

COPY

No. 2003-SA-02658

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

FILED

AUG - 4 2004

QUITMAN COUNTY, MISSISSIPPI,

OFFICE OF THE CLERK
SUPREME COURT
COURT OF APPEALS

Plaintiff-Appellant

vs.

per order of
8/4/04

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

Defendants-Appellees.

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

BRIEF FOR *AMICI CURIAE* NAACP LEGAL DEFENSE AND EDUCATIONAL FUND, INC.
AND 100 BLACK MEN OF JACKSON, INC. IN SUPPORT OF PLAINTIFF-APPELLANT

Carlton W. Reeves
Mississippi Bar No. 8515
PIGOTT REEVES JOHNSON & MINOR
775 North Congress St.
Jackson, Mississippi 39202
(601) 354-2121

(Additional Counsel on Inside Cover)

TABLE OF CONTENTS

TABLE OF AUTHORITIES	ii
INTEREST OF <i>AMICI</i>	vi
ARGUMENT	1
I. MISSISSIPPI'S CURRENT, PATCHWORK SYSTEM OF INDIGENT DEFENSE SERVICES HAS A PARTICULARLY HARMFUL EFFECT ON AFRICAN-AMERICAN MISSISSIPPIANS	1
A. Concentrated Poverty Among Black Mississippians Creates a Reliance Upon Publicly-Funded Counsel.	1
B. Poor African-American Defendants Represented by Publicly-Funded Counsel Spend More Time in Pre-Trial Detention and Serve Longer Prison Sentences.	4
C. Prolonged Incarceration Has a Disproportionate and Debilitating Impact on African-American Families and Communities	7
D. Repeated Injustices and Inequities Lead African-American Defendants and Crime Victims to Lose Faith in the Criminal Justice System.	8
E. The Collateral Consequences of Criminal Convictions in Mississippi are Disproportionately Borne by the African-American Community.	10
II. FULL-TIME, ADEQUATELY FUNDED PUBLIC DEFENDERS WILL IMPROVE THE QUALITY OF SERVICE PROVIDED TO POOR DEFENDANTS AND HELP RESTORE CONFIDENCE IN THE CRIMINAL JUSTICE SYSTEM AMONG AFRICAN-AMERICAN MISSISSIPPIANS.	12
A. A Full-time and Properly Funded Public Defender System Would Help Raise the Quality of Representation of Poor Blacks up to Constitutional Standards.	12
B. A Full-Time and Properly Funded Public Defender System Would Enhance the Legitimacy and Effectiveness of the Criminal Justice System.	13
CONCLUSION	15

TABLE OF AUTHORITIES

FEDERAL CASES:

Pages

<i>Barker v. Wingo</i> , 407 U.S. 514 (1972)	5, 8
<i>Burdine v. Johnson</i> , 262 F.3d 336 (5th Cir. 2001)	9
<i>Cotton v. Fordice</i> , 157 F.3d 388 (5th Cir. 1998)	10
<i>Furman v. Georgia</i> , 408 U.S. 238 (1972)	vi
<i>Miller-El v. Cockrell</i> , 537 U.S. 322 (2003)	vii
<i>NAACP v. Button</i> , 371 U.S. 415 (1963)	vi
<i>Butler v. State</i> , 608 So. 2d 314 (Miss. 1992)	9

STATE CASES:

<i>Brookins v. State of Texas</i> , 07-00-0159-CR, 2001 WL 246581 (Tex. App.)	vi
<i>Esparza v. State</i> , 595 So. 2d 418 (Miss. 1992)	5
<i>Williams v. State of Texas</i> , 07-00-0186-CR, 2000 WL 1527942 (Tex. App.)	vi

CONSTITUTIONS:

Miss. Const. Ann. Art. 12 § 241 (2004)	10
Miss. Const. Ann. Art. 12 § 253 (2004)	11

FEDERAL STATUTES:

Criminal Justice Act of 1964, Pub. L. No. 88-455 § 2, 78 Stat. 552 (1964) (codified as amended at 18 U.S.C. § 3006A (1994)).	1
--	---

STATE STATUTES:

Miss. Code Ann. §§ 73-35-21 (2004)	10
Miss. Code Ann. §§ 73-11-57 (2004)	10

MISCELLANEOUS:

Alemayehu Bishaw and John Iceland, <i>Poverty: 1999, Census 2000 Brief</i>	2
Carl Brooking and Blakely Fox, <i>Economic Losses and the Public System of Indigent Defense: Empirical Evidence on Pre-Sentencing Behavior from Mississippi</i> (June 2003)	<i>passim</i>
Paul Butler, <i>Racially Based Jury Nullification: Black Power in the Criminal Justice System</i> , 105 Yale L.J. 677 (1995)	9
David N. Dorfman & Chris K. Iijima, <i>Fictions, Fault, and Forgiveness: Jury Nullification in a New Context</i> , 28 U. Mich. J. L. Reform 861 (1995)	10
E-mail from Nic Lott, Communications Specialist, Mississippi Dept. of Corrections, to Kareem Rabie, Paralegal, NAACP Legal Defense and Educational Fund, Inc. (May 13, 2004, 15:31 EST)	6
Tony Fabelo, <i>What Policy-Makers Need to Know to Improve Indigent Defense Systems</i> , 29 N.Y.U. Rev. L. & Soc. Change 135 (2004)	8, 12, 14
David A. Felice, <i>Justice Rationed: A Look at Alabama's Present Indigent Defense System with a Vision Towards Change</i> , 52 Ala. L. Rev. 975 (2001)	4, 13
Jamie Fellner & Marc Mauer, The Sentencing Project, <i>Losing the Vote: The Impact of Felony Disenfranchisement Laws in the United States</i> (1998)	11
Ted Gest, <i>et al.</i> , <i>Violence in America: The Victims' Profiles</i> , U.S. News & World Rep., Jan. 17, 1994, at 22	14

Caroline W. Harlow, U.S. Dept. of Justice, <i>Defense Counsel in Criminal Cases</i> (2000)	4
Aga Haupt, Mississippi State University Relations, <i>MSU Study Seeks to Assist Children of Imprisoned Parents</i> (Sept. 12, 2001)	7
Randall Kennedy, <i>Symposium: Changing Images of the State: The State, Criminal Law, and Racial Discrimination: A Comment</i> , 107 Harv. L. Rev. 1255 (1994)	14
Legal Action Center, <i>After Prison: Roadblocks to Reentry. A Report on State Legal Barriers Facing People with Criminal Records</i> (2004)	10
Terence F. MacCarthy, <i>Unanimous Resolution</i> , 23 Champion 20 (Apr. 1999)	1, 4, 6
Jeff Manza and Christopher Uggen, <i>Democratic Contraction? Political Consequences of Felon Disenfranchisement in the United States</i> , 67 Amer. Soc. Rev. 777 (2002)	11
Mark Mather, <i>Patterns of Poverty in America</i> (2000)	2
Mississippi Department of Corrections, <i>Monthly Fact Sheet</i> (Apr. 1, 2004)	6
Mississippi Public Defenders Task Force, <i>Report to the Mississippi State Legislature</i> (Sept. 29, 2000)	3
Christopher J. Mumola, Department of Justice, <i>Incarcerated Parents and Their Children</i> (Aug. 2000)	7
NAACP Legal Defense and Educational Fund, Inc., <i>Assembly Line Justice: Mississippi's Indigent Defense Crisis</i> (Feb. 2003)	6, 8, 9
Charles J. Ogletree, Jr., <i>Toward a More Effective Right to Assistance of Counsel: An Essay on the New Public Defender for the 21st Century</i> , 58 Law and Contemp. Probs. 81 (1995).	3, 13
Bernadette D. Proctor and Joseph Dalaker, U.S. Census Bureau, <i>Poverty in the United States: 2002</i>	1
Michael Radelat <i>et al.</i> , <i>Prisoners Released from Death Row Since 1970 Because of Doubts About Their Guilt</i> , 13 Cooley L. Rev. 907 (1996)	9
Hanna Rosin, <i>Action Jackson: Jesse's Volte-face on Crime</i> , New Republic, Mar. 24, 1994, at 17	14

U.S. Census Bureau, <i>Alabama: 2000</i>	4
U.S. Census Bureau, <i>Mississippi: 2000</i>	1, 2
U.S. Census Bureau, <i>Census 2000 Data Tables</i>	2
U.S. Census Bureau, <i>Census 2000: Tables P159B and P160B for Mississippi and Quitman County, Mississippi</i>	2
Matt Volz, <i>Young Black Male Prison Population Soars</i> , The Baltimore Afro-American, Aug. 30 - Sept. 5, 2003, at B8	6

INTEREST OF *AMICI*

Amici NAACP Legal Defense and Educational Fund, Inc. and The 100 Black Men of Jackson, Inc. file this brief because both organizations are deeply concerned about the plight of African Americans living in poverty who are disproportionately affected by the inadequacies of Mississippi's indigent defense system. These organizations believe that Mississippi's current public defender system has a negative, disparate impact on the communities these two organizations serve.

The NAACP Legal Defense and Educational Fund, Inc. ("LDF") is the nation's oldest civil rights law firm, having been founded as an arm of the NAACP in 1939 by Charles Hamilton Houston and Thurgood Marshall. LDF was chartered by the Appellate Division of the Supreme Court of New York in 1940 as a non-profit legal aid society "to render legal aid gratuitously to such Negroes as may appear to be worthy thereof, who are suffering legal injustices by reason of race or color and unable to employ and engage legal aid and assistance on account of poverty." Since 1957, LDF has operated independently from the NAACP. The United States Supreme Court has recognized that LDF "has a corporate reputation for expertness in presenting and arguing the difficult questions of law that frequently arise in civil rights litigation." *NAACP v. Button*, 371 U.S. 415, 422 (1963). Throughout its history, LDF has been involved in such litigation throughout the country, and has argued and won more cases before the United States Supreme Court than any other body of lawyers excluding the U.S. Department of Justice.

Since its inception, LDF has litigated or provided technical assistance to parties and the court in cases that expose racial bias in the criminal justice system. *Furman v. Georgia*, 408 U.S. 238 (1972) (holding the death penalty as applied unconstitutional, in part, because of racial bias against black defendants); *Williams v. State of Texas*, 07-00-0186-CR, 2000 WL 1527942 (Tex. App.) and *Brookins v. State of Texas*, 07-00-0159-CR, 2001 WL 246581 (Tex. App.) (state post-conviction

proceedings in cases of racially discriminatory arrests and prosecutions in Tulia, Texas); *Miller-El v. Cockrell*, 537 U.S. 322 (2003) (preserving *habeas corpus* claim in case regarding racial bias in jury selection). LDF has authored a report detailing Mississippi's indigent defense crisis and commissioned a study revealing the economic impact of the broken defense system. LDF also conducts national civil rights training conferences to provide guidance to attorneys addressing these issues in their communities.

The 100 Black Men of Jackson, Inc. ("100 Black Men") is a chapter of 100 Black Men of America, Inc., which was founded in New York in 1963. 100 Black Men is a membership organization committed to the intellectual development of youth and the economic empowerment of the African-American community based upon the following precepts: respect for family, spirituality, justice, and integrity. The members of 100 Black Men seek to improve the quality of life in the African-American community and to enhance educational and economic opportunities for all African Americans, particularly young males. The organization advances this mission by providing vital services to African-American families and youth in Mississippi, including those affected by the removal of parents from the home due to incarceration and other collateral consequences of criminal convictions that devastate the black community. These services include mentoring programs, scholarships, and seminars on economic development and preventive health care.

Amici have decades of experience providing assistance and resources and advocating for the welfare of African-American communities. The expertise that LDF and 100 Black Men share designate them as especially appropriate parties to illustrate the damaging effects of Mississippi's patchwork indigent defense system on the State's African-American population.

ARGUMENT

I. MISSISSIPPI'S CURRENT, PATCHWORK SYSTEM OF INDIGENT DEFENSE SERVICES HAS A PARTICULARLY HARMFUL EFFECT ON AFRICAN-AMERICAN MISSISSIPPIS.

A. Concentrated Poverty Among Black Mississippians Creates a Reliance Upon Publicly-Funded Counsel.

The greatest share of the burden imposed by the absence of a properly funded indigent defense system in Mississippi is borne by African Americans and the black community. African Americans are, on average, in greater need of indigent defense services because they are more likely to live in poverty than members of any other racial group. An American Bar Association Report recommending full funding for the Criminal Justice Act¹ found that, as of 1991, blacks comprised only 12% of the nation's population but comprised 30% of the families living below the poverty line.² In 2002, the United States Census Bureau found that 23.9% of Americans who identified themselves as black lived in poverty, compared to 12.1% for all races, and 10.3% for those who identified themselves as white.³

The State of Mississippi includes a much higher percentage of African Americans than the rest of the United States. The Census Bureau found that 36.3% of Mississippi residents identified themselves as black or African-American in the 2000 Census.⁴ The percentage of African Americans in Quitman County was even greater: 68.6% of the county's residents identified

¹Criminal Justice Act of 1964, Pub. L. No. 88-455 § 2, 78 Stat. 552 (1964) (codified as amended at 18 U.S.C. § 3006A (1994)).

²Terence F. MacCarthy, *Unanimous Resolution*, 23 Champion 20, 25 (Apr. 1999) (citations omitted).

³Bernadette D. Proctor and Joseph Dalaker, U.S. Census Bureau, *Poverty in the United States: 2002* 2 tbl.1, available at <http://www.census.gov/prod/2003pubs/p60-222.pdf> (last modified Sept. 2003).

⁴U.S. Census Bureau, *Mississippi: 2000* 2 tbl.DP-1, available at <http://www.census.gov/prod/2002pubs/c2kprof00-ms.pdf> (last modified Aug. 2002).

themselves as black or African-American.⁵

The poverty rate in Mississippi is also much greater than elsewhere in the country. In fact, Mississippi has the highest percentage of people living below the poverty line of any state.⁶ Census Bureau statistics show that 12.4% of U.S. citizens and 9.2% of American families lived beneath the poverty line in 1999.⁷ During that same year, nearly 20% of all Mississippi residents and 16% of Mississippi's families were living in poverty.⁸ The poverty rate was even higher in Quitman County, where 33.1% of all individuals and 28.6% of families were living in poverty.⁹

The poverty rate among black Mississippians surpassed even these figures. Approximately 35% of all African-American Mississippians and 31.6% of African-American families in Mississippi lived below the poverty line in 1999.¹⁰ Poverty among African Americans living in Quitman County was even more pronounced: over 40% of African-American individuals in Quitman County and nearly 38% of black families were living there in poverty.¹¹

This concentration of poverty among African Americans marks Mississippi as a whole and Quitman County in particular as places where effective indigent defense is necessary in the interests

⁵U.S. Census Bureau, *Census 2000 Data Tables* tbl.DP-1, available at <http://censtats.census.gov/data/MS/05028119.pdf>.

⁶Mark Mather, *Patterns of Poverty in America* (2000), available at <http://www.prb.org> (last modified June 2002).

⁷Alemayehu Bishaw and John Iceland, *Poverty: 1999*, Census 2000 Brief, 4 tbl.3, 9 tbl.7, available at <http://www.census.gov/prod/2003pubs/c2kbr-19.pdf> (last modified May 2003).

⁸U.S. Census Bureau, *Mississippi: 2000* 4, available at <http://www.census.gov/prod/2002pubs/c2kprof00-ms.pdf>.

⁹U.S. Census Bureau, *Census 2000 Data Tables* tbl.DP-3, available at <http://censtats.census.gov/data/MS/05028119.pdf>.

¹⁰U.S. Census Bureau, *Census 2000: Tables P159B and P160B for Mississippi and Quitman County, Mississippi*, American FactFinder, available at <http://factfinder.census.gov>.

¹¹*Id.*

of justice and by Constitutional mandate. Moreover, these numbers indicate that the consequences of Mississippi's failure to provide adequate indigent defense services to its poor citizens generally "fall[s] disproportionately on communities of color because of the greater incidence of poverty in these communities and, hence, their greater reliance on public defender services."¹²

Survey evidence suggests that the overwhelming majority of criminal cases brought in Mississippi are against indigent defendants. In its year 2000 Report to the Mississippi Legislature, the Mississippi Public Defenders Task Force asked judges in Mississippi's twenty-two judicial circuits to estimate the number of indigent criminal defendants that came before them in felony cases. The fifteen courts that responded estimated that the number of indigent defendants appearing before them in felony cases ranged between 50% and 95%.¹³ The average of these responses was just over 82%. In Quitman County, the court estimated that over 90% of all criminal defendants who appeared before it in felony cases were indigent.¹⁴ These results, combined with the high degree of poverty in Mississippi's black community, indicate that the State's failure to provide even minimally sufficient funding for indigent defense has an inordinate impact on African Americans.

A recent U.S. Department of Justice survey compared rates of representation by public and private attorneys in the federal and state court systems. The survey results showed that 77% of black people incarcerated in state prisons reported that they were represented by assigned counsel¹⁵ or

¹²Charles J. Ogletree, Jr., *Toward a More Effective Right to Assistance of Counsel: An Essay on the New Public Defender for the 21st Century*, 58 Law and Contemp. Probs. 81, 82 (1995).

¹³Mississippi Public Defenders Task Force, *Report to the Mississippi State Legislature* (Sept. 29, 2000) (Attachment C: Compilation of Results of Circuit Judges Survey). The responses were provided in percentages only; no information on the actual number of defendants per jurisdiction was available.

¹⁴*Id.* at Attachment E: Copy of Results of County System and Costs Survey.

¹⁵ "Assigned counsel" is an attorney paid by the government to handle cases on a rotating-list system. The list of attorneys may be volunteers or may include all attorneys within a county. "Contract counsel", referred to later in this brief, is an attorney paid a fixed rate by the government to handle

public defenders, compared to 69% of white inmates and 73% of Hispanic inmates. Among those incarcerated in federal facilities, 65% of blacks had publicly financed attorneys, compared with 57% of whites and 56% of Hispanics. In the State of Alabama – Mississippi’s neighbor and a state with similar demographics¹⁶ – a study found that over half of the defendants using the State’s indigent defense system were black.¹⁷ As observed in a report by the American Bar Association’s Section on Criminal Justice, “one conclusion to be drawn from these harsh statistics is that people of color require appointed lawyers disproportionately more often than white people. Therefore, when the quality of representation provided by appointed lawyers is diminished by underfunding, the consequences will be disproportionately felt by people of color.”¹⁸

B. Poor African-American Defendants Represented by Publicly-Funded Counsel Spend More Time in Pre-Trial Detention and Serve Longer Prison Sentences.

Insufficient, part-time public defense services tend to result in longer jail time for all indigent defendants, both before and after trial. One nationwide study by the Department of Justice showed that only about half of the defendants represented by a public defender or assigned counsel were released from jail before trial, while three-quarters of those employing a private attorney were released.¹⁹ The same study found that inmates with court-appointed counsel were far less likely to

indigent defense cases usually on a part-time basis. Both contract and assigned attorneys are allowed to maintain private legal practices. For more detailed definitions of the types of defense counsel, see Carl Brooking and Blakely Fox, *Economic Losses and the Public System of Indigent Defense: Empirical Evidence on Pre-Sentencing Behavior from Mississippi* 5 (June 2003), available at http://www.naacpldf.org/content/pdf/indigent/Mississippi_Economic_Study.pdf.

¹⁶See U.S. Census Bureau, *Alabama: 2000*, available at <http://www.census.gov/prod/2002pubs/c2kprof00-al.pdf> (last modified Aug. 2002).

¹⁷David A. Felice, *Justice Rationed: A Look at Alabama’s Present Indigent Defense System with a Vision Towards Change*, 52 Ala. L. Rev. 975, 994-95 (2001).

¹⁸MacCarthy, *supra* note 2, at 25.

¹⁹Caroline W. Harlow, U.S. Dept. of Justice, *Defense Counsel in Criminal Cases* (2000), available at <http://www.ojp.usdoj.gov/bjs/pub/pdf/dccc.pdf>.

have contact with their attorneys within a week after their arrest than those with hired counsel.²⁰

A study commissioned by the NAACP Legal Defense and Educational Fund, Inc. (“LDF Study,” *see* Appendix A) showed that poor defendants in Mississippi who are represented by court-appointed counsel (working only part-time representing indigent defendants) tend to spend more time in jail waiting for their cases to be resolved than defendants who are represented by full-time public defenders.²¹ Specifically, the LDF Study found that individuals represented by part-time assigned counsel were 40% less likely to get out of jail before trial and spent an average of 96 more days in jail than those represented by full-time counsel. Individuals represented by part-time contract counsel were 28% less likely to get out of jail than those defendants represented by full-time counsel and spent an average of 81 more days in jail prior to release.

Overall, the LDF Study found that minorities were 19% less likely to get out of jail and spent an average of 52 more days in jail than non-minorities.²² Research from individual counties showed an inversely proportional relationship between a county’s minority population and a defendant’s chances of being released from jail prior to trial: the greater the concentration of minorities in a particular county, the less likely it was that an accused person would be released prior to trial.²³

Furthermore, the LDF Study revealed that the disabling effects of representation by part-time

²⁰*Id.* The study found that only 37% of state inmates and 54% of federal inmates represented by appointed counsel met their attorneys within a week of arrest; in contrast, 60% of state inmates and 75% of federal inmates represented by private counsel spoke with their attorneys within a week of arrest.

²¹Brooking and Fox, *supra* note 15.

²²*Id.* at 22.

²³*Id.* Moreover, the longer the delay, the more punitive the effect of pre-trial incarceration. *See Barker v. Wingo*, 407 U.S. 514, 533 (1972) (“[I]f a defendant is locked up, he is hindered in his ability to gather evidence, contact witnesses, or otherwise prepare his defense.”); *id.* at 527 (“[A] defendant confined to jail prior to trial is obviously disadvantaged by delay”). *Cf. Esparza v. State*, 595 So. 2d 418, 423-24 (Miss. 1992).

defense counsel continue after an accused person is convicted. Part-time, court-appointed counsel tend to provide their clients with less sentencing advocacy than full-time public defenders, which translates into longer prison sentences.²⁴ This lack of meaningful advocacy in all stages of criminal proceedings results in harsh convictions and sentences even for non-violent, minor crimes.²⁵ Thus, the punishment that begins in pre-trial detention continues, unnecessarily, for many years to come.

This impact is evident in the composition of the state and national prison populations. African Americans made up only 12% of U.S. citizens in 1999; yet, they constituted almost 50% of all incarcerated people nationwide.²⁶ The same is true in Mississippi: While blacks comprise less than 40% of the State's residents, the Mississippi Department of Corrections reported that, as of April 1, 2004, they represented 68.39% (15,571) of the State's 23,037 inmates.²⁷ By one estimate, one out of every twelve black males in Mississippi between the ages of 20 and 29 was in prison as of August 2003 – a rate four times that for white males in the same age group.²⁸ An even greater proportion of incarcerated people convicted in Quitman County are African-American. As of May 13, 2004, of the 97 offenders imprisoned in state facilities and convicted in Quitman County, 82 of them (approximately 84.5%) were black.²⁹

²⁴Brooking and Fox, *supra* note 15, at 14.

²⁵NAACP Legal Defense and Educational Fund, Inc., *Assembly Line Justice: Mississippi's Indigent Defense Crisis* 10-12 (Feb. 2003) [hereinafter *Assembly Line Justice*], available at http://www.naacpldf.org/content/pdf/ms_indigent/Assembly_Line_Justice.pdf.

²⁶MacCarthy, *supra* note 2, at 25 (using 1993 incarceration figures) (citation omitted).

²⁷Mississippi Department of Corrections, *Monthly Fact Sheet* (Apr. 1, 2004), available at <http://www.mdcc.state.ms.us>.

²⁸Matt Volz, *Young Black Male Prison Population Soars*, The Baltimore Afro-American, Aug. 30 - Sept. 5, 2003, at B8.

²⁹E-mail from Nic Lott, Communications Specialist, Mississippi Dept. of Corrections, to Kareem Rabie, Paralegal, NAACP Legal Defense and Educational Fund, Inc. (LDF) (May 13, 2004, 15:31 EST) (on file with LDF).

C. Prolonged Incarceration Has a Disproportionate and Debilitating Impact on African-American Families and Communities.

Excessive periods of incarceration caused by an inadequate defense subject entire families to severe consequences and deprive minority communities of both the financial and human capital necessary to sustain themselves.

National figures show that the black community is disproportionately burdened by the removal of parents from their children due to incarceration. The Bureau of Justice Statistics found that in 1999, of the 1,498,800 children with a parent in prison nationwide, 51.2% (767,200) of those children were black.³⁰ In all, a full 7% of all black children had a parent in prison, and black children were nine times more likely to have a parent in prison than white children.³¹ Although comparable statistics are not available for Mississippi, the State's large African-American population and the high degree of poverty within it, combined with the documented failure of the State's indigent defense system, make it all but certain that Mississippi's black children are similarly affected.³²

The lack of a full-time public defender system has also taken its toll on the fiscal resources of poor African-American families and communities in Mississippi. The LDF Study showed that the majority of people whose cases were studied and were held in pre-trial detention were working

³⁰Christopher J. Mumola, Department of Justice, *Incarcerated Parents and Their Children* 1 (Aug. 2000), available at <http://www.ojp.usdoj.gov/bjs/pub/pdf/iptc.pdf>.

³¹*Id.*

³²According to one estimate, over 5,000 black children in Mississippi have at least one parent in prison. Aga Haupt, Mississippi State University Relations, *MSU Study Seeks to Assist Children of Imprisoned Parents* (Sept. 12, 2001), at <http://www.ur.msstate.edu/news/stories/2001/parentinprison.asp>. These children are "more likely to have a greater exposure to violence, are at a higher risk for physical or sexual abuse and are more likely to suffer drug and alcohol addiction [and] [a]s a result, they are more likely to turn to a life of crime themselves." *Id.* Thus, the harmful effects of incarceration are cyclical and will be borne by subsequent generations of African Americans.

at the time of their arrest. While sitting in jail for needlessly protracted periods awaiting trial, many poor defendants lost their jobs, homes, cars, and other sources of income and wealth.³³ Economic resources were expended when children were displaced and valuable tax revenue was lost to the towns and counties affected. Moreover, these communities wasted funds that could have been spent on much-needed social services instead of paying for pre-trial jail time.³⁴ Inasmuch as African Americans are disproportionately among the State's poor, they bear the brunt of this drain of resources.

D. Repeated Injustices and Inequities Lead African-American Defendants and Crime Victims to Lose Faith in the Criminal Justice System.

There is a sense in Mississippi among many poor people and African Americans that the criminal justice system is stacked against them, not only as criminal defendants but also as crime victims.³⁵ Mississippi residents repeatedly bear witness to the fact that those who cannot afford to pay lawyers spend months – and sometimes years – languishing in jail waiting for their cases to be resolved. While these poverty-stricken defendants wait in pre-trial incarceration limbo, they rarely hear from the lawyers the court appoints to represent them. Indigent defendants often meet their court-appointed counsel for the first time on the date of critical hearings. Subsequently, some defendants plead guilty to serious charges without the benefit of investigation or even an explanation of the consequences of the plea agreements. In other instances, over-worked, under-paid, or

³³Brooking and Fox, *supra* note 15, at 23. Among those indigent defendants surveyed for the LDF Study, 73% who were working lost their jobs, 24% lost their homes, 22% lost their cars, 16% lost utilities, and 14% lost their phones. The resulting financial impact was felt by many of their families. *See also Barker*, 407 U.S. at 532 (“The time spent in jail awaiting trial . . . often means loss of a job; it disrupts family life; and it enforces idleness. Most jails offer little or no recreational or rehabilitative programs. The time spent in jail is simply dead time.”).

³⁴Brooking and Fox, *supra* note 15, at 15-17.

³⁵*See generally Assembly Line Justice*, *supra* note 25; cf. Tony Fabelo, *What Policy-Makers Need to Know to Improve Indigent Defense Systems*, 29 N.Y.U. Rev. L. & Soc. Change 135, 137 (2004).

incompetent defense lawyers have gone to trial, resulting in numerous cases of wrongful convictions all over the country.³⁶ Mississippi is no exception.³⁷ Many poor defendants are saddled with sentences that are too often incommensurate with the crimes for which they are convicted because their lawyers failed to engage in any meaningful advocacy on their behalf during sentencing.³⁸

Those who have no choice but to rely on the inadequate services provided by over-worked and under-funded appointed counsel understandably lose confidence in the fairness of Mississippi's justice system. When inadequate indigent defense services lead to wrongful convictions, unreasonable pre-trial incarceration, and excessive and inappropriate sentences, collective faith in the system suffers. There is a ripple effect in the black community for each individual defendant whose liberty interests are trampled upon. Families, friends, neighbors and co-workers all lose trust in the effectiveness and fairness of the criminal justice system when an individual is mistreated or ignored by his or her counsel. Meanwhile, victims of crime in poor communities served by inadequate indigent defense systems also wait longer for resolution of cases and at times question whether the actual perpetrators were apprehended, tried, and convicted. This loss of public confidence undermines the validity and finality of the results.³⁹

³⁶See, e.g., *Burdine v. Johnson*, 262 F.3d 336 (5th Cir. 2001) (*en banc*) (reversing death penalty conviction in Texas case because counsel fell asleep during trial); Jim Dwyer, *et al.*, *Actual Innocence: Five Days to Execution and Other Dispatches From the Wrongly Convicted* (2000) (detailing the authors' work on the Innocence Project).

³⁷See, e.g., *Butler v. State*, 608 So. 2d 314 (Miss. 1992) (reversing wrongful conviction of Sabrina Butler, who was accused of murdering her infant child); Michael Radelat *et al.*, *Prisoners Released from Death Row Since 1970 Because of Doubts About Their Guilt*, 13 Cooley L. Rev. 907, 931 (1996) (reporting the *Butler* case); *Assembly Line Justice*, *supra* note 25, at 18 (noting that "three young men spent four-and-a-half years awaiting trial in Biloxi, only to have the case against them dismissed").

³⁸*Assembly Line Justice*, *supra* note 25, at 9-10.

³⁹Historically, when confronted with a law or system they believe is unjust, some jurors have resorted to a unique means of community self-help: jury nullification. Some see a moral justification for this practice that lends legitimacy to an otherwise unjust criminal justice system. See Paul Butler, *Racially Based Jury Nullification: Black Power in the Criminal Justice System*, 105 Yale L.J. 677, 714

E. The Collateral Consequences of Criminal Convictions in Mississippi are Disproportionately Borne by the African-American Community.

The convictions and sentences meted out by the court and the economic losses caused by these detentions are not the only consequences of Mississippi's broken indigent defense system. Severe and continuing collateral consequences are attached to criminal convictions in Mississippi. For example, the State's professional and occupational licensing statutes restrict participation in a variety of professions by those convicted of crimes.⁴⁰ Moreover, Mississippi "[e]mployers can ask about arrests that never led to conviction and refuse to hire anyone with a criminal record no matter their qualifications."⁴¹ The State provides no mechanism for people with criminal records to obtain "certificates of rehabilitation" that would signal to the community that a former offender is ready to become a productive and contributing member of society. In addition, people convicted of drug crimes face a lifetime ban on public assistance and food stamps in Mississippi, denying them and their families a crucial means of support at a time when they are trying to get back on their feet.⁴²

Perhaps the most damaging collateral consequence of felony convictions is the denial of the right to vote, known as felon disenfranchisement. In Mississippi, disenfranchisement is generally a lifetime sanction.⁴³ Statistics current through the end of the year 2000 show that approximately 119,

(1995); David N. Dorfman & Chris K. Iijima, *Fictions, Fault, and Forgiveness: Jury Nullification in a New Context*, 28 U. Mich. J. L. Reform 861, 893-94 (1995).

⁴⁰See, e.g., Miss. Code Ann. §§ 73-35-21, -11-57 (2004).

⁴¹Legal Action Center, *After Prison: Roadblocks to Reentry, A Report on State Legal Barriers Facing People with Criminal Records* (2004), available at http://www.lac.org/lac/upload/reportcards/25_Image_Mississippi.pdf.

⁴²*Id.*

⁴³The Mississippi Constitution bars those convicted of "murder, rape, bribery, theft, arson, obtaining money or goods under false pretense, perjury, forgery, embezzlement or bigamy" from voting. Miss. Const. Ann. Art. 12 § 241 (2004). For purposes of this bar, theft includes armed robbery. *Cotton v. Fordice*, 157 F.3d 388 (5th Cir. 1998). A person may regain the right to vote if the governor issues an executive order (pardon), or if legislation specifically restoring a particular person's right to vote passes

943 Mississippians were permanently barred from voting or serving on juries because of felony convictions.⁴⁴ This figure accounts for nearly 6% of Mississippi's entire voting-age population.⁴⁵ Approximately 63% of disfranchised Mississippi residents were African Americans. In total, over 11% (76,106) of all African Americans of voting age in Mississippi were disfranchised by a felony conviction.⁴⁶ In this way, the State's felon disfranchisement scheme dilutes the voting strength of the black community. As a result, African Americans are left unable to affect through the electoral process those very circumstances that disproportionately impact them.

The detrimental effects of Mississippi's failed indigent defense system are numerous and markedly debilitating to the State's African-American community. Black Mississippians are particularly interested in seeing the establishment of a state-wide, full-time public defender system staffed by dedicated lawyers. This would ensure that cases are resolved fairly and expeditiously so that those who deserve harsh punishments receive them, but those who do not may serve jail or prison time that neither needlessly disrupts their lives nor those of their families and communities.

both houses of the State legislature by a two-thirds majority of all elected members and is then signed by the governor. Miss. Const. Ann. Art. 12 § 253 (2004).

⁴⁴Jeff Manza and Christopher Uggen, *Democratic Contraction? Political Consequences of Felon Disenfranchisement in the United States*, 67 Amer. Soc. Rev. 777, 797 tbl.A (2002), available at <http://www.sentencingproject.org/pdfs/uggenmanza.pdf>.

⁴⁵*Id.*

⁴⁶*Id.* at 798 tbl.B. A 1998 report indicated that 28.6% of all the African American men in the State were disfranchised as a result of felony convictions. Jamie Fellner & Marc Mauer, The Sentencing Project, *Losing the Vote: The Impact of Felony Disenfranchisement Laws in the United States* 9 (1998), available at http://www.sentencingproject.org/pubs_05.cfm.

II. FULL-TIME, ADEQUATELY FUNDED PUBLIC DEFENDERS WILL IMPROVE THE QUALITY OF SERVICE PROVIDED TO POOR DEFENDANTS AND HELP RESTORE CONFIDENCE IN THE CRIMINAL JUSTICE SYSTEM AMONG AFRICAN-AMERICAN MISSISSIPPIANS.

Effective indigent defense systems are “the first line of defense against corruption of the justice system,” which tends to be unleashed upon “poor people alienated from the socioeconomic and political mainstreams.”⁴⁷ A fair dispensation of justice requires a “strong indigent defense system . . . to shield poor citizens, and indirectly all citizens, against abuses by the state.”⁴⁸ A statewide public defense system in Mississippi featuring full-time public defenders would enhance the quality of representation afforded to indigent African-American defendants and lead to greater confidence in the black community about the State’s administration of criminal justice.

A. A Full-time and Properly Funded Public Defender System Would Help Raise the Quality of Representation of Poor Blacks up to Constitutional Standards.

While not a panacea for all of the problems that exist in the criminal justice system, a full-time and properly funded indigent defense system would yield many positive results. People served by full-time public defenders tend to receive more meaningful advocacy than those who are represented by part-time, under-funded appointed counsel.⁴⁹ For example, the LDF Study indicates that in the Mississippi counties with full-time public defenders, defense attorneys visited their clients in jail more frequently, spent more time with them, accepted and returned their clients’ phone calls, investigated cases more diligently, interviewed witnesses, and attempted to reduce bond more frequently.⁵⁰ Full-time defenders also file more motions on behalf of their clients and investigate

⁴⁷Fabelo, *supra* note 35, at 136.

⁴⁸*Id.*

⁴⁹Brooking and Fox, *supra* note 15, at 5.

⁵⁰*Id.* at 23-26.

cases more frequently and thoroughly than part-time defenders.⁵¹ In addition, full-time defenders tend to remain engaged in cases, reducing the rate of turnover in counsel, which provides greater continuity and a better quality of defense.⁵² The consistent advocacy provided by full-time public defenders in a properly funded system would provide more in-depth investigation and meaningful advocacy at plea hearings, trials and sentencing hearings.⁵³ This would almost certainly lead to less pre-trial jail time and a reduction in the number of undeserving felony convictions. Those represented by publicly-funded counsel would be more likely to be acquitted, or when convicted they would receive prison sentences more proportionate to their crimes. Adequately funded representation would spare countless African-American individuals and families the undue burdens of needless incarceration and the collateral consequences of criminal convictions.

B. A Full-Time and Properly Funded Public Defender System Would Enhance the Legitimacy and Effectiveness of the Criminal Justice System.

Beyond a defendant's individual liberty interests, full-time public defender systems also provide benefits to the entire community and the criminal justice system itself. While seemingly counter-intuitive, serving the individual defendant's interests actually coincides with improving the system as a whole, since "the true adversarial system of American jurisprudence will gain legitimacy in the eyes of the entire population," including families and, indirectly, among crime victims through increased faith in the accuracy of criminal verdicts.⁵⁴ "A strong indigent defense system allows those most alienated from our institutional mainstream to feel that the system is not 'stacked' against

⁵¹*Id.* at 11, 14, 19.

⁵²*Id.* at 11, 19. The authors found that 40% of the Mississippi defendants represented by contract counsel experienced a change in their attorney, while only 15% of those represented by full-time public defenders saw such a change. *Id.* at 19.

⁵³Ogletree, *supra* note 12, at 93.

⁵⁴Felice, *supra* note 17, at 1000.

them, even when they break the law and are punished by the system.”⁵⁵ In the long term, this increased confidence will lead to fewer “grievances ‘against the system’ among alienated populations.”⁵⁶

This enhanced legitimacy would also benefit crime victims in the black community. Statistics show that African Americans are more likely to be victims of crime than members of other racial groups.⁵⁷ Properly funded, full-time public defender offices force prosecutors to use their own resources efficiently and to work diligently to avoid fingering the wrong perpetrator or wasting time and money prosecuting innocent parties. In addition, through their zealous advocacy, full-time public defenders help ensure that police officers and prosecutors apprehend and appropriately charge the correct offenders, bringing closure for African-American crime victims and their families.

Moreover, effective indigent defense systems aid in the expeditious dispensation of justice by allowing cases to move quickly through the system and creating opportunities for implementation of innovative programs – effects which increase the system’s capacity to respond to growing demands.⁵⁸ Cases are resolved more reliably and yet more efficiently than when the community is forced to rely on inadequately staffed and poorly funded indigent defense services. African-

⁵⁵Fabelo, *supra* note 35, at 137.

⁵⁶*Id.*

⁵⁷See, e.g., Randall Kennedy, *Symposium: Changing Images of the State: The State, Criminal Law, and Racial Discrimination: A Comment*, 107 Harv. L. Rev. 1255, 1255 (1994) (“Like many social ills, crime afflicts African-Americans with a special vengeance. African-Americans are considerably more likely than whites to be raped, robbed, assaulted, and murdered.”); *id.* at 1278 n.2 (citing Ted Gest et al., *Violence in America: The Victims’ Profiles*, U.S. News & World Rep., Jan. 17, 1994, at 22, 30) (noting that black male youth ages 14-17, with a victimization rate of 65.9 per 100,000 in the population, are more likely to be victims of crime than white youth in the same age group, who have a victimization rate of only 8.5 per 100,000); See also Hanna Rosin, *Action Jackson: Jesse’s Volte-face on Crime*, New Republic, Mar. 24, 1994, at 17 (reporting that blacks are four times as likely than whites to be raped, three times as likely to be robbed, twice as likely to be assaulted, and seven times more likely to be murdered).

⁵⁸Fabelo, *supra* note 35, at 137.

American defendants, crime victims, and victims' families spend far less time waiting for justice.

CONCLUSION

Improving indigent defense is a civil rights issue which touches on numerous concerns that are critical to African Americans in Mississippi – both the accused and law-abiding families and community members. Since African Americans rely upon publicly-funded defense counsel more often than other citizens when accused of criminal acts and are disproportionately harmed by its failures, it follows that the black community stands to benefit directly from a full-time and properly funded public defender system.

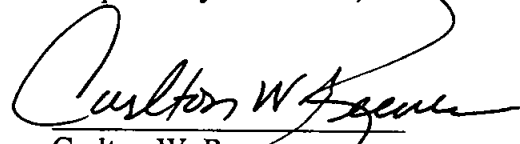
Given the racially disproportionate impact of the State's indigent defense failure at every level, it is clear that Mississippi can do better. The NAACP Legal Defense and Educational Fund and 100 Black Men of Jackson urge this Court to interpret the State's constitution in a way that requires Mississippi to do justice by mandating adequate state funding for public defenders.

DATED: July ^{22nd} 2004

Damon T. Hewitt
Pennsylvania Bar No. 86832
NAACP LEGAL DEFENSE AND
EDUCATIONAL FUND, INC.
99 Hudson Street, Suite 1600
New York, New York 10013
(212) 965-2200

James S. Hardy
New York Registration Number 4245692
167 Avenue B, # 5F
New York, New York 10009
(646) 431-1183

Respectfully Submitted,



Carlton W. Reeves
Mississippi Bar No. 8515
PIGOTT REEVES JOHNSON & MINOR
775 North Congress St.
Jackson, Mississippi 39202
(601) 354-2121

Counsel for Amici Curiae

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing *Motion for Leave to File as Amici Curiae and Proposed Brief of Amici Curiae in Support of Plaintiff-appellant Quitman County* have been served by depositing same in the United States mail, first class postage prepaid, on this 22nd day of July, 2004, addressed to the following:

J. Christopher Klotz
COXWELL & ASSOCIATES, PLLC
610 North Street
Jackson, Mississippi 39202

William H. Voth
ARNOLD & PORTER
399 Park Avenue
New York, New York 10022

Kathleen A. Behan
ARNOLD & PORTER
555 12th Street, N.W.
Washington, DC 20004

Counsel for Plaintiff-Appellant

Roger Googe
Harold E. Pizetta
OFFICE OF THE ATTORNEY GENERAL
OF THE STATE OF MISSISSIPPI
450 High Street
Jackson, Mississippi 39205

Counsel for Defendant-Appellee

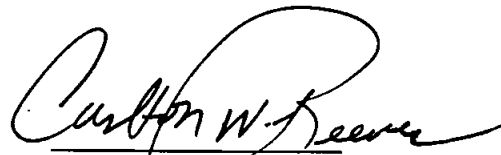

Carlton W. Reeves

EXHIBIT A

Economic Losses
and the
PUBLIC SYSTEM OF INDIGENT DEFENSE:

Empirical Evidence on Pre-Sentencing Behavior from Mississippi

**Carl Brooking
Blakely Fox**

Economic Systems, Inc.

NAACP LEGAL DEFENSE AND EDUCATIONAL FUND, INC.



Supported in part by a grant from the ABA Gideon Initiative, a grant program of the American Bar Association's Standing Committee on Legal Aid and Indigent Defendants. The ABA Gideon Initiative is supported by an award that the ABA has received from the Open Society Institute.

INTRODUCTION

In *Gideon v. Wainwright* (1963), the United States Supreme Court decided that each state has the obligation to provide court-appointed counsel to indigent persons accused of felonies. The state of Mississippi recognized this obligation to provide counsel to indigent persons in *Conn v. State* (1964), but Mississippi has delegated this responsibility of indigent defense to counties. The counties in Mississippi, in turn, have implemented a variety of public defender systems; Mississippi counties employ attorneys on either a full-time or a part-time basis to represent indigent persons. This system, however, does not appear to work fairly.

There is ample anecdotal evidence that Mississippi's system of indigent defense is inadequate. For example, the NAACP Legal Defense and Educational Fund, Inc. (2003) reports that some detainees spend months in overcrowded county jails before their trials, awaiting resolution of their cases. In addition, many indigent persons charged with non-violent property crimes end up spending more time in jail waiting for trial than the time they eventually receive as a sentence. In some counties, indigent defendants have waited for one year—or more—before having their first conversations about the facts of their cases with a court-appointed lawyer. These examples demonstrate that there is clearly a problem with Mississippi's efforts to respond to the Supreme Court's call for providing counsel to indigent persons. In Mississippi, the patchwork system of providing counsel to indigent persons results in delayed access to court-appointed counsel and prolonged periods of jail time before sentencing.

Prolonged periods of pre-sentencing jail time for defendants who are not dangerous, in turn, result in undue personal and economic costs for indigents and unnecessary costs for the state. Obviously, housing the inmates is costly, but other economic losses of the indigent are not as obvious but are, nevertheless, significant. An employed inmate loses income while in jail, and an unemployed inmate loses valuable time that may be used to search for gainful employment. In addition, there can be equally undue spillover effects for an inmate's family, such as missed child support payments.

Clearly, the examples above indicate that Mississippi's system is far from perfect. The question of whether these examples are isolated incidents or whether they are evidence of systematic problems remains. If these examples are evidence of systematic problems, exploration of the causes and effects of such problems and of their rate of occurrence in various counties throughout Mississippi can provide a better understanding of the flaws in Mississippi's system of indigent defense. Although the system as a whole may be inadequate, this paper examines whether or not inadequacies are greater for particular demographic groups during the pre-sentencing period as well as the impact of identified inadequacies on the state economy. Because Mississippi counties handle indigent defense using both part-time and full-time public defenders and because both race and gender differences can be observed, losses for indigents represented by part-time public defenders are compared to those represented by full-time public defenders, and differences in losses across racial and gender groups are considered.

PRIMARY FINDINGS

Although this research points to a number of findings concerning Mississippi's system of indigent defense, the most important findings to note are the following:

- The implementation of a state wide full-time public defender system could increase personal income in Mississippi by over \$90 million annually, with resulting increases of \$5.3 million in state general fund revenue and \$546 thousand in local government revenue. In addition, county jail costs could decrease by \$16.5 million per year.
- Indigents represented by part-time public defense attorneys spend at least 81 more days in jail prior to sentencing when all intervening variables are controlled.
- When the influence of intervening variables is eliminated, minorities spend 52 more days in jail waiting for resolution of their case than non-minorities.
- Males spend 65 more days in jail than females after controlling for intervening variables.
- Full-time public defenders filed significantly more motions on behalf of their clients.
- In counties that employ full-time public defenders, indigents receive better, more immediate, and more satisfactory defense. Full-time public defenders more often visited their clients in jail, accepted phone calls from the client, returned phone calls to the client, investigated the case, talked to witnesses, and attempted to reduce bond.
- In counties that employ part-time public defenders, there are economic incentives for those public defenders to spend their time on private, more lucrative work and, therefore, indigents receive worse, more delayed, and more unsatisfactory defense.

In light of such clear indications that the systems of indigent defense in Mississippi are unfair and that the most serious inequity derives from the various county approaches to providing public defenders, these findings call for serious reconsideration of Mississippi's structure for providing indigent defense.

HYPOTHESES

This study measures the impact of race, gender and representation on economic loss for indigents prior to sentencing. To clearly identify the impact of these characteristics on the economic loss of indigents, the following characteristics are controlled for in the empirical analysis: personal characteristics, crime categories and county differences. Economic loss is a complicated outcome to identify because it consists of three separate measures: (1) the length of time a person spends in county jail from the arrest date until the sentence date; (2) the direct cost per day of time spent in jail; and (3) the opportunity cost per day of time spent in jail from missed work days.

The first step of the analysis is to measure the impact of each of the specific characteristics on time spent in jail. The following hypotheses have been identified:

- Because the public defender system varies by county in Mississippi, the impact of the type of legal representation is examined. It is likely that an individual represented by a full-time public defender will spend less time in jail than an individual represented by a part-time public defender, when all other factors are controlled.
- Labor market discrimination is often present in the South. Published literature indicates that minorities receive lower wages, are less likely to be employed, and receive longer sentences than non-minorities. It is likely that minorities will spend more time in jail than non-minorities, when all other factors are controlled.
- It is likely that the gender of an individual will impact the jail time served. Specifically, females are expected to serve shorter periods of time in county jail.
- The seriousness of the crime committed should impact a person's jail time. It is likely that the length of time spent in jail will increase with the seriousness of the crime committed, after controlling for other variables.
- It is likely that various characteristics of the areas in which an individual lived will have an impact on time spent in jail. Specifically, the effects of county income, county race, and county urbanization on time served in jail are examined.

PUBLIC DEFENDER SYSTEMS AND ECONOMIC INCENTIVES

Given that Mississippi counties have adopted different types of systems to compensate their public defenders, it seems logical that these different systems should be scrutinized to determine if there are any economic incentives embedded in the various alternatives which would explain differing degrees of attention to indigent persons relative to the public defender's full or part-time status. While it is true that the overall performance of any public defender system should be measured by more than just economic incentives related to compensation, it is also true that economic incentives play a role in overall performance of public defenders.

From an economic perspective, there are four distinct public defender compensation systems employed in Mississippi counties:

- A full-time public defender office (referred to hereafter as full-time public defender), which employs full-time attorneys with related staff and overhead. Each attorney is devoted exclusively to the task of indigent defense.
- A part-time public defender system, which pays selected attorneys a fixed annual salary to handle indigent defense in the county (referred to hereafter as part time - contract). These attorneys are allowed to handle other private legal work.
- A rotating-list defender system, which pays attorneys on a county list a fixed fee per indigent case handled (referred to hereafter as assigned - fixed fee). The list of attorneys may be volunteers only or may include all attorneys within a county. These attorneys are also allowed to handle other private legal work.
- A rotating-list defender system, which pays attorneys on a county list an hourly fee for handling indigent cases (referred to hereafter as assigned - hourly). Again the list may or may not be volunteers, and the attorneys can handle other private legal work.

On these various systems, the theory of economic incentives operates clearly. Motivation to maximize profits will lead public defenders to concentrate on those activities with the highest net marginal revenue per hour of time

worked. Essentially, an attorney will devote time to the activity with the highest payoff. Activities that are reimbursed on a fixed-fee basis will be neglected in favor of activities that will generate additional revenue or for which there is not a fixed fee or cap. There is still some incentive to perform fixed fee activities, but only at the minimum level necessary to maintain the contract and receive the fixed fee.

Attorneys in a full-time public defender system will have different incentives compared to attorneys in all of the part-time systems. The full-time public defender system eliminates the motive and opportunity to devote legal time and resources to private practice while representing indigent clients since no private practice is allowed. If all other factors are equal, the full-time public defender system will lead to improved defense for indigents because of superior economic incentives.

Within the part-time systems, the assigned - hourly system would seem to have the most appropriate economic incentives. If faced with the choice of devoting time to a private case or an indigent list case, there would seem to be no difference from an economic standpoint. However, because the fees are statutorily capped at a total of \$1,000 for all cases (see Miss. Code Ann. 99-15-15), there is a significant disincentive to continue working on the client's behalf once the maximum fee has been reached.

There are negative economic incentives for the part-time - contract and assigned - fixed fee systems. In both cases, the greatest economic gain can be made by devoting as little time as possible to the indigent defense work while spending the maximum amount of time working on private matters. Thus all of the part-time public defender systems employed in Mississippi are inferior to the full-time system.

There are, of course, other considerations beyond maximizing financial gain. When making choices, individuals tend to consider personal preference issues and balance these against potential financial gain. It is certainly possible that there are individuals who will look at all of the considerations and choose to provide quality indigent defense under any of these systems. However, pure economic incentive issues tend to favor the full-time public defender system.

SAMPLING AND DATA COLLECTION

In order to test the hypotheses and further demonstrate the flaws in Mississippi's system of providing counsel to indigents, data were collected from a number of Mississippi counties and from minority and non-minority, male and female indigents' cases. The goal of the sampling methodology was to collect information on indigents who were represented by public defenders in the state of Mississippi. The details collected included demographic characteristics of the individual, information on the crime in question, process-specific characteristics related to the crime, information on the economic losses of the person while in jail, and information regarding the county in which the person was arrested.

Some of the required information was available in public records, and some was only available through personal interviews. Because of the expense, a limited number of personal interviews were conducted. Therefore, this study

utilized two samples: 1) a Public Record sample compiled from the public records of 700 individuals arrested, and 2) a Personal Interview sample based on interviews with a group of 100 individuals selected from the larger Public Record sample.

COUNTY SELECTION

Because there are both full-time and part-time indigent defense systems in Mississippi, counties with both types of systems were included in the sample. In addition, the sample selection ensures that each type of part-time system, both assigned and contract counsel, is included.

The 700 study cases were drawn from 11 counties in Mississippi: Adams, Amite, Harrison, Hinds, Jackson, Lafayette, Lauderdale, LeFlore, Lee, Sunflower, and Washington (See Appendix A and B for a map of Mississippi with the selected counties and for the demographic information on these counties and for the entire state). Because there were only four counties with full-time

Figure 1. Percentage of Population Black by County (2000)

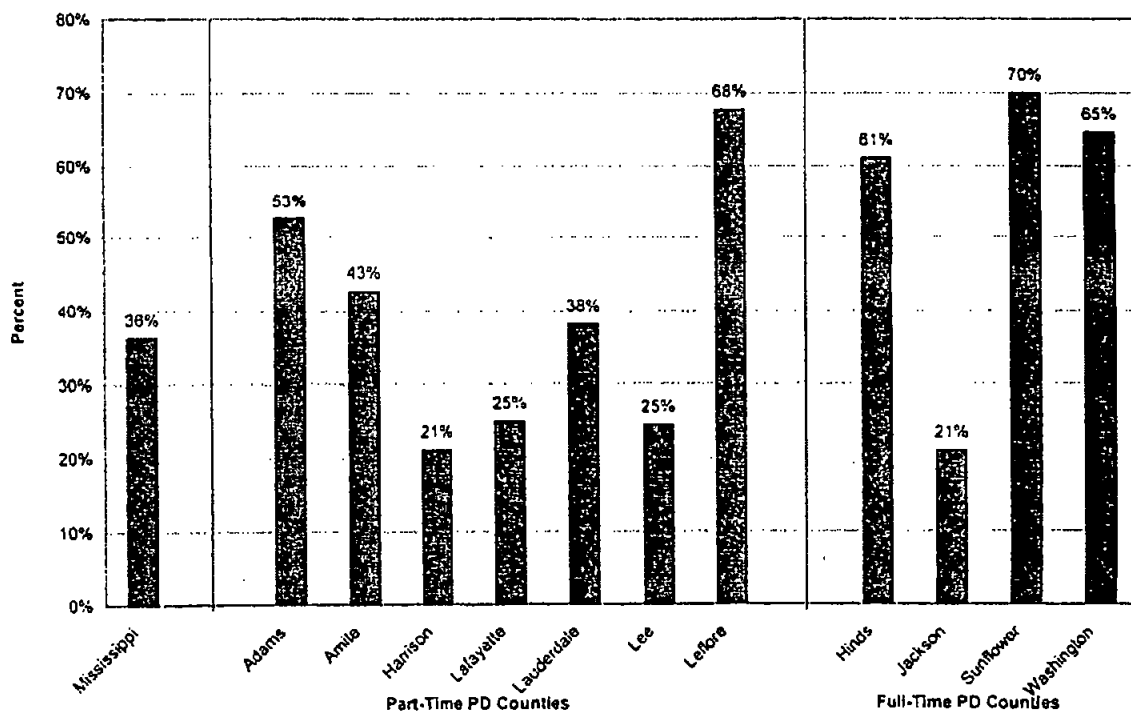


Figure 1

public defender systems, each one was included in the sample. These four counties are Hinds, Jackson, Sunflower, and Washington.

The part-time counties were chosen either randomly or to serve as matches for the full-time public defender counties. These counties are listed below with some explanation for their inclusion in the sample:

- Adams County is included because of its proximity to the Mississippi River (similar to that of Washington County). Although the population of Adams County is roughly one-half of the population in Washington County, the two counties are similar in terms of population density, median household income, and persons in poverty. Both counties have casinos.
- Amite County was randomly selected.
- Harrison County is the geographic and demographic counterpart to Jackson County. These two counties are

located on the Mississippi Gulf Coast, are casino counties, and are similar in terms of education, income, and race.

- Lafayette County was randomly selected.
- Lauderdale County and Lee County were selected because they represent larger, non-rural areas. They essentially balance with Hinds County.
- Leflore County is selected because of its similarity to Sunflower County. Each is located in the Mississippi Delta, and they are demographically similar in terms of population, race, income, and education.

The percentage of minorities in the population and the median income for each county is important to consider (see Figures 1 and 2.) With the exception of Jackson county, the full-time public defender counties are predominantly minority, with blacks comprising more than 60 percent of the population in each county. The only part-time public defender county with a minority population this high is

Figure 2. Median Family Income by County (1997)

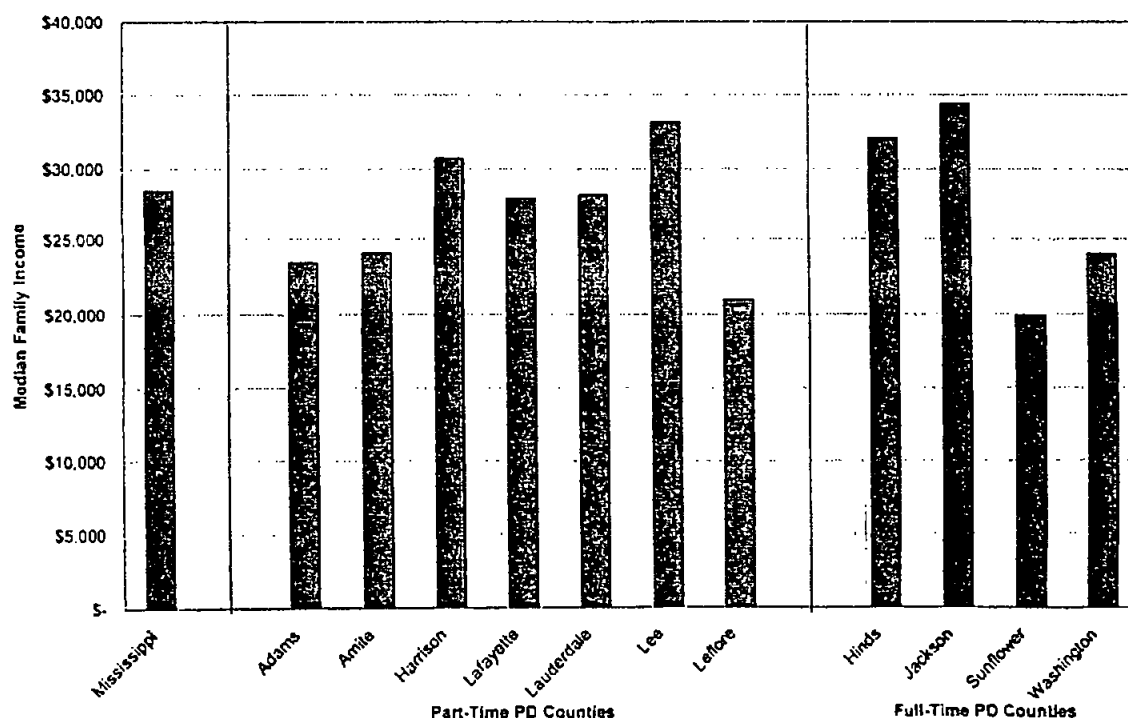


Figure 2

LeFlore county. The full-time public defender counties are diverse in terms of per-capita income. Sunflower county has the lowest median family income of any county in the sample at \$19,878, but Hinds and Jackson counties have relatively high median family incomes of \$32,033 and \$34,411, respectively.

SELECTING INDIVIDUALS FROM THE POPULATION

From the 11 counties selected, a total of 700 records were collected. These records were randomly selected from the population of indigent cases in those counties. The sample is spread among the 11 counties based on the total number of criminal dispositions in each county.

The Mississippi Administrative Office of the Courts (AAOC) provided a single printed page of individual-specific information for all of the disposed cases in the 11 sample counties for Fiscal Years 1999, 2000, and 2001 (see

Appendix C for counts of criminal dispositions in the relevant years and counties). These printouts included cases where defendants were represented by private attorneys as well as by public defenders, so the public defender cases were extracted from this information. After the public defender cases were extracted, a random sampling of 700 individual cases from FY 2000-2001 was identified.

Phase 1 - Public Records Database

For each of the 700 selected cases, relevant data from the court files were collected from the circuit clerks' offices in each county (see Appendix D for the detailed questionnaire used to collect information from the court files). In general, the information gathered from these files included dates of incarceration, relevant motions, hearings, and other court action. Also, information was gathered on outcomes such as bail, pleas, and sentencing (see Figure 3 for the total number of cases collected in each county and Figure 4 for a categorization of the information collected).

It is logical to assume that individuals committing more serious crimes will have a harder time getting out of jail on bond; thus the seriousness of the crime is an important intervening factor to analyze when considering the disparities in county jail time among indigents. Ideally, each crime could be analyzed individually to consider the disparities in county jail time for all indigents accused of each crime. However, this was not feasible due to the number of different crimes recorded. As a result, crimes were categorized by maximum sentence length according to the Mississippi penal code, with some of these categories including more than one crime. Some crimes, such as transfer of a controlled substance, are not grouped with other crimes simply because many individuals were sentenced for these crimes.

Phase 2 - Personal Interview Database

From the 700 court files obtained, 100 cases were selected for personal interviews. Ultimately interviews were conducted with 54 of the individuals. These interviews provided information regarding employment, work time, and other issues relevant to economic loss (see Appendix E for a detailed questionnaire for the individual-specific interviews and Appendix F for additional information regarding the data collection process from both public records and personal interviews).

In addition to the cases randomly selected for interview, the NAACP Legal Defense and Educational Fund, Inc. surveyed 35 women housed in correctional institutions

**Figure 3. Public Record Dataset
Number of Observations**

	<u>Number</u>	<u>Percent</u>
Adams	14	2.00
Amite	6	0.86
Harrison	209	29.86
Hinds	163	23.29
Jackson	68	9.71
Lafayette	29	4.14
Lauderdale	92	13.14
Lee	53	7.57
LeFlore	19	2.71
Sunflower	20	2.86
Washington	27	3.86
Total	<u>700</u>	<u>100.00</u>

Figure 3

Figure 4. Variable Definitions - Public Records Database

<i>Outcome Measure</i>	
Time	Number of days spent in county jail from the date of arrest to the sentencing date.
<i>Personal Characteristics</i>	
Age	Age of the individual in years.
Male	A categorical variable equal to 1 if the individual is male and equal to 0 otherwise.
Minority	A categorical variable equal to 1 if the individual is non-white and equal to 0 otherwise.
Assigned Counsel	A categorical variable equal to 1 if the individual is represented by assigned counsel and equal to 0 otherwise.
Contract Counsel	A categorical variable equal to 1 if the individual is represented by contract counsel and equal to 0 otherwise.
Full-Time Public Defender	A categorical variable equal to 1 if the individual is represented by a full-time public defender and equal to 0 otherwise.
<i>Process Characteristics</i>	
Bail Set	A categorical variable equal to 1 if court records indicate that bail was set for the individual and equal to 0 otherwise.
Changed Attorneys	A categorical variable equal to 1 if the court records indicate that the individual changed attorneys and equal to 0 otherwise.
Made Bail	A categorical variable equal to 1 if court records indicate that the individual posted bond and equal to 0 otherwise.
Motions	The number of motions filed by the public defender on behalf of the defendant as indicated by court records.
Witnesses - Defense	The number of witnesses subpoenaed for the defense as indicated by the court records.
Witnesses - Prosecution	The number of witnesses subpoenaed for the prosecution as indicated by the court records.
<i>Crime-Specific Characteristics</i>	
Misdemeanor	A categorical variable equal to 1 if the sentence is a misdemeanor or other minor crime and equal to 0 otherwise.
Possession	A categorical variable equal to 1 if the individual was sentenced for possession of drugs (cocaine, methamphetamine, or controlled substance) and equal to 0 otherwise.
Felony DUI	A categorical variable equal to 1 if the individual was sentenced for a DUI and equal to 0 otherwise.
Property	A categorical variable equal to 1 if the individual was sentenced for a property crime, such as uttering a forgery or embezzlement, and equal to 0 otherwise.

Figure 4

Assault	A categorical variable equal to 1 if the individual was sentenced for a crime against persons for which he/she might receive some prison time, such as aggravated assault or possession of a deadly weapon by a convicted felon.
Transfer of a Controlled Substance	A categorical variable equal to 1 if the individual was sentenced for the transfer of a controlled substance and equal to 0 otherwise.
Burglary/Larceny	A categorical variable equal to 1 if the individual was sentenced for either burglary or larceny and equal to 0 otherwise.
Drug Sale	A categorical variable equal to 1 if the individual was sentenced for selling drugs and equal to 0 otherwise.
Burglary of a Dwelling	A categorical variable equal to 1 if the individual was sentenced for the burglary of a dwelling and equal to 0 otherwise.
Arson/Carjacking	A categorical variable equal to 1 if the individual was sentenced for a crime for which he/she would receive a significant amount of jail time, such as arson or carjacking, and equal to 0 otherwise.
Murder/Sex Crimes	A categorical variable equal to 1 if the individual was sentenced for a very serious crime, such as murder or rape, and equal to 0 otherwise.
<i>County Characteristics</i>	
Median Income	The median income of the county.
Percent Minority	A variable representing the proportion of the individual's county that is African American.
Urban	A categorical variable equal to 1 if the county is in an urban area (Jackson, Harrison, or Hinds) and equal to 0 otherwise.

Figure 4 continued

around the state of Mississippi for a more detailed picture of the economic loss to women and children. This information has been integrated into the information from the personal interviews wherever appropriate and is designated accordingly (Figure 5 describes the variables constructed from the Personal Interview Database).

RESULTS - PUBLIC RECORDS DATABASE

The primary findings from the records of 700 individuals are as follows:

PRIMARY FINDINGS OF EMPIRICAL MODEL

- Individuals represented by full-time public defenders are more likely to exit jail, specifically resulting in at least 81 fewer days spent in jail prior to sentencing;
- Race and gender of an individual also have a significant impact on the probability of exiting jail; minorities spend 52 more days in jail prior to sentencing and males spend 65 more days;
- Persons in urban counties are likely to spend more time in jail relative to persons in non-urban counties;
- Higher county median income results in increased jail time;
- An increase in a county's minority population results in a lower chance of leaving jail.

PRIMARY FINDINGS OF SUMMARY STATISTICS

Type of Defender

- Full-time public defenders make more motions on behalf of their clients;
- Individuals represented by full-time public defenders experience significantly fewer changes in attorneys when compared to individuals represented by contract counsel;
- Bail was set and posted more often for persons represented by contract counsel;

Gender

- Female indigents are slightly older than males, less often represented by a full-time public defender, and less often minority;
- Females are sentenced for less serious crimes (misdemeanor and property crimes) while males are sentenced for more serious crimes (burglary of a dwelling, assault and murder/sex crimes);

Race

- 86 percent of the minority population is male, while only 72 percent of the non-minority population is male;
- 43 percent of minorities are represented by full-time public defenders, compared to 24 percent of non-minorities;
- Defense counsel subpoena more witnesses for minorities than non-minorities;
- A greater proportion of non-minorities make bail than minorities;
- Minorities are more often arrested for drug related crimes than non-minorities;
- Non-minorities are more often arrested for DUI and property crimes;

Location

- Individuals represented by full-time public defenders come from counties with a significantly higher level of median income;
- Contract counsel represent a significantly smaller proportion of minorities;
- 90 percent of the individuals represented by full-time public defenders are from urban counties.

Figure 5. Variable Definitions - Personal Interview Database

Personal Characteristics

Male	A categorical variable equal to 1 if the individual is male and equal to 0 otherwise.
Minority	A categorical variable equal to 1 if the individual is non-white and equal to 0 otherwise.
Assigned Counsel	A categorical variable equal to 1 if the individual is represented by assigned counsel and equal to 0 otherwise.
Contract Counsel	A categorical variable equal to 1 if the individual is represented by contract counsel and equal to 0 otherwise.
Full-Time Public Defender	A categorical variable equal to 1 if the individual is represented by a full-time public defender and equal to 0 otherwise.

Representation Indicators

Did you receive adequate representation?	A categorical variable equal to 1 if the individual felt that he/she received adequate representation. Equal to 0 otherwise.
Did lawyer visit you in jail?	A categorical variable equal to 1 if the attorney visited the individual in jail. Equal to 0 otherwise.
Did you meet lawyer in office?	A categorical variable equal to 1 if the individual met with the attorney in the attorney's office. Equal to 0 otherwise.
Did lawyer investigate case?	A categorical variable equal to 1 if the attorney investigated the case. Equal to 0 otherwise.
Did lawyer talk to witnesses?	A categorical variable equal to 1 if the attorney talked to witnesses. Equal to 0 otherwise.
Did lawyer attempt to reduce bond?	A categorical variable equal to 1 if the attorney attempted to have the individual's bond reduced. Equal to 0 otherwise.
Did lawyer take calls?	A categorical variable equal to 1 if the attorney accepted telephone calls from the individual. Equal to 0 otherwise.
Did lawyer return calls?	A categorical variable equal to 1 if the attorney returned telephone calls. Equal to 0 otherwise.
Did you change your plea to guilty?	A categorical variable equal to 1 if the individual changed his/her plea to guilty. Equal to 0 otherwise.
Time spent with lawyer?	A continuous variable reflecting the amount of time (in minutes) the lawyer spent talking with the client as reported by the client.

Job/Income Characteristics

Working when arrested?	A categorical variable equal to 1 if the individual was working when arrested. Equal to 0 otherwise.
Hourly wage (only if working)?	The hourly wage the individual reported if he/she was working when arrested.
Job loss?	A categorical variable equal to 1 if the individual reported that he/she lost a job after being arrested. Equal to 0 otherwise.

Figure 5

Did you lose a car?	A categorical equal to 1 if the individual reported that he/she lost a car after being arrested. Equal to 0 otherwise.
Did your phone get disconnected?	A categorical variable equal to 1 if the individual reported that his/her phone was disconnected after being arrested. Equal to 0 otherwise.
Did you lose a dwelling?	A categorical variable equal to 1 if the individuals reported that he/she lost a dwelling after being arrested. Equal to 0 otherwise.

Family Variables

Did your family suffer financially?	A categorical variable equal to 1 if the individual reported that his/her family suffered financially after being arrested. Equal to 0 otherwise.
Did your child care arrangements change?	A categorical variable equal to 1 if the individual reported that his/her child care arrangements changed after being arrested. Equal to 0 otherwise.
Did you miss child support payments?	A categorical variable equal to 1 if the individual reported that he/she missed child support payments after being arrested. Equal to 0 otherwise.

Figure 5 continued

SUMMARY STATISTICS

Of the 700 individuals for whom information was collected, 38 percent were represented by full-time public defenders, 58 percent were represented by contract counsel, and 6 percent were represented by assigned counsel (Figure 6; Appendix G contains a table of all of the summary statistics). Males comprised 81 percent of the sample and minorities comprised 69 percent (see Figure 7).

Regarding process characteristics (Figures 8 and 9), the data reveal that bail is set for 87 percent of the sampled individuals, and bail is posted 84 percent of the time. 29 percent of the defendants change attorneys at least once. The average number of motions filed on behalf of a defendant is 1.33. A pre-sentencing motion was filed in only 4 of the 700 cases examined, reflecting a lack of effective representation at this crucial stage of indigent defense. The average number of witnesses for a defendant is 0.07.

The crime statistics reveal that individuals in the sample are sentenced for crimes of differing severity; no one category dominates the sample (see Figure 10). Only 7 percent are sentenced for misdemeanors. The greatest proportion of

indigents is sentenced for burglary/larceny crimes. Exactly 9 percent of the sample is sentenced for very serious crimes, reflected by the murder/sex crimes category.

Each factor that might impact the length of time individuals serve in county jail was analyzed for differences between full-time public defenders, part-time contract public defenders (contract counsel) and part-time assigned public defenders (assigned counsel). The averages for each of the personal, process, and crime-specific variables have been considered based on type of representation (see Figure 11). The results suggest that there are some statistically significant differences in certain characteristics. The personal characteristics suggest that the full-time public defender and assigned counsel represent a greater proportion of minorities and males. In this sample, 80 percent of the individuals represented by full-time public defenders were minority, and 85 percent were male. The individuals represented by assigned counsel were 76 percent minority and 85 percent male. In contrast, 61 percent of the individuals represented by contract counsel were minority and 78 percent were male.

Process characteristics indicate that full-time public defenders made more motions on behalf of their clients. The aver-

Figure 6. Percentage of Sample by Type of Representation

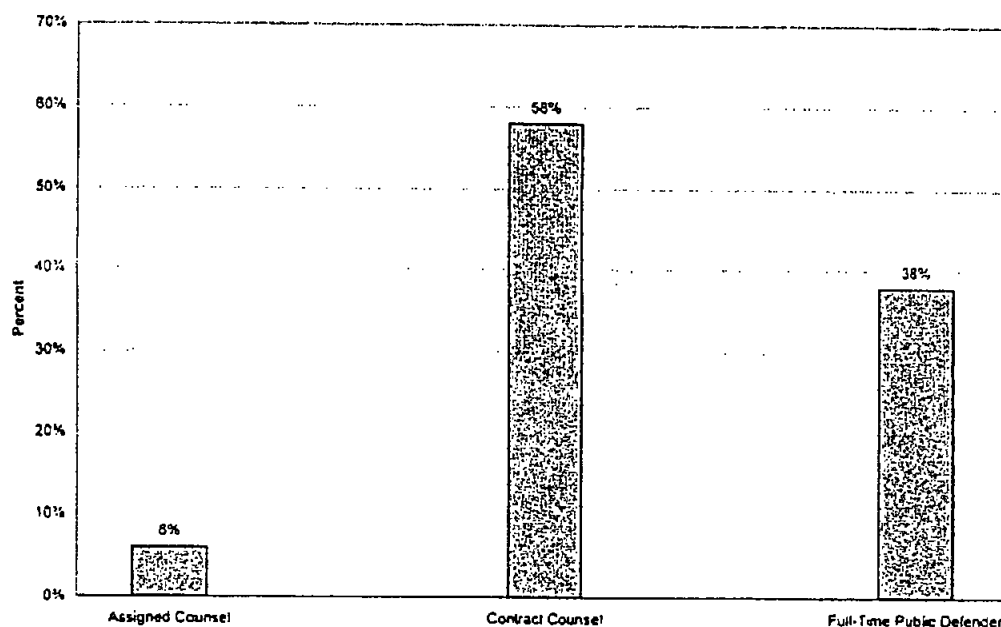


Figure 6

Figure 7. Percentage of Sample by Gender and Race

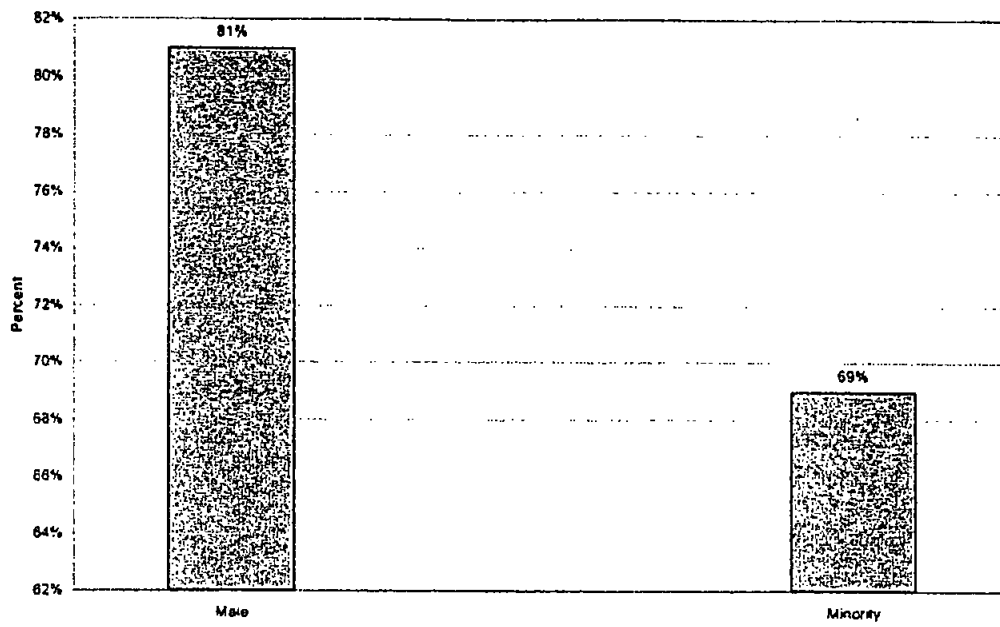


Figure 7

Figure 8. Percentage of Sample Attaining Bail and Changing Attorneys

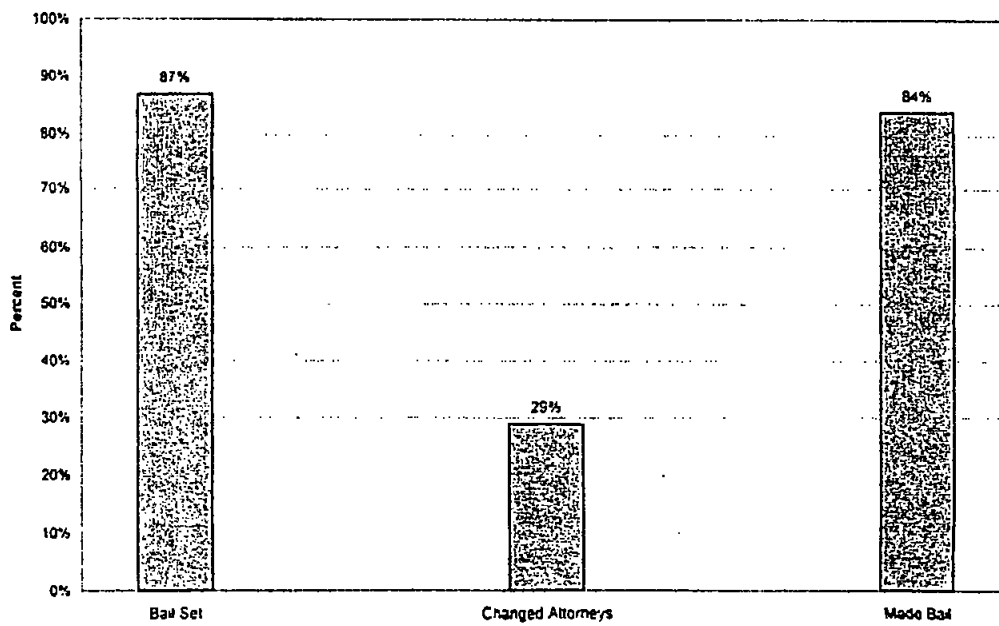


Figure 8

Figure 9. Average Motions and Witnesses

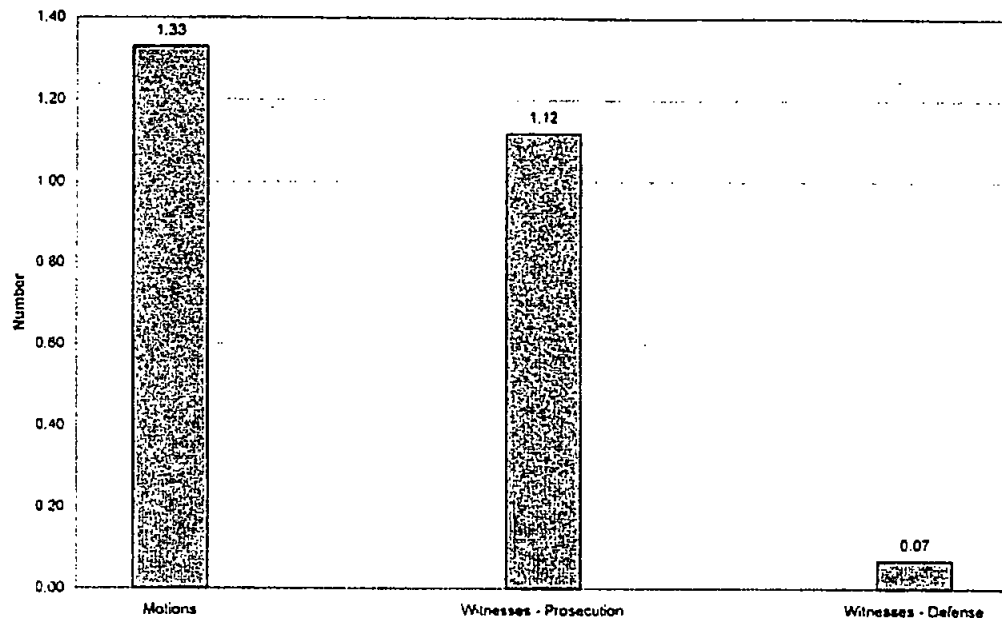


Figure 9

Figure 10. Percentage of Sample with Crime Levels

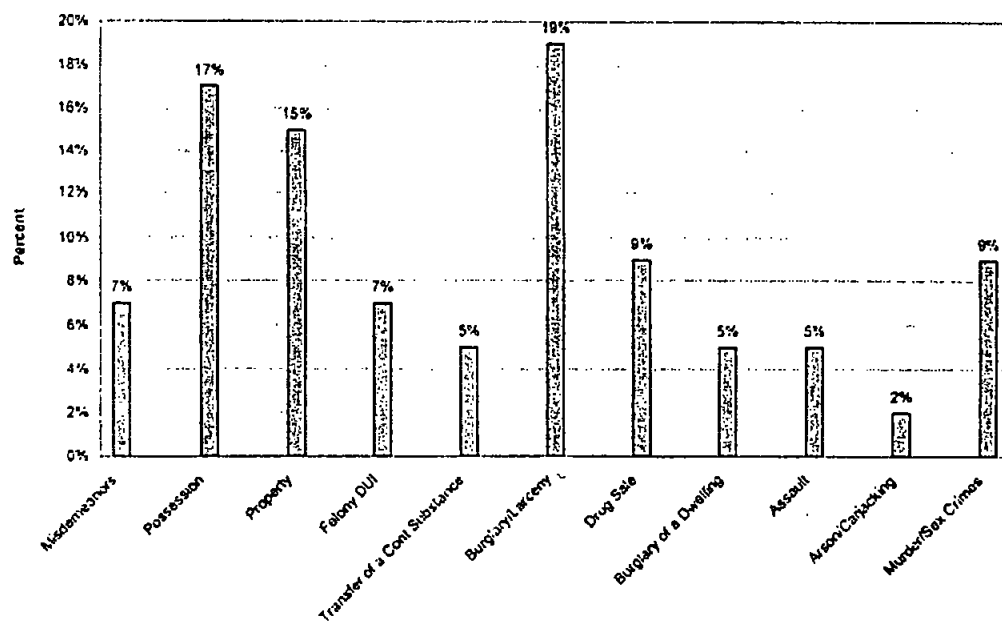


Figure 10

Figure 11. Descriptive Statistics by Type of Representation
(Standard Deviations in Parentheses)

	Overall Mean	Assigned Counsel	Contract Counsel	Full-Time Public Defender	Significance
<i>Personal Characteristics</i>					
Age	33.36 (9.50)	29.59 (9.38)	33.98 (9.67)	32.76 (9.11)	**
Male	0.81 (0.39)	0.85 (0.36)	0.78 (0.41)	0.85 (0.36)	*
Minority	0.69 (0.46)	0.76 (0.44)	0.61 (0.49)	0.80 (0.10)	**
<i>Process Characteristics</i>					
Bail Set	0.87 (0.34)	0.82 (0.39)	0.90 (0.30)	0.81 (0.39)	**
Changed Attorneys	0.29 (0.45)	0.05 (0.22)	0.40 (0.49)	0.15 (0.36)	**
Made Bail	0.84 (0.37)	0.69 (0.47)	0.87 (0.33)	0.80 (0.40)	**
Motions	1.33 (1.43)	1.10 (1.29)	1.18 (1.47)	1.59 (1.35)	**
Witnesses - Prosecution	1.12 (2.58)	1.13 (2.30)	1.04 (2.43)	1.24 (2.83)	
Witnesses - Defense	0.07 (0.63)	0.00 (0.00)	0.10 (0.75)	0.03 (0.44)	
<i>Crime-Specific Characteristics</i>					
Misdemeanors	0.07 (0.25)	0.11 (0.31)	0.07 (0.26)	0.05 (0.23)	
Possession	0.17 (0.38)	0.11 (0.31)	0.18 (0.39)	0.17 (0.38)	
Property	0.15 (0.36)	0.08 (0.27)	0.16 (0.37)	0.16 (0.37)	
Felony DUI	0.07 (0.25)	0.03 (0.16)	0.08 (0.27)	0.05 (0.23)	
Transfer of a Controlled Substance	0.05 (0.22)	0.00 (0.00)	0.07 (0.25)	0.03 (0.19)	*
Burglary/Larceny	0.19 (0.39)	0.32 (0.47)	0.19 (0.39)	0.17 (0.37)	*
Drug Sale	0.09 (0.30)	0.11 (0.31)	0.08 (0.27)	0.11 (0.32)	
Burglary of a Dwelling	0.05 (0.21)	0.11 (0.31)	0.02 (0.15)	0.07 (0.26)	**
Assault	0.05 (0.22)	0.05 (0.22)	0.05 (0.23)	0.04 (0.20)	
Arson/Carjacking	0.02 (0.16)	0.03 (0.16)	0.03 (0.16)	0.02 (0.16)	
Murder/Sex Crimes	0.09 (0.29)	0.09 (0.27)	0.08 (0.28)	0.10 (0.30)	

Notes: ** and * indicate significant differences at the 5 and 10% levels.

Figure 11

Figure 12. Descriptive Statistics by Gender
(Standard Deviations in Parentheses)

	Overall Mean	Male	Female	Male/ Female Significance
<i>Personal Characteristics</i>				
Age	33.36 (9.50)	32.99 (9.71)	34.95 (8.38)	**
Assigned Counsel	0.06 (0.23)	0.06 (0.23)	0.05 (0.21)	**
Contract Counsel	0.57 (0.49)	0.56 (0.47)	0.66 (0.50)	**
Full-Time Public Defense	0.37 (0.49)	0.40 (0.49)	0.29 (0.46)	**
Male	0.81 (0.39)	n/a	n/a	
Minority	0.69 (0.46)	0.72 (0.45)	0.54 (0.50)	**
<i>Process Characteristics</i>				
Bail Set	0.87 (0.33)	0.86 (0.35)	0.90 (0.30)	
Changed Attorneys	0.29 (0.45)	0.29 (0.45)	0.30 (0.46)	
Made Bail	0.84 (0.37)	0.83 (0.38)	0.88 (0.32)	
Motions	1.33 (1.43)	1.36 (1.41)	1.19 (1.51)	
Witnesses - Prosecution	1.12 (2.58)	1.15 (2.67)	0.97 (2.18)	
Witnesses - Defense	0.07 (0.63)	0.08 (0.69)	0.02 (0.26)	
<i>Crime-Specific Characteristics</i>				
Misdemeanors	0.07 (0.25)	0.06 (0.23)	0.12 (0.32)	**
Possession	0.17 (0.38)	0.18 (0.38)	0.15 (0.36)	
Property	0.15 (0.36)	0.12 (.33)	0.30 (.46)	**
Felony DUI	0.07 (0.25)	0.08 (0.27)	0.01 (0.09)	**
Transfer of a Controlled S	0.05 (0.22)	0.05 (0.23)	0.04 (0.19)	
Burglary/Larceny	0.19 (0.39)	0.19 (0.39)	0.17 (0.38)	
Drug Sale	0.09 (0.30)	0.09 (0.29)	0.11 (0.31)	
Burglary of a Dwelling	0.05 (0.21)	0.05 (0.23)	0.01 (0.09)	**
Assault	0.05 (0.22)	0.06 (0.23)	0.02 (0.15)	**
Arson/Carjacking	0.02 (0.16)	0.02 (0.15)	0.04 (0.19)	
Murder/Sex Crimes	0.09 (0.29)	0.10 (0.30)	0.05 (0.23)	**

Notes: ** indicates statistical significance at the 5 percent level. * indicates statistical significance at the 10 percent level.

	(0.49)	(0.50)	(0.45)	
Full-Time Public Defense	0.37 (0.49)	0.43 (0.50)	0.24 (0.43)	**
Male	0.81 (0.39)	0.86 (0.35)	0.72 (0.45)	**
Minority	0.69 (0.46)	n/a	n/a	
Process Characteristics				
Bail Set	0.87 (0.33)	0.86 (0.34)	0.88 (0.33)	
Changed Attorneys	0.29 (0.45)	0.28 (0.45)	0.30 (0.46)	
Made Bail	0.84 (0.37)	0.82 (0.38)	0.88 (0.33)	**
Motions	1.33 (1.43)	1.34 (1.38)	1.31 (1.55)	
Witnesses - Prosecution	1.12 (2.58)	1.15 (2.53)	1.06 (2.74)	
Witnesses - Defense	0.07 (0.63)	0.10 (0.77)	0.00 (0.07)	**
Crime-Specific Characteristics				
Misdemeanors	0.07 (0.25)	0.07 (0.25)	0.07 (0.26)	
Possession	0.17 (0.38)	0.19 (0.39)	0.14 (0.35)	
Property	0.15 (0.36)	0.13 (0.33)	0.21 (0.41)	**
Felony DUI	0.07 (0.25)	0.04 (0.19)	0.13 (0.33)	**
Transfer of a Controlled S	0.05 (0.22)	0.07 (0.25)	0.02 (0.14)	**
Burglary/Larceny	0.19 (0.39)	0.18 (0.38)	0.20 (0.40)	
Drug Sale	0.09 (0.30)	0.12 (0.33)	0.03 (0.18)	**
Burglary of a Dwelling	0.05 (0.21)	0.04 (0.20)	0.05 (0.21)	
Assault	0.05 (0.22)	0.05 (0.22)	0.05 (0.21)	
Arson/Carjacking	0.02 (0.16)	0.02 (0.15)	0.03 (0.17)	
Murder/Sex Crimes	0.09 (0.29)	0.10 (0.30)	0.08 (0.27)	

Notes: ** indicates statistical significance at the 5 percent level. * indicates statistical significance at the 10 percent level.

age number of motions was 1.59 for each individual represented by full-time public defenders compared to 1.18 motions for contract counsel and 1.10 for assigned counsel. Individuals represented by full-time public defenders also experienced significantly fewer changes in attorney; 40 percent of the clients represented by contract counsel experienced a change in attorney, while only 15 percent saw a change when represented by full-time public defenders.

Bail was set and posted more often for persons represented by contract counsel. Bail was set 90 percent of the time and made 87 percent of the time. In cases represented by full-time public defenders, bail was set 81 percent of the time, and bail was made 80 percent of the time. Although setting and posting of bail is determined by a number of variables and is not totally under the control of the defending attorney, this information still suggests that the type of public defender affects the possibility of setting and posting bail for an indigent person. Finally, there are several crime-specific characteristics that are statistically different among the three types of representation. Contract counsel represent a greater proportion of cases involving transfer of controlled substance, while assigned counsel handled more burglary/larceny and burglary of a dwelling cases.

These data were also considered for differences between males and females, indicating that female indigents are slightly older than males, less often represented by a full-time public defender, and less often minority (see Figure 12). In relation to process characteristics, there are no significant differences between males and females. Significant differences exist in crimes committed across gender lines. In general, females are sentenced for less serious crimes (misdemeanor and property crimes) while males are sentenced for more serious crimes (burglary of a dwelling, assault and murder/sex crimes).

Finally, characteristics are analyzed for differences in minority status (see Figure 13). Personal characteristics suggest 86 percent of the minority population is male, while only 72 percent of the non-minority population is male. In addition, 43 percent of minorities are represented by full-time public defenders, compared to 24 percent of non-minorities. Process characteristics suggest that defense counsel subpoena more witnesses for minorities than for non-minorities and that a greater proportion of non-minorities make bail. Also, crime-specific characteristics reveal that minorities are more often arrested for drug related crimes (transfer of a controlled substance and drug sale) than non-minorities. Non-minorities are more often arrested for DUI and property crimes.

It was hypothesized that the characteristics of the area in which the individual lived would have an impact on time

Figure 13. Descriptive Statistics by Race
(Standard Deviations in Parentheses)

	Overall Mean	Minority	Non-Minority	Minority/ Non-Minority Significance
<i>Personal Characteristics</i>				
Age	33.26 (9.24)	32.17 (9.10)	34.92 (9.92)	**
Assigned Counsel	0.06 (0.23)	0.16 (0.37)	0.04 (0.19)	
Contract Counsel	0.52 (0.50)	0.52 (0.50)	0.73 (0.45)	**
Full-Time Public Defender	0.32 (0.46)	0.31 (0.56)	0.24 (0.43)	**
Male	0.81 (0.39)	0.86 (0.35)	0.72 (0.45)	**
Minority	0.00 (0.00)	0.94	0.00	
<i>Process Characteristics</i>				
Bail Set	0.87 (0.33)	0.86 (0.34)	0.89 (0.33)	
Charged Attorney	0.20 (0.40)	0.28 (0.45)	0.30 (0.46)	
Make Bail	0.83 (0.37)	0.82 (0.38)	0.88 (0.33)	**
Witnesses	1.34 (1.41)	1.34 (1.38)	1.31 (1.55)	
Witnesses - Prosecution	1.12 (1.28)	1.15 (1.31)	1.06 (1.24)	
Witnesses - Defense	0.67 (0.67)	0.14 (0.35)	0.88 (0.63)	**
<i>Crime-Specific Characteristics</i>				
Misdemeanor	0.97 (0.21)	0.97 (0.21)	0.97 (0.20)	
Property	0.17 (0.38)	0.10 (0.30)	0.14 (0.35)	
Property DUI	0.07 (0.25)	0.04 (0.19)	0.13 (0.33)	**
Transfer of a Controlled S.	0.06 (0.22)	0.07 (0.25)	0.02 (0.14)	**
Burglary/Larceny	0.19 (0.39)	0.18 (0.38)	0.20 (0.40)	
Drug Sale	0.04 (0.20)	0.12 (0.33)	0.01 (0.10)	**
Burglary of a Dwelling	0.05 (0.21)	0.04 (0.20)	0.06 (0.24)	
Assault	0.01 (0.02)	0.05 (0.22)	0.01 (0.01)	
Aggravated Assault	0.02 (0.14)	0.02 (0.15)	0.01 (0.12)	
Murder Sex Crimes	0.00 (0.00)	0.10 (0.30)	0.00 (0.00)	**

Notes: ** indicates statistical significance at the 5 percent level. * indicates statistical significance at the 10 percent level.

Figure 13

Figure 14. County Descriptives by Type of Representation
(Standard Deviations in Parentheses)

	Overall Mean	Assigned Counsel	Contract Counsel	Full-Time Public Defender	Significance
Median Income (thousands)	29.90 (3.44)	22.36 (1.34)	29.40 (2.66)	31.82 (2.87)	**
Percent Minority	38.22 (18.55)	58.31 (19.68)	28.13 (11.75)	50.87 (17.99)	**
Percent Urban	63.00 (48.34)	0.00 (0.00)	52.00 (50.01)	90.00 (31.41)	**

Notes: ** and * indicate significant differences at the 5 and 10% levels.

Figure 14

spent in jail. Comparisons of county income, race and urban status for individuals classified by type of representation confirm this hypothesis (see Figure 14). The differences are statistically significant for all three variables. Individuals represented by full-time public defenders are from counties with a significantly higher level of median income - \$31.82 thousand as opposed to \$29.40 thousand for contract counsel and \$22.36 thousand for assigned counsel. Contract counsel represented a significantly smaller proportion of minorities - 28 percent as opposed to 51 percent for full-time public defenders and 59 percent for assigned counsel. Most striking, 90 percent of the individuals represented by full-time public defenders were from urban counties, compared to 52 percent for contract counsel and none for assigned counsel. These differences contribute significantly to the variation in the length of jail time examined in the following section.

PRE-SENTENCING JAIL TIME

The average indigent in the sample drawn spends 135 days in county jail prior to the resolution of the case, but there is a great deal of variation in this figure among indigents. Roughly 21 percent of persons in the sample are bailed out or released from jail on the day or the day after they are arrested. An additional 10 percent are released within one week. More than one-half of the sample is less fortunate, spending at least one month in jail. Roughly 48 percent spent at least two months in jail. Approximately 13 percent of the sample spent over one year in county jail, but less than 2 percent were jailed for more than two years' time (see Figure 15 for an overview of time spent in county jail).

The averages for time spent in jail prior to sentencing for the various crimes are even more revealing. There is considerable variation across crime categories (see Figure 16). The average time spent in jail for misdemeanors is 44 days. The average time for property crimes is 94 days. Time in jail for drug related crimes ranged from 98 days for posses-

sion to 147 days for drug sales. The time spent in jail for more violent crimes is longer, ranging from 169 days for assault to 290 days for murder/sex crimes. While the misdemeanor and property crime jail times were shorter than the other more serious categories, the actual lengths of time spent in jail for these categories are quite long.

Pre-sentencing jail time varies significantly by gender, race and type of representation (see Figure 17). Males spend an average of 146 days in jail, while females spend an average of 87 days. Minorities average 156 days in jail, while non-minorities average 93 days. Individuals represented by a full-time public defender spend 189 days in jail compared to 105 days for individuals represented by contract counsel and 99 days for assigned counsel. While this difference is significant, it is not an indicator of the quality of representation because some allowance must be made for other intervening variables. The next section shows that after the averages have been controlled for personal characteristics, crime categories and county differences, the full-time public defender average is significantly lower than the averages for the two part-time categories.

EMPIRICAL MODEL

As noted above, the differences in average length of time in jail are partially explained by intervening factors. For example, indigents represented by full-time public defenders spend longer periods of time in jail partially because they live in more urban areas with higher crime rates and a burdened legal system. To isolate the impact of gender, race, and type of legal representation on time in jail, techniques that estimate the probability of getting out of jail can be employed while controlling for various intervening variables. A higher probability of getting out of jail implies shorter jail stays.

The controlling factors used in the model include personal, crime-specific, and county-specific explanatory variables

Figure 15. Histogram of Time (Days) Served in County Jail

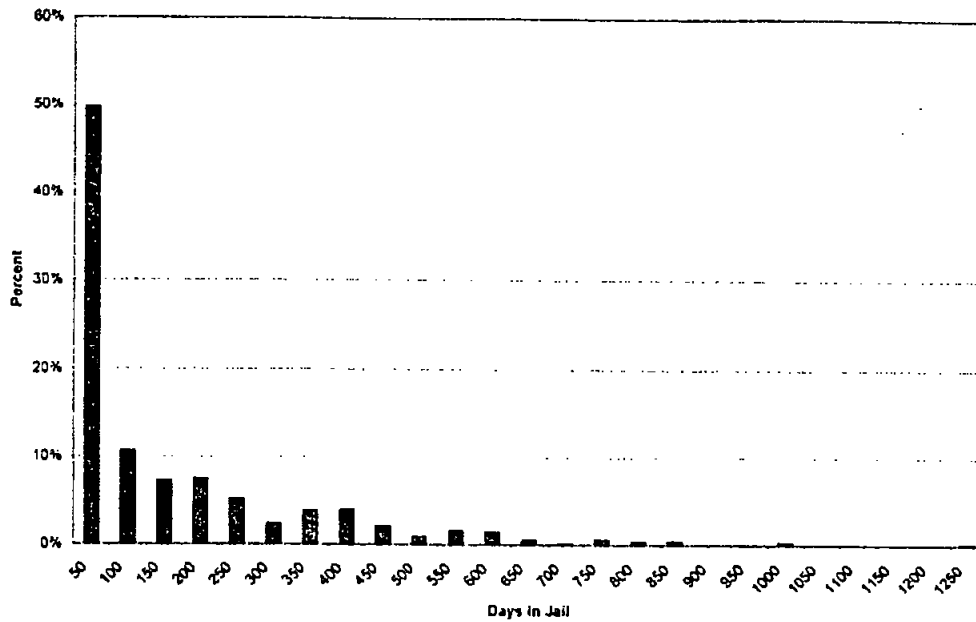


Figure 15

Figure 16. Summary of Jail Time by Crime Category
(Standard Deviations in Parentheses)

	Mean
All Crimes	135.25 (185.54)
Misdemeanors	43.92 (79.10)
Possession	98.17 (159.22)
Property	93.99 (158.89)
Felony DUI	103.49 (117.79)
Transfer of a Controlled Substance	143.43 (174.04)
Burglary-Larceny	116.95 (153.13)
Drug Sale	147.07 (172.80)
Burglary of a Dwelling	186.27 (193.89)
Assault	168.70 (200.77)
Arson/Carjacking	255.78 (304.40)
Murder/Sex Crimes	290.28 (263.71)

Figure 16

Figure 17. Summary of Jail Time by Race,
Gender, and Type of Representation
(Standard Deviations in Parentheses)

	Mean
Male	146.01 (188.19)
Female	86.97 (165.50)
Minority	156.18 (199.94)
Non-Minority	92.95 (144.26)
Full-Time Public Defender	189.15 (210.29)
Contract Counsel	105.22 (166.72)
Assigned Counsel	99.26 (120.75)

Figure 17

Figure 18. Weibull Hazard Model
Hazard Ratios Reported
(Standard Errors in Parentheses)

<i>Personal Characteristics</i>	
Age	0.99 ** (0.00)
Assigned Counsel	0.60 * (0.18)
Contract Counsel	0.72 * (0.14)
Male	0.75 ** (0.09)
Minority	0.81 ** (0.08)
<i>Crime-Specific Characteristics</i>	
Possession	0.82 (0.19)
Property	0.72 * (0.14)
Transfer D.I.	0.64 * (0.15)
Transfer of a Controlled Substance	0.57 * (0.15)
Burglary-Larceny	0.57 ** (0.11)
Drug Sale	0.56 ** (0.12)
Burglary of a Dwelling	0.39 ** (0.10)
Assault	0.39 ** (0.10)
Arson/Catfishing	0.35 ** (0.12)
Murder, Sex Crimes	0.35 ** (0.07)
<i>County-Specific Characteristics</i>	
Median Income	0.94 ** (0.02)
Percent Minority	0.96 ** (0.06)
Urban	0.98 ** (0.07)
Number of Observations	583

Notes: Reported values are exponentiated coefficients, or hazard ratios. The hazard ratios reported correspond to a one-unit change in the corresponding variable. ** indicates statistical significance at the 5% level. * indicates statistical significance at the 10% level. Crime categories are jointly significant at the 5% level.

Figure 18

(Figure 18). Personal characteristics include the age, gender and race of the individual and the type of legal representation. Crime-specific characteristics include a series of categorical variables detailing the crime for which the individual was sentenced, with the omitted crime category (or the base case) of misdemeanor crimes. The proportion of the county that is black, the median income for the county, and whether the county is urban or rural are the county-specific variables.

The findings indicate that individuals represented by full-

time public defenders are more likely to get out of jail (i.e. spend less time in jail). Specifically, after controlling for all other variables specified in the model, individuals represented by assigned counsel are 40 percent less likely to get out of jail, and individuals represented by contract counsel are 28 percent less likely to get out of jail.

Race and gender of an individual also have a significant impact on the probability of getting out of jail. Minorities are 19 percent less likely to get out of jail than their non-minority counterparts, and males are 25 percent less likely than females to get out of jail.

Categorical variables controlling for the crimes that individuals commit have the expected impact. Persons committing more serious crimes are more likely to remain in jail for longer periods. For example, a person sentenced for transfer of a controlled substance is 43 percent less likely to exit jail than a person who is ultimately sentenced for a misdemeanor. On the other hand, a person committing the most serious crime (murder/sex crimes) is roughly 65 percent less likely to exit jail than a person committing a misdemeanor.

Finally, the county-specific characteristics reveal additional information. The variables controlling for county race, income and urbanization are all statistically significant. Persons in urban counties are less likely to get out of jail compared to persons in non-urban counties. Higher county median income results in a reduced probability of exit. Similarly, an increase in a county's minority population results in a lower chance of leaving jail. These are significant findings that have not been well documented in previous research; such research has typically examined cases from one jurisdiction and therefore has missed the impact of differences in the demographic makeup of a jurisdiction on time spent in jail.

To further illustrate the impact of the independent variables, the actual difference in length of time in jail by race, gender and representation has been predicted (see Figure 19). After adjusting for all other factors, figures suggest that minorities spend an average of 52 more days in jail than non-minorities. Similarly males spend 65 more days in jail than females. The differences across types of representation are even greater. After controlling for all intervening factors, data indicate that individuals represented by part-time contract counsel spend 81 more days in jail, and individuals represented by part-time assigned counsel spend 96 more days in jail than individuals represented by full-time public defenders.

Figure 19.
Difference in Predicted
Length of Time in Jail

	Predicted Difference in Days
Minority Minus Non-Minority	51.99
Male Minus Female	65.13
Contract Counsel Minus Full- Time Public Defender	80.50
Assigned Counsel Minus Full- Time Public Defender	95.90

Figure 19

RESULTS - PERSONAL INTERVIEW DATABASE

Summary Statistics

Roughly 80 percent of the random sample is male; similarly, roughly 80 percent is minority (see Figures 20-23 and Appendix H for characteristics of indigents in the Personal Interview Database). Also, about 33 percent of the sample is represented by a full-time public defender. These characteristics closely mirror those of the indigents in the Public Records Database, with the exception of the minority composition. The Personal Interview Database has a higher percentage of minorities.

In the interviews, only 38 percent of the sample indicated that they felt they had received adequate legal representation, as illustrated in Figure 21. This finding is not surprising given that only 41 percent of the sample met with an attorney while in

jail, and the average attorney interacted with the client for only an hour and 10 minutes. Very few indigents indicated that their cases were investigated (16 percent) or that the attorney spoke with witnesses (13 percent). In addition, the majority of indigents changed their pleas to guilty (64 percent).

The majority of indigents were working when arrested (70 percent), and the average hourly wage for those working was \$7.41 per hour (see Figure 22 for statistics regarding the job and income characteristics of indigents interviewed). It appears that the arrest had negative consequences for many of these indigents. After arrest, 73 percent of indigents who were working lost their jobs. In addition, many lost other important resources, such as their cars (22 percent), phones (14 percent), utilities (16 percent), and homes (24 percent).

Nearly 50 percent of the random sample felt that their personal financial loss negatively impacted their families (see Figure 23). Also, some indigents were forced to change their child care arrangements (16 percent) and some missed child support payments (11 percent).

The results of the personal interviews show a strong difference between the quality of the representation offered by the full-time public defender system and the part-time systems (see Figure 24). These results suggest that full-time public defenders devoted more resources to their clients

Figure 20. Personal Characteristics by Type of Sample

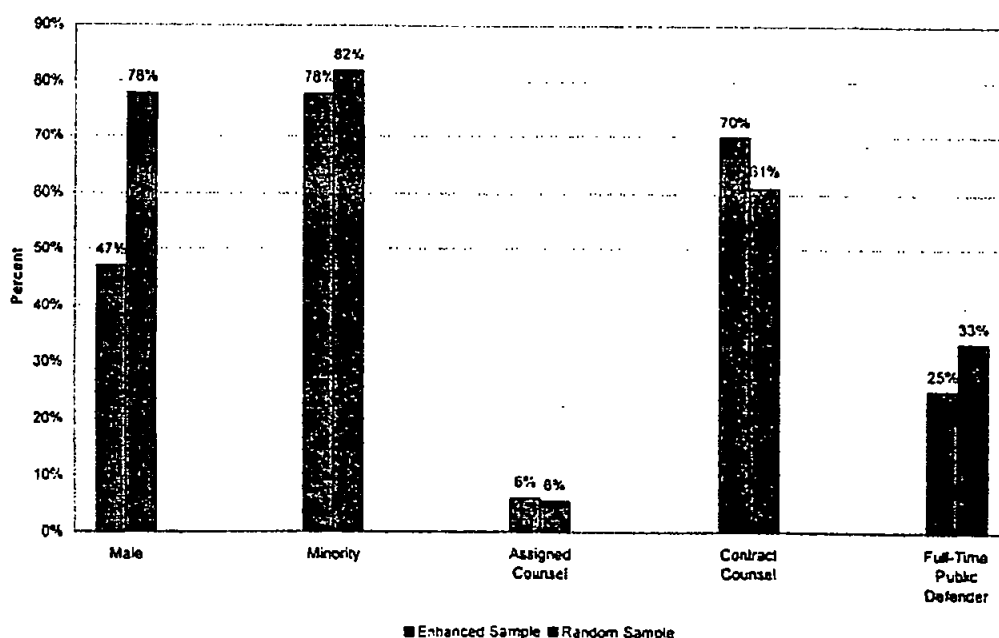


Figure 20

Figure 21. Representation Characteristics by Type of Sample

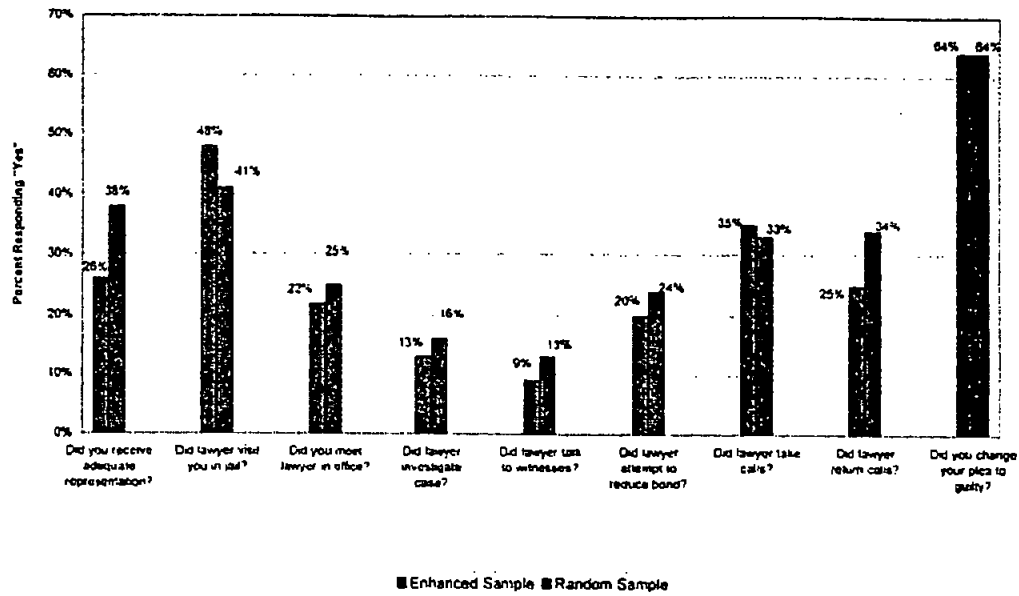


Figure 21

Figure 22. Job/Income Characteristics by Type of Sample

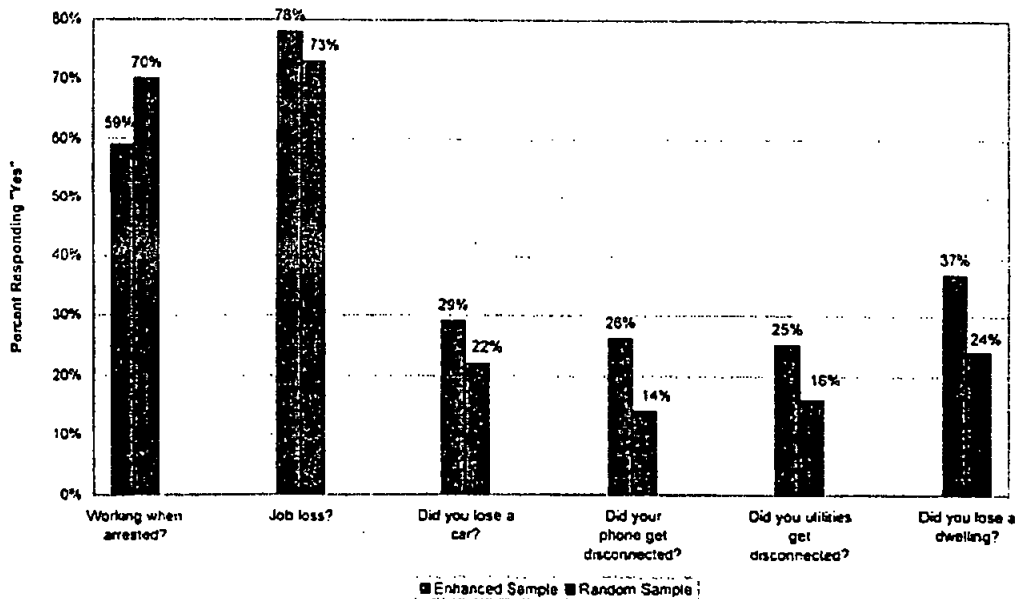


Figure 22

Figure 23. Family Characteristics by Type of Sample

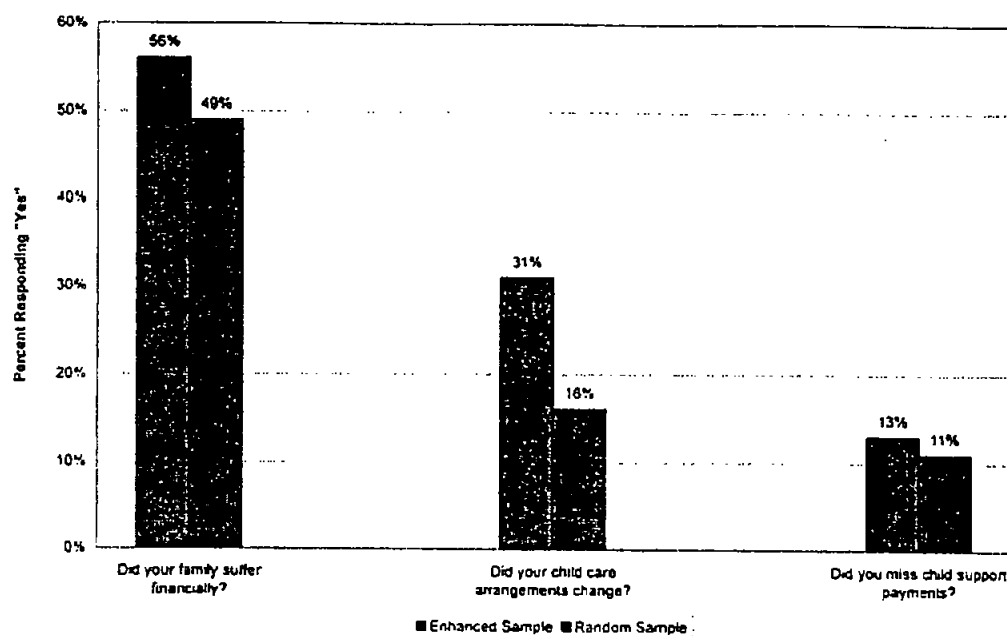


Figure 23

Figure 24. Differences of Means for Legal Representation Characteristics
Random Sample
(Standard Deviations in Parentheses)

	Assigned Counsel	Contract Counsel	Full-Time Public Defender	Significance
Did you receive adequate representation?	0.33 (0.58)	0.38 (0.49)	0.41 (0.51)	
Time spent with lawyer (minutes)?	22.50 (10.61)	51.96 (45.22)	130.22 (169.68)	*
Did lawyer visit you in jail?	0.00 (0.00)	0.32 (0.48)	0.65 (0.49)	**
Did you meet lawyer in office?	0.33 (0.58)	0.28 (0.45)	0.19 (0.40)	
Did lawyer investigate case?	0.33 (0.58)	0.05 (0.19)	0.42 (0.51)	**
Did lawyer talk to witnesses?	0.33 (0.58)	0.03 (0.18)	0.31 (0.48)	**
Did lawyer attempt to reduce bond?	0.00 (0.00)	0.14 (0.35)	0.50 (0.52)	**
Did lawyer take calls?	0.50 (0.71)	0.19 (0.40)	0.70 (0.48)	**
Did lawyer return calls?	0.50 (0.71)	0.22 (0.42)	0.67 (0.50)	**
Did you change your plea to guilty?	1.00 (0.00)	0.65 (0.49)	0.55 (0.52)	

Notes. ** indicates statistical significance at the 5 percent level. * indicates statistical significance at the 10 percent level.

Figure 24

assigned counsel or contract counsel. Full-time public defenders more often visited their clients in jail, accepted phone calls from the client, returned phone calls to the client, investigated the case, talked to witnesses, and attempted to reduce bond. Additionally, full-time public defenders spent more time with their clients.

ECONOMIC IMPACT

Utilizing the information described above and other sources, it is possible to estimate the annual impact on the Mississippi economy of implementing the full-time public defender system throughout the state. The average hourly salary (including individuals who were not working) of the persons interviewed was \$4.12, implying an average daily loss of income of \$32.96. The indirect effect of those lost salary dollars is \$22.08. Thus the gain in personal income to the state resulting from the elimination of one day in jail for the average individual is \$55.04.

The implementation of the full-time public defender system should decrease jail time per criminal disposition by at least 80.5 days (see Figure 19). When this saving is multiplied by the number of dispositions handled annually by part-time counsel, the total annual increase in state personal income is \$90.9 million. An increase in state income of this magnitude will generate a total of \$5.3 million annually in additional tax revenue for the state's general fund and \$546 thousand in additional local government tax revenue (see Figure 25).

Another potential source of saving from the decrease in jail days is the reduction of expenses by county government related to jail inmates. While no precise value has been established for this saving, an estimate has been prepared under the assumption that a reduction of one jail day will result in a cost reduction of \$10 per inmate per day. The annual savings for the counties resulting from the implementation of the full-time public defender system is \$16.5 million.

The economic impact values presented in this section are obviously based on a number of assumptions that could be debated. Regardless of the precise values of the assumptions used, the fact remains that the impact is large and the resulting savings to state and local government would be substantial. Eliminating disparities in the current system - disparities resulting primarily from the different county approaches to providing for indigent counsel - has obvious benefits. Given that all indications suggest that the full-time public defender system is more beneficial to both indigents and to the state, Mississippi would be well served to reconsider its current system of providing indigents with the legal counsel to which they are constitutionally entitled.

Figure 25. Economic Impact of Implementing Full Time System Statewide

Part-Time Indigent Dispositions for FY 2000

Total Statewide Dispositions	25,832
Less Dispositions in Full-Time Counties	(1,692)
Dispositions in Part-Time Counties	24,140
Less Non-Indigent and Bad Check Dispositions*	(3,621)
Part-Time Dispositions Covered by Study	20,519

Economic Impact per Disposition per Day

Lost Daily Salary**	\$ 32.96
Indirect Loss***	22.08
Total Income Loss	\$ 55.04

Annual State Wide Impact of Replacing Part-Time System with Full-Time System

Increase in Personal Income****:	\$ 90,919,000
(Decreased Jail Days x Income Loss x Dispositions)	
Increase in General Fund Tax Revenue***	\$273,000
Increase in Local Government Tax Revenue***	\$46,000
Estimated Decrease in Jail Cost*****	\$ 16,518,000
(Decreased Jail Days x Marginal Cost per Day x Dispositions)	

* Estimated to be 15% of total dispositions based on sample.

** Calculated from the Personal Interview Database showing average salary of \$4.12 per hour.

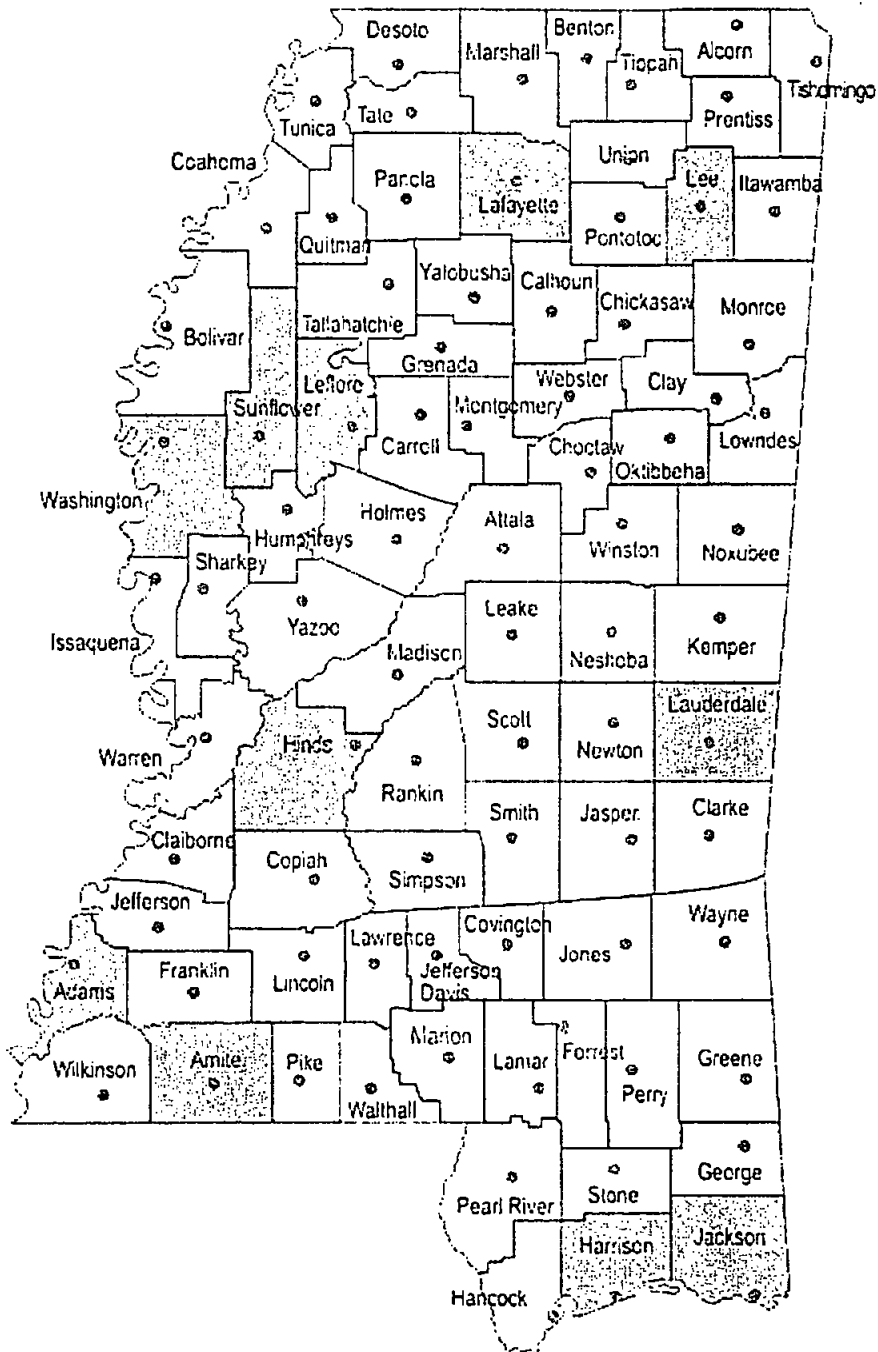
*** Based on statewide multipliers obtained from Mississippi Center for Policy Research.

**** Using 80.5 days differential for all part-time dispositions.

***** Based on estimated marginal cost per jail day of \$10.

Figure 25

APPENDIX A



APPENDIX B

COUNTY DEMOGRAPHICS

	Adams	Amite	Harrison	Itasca	Jackson	Lafayette	Lauderdale	Lee	Leflore	Scott	Washington	Mississippi
Population, 2000	34,340	13,299	18,641	29,636	131,429	56,744	78,161	79,752	37,947	34,360	62,977	2,844,658
Population Change, 1990 to 2000	-2.9%	2.0%	11.7%	-1.3%	11.6%	21.7%	34.6%	15.5%	1.6%	-2.2%	-7.3%	10.5%
White Persons, 2000	46.0%	56.8%	71.1%	57.5%	75.3%	71.9%	69.1%	73.7%	30.6%	28.9%	31.6%	61.4%
Black Persons, 2000	52.8%	42.7%	28.1%	41.1%	20.9%	28.1%	30.2%	24.3%	67.7%	69.9%	67.1%	36.5%
Other, 2000	1.2%	0.9%	5.8%	1.6%	3.7%	3.1%	1.7%	1.8%	2.3%	1.2%	1.4%	2.3%
High School Graduates, 1990	43.8%	31.5%	40.0%	45.9%	39.5%	29.6%	41.3%	36.5%	30.3%	26.2%	35.4%	34.7%
College graduates, 1990	9.6%	5.2%	8.7%	16.1%	7.6%	12.3%	7.3%	8.1%	3.6%	4.8%	8.6%	7.9%
Median household income, 1997	\$ 23,444	\$ 21,072	\$ 26,796	\$ 32,631	\$ 34,111	\$ 27,258	\$ 28,223	\$ 33,160	\$ 21,027	\$ 19,875	\$ 24,061	\$ 26,527
Persons below poverty, 1997	22.6%	18.6%	13.9%	18.5%	15.6%	14.5%	17.5%	12.0%	24.1%	34.3%	26.0%	18.1%
Persons per square mile, 2000	74.70	18.60	126.30	288.60	180.80	61.30	111.40	168.50	64.10	49.50	87.00	60.60

* indicates person 25 years and over

APPENDIX C

Criminal Dispositions
Fiscal Year: July - June

	<u>1999</u>	<u>2000</u>	<u>2001</u>
Adams	462	315	173
Amite	97	68	0
Harrison	2292	1915	2208
Hinds	1000	1067	1205
Jackson	653	788	772
Lafayette	424	441	487
Lauderdale	983	1031	946
Lee	812	714	340
Leflore	102	131	98
Sunflower	258	274	240
Washington	<u>348</u>	<u>418</u>	<u>147</u>
Total	<u><u>7431</u></u>	<u><u>7162</u></u>	<u><u>6616</u></u>

APPENDIX D

INDIVIDUAL INFORMATION

Last Name Sample First Name Date of Birth
 Race Cause/Case Number: SSN 0
 Gender:

COUNTY INFORMATION

County
 Judge's Last Name Judge's First Name
 Attorney's Last Name Attorney's First Name Date Attorney Appointed:
 Lead attorney change during course of trial? Was there a Second Chair?
 Fine \$0.00 Indigent Fee \$0.00 Restitution \$0.00
 Court Costs \$0.00 Attorney Fees \$0.00 Other Fees \$0.00

Conditions of Payment

CASE INFORMATION

Date of Alleged Crime: Arrest Date Date of Arraignment
 Bail Set (Y/N): Date Bail Set: Bail Amount: \$0.00
 Bail Posted (Y/N/Unknown): Date Bail Posted: Declared Indigent:
 Date Released for Other Reasons Why Released for other reason?
 Plea Date: Date of Preliminary Hearing Trial Date:
 Plea:
 Confined: Bail Revoked?: Dispositions Reported:
 Conviction as Result of:

INDICTMENT INFORMATION

Date of Indictment
 Count I Charge:
 MS Code Section (Count I):
 Count II Charge:
 MS Code Section (Count II):
 Count III Charge:
 MS Code Section (Count III):

Date of Sentence/ or Final Disposition: Appeal (Y/N) Where Incarcerated

Number of witnesses sup by defendant 0
 Number of witnesses sup by plaintiff: 0
 Total witnesses: 0

MOTION DATA

Motion 1	_____	Date1	_____
Court Ruling1	_____		
Other Comments1	_____		
Motion 2	_____	Date2	_____
Court Ruling2	_____		
Other Comments2	_____		
Motion 3	_____	Date3	_____
Court Ruling3	_____		
Other Comments3	_____		
Motion 4	_____	Date4	_____
Court Ruling4	_____		
Other Comments4	_____		
Motion 5	_____	Date5	_____
Court Ruling5	_____		
Other Comments5	_____		
Motion 6	_____	Date6	_____
Court Ruling6	_____		
Other Comments6	_____		
Motion 7	_____	Date7	_____
Court Ruling7	_____		
Other Comments7	_____		

CHARGES AND SENTENCING INFORMATION

Count I	_____	Portion of Sentence to be Served (Count I)	_____
		Portion of Sentence to be Suspended (Count I)	_____
		To be Served on Probation (Count I)	_____
		Other/Method of Disposition (Count I)	_____
Count II	_____	Portion of Sentence to be Served (Count II)	_____
		Portion of Sentence to be Suspended (Count II)	_____
		To be Served on Probation (Count II)	_____
		Other/Method of Disposition (Count II)	_____
Count III	_____	Portion of Sentence to be Served (Count III)	_____
		Portion of Sentence to be Suspended (Count III)	_____
		Other/Method of Disposition (Count III)	_____

To be Served on Probation (Count III)

Address:

APPENDIX E

PERSONAL INTERVIEW

Individual Information

Last Name _____
First Name _____
Gender _____
Race _____
Date of Birth _____
Docket Number _____
County _____
Date of Interview _____

Additional Criminal Case Information

Job/Educational History

Skill Level/Occupation _____
Educational Level _____ None _____ Less than High School _____ Some High School
_____ High School Grad _____ Some College _____ College Grad
_____ More than College

Literacy Level _____

Working when arrested? _____ YES _____ NO

Salary/Wages _____

Benefits _____

Loss of Job _____ YES _____ NO

Miss work while in Jail? _____ YES _____ NO

Currently in Custody? _____ YES _____ NO

If YES, Where in custody? _____

If NO then,

Have arrests interfered with your ability to find work? _____ YES _____ NO

Have you missed school because you were in jail? _____ YES _____ NO

Did arrest have any long term, adverse affects on educational opportunities? _____ YES _____ NO

Were you receiving SSI, Welfare, or Other Benefits when arrested? _____ YES _____ NO

Amount? _____

Do you feel you received adequate representation? ☐ YES ☐ NO

Explain: _____

Time lawyer spent talking to you: _____

Did the lawyer visit you in jail? ☐ YES ☐ NO

Did you ever meet the lawyer in the office? ☐ YES ☐ NO

Did you change attorneys in the course of your case? ☐ YES ☐ NO

Did the lawyer do any investigation? ☐ YES ☐ NO _____

Did your lawyer talk to witnesses? ☐ YES ☐ NO _____

Did an investigator work on your case? ☐ YES ☐ NO _____

Did the lawyer make an attempt to have your bond reduced? ☐ YES ☐ NO _____

If you or your family made calls, did the lawyer take calls? ☐ YES ☐ NO

Did the lawyer return calls? ☐ YES ☐ NO

Did you change your plea to guilty? ☐ YES ☐ NO

How did it come that you changed your plea to guilty? _____

Family Information

Did a family member lose a job because of your jail time? _____ YES _____ NO

If YES, Who? _____

Why? _____

Job? _____

Pay? _____

Was a family member forced to take a job? _____ YES _____ NO

If YES, Who? _____

Why? _____

Job? _____

Pay? _____

Have any of your family members suffered financially because of your loss of income? _____ YES _____ NO

Who were the members of your household at the time of your arrest? _____

How many children do you have? _____

Did child care arrangements change because of your arrest? _____ YES _____ NO

Explain: _____

Miss Child Support Payments? _____ YES _____ NO

How much? _____

Were any children placed in foster care? _____ YES _____ NO _____

When in jail, family visits per year: _____

Distance traveled to visit: _____

Welfare after Release? _____ YES _____ NO

Personal Finances

Did you own a car? _____ YES _____ NO

Did you lose the car because you went to jail? _____ YES _____ NO

Did your phone become disconnected because of jail time? _____ YES _____ NO

Were utilities disconnected? _____ YES _____ NO

Did you lose your dwelling? _____ YES _____ NO

Health Information

Additional Comments

APPENDIX F

Data Collection Difficulties

There were several roadblocks that impacted our efforts to collect data. First, the data collection effort from public records was obviously dependent upon the quality of the records in each county, and this quality varied vastly from county to county. As a result, many of the variables we originally hoped to collect were largely unavailable. For example, the data collection form in Appendix D calls for the date an individual is declared indigent. Unfortunately, this information was missing two-thirds of the time. Another example lies in the information regarding bail. The date bail was set was not recorded in the court files in nearly 80 percent of the cases. Although this information would have provided additional insight, the missing information was not essential to this study.

Vital to this study is information on the length of time individuals were housed in county jails. Because the court files did not contain complete information on this variable, the county jail logbooks were relied heavily upon to retrieve these dates. Even so, this important variable is not available in 89 cases.

The second major roadblock encountered during the data collection effort was during the personal interview stage. Of the 100 individuals selected for personal interview, only 54 were ultimately interviewed. Most individuals from this population who are currently housed in Mississippi correctional facilities were interviewed. Individuals housed in correctional institutions outside the state were not interviewed. Private investigators were used to locate and interview the remaining non-institutionalized population. These individuals are not an easy group to locate, and they are highly suspicious of anyone wanting to discuss their criminal backgrounds.

Although only 54 of the personal interviews were completed, this information is sufficient for the purposes for which it is intended. The fifty percent response rate is actually quite good and the absolute size of the data set allows us to draw conclusions concerning the economic impact of the public defender system in Mississippi.

APPENDIX G

Summary Statistics - Public Records Database

	<u>Mean</u>	<u>Std. Dev.</u>	<u>Min</u>	<u>Max</u>	<u>Number of Obs</u>
Time in Jail	135.25	185.54	1	1225	615
<i>Personal Characteristics</i>					
Age	33.36	9.5	18.31	66.02	685
Assigned Counsel	0.06	0.23	0	1	700
Contract Counsel	0.58	0.49	0	1	700
Full-Time Public Defender	0.38	0.49	0	1	700
Male	0.81	0.39	0	1	700
Minority	0.69	0.46	0	1	676
<i>Process Characteristics</i>					
Bail Set	0.87	0.33	0	1	601
Changed Attorneys	0.29	0.45	0	1	692
Made Bail	0.84	0.37	0	1	523
Motions	1.33	1.43	0	7	700
Witnesses - Plaintiff	1.12	2.58	0	20	698
Witnesses - Defense	0.07	0.63	0	9	700
<i>Crime-Specific Characteristics</i>					
Misdemeanors	0.07	0.25	0	1	687
Possession	0.17	0.38	0	1	687
Property	0.15	0.36	0	1	687
Felony DUI	0.07	0.25	0	1	687
Transfer of a Controlled Substance	0.05	0.22	0	1	687
Burglary/Larceny	0.19	0.39	0	1	687
Drug Sale	0.09	0.29	0	1	687
Burglary of a Dwelling	0.05	0.21	0	1	687
Assault	0.05	0.22	0	1	687
Arson/Carjacking	0.02	0.16	0	1	687
Murder/Sex Crimes	0.09	0.29	0	1	687

NAACP LEGAL DEFENSE AND EDUCATIONAL FUND, INC.
BOARD OF DIRECTORS

National Officers

Julius L. Chambers
 Martin D. Payson
Co-Chairs

Daniel L. Rabinowitz
 Roger W. Wilkins
Co-Vice Chairs

James M. Nabrit III
Secretary

Clifford P. Case III
Treasurer

Theodore M. Shaw
Director-Counsel and President

Senior Directors

Anthony G. Amsterdam
 William K. Coblentz
 Theodore L. Cross
 Nannette B. Gibson
 Jack Greenberg
 Louis Harris
 Anna Faith Jones
 Jetta N. Jones
 David S. Lindau
 Robert O. Preyer
 Norman Redlich
 Charles B. Renfrew
 William H. Scheide
 Frederick A.O. Schwarz, Jr.
 Andrew Young

National Board of Directors

Billye Suber Aaron
 Gerald S. Adolph
 Eleanor S. Applewhite
 Clarence Avant
 Mario L. Baeza
 Mary Frances Berry
 Patrick A. Bradford
 Johnnie L. Cochran, Jr.
 Kenneth C. Edelin
 Toni G. Fay
 Gordon G. Greiner
 Quincy Jones
 Vernon E. Jordan, Jr.
 David E. Kendall
 Caroline B. Kennedy
 Tonya Lewis Lee
 William M. Lewis, Jr.
 John D. Maguire
 Cecilia S. Marshall
 David Mills
 Richard M. Moss
 Lawrence Newman
 C. Carl Randolph
 Judith T. Sapers
 Judith McCartin Scheide
 John W. Walker
 George Wallerstein
 Theodore V. Wells, Jr.
 Karen Hastie Williams

Directors Emeritus

Alice M. Beasley
 Anita Lyons Bond
 William H. Brown III
 Talbot D'Alemberte
 Ossie Davis
 Peter J. DeLuca
 Adrian W. DeWind
 Anthony Downs
 Robert F. Drinan
 Marian Wright Edelman
 Clarence Finley
 H. Minton Francis
 Norman C. Francis
 John Hope Franklin
 Ronald T. Gault
 Lucy Durr Hackney
 Charles V. Hamilton
 Patricia L. Irvin
 Nicholas DeB. Katzenbach
 George E. Marshall, Jr.
 Glendora McIlwain Putnam
 Gilbert T. Ray
 Henry T. Reath
 Wayman F. Smith III
 Michael I. Sovern
 Bonnie Kayatta Steingart
 Chuck Stone
 Jay Topkis
 E. Thomas Williams, Jr.

Co-Chairs Emeritus

William T. Coleman, Jr.
 Robert H. Preiskel

NATIONAL HEADQUARTERS

99 Hudson Street, Suite 1600
 New York, NY 10013
 (212) 965-2200
 Fax: (212) 226-7592
www.naacpldf.org

REGIONAL OFFICES

1444 Eye Street, N.W., 10th Floor
 Washington, D.C. 20005
 (202) 682-1300
 Fax: (202) 682-1312

1055 Wilshire Boulevard, Suite 1480
 Los Angeles, CA 90017
 (213) 975-0211
 Fax: (213) 202-5773