

COPY

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

QUITMAN COUNTY, MISSISSIPPI,

Plaintiff-Appellant

vs.

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

Defendants-Appellees

**FILED**

**AUG - 4 2004**

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*per order of  
8/4/04*

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

AMICUS CURIAE BRIEF of MISSISSIPPI TRIAL LAWYERS  
ASSOCIATION AND MAGNOLIA BAR ASSOICATION

Merrida P. Coxwell (MSB NO.7782)  
President, MTLA  
Post Office Box 1992  
Jackson, Mississippi 39205

Crystal Wise-Martin (MSB NO.10860)  
President, MBA  
Post Office Box 648  
Jackson, Mississippi 39205

**MOTION# 2004-2223**

IN THE SUPREME COURT OF MISSISSIPPI

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QUITMAN COUNTY, MISSISSIPPI,	)	
Plaintiff-Appellant,	)	
	)	
vs.	)	No. 2003-SA-02568
	)	
STATE OF MISSISSIPPI, HALEY BARBOUR,	)	
in his official capacity as GOVERNOR,	)	
and JIM HOOD, in his official capacity as	)	
ATTORNEY GENERAL,	)	
Defendants-Appellees.	)	

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

**BRIEF OF *AMICI CURIAE* MISSISSIPPI TRIAL LAWYERS  
ASSOCIATION AND MAGNOLIA BAR ASSOCIATION IN  
SUPPORT OF APPELLANT QUITMAN COUNTY**

As organizations composed of members of the Mississippi Bar who are lawyers practicing throughout the state, the Mississippi Trial Lawyers Association and the Magnolia Bar Association are particularly well suited to address whether a statewide and state-funded full-time public defender system is necessary for a fair and effective system of justice. The MTLA and the MBA also jointly filed a brief as *amici curiae* in *Wilson State*, 574 So. 2d 1338 (Miss. 1990). Both organizations are uniquely concerned about improving the current level of representation indigent defendants receive from defense counsel. Moreover, because the MTLA includes many criminal defense lawyers and former prosecutors and the MBA includes a number of lawyers appointed to

represent indigent defendants on a piecemeal basis, *amici* can attest to the fact that the current system fails to provide effective assistance of counsel.

### Argument

#### **I. THE CURRENT INDIGENT DEFENSE SYSTEM DOES NOT PROVIDE EFFECTIVE ASSISTANCE OF COUNSEL AND UNDERMINES THE INTEGRITY OF THE JUSTICE SYSTEM**

The State provides no funding for indigent defense except for some limited funding in capital cases and imposes the obligation to provide indigent defense in almost all felony cases on counties, many of which are very poor. Because they cannot afford to do more, the vast majority of counties in Mississippi utilize the services of part-time defenders, who also have to maintain private practices to support their families. This county-based indigent defense system does not provide the necessary tools of an adequate defense including client communication, factual investigation, informed plea negotiation, motion practice and use of experts. These shortcomings are inherent in the existing part-time system and cannot be cured at the county level. The incentives created by a part-time system allowing for private practices lead attorneys to minimize the amount of time spent representing indigent clients. Further, because public defenders are usually judicially appointed, there is a real risk of lack of independence and going along with the court and prosecution to move cases along rather than zealously representing the client. The vast disparity between the resources provided by the State to the prosecution and the minimal resources available to public defenders adds to the inadequacy of representation.

Chronic underfunding of indigent defense has resulted in constitutional requirements for effective assistance of counsel often not being met and has adversely affected the administration of justice in Mississippi. The poor and uneducated, who are

disproportionately minorities, in many cases are effectively without representation. This situation undermines public trust in the justice system and furthers the cynical view that there is one law for the rich and one for the poor.

## **II. JUDICIAL INTERVENTION IS NECESSARY TO ACHIEVE A CONSTITUTIONALLY ADEQUATE INDIGENT DEFENSE SYSTEM**

A statewide indigent defense system with resources comparable to the prosecution is necessary for a properly functioning adversary system. A full-time public defender office is needed to deliver indigent defense services in a constitutionally adequate manner in Mississippi. Such an office would need an adequate salary; investigative support; secretarial and other support; office space; access to legal resources; a computer system; professional supervision and consulting attorneys; and the ability to bring in other lawyers when there is a conflict of interest. The resources required are far beyond the means of almost all Mississippi counties. It is clear that the establishment of a full-time public defender office requires state action and state funding.

This Court and numerous study commissions have identified serious problems in the county-based indigent defense system and urged the Legislature to replace it with a statewide, state-funded system. Notably, the 2000 Public Defender Task Force compiled reports by Senior Circuit Judges describing inadequate representation they observed in their districts. But these calls for State funding have gone unheeded except for some very limited funding in capital cases.

It is clear from the history of indigent defense, and from the history of other episodes of legal reform in Mississippi, that judicial intervention is required to make constitutional guarantees a reality. Left to its own devices, the Legislature will not take

action to secure the rights of politically unpopular criminal defendants. However, far more is at stake here, because the right to the effective assistance of counsel in criminal cases is a vital component of each individual's fundamental right to life and liberty. This right is essential to the well being of all citizens and to a fair and efficient system of justice in Mississippi. The prompt appointment and effective assistance of counsel for indigent defendants is necessary to ensure that the innocent are not wrongfully convicted and that those found guilty by due process of law are incarcerated in a timely manner. The creation of a fair and efficient indigent defense system will benefit crime victims, taxpayers, law enforcement officials and everyone else with an interest in the criminal justice system.

**Conclusion**

For the foregoing reasons, the judgment of the Circuit Court should be reversed and the Court should order the implementation of a statewide and state-funded full-time public defender system.

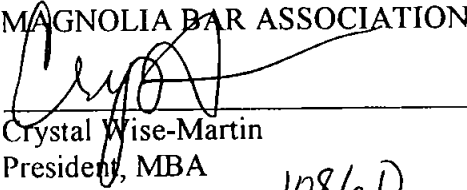
Dated: July 14, 2004

Respectfully submitted,

MISSISSIPPI TRIAL LAWYERS ASSOCIATION  
By: Merrida Coxwell  
Merrida P. Coxwell, Jr.,  
President, MTLA  
Mississippi Bar No. 7782  
P.O. Box 1992  
Jackson, Mississippi 39205  
(601) 948-8631

MAGNOLIA BAR ASSOCIATION

By:

  
Crystal Wise-Martin

President, MBA

Mississippi Bar No. 10860

P.O. Box 648

Jackson, Mississippi 39205

(601) 469-0990

CERTIFICATE OF SERVICE

This is to certify that I have caused to be served by hand on this 22 day of July, 2004 a true and correct copy of the foregoing Motion for Leave to File Brief of *Amici Curiae* Mississippi Trial Lawyers Association and Magnolia Bar Association in Support of Appellant Quitman County and the accompanying brief on the following:

Harold E. Pizzetta, III, Esq.  
Civil Litigation Division  
Office of the Attorney General  
Post Office Box 220  
Jackson, MS 39205

*Attorney for Defendant-Appellees*

J. Christopher Klotz  
500 N. State Street  
Jackson, MS 39202

*Attorneys for Plaintiff-Appellant*

Judge Ann Lamar  
Circuit Judge, District 17  
P.O. Box 707  
Senatiobia, MS 38668

*Trial Judge- served via U.S. Mail*

By: Merrida Coxwell  
Merrida P. Coxwell, Jr.  
President, MTLA  
Mississippi Bar No. 7782  
P.O. Box 1992  
Jackson, Mississippi 39205  
(601) 948-8631