No. 2003-SA-02658

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

QUITMAN COUNTY, MISSISSIPPI,

Plaintiff-Appellant

v.

per Order of 8/4/04

STATE OF MISSISSIPPI, Haley Barbour, in his official capacity as GOVERNOR, and James 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

NATIONAL LEGAL AID & DEFENDER ASSOCIATION'S BRIEF OF *AMICUS CURIAE* IN SUPPORT OF APPELLANT QUITMAN COUNTY, MISSISSIPPI

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INTRODUCTION AND SUMMARY

This case is, in the end, about individual people – poor people charged with crimes by the state of Mississippi, each one of whom deserves a competent lawyer who will represent his or her interests in the adversarial system in order to arrive at a just outcome. But achieving individual just outcomes demands attention to a systemic question – is the system of indigent defense providing a constitutionally adequate defense to each client? This is a difficult question, but not one for which there is no guidance. Nationally recognized standards and guidelines were developed so that a system that meets these standards comes as close as possible to guaranteeing that each defendant will be provided with an adequate defense. However, the question raised by this case is slightly different and is an easier one to answer: how can we tell if the system of indigent defense in Quitman County is *not* providing a constitutionally adequate defense to clients? Here, too, national standards are essential. A system of indigent defense, like the one in place in Quitman County, that utterly fails to measure up to national standards and principles is in fact delivering a constitutionally inadequate defense to some accused persons. Mississippi has failed to ensure that the system of indigent defense in Quitman County is equipped to provide each defendant with the tools of an adequate defense. As such, Mississippi has failed to meet its constitutional obligation to provide counsel to the indigent accused, and this Court must step in to protect the rights of the individuals whose lives and liberties are at stake.

I. THE STATE OF MISSISSIPPI HAS A DUTY TO PROVIDE THE INDIGENT ACCUSED WITH THE TOOLS OF AN ADEQUATE DEFENSE.

The Mississippi Constitution, Article 3, § 26, has been interpreted to create a duty on the part of the state to provide effective assistance of counsel to indigent defendants. *State v. Quitman County*, 807 So. 2d 401, 407 (Miss. 2001), *reh'g denied* (2002). The Mississippi Supreme Court has recognized that this means that indigent defendants must be provided with

the tools of an adequate defense. *Harrison v. State*, 635 So. 2d 894, 901 (Miss. 1994) (*citing Ake v. Oklahoma*, 470 U.S. 68, 77 (1985)). The Court has also noted that the "tools" that are necessary to construct an adequate defense vary depending on the facts and circumstances of each case. *Harrison*, 635 So. 2d at 901 (*citing Oregon v. Acosta*, 597 P.2d 1282, 1284 (Or. 1979)).

The trial court found that Quitman County has not demonstrated ineffective assistance of counsel in individual cases. Trial Ct. Op. at ¶ 72. Quitman County, however, has raised a *systemic* challenge to the current system for delivery of indigent defense services, a challenge that raises qualitatively different questions and demands a different type of analysis than an individual ineffective assistance of counsel claim. As it is impossible to determine in advance what tools will be necessary in a specific case, fundamental fairness and the Constitution demand that the system of indigent defense stands ready to provide the accused individual with the materials needed to put forth a defense tailored to the facts and circumstances of his case. The Mississippi Supreme Court, quoting the United States Supreme Court, acknowledged:

> We recognized long ago that mere access to the courthouse doors does not by itself assure a proper functioning of the adversary process, and that a criminal trial is fundamentally unfair if the State proceeds against an indigent defendant without making certain that he has access to the raw materials integral to the building of an effective defense.

Harrison, 635 So. 2d at 901 (*quoting Ake*, 470 U.S. at 77). Therefore, in the context of Quitman County's systemic challenge, this Court must examine the system as a whole, including its structure and funding, and determine whether the system is equipped to consistently provide indigent defendants with the tools necessary to an adequate defense.

II. NATIONAL STANDARDS ARE ESSENTIAL IN ADDRESSING QUITMAN COUNTY'S SYSTEMIC CHALLENGE, AS THEY ARE DESIGNED TO ENSURE THAT A SYSTEM IS EQUIPPED TO PROVIDE THE TOOLS OF AN ADEQUATE DEFENSE.

National standards are integral to a determination of whether a system of indigent defense provides the tools of an adequate defense. The Final Report of the National Symposium on Indigent Defense in 2000, convened by the U.S. Department of Justice, highlighted the vital role that national standards play: "The constitutional right to effective representation joins with the guarantee of equal justice to compel the nationwide implementation of indigent defense standards." Office of Justice Programs, U.S. Department of Justice, *Redefining Leadership for Equal Justice: Final Report of National Symposium on Indigent Defense 2000*, at 14, *available at*: http://www.ojp.usdoj.gov/indigentdefense/symposium.pdf. Standards and guidelines for indigent defense systems were developed by the National Legal Aid & Defender Association ("NLADA"), the American Bar Association ("ABA"), and other nationally recognized organizations as a way of ensuring that all indigent defendants are provided with a constitutionally adequate defense. Although the concept of using standards to address quality concerns is not unique to the field of indigent defense, it is particularly important where the quality of services provided is directly related to a constitutional obligation on the part of the state.

In a systemic challenge like the one raised by Quitman County, national standards are essential for gauging whether the system is equipped to provide each indigent client with the raw materials of an effective defense. As the trial court recognized, "The question is not...whether in isolated cases the public defenders were ineffective. Rather, the question is whether Mississippi's county-based system is a constitutionally adequate system of indigent defense." Trial Ct. Op. at ¶ 84. Keeping this distinction in mind, NLADA does not here put forth the standards-based argument that has been raised by individuals in the context of ineffective assistance of counsel claims – that an indigent defense system that fails to measure up to national standards means that individual convictions must be overturned on appeal. *See, e.g. State v. Salazar*, 844 P.2d 566,

581-582 (Ariz. 1992); *Ford v. State*, 784 P.2d 951, 953 (Nev. 1989). Rather, NLADA urges this Court to consider the relevant national standards in its determination of whether the Mississippi system as a whole is constitutionally defective.

A. NLADA Standards

For over twenty-five years, NLADA has played a key role in developing standards for systems of indigent defense. In 1976, the National Study Commission on Defense Services, a group convened by NLADA, published *Guidelines for Legal Defense Systems in the United States* ("NSC Guidelines") after two years of consultation and study. NSC Guidelines detail how a system of indigent defense should be structured and managed to best provide services to indigent clients. NLADA continues to play a leadership role in both the development of national standards for public defense systems[1] and processes for evaluating jurisdictions' compliance with the constitutional right to counsel.

Of particular relevance in this case is NLADA's experience in developing guidelines to address the concerns that arise in jurisdictions that provide counsel to indigent defendants through contracts with private attorneys. NLADA, *Guidelines for Negotiating and Awarding Governmental Contracts for Criminal Defense Services* (1984). ("Contracting Guidelines"). The

[1] Guidelines for Legal Defense Systems in the United States (National Study Commission ("NSC") on Defense Services, U.S. Department of Justice, 1976); The Ten Principles of a Public Defense Delivery System (adopted by the ABA, 2002); Standards for the Appointment and Performance of Counsel in Death Penalty Cases (NLADA, 1988; ABA, 1989), Defender Training and Development Standards (NLADA, 1997); Performance Guidelines for Criminal Defense Representation (NLADA, 1995); Guidelines for Negotiating and Awarding Contracts for Criminal Defense Services (NLADA, 1984; ABA, 1985); Standards for the Administration of Assigned Counsel Systems (NLADA, 1989); Standards and Evaluation Design for Appellate Defender Offices (NLADA, 1980); Evaluation Design for Public Defender Offices (NLADA, 1977); and Indigent Defense Caseloads and Common Sense: An Update (NLADA, 1994). All standards are available at: http://www.nlada.org/Defender/Defender_Standards/Defender_Standards_Home. Such standards were gathered into the first-ever National Compendium of Standards for Indigent Defense Systems by the U.S. Department of Justice, with NLADA assistance, in 2000. Available at http://www.ojp.usdoj.gov/indigentdefense/compendium/.

Contracting Guidelines are "designed to provide assurance that minimum constitutional requirements are met when local governments choose to serve poor clients through a contract defense system." *Id.*

A number of courts throughout the country have looked to national standards in assessing effectiveness of counsel and determining the meaning of statutes implementing the constitutional guarantee of right to counsel. *Earl v. Tulsa County Dist. Court*, 606 P.2d 545, 547 n.7 (Okla. 1979); *Commonwealth v. Brown*, 476 A.2d 381, 386 (Pa. Super. Ct. 1984); *State v. Smith*, 140 Ariz. 681 P.2d 1374, 1379-1382 (Ariz. 1984). For example, in interpreting a statute providing for public defender salaries that are "commensurate" with that of prosecutors, the Supreme Court of Oklahoma noted that its construction of the statute harmonized with American Bar Association, NLADA, and other national standards. *Earl*, 606 P.2d at 547, n.7. The Superior Court of Pennsylvania has cited to NLADA and other standards in considering a defendant's challenge to a finding of ineligibility for a public defender. *Brown*, 476 A.2d at 386. Furthermore, in *State v. Smith*, the Arizona Supreme Court undertook an analysis of one county's contract defense system, and compared it to NLADA's Contracting Guidelines and relevant ABA standards. 681 P.2d at 1379-1382. The court found that the county's system did not conform to standards, and that as a result, indigent defendants were not being provided with adequate assistance of counsel. The Court established a rebuttable presumption of inadequate representation.[2] *Id.*

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[2] "We do not believe the Mohave County system is in conformance with these standards and guidelines for four reasons:
1. The system does not take into account the time that the attorney is expected to spend in representing his share of indigent defendants.
2. The system does not provide for support costs for the attorney, such as investigators, paralegals, and law clerks.
3. The system fails to take into account the competency of the attorney. An attorney, especially one newly-admitted to the bar, for example, could bid low in order to obtain a contract, but would not be able to adequately represent all of the clients assigned according to the standard of Watson, supra.
4. The system does not take into account the complexity of each case.

The United States Supreme Court has also recognized, most recently in *Wiggins v. Smith*, that national standards are "well-defined norms" that should serve as guideposts for assessing ineffective assistance of counsel claims. 539 U.S. 510, 524 (2003) ("Counsel's conduct similarly fell short of the standards for capital defense work articulated by the American Bar Association (ABA) -- standards to which we long have referred as 'guides to determining what is reasonable.'") Moreover, in addressing a wide assortment of individual and systemic challenges to services provided to indigent defendants, Courts have found it useful and appropriate to consult national standards in grappling with the difficulties of ensuring that an accused individual is provided with a fair and adequate defense. *See also Whiting v. Burt*, 266 F. Supp. 2d 640, 645-646 (D. Mich. 2003); *Mojica v. Reno*, 970 F. Supp. 130, 177 (E.D.N.Y. 1997); *U.S. ex rel. Green v. Washington*, 917 F. Supp. 1238, 1250, 1251 (D. Ill. 1996); *N.Y. County Lawyers' Ass'n v. State*, 763 N.Y.S.2d 397, 407 (N.Y. Sup. Ct. 2003).

B. ABA's Ten Principles of a Public Defense Delivery System

The ABA has also been active in developing guidelines and standards for criminal defense representation in general, and for public defense systems specifically. Most recently, the ABA has adopted *The Ten Principles of a Public Defense Delivery System* ("Ten Principles"), (2002) in an effort to distill ABA, NLADA, and other national standards into the most essential elements of an indigent defense delivery system.[3] The Ten Principles "constitute the fundamental

---

We believe that the system for obtaining indigent defense counsel in Mohave County militates against adequate assistance of counsel for indigent defendants. Even though in the instant case we do not find inadequate representation, so long as the County of Mohave fails to take into account the items listed above, there will be an inference that the adequacy of representation is adversely affected by the system." *State v. Smith*, 681 P.2d 1374, 1381 (Ariz. 1984).

[3] The full text of the Ten Principles are attached hereto as Appendix A. The Ten Principles are based on a paper entitled *The Ten Commandments of Public Defense Delivery Systems*, which was written by James R. Neuhard, Director of the Michigan Sate Appellate Defender Office, and Scott Wallace, former Director of Defender Legal Services for NLADA. The paper was published as an introduction to *Compendium of Standards for Indigent Defense Systems: A Resource Guide for Practitioners and Policymakers* (Office of Justice Programs/Bureau of Justice Assistance, U.S. Department of Justice, 2001).

criteria to be met for a public defense delivery system to deliver effective and efficient, high quality, ethical, conflict-free representation to accused persons who cannot afford to hire an attorney." *Report to the House of Delegates*, Introduction (2002), *at* http://www.abanet.org/legalservices/downloads/sclaid/10principles.pdf. As a distillation of nationally recognized standards into their most fundamental and crucial elements, the ABA's Ten Principles are particularly useful as benchmarks for measuring the success or failure of systems of public defense. NLADA regards the Ten Principles as the absolutely essential characteristics that a system must possess in order to safeguard the rights of the indigent accused.

Since the ABA adopted the Ten Principles in 2002, states that are in the process of reforming their indigent defense systems are increasingly looking to the Ten Principles for guidance. In 2002, the Georgia Supreme Court Commission on Indigent Defense issued a report calling for state-sponsored indigent defense and establishment of basic standards, in which it embraced the ABA's Ten Principles. Georgia enacted legislation in May 2003 incorporating most of the Commission's recommendations. *The Ten Principles' Role in State Reform Efforts*, *at* http://www.abanet.org/legalservices/downloads/sclaid/indigentdefense/10principles-statereform.pdf. The Ten Principles have also been adopted by the Michigan State Bar, *Id.*, and have been instrumental in assessing and working towards improvement of indigent defense systems in Louisiana and Virginia. *See* Appendices B and C.

III. QUITMAN COUNTY'S SYSTEM OF INDIGENT DEFENSE WHOLLY FAILS TO MEASURE UP TO NATIONAL STANDARDS AND PRINCIPLES.

The system of indigent defense in Quitman county does not measure up to national standards. Not only does it fail to meet the detailed guidelines established by NLADA and the ABA, but Quitman County's public defense system violates the basic institutional safeguards, as reflected in the Ten Principles, that enable a system of public defense to consistently provide the

tools of an adequate defense in each case. The most egregious and systematic failures are discussed in more detail below.[4]

A. Independence

The legitimacy and fairness of the adversarial system depends crucially upon the independence of each of the parties. According to ABA Principle One, "The public defense function, including the selection, funding, and payment of defense counsel, is independent. The public defense function should be independent from political influence and subject to judicial supervision only in the same manner and to the same extent as retained counsel."

In Quitman County, however, the public defenders are far from independent. They are appointed by the senior circuit judge, and can be terminated by him as well. Trial Ct. Op. at ¶ 9, 12. Such an arrangement is simply unacceptable in an adversarial system – as the National Study Commission on Defense Services concluded in 1976, "The mediator between two adversaries cannot be permitted to make policy for one of the adversaries." NSC Report at 220 (citing *National Advisory Commission on Criminal Justice Standards and Goals* (1973), commentary to Standard 13.9.).

Neither is the public defense function independent from law enforcement, as sheriff's deputies often help the public defenders locate witnesses for their cases. Trial Ct. Op. at ¶ 29. The high rate of arraignment day guilty pleas[5] is also an indication that Quitman County public defenders do not undertake an independent investigation of the facts. While the trial judge noted that the practice of pleading clients out on arraignment day after only a brief meeting is "not an

[4] Nothing in this brief should be taken to mean that NLADA believes Quitman County or Mississippi is complying with any of the Ten Principles or NLADA guidelines that are not discussed here. NLADA has limited its discussion to the violations of principles and standards that are most apparent in the record, particularly in the Trial Court's Opinion, and that go to the heart of Quitman County's systemic challenge to the indigent defense structure in Mississippi. For the full text of the ABA's "The Ten Principles of a Public Defense Delivery System," see Appendix A. Appendices B and C provide examples of how the Ten Principles can be used as a practical guide for assessing a system of indigent defense.

[5] Approximately one-half of all guilty pleas from 1995-2003 involving indigent defendants were entered the same day as the arraignment. Trial Ct. Op. at ¶ 31.

ideal situation," Trial Ct. Op. at ¶ 77, it is much less than not ideal. At a minimum, effective representation requires that counsel interview potential witnesses and make an independent investigation of the facts and circumstances of each case. *Payton v. State*, 708 So. 2d 559, 561 (Miss. 1998); *State v. Tokman*, 564 So. 2d 1339, 1342 (Miss. 1990) (internal quotation marks and citations omitted). Independent investigation is surely not the hallmark of a system in which half of all guilty pleas by indigent defendants take place on arraignment day.

Central to the need for independence of the public defense function is the need for it to be conflict-free. In the context of a contract system like Quitman County's, "the concern focuses primarily on flat-fee contracts which pay a single lump sum for a block of cases regardless of how much work the attorney does, *creating a direct financial conflict of interest with the client*, in the sense that work or services beyond the bare minimum effectively reduces the attorney's take-home compensation." Scott Wallace & David Carroll, *The Implementation and Impact of Indigent Defense Standards* 8 (2002). (emphasis added). For this reason, NLADA Contracting Guidelines prohibit this type of flat-fee arrangement, requiring that the contract compensate attorneys at a rate reflecting the time and labor required to be spent by the attorney. Contracting Guidelines III-10. Equally troubling is the fact that Quitman County public defenders maintain a private law practice, Trial Ct. Op. ¶ 9, 12, creating a further conflict of interest and a financial disincentive to spend time on the cases of indigent defendants.[6]

The record indicates that the system of indigent defense in place in Quitman County is not independent in any meaningful way. Public defenders are dependent on judges for their jobs. In too many cases, they undertake no independent investigation of the facts and circumstances. The flat-fee contract arrangement that is in place builds in financial conflicts of interest between attorney and client. Without conformity to national standards designed to ensure the

[6] NSC Guideline 2.9 states that "staff attorneys should be full-time employees, prohibited from engaging in the private practice of law."

independence of the public defender function, the Quitman County system of indigent defense is not equipped to deliver appropriate conflict-free representation to the indigent accused.

B. Caseload

The centerpiece of any effective public defense system is control over the workload of the attorneys. A system that limits the number and type of cases a defender carries at one time paves the way for public defenders to be able to give an appropriate amount of time and attention to each accused individual. ABA Principle Five reflects this most basic of concerns: "Defense counsel's workload is controlled to permit the rendering of quality representation," and provides that "national caseload standards should in no event be exceeded."[7]

In violation of this critical precept, Quitman County public defenders are not subject to any limitations on the number of accused persons they are permitted to represent. Rather, for a flat fee, they represent all indigent defendants in Quitman County, and maintain the same arrangements with other counties as well. Trial Ct. Op. at ¶ 9-11. In addition, Quitman public defenders handle justice court appointments, are required to handle appeals, and are permitted to maintain their private law practices. Trial Ct. Op. at ¶ 9-11. Quitman County asserts that public defenders Shackleford and Tisdell handle 164 and 169 felony cases respectively.[8] PX 48. Both of these caseloads exceed the maximum allowable cases under the standards, *before* taking into consideration the number of cases handled in private practice, in justice court, and in the appeals phase. RE 18 (Tr. 758). In rejecting Quitman County's contention that these caseloads are

[7] National Advisory Commission Standard 13.12 (National Advisory Commission on Criminal Justice Standards and Goals, *Standards for the Defense*, Chapter 13, (1973)) specifies the numerical caseload limits (maximum yearly caseload: 150 felonies, 400 misdemeanors, 200 juvenile, 200 mental health, or 25 appeals) that have been incorporated into the Ten Principles, as well as into NSC Guidelines and Contracting Guidelines. (NSC Guideline 5.1; Contracting Guidelines III-6.) Both NSC and Contracting Guidelines call for the establishment of maximum allowable caseloads. *Id.*

[8] Even assuming, arguendo, that Quitman County public defenders handle fewer cases than the numerical limits set forth in the standards, these caseload limits are designed for public defenders who have the support of investigators and other staff. Contracting Guidelines III-8, III-9. It follows that the Quitman defenders, who do not have the benefit of these support personnel, can effectively work on fewer cases than the maximum number.

excessive, the trial court ignored national standards and relied primarily on testimony that "the defenders did not feel overburdened with their caseload." Trial Ct. Op. at ¶ 73.

C. Sufficient Time and Confidential Space to Meet with Client

As any lawyer knows, confidential communications about the case are the cornerstone of an effective and ethical representation. ABA Principle Four captures this crucial element of effective representation: "Defense counsel is provided sufficient time and a confidential space within which to meet with the client....Counsel should have confidential access to the client for the full exchange of legal, procedural and factual information between counsel and client."[9] This basic principle stands in stark contrast to the reality in Quitman County, where public defenders often meet with clients in groups in the courtroom or in the jury room. Trial Ct. Op. at ¶ 28. The trial court did not address the systemic question raised by the finding that this happens "often" – whether a system that operates in this manner is complying with the Mississippi Constitutional mandate to provide effective assistance of counsel to every indigent person accused of a crime. The answer is that it is not – the Mississippi Supreme Court has recognized that meaningful discussions regarding the realities of a case are the "cornerstones of effective assistance of counsel." *State v. Tokman*, 564 So.2d 1339, 1343 (Miss. 1990) (citing *Gaines v. Hopper*, 575 F.2d 1147, 1150 (5th Cir. 1978)). Brief, group conversations are not "meaningful" in any sense of the word.

D. Oversight

ABA Principles One, Two and Ten address the need for supervision and oversight of those responsible for delivering indigent defense services.[10] It is axiomatic that taxpayer-paid contractors serving as guarantors of the fundamental constitutional right to counsel should be

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[9] *See also.* NSC Guideline 5.10; NLADA Performance Guidelines for Criminal Defense Representation 2.1-4.1 (1995).

[10] *See also* NSC Guidelines 2.4, 2.10-2.13, 5.4-5.5; Contracting Guidelines II-1, II-3, III-16;

closely overseen by those in a position to ensure the adequacy of their performance and the integrity of the justice system. Yet in Quitman County and other counties in Mississippi, there is no significant oversight of public defense services. (Tr. 251, 252, 592, 752). Instead, Mississippi allows county boards of supervisors to organize systems of public defense in the manner they determine is best, Trial Ct. Op. at ¶ 17, and there is no statewide structure to ensure uniform quality or constitutionally adequate services. RE 4 (Tr. 591-2).

E. State Funding

The Ten Principles and NLADA Standards call for state funding for every system of indigent defense. Principle Two ("Since the responsibility to provide defense services rests with the state, there should be state funding and a statewide structure responsible for ensuring uniform quality statewide."); NSC Guidelines 2.17 ("The primary responsibility for funding of defense services should be borne at the state level. Each state should provide adequate funding for all defense services within its jurisdiction regardless of the level of government at which those services are administered.") Because a weakened local economy causes increases in unemployment, worker flight, demands for other county services, and crime, local funding tends to constrict in inverse proportion to the demand for indigent defense services, producing instability in funding and wide fluctuations in the quality of indigent defense. State funding is included as one of the Ten Principles not because it is a goal in itself, but because of the necessity of a stable, broad-based funding source to the provision of constitutionally adequate indigent defense services. A system like Quitman County's, that is subject to the vagaries of a county government's economy and politics, is not well-equipped to consistently provide the raw materials of an adequate defense to defendants. Therefore, by failing to provide state funding in non-capital cases, the state of Mississippi has failed to meet its constitutional burden of providing counsel for accused persons who cannot afford a lawyer.

IV. A SYSTEM OF INDIGENT DEFENSE THAT SO UTTERLY FAILS TO MEASURE UP TO NATIONAL STANDARDS CANNOT BE DELIVERING CONSTITUTIONALLY ADEQUATE SERVICES TO ALL INDIGENT DEFENDANTS.

The failure on the part of Quitman County public defenders to comply with national standards in one particular area might not seem that significant. What is significant is that the public defense system in Quitman County fails across the board to safeguard the most fundamental protections necessary for the equitable administration of justice. Mississippi has neglected to ensure that public defender systems in the counties are able to operate independently, that workloads are controlled, that there is appropriate oversight, and that defendants are allowed confidential access to an attorney who will investigate the facts of each case. The flaws apparent in the Quitman County system are not unique; rather, they are the result of the fundamental problems inherent in a part-time, county-based system that lacks state funding and supervision. In essence, the state of Mississippi has failed to establish or fund a system of indigent defense that is equipped to provide all defendants with the tools of an adequate defense, and has therefore fallen short of its constitutional obligation to provide counsel to indigent defendants in Quitman County.

The trial court erred in failing to consider or address the testimony and evidence on national standards and the impact that Mississippi's failure to live up to these standards has on Quitman County's systemic challenge. NLADA and ABA standards and principles were developed as a means of facilitating the provision of a constitutionally adequate defense to each indigent accused. A system that reflects the essential tenets embodied in the Ten Principles is a system that minimizes the risk that innocent people will be convicted and that guilty people will evade prosecution and punishment. National standards and principles should not be considered aspirational. They should be regarded as an effective way of implementing the constitutional guarantee of right to counsel.

It is NLADA's position, based not on speculation, but on years of developing standards and researching systems of indigent defense in various states, that a system of indigent defense that so wholly fails to measure up to recognized standards and principles is in fact delivering constitutionally inadequate assistance of counsel to some indigent persons accused of wrongdoing. The state would have the Mississippi Supreme Court sit idly by, knowing that individual defendants are certain to receive ineffective assistance of counsel under the current system. We submit that the Supreme Court need not wait for individuals to be deprived of constitutional rights in order to provide a remedy. Rather, this Court can and should act to ensure that the indigent defendants prosecuted by the state of Mississippi are provided with the constitutionally required tools of an adequate defense. In so doing, the Court will safeguard not only the rights of individuals, but the integrity of the justice system of Mississippi.

CONCLUSION

NLADA respectfully requests that the Court grant the relief requested by Quitman County, with a specific instruction to the legislature to assure that standards are incorporated into any change in law enacted pursuant to this Court's opinion.

RESPECTFULLY SUBMITTED, this the 20th day of July, 2004.

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CERTIFICATE OF SERVICE

I, Julie A. Epps, one of the attorneys for the National Legal Aid & Defender Association, hereby certify that I have this day served via United States mail, postage prepaid, first class, a true and correct copy of the above and foregoing Motion for Leave to File Brief of Amicus Curiae, to the following:

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APPENDIX A

THE TEN PRINCIPLES OF A PUBLIC DEFENSE DELIVERY SYSTEM
February 2002

1. The public defense function, including the selection, funding, and payment of defense counsel,[1] is independent. The public defense function should be independent from political influence and subject to judicial supervision only in the same manner and to the same extent as retained counsel.[2] To safeguard independence and to promote efficiency and quality of services, a nonpartisan board should oversee defender, assigned counsel, or contract systems.[3] Removing oversight from the judiciary ensures judicial independence from undue political pressures and is an important means of furthering the independence of public defense.[4] The selection of the chief defender and staff should be made on the basis of merit, and recruitment of attorneys should involve special efforts aimed at achieving diversity in attorney staff.[5]

2. Where the caseload is sufficiently high,[6] the public defense delivery system consists of both a defender office[7] and the active participation of the private bar. The private bar participation may include part time defenders, a controlled assigned counsel plan, or contracts for services.[8] The appointment process should never be ad hoc,[9] but should be according to a coordinated plan directed by a full-time administrator who is also an attorney familiar with the

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[1] "Counsel" as used herein includes a defender office, a criminal defense attorney in a defender office, a contract attorney or an attorney in private practice accepting appointments. "Defense" as used herein relates to both the juvenile and adult public defense systems.

[2] National Advisory Commission on Criminal Justice Standards and Goals, Task Force on Courts, Chapter 13, *The Defense* (1973) [hereinafter "NAC"], Standards 13.8, 13.9; National Study Commission on Defense Services, *Guidelines for Legal Defense Systems in the United States* (1976) [hereinafter "NSC"], Guidelines 2.8, 2.18, 5.13; American Bar Association Standards for Criminal Justice, *Providing Defense Services* (3rd ed. 1992) [hereinafter "ABA"], Standards 5-1.3, 5-1.6, 5-4.1; *Standards for the Administration of Assigned Counsel Systems* (NLADA 1989) [hereinafter "Assigned Counsel"], Standard 2.2; NLADA *Guidelines for Negotiating and Awarding Contracts for Criminal Defense Services*, (1984) [hereinafter "Contracting"], Guidelines II-1, 2; National Conference of Commissioners on Uniform State Laws, *Model Public Defender Act* (1970) [hereinafter "Model Act"], § 10(d); Institute for Judicial Administration/American Bar Association, *Juvenile Justice Standards Relating to Counsel for Private Parties* (1979) [hereinafter "ABA Counsel for Private Parties"], Standard 3.1 (D).

[3] NSC, *supra* note 2, Guidelines 2.10-2.13; ABA, *supra* note 2, Standard 5-1.3(b); Assigned Counsel, *supra* note 2, Standards 3.2.1, 2; Contracting, *supra* note 2, Guidelines II-1, II-3, IV-2; Institute for Judicial Administration/ American Bar Association, *Juvenile Justice Standards Relating to Monitoring* (1979) [hereinafter "ABA Monitoring"], Standard 3.2.

[4] Judicial independence is "the most essential character of a free society" (American Bar Association Standing Committee on Judicial Independence, 1997).

[5] ABA, *supra* note 2, Standard 5-4.1.

[6] "Sufficiently high" is described in detail in NAC Standard 13.5 and ABA Standard 5-1.2. The phrase can generally be understood to mean that there are enough assigned cases to support a full-time public defender (taking into account distances, caseload diversity, etc.), and the remaining number of cases are enough to support meaningful involvement of the private bar.

[7] NAC, *supra* note 2, Standard 13.5; ABA, *supra* note 2, Standard 5-1.2; ABA Counsel for Private Parties, *supra* note 2, Standard 3.2. "Defender office" means a full-time public defender office and includes a private nonprofit organization operating in the same manner as a full-time public defender office under a contract with a jurisdiction.

[8] ABA, *supra* note 2, Standard 5-1.2(a) and (b); NSC, *supra* note 2, Guideline 2.3; ABA, *supra* note 2, Standard 5-2.1.

[9] NSC, *supra* note 2, Guideline 2.3; ABA, *supra* note 2, Standard 5-2.1.

varied requirements of practice in the jurisdiction.[10] Since the responsibility to provide defense services rests with the state, there should be state funding and a statewide structure responsible for ensuring uniform quality statewide.[11]

3. Clients are screened for eligibility,[12] and defense counsel is assigned and notified of appointment, as soon as feasible after clients' arrest, detention, or request for counsel. Counsel should be furnished upon arrest, detention or request,[13] and usually within 24 hours thereafter.[14]

4. Defense counsel is provided sufficient time and a confidential space with which to meet with the client. Counsel should interview the client as soon as practicable before the preliminary examination or the trial date.[15] Counsel should have confidential access to the client for the full exchange of legal, procedural and factual information between counsel and client.[16] To ensure confidential communications, private meeting space should be available in jails, prisons, courthouses and other places where defendants must confer with counsel.[17]

5. Defense counsel's workload is controlled to permit the rendering of quality representation. Counsel's workload, including appointed and other work, should never be so large as to interfere with the rendering of quality representation or lead to the breach of ethical obligations, and counsel is obligated to decline appointments above such levels.[18] National caseload standards should in no event be exceeded,[19] but the concept of workload (i.e., caseload

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[10] ABA, *supra* note 2, Standard 5-2.3 and commentary; Assigned Counsel, *supra* note 2, Standard 3 3.1 and commentary n. 5 (duties of Assigned Counsel Administrator such as supervision of attorney work cannot ethically be performed by a non-attorney, citing ABA Model Code of Professional Responsibility and Model Rules of Professional Conduct)

[11] NSC, *supra* note 2, Guideline 2.4; Model Act, *supra* note 2, § 10; ABA, *supra* note 2, Standard 5-1.2(c); *Gideon v. Wainwright*, 372 U.S. 335 (1963) (provision of indigent defense services is obligation of state)

[12] For screening approaches, see NSC, *supra* note 2, Guideline 1.6 and ABA, *supra* note 2, Standard 5-7.3.

[13] NAC, *supra* note 2, Standard 13.3; ABA, *supra* note 2, Standard 5-6.1; Model Act, *supra* note 2, § 3; NSC, *supra* note 2, Guidelines 1.2-1.4; ABA Counsel for Private Parties, *supra* note 2, Standard 2.4 (A).

[14] NSC, *supra* note 2, Guideline 1.3.

[15] American Bar Association Standards for Criminal Justice, *Defense Function* (3rd ed. 1993) [hereinafter "ABA Defense Function"], Standard 4-3.2; *Performance Guidelines for Criminal Defense Representation* (NLADA 1995) [hereinafter "Performance Guidelines"], Guidelines 2.1-4.1; ABA Counsel for Private Parties, *supra* note 2, Standard 4.2

[16] NSC, *supra* note 2, Guideline 3.10; ABA Defense Function, *supra* note 15, Standards 4-2.3, 4-3.1, 4-3.2; Performance Guidelines, *supra* note 15, Guideline 2.2.

[17] ABA Defense Function, *supra* note 15, Standard 4-3.1.

[18] NSC, *supra* note 2, Guideline 5.1, 5.3; ABA, *supra* note 2, Standards 5-5.3; ABA Defense Function, *supra* note 15, Standard 4-1.3(e); NAC, *supra* note 2, Standard 13.12; Contracting, *supra* note 2, Guidelines III-6, III-12; Assigned Counsel, *supra* note 2, Standards 4.1 4.1.2; ABA Counsel for Private Parties, *supra* note 2, Standard 2.2 (B) (iv).

[19] Numerical caseload limits are specified in NAC Standard 13.12 (maximum cases per year: 150 felonies, 400 misdemeanors, 200 juvenile, 200 mental health, or 25 appeals), and other national standards state that caseloads should "reflect" (NSC Guideline 5.1) or "under no circumstances exceed" (Contracting Guideline III-6) these numerical limits. The workload demands of capital cases are unique: the duty to investigate, prepare and try both the guilt/innocence and mitigation phases today requires an average of almost 1,900 hours, and over 1,200 hours even where a case is resolved by guilty plea. *Federal Death Penalty Cases: Recommendations Concerning the Cost and Quality of Defense Representation* (Judicial Conference of the United States, 1998). *See also ABA Guidelines for the Appointment and Performance of Counsel in Death Penalty Cases* (1989) [hereinafter "Death Penalty"].

adjusted by factors such as case complexity, support services, and an attorney's nonrepresentational duties) is a more accurate measurement.[20]

6. Defense counsel's ability, training, and experience match the complexity of the case. Counsel should never be assigned a case that counsel lacks the experience or training to handle competently, and counsel is obligated to refuse appointment if unable to provide ethical, high quality representation.[21]

7. The same attorney continuously represents the client until completion of the case. Often referred to as "vertical representation," the same attorney should continuously represent the client from initial assignment through the trial and sentencing.[22] The attorney assigned for the direct appeal should represent the client throughout the direct appeal.

8. There is parity between defense counsel and the prosecution with respect to resources and defense counsel is included as an equal partner in the justice system. There should be parity of workload, salaries and other resources (such as benefits, technology, facilities, legal research, support staff, paralegals, investigators, and access to forensic services and experts) between prosecution and public defense.[23] Assigned counsel should be paid a reasonable fee in addition to actual overhead and expenses.[24] Contracts with private attorneys for public defense services should never be let primarily on the basis of cost; they should specify performance requirements and the anticipated workload, provide an overflow or funding mechanism for excess, unusual or complex cases,[25] and separately fund expert, investigative and other litigation support services.[26] No part of the justice system should be expanded or the workload increased without consideration of the impact that expansion will have on the balance and on the other components of the justice system. Public defense should participate as an equal partner in improving the justice system.[27] This principle assumes that the prosecutor is adequately funded and supported in all respects, so that securing parity will mean that defense counsel is able to provide quality legal representation.

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[20] ABA, *supra* note 2, Standard 5-5.3. NSC, *supra* note 2, Guideline 5.1; *Standards and Evaluation Design for Appellate Defender Offices* (NLADA 1980) [hereinafter "Appellate"], Standard I-F.

[21] Performance Guidelines, *supra* note 11, Guidelines 1.2, 1.3(a); Death Penalty, *supra* note 15, Guideline 5.1.

[22] NSC, *supra* note 2, Guidelines 5.11, 5.12; ABA, *supra* note 2, Standard 5-6.2; NAC, *supra* note 2, Standard 13.1; Assigned Counsel, *supra* note 2, Standard 2.6; Contracting, *supra* note 2, Guidelines III-12, III-23; ABA Counsel for Private Parties, *supra* note 2, Standard 2.4 (B) (1).

[23] NSC, *supra* note 2, Guideline 3.4; ABA, *supra* note 2, Standards 5-4.1, 5-4.3; Contracting, *supra* note 2, Guideline III-10; Assigned Counsel, *supra* note 2, Standard 4.7.1; Appellate, *supra* note 20 (*Performance*); ABA Counsel for Private Parties, *supra* note 2, Standard 2.1 (B) (iv). *See* NSC, *supra* note 2, Guideline 4.1 (includes numerical staffing ratios, e.g., there must be one supervisor for every 10 attorneys, or one part-time supervisor for every 5 attorneys; there must be one investigator for every three attorneys, and at least one investigator in every defender office). *Cf.* NAC, *supra* note 2, Standards 13.7, 13.11 (chief defender salary should be at parity with chief judge; staff attorneys at parity with private bar).

[24] ABA, *supra* note 2, Standard 5-2.4; Assigned Counsel, *supra* note 2, Standard 4.7.3.

[25] NSC, *supra* note 2, Guideline 2.6; ABA *supra* note 2, Standards 5-3.1, 5-3.2, 5-3.3; Contracting, *supra* note 2, Guidelines III-6, III-12, and *passim*.

[26] ABA, *supra* note 2, Standard 5-3.3(b)(x). Contracting, *supra* note 2, Guidelines III-8, III-9.

[27] ABA Defense Function, *supra* note 15, Standard 4-1.2(d).

9. Defense counsel is provided with and required to attend continuing legal education. Counsel and staff providing defense services should have systematic and comprehensive training appropriate to their areas of practice and at least equal to that received by prosecutors.[28]

10. Defense counsel is supervised and systematically reviewed for quality and efficiency according to nationally and locally adopted standards. The defender office (both professional and support staff), assigned counsel, or contract defenders should be supervised and periodically evaluated for competence and efficiency.[29]

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[28] NAC, *supra* note 2, Standards 13.15, 13.16; NSC, *supra* note 2, Guidelines 2.4(d), 5.6-5.8; ABA, *supra* note 2, Standards 5-1.5; Model Act, *supra* note 2, § 19(e); Contracting, *supra* note 2, Guideline III-17; Assigned Counsel, *supra* note 2, Standards 4.2, 4.3.1, 4.3.2, 4.4.1; NLADA *Defender Training and Development Standards* (1997); ABA Counsel for Private Parties, *supra* note 2, Standard 2.1 (A).

[29] NSC, *supra* note 2, Guidelines 5.4, 5.5; Contracting, *supra* note 2, Guidelines III-16; Assigned Counsel, *supra* note 2, Standard 4.4; ABA Counsel for Private Parties, *supra* note 2, Standards 2.1 (A), 2.2; ABA Mentoring, *supra* note 3, Standards 3.2, 3.3. Examples of performance standards applicable in conducting these reviews include NLADA Performance Guidelines, ABA Defense Function, and NLADA/ABA Death Penalty.

APPENDIX B

Finding:		Supporting Documentation:
1	*In direct violation of its constitutional obligations under Gideon and ABA Principle #2, the State of Louisiana fails to adequately fund indigent defense services. This results in a disparate funding system that fosters ineffective assistance of counsel in the parishes.*	Louisiana is the only state to attempt to fund the majority of indigent defense services through court surcharges. Funding indigent defense through such court costs has proven to be unreliable because there is no correlation between the ability of a jurisdiction to raise revenues and the resources required to provide adequate defense services to those unable to hire an attorney. Additionally, the policies and practices of other policy-makers can have a deleterious effect on the primary revenue stream for public defense services.
2	*In violation of ABA Principle 1, Louisiana's indigent defense system lacks independence from undue political interference.*	By vesting the District Court judiciary with the authority to appoint the members of the local indigent defense boards (IDB), Louisiana Revised Statutes, Title 15 §144 is in direct violation of this ABA principle. In Avoyelles Parish the judiciary has appointed an IDB that has not allowed for qualified continuity of administration of the system.
3	*In violation of ABA Principle 5, the failure to ensure adequate funding and independence of the indigent defense system has led to the prevalence of flat fee contract systems in those districts with poor revenue streams in an attempt to save money. Flat-fee contracts are universally rejected by all national standards because they create a monetary conflict between the defense provider and the client.*	An IDB in a judicial district in which the need for public defense services is greater than can be afforded through court costs must look for cost savings to stay afloat. There are only two ways to cut costs related to indigent defense: either reduce the number of cases coming into the system or cut spending on salaries and case-related expenses. Since public defenders do not control their own caseload (it is dictated by the prosecution and courts), IDBs across the state have turned to low-bid, flat fee contract systems in which an attorney takes all of the indigent defense cases in a jurisdiction for a fixed fee. Flat-fee contracts create a financial disincentive for the attorneys to provide adequate representation since the attorney must pay for all case-related services (investigation, expert witnesses, etc.).
4	*In violation of ABA Principle 5, the failure to adequately fund and ensure the independence of the indigent defense system results in attorneys handling caseloads far in excess of national standards. The crushing caseloads exist despite the fact that indigent defendants in misdemeanor cases are being denied attorneys without a proper waiver of their right to counsel.*	One Avoyelles Parish contract attorney handles the workload equivalency of 6.3 full-time attorneys while only working part-time. Assuming a 1,387 hour work year, clients facing felony charges are afforded, on average, approximately two hours a piece of this attorney's time *including those charged with capital offenses*. First hand courtroom observations showed that clients were not afford counsel in some misdemeanor cases without an informed waiver of counsel.
5	*In violation of ABA Principle 6, the failure to adequately fund and ensure independence of the indigent defense system results in attorneys being assigned cases that they are not qualified to handle.*	The Avoyelles Parish IDB recently hired an attorney with no trial-level experience to handle all juvenile and misdemeanor cases. In doing so, the lives of poor people have become a "practice" forum for the recent law school graduate to learn through the process of "sink or swim." At-risk juveniles require special attention from public defenders if there is hope to change behavior and prevent escalating behavioral problems that increase the risk that they will eventually be brought into the adult criminal justice system in later years.
6	*In violation of ABA Principles 3 and 7, the failure to ensure adequate funding and independence of the indigent defense system undermines the timeliness of appointment of attorney and results in a lack of continuity of representation. Both erode clients' right to a speedy trial.*	In Avoyelles Parish the first attorney assigned to a felony case does nothing substantial prior to arraignment and has no responsibility for the case post-arraignment. Thus, nothing that would help the client (investigation, psychiatric exams, drug-treatment placement) occurs until his second attorney receives the case. This is usually on the eve of preliminary hearings or pre-trial settlement conferences – several months later. Louisiana's speedy trial rules have proven ineffective to overcome this dynamic. Under Louisiana Statutes, a defense lawyer must stipulate on the record that he or she is prepared to go to trial when filing a speedy trial motion. Since they are effectively just beginning the case, the lawyer cannot do so and often waives the right to a speedy trial.

Finding:		Supporting Documentation:
7	*In violation of ABA Principle 9, the failure to ensure adequate funding and independence of the indigent defense system results in a systemic failure to provide comprehensive training.*	Training should be a continual facet of a public defender agency. Skills need to be refined and expanded, and knowledge needs to be updated as laws change and practices in related fields, such as forensics, evolve. Thus, on-going training is always critical, but even more so where, as in Avoyelles Parish, experienced attorneys never received any initial "New Attorney" training and may need to re-learn skills or unlearn bad practices. There simply is no training.
8	*In violation of ABA Principle 10, the failure to ensure adequate funding and independence of the indigent defense system results in a lack of accountability for attorney performance and systemic ineffective assistance of counsel.*	Because the IDB members in Avoyelles Parish do not have the knowledge or training to enable them to oversee any aspect of the delivery of indigent defense services in the Parish, the method of delivery, caseloads, quality of representation, etc., is left to the discretion of the contract public defenders. The NLADA site team noticed many troublesome practices of the defense attorneys, including one attorney's practice of standing 15 feet away from the defendant during guilty pleas. This attorney was at times laughing with court staff during the proceeding in which his clients were forced to advocate on their own behalf.
9	*In violation of ABA Principle 4, the failure to ensure adequate funding and independence of the indigent defense system results in the continual abridgement of indigent defense clients' right to confidentiality.*	Substantive conversations on felony cases between clients and attorneys in Avoyelles Parish were conducted in the open courtroom audible to the courtroom audience and staff. The Avoyelles Parish Sheriff owns and operates the jail phone system and we were told that it cost $5.00 to place a collect call from the jail plus long distance rates for the entirety of the conversation. This policy has forced the contract lawyers to set a policy that no collect calls from the jail be accepted due to the financial limitations of their contracts.
10	*In violation of ABA Principle 5, the failure to ensure adequate funding and independence of the indigent defense system results in the lack of resource parity between the prosecution and defense in Louisiana.*	On average, Louisiana prosecutors outspent their indigent defense counterparts by nearly 3 to 1. This does not take into account the amount of investigative resources provided at no cost to the prosecution by police, sheriffs, or FBI but which the indigent defense system must pay for directly. At the close of 2002, Louisiana district attorneys collectively had over $38 million in unused revenue in reserve accounts.

Excerpt taken from:

NLADA, *In Defense of Public Access to Justice: An Assessment of Trial-Level Indigent Defense Services in Louisiana 40 Years after* Gideon, Executive Summary at iv-v (March 2004), *available at* http://www.nlada.org/Defender/Defender_Evaluation/la_eval_summary.pdf.

APPENDIX C

VIDC

VIDC Report Card

The report card is based on the American Bar Association's Ten Principles of a Public Defense Delivery System.

1. The public defense function including the selection, funding and payment of defense counsel is independent.
There are two parts to Virginia's public defense delivery system. 1) Public Defender offices serve about half of Virginia's population in 21 locations and 2) a court appointed system (using private attorneys) serves the remainder of the state. Court appointed attorneys depend on local judges to appoint them and approve their fees. The appointment system compromises independence and gives the appearance that a lawyer's zealous advocacy on behalf of a client could result in a private lawyer's removal from the court appointed list. Public defender offices are managed by the Virginia Public Defender Commission, an independent state agency within the judicial branch. The commission sets policy for the hiring of all public defenders, including those involved in capital cases. **Grade: D**

2. Where the caseload is sufficiently high, the public defense delivery system consists of both a defender office and the active participation of the private bar.
This principle requires the establishment of a statewide system for ensuring uniform quality. Virginia has no such structure. In Public Defender jurisdictions there is a full-time administrator, but in court appointed jurisdictions administration is left up to localities. A full-time statewide administrator covering all indigent defense would improve the system and help ensure uniform quality. **Grade: D**

3. Clients are screened for eligibility, and defense counsel is assigned and notified of appointment, as soon as feasible after client's arrest, detention, or request for counsel.
In Virginia, the court appoints a lawyer during the defendant's initial court appearance after arrest, but the client may not be able to meet with his lawyer until after the hearing. An improved system would allow for appointment of a lawyer and attorney-client contact before the initial hearing. **Grade: B**

4. Defense counsel is provided sufficient time and a confidential space within which to meet with the client.
Virginia's high caseloads and low fee caps may discourage court-appointed lawyers from spending sufficient time with clients to prepare their cases. Similarly, in many public defender offices, high caseloads prevent lawyers from spending sufficient time with clients to prepare cases. In some Virginia jails and courthouses, there is no private place for lawyers to meet with their clients. **Grade: D**

5. Defense counsel's workload is controlled to permit the rendering of quality representation.
In 1990, the Virginia Department of Planning and Budget approved statewide caseload standards for Public Defender offices. Public defender caseloads remain unreasonably high because the Virginia General Assembly has never funded enough staff to meet those standards. For many court appointed lawyers, caseloads are similarly high, hampering their ability to provide quality representation. To improve under this principle, Virginia should implement a statewide plan for managing caseloads. **Grade: D**

6. Defense counsel's ability, training, and experience match the complexity of the case.
The Public Defender within each office is responsible for ensuring that the assistant public defender assigned to the case has the necessary ability, training and experience. However, because of high caseloads, sometimes attorneys lack sufficient training and experience for particular cases. Court appointed lawyers are appointed by individual trial judges who are responsible for ensuring that they assign lawyers who are qualified to handle the charges. However, often there is no attempt to match a case with a qualified lawyer. **Grade: C**

7. The same attorney continuously represents the client until completion of the case.
Most public defender offices assign a single attorney from intake through disposition. In some offices, special appellate attorneys take all cases on appeal. Virginia's Supreme Court requires all court appointed lawyers and public defenders to represent a defendant through completion of the case. **Grade: A**

8. There is parity between defense counsel and the prosecution with respect to resources and defense counsel is included as an equal partner in the justice system.
There is no parity of resources in Virginia. Virginia's current maximum hourly rate for court appointed counsel ($90/hour) is subject to the lowest unwaivable salary cap in the country. For example, in a complicated case involving three or more appearances in a District Court, a court appointed lawyer would receive a maximum of $112 (or 1.25 hours of pay) for representing the client. Unlike prosecutors, neither Public Defenders nor court appointed lawyers have access to expert assistance, except by demonstration of need, which is made in open court. Public defender salaries are set by the state to be comparable to Commonwealth's Attorneys' state salaries, but unlike Commonwealth's Attorneys, there is no flexibility as to hiring level, no local salary supplements, no Career Defender Program, and no law school loan forgiveness. **Grade: F**

9. Defense counsel is provided with and required to attend continuing legal education.
Public defender offices provide their lawyers with the minimum general training to meet state-mandated attorney continuing legal education (CLE) requirements of 12 hours per year, including two hours of ethics. Most training is in criminal defense. Court appointed lawyers must pay for their continuing legal education and are required only to complete state-mandated general training. There is no requirement for court appointed lawyers to undergo criminal defense training. **Grade: C**

10. Defense counsel is supervised and systematically reviewed for quality and efficiency according to nationally and locally adopted standards.
Public defenders receive yearly performance evaluations based on statewide standards provided by the Public Defender Commission. Virginia's evaluation criteria do not encompass nationally recognized standards. Court appointed lawyers are not required to meet any statewide qualifications or standards, nor is their performance evaluated. Attorneys who wish to represent defendants in capital cases must meet minimum statewide standards set by the Virginia Public Defender Commission, the Virginia State Bar, and the Supreme Court of Virginia. **Grade: D**

Virginia Indigent Defense Coalition, *VIDC Report Card, at* http://www.vidcoalition.org/reportcard.html (last visited July 22, 2004).