

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ROME DIVISION

BEVERLY CANNON,, :
HORACE LUCKEY, III, :
M.V. BOOKER, :
WILLIAM F. BRAZIEL, JR., :
G. TERRY JACKSON, :
JOSEPH SAJA AND CHARLES :
THORNTON, ON THEIR BEHALF :
AND ON BEHALF OF ALL PERSONS :
SIMILARLY SITUATED, :

Plaintiffs, :

vs. :

JOE FRANK HARRIS, Governor; and :
HON. ROBERT J. NOLAND, CHIEF :
JUDGE OF DOUGLAS JUDICIAL :
CIRCUIT; and HON. JOE C. CRUMBLEY, :
CHIEF JUDGE OF CLAYTON JUDICIAL :
CIRCUIT; ON THEIR OWN BEHALF :
AND ON BEHALF OF OTHERS SIMILARLY :
SITUATED, :

CIVIL ACTION NO. C86-297R

Defendants.

AMENDED COMPLAINT-CLASS ACTION

11/25/86

1.

INTRODUCTORY STATEMENT

This is bilateral class action commenced under 42 U.S.C. 1983. Plaintiffs seek an order requiring the defendants to provide adequate criminal defense services for indigent criminal defendants in Georgia. Plaintiffs bring this action on behalf of all present and future indigent persons charged with criminal offenses in the courts of Georgia and on behalf of all attorneys who represent indigent defendants in those courts.

The State of Georgia is required by the United States Constitution to provide indigent criminal defendants with criminal defense services. The services provided must be adequate to assure that the defendant has a fair opportunity to present a thorough and rigorous defense. Services provided in Georgia do not satisfy these minimum constitutional obligations.

Plaintiffs allege a statewide systemic failure to provide constitutionally adequate criminal defense services for indigents. These failures are inherent in, and pervasive throughout, the system.

2.

JURISDICTION

Jurisdiction over this action is provided by 28 U.S.C. 1343.

PARTIESPretrial Detainee Plaintiffs

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Plaintiff Beverly Cannon is an indigent defendant charged with assault, driving under intoxication and driving with a suspended license, in Douglas County, Georgia.

4.

Plaintiff Horace Luckey III is an indigent defendant charged with twenty-six counts of forgery in the second degree in Clayton County, Georgia.

Attorney Plaintiffs

5.

Plaintiff M. V. Booker is an attorney engaged in the private practice of law in Dublin and Washington, Georgia.

6.

Plaintiff William F. Braziel, Jr., is an attorney engaged in the private practice of law in Savannah, Chatham County, Georgia.

7.

Plaintiff G. Terry Jackson is an attorney engaged in the private practice of law in Savannah, Chatham County, Georgia.

8.

Plaintiff Joseph Sala is an attorney engaged in the private practice of law in Fayette County, Georgia.

9.

Plaintiff Charles Thornton is an attorney engaged in the private practice of law in Atlanta, Fulton County, Georgia.

DEFENDANTS

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Defendant Joe Frank Harris is duly elected Governor of the State of Georgia and is sued in his official capacity.

11.

Defendant Hon. Robert J. Noland is chief judge of the Douglas Judicial Circuit, and is sued in his official capacity.

12.

Defendant Hon. Joe C. Crumbley is chief judge of the Clayton Judicial Circuit, and is sued in his official capacity.

13.

As chief judges for their respective circuits, Defendants Noland, and Crumbley are responsible for supervising the provision of counsel to indigent criminal defendants.

PLAINTIFF CLASS ACTION ALLEGATIONS

14.

The named plaintiffs bring this action as a bilateral class action under Fed.R.Civ.P.Rule 23 and Rule 220 of the Local Rules of this District, on behalf of themselves and all persons similarly situated, and against a Defendant class. In compliance with those Rules, Plaintiffs show this Court as follows:

15.

The class that plaintiffs seek to represent consists of all individuals who are or will in the future be adversely affected by the unconstitutional practices of the indigent defense systems within Georgia.

16.

The plaintiffs are made up of two subclasses--(a) all indigents who are or will be charged with violations of the criminal laws of Georgia, and (b) all attorneys who represent indigents in the criminal justice systems within Georgia whether by appointment, as a public defender or on a pro bono basis. As such, the plaintiffs and the class in common are or will be subject to the acts, practices and omissions complained of herein.

17.

The Plaintiff class and its subclasses meet all of the requirements of Fed.R.Civ.P.Rule 23(a) in that:

(a) The Plaintiff class and the subclasses are so numerous that joinder of all members is impracticable. Upon information and belief, thousands of Georgia indigent criminal defendants and hundreds of attorneys are affected each year by the systemic deficiencies outlined in this complaint.

(b) The questions of law here raised are common to all members of the Plaintiff class, despite some necessary factual differences in their situations.

(c) The claims of the representative parties are typical of the claims of the class, in that all class members have been or will be denied effective indigent representation, or the opportunity to provide it.

(d) The representative parties will fairly and adequately protect the interests of the class, in that all questions of law affecting the named Plaintiffs are equally applicable to the class; and Plaintiffs are represented by counsel who are familiar with

questions of law and fact applicable to the class, and who are experienced in public interest litigation involving federal constitutional law and affecting low income persons.

18.

Plaintiff class satisfies the requirements of Rule 23(b)(2) in that Defendants have acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief with respect to the class as a whole. Specifically, Defendants have failed to provide a system matching federal constitutional guarantees for indigent criminal defense.

DEFENDANT CLASS ACTION ALLEGATIONS

19.

The Defendant class are defined as all judges in Georgia trial courts, whether titled superior, state, municipal, magistrate or other court, which appoint attorneys or arrange for indigent criminal defense under other systems.

20.

The Defendant class likewise meets all of the requirements of Fed. R. Civ. P. Rule 23(a), in that:

(a) The Defendant class is so numerous that joinder of all its members is impracticable. Hundreds of Georgia trial judges routinely appoint attorneys or establish other indigent defense systems.

(b) Common questions of law are presented as to all members of the Defendant class, despite differences in detail as to each local court.

(c) The claims against the representative parties are typical of those against the class, in that all local Georgia systems deny effective indigent criminal representation.

(d) The representative parties will fairly and adequately protect the interests of the Defendant class, in that all questions of law affecting the named Defendants are equally applicable to the class; and no conflict of interest divides the representative Defendants from absent class members.

21.

Defendant class satisfies the requirements of Rule 23(b)(1)(B) and of Rule 23(b)(2), thereby making appropriate class injunctive relief.

GEORGIA INDIGENT DEFENSE SCHEME

22.

The Georgia Indigent Defense Act, O.C.G.A. 17-12-30, et seq., begins with a "Declaration of Policy," providing, in part:

"It is the policy of this state to provide the constitutional guarantees of the right to counsel and equal access to the courts to all its citizens in criminal cases and to provide: (1) Adequate defense services for indigent persons accused of crime; (2) Adequate compensation for counsel who represent indigent persons accused of crime."

The Georgia Indigent Defense Act concludes as follows:

"This article expressly recognizes the inherent power of the court to appoint counsel to represent indigent defendants and to order compensation and reimbursement from county funds in individual cases as the proper administration of justice may require."

Id., at 17-12-44.

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Notwithstanding the provisions of the Georgia Indigent Defense Act, the State of Georgia+ has not appropriated any funds for purposes of criminal indigent defense services. See, O.C.G.A. 17-12-43.

24.

Specifically, nearly \$2 million recommended for such services in the proposed executive budget was deleted by the General Assembly in its 1986 session.

25.

In addition to the Georgia Indigent Defense Act, Georgia has enacted the Georgia Criminal Justice Act, O.C.G.A. 17-12-1, et seq, prescribing arrangements for the representation of indigents. That law assigns to the courts the responsibility to "provide for the representation of indigent persons in criminal proceedings." O.C.G.A. 17-12-4.

26.

In particular, the courts are charged with responsibility for choosing one of several alternative statutory arrangements for providing such representation, O.C.G.A. 17-12-4(a)(1)-(3), as well as prescribing the compensation to be paid for such services. O.C.G.A. 17-12-5. The county governing authorities are assigned responsibility for paying such compensation from public funds. O.C.G.A. 17-12-5(c).

27.

Pursuant to Article VI, Section 9, Para. 1 of the Constitution of 1983, the Supreme Court of Georgia adopted Uniform Rules for the Superior Courts effective July 1, 1985 that specify in part, the

-- procedures for the provision of indigent defense services. Rules 26.1, 26.2 and 29 provide that indigents shall receive notice of the right to counsel, timely appointment of counsel and information about the procedure for that appointment. Rule 29 further provides that fees paid to attorneys under an appointive system should bear a reasonable relationship to the fees charged by non-appointed attorneys.

28.

The Uniform Rules for the State Courts and the Uniform Magistrate Court Rules also contain provisions governing the application for and appointment of counsel for indigent defendants.

29.

Despite these assorted rules aimed at providing individuals representation, the local authorities responsible for providing and funding such services spend only a collective \$5 million per year.

30.

This figure is far below the national average on a per case basis, and is far below the amount needed to provide constitutionally adequate services.

31.

The Georgia indigent defense system is inherently incapable of providing constitutionally adequate services, as detailed below.

FACTUAL ALLEGATIONS AS TO THE INDIVIDUAL PRE-TRIAL DETAINEE PLAINTIFFS

32.

Each of the named pretrial detainee plaintiffs has been denied adequate defense services in a manner that is representative of the systemic failure of Georgia's indigent defense system.

33.

Plaintiff Beverly Cannon was arrested on or about October 7, 1986 in Douglas County, Georgia.

34.

Plaintiff Cannon's bond has been set at slightly in excess of \$3,000.

35.

Plaintiff has been unable to satisfy this bond requirement and has remained in jail since her arrest.

36.

Plaintiff requested assistance of an attorney to represent her on several occasions, from mid-October until the present.

37.

Several weeks after her arrest, in mid-November 1986, Plaintiff finally obtained a form for requesting that an attorney be appointed to represent Plaintiff.

38.

Plaintiff has not yet been appointed an attorney.

39.

Plaintiff Horace Luckey III, a/k/a Philip H. Michaels II, was arrested at Hartsfield International Airport in Clayton County, Georgia on June 8, 1986.

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Plaintiff Luckey orally requested assistance of an attorney on June 9, 1986.

41.

Attorney Arthur K. Steinberg was appointed to represent Plaintiff, on June 11, 1986.

42.

Plaintiff first met attorney Steinberg at his commitment hearing on June 18, 1986.

43.

At that hearing, Plaintiff's bond was set at \$30,000.

44.

Plaintiff has been unable to post bond and thus remains in jail.

45.

On September 3, 1986, a bench warrant issued for Plaintiff's failure to appear in court on that date.

46.

Plaintiff had had no notice of the September 3 hearing.

47.

On September 4, 1986, Plaintiff met attorney Steinberg for the first time since the commitment hearing.

48.

At the September 4 interview, attorney Steinberg omitted to mention the September 3 hearing.

49.

Despite repeated requests for an interview, Plaintiff saw attorney Steinberg only at the commitment hearing and for about 10 minutes on September 4, 1986.

50.

On September 5, 1986, Plaintiff requested that attorney Steinberg be relieved from his appointment to represent Plaintiff.

51.

On October 15, 1986, Plaintiff was arraigned and pleaded not guilty, without an attorney present.

FACTUAL ALLEGATIONS AS TO THE INDIVIDUAL ATTORNEY PLAINTIFFS

52.

Each of the named attorney plaintiffs has represented indigent criminal defendants either as a public defender, through appointment or on a pro bono basis.

53.

Each is an officer of the court and each is governed by the Code of Professional Responsibility, including DR 6-101.

54.

Plaintiff William F. Braziel, Jr. is an attorney who has been engaged in the private practice of law in Savannah, Georgia for eleven years. Plaintiff Braziel is Past President of the Georgia Association of Criminal Defense Lawyers and provides legal representation in both retained and appointed criminal cases in Chatham County. The fees he receives for indigent representation are seriously inadequate and, along with the lack of any funds for defensive services, hamper

plaintiff Braziel's ability to provide effective representation to his indigent clients.

55.

Plaintiff G. Terry Jackson is in private law practice in Chatham County, Georgia. He does a substantial practice in criminal representation including approximately 70 indigent appointments at present. He serves as chairperson of the Committee on Indigent Defense of the Savannah Association of Criminal Defense Lawyers. Plaintiff Jackson is often given insufficient time to prepare for the representation of his indigent clients, frequently as a result of delays in appointment. Plaintiff Jackson has also been hampered in his responsibility to provide effective representation by the lack of funds available to retain experts, to conduct scientific tests or provide other defense services.

56.

Plaintiff M. V. Booker is engaged in the general practice of law in Dublin and Washington, Georgia. Ms. Booker is appointed to represent indigent defendants in Laurens County when a conflict arises for the Public Defender in that county. As appointed counsel, she finds it difficult adequately to represent clients due to the unavailability of expenses for expert witnesses and investigation. In addition, delays in appointment are frequent due to the long time lag between time of arrest and arraignment. Often there is little time to prepare a client's case when the appointment comes near the date set for trial.

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Plaintiff Joseph Saia is an attorney engaged in the private practice of law in Fayette County. Criminal matters constitute approximately forty percent of his practice. He has taken appointments in criminal cases on a regular basis for the last nine years and has been appointed in approximately eight new cases each year. Mr. Saia is compensated at hourly rates well below his usual rates for criminal cases.

58.

Mr. Saia has filed appeals for his indigent criminal clients in approximately two cases per year. He currently has approximately three such appeals pending. There are delays of approximately eighteen months in receiving the trial transcript necessary to complete filing the appeal in the Supreme Court or Court of Appeals.

59.

Plaintiff Charles Thornton is a Fulton County attorney engaged in the private practice of law. Representing criminal defendants comprises seventy percent of his practice. From 1977 to 1982, he was appointed to represent an average of five indigent criminal defendants per year. In each of these cases, Mr. Thornton was appointed after indictment, and long after his client's arrest. These long delays in appointment were extremely detrimental to Mr. Thornton's ability to represent these clients since the delays resulted in lost evidence when memories faded and witnesses disappeared. Mr. Thornton found there was intense pressure from the court and the prosecutor to hurry cases of indigent defendants to a guilty plea or to trial within seven to ten days of appointment. This did not give him adequate time to

investigate the cases and to prepare a defense. In numerous cases he requested a continuance, but in most of these cases the requests were denied.

60.

In 1982, Mr. Thornton stopped taking appointments because the low rates of pay, the long delays in appointment, and the pressures to enter guilty pleas made adequate representation of indigent clients nearly impossible.

DETAIL OF THE GEORGIA SYSTEM

61.

Pursuant to the authority of the Georgia Criminal Justice Act, the courts of Georgia have adopted one of three basic models for the provision of criminal indigent defense services:

(a) The "appointment system," which has been adopted by the vast majority of Georgia counties (approximately 66%) utilizes the court appointment of a member of the local bar to represent an indigent defendant;

(b) Using the "agency system," approximately 23% of Georgia counties have established an organization of staff lawyers who represent indigent defendants; and

(c) Under the "contract system," which has been adopted by approximately 11% of Georgia counties, lawyers bid for the county's indigent defense "business," and one or more lawyers are awarded a contract to provide all criminal defense services.

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Indigent criminal defendants in Georgia are denied a fair trial, in that the various systems for providing indigent criminal defense inherently provide inadequate resources and services. As a result, counsel are rendered ineffective, and the adversarial process is undermined and unreasonably skewed to favor the prosecution.

63.

The cumulative effect of the following inadequacies in the provision of indigent criminal defense in Georgia constitutes a systemic failure to satisfy minimum constitutional standards:

(a) By delegating to each county the entire burden of, and responsibility for, providing defense services for criminal indigent defendants, Georgia has ignored its constitutional obligations to assure the adequacy of such services and the fair trial of such defendants.

(b) the State has shifted to the counties the entire financial burden of indigent criminal defense services, a burden counties are increasingly unable to bear.

(c) The State does not assume any responsibility for the administrative oversight, or quality control, of indigent defense services throughout Georgia.

(d) The County governments of Georgia spend approximately \$131 per case for indigent defense services, U.S. Department of Justice, National Survey of Criminal Defense Systems (1984), at 7 (statistics for 1982), which is facially insufficient to satisfy the criminal defense needs of indigent defendants.

(e) The amount spent by the State for the prosecution of indigent defendants is far more than double the amount spent for indigent criminal defense. The gross disparity between the resources expended for the prosecution, as compared to the defense, of criminal indigent defendants reflects a fundamental unevenness in the adversary process that precludes a fair trial.

(f) Indigent criminal defense services function without regard for, and in violation of accepted minimum standards of training, workload and resources:

- (1) Guidelines for the operation of local Indigent Defense Programs adopted by the Georgia Supreme Court in 1980 have not yet been followed or complied with by counties in Georgia. Standards of Performance for Appointed Attorneys have not been promulgated.
- (2) Standards for indigent defense services have been promulgated by the Georgia Indigent Defense Council, as well as the American Bar Association, the National Study Commission on Defense Services, the National Legal Aid and Defender Association and the National Advisory Commission on Criminal Justice Standards and Goals. Indigent criminal defense services in Georgia function without regard for, and in violation of, these accepted minimum standards.

(g) By not providing sufficient resources, the Georgia system of indigent defense tends to preclude the involvement of experienced defense counsel and promotes reliance on inexperienced counsel.

(h) Additionally, that lack of resources increases the burden on indigent criminal defense counsel and effectively creates a financial disincentive for defense counsel to provide thorough and effective defense services consistent with minimum standards of representation.

(i) The failure to provide adequately for essential investigative resources, as well as other defense-related expenses, such as expert witnesses, psychiatric examinations and scientific tests, imposes a substantial burden on defense counsel.

(j) Counsel are not appointed to the defense promptly after the arrest or, if appointed, are not able to undertake the immediate representation of the indigent defendant, thus depriving a defendant of the opportunity to obtain effective assistance of counsel when the evidence is freshest and the individual's constitutional rights most at risk. This deprives indigent defendants of counsel at critical stages of the prosecution.

(k) The disparity in resources and services committed to indigent defendants by the various counties of Georgia further contributes to an inadequate system for providing indigent defense services.

(l) In sum, the Georgia appointment system provides indigent defense attorneys insufficient time and resources to permit adequate services, including (1) interviewing; (2) investigation; (3) research; (4) motion practice; (5) trial preparation; (6) client advice; and (7) overall attention to the case, given forced excessive caseloads.

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Upon information and belief, the defendant Judges and the class of Judges have failed to provide for an adequate indigent defense system within their respective jurisdictions.

65.

Criminal defendants are brought before the court in the name of the State of Georgia and it is the responsibility of the State to assure that adequate representation is provided to those defendants so that they receive a fair trial.

66.

The State of Georgia and Defendant Harris are aware of the failures and inadequacies of the present system of providing defense to indigents throughout the state but have failed to act in any responsible way to alleviate or remedy it.

FIRST CAUSE OF ACTION

67.

The inherent inadequacies of the Georgia indigent criminal defense system and its lack of adequate funding deny Plaintiffs and their class the right to counsel guaranteed them by the Constitution's Sixth Amendment.

SECOND CAUSE OF ACTION

68.

The allegations of paragraphs One through 74 are incorporated herein as though set out in full.

69.

The systemic and funding deficiencies of the Georgia criminal defense scheme for indigents also violate Plaintiffs' due process rights under the Fourteenth Amendment to the United States Constitution.

THIRD CAUSE OF ACTION

70.

Paragraphs One through 74 are hereby incorporated by reference.

71.

Delays in appointment of counsel for those pretrial detainees in jail effectively deny them their right to bail, in violation of the Eighth and Fourteenth Amendments.

FOURTH CAUSE OF ACTION

72.

Paragraphs One through 74 are hereby incorporated by reference.

73.

The disparity of resources and of effectiveness of representation among jurisdictions denies equal protection to those who suffer for lack of local wherewithall.

FIFTH CAUSE OF ACTION

74.

Paragraphs One through 74 are hereby realleged by incorporation.

75.

Criminal defendants with the financial means obtain adequate defense services.

76.

The failures of the Georgia criminal defense system deny the equal protection of the laws, guaranteed by the Fourteenth Amendment, to Plaintiffs and the Plaintiff class of indigent criminal defendants.

77.

Plaintiffs have no adequate remedy at law, but must call upon equity for effective relief.

WHEREFORE, Plaintiffs pray that this Court:

1. Order that Defendants provide a statewide indigent defense system which will, at a minimum, provide (a) for attorneys for all indigents at probable cause determinations if so requested by those indigents; (b) for the speedy and immediate appointment of attorneys at critical stages generally for all indigents; (c) for adequate defense services and experts needed for the representation of indigents; (d) and for adequate compensation for indigent defense attorneys.

2. Order that uniform standards be promulgated and adopted governing the representation of indigents consistent with the judgment in this case.

3. Monitor and assure the implementation of those standards throughout the state in all indigent defense systems.

4. Award attorney fees to Plaintiffs as appropriate under 42 U.S.C. 1988.

5. Grant such other and further relief as the Court deems just and proper.

Respectfully submitted,

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