Rec'd 04/18/01

ORIGINAL

No. 2000-IA-01477

IN THE
SUPREME COURT OF THE STATE OF MISSISSIPPI

STATE OF MISSISSIPPI, RONNIE MUSGROVE, in his official capacity as GOVERNOR, and MIKE MOORE, in his official capacity as ATTORNEY GENERAL,

Defendants-Appellants,

v.

QUITMAN COUNTY, MISSISSIPPI,

Plaintiff-Appellee.

On Appeal from The Circuit Court of the Eleventh Judicial District In and For Quitman County, Mississippi

BRIEF FOR WARRAT STEWART, WILLIE HENLEY, DONALD STATEN, WALTER WILLIAMS, DIANA BROWN, JIMMY REDWINE, CARLOS IVY, MILAS McDONALD, and JAMES BORGMANN as *AMICUS CURIAE* IN SUPPORT OF PLAINTIFF FOR AFFIRMANCE OF THE CIRCUIT COURT

ORAL ARGUMENT NOT REQUESTED

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INTEREST OF *AMICI*

Amici are recipients of indigent defense services in Mississippi. They hail from counties all over the state, including Quitman County. *Amici* were charged with a range of crimes, and their cases were resolved with a variety of dispositions, but common themes unite their stories: all received ineffective legal representation from impoverished county-funded public defense systems. *Amici*'s experiences starkly illustrate the failures of the county-funded systems. Typically, in their cases:

- there was significant delay in the appointment of counsel;
- meetings between clients and counsel were cursory and usually took place in court immediately before critical hearings;
- counsel lacked funds to investigate cases, conduct legal research, and hire experts; appointed counsel often instructed their clients to conduct their own investigations;
- appointed counsel were burdened with overwhelming caseloads and often urged defendants to accept pleas without adequately explaining the terms of the pleas and without weighing the costs and benefits of accepting pleas versus going to trial;
- no defense services were available pre-trial, during critical hearings, or during sentencing, and no such services were available for non-capital post-conviction relief. Without exception, *amici* have been unable to obtain post-conviction assistance.[1]

Amici's stories are critically relevant to the issue in this case: whether Mississippi's failure to fund indigent defense is resulting in a constitutional crisis by depriving poor criminal defendants of their right to counsel. *Amici*'s stories show that Mississippi's county-funded systems of indigent defense, by

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[1] The State argued below that post-conviction relief is readily available to *amici* and similarly situated defendants and therefore any flaws in indigent defense services can be adequately addressed in post-conviction proceedings. This argument is flawed for several reasons: 1) non-capital post-conviction relief is unavailable to indigent defendants– neither the State nor counties provide attorneys for non-capital post-conviction petitions; 2) as several *amici* report, after disposition of their cases, defendants may never hear from their counsel again and are unable to obtain their files and other documents critical to their pursuit of post-conviction relief; and 3) most importantly, the Constitutions of the United States and the State of Mississippi guarantee *amici* and similarly situated defendants effective, competent criminal defense representation at their trials, *before* they lose their liberty, not after they have been convicted and sentenced.

depriving *amici* of their right to effective representation in criminal proceedings, are falling far short of the constitutional guarantee of a criminal defendant's right to counsel.

ARGUMENT:
Mississippi's Failure to Fund Indigent Defense Services Violates the Fundamental Constitutional Right to the Effective Assistance of Counsel.

One of the most important rights Mississippians enjoy when facing criminal charges is access to competent legal services regardless of one's ability to pay.[2] Today, basic, no-frills effective representation includes: (1) timely and periodic consultation with clients while cases are pending;[3] (2) reasonably thorough investigation of cases;[4] (3) knowledge of the law governing each client's case;[5] (4) routine consultation with clients regarding important developments and decisions;[6] (5) filing of critical

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[2] "Even the intelligent and educated layman . . . 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." Powell v. Alabama, 287 U.S. 45 (1932); see, e.g., Strickland v. Washington, 466 U.S. 668, 686 (1984).

[3] See, e.g., Ferguson v. State, 507 So. 2d 94, 96 (Miss.1987) (finding counsel's performance deficient where he met with his client only twice, including once on the day of the trial); State v. Tokman, 564 So.2d 1339, 1342 (Miss. 1990); Mitchell v. Kemp, 762 F.2d 886, 888 (11th Cir. 1985) (holding that meaningful discussion with the client of the realities of his case is a cornerstone of effective assistance of counsel).

[4] See, e.g., Triplett v. State, 666 So. 2d 1356, 1361 (Miss. 1995) (stating that basic defense requires "complete investigation to ascertain every material fact about [the] case"); Tokman, 564 So.2d at 1342 ("'At a minimum, counsel has a duty to interview potential witnesses and to make independent investigation of the facts and circumstances of the case.'")(citation omitted); Smith v. Murray, 477 U.S. 527, 534 (1986); Kimmelman v. Morrison, 477 U.S. 365, 384 (1986).

[5] See, e.g., Ward v. State, 708 So.2d 11, 14 (Miss. 1998) ("Effective assistance of counsel contemplates counsel's familiarity with the law that controls his client's case."); Strickland, 466 U.S. at 689 (noting that counsel has a duty to bring to bear in his client's case such skill and knowledge as will render the trial reliable).

[6] See, e.g., Leatherwood v. State, 473 So.2d 964, 969 (1985) ("There are . . . certain basic duties required of an attorney when representing a criminal defendant. These duties include the following: to assist the defendant, to advocate the defendant's cause, to consult the defendant on important decisions and to keep the defendant informed of important developments.").

motions;[7] (6) zealous defense during hearings and trials;[8] (7) accepting guilty pleas only when doing so is in the client's best interests and after advising clients of the maximum sentence under the plea;[9] (8) advocating for the best possible sentence when clients are convicted;[10] and (9) making sure defendants have access to their files and other information they need in order to pursue appeals of their convictions.[11]

At present, Mississippi provides its counties no funding for indigent defense services, except in capital trials and capital post-conviction proceedings. In three counties, institutional public defender offices represent indigent defendants; in the remaining 79 counties, private attorneys contract with the

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[7] See Triplett, 666 So.2d at 1362 (finding that counsel's failure to file motion for a continuance where a continuance was necessary was ineffective assistance); Kimmelman, 477 U.S. at 384 (holding counsel's failure to file pre-trial discovery motion possibly ineffective and remanding for a hearing on that issue).

[8] See Ferguson, 507 So.2d at 94 (finding counsel's undermining his own client's credibility ineffective and prejudicial); Moody, et al. v. State, 644 So.2d 451, 456-57 (Miss. 1994) (stating that counsel's failure to subpoena witnesses, present evidence, and advise defendant of his right to testify were both ineffective and prejudicial); Stewart v. State, 229 So.2d 53, 54-56 (Miss. 1969) (holding that counsel's failure to object to any of the prosecution's leading questions, cross examine a single witness, or present a single defense witness equaled ineffective assistance).

[9] See Ward, 708 So.2d at 12 (vacating a conviction where the defendant entered a guilty plea without being advised of the range of punishment); Alexander v. State, 605 So.2d 1170, 1172 (Miss. 1992) (holding that a plea is deemed "voluntary and intelligent" only where the defendant is advised concerning the nature of the charge against him and the consequences of the plea); Vittitoe v. State, 556 So.2d 1062, 1063 (Miss. 1990) ("Before a person may plead guilty to a felony he must be informed of his rights, the nature and consequences of the act he contemplates, and any other relevant and circumstances, and thereafter, voluntarily enter the plea."); Nelson v. State, 626 So.2d 121, 125 (Miss. 1993); Boykin v. Alabama, 395 U.S. 238, 243 (1969).

[10] See, e.g., Brown v. State, 749 So.2d 82, 91 (Miss. 1999); Moody, 644 So.2d at 456 (remanding for a new trial where defense counsel failed to subpoena or present any mitigation witnesses at sentencing hearing, although several such witnesses were available in the courtroom).

[11] See, e.g., Opinion No. 236 of the Mississippi Bar, (Nov. 21, 1996) ("The Mississippi Bar has previously recognized that a lawyer has an ethical duty to turn over the client's files when requested by the client and a discharged lawyer must deliver the client file, even if he has not been paid. . . It makes no difference that the client is an indigent criminal defendant and the attorney is a public defender or appointed counsel. The duty remains the same."); Roe v. Flores-Ortega, 528 U.S. 470 (2000) (holding that defense counsel has a duty to consult a criminal defendant regarding his desire to pursue an appeal of his conviction, and if the defendant so desires, defense counsel has a duty to file a notice of appeal).

county to represent indigent defendants and are court-appointed to individual cases, or courts simply appoint individual lawyers, without a contract, on a case-by-case basis.[12] Because Mississippi's counties currently bear the entire responsibility for funding non-capital indigent defense services, regardless of their capacity to provide adequately such services, public defenders and court-appointed counsel often fall short of these basic standards of effective representation.[13]

Acknowledging the myriad problems plaguing the State's indigent defense services, this Court previously has urged the State to institute a state-wide public defender system to insure that defendants are represented by counsel at all stages of their criminal proceedings.[14] In fact, this Court has recognized even in civil cases involving fundamental rights, the right to counsel is critical and well-established. And yet, at present, the State leaves unfulfilled the right to counsel in non-capital criminal cases. Report after report confirms that the right to counsel remains unfulfilled because of the State's decision to relegate the entire responsibility of funding indigent defense services to the counties.[15] The State's refusal to contribute to indigent defense services harms poor criminal defendants every day by abrogating their

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[12] Many of these attorneys practice criminal defense only part-time and use their contracts with the counties to supplement their incomes from private practice.

[13] Given the minimal compensation afforded appointed counsel in most Mississippi counties for their time and out-of-pocket expenses, counsel's performance is hardly surprising. See, e.g., Public Defender Asks for Funds, The Advocate (Baton Rouge, LA), Aug. 9, 1999, at 2-B (reporting that Mississippi's until-then-state-funded public defender system had run out of funds and could not even afford postage and paper); Lockett v. Anderson, 230 F.3d 695, 697 (2000) (remanding for a new trial where counsel failed to conduct "constitutionally adequate investigation" into defendant's claims of mental instability).

[14] See, e.g., Mease v. State, 583 So.2d 1283, 1285 (1991); Jackson v. State, 732 So.2d 187, 191 (1999). See id. at 190 (citing M.L.B. v. S.L.J., 519 U.S. 102 (1996)); see also Lynne Wilbanks Jeter, Business Groups Ready for 2001 Legislative Session, Miss. Bus. Journal, Dec. 18-Dec. 24, 2000 (reporting that Mississippi ranks last in the nation for funding legal aid for the poor).

[15] See, e.g., Robert L. Spangenberg, et al., Indigent Defense in Mississippi (January 1995); Robert L. Spangenbert, et al., The Spangenberg Group Update: The State of Indigent Defense Services in Mississippi Final Report (January 1997); M. Beth Davis, The Mississippi Public Defender Commission Implementation Plan (December 31, 1998); Mississippi Public Defenders (sic.) Task Force, Report to the Mississippi Legislature (September 29, 2000).

basic constitutional right to adequate representation during criminal proceedings. The poor quality of representation afforded indigent defendants fosters the perception that justice is available only to the wealthy.

At present, the entire responsibility for providing defense services to the poor belongs to each county, regardless of its ability to provide such services. In many counties, even when attorneys are available for appointment to indigent defendants, inadequate funding seriously hampers the lawyers' efforts to provide effective assistance to their clients.[16] Defense attorneys face staggering caseloads, inadequate compensation, insufficient staff and resources, and a lack of training and supervision. These inadequate defense systems are a predictable result of Mississippi's unwillingness to financially support indigent defense services in every county across the State.

No responsible body asserts that the solution to this problem is to demand that the counties expend additional funds on indigent defense. Many counties simply cannot expand indigent defense spending.[17] Moreover, because the current system requires local jurisdictions to bear the entire expense of the provision of indigent defense services, and those localities have varying levels of revenue on which they can draw, the quality of legal representation available to the poor varies significantly across the state. Mississippi's refusal to fund indigent defense has resulted in the wholesale absence of

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[16] See Terry Brooks, Efforts Increase to Improve State Systems,15 Crim. Just. 59 at 60 (Spring 2000)(reporting that several counties in Mississippi are suing the State for failure to fund indigent defense services, thereby violating the Mississippi Constitution and state statutes).

[17] See Brooks, supra note 14, at 60 (reporting that because of the State's refusal to fund indigent defense, Quitman County, Mississippi was "forced to raise taxes for three consecutive years and incur debt that took three years to repay just to cover costs of the trials and initial appeals for two individuals accused of committing a crime there."); see also David E. Rovella, Mississippi Suits are the Latest to Attack State Defense Funding, The National Law Journal, Jan. 10, 2000, at A1 (quoting Quitman County prosecuting attorney Larry O. Lewis as favoring a statewide defender system and saying "The state should share the burden [of funding indigent defense] and spread the costs to the four corners of the state."); Reed Branson, Two Counties Sue Mississippi for Public Defender Money, The Commercial Appeal (Memphis, TN), Dec. 17, 1999, at B1 (reporting that while most states have a state-funded system of indigent defense, Mississippi counties devise and fund their own systems; many counties hire local attorneys as part-time defenders and many have no money to pay for investigators or support staff).

effective indigent defense services in many counties.[18] In order for the right to counsel to be meaningful to all of Mississippi's criminal defendants, the State must provide court-appointed attorneys adequate resources to represent their indigent clients effectively and zealously. The stories of *amici* illustrate the unacceptable effects the dearth of state funding has had on the quality of representation available to poor criminal defendants in Mississippi.

AMICI EXPERIENCES

Amici's experiences demonstrate the chronic shortcomings of Mississippi's current approach to indigent defense. Defendants with court-appointed counsel have no meaningful access to their attorneys. Indigent defendants are not afforded basic defense services such as investigators and expert witnesses. *Amici*'s stories are riddled with evidence of a systemic breakdown in the quality of representation indigent defendants in Mississippi receive at trial, conviction, and sentencing. These stories are neither atypical nor extreme. Rather, they are the almost inevitable byproduct of Mississippi's current approach to indigent defense, whereby the level of resources available for defense services, and the quality of representation that an indigent defendant receives, depend largely on: a) where the defendant resides, or b) where the crime took place.

1. No Meaningful Access to Court-appointed Counsel:

a. Amicus Warrat Stewart (Quitman County): Warrat Stewart was arrested for rape on April 13, 1995. Although the court appointed him an attorney at his bail hearing, Stewart did not speak to his attorney until July 16, 1995. At that time, counsel consulted with Stewart for five minutes and suggested he plead guilty. Despite Stewart's request that counsel pursue DNA testing, counsel never did so. Stewart was indicted on August 15, 1995. Thereafter, Stewart's lawyer visited him in jail only once for

[18] The State's assertion that its funding capital indigent defense is sufficient to relieve counties of the burden of paying for indigent defense services is untenable. The State's limiting its funding to capital indigent defense provides little relief for many Mississippi counties. For example, a review of Plaintiff's criminal dockets shows that of a total of 327 criminal cases prosecuted in Quitman County beginning in 1995 through 2000, at least 256 were handled by court-appointed counsel. Only 7 of the cases handled by court-appointed counsel were capital cases.

about ten minutes, and asked Stewart to make a list of potential witnesses and to write down his account of his participation in the alleged crime. Stewart complied, but counsel never retrieved the information, even after Stewart informed him it was ready.

Stewart next met counsel a month later, at the first day of his trial. Stewart again tried to give counsel his list of character and alibi witnesses, but counsel said he did not need the list. Stewart also showed counsel a discharge certificate proving Stewart was in prison when the State claimed the crime began. Counsel told Stewart the certificate was useless, but did not explain why. Instead of putting together a defense for trial, counsel urged Stewart to plead guilty and assured him that he would be sentenced to fifteen years, with the possibility of early release. Stewart learned only after he pleaded guilty that the fifteen-year sentence was mandatory.

Counsel never contacted Stewart following his sentencing. On March 31, 1996, Stewart wrote to Counsel requesting a copy of his file so that he could timely seek post-conviction relief. Counsel never responded. The court provided Stewart with some documents from his file. Stewart's request for a copy of his transcript went unanswered. Stewart used the documents he received from the court to seek post-conviction relief, but his petition was denied in March,1998, because of procedural flaws. The prison law library was closed, so he had no way of continuing to help himself and he could not afford to hire an attorney.

Basic defense in Stewart's case would have included: counsel's timely consultation with Stewart about the issues in his case; a reasonably adequate investigation of the facts, including Stewart's alibi and his claims of innocence; counsel's thorough preparation for trial; and counsel's accurate explanation to Stewart of the terms of the plea offer.

b. Amicus Jimmy Redwine (Panola County): Jimmy Redwine is an inmate at the Panola County Jail in Batesville, Mississippi. He is serving an eleven-year sentence for manslaughter. Redwine pleaded guilty to the crime on the advice of his appointed counsel. On March 24, 2000, a judge sentenced Redwine to fifteen years, four of which were suspended.

Redwine's problems began in 1999, when a cocaine addict named Jimmy "Bo" Shelton broke into Redwine's house. Redwine had Shelton arrested, and he was charged with trespassing. After Shelton was released from the county jail, he continued to harass Redwine. Shelton's behavior escalated until, on January 11, 2000, he appeared at Redwine's door in the middle of the night and repeatedly threatened to kill him. By this time, local law enforcement was well aware of Redwine's history of problems with Shelton. On that night, after Shelton ignored Redwine's several requests that he leave his property, Redwine fired his roommate's gun twice in the air to scare Shelton away. (Redwine himself never owned a gun and had no prior record of violent crime.) Despite Redwine's efforts, Shelton broke down the door to the house. A scuffle ensued in which Redwine accidentally shot Shelton in his side. Redwine immediately called the police and an ambulance. Shelton later died from the gun shot wound. Redwine's roommate and the roommate's sister witnessed the incident.

Redwine's court-appointed counsel harmed, rather than helped, his case. Counsel conducted no investigation into the shooting. Instead, he directed Redwine to obtain his own witness statements. Counsel met with Redwine only twice. Each visit lasted about five minutes. The "meetings" were held in the courtroom while counsel was handling other cases. In spite of Redwine's corroborated account that he acted in self-defense, counsel did not interview a single witness or otherwise investigate the defense. Counsel also refused to subpoena any law enforcement witnesses; he told Redwine that such subpoenas were not part of his job. Counsel's failure to pursue any investigation whatsoever left him totally unfamiliar with the facts of his client's case.

When Redwine and his sister asked counsel whether he might pursue a self-defense justification for the killing, counsel advised them that Mississippi does not recognize self-defense.[19] Instead, counsel

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[19] Counsel was either ignorant of the relevant law, or he deliberately misled Redwine in order to convince him to plead guilty. See Homicide; Justifiable Homicide, Miss. Code Ann. § 97-3-15 (e) (f) (2000); see also Ferrell v. State, 733 So.2d 788 (Miss. 1999) (remanding for a retrial where the trial court's jury instruction inadequately distinguished between manslaughter and justifiable homicide in a case where the victim failed to heed the defendant's requests that he leave his property and the defendant fired warning shots into the air before the two fought and the victim was shot).

recommended that Redwine plead guilty to manslaughter. Counsel scared Redwine into believing that if his case went to trial he would risk life in prison without parole. Counsel assured Redwine that pursuant to the plea agreement, he would serve only one year in the county jail. Although Redwine does not read well, his lawyer never read the plea agreement to him. Out of fear that he would spend the rest of his life in prison, and relying on his attorney's repeated assurances that he would only spend one year in jail if he accepted the plea, Redwine consented to the agreement. Only after he signed the plea did Redwine learn that counsel was seriously mistaken: he was sentenced to fifteen years in prison. He must serve eleven. Since his sentencing, Redwine has never seen nor spoken to his attorney. Redwine is not familiar with the post-conviction review process and has been unable to find counsel to represent him in such proceedings without a fee.

In Redwine's case, a minimum competent defense would have included: investigation of Redwine's claims of self-defense, including interviews with witnesses and inquiry into Shelton's history of harassing Redwine; counsel's familiarity with the law and defenses applicable to Redwine's case; an accurate explanation to Redwine of the terms of the plea; and an honest assessment of the risks of conviction at trial versus accepting a plea with a lengthy prison sentence.

c. Amicus Diana Brown (Quitman County): Diana Brown was arrested on October 31, 1997 and was released on bond on December 3, 1997. In February 1998, Brown learned from a family friend that her case was going to the grand jury. She contacted the court and learned that the court had appointed counsel. She looked up her attorney in the phone book and called his office. Counsel's staff told Brown she could not speak to her lawyer, but that counsel was aware of her case and would see her in court. Soon thereafter, Brown's bond was revoked and she was taken back to jail. Brown did not know why her bond had been revoked, and she had no contact with counsel prior to being jailed.

Brown was indicted for several serious crimes, including aggravated assault and driving under the influence. Two days later, she met counsel for the first time at the courthouse. Counsel spoke to Brown and about ten other defendants as a group. Counsel read the charges against each defendant out

loud and reported any possible plea agreement. He told Brown that she was facing sixty years or more in prison if she were to be convicted at trial, and that the state was offering a plea of ten years. Counsel gave Brown five minutes to decide on the plea; when she asked for time to think about it, he told her that she was guilty and her best bet was to accept the deal.

Brown was never able to discuss her case privately with her lawyer. Counsel never asked her about the facts of her case. For example, Brown suffers from polio and is an alcoholic. Counsel never investigated whether these would be mitigating factors in her case. Brown accepted what counsel represented to be a ten-year plea. At her sentencing on March 5, 1998, Brown learned that she would receive ten years for each assault charge, for a total of thirty years. She was told that her ten-year sentences would run concurrently, but no one explained what that meant. She has not spoken to counsel since her sentencing. Brown lacks the knowledge to pursue post-conviction relief *pro se*. She knows of no attorney who is available to help her.

An adequately-funded defense attorney would have: met with Brown before she was indicted; defended Brown against bond revocation; arranged a private and confidential meeting with her to discuss her case; examined the facts of the case before suggesting that she plead guilty; considered mitigating circumstances and presented them in her defense; and thoroughly explained the terms of the plea and resulting sentence.

2. Systemic Absence of Basic Defense Services:

a. Amicus Willie Henley (Quitman County): Willie Henley was arrested for burglary in January 1995. He was indicted three weeks later. Henley met his court-appointed lawyer for the first, and only, time at his arraignment, after he had spent weeks in jail. Immediately Henley explained to counsel that the house he had allegedly broken into was his cousin's house and that he had permission to enter; counsel nevertheless advised Henley to plead guilty. Henley explained that he had not committed a burglary and implored his lawyer to postpone the arraignment until Henley's cousin returned from out of town and could explain the situation to the court. Counsel made no attempt to postpone the

arraignment and did not advise the court of Henley's defense and the unavailability of a critical defense witness. Thanks to the efforts of Henley's family, Henley's cousin confirmed his account at the arraignment, and the judge dismissed the charges. At the very least, competent counsel would have asked the court for a continuance in order to insure the appearance of a critical witness. Instead, Henley's charges were dismissed only because of his family's efforts.

b. Amicus Carlos Ivy (Union County): Carlos Ivy, then only fourteen years old, was arrested in August 1998 for the robbery of $100 from an elderly woman. On the night of the crime, Ivy's grandmother, Vera Sanders, overheard Ivy's name on a police scanner. The police said he had been spotted wearing a Dallas Cowboys jacket and was a suspect in the robbery. Sanders immediately called the police and told them that they must be mistaken: although Ivy owned a jacket with the same colors as the Dallas Cowboys', the jacket did not bear the team's name or logo, and, more importantly, was hanging in his grandmother's closet as she spoke. Nonetheless, Ivy was arrested for the crime and was taken to jail. After Ivy's first court-appointed counsel withdrew because of a conflict of interest, the court appointed a second attorney.

While awaiting trial, Ivy was verbally and physically abused by law enforcement: the jailers housed Ivy with adult men, and sometimes threw him in the "drunk tank" with intoxicated arrestees; they beat him on more than one occasion; they sprayed him with water hoses and with mace; and they deprived him of food and water. The jailers also stripped Ivy and made him sleep naked in his cell for four nights. Ivy's lawyer never made any attempt to protect him from the abuse. In fact, Ivy's grandmother tried in vain to contact his attorney weekly during the year Ivy was held in the county jail. He never returned her calls. After the stripping incident, Ivy's grandmother, then desperate, contacted the FBI and the United States Attorney General. Only after federal officers intervened did Ivy's jailers cease abusing him.

Meanwhile, Ivy's court-appointed lawyer provided no defense services: counsel conducted no investigation, interviewed no witnesses (not even Ivy's grandmother) and made no attempt to prepare for

trial. Later, Ivy learned that the State's principal witness against him was charged with a felony and had been threatened by the authorities with the removal of her children if she did not testify against Ivy.

When counsel recommended that Ivy plead guilty to burglary of a dwelling and robbery, Ivy accepted the plea in part because he was desperate to leave the county jail. Counsel assured him that if he accepted the plea, he would be eligible for parole after six years. Although he was only fifteen when he pled, Ivy's grandmother, his legal guardian, was never notified when his plea and sentencing hearing would take place; therefore, she was not present at either hearing. Only after he accepted the plea did Ivy learn that ten years of his twelve-year sentence are mandatory.

An adequate defense system would have insured that: Ivy had access to his lawyer before his court hearings and while he was incarcerated; counsel would have consulted Ivy's legal guardian about major decisions in his case; the circumstances of the allegations were investigated; Ivy and his grandmother were accurately and carefully apprised of the terms of the plea offer; and counsel would have been prepared to go to trial had Ivy elected to do so.

c. Amicus Walter Williams (Quitman County): Walter Williams was arrested for murder on January 1, 1998 and released on bond on January 24, 1998. He was not appointed an attorney until August 13, 1998, the day of his arraignment. At that time, counsel directed Williams to obtain his own statements from potential witnesses and pursue his own investigation. Williams eventually quit his job at a local farm so he could devote his time to investigating his case. At trial, Williams was convicted of murder and sentenced to life in prison. Williams has not seen his lawyer since the trial. Counsel wrote a letter to Williams informing him that an appeal had been filed in his case, but Williams has no information about the grounds of the appeal or its outcome.

Since June 1999, Williams has been trying to obtain post-conviction relief. First, he tried to obtain documents from counsel. In response to Williams's request, his lawyer wrote: "This acknowledges receipt of your letter. . .wherein you requested copies of your file. I will be unable to forward these to you since I have no expense fund with which to do so." Williams contacted the

Mississippi Bar Association and was informed that an attorney is required to send a client his file. Williams is unable to seek post-conviction relief without access to his files and the assistance of an attorney.

A basic defense in Williams's case should have included: timely appointment of counsel; counsel's routine pre-trial consultation with Williams; reasonable, professional investigation of the facts of the case, rather than Williams's amateur attempts to investigate his own case; counsel's explanation of the status of Williams's direct appeal; counsel's providing Williams with a copy of his file to enable Williams to pursue post-conviction relief.

d. Amicus James Borgmann (Forrest County): James Borgmann was charged with the rape of the daughter-in-law of a well-known local family, at the University of Southern Mississippi campus. The victim identified Borgmann as the rapist. At Borgmann's first court appearance, he was appointed an attorney. He was not arraigned until six months later. Even though Borgmann claimed he was innocent and provided an alibi as well as a list of witnesses, counsel conducted no investigation and made no effort to confirm the alibi. Counsel spoke to Borgmann only a couple of times while he was in jail. The State had offered Borgmann a deal whereby he would serve ten years if he pled guilty. Counsel was suspicious of this offer because it seemed lenient given the nature of the alleged crime. Still, he conducted no investigation. Finally, in November of 1999, counsel overheard the D.A. say that the State's DNA test had exonerated Borgmann as the rapist. As a result of the State's DNA test, Borgmann was cleared of the charges in November 1999. He had spent nine months in detention.

With adequate resources, Borgmann's lawyer would have been able to: 1) investigate the facts of the case; 2) obtain independent blood tests; 3) schedule a preliminary hearing to explore any problems with the identification of Borgmann; and 4) file a motion to compel discovery, which might have caused the government to release the DNA results sooner.

3. Systemic Breakdown:

a. Amicus Donald Staten (Quitman County): Donald Staten turned himself in to police on a burglary charge in March 1996. The next day, he appeared before a judge. At the hearing, the judge advised Staten of his right to an attorney, but no one was appointed. Instead, the court ordered Staten to participate in a program, pursuant to which he would participate in a work detail during the time he was incarcerated. Staten completed the program and was released from custody on September 27, 1996. Staten was convicted, and incarcerated for six months, without the assistance of counsel.

Had Staten been charged in a jurisdiction with adequately-funded indigent defense services, he never would have been convicted and sentenced to a prison term without the assistance of counsel.

b. Amicus Milas McDonald (Harrison County):

Milas McDonald was arrested for burglary in 1995. He made his first court appearance on July 27, 1995. At this hearing, he was represented by a public defender who handled only initial appearances. At some point during his pre-trial incarceration, while he was without a court appointed attorney, McDonald was transferred to state prison after an erroneous notation in his file showed that he had already been convicted. McDonald was not appointed a lawyer until December 13, 1995. The first two lawyers appointed to McDonald's case were unable to represent him because of conflicts of interest. In June 1996, a third attorney was appointed to handle McDonald's case. McDonald's lawyer never contacted McDonald and took no action on his behalf. McDonald had no way of reaching his attorney. He had no money for stamps to send a letter, and the county's appointed attorneys, including McDonald's, did not accept their clients' collect calls because the county did not reimburse them for such expenses. In August 1996, McDonald requested a new attorney because his lawyer had not contacted him. His request was denied. At that time, an attorney who happened to be in the court room while McDonald was making his request told McDonald he would handle his case without charge. Soon thereafter, the case against McDonald was dismissed. By that time, McDonald had spent eighteen months in the judicial system without representation.

McDonald's case illustrates several shortcomings of Mississippi's approach to indigent defense: 1) the failure to provide counsel in a timely fashion; 2) defendants' lack of meaningful access to their lawyers; 3) cases dragging on for months, or even, as in this case, over a year, before they are resolved. Such inefficient resolution taxes defendants and the counties forced to detain them in jail for extended periods of time. In an adequately funded defense system, McDonald would have met with his attorney within a reasonable time after his arrest; he would have been able to contact his attorney; and his case would have been resolved competently and efficiently with the assistance of counsel.

CONCLUSION

Mississippi's failure to provide funds for indigent defense services has produced a statewide crisis in the delivery of such services. *Amici's* experiences, typical of indigent defendants across the state, show that the current county-funded systems fall far short of constitutional standards. The State's fiscal support of indigent defense is at the crux of any remedial effort. Presently, the State refuses to provide the support. Quitman County should be allowed to pursue this action to compel the State to bear its fiscal responsibility to make the right to counsel meaningful to Mississippi's poorest citizens.

Respectfully submitted,

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Dated: April 20, 2001