No. 2003-SA-02658

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

QUITMAN COUNTY, MISSISSIPPI,

Plaintiff-Appellant,

vs.

STATE OF MISSISSIPPI, HALEY BARBOUR,
in his official capacity as GOVERNOR, and JIM HOOD,
in his official capacity as ATTORNEY GENERAL,

Defendants-Appellees.

On Appeal From the Circuit Court Of The Eleventh Judicial District
In And For Quitman County, Mississippi

BRIEF OF AMICI CURIAE Reuben V. Anderson, Rhoda B. Billings, Charles B. Blackmar, Harold G. Clarke, Armis E. Hawkins, James L. Robertson, Albert W. Thompson

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INTEREST OF *AMICI*:

Amici are former judges who sat on state court benches in Mississippi, Georgia, Missouri and North Carolina.[1] *Amici* have all had extensive experience presiding over criminal cases and have witnessed breakdowns in the fair trial process when attorneys for the defense have failed to investigate the facts of the case, prepare for court, or advocate for their clients.

Amici's experiences have led to their support of adequately resourced, full-time indigent defense systems to enable states to provide fair trials for the criminally accused. *Amici* know first-hand the difficulties in determining the culpability of a defendant and reaching a just outcome when counsel for the defense has not had the time or resources to represent the accused adequately. The similar experiences of judges in other states and counties throughout the nation have led judges to participate in creating indigent defense reform in many states. *Amici* believe that the establishment of a statewide, full-time indigent defense system will improve the efficiency and accuracy of the justice system in Quitman County and throughout the State of Mississippi.

ARGUMENT:

I. JUDGES HAVE A PARTICULAR INTEREST IN ENSURING ADEQUATE REPRESENTATION IN CRIMINAL CASES

Article Three of the Mississippi Constitution provides that "[i]n all criminal prosecutions the accused shall have a right to be heard by himself or counsel, or both, to demand

[1] *Amici* are Reuben V. Anderson, Justice of the Mississippi Supreme Court, 1985-1991; Rhoda B. Billings, Justice of the North Carolina Supreme Court, 1985-1986, Chief Justice of the North Carolina Supreme Court, 1986; Charles B. Blackmar, Judge of the Supreme Court of Missouri, 1982-1992, Chief Justice of the Supreme Court of Missouri, 1989-1991; Harold G. Clarke, Justice of the Supreme Court of Georgia, 1979-1994, Chief Justice of the Supreme Court of Georgia, 1990-1994; Armis E. Hawkins, Justice of the Mississippi Supreme Court, 1980-1995; James L. Robertson, Justice of the Mississippi Supreme Court, 1983-1992; Albert W. Thompson, Superior Court Judge, Chattahoochee Judicial Circuit, Georgia, 1981-1982.

the nature and cause of the accusation, to be confronted by the witnesses against him, and … [to] a speedy and public trial."[2] In *Triplett v. State,* the Mississippi Supreme Court ruled, "[w]e hold today that the Mississippi Constitution's right to counsel embraces all rights guaranteed to a criminally accused defendant by the Sixth Amendment."[3] The Court also has held, in *Johnson v. State,* that the right to a fair trial by an impartial jury is a fundamental right provided by both the state and federal constitutions.[4]

Federal law also mandates that indigent defendants be provided with adequate counsel to carry out their right to a fair and speedy trial. As early as 1932, the United States Supreme Court examined the nature of the right to counsel, holding in *Powell v. Alabama* that the defendants had not been afforded the right to counsel where "until the very morning of the trial no lawyer had been named or definitely designated to represent the defendants."[5] The Court addressed the difference between having a person who simply stands next to the defendant at trial, or, as is often the case in Mississippi, as the defendant pleads guilty, as opposed to having an individual that will "accord[] the right of counsel in any substantial sense."[6] The Court wrote:

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[2] Miss. Const. art. 3, § 26.

[3] *Triplett v. State*, 666 So.2d 1356, 1358 (Miss. 1995) (holding that Triplett received ineffective assistance of counsel where counsel failed to file a motion for continuance and a continuance was necessary).

[4] *See* 476 So.2d 1195, 1209 (Miss. 1985). In that decision, the court stated that

> A fair trial is, after all, the reason we have our system of justice; it is a paramount distinction between free and totalitarian societies. … The right to a fair trial by an impartial jury is fundamental and essential to our form of government. It is a right guaranteed by both the federal and the state constitutions.

Id. See also Littlejohn v. State, 593 So.2d 20, 23 (Miss. 1992) ("An accused is entitled to be assisted by an attorney, whether retained or appointed, who plays the role necessary to ensure that the *trial is fair*.").

[5] 287 U.S. 45, 56 (1932).

[6] *Id.* at 58. The Supreme Court held that "[u]nder the circumstances disclosed . . . defendants were not accorded the right of counsel in any substantial sense." *Id.*

> during perhaps the most critical period of the proceedings against these defendants, that is to say, from the time of their arraignment until the beginning of their trial, when consultation, thorough-going investigation and preparation were vitally important, the defendants did not have the aid of counsel in any real sense, although they were as much entitled to such aid during that period as at the trial itself.[7]

In *Gideon v. Wainwright* the Supreme Court extended the holding in *Powell v. Alabama* and described the scenario of a criminal defendant's facing trial without an attorney:

> Left without the aid of counsel he may be put on trial without a proper charge, and convicted upon incompetent evidence, or evidence irrelevant to the issue or otherwise inadmissible. … He requires the guiding hand of counsel at every step in the proceedings against him. Without it, though he be not guilty he faces the danger of conviction because he does not know how to establish his innocence.[8]

When a defendant appears before the court without the aid of an attorney who has prepared and is ready to make objections and advocate for the defendant throughout the proceedings, it hinders the ability of judges to provide a fair trial or accurate outcome.

Just last term, in *Wiggins v. Smith*, the Supreme Court emphasized that conducting a reasonable investigation of the facts of the defendant's case is an essential element to providing effective assistance of counsel.[9] The Court stated, "'strategic choices made after less than complete investigation are reasonable' only to the extent that 'reasonable professional judgments support the limitations on investigation.'"[10] The Fifth Circuit also has held that

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[7] *Id*. at 57 (emphasis added).

[8] 372 U.S. 335, 345 (quoting *Powell*, 287 U.S. at 69).

[9] *See Wiggins v. Smith*, 539 U.S. 510, 123 S.Ct. 2527 (2003).

[10] *Id*. at 2539 (citation omitted).

essential to adequate assistance is "a reasonably substantial, independent investigation into the circumstances and the law from which potential defenses may be derived."[11]

As early as 1964, in the wake of *Gideon v. Wainwright*, the Mississippi Supreme Court reversed the conviction of a defendant convicted and sentenced without legal representation, writing that "[t]he assistance of counsel is one of the safeguards of the Sixth Amendment deemed necessary to insure fundamental human rights of life and liberty. … The Sixth Amendment stands as a constant admonition that if the constitutional safeguards it provides be lost, justice will not still be done."[12] The Mississippi Supreme Court has held that the right to counsel provides defendants with a right to an attorney who knows the governing law and relevant facts of the case before going to trial or pleading his client guilty. In *Ward v. State,* the Court held that effective assistance of counsel requires a lawyer who is familiar with the governing law of the case; a lawyer unversed in the facts or the law of a case is unable to provide competent representation in advising a client to plead guilty.[13] Meeting this legal standard necessitates that counsel for the indigent have the resources to investigate the facts and law of the case.

By all national standards, the county-based indigent defense system fails to provide the essential tools of an adequate defense. As the trial record reflects, Quitman County's

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[11] *Lockett v. Anderson*, 230 F.3d 695, 714 (5th Cir. 2000); *see also Baldwin v. Maggio*, 704 F.2d 1325, 1332-33 (5th Cir. 1983) (finding counsel ineffective in failing to conduct adequate investigations).

[12] *Conn v. State*, 170 So.2d 20, 22 (Miss. 1964) (quoting *Johnson v. Zerbst*, 304 U.S. 458, 462 (1938)).

[13] *Ward v. State*, 708 So.2d 11, 14–15 (Miss 1998); *see also Harris v. State*, 806 So.2d 1127, 1130–31 (Miss. 2002) (holding that defendant received ineffective assistance of counsel where counsel admitted under oath that he advised defendant to enter a guilty plea, after which point counsel planned to investigate the case, and advised defendant that he could legally withdraw his guilty plea prior to sentencing); *State v. Tokman*, 564 So.2d 1339, 1342 (Miss. 1990) ("The failure by Tokman's counsel to conduct any investigation at all can be characterized as an 'identifiable lapse.'").

attorneys for the indigent routinely waive important stages of criminal proceedings. Attorneys often only meet with clients in groups and within earshot of the prosecutor and judge, losing the potential for meaningful attorney-client communications. Lawyers for the indigent in Quitman County do not interview witnesses, hire investigators, examine evidence, or conduct any investigation of the cases. Instead of independently constructing a factually based defense, they simply rely upon the prosecution's file. Also absent from the defense provided is motion practice, with no substantive motions filed in 83% of Quitman County defenders' cases from 1998-2000. Forensic testing, psychiatric evaluation, and retaining of experts are also not provided in Quitman County.

In the experience of *amici*, the adequacy of representation for the indigent improves significantly when representation is provided by public defenders who are devoted to indigent cases, adequately paid, and given access to investigators and other support staff to assist with their work. At present, only three of Mississippi's eighty-two counties have one or more full-time public defenders.[14] National institutions, including the American Bar Association, state in their standards for criminal justice that having a full-time staff devoted to criminal defense best ensures that adequate counsel will be provided. The American Bar Association Standards state that "[d]efense organizations should be staffed with full-time attorneys. All such attorneys should be prohibited from engaging in the private practice of law."[15] An economic study of

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[14] *Assembly Line Justice: Mississippi's Indigent Defense Crisis* 6 (NAACP Legal Defense and Educational Fund, Inc. ed., 2003) (noting that among the seventy-nine other counties in Mississippi, the vast majority "contract with part-time defenders who maintain private practices, or appoint private attorneys to represent poor defendants").

[15] *ABA Standards For Criminal Justice: Providing Defense Services*, Standard 5-4.2 (A.B.A., 3d ed. 1992), *available at* http://www.abanet.org/crimjust/standards/defsvcs_toc.html; *see also* National Study Comm'n on Defense Servs., Nat'l Legal Aid & Defender Ass'n, *Guidelines for Legal Defense Systems in the United States*, Standard 2.9 (1976) ("Defender Directors and staff attorneys should be full-time employees, prohibited from

Mississippi's indigent defense systems concluded that full-time public defenders provide better representation for Mississippi's poor than alternative models of indigent defense.[16] Similarly, after conducting a two-year-investigation, the Georgia Blue Ribbon Commission on Indigent Defense concluded that a public defender's office presents the best method of representation.[17] Studies have also concluded that defendants with private counsel, often full-time defense attorneys with greater resources, are sentenced to time in prison or jail half as often as defendants who are publicly defended receive a sentence of time in prison or jail, suggesting that such punishments are more proportionate to the crimes for which the defendants are convicted. For example, a study conducted in Harris County, Texas documented that out of 30,000 felony filings, 58% of defendants with appointed counsel were sentenced to jail or prison whereas only 29% of defendants with private counsel were incarcerated.[18]

When defendants are represented by counsel that puts forth a basic defense, by investigating the facts and advocating for the defendant, the fate of the individual defendant is not the only outcome impacted upon. Provision of competent counsel for the poor creates

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engaging in the private practice of law . . . ."), *available at* http://www.nlada.org/Defender/Defender_Standards/Guidelines_For_Legal_Defense_Systems.

[16] Carl Brooking & Blakely Fox, *Economic Losses and the Public System of Indigent Defense: Empirical Evidence on Pre-Sentencing Behavior From Mississippi*, 4 (NAACP Legal Defense and Educational Fund, Inc. ed., 2003) ("In counties that employ full-time public defenders, indigents receive better, more immediate, and more satisfactory defense."); *see also Assembly Line Justice: Mississippi's Indigent Defense Crisis*, *supra*, note 14, at 22 (recommending that "[e]ach judicial circuit court should have a public defender office. Just as prosecution offices are staffed with full-time attorneys, the public defender offices should generally be staffed with full-time attorneys").

[17] Bill Rankin, *Indigent Defense Rates F*, Atlanta J.-Const., Dec. 12, 2002, at A1.

[18] Note, *Gideon's Promise Unfulfilled: The Need for Litigated Reform of Indigent Defense*, 113 Harv. L. Rev. 2062, 2064 (2000) (citing Bob Sablatura, *Study Confirms Money Counts in County's Courts*, Houston Chron., Oct. 17, 1999, at 1). The 1999 study concluded that 58% of defendants with appointed counsel and 29% of defendants with private counsel served time. Controlling for the variable of the severity of the various crimes involved, the results remained disproportionate, with 57% of those who were publicly defended incarcerated versus 25% of those who were privately defended. *Id.*

greater confidence in the outcome of criminal cases generally.[19] The administration of justice then includes fewer reversals on appeal, fewer wrongful convictions, and fewer exonerations after years spent in the state prison system. The Mississippi Supreme Court has "caution[ed] the bench and bar of a growing number of reversals caused by inefficient, ineffective or unprofessional conduct by counsel."[20] Analysis done on where the justice system has broken down when innocent people are convicted has found that bad lawyering is a significant contributor to wrongful convictions.[21] Speaking at the Symposium on Indigent Criminal Defense in Texas, Stephen B. Bright, one of the nation's most renowned civil rights attorneys, stated that "the quality of legal representation which poor people get in the courts day in and day out is causing the public to lose confidence in the judicial system."[22]

Public confidence in the judicial system is critical. When the judicial system consistently renders unfair results, it threatens citizens' commitment to abide by the criminal laws; to serve on juries; to attempt to reach an accurate determination when serving as jurors;

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[19] *See* Peter Arenella, *Rethinking The Functions of Criminal Procedure: The Warren and Burger Courts' Competing Ideologies*, 72 Geo. L.J. 185, 191 (1983) (finding that "reversals of convictions … may undermine the public confidence in the judicial system").

[20] St*ringer v. State*, 627 So.2d 326, 330 (Miss. 1993).

[21] *See* Samuel Gross et al., *Exonerations In the United States: 1989 Through 2003* (2004), *at* http://www.law.umich.edu/NewsAndInfo/exonerations-in-us.pdf; *see also* Stephen B. Bright, *Turning Celebrated Principles Into Reality*, Champion, Jan./Feb. 2003, at 6, *available at* http://www.schr.org/indigentdefense/champion02.htm (noting that the number of people released from prison "as a result of DNA evidence has demonstrated the most drastic consequence of inadequate representation--conviction of the innocent").

[22] Transcript, *Symposium on Indigent Criminal Defense*, 42 S. Tex. L. Rev. 979, 1017 (2001).

and to come forth as witnesses in court.[23] At bottom, public confidence in the judicial system is damaged when the perception is that the wealthy receive a different class of justice than the poor.

II. JUDICIAL SUPPORT IS OFTEN CENTRAL TO SUCCESSFUL INDIGENT DEFENSE REFORM.

Judges have played active roles in securing reform in indigent defense systems where the judges could no longer ensure that swift and accurate justice was provided in their courts because of inadequate counsel for the poor. Judges have repeatedly decided cases to change the indigent defense system in counties and towns where the constitutionally required level of representation was not being provided.[24] In addition, some judges have participated in statewide Blue Ribbon Commissions (task forces comprised of judges, prosecutors, defense attorneys and other community leaders) with the objective of assessing what reform measures, if any, were needed in county and state criminal defense systems.[25] Indigent defense reform efforts in Georgia, Louisiana, and Texas offer useful examples.

As of 2003, the State of Georgia provided only eleven percent of the funding of indigent defense in all of its counties.[26] Facing plentiful evidence that the state was not meeting

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[23] *See* Cheryl A. Whitney, Note, *Non-Stranger, Non-Consensual Sexual Assaults: Changing Legislation to Ensure That Acts Are Criminally Punished*, 27 Rutgers L.J. 427, 437 (1996) (finding that decreased confidence in the justice system is a likely factor for the under-reporting of crimes by sexual assault victims).

[24] *See State v. Peart*, 621 So.2d 780, 790–791 (La. 1993) (holding that excessive caseloads and insufficient support services for New Orleans public defenders created a rebuttable presumption that indigent defendants were not provided constitutionally adequate assistance of counsel); *State v. Smith*, 681 P.2d 1374, 1384 (Ariz. 1984) (holding that Mohave County's system of offering contract for representing the county's indigent to whoever made the lowest bid, with no inquiry into attorney's competency, raises "an inference that the procedure resulted in ineffective assistance of counsel, which inference the state will have the burden of rebutting").

[25] *See, e.g.*, Richard W. Creswell, *Georgia Courts In the 21st Century: The Report of the Supreme Court of Georgia Blue Ribbon Commission on the Judiciary*, 53 Mercer L. Rev. 1 (2001) (discussing the Georgia Supreme Court Blue Ribbon Commission on the Judiciary); *see also* Chief Justice Pascal F. Calogero, Jr., *The State of Indigent Defense In Louisiana*, 42 La. B.J. 454 (1995) (discussing the creation of judicial committee to address problems with indigent defense services in Louisiana).

[26] Bill Rankin, *Legislature 2003: Indigent Defense Moves Up Agendas*, Atlanta J.– Const., Apr. 14, 2003, at B1.

indigent defendants' constitutionally required right to representation by counsel and a fair trial, Georgia Supreme Court Chief Justice Robert Benham created a Blue Ribbon Commission on Indigent Defense.[27] The Blue Ribbon Commission consisted of members of the state bar, a bipartisan group of legislators, four active judges, and was chaired by former Georgia Supreme Court Justice Honorable Hardy Gregory, Jr.[28] The Blue Ribbon Commission issued a report to the Georgia Supreme Court finding that Georgia's system had resulted in inconsistent and often unconstitutional legal services for the indigent.[29] The Commission's findings were responsible for the Georgia legislature's passage of the Georgia Indigent Defense Act of 2003. Republican Governor Sonny Perdue signed the Act, which mandates the creation of forty-nine public defender's offices, one for each judicial circuit in Georgia.[30] These offices will match the number of prosecutors' offices that are in place and are designed to demonstrate the state's commitment to provide indigent defendants with representation that can stand up to the services provided by prosecutors.

Judges in Georgia continue to work on reform of the State's indigent defense system. DeKalb County Superior Court Judge Michael E. Hancock and Dougherty County

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27 Marion Chartoff, *The Georgia Indigent Defense Act of 2003*, Champion, Aug. 2003, at 62.

28 Creswell, *supra* note 25, at 3.

29 Chartoff, *supra* note 27, at 61 ("The passage of the Act was the result of a concerted effort by members of the judiciary, the state bar, advocacy groups, and legislators from across the political spectrum."); *see also* Alison Couch, *Legal Defense of Indigents: Create the Georgia Public Defender Standards Council to Set State-Wide Standards For the Legal Representation of Indigent Defendants And Provide Budget Authority to Such Council*, 20 Ga. St. U. L. Rev. 105, 107 (2003) ("The information compiled [by the Commission] revealed that the indigent defense system needed an overhaul."); Creswell, *supra* note 25, at 38 ("The plain fact is that justice in Georgia is not administered on an equal basis to those criminal defendants who are too poor to hire their own lawyers.").

30 Chartoff, *supra* note 27, at 61–62 (explaining that in addition to creating forty-nine public defender's offices, the Act creates standards for minimum experience, training, caseload, support staff, compensation of attorneys, and contractual indigent defense representation.).

Superior Court Judge Willie E. Lockette have been selected by the Georgia Supreme Court to sit on the Georgia Public Defender Standards Council to oversee the implementation of reforms.[31]

Members of the judiciary have also been instrumental in creating indigent defense reform in Louisiana by providing state standards and guidance to a system that for years had been run on the local level with no state support.[32] The Louisiana Supreme Court began its active role in indigent defense reform in December 1990, when the Court appointed a statewide Indigent Defender Board Committee of the Judicial Council to study Louisiana's indigent defense system.[33] The report commissioned by the Committee confirmed that Louisiana did not provide adequate funds for counsel for the indigent. When compared with eighteen similar states, Louisiana ranked last in expenditures per case and expenditures per capita on indigent defense.[34]

In 1993, the Louisiana Supreme Court heard the case of *State v. Peart*, brought by an Orleans Parish public defender who asked the Court for relief from his crushing caseload.[35] The Louisiana Supreme Court found a "general pattern . . . of chronic underfunding of indigent defense programs in most areas of the state."[36] The Louisiana Supreme Court called upon the

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31 Bill Rankin, *Indigent Defense Panel In Place*, Atlanta J.–Const., July 19, 2003, at E1; *see also* Ga. Code Ann.. § 17-12-4(a)(10) (2003) (creating the Council as a legal entity with perpetual existence and reasonably necessary power to ensure effective representation of indigent defendants).

32 *See* Robert L. Spangenberg & Marea L. Beeman, Toward A More Effective Right to Assistance of Counsel, Law & Contemp. Probs., Winter 1995, at 39.

33 Calogero, *supra* note 25, at 456.

34 *Id*. at 456–57. The article explains that the median cost per case was $277.06 among the states surveyed, while Louisiana spent $100.03 per case. *Id*. at 456. The states surveyed spent a median of $6.50 on indigent defense for every resident of the state, while Louisiana spent $2.37 per resident. *Id*. at 456–57.

35 *State v. Peart*, 621 So.2d 780 (La. 1993).

36 *Id*. at 789.

state legislature to enact reform, noting that otherwise the Court "may find it necessary to employ the more intrusive and specific measures it has thus far avoided to ensure that indigent defendants receive reasonably effective assistance of counsel."[37]

In early 1994 the state issued an Executive Order that created a Task Force on Indigent Defense.[38] The Task Force included representatives from all three branches of government. Soon after, the Louisiana Supreme Court established the Louisiana Indigent Defense Board by court rule.[39] The state legislature provided the Board with five million dollars in funding.[40] The Louisiana Supreme Court appoints the members of the Louisiana Indigent Defense Board, now called the Louisiana Indigent Defense Assistance Board, and "charges the Board with certain responsibilities toward improving the administration of criminal justice," including the creation of guidelines for indigent defense systems and the disbursement of funds among local indigent defense boards that work toward compliance with those guidelines.[41]

However, initiatives by the judiciary alone have not been enough to ensure consistent, constitutionally adequate representation in a state where indigent defense is not adequately funded by the state.[42] Efforts by the judiciary and the other branches of government

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37 *Id.* at 791.

38 Calogero, *supra* note 25, at 457.

39 Nat'l Legal Aid & Defender Ass'n, *In Defense of Public Access to Justice: An Assessment of Trial-Level Indigent Defense Services In Louisiana 40 Years After* Gideon, 2 (2004).

40 Calogero, *supra* note 25, at 457. The state has provided annual funding, including 2.9 million dollars in fiscal year 2003. *See* Nat'l Legal Aid & Defender Ass'n, *supra* note 39, at 16.

41 Calogero, *supra* note 25, at 457–58; *see also* Nat'l Legal Aid & Defender Ass'n, *supra* note 39, at 2–3 (discussing responsibilities of Louisiana Indigent Defense Board); Robert Spangenberg & Marea Beeman, *supra* note 32, at 39 (same).

42 Mark Ballard, *Indigent Defenders Problems Can Lead to Overturned Cases*, Advocate (Baton Rouge, La.), May 4, 2004, at 4.A; Nat'l Legal Aid & Defender Ass'n, *supra* note 39, at 19–20.

continue. In 2003, the Louisiana House of Representatives created the Louisiana Task Force on Indigent Defense Services. Louisiana Supreme Court Chief Justice Pascal Calogero, Jr. is a member of the Task Force.[43]

When the Texas legislature passed the Texas Fair Defense Act on June 14, 2001 it took the first official step toward affording poor defendants in Texas their right to a speedy, fair trial and to constitutionally adequate counsel.[44] Supporters of the legislation had gained momentum from cases like the *Burdine* "sleeping lawyer" case, in which Calvin Burdine was convicted of capital murder as his lawyer slept through portions of his six-day trial.[45] The attention generated by the *Burdine* case resulted in an effort among Harris County judges in Texas to create uniform standards for appointing counsel in capital cases and led to passage of the Fair Defense Act.[46] The Act directs that in all criminal cases counties take a systematic approach to selecting attorneys for the indigent and includes a twenty million dollar appropriation.[47]

The Fair Defense Act established the Texas Task Force on Indigent Defense as a permanent standing committee of the Texas Judicial Council, with the mission of continuing the

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43 *See* Ballard, *supra* note 42, at 4.A.

44 Texas Fair Defense Act, Tex. Crim. Proc. Code Ann. § 1.051 (2004).

45 *Burdine v. Johnson*, 262 F.3d 336, 338–39 (5th Cir. 2001). The Fifth Circuit Court of Appeals ultimately ruled en banc that a sleeping lawyer did not meet Calvin Burdine's right to effective representation. *Id.* at 357. Previously, a divided panel of the Fifth Circuit Court had held that the circumstances of Burdine's representation did not require a presumption of prejudice. *Burdine v. Johnson*, 231 F.3d 950, 958 (5th Cir. 2000), *vacated by*, 234 F.3d 1339 (5th Cir. 2000).

46 Lisa Teachey, *Convicted Killer Avoids Death Row/Notorious 'Sleeping Lawyer Case' Ends In Plea Agreement*, Houston Chron., June 20, 2003, at 29.

47 Texas Fair Defense Act, Tex. Crim. Proc. Code Ann. § 1.051 (2004); s*ee also* Melissa Thraikill, *Bill May Provide Better Defense For Texas' Poor*, Daily Texan, Apr. 11, 2001; *Fair Defense Act*, *at* http://www.texasappleseed.net/projects/fairdefense.html (last visited 6/30/04).

process of reform. The Texas Task Force on Indigent Defense consists of five members who are appointed by the Governor and eight *ex officio* members.[48] The eight *ex officio* members include Presiding Judge of the Court of Criminal Appeals Honorable Sharon Keller, who serves as Chair of the Task Force; Chief Justice of the Supreme Court Thomas Phillips; Justice Ann McLure of the Eighth Circuit Court of Appeals; and Judge Orlinda Naranjo of the Travis County Court.[49] The five Governor appointees include Judge Olen Underwood of the 284th Judicial District and County Judge Jon Burrows of Bell County.[50] Thus judges from across Texas, from County Courts to the Criminal Court of Appeals, have been instrumental in the process of working toward a more consistent, constitutionally adequate level of defense representation for the poor throughout the state.

Judges have increasingly become involved in supporting the rights of indigent defendants in other states as well. For example, New York State recently established a Commission on the Future of Indigent Defense Services to examine the effectiveness of criminal defense services and alternative methods of assigning and financing counsel for the poor, the State announced that those who would serve on the thirty-one member committee included thirteen sitting judges as well as former administrative judge Burton Roberts as the Committee Chairman.[51] These examples demonstrate the central role of courts and members of the judiciary

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48 Composition of the Texas Task Force on Indigent Defense Government Code, Subch. D, Tex. Code§ 71.051 *et seq*.

49 *Id.*

50 *Id.*

51 *State Establishes Indigent Defense Services Commission*, Daily Record (Rochester, N.Y.) May 25, 2004, *available at* 2004 WL 63189834.

to indigent defense reform across the country. In Mississippi, as elsewhere, the judiciary has a duty to insure that the indigent defense system has the resources to function well.

CONCLUSION

Mississippi's judicial system will benefit if a full-time system of legal representation for the indigent is established by the State. The improvement in the quality of representation for the poor will impact the criminal justice system throughout all of Mississippi's counties. Cases will move more efficiently and fairly, and public confidence in the administration of justice will be restored. For these reasons, *amici* urge this court to reverse the judgment of the trial court against Quitman County, and order the establishment of a statewide, state-funded indigent defense system.

Respectfully Submitted,

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