

“A VEXING PROBLEM”: AN EXAMINATION OF MISSISSIPPI’S PUBLIC DEFENDER SYSTEM

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INTRODUCTION

It is no secret that Mississippi’s criminal justice system has a long and complicated history. And perhaps nowhere are our state’s struggles more apparent than in the structure and operation of its indigent criminal defense system.¹ Mississippi has extremely high poverty and incarceration rates but remains one of only a handful of states with no statewide system, uniform standards, or state funding for appointment of counsel for indigent defendants at the trial level.² Instead, each of the state’s 82 counties are responsible for establishing and funding individual public defender offices to provide legal services to indigent criminal defendants. Despite the establishment of the Office of State Public Defender in 2011, Mississippi continues to lag behind other states and is often held up as the ‘worst of the worst’ in state indigent defense systems.

¹ MISS. PUB. DEF. TASK FORCE, REPORT TO THE MISSISSIPPI LEGISLATURE 5 (2000) (“[I]t is apparent that indigent defense remains a *vexing problem* for the counties.”) (emphasis added).

² Steven Ross Johnson, *The 10 States with the Highest Poverty Rates*, U.S. NEWS & WORLD REPS. (May 7, 2024), <https://www.usnews.com/news/best-states/slideshows/us-states-with-the-highest-poverty-rates?onpage> [<https://perma.cc/TSX9-6DXY>] (Mississippi has a poverty rate of 19.1%.); E. ANN CARSON & RICH KLUCKOW, U.S. DEPT OF JUST., PRISONERS IN 2022 – STATISTICAL TABLES 15 (2023), <https://bjs.ojp.gov/document/p22st.pdf> [<https://perma.cc/4N34-VZKL>] (Mississippi has an incarceration rate of 661 per 100,000 state residents of all ages.).

Nevertheless, all but the most modest reform efforts since the turn of the century have failed. Section II of this Comment provides a comprehensive history of the creation of Mississippi's public defense system while Section III offers a candid assessment of the current state of the system, gleaned from interviews with current and former public defenders, state officials, and a former Mississippi Supreme Court justice. It is my hope that this Comment will lay the groundwork for legal advocates who wish to join the fight for better indigent defense delivery in Mississippi. By preserving the past and shining a light on current problems, we as advocates can better contemplate where we go from here and how we safeguard the rights of indigent defendants to the effective assistance of counsel as promised under the Constitution.

I. HISTORICAL BACKGROUND

A. *Right to Counsel in the United States*

The Sixth and Fourteenth Amendments of the United States Constitution guarantee the right to effective assistance of counsel to all defendants facing criminal prosecution.³ However, the full extent and applicability of this right developed slowly and incrementally over time. In 1932, in the infamous “Scottsboro Boys” case, *Powell v. Alabama*,⁴ the United States Supreme Court overturned the convictions of nine African-American teenagers by an all-white jury for the rape of two white women, holding that the trial court’s “failure [to provide the defendants] reasonable time and opportunity to secure counsel was a clear denial of due process.”⁵ The *Powell* court also took the opportunity to note that, in certain circumstances, failure of the trial court to *appoint* counsel

³ U.S. CONST. amend. VI; U.S. CONST. amend. XIV, § 1.

⁴ 287 U.S. 45 (1932); *See also You Should Know: The Scottsboro Boys*, NATIONAL MUSEUM OF AFRICAN AMERICAN HISTORY & CULTURE, <https://nmaahc.si.edu/explore/stories/scottsboro-boys> [https://perma.cc/5U9C-FC6H] (last visited Nov. 19, 2024). This case is widely regarded as a loose inspiration for Harper Lee’s novel, *To Kill A Mockingbird* and for helping to spur the Civil Rights Movement. *Id.*

⁵ *Powell*, 287 U.S. at 71.

in capital cases could constitute a due process violation.⁶ In 1938, the United States Supreme Court acknowledged for the first time in *Johnson v. Zerbst* a Sixth Amendment right to appointment of counsel in all federal cases,⁷ but initially declined to extend the right to the states.⁸ The Court subsequently clarified that counsel was required to be appointed in all capital cases rather than just capital cases involving other special circumstances.⁹

Three decades later, in 1963, the United States Supreme Court issued its landmark decision, *Gideon v. Wainwright*, holding that the Constitution compelled state courts to appoint counsel to indigent defendants facing serious criminal charges.¹⁰ Prior to *Gideon*, states that provided any sort of criminal public defense counsel to indigent defendants had done so under the “charity” model.¹¹ That is, courts relied upon members of the state bar to volunteer time, resources and pro bono legal services.¹² Many hoped that *Gideon* would mark the beginning of uniform state-level indigent defense services, despite the fact that the *Gideon* Court offered virtually no guidance on how state public defender systems should be structured or funded.¹³ Further complicating matters, many states, Mississippi among them, refused to adopt systems at the state level, choosing instead to pass responsibility off onto individual counties.¹⁴

In 1972, the right was expanded when the Supreme Court held that a criminal defendant could not be jailed for any offense unless such defendant had been represented by counsel at trial.¹⁵ And, in 1984, the Supreme Court solidified, in *Strickland v. Washington*,

⁶ *Id.* at 71-72 (“All that is necessary now to decide, as we do decide, is that in a capital case, where the defendant is unable to employ counsel, and is incapable adequately of making his own defense because of ignorance, feeble mindedness, illiteracy, or the like, it is the duty of the court, whether requested or not, to assign counsel for him as a necessary requisite of due process of law . . .”).

⁷ *Johnson v. Zerbst*, 304 U.S. 458, 467-68 (1938); see also PAUL MARCUS & MELANIE D. WILSON, CRIMINAL PROCEDURE § 4.01, at 451 (9th ed. 2020).

⁸ *Betts v. Brady*, 316 U.S. 455, 455 (1942).

⁹ *Bute v. Illinois*, 333 U.S. 640, 676 (1948).

¹⁰ *Gideon v. Wainwright*, 372 U.S. 335, 335 (1963).

¹¹ Eve Brensike Primus, *The Problematic Structure of Indigent Defense Delivery*, 122 MICH. L. REV. 207, 212 (2023).

¹² *Id.*

¹³ Maybell Romero, *Lowball Rural Defense*, 99 WASH. U.L. REV. 1081, 1086 (2021).

¹⁴ *Id.* at 1103.

¹⁵ *Argersinger v. Hamlin*, 407 U.S. 25, 37-38 (1972).

that the right to counsel meant a right to the effective assistance of counsel and implemented a test for evaluating claims of ineffective assistance of counsel.¹⁶ Decided concurrently with *Strickland*, *United States v. Cronin* highlighted that, while a defendant can prove his ineffective assistance of counsel claim by demonstrating certain specific errors, it is also possible that circumstances may arise which are so egregious as give rise to the presumption that defendant's representation was prejudiced without further inquiry into the actual conduct of the trial.¹⁷ In the years after *Gideon* and *Strickland*, Mississippi, like many other states, began legislating more definitive indigent defense systems into existence.

B. Creation of Mississippi's Public Defense System

Since the adoption of the state's first Constitution, Mississippi has declared that all persons facing criminal prosecution have a right to counsel.¹⁸ However, until 1964, Mississippi law only provided court-appointed counsel to indigent defendants facing conviction being prosecuted for capital crimes.¹⁹ In fact, it was more than a year after *Gideon* that the Mississippi Supreme Court acknowledged the state's obligation to provide counsel for non-capital indigent defendants and "eliminate[d] the question of discretion" contained in Mississippi's statutes.²⁰ Despite this, the current statute governing appointment of counsel for indigents retained the discretionary language which provides that a court or judge *may* appoint counsel upon satisfaction of a person's indigency.²¹

In 1970, the Judiciary Commission of the Mississippi Legislature recommended the establishment of both a State Public Defender and local panels of lawyers who would represent indigent defendants in exchange for payment of an hourly rate and

¹⁶ *Strickland v. Washington*, 466 U.S. 668, 686, 690-91 (1984).

¹⁷ *United States v. Cronin*, 466 U.S. 648, 660-61 (1984).

¹⁸ MISS. CONST. of 1817, art. I, § 10.

¹⁹ Mary Libby Payne, *The Mississippi Judiciary Commission Revisited: Judicial Administration: An Idea Whose Time Has Come?*, 14 MISS. COLL. L. REV. 413, 470 (1994) (citing MISS. CODE ANN. § 2505 (1942)).

²⁰ *Conn v. State*, 170 So. 2d 20, 21-23 (Miss. 1964); *see also* MISS. CODE ANN. § 99-15-15 (2001).

²¹ *See* MISS. CODE ANN. § 99-15-15.

expenses.²² The Legislature did ultimately adopt a law authorizing the appointment of court-appointed counsel for indigent defendants in certain cases; however, the Commission's original recommendations were abandoned.²³ In 1971, the Mississippi Legislature introduced two house bills which proposed a statewide system of public defenders and a state public defender's office, respectively.²⁴ The first bill died in committee and the second failed to pass its initial House vote.²⁵ In 1972, the Legislature enacted a law to establish Mississippi's first public defender office in Washington County,²⁶ and appointed John Culpepper Webb, county prosecutor and past Washington County Bar President, to serve as the inaugural public defender.²⁷

Subsequent legislation passed to establish public defender offices in Warren County in 1975,²⁸ and in Hinds County in 1976.²⁹ Similar bills which would have also established public defender offices in Harrison, Jackson, and Pike Counties were proposed between 1974 and 1975 but were vetoed by the Governor.³⁰ From 1976 to 1978, five additional bills proposing a statewide system of public defense failed to pass either the Senate or House.³¹ Then, in 1979, several local bills were passed which resulted in the authorization of public defenders in Forrest, Jackson, Lauderdale, and Yazoo Counties.³²

²² Erin V. Everett, Comment, *Salvation Lies Within: Why the Mississippi Supreme Court Can and Should Step in to Solve Mississippi's Indigent Defense Crisis*, 74 MISS. L.J. 213, 225 (2004) (citing MISS. JUDICIARY COMM'N. REPORT TO THE LEGISLATURE OF 1970, at 2 (1970)).

²³ See Act of Apr. 5, 1971, ch. 490, 1971 Miss. Laws 604 (codified as amended at MISS. CODE ANN. § 99-15-15).

²⁴ Everett, *supra* note 22, at 225-26 (citing 1971 MISS. HOUSE J. 1264).

²⁵ *Id.* at 226 (citing 1971 MISS. HOUSE J. 1264).

²⁶ Act of May 4, 1972, ch. 867, 1972 MISS. LOC. & PRIV. LAWS 41.

²⁷ See *infra* note 48, at 9:12.

²⁸ Act of Mar. 28, 1975, ch. 852, 1975 MISS. LOC. & PRIV. LAWS 25.

²⁹ Act of Jan. 14, 1976, ch. 1011, 1975 MISS. LOC. & PRIV. LAWS 160. HB 427 was originally proposed in 1973 but was not passed until 1976 following an override of then Governor William Waller, Sr.'s veto. See Payne, *supra* note 19, at 471.

³⁰ Payne, *supra* note 19, at 472.

³¹ *Id.* at 472-73 (first citing H.R. 695, Reg. Sess. (1976); then citing S. 2412, Reg. Sess. (1976); then citing H.R. 964, Reg. Sess. (1977); then citing H.R. 1115, Reg. Sess. (1977); and then citing H.R. 142, Reg. Sess. (1978)).

³² *Id.* at 473-74.

Following these many unsuccessful calls for a statewide system, Mississippi adopted the statutes that established the county-based system still in use today.³³ These laws provide the board of supervisors for any county (or two or more counties within the same district) with the discretion to establish a full-time or part-time office of public defender and to provide office space and personnel.³⁴ Once a public defender office has been established, the senior circuit judge will appoint a practicing attorney to the position of public defender for a term of four years.³⁵ Once appointed, the public defender may appoint any assistant public defenders as authorized by the board of supervisors.³⁶ Compensation for public defenders is determined by the relevant board or the board of supervisors and is paid from the budget of such county or counties.³⁷ Full-time public defenders may not engage in the private practice of law, but part-time public defenders may continue to maintain a private practice in areas of the law other than criminal prosecution.³⁸

Meanwhile, public defense attorneys across the state began to organize in the late eighties and, in 1984, the Mississippi Public Defenders Association (MPDA) was born. A non-profit organization, MPDA, offers support to public defenders throughout the state by providing resources and opportunities such as “legislative updates, networking and brainstorming opportunities for trial preparation, model jury instructions, [and] appellate brief guides”³⁹ Interviewees Tom Fortner and Phil Broadhead⁴⁰ are both founding and life members of the organization which celebrated its fortieth anniversary this year.

³³ Act of Apr. 18, 1979, ch. 509, § 1, 1979 Miss. Laws 1099, 1099 (codified as amended at MISS. CODE ANN. §§ 25-32-1, 25-32-3, and 25-32-5 through 25-32-19).

³⁴ MISS. CODE ANN. § 25-32-1.

³⁵ § 25-32-3.

³⁶ § 25-32-4.

³⁷ § 25-32-5.

³⁸ *Id.*

³⁹ *Mississippi Public Defender Association (MPDA)*, OFF. OF STATE PUB. DEF., <https://www.ospd.ms.gov/mississippi-public-defender-association> [<https://perma.cc/E9JQ-4FNN>] (last visited Apr. 16, 2025).

⁴⁰ See *infra* note 48; see also *infra* note 151.

Then, in 1988, the Mississippi Capital Defense Resource Center was established.⁴¹ The center was part of a broader federally funded grant program which established non-profit organizations in several states to provide post-conviction legal services and resources to criminal defendants convicted of capital charges.⁴² Mississippi's chapter was operated in conjunction with Mississippi College's School of Law, which provided office space, library support, and student interns.⁴³ In fact, Mississippi's current State Public Defender, André de Gruy, actually began his career in public defense at Mississippi Capital Defense Resource Center as a MC Law student.⁴⁴ Unfortunately, in late 1995, federal funding was eliminated and, with no state funding to continue the work, Mississippi's center was forced to close its doors.⁴⁵

Between 1993 and 1997, bills were introduced in the Mississippi Legislature every year calling for the replacement of the county-based system with a statewide system without success. Then, in 1998, Mississippi passed the Statewide Public Defender System Act.⁴⁶ Many hoped this would be a turning point for indigent defense in the state, but with no funding or implementation mechanism, the Act was promptly repealed only two years later.⁴⁷ Beth Davis, a deputy public defender from Hinds County actually took the position of State Public Defender following the Act's adoption and served in the role without pay until the repeal.⁴⁸

⁴¹ Business Search, MISS. SEC'Y OF STATE, <https://corp.sos.ms.gov/corp/portal/c/page/corpBusinessIdSearch/portal.aspx#> [<https://perma.cc/6SA4-7VGF>] (last visited Dec. 19, 2024) (search "Mississippi Capital Defense" in the Business Name search bar, then click details).

⁴² Zoom Interview with André de Gruy, State Public Defender for Mississippi, Off. of State Pub. Def., at 14:38 (Sept. 26, 2024)[hereinafter *André de Gruy*].

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ Statewide Public Defender System Act, ch. 575, 1998 Miss. Laws [page number], § 5 (codified as amended at MISS. CODE ANN. §§ 25-32-39 to 25-32-65 (Repealed by Laws 2000, ch. 569, § 29, eff. July 1, 2000)).

⁴⁷ *Id.*

⁴⁸ Zoom Interview with Tom Fortner, Partner, Lowery & Fortner, P.A., at 23:12 (Oct. 14, 2024)[hereinafter *Tom Fortner*].

Meanwhile, in 1996, while Mississippi struggled to implement a functioning statewide public defense system, the United States Congress enacted the Antiterrorism and Effective Death Penalty Act of 1996 (“AEDPA”).⁴⁹ One of the purposes of AEDPA was habeas corpus reform including, specifically, establishing a “statute of limitations for habeas corpus” claims and placing “stringent restrictions on a habeas petitioner’s ability to file [more than one] habeas petition.”⁵⁰ AEDPA also provided several key procedural advantages to states qualifying under its “opt-in” structure.⁵¹ More specifically, a state could opt-in if it had: (1) “established a mechanism,” whether by state or rule, “for the appointment, compensation, and reimbursement” for reasonable expenses of competent counsel in state postconviction proceedings, (2) offered counsel to all capital prisoners seeking post-conviction relief with final appointment to be subject to a determination of the applicable defendant’s indigency, and (3) provided standards of competency for the appointment of such counsel.⁵² In exchange, these opted-in states would receive: (1) a shorter statute of limitations, (2) limitation on claims eligible for consideration by federal district courts, (3) restriction on amendments after the filing of answers, (4) priority over noncapital matters from district court and court of appeals, and (5) expedited review.⁵³

Following AEDPA’s passage, states across the nation began attempting to comply with its opt-in structure. In 1999, “[i]n an apparent attempt to qualify the state of Mississippi to avail itself of the opt-in structure,” the Mississippi Supreme Court held, in *Brown v. Puckett*, that “all death-row post-conviction petitioners would have a right to appointed counsel, attorney compensation, and reasonable litigation expenses in their attempt to seek post-conviction relief from their convictions and death sentences.”⁵⁴

⁴⁹ Antiterrorism and Effective Death Penalty Act of 1996, Pub. L. 104-132, 110 Stat. 1214 (codified as amended at 28 U.S.C. §§ 2241-2266).

⁵⁰ John H. Blume, *AEDPA: The “Hype” and the “Bite,”* 91 CORNELL L. REV. 259, 270 (2006).

⁵¹ See generally 28 U.S.C. § 2261(a)-(c).

⁵² 28 U.S.C. § 2261; 28 U.S.C. § 2265.

⁵³ *Brown v. Puckett*, No. 3:10CV197-D, 2003 WL 21018627, at *1-2 (N.D. Miss. Mar. 12, 2003).

⁵⁴ *Grayson v. Epps*, 338 F. Supp. 2d 699, 702 (S.D. Miss. 2004) (quoting *Brown*, 2003 WL 21018627, at *2).

In 1999, Henry Curtis Jackson, a man convicted of capital murder and sentenced to death, filed a motion requesting that the state provide him with attorneys' fees and reasonable expenses in connection with his requests for post-conviction relief.⁵⁵ Despite the court's history of denying similar requests, they granted Jackson's petition and, in ruling in Jackson's favor, took a strong position on indigent defense in Mississippi, at least with respect to capital cases.

In Mississippi, repeatedly, since 1995, death row inmates have been unable to obtain counsel or requisite help from institutional lawyers. The Legislature has been aware of this acute problem. In the 1998 session, it took the first step toward the institution of a statewide public defender system. It is strongly urged that the Legislature proceed toward a solution to this serious problem by enacting the program utilized in Virginia or some other system. We can no longer sit idly by.⁵⁶

In 2000, contemporaneously with the repeal of the Statewide Public Defender System Act, the Mississippi Legislature passed House Bill 1228, which achieved three primary objectives.⁵⁷ First, it adopted the Mississippi Capital Defense Litigation Act to establish the Office of Capital Defense Counsel,⁵⁸ a state agency tasked with "provid[ing] representation to indigent parties under indictment for death penalty eligible offenses."⁵⁹ The Office opened in July 2001 and André de Gruy was appointed as the Office's first director.⁶⁰

Second, the bill adopted the Mississippi Capital Post-Conviction Counsel Act to establish the Office of Capital Post-Conviction Relief, a separate state agency responsible for providing representation to indigent defendants convicted and sentenced to

⁵⁵ Jackson v. State, 732 So. 2d 187, 188-89 (Miss. 1999).

⁵⁶ *Id.* at 191.

⁵⁷ H.B. 1228, 2000-2004 Leg., 2000 Reg. Sess. (Miss. 2000), <https://billstatus.ls.state.ms.us/documents/2000/html/HB/1200-1299/HB1228PS.htm> [<https://perma.cc/QF3F-5MT7>].

⁵⁸ MISS. CODE ANN. §§ 99-18-1 to 99-18-19.

⁵⁹ *Capital Defense Counsel*, OFF. OF STATE PUB. DEF., <https://www.ospd.ms.gov/capital-defense> [<https://perma.cc/DS4V-UTRC>] (last visited Apr. 16, 2025).

⁶⁰ *Id.*

death in appellate (and certain ancillary) proceedings.⁶¹ Jack Williams, who had represented Henry Curtis Jackson,⁶² was appointed to serve as the inaugural director.⁶³

Finally, it authorized the creation of a Mississippi Public Defender's Task Force tasked with evaluating the existing county-based public defender systems in the state, studying the cost and delivery systems for indigent defense in other states, assessing the need for a potential statewide system, and reporting to the Legislature accordingly.⁶⁴

In its first report the Legislature in September 2000, the Task Force recommended the creation of an Office of Indigent Appeals to handle all or a significant portion of the state's non-capital appeals for indigent defendants.⁶⁵ The report also recommended the appointment of a state public defender who would exercise oversight of the operation and administrative functions of the Offices of Capital Defense and Indigent Appeals.⁶⁶ Finally, the Task Force recommended that funding for indigent defense be shifted from the counties to an alternative funding source such as traffic violation assessments and felony and misdemeanor criminal fines.⁶⁷ It would take years, however, for the Legislature to heed the Task Force's recommendations.

In addition to legislative efforts, in 2001, Quitman County sued the State of Mississippi challenging the constitutionality of statutes requiring counties to fund the defense of indigent criminal defendants under the Mississippi Constitution.⁶⁸ However, in 2005,

⁶¹ Mississippi Capital Post-Conviction Counsel Act, Ch. 569, § 1 (2000) (codified as amended at MISS. CODE ANN. §§ 99-39-101 to 99-39-118).

⁶² See generally *Jackson*, 732 So. 2d at 187.

⁶³ For a detailed recounting of Attorney Williams' service as the Director of the Office of Capital Post-Conviction Counsel in his own words, see Affidavit of Jack Williams, former Director, Miss. Off. Cap. Post-Conviction Couns. (Aug. 25, 2005) (available at https://downloads.regulations.gov/DOJ-OAG-2011-0004-0018/attachment_12.pdf [<https://perma.cc/Q92P-5C73>]).

⁶⁴ Mississippi Capital Post-Conviction Counsel Act, Ch. 569, § 1 (2000) (codified as amended at MISS. CODE ANN. §§ 99-39-101 to 99-39-118).

⁶⁵ See MISS. PUB. DEF. TASK FORCE, *supra* note 1, at 2.

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ *State v. Quitman County*, 807 So. 2d 401, 402 (Miss. 2001), *aff'd*, 910 So. 2d 1032 (Miss. 2005) (upholding the constitutionality of statutes mandating county-based indigent defense system).

the Mississippi Supreme Court upheld the constitutionality of the state's county-based system in its final opinion in *Quitman*.⁶⁹

Meanwhile, the Mississippi Public Defender Task Force did not issue another report to the Legislature until 2004 when it again recommended the creation of an Indigent Appeals Office.⁷⁰ This time, however, they limited the scope of the report, focusing on a detailed approach to funding and structure of the Indigent Appeals office, eliminating the prior requests for a State Public Defender and further evaluating shifting indigent defense from county to state funding.⁷¹ With these changes, the Mississippi Legislature passed Senate Bill 2960, drafted by the Task Force and put forth by Task Force Member and Senator, Charlie Ross.⁷² In 2005, the Office of Indigent Appeals was established although it would not become operational until early 2007.⁷³

In 2006, the Task Force determined that, since the State had established an Office of Indigent Appeals which paralleled the Criminal Division of the Attorney General's Office, that the next logical step would be to create a training division within the Indigent Appeals Office to mirror the structure and funding mechanism of Attorney General's Prosecutor Training Division.⁷⁴ The Task Force recommended that the mission of the Division of Public Defender Training should be to work closely with the Mississippi Public Defenders Association to provide training and technical assistance to public defenders in all state, county and municipal courts.⁷⁵ The Task Force also proposed some structural and demographic changes to the task force itself and again suggested the establishment and funding of a statewide trial-level felony public defender system.⁷⁶ The Task Force even provided proposed legislation which would have created a Mississippi Indigent Defense Board to serve as an oversight for Mississippi's indigent defense system and create and provide assessments for a

⁶⁹ *Quitman County*, 910 So. 2d at 1048.

⁷⁰ MISS. PUB. DEF. TASK FORCE, REPORT TO THE MISSISSIPPI LEGISLATURE 2 (2004).

⁷¹ *Id.*

⁷² MISS. PUB. DEF. TASKFORCE, REPORT TO THE MISSISSIPPI LEGISLATURE 1 (Dec. 2, 2005).

⁷³ *André de Grey*, *supra* note 42, at 21:19.

⁷⁴ MISS. PUB. DEF. TASK FORCE, REPORT TO THE MISSISSIPPI LEGISLATURE 2 (2006).

⁷⁵ *Id.* at 14.

⁷⁶ *Id.* at 20-21.

State Indigent Defense Fund.⁷⁷ The Legislature adopted the Defender Training Division without the statewide system or state defense fund components.⁷⁸

In 2008, the Task Force turned its focus toward potential pilot program legislation and whether it should include a juvenile defender component.⁷⁹ However, following the 2008 report to the Legislature, the Task Force was discontinued for several years before being revived in 2015.⁸⁰

In 2011, Mississippi enacted legislation which created the Office of the State Public Defender and established qualifications and term of service for the office, set forth staffing and funding guidelines and consolidated the existing Capital Defense Counsel Office, Office of Indigent Appeals and Division of Defender Training into the State Public Defender Office.⁸¹

Then, in the 2015 Legislative Session, the Mississippi Public Defender Task Force was revived and given the renewed task of studying: (1) the needs of circuit court districts for state-supported indigent defense counsel, this time including youth courts, (2) the approaches to indigent defense delivery adopted by other states, and (3) the relationships between presiding circuit and youth court judges and methodology for appointing criminal and delinquency counsel to indigent defendants.⁸²

To fulfill the Legislature's mandate, Task Force Chairman and Mississippi Supreme Court Justice James Kitchens enlisted assistance from the National Legal Aid & Defender Association to identify a methodology for collecting accurate and reliable data from its counties to properly assess the state's needs with respect to indigent defense delivery.⁸³ The Task Force also commissioned

⁷⁷ *Id.* at 60-66.

⁷⁸ H.B. 1498, 2007 Leg., Reg. Sess. (Miss. 2007) (amending §§ 25-32-71, 99-40-1, 99-19-73).

⁷⁹ MISS. PUB. DEF. TASKFORCE, REPORT TO THE MISSISSIPPI LEGISLATURE 3-4 (2008).

⁸⁰ MISS. PUB. DEF. TASKFORCE, REPORT TO THE MISSISSIPPI LEGISLATURE (2015).

⁸¹ S.B. 2563, 2011 Leg., Reg. Sess. (Miss. 2011) (codified as MISS. CODE ANN. § 99-18-1).

⁸² MISS. PUB. DEF. TASK FORCE, *supra* note 80, at 1.

⁸³ *See generally* MAREA L. BEEMAN & TIFFANY CULLEY, NAT'L LEGAL AID & DEF. ASS'N, MISSISSIPPI INDIGENT DEFENSE DATA PROJECT: RECOMMENDATIONS FOR THE MISSISSIPPI PUBLIC DEFENDER TASK FORCE (Dec. 2015), <https://www.nlada.org/sites/default/files/pictures/MS%20Report%20FINAL%2012%2018%202015.pdf> [<https://perma.cc/M5Q5-5GMD>].

the Sixth Amendment Center, through a grant funded by the Department of Justice, to conduct an in-depth evaluation of Mississippi's adult felony trial level indigent defense delivery system.⁸⁴

The Sixth Amendment Center's 2018 comprehensive report found multiple deficiencies and a pervasive lack of oversight and accountability within Mississippi's indigent defense system warranting legislative intervention.⁸⁵ Specific critical findings included (1) lack of methodology for ensuring that municipalities fulfill the state's obligation to provide effective assistance of counsel, (2) lack of independence of the appointment and compensation of indigent defense counsel from judicial influence and control (3) lack of standards and oversight of necessary qualifications and experience of indigent defense attorneys (excluding capital cases), (4) lack of continuity in representation at critical stages of criminal prosecutions, (5) failure to ensure indigent defense attorneys have sufficient time and necessary resources, and (6) failure to monitor or regulate the often excessive caseloads of indigent defense attorneys.⁸⁶

II. THE CURRENT STATE OF PUBLIC DEFENSE IN MISSISSIPPI

Today, Mississippi is one of only eight states that continues to utilize a decentralized county-based public defender system.⁸⁷ Of the eight states, Mississippi, in particular, is frequently cited as a prime example of the unfulfilled promise of the Sixth Amendment right to counsel, and it has drawn particular criticism for systemic failures—including the absence of an oversight committee or governing entity.⁸⁸ Despite having the highest incarceration and

⁸⁴ MISS. PUB. DEF. TASK FORCE, FINAL REPORT TO THE LEGISLATURE 1 (June 15, 2018).

⁸⁵ SIXTH AMEND. CTR., THE RIGHT TO COUNSEL IN MISSISSIPPI: EVALUATION OF ADULT FELONY TRIAL LEVEL INDIGENT DEFENSE SERVICES XII-XIII (2018), https://courts.ms.gov/research/reports/6AC_mississippi_report_2018.pdf [<https://perma.cc/JW46-TV35>].

⁸⁶ *Id.* at III-X.

⁸⁷ Caleb Bedillion, *Mississippi Lawmakers Considered Modest Public Defense Reforms. They Rejected All of Them.*, MARSHALL PROJECT (May 2, 2024, 6:00 AM), <https://www.themarshallproject.org/2024/05/02/mississippi-public-defense-legislative-reforms> [<https://perma.cc/Y8AC-6R7A>].

⁸⁸ *Id.* at 47-52.

poverty rates in the United States, the state ranks last nationally in per capita spending on public defense.⁸⁹ Mississippi has the highest incarceration and poverty rates in the United States,⁹⁰ and yet, the state ranks last nationally on amount spent per capita on public defense.⁹¹

Mississippi's current system delegates implementing and funding of all non-capital trial-level indigent defense programs to each of its eighty-two counties.⁹² State statute provides for the establishment of a county public defender, at the discretion of the county board of supervisors;⁹³ however, only seven counties currently operate full-time public defenders' office.⁹⁴ The state's remaining sixty-three counties utilize part-time appointed private attorneys, many of whom receive flat fees to represent an unlimited number of defendants.⁹⁵

More specifically, there are three primary methodologies for structuring public defense currently in use across the state. Approximately thirty-eight counties have appointed at least one part-time public defenders.⁹⁶ These attorneys are considered county employees and receive a salary and pro-rated benefits but are permitted to continue handling private cases in addition to their public defender duties.⁹⁷ Many of these defenders continue to operate out of their private office spaces and, effectively, subsidize

⁸⁹ Perisha Wallace, *No Equal Justice for the Poor: Mississippi's Failed Attempt to Honor Right to Counsel Mandates*, 9 S.J. POL'Y & JUST. 81, 93-94 (2015).

⁹⁰ See Johnson, *supra* note 2.

⁹¹ Caleb Bedillion, *Mississippi Courts Wont's Say How They Provide Lawyers for Poor Clients*, PROPUBLICA, (Sept. 18, 2023, 5:00 AM), <https://www.propublica.org/article/mississippi-courts-wont-say-how-they-provide-lawyers-for-poor-clients> [<https://perma.cc/NK2D-7YUX>].

⁹² MISS. CODE ANN. § 25-32-7 (1979).

⁹³ § 25-32-1.

⁹⁴ Mrudvi Bakshi, *Public Defender Office Now in Pearl River County*, PICAYUNE ITEM (Feb. 22, 2018, 7:00 AM), <https://www.picayuneitem.com/2018/02/public-defender-office-now-in-pearl-river-county/> [<https://perma.cc/4MSZ-5LSX>] (The seven counties include Forrest, Lamar, Harrison, Hinds, Jackson, Washington, and Pearl River.).

⁹⁵ See OFF. OF STATE PUB. DEF., THE STATE OF THE RIGHT TO COUNSEL IN MISSISSIPPI: REPORT & RECOMMENDATIONS 3-7 (2013), <https://www.ospd.ms.gov/sites/ospd/files/Reports/MS%20Report%20October%202013%20Updated.pdf> [<https://perma.cc/3G77-9L9B>].

⁹⁶ *Id.* at 6-7.

⁹⁷ *Id.* at 3.

the overhead of maintaining a public defender's office for the county.⁹⁸

Additionally, approximately eleven counties utilize an "assigned counsel" model, wherein one or more local private attorneys place their names on a rotation list, subject to the approval of the county (or district) judges.⁹⁹ These attorneys are typically paid an hourly rate for assigned indigent defense cases, although the compensation is typically substantially lower than their private rates and is capped at the statutory maximum of \$1,000 per felony case.¹⁰⁰ Much like salaried, part-time defenders, assigned counsel maintain their own private practices as well.¹⁰¹

Finally, most, if not all, of the remaining counties operate under a contract public defender system. Here, one or more private attorneys provide indigent defense services for one or more counties for a flat fee.¹⁰² These contractors may be part-time or full-time; however, full-time contract defenders are prohibited from taking private cases.¹⁰³ There are also variations in flat fee arrangements among contract defenders.¹⁰⁴ While some contract defenders accept an unlimited number of cases in exchange for their fee, others are able to establish a maximum number of cases which will be encompassed in his or her flat fee.¹⁰⁵ Likewise, under some fee arrangements, trial-related expenses must be encompassed within the contract defender's fee, and in some, the defender must petition the court for additional funding of trial-related expenses.¹⁰⁶

Within these three methodologies, there are any number of variables that may impact and lead to unique challenges in a county or district's provision of indigent defense. To better examine the critical aspects of these systems and make sense of the deficiencies cited by the Sixth Amendment Center's report,¹⁰⁷ I turned to those

⁹⁸ *See id.* at 8.

⁹⁹ *Id.* at 5.

¹⁰⁰ MISS. CODE ANN. § 99-15-17 (2000).

¹⁰¹ OFF. OF STATE PUB. DEF., *supra* note 95, at 3.

¹⁰² *Id.* at 4.

¹⁰³ *Id.*

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

¹⁰⁶ *Id.* at 3-4.

¹⁰⁷ *See* MISS. PUB. DEF. TASK FORCE, FINAL REPORT TO THE LEGISLATURE, *supra* note 84.

working within the system for guidance. Below are summarized excerpts from those interviews.

III. INTERVIEWS

*A. William L. Waller, Jr.
Former Chief Justice of Mississippi Supreme Court &
Former Chairman of Mississippi Public Defender Task Force*

Justice Waller,¹⁰⁸ a former public defender and veteran attorney with more than twenty years in practice, was elected to the Mississippi Supreme Court in 1996 and served on the bench from 1998 to 2019. He served as Chief Justice of the Court from 2009 until his retirement. During our interview, Justice Waller recounted winning his election bid for an open seat on the Supreme Court and said he took the bench with a plan:

One of my interests coming onto the Supreme Court was administrative. I'm probably not a very smart lawyer or a good jurist, but I was interested in the administration of justice. And we had some real problems on the public defense side, particularly with capital defense. So, in researching it and looking at it, I saw we were never going to get any finality unless we came up with a solution to provide adequate defense for criminal defendants, particularly in capital cases, which is where we started.¹⁰⁹

Interestingly, Justice Waller credited the Attorney General's Office with the idea of creating a Capital Defense Counsel, which was created contemporaneously with the Capital Post-Conviction Counsel's Office.

¹⁰⁸ Justice Waller is the son of former Governor William Wallace Sr. who, as a Hinds County District Attorney in the 1960s, twice prosecuted Byron de la Beckwith for the murder of Civil Rights Leader, Medgar Evers, and, coincidentally, subsequently faced and defeated Evers' older brother, Charles Evers, in the 1971 governor race. Bobby Harrison, *Bill Waller Jr.: State Faces Same Woes as in 2019 When He Ran for Governor*, MISSISSIPPI TODAY: THE OTHER SIDE PODCAST, at 25:36 (Oct. 7, 2024), <http://mstoday.libsyn.com/bill-waller-jr-state-faces-same-woes-as-in-2019-when-he-ran-for-governor/> [https://perma.cc/8RD5-VDC6].

¹⁰⁹ Zoom Interview with William L. Waller, Jr., Former Chief Justice of Miss. Sup. Ct., at 03:22 (Nov. 21, 2024)[hereinafter *William L. Waller*].

[W]e pursued the idea of starting with post-conviction relief. . . . [W]e came up with a plan, came up with an office. We got money for expert witnesses, for resources, for investigators, and, lo and behold, the Attorney General just out of nowhere said ‘well, you know, y’all are right. We need to have a capital defender that’s paid by the state and the office is funded, and so forth, so we can quit playing games with the trials. We can have good trials that perhaps would stand up to appellate scrutiny.’ . . . [T]hat’s where it all began.¹¹⁰

When I asked whether he, like some other interviewees, believed that the State’s true motivation for establishing the Capital Post-Conviction Office and subsequent public defense-related state agencies in the early 2000s stemmed from a desire to qualify as an opt-in jurisdiction for AEDPA, he responded:

[E]verybody’s got different backgrounds and different reasons. And certainly, they could say we were trying to comply with the Anti-Terrorism [and Effective Death Penalty] Act to speed up the appeals, to speed up or to reduce the federal oversight through habeas and the parallel appeals and attacks on the federal side. But, ultimately, at least my interest was from the administration point. This thing is not working. We’ve got people languishing in jail, and we’ve got to do something. . . . [I]f they’re guilty, they need to serve the time. If they’re not, we need to let them out of jail or acquit them or do whatever. So . . . my motivation was a process motivation, and not necessarily either prosecution or defense. . . . I was strictly interested in the process. It seemed to me one of our arguments was, if you’ve got to get into these things, you’ve got to have a pathway that’s reasonable.¹¹¹

We also talked at length about the work of the Mississippi Public Defender Task Force. Justice Waller served as the Chairman of the Task Force in 2004 and 2005. Specifically, I asked Justice Waller why he believes we still do not have a statewide system. He had this to say:

¹¹⁰ *Id.* at 03:22.

¹¹¹ *Id.* at 21:39.

[F]rom a political standpoint, all the pressure now is cut taxes, cut taxes, cut taxes, and there's so many needs out there. I don't see that it's realistic that there's going to be a state takeover of public defense and a statewide public defender system. But you could have . . . a hybrid system that would be a great thing. For instance, at the state, if you did a district public defender to mimic the district attorney positions in the state, and state would pay for that, and maybe the county would pay for the [legal] assistants. . . . there's a lot of ways to get into that, . . . but I do think it's time that we stepped up. And it's interesting, you as a law student would be interested in this. We've got a chronic shortage of good attorneys in rural areas. . . . [T]hat is putting additional pressure on the situation, because there's not many people out there in rural areas that are willing to take the cases. . . .¹¹²

We contemplated how to achieve and fund a statewide system, and Justice Waller indicated that there are a number of ways to fund initiatives, whether through added assessments, criminal fines, or other means. He said that one must run the numbers, but there are always cost neutral ways to get the job done. The larger issue, he said, was having someone in place who knows the process and can get the job done.

[T]here are ways to do it that are cost neutral, and, actually, you've . . . got to have a player in there that's got access to number crunchers and to go into Senate committee meetings and things that mere mortals can't do. . . . [I]t's not that big of a deal, it's just that somebody's got to do it.

. . .

I'll never forget when I was [a judge] on city court, there was a public defender. Hinds County had a public defender office, [with] . . . a classmate [of mine] from law school. Her name was Beth Davis. . . .¹¹³ I was on the bench possibly two, three days a week. . . . [S]he would come in every morning that I was on the bench, and she would hand me a list. She said, 'Judge, these are the people in jail that haven't had an initial appearance,'

¹¹² *Id.* at 11:31.

¹¹³ *See infra* Section IV(F). Beth Davis also served as the State Public Defender, unpaid, during the brief life of the Statewide Public Defender System Act of 1998.

and we would give them to the Hinds County Sheriff's Department, and they would go round them up, bring them in so we could get an initial appearance and so the public defender's office could officially start representing them [Y]ou've got to have somebody like Beth Davis. And she didn't get this, necessarily, on paperwork. She got it by walking through the jail and counting people. . . [by] taking the blotter and going through it against people who had attorneys and those who needed initial appearances.¹¹⁴

In fact, throughout the course of our interview, Justice Waller stressed the importance of having people that are motivated to effect change in the public defense arena, and he was quick to give examples of people that he felt have done or still are doing just that.

[I]t takes people that are motivated and want to do that and have an interest other than drawing a check to do it. And that's . . . the great mission of life, because it doesn't really matter if you've got full time public defender or if you've got a raggedy pants lawyer from a rural area. . . . If they're not motivated, then it's not [going to] happen, and people aren't going to get good representation. So that's the key. That's what you need to figure out, Amber.¹¹⁵

. . .

There is a public defender from Bolivar County. . . . [H]is last name is Carr.¹¹⁶ This guy's just on fire, and then he does a great job, and he's a good one. If I was sitting in jail, if I couldn't have Tom Fortner, I'd want him representing me. . . . You've got André de Gruy as the State Public Defender, and there's not a better lawyer, not a better person, not a more motivated person in the state. Nobody tries harder than he to get a statewide system, but he can't do it by himself.¹¹⁷

¹¹⁴ William L. Waller, *supra* note 109, at 33:39.

¹¹⁵ *Id.* at 33:39.

¹¹⁶ Here, Justice Waller refers to Mike Carr, criminal defense attorney and public defender from Cleveland, Mississippi, who also served as an interviewee for this project. *See infra* Section IV(H).

¹¹⁷ William L. Waller, *supra* note 109, at 33:39.

*B. André de Gruy,
Director, Office of State Public Defender*

André de Gruy has served as Mississippi's State Public Defender since his appointment by Governor Phil Bryant in 2016;¹¹⁸ however, he began his work to protect Mississippians' right to legal counsel long before that. As noted above, André began his service in the public defense arena as a student intern for the Mississippi Capital Defense Resource Center in January 1989. Upon his graduation from Mississippi College Law School in 1990, he was hired on as a full-time staff attorney and eventually served as Mississippi Capital Defense Resource Center's director before it closed in late 1995 or early 1996. Mr. de Gruy also served as an assistant public defender in Hinds County, working alongside fellow interviewees, Tom Fortner and Phil Broadhead,¹¹⁹ and as the inaugural director of the Mississippi Office of Capital Counsel (now the Capital Defense Counsel division of the Office of State Public Defender).

When I met with André, we talked at length about Mississippi's lack of a statewide system, and I was somewhat surprised to learn that he is not a proponent of a fully statewide system. In fact, he seemed frustrated that reform efforts are often stymied by public defenders' fear of such a system and the misconception that his office wants to impose a statewide model and completely eliminate part-time county defender offices.

¹¹⁸ *André de Gruy*, OFF. OF STATE PUB. DEF., <https://www.ospd.ms.gov/sites/ospd/files/OSPDBios/AndredeGruy.pdf> [https://perma.cc/JY3D-FAKM] (last visited Dec. 19, 2024); see also *The Clarion-Ledger*, *De Gruy appointed state public defender* (June 30, 2016, 5:54 A.M.), <https://www.clarionledger.com/story/news/politics/2016/06/30/bryant-appoints-de-gruy-state-public-defender/86552510/> [https://perma.cc/SJ2Y-B6KP].

¹¹⁹ *Tom Fortner*, *supra* note 48, at 23:12, 1:04:20.

[P]art of the mistake, is that . . . in the last 25 years, there hasn't been an argument for a full-time system. Yeah, that's the fear. People say, 'well, we don't want a full-time system,' but that's not what's being proposed. It's not what was [ever] proposed. [The taskforce proposal] explicitly left the current system, where you could have full-time or part-time option. . . . Since 1998-99, . . . the argument has been 'we don't want a full-time system,' but they're arguing against something that's not been proposed.¹²⁰

Then, the conversation turned to why public defenders fear a statewide system when most experts have suggested that a statewide structure is necessary to provide adequate indigent criminal defense required by *Gideon* and its progeny.¹²¹

[B]ecause they're lawyers that are doing it part time, and they do not want to be full-time public defenders. . . . [T]hey fear a system of only full-time. And it doesn't matter how many times I say that would be a disaster to have a full-time only system – you should never have a full-time only system – they have that fear anyway. And then you have some who, right now, if there are no standards, and they decide what they need to do and not do, . . . subject to a client writing a letter to a judge, they can control how much time they spend on the case. So it doesn't matter how many cases they have, they just reduce the amount of time on each case, they're still going to be just doing this part time. To me, the problem is more that, despite the change in the rule and the requirement of continuous counsel, we still have gaps of where you might have . . . a lawyer in name, but they're not doing anything.¹²²

Next, the conversation turned to how this gap creates a disparity between the prosecution and the defense from the beginning of a criminal prosecution, a disparity that can pervade the entire process.

¹²⁰ *André de Gruy*, *supra* note 42, at 05:55.

¹²¹ *See generally* *Gideon v. Wainwright*, 372 U.S. 335 (1963).

¹²² *André de Gruy*, *supra* note 42, at 46:21.

[T]he prosecutor's ready . . . that's why he got the indictment, because he's ready to go. He's got everything he needs. So, it's working on things early – not just continuous representation, but getting the lawyer that's going to handle the case throughout on the case earlier. . . . [W]hen I look at part-time, it's not that they spend so much of their time doing civil cases or something else. The problem, to me, is that they're only part-time on that case.¹²³

We also spent some time discussing the various proposals that have been contemplated over the years which do not involve a fully statewide system, but which improve upon the current model.

In the 2019 and 2020 session we were trying to advance the Task Force bill. . . . [T]hen we . . . came back and said, '[can] we work on pilot projects,' which was something the Task Force had talked about over the years. . . . [T]he idea evolved a couple of times. With the most recent one, just sort of for geographic disparity, we wanted to look at helping in South Mississippi, using the Supreme Court districts, Southern, Central, and Northern districts, and just put a pilot. The reason we were selecting or looking at one in each area was fairness to the whole state. There's nothing magic about it. . . . [T]he idea is, using state money to help them set up this pilot, they would then see the value. . . . [W]e could move this to more districts, more areas, basically just doing the Task Force recommendation on a few districts at a time.¹²⁴

. . .

Then, . . . the Legislature started focusing on Hinds County [and the] City of Jackson. [W]e got involved from the state office in supporting the Hinds County office, and now we are funding some of the positions there. . . . [T]he support we're providing in Hinds County today is actually more than what the Task Force recommendation would have done, because the Task Force would have had us following the Task Force recommendation. . . . The State Commission would have picked the public defender for Hinds County and paid just that

¹²³ *Id.*

¹²⁴ *Id.* at 18:07.

position and its office expenses, and then the rest of the staff would have all been funded by [Hinds] County. . . . Now, . . . the chief senior judge picks the public defender, but [the Office of State Public Defender] fund[s] three of the positions. If you had that model in every district, we'd be funding at 50% in some places, complete funding in others. . . . [E]ven if the belief is that the state ought to be taking on the majority of this responsibility, that would actually get us there faster. . . . [F]or the last couple of years, that's what these pilots evolved into. . . . [N]ow we're in Jackson, so we'll just add some positions in Jackson, and then go beyond that to look at doing something similar in South Mississippi and North Mississippi.¹²⁵

. . .

[I]n 2024, just the [creation of a] standard setting authority was presented. It was presented [to the Legislature] for the last three years, and it never made it to a committee agenda on the Senate side, but it passed the House two years in a row. So this year, we focused on the Senate, trying to get it moved through. . . . [W]e had the Supreme Court as the sort of protector of public defenders, so that it wouldn't just be me in Jackson setting rules for the whole state. The Supreme Court would have to approve them. The [American] Bar Association, which is representative of all lawyers, thinks it's a great idea that you would have standards for counsel. It seems like a given. . . . [I]t came back out of the Senate Judiciary A committee. It was modified in the committee, but it essentially passed out onto the floor, was voted on the floor and passed. That's when Senator Sparks raised the objection and a motion to reconsider. Other than the questions he asked about it when it was first voted on, there was no opposition to it there. They had a committee hearing,¹²⁶ . . . there were discussions in the committee, and they made the modification to take enforcement authority out. Which, in an ideal world . . . what do you do if you have a rule that you can't enforce? Is it really a rule? . . . I think just having the rule out there, having the standard out there, would have been valuable. So, [the bill] passed out of Committee and then passed on the floor of the Senate, so you essentially have a bill that has unanimously

¹²⁵ *Id.*

¹²⁶ *Id.* at 10:31-12:32.

passed the house in the previous year. It's now passed the Senate. We just made the assumption that it would go to the House and pass easily, and . . . basically on a procedural move, it was killed. I don't know yet whether the Senator who filed the bill has an interest in in going back through that fight, so I don't know if it's going to be back for the Legislature this session.¹²⁷

He also shared with me some details for the latest proposal that his office has been working on in partnership with the nonpartisan organization, Deason Criminal Justice Reform Center, through the Dedman School of Law at Southern Methodist University.¹²⁸ Deason has done extensive work in West Texas and Kansas, focusing on Star communities – small, tribal and rural areas.¹²⁹ This work not only addresses indigent defense and its challenges, but also addresses the broader issue of legal deserts in general, with the hope of drawing people into these communities long term.¹³⁰

[T]he plan that I had in July . . . I've given it to the legislature, looking at two pilots, one in the north, one in the south, has already evolved into one pilot. . . . [B]ased on conversations we're having now, everybody's been encouraging, which you know from the work you've been doing, that you don't find agreement on much. We're trying to get this together in time to get to the Legislature. . . . [B]asically, we're walking in January to say 'everything we asked for in July? We're going to combine it in one place.' We're going to ask for less money, which will make them happy, and this is going to be done differently. It is going to be done in ways I hadn't imagined before because I was trying to fit a pilot into existing statute, and this is going to be something different. It's not going to be creating a district office or state office. . . . [W]e're going to sit down . . . and see if we can get a single pilot opened that would be multi-county, that we can run for two or three years to show a way that we can do rural public defense that doesn't just have

¹²⁷ *Id.* at 12:32.

¹²⁸ *André de Gruy*, *supra* note 42, at 46:21.

¹²⁹ *STAR Justice Initiative*, DEASON CRIM. JUST. REFORM CTR., <https://www.smu.edu/law/centers-and-initiatives/deason-center/issues/star-criminal-justice> [<https://perma.cc/3NUL-H3SX>] (last visited Apr. 17, 2025).

¹³⁰ *Id.*

the immediate concern and, really, the only concern I've focused on for years: getting better representation for the indigent accused at the beginning and all the way through. Their concept is that this is going to be transformational to the [entire] local legal system, not just criminal legal system. The idea is they'll bring somebody into this office and in three to five years, they're going to go out into private practice and stay in that community. So, you'll have more lawyers to do loan closings and . . . whatever else needs to happen in rural areas that you can't find lawyers to do now.¹³¹

I asked André about the frustration associated with working and trying to garner support for the rights of indigent defendants and their legal counselors who have not received strong support from the Legislature in recent decades. He remains optimistic.

[I]t is frustrating, but we've accomplished some good things. And we continue to. We're making more progress right now in the youth court area. . . . [T]hat's where there's interest in doing things. . . . [T]his Friday, we'll be at the Senate Judiciary A having a hearing on the Youth Court Commission report and interest there in implementing things which impact our work in providing representation in the youth court. So, we'll work on that. It's just a slow process. Things are better today than they were 25 or 35 years ago, and so we just keep working.¹³²

*C. Kelsey Rushing,
Capital Defender, Office of Capital Defense Counsel*

Kelsey Rushing has worked in the Office of Capital Defense Counsel for over fourteen years and was appointed as the Capital Defender in June 2021. His office defends death-eligible cases at the trial-level; however, their involvement is far from automatic. Mr. Rushing explained that, unlike states that operate under a statewide system and assign Capital Defense to every capital case, the Mississippi Office of Capital Defense Counsel essentially serves as resource or associated counsel upon invitation by the local public defenders. This system prevents automatic judicial appointments which might otherwise overwhelm the Office's limited staff,

¹³¹ *André de Gruy, supra* note 42, at 18:07-36:43.

¹³² *Id.* at 16:37.

resources, and budget, and it further serves as a demarcation line between meritorious capital cases and cases where district attorneys overcharge defendants so they can negotiate pleas to more serious, non-death eligible, charges.

He noted that, in death-eligible cases, counsel's primary focus is often mitigation¹³³ rather than proving actual innocence, which presents unique challenges when preparing cases for trial.

We need time to do the things that we do, and it's not a stalling tactic. [Y]ou have to realize that if someone is charged with capital murder and they're seeking death, right? That's probably the big news in that community in rural Mississippi. . . . [S]o the first thing that we're asked is 'well, how long you think it's going to take?' Well, I don't know, I just got on the case. And most judges and D.A.s think that once you have a mental health exam, you should be ready to go to trial. But that's not mitigation. . . . [S]o, it's almost forcing us to commit malpractice in representing our clients - because you want to clear your docket and call the press in every time we're in trial or we're in court. . . . So, a lot of times . . . I'll tell the DA, . . . "how many times you want to try this case? We can . . . do what we're doing now and possibly try it once or you can keep pressing the issue. Somebody's going to commit an error and we're going to come back and try this case again. So, just allowing us to do our job."¹³⁴

I asked Mr. Rushing why he believed there was so much pushback against a statewide system or statewide standards for indigent defense from public defenders themselves, and his sentiments were similar to those expressed by many of the interviewees.

We have some public defenders who are great and do wonderful jobs. And then there's some that aren't. [S]o, when we come in, or when you have a state system, your pushback is twofold. One is the money. And the other pushback is, just to be frank about

¹³³ Mitigation investigations focus on finding evidence of mitigating circumstances which, despite having no bearing on a defendant's guilt, may bear on a court's determination to lessen the severity of punishment imposed. *Mitigating Circumstances*, BLACK'S LAW DICTIONARY (12th ed. 2024).

¹³⁴ Zoom Interview with Kelsey Rushing, Capital Defender, OFF. OF STATE PUB. DEF., at 58:05 (Nov. 7, 2024).

it, is the public defenders that are not so good, but who are still getting the contracts . . . will be told, 'yeah, you're probably not going to be the public defender for this circuit.' . . . [T]he pushback is 'I don't want to lose my job.' . . . [T]he fear is that if there's a state system that comes in, you'll have full-time public defenders. And [part-time defenders] will have to make a choice: do I want to be a full-time public defender or be strictly private practice? . . . [A]t the end of the day, that's really what it boils down to.¹³⁵

Mr. Rushing also offered valuable perspective on what it means to be "tough on crime" in Mississippi and the hidden costs that often result.

[People will say] 'I can't be easy on crime and continue to get elected.' Right? And any type of criminal justice reform is going to be seen as a weakening of my stance, on how tough I am, and 'all the bad guys need to go to jail.' But then you realize, too, from an economic standpoint, . . . that it costs you so much to be tough on crime. . . . [I]n the poorest state in the Union with the second highest incarceration rate . . . we are spending millions of dollars on low-level criminals because we want to be tough on crime. [For example, the Legislature] bounced back four different iterations of the gang bill They wanted to do this [gang bill] in order to show that the gangs are running amok, and we want to enhance these [sentence] times But I think it was their finding that a lot of young people who are arrested from these low-level drug deals, . . . they weren't gang members going in. They're gang members coming out.

[A] lot of times the economics are used, . . . and you have so many people that you're denying parole to because you want to be tough on crime, right? And so now you have these huge incarceration rates and all this stuff, and then these certain judges and A.D.A.s saying, 'everybody's got to go to jail if you commit a crime here.' Part of that helps that process, or maybe moves that along, is having a great set of public defenders. Well, if I have really good public defenders or people really kind of dedicated to the craft, does that mean I'm getting weak on crime? They need to stay in jail, right? And so, these conversations are short lived until you can start showing an

¹³⁵ *Id.* at 48:04.

economic incentive. It's all going to come back down to the money.¹³⁶

To sum up our conversation, I asked him what he would consider to be the most crucial “need” to improve indigent defense in Mississippi.

[For] most of your public defenders . . . anything that they need, they have to go to the court to ask for. Part of having a statewide system would be that the resources that they need, they wouldn't have to go ask for it. They would be able to go into the system and get whatever it is that they need . . . and sometimes, [it is] just as simple as an investigator. There's a lot of public defenders, you would be surprised, in some of these small counties where they don't have investigators, they literally are going to trial on what's in the discovery. And there's very little conversation with any witnesses or anything outside of that, just because they don't have investigators. They would have to go to the court and ask for funds to get the investigators. So, sometimes for me, I think the advantage of having a statewide system is just to give resources to the people doing the job every day. Because the DA has it. The DA literally has the entire United States government.¹³⁷

*D. Krissy Nobile,
Director, Office of Capital Post-Conviction Counsel*

Krissy Nobile has served as the Director of the Office of Capital Post-Conviction Counsel since 2021, although her trajectory to the role was somewhat unorthodox. After a brief stint in private civil practice, she actually worked for several years in the Mississippi Attorney General's Office, where she served as Deputy Solicitor General before departing in January 2021.

This transition from the prosecutorial side to defense work (or vice versa) is sometimes referred to in the legal community as “crossing the v.” We spoke at length about what that transition was like for her, as well as how her decision to make such a change was received by her colleagues at the time.

¹³⁶ *Id.* at 50:55-52:49.

¹³⁷ *Id.* at 1:03:49.

I did feel the ‘us versus them’ sentiment. When I left the AG’s office, I was expressly told that I had ruined my career. And there are still a couple of people at the AG’s office, one who has now left, but a couple people who, literally like I’ve known since I’ve practiced law, who refuse to speak to me . . . [who] have not spoken to me since early 2021.¹³⁸

I also asked if she had experienced the sentiment, during her time at the Attorney General’s office, that prosecution valued an easy win over ensuring that both sides of the system were functioning well. She was hesitant to paint all prosecutors with such a broad brush but did acknowledge that the attitude certainly does exist.

I do think in my prior life, a lot of people just cared about a win. . . . [E]ven after one particular win – it was a juvenile who was going to spend the rest of their life in prison. I had several of those, and people were super, super excited about a win. And I’m sitting there, and I literally, and I’m not the most emotional human in the world, and I’m crying. . . . I’m noticing this stark difference. Even if you believe in . . . ‘this person needs to be locked up forever,’ . . . they’re 15 and their life is over.¹³⁹

Speaking more generally about what prompted her to make the move from criminal prosecution to death penalty defense work, Krissy admitted that she witnessed a bias towards the prosecution that sometimes led to wins that should have been losses.

I hate . . . when people say . . . the system is ‘broken,’ because sometimes I feel like it’s only broken when we don’t admit it’s a flawed system because it’s a human system. But I really saw the brokenness of it from the state side in more than one way. . . . I honestly felt like some of the cases I had and easily won, I could have probably not prepared at all and still have won. There were also three or four cases that, . . . I firmly believe as a lawyer, I should have lost. [L]ooking back, the state should [have] los[t] this issue. . . . [I]t was really having those cases . . . where the wins were the ones that hurt so bad, just even as . . . a person, because it’s a criminal issue, and you have to have

¹³⁸ Zoom Interview with Krissy Nobile, Director, OFF. OF CAP. POST-CONVICTION COUNS., at 09:34 (Oct. 25, 2024) [hereinafter *Krissy Nobile*].

¹³⁹ *Id.* at 11:29.

a certain reverence when people are facing incarceration or death, especially death and life without parole. I had several of those and felt like some of them, the state should have lost, and pretty easily won. [I]t took a couple of those cases where, really, . . . the wins got harder to live with. So, I started talking to my predecessor and some others about . . . jumping sides and doing . . . work on the other side. And after winning one big case, I turned in my resignation and jumped over and worked as an attorney in the office before becoming the director.¹⁴⁰

We also discussed how her office came into existence and how, in a state that seems hesitant to fund any sort of trial-level public defense reform, the Capital Post-Conviction Counsel Office received support and, more importantly, funding.

Essentially, two reasons. One, if the state wants to get any kind of deference in its capital federal habeas cases, it has to have its system open in state court for us to exhaust remedies and bring the claims in state court and give the state the first . . . bite at the apple on addressing the claims[. T]his is a very abbreviated kind of version, but if they do address them thoroughly, [and] truly have a robust post-conviction process for capital clients, then once you move into federal court, the federal courts are required to give deference. So, one reason is they needed it for federal court issues. And then two, the other reason is the Mississippi Supreme Court had held that you had a right to effective assistance of post-conviction counsel in capital cases,¹⁴¹ so that was a state law issue. So, there were state law issues and federal law issues pushing the need for an office. Because what was happening before is the capital cases were just very, very patchwork. [Y]ou would have some capital clients who were having to draft and file their own petitions. Some were being appointed [and were] not qualified attorneys. Really, there were only a handful of . . . death-qualified attorneys in 2000, . . . literally less than a handful. So, for some federal reasons and then some state law reasons, that's kind of how it came about. The problem is this office also wasn't funded when it was first opened, so you had one director resign because he felt like he was going to be [ineffective.] [He was] awesome, and he was going to be ineffective if he . . . continued

¹⁴⁰ *Id.* at 02:11.

¹⁴¹ *Grayson v. State*, 118 So. 32 118, 126 (Miss. 2013).

this work. [H]e couldn't do it ethically. And then one director was just completely underfunded. He had twenty-seven petitions due the same week-ish. Twenty-seven death petitions - I mean, my last petition was like 200 pages and 6000 exhibits.

...

The office was miserably underfunded, so it took a while for this office to get fully funded and fully staffed, actually. But I do think . . . if you don't have the process open for capital defendants to exhaust their remedies and for the state to try to make sure they're rectifying any area, any errors, securing constitutional rights before it gets to federal court, you've got a wide-open claim in federal court. . . . [I]t makes sense for the state to be the primary guardians of criminal rights. It's a state issue, and it should be guarded by the state court.¹⁴²

As Krissy explained, the Office of Capital Post-Conviction Counsel enters a case after someone has been sentenced to death and his or her conviction has been upheld on direct appeal by the Mississippi Supreme Court.¹⁴³ When the case is received, they have one year to investigate and present any new evidence claims, including *Brady* violation claims,¹⁴⁴ ineffective assistance of counsel claims, or new retroactively applied laws from which a client may benefit.¹⁴⁵ By statute, this representation continues until the client is executed, released from death row, or dies of natural causes.¹⁴⁶ As a result, the Office Capital Post Conviction Counsel possesses a unique vantage point for evaluating the challenges faced by public defenders at the trial level.

¹⁴² *Id.* at 17:46.

¹⁴³ *Id.* at 27:41.

¹⁴⁴ *Brady v. Maryland*, 373 U.S. 83 (1963) (establishing *Brady* violations, which are due process violations that occur when the government fails to disclose evidence materially favorable to an accused).

¹⁴⁵ *Krissy Nobile, supra* note 138, at 27:41.

¹⁴⁶ *Id.*

[O]ur public defenders are awesome, but they don't have enough time, and they don't have enough resources, and they're paid terribly[, s]o from that perspective, yes. From another perspective, I think it's just a holistic approach[, and] in how we approach criminal cases in Mississippi[, t]here's just, there's a very big presumption that, you know, the person is guilty, the person needs to be in jail. The person needs to be . . . locked up for a long period of time. . . . I think it's more than just a broken public defender system. It's just a bigger, bigger issue, I think, in our state.¹⁴⁷

We also talked candidly about the nature of appellate work and how her office is often put in a position of seemingly "criticizing" public defenders and the animosity this can create. However, while she acknowledged this unfortunate reality, she was quick to clarify that ineffective assistance of counsel claims are more often the product of inequity of resources rather than egregious failures by the attorneys themselves.

[In] a lot of cases . . . there is some kind of ineffective assistance claim, ye[s]. I had one case recently where the defense attorney did no mitigation during sentencing. So, when the sentencing phase started, even though this particular client had family in the courtroom, ready, willing to testify, the attorney stood up and said he was not presenting anything. That's baffling to me, especially in a case where you have family right there at your fingertip that would be happy to tell the life story of their loved one. I have another case where a death penalty trial literally lasted a day and a half. There were no defense witnesses called. [T]hose types of cases . . . that level of egregiousness, I would say, is rare. But . . . even when you have . . . a very, very good trial attorney, like I've got one that is an actual innocence case, and Mark Williamson, out of Starkville, is a fantastic attorney and did a fantastic job in the guilt phase of which was his portion of the case, but it was just him. He got less than \$1,000 for investigative fees. So, you'll see the investigators' notes and one of those is . . . 'I'm not doing anything else until I get paid,' and Mark didn't have any more money[.]. [W]hen you've got the DA's office who has two or three attorneys in the case, great investigators[,] . . . how do you combat that as a single

¹⁴⁷ *Id.* at 07:43.

practitioner, given no fees, really, for your investigative services while you're handling a hundred other cases? Even with some of them that you would not typically see as ineffectiveness claims, . . . if they don't have the money and they don't have the time, they can't do anything.¹⁴⁸

I also asked Ms. Nobile to discuss whether there were obvious differences or disparities between the caliber of defense provided by local public defenders compared to the State Public Defender's Office.

[E]ven when the State Public Defender's office does come in, we're not where we need to be. And I would say, . . . just from going to conferences and seeing how other states do it, they're doing a much better job than we are. . . . I had a colleague who was a public defender for about 20 years before she jumped over to doing post-conviction work, and she started right out of law school. That first year, she had a murder case, but she also had, at one point, 227 open cases. If you throw a death case onto someone who's got 227 open cases, there's no possible way that one person can do a death case. . . . [W]hen we're doing it from the post-conviction side, it's . . . at least two attorneys on every case, a mitigation specialist and an investigator on every case; that's a low number. So, at least when the state public defender's office comes in, their capital trial folks . . . specialize in capital work. They know how to do a mitigation investigation. They understand that it is a whole separate trial from the guilt phase. [A] lot of times you either don't have the experience or the time or the funds if those folks aren't coming in.¹⁴⁹

Building on her comment about Mississippi underperforming in relation to other states, I asked Ms. Nobile to elaborate on how she believed Mississippi could improve upon its current system of indigent defense delivery and she spoke of increased resources for public defenders, pay parity, and flexibility among counties.

[O]ne, I would say, resources for public defenders. . . . I am a state agency, so I have a budget, and it's carefully scrutinized by the legislature. So if I need an expert, I'm not running to the

¹⁴⁸ *Id.* at 13:44.

¹⁴⁹ *Id.* at 37:35.

court saying, ‘hey, I need \$10,000 for this expert.’ I’m going to draft a contract and I’m going to get the expert that I think is required . . . [to] legally, ethically do my job. Some public defenders don’t operate like that. They’re running to the court every time they need a little bit of money to get an expert, [and] a lot of times they’re turned down. More resources would be, I would say, one. Along the same lines, dedicated public defenders – . . . and I don’t mean dedicated by work ethic. I mean, instead of this patchwork[,] . . . a robust public defender office. And whether or not that’s statewide or it’s just a county specific thing, more money. Public defenders are not [paid] even close to a DA salary I would say resources, resources, resources.

. . . .

And I know plenty of public defenders who have their private practice too and like it. One reason they like it is because they’re paid so poorly as a public defender that they couldn’t survive without having the private practice also. Also, I don’t believe every county should be cookie cutter. . . . I would not say we have to have a state public defender system, and it should be this way in every county. Because, I mean, every county is different, and the needs of every county are different. But you definitely have a push for our prosecutors to get the best and get what they need. You don’t have that same push for criminal defense. [So] I do think resources are the main thing.¹⁵⁰

*E. Phillip W. Broadhead,
Professor Emeritus at University of Mississippi School of Law*

Professor Phil Broadhead practiced law for more than twenty years as a public defender, working in Marion and Hinds Counties. He then embarked on a “second act” career on the faculty of the University of Mississippi School of Law. During his nearly twenty-year tenure, he served as the director of the University’s Criminal Appeals Clinic before taking Emeritus status in 2019.¹⁵¹ Professor Broadhead spoke at length about the history of public defenders in

¹⁵⁰ *Krissy Nobile, supra* note 138, at 39:50, 44:57.

¹⁵¹ Interview with Phillip W. Broadhead, Professor Emeritus, Univ. of Miss. Sch. of L., in Oxford, Miss. (Sept. 11, 2024).

our state, the challenges they faced during his career and the time he spent consulting with the inaugural Mississippi Public Defender Task Force. Professor Broadhead, like many of the Task Force Members, acknowledged that strides were made but that there was a sense of frustration at a job left unfinished, either because of conflicting motivations of parties involved, budgetary concerns, or plain apathy and indifference. As he put it, “[I]t was half a loaf. Maybe not even a slice of the bread.”¹⁵²

[I]n 1996, the Congress passed the Anti-Terrorism and Effective Death Penalty Act [and the pertinent part of that Act said that] told the states that you cannot execute anybody else until you have a post-conviction counsel office to represent these people on death row. [T]he whole purpose of the act was to speed up the death penalty process, and they figured the best way to do that was to get competent counsel to represent these guys on death row. . . . So, the State, in receiving the news that they weren’t going to be allowed to execute anybody else until they funded this full-time office, the Legislature created a Statewide Public Defender Task Force[, and] that was in 1999, I think. . . . The discussion centered around whether there could be a statewide office that oversaw all of the county offices, or whether or not it needed to be created from the bottom up or the top down. You create a statewide office and you just oversee all the eighty-two counties, or you create a public defender’s office in every district, each one of the twenty-two districts, and you go up from there and have a statewide oversight of all of these full-time public defenders, and fire the ones that didn’t do right and try to retain the good ones. [T]hey had several hearings and went about their business, but, and I don’t know if I should say this or not, but a lot of the people who were in the legislature, are now dead so who cares[?] They had the votes counted before we even had our first meeting. [And t]hey were going to create that Post-Conviction Counsel Office, but they weren’t going to create anything else.¹⁵³

One of the primary goals of this project is to understand why so many efforts at reform have failed when experts and research largely support that Mississippi’s current system is failing. To that

¹⁵² *Id.*

¹⁵³ *Id.*

end, I asked Professor Broadhead to elaborate on his thoughts on this matter. Does it truly come down to not wanting to spend money and allocate the necessary resources?

No, no . . . All through my career, I had people say, ‘how can you represent those people?’ [T]he idea of spending money to provide counsel for the worst of the worst, or the people who are caught in difficult circumstances[] or whatever it is, they’re just not willing to do that. [I mean, t]his is a very conservative state, [so] when it comes to providing counsel for accused persons, they’re going to do the bare minimum because [most people believe] it’s either your fault or God’s will that you’re in the position that you’re in. [So,] you’re going to go to . . . prison, for long terms[. A]nd, of course, that doesn’t work because every time they build a prison, the next day it is full.¹⁵⁴

*F. Tom Fortner,
Partner, Lowery & Fortner, P.A.*

Prior to joining the private firm where he currently practices, Tom Fortner had a long and storied career in public defense. He is a founding, life member of the Mississippi Public Defenders Association and served as the second full-time public defender in Jackson County for ten years before serving as Hinds County’s first full-time public defender from 1991 to 2005. Due to scheduling conflicts, he was one of the last interviewees I was able to speak with; however, everyone that came before told me, in no uncertain terms, that “If you want to know about the history of public defenders in Mississippi, you’ve got to talk to Tom Fortner.”

[W]hen I was a third-year law student, Jackson County in Pascagoula had established a full-time public defender office. And as far as I know, the first full-time public defender there was a man named Louis Fondren. [H]e . . . was the full-time public defender, and he was the only person in that office when I went to Pascagoula as an extern in my third year of law school Then I graduated from law school and I went to Eastern Kentucky because Eastern Kentucky had a statewide public defender system called the Office of Public Advocacy, and they offered, if you went to work for them or for a public service firm

¹⁵⁴ *Id.*

or whatever, in Kentucky, they had a Limited License Practice Act where you could practice law as a public defender while studying for the bar exam, as long as you took the bar exam within one year. So that's, I went to Kentucky, but six months after getting to Kentucky, Louis Fondren in Pascagoula decided to resign . . . to go back into private practice. The senior Circuit Judge there was a man named Darwin Maples . . . and the senior circuit judge had the authority under the statute to appoint a full-time public defender if you had a public defender office, so he called me and asked me if I would consider coming back down there. [S]o[,] I went down there, and the local bar association made nominations to the senior circuit judge for the public defender position. . . . Darwin Maples appointed me to be the public defender in Pascagoula. . . . [S]o[,] I was the full-time public defender in Pascagoula from 81 to 91, and by the time I left there, it had a staff of four people: the full-time public defender, the full-time assistant public defender, paralegal, and a legal secretary. . . . [T]here were four people in there, and we handled only felony cases, except for Youth Court. Once a week, I had to go to Youth Court and do Youth Court defense and defend children charged with delinquent acts, which were felonies. . . . I did that for 10 years. . . . Hinds County didn't have [a public defender] office. At that time, most counties in the state, almost all counties, did not have public defender offices. They had just a rotating list of attorneys that took Court appointments. Judge Bill Coleman, William Coleman in Jackson, decided that he didn't he didn't like that. He didn't think that was the way to do it. . . . [H]e told the board of supervisors that if they didn't establish an Office of the Public Defender, a full-time office, he was going to start paying the appointed attorneys more money than they were already making. And they weren't making much anyway . . . so based on his recommendation, they established the Office of the Public Defender in Hinds County. [T]hat was in the Spring of 1991 or the Fall of 1991. So I moved to Jackson and headed up that office. We formed the office. . . . I think it started off maybe with six attorneys in it. Eventually, by the time I left, there

must have been, I'm going to say, twelve or fourteen attorneys and staff in that office. It was a busy, busy office.¹⁵⁵

We spent some time talking about his time on the Mississippi Public Defender Task Force and the challenges they faced in light of dueling perspectives of the members as well as the broader objections to a statewide system that existed at the time.

I think the Prosecutors Association . . . just didn't want to see an organized defense system because that would . . . only provide better defense to individuals, right? It would make their work a little harder, their work a little more difficult, I think. . . . I think prosecutors, they are the establishment. . . . I think . . . that it felt threatening to them [p]robably. I don't know that you can really quantify it any statistical way, but I think that was probably the main issues that they had with it, and they probably still have issues with it. . . . I have no idea, but I think the truth is, . . . like in Hinds County, for that period of time, it streamlined. The courts ran smoother. Cases went faster. There wasn't a large backlog of unresolved cases. . . . [I]t really did make a positive difference. . . . Overall, it ended up being cost effective. Also, if you got an organization that's constantly checking the jails to make sure people are getting out on bonds when they get set and things like that, it starts saving money for the sheriff. It starts saving money for everybody. . . . [T]o that extent, . . . I think the public defender system won over some prosecution support. . . . [E]ventually, I think that's exactly what ended up happening.¹⁵⁶

I asked if he thought there was an added argument that convictions are actually stronger or more secure, with more finality, when a state prioritizes a robust public defense system and, further, whether that might be a selling point to obtain buy-in from those on the prosecution side of the justice system.

¹⁵⁵ Tom Fortner, *supra* note 48, at 10:25.

¹⁵⁶ *Id.* at 29:14.

[Yeah,] I think you could. I think you could make that argument very well. And I think that there are some district attorneys now around this state who would look at you and say, yeah, that'd be okay. . . . We'd like that just fine, because these days, they're, well, I can't say all of them, but they run pretty good offices. . . . I don't really think they have anything to fear about that. And I think you're right about the finality. I think the finality would be more certain that way, one way or the other, either direction, it would be done, and you would move on. And the truth is, . . . if you're going to . . . thrive doing this kind of work, both prosecution and defense, . . . you really have to be able to take the personal [out of it]. It's not personal. It's just not. . . . [T]wo lawyers can walk in the courtroom and go at it and walk out of the courtroom and shake hands. . . . [T]hat's just the way it's supposed to be. And . . . sometimes we get away from that. The emotion in the moment gets all of us away from that more professional behavior.¹⁵⁷

Finally, I asked him his thoughts about what the Task Force was able to achieve and, conversely, what it was unable to achieve.

[D]uring that time, and I want to say around 2000, is probably when we were pushing real hard for a statewide system. And there was Mississippi Supreme Court [Justice] Jimmy Robertson who got involved in that. He and a couple of other lawyers, kind of influential in the state bar and that kind of thing, got behind it. And I don't remember all the details of it. . . . There was a Statewide Act passed, and it might have been 2000 or 2001 that established a state public defender. The problem was that there was a long-time head of the Legislative Appropriations Committee, [he] was a guy named Charlie Capps. I think he was from Cleveland, Mississippi, like Bolivar County. Charlie had been the head of the appropriations for a long, long time, . . . which, just like any other legislative body, that's a real power position. And Charlie didn't, for whatever reason, just was . . . not willing to adopt some new kind of thinking. Charlie didn't like the public defender idea, the statewide system, so when it did pass, it couldn't get funded. When it didn't get funded, my deputy public defender, Beth Davis, took that position, and I think she served for a couple of

¹⁵⁷ *Id.* at 59:03.

years without any salary, without getting paid, and then eventually it just kind of went by the wayside.¹⁵⁸

One of the great benefits as he sees it is the establishment of the Office of State Public Defender, which acts both as a training resource for public defenders throughout the state and a secondary support in complex felony cases.

In fact, the state office, handles training of public defenders statewide, . . . which helps a whole lot. I mean, it really does make a very positive difference that way. And they'll step in and help when things, if somebody just is in over their heads or something like that, they are more than willing to help out any way they can.¹⁵⁹

*G. Butch Scipper,
Chancery Clerk for Quitman County, Mississippi*

Butch Scipper is the Quitman County Chancery Clerk and served on the Mississippi Public Defender Task Force from its inception in 2000 until 2008.¹⁶⁰ During our interview, he reflected on his time on the Task Force, the amount of work involved, and the frustration over not achieving a true statewide system. Of his time on the Task Force, he said:

I stayed on it just a short period of time. . . . It took a lot of time. It took a lot of energy. And I fought it from '98 to then. I was just ready to lay down that burden and let somebody else do this. I saw that I was just really in deep water there, because it was all legal jargon all the way through. . . . [E]verybody in that thing was tied to the law some way except me. I was a clerk, and after we got it down, I just got frustrated with them that they didn't fund us. I really thought, 'it's never going to be funded.' . . . [T]hey repealed it, and they're not going to fund it. . . . And we ran into a lot of roadblocks with those guys, and . . . I just got frustrated, and I decided my frustration was not

¹⁵⁸ *Id.* at 23:12.

¹⁵⁹ *Id.*

¹⁶⁰ Interview with Butch Scipper, Quitman County Chancery Clerk, in Marks, Miss., at 16:53 (Sept. 30, 2024).

going to help them get to the goals they wanted. So, I resigned and somebody else took my place.¹⁶¹

We also spoke at some length about the Quitman County quadruple murder that shocked his community and nearly bankrupted his county. The case was also the catalyst for his involvement with the Mississippi Public Defender Task Force and a lawsuit challenging the constitutionality of Mississippi's entire system of public defense.

It came about because of . . . one court case that happened here in Quitman County. In 1990, Bubba Parker and his wife and two children, one son, 12, and a daughter, nine, returned home on a Sunday night from church, and they came upon two guys that were burglarizing their home. And these two guys were named Robert Simon and Anthony Carr. That was their MO, they would go out and research who went to church at night and during the daytime, and they robbed their houses and . . . generally burn them down. . . . Evidently, this is the first time that they were absolutely caught in the act, and they ended up murdering all four of the family, but not before they tortured all of them. It was terrible. I still remember. People my age, the first thing they will tell you is 'we can tell you exactly where we were when Kennedy was killed. We can tell you exactly where we were when Elvis died, or when 9/11 hit.' But also, in Quitman County, most of us can tell you where we were when we got word that Bubba Park and his family had been killed. And it had been a really bad situation. So this family was killed, tortured and killed, and these two guys did it – it went unsolved for a short period of time. . . . [W]e ended up having four trials for each one of the men and it bankrupted the county . . . because we had to pay all of the defense and plus all of the court costs[.] . . . By 1991 they were already in court. And then in '92 or '93, we ended up having, I think, a few more cases. . . . I came to office in 1992, and all these bills came into me to pay. And . . . they were just, 'wow, I can't believe court costs this much because they had court.' They changed the location. They went to DeSoto County for one and they went to down in South Mississippi for another, they went over here for another. . . . [W]e had to pay for the jury pools and all the circuit clerks,

¹⁶¹ *Id.* at 25:36.

all the travel. It was a lot of money, and we had just been through two tremendous floods up here that had damaged a lot of the county, and we were trying to build back from that. It was just a small, rural county. . . . [T]hat's how I became involved with the public defender deal. Because part of what the largest expense here was the cost of the public defenders.¹⁶²

H. Mike Carr

Partner, Carr Law Firm and Part-Time Public Defender

Mike Carr and his wife, Jessica Carr, operate the Carr Law Firm in Cleveland, Mississippi, where Mike was born and raised. Their private practice currently focuses on criminal defense and they both serve as ad hoc public defenders in Bolivar, Coahoma, Tunica, Quitman, Washington, Sunflower, and Leflore Counties. Mr. Carr is also the founder and current President of the Criminal Defense Section of the Mississippi Bar and member of the Mississippi Public Defender Association.¹⁶³

During our interview, Mr. Carr explained some of the disadvantages of the ad hoc public defender system, including the fact that it provides no guaranteed salary or insurance or retirement benefits for its defenders. Instead, attorneys who serve in this capacity are essentially required to front the cost of public defense for the counties and, even then, risk having their fees reduced. In fact, he shared a recent case where that happened to him.

This is a murder for hire charge against a middle-aged woman who was a first-time offender. . . and [our firm] fronted money on that case for a solid year and a half. . . which is not unusual. I have fronted money and time in cases for more than three years before. In this case, we prepared for trial four different times, and in addition to appearing in court for pre-indictment and pre-trial bond hearings and suppression motions. We had to travel an hour and a half each time we needed to see our client or attend a hearing because [our client] stayed incarcerated the entire time on this charge due to her poverty – even though through argument and multiple court

¹⁶² *Id.* at 01:04.

¹⁶³ *Michael "Mike" Carr*, CARR LAW FIRM, <https://www.carrlawpllc.com/michael-mike-carr> [<https://perma.cc/58H4-M2W5>] (last visited Apr. 24, 2025).

appearances, we eventually got the bond lowered from \$400,000 to \$75,000. On the fourth time we appeared for trial, [our client] decided to plead on the morning of trial, which was in her best interest based on overwhelming evidence of guilt. After I pled her, I submitted a bill in the amount of \$4,200 which was our time and travel expense over approximately a year and a half. In our circuit, the senior judge reviews itemized bills for payment, even when he is not the trial judge – which was the case here. The senior judge looked at my itemized bill and said ‘I’m not telling the county to pay \$4,200 for a guilty plea, Mr. Carr. That’s too expensive. So, I’m going to cut it down to \$3,000.’ . . . He said, ‘If you can’t plead a case in [redacted] County for \$3,000 or less, then you don’t need to be a public defender in [redacted] County.’ . . . Since the county pays my firm only \$65 an hour for ad hoc public defender work, cutting \$1,200 is cutting 18.5 hours of work I put into the case. And I did that work. I did not lie about it. I absolutely did that work. I should not have to bankroll the criminal defense for a county and end up working for free. The trial judge knew how much time and work we put into the case. In the least, he should be the one to review the bill.

. . .

But also, issues like this can create a conflict between a lawyer and his client – between what’s in the client’s best interest and what’s in the attorney’s financial best interest. If an attorney knows he is capped at a certain dollar amount worth of work, he or she may stop working once the meter runs out.¹⁶⁴

Mr. Carr is a vocal proponent for a part-time, salaried public defender system funded by the state and argues that it would provide better stability and support for defense attorneys and would allow them to quit “acting as banks” for the counties.

But if I was a part-time salaried public defender, I keep my same check every month, . . . and I’m not fronting money. . . . [T]hat’s the beauty of being at least a part-time salary public defender – not fronting money from my personal business. I am a bank for seven counties to front their criminal defense

¹⁶⁴ Interview with Mike Carr, Partner, Carr Law Firm, in Cleveland, Miss., at 01:59 (Oct. 25, 2024).

expenses. And I don't get interest. I don't get insurance. I don't get retirement - and that's a stupid business model. And I'm probably a bad businessman, but that's what I'm doing right now, and I'm doing it for poor people because that's the humane thing to do.¹⁶⁵

It was immediately apparent during our interview that Carr, like many other public defenders I have met and/or interviewed, feels a very real and strong frustration toward those players in our state justice system – from legislators, district attorneys and judges to apathetic or less than diligent public defenders – who seem to care very little about the constitutional rights of indigent defendants in our state while he and a small group of others care so very much.

*I. Matt Dalton,
Part-time Public Defender for Tate and Yalobusha Counties*

Matt Dalton is currently a salaried part-time public defender employed by Tate County. He also maintains a private practice in addition to serving as conflict counsel in Panola County and on the approved public defense counsel rotation list for Yalobusha County.¹⁶⁶ Mr. Dalton was a unique outlier among my interview subjects because he believes that, working in the 17th Circuit District, he has avoided some of the challenges faced by other public defenders in other districts. For instance, in his district, both circuit judges conduct ninety-day status reviews for unindicted persons who remain in custody, and he explained that process for me through the lens of a hypothetical drug arrest scenario.

[T]hese [reviews] are for unindicted people that are in custody. . . . [I]f you're arrested, let's say, on a drug crime. As I'm sure you have heard through your interviews, right now the crime lab is just severely backed up. And so, if someone is being arrested on a possession charge, you know, they're not going to be indicted until those crime lab results return. And the situation that a lot of people are unfortunately facing is, you know, you get arrested on a drug crime in, let's say, 2022, but

¹⁶⁵ *Id.*

¹⁶⁶ Zoom Interview with Matt Dalton, Attorney, Stroud, Flechas & Dalton, Southaven, Miss., at 01:04-05:00 (Oct. 29, 2024).

you don't have the means to post bond. Then you are waiting anywhere from 12 to 16 months, sometimes longer, for crime lab results to come back. That's that gray zone that you were just referring to, where you know they're sitting in jail. Now most of these lower court judges are aware of this, and they will set either very low bonds or release them on their own recognizance because of that. But some people, even if the bond is reduced in a large amount . . . they still don't have the means to post it. . . . [W]hat the Circuit Court judges in my district have done is they've started setting what's called a 90-day status review, and I am appointed to those. And then once they are indicted, if they are indicted, then they have the opportunity to hire a private attorney. And if they can't do that, then I get reappointed for post indictment. . . . [A]t these 90-day status reviews, the judge is asking the D.A. where they are in the indictment process. 'Are you waiting on crime lab results? Why has this case not been indicted yet? What is the reason for the delay,' essentially. . . . [T]hen, depending on their answer, the judge is asking me, . . . do you have any requests? . . . [I]n that situation, I'm almost always requesting a significant bond reduction based on the amount of time they've been sitting there. [S]o, my district does that. I think it's a very good thing because, . . . even though it's every 90 days, the judges are aware that they've been sitting. I'm able to make arguments that they've been sitting, and if the crime lab results aren't back, I can raise that issue and ask for a bond reduction based on that. . . . [U]sually the judges do accommodate that, unless there's some type of . . . odd circumstance. Unfortunately, not all districts operate that way, . . . so there's some districts where they're getting arrested, waiving their preliminary hearing at the lower court level . . . and getting a bond reduction, but it's still a bond they can't post, and so [they are] sitting in that gray area for a significant amount of time.¹⁶⁷

Mr. Dalton, like Mike Carr, is a proponent of a public defense system made up of salaried, part-time public defenders. As such, I asked him to describe specifically what his ideal system might look like if, in a perfect world, he could build it from the ground up.

¹⁶⁷ *Id.* at 32:55.

I have talked with some public defenders from other states about this that do things a little bit differently, Arkansas being one of them. . . . I have some friends that are public defenders in Arkansas. I think that the ideal system, at least where I work, would be to keep public defenders part-time as they are now, but for each county to have a full-time investigator or . . . a paralegal work . . . with the part-time, salaried public defenders. I think if that was their full-time job and they were paid by the county, [then] each public defender in the county would have that resource available and would have an investigator dedicated to helping with their cases. . . . Arkansas does that. . . . [T]he public defenders are part-time, but they have, essentially a staff that's employed by the county that assists them with cases similar to the how the D.A.'s office does. . . . I think there is some merit to [full-time public defender system]. What I'm concerned about in that structure, though, is that I don't know that the counties would be able to pay enough to full-time public defenders to keep turnover from being extensive. . . . What I would worry about is younger law school graduates taking a position like that as their first job to get experience, which that's definitely valuable. . . . [T]hat's part of the reason I did it, so I could start to get some trial experience and things of that nature. But my concern would be that people fresh out of law school would take that job at a lower salary, full-time to get some experience, and their heart and mind is in the right place, right? But then after a couple years, once they've gathered that experience and realized that they could hypothetically make a lot more money in private practice, they leave, and then these clients are kind of hung out to dry [in a] situation where they maybe have two to three public defenders on their case because of turnover. That argument can be made in part-time as well, though. I mean, you have part-time public defenders who their caseload gets so high, along with their private practice, that they just can't maintain it anymore and they just quit. But I think my concern would be that a full-time system would lend itself to younger, more inexperienced attorneys using it to get experience and then leaving and kind of becomes cyclical. . . . I think the answer, at least in my county, I can't speak for every county, .

. . . would be to keep public defenders part time, but to have some type of full-time county-funded staff to assist them.¹⁶⁸

J. Ben Conner

Part-time Public Defender for Madison County, Mississippi

Ben Conner is a salaried, part-time defender for Madison County. He earns a salary from the county and maintains his private practice.¹⁶⁹ Ben shared some of the struggles he and other part-time public defenders have experienced, including lack of access to consistent health insurance coverage or state retirement benefits, lack of parity in pay between public defenders and district attorneys, and inequitable access to experts, investigators, and other resources that are readily available to prosecutors. However, Conner does not believe that a statewide system or statewide regulations are necessarily the answer. To illustrate one potential pitfall of full-time offices, which are conflicted out of service in multiple defendant cases, Conner shared a story about Tom Fortner and the Hinds County Public Defender Office.

¹⁶⁸ *Id.* at 40:33.

¹⁶⁹ Zoom Interview with Ben Connor, Chief Defender for Madison County, Miss., at 03:55 (Oct. 31, 2024).

The district attorney's office has one client. They never have a conflict of interest. They don't even need somebody to do a conflict study to keep up with because they've only got one client. When Tom Fortner opened the full-time office in Hinds County, he had five full-time salaried public defenders. The first day they were there, he got in a case with two co-defendants, and Tom went to his judge and said 'Judge, I can't represent the other one.' Judge Coleman tried to get him to put one of the other lawyers in the office on the case, and Tom said, 'No, sir, that would be unethical. All five of my salaried, full-time public defenders have access to every filing cabinet in the office. We have access to everybody else's client. It's unethical.' So, Hinds County found out the hard way that they still needed ad hoc.¹⁷⁰

K. Chris Routh

Deputy Public Defender for Hinds County, Mississippi

Chris Routh is a deputy public defender for the Hinds County Public Defender Office, which is one of the state's seven full-time offices. During our interview, Chris shared that his interest in public defense originated while he was still attending law school at Mississippi College. He completed two externships with the Capital Defense Counsel division of the Office of State Public Defender and cemented his desire to work in the field. He is a staunch believer that Mississippi needs to adopt a statewide public defender system, and, almost immediately, he confided "I'll tell you at the outset, Amber, I don't think the way we do public defense in Mississippi is great."¹⁷¹

He then shared an experience from earlier in his career to highlight some of the major problems with our existing system – low pay and high turnover for public defenders and the lack of continuity in client representation that results therefrom.

[W]hen I came here as an assistant public defender, I started at the same time as an assistant DA who actually graduated law school a year after I did and started at the DA office. And she's still my contemporary there now. . . . [W]e've both been

¹⁷⁰ *Id.* at 41:00.

¹⁷¹ Zoom Interview with Chris Routh, Assistant Public Defender, Hinds County, Miss., at 03:37 (Nov. 1, 2024).

there, but when we started in 2015 she was making \$35,000 more than me by virtue of absolutely nothing other than being a D.A. and not a public defender. . . . I say that to say, again money – and money is the root of all evil – but it’s also the root of most, if not all, of these problems. . . . [T]here was a two year span a couple of years ago, where at one point we only had twelve lawyers, right? Because we had twelve before we got the three [more]. At one point, we lost eleven of those twelve lawyers in the span of two years. Every single one of them was lost to basically more money in another position. [W]hat that does on the ground level . . . is . . . create[] turnover, right? . . . I use this kind of as an example: I had a murder case. It was ultimately remanded because . . . when I finally got to this file, it was . . . four, almost five years old. I picked it up, I was like, ‘this charge is absolute bull[expletive],’ right? And I’m not going to, I won’t spend a lot of time going into why, but, basically, other people were picked out of lineups as the perpetrator. And . . . take what I say with a grain of salt as a defense attorney, but I’m saying this objectively. There was absolutely zero evidence against this guy, and he had still been indicted by the Hinds County District Attorney’s Office. Because that saying about indicting a ham sandwich is absolutely true – they can do it and they do. But I [wondered], . . . ‘why is this still a charge? Why is this guy still in jail?’ When you started looking at it, he’d had five damn lawyers, and no one had a chance to look at that case amongst the 200 other cases that they have at any given point and say, ‘this is bull[expletive]. Let’s get a trial date and let’s call their bluff here.’ Because of the constant rollover of attorneys. . . . [W]hen we’re talking about money, it’s easy for us to just be written off as, ‘oh, they just want a cushier salary. Oh, they just want more money.’ But when you see the real-world implication of our office and our profession not having enough money to keep adequate and well-trained people on this job, and that real-world application is that people are spending half-decades in pretrial detention only to have their cases dismissed for lack of

evidence. That's when money starts becoming important.
That's when it's real.¹⁷²

IV. ANALYSIS

Several key themes emerged from these interviews: inadequacy of defender pay and provision of resources, ongoing resistance to statewide standards and central oversight, economic concerns, and political inaction for even the most modest reform efforts. While these themes are discussed individually below, it is important to approach them holistically. The shortcomings and failures of Mississippi's existing public defense system are so interconnected that addressing them in isolation is impractical. Each problem exacerbates another, but this interdependence suggests that one solution may also address more than one problem.

A. Inadequacy and Inequity in Compensation and Resources

A crucial concern among all the interviewees is the continued inadequacy of pay for public defenders across all delivery models. This leads to overburdened attorneys and insufficient access to resources like investigators and expert witnesses. Public defenders are frequently forced to fund defense of their indigent clients from their own private funds upfront and await delayed or reduced reimbursements. Then, in contrast to their counterparts in district attorney offices or other prosecutorial bodies who are paid significantly more and are often incentivized to take and retain their roles for prestige and political aspirations, public defenders often leave their roles for better opportunities "on the other side." High turnover rates, likewise, create experience disparities as defender positions are increasingly filled by younger, inexperienced attorneys.

B. Lack of Uniform Standards or Central Oversight

Absence of a dedicated state oversight agency or adoption of statewide uniform standards exacerbates inconsistencies in legal representation. While the Office of State Public Defender provides

¹⁷² *Id.* at 13:12.

training and supporting resources, so long as counties and individual defenders retain the sole discretion to utilize these resources or not, their effectiveness will be limited. Likewise, judges also exercise broad discretion over the administration of public defense across counties, resulting in inconsistent practices. This inconsistency often leads to defendants being detained without timely or adequate representation, potentially infringing upon their constitutional rights and adversely affecting the outcomes of their cases.

C. Cultural and Political Barriers to Reform

Nearly all of the interviewees acknowledged that judges and legislators, which are elected officials, often prioritize fiscal conservatism and appearing tough on crime. Thus, in conservative Mississippi, societal bias against defendants makes it politically unpopular to champion reforms for indigent defense, and even modest reform efforts struggle to find wide support. Instead, public defense is reframed as helping the guilty escape punishment rather than as a means of safeguarding constitutional rights.

D. Mixed Support Among Public Defenders

Interviewees noted that inadequate pay commonly contributes to the reluctance or unwillingness of part-time defenders to support a statewide system or uniform standards, which might restrict their ability to supplement their income through private practice. Likewise, many defenders share reservations that a “one size fits all” model is impractical because Mississippi counties (or districts) often vary widely in population, number of cases indicted annually, and availability of practicing attorneys. However, nearly all interviewees acknowledged that some form of central oversight would be beneficial. Multiple interviewees proposed that a hybrid state system under which the state’s largest counties would operate full-time public defender offices, and the remaining counties would establish salaried, part-time defenders in accordance with the needs of the county (or one or more counties). Under this model, counties would effectively eliminate contract defenders and flat-fee arrangements, which often lead to some of the more problematic practices in public defense: excessive caseloads and underworked

case files. Uniform standards and policies on resource distribution and workload management could then be implemented by the Office of State Public Defender, alone or in conjunction with some other governing body or commission, to enhance efficiency and reduce overall costs. Under a hybrid model, the state could assume part of the funding responsibilities, such as paying for district-level public defenders, supplementing salaries, and subsidizing defender benefits such as retirement and/or health insurance. This structure would alleviate financial pressure on individual counties while still being adaptable to specific regional needs.

E. Ongoing Need for Activism and Support

Finally, nearly every interviewee emphasized the critical role that the next generation of lawyers and other justice-minded individuals will play in the reform and ultimate success of Mississippi's indigent defense system. I depart from this project with the directive that my classmates and I will be the drivers of future progress and reform and an understanding that our vulnerable citizens must have a voice at the Legislature and in other political and judicial circles if real change is to be affected.

CONCLUSION

Mississippi's public defender system has long struggled with systemic challenges that undermine the constitutional guarantee of effective legal representation for indigent criminal defendants. Despite efforts at improvement, the state remains one of the most criticized for its handling of public defense, with glaring disparities in resources, independence, and accountability across its eighty-two counties. Recurring themes in this study reveal the depth of the problems: inadequate funding, excessive caseloads, judicial conservatism, political apathy, and a lack of resources, standards, and accountability, which contribute to a system that often fails its most vulnerable citizens. While small-scale reforms have achieved pockets of progress, these efforts fall short of addressing the broader, systemic issues. Resistance from stakeholders, whether rooted in fear of change or concerns over fiscal constraints, continues to impede meaningful reform.

Nevertheless, there is a clear path forward. Mississippi should adopt a hybrid public defense model combining regional oversight with local flexibility, to ensure consistency and fairness across the state while preserving the ability to address unique regional needs. Regardless of the exact form that indigent defense delivery ultimately takes in Mississippi, meaningful reform must be achieved through the sustained efforts, advocacy, and collaboration of today's legal practitioners, judiciary, and Legislature with current and future law students and other social justice interest groups. Only then can Mississippi truly fulfill its constitutional obligation to provide effective assistance of counsel to all of the state's citizens.