

MISSISSIPPI'S NO-COUNSEL COURTS

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Center for Access to Justice

About the Center for Access to Justice

The Center for Access to Justice at Georgia State University College of Law supports those working to ensure meaningful access to the courts and equal treatment in the civil and criminal justice systems, with a regional focus on the South. To that end, the Center convenes stakeholders, engages in research and public education, and trains the next generation of lawyers to serve the public interest.

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About this report

This report reflects research conducted by several of the Center's student fellows and data compiled during court observation conducted as part of the Center's inaugural Alternative Spring Break program, which sent a group of Georgia State University College of Law students to Jackson, Mississippi to work with the Office of the State Public Defender (OSPD). The Center is grateful to OSPD for its role in supporting this research and to the students who made this report possible: Colt Burnett (J.D. '20), Jarvarus Gresham (J.D. '19), Kathryn Hamoudah (J.D. '20), Jobena Hill (J.D. '19), Virginia McMillan, Nicholas Nesmith (J.D. '19), Timur Selimovic (J.D. '19), and Andrew Wang (J.D. '19).





Mississippi's No-Counsel Courts

A report from the Center for Access to Justice at Georgia State University College of Law

EXECUTIVE SUMMARY

Much of the public believes that criminal defendants invariably have a right to an appointed attorney. Television and film portrayals of encounters with the police reinforce that misconception, with fictional police officers reciting, “You have the right to an attorney. If you cannot afford an attorney, one will be appointed for you.”

The law is at odds with this common misunderstanding, both in theory and in practice. Though the Sixth Amendment guarantees the right “to have the assistance of counsel” in “all criminal prosecutions,” the United States Supreme Court has held that indigent criminal defendants have a right to *appointed* counsel only when incarceration will be imposed. Even in those instances, however, the promise of counsel often goes unfulfilled. Indeed, as this report details, some jurisdictions’ criminal courts regularly deny counsel to qualifying defendants.

You may have a right to an attorney, but in some courts in Mississippi, one will not be appointed for you.

The Center for Access to Justice, in partnership with the Office of the State Public Defender in Mississippi, sent a group of Georgia State University College of Law students to observe criminal court in March 2017. They spent a week in courts in and around Jackson, Mississippi, and what they found was alarming. Defendants were regularly dealing directly with the prosecuting attorney without ever having waived their right to counsel. Public defenders were often completely absent from court. Entire criminal hearings were conducted in under a minute—often without defense counsel and based solely on the uncontested testimony of the arresting officer.

Across our students’ observations, one thing was clear: You may have a right to an attorney, but in some courts in Mississippi, one will not be appointed for you.

This report provides an overview of Mississippi’s criminal justice system and a snapshot of the reality inside some of the state’s misdemeanor courts. What the students recorded during their week-long observation is a data point that confirms what countless others have observed in courts across the South: the denial of counsel is a systemic, well-documented constitutional crisis in violation of Supreme Court precedent.¹

YOU HAVE A RIGHT TO AN ATTORNEY

According to the Sixth Amendment and U.S. Supreme Court precedent, indigent criminal defendants are entitled to a lawyer when facing imprisonment. In 1963, Justice Black wrote in *Gideon v. Wainwright* that lawyers in felony criminal cases are “necessities, not luxuries,” concluding that a fair trial is effectively impossible where “the poor man charged with a crime [must] face his accusers without a lawyer to assist him.”² *Gideon* recognized the constitutional right to appointed counsel in felony cases.

In the 1972 case of *Argersinger v. Hamlin*, the Supreme Court further held that misdemeanor defendants facing a loss of liberty are also entitled to the provision of counsel.³ After *Argersinger*, barring the “knowing and intelligent waiver [of counsel], no person may be imprisoned for any offense, whether classified as petty, misdemeanor, or felony, unless he was represented by counsel at his trial.”⁴ *Argersinger* left open whether the right to counsel applied to defendants charged with an offense for which imprisonment was authorized but not actually imposed.⁵ The Court resolved this question in *Scott v. Illinois*, holding that a criminal defendant in state court is entitled to the appointment of counsel only if his

¹ See generally, e.g., ROBERT C. BORUCHOWITZ, MALIA N. BRINK, & MAUREEN DIMINO, NAT’L ASS’N CRIMINAL DEF. LAWYERS, *MINOR CRIMES, MASSIVE WASTE: THE TERRIBLE TOLL OF AMERICA’S BROKEN MISDEMEANOR COURTS* (2009); ALISA SMITH & SEAN MADDAN, NAT’L ASS’N CRIMINAL DEF. LAWYERS, *THREE MINUTE JUSTICE: HASTE AND WASTE IN FLORIDA’S MISDEMEANOR COURTS* (2011); DIANE DEPIETROPAOLO PRICE ET AL., NAT’L ASS’N CRIMINAL DEF. LAWYERS, *SUMMARY INJUSTICE: A LOOK AT CONSTITUTIONAL DEFICIENCIES IN SOUTH CAROLINA’S SUMMARY COURTS* (2016); ALISA SMITH ET AL., NAT’L ASS’N CRIMINAL DEF. LAWYERS, *RUSH TO JUDGMENT: HOW SOUTH CAROLINA’S SUMMARY COURTS FAIL TO PROTECT CONSTITUTIONAL RIGHTS* (2017); STEPHEN F. HANLON ET AL., AMERICAN BAR ASS’N SECTION ON CIVIL RIGHTS AND SOCIAL JUSTICE, *DENIAL OF THE RIGHT TO COUNSEL IN MISDEMEANOR CASES: COURT WATCHING IN NASHVILLE, TENNESSEE* (2017).

² *Gideon v. Wainwright*, 372 U.S. 335, 344 (1963).

³ *Argersinger v. Hamlin*, 407 U.S. 25 (1972).

⁴ *Id.* at 37.

⁵ *Scott v. Illinois*, 440 U.S. 367, 369 (1979).

conviction actually results in incarceration.⁶ In *Shelton v. Alabama*, the Court added yet another layer to its right to counsel jurisprudence, holding that a suspended sentence that may end in imprisonment could not be imposed without the assistance of counsel.⁷

According to the Supreme Court, therefore, if an indigent defendant is facing incarceration, whether charged with a misdemeanor or a felony, counsel must be provided unless knowingly and intelligently waived. Mississippi law is similarly clear, providing that “any person...arrested and charged with a felony, a misdemeanor or an act of delinquency” shall have the right to sign an affidavit of indigency and be represented by a public defender or court-appointed attorney.⁸ And according to Mississippi law, the right to counsel attaches even earlier than federal law would require—at arrest, rather than at the first judicial proceeding.⁹

MISSISSIPPI’S MISDEMEANOR COURTS

In Mississippi, municipal courts, justice courts, and county courts all handle misdemeanor cases,¹⁰ which carry penalties ranging from a fine to up to a year in prison.¹¹ Though municipal courts have jurisdiction over violations of city ordinances, traffic laws, and misdemeanor charges, they also handle preliminary hearings in felony cases.¹² All matters before the municipal court proceed without a jury or recorded testimony.¹³ There are 237 municipal court judges in Mississippi,¹⁴ all of whom are appointed by the municipality and

⁶ *Id.* at 373-74.

⁷ *Shelton v. Alabama*, 535 U.S. 654, 658 (2002). For a more thorough discussion of how the right to counsel applies to misdemeanor cases, see Brandon Buskey & Lauren Sudeall Lucas, *Keeping Gideon's Promise: Using Equal Protection to Address the Denial of Counsel in Misdemeanor Cases*, 85 FORDHAM L. REV. 2299 (2017).

⁸ MISS. CODE ANN. §§ 25-31-9(1), 25-32-13, 99-15-15 (2017); see also MISS. R. CRIM. P. 7.1(b) (stating that the right to counsel is extended to all persons facing incarceration as a penalty for crime).

⁹ *Grayson v. State*, 806 So.2d 241, 248 (Miss. 2001). In contrast, the Supreme Court has held that the right to counsel in a criminal case attaches at the initiation of “adversary judicial criminal proceedings, whether by way of formal charge, preliminary hearing, indictment, information, or arraignment.” *Kirby v. Illinois*, 406 U.S. 682, 689 (1972).

¹⁰ *About the Courts*, STATE OF MISSISSIPPI JUDICIARY, <https://courts.ms.gov/aboutcourts/aboutcourts.html>; see generally Miss. Const. art. 6, § 171 (2017) (justice courts); MISS. CODE ANN. §§ 9-9-21 (2017) (county courts), § 21-23- 7(1) (2017) (municipal courts).

¹¹ *Understanding the Court System*, MISSISSIPPI BAR, <https://www.msbar.org/for-the-public/consumer-information/understanding-the-court-system/>.

¹² *Id.*

¹³ *Id.*

¹⁴ *About the Courts*, *supra* note 10.

are required to be licensed attorneys and qualified electors of the county where the municipality is located.¹⁵

Justice courts also have jurisdiction over misdemeanors, but, in addition, they adjudicate civil cases for the recovery of debts, damages, or personal property not exceeding \$3,500.¹⁶

Defendants in a misdemeanor case appearing before a justice court judge are entitled to a jury trial and can appeal their case to the county or circuit court.¹⁷ Justice court judges are elected to a four-year term.¹⁸ To qualify as a justice court judge, an individual must be (1) a high school graduate or its equivalent, (2) a resident of the county where the court lies for at least two years prior to the election date, and (3) must successfully complete a training course by the Mississippi Judicial College of the University of Mississippi Law Center.¹⁹ The judge maintains discretion regarding how many days to hold court beyond the minimum two-days per month requirement.²⁰ The justice court judge may be a part-time position, and the judge is permitted to practice law “when he [or she] is not in court.”²¹ There are 82 justice courts in Mississippi, with a total of 197 judges.²²

County courts have concurrent jurisdiction with justice courts in all matters, civil and criminal.²³ Mississippi has 21 county courts and 30 county court judges, who are elected in non-partisan elections and serve four-year terms.²⁴

¹⁵ MISS. CODE ANN. § 21-23-3 (2017). The size of the municipality’s population determines the number of judges that the municipality may appoint: A municipality of 10,000 or more is required to appoint at least one municipal judge. Municipalities with a population exceeding 50,000 may not appoint more than ten municipal judges. MISS. CODE ANN. § 21-23-3 (2017). Any municipality with a population of less than 10,000 has the discretion of whether or not to appoint a municipal judge. MISS. CODE ANN. § 21-23-5 (2017). If the governing authorities of a municipality of less than 20,000 people appoint a municipal judge, the judge is required to be either a licensed attorney in the state of Mississippi or a justice court judge of the county where the municipality is located. *Id.*

¹⁶ MISS. CODE ANN. § 9-11-9 (2017).

¹⁷ *Understanding the Court System*, *supra* note 11.

¹⁸ *About the Courts*, *supra* note 10.

¹⁹ MISS. CODE ANN. § 9-11-3 (2017); *see also* Qualifications and Fees for Mississippi Candidates, <http://www.sos.ms.gov/Elections-Voting/Documents/CandidateQualifications.pdf>.

²⁰ MISS. CODE ANN. § 9-11-15 (2017); *see also* Robert Lee Long, *Judges may be part-time law says*, DESOTO TIMES (Aug. 4, 2007), http://www.desototimes.com/news/judges-may-be-part-time-law-says/article_afeacefe-ee71-5b4e-8713-2b8123d1443a.html.

²¹ Long, *supra* note 20.

²² *About the Courts*, *supra* note 10.

²³ MISS. CODE ANN. §§ 9-9-21; 9-9-27; 9-9-35 (2017); *see also* *About the Courts*, *supra* note 10.

²⁴ *About the Courts*, *supra* note 10.

INDIGENT DEFENSE IN MISSISSIPPI

The statutory provision of public defense was not codified in Mississippi until 1972, several years after *Gideon v. Wainwright* was decided.²⁵ Before public defender offices existed, courts appointed private counsel to indigent individuals.²⁶ Starting in 1979, counties could establish a public defender office—which was open either full-time or part-time—instead of using a court-appointed counsel system.²⁷

Today, most counties continue to employ either an appointed (private) counsel system or a part-time public defender system using a flat-fee contract rate; there has never been a significant number of full-time public defender offices in Mississippi.²⁸ Only seven of Mississippi's 82 counties have established public defender offices,²⁹ and only five are full-time offices with support staff.³⁰ There is not a single full-time public defender office handling misdemeanors.³¹

Appointed criminal defense attorneys handling felony charges are entitled to a maximum \$1000 fee, case-related out-of-pocket expenses, and \$25 per hour for any overhead expenses.³² For misdemeanor representation, the maximum fee is a mere \$200.³³ According to a 2014 report, per capita expenditures on indigent defense ranged from \$0.87 (in Leake

²⁵ Nat'l Legal Aid & Defender Ass'n, Mississippi: A Short Story, http://www.nlada.net/library/article/ms_ashortstory.

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

²⁹ THE SIXTH AMENDMENT CENTER, THE RIGHT TO COUNSEL IN MISSISSIPPI: EVALUATION OF ADULT FELONY TRIAL LEVEL INDIGENT DEFENSE SERVICES note 73 (2018) (stating that “only seven of Mississippi's 82 counties (just over 8.5%) are known to operate a public defender office: Forrest, Harrison, Hinds, Jackson, Lamar, Pearl River, and Washington”), http://sixthamendment.org/6AC/6AC_mississippi_report_2018.pdf.

³⁰ MISS. OFFICE OF STATE PUBLIC DEFENDER, ASSESMENT [sic] OF CASELOADS IN STATE AND LOCAL INDIGENT DEFENSE SYSTEMS IN MISSISSIPPI 9 (Dec. 2016), <http://www.ospd.ms.gov/Task%20Force/ASSESSMENT%20OF%20CASELOADS%20IN%20STATE%20AND%20LOCAL%20INDIGENT%20DEFENSE%20SYSTEMS%20IN%20MISSISSIPPI%20-%20Dec%202016.pdf>.

³¹ Email from Beau Rudder, Training Director, Office of the State Public Defender, quoting André De Gruy, State Public Defender (Apr. 20, 2018, 11:01 EST) (on file with authors).

³² *Wilson v. State*, 574 So.2d 1338 (Miss. 1990).

³³ MISS. CODE ANN. § 99-15-17 (2017) (limiting compensation to a maximum of \$200 for cases that “do[] not originate in a court of record[,]” with “the amount of such compensation to be approved by a judge of the chancery court, county court or circuit court in the county where the case arises”).

County) to \$11 (in Leflore County).³⁴ Mississippi's per capita expenditure on indigent defense is among the lowest in the nation and is the lowest among surrounding states.³⁵

Indigent Defense Expenditures Per Capita in Mississippi and Surrounding States³⁶

State	Population	Indigent Defense Expenditure	Cost per Capita
Tennessee	6.456 million	\$86.834 million	\$13.45
Louisiana	4.602 million	\$65.843 million	\$14.31
Alabama	4.822 million	\$50.000 million	\$10.37
Arkansas	2.949 million	\$22.950 million	\$7.78
Mississippi	2.985 million	\$16.369 million	\$5.48

Mississippi is one of only four states that do not contribute any money to non-capital, trial-level counsel for indigent defendants,³⁷ leaving it to local governments to fund right-to-counsel services through a combination of court fees, ordinance violations, and real estate taxes.³⁸ As a result, there is very little consistency in how indigent defense services are funded throughout the state.

While it is not unconstitutional for a state to delegate responsibility for indigent defense, it must ensure that local governments are able to—and in fact do—provide appointed counsel.³⁹ The Sixth Amendment Center recently published a report detailing the abysmal state of indigent defense for felony charges in Mississippi,⁴⁰ but the state of misdemeanor representation is arguably even more dire, with attorneys' fees capped at \$200 and not a

³⁴ MISS. OFFICE OF STATE PUBLIC DEFENDER, THE STATE OF THE RIGHT TO COUNSEL IN MISSISSIPPI: REPORT & RECOMMENDATIONS 6-7 (2014), http://sixthamendment.org/6ac/6AC_mississippireport_%20updated092014.pdf.

³⁵ *Id.* at 24.

³⁶ *Id.* Note that the cost per capita provided for Mississippi in this table is slightly higher than the average per capita expenditure noted elsewhere in the same report. *Compare id.* at 24 *with id.* at 7 (reporting a \$4.29 average expenditure statewide).

³⁷ THE SIXTH AMENDMENT CENTER, THE RIGHT TO COUNSEL IN MISSISSIPPI, *supra* note 29, at 10. The other states are Nebraska, Pennsylvania, and South Dakota. *Id.* at n.28.

³⁸ MISS. PUBLIC DEFENDER TASK FORCE: REPORT TO THE MISS. LEGISLATURE 34 (2017), <http://www.ospd.ms.gov/Task%20Force/Public%20Defender%20Task%20Force%20Report%202017.pdf>; *see also* NAT'L LEGAL AID & DEFENDER ASSOC., MISSISSIPPI INDIGENT DEFENSE DATA PROJECT: RECOMMENDATIONS FOR THE MISSISSIPPI PUBLIC DEFENDER TASK FORCE 2-3 (Dec. 2015), <http://www.nlada.org/sites/default/files/pictures/MS%20Report%20FINAL%202012%2018%202015.pdf>.

³⁹ THE SIXTH AMENDMENT CENTER, THE RIGHT TO COUNSEL IN MISSISSIPPI, *supra* note 29, at 10.

⁴⁰ *Id.*

single full-time defender or office available to handle misdemeanor cases, even in the largest cities and counties.

A MOVE TOWARD UNIFORMITY

In 2011, the Mississippi legislature inaugurated the Mississippi Office of the State Public Defender (OSPD), combining the State Office of Indigent Appeals and Office of Capital Defense Counsel into one administrative unit.⁴¹ OSPD is responsible for coordinating the “collection and dissemination of statistical data” and developing “plans and proposals for further development of a statewide public defender system in coordination with the Mississippi Public Defenders Task Force.”⁴²

Despite the creation of the OSPD, there is no statewide commission in Mississippi that oversees the provision of indigent defense services. Mississippi is an outlier in this regard; all of the surrounding states in the South have some state-level oversight.⁴³ The Mississippi Public Defenders Task Force has recognized the lack of central oversight as an ongoing concern.⁴⁴

As of 2016, the clerks of Mississippi’s circuit, justice, and municipal courts are required to report data about misdemeanor and felony cases to the Administrative Office of the Courts, including “the date on which the criminal charges were filed, charge code and name of indicted offenses, count number of indicted offenses, whether counsel was appointed, the disposition of the charges, date disposed, date sentenced, charge code and name of sentenced offenses, and sentence length.”⁴⁵ But clerks are not required to track whether a

⁴¹ MISS. OFFICE OF STATE PUBLIC DEFENDER, THE STATE OF THE RIGHT TO COUNSEL IN MISSISSIPPI, *supra* note 34, at 2.

⁴² *Id.*

⁴³ *Id.* at 39.

⁴⁴ MISS. PUBLIC DEFENDER TASK FORCE: REPORT TO THE MISS. LEGISLATURE, *supra* note 38 (quoting Presiding Justice James W. Kitchens, Chairman of the Mississippi Public Defender Task Force, as saying “There is a need for an entity at the state level to promulgate standards for indigent defense; to train to those standards; and evaluate the performance of local defenders to ensure standards are being met. Recent efforts in other states were provided as examples of the continued national movement. Utah and Idaho have many similarities to Mississippi and have established state oversight. These new systems anticipate state grants available to counties who cannot meet standards”).

⁴⁵ MISS. CODE ANN. § 9-1-46; *see also* July 2017 Updates to the Handbook for the Mississippi Circuit Court Clerks, Published by the Mississippi Judicial College, at 41-42, <https://mjc.wp.olemiss.edu/wp-content/uploads/sites/134/2017/07/2017-Complete-Updates-Handbook-for-Circuit-Court-Clerks.pdf>.

defendant was facing imprisonment—entitling indigent defendants to appointed counsel—nor must they track whether the defendant was determined to be indigent, or whether the defendant requested or waived the right to appointed counsel.⁴⁶ Thus far, data have not been consistently provided and are not reported in a manner that allows for comparison across counties.⁴⁷

In December 2016, the Supreme Court of Mississippi unanimously adopted for the first time a uniform set of rules regarding criminal procedure, which took effect on July 1, 2017. Rule 7.1 of the Mississippi Rules of Criminal Procedure governs the representation of indigent and non-indigent criminal defendants.⁴⁸ According to Rule 7.1(b), in any criminal proceeding where punishment *may* result in the loss of liberty, an indigent defendant is entitled to the provision of counsel no later than the defendant’s first appearance before a judge.⁴⁹

The rules further require that “each circuit, county, municipal, and justice court” establish a procedure for the appointment of counsel for indigent defendants.⁵⁰ An indigent person is defined as someone “who is financially unable to employ counsel,”⁵¹ and the rules provide that indigency may be determined through oral questioning regarding the defendant’s financial resources, through an affidavit, or both.⁵² In sum, the rules instruct that, absent waiver, all indigent defendants shall be appointed a public defender, but where unavailable, a private attorney shall be appointed and paid for by the court.⁵³ That representation is to be “available at every critical stage of the proceedings against him where a substantial right may be affected.”⁵⁴

⁴⁶ THE SIXTH AMENDMENT CENTER, THE RIGHT TO COUNSEL IN MISSISSIPPI, *supra* note 29, at 12.

⁴⁷ *Id.*

⁴⁸ MISS. RULES OF CRIM. PROC. R. 7.1 (Sup. Ct. of Miss. 2016).

⁴⁹ *Id.* (emphasis added). The bases in law for rule 7.1 are provided in the rule’s comment and include the Sixth Amendment to the United States Constitution; Article 3, Section 26 of Mississippi’s constitution; *Gideon v. Wainwright*, *Argersinger v. Hamlin*, *Alabama v. Shelton*, and other cases not mentioned here.

⁵⁰ MISS. RULES OF CRIM. PROC. R. 7.2 (Sup. Ct. of Miss. 2016).

⁵¹ MISS. RULES OF CRIM. PROC. R. 7.3(a) (Sup. Ct. of Miss. 2016).

⁵² MISS. RULES OF CRIM. PROC. R. 7.3(b) (Sup. Ct. of Miss. 2016).

⁵³ MISS. RULES OF CRIM. PROC. R. 7.3(e)-(f) (Sup. Ct. of Miss. 2016). *See also* MISS. CODE ANN. § 25-32-9(1)-(2) (2017) (“...No person determined to be an indigent as provided in this section shall be imprisoned as a result of a misdemeanor conviction unless he was represented by the public defender or waived the right to counsel. (2) The accused shall have such representation available at every critical stage of the proceedings against him where a substantial right may be affected.”)

⁵⁴ *Jones v. State*, 355 So.2d 89, 91 (Miss. 1978) (“An accused is not only entitled to counsel at trial, but he is entitled to counsel on appeal from a conviction on the merits. If he is an indigent and unable to afford an

If an indigent defendant elects to waive the assistance of appointed counsel, Rule 7.1(c) requires the court to permit the waiver only if the defendant knowingly and voluntarily desires to act as his or her own attorney.⁵⁵ To ensure waiver is knowing and voluntary, Rule 7.1(c) requires the court to inform the defendant that he or she:

- (1) has a right to an appointed attorney, free of charge;
- (2) has the right to conduct his or her own defense;
- (3) is aware that the court will not relax or disregard the rules of evidence, procedure or courtroom protocol for the defendant, and the defendant will be bound by and have to conduct him/herself by the same rules as an attorney, that the rules are not simple and that without legal advice his/her ability to defend him/herself will be hampered; and
- (4) is aware that the right to proceed pro se usually increases the likelihood of a trial outcome unfavorable to the defendant.⁵⁶

If, despite the court's caution, the defendant insists on proceeding pro se, the court must determine whether the defendant has "knowingly and voluntarily" waived assistance from an appointed attorney.⁵⁷ Only then is a defendant's waiver to be recognized by the court.⁵⁸

Finally, Rule 7.1(c) requires the court to inform the defendant that the waiver may be withdrawn and counsel appointed at any stage of the proceedings, and the court may appoint an attorney to assist the defendant with criminal procedure, even if the defendant does not ask for an attorney.⁵⁹

attorney, then he is entitled to a court-appointed attorney at trial and on appeal. On the other hand, if he is able to afford an attorney at trial but subsequently is reduced to the status of an indigent, then he is entitled to have a court-appointed attorney to represent him on appeal.”)

⁵⁵ MISS. RULES OF CRIM. PROC. R. 7.1 (Sup. Ct. of Miss. 2016).

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ *Id.*

FIRSTHAND OBSERVATIONS IN MISDEMEANOR COURTS

In March 2017, students from Georgia State University College of Law traveled to Mississippi to observe firsthand the practices of municipal and justice courts—referred to here as “misdemeanor courts”—in and around Jackson.⁶⁰

Though a week-long study of a selection of Mississippi’s courts cannot purport to be broadly representative of practices throughout the state, the students’ observations revealed alarming patterns: indigent defendants were routinely not informed of their right to counsel, defendants were sometimes convicted and sentenced without even being present, and convictions were meted out in mere minutes.

In the misdemeanor courtrooms the students observed, court staff and officials were primarily white, and the criminal defendants were overwhelmingly people of color. Of the 167 defendants students observed in Mississippi courts, nearly 50 percent of defendants were African-American males, while only 25 percent were white males.

Students witnessed defendants enter guilty pleas, called up in groups of three to talk to the prosecutor directly, sometimes in whispers and other times in a manner audible to the entire courtroom. Pleas were often negotiated one-on-one directly with the prosecutor. In one instance, a defendant spoke to the prosecutor and could be overheard repeatedly saying, “I don’t understand. Am I going to get a lawyer?” The prosecutor pressed him to plead guilty, but the defendant refused. The public defender was present but did not intervene. Finally, the judge told the defendant he had a right to counsel and set bond at \$15,000. The defendant pled not guilty to the charges and only then was appointed a public defender.

The Jackson Municipal courtroom is dark and imposing. The air is stuffy, and the seats are hard and uncomfortable, like church pews. Dim fluorescent lights buzz above, while voices echo from the front, where black marble columns stand as barriers to the seated crowd.

⁶⁰ The Georgia State University College of Law students observed Ridgeland Municipal Court, Madison County Justice Court, Madison Municipal Court, and Canton Municipal Court.

In one courtroom, the judge allowed the Solicitor to run the court. Defendants were lectured as if children. They approached the Solicitor in groups of three, where he spoke to them about their charges. The public defender was not present during any of these conversations. It was afternoon before the students learned there was even a public defender present.

Half of the courts the students observed had no public defender present at any time, and in instances where the public defender was present, the public defender was usually not readily identifiable. Judges routinely failed to mention defendants' right to counsel and did not secure knowing and intelligent waivers.

In more than one instance, the defendants themselves were not even present, and the judge took uncontested testimony from the

arresting officer before convicting and sentencing the defendant in absentia.

Without counsel (or even defendants, in some cases) involved, things moved quickly. In one courtroom, the average time spent per criminal case was less than a minute and a half. The average time spent per case for all courts observed during the students' trip was less than three minutes.

The average time spent per case for all courts observed was less than 3 minutes.

“Justice” in these misdemeanor courts was not just alarmingly swift, it was also deliberately dismissive of defendants' humanity. One judge compared defendants to animals, saying they were like lost dogs, showing up time and time again, expecting the court to show some grace even when defendants “don't do what they're supposed to do.”

Students were in the Madison County Justice Court when two African-American men—dressed in orange jumpsuits and chained together at the waist—were brought into a courtroom by a guard. The men were in court for minor traffic violations. Each man was told to put his nose in the corner and not to look at anyone in the courtroom. One man had

a difficult time hearing and looked up to ask the guard to repeat his instruction. The guard responded with, “I told you to get your nose against that wall!”

CONCLUSION

The Georgia State Law students’ observations in misdemeanor courts revealed trends similar to those detailed in the felony context in the Sixth Amendment Center’s March 2018 report: Public defenders were not appointed early enough, if ever, and representation of indigent defendants was “seriously deficient,” including proceedings without defense counsel present at all.⁶¹

Even after the publication of the new Uniform Rules of Criminal Procedure, Mississippi misdemeanor courts continue to run afoul of the law. The Southern Poverty Law Center and the MacArthur Justice Center recently filed suit against the City of Corinth, alleging that Municipal Court Judge John C. Ross requires people convicted of misdemeanor or municipal offenses to pay or languish in jail, without first appointing counsel and determining whether they have the ability to pay.⁶² The City of Jackson settled a similar suit in 2016, ending the city’s self-described “pay or stay” system, which sent hundreds of people to jail every year without appointing adequate counsel, simply because they could not afford bail relating to misdemeanor charges.⁶³

Law professor Jessica Roth posits that “[n]owhere are the structural disincentives and barriers to innovation and effective judicial leadership more daunting” than in misdemeanor courts.⁶⁴ Misdemeanor courts are the most varied in terms of organizational structure and

⁶¹ Statement of David Carroll, Director of the Sixth Amendment Center, Minutes from Public Defender Task Force Meeting (Jan. 9, 2017), at 7, <http://www.ospd.ms.gov/Task%20Force/Public%20Defender%20Task%20Force%20Report%202017.pdf>.

⁶² See Complaint at ¶8, *Brown v. Corinth*, No. 1:17CV204-DMB (N.D. Miss. Dec. 5, 2017), http://umlaw.macarthurjustice.org/uploads/rsmjc-oxford/documents/brown_v_corinth_complaint.pdf. A proposed settlement in the suit is awaiting federal court approval. See *SPLC Lawsuit Settlement Ends Debtors’ Prison in Corinth, Mississippi* (Apr. 26, 2018), <https://www.splcenter.org/news/2018/04/26/splc-lawsuit-settlement-ends-debtors-prison-corinth-mississippi>.

⁶³ See generally Complaint, *Bell v. City of Jackson*, No. 3:15-cv-00732-TSL-RHW (S.D. Miss. Oct. 7, 2015), http://umlaw.macarthurjustice.org/uploads/rsmjc-oxford/documents/bell_v_jackson_complaint_100915.pdf

⁶⁴ Jessica Roth, *The Culture of Misdemeanor Courts*, 46 HOFSTRA L. REV. 215, 235 (2018).

jurisdiction, which results in a lack of accountability and inconsistent enforcement of best practices.⁶⁵

Though Mississippi now has uniform rules of criminal procedure, its lack of statewide oversight means that the rules' application is anything but uniform. As a result, the practices Georgia State Law students observed in and around Jackson in March 2017 may continue unabated, making Mississippi yet another place where misdemeanor courts routinely fail to provide appointed counsel, resulting in unconstitutional incarceration that carries dire consequences.⁶⁶

⁶⁵ *Id.*

⁶⁶ *See, e.g.,* Alexandra Natapoff, *Misdemeanors*, 85 S. CAL. L. REV. 1313, 1323-27 (2012); *Protecting the Constitutional Right to Counsel for Indigents Charged with Misdemeanors: Hearing on the Denial of Right to Counsel in Criminal Misdemeanor Cases Before the S. Comm. On the Judiciary*, 114th Cong. 8 (2015) (statement of Erica Hashimoto, Professor, University of Georgia School of Law).