SUPREME COURT
STATE OF LOUISIANA

DOCKET NO. 2020-KK-00447

STATE OF LOUISIANA

VERSUS

RODERICK L. COVINGTON, SAMANTHA KELLY, AND KIFFANY SPEARS

ON APPLICATION FOR SUPERVISORY WRITS FROM THE FIRST CIRCUIT COURT OF APPEAL DOCKET NO. 2019/KW/1494 AND NINETEENTH JUDICIAL DISTRICT COURT, CRIMINAL DIVISION, HONORABLE DONALD JOHNSON PRESIDING, DOCKET NOS. 07-18-0409, 07-18-0422 AND 10-18-0529

RESPONSE OF MICHAEL MITCHELL TO APPLICATION FOR SUPERVISORY WRITS ON BEHALF OF THE STATE OF LOUISIANA

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INTRODUCTION

This case presents the situation anticipated by the Court 27 years ago when it decided *State v. Peart*.[1] In *Peart*, a public defender sought relief in all of the cases to which he was appointed in one section of the district court based on his inability to provide reasonably effective assistance of counsel to his clients because of his excessive caseload and inadequate resources. After conducting an evidentiary hearing, the district court found that the defender's clients were being denied effective assistance of counsel and ordered that (i) the defender's caseload be immediately reduced and he be provided adequate resources and (ii) the Louisiana Legislature provide long-term funding adequate to allow him to provide effective assistance of counsel going forward.

On direct appeal, this Court held that (1) a trial court should address ineffective assistance of counsel claims prior to trial if it has the ability to do so;[2] (2) "because of the excessive caseloads and insufficient support with which their attorneys must work, indigent defendants in Section E are generally not provided with the effective assistance of counsel that the constitution requires";[3] and (3) the Court has the constitutional power and authority to address those unconstitional conditions.[4] Nevertheless, in defference to the legislature, the Court declined to fashion a systemic remedy. Instead it imposed a rebuttable presumption that "indigents in Section E are receiving assistance of counsel not sufficiently effective to meet constitutionally required standards."[5] In so ruling, the Court admonished that it might be forced to act if the legislature did not:

> If legislative action is not forthcoming and indigent defense reform does not take place, this Court, in the exercise of its constitutional and inherent power and supervisory jurisdiction, may find it necessary to employ the more intrusive and explicit measures it has thus far avoided to ensure that indigent defendants receive reasonably effective assistance of counsel.[6]

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1 621 So. 2d 780 (La. 1993).

2 *Id.* at 787.

3 *Id.* at 790.

4 *Id.* at 790-91.

5 *Id.* at 791.

6 *Id.*

In the 27 years since the Court decided *Peart,* the Louisiana Legislature has failed to remedy the conditions that existed in 1993 and continue to exist today.[7] The unrebutted evidence presented to the district court in this case unquestionably demonstrated that (1) the excessive workloads of the public defenders in Section VI of the Nineteenth Judicial District Court render them unable to satisfy the ethical obligations they owe to their clients and (2) as a result, indigent defendants in Section VI are not receiving the reasonably effective assistance of counsel mandated by the Sixth Amendment and the Louisiana Constitution. It is past time for this Court to exercise its constitutional and inherent powers and authority to remedy this ongoing ethical dilemma and the resulting constitutional violations. Given the importance of these issues, the Court should grant the State's Application, require full briefing by the parties and hear oral argument.

7 Following *Peart*, in 2007 the Louisiana Legislature enacted the Louisiana Public Defender Law, which created the Louisiana Public Defender Board ("LPDB") to oversee state-wide indigent public defense services. As this case demonstrates, however, LPDB's ability to provide reasonably effective assistance of counsel to indigent criminal defendants continues to be undermined by the legislature's failure to provide adequate funding for this purpose.

QUESTIONS PRESENTED

1, Does a chief district public defender have a duty under the Louisiana Rules of Professional Conduct, the Louisiana Constitution, and the United States Constitution to seek judicial relief when he concludes, based on substantial evidence, that the excessive workloads of the public defenders he supervises prevents them from fulfilling the obligations they owe to their appointed clients under the Louisiana Rules of Professional Conduct?

2. Should a district court and, ultimately, this Court grant relief to ensure that indigent criminal defendants receive reasonably effective assistance of counsel when it is demonstrated that (i) the public defenders appointed to represent them have grossly excessive workloads; (ii) these workloads will require the public defenders to violate the obligations they owe to their clients under the Louisiana Rules of Professional Conduct; (iii) the violation of these obligations creates a significant risk that the public defenders will be unable to provide the reasonably effective assistance of counsel to their clients guaranteed under the Louisiana Constitution and the United States Constitution; and (iv) the Louisiana Legislature has had the opportunity but has failed to remedy the conditions that caused these circumstances?

3. What relief should the Court grant under the circumstances presented in this case?

LAW AND ARGUMENT

Mr. Mitchell agrees that the Court should grant the State's Application. The Court should then order full briefing and oral argument by the parties. Nevertheless, the Court should be made aware now of certain errors and omissions contained in the State's Application.

I. Mr. Mitchell was required to seek relief pursuant to the Louisiana Rules of Professional Conduct.

Although it is clear from the motions that Mr. Mitchell filed in the district court,[8] the State's Application strangely ignores the fact that the motions are based primarily on the Louisiana Rules of Professional Conduct ("LRPC"). Under LRPC 5.1(b), Mr. Mitchell, has a duty to take reasonable measures to ensure that the lawyers over whom he has supervisory authority conform to the LRPC. Indeed, under LRPC 5.1(c)(2), Mr. Mitchell would be responsible for any ethical violations of his staff lawyers if he knew of the offending conduct "at a time when its consequences can be avoided or mitigated" and he failed "to take reasonable remedial actions." Accordingly, once Mr. Mitchell concluded that his public defenders were unable to satisfy their ethical obligations due to their excessive workloads, he was required under the LRPC to take reasonable remedial action.

All of the public defenders Mr. Mitchell supervises are ethically obligated: (i) under LRPC 1.1(a) to represent each of their clients with the "thoroughness and preparation reasonably necessary for the representation;" (ii) under LRPC 1.3 to "act with reasonable diligence and promptness in representing" the client; (iii) under LRPC 1.4(2), to "reasonably consult with the client about the means by which the client's objectives are to be accomplished;" (iv) under LRPC 1.4(3) to "keep the client reasonably informed about the status of the matter;" and (v) under LRPC 1.16(a)(1) to decline a representation and to withdraw from a representation of a current client if "the representation will result in violation of the rules of professional conduct or other law." Importantly, LRPC 1.7(a)(2) prohibits each staff lawyer from representing a client "if there is a

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8 *See* Exhibits 1, 2, and 3 to Mr. Mitchell's Application for Supervisory Writs, R-54-271. The State has submitted the Mr. Mitchell's Application for Supervisory Writs filed with the First Circuit Court of Appeal, along with all of its attachments, in support of the Stat's Writ of Certiorari. For ease of reference, Mr. Mitchell will refer to the exhibits attached to the Application filed in the First Circuit Court of Appeal as "Exhibit" with the appropriate record citation as they are numbered in the copy provided to the Court.

significant risk that the representation . . . will be materially limited by the lawyer's responsibilities to another client."

Mr. Mitchell testified at the evidentiary hearing that his office had been operating under "restriction of services" ("ROS") plans since June 2016.[9] Under these plans, he eliminated six staff lawyer positions, seven investigator positions and his conflict panel consisting of four lawyers.[10] Toward the end of the 2018 fiscal year (June 30, 2018), the Louisiana Public Defender Board ("LPDB") conducted an on-site review of the fiscal conditions and operations of Mr. Mitchell's office. The Louisiana State Public Defender at that time, James Dixon, reported the results of the review in a letter to Mr. Mitchell dated July 2, 2018. While praising the professionalism and efforts of Mr. Mitchell and his staff, Mr. Dixon raised concern about the difficulties these defenders were facing in providing effective assistance of counsel as a result of the crisis:

> 1. Line defenders in your office have excessive workloads that cannot be maintained.
>
> 2. Attorneys cannot maintain sufficient contact with clients. This deficiency is related in part to the excessive workloads maintained by your attorneys. However, this deficiency is also related to the number of incarcerated defendants who are housed outside of parish. It is our understanding that as many as 1,500 defendants are housed in local jails located two hours or more from Baton Rouge. It would be impossible for any attorney, much less an already overloaded attorney, to maintain proper client contact under these conditions.
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> 3. We also found that the number of full-time investigators is woefully deficient. During 2017, attorneys in your office represented 12,167 cases in the 19th Judicial District Court with access to just one full-time investigator. It is not possible for one person to fully investigate every case, or even just the serious felony cases handled by your office, at a level that is conformity with the Trial Court Performance Standards.
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> 4. We found that some attorneys have inadequate access to computers and other basic technology.[11]

Mr. Dixon's letter concluded:

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9 Exhibit 8, Testimony of Mr. Mitchell, 6/13/2019 at 52:3-30, R-348.

10 Exhibit 12, Petitioner's Exhibit No. 2, R-659; Exhibit 8, Testimony of Mr. Mitchell, 6/13/2019 at 53:3-12, R-349. The State's assertion that Mr. Mitchell's office has increased its staffing is misleading in that as it compares staffing decades ago to current staffing and ignores the substantial reduction in staffing since 2015.

11 Exhibit 15, Petitioner's Exhibit 5, R-668-669.

> To be clear, nothing in our findings should be construed as a critique of your office, its staff, its attorneys, or its management. Fundamentally, this is an instance of a management staff struggling to maintain service levels while facing inexorably depleting funding sources beyond its control. When faced with such a situation, LPDB staff must insist that you remain in restriction of services (ROS).[12]

In addition to Mr. Dixon's report, during 2018 Mr. Mitchell received complaints from clients that they had been unable to meet with their lawyers before appearing in court.[13] Based on the opinions of experts in the field and the advice of Mr. Dixon, Mr. Mitchell concluded that the excessive workloads of the public defenders in Section VI of the district court created a significant risk of concurrent conflicts of interest among their clients in violation of LRPC 1.7(a)(2).[14] He further concluded that filing motions to withdraw from certain current representations and to decline certain future appointments were the only reasonable manner in which he could comply with obligations under LRPC 5.1(b).[15]

Stephen Hanlon, who is General Counsel to the National Association for Public Defense, was qualified by the district court at the evidentiary hearing as an expert on the law and standards applicable to public defender workload studies.[16] In his affidavit in support of Mr. Mitchell's motions and at the hearing, Mr. Hanlon explained how a public defender's excessive workload necessarily leads to the type of concurrent conflict of interest prohibited under LRPC 1.7:

> In fact, in such a situation, each public defender has a concurrent conflict under LRPC 1.7 with every single one of his or her clients, since every moment of the day that he or she works on one client's case is a moment that should have been worked on another client's case if that other client were to receive reasonably effective assistance of counsel under prevailing professional norms. And vice versa. That is, their responsibilities to each one of their clients are materially

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12 *Id.*

13 Exhibit 8, Testimony of Mr. Mitchell, 6/13/2019 at 60:4-19, R-356.

14 *Id.* at 60:20-61:12, R-356 - 357.

15 *Id.* at 60:20-61:12, R-356 – 357; Exhibits 1, 2, and 3, Motions to Withdraw, R-54-271. *See State v. Singleton,* 2015-1099 (La. App. 4 Cir. 5/25/16), 216 So. 3d 985 (permitting the chief public defender of Orleans Parish to decline an appointment when it would violate ethical rules established in the LPDB, as well as protection of the client's rights under the federal and state constitutions).

16 The State's Writ Application claims that the State does not know what Mr. Hanlon's expertise is. However, the district court qualified him as an expert witness at the evidentiary hearing. The State had an opportunity to voir dire Mr. Hanlon on his expertise, and the State raised no objection to his qualifications. *See* Ex. 8, Testimony of Mr. Hanlon 6/13/19 at 114:8-18.

> limited by their responsibilities to each one of their other clients. And vice versa, for every single client represented by every single EBR public defender.[17]

The State's Application ignores the serious and substantial ethical issues that the district court declined to consider and that underlie the Court of Appeal's ruling. This Court has the authority and the responsibility to address these issues.

II. The district court's findings are not entitled to normal deference because the court failed to exercise judicial discretion.

The State's Application contends that the Court should resolve this case merely by determining whether the district court abused its discretion in making its rulings. But, it is clear from the record that the district court did not exercise any independent judicial discretion in making its rulings. Instead, the district court adopted verbatim – including typographical errors – the proposed written reasons for judgment submitted by the State following the evidentiary hearing.[18]

By adopting the State's submissions, the district court also adopted interpretations of law and recitation of facts that do not comport with the law or the evidence that were presented to that court. Extra scrutiny is warranted and *de novo* review is appropriate where, as here, a lower court fails to perform its judicial function by simply adopting a party's arguments without evidence of independent judicial analysis. *See, e.g., Bright v. Westmoreland County*, 380 F.3d 729, 732 (3rd Cir. 2004) ("Judicial opinions are the core work-product of judges. . . . When a court adopts a party's proposed opinion as its own, the court vitiates the vital purposes served by judicial opinions."); *Andre v. Bendix Corp.*, 774 F.2d 786 (7th Cir. 1985) (vacating and remanding for a new trial before a different judge where court adopted 54 out of 55 pages of the party's post-trial brief, including footnotes, citations, and spelling and typographical errors); and *Chicopee Mfg. Corp. v. Kendall Co.*, 288 F.2d 719, 724-25 (4th Cir. 1961) (applying *de novo* review to reverse and remand after determining "there is no authority . . . that countenances the preparation of the opinion by the attorney for either side. That practice involves the failure of the trial judge to perform his judicial function.").

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17 Affidavit of Stephen Hanlon, attached to Exhibit 1, Motion to Withdraw at R-239-249.

18 Compare Exhibit 29, Judgments and Written Reasons for Rulings, R-1031-1046, with Exhibits 32, 33, and 34, State's Proposed Written Reasons for Ruling, R-1058-1067.

The record in this case lacks any evidence that the district court exercised any judicial discretion in making its rulings. Accordingly, these rulings are not entitled to deference on review.

III. The State's attacks on evidence derived through the Delphi Method are unfounded.

In attacking the validity of the Delphi Method, and The Louisiana Project report which utilized it, the State's Application ignores the substantial and unrebutted evidence that demonstrated the method's reliability as a tool to measure the maximum workloads that a public defender can reasonably handle. Moreover, even without the Louisiana Project results, Mr. Mitchell demonstrated through other, unrebutted evidence that the workloads of the Section VI public defenders were so excessive that there is a significant risk that they will be unable to provide reasonably effective assistance of counsel to their clients. The Louisiana Project both reinforces this unrebutted evidence and, importantly, provides a useful tool to measure how excessive the workloads are and to tailor necessary remedial relief.

A. Unrebutted evidence demonstrated the reliability of the Delphi Method to measure public defender workloads.

The development of the use of the Delphi Method to measure public defender workloads was explained at the evidentiary hearing by Stephen Hanlon, who, without objection from the State, was qualified by the district court as an expert in the law and standards applicable to public defender workload studies using the Delphi Method.[19] Mr. Hanlon is the General Counsel of the National Association for Public Defense, which has a membership of 20,000 public defenders.[20] He has taught law school courses and authored published law review articles on the subject of public defender workloads.[21] He also has served as lead counsel in litigation throughout the country concerning public defender workloads.[22]

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19 Exhibit 8, Testimony of Mr. Hanlon, 6/13/2019 at 114:8-18.

20 Exhibit 8, Testimony of Mr. Hanlon, 6/13/2019 at 102:25-30, R-398.

21 Exhibit 17, Petitioner's Exhibit 7, R-689-693; Exhibit 8, Testimony of Mr. Hanlon, 6/13/2019 at 103:4-9, 14-20, R-399.

22 Exhibit 17, Petitioner's Exhibit 7, R-691; Exhibit 8, Testimony of Mr. Hanlon, 6/13/2019 at 103:21-105:21, R-399-401.

Following litigation in Missouri concerning public defender caseloads, Mr. Hanlon began a search to develop a reliable statistical framework by which to rationally measure public defender workloads to determine when they become excessive.[23] In his search, Mr. Hanlon learned of the Delphi Method, which had been developed by the Rand Corporation in the 1960's. He asked RubinBrown, a top 100 national accounting and consulting firm, to determine whether the Delphi Method would be an appropriate and reliable methodology to measure public defenders workloads.[24] As discussed in the literature review then conducted by RubinBrown, the Delphi Method has been utilized in the past by judicial organizations and legislatures as a reliable analytical and statistical framework to measure attorney and judicial workloads in studies performed by the National Center for State Courts and other organizations across the United States.[25]

After its exhaustive literature review, RubinBrown concluded that the Delphi Method could reliably be used for the purpose proposed by Mr. Hanlon and agreed to direct a study of public defender workloads in Missouri using the Delphi Method.[26] Mr. Hanlon, on behalf of the American Bar Association ("ABA"), provided the legal framework for the study while RubinBrown provided the study's statistical framework.[27] Since the completion of the Missouri study in 2014,[28] in addition to The Louisiana Project, Mr. Hanlon and major accounting firms have completed similar Delphi Method studies of public defender workloads in Colorado and Rhode

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23 See Exhibit 8, Testimony of Mr. Hanlon, 6/13/2019 at 106:19-108:20, R-402-404.

24 *Id*.

25 *See* https://www.ncsc.org/Topics/Court-Management/Workload-and-Resource-Assessment/State-Links.aspx (link to all NCSC workload studies – over 67 workload/needs assessments performed/published); https://www.ncsc.org/Topics/Court-Management/Workload-and-Resource-Assessment/Resource-Guide.aspx (over 25 states utilized this method to determine workload as opposed to caseload).

26 Exhibit 8, Testimony of Mr. Hanlon, 6/13/2019 at 108:29-112:15, R-404-408.

27 *Id.*

28 Exhibit 20, Petitioner's Exhibit 10, R-761-808.

Island.[29] Mr. Hanlon also consulted on a Texas study[30] and currently is directing studies together with major accounting firms in Indiana, New Mexico and Oregon.[31]

In 2015, LPDB retained the Louisiana accounting firm Postlewaite & Netterville, APAC ("P&N") and the ABA to perform a Delphi Method study of the workloads handled by Louisiana public defenders. This study came to be known as The Louisiana Project.[32] As part of its work, P&N reviewed the RubinBrown literature review and the prior instances when the Delphi Method was used to measure workloads. Based on this review, P&N concluded:

> The Delphi Method offers a reliable and structured means to integrate opinions of highly informed professionals to develop a consensus opinion. As a methodological strategy, the Delphi Method is an iterative process of surveys given to a group of professionals, with structured feedback presented to the experts at each interval stage. The surveying practices applied by the Delphi Method can be either interviews or questionnaires that focus on fundamental questions of significance to the experts convened.
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> *******
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> Since its introduction, the Delphi Method has been employed across a diverse array of industries, such as health care, education, information systems, transportation and engineering. The purpose of its use beyond forecasting has ranged from "program planning, needs assessment, policy determinations and resource utilization." Within the legal system, early examples of the use of the Delphi Method can be traced back a couple of decades and are considered an appropriate methodology for a weighted caseload study. Examples of these attempts were sponsored by both the National Association of Court Management and the National Center for State Courts. These efforts were principally charged with assessing judicial and court support staff needs.[33]

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29 Exhibits 21 and 22, Petitioner's Exhibit 11 and 12, R-809-866; Exhibit 8, Testimony of Mr. Hanlon, 6/13/2019 at 112:21-23, R-408. The Colorado study was conducted by the ABA and RubinBrown. The Rhode Island study was conducted by the ABA and BlumShapiro, the largest regional advisory firm based in New England.

30 Exhibit 23, Petitioner's Exhibit 13, R-867-960. The Texas study was conducted by the ABA and The Public Policy Research Institute, a leading policy research group at Texas A&M University engaged in survey administration, statistical analysis, evaluation and systems management.

31 Exhibit 8, Testimony of Mr. Hanlon, 6/13/2019 at 112:23-28, R-408. The Indiana study is being conducted by the ABA and Crowe, LLP, an international public accounting, consulting and technology firm. The New Mexico and Oregon studies are being conducted by the ABA and Moss Adams, LLP, a 107-year-old professional services firm with more than 25 locations in the United States.

32 Exhibit 19, Petitioner's Exhibit 9, R-697-760; Exhibit 9, Testimony of Mr. Field, 6/14/2019 at 8:1-14, R-482.

33 Exhibit 19, Petitioner's Exhibit 9, 14-15, R-716-717 (footnoted omitted).

Madison Field is an associate consulting director at P&N specializing in data analytics and forensics.[34] The district court twice qualified Mr. Field as an expert in the application of the Delphi Method, over the objection of the State.[35] Mr. Field's unrebutted testimony confirmed that the Louisiana Project was conducted in accordance the prior, peer-reviewed Delphi Method public defender and judicial workload studies, as well as the American Institute of Certified Public Accountants' Statement on Standards for Consulting Services.[36] He explained how the Delphi panel members were selected,[37] the three phases of the Delphi Method portion of the study,[38] and how the feedback provided to the 23 participants (all experienced criminal defense lawyers, both public and private) allowed them to reach a reliable consensus on how many minutes each discreet case task should take to complete, based on the case type.[39]

The participants evaluated case types and assigned the number of minutes required to complete eleven different case tasks for an average case. The total hours per case type were calculated based on three assumptions provided to the panel members: (1) that the time calculated was the time over the entire life of the case; (2) that the attorney had adequate support, secretarial

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34 Exhibit 18, Petitioner's Exhibit 8, R-694-696; Exhibit 9, Testimony of Mr. Field, 6/14/2019 at 5:11-13, 12:13-15, R-479, R-486.

35 Exhibit 9, Testimony of Mr. Field, 6/14/2019 at 24:18-28; 70:1-71:13, R-498, R-544-545. Contrary to the State's assertions that Mr. Field was only "offered" as an expert in application of the Delphi Method (p. 6 of the Writ Application) and that the district court rejected his testimony (p. 9 of the Writ Application), the district court actually qualified Mr. Field on the record TWICE over the objections of the State. Despite this fact, the State submitted a post-hearing proposed judgment granting the State's un-argued *Daubert* motion, which the district court adopted without explanation.

36 *Id.* at 28:21-26, R-502.

37 *Id.* at 37:31-38:18, R-511-512.

38 *Id.* at 29:22-30:3, R-503-504. The State's attempt to disparage the participants in the Louisiana Project by characterizing them as "high ranking, pro defense" is misplaced. The Delphi Method requires that those providing input in any study be "highly informed individuals and professionals on a specific topic." *Id.* at 35:29-31. All participants in The Louisiana Project study were "well-respected, experienced professionals" who are or were defense practitioners, exactly the kind of lawyers best positioned to opine on the time necessary to provide a competent criminal defense. *See id.* at 38. The State has no basis on which to opine on this subject or for its feigned outrage that an attorney would require five weeks of work (including client interviews, case analysis, investigation, discovery, motion practice, court hearings, trial, and sentencing) to represent a client who faces a lifetime sentence without the possibility of parole. *See* Writ Application at pp. 11-12.

39 Exhibit 9, Testimony of Mr. Field, 6/14/2019 at 38:29-41:16, R-512-515.

assistance, and investigative staff; and (3) that the case is the average case, and not an extreme example.[40] The participants also assigned a percentage of the cases in which each task should be performed to reach the ultimate conclusion of how much time should be spent on each case type. The following charts, which appear in Exhibit 2.2 to The Louisiana Project report[41] show the consensus reached by the Delphi panel as to the amount of time required for average high-level felony and felony life without parole ("LWOP") cases appears below.

	High-level Felony		
	Minutes Per Case	Percentage Performed	Total
	Delphi Panel Results		
Client Communication	480	100%	480.00
Collecting Records	210	100%	210.00
Interviews / Field Investigation	360	100%	360.00
Experts	300	50%	150.00
Legal Research and Writing	480	100%	480.00
Negotiations	240	100%	240.00
Court Preparation	800	100%	800.00
Case Preparation	600	100%	600.00
Sentencing	240	99%	237.60
Court Time	450	100%	450.00
Client Care	180	100%	180.00
Total Minutes per Case			**4,187.60**
Total Hours per Case			**69.79**

	Felony- Life Without Parole		
	Minutes Per Case	Percentage Performed	Total
	Delphi Panel Results		
Client Communication	2,500	100%	2,500.00
Collecting Records	600	100%	600.00
Interviews / Field Investigation	900	100%	900.00
Experts	600	95%	570.00
Legal Research and Writing	1,200	100%	1,200.00
Negotiations	300	100%	300.00
Court Preparation	1,600	100%	1,600.00
Case Preparation	1,800	100%	1,800.00
Sentencing	240	100%	240.00
Court Time	2,000	100%	2,000.00
Client Care	330	100%	330.00
Total Minutes per Case			**12,040.00**
Total Hours per Case			**200.67**

The following chart, which appears on page 1 of The Louisiana Project report,[42] shows the consensus reached by the Delphi panel as to the amount of time required for all eleven case types considered:

40 Exhibit 9, Testimony of Mr. Field, 6/14/2019 at 44:28-45:7, R-518-519.

41 Exhibit 19, Petitioner's Exhibit 9, The Louisiana Project, R-756.

42 *Id*. at R-703.

Delphi Panel Survey Results	
Case Type	Hours Per Case
Misdemeanor or City Parish Ordinance	7.94
Enhanceable Misdemeanor	12.06
Low-level Felony	21.99
Mid-level Felony	41.11
High-level Felony	69.79
Felony-Life Without Parole	200.67
Juvenile Delinquency	19.78
Families in Need of Service (FINS)	9.66
Child in Need of Care (CINC)	25.08
Revocation	8.47

Prior to the evidentiary hearing, the State moved for a continuance on the ground that its expert, whom it had just retained to rebut the use of the Delphi Method in this context, was unavailable. Although the district court offered to keep the record open so that the State could present its own expert evidence when its witness was available, the State declined the offer and determined to rely solely on its cross examination of Mr. Mitchell's witnesses. Accordingly the State offered no evidence to rebut Mr. Mitchell's expert evidence that the Delphi Method is a reliable means to measure public defender workloads and that The Louisiana Project study was carried out in consistently with the prior studies.

As noted above, the Missouri study, published in 2014, was the first of eight public defender workload studies conducted by the ABA and six highly regarded professional research and econometrics firms from all over the nation. The Missouri study was a national blueprint for the studies that followed and each of the five other consulting firms conducting these studies followed that model, utilizing the Delphi Method. Each of these firms concluded, as did P&N, that the Delphi Method is a reliable research tool to measusre public defender workloads. Against this professional consensus, the State offered in opposition at the evidentiary hearing only the views of its counsel, who admittedly had no expertise in this area and declined the district court's offer to hold the hearing open for three months to give the State the time to produce its own expert. There is not a scintilla of competent evidence in this record to rebut Mr. Mitchell's evidence regarding the reliability of the Delphi Method.

Moreover, the State's arguments against the reliability of the Delphi Method to measure public defender workload capacities are unfounded. For example, the fact that The Louisiana Project results appear to differ from those of similar studies in Texas and Missouri do

not demonstrate unreliability of the Delphi Method.[43] Rather, it is to be expected that studies in different states with different criminal codes, different "case type" definitions, different practices and different priorities will produce different results. The State's comparison of results between states fails to consider any of these factors. Similarly, the State's argument that the Delphi Method is unreliable because it fails to take into account differences in the relative complexities of different cases charging the same crime, deliberately ignores that the Delphi panel members were instructed to consider the average case for each case type. Obviously, some cases will take more time and some will take less. The law of averages takes this into account.

In sum, the unrebutted evidence presented to the district court amply demonstrated the reliability of the Delphi Method as a tool to measure public defender workloads. The district court erred by adopting the State's arguments to the contrary.

B. Even if The Louisiana Project results were ignored, other, unrebutted evidence demonstrated that the excessive workloads of the Section VI public defenders render them unable to provide effective assistance of counsel to their clients.

1. Testimony of Mr. Mitchell.

Mr. Mitchell, who has served as the Chief Public Defender for East Baton Rouge Parish ("EBR") since 1994, oversees all aspects of the delivery of indigent defense services in that parish. From 2014 through 2018, his office experienced a reduction of approximately $1,700,000 in locally generated funding that has resulted in a situation that he describes as "fiscal crisis."[44] During 2015, Mr. Mitchell projected that his office would have a budget deficit of $665,950 for the 2016 fiscal year.[45] As required under regulations promulgated by the Louisiana Public Defender Board ("LPDB"), Mr. Mitchell submitted to LPDB a restriction of services ("ROS") plan to reduce the projected budget deficit through a reduction in expenses.[46] Under the ROS plan,

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43 The differences cited by the State are based on the self-serving, non-expert and unexplained "analysis" of its hearing counsel, not on the reasoned opinion of any expert.

44 Exhibit 12, Petitioner's Exhibit No. 2, R-658; Exhibit 8, Testimony of Mr. Mitchell, 6/13/2019 at 52:17-28, 56:14-25, R-348, R-352.

45 Exhibit 12, Petitioner's Exhibit No. 2, R-659; Exhibit 8, Testimony of Mr. Mitchell, 6/13/2019 at 52:22-28, R-348.

46 Exhibit 12, Petitioner's Exhibit No. 2, R-657-662.

which was approved by LPDB,[47] Mr. Mitchell eliminated six attorney positions, an investigator and an administrative position.[48] When the 2015 reduction in services proved to be insufficient, Mr. Mitchell submitted to LPDB on March 30, 2016 a second ROS plan under which he suspended the contracts of four conflicts attorneys, laid off six staff investigators, and instituted salary reductions for several staff attorneys and the remaining two investigators.[49]

As of January 2019, Mr. Mitchell had been forced to reduce further his office's capabilities through forced elimination of additional staff services, including the office's sole bilingual attorneys and two attorneys who worked in the Zachary and Baton Rouge City Courts.[50] At the time of the June 2019 evidentiary hearing, Mr. Mitchell's office employed 27 staff attorneys assigned to the Nineteenth Judicial District Court.[51] Those attorneys were assisted by one chief investigator (who is assigned to high-level felony cases), two junior investigators (who are assigned to mid-level felony cases) and one part-time investigator.[52] Low-level felony cases are rarely investigated at all.[53]

2. Testimony of Mr. Hanlon.

In addition to providing background information regarding the use of the Delphi Method to evaluate public defender workloads, Mr. Hanlon provided unrebutted expert testimony

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47 Exhibit 13, Petitioner's Exhibit No. 3, R-663-664.

48 Exhibit 12, Petitioner's Exhibit No. 2, R-659; Exhibit 8, Testimony of Mr. Mitchell, 6/13/2019 at 53:3-12, R-349. Mr. Mitchell's testimony on this point directly contradicts the State's misleading contention that the public defender staffing as increased while caseload has decreased. Writ Application at p. 5. The workforce increase referenced by the State is the increase in the public defender's office over 20 years ago, before any state-wide system for public defense existed and does not take into account the positions eliminated as detailed in Mr. Mitchell's testimony.

49 Exhibit 14, Petitioner's Exhibit No. 4, R-665-667; Exhibit 8, Testimony of Mr. Mitchell, 6/13/2019 at 53:24-54:6, R-349-350.

50 Exhibit 8, Testimony of Mr. Mitchell, 6/13/2019 at 57:20-58:10, R-353-354.

51 *Id.* The State's criticism of Mr. Mitchell for permitting his staff attorneys to maintain part-time private practices ignores Mr. Mitchell's testimony that (1) the salaries and benefits available to public defenders are not comparable to other attorneys in the criminal system and (ii) he requires all staff attorneys to devote 40 hours per week to their indigent clients. *Id.* at 95:3-16., R-391.

52 *Id.* at 47:27-31, R-343.

53 *Id.* at 48:8-30, R-344.

regarding how excessive workloads invariably lead public defenders to "triage" their cases, thereby creating conflicts of interest among their clients:

> But the one thing we can see is that invariably and every jurisdiction we go into, public defenders do what we would expect them to do under those circumstances. It's only reasonable. They move their resources to the higher risk cases. Okay. And those numbers, for the murder and the high felony and that, they're not nearly as these numbers down here for the mid felony and the low felony and the high and low misdemeanor. These people are being thrown under the bus to take care of these people – okay, in the high felonies. Lawyers simply may not do that. It's against the rules. We all rose – raised our hand and said we would never do such a thing, when we were sworn in. So that's the effect. I can tell you it's emotionally devastating on these people. They know very good and well at the end of the day what has happened.[54]

Mr. Hanlon further explained how EBR's lack of investigative resources leads to plea bargains in violation of professional norms that were developed for the ABA by prosecutors, judges, defenders and academics:

> These standards, by the way, have been specifically approved as being valuable measures of prevailing professional norms. That's exactly what we're trying to do, measure prevailing professional norms with a Delphi study. So the standard is defense function standard 4-6.1b. Okay. And it sets out the prevailing professional norm for defense counsel. It says he has – he or she has a duty to explore plea and then it says in every – and it begins really well, from my point of view. In every criminal matter – okay, defense counsel should consider the individual circumstances of the case and of the client and should not recommend acceptance of a plea to a client unless and until appropriate investigation of the matter has been – and the verb is important. Completed, not thought about, kicked around with your buddies, completed – including discussion with the client, analysis of relevant law, and analysis of the prosecutor's evidence, and analysis of potential dispositions, and analysis of relevant collateral consequences. He can't possibly investigate his cases with three investigators, and he's got 5,000 cases.[55]

Mr. Hanlon also explained how trial judges often are unaware of the lack of investigation before accepting plea bargains:

> No. No, because that's the triage, and that happens, I would imagine. I mean, I've talked to judges around the country, and they'll say well it looks – when they come in here, it looks pretty good. They're winning some of their cases, but what the judges don't see is that a lot of these other ones are just going into this plea system and they're not investigated. Okay. And it makes a real difference. We know it

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54 Exhibit 8, Testimony of Mr. Hanlon, 6/13/2019 at 129:19-130:1, R-425-426. This situation, by its nature, creates concurrent conflicts of interest in violation of LRPC 1.7, as the public defender cannot dedicate the time necessary to any single case, and each time he gives to one case necessarily takes away time she should be spending on another case. This is not an absurd premise, as the State suggests, but one grounded in the inherent limitation of public defenders being assigned more clients that they can competently handle.

55 *Id.* at 125:9-28, R-421.

> makes a difference in the outcomes because we have public defenders in this country who have reasonable workloads, and at least one of them, they win 50 percent of their felony cases. That makes a difference.[56]

3. Testimony of James Dixon

As the Louisiana State Public Defender at the time of the evidentiary hearing, Mr. Dixon was responsible for the delivery of indigent defender services throughout the state. While he observed that excessive public defender caseloads exist throughout the state, he became particularly concerned about East Baton Rouge Parish due to its dramatic decline in local funding and the resulting conditions outlined in his July 2018 report advising Mr. Mitchell that his office was required to continue to operate under an ROS plan.[57] Accordingly, he undertook a closer examination of the EBR workloads, including those of the Section VI public defenders.[58]

Utilizing the comprehensive database maintained by LPDB and the results of The Louisiana Project statewide workload study, he documented that the three Sections 6 public defenders were assigned respective workloads of 7,020 hours, 6,366 hours and 9,732 hours during the 2018 calendar year.[59] He further documented that the three defenders had already been assigned new cases during 2019 representing respective caseloads of 3,003 hours, 2,870 hours and 2,692 hours.[60] Considering the estimated workloads remaining for the cases that carried over from 2018 into 2019, Mr. Dixon estimated that, as of June 2019, the three Section VI defenders had current respective 2019 annual workloads of 5,141 hours, 5,614 hours and 6,652 hours.[61] These workloads grossly exceed the 2,080 hour maximum annual capacity utilized in The Louisiana Project study.[62] When asked what conclusion he drew from his analysis, Mr. Dixon responded:

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56 *Id.* at 131:7-17, R-427.

57 *Id*. at 102:19-104:31, R-576-578.

58 *Id.* at 104:28-31, R-578.

59 Exhibit 24, Petitioner's Exhibit 14, R-961; Exhibit 9, Testimony of Mr. Dixon, 6/14/2019 at 111:7-27, R-585.

60 Exhibit 25, Petitioner's Exhibit 15, R-962-963; Exhibit 9, Testimony of Mr. Dixon, 6/14/2019 at 113:16-32, R-587.

61 Exhibit 25, Petitioner's Exhibit 15, R-963.

62 This number of hours represents 40 hours per week for 52 weeks per year. It does not take into account vacations, time spent obtaining required CLE credits or time spent on non-case-specific administrative matters.

> So what we know and what we've always known is that the public defenders, in Baton Rouge, in this division, and frankly statewide – this is not – this is not a problem that's unique to this division. They're overworked. They have too many cases. And because of that, they're having to make choices to the detriment of clients who don't get the proper attention to their case. Not through lack of hard work, not through any fault of their own, it's the fact that they have too many cases. They can't possibly do everything they are supposed to do in these cases. So you have – you have folks that are suffering, and what this does is this actually puts a number on it. It shows you what it is and what kind of workload they have, and what kind of expectations you can have of them. If someone has a year's work – worth of work in the first six months, you can't possibly get to it. You just can't. So the conclusions are they're well overworked, and they can't handle the cases they've got now, and anymore – adding on to anymore would be disastrous.[63]

4. Testimony of the Delphi panel participants.

Two panel members who participated in the Louisiana Project testified at trial regarding their participation in all three stages of the study. These witnesses, who are experienced criminal defense lawyers, stressed how early case assessment—which the Section VI public defenders cannot undertake due to their excessive caseloads—is crucial to providing effective assistance of counsel.

Christie Smith is a 23-year private pracitioner,[64] who is a National Board of Trial Advocacy Board Certified Criminal Lawyer,[65] has been appointed to thousands of indigent defense cases in the parish in which he practices,[66] has defended thousands of defendants charged with high felony crimes,[67] and has defended dozens of defendants charged with crimes punishable by life without parole.[68] Mr. Smith opined that the time requirements reached by the consensus of the panel were the "minimum" number of hours that should be worked by an attorney to meet the "constitutional minimum."[69] Mr. Smith emphasized that the greatest time commitment that a defense attorney must spend should be at the front of a case, taking the time and resources to

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63 Exhibit 9, Testimony of Mr. Dixon, 6/14/2019 at 115:15-116:1, R-589-590.

64 Exhibit 9, Testimony of Mr. Smith, 6/14/2019 at 73:6-18, R-547.

65 *Id.* at 73:19-25, R-547.

66 *Id.* at 75:13-32, R-549.

67 *Id.* at 84:31-:85:1, R-558-559.

68 *Id.* at 91:29-92:1, R-565-566.

69 *See id.*at 91:6-24, R-565 (discussing 70 hours assigned to High-Level Felony cases); 93:19-24, R-567 (discussing 200 hours assigned to Life Without Parole cases).

evaluate the case and determine a strategy.[70] When that work is not done, then an attorney has less ability to forecast the outcome of the case, and the client is left more exposed to negative results.[71]

Chris Murrell has approximately twelve years of experience has a public defender, working for the Georgia Capital Defender, the Orleans Public Defender Board, and the Capital Appeals Project.[72] Mr. Murrell testified that in the panel meeting that he "generally tended to say" that the numbers reached by the consensus were too low and do not represent enough time to fulfill a lawyer's ethical obligations and Sixth Amendment duties.[73] Mr. Murrell agreed with Mr. Smith's assessment that time spent at the beginning of the case to assess and investigate the facts is critical to the preparation of a defense and cannot be recovered.[74]

IV. The highest courts in other states have rejected the State's arguments that Mr. Mitchell was required to show actual ineffective assistance of counsel on a case-by-case basis.

Since this Court decided *Peart* in 1993, the highest courts in other states have been faced with situations equivalent to the situation presented here – an under-funded, under-resourced public defender system or office with excessive workloads that prevent the affected public defenders from fulfilling their ethical obligations and providing reasonably effective assistance of counsel to their clients. These courts have uniformly rejected the arguments asserted by the State in this case, ruling that, when public defenders are required to accept appointments in excess of their workload capacities, (1) they are at risk of violating their professional ethical obligations; (2) their clients are at risk of receiving less than effective assistance of counsel; (3) all courts have the inherent authority to grant prospective and systemic relief to address the problem; and (4) the *Strickland* standard of showing actual, individual harm to each client is inapplicable in this context.

In support of its ruling in this case, the First Circuit cited *State ex rel. Mo. Pub. Defender Comm'n v. Waters.*[75] In that case, the Missouri Public Defender Commission sought an order from the Missouri Supreme Court vacating a trial court's appointment of a district public defender after the Commission had certified that the appointment would violate a regulation that

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70 *Id.* at 90:3-91:5, R-564-565.

71 *Id.* at 94:17-95:5, R-568-569.

72 Exhibit 10, Testimony of Mr. Murrell, 6/17/2019 at 4:22-5:7, R-609-610.

73 *Id.* at 6:19-32, R-611.

74 *Id.* at 9:3-10:24, R-614-615.

75 370 S.W.3d 592 (Mo. 2012).

allowed the district defender office to decline appointments when it had exceeded its caseload limit. The trial court made the appointment because "it believed it 'had no choice' but to appoint a public defender, regardless of the public defender's ability to provide competent and effective representation in another case, because to do otherwise would have violated the defendant's Sixth Amendment right to counsel, as the court could identify no other realistic mechanism by which to provide other counsel,"[76] The Missouri Supreme Court granted the requested order, holding that both the Sixth Amendment and the rules of professional conduct prohibit an appointment of counsel for an indigent defendant when appointed counsel would be unable to provide competent and effective assistance of counsel.

Regarding the Sixth Amenment, the court emphasized that it is an "affirmative and prospective" right that is not limited to postconviction review but is applicable at all critical stages of the proceeding. [77] Citing rules 1.1, 1,3 and 1.4, the court also noted:

> The Court's rules of professional conduct also impose on all counsel an "ethical duty to provide effective assistance of counsel to [their] clients." Counsel violates these rules if she accepts a case that results in a caseload so high that it impairs her ability to provide competent representation, to act with reasonable diligence and to keep the client reasonably informed.[78]

The court further noted that " these duties apply not just in relation to new clients, so that an attorney's acceptance of a new case violates [rule of professional conduct 1.7] if it compromises her ability to continue to provide effective assistance of counsel to her other clients."[79]

As a guide for future similar situations, the court outlined a protocol by which trial judges could exercise their "inherent authority, and an inherent responsibility, to manage their dockets in a way that respects the rights of the defendants, the public and the state and that respects the obligations of public defenders to comply with the rules governing their representation:"

> An effective means of so doing is for judges to triage cases on their dockets so that those alleging the most serious offenses, those in which the defendants are unable to seek or obtain bail, and those that for other reasons need to be given priority in their resolution also are given priority in appointment of the public defender and for scheduling of trial, even if it means that other categories of cases are continued

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76 *Id.* at 597.

77 *Id.* at 606-07.

78 *Id.* at 607.

79 *Id.*

> or delayed, either formally or effectively, as a result of the failure to appoint counsel for those unable to afford private counsel."[80]

In 2013, the Florida Supreme Court was faced with facts strikingly similar to those presented in this case.[81] In that case:

> The Public Defender for the Eleventh Judicial Circuit (the Public Defender) filed motions in twenty-one criminal cases seeking to be relieved of the obligations to represent indigent defendants in non-capital felony cases. The Public Defender certified a conflict of interest in each case, claiming that excessive caseloads caused by underfunding meant the office could not carry out its legal and ethical obligations to the defendants. . . . The trial court determined that the Public Defender's caseload was excessive by any reasonable standard and that this excessive caseload only allowed the Public Defender to provide minimally competent representation.[82]

The trial court granted the motions but the court of appeal reversed, holding, among other things, that (i) the motions to withdraw "must be determined on a case-by-case basis, and not in the aggregate" and (ii) the Florida rules of professional conduct governing lawyer were inapplicable.[83] On further review, the Florida Supreme Court reversed the court of appeal and reinstated the trial court's order.

Regarding the applicability of the rules of professional conduct, the court first noted that "[w]hether an indigent defendant is represented by an elected public defender, the appointed regional counsel, or a private attorney appointed by the court, the attorney has an independent professional duty to 'effectively' and 'zealously' represent his or her client."[84] Based on the same kind of evidence presented in this case, the court explained why a systemic, rather than a case-by-case approach, was necessary.

> Clients who are not in custody are essentially unrepresented for long periods between arraignment and trial. Attorneys are routinely unable to interview clients, conduct investigations, take depositions, prepare mitigation, or counsel clients about please offered at arraignment. Instead, the office engages in "triage" with the clients who are in custody or who face the most serious charges getting priority to the detriment of the other clients. . . .

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80 *Id.* at 599.

81 *Public Defender v. State,* 115 So. 3d 261 (Fla. 2013).

82 *Id.* at 265.

83 *Id.* at 265-66.

84 *Id.* at 271.

> Additionally, the public defender's lack of adequate resources or excessive caseload is likely to affect each client's case differently in the pretrial context as the attorney "juggles" the cases against each other in "triage."
>
> In extreme circumstances where a problem is system-wide, the courts should not address the problem on a piecemeal case-by-case basis. This approach wastes judicial resources on redundant inquiries. If this Court had not approved systemic aggregate relief in the appellate cases cited above, the courts would have been clogged with hundreds of individual motions to withdraw. This is tantamount to applying a band aid to an open head wound.[85]

The court also rejected the state's argument that *Strickland* required a showing of prejudice to the defendants before relief could be granted, citing *Luckey v. Harris,* 860 F.2d 1012 (11th Cir. 1988) and this Court's opinion in *Peart.*[86]

On March 30, 2020, in *Carrasquillo, Jr. v. Hampden County District Courts,*[87] the Supreme Judicial Court of Massachusetts overturned a trial court's orders compelling two public defender offices to accept additional appointments even though the public defenders in those offices had reached their workload capacities. In so ruling, the court explained the ethical implications of the orders:

> Under Rule 1.3 of the Massachusetts Rules of Professional Conduct, a lawyer must "act with reasonable diligence and promptness in representing a client." Requiring attorneys to take on more clients than they can reasonably handle may impede their ability to meet this obligation. Comment 2 to Rule 1.3 points out that a "lawyer's work load must be controlled so that each matter can be handled competently." In addition, having too many clients and matters at once may create concurrent conflicts of interest, implication Mass R. Prof. C. 1.7, if attorneys are then forced to pick and choose between clients who will receive their limited time and attention, and others who will necessarily be neglected. For these reasons, the American Bar Association's guidelines for public defense workloads specifically recommend that "public defense providers "avoid excessive lawyer workloads and the adverse

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85 *Id.* at 274 (footnotes omitted).

86 *Id.* at 276-77. As this Court aptly summarized the law in *Peart*: "If the trial court has sufficient information before trial, the judge can most efficiently inquire into any inadequacy and attempt to remedy it. Thus, treating ineffective assistance claims before trial where possible will further the interests of judicial economy. It will also protect defendants' constitutional rights, and preserve the integrity of the trial process. It matters not that the ineffective assistance rendered may or may not affect the outcome of the trial to the defendant's detriment. If the judge has an adequate record before him and a defendant has claimed that he is receiving ineffective assistance of counsel before trial, the judge may rule on the ineffective assistance of counsel claim at that time." 621 So. 2d at 787 (adopting *Luckey v. Harris*, 860 F.2d 1012, 1017 (11th Cir.1988), cert. denied, 495 U.S. 957, 110 S. Ct. 2562, 109 L. Ed. 2d 744 (1990)) (other citations omitted).

87 142 N.E.3d 28 (Mass. 2020).

> impact that such workloads have on providing quality legal representation to all clients.[88]

The court also explained the Sixth Amendment implications of the orders:

> Furthermore, the "right to counsel means the right to effective assistance of counsel." Ordered assignments of additional cases to public defenders who are already carrying maximum caseloads risks making them ineffective, by hindering them from, among other responsibilities, giving adequate attention to contesting pretrial detention if necessary, investigating their cases, making strategic decisions, filing pretrial motions, and preparing for trial, thereby defeating the very purpose of the right to counsel.[89]

On April 1, 2020, in *Lozano v. Circuit Court of the Sixth Judicial Dist.,*[90] the Wyoming Supreme Court overturned trial court orders holding a public defender in contempt for violating orders that her office accept appointments, even though she had certified that the public defenders in her office had workloads exceeding their capacities. In deciding that the appointment orders were invalid because they violated provisions of the Wyoming Public Defender Act, the court rejected the lower appellate court's holding that *Strickland* required that the public defender show an individualized prejudice to the client before declining an appointment. The court explained that the rules of professional conduct and the Sixth Amendment require no such showing.

> We also disagree with the circuit court's assertion on appeal that the public defender must prove an individualized injury in fact or make the individualized substantial prejudice showing required by *Strickland v. Washington,* 466 U.S. 668, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984) before declining representation. This presumes that an attorney cannot act to prevent an ethical violation or violation of the client's right to effective assistance but instead must violate either or both before obtaining relief. This is contrary to the mandate of Rule 1.16 that an attorney ***decline*** representation if it will result in a violation of the attorney's ethical obligations, and it is contrary to the Sixth Amendment' guarantee.[91]

These cases demonstrate that the First Circuit's ruling in this case is not an aberration. To the contrary, the ruling is entirely consistent with a growing body of law that recognizes that requiring public defenders to accept appointments when they already have met or exceeded their workload capacities creates unacceptable risks that the public defenders will be forced to violate their professional ethical obligations and that their clients will be denied reasonably effective assistance of counsel as guaranteed by the Sixth Amendment.

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88 *Id.* at 34 (citations omitted).

89 *Id.* (citations omitted).

90 220 WY 44, 2020 Wyo. LEXIS 45 (Wyo. 2020).

91 *Id.* at 58 (emphasis in original).

CONCLUSION

The problems that existed when this Court decided *Peart* continue to exist. Because Louisiana's indigent system is severely underfunded, public defenders are at significant risk of violating both their ethical obligations and their clients' constitutional rights. Under our Constitution and laws, it is the responsibility of the legislature, and not this Court, to adequately fund Louisiana's indigent defense system, and so this Court is without power to compel the legislature to do that under well settled separation of powers principles. Under Article 5, §5(A) of that same Constitution, however, the citizens of our state have given this Court general supervisory jurisdiction over all other courts. Thus, this Court has been charged by the citizens of our state with the fundamental constitutional duty to ensure the integrity of our criminal justice system. Accordingly, the Court should provide an appropriately tailored, structured and phased-in remedy to cure the clearly established ethical and constitutional violations demonstrated by the record in this case.

Respectfully submitted,

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VERIFICATION AND CERTIFICATE OF SERVICE

I, John M. Landis, certify that I am counsel of record for Respondent Michael Mitchell, in his capacity as District Defender of the Office of the Public Defender for the Parish of East Baton Rouge, and have prepared and reviewed the foregoing Reponse to the State of Louisiana's Application for Writ for Supervisory Writs; all of the allegations of fact and law are true and correct to the best of my knowledge, information and belief; and copies of the foregoing documents have been delivered to all counsel of record, the Honorable Donald R. Johnson, Section VI, Nineteenth Judicial District Court for the Parish of East Baton Rouge, State of Louisiana, and the Honorable Rodd Naquin, Clerk of Court, Court of Appeal, First Circuit, as follows:

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