

PROMISES TO KEEP:
ACHIEVING FAIRNESS AND EQUAL JUSTICE
FOR THE POOR IN CRIMINAL CASES

A PRELIMINARY REPORT
ON GEORGIA'S COMPLIANCE WITH THE
CONSTITUTIONS OF GEORGIA AND THE UNITED STATES
IN PROVIDING REPRESENTATION
TO POOR PEOPLE ACCUSED OF CRIMES

by the

SOUTHERN CENTER for HUMAN RIGHTS

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[I]n our adversary system of criminal justice, any person haled into court, who is too poor to hire a lawyer, cannot be assured a fair trial unless counsel is provided for him. . . . [L]awyers in criminal cases are necessities, not luxuries. The right of one charged with crime to counsel may not be deemed fundamental and essential to fair trials in some countries, but it is in ours.

Even the intelligent and educated layman . . . requires the guiding hand of counsel at every step in the proceedings against him.

- United States Supreme Court
Gideon v. Wainwright, 372 U.S. 335, 344 (1963).

We set our sights on the embarrassing target of mediocrity. I guess that means about halfway. And that raises a question. Are we willing to put up with halfway justice? To my way of thinking, one-half justice must mean one-half injustice, and one-half injustice is no justice at all.

- Chief Justice Harold Clarke
Annual State of the Judiciary Address
to the Georgia General Assembly, 1993

About this report

In the last twenty years, the Southern Center for Human Rights has observed, documented and litigated deficiencies in Georgia's indigent defense system. The Center has litigated numerous cases of ineffective assistance of counsel throughout Georgia, prevailing in many of them. The Center's lawyers have been shocked by the poor quality of legal representation provided in some of the most serious cases, those in which the death penalty is sought, and concerned because those same lawyers often handle only court-appointed cases. The Center has seen cases in which court-appointed lawyers failed to conduct any investigation, referred to their clients with a racial slur, had no knowledge of the governing law, were absent from the courtroom during parts of the trial, distanced themselves from their clients during closing argument, and failed to provide any advocacy for their clients. In the course of litigating cases involving conditions at jails and prisons, the Center's attorneys have repeatedly heard complaints by inmates that court-appointed lawyers did not visit them. The attorney sign-in logs at the jails corroborated these complaints. The Center regularly receives complaints from inmates about the failure of court-appointed lawyers to visit them, explain their legal situations to them, and work on their cases.

The Center has also provided assistance to many lawyers who are assigned to defend the poor in criminal cases in Georgia. The Center's staff has observed the frustration of conscientious lawyers who have been assigned complex cases they do not feel competent to handle at minimal rates of compensation and without the resources needed to defend the cases properly.

Upon becoming aware of these problems, the Center has sought to improve the quality of representation for poor people accused of crimes. The Center has successfully challenged in two class action cases the failure of counties to provide lawyers to poor people accused of crimes. The Center has published various articles on indigent defense issues. The most recent, *Neither Equal Nor Just: The Rationing and Denial of Legal Services to the Poor When Life and Liberty Are at Stake* was published in New York University's ANNUAL SURVEY OF AMERICAN LAW (1997).

This year, the Center has undertaken a systematic study of the quality of representation provided for poor people in Georgia's criminal courts. The Center's staff has examined records in the offices of clerks of court and county commissions in a number of counties; observed proceedings in Superior, State, and municipal courts; conducted interviews of various participants in the process; reviewed studies made by others; analyzed information available on the internet or obtained through the Georgia Public Records Law regarding the funding of indigent defense by the counties and the state; and obtained through the Public Records Law and examined applications submitted by counties to the Georgia Indigent Defense Council.

This examination of the quality of justice for Georgia's poor is far from complete, but what has been found thus far is deeply disturbing. It is offered to inform those interested in equal justice of some of the serious deficiencies that have come to the attention of the authors, to demonstrate the urgency of the need to correct those deficiencies, and to provide a basis for further study and for proposals to bring about the fair and equal treatment for all people who come before the courts.

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The integrity and legitimacy of Georgia's system of justice depends upon providing poor people with competent representation in cases in which their life or liberty is at stake. Competent representation is the most fundamental element of fairness. An adversary system of justice cannot function properly when one side is not competently represented. Zealous representation and rigorous adversarial testing are essential if the courts are to be properly informed of the law and reach accurate and just results. As Attorney General Janet Reno has observed, if justice is available only to those who can pay for a lawyer, "that's not justice, and that does not give people confidence in the justice system."¹ Chief Justice Harold Clarke delivered a similar message to the Georgia legislature in 1994: "[A] judicial system which fails to provide fair and equal treatment to all the people deserves the dishonor of all the people."²

However, it is undeniable that the legal representation provided for poor people in criminal cases in Georgia is, at best, extremely uneven from one county to another and that some people do not receive fair and equal treatment. Some receive no representation at all and are forced to fend for themselves without a lawyer – some even in felony cases. Some receive only perfunctory representation – sometimes having nothing more than hurried, whispered conversations with their court-appointed lawyer outside the courtroom or even in open court before entering a guilty plea or going to trial. Others may languish in jail for days, weeks or months before seeing a lawyer. Court-appointed lawyers often lack the time, knowledge and resources to conduct an independent investigation and raise appropriate legal issues. Of course, many poor people receive competent representation. However, the constitutions of Georgia and the United States require representation for *all* persons charged with felonies and all those charged with misdemeanors who face imprisonment. Only by looking at the deficiencies, and the reasons for them, can the deficiencies be corrected.

This preliminary report sets forth the constitutional, ethical and professional requirements that counsel be provided to poor people accused of crimes, describes some of the more egregious failures to comply with this requirement, and examines briefly some of the reasons for those failures. It is offered to inform those interested in equal justice of some of the serious deficiencies that have come to the attention of the authors, to demonstrate the urgency of the need to correct those deficiencies, and to provide a basis for further study and for proposals to bring about the fair and equal treatment for all people who come before the courts.

THE CONSTITUTIONAL, ETHICAL AND PROFESSIONAL REQUIREMENTS

The Georgia Constitution provides that "[e]very person charged with an offense against the laws of this state shall have the privilege and benefit of counsel."³ The Sixth Amendment to the United States Constitution provides that "[i]n all criminal prosecutions, the accused shall enjoy the right . . . to have the Assistance of Counsel for his defence."⁴

The United States Supreme Court held in 1963 in *Gideon v. Wainwright*⁵ that the federal constitutional right to counsel requires the appointment of an attorney to represent a poor person charged with a felony offense. The Court explained:

In our adversary system of criminal justice, any person haled into court, who is too poor to hire a lawyer, cannot be assured a fair trial unless counsel is provided for him. This seems to us to be an obvious truth. Governments, both state and federal, quite properly spend vast sums of money to establish machinery to try defendants accused of crime. Lawyers to prosecute are everywhere deemed essential to protect the public's interest in an orderly society. Similarly, there are few defendants charged with crime, few indeed, who fail to hire the best lawyers they can get to prepare and present their defenses. That government hires lawyers to prosecute and defendants who have the money hire lawyers to defend are the strongest indications of the wide-spread belief that lawyers in criminal courts are necessities, not luxuries. The right of one charged with crime to counsel may not be deemed fundamental and essential to fair trials in some countries, but it is in ours.⁶

In describing the essential nature of counsel for those accused of crimes, the Court quoted from its earlier decision in *Powell v. Alabama*:

The right to be heard would be, in many cases, of little avail if it did not comprehend the right to be heard by counsel. Even the intelligent and educated layman has small and sometimes no skill in the science of law. If charged with crime, he is incapable, generally, of determining for himself whether the indictment is good or bad. He is unfamiliar with the rules of evidence. Left without the aid of counsel he may be put on trial without a proper charge, and convicted upon incompetent evidence, or evidence irrelevant to the issue or otherwise inadmissible. He lacks both the skill and knowledge adequately to prepare his defense, even though he have a perfect one. He requires the guiding hand of counsel at every step in the proceedings against him. Without it, though he be not guilty, he faces the danger of conviction because he does not know how to establish his innocence.⁷

The same day it handed down its decision in *Gideon*, the Court held in *Douglas v. California* that the due process and equal protection clauses of the Fourteenth Amendment require that a lawyer be provided to a poor person on direct appeal.⁸ A few years earlier, the Court held in *Griffin v. Illinois* that the federal constitution requires states to provide transcripts to poor defendants for purposes of appeal. Writing for the Court, Justice Hugo Black stated, "There can be no equal justice where the kind of trial a man gets depends on the amount of money he has."⁹ The Canons of Ethics of the State Bar of Georgia provide: "A basic tenet of the professional responsibility of lawyers is that every person in our society should have ready access to the independent professional services of a lawyer of integrity and competence."¹⁰

Expressing its disapproval of "assembly line justice" and "[i]nadequate attention . . . given to the individual defendant" in misdemeanor cases, the Court held in 1972 in the case of *Argersinger v. Hamlin* that counsel must be provided in any case in which a person faces imprisonment.¹¹ In the case of *In re Gault*, the Court recognized that a "juvenile needs the assistance of counsel to cope with problems of law, to make skilled inquiry into the facts, to insist upon regularity of the proceedings, and to ascertain whether he has a defense and to prepare and submit it."¹² The Court recognized the "dangers and disadvantages of self-representation" in *Faretta v. California* and required that courts not allow individuals to represent themselves unless the courts first warned them of those "dangers and disadvantages" and then determined that any decision to waive counsel was made "with eyes wide open."¹³ The Court held in *Ake v.*

Oklahoma that due process requires that the defense be provided expert assistance if it is necessary for a fair trial.¹⁴

Complementing these constitutional mandates, the Canons of Ethics of the State Bar of Georgia commit the legal profession to “the principle that high quality legal services should be available to all” and require lawyers to represent clients competently and zealously within the bounds of the law, exercising independent professional judgment on behalf of the client.¹⁵

In short, the Constitution and the Canons of Ethics require that the poor person accused of a crime be represented as an individual by a competent lawyer. Accordingly, a lawyer who defends a poor person accused of a crime must be knowledgeable about the criminal and constitutional law and the rules of evidence and procedure. Upon appointment, he or she should promptly interview the client, conduct an independent investigation, obtain any relevant records, obtain discovery, make an assessment of the prosecution’s case, and provide the accused with informed advice on issues such as whether to plead guilty or go to trial and whether to testify. If the case is tried, the lawyer must subject the prosecution’s case to adversarial testing and, if appropriate, present evidence on behalf of the accused. If the client is to be sentenced, whether because of a guilty plea or verdict, the lawyer has a duty to present the court with information relevant to sentencing and to advocate on the client’s behalf with regard to sentence.¹⁶

As a result of these constitutional, ethical and professional requirements, many poor people charged with crimes have been capably defended by competent lawyers supported by the resources necessary to provide an adequate defense. Some counties have created and funded programs which secure capable lawyers and provide them with training and supervision, adequate compensation, and investigative and expert assistance. Even where such programs do not exist, some members of the legal profession, with extraordinary dedication and selflessness, have provided excellent representation in spite of modest compensation, limited resources for investigative and expert assistance, and, in many instances, heavy caseloads.

In many instances, however, the fairness and equality required by the Constitution are not realized in practice. It is those instances which require attention if the constitutional and professional goals of equal and fair justice are to be realized.

THE CRISIS AND THE CHALLENGE

Providing representation to poor people charged with crimes is an immense challenge. Over 80 percent of people accused of crimes are poor and cannot afford a lawyer. Although presumed innocent by the law, they are assumed to be guilty by much of the public. They are unpopular and have no political power. These and other factors have caused the state and local governments to strive not toward the much-celebrated constitutional command of equal justice, but, rather, as observed by Chief Justice Harold Clarke in his 1993 address to the legislature, toward “the embarrassing target of mediocrity.”¹⁷ As a result, indigent defense in Georgia lacks the funding, structure and independence necessary to provide quality representation to poor people accused of crimes. An American Bar Association report in 1993 found that “long-term neglect and underfunding of indigent defense have created a crisis of extraordinary proportions in many states throughout the country.”¹⁸

Even prior to the ABA's 1993 report, the crisis had been recognized in Georgia. Former Court of Appeals Judge Irwin Stolz, who chaired a subcommittee of the Governor's Judicial Process Review Commission in 1985, had pronounced the system "terrible" and added, "It's almost enough to make a cynic out of you."¹⁹ The *Atlanta Constitution* published a series on rural justice in 1987, which reported that in one judicial circuit poor people were languishing in jails for months without lawyers and meeting their lawyers for the first time in court on the day of their plea.²⁰ The *Constitution* quoted House Majority Leader Larry Walker (D-Perry) acknowledging that "the hodgepodge system [of indigent defense] we've got is inadequate."²¹

Some significant steps have since been taken to fulfill the responsibility of Georgia and its legal profession to provide representation to poor people accused of crimes. The legislature appropriated state funds in 1989 to support indigent defense – although the \$1 million appropriated was less than half the \$2.5 million proposed by the governor – and has increased state funding in subsequent years to its present level of \$4.9 million. It also created an office to specialize in the defense of capital cases, thereby improving representation in those cases both by direct representation and through training and guidance given by specialists in that office to lawyers throughout the state. The Georgia Supreme Court established guidelines regarding the prompt appointment of counsel, compensation for counsel, caseload limits and other aspects of indigent defense. Training programs are now available at little or no cost to lawyers who represent the poor.

Despite these steps, however, funding still remains woefully inadequate, the guidelines adopted by the Georgia Supreme Court are not enforced, and provision of representation to the poor remains fragmented – indigent defense is left up to each of Georgia's 159 counties. By contrast, the state's district attorneys are organized by the state's 48 judicial circuits. In most counties, an uncompensated, three-person committee is charged with overseeing the provision of representation to indigents by either appointing individual lawyers to individual cases and paying the lawyer by the hour or by the case (an "appointed lawyer" program), by contracting with an attorney or group of attorneys to represent all indigent defendants in the county over a period of time for a fixed sum (a "contract defender" program), or by creating a public defender's office (a "public defender" program).

Some major deficiencies in this system of indigent defense have not escaped public attention. The ABC News program, *Nightline*, earlier this year featured one county's contract defender as an example of deficient representation. In 1995, the *Fulton County Daily Report* disclosed that members of one county's three-person committee that was supposedly overseeing the indigent defense program conducted no oversight over the quality of indigent defense; the committee's only function was to sign the application form for state supplemental funds. The responsibility of assigning lawyers to represent the poor was left with the sheriff, who withheld appointments from lawyers who did not accept plea offers.²²

Thus, the approach to indigent defense remains, as Senator Walker described it, "a hodgepodge." As a result, too often the kind of justice a person receives depends upon the money he or she has. In some courts, poor people – even those charged with felonies – are still subject to the kind of "assembly line justice" the United States Supreme Court condemned in *Argersinger v. Hamlin*. Many localities have become accustomed to systems and practices which simply do not measure up to what the constitutions of Georgia and the United States require. For example:

- Some adults and children who cannot afford a lawyer plead guilty – even to felony charges – and are sentenced to prison or jail without the assistance of an attorney.
- In some municipal and state courts, there are no lawyers available to represent indigent defendants. Virtually all the poor people are processed through those courts without a lawyer. In some of the courts, the few who ask for a lawyer are taken into custody and their cases are transferred to another court, where a new bond is set. Counsel is also assigned, but the accused may face greater punishment than would have been imposed in the original court.
- Indigent people may languish in jail for weeks or months before meeting with a lawyer, despite guidelines adopted by the Georgia Supreme Court which require that lawyers be appointed within 72 hours of arrest and that lawyers meet promptly with their clients.
- In some courts, the determination of whether an accused can or cannot afford a lawyer is based on factors such as ability to make bail.
- Even after a lawyer has been appointed, some indigent people cannot communicate with their lawyer because their lawyer does not visit the jail, accept telephone calls from their clients, or reply to letters and family inquiries, despite guidelines adopted by the Georgia Supreme Court which require a lawyer to meet with his or her client promptly after appointment.
- Many poor people meet their court-appointed lawyers for the first time on the same day they enter a guilty plea and are sentenced.
- Some lawyers are paid \$50 or less *per case* to defend the poor.
- Appointed counsel in many counties rarely hire investigators and expert witnesses. Many lawyers do not seek funds for investigators or experts because they do not think that there is any chance the judge will order that funds be provided.
- Some court-appointed lawyers handle several times the number of cases set out in the guidelines adopted by the Georgia Supreme Court. As a result, their clients do not receive the individualized attention to which they are entitled.
- Because many of the lawyers appointed to defend the poor do not specialize in criminal law, they may be unaware of important developments in the law as well as in areas such as forensic sciences and mental health.
- Important legal issues are not raised by motion or otherwise in many cases. Motions practice is virtually non-existent in some counties; in some others, the same boilerplate motions are filed in virtually every case.

- There is no exploration of sentencing alternatives or advocacy regarding sentence in many cases.
- Despite their poverty, those convicted are often fined and required to pay court costs and various fees and surcharges they cannot afford.
- Even though state funding is available, 23 counties do not receive state funding. Thirteen counties have *never* applied for state funding since it has been available. One county's reason for not seeking state funding was that it was too difficult to complete the application form.

These practices affect the lives of the thousands of people who are hurriedly processed through Georgia's courts, instead of being represented by competent, zealous and independent counsel as required by the constitutions of Georgia and the United States and the ethical and professional standards of the legal community.

Pleading without consultation with a lawyer

In most courts in the United States, it is exceedingly rare for people to represent themselves in criminal cases. Only one percent of felony defendants represented themselves in the nation's 75 largest counties in 1992.²³ In some Georgia counties, however, a much higher percentage of people plead guilty or go to trial without the assistance of counsel. Many represent themselves not because of a desire to do so but because of subtle or overt pressure, because they do not understand that they have the right to a lawyer free of charge, because lawyers are not available, or because the attorney made available by the court has a reputation of doing more harm than good to the clients he represents.

For example, in one Superior Court, between January 1999 and May 2000, 218 people – over one-third of indigent defendants – represented themselves. Of that number, 216 entered guilty pleas and received sentences ranging from probation to years in prison. The county's two contract defenders each handled 117 cases during this same period.

In some courts, judges direct unrepresented individuals to speak with the district attorney. The uncounseled individual may talk with the prosecutor and enter a guilty plea even though the lawyers who contract with the county to defend the poor are in the courtroom. When a plea bargain is reached, the defendant typically waives his or her right to counsel, pleads guilty and is sentenced. In one Superior Court recently, the contract lawyer watched eight out of 34 defendants who appeared before the court that day – 24 percent of defendants – speak with the prosecutor, enter guilty pleas and be sentenced. The presiding judge advised these defendants of their right to appointed counsel but, the judge never inquired into whether the defendants could afford a lawyer to represent them, never advised them of the benefits of proceeding with counsel and, in violation of *Faretta v. California*, never warned them of the dangers, disadvantages and potential consequences of proceeding without counsel. The county where this occurred ranked among the lowest of all Georgia counties in the amount spent on indigent defense during the preceding year.

In one state court, individuals were given a form upon entering the courtroom entitled “waiver of rights for plea” which listed the rights they would waive by pleading guilty upon signing the form. Nowhere on the form were defendants informed that they had a right to consult with counsel to help them decide whether or not to plead guilty. No lawyers were available to assist those who wanted representation. Most cases were disposed of by uncounseled guilty pleas. It took a federal lawsuit to compel county and judicial officials to advise poor people of their right to counsel, but this practice continues in many other courts.

Proceedings for juveniles are sometimes scarcely any different. Even though the United States Supreme Court held in *In re Gault* that “[t]he juvenile needs the assistance of counsel to cope with problems of law, to make skilled inquiry into the facts, to insist upon regularity of the proceedings, and to ascertain whether he has a defense and to prepare and submit it,”²⁴ children – who are certainly among those most in need of the guiding hand of counsel – in large and small counties alike, are led through a series of questions that many do not understand in which the judge extracts from the child a “waiver” of the right to counsel.

The United States Supreme Court has made it clear that entry of a guilty plea does not dispense with the need for counsel: “Counsel is needed so that the accused may know precisely what he is doing, so that he is fully aware of the prospect of going to jail or prison, and so that he is treated fairly by the prosecution.”²⁵ The United States Supreme Court’s requirement in *Faretta v. California* that an individual without a lawyer must be warned of “the dangers and disadvantages of self-representation” before being allowed to dispense with the guiding hand of counsel is being routinely violated in some courts.²⁶

Languishing in jail without a lawyer

The Georgia Supreme Court adopted guidelines in November 1999, requiring that counsel be appointed within 72 hours of arrest or detention, and that appointed counsel make contact with the person promptly after actual notice of appointment. According to the guidelines, the local officials are to advise detained persons of their right to have counsel and that if they cannot afford a lawyer, one will be appointed to represent them; allow or assist a person claiming to be indigent and without counsel to immediately complete an Application for Appointment of Attorney and Certificate of Financial Resources for a determination of indigency; and appoint counsel for those who are indigent within 72 hours.²⁷

Notwithstanding these guidelines, many people may languish in jail for months without having a lawyer appointed or seeing their appointed lawyer. In one county, the accused often wait several months before the local contract defender sees them. In another county, indigent defendants have gone months after arrest without appointed counsel because they have no idea how to request an attorney. When they finally appear in Superior Court, often six to nine months after arrest, they still have never consulted with an attorney.

Minimal consultation before a guilty plea or trial

The United States Supreme Court made it clear in 1972 that an “almost total preoccupation . . . with moving cases” and “an obsession for speedy dispositions, regardless of the fairness of the result”

resulting in “assembly line justice” is inconsistent with the right to counsel.²⁸ Yet, in courtrooms across Georgia, poor people meet their court-appointed lawyers just moments before pleading guilty and being sentenced. Many never have a meaningful consultation with a lawyer, just a whispered conversation in the courtroom.

In *Argersinger v. Hamlin*, the United States Supreme Court quoted from the *Report by the President's Commission on Law Enforcement and Administration of Justice* (1968) in describing the “[i]nadequate attention . . . given to the individual defendant”:

[S]peed is often substituted for care, and casually arranged out-of-court compromise too often is substituted for adjudication. Inadequate attention tends to be given to the individual defendant, whether in protecting his rights, sifting the facts at trial, deciding the social risk he presents, or determining how to deal with him after adjudication. The frequent result is futility and failure.²⁹

Unfortunately, the treatment of defendants condemned by the Supreme Court in 1972 remains an apt description of what happens in many Georgia courtrooms today: “Defense lawyers appear having had no more than time for hasty conversations with their clients . . . Suddenly it becomes clear that for most defendants in the criminal process, there is scant regard for them as individuals. They are numbers on dockets, faceless ones to be processed and sent on their way. The gap between the theory and the reality is enormous.”³⁰

The Supreme Court was talking about the processing of misdemeanor cases in *Argersinger*, but the gap it identified between theory and reality was apparent during a recent *felony* criminal trial week in one county. The contract defender was listed as counsel of record for, or was subsequently appointed to represent, 63 individuals. Of those, 20 failed to appear or their cases were continued. The contract lawyer consulted with the remaining 43 in the courtroom and ultimately entered guilty pleas for 42 of them. The 42 were sentenced, many to time in prison. During the proceedings, the contract defender exhibited little knowledge of the facts of the cases. For example, he did not know one client’s prior record before accepting a plea offer. He did not know that another client was mentally disabled until the client’s mother (who had also been represented by the contract defender that same day) provided this information to the judge. At one point in the proceedings, the judge warned the contract lawyer that he must do a better job of making contact with his clients before coming to court. However, the judge accepted the guilty pleas and imposed sentence for all 42 individuals.

In another county, the contract attorney tried only three cases to a jury while entering 313 guilty pleas over a four-year period. Many of the pleas were entered the same day the attorney met his clients. In another county, each of the two contract lawyers were assigned 117 cases between January 1999 and May 2000. One lawyer entered guilty pleas for 116 of those clients and took one case to trial and received a guilty verdict. The other entered pleas for 112 of his clients, one plea of *nolo contendere*, and tried three cases, receiving guilty verdicts in all three. One case remains unresolved. In another county, the contract defender was called upon by the judge during the proceedings to represent four people who faced serious felony charges and did not have lawyers. Although the lawyer had no involvement with the individuals before being assigned to defend them, he entered guilty pleas for three of the four.

Obviously, clients in these cases are not being interviewed in any depth and no independent investigation of their cases is occurring. Nor is there any investigation and meaningful advocacy with regard to sentence. A woman leaving a courtroom for the lunch break after a morning in which people were meeting a contract lawyer and pleading guilty, remarked to a companion “there’s a railroad going on up there.” After lunch, the judge – who had not heard the comment – called the proceedings to order with the words, “Let’s get this train going.” Unfortunately, in this instance, there was no gap between the appearance and the reality.

Processing a large number of cases

The Georgia Supreme Court has adopted guidelines limiting the number of cases to be handled by an attorney in counties receiving state funding. The guidelines, based on those adopted by the American Bar Association, prohibit a full-time public defender from handling more than 150 felonies per year; or 300 misdemeanors per year; or 50 juvenile offender cases per year; or 60 juvenile dependency clients per year; or 25 appeals to an appellate court hearing a case on the record and briefs per year. The limits are not intended to be an aggregate.

Despite these guidelines, lawyers who contract or are appointed to defend poor people are often forced by limited compensation to handle a large volume of cases. These lawyers may not have a large number of open cases because they often dispose of cases within a few hours or even minutes after meeting clients. Some lawyers must process a high volume of indigent cases to earn a living. For example, in some courts which pay \$50 or less per case, the only way a lawyer can make any money is to take several cases and resolve them with guilty pleas the same day. For lawyers who contract with counties to represent the poor, there is a conflict between the time to be devoted to assigned cases, which will produce the same income regardless of the amount of time spent on them, and the time devoted to private cases, which produce additional income.

Some contract lawyers spend as little as 40 to 50 percent of their practice processing over 500 indigent criminal cases a year. This means that some lawyers average as little as an hour and a half on each case. In one county where a contract lawyer handled more than 500 adult cases per year during the 40 percent of his practice devoted to representation under the contract, detainees in the county jail often waited six to nine months before seeing the lawyer for the first time. The county spent less than 25 percent of the statewide average cost per case in the 2000 fiscal year. Another county in which the contract attorney handles 530 cases per year, also spent less than 25 percent of the statewide average cost per case during the 2000 fiscal year.

A pair of lawyers who contracted to handle *the entire indigent caseload* – felonies, misdemeanors, and juvenile cases, excluding conflict of interest and death penalty cases – *for five counties*, handled over 800 cases in a year in what they said was half their practice. Collectively, the five counties’ cost per case average was only 44 percent of the statewide average during the 2000 fiscal year.

Failure to recognize the poverty of those in need of representation

The Georgia Supreme Court guidelines express a clear policy in favor of appointment where there is doubt about a defendant's ability to hire his or her own lawyer and require that the assessment of one's ability to afford a lawyer take into consideration income and expenses. Nevertheless, poor people who gain release from jail by posting a bond may not receive the services of an attorney. Some judges assume that they are not indigent because they made bail. Some poor people released on bond are told to "come back with a lawyer." However, many cannot afford to do so.

For example, an individual who asked a judge to appoint a lawyer to represent him in his upcoming felony trial was told that since he was out on bond, he could afford to hire an attorney. Even though the individual insisted that he could not afford an attorney and informed the judge that he earned only \$147 a week after taxes, the judge told him – without further inquiry into the defendant's expenses – that \$147 a week was enough money to hire an attorney. The federal poverty guideline in the year 2000 for one person in the 48 contiguous states is \$8,350, or \$160.57 per week. Despite the individual's poverty, the judge refused to appoint counsel and instructed him to come back 12 days later with his own lawyer for trial.

The same judge also resisted appointing counsel to another individual when she asked for an appointed lawyer to represent her on two drug possession charges. The judge told her that if she could afford to be out on bond, she could afford a lawyer. When she told the judge that she was unemployed and that her mother had paid her bond, the judge criticized her for not having a job and told her to have a lawyer within two weeks for trial. When she appeared two weeks later without counsel, the judge asked her again if she had a job. When she replied no, he shook his head and asked if she had a car. When she said no, he shook his head, turned to one of the two contract defenders sitting in the courtroom and said grudgingly, "Well, you'll have to represent this lady."

In the same county, another person reported to the office of one of the contract lawyers to submit an application for an attorney after being released on bond on felony charges. He was not notified that there was any problem with his application and appeared in court believing he would be represented by the contract lawyer. However, during the proceedings, the contract lawyer told the judge he would not represent the individual because the lawyer believed the individual had "lied" on the application because he failed to list his wedding ring, a necklace, and a wristwatch as assets. An employee of the contract lawyer had noted that the individual was wearing "excessive amounts of gold jewelry." The defendant, surprised, had no attorney to advise him with regard to responding to this accusation being made against him by the lawyer he thought was going to defend him. Upon hearing the information, the judge denied appointment and told the defendant to return to court with a private lawyer in 24 hours.

Failure to investigate and litigate

The American Bar Association standards for defense counsel state that defense counsel should:

[C]onduct a prompt investigation of the circumstances of the case and explore all avenues leading to facts relevant to the merits of the case and the penalty in the event of conviction. The investigation should include efforts to secure information in the possession of the prosecution and law enforcement authorities. The duty to investigate exists regardless of the accused's admissions or statements to defense counsel of facts constituting guilt or the accused's stated desire to plead guilty.³¹

The standards also advise:

Many important rights of the accused can be protected and preserved only by prompt legal action. Defense counsel should inform the accused of his or her rights at the earliest opportunity and take all necessary action to vindicate such rights. Defense counsel should consider all procedural steps which in good faith may be taken, including, for example, motions seeking pretrial release of the accused, obtaining psychiatric examination of the accused when a need appears, moving for change of venue or continuance, moving to suppress illegally obtained evidence, moving for severance from jointly charged defendants, and seeking dismissal of the charges.³²

Contrary to these standards, some appointed lawyers fail to conduct interviews in any depth with their clients, conduct no investigations, file no motions or file the same boilerplate motions in every case, and fail to bring any professional skills to bear on the case.

It appears that some court-assigned lawyers never use an investigator. One lawyer, who has handled hundreds of court-appointed cases over the last thirty years, could not recall a case in which he had an investigator and could recall only one in which he had an expert witness. A lawyer in another part of the state said that it was his practice not to investigate cases and rely only on police reports. A contract lawyer assigned to represent a client who was charged with murder of her baby met with the client only a few times for only a few minutes, including appearances in court. The lawyer never sought to have his client, who was mentally retarded, examined by an expert, and apparently never looked at the autopsy report which listed the cause of death as “undetermined.” He counseled his client to plead guilty to manslaughter. She accepted his advice, entered the plea and she was sentenced to 20 years in prison.

Some of the lawyers being assigned to defend the poor do not know the law. One lawyer, who was appointed to represent indigents throughout his career, when asked to name all the criminal law decisions with which he was familiar responded, “*Miranda* and *Dred Scott*.” Of course, *Dred Scott v. Sandford* was not a criminal case. Another lawyer who had tried a capital case admitted that he had never heard of *Furman v. Georgia*, *Gregg v. Georgia* and other important capital decisions. When pressed, he could not name a single case from any court. There is no excuse for this ignorance of the law.

Lawyers who do not know the law cannot protect their clients’ rights. People, including the first two individuals executed in Georgia since the Supreme Court allowed the resumption of capital punishment, were denied relief on meritorious claims because their lawyer did not preserve the issue, while their co-defendants were granted new trials because of the very same legal error. The person who by good fortune was assigned the well-informed lawyer won a new trial, while the person assigned a lawyer ignorant of the law was executed. If the lawyers had been switched when the appointments were made, the results of the cases would have been exactly the opposite. This is not equal justice.

Lack of knowledge and experience in criminal law undoubtedly results in the absence of any motions practice on behalf of the poor in some courts. One contract lawyer filed only three motions while handling over 300 cases in four years. In another county, a pair of contract defenders filed only 64 motions in the 234 cases they handled over a 17 month period. The majority of these motions were filed in the five cases they took to trial.

FACTORS CONTRIBUTING TO DEFICIENT REPRESENTATION

While there are numerous reasons, varying from one county to the next, which contribute to failures to comply with the constitutional, ethical and professional requirements regarding representation of the poor, the primary reasons are no secret. Nor are they isolated factors unique to a particular county. Deficient representation is the unavoidable result of several interrelated factors: leaving the provision of indigent defense up to each of 159 counties, insufficient funding, the lack of independence of attorneys assigned to defend the poor, and the lack of any oversight of local indigent defense programs.

Lack of structure and adequate compensation

Primary responsibility for providing representation to poor people accused of crimes is placed upon the counties. In most counties, an uncompensated, three-person committee – called a “tripartite committee” – chooses the method of representation and supposedly oversees the provision of indigent defense services. Approximately 40 percent of Georgia’s counties provide representation for the poor by contracting with an attorney or attorneys to represent all indigent defendants in the county over a certain period of time for a fixed sum.³³ The lawyer or lawyers are free to generate other income through private practice. Indeed, the low compensation compels them to take fee-generating cases in order to earn a living. Another 40 percent of counties provide representation by appointing individual lawyers to cases and paying the lawyers by the hour or by the case.³⁴ Twenty-one counties, including some in collaboration with others, deliver indigent defense services through the use of a public defender office which employs lawyers and investigators on a full-time basis.³⁵

Although there are some exceptions, for the most part, even counties within the same judicial circuit do not share responsibility for providing representation to poor people accused of crimes. Thus, in a multi-county circuit, one county may contract with a lawyer to represent all of the poor people for a set amount on a part-time basis, another county in the same circuit may contract with another attorney to represent the poor in that county, and another county in the circuit may appoint attorneys to individual cases and pay them by the hour or by the case. This is an inefficient approach. It requires, for example, that several lawyers be trained in various aspects of defending criminal cases instead of one or two.

Some counties award contracts to defend the poor to the attorney or attorneys who submit the lowest bid. Obviously, the lowest bid does not necessarily equate with effective representation. For example, one county commission awarded the indigent defense contract to a lawyer whose bid of \$25,000 was \$21,000 lower than the amount the county had paid for indigent defense the previous year and almost \$20,000 lower than bids received from two other attorneys. The contract allowed the lawyer to maintain a private practice as well as defend the county’s poor. While the county saved money under this arrangement, the lawyer could not afford to devote much time to any individual case. He met many clients for the first time in court on the same day that their cases were resolved with a guilty plea. Obviously, no interviews, investigation, legal research or consultation with experts occurred in these cases.

Even in those counties that do not award contracts to the lowest bidder, the amounts paid are often not enough to adequately compensate a lawyer for the time necessary to represent each client properly. Some lawyers refuse to contract with counties to defend the poor, saying that the amounts paid under the contract in their counties are not sufficient to enable them to meet their professional obligations to the clients. Contract defender arrangements also create a conflict of interest between a lawyer's professional obligation to provide zealous and competent representation to his or her indigent clients and the need to earn enough income from private cases to survive.

The amount paid to lawyers appointed to cases – \$45 an hour for out-of-court work and \$60 an hour for in-court representation in counties that comply with the guidelines adopted by the Georgia Supreme Court – is far below the market rates attorneys receive for far less stressful work than defending people in criminal cases. In fact, the cost of overhead for some law offices equals or exceeds \$45 per hour. In courts that pay \$50 or less *per case*, an attorney cannot make money unless he or she takes a large number of cases and disposes of them quickly. While some outstanding members of the legal profession take some court-appointed cases at these rates, it is not a realistic way to make a living. As a result, many poor people are represented by inexperienced lawyers building a practice and by lawyers who cannot attract other business and turn to taking court appointments as a last resort.

Because of low compensation, lawyers assigned to cases under either the contract or court-appointed approaches have little incentive to develop an expertise in the defense of criminal cases or even to continue representing indigent defendants after building a successful private practice.

One does not need to look far for an example of a structure for the delivery of legal services in criminal cases. The prosecution of criminal cases is primarily state-funded, and is efficiently structured on a circuit-wide basis with one district attorney's office for each of the state's 48 judicial circuits. The method of organization is efficient, cost-effective, and effective in ensuring that the State is competently represented in criminal cases. The district attorneys recruit, train and supervise lawyers who prosecute cases on a full-time basis. The lawyers hired by these offices specialize in the prosecution of cases, attend continuing legal education programs on their responsibilities, learn both the law and new approaches to dealing with their duties – such as, for example, how to prosecute child abuse or domestic violence cases – and stay current on developments in forensic sciences and other areas of importance to their practice. The offices of district attorneys share information with one another, avoiding unnecessary and costly duplication of effort.

The public defender offices that already exist in this state – several of which are circuit-wide – show that this approach can be used to deliver defense services as well. Public defender offices that employ full-time attorneys who specialize in the defense of criminal cases benefit from economies of scale that are not available in contract and appointed-counsel programs. Of course, as has been demonstrated in this state and elsewhere, no office can provide adequate representation without adequate resources so that attorneys carry reasonable caseloads and have the investigative and expert assistance necessary to provide competent representation.

Inadequate funding

Georgia and its counties are spending \$40.5 million this year on indigent defense, far less than other states with similar populations and caseloads. And, unlike most states, funding for indigent defense in Georgia comes primarily from the counties, not the state. The state provides only \$4.9 million to counties that apply for it. Despite the need for adequate funding, 23 counties, including two entire judicial circuits, do not receive state funding.³⁶ Thirteen counties have *never* applied for state funding since it became available in 1989.³⁷ One county's reason for not seeking state funding was that it was too difficult to complete the application form.

The most recent comparative study of indigent defense expenditures among states like Georgia which fund indigent defense programs through a combination of state and county funds was completed in 1998.³⁸ The study found:

- Georgia, despite having the third highest population, spent the *least amount in state dollars* for indigent defense during fiscal year 1997. The spending, by state, was as follows: Florida (\$123,870,000), Ohio (\$31,152,258), Tennessee (\$29,521,673), Kentucky (\$12,019,042), Indiana (\$12,019,042), Louisiana (\$7,500,000), South Carolina (\$4,263,593), and Georgia (\$3,000,000).
- Georgia, despite having the third highest population, ranked sixth among the eight states in per capita indigent expenditures: Florida (\$11.99), Tennessee (\$6.49), Indiana (\$5.40), Louisiana (\$5.35), Ohio (\$5.08), Georgia (\$4.48), Kentucky (\$4.39), South Carolina (\$3.90).
- Georgia, despite having the highest felony to misdemeanor case ratio, ranked fifth out of the eight states in per case spending: Indiana (\$327.41), South Carolina (\$314.43), Florida (\$291.54), Ohio (\$220.15), Georgia (\$210.37), Tennessee (\$180.70), Louisiana (\$165.94), Kentucky (\$163.25).

As described in the previous section, the low amount of funding affects each of the methods of delivering legal representation to indigent defendants and creates disincentives to competent representation which in many cases are impossible to overcome.

In 1992, Chief Justice Clarke told the Georgia legislature that because of inadequate state funding, “local governments struggle to fund a program which the constitution and logic say is a state burden. This is unfair to local government and results in uneven quality of representation around the state causing untold problems.”³⁹ Unfortunately, little has changed in the last eight years.

Lack independence and oversight

Lawyers are ethically, professionally and constitutionally required to exercise independent professional judgment on behalf of a client.⁴⁰ The appointment of counsel by judges creates – at the least – the appearance that lawyers are being assigned cases to move dockets and that lawyers may be more loyal to the judge than to the client. A lawyer's conduct in a case should not be influenced in any way by considerations of administrative convenience or by the desire to remain in the good graces of the judge who

assigned the case. However, because some lawyers are dependent upon judges for continued appointments – which, in some cases, are the only business the lawyer receives – a lawyer may be reluctant to provide zealous advocacy for fear of alienating the judge. Some lawyers have remarked that one way to avoid being assigned indigent cases is to provide a vigorous defense in one.

Accordingly, Standard 5-1.3 of the American Bar Association's *Criminal Justice Standards*, provides:

(a) The legal representation plan for a jurisdiction should be designed to guarantee the integrity of the relationship between lawyer and client. The plan and the lawyers serving under it should be free from political influence and should be subject to judicial supervision only in the same manner and to the same extent as are lawyers in private practice. The selection of lawyers for specific cases should not be made by the judiciary or elected officials, but should be arranged for by the administrators of the defender, assigned-counsel and contract-for-service programs.

(b) An effective means of securing professional independence for defender organizations is to place responsibility for governance in a board of trustees. Assigned-counsel and contract-for-service components of defender systems should be governed by such a board. Provisions for size and manner of selection of boards of trustees should assure their independence. Boards of trustees should not include prosecutors or judges. The primary function of boards of trustees is to support and protect the independence of the defense services program. Boards of trustees should have the power to establish general policy for the operation of defender, assigned-counsel and contract-for-service programs consistent with these standards and in keeping with the standards of professional conduct. Boards of trustees should be precluded from interfering in the conduct of particular cases. A majority of the trustees on boards should be members of the bar admitted to practice in the jurisdiction.

Georgia also has no mechanism which holds the lawyers who represent the poor and the county and judicial officials who administer indigent defense programs accountable for deficient representation. Members of local tripartite committees are essentially volunteers who may know nothing about the defense of a criminal case. Many provide no active oversight of indigent defense representation. Local officials may be more interested in cost and moving the docket than in effective representation for the poor. As previously described, some counties have contracted with a lawyers who do nothing more than meet poor people charged with crimes at court and plead them guilty. When the guidelines adopted by the Georgia Supreme Court are violated, the Georgia Indigent Defense Council can take no action except possibly to withhold state funding the next time the county applies. This drastic and counterproductive remedy has never been used.

The poor person denied effective legal representation has little or no redress in the courts. Because Georgia does not provide counsel for post-conviction proceedings, those who have been denied the right to counsel have no way to bring habeas corpus actions to vindicate their right to counsel. The only poor defendants who usually receive lawyers for post-conviction proceedings are those sentenced to death, and they have prevailed repeatedly on claims of ineffective assistance of counsel as well as other violations of their constitutional rights. Two-thirds of the death sentences imposed in Georgia's courts since 1973 have

been set aside on post-conviction review. If such errors are occurring in the most serious cases, it is likely that they are occurring in other cases as well.

CONCLUSION

Although the Supreme Court stated in *Gideon v. Wainwright* that lawyers are “necessities, not luxuries,” the reality is that representation by a capable attorney is a luxury, one few of those accused of a crime can afford. Many counties are not meeting their constitutional, ethical and professional obligation to provide fair and equal treatment to poor people accused of crimes. The purpose of this preliminary report is not to assign blame, but to bring to light the deficiencies – such as people proceeding without counsel, a practice that should have ended in 1963, and the assembly line approach to justice found in some courts that should have ended in 1972 – and to urge that they be corrected. No purpose is served by pretending that these deficiencies do not exist. They are apparent to anyone who spends a day watching scores of people being processed in the courts.

Self-criticism is one of the great strengths of our democracy and our court system. The representation provided to the poor has been neglected for too long. Those who have been entrusted with responsibility for the judicial system – members of the bar and the judiciary and elected officials – have a special responsibility to see that every poor person who comes before the court is treated fairly and provided competent legal representation. Achieving equal justice for all is not beyond the grasp of this state. It is only a matter of reaching out and delivering on constitutional promises made long ago.

ENDNOTES

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1. Janet Reno, Address to the American Bar Association Criminal Justice Section, page 6 (Aug. 2, 1997).
 2. Hon. Harold G. Clarke, State of the Judiciary Address to the Georgia General Assembly (Jan. 13, 1994), *in* FULTON COUNTY DAILY REPORT, Jan. 14, 1994, at 8.
 3. GA. CONST., art. I, § 1, ¶ XIV.
 4. U.S. CONST., amend. VI.
 5. *Gideon v. Wainwright*, 372 U.S. 335 (1963).
 6. *Id.* at 344.
 7. *Id.* at 345 (quoting *Powell v. Alabama*, 287 U.S. 45, 68-69 (1932)).
 8. *Douglas v. California*, 372 U.S. 353 (1963).
 9. *Griffin v. Illinois*, 351 U.S. 12, 19 (1956).
 10. CANONS OF ETHICS, Canon 1, EC-1-1 (State Bar of Georgia).
 11. *Argersinger v. Hamlin*, 407 U.S. 25, 34 (1972).

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12. *In re Gault*, 387 U.S. 1, 36 (1967).
 13. *Faretta v. California*, 422 U.S. 806, 835 (1975) (quoting *Adams v. United States ex rel. McCann*, 317 U.S. 269, 279 (1942)).
 14. *Ake v. Oklahoma*, 470 U.S. 68 (1985).
 15. CANONS OF ETHICS, Canons 5, 6, 7, EC 2-23 (State Bar of Georgia).
 16. See generally ABA CRIMINAL JUSTICE STANDARDS—DEFENSE FUNCTION (3d ed. 1993); ABA CRIMINAL JUSTICE STANDARDS—PROVIDING DEFENSE SERVICES (3d ed. 1992), available at <<http://www.ambar.org/crimjust/standards>>; see also PERFORMANCE GUIDELINES FOR CRIMINAL DEFENSE SERVICES (1995) (National Legal Aid & Defender Association), available at <<http://www.nlada.org/standards/standards.htm>>.
 17. Hon. Harold G. Clarke, State of the Judiciary Address to the Georgia General Assembly (Jan. 13, 1994), in FULTON COUNTY DAILY REPORT, Jan. 14, 1993, at 5.
 18. RICHARD KLEIN & ROBERT SPANGENBERG, THE INDIGENT DEFENSE CRISIS 25 (1993) (prepared for the American Bar Association Section of Criminal Justice Ad Hoc Committee on the Indigent Defense Crisis).
 19. Hal Straus, *Indigent Legal Defense Called ‘Terrible,’* ATLANTA JOURNAL & CONSTITUTION, July 7, 1985, at 1A.
 20. Tracy Thompson, *Rural Ga. ’s Poor Often Find Free Legal Aid Lacking*, ATLANTA CONSTITUTION, Dec. 14, 1987, at 1-A; Tracy Thompson, *Push to Fund Indigent Defense An Uphill Battle*, ATLANTA CONSTITUTION, Dec. 16, 1987, at 1-A.
 21. Tracy Thompson, *Push to Fund Indigent Defense An Uphill Battle*, ATLANTA CONSTITUTION, Dec. 16, 1987, at 1-A, 8-A.
 22. Judy Bailey, *Does Sheriff Run Putnam’s Indigent Defense?* FULTON COUNTY DAILY REPORT, Nov. 10, 1995, at 1.
 23. U.S. DEPARTMENT OF JUSTICE, BUREAU OF JUSTICE STATISTICS, SELECTED FINDINGS: INDIGENT DEFENSE 4, at Table 8 (Feb. 1996).
 24. *In re Gault*, 387 U.S. 1, 36 (1967).
 25. *Argersinger v. Hamlin*, 407 U.S. 25, 34 (1972).
 26. *Faretta v. California*, 422 U.S. 803, 835 (1975).
 27. GUIDELINES OF THE GEORGIA INDIGENT DEFENSE COUNCIL FOR THE OPERATION OF LOCAL INDIGENT DEFENSE PROGRAMS, at § 1.3 (Application for Appointment of Counsel And Certificate of Financial Resources) (1999) (Georgia Indigent Defense Council, approved by the Georgia Supreme Court).
 28. *Argersinger v. Hamlin*, 407 U.S. 25, 34-36 (1972).
 29. *Id.* at 35.
 30. *Id.*
 31. ABA STANDARDS FOR CRIMINAL JUSTICE STANDARDS—DEFENSE FUNCTION, Standard 4-4.1 (3d ed. 1993).
 32. *Id.* at Standard 4-3.6.
 33. This percentage is not precise because it does not include the 23 counties that do not receive state funds. Fifty-six counties

that receive state funds contract with an individual or group of attorneys to represent indigent defendants. They are Baker, Banks, Barrow, Bartow, Ben Hill, Berrien, Bleckely, Calhoun, Camden, Candler, Carroll, Coffee, Cook, Coweta, Crisp, Decatur, Dodge, Dooly, Dougherty, Emanuel, Floyd, Grady, Greene, Heard, Jefferson, Johnson, Laurens, Liberty, Lincoln, Long, McDuffie, McIntosh, Meriwether, Mitchell, Montgomery, Murray, Paulding, Pickens, Pulaski, Schley, Spalding, Taliaferro, Tattall, Telfair, Tift, Toombs, Treutlen, Twiggs, Upson, Washington, Webster, Wheeler, Whitfield, Wilcox, Wilkes, and Worth.

34. The 60 counties that receive state funds that employ this system are: Bacon, Baldwin, Bibb, Brantley, Brooks, Bryan, Burke, Butts, Charlton, Chatham, Cherokee, Clay, Clayton, Cobb, Colquitt, Columbia, Crawford, Dawson, Early, Echols, Evans, Fannin, Fayette, Forsyth, Gilmer, Glascock, Gwinnett, Hall, Haralson, Harris, Henry, Irwin, Jeff Davis, Jones, Lamar, Lee, Lowndes, Lumpkin, Macon, Miller, Monroe, Morgan, Peach, Pierce, Pike, Polk, Putnam, Quitman, Randolph, Richmond, Seminole, Sumter, Terrell, Thomas, Towns, Union, Warren, Wayne, White and Wilkinson.

35. The counties which have a public defender office are: Clarke, DeKalb, Douglas, Elbert, Franklin, Fulton, Glynn, Habersham, Hart, Houston, Jackson, Madison, Muscogee, Newton, Oconee, Oglethorpe, Rabun, Rockdale, Troup, Stephens, and Ware.

36. The counties that do not receive state funds are: Appling, Atkinson, Bulloch, Catoosa, Chatahoochee, Chattooga, Clinch, Dade, Effingham, Gordon, Hancock, Jackson, Jasper, Jenkins, Lanier, Marion, Screven, Stewart, Talbot, Taylor, Turner, Walker, and Walton Counties. These counties have a combined population of 432,813 people.

37. The counties that have never sought state funding are: Bulloch, Catoosa, Chatahoochee, Chattooga, Dade, Effingham, Gordon, Jenkins, Lanier, Marion, Screven, Talbot, and Walker.

38. See SPANGENBERG GROUP/ABA BAR INFORMATION PROGRAM, *Comparative Analysis of Indigent Defense Expenditures and Caseloads in States with Mixed State & County Funding*, (1998).

39. Harold G. Clarke, State of the Judiciary Address (1992), in FULTON COUNTY DAILY REPORT, Jan. 22, 1992, at 8

40. CANONS OF ETHICS, Canon 5 (State Bar of Georgia).