingly moved away from that goal. In 1998, the Mississippi legislature passed the Statewide Public Defender System Act, but it never appropriated the funds to implement this legislation.<sup>20</sup> In 2000, legislators repealed the bill, citing budget constraints. Although the state has since assumed partial responsibility for indigent defense in death penalty cases,<sup>21</sup> other calls for reform have gone unheeded.

For example, Mississippi's Public Defender System Task Force was established to study the existing system, examine approaches in other states, and make recommendations.<sup>22</sup> Its first recommendation, urging the incremental adoption of a statewide system, beginning with a state-funded indigent appeals office, has thus far fallen on deaf ears.<sup>23</sup> To date, the State of Mississippi has made few changes to a system that has ill-served poor defendants, their families, and the community for years.

# MISSISSIPPI'S INDIGENT DEFENSE CRISIS

The Mississippi Supreme Court has stated that the quality of representation for poor defendants “go[es] to the very heart of how we as a civilized society assure equal justice to rich and poor alike.”<sup>24</sup> While the majority of public defenders in Mississippi are hard-working and conscientious, limitations on time and resources often prevent those with the best of intentions from doing the job they would like to do. Moreover, the system allows for substandard representation at all turns. In the course of its investigations, LDF met people whose lawyers failed to meet with them before critical hearings, to advocate for bail, to investigate their cases, to file motions, to research the law, or to provide them with even minimally adequate legal representation. In many cases, lawyers’ work was sloppy and legal advice plain wrong. In others, court-appointed lawyers badgered indigent people for money to pay for their constitutionally guaranteed right to counsel.

## LANGUISHING IN JAIL WITHOUT TALKING TO A LAWYER

Delay in appointing counsel is a pervasive problem in Mississippi. In several counties, poor people wait for months, until after indictment, to receive a court-appointed lawyer. While lawyers may be present in the courtroom at preliminary proceedings, they typically talk to their clients briefly (if at all), and then only to discuss bail. In practice, this means that defendants—many of whom were arrested for non-violent property or drug crimes—spend months in jail before they ever discuss their cases with a lawyer.

Even if lawyers are appointed early in the process, they often have little interaction with clients. Many indigent defendants report that court-appointed lawyers do not visit them in jail, do not accept or return telephone calls, and do not respond to letters. These claims are corroborated by jail visitor logs. For example, in one county, an attorney who was appointed in 121 new felony cases in 2001 made three trips to the county jail during that same period. Another lawyer in the county gave clients a pamphlet stating that he does not “make it a habit” of visiting clients at the jail because it is “very inconvenient to do so.” This contravenes the Mississippi Rules of Professional Responsibility which require counsel to “keep a client reasonably informed about the status of a mat-

ter” and “promptly [to] comply with reasonable requests for information.”<sup>25</sup>

Other states such as Texas<sup>26</sup> and Georgia<sup>27</sup> have statutes or guidelines that require counsel to be appointed promptly and to interview clients as soon as practicable. Mississippi has no such rule.

## INSUFFICIENT BAIL ADVOCACY

Many criminal defendants who sit in jail for months have jobs and families to support and would not pose a danger to society if released pending trial. Nevertheless, their appointed attorneys do not advocate for bail on their behalf. LDF found cases in which poor people who could not afford to make bonds as low as \$100 remained in jail for months, costing taxpayers about \$30 per day. Their appointed lawyers neither ascertained their clients’ ability to pay, nor argued to the court that the client might be released on his own recognizance. In other cases, where defendants do post bond, they may be automatically denied appointed counsel under the misguided assumption that anyone who can afford to pay a bondsman can also afford to pay thousands of dollars to retain a private attorney.

An LDF investigator spoke to one former public defender who acknowledged the different service he provided for paying and poor clients in the jail. To get a paying client out of jail, the attorney said, he might petition for a reasonable bond in justice court after consulting with the defendant about his ability to pay, file a petition in the circuit court seeking release pending trial, or, if the client wished to plead guilty, arrange for the defendant to waive indictment and enter a plea. A poor client, on the other hand, may well be stuck with the original justice court bond, reasonable or not, and sit in jail for as long as it takes to come to trial.

As the following account demonstrates, not only the criminal defendant, but also the taxpayer, pays the price of allowing defendants to languish in jail without adequate pretrial advocacy.



### **Eight Months of Pretrial Jail Time for Cheating at Gambling**

**Gulfport, Mississippi**

Shirley Johnson of Mobile, Alabama came to Gulfport to visit the casinos. One evening, she allegedly attempted to take about \$200 in quarters that came out of a slot machine into which she had not put any tokens. A casino security guard stopped her and police were called. Ms. Johnson was arrested, charged with violation of Mississippi's Gaming Control Act, and taken to the Harrison County Jail.

That was November 9, 2001. More than seven months after her arrest, Johnson remained in jail. Although her bail was only \$100, she could not afford to pay it. No attorney visited her or argued for release on her own recognizance. So Johnson waited and waited for her day in court.

In May 2002, Johnson tried to bring her case to the attention of the judge. "I have been incarcerated since November 9, 2001," Johnson wrote, in a neatly-penned letter sent from her jail cell. "I have not received an attorney visit or a letter from an attorney. During my preliminary hearing, I petitioned the court for an attorney but I have not received one. I also called several attorney offices to find out if they had my case. I have been unsuccessful at finding any information."

On June 17, 2002, more than eight months after her arrest, Johnson finally came before a judge and pled guilty. She was sentenced to time served plus one year of probation and released from the jail. The price tag for 220 days of pretrial detention was about \$6,820, all paid by the county.

### **MINIMAL CONSULTATION BEFORE TRIAL OR PLEA**

It is an all too common occurrence in the circuit courts of Mississippi that lawyers fail to consult with their clients before trial or "plea day." A defendant may wait for months with no news of his case. Then one day he is summoned to

the courthouse only to find that his case has been scheduled for trial on that day. His lawyer, whom he has just met, checks a list of plea offers from the district attorney. The defendant has two choices: (1) join the group of defendants being herded to the front of the courtroom in groups to plead guilty after little or no legal consultation, or (2) risk substantial prison time by going to trial—sometimes one or two days later—with a lawyer who has not begun to prepare the case. That is the unenviable position in which John Montgomery<sup>28</sup> found himself in June 2002.

### **Eight Months in Jail and Three Lawyers Later, A Not-Guilty Verdict**

**Tupelo, Mississippi**

On May 4, 2001, police discovered crack cocaine hidden above a ceiling tile in a motel bathroom in Tupelo, Mississippi. They arrested John Montgomery, who they found on the street near the motel, and charged him with possession of the drugs. Montgomery admitted to being a drug user, but insisted from the beginning that he had nothing to do with the drugs in the motel room.

Montgomery spent eight months in the county jail waiting to go to court. During that period, his appointed lawyer changed three times. Neither of the first two lawyers ever spoke to Montgomery. Despite repeated efforts by Montgomery, his girlfriend, and his mother to contact his first two lawyers, they did not come to the jail, accept telephone calls, respond to letters, or notify him that they no longer represented him.

By the time that Montgomery finally spoke to an attorney—his third attorney—nearly an entire year had passed since his arrest. The attorney brought news of the district attorney's plea offer: 20 years in the custody of the Mississippi Department of Corrections with 15 suspended. Montgomery refused the offer, telling his lawyer he was innocent. It was a decision he would question when he found himself two days away from a trial having had less than five minutes consultation with a lawyer who had done no investigation and, as yet, filed no motions on his behalf.

The day before trial, Montgomery's lawyer asked the court for more time, stating that he had just finished a two-day murder trial, and that he had not had time to interview crucial witnesses or otherwise prepare Montgomery's case. The continuance was denied. Fortunately for Montgomery, the state's case was weak. There was no physical evidence linking the drugs to Montgomery. The motel room was not registered in his name. None of the state's witnesses could place the drugs in Montgomery's control. After eight months in the county jail awaiting trial, the jury took less than 15 minutes to acquit him.

The cost of Montgomery's pretrial detention? Approximately \$6,000.

### **Nineteen Months of Pretrial Incarceration for Mentally Ill Man**

**Sardis, Mississippi**

Monroe Turner, who suffers from schizophrenia, was charged with kidnapping after he entered a police station with an unloaded BB gun and allegedly forced a staff person into a back room. The incident lasted but a few minutes. According to police reports, officers found Turner, half-naked, drunk, and wearing two left shoes, sitting on a toilet seat and pointing the unloaded BB gun at his own head. Turner later told the police that the incident was a frustrated attempt at suicide. He had stopped taking his medication and, in his deluded state, he believed that the officers would "shoot him on sight."

Turner spent nearly ten months in jail before a lawyer was appointed to represent him. Despite Turner's obvious mental illness, no mental evaluation was requested until almost a year after the arrest. In 19 months of pretrial incarceration, Turner saw his lawyer just twice, and only for a few minutes each time. Turner and his family report that the possibility of an insanity defense was never discussed. The lawyer's only advice to Turner was to take the state's plea offer. Turner accepted his lawyer's advice and was sentenced to five years in prison plus a ten-year suspended sentence.

A constitutionally adequate defense would have included a discussion and possible presentation of an insanity defense, plus meaningful advocacy before he was sentenced for an act Turner committed while in a delusional state.

### **FAILURE TO INVESTIGATE OR LITIGATE**

Constitutionally effective representation requires, at a minimum, that counsel interview potential witnesses and make an independent investigation of the facts and circumstances of each case. That is the law, as stated by the Mississippi Supreme Court and the Fifth Circuit Court of Appeals.<sup>29</sup> Complementing the constitutional mandate, the Mississippi Rules of Professional Conduct require a lawyer to inquire into and analyze the factual and legal elements of each case,<sup>30</sup> and then to "zealously assert[] the client's position under the rules of the adversary system."<sup>31</sup>

LDF's investigations found that in circuit courthouses throughout the state, these basic points of law and ethics are often ignored by defense attorneys, prosecutors, and judges who are sworn to uphold them. Court-appointed lawyers do not interview crucial witnesses or investigate defenses. Motion practice is limited to the same boiler-plate discovery motions filed in every case. Defendants' protestations about witnesses and alibis are ignored or met with a warning that rejecting a plea offer will cause the judge to "give them life," or "throw them away." And, at sentencing hearings, some court-appointed counsel stand mutely at the podium without offering a single word on their clients' behalf.

Many public defenders candidly admit that they do not investigate cases—even when clients ask them to do so. In one North Mississippi county, a lawyer who handles about 150 felony cases on behalf of poor defendants (in addition to his private practice) reported that it is virtually impossible for him to speak to witnesses or do any investigative work in the majority of his cases. Another lawyer from a coastal county acknowledged that he does not even try to locate witnesses since he is not appointed to cases until nine months or a year after the alleged crime occurred. By then, he said, crime scenes have changed, witnesses have moved, and memories have faded. A third lawyer—a solo practitioner who has han-

dled more than 1000 cases over the past seven years—could recall only one case in which he had an investigator's assistance.

Limited resources also means that getting outside help from investigators or experts is exceedingly rare in a poor person's case—especially in non-capital cases. Under the current system, every time a public defender determines that he needs investigatory or expert assistance in a case, he must petition the court for funds. Many elected judges are reluctant to incur a reputation for spending taxpayer money on criminal defendants. If the judge refuses, the lawyer must either pay out of his own pocket, or forego the investigation. By contrast, the state provides full-time investigators to each District Attorney's Office and funds 100% of the State Crime Lab's annual budget.

It should go without saying that lawyers must have access to legal research materials. But many lawyers for the poor do not. Meager county salaries leave them unable to afford expensive electronic research. Some contract defenders in rural counties must travel over 100 miles to use the law library in Jackson. By contrast, prosecutors have access to electronic legal research, funded by the state.

Instead of the zealous advocacy to which they are entitled, poor people often receive the kind of "assembly line justice" that the Supreme Court of the United States has condemned.<sup>32</sup>

Consider the following examples:

### **Appointed Counsel Ignores Potential Defense**

#### **Panola County**

Jimmy Redwine said he shot a man who came at him with a knife in self-defense.<sup>33</sup> His court-appointed lawyer met with him only twice, for about five minutes each time. The meetings were held in the courtroom while counsel was handling other cases. Despite Redwine's corroborated account that he acted in self-defense, counsel did not interview a single witness or otherwise investigate the case. Redwine reported that counsel refused to subpoena any

law enforcement witnesses, telling him that such subpoenas were not part of his job. Counsel also erroneously advised Redwine that Mississippi law does not recognize self-defense as an affirmative defense to murder. Redwine is serving an 11-year sentence for manslaughter.

### **Five Years of Appeals Follow An Inadequate Sentencing Hearing**

#### **Copiah County**

Melissa Davis, a 25-year-old mother, was convicted of selling two rocks of crack cocaine for \$40. For this crime, the local circuit court judge sentenced her to the maximum sentence she could receive under the law: 60 years in the custody of the Department of Corrections—without the possibility of parole until the year 2043. Davis received this sentence after a hearing at which her court-appointed lawyer made no effort to represent her. There was no presentence investigation report, no inquiry into Davis' mental health or family situation, no discussion of her prior record (which consisted of two non-violent drug-related crimes) and no plea for leniency.

When the Mississippi Supreme Court reviewed the case, it agreed with Davis that there was "little before [it] to explain this sentence."<sup>34</sup> The Court found it troubling that Davis' lawyer "chose not to offer any evidence in her defense," and that the trial judge "gave no explanation" for what was "in essence a life sentence without parole." The Court reversed Davis' sentence and sent it back to the trial judge for a new hearing.

At the second sentencing proceeding, the same court-appointed lawyer was again ill-prepared. His entire argument on Davis' behalf consisted of about 20 transcript lines and could not have lasted more than one minute. The judge, who had been admonished four separate times that he must provide a good reason for imposing a 60-year sentence in a low-level drug case<sup>35</sup>, remained unmoved. Calling the sale of cocaine "one of the most devastating

crimes that can be committed on earth by a human being,” the judge re-sentenced Davis to the same 60 years in prison.

Davis subsequently filed a post-conviction petition again challenging the length of her sentence. This time, the trial judge lowered the sentence to 30 years. Instead of one simple sentencing hearing, Copiah County taxpayers paid for three separate proceedings over the course of five years.

Julius Harris, who taught school in Sardis for 30 years, has noticed a disturbing trend in his community. When former students get in trouble with the law, they call him for help with their cases. “I get letters from the jail, calls from mothers, girlfriends,” says Mr. Harris. “What I hear time and again is that lawyers don’t make time for people. All they want to do is meet and plea.” On a recent visit to his office, two women—mothers of criminal defendants—waited in his office, looking for direction with their sons’ cases. “Unless they have money to hire a lawyer, there is nowhere for people to turn. People in this community come to me to ask for help, and I’m not even a lawyer. I don’t know what to tell them.”

## ERRONEOUS LEGAL ADVICE

Far too often, part-time defenders who do not specialize in criminal law give legal advice that is just plain wrong. In particular, many criminal defendants report that lawyers who are not familiar with Mississippi’s frequently changing parole laws give them erroneous advice about sentence length and parole eligibility. Mississippi appellate courts are inundated with such complaints from poor defendants,<sup>36</sup> and in several cases convictions have been reversed due to lawyers’ ignorance of the law.<sup>37</sup>

When court-appointed lawyers make mistakes, poor defendants often have little recourse. Once a person has entered a guilty plea—even if she has been given erroneous information

about the sentence—it is very difficult to withdraw it. The defendant would have to demonstrate that he would not have entered the plea but for the erroneous advice.<sup>38</sup> That high standard leaves little hope for many.

## THE SPECIAL CASE OF CHILDREN

It is particularly sad when the state turns its back on children by failing to provide them with even the semblance of proper procedure when they stand accused of a crime.<sup>39</sup> Children are entitled to the same right to competent representation as adults. Despite this guarantee, LDF identified children as young as 14 who were sent to state prison for decades after being represented by lawyers who did no investigation on their cases and who spent less time talking to them than a sales clerk might spend with a customer buying a pair of shoes.

### James Wash<sup>40</sup>

Lucedale, Mississippi

Fifteen-year-old James Wash was sentenced to 60 years in prison after being represented by a court-appointed lawyer whose performance was so abysmal that even he later acknowledged that it rendered him “liable to a civil suit” for the malpractice of law.

Wash, along with three adult men, was accused of participating in a robbery and a shooting. Because he had no money to hire a lawyer, Wash had the misfortune of being represented by George County’s answer to *Gideon v. Wainwright*: a 76-year-old solo practitioner in bad health who was contracted to represent as many people as the grand jury could indict, with not even a secretary to assist him. Counsel admitted that his typical trial preparation strategy was to wait until the eve of trial to prepare his case so that he would not “confuse [the defendant] with someone else.” It was a strategy that backfired when he found himself 72 hours away from Wash’s trial, with six to eight cases to attend to later that day, and his only access to legal materials a 2 1/2-hour trek each way to the law library in Jackson.

In a case in which his client faced a possible sentence of life in prison, Wash's lawyer did not do any preparation until the Friday afternoon before a Monday morning trial. Counsel did not discuss the case with his client. He never sought to determine his client's age (which was in dispute) for referral to youth court. He did not interview a single witness until the weekend before the trial. The only substantive motion in the entire case, filed on the morning of trial, was a motion to suppress that consisted of three sentences and did not cite a single authority.

The Wash case was by no means an open-and-shut case for the prosecution. Three adult men were charged in connection with the same incident, and there was little evidence to suggest what role Wash played in the crime. But with the George County public defender to represent him, Wash did not stand a chance.

Just seconds after the jury convicted him on both counts, the following exchange took place:

BY THE COURT: Mr. Wash, would you please stand. Do you have anything you want to tell the court before I sentence you?

BY THE DEFENDANT: No, ma'am.

BY THE COURT: What about you, Mr. [Defense Attorney]?

BY MR. [DEFENSE ATTORNEY]: No, thank you, Your Honor.

This was the defendant's sentencing hearing in its entirety. Counsel never asked for a pre-sentence investigation. There was no inquiry into family history, mental health, or any other potentially mitigating factor. There was not even a plea for leniency based upon Wash's young age. Despite the fact that this basic advocacy is part of a minimally adequate defense, counsel offered not a single word before his client was sentenced to remain in prison until age 75.

### **Adult Court, Adult Jail, Age Fourteen**

#### **New Albany, Mississippi**

In March 1998, Carlos Ivy was arrested in Union County for the alleged robbery of \$100 from an elderly woman. He was 14 years old. Ivy would spend eight months in adult jail and go through three changes in counsel before he had his first conversation with a lawyer about the facts of his case. Lawyer number one withdrew due to a conflict of interest. A second lawyer never came to visit Ivy in jail, never spoke on his behalf during preliminary court proceedings, and withdrew from the case several months later without explanation. After one brief meeting with a third lawyer, Ivy did not hear from him again for six months. The lawyer did not answer letters or return Ivy's grandmother's telephone calls.

When an attorney finally visited Ivy, he stated that he was doing his case for free, and that it would help if his family could pay him some money. But Ivy's grandmother was too poor to pay. So, despite Ivy's protestations of innocence, counsel never investigated the case, spoke to any witnesses, or filed any motions on his behalf. He told Ivy that he was "looking at life" in state prison if he lost, and erroneously advised him that if he pled guilty, he would be eligible for parole in about six years.

Ivy was desperate to get out of the county jail, where he was the only juvenile. During his stay there, he claimed to have suffered serious mistreatment, including having his head rammed into a concrete wall, being choked, being sprayed with a water hose, being deprived of food, being held in the "drunk tank" with intoxicated inmates, and being stripped naked for a period of four days. Ivy told his lawyers about this treatment, and his grandmother begged for help on his behalf. No lawyer intervened.

Ivy decided to plead guilty, in part, to get out of the jail. The judge sentenced him to 25 years in prison. Although Ivy was only 15 at the time, no one asked his grandmother to be present at the plea hearing. In fact, she was not told when the hearing would take place. Later, Ivy found out that his lawyer was wrong about his parole eligibility—there would be no hope of parole for at least ten years. He never heard from his lawyer again.

## A Note About Youth Courts

This report focuses primarily on the representation of persons accused of felony crimes, but a note must be added about Mississippi's Youth Courts. While resources for the defense of adults are scarce, even fewer resources are devoted to the defense of juveniles. As a result, children in some youth courts are routinely "adjudicated delinquent" without the benefit of anything resembling legal advocacy.

Take the Sunflower County Youth Court.

The court sits once a week, on Wednesday afternoons. Although there are three court-appointed attorneys, on any given day, only one is available to represent all children before the court. As the afternoon approaches, the small hallway outside the courtroom is crowded with young people and their families. Virtually all are African-American—the state's data shows that only 21 of the 506 dispositions reached by the Sunflower County Youth Court last year involved white defendants. Sometimes the lawyer calls the defendant and his or her parents for a few minutes of conversation before the hearing begins; often, they do not.

As a matter of course, the appointed attorneys do not prepare for cases or investigate the facts, fail to inform their clients of their rights, rarely put on defense witnesses or cross-examine prosecution witnesses, make no objections or motions, and sometimes refuse to file appeals. The representation of indigent juvenile defendants often fails to meet minimum constitutional standards, and the consequences of such substandard representation can be dire.

"S," Age 16  
Indianola, Mississippi

"S," a 16-year-old boy, was charged with "simple assault by threatening," a charge which does not exist in Mississippi statutes, after he allegedly told another student outside the presence of anyone else that he wanted to slap a teacher. S was arrested a few days after the alleged incident and ordered to pretrial detention without a hearing. His appointed attorney never spoke to S or his mother before the hearing—in fact, when the hearing began, neither S nor his mother had any idea who the appointed attorney was or that he was representing S. The attorney never investigated the facts of the case or even asked S what happened—he simply asked the judge for the file at the beginning of the hearing and reviewed the court's paperwork as the case began. In fact, S had witnesses to support his defense that he had never made the alleged

statement which, even in the prosecutor's version of events, did not meet the elements of simple assault. S's attorney made no opening statement, no closing argument, put on none of S's witnesses, and cross-examined only one of the prosecution witnesses, the teacher, by asking a single question: "Did you feel threatened?" (She answered, "Yes.").

S was found guilty ("adjudicated delinquent") and sentenced without the required separate hearing or "best interests" evidence required by statute. S was sentenced to an indeterminate stay at the state's juvenile detention facility for mentally retarded children. S is not mentally retarded. S's attorney made no effort to correct the obvious error of the court's sentence or offer evidence of better alternatives, as was S's right. After a pro bono attorney took over S's representation on appeal, S's appointed attorney submitted to the court a motion in which he admitted to not being prepared (his excuse was that he was out of town for a football game) but stated that because S was obviously guilty, there wasn't anything he could have done to defend him. S's rehearing was denied, but after filing for appeal to the Supreme Court, the prosecutor conceded, and S was released to his mother.

Marcus Nelson, Age 9  
Indianola, Mississippi

Marcus was a fourth grader. He and a group of boys, including his best friend, got into a pushing and shoving fight in the schoolyard during recess. No one was injured, and no weapons were involved. In fact, no punches were thrown. Nevertheless, the school principal called the police, who took the boys to the station house. The police called the youth court judge who ordered the boys taken to the juvenile jail in the next county. This sort of custody order requires a hearing except in cases of imminent danger. Some of the boys' parents negotiated their release with the police, but by the time Marcus' parents arrived at the station house, he and another boy had already been shackled in handcuffs and leg irons and transported to the juvenile jail. Marcus and the other boy (the one to whom he allegedly posed a danger) were kept overnight at the jail in the same cell, without any contact with their parents. Throughout this process, no counsel was ever appointed to represent Marcus. Because the system does not appoint counsel until the time of trial, Marcus' parents did not know that they could challenge their son's custody or how to go about doing so.

Sadly, LDF's investigation suggests that, in many counties, low quality representation for children is the rule, not the exception.

- In Lee County, LDF found two 16-year-old boys who had been held in the adult jail on a robbery charge for four months. Neither of them had ever spoken to a lawyer about their case. When family members called the court to ask if counsel had been appointed, they were told that the boys would have to wait until after indictment to talk to a lawyer. When LDF called on the defendants' behalf to inquire about the boys' lack of legal representation, they were told that the circuit clerk's office charged a fee to conduct a search to see whether a lawyer had been appointed.
- In Copiah County, a 17-year-old girl with a history of severe mental illness spent just minutes talking to her lawyer on the day of her trial for the sale of a small quantity of drugs. Although she was a first-time offender, her lawyer's only advice was to take the state's offer: ten years in state prison. She took the offer, and is currently serving her sentence.

### **EXCESSIVE FINES FOR INDIGENT DEFENDANTS**

In some counties, criminal convictions are inappropriately turned into a money-making venture for the county. Despite their poverty, defendants are ordered to pay hundreds or thousands of dollars in fines and court costs. In addition, some courts charge defendants upwards of \$500 in "attorney's fees" when they are represented by the public defender. Consequently, it is not uncommon for a first-time offender to be saddled with several thousand dollars of debt after conviction. In one case, a circuit judge imposed a whopping \$18,000 fine on an indigent high school drop-out and mother of two after she was convicted of selling 0.0071 ounces (or less than \$40) worth of drugs.

Such penalties just do not make sense for a person who already lives at or below the poverty level, especially when he or she has children to support. Besides taking money from people who need it, high fines set poor defendants up for failure because their probation may be revoked when they do not pay. And when defendants do fail to pay their court costs, they have no advocates to assist them in explaining their situation to the judge. Probation is routinely revoked at per-

functory hearings at which defendants are unrepresented by counsel.

### **MAKING POOR DEFENDANTS PAY FOR REPRESENTATION**

Time and again, LDF's investigations unearthed a similar complaint from indigent defendants across the state. Court-appointed lawyers pressure poor clients and their families to give them money on the side, promising that they can get a better class of service if they pay for it. In one case, a court-appointed attorney representing a young defendant told his client's family that he could "do a good job" for their son if they paid him \$10,000. The client's family retained receipts that show they paid the attorney several thousand dollars. After accepting payment, the lawyer did little work on the case, leaving the client to languish in jail for a year. On the day of trial, the lawyer, who was ill-prepared, told his client that the judge would go hard on him unless he agreed to plead guilty. The defendant pled guilty and received a lengthy sentence. Later, a private attorney took over representation, filed a motion to withdraw the guilty plea, and, after a mistrial, re-negotiated the plea. The defendant was sentenced to time served, and has since retained private counsel to bring a legal malpractice action against his court-appointed lawyer.

Court-appointed attorneys who pressure clients to "top up" their wages perpetrate a fraud upon the court by seeking to be paid twice for the same work. What is worse, by refusing to provide representation to those who cannot pay, they deny the poor their right to counsel. The short-lived Statewide Public Defender System Act would have prohibited this practice. As it stands, there is no such statutory prohibition and little oversight to prevent the practice, which continues unabated.

## FACTORS CONTRIBUTING TO A WASTEFUL AND INADEQUATE SYSTEM

At the heart of Mississippi's indigent defense crisis is the state's refusal to pay for the cost of indigent defense. In the absence of state funds, many counties do not allocate sufficient resources to ensure that defendants receive a constitutionally adequate defense. Some counties—particularly small rural counties—simply do not have the money to pay for a proper public defender system while simultaneously maintaining schools, hospitals, roads, and performing other traditional county functions. In other counties, elected officials allocate insufficient funds to criminal defense because criminal defendants are poor and unpopular, and other needs are pressing. Consequently, lawyers are often paid rock-bottom salaries, barely compensated for expenses, and have no access to investigatory, support, or expert services. Compounding these problems is the state's refusal to oversee or regulate the quality of representation for the poor.

### MISSISSIPPI'S REFUSAL TO PAY FOR THE COST OF INDIGENT DEFENSE

Mississippi now stands virtually alone among states in imposing on counties the full burden of paying for the defense of poor people accused of crimes.<sup>41</sup> The state's failure to contribute to defense of the poor has created a system of indigent defense that consistently ranks among the most underfunded in the nation. According to the most recent estimates, Mississippi counties spent about \$3.19 per capita on indigent defense in 2000.<sup>42</sup> Compare that to what the following states spent in the same year:<sup>43</sup>

Florida	\$11.70	Tennessee	\$6.45
Louisiana	\$10.18	S. Carolina	\$5.94
Virginia	\$ 9.00	Georgia	\$5.84
N. Carolina	\$ 8.19	Missouri	\$5.16
Kentucky	\$ 7.28	Arkansas	\$4.83
Alabama	\$ 6.84	Texas	\$4.65

Of all the states in its region, Mississippi ranks last. Only one other state in the nation—North Dakota—spends less than Mississippi to defend its poor citizens.<sup>44</sup>

### EXCESSIVE CASELOADS AND FINANCIAL DISINCENTIVES TO PROVIDE ADEQUATE REPRESENTATION

In recent years, the contract defender system has become increasingly popular in Mississippi—about 50 counties use this method of assigning counsel to the poor.<sup>45</sup> The source of its popularity can be traced to a 1990 lawsuit challenging the low hourly rate paid to assigned counsel. In *Wilson v. State*, the Mississippi Supreme Court held that in addition to their hourly fee, attorneys representing defendants in circuit court were entitled to receive payment for overhead.<sup>46</sup> After *Wilson*, counties feared that their indigent defense expenditure would increase. Many switched to contract defender systems which fix the price of indigent defense. Under the contract defender system, one or more lawyers agrees to take as many cases as are prosecuted in the county for a fixed annual sum, which usually includes overhead and all litigation expenses.

The contract defender system may be cheap, but it does not always deliver effective representation. When the fee is capped—especially if it's capped at a low rate—there is little incentive to spend time on cases. By contrast, there is every incentive to keep the costs of mounting a defense down. Litigation costs such as legal research and travel are included in the fixed fee, so spending money on these things takes away from the lawyer's salary. Moreover, in counties that pay part-time lawyers at below-market rates, the system depends upon lawyers supplementing meager income with paying clients. When paying and poor clients compete for a lawyer's time, it's no surprise who wins.

In 2002, a newly appointed part-time contract defender in a northern Mississippi county inherited a backlog of 150 felony cases from an outgoing public defender. According to standards set by the American Bar Association, the caseload is at the upper limit to occupy a full-time public defender.<sup>47</sup> Still, this lawyer can only afford to devote about half his time to defend the county's poor. The county pays its court-appointed lawyers a fixed amount of \$36,000 per year. That amount is intended to cover the lawyer's salary as well as all costs and expenses associated with cases, including legal research, travel, copying, rent, administrative support, utili-



ties, postage, office equipment, and telephone. While the county may succeed in keeping its indigent defense costs down, the lawyer can afford to spend only a short time on each case. He rarely takes cases to trial, and almost never has time to investigate.

In recent years, Hattiesburg, Mississippi was one example of the contract defender system's major shortcomings. As Forrest County's only attorney for indigent defendants, former public defender J.B. Van Slyke handled about 700 felony cases during the 2000 calendar year. And that was his part-time job. Inadequate funding left him spread so thin that in the vast majority of his cases, he filed no motions, conducted no investigation, and spent only a few hurried minutes advising clients before critical court hearings. Although Van Slyke was a public defender for more than three years and was assigned to nearly 2000 cases, only seven of his cases were resolved at trial. All seven resulted in guilty verdicts. The situation was so bad that Van Slyke sued the county, alleging that inadequate funding left him unable to fulfill his constitutional obligations to his clients.<sup>48</sup>

### **DISPARITY BETWEEN THE STATE'S PROSECUTION AND DEFENSE SPENDING**

In 2001, the state paid about \$16.5 million toward the cost of prosecuting felony cases.<sup>49</sup> It paid for prosecutors' salaries and benefits, office expenses, support services, litigation expenses, expert witnesses, and the full cost of a state-of-the-art crime lab. In the same year, the state paid less than \$250,000 for the cost of defending capital cases, and \$0 for the cost of defending all other cases. It fell to counties to pay an estimated \$9 million to defend the poor<sup>50</sup>—an amount that does not even approach parity with prosecution expenditures.

### **NO INDEPENDENT STATEWIDE REGULATION OR OVERSIGHT**

In Mississippi, there is no supervision or evaluation of indigent defense services, nor are there uniform standards insuring that county-funded defenders are providing a basic, constitutionally adequate defense. There is no requirement that public defenders keep caseload figures, and no way to make

sure that they keep abreast of changes in the law. Unlike most other states, there are no caseload guidelines and no qualifications.

That statewide oversight is sorely needed can be seen from the number of court-appointed defenders who, in recent years, have been disciplined, disbarred, or found ineffective by the courts:

- In one county, the sole public defender was indefinitely suspended from the practice of law after he failed to file appellate briefs on behalf of seven indigent defendants and ignored court orders to act on behalf of his clients.<sup>51</sup> The Court found that the lawyer's representation of his indigent, incarcerated clients was characterized by "virtually identical histories of delay, neglect, and inattention."<sup>52</sup>

- In one county, a court-appointed lawyer whom courts have found to be "ineffective" in more than one case still carries a substantial indigent defense caseload.<sup>53</sup>

- In recent years, two lawyers were disbarred or suspended from practice between the time they tried a death penalty case and when the direct appeal was filed. Another lawyer who was found to have provided deficient performance in one criminal case was appointed on another criminal case, and in that case had to be ordered to appear and argue the only issue he raised in the direct appeal brief.

- There is a growing number of recent cases in which lawyers who represent the poor were found to be ineffective advocates, or in which new trials or hearings were required due to counsel's inferior performance.<sup>54</sup> In one such case, the Mississippi Supreme Court issued a stern rebuke:

"We take this opportunity to caution the bench and bar of a growing number of reversals caused by inefficient, ineffective or unprofessional conduct by counsel. Retrials of criminal proceedings are extremely costly to the taxpayers of this State. . . . This Court is increasingly unwilling to cast the burden of incompetence on innocent taxpayers and considers this notice to the bench and bar that in the future we may not do so."<sup>55</sup>

Local oversight of public defenders by judges and county administrators is insufficient to protect defendants' constitutional right to an adequate defense. Lawyers for the poor cannot be vigorous advocates for their clients when their continued employment depends upon staying in a judge's good graces. In one Mississippi county, the public defenders' independence is thoroughly undermined by a circuit judge who not only decides which attorneys receive contracts to defend the county's poor, but also determines when they receive raises, and how much they receive. LDF often hears dissatisfied defendants claim that their lawyers behave as if they "work for the judge." In this county, the lawyers actually do.

### **Cash-Strapped Counties Take the State to Court** **Quitman County, Mississippi**

For years, counties have struggled under the financial strain of assuming the state's duty to defend the poor. Now, cash-strapped counties are taking action. Quitman County took the State to court after the costs of providing defense for a capital trial left that county on the brink of financial ruin.

In 1990, two men from outside the county were charged with the murders of four members of a local family. The County was forced to raise its taxes for three years and take out a substantial loan to pay the \$250,000 bill for the trials and appeals of the two men. As a result, resources available to fund schools, hospitals, and local law enforcement were dangerously reduced. In the lawsuit, the County alleges that the current system imposes enormous and unpredictable costs on taxpayers and results in constitutionally deficient representation.

In October 2001, the Mississippi Supreme Court affirmed a lower court's refusal to dismiss the suit, clearing the way for trial in spring, 2003.

Support for the lawsuit has been widespread. Several groups filed *amicus* briefs with the Supreme Court in support of Quitman County's position, including the Mississippi Association of County Supervisors, the Quitman County Chamber of Commerce, the Mississippi Trial Lawyers' Association, the Mississippi Bar Association, and the Sheriffs of Quitman County and ten other counties.

Two other Mississippi counties—Jefferson and Noxubee—filed similar suits. Other counties are likely to follow their lead.

Given the failure to reform the indigent defense system, many believe that actions like the Quitman County suit are the only way to effectuate change in the system.<sup>56</sup>

## SUMMARY: HIDDEN COSTS OF THE CRISIS IN INDIGENT DEFENSE

A chronically underfunded indigent defense system has serious consequences for taxpayers. Lengthy delays between arrest and trial cost money—money that is supplied by taxpayers. So do expensive appeals and re-trials. Finally, there are the costs of lives on hold, work days missed, bills left unpaid, and families separated while poor Mississippians wait for the wheels of justice to turn.

### CONGESTED DOCKETS

Mississippi's overburdened criminal courts are making headlines. In January 2003, the *Hattiesburg American* reported that 20 inmates in the Forrest County Jail spent over a year waiting for their day in court, that the cases of 143 defendants were still pending from 1998, and that it would take “years” to clear the backlogged criminal docket.<sup>57</sup> In August 2002, the *Biloxi Sun-Herald* reported that three young men spent four-and-a-half years awaiting trial in Biloxi, only to have the case against them dismissed for lack of admissible evidence.<sup>58</sup> Also in August 2002, *The Clarion Ledger* featured an article on George County, where the circuit court was so far behind in processing its caseload that local officials called in the Attorney General to sort it out.<sup>59</sup> These incidents weaken the public's faith in our system of justice.

An inefficient public defender system contributes to delays that create congested dockets. An overburdened, poorly paid defender who spends most of his time on private, paying clients may not have time to:

- meet with clients at an early stage in the case
- advocate for bail
- demand that the state turn over discovery in a timely fashion
- move to dismiss cases lacking sufficient evidence
- keep cases moving through the system by coming to court prepared
- meet scheduled trial dates.

The consequence is that some cases drag on for far longer than they should. Multiple requests for continuances keep cases on the docket from one term of court to the next. Some cases slip through the cracks, as did Gail Chester's case (see p. 2), where taxpayers paid about \$12,000 to keep a misde-

meanant shoplifter in jail for 14 months of pretrial incarceration.

### BURDENS ON LAW ENFORCEMENT

Even law enforcement officials—not usually the first to champion defendants' rights—think there is a problem with the way Mississippi provides counsel to the poor. That's because the current system crowds jails and depletes resources needed to prevent and investigate crimes.

At the Harrison County Jail, Chief of Security Rick Gaston oversees 850 to 1000 inmates in a space with a safe operating capacity of 760. An estimated 55 to 60 percent of those in the Harrison County Jail have not been convicted.<sup>60</sup> Overcrowding makes life difficult for jail staff. A recent audit of the jail by the United States Department of Justice National Institute of Corrections found that overcrowding contributed to the level of violence and other disciplinary problems. Gaston said that as a taxpayer, he is bothered by prolonged pretrial incarceration, which costs the county nearly \$31 per inmate per day.<sup>61</sup> “If we had less people taking up space at the jail,” he said, “we could afford to pay for more social workers to help abused children.”<sup>62</sup>

One of the auditors' main recommendations to alleviate jail overcrowding in Harrison County was to create a full-time professionally staffed public defender system. The National Institute of Corrections stated that having an effective advocate assigned to each detainee at an early stage in the proceedings would alleviate the problem.

Harrison County District Attorney Cono Carrana agrees. In an interview with LDF staff, he stated:<sup>63</sup>

“I think that the state of Mississippi needs a public defender program that would see to it that we have full-time folks giving indigent care. It slows down the system when you have contract defenders limited by time that they can dedicate to the program because they have other responsibilities in the practice of law. The pay is low and the turnover is high. We have had some cases that have gone through five or six contract defenders before it goes to trial. Each one of those occasions is a delay.”

He added that due to overwhelming public defender case-loads and the demands of private practice, many defenders know little about their clients' cases until the day of trial. Full-time defenders, Carrana said, would be better able to prepare in advance of trial, make an informed response to plea recommendations, and take cases to trial in a timely manner.

The sheriffs of 11 counties—Quitman, Hinds, Noxubee, Jefferson, Claiborne, Wilkinson, Lauderdale, Pike, Holmes, Coahoma, and Forrest—share the view that a statewide public defender system is an essential component of an efficient, effective justice system. They all joined in asking the Mississippi Supreme Court to allow Quitman County to continue its effort to seek state funding for indigent defense.

### **SOCIAL COSTS OF AN INADEQUATE DEFENDER SYSTEM**

Mississippi's failure to improve its faltering public defender system comes at a cost to defendants, taxpayers, and the community at large. There is the per diem cost of keeping inmates in jail while they wait for months to come to court, and the expense of appeals and retrials when court-appointed lawyers perform poorly. These are compounded by the economic effects of a deficient court system on already poor people. Jobs are lost, income foregone, child support unpaid, school missed, and federal government benefits stopped while Mississippi's indigent defendants wait for justice.

In an effort to document some of these social costs, LDF conducted a survey of women prisoners serving time for non-violent offenses. Nearly all of the 34 women who responded to the survey reported that they were dissatisfied with their public defender. Twelve women reported that their lawyer spent between zero and 15 minutes advising them about their case. Although 20 of the women were convicted of low level drug crimes, their sentences were long—almost certainly longer than they would have been if their lawyers had provided even minimal advocacy when they were sentenced. Seventeen out of the 34 women were serving sentences of a decade or more. Many were first time felony offenders.

Of the women who responded to the survey:

- 16 were working at the time of their arrest and 6 more had significant work experience in the year leading up to their arrest
- 18 had children living with them who moved in with relatives after their mother's arrest
- 15 lost a dwelling they owned or rented, and 12 lost cars
- 8 had elderly parents who suffered financially due to their daughter's incarceration
- 5 missed child support payments due to incarceration
- 3 were disabled and lost Federal Supplemental Security Income benefits.

Annie Collins<sup>64</sup> is serving an eight-year sentence for a street-level drug sale. She is 50 years old, illiterate, and mentally disabled. At the time of her arrest, she had been sharing a trailer with her elderly mother who suffers from schizophrenia. Collins was her mother's sole caregiver. After Collins' arrest, her mother was sent to a state mental hospital.

At the time of her arrest, Sarah Mills worked as a cook, making \$300 per week, plus benefits. Now, she is serving a 15-year sentence for a single street-level drug sale crime. To keep Mills from losing her home, her oldest daughter had to sell her own house and take up her mother's mortgage.

For years, Valerie Price worked as a cosmetologist. At one time, she owned a house, a car, and her own beauty salon. An addiction to prescription pain killers led to her arrest on a drug charge. Her public defender spoke to her for less than five minutes before court; he simply advised her to plead guilty. Price did plead guilty at a mass plea hearing with more than ten other criminal defendants. She received a year of house arrest and a ten-year suspended sentence. Price violated the terms of her house arrest with a single dirty urine test. She is now serving ten years in prison, and will not be eligible for parole until she serves nearly all of that time.

Before her arrest, Debbie Herbert received Supplemental Security Income due to a debilitating brain aneurysm. She was also the sole caregiver to her daughter, who is mentally retarded and has cerebral palsy. Herbert is now serving a five-year sentence for shoplifting. The only time her lawyer ever spoke to her was in the holding cell in the courthouse a few minutes before she pled guilty. Herbert's daughter now lives with her 80-year-old father, who suffers from Parkinson's disease, and her 76-year-old, blind mother.

Overall, LDF's survey of the women prisoners illustrates that Mississippi's broken public defender system has a ripple effect spreading from the defendants to their families and their communities. And, because many lose their livelihood and their assets after convictions for even first-time minor offenses, the State eventually absorbs the cost of supporting citizens who used to pay taxes and help support their own families. (No one has calculated the effects on the health and education of children of incarcerated parents in Mississippi, but that may also be a long-term social cost of poor representation and unnecessarily long sentences). Basic, constitutional advocacy in the criminal courts would go a long way toward reducing prison sentences, or finding alternative sentences to incarceration for non-violent offenders, so that indigent defendants could be sanctioned without complete disruption of their lives and productivity. In the end, the counties and the state will reap the fiscal and social benefits of a constitutional, effective public defender system.

#### **SOCIAL COSTS OF AN INADEQUATE DEFENDER SYSTEM INCLUDE THE FOLLOWING:**

- Innocent people go to prison
- Counties pay to maintain prisoners during long jail stays
- Poor families lose jobs, homes, cars, child support payments, and government benefits while criminal defendants wait in jail for their cases to come to court
- The state and counties pay for retrials and reversals on appeal
- Criminal defendants are let out of jail and their cases dismissed because of court backlog and jail crowding
- First-time offenders serve long prison sentences at the taxpayers' expense because defense attorneys make no effort to negotiate reasonable plea offers
- Children arrested for criminal offenses miss months of school while they wait in detention centers for resolution of their criminal cases
- Victims endure repeated delays waiting for cases to go to trial
- Citizens lose faith in the criminal justice system.

## **R E C O M M E N D A T I O N S**

1. Adequate state funding for appointed counsel and related services.
2. The delivery of indigent defense services should be reorganized to insure accountability, uniformity of quality, and constitutionally adequate representation. A statewide public defender system should be established similar to the one envisioned by the now-repealed Mississippi Statewide Public Defender System Act of 1998. Each judicial circuit should have a public defender office. Just as the prosecution offices are staffed with full-time attorneys, the public defender offices should generally be staffed with full-time attorneys.
3. A statewide indigent defense oversight entity should be established. This entity should monitor performance of public defenders across the state. It should also provide training for public defenders and ensure that they have effective access to independent, qualified investigators, experts, and other support.
4. Maximum caseload guidelines for public defenders and appointed counsel should be adopted.
5. Counsel should be appointed for indigent defendants promptly following arrest.
6. An objective statewide standard for determining whether defendants are indigent, and thus eligible for appointment of counsel, should be established.
7. Efforts should be made to reduce the delay in presenting criminal cases to the grand jury.
8. The appointment of criminal defense counsel for indigent defendants and the amounts paid to counsel should be reported to the Administrative Office of the Courts.

Fortenberry in Support of Appellee Quitman County, *State of Mississippi v. Quitman County* (declaring that a state funded public defender office ‘is in the best interest of every prosecutor in Mississippi, as well as in the best interest of the courts, defendants tried on criminal charges, financially-strapped counties currently funding indigent defense, underpaid and overburdened public defenders, and the public at large.’).

14. Brief of *Amicus Curiae*, The Mississippi Association of Supervisors, in Support of Appellee, Quitman County, *State of Mississippi v. Quitman County*. Brief of *Amici Curiae* Sheriffs of Quitman County, et al. in Support of Appellee Quitman County, *State of Mississippi v. Quitman County*.

15. The Spangenberg Group, *Indigent Defense in Mississippi* (January 1995); *Update: The State of Indigent Defense Service in Mississippi* (January 1997); *Update: The State of Indigent Defense Services in Mississippi* (December 1998).

16. *J.B. Van Slyke v. State of Mississippi*, No. 00-0013-GN-D (Chancery Court, Forrest County 1999) (voluntarily dismissed when plaintiff resigned his position as public defender); *In re Jones County Public Defender*, No. 93-CA-1273 (Jones County Circuit Court 1996).

17. *See generally* Georgia Supreme Court, Chief Justice’s Commission on Indigent Defense, *Report of Chief Justice’s Commission on Indigent Defense* (December 2002); Bill Rankin, *Indigent Defense Rates F*, ATLANTA JOURNAL-CONSTITUTION, December 12, 2002, p.1.

18. *See, e.g.*, Louisiana Indigent Defense Board, *Louisiana Standards on Indigent Defense*, 1995.

19. *See, e.g.*, TEX. CRIM. CODE ANN. § 1.051 (2001) (‘Texas Fair Defense Act’).

20. MISS. CODE ANN. § 99-15-15.

21. MISS. CODE ANN. § 99-39-101 (2000) (establishing the Office of Capital Post Conviction Counsel).

22. MISS. CODE ANN. § 25-32-71 (2000).

23. Mississippi Public Defenders Task Force, *Report to the Mississippi Legislature*, September 29, 2000.

24. *In re Lewis*, 654 So. 2d 1379, 1380 (Miss. 1995).

25. MISSISSIPPI RULE OF PROFESSIONAL RESPONSIBILITY 1.4.

## E N D N O T E S

1. A pseudonym is used where indicated to protect certain defendants’ privacy. Ms. Chester’s true identity and pertinent parts of her circuit court record are on file with the authors.

2. A pseudonym is used here.

3. Amanda Jones, *When Justice is Slow, Taxpayers Pay*, BILOXI SUN HERALD, June 19, 2002.

4. *Gideon v. Wainwright*, 372 U.S. 355 (1963).

5. MISS. CONST. ART. 3, § 26; MISS. CODE ANN. 99-15-15.

6. See The Spangenberg Group, *Report for the American Bar Association Information Program* (November 2000); NAACP Legal Defense and Educational Fund, Inc., *Thirteen State Survey of Indigent Defense Funding* (October 2002) (report on file with the authors). Mississippi is one of only five states in which counties pay the entire cost of non-capital indigent defense. The others are: Pennsylvania, South Dakota, Wyoming, and Utah. Twenty-four states fund 100% of indigent defense services. Twenty-one states pay for indigent defense with a combination of state and county funding.

7. The counties with full-time public defender systems are: Hinds (Jackson), Jackson (Pascagoula), and Washington (Greenville).

8. *Wilson v. State*, 574 So.2d 1338, 1340 (Miss. 1990); *Mease v. State*, 583 So.2d 1283, 1285 (Miss. 1991).

9. *In re Lewis*, 654 So.2d 1379, 1384 (Miss. 1995).

10. *Stringer v. State*, 627 So.2d 326, 330 (Miss. 1993).

11. *Quitman County v. State of Mississippi*, No. 99-0126 (Chancery Court, Quitman County 1999); *Noxubee County v. State of Mississippi*, No. 99-0136 (Circuit Court, Noxubee County 1999); *Jefferson County v. State of Mississippi*, No. 99-0169 (Circuit Court, Jefferson County 1999).

12. *Quitman County v. State of Mississippi*.

13. Jones, *supra* note 3 (reporting that Harrison County District Attorney Cono Carrana called for a statewide public defender system). *See also* Brief of *Amici Curiae* Rusty

26. TEX. CRIM. CODE ANN. § 1.051 (2001) ('Texas Fair Defense Act') (requiring the appointment of counsel within 1-3 days after application by indigent defendant in custody, and requiring appointed counsel to meet with clients as soon as practicable).

27. GUIDELINES OF THE SUPREME COURT OF GEORGIA FOR THE OPERATION OF LOCAL INDIGENT DEFENSE PROGRAMS, Rule 6.1: Caseload Control in Programs (1999).

28. A pseudonym is used here. Mr. Montgomery's real name and pertinent parts of his circuit court record are on file with the authors.

29. See *Payton v. State*, 708 So.2d 559 (Miss. 1998); *State v. Tokman*, 564 So.2d 1339 (Miss. 1990) (quoting *Nealy v. Cabana*, 764 F.2d 1173, 1177 (5th Cir. 1985)).

30. MISSISSIPPI RULES OF PROFESSIONAL RESPONSIBILITY. Rule 1.1 Competence.

31. MISSISSIPPI RULES OF PROFESSIONAL RESPONSIBILITY. Preamble.

32. *Argersinger v. Hamlin*, 407 U.S. 25 (1972).

33. *Lawyers' Groups Push for Statewide System of Public Defenders*. THE MEMPHIS COMMERCIAL APPEAL. May 25, 2001.

34. *Davis v. State*, 724 So.2d 342 (Miss. 1998).

35. *Earnest White v. State*, 742 So.2d 1126 (Miss. 1999) (remanded for new sentencing hearing where court failed to explain decision to impose 60-year sentence for first time offender convicted of low-level drug sale); *Davis v. State*, 724 So.2d 342 (Miss. 1998) (remanded for new sentencing hearing after judge imposed 60-year sentence on defendant convicted of one \$40 drug sale); *Green v. State*, 762 So.2d 810 (Miss. Ct. App. 2000) (remanded to determine whether 60-year sentence for cocaine sale was excessive, where defendant had no prior convictions); *Troy White v. State*, 755 So.2d 1148 (Miss. Ct. App. 1999) (reversing conviction and admonishing trial judge to provide reasons for sentencing first time offender to 60 years in drug case, especially where district attorney recommended only twelve years).

36. See, e.g., *Richardson v. State*, 769 So.2d 230 (Miss. Ct. App. 2000); *Shanks v. State*, 672 So.2d 1207 (Miss. 1996).

37. *White v. State*, 751 So.2d 481 (Miss. Ct. App. 1999)

(reversed and remanded where lawyer erroneously advised client that he would be eligible for parole); *Alexander v. State*, 605 So.2d 1170 (Miss. 1992) (reversed and remanded where lawyer erroneously advised client that he would be eligible for parole after 2.5 years, when, in fact, client would not be eligible for parole for 10 years); *Washington v. State*, 620 So.2d 966 (Miss. 1993) (reversed and remanded where lawyer was ill-informed about statute under which defendant was sentenced).

38. *Alexander v. State*, 605 So.2d 1170 (Miss. 1992).

39. A juvenile defendant's right to counsel is guaranteed by the United States Constitution in cases involving the threat of incarceration. See *In re Gault*, 387 U.S. 1, 87 S.Ct. 1428 (1967); *Love v. State*, 221 So.2d 92 (Miss. 1969). Mississippi law grants the right to counsel to all juveniles who are party to a youth court proceeding. See MISS. CODE ANN. §§43-12-201.

40. *Wash v. State*, 807 So.2d 452 (Miss. Ct. App. 2001), *reh'g denied* (October 16, 2001), *cert. denied* (February 14, 2002). The conviction was affirmed on direct appeal, but the Court of Appeals indicated that Wash may be able to show ineffective assistance in a post-conviction proceeding. Judges Irving and Bridges, dissenting, would have reversed his conviction on direct appeal because of ineffective assistance.

41. The Spangenberg Group; NAACP Legal Defense Fund, Inc., *supra* note 7.

42. A study conducted by the Mississippi Public Defenders Task Force found that the counties spent about \$9 million on indigent defense in 2000. See Mississippi Public Defenders Task Force, *Report to the Mississippi Legislature*, September 29, 2000. The \$3.19 figure was calculated by dividing nine million by Mississippi's 2000 census figure: 2,844,658.

43. The Spangenberg Group, *Report for the American Bar Association Information Program* (November 2000). See also The Spangenberg Group, *Comparative Analysis of Indigent Defense Expenditures and Caseloads in States with Mixed State & County Funding* (February 25, 1998).

44. The Spangenberg Group; NAACP Legal Defense Fund, Inc., *supra* note 7.

45. Mississippi Public Defenders Task Force, *Report to the Mississippi Legislature*, September 29, 2000.

46. *Wilson v. State*, 574 So.2d 1338, 1340 (Miss. 1990).



47. The American Bar Association's Standards for Criminal Justice recommend that full-time public defenders not be assigned more than 150 felonies per year, or 400 misdemeanors per year, or 200 juvenile cases per year, or 25 appeals per year. See ABA STANDARDS FOR CRIMINAL JUSTICE, PROVIDING DEFENSE SERVICES (3rd ed. 1993).

48. *J.B. Van Slyke v. Mississippi* et al. No. 00-0013-GN-D (Chancery Ct. Forrest Cty. 1999). The lawsuit was voluntarily dismissed in 2001 after Van Slyke resigned as public defender.

49. Mississippi Legislative Budget Office. *State of Mississippi Budget FY 2001*.

50. The State of Mississippi does not keep records of indigent defense expenditures. The \$9 million figure comes from a survey conducted by the Mississippi Public Defenders Task Force in which circuit clerks were asked to estimate their counties' total annual indigent defense expenditure. See Mississippi Public Defenders Task Force, *supra* note 45.

51. *In re Lewis*, 654 So.2d 1379, 1384 (Miss. 1995).

52. See *id.*

53. *Tripplett v. State*, 666 So.2d 1356 (Miss. 1995); *Nealy v. Cabana*, 764 F.2d 1173 (5th Cir. 1985).

54. *Neal v. Puckett*, 239 F.3d 683 (5th Cir. 2001) (counsel's performance during sentencing phase of death penalty trial was derelict); *Moawad v. Anderson*, 143 F.3d 942 (5th Cir. 1998) (ineffective assistance found due to counsel's failure to object to a jury instruction which had long been condemned by Mississippi Supreme Court); *Burns v. State*, 813 So.2d 668 (Miss. 2001) (appellant granted hearing on whether he received ineffective assistance at sentencing phase where counsel failed to call any witnesses in mitigation); *Bronson v. State*, 786 So.2d 1083 (Miss. Ct. App. 2001) (conviction reversed where counsel gave incorrect information on length of minimum sentence); *Gary v. State*, 760 So.2d 743 (Miss. 2000) (trial counsel was ineffective for failing to suggest alternative sentencing under the Youth Court statute); *Bigner v. State*, 822 So.2d 342 (Miss. Ct. App. 2002) (conviction reversed in rape case where appointed counsel made no pre-trial motions, conducted no investigation, and failed to bring exculpatory evidence of negative rape kit into evidence); *Brown v. State*, 749 So.2d 82 (Miss. 1999) (post-conviction relief granted where trial counsel failed to seek independent mental examination for purposes of sentencing); *McVeay v. State*, 754 So.2d 486 (Miss. Ct. App. 1999) (ineffective assistance found where counsel failed to advise petitioner regard-

ing potential speedy trial bar to prosecution despite 424 day delay); *White v. State*, 751 So.2d 481 (Miss. Ct. App. 1999) (defendant entitled to evidentiary hearing on his claim that counsel failed to inform him that he would be ineligible for parole); *Holly v. State*, 716 So.2d 979 (Miss. 1998) (counsel's presentation of mitigating evidence was deficient); *Davis v. State*, 724 So.2d 342 (Miss. 1998) (reversing 60-year sentence for \$40 sale of cocaine in case where appointed counsel 'chose not to offer evidence in [his client's] defense' at sentencing hearing); *Tripplett v. State*, 666 So.2d 1356 (Miss. 1995) ("record reveals a marked failure of counsel to fulfill his adversarial role"); *Moody v. State*, 644 So.2d 451 (Miss. 1994) (conviction reversed where counsel failed to question jury panel during voir dire, failed to make an opening statement, failed to call any defense witnesses, and stated during closing argument that he forgot to bring his trial notes to court); *Woodward v. State*, 635 So.2d 805 (Miss. 1993) (death sentence vacated where counsel admitted guilt during guilt phase, and offered almost no evidence in mitigation at penalty phase).

55. *Stringer v. State*, 627 So.2d 326, 330 (Miss. 1993).

56. Thomas Fortner, Phillip Broadhead, Marjorie Elizabeth Davis, *Indigent Defense in Mississippi: Justice v. Dollars*, THE MISSISSIPPI LAWYER, April - May 2002.

57. Nikki Davis Maute, *Helfrich Says Clearing Cases May Take Years*, HATTIESBURG AMERICAN, January 8, 2003.

58. Jones *supra*, note 3.

59. George, Lucedale Officials Seek AG's Help, THE CLARION-LEDGER, August 10, 2002.

60. Jones *supra*, note 3.

61. United States Department of Justice, National Institute of Corrections, Jail Division, *Local Systems Assessment: Harrison County, Mississippi* (February 2002).

62. Interview with Rick Gaston, Chief of Security, Harrison County Jail, June 2002.

63. Interview with Harrison County District Attorney Cono Carrana, December 19, 2002.

64. Pseudonyms are used here for all four women.

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The NAACP Legal Defense and Educational Fund, Inc. (LDF) was founded in 1940 under the leadership of Thurgood Marshall, the first African-American U.S. Supreme Court justice. Although initially affiliated with the National Association for the Advancement of Colored People, LDF has been an entirely separate organization since 1957.

LDF is America's premier civil rights law organization, and was considered the legal arm of the civil rights movement. Its fundamental mission is to transform the promise of equality into reality for African Americans, other people of color, women, the poor and ultimately all individuals in the areas of education, political participation, economic justice and criminal justice.

Although LDF works primarily through the courts, its strategies include advocacy, educational outreach, monitoring of activity in the executive and legislative branches, coalition building and policy research.

Among its current priorities, LDF is challenging initiatives to ban affirmative action in admissions to public colleges and universities; protecting minority voting rights; and pressing for improvement of bus service for minorities and the poor in Los Angeles. It is also seeking to bring justice to the African-American community in Tulia, Texas, which has been targeted unfairly by the "War on Drugs," and the Mississippi communities affected by that state's indigent defense crisis.

Additionally, through its scholarship and fellowship programs, LDF has helped over 4,000 exceptional African-American students to graduate from many of the nation's best colleges, universities and law schools.