March 19, 2020

Statement of Stephen F Hanlon

Expert Witness for East Baton Rouge Chief Public Defender Michael Mitchell

in

State v Spears, Case No. 2019 KW 1494, Court of Appeal, First Circuit

2020 WL 1230134, State of Louisiana, decided March 13, 2020

Justice in Louisiana

On March 13, 2020, the Louisiana First Circuit Court of Appeal issued an opinion holding that Chief East Baton Rouge Public Defender Michael Mitchell had presented sufficient evidence to the district court to demonstrate that his appointed public defenders cannot effectively represent their indigent clients in a manner consistent with their constitutional and ethical obligations due to their excessive caseloads.

The First Circuit further held that there is a conflict of interest when a public defender is compelled by his or her excessive caseload to choose between the rights of the various indigent defendants he or she is representing, citing Louisiana Rules of Professional Conduct (LRPC), Rule 1.7.

That Louisiana rule is identical to American Bar Association (ABA) Model Rule (MRPC) 1.7, which is in force almost every jurisdiction in America. Both the LRPC and the MRPC mandate that lawyers must seek to withdraw from existing representations and decline future representations when they have such a conflict.

This rule, or a similar version of it, has been in place in every state in America for the last 50 years. Until now, with rare exception, it has been systematically ignored in every public defense system operating in every criminal court in the American criminal processing system.

To implement this decision, the Louisiana Court of Appeal directed the trial court to triage the cases on its docket so that those alleging the most serious offenses, and those in which defendants are unable to seek or obtain bail, are given priority even if it means that other cases are continued or delayed as a result of the state's failure to appoint counsel who can meet the ethical and constitutional standards required of all lawyers, whether they be public defenders or private practitioners.

Finally, the Court of Appeal directed the trial court to allow these public defenders to withdraw from future representation of certain indigent defendants until their caseloads are no greater than 100% of their annual capacity, as determined by a workload study produced by The American Bar Association's Standing Committee on Legal Aid and Indigent Defendants (ABA/SCLAID) and Postlethwaite and Netterville, Louisiana's largest accounting and consulting firm, entitled "The Louisiana Project" and introduced in evidence in this case.

In addition to the Louisiana study, three more of these studies have been produced by ABA/SCLAID, working in partnership with some of our nation's leading accounting and consulting firms. Three more are underway. Soon we will have maximum caseload standards that will be applicable throughout the nation.

The state in this case produced no expert testimony to contradict the conclusions of The Louisiana Project report. The methodology utilized in that study was developed by the RAND Corporation in the 1960s, has been peer reviewed, and reliably employed across a diverse array of industries and professions, including the legal profession.

Thus, the unrebutted evidence in this case established that the Louisiana public defense system currently only has the capacity to handle 21 percent of its workload with reasonable competence and effectiveness. Until the Louisiana public defense system has the capacity to handle 100% of its workload with reasonable competence and effectiveness, Louisiana public defenders can only

ethically and constitutionally represent some of their clients charged with Life Without Parole and High Felony cases, and no others.

In that connection, it is noteworthy that The Brennan Center, a highly regarded non-partisan law and policy institute, recently examined America's prison population and found that nearly 40% of that population – 576,000 people – are behind bars with no compelling public safety reason.

The state filed a notice of intent to seek rehearing and an emergency motion to stay this ruling pending the outcome of its rehearing application. The Louisiana Supreme Court then granted the state's motion for a stay of the ruling until April 13, 2020. The Governor issued an order closing Louisiana courts until that date.

In its motion for rehearing, the state advised both the Louisiana Supreme Court that the ruling in this case "carries extremely significant ramifications. While the motion was originally filed in Section VI of the 19th JDC, the logic of *Spears* would apply equally to all trial courts within the First Circuit's jurisdiction."

The state continued: "*Spears* for certain will impact thousands of indigent defendants located within the jurisdiction and the many unqualified private civil attorneys that will now be called upon to do *pro bono* criminal work. *Spears* could impact all trial courts, public defenders, and prosecutors in the State of Louisiana. It is one of the rare decisions in criminal law that affects more than just a specific defendant. It affects our society."

Spears will indeed significantly affect our society, particularly that part of society impacted by our criminal processing system. This decision marks the beginning of the end of that system. This is the first appellate court in the nation to order specific public defender caseload relief based on reliable data and analytics contained in a statewide public defender workload study.

For decades the U.S. Supreme Court and other courts have ruled that indigent defendants in criminal cases are entitled to reasonably competent and

effective lawyers to represent them when their life or liberty is at stake. But until *Spears*, our courts have failed to adopt and enforce three obvious corollaries of those high-sounding rulings:

1. Lawyers, public or private, who represent indigent criminal defendants, cannot represent more clients than they can represent with reasonable competence and effectiveness.

2. When ordered by trial courts to do that, those lawyers must file motions to withdraw from existing cases and to decline future cases.

3. When making such motions, lawyers must protect the interests of their present and future clients by seeking to have their cases dismissed until such time as the state can provide a lawyer for those clients who can represent those clients with reasonable competence and effectiveness; and for those of their clients who pose no compelling safety risk, lawyers must seek their client's immediate release.

Under the Louisiana rules of professional conduct, Louisiana public defenders, charged with the obligation under our profession's rules to zealously represent their clients, can now seek such relief for all of their present and future clients.

The key to the First Circuit's decision in *Spears* is simple. It's based on a rule that has been in effect all over America for the last 50 years: lawyers cannot take on more cases than they can handle competently and effectively. But we – all of us in our profession, judges and lawyers alike – have ignored this simple rule for a half century.

That sordid period in the history of our profession started to come to an end on March 13, 2020, with the issuance of the First Circuit's remarkable decision in *Spears*. *Spears* is a turning point for justice in Louisiana and justice in America. It is a watershed moment in the reform of our nation's criminal processing system.

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N.B.:

1. We are immensely grateful to Arnold Ventures for providing support for the workload study used in this litigation and the litigation itself.

2. The entire record in this case will soon be posted on the website of the National Association for Public Defense, so that public defenders all over America can use this case as a model for reform, following Michael Mitchell's courageous example in East Baton Rouge.