RETURN FROM WONDERLAND: PUBLIC DEFENDER WORKLOADS, GEORGIA, AND THE OPPORTUNITY TO RETURN FROM A WORLD WHERE THE JUSTICE SYSTEM IS ANYTHING BUT

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"[The assistance of counsel] is one of the safeguards of the Sixth Amendment deemed necessary to insure fundamental human rights of life and liberty. . . . The Sixth Amendment stands as a constant admonition that, if the constitutional safeguards it provides be lost, justice will not 'still be done.'"[1]

INTRODUCTION

One could certainly make the case that the most pressing civil rights challenge confronting our nation today is our approach to criminal justice. Millions of people are arrested each year. They are almost exclusively low-income individuals and disproportionately of color. In addition to criminal penalties, they face civil consequences that keep them from being able to fully participate in society.

It is also arguable that no criminal justice professional is more pivotal to this struggle than the public defender. These men and women represent over 80% of the people who are criminally charged.

During the height of the civil rights movement, the United States Supreme Court recognized the criminal courts as a key battleground in the fight for equal justice and public defenders as the key to ensuring access to

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[1] Gideon v. Wainwright, 372 U.S. 335 (1963) (citing Johnson v. Zerbst, 304 U.S. 458, 304 U. S. 462 (1938)).

fundamental rights. The case was *Gideon v Wainwright*.[2] The year was 1963. The criminal justice system has only grown in significance since that time while public defenders have been rendered less effective than ever.

As the criminal legal system has grown and public defenders have been deprived of the resources necessary to meet their professional obligations, low-income Americans have paid the price. There are simply not enough public defenders available to do all the work required to fulfill the promise of *Gideon.*

However, a new study brings promise to advocates for equal justice. The National Public Defense Workload Study (the NPDWS),[3] is the first scientifically sound analysis of the workload limits necessary to allow public defenders to fulfill their professional responsibilities. It provides ammunition for public defender leaders and criminal justice reform advocates to campaign for greater resources for indigent defense.

Few states could use such advocacy as much as Georgia. It is a state that has historically struggled to provide anything close to justice in the criminal legal arena. Not coincidentally, it also falls well short of providing public defenders the support they need.

However, while Georgia desperately needs greater public defender resources, it is unlikely the NPDWS will result in significant improvement there, as the lack of public defender independence makes it difficult to sustain leadership committed to the necessary advocacy.

Each of these theses will be examined in this paper, ultimately concluding that new public defender workload standards give cause to be hopeful about the future of indigent defense in America; there is less reason to be optimistic that, without external pressure, reform will visit Georgia in the near future.

I. *GIDEON:* AN IMPORTANT CIVIL RIGHTS MILESTONE

Gideon v. Wainwright is the Supreme Court decision that establishes the Sixth Amendment right to counsel as a fundamental right that must be

[2] Gideon v. Wainwright, 372 U.S. 335 (1963).
[3] Nicholas M. Pace, Malia N. Brink, Cynthia G. Lee, and Stephen F. Hanlon, *National Public Defense Workload Study*, RAND Corporation (2023).

honored in state courts.[4] In law school, we study *Gideon* as a criminal procedure case. We learn that a person accused of a crime can only fully realize all other constitutional protections through the "guiding hand of counsel."[5] As important as this case is to making justice a reality in criminal courts, law students are taught to understand it narrowly, as a case about access to criminal justice.

It was only after serving as a public defender for a decade and joining the effort to bring indigent defense reform to the South that I came to appreciate the greater significance of *Gideon*. I realized that, at its core, *Gideon* is a civil rights case. It is an important chapter in the historical struggle to address racial and economic injustice in America. It cannot be divorced from other battles to secure civil rights in other arenas. *Gideon* birthed public defenders as critical civil rights warriors. By limiting our view of the role of public defenders to their impact on the outcomes of criminal cases, we sell short their importance to realizing the broader promise of democracy in America.

To truly appreciate the importance of *Gideon*, we must consider the historical context of that decision. *Gideon* was decided nearly a century after the Reconstruction era, and the events that transpired during that period are necessary to put the *Gideon* decision into perspective.

Following the Civil War, Congress passed the Fourteenth and Fifteenth Amendments,[6] along with a series of laws, to help Black Americans integrate into a new, post-slavery vision for our nation. However, that vision was short-lived as a violent response by white Americans, who were not ready for change, ensued. This brief period of Reconstruction[7] was followed by an era of Jim Crow laws designed to enforce racial segregation.[8] Lawful decrees, aimed at enforcing segregation, sought to further cement Black Americans'

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[4] *Gideon* held that the Sixth Amendment required states to provide a lawyer to all adult criminal defendants charged with a felony in state courts if they could not afford counsel. That right was later extended to juvenile defendants in In re Gault, 387 U.S. 1 (1967) and to defendants charged with misdemeanors in Argersinger v. Hamlin, 407 U.S. 25 (1972).

[5] *Gideon*, 372 U.S. at 345.

[6] The Fourteenth Amendment granted Black Americans citizenship and protected them from discriminatory state laws. *See* U.S. Const. amend. XIV. The Fifteenth Amendment guaranteed Black Americans the right to vote. *See* U.S. Const. amend. XV.

[7] The Reconstruction era lasted only twelve years. *See* Equal Justice Initiative, *Reconstruction in America, EQUAL JUSTICE INITIATIVE,* (2020), https://eji.org/report/reconstruction-in-america/.

[8] *See* Melvin I. Urofsky, *Jim Crow law*, *ENCYCLOPAEDIA BRITANNICA, https://www.britannica.com/event/Jim-Crow-law* (Dec. 4, 2024).

inferior status. Resistance to discriminatory laws and practices was often met with violence. Decades of racial terror aimed at keeping Black people subjugated was part and parcel of this new system of racial hierarchy.[9]

Thousands of Black Americans were lynched during this period, with no process whatsoever. Frequently, a mere accusation of wrongdoing led to a lynch mob being assembled. Without a judge, a jury, or any pretense of Due Process, an extrajudicial execution was carried out.[10] This racialized terror was used to halt the progress of civil rights and to reinforce a system of white supremacy.

By the early 1900s, as pressure mounted to stop extrajudicial executions, lynchings were more frequently replaced with racialized terror meted out in the criminal legal system. Accusations of lawbreaking were followed by sham trials and harsh punishment, in what one scholar coined "legal lynchings."[11]

Perhaps the best-known example of these legal lynchings is the case of the Scottsboro Boys, the nine young men at the heart of the *Powell vs. Alabama* decision.[12] The year was 1931. These Black teenagers were on a train passing through Alabama when they got into a fight with a group of white boys. Having got the best of the white youths, the nine young men were arrested by deputies in Scottsboro, Alabama. Based on a fabricated account, the Black teens were charged with raping two white women on the train. They were appointed counsel on the morning that the trial was set to begin. One of their lawyers was an alcoholic real estate lawyer from Tennessee who had no knowledge of criminal procedure in Alabama. The second was a local lawyer in his seventies who hadn't tried a case in thirty years. The two lawyers willingly went to trial that day without conducting any investigation, litigating any motions, or preparing their clients. Predictably, the nine boys were convicted and eight were sentenced to die. The ninth, only thirteen, was sentenced to life in prison.[13]

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[9] *See* Equal Justice Initiative, *Lynching in America: Confronting the Legacy of Racial Terror,* (2017), https://eji.org/wp-content/uploads/2005/11/lynching-in-america-3d-ed-110121.pdf.
[10] The Equal Justice Initiative documented over 4,000 racial terror lynchings between 1877 and 1950. *Id.* at 39.
[11] *See* Michael J. Klarman, *Powell v. Alabama: The Supreme Court Confronts Legal Lynchings,* in CRIMINAL PROCEDURE STORIES 1–44 (2008).
[12] 287 U.S. 45 (1932).
[13] *See* JONATHAN RAPPING, GIDEON'S PROMISE: A PUBLIC DEFENDER'S MOVEMENTS TO TRANSFORM CRIMINAL JUSTICE 65 (2020).

While perhaps the most notorious of these cases, it was hardly isolated. The same year the Scottsboro Boys were victims of a sham trial, John Downer was accused of rape in Elberton, Georgia. One week after being arrested, Downer was tried. He was given a lawyer on the day of trial. His lawyer never asked for the time necessary to investigate the accusation, interview Mr. Downer, or prepare for trial in any meaningful way. Trial began around 11:00 a.m. and concluded that afternoon. The jury deliberated a mere six minutes before returning a guilty verdict. Downer was sentenced to die.[14]

Accusations that once led to lynchings now resulted in sham trials and rapidly pronounced death sentences. The criminal justice system became the new medium to intimidate Black Americans who dared to defy the norms of a white supremacist society. It was the counter to any movement to ensure civil rights and equal justice, a critical tool in the white supremacist toolkit to fight racial progress.

Despite a commitment by white supremacists to maintain this racial hierarchy, the fight to ensure civil rights in America's institutions gained traction. By the 1960s, the civil rights movement was at its peak. Arguably, the most important year in this struggle was 1963. This is the year that four little girls were killed in the bombing of the 16th Street Baptist church in Birmingham, Alabama,[15] and that civil rights leader, Medgar Evers, was gunned down in his driveway in Mississippi.[16] However, if those events reflected the determination some whites had to keep Black people from achieving equality, this was also the year that over 1,000 students took to the streets in the Alabama Children's Crusade,[17] and that Dr. Martin Luther King, Jr. delivered his iconic "I Have a Dream Speech" on the steps of the Lincoln Memorial before a quarter of a million people who took part in the March on Washington For Jobs and Freedom.[18] 1963 was arguably the crescendo in an

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[14] ANNE EMANUEL, ELBERT PARR TUTTLE: CHIEF JUSTICE OF THE CIVIL RIGHTS REVOLUTION 1-7 (2011).

[15] Debbie Elliott, Lessons from Birmingham: 60 years after the 16th Street Baptist Church Bombing, ALL THINGS CONSIDERED (Sept. 14, 2023), https://www.npr.org/2023/09/14/1199312953/16th-street-baptist-church-bombing-60th-anniversary.

[16] Dernoral Davis, *Profile of Medgar Evers*, ALL ZINN EDUCATIONS PROJECT, https://www.zinnedproject.org/materials/evers-medgar/.

[17] NATIONAL MUSEUM OF AFRICAN AMERICAN HISTORY & CULTURE, *The Children's Crusade*, https://nmaahc.si.edu/explore/stories/childrens-crusade.

[18] NPR, *Read Martin Luther King Jr.'s 'I Have a Dream' Speech in Its Entirety* (Jan. 16, 2023), https://www.npr.org/2010/01/18/122701268/i-have-a-dream-speech-in-its-entirety.

ongoing battle that pitted racist resistance to equal justice against the hope for that American ideal.

In 1963, the civil rights movement was in the homestretch of defeating Jim Crow. The *Gideon* decision must be understood as an important step along that path. The criminal justice system was one of the institutions that contributed to racial injustice, and its reform was an important ingredient in the recipe for a more just future. The *Gideon* Court made clear that justice in the criminal legal system could not be realized without counsel. It birthed appointed counsel — the public defender — as the vehicle necessary to ensure justice in the criminal courts. Public defenders were envisioned as a key ingredient to a more hopeful tomorrow.

Gideon must be understood as part of a series of legislative and judicial victories, aimed at dismantling racially discriminatory institutions in the march to push the nation closer to its democratic promise. Between the mid-1950s and mid-1960s, a series of Supreme Court decisions and Congressional acts sought to address civil rights violations in all walks of life. They tackled equal justice in education, voting, travel and commerce, and, through *Gideon*, criminal justice.[19]

When understood in this context, our nation's devotion to the promise of *Gideon* reflects its commitment to true democracy. However, the struggle for civil rights in America has always involved progress followed by regress. Those committed to justice have inevitably faced backlash. If *Gideon* is a story of national progress, the current state of the right to counsel is an example of the backlash that has confronted those who have sought to implement this mandate.

The *Gideon* decision served as a flag planted in the soil of an important civil rights battleground. It acknowledged the criminal justice arena as a strategically necessary venue in the fight for racial and economic justice. Predictably, civil rights opponents mounted a counter-offensive. It came in the form of a new era of tough-on-crime rhetoric and policies. Understanding the criminal justice arena as the new frontline in the civil rights battle, those resistant to racial progress began to find ways to criminalize a population of

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[19] *Brown v. Board of Education of Topeka*, 347 U.S. 483 (1954) (Court tackles segregation in public schools); Civil Rights Act of 1964, Pub. L. No. 88-352,78 Stat. 241 (1964) (Congress prohibits discrimination in public accommodations, employment, and schools); Voting Rights Act of 1965, Pub. L. No. 89-110, 79 Stat. 437 (1965) (Congress prohibits discrimination in voting).

people they could no longer legally segregate.[20] Without Jim Crow laws to control Black communities, those who longed to retain racial hierarchy found creative ways to use the criminal justice system to achieve similar ends.[21]

II. CASELOAD STANDARDS: ATTEMPTING TO FILL THE VOID LEFT BY *GIDEON*

As criminal codes expanded, sentencing schemes became more draconian, and the size of the criminal justice apparatus grew, the promise of *Gideon* would become even more necessary to prevent civil rights abuses.[22] However, it quickly became apparent that there was a glaring flaw in the *Gideon* decision. While the Court required that states provide counsel to poor defendants, it never laid out any standards to ensure appointed counsel could fulfill its constitutional obligation. *Gideon* said nothing about quality. How many cases could an appointed lawyer handle? What tasks would they be required to complete to fulfill their constitutional obligations? With no criteria set forth by the Court, states that were never committed to civil rights were incentivized to do the bare minimum. A hodgepodge of delivery systems sprung up.[23] Predictably, without a built-in mechanism to ensure quality, regardless of the system, public defenders became saddled with far more cases than they could responsibly handle.[24]

In order to address this lapse, in the years immediately following the *Gideon* decision, indigent defense leaders developed caseload caps to provide guidance. They proposed a set of annual caps for felonies (150), misdemeanors (400), juvenile cases (200), mental health cases (200), and appeals (25).[25] These standards were informed by a national survey that collected data from "650 state court-level defender agencies and offices."[26]

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[20] *See* MICHELLE ALEXANDER, THE NEW JIM CROW: MASS INCARCERATION IN THE AGE OF COLORBLINDNESS (2010).
[21] *Id.*
[22] *See* Rapping, *supra* note 13.
[23] *Id.*
[24] *Id.*
[25] *See* Nicholas M. Pace, Malia N. Brink, Cynthia G. Lee, and Stephen F. Hanlon, *National Public Defense Workload Study viii,* RAND Corp. (July 27, 2023) (explaining a discussion of events that led to the adoption of this set of caseload limits by a defender committee at a 1972 National Legal Aid and Defender Association conference), https://www.rand.org/pubs/research_reports/RRA2559-1.html.
[26] *Id*. at 17.

While not the product of any scientifically rigorous methodology,[27] these standards at least provided some guidance where there previously was none. They were therefore impactful when, in 1973, the United States Department of Justice commissioned the National Advisory Commission on Criminal Justice Standards and Goals ("NAC") to conduct a comprehensive review of the criminal justice system in the United States.[28] The NAC review consisted of twelve task forces, each focusing on a single subject matter area.[29] The Courts Task Force focused on a variety of areas related to criminal case processing.[30] The standards the Courts Task Force adopted regarding publicly financed representation in criminal cases contained recommended caseload limits. Essentially adopting the guidelines previously set out by the defender community, the standards included:

> Standard 13.2 Workload of Public Defenders
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> The caseload of a public defender offices should not exceed the following: felonies per attorney per year: not more than 150; misdemeanors (excluding traffic) per attorney per year: not more than 400; juvenile court cases per attorney per year: not more than 200; Mental Health Act cases per attorney per year; not more than 200; and appeals per attorney per year: not more than 25.
>
> For purposes of this standard, the term case means a single charge or set of charges concerning a defendant (or other client) in one court in one proceeding. An appeal or other action for post judgment review is a separate case. If the public defender determines that because of excessive workload the assumption of additional cases or continued representation in previously accepted cases by his office might reasonably be expected to lead to inadequate representation in cases handled by him, he should bring this to the attention of the court. If the court accepts such

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[27] In the 1970s, defender timekeeping requirements were extremely rare and reliable case-level data on attorney time expenditures did not exist. *Id*. at 14. One could assume the 650 survey respondents each had varying methods for collecting the information reported in the survey, and that the responses ranged wildly in terms of the accuracy of the data shared.

[28] The Law Enforcement Assistance Administration (LEAA) was the unit of the Department of Justice that funded this review. See id. at 15.

[29] *Id.*

[30] *Id.*

> assertions, the court should direct the public defender to refuse to accept or retain additional cases for representation by his office.[31]

In these years following the *Gideon* decision, the nation was just beginning to wage a "War on Crime." Launched by Lyndon Johson in 1968, this focus on crime control led to resources being invested in local law enforcement.[32] By 1973, crime became a significant political issue.[33] As more attention, and resources, was focused on dealing with rising crime rates, and as the critical justice system correspondingly grew, these NAC standards became increasingly important to public defenders struggling for resources. At times referred to as the NLADA standards, the ABA standards, or ACCD standards, over the next fifty years, they would be referenced as powerful authority by indigent defense organizations trying to manage caseloads crises across the county.[34]

III. THE *GIDEON* BACKLASH

However, as indigent defense leaders leaned on the NAC standards to try to get caseload relief, lawmakers who controlled the purse, and who saw no advantage politically to funding public defense, were unmoved.[35] The standards were not binding on states and localities, and the courts historically refused to provide defenders any caseload relief under the constitutionally elusive standard of "effectiveness" established in *Gideon*.[36]

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[31] *Id.* at 15-16 (citing NAC, *Courts*, 1973, p. 276).

[32] Elizabeth Hinton, *Why We Should Reconsider the War on Crime*, TIME (Mar. 20, 2015), https://time.com/3746059/war-on-crime-history/.

[33] James Vorenberg, *The War on Crime: The First Five Years*, THE ATLANTIC ONLINE (May 1972), https://www.theatlantic.com/past/politics/crime/crimewar.htm.

[34] *See* PACE ET AL., *supra* note 25, at 17.

[35] *See* Jonathan Rapping, *National Crisis National Neglect: Realizing Justice Through Transformative Change,* 13 U. PA. J.L. & SOC. CHANGE 331, 340 (2010) (Discussing how states responded to the *Gideon* decision).

[36] In Strickland v. Washington*,* 466 U.S. 668, 669 (1984), the Court held that the Sixth Amendment guaranteed the right to the effective assistance of counsel, before going on to establish a two-prong test for effectiveness that was nearly impossible for criminal defendants to meet. The defendant first bears the burden of establishing that counsel was incompetent. In evaluating the defendant's claim, the court "must indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance." Id. at 689. If the defendant is successful in establishing incompetence, they must then "show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 694. Given that an incompetent lawyer likely

In fact, a decade after the NAC standards were published, a very different Supreme Court decided a case that would remove any teeth *Gideon* ever had. In 1963, the Warren Court unanimously ruled in Clarence Earl Gideon's favor, making that decision a seminal feature in the civil rights revolution that was transpiring. By 1984, the civil rights movement was in the nation's rear-view mirror, and the Supreme Court was becoming reshaped as a new tough-on-crime era took over.[37] One of the cases that marked an end of the criminal procedure revolution[38] was *Strickland v. Washington.*[39] David Leroy Washington alleged that his lawyer was ineffective when he failed to conduct adequate investigation at the sentencing phase of his capital trial. The Court, affirming that *Gideon* requires that appointed counsel be "effective," established a two-prong test for ineffectiveness that essentially closed the door to relief. The Court held that the defendant first bears the burden of establishing that counsel was incompetent. In evaluating the defendant's claim, the court "must indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance."[40] If the defendant is successful in establishing incompetence, they must then "show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different."[41] Astonishingly, *Strickland* seems to reframe the Sixth Amendment right to counsel as a right that is fulfilled through the appointment of incompetent counsel, as long as the defendant cannot prove post-conviction that they would have prevailed with a competent lawyer. Given that an incompetent lawyer likely failed to conduct the investigation and develop a record sufficient to establish the second prong, it is not surprising that very few of these claims have succeeded.[42]

The post-*Strickland* message to states was clear: states are required to provide a lawyer to anyone charged with a crime who cannot afford one, but they do not need to invest in providing much of a lawyer. After *Strickland*,

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failed to develop a record sufficient to establish the second prong, it is not surprising that very few of these claims have succeeded.

[37] *See* ALEXANDER, *supra* note 20.

[38] While many scholars consider the Warren Court's decisions in the area of criminal procedure to be the criminal procedure revolution, for purposes of the arguments in the article I would consider this body of case law to be the civil rights revolution applied to the institution of criminal justice. *See* Strickland v. Washington, 446 U.S. 668 (1984).

[39] *Id.*

[40] *Id.* at 689.

[41] *Id.* at 694.

[42] *Id.*

even if a defendant could establish that their lawyer was drunk, asleep, or completely unprepared, they would have to go further to secure relief. They would have to also prove that if their lawyer was sober, awake, and prepared, they would have won the trial. This is an almost insurmountable standard.[43] Throw in that the defendant was likely deprived of a lawyer at trial who attempted to identify any meaningful defense strategy, and the hurdle became even greater.

In this world, states that face tight budgets, coupled with no political pressure to invest in lawyers for criminal defendants, have little incentive to control public defender caseloads. Even if the lawyer is unable to adequately prepare, the ensuing conviction will be affirmed.

Perhaps the greatest setback as a result of *Strickland* is that now, absent the wholesale deprivation of counsel,[44] an individual defendant has no recourse to raise an ineffective assistance of counsel claim pretrial. A person left to rely on the representation of a court-appointed lawyer who is obviously incompetent will have to wait until they are inevitably convicted to go through the appellate process to hope for relief.[45]

Not only did *Strickland* make it impossible for an individual to challenge the quality of their court-appointed counsel while there is still time to prevent the damage an incompetent lawyer will cause, it also all but closed the door to individual court-appointed lawyers challenging excessive workloads and inadequate resources on Sixth Amendment grounds. There has been some success challenging systemic deprivations of the Sixth Amendment Right to Counsel.[46] The judicial response to an appointed

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[43] For a discussion of the low quality of lawyering that has been met with approval by the courts in the wake of *Strickland*, *see* Stephen B. Bright, *The Right to Counsel In Death Penalty and Other Criminal Cases: Neglect of the Most Fundamental Right and What We Should Do About It,* 11 J.L. & SOC'Y 1 (2010).

[44] *See* United States v. Cronic, 466 U.S. 648 (1984).

[45] Given the *Strickland* standard, they likely will not receive any. Yet, even if they did, consider the damage that has already been done during the years that likely passed between arrest and appellate review. In addition to any loss of liberty resulting from pretrial detention and/or a post-conviction sentence, the appellant may have lost employment, housing, public benefits, and reputation. *Id.*

[46] *See Hurrell-Harring Settlement Implementation*, N.Y. State Office of Indigent Legal Services (last updated July 2, 2023), https://www.ils.ny.gov/files/Hurrell-Harring%20Final%20Settlement%20Execution%20Copy%20102114.pdf; *See* Settlement Consent Judgment, ACLU (Aug. 24, 2020), https://www.aclu.org/cases/davis-v-nevada?document=settlement-consent-judgement; *See Bairefoot v. Beaufort - Court Order &*

attorney who argues that they are incapable of fulfilling their obligations pursuant to the Sixth Amendment due to lack of time and resources is that their client will have to wait until they have been convicted. Only then can they ask an appellate court to determine if their lawyer would have succeeded at trial had they had the time and resources they requested pretrial.

The aftermath of *Strickland* is almost as if we have stepped through the criminal justice looking glass into a world where, as with a reflection, the obvious intent and logic of *Gideon* is reversed.[47] One must now prove their innocence to be afforded the right to a competent lawyer. Correspondingly, a lawyer obligated to provide effective representation is required to disregard their realized incompetence and willfully violate that duty.

IV. THE NAC STANDARDS: A RECIPE FOR INEFFECTIVENESS?

As well intentioned as the *Gideon* Court was, the sea-change it hoped to catalyze never materialized. Similarly, the aspirations of the NAC Standards, to ensure that excessive caseloads would not prevent appointed counsel from fulfilling their obligations to their clients, were never realized.

While not for lack of good intentions, the NAC standards were an inadequate measure of manageable workloads from their inception. Acknowledging this is not meant to minimize their significance. There was a need to control workloads of public defenders in the wake of *Gideon*. An imperfect measure was better than none at all. The fact that public defender leaders continued to point to this metric in the decades that followed is more a reflection of the fact that it was the sole authority they could point to when faced with significantly higher caseloads.

As mentioned above, the NAC standards were the product of a survey of public defense leaders. They were not the result of a rigorous scientific methodology. Public defense data collection was sporadic and unreliable. Just

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Settlement (Oct. 22, 2019), ACLU, https://www.aclu.org/cases/bairefoot-v-city-beaufort-et-al?document=bairefoot-v-beaufort-court-order-settlement.

[47] This is a reference to the 1871 novel *Through the Looking Glass and What Alice Found There*, by Lewis Carroll. In this sequel to *Alice's Adventures in Wonderland*, Alice steps through a mirror to enter a world where, as with a reflection, everything is reversed and all logic is suspended. *See* LEWIS CARROLL, *THROUGH THE LOOKING GLASS AND WHAT ALICE FOUND THERE* (1871).

five years after they were published, an indigent defense study speculated that the NAC numbers were too high.[48]

They were also imprecise, dividing cases into extremely broad classifications (felony, misdemeanor, juvenile, mental health, and appellate). There was no effort to distinguish between the most and least complex cases within each category. A multi-witness first degree murder was assumed to require the same time as a straight-forward felony drug possession. Yet, despite its imprecision, defenders grasped for them when relief was desperately needed. Given the era ushered in soon after the NAC standards were developed, public defenders would need caseload relief more than they could have realized.

As the NAC standards were being developed, the Nixon Administration was launching the War on Drugs.[49] Within a decade, as fighting crime became an increasingly effective campaign issue, the stakes got higher. In 1984, Congress passed the Comprehensive Crime Control Act, establishing mandatory minimum sentences and eliminating federal parole.[50] This was during the Reagan administration. However, it would be a mistake to think crime prevention was a partisan issue.

Ten years later, President Clinton took credit for passing the largest crime bill in U.S. history. The Violent Crime Control and Law Enforcement Act of 1994, also known as the 1994 Crime Bill, funded more police, built more prisons, created more criminal offenses, and provided incentive grants to states to follow suit.[51] These forces fueled the mass incarceration era. In the five decades since the NAC standards were adopted, the number of people incarcerated in America grew from just over a quarter of a million to roughly 2.3 million.[52]

As the criminal justice system expanded exponentially, pressure continued to mount for public defenders to represent a greater number of

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[48] PACE, ET AL., *supra* note 25, at 20 (citing Shelvin Singer, et al., *Indigent Defense Systems Analysis (IDSA)*, Nat'l Legal Aid & Defender Ass'n (1978)).

[49] Jamila Hodge and Nazish Dholakia, *Fifty Years Ago Today, President Nixon Declared the War on Drugs*, VERA (June 17, 2021), https://www.vera.org/news/fifty-years-ago-today-president-nixon-declared-the-war-on-drugs.

[50] Comprehensive Crime Control Act of 1984, Pub. L. No. 98–473, 98 Stat. 1976 (1984).

[51] The Violent Crime Control and Law Enforcement Act of 1994, 42 U.S.C. § 14141 (re-codified at 34 U.S.C. § 12601).

[52] *See* JONATHAN RAPPING, GIDEON'S PROMISE: A PUBLIC DEFENDER MOVEMENT TO TRANSFORM CRIMINAL JUSTICE (2020).

people. However, not only did the number of people needing public defenders grow, but the complexity of the work did as well. Since *Gideon* was decided, criminal prosecutions now frequently involve digital and forensic evidence, complicated issues involving social science, and collateral civil consequences.

Criminal defense lawyers today are routinely required to review recordings and printed documentation from body-worn cameras, computer and cell phone files, social media, chat rooms, message boards, and other forms of digital evidence. These can amount to hours of recording and hundreds of pages of printed files.

Modern prosecutions more frequently rely on forensic evidence such as DNA, fingerprints, ballistics and tool markings, hair and fibers, and handwriting or voice exemplars. In addition to taking the time to review this evidence, a competent defense lawyer must have sufficient literacy in these areas to understand their relevance and to consult with and prepare expert witnesses when necessary.

As the evolution of social science shines light on our understanding of eyewitness identification, false confessions, the susceptibility to suggestion of child witnesses, and how implicit biases shape our perceptions, defense lawyers must be proficient in the relevant social science in order to understand how these issues might impact witness testimony and to consult with psychologists when helpful.

Today, criminal convictions can result in a plethora of civil consequences that may be more important to the accused than the actual sentence they face. Criminal convictions may impact immigration status, housing, employment, voting rights, child custody, the ability to receive public assistance, and countless other privileges.[53] In order to adequately advise their clients about these consequences, a lawyer must know the relevant law and set aside the time to look into each issue, some of which are quite complicated. In fact, many scholars have written about the impact these civil consequences can have long after the criminal sentence has been served.[54]

Because the cost of a criminal conviction can be so consequential, public defenders increasingly understand their obligation to learn about the

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[53] *See* JONATHAN RAPPING, *Implicitly Unjust: How Defenders Can Affect Systemic Racist Assumptions*, 16 N.Y.U. J. LEGIS. & PUB. POL'Y 999, 1004–05 (2013).
[54] ALEXANDER, *supra* note 20, at 140-177.

myriad issues that brought a person into contact with the criminal system and to try to address them. These can include mental illness, substance use disorder, unemployment, lack of adequate housing, subpar education, or the need for job training. Helping to identify resources to address these issues can help earn a client pretrial release, a favorable plea bargain, or a sentencing alternative to incarceration.

These simply were not issues in 1972 when the data behind the NAC standards was collected. Today, in the face of a much more expansive criminal justice system in which every case is more complex, the NAC standards have little relevance. Even more problematic, they risk cementing into place a workload benchmark that is too onerous to ensure quality representation.

V. CONSTITUTIONAL REQUIREMENTS VS. ETHICAL OBLIGATIONS

While it may be difficult for a lawyer to argue that they have an excessive caseload in violation of the Sixth Amendment of the Constitution, they may have success in grounding their objection in ethical rules.

The American Bar Association ("ABA") adopted the Model Rules of Professional Conduct in 1983.[55] While not binding on any state, each state has its own Rules that guide a lawyer's professional conduct, largely based on the ABA rules.[56] These Rules help define every lawyer's responsibility to their clients.

For example, Rule 1.1 requires that lawyers act with competence and instructs that "competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation."[57]

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[55] Prior to 1983, the model was the ABA Model Code of Professional Responsibility (adopted in 1969). *See* MODEL RULES FOR PRO. CONDUCT (AM. BAR ASS'N 1969).

[56] The Georgia Rules of Professional Conduct, which went into effect on January 1, 2001, are modeled after the ABA rules. *See* ETHICS AND PROFESSIONAL RESPONSIBILITY, https://libguides.law.gsu.edu/c.php?g=253396&p=1689859#:~:text=Georgia%20Rules%20of%20Professional%20Conduct,-On%20June%2012&text=Georgia's%20Rules%20follow%20the%20format,Model%20Rules%20of%20Professional%20Conduct.&text=Georgia%20Rules%20of%20Professional%20Conduct%20begins%20on,1878.&text=Contains%20the%20Georgia%20Rules%20of%20Professional%20Conduct%20in%20a%20loose,tab%2C%20Chapter%2011%2D12.1 (last visited Sept. 10, 2024).

[57] MODEL RULES OF PRO. CONDUCT r. 1.1 (AM. BAR ASS'N 1983).

To understand the degree of thoroughness and preparation that is reasonably necessary to represent an indigent client in a criminal case, the lawyer must look to prevailing professional standards.[58]

For cases that go to trial, the lawyer is obligated to be thorough in their preparation and execution of all aspects of the trial. This includes jury selection, opening statements, examination of prosecution witnesses, the presentation of a defense, closing arguments, and advocacy related to jury instructions.[59] There is no boilerplate approach to this. Each trial must be prepared in accordance with a theory of the case that is tailored to the circumstances and developed and reevaluated throughout the pretrial process.[60]

Regardless of whether a case goes to trial, defense counsel must invest in developing a relationship with the client and engaging in extensive pretrial preparation. This includes the duty to conduct investigation, pursue formal and informal discovery, and research legal issues and consider filing and preparing applicable pre-trial motions.[61]

Defense counsel must explore the possibility of a plea and devise a negotiation plan that takes into account potential sentencing enhancements, collateral consequences, the potential for asset forfeiture, and parole or supervised release consequences.[62]

If there is a conviction, whether pursuant to a plea or a trial, defense counsel must learn all sentencing options and engage in thorough sentencing mitigation investigation, preparation and advocacy.[63]

The duty to be thorough and prepared necessarily requires communication to keep the client apprised of developments in their case and to ensure that they have sufficient information to decide the objectives of their own representation.[64] This duty "is essential to the very nature of the

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[58] *See generally* AM. BAR ASS'N., ABA STANDARDS FOR CRIMINAL JUSTICE PROSECUTION FUNCTION AND DEFENSE FUNCTION (3d ed. 1993); NATIONAL LEGAL AID AND DEFENDER ASS'N, PERFORMANCE GUIDELINES FOR CRIMINAL DEFENSE REPRESENTATION (3d ed. 1995).
[59] *Id.*
[60] *Id.*
[61] *Id.*
[62] *Id.*
[63] *Id.*
[64] *See* MODEL RULES OF PROF'L CONDUCT r. 1.4 (AM. BAR ASS'N 1983); *Strickland*, 466 U.S. at 688.

attorney-client relationship,"[65] for it impacts the lawyer's ability to carry out all other obligations. Without effective communication the lawyer's duties to provide zealous and loyal representation, to advocate for the client's cause, and to thoroughly study and prepare will be severely hampered.

Rule 1.4 addresses the lawyer's duty to communicate with the client. The lawyer is required to "keep the client reasonably informed," to "consult" with the client, "comply with reasonable requests for information," and to "explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation."[66]

Finally, Model Rule 1.3 requires that "a lawyer shall act with reasonable diligence and promptness in representing a client."[67] This rule also makes clear that the duty of diligence requires that "a lawyer's workload must be controlled so that each matter can be handled competently."[68]

Taken collectively, it is clear that a lawyer violates their ethical obligation by taking on a caseload that precludes them from doing each of the duties prescribed by the Model Rules. In fact, the Model Rules recognize that doing so creates a prohibited conflict of interest for the lawyer. Rule 1.7 mandates that "a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if … there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client."[69] It follows that for a lawyer to take on an additional case that will interfere with their ability to fulfill their obligations to their existing clients, a conflict exists and the lawyer must refuse the additional representation.

Furthermore, while these rules apply to each lawyer individually, Model Rule 5.1 places an obligation on leaders, managers, and supervisors to ensure every lawyer is able to meet these standards.[70] Rule 5.1 holds any member of the leadership team with managerial/supervisory authority

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[65] J. Nick Badgerow, *The Lawyer's Ethical, Professional, and Proper Duty to Communicate With Clients*, 7 KAN. J.L. & PUB. POL'Y 105, 105-06 (Spring 1998).
[66] MODEL RULES OF PROF'L CONDUCT r. 1.4 (AM. BAR ASS'N 1983).
[67] MODEL RULES OF PROF'L CONDUCT r. 1.3 (AM. BAR ASS'N 1983).
[68] *Id. at* cmt. 2.
[69] MODEL RULES OF PROF'L CONDUCT r. 1.7(a)(2) (AM. BAR ASS'N 1983).
[70] MODEL RULES OF PROF'L CONDUCT r. 5.1 (AM. BAR ASS'N 1983).

responsible for the violations of the legal team should they be aware of the conduct and fail to take "reasonable remedial action."[71]

The obligation of leaders and supervisors to ensure their lawyers' caseloads are controlled sufficiently to ensure compliance with their professional responsibility was further underlined in a 1996 formal opinion issued by the American Bar Association (ABA):

> Lawyer supervisors, including heads of public defenders' offices and those within such offices having intermediate managerial responsibilities, must make reasonable efforts to ensure that the other lawyers in the office conform to the Rules of Professional Conduct. To that end, lawyer supervisors must, working closely with the lawyers they supervise, monitor the workload of the supervised lawyers to ensure that the workloads do not exceed a level that may be competently handled by the individual lawyers.[72]

Public defenders struggling to meet these obligations would have their work cut out for them. In the two decades after the *Strickland* decision, public defenders experienced overwhelming workloads and judges were disinclined to do anything about it. The idea that *Strickland* required a conviction before relief could be secured left judges feeling empowered to pile onto public defenders. As the criminal legal system grew, public defenders found themselves representing roughly eighty percent of all people accused of crimes.[73] Judges seemed to view these court-appointed lawyers as receptacles for all unrepresented persons, regardless of the burden on the lawyer.[74] It was

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[71] MODEL RULES OF PROF'L CONDUCT r. 5.1(c)(2) (AM. BAR ASS'N 1983).

[72] Am. Bar Ass'n Standing Comm. on Ethics & Pro. Resp., Formal Op. 06-441, *Ethical Obligations of Lawyers Who Represent Indigent Criminal Defendants When Excessive Caseloads Interfere With Competent and Diligent Representation* (2006).

[73] Sue Halpern, *How a New Approach to Public Defense Is Overcoming Mass Incarceration*, THE NEW YORKER (Oct. 5, 2023).

[74] *See* Emily Hamer, Lee Enterprise's Public Service Journalism Team, *Public Defenders Work Three Times Too Many Cases, Milestone Study and New Data Show*, THE ST. LOUIS POST-DISPATCH (Sept. 12, 2023), https://www.stltoday.com/news/nation-world/crime-courts/public-defenders-attorneys-dangerously-overworked/article_5a63628b-63d0-56dc-bc91-ce908820ac75.html#tncms-source=login. ("Public defenders across America regularly work triple the cases they can effectively handle, and some work upwards of 10 times too many cases, according to an analysis of Lee Enterprises data based on a milestone study of public defender workloads…").

as if court-appointed counsel was exempt from the rules that governed professional conduct.

Feeling the need to clarify that public defenders are actually lawyers who are bound by the rules of professional responsibility, the ABA addressed this issue in its 1996 formal opinion. It stated, "All lawyers, *including public defenders,* have an ethical obligation to control their workloads so that every matter they undertake will be handled competently and diligently" (emphasis added).[75] It further requires lawyers to refrain from accepting new clients if they cannot meet these obligations.[76]

Consistent with this opinion, in 2023 the American Bar Association (ABA) updated its publication*, Ten Principles of a Public Defense Delivery System.* Principle 3 states, in part:

> The workloads of Public Defense Providers should be regularly monitored and controlled to ensure effective and competent representation. Workloads should never be so large as to interfere with the rendering of quality representation or to lead to the breach of ethical obligations. Workload standards should ensure compliance with recognized practice and ethical standards and should be derived from a reliable data-based methodology. Jurisdiction-specific workload standards may be employed when developed appropriately, but national workload standards should never be exceeded.[77]

When one looks at the Rules of Professional Conduct that govern lawyers' obligations to their clients and to the profession, combined with professional practice standards, it is clear that these guidelines limit the number of cases a lawyer can handle at any given time.[78] Together, they offer the authority to which public defenders must defer when determining workloads, thereby filling the void left by *Gideon.* They also recognize that every case is unique, and that there is not a single caseload number that adequately applies across the board. They require each lawyer to assess what

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[75] Am. Bar Ass'n Standing Comm. on Ethics & Pro. Resp., Formal Op. 06-441, at 9 (2006).
[76] *Id.*
[77] Am. Bar Ass'n, Standing Comm. on Legal Aid & Indigent Def., *Ten Principles of a Public Defense Delivery System,* Principle 3 (Aug. 2023).
[78] *See also* A.B.A., *Eight Guidelines of Public Defense Related to Excessive Workloads* (2009), https://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls_sclaid_def_eight_guidelines_of_public_defense.pdf.

needs to be done in each case and to ensure they have the time to meet these obligations.

VI. THE UNETHICAL, YET CONSTITUTIONALLY EFFECTIVE, LAWYER

Understanding these standards also shines a light on the problem with the *Strickland* Court's thinking. *Strickland* allows, and arguably requires in many cases, appellate courts to find that lawyers who have failed to live up to their ethical obligations have been constitutionally effective.[79] For, in the many cases where a trial lawyer violates myriad professional obligations, yet the convicted defendant is unable to prove that an ethical lawyer would have changed the outcome of the trial, the trial lawyer will be given the constitutional stamp of approval. Understanding these rules brings into focus how the Supreme Court has incentivized states to offer indigent defendants lawyers who are incapable of living up to their ethical obligations. In fact, it is fair to say that the *Strickland* Court established a new class of lawyers exclusively for indigent defendants: the unethical, yet constitutionally effective, lawyer. For no person accused of a crime would ever hire a lawyer who was so clearly overwhelmed that they could not handle another case. However, indigent defendants have these attorneys foist on them routinely.

In 2013, the fiftieth anniversary of the *Gideon* decision, *Mother Jones* reported on the caseload crises and our failure to fulfill the promise of that mandate.[80] The report begins by recognizing that during the fifty-year period, the prison population grew tenfold–from 217,000 to 2.3 million.[81] It also notes that criminal cases have become much more complex than they were in 1973 when the NAC standards were developed.[82] Nevertheless, it found that public defenders routinely exceed the recommended NAC standards. Based on those standards, the nation would need an additional 6,900 public defenders to

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[79] The Strickland Court recognized that a lawyer's failure to satisfy the first prong means the lawyer failed to "function[] as the 'counsel' guaranteed the defendant by the Sixth Amendment." *See Strickland*, 466 U.S. at 687. However, that constitutionally deficient lawyer will not be found to be constitutionally ineffective, such that any remedy is warranted, absent a "show[ing] that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Id.* at 694.

[80] Jaeah Lee, et al., Charts: *Why You're in Deep Trouble if You Can't Afford a Lawyer,* MOTHER JONES (May 6, 2013), https://www.motherjones.com/politics/2013/05/public-defenders-gideon-supreme-court-charts/.

[81] *Id.*

[82] *Id.*

handle the caseload.[83] The logical consequence is that indigent defenders spend far too little time serving their clients. In fact, the reporter found that public defenders in Atlanta were only able to spend 59 minutes on each case, while those in Detroit had only 32 minutes, and in New Orleans they could devote only seven.[84]

With these expectations, it is no wonder lawyers committed to justice walk away from public defense. As much as they care about helping people, in many places it can feel impossible to make a dent in the problem. So, what happens when states are told they must provide lawyers while simultaneously being incentivized to deny counsel the resources necessary to be competent? Poor people end up settling for any person with a heartbeat and a bar card. The post-*Gideon* landscape is sadly littered with these anecdotes. The victims are the accused who had to accept the attorney given them.

They are people like Judy Haney, who was sentenced to death in Talladega County, Alabama for arranging to have her abusive husband killed. She was appointed an alcoholic lawyer who was so drunk during trial that the proceedings had to be stopped as he was held in contempt and sent to jail. The next morning the lawyer was brought to court from the jail, along with Ms. Haney, so the trial could resume. Ms. Haney was sentenced to die several days later. Her lawyer never presented hospital records showing injuries received by Ms. Haney and her daughter that would have corroborated her testimony. He did not bring their expert witness on domestic abuse to visit Ms. Haney until 8 p.m. the night before he testified at trial.[85]

They are people like the 12-year-old boy who had to rely on a New Orleans public defender named Clarence Richardson. Mr. Richardson met his client for the first time in a crowded waiting area outside the courtroom just minutes before trial was to begin. Obviously unprepared, the lawyer had no law books, files, or paperwork. With no trial strategy to share, Mr. Richardson pressured the child to plead guilty. With no one else to turn to for support, the boy did. He was sentenced to two years in juvenile prison.[86]

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[83] *Id*.
[84] *Id*.
[85] Stephen Bright, *Counsel for the Poor: The Death Sentence Not for the Worst Crime but for the Worst Lawyer*, 103 YALE L.J. 1835, 1836 (1994).
[86] Fox Butterfield, *Few Options or Safeguards in a City's Juvenile Courts*, THE NEW YORK TIMES, July 22, 1997.

They are people like Donald Lambert, who was barely older than the boy who had to rely on a court-appointed lawyer when he was accused of a double homicide in Grant County, Washington. A critical piece of evidence against the fifteen-year-old was a transcript of a tape-recorded confession in which he allegedly admitted that he went to the couple's home intending to shoot them. His lawyer, Guillermo Romero, never requested a copy of the tape. If he had, he would have learned that Lambert never said this. Instead, Mr. Romero convinced the teen that his best course of action was to plead guilty. Following the advice of his unqualified lawyer, Donald pled guilty and received a sentence of mandatory life without the possibility of parole.[87]

These are also people like Eddie Joe Lloyd, a mentally ill man who was convicted of the brutal murder of a 16-year-old girl in Detroit Michigan based, in part, on an unreliable confession and questionable forensic evidence. Mr Lloyd's original lawyer was paid one hundred and fifty dollars. He withdrew a week before trial. His new lawyer never met with the original lawyer or did any independent investigation. The trial was not postponed.[88] As if having to rely on an incompetent lawyer at trial was not bad enough, Mr. Lloyd was assigned a different attorney for his appeal. During the two years the appellate lawyer represented Mr. Lloyd, he did not meet with or accept a single phone call from his client. In his own defense, the appellate lawyer claimed that his lack of attentiveness was because he was not paid enough.[89]

In case the other examples fail to reveal that, in this post-*Gideon* world, the defense lawyers can be as indifferent to the injustice of the system as other actors, Mr. Lloyd's appellate lawyer makes the point clearly. After his appeal unsurprisingly failed, Mr. Lloyd filed a complaint with the state claiming that his appellate lawyer did not devote enough time to his case. The lawyer's response was, "this is a sick individual who raped, kidnapped and strangled a young woman on her way to school. His claim of my wrongdoing

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[87] Ken Armstrong, et al., *An Unequal Defense: For Some, Free Counsel Comes at a High Cost*, THE SEATTLE TIMES, Apr. 4, 2004 (a U.S. District Court judge subsequently vacated Lambert's guilty plea based on this, and other failings by his lawyer).

[88] Innocence Project, *Eddie Joe Lloyd*, INNOCENCE PROJECT, https://innocenceproject.org/cases/eddie-joe-lloyd/.

[89] *See* Ailsa Chang, *Not Enough Money or Time to Defend Detroit's Poor*, NPR NEWS, (Aug. 17, 2009, 12:52 AM), *available at* http://www.npr.org/templates/story/story.php?storyId=111811319.

is frivolous, just as is his existence. Both should be terminated."[90] Lloyd was subsequently exonerated by DNA after spending seventeen years in prison.[91]

Eddie Joe Lloyd's case is a stark example of how states have responded to the low standard set by *Strickland*. Not only will they settle for lawyers who are overwhelmed and under-resourced, but they will accept counsel that assumes the guilt of their clients and uses this mindset to justify doing as little as possible.

VII. THE PROBLEM THROUGH A GEORGIA LENS

I learned of stories like these when I moved to Georgia in 2004. After serving as a public defender in Washington, D.C. for a decade, I moved to Georgia to become the Training Director for its new, state-wide public defense system slated to launch on January 1, 2005. The organization I would join, The Georgia Public Defender Standards Council ("GPDSC"), was charged with overseeing the implementation and operation of this system. This was the state where John Downer was accused of rape more than fifty years earlier. It could have served as the poster child for the failure to live up to the promise of *Gideon* by the time I arrived.

Gary Nelson suffered tremendously because of Georgia's response to *Gideon*. His lawyer, who was going through a divorce and financially desperate, was paid only $15-$20 dollars per hour to represent Mr. Nelson in a capital case. The state denied the lawyer's request for co-counsel and an investigator. The case against Mr. Nelson was based on questionable scientific evidence, yet his lawyer never requested a defense expert. The lawyer's closing argument was only 255 words long.[92] Mr. Nelson was convicted and sentenced to die.[93] It took eleven years for post-conviction lawyers to demonstrate that the forensic evidence was unreliable and for Mr. Nelson to be released.[94]

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[90] *Id.*
[91] *Id.*
[92] Stephen Bright, *Counsel for the Poor: The Death Sentence Not for the Worst Crime but for the Worst Lawyer*, 103 YALE L.J. 1835, 1838 (1994).
[93] *Id.*
[94] *Id.*

Another Georgia lawyer, Mark Straughn, agreed to handle cases for roughly $50 a-piece.[95] When he testified before the Commission investigating lapses in Georgia's indigent defense system, he said that he presumes his clients are guilty. If they insisted on their innocence, he assumed they were lying. Embracing a presumption of guilt, Straughn viewed his professional goal as getting his clients to plead guilty.[96]

Green County, Georgia awarded its indigent defense contract to a lawyer named Robert Surrency. Surrency agreed to handle hundreds of cases a year and saw his role as helping to process many cases efficiently as possible. Surrency often only spent minutes with clients before pleading them guilty. He routinely relied on police reports as an accurate reflection of the facts of the case. He almost never requested investigative or expert services. When speaking of his high-volume, plea-bargain practice, he called it "a uniquely productive way to do business."[97] When clients complained about the insufficient time he spent talking to them, Surrency pointed to "their need for attention," rather than their need for a competent lawyer.[98]

Although he was a "part-time public defender," his annual caseload was twice the NAC standards.[99] He would resolve more than 99 percent of his cases through guilty pleas, without engaging in negotiation, at times pleading dozens of clients in a single court session.[100]

Not to be outdone by Green County, Johnny Mostiler's contract with Spalding County required him to handle as many as 900 felonies per year.[101] Despite this overwhelming workload, he supplemented his income with additional private clients. In fact, Mostiler only spent approximately sixty percent of his time on his court-appointed work.[102] In one two-week trial calendar, Mostiler resolved nearly each of his 150 scheduled cases with a plea. He boasted, "We'll enter pleas all week, at a rate of about 10 to 12 every 45 minutes."[103]

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[95] Henry Weinstein, *Georgia Fails Its Poor Defendants*, L.A. TIMES, Dec. 13, 2002, http://articles.latimes.com/2002/dec/13/nation/na-indigent13.
[96] *Id.*
[97] *Id.*
[98] AMY BACH, ORDINARY INJUSTICE: HOW AMERICA HOLDS COURT 13, 17 (2009).
[99] *Id.*
[100] *Id.*
[101] Alan Berlow, *A Requiem for a Public Defender*, THE AMERICAN PROSPECT (Dec. 19, 2001), http://prospect.org/article/requiem-public-defender.
[102] *Id.*
[103] *Id.*

These anecdotes illustrate one of the greatest dangers of a criminal legal system that refuses to support the human resources needed to hold it accountable to its democratic ideals. As every person in the system is forced to take shortcuts in an attempt to process an overwhelming volume of cases, the injustice becomes normalized. Every actor in the system, including the defense lawyers, come to accept routine injustice as the standard.[104]

I have written quite a bit about this cultural challenge and will not address it in depth in this piece.[105] However, a criminal justice culture that accepts the very problems that *Gideon* tried to change is clearly fueled by a system that incentivizes crushing caseloads. While controlling caseloads alone will not result in the transformative change needed, it is certainly an important part of the solution. Twenty years ago, I had the opportunity to understand this first-hand.

When Georgia passed the Indigent Defense Act of 2003,[106] and established GPDSC, there was great hope for real change. At the time, I had spent nearly a decade as a public defender in a model *indigent* defense organization in Washington, DC. the District of Columbia. It was an office where every lawyer would have been shocked by the stories told above. It embraced a fiercely client-centered ethos, and every professional in the office cared deeply about the people we served.[107]

One of the key ingredients to this model was manageable caseloads. By the time I left the office, I was handling the most serious felony cases. I had learned to understand all that went into adequately defending a person against an allegation of homicide or sexual assault. In recognition of this complexity, lawyers handling these cases would usually carry no more than twenty cases at a time. We would never come close to the NAC ceiling of 150

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[104] A primary thesis of *Gideon's Promise: A Public Defender Movement to Transform Criminal Justice* is that the culture of the criminal legal system shapes even the best-intentioned professionals and that without support they will soon accept the substandard level of justice. Over time the injustice becomes normalized.

[105] Before writing *Gideon's Promise,* I developed this thesis in several articles, including *Directing the Winds of Change: Using Organizational Culture to Transform Indigent Defense*, 9 Loy. J. Pub. Int. L. 177 (2008) and *You Can't Build on Shaky Ground: Laying the Foundation for Indigent Defense Reform Through Values-Based Recruitment, Training, and Mentoring*, 3 HARV. L. & POL'Y REV. 161 (2009).

[106] O.C.G.A. § 17-12-1.

[107] For a discussion of the concept of client-centered lawyering, *See* RAPPING, *supra* note 52, at Chapter 1.

per year. Even with that caseload, I frequently worked seven days a week. 70-80 hour work weeks were not uncommon.

Prior to Georgia adopting a state-wide public defender system, each of Georgia's 59 counties were left to decide how to provide indigent defense.[108] Some had full-time public defender offices. Others relied on private lawyers who agreed to take on some court-appointed case or to accept a contract to handle all the cases in a county.[109] These court-appointment and contract systems often led to the horror stories told above. The new system was meant to change that.

With the exception of a small number of counties that demonstrated the ability to meet certain standards,[110] every jurisdiction would have a public defender office that employed full-time staff who had no private clients to compete for their time and attention. GPDSC would set standards that public defenders would be required to meet. It would also provide the training and support necessary to ensure defenders could competently handle cases.

In 2004, I was invited to be the first Training Director for Georgia's new system. My priority was to recruit new public defenders who were passionate about justice and to provide them with training and mentorship so that they could appreciate their ethical obligations to each client. This wave of defenders would begin to replace the appointed lawyers, many of whom blindly accepted and processed every case the system needed to dispense with.

In 2005, we launched the Georgia Honors Program to attract the new lawyers we hoped would become the future leaders of indigent defense in Georgia.[111] We attracted some incredibly talented law school graduates who were committed to being a part of change in Georgia. Through a three-year program of ongoing training and mentorship, these lawyers came to understand what every client deserved. However, within two years, Georgia's commitment to indigent defense reform waned.[112] The march towards

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[108] Rapping, *supra* note 53*,* at 85-86.
[109] *Id.*
[110] In theory, these "opt-out" counties met acceptable standards of representation. However, a recently published report focused on Gwinnett County, one of the opt-out jurisdictions, and found it to be struggling to deliver high-quality indigent defense. *See* THE WREN COLLECTIVE, *Restoring and Rebuilding: Indigent Defense in Gwinnett County* (Jan. 2024), https://www.wrencollective.org/_files/ugd/8fe8f0_ff1ad77fe24b47db9bb6fef98d6aad47.pdf .
[111] *See* Rapping*, supra* note 53*,* at 89-90.
[112] For a discussion of the early years of indigent defense reform in Georgia, see RAPPING, *supra* note 52, at Chapter 3.

transformative change was stalled. Funding for the Honors Program was cut. Although these young defenders worked diligently, without the support the Honors Program offered, they could only last for so long with their spirit intact.

One of the public defenders who came to Georgia in 2005 to join the effort to reform indigent defense was Marie. She was a graduate of Cornell Law School and agreed to spend two years with the state's newly formed Capital Defender Office. When she finished her two-year commitment at the Capital Defender Office, she moved to Walton County to become a public defender.

Thirteen months later she made the difficult decision to leave her office. Although she loved the work, she felt she could not be effective. In just over a year, she closed roughly 900 cases. At any given time, she would carry a mix of approximately 270 felonies, misdemeanors, and probation revocations.[113] As she explained in a final letter, published in the Atlanta Journal-Constitution, "an attorney devoting 50 hours per week to case work, taking no vacation time or sick leave, would have only three hours to devote to an individual case, including court time and meeting with the client."[114] She described how the workload created a culture in the office in which attorneys routinely allowed clients to plead guilty without adequate consultation or investigation. The lack of funding to support conflict counsel led lawyers to ignore conflicts of interest between clients. She believed her colleagues tried their best but, because of inexperience and inadequate resources, could do little more than help process their clients through the system without any meaningful representation. She shared how the elimination of the Honors Program impacted her ability to remain passionate. Without that support, she concluded that she could not continue to be a public defender in Georgia.

Another young public defender who was a member of the 2004 Honors Program was Brett. Brett was incredibly talented, driven, and self-confident. He was as prepared for the challenges of public defense as any of the hundreds of lawyers I had trained in my career. He worked with the Hall County public defender office. About the same time Marie decided to leave, I received an email from Brett. As I read Brett's email, I was saddened to detect that this

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[113] Marie-Pierre Py, *Public Defender System Fails Georgians and Their Lawyers*, ATL. J. CONST. (Mar. 30, 2009), http://www.ajc.com/printedition/content/printedition/2009/03/30/pyed0330.html.

[114] *Id.*

usually confident and optimistic advocate seemed discouraged. He was struggling without the training and support from the Honors Program that he relied on. He wrote that he was feeling worn down. "[There is] still nothing I'd rather be doing, but it doesn't feel quite as pure as before," he shared. "I'm just becoming part of the machine."[115]

Jason was another classmate of Marie and Brett's. He moved to Georgia after graduating from Boston College School of Law to join the effort to reform indigent defense as a member of the Honors Program. He joined the public defender's office in Cordele, a notoriously dysfunctional system that gave rise to a 2003 lawsuit that helped bring about Georgia's new public defender system.[116] Cordele was a jurisdiction with a heavy volume of cases that expected lawyers to move cases efficiently. Filing legal motions was almost unheard of. Understanding that raising legal issues through a robust motions practice was part of his ethical duty, Jason filed plenty of motions. This did not sit well with the judge to whom he was assigned. The judge complained to Jason's boss who, in turn, suggested Jason ease up a bit. While Jason continued to try to provide the representation he understood his clients deserved, the resistance he met eventually wore him down. Without the support that brought him to Cordele in the first place, he eventually left Georgia.[117]

The promise of public defense reform in Georgia was short-lived. I left GPDSC in 2006, as funding for the Honors Program was eliminated. I worried that the lack of commitment to recruitment, training, and mentorship was the canary in the coal mine for a course reversal in the movement to bring meaningful reform to Georgia. My instincts proved correct.

A year later, the Georgia legislature moved GPDSC from the judicial branch to the executive branch,[118] giving the Governor more control over the agency and effectively preventing indigent defense leadership from litigating the failure to provide adequate resources.[119] Within eight years, as if to acknowledge that the agency had no power to ensure poor people received adequate representation, the legislature dropped the word "Standards" from

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[115] Rapping, *supra* note 53, at 99.
[116] *Id.* at 95.
[117] *Id.* at 96.
[118] In 2007, Georgia passed legislation that transferred the GPDC from the judicial branch to the executive branch. O.C.G.A. § 17-12-1(b) (2013).
[119] *See* Eve B. Primus, *Federal Review of State Criminal Convictions: A Structural Approach to Adequacy Doctrine*, 116 MICH. L. REV. 75, 88, n.74 (2017).

the name. The Georgia Public Defender Standards Council became simply the Georgia Public Defender Council (GPDC) in 2015.[120] The name change portended a bleak future.

As we will see, recent developments in the fight to manage public defender workloads offer hope to systems that have abandoned a commitment to the Sixth Amendment. Sadly, Georgia does not appear poised to take advantage of these developments. We will take a look at a recent workload study that provides public defenders a powerful new tool to advocate for more resources and lower caseloads, before turning to hurdles that will likely keep indigent defendants in Georgia from feeling relief.

VIII. A NEW PERSPECTIVE ON WORKLOADS - THE NATIONAL DEFENSE WORKLOAD STUDY

While the number of people in prison has dipped slightly in the last decade, today there are nearly six million people under some form of correctional control. Last year, American had 1.9 million people in its prisons and jails, 2.9 million on probation, and more than 800,000 on parole.[121] The crisis has clearly grown since the NAC standards were developed. Recognizing that (1) the NAC Standards were inadequate when established, (2) criminal cases have gotten significantly more complex since 1973, (3) the stakes of bad lawyering have grown with the rise in mass incarceration, and (4) almost no public defenders are even close to meeting the flawed NAC standards, a group of experts (hereinafter referred to as "authors") decided to establish a more reliable set of national workload standards.[122] In 2023, they published the National Public Defense Workload Study (the "NPDWS).

The authors: Malia Brink, American Bar Association Standing Committee on Legal Aid and Indigent Defense (SCLAID); Cynthia Lee, National Center for State Courts (NCSC); Stephen Hanlon, Law Office of Lawyer Hanlon; and Nicholas Pace, the RAND Corporation had each

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[120] The Georgia Public Defender Council used to be called the Georgia Public Defender Standards Council, but the legislature dropped the "Standards" part in 2015. Act of May 5, 2015, No. 74, § 7-1, 2015 Ga. Laws 519, 528 (amending O.C.G.A. § 17-12-1 (2013)).

[121] Prison Policy Initiative, *Mass Incarceration: The Whole Pie 2023* (Mar. 14, 2023), https://www.prisonpolicy.org/blog/2023/03/14/whole_pie_2023/#:~:text=In%20total%2C%20roughly%20 1.9%20million,million%20people%20are%20on%20probation.

[122] *See* PACE ET AL., *supra* note 25.

previously been involved in workload studies in individual states. In fact, between 2005 and 2022, 17 state level workload studies were conducted by different entities.[123] In all but three, either SCLAID, NCSC, or RAND were the primary research organizations.[124] Stephen Hanlon led the effort in seven of these studies and consulted on eight.[125]

Each of these studies set out to identify appropriate "workloads," as opposed to "caseloads," recognizing that the average amount of work that a lawyer will predictably spend on a case depends on many factors. All cases are not the same. While it is impossible to predict with accuracy the amount of time a particular case will require, by looking a categories of similar cases, experts can identify the average amount of time a case in that category will require and, thereby, ascertain the mix and number of cases that will make up a manageable workload for a lawyer given the amount of time available to them.

The state-based studies used different approaches and were based on factors unique to each state.[126] However, each relied on the expertise of criminal defense practitioners to yield consensus-based subjective judgements as to the average amount of time needed for effective representation."[127]

Because "[s]ubstantive law and court rules and procedures have an impact on the amount of time attorneys require to represent their clients," state or jurisdiction specific weighted caseload models are most accurate.[128] However, recognizing that for "fiscal or practical reasons" most jurisdictions are unable to conduct unique studies,[129] the authors involved in the NPDWS decided to join to conduct a "meta study" that takes all 17 workload studies and analyzes them to create a national set of workload standards.[130]

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[123] For a list of states, study years, and primary research organizations, *see id.* at 29-30.
[124] *Id.*
[125] Public Defenseless Podcast, *160: Unveiling the National Public Defender Workload Standards and the Strategy to Implement Them w/Stephen Hanlon,* PUBLIC DEFENSELESS (Sept. 22, 2024).
[126] PACE ET AL., *supra* note 25, at 28.
[127] *Id.*
[128] *Id.* at ix.
[129] *Id.*
[130] One Man's Fight for Reshaping the Nation's Public Defense System, Arnold Ventures (Sept. 22, 2024), https://www.arnoldventures.org/stories/one-mans-fight-for-reshaping-the-nations-public-defense-system.

The authors settled on the Delphi model, a method for "measuring collective agreement among [the] panel of experts selected] and for developing a consensus on recommended average time expenditures in distinct types of cases."[131] This was the method used in the more recent state-wide studies to help a group of experts to achieve consensus on the average amount of time needed for cases of various types.[132]

One of the first things the authors set out to do was to establish more discriminating categories of case types than the NAC standards and to identify a set of case activities that reflect the work that criminal defense lawyers conduct on behalf of adult clients.[133] These categories would allow them to identify the amount of time a capable lawyer would spend on average on each of these activities for each of the case types identified.

Based on their review of the 17 state-level studies, the authors identified and defined a set of 11 case types and eight activity types.[134]

The 11 case types include:[135]

- Felony-High- Life Without Parole (LWOP)
- Felony-High-Murder
- Felony-High-Sex
- Felony-High-Other
- Felony-Mid
- Felony-Low
- Driving Under the Influence (DUI)-High
- Driving Under the Influence (DUI)-Low
- Misdemeanor-High
- Misdemeanor-Low
- Probation and Parole Violations

These categories are significantly more discriminating than the NAC standards which lump all pretrial cases into either Felonies or Misdemeanors.

The eight activity types include:[136]

- Client Communication and Care

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[131] For a more depthful discussion of the Delphi model, *see id.* at 47.
[132] *Id*. at ix.
[133] The NPDWS focused exclusively on adult criminal cases, excluding death penalty cases.
[134] PACE ET AL., *supra* note 25, at x.
[135] *Id.*
[136] *Id.*

- Discovery and Investigation
- Experts
- Legal Research, Motions Practice, and Other Writing
- Negotiations
- Court Preparation
- Court Time
- Sentencing and Mitigation and Post-adjudication

These standards reflect those set forth in the ABA Criminal Justice Standards: The Defense Function.[137] These are also the standards the Supreme Court points to in *Strickland* to provide guidance on whether the lawyer met their professional obligations under the first prong of the test for whether relief is warranted for ineffectiveness of counsel.[138]

The authors then put together a panel of 33 experts in the field of criminal defense, generally, and public defense, specifically.[139] These experts participated in an initial seminar to ensure they were aligned on defense counsel's duties toward their clients. In this seminar, the group referenced the ABA's Model Rules and Defense Function Standards, in addition to other information regarding these obligations.[140] The group then joined for a second conference to review the finding of previous public defense workload studies.[141] Next the group was asked to come up with recommendations for the amount of time that should be spent in each of the eight activity types for each of the 11 Case types.[142]

The final step was for the 33 experts to come together in Williamsburg, Virginia to spend the day reviewing their estimates, deliberating, and working on reaching consensus. The entire process, which was quite sophisticated and deliberate, is detailed in Chapter four of the National Public Defense Work Study.[143]

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[137] Am. Bar Ass'n., Criminal Justice Standards: Defense Function Fourth Edition, https://www.americanbar.org/groups/criminal_justice/standards/DefenseFunctionFourthEdition/. *See Arnold Ventures* (Stephen Hanlon explains, "we are going to apply precisely those professional norms that the United States Supreme Court has specifically approved for determining what reasonably effective assistance of counsel is — The ABA Criminal Justice Section's Standards for the Defense Function.").
[138] *Strickland*, at 688.
[139] *See* PACE ET AL., *supra* note 25, at 63-65 for details about how the panel was constructed.
[140] *Id.* at 69.
[141] *Id.*
[142] Information gleaned from these initial estimates are included in Chapter 4 of *Id*. at 69-85.
[143] *Id.*

IX. The NPDWS Results – a Metric for Manageable Public Defender Workloads Is Born

After spending fifty years hanging onto the misconception that a defense lawyer can do an adequate job with an annual caseload of 150 adult felonies or 400 adult misdemeanors, regardless of the complexity of the case, the results of the NPDWS were eye-opening. While the results may not have been surprising to the subset of defense lawyers with the ability to manage their caseloads and truly put in the work necessary, for the vast majority of criminal justice professionals who have become resigned to the workloads placed on public defenders, these standards had to be a bit jarring.

The NPDWS concluded that in order for a defense lawyer to meet their professional and ethical obligations, they should handle no more than: seven Felony-High-LWOP cases, eight Felony-High-Murder cases, 12 Felony-High-Sex cases, 21 Felony-High-Other cases, 36 mid-level felonies, 59 low-level felonies, 63 high-level DUIs, 109 low-level DUIs, 93 high-level misdemeanors, 150 low-level misdemeanors, or 154 probation or parole violations.

These results can be found in the table below:[144]

Table S.1. Final Results of the Expert Panel Session with Example Caseload Standards

Case Type	Case Weight (Hours per Case)	Annual Caseload Standard
Felony–High–LWOP	286.0	7
Felony–High–Murder	248.0	8
Felony–High–Sex	167.0	12
Felony–High–Other	99.0	21
Felony–Mid	57.0	36
Felony–Low	35.0	59
DUI–High	33.0	63
DUI–Low	19.0	109
Misdemeanor–High	22.3	93
Misdemeanor–Low	13.8	150
Probation/Parole Violations	13.5	154

NOTE: Annual caseload standards were calculated using an assumption of 2,080 hours available annually to a defender for case-related work.

In order to arrive at these figures, the authors assumed 2080 hours per year that each lawyer had to devote to representation. This assumes that every lawyer works 52 weeks per year,[145] and 40 hours per week.[146] It also assumes the lawyer is not required to devote time to other job responsibilities such as supervision, management, or professional development.

The experts then worked through the Delphi model process to arrive at an estimate of the hours it would take a lawyer to responsibly engage in each of the eight case activities for each category of case. Using these estimates, the experts determined the time that would be required to handle cases in each of the categories. Again, the process was quite rigorous and is

[144] *Id.* at xii.

[145] This number likely overestimates what is reasonable as it does not take into account any time off for vacation, holidays, or personal/sick leave. PACE ET AL., *supra* note 25, at xii..

[146] 52 weeks x 40 hours/week = 2080 hours available. *Id.*

explained in detail in the NPDWS. The interested reader can review the process as detailed in that report.

The table below, which is published in the NPDWS, compares the results of the Delphi session conducted for the study with the median results of the 17 state-wide workload studies and the number of hours allotted under the NAC guidelines assuming 2080 hours available per year.[147]

Table 7.1. Case Weights Comparison

NPDWS Case Type	NAC Standard (illustrative hours)[a]	State-Level Study Medians (hours)[b]	NPDWS Results (hours)
Felony–High–LWOP	13.9 (all felonies)	256.0	286.0
Felony–High–Murder		266.1	248.0
Felony–High–Sex		150.0	167.0
Felony–High–Other		75.3	99.0
Felony–Mid		67.2	57.0
Felony–Low		24.6	35.0
DUI–High	N/A	25.0	33.0
DUI–Low		12.1	19.0
Misdemeanor–High	5.2 (all misdemeanors)	20.7	22.3
Misdemeanor–Low		8.0	13.8
Probation and Parole Violations	N/A	6.0	13.5

[a] Effective case weight based on 2,080 annual case-related duty hours assumption.
[b] Categorizations of the case types used in the 17 state-level workload studies for the purpose of comparison with the NPDWS case types are subject to the limitations described in the discussion accompanying Table 4.3 and Table 4.4.

The study ultimately concluded that the average time a lawyer should expect to spend on each of the case categories is as follows: 286 hours for a Felony-High-LWOP, 248 hours for a Felony-High-Murder, 167 hours for a Felony-High-Sex, 99 hours for a Felony-High-Other, 57 hours for a mid-level felony, 35 hours for a low-level felony, 33 hours for a high-level DUI, 19 hours for a low-level DUI, 22.3 hours for a high-level misdemeanor, 13.8 hours for a low-level misdemeanor, and 13.5 hours for a probation or parole revocation.

[147] *Id.* at 112-113.

Assuming a lawyer has 2080 hours available each year, by dividing 2080 by the average hours needed per case category, the authors were able to use these figures to arrive at the annual caseload standards in Table S.1.[148]

Never mind the fact that most public defenders significantly exceeded the NAC standards. For the defense lawyer who handled 150 murder cases last year and was led to believe their caseload was not too high according to the 1973 guidelines, they just got a rude awakening. The new standards suggest that they began to fall short of their professional obligations after the eighth case of the year. For the defense attorney who maintains a steady caseload of the most basic misdemeanors, they learned that they should not have been handling more cases than was previously believed to be adequate for the most serious felonies. For judges and court administrators who were responsible for assigning cases, they learned that they had almost certainly been forcing defense lawyers to practice in severe violation of their professional obligations.

However, more important than what this study tells us about our lack of fidelity to the Sixth Amendment Right to Counsel since *Gideon* was decided is the opportunity it gives us to look forward and prevent a repeat of past injustices. It provides a powerful tool for justice advocates to press for a change in the status quo.

With these new metrics, indigent defense leaders can use this study to advocate for more realistic staffing budgets. The first step is public defender leaders must forecast the number of cases they anticipate in each category for the budget year in question.[149]

A fictional example illustrates how this can be done. Assume a hypothetical jurisdiction projects the following number of expected cases for the upcoming budget year: 100 Felony-High-LWOP cases, 200 Felony-High-Murder cases, 300 Felony-High-Sex cases, 400 Felony-High-Other cases, 500

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[148] These standards are client-based, as opposed to charge-based. This means that for clients who have multiple charges in a single case, the projected time required for that client is based on the highest charge; not the total of all charges. Therefore, if Client A is charged with Murder, Burglary, and Theft, the projected time assigned to that case is 248 hours – the time estimated for the highest charge of Murder. *See* AM. BAR ASS'N., *National Public Defense Workloads Standards Webinar*, at 26:00 (Oct. 26, 2023), https://www.americanbar.org/groups/legal_aid_indigent_defense/indigent_defense_systems_improvement/natl-pub-def-standards/.

[149] *Id.* (Two of the authors of the NPDWS, Malia Brink and Cynthia Lee, explain how indigent defense leaders can project future caseloads.)

mid-level felony cases, 600 low-level felony cases, 700 high-level DUI cases, 800 low-level DUI cases, 900 high-level misdemeanor cases, 1000 low-level misdemeanor cases, and 5000 probation or parole revocation cases.

By multiplying the number of projected cases in each category by the number of average hours needed per case for the same category, leaders can estimate the number of lawyer hours needed to adequately handle the cases in that category. By adding that figure for all 11 categories, leaders can estimate the number of lawyer hours needed to capably handle the entire projected workload.

In our hypothetical example, as illustrated in the table below, indigent defense leaders will need to staff sufficient to cover 357,070 total hours for the representation of clients. By dividing this number by 2080, the hours available in a year, the leader can determine that they will need to employ 172[150] lawyers in the budget year to adequately cover the entire caseload.

CASE TYPE	NUMBER OF CASES	HOURS PER CASE	TOTAL HOURS FOR CATEGORY
Felony High - LWOP	100	286	28600
Felony High - Murder	200	248	49600
Felony High - Sex	300	167	50100
Felony High - Other	400	99	39600
Felony - Mid	500	57	28500
Felony - Low	600	35	21000
DUI - High	700	33	23100
DUI - Low	800	19	15200
Misdemeanor - High	900	22.3	20070
Misdemanor - Low	1000	13.8	13800
Probation/Parole Violations	5000	13.5	67500
TOTAL			357070
# of attorneys needed	Assumption: Each lawyer has 2080 hours per year (52 x 40)		171.67

Of course, this figure assumes that 1) each lawyer will have 2080 hours to devote exclusively to client representation that year and 2) each lawyer has the training and experience necessary to handle the cases in the categories they are assigned to handle and therefore does not require additional professional development.

In reality, it is very unlikely that either of these assumptions are accurate. Most likely there will be lawyers on the team who have responsibilities other than client representation. In addition to representing clients, there will likely be lawyers who have leadership, management, or supervisory responsibilities. Therefore, if a jurisdiction employs ten lawyers

[150] This number is rounded up from 171.67.

who help manage and supervise, and each of these lawyers devotes 50% of their time representing clients, these ten lawyers would be the equivalent of five lawyers who devote 100% of their time representing clients. In other words, of the 20,800 hours these ten lawyers will work collectively in the budget year, only 10,400 hours can be counted towards those available to handle the 357,070 hours required for client representation.

In addition to having lawyers on staff who only devote a fraction of their time to client representation, there may be other lawyers on staff who are not full-time employees (FTEs). Furthermore, in order to ensure that every lawyer maintains the professional expertise necessary to represent the clients they are assigned, there will need to be time set aside for each lawyer to attend training and professional development programming. This will need to be deducted from the hours they have available to represent clients. Of course, every lawyer will be allotted time off for vacation, sick leave, and personal time. This must also be deducted for their available workload hours.

Conversely, the public defender leader will likely employ non-lawyer professionals who will be able to reduce some of the lawyer workload. Investigators, social workers, administrative professionals, paralegals, and volunteers[151] can help relieve some of the workload required by the professional standards.

However, for the sake of simplicity, assuming the system represented in this hypothetical scenario will employ lawyers who will devote all of their time to client representation, that each will have 2080 hours available per year, and that there will not be non-legal staff to take on any of the required tasks, leadership will need to request funding in the budget year for 172 lawyers who are qualified to handle the projected caseload.

X. LEADERSHIP AND ADVOCACY IN THE WAKE OF THE NPWS

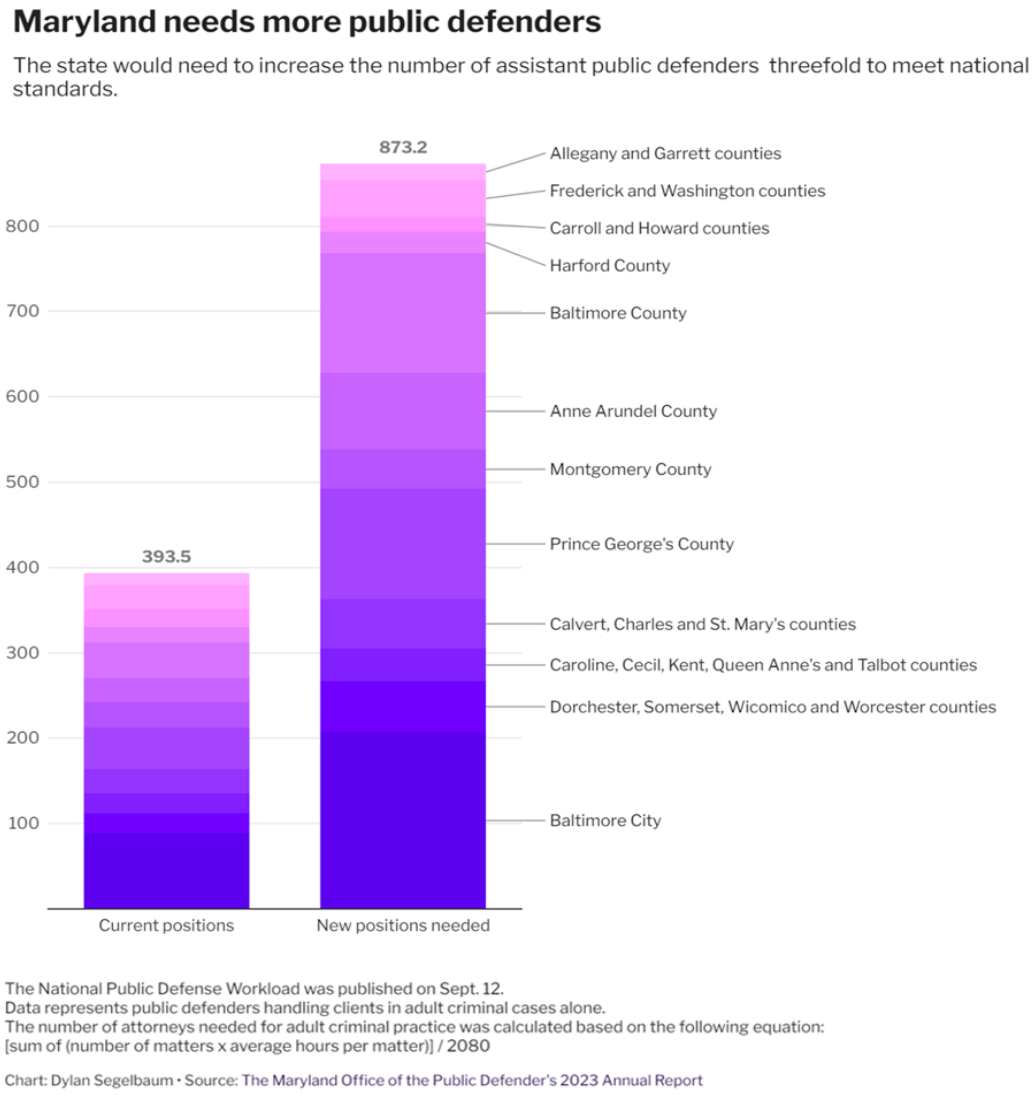
The NPDWS provides public defenders with a powerful tool to advocate for caseload relief. One of the first public defense systems to use the NPDWS to advocate for workload relief was the Maryland Office of the Public Defender ("OPD"). OPD discussed the workload study in its 2023

[151] Many public defender offices rely on law students to serve as law clerks who help with legal research and writing or college interns to assist with investigation and other tasks.

Annual Report and used the report to explain the extent to which the organization is understaffed.[152]

It also used these results to publicly campaign for more funding and to raise awareness of the harm that comes from public defenders being overworked.[153] The graphic below, which serves as a model indigent defense leaders can use to advocate for needed resources, accompanied an article about Maryland's public defender resource challenges published in the Baltimore Banner.[154]

[152] Maryland Office of the Public Defender, *2023 Annual Report* 13-23 (2023), https://opd.state.md.us/_files/ugd/868471_2a3baa9254584cc7beaec906307f0e39.pdf.
[153] *See* Dylan Segelbaum, *Maryland Doesn't Have Enough Public Defenders. Here's What They Say They Will Need,* THE BALT. BANNER (Dec. 11, 2023), https://www.thebaltimorebanner.com/community/criminal-justice/maryland-public-defender-staffing-national-public-defense-workload-HFPBMDNXMVE3PBCBFUOFS6NEMU/.
[154] *Id.*



There is reason to be hopeful that this advocacy can work. The NPDWS has already led to revised workload standards in at least one state.[155] Every public defense leader should follow Maryland's example and use the NPDWS to demonstrate its staffing shortcomings and to advocate for greater

[155] Drew T. Pollom & Oskar Rey, *Public Defense Standards Are Changing: What Counties and Cities Need to Know,* MRSC (May 6, 2024), https://mrsc.org/stay-informed/mrsc-insight/may-2024/changing-public-defense-standards.

resources. While Maryland is a statewide system, county or municipal based systems can use the NPDWS in the same way.

In addition to using the NPDWS to advocate for the staffing budget necessary to adequately handle projected workloads, organizational leaders can also use these standards to resist accepting cases beyond what it is staffed to handle. We have discussed how organizational leaders and supervisors have an ethical obligation to ensure that their staff does not take on a workload that is too great to allow them to meet their professional obligations. The NPDWS provides leaders with further authority to show the case activities in which their defenders must engage to meet their professional obligations and the amount of time they must spend, on average, on each case given these obligations.

Advocating for their staff against the interests of judges, legislators, or, in the case where the public defender is under the executive branch, the Governor, takes a tremendous amount of courage. The leader may certainly face consequences for doing what is right. For example, Rhonda Lindquist, who leads the Office of the State Public Defender in Montana, was held in contempt of court for declining cases after unsuccessfully advocating for additional lawyers.[156] The fight to fulfill the promise of *Gideon* is not one for the leader that lacks mettle.

When advocacy efforts are unsuccessful, leaders should consider how they may facilitate, or cooperate with, external litigation to force systems to meet their obligations to indigent defendants. The American Civil Litigation Union ("ACLU") has filed at least 15 lawsuits nationally to force states to live up to their Sixth Amendment obligations.[157] The NPDWS provides additional support in this litigation. Behind these lawsuits are often public defense leaders who have invited, welcomed, or cooperated with, the effort to force change.

Meanwhile, on an individual level, the NPDWS provides individual lawyers authority to support a decision to decline accepting additional cases, as they are required to be consistent with their professional obligations. In fact, for a cautionary tale, lawyers can look to the situation facing Karl

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[156] Emma Andersson, *If You Care About Freedom, You Should Be Asking Why We Don't Fund Our Public Defender Systems,* ACLU (Mar. 8, 2022), https://www.aclu.org/news/criminal-law-reform/if-you-care-about-freedom-you-should-be-asking-why-we-dont-fund-our-public-defender-systems.

[157] *Id.*

Hinkebein, a Missouri public defender.[158] Mr. Hinkebein was unable to meet his professional obligations to every client due, in part, to an excessive workload. Mr. Hinkebein did not complain about his workload because he believed he would be fired if he refused to handle the cases assigned to him. The Missouri Supreme Court found that he violated his professional obligations to his clients and that his fear of being fired was not an excuse. He was disciplined for violating his ethical obligations.[159]

Individual public defenders must understand that their professional obligations require that they refuse to accept more cases than they can competently handle. Supervisors have an ethical obligation to support the lawyer in their refusal to handle an excessive caseload. The NPDWS provides additional ammunition for these defenders in their fight to maintain a workload that will enable them to fulfill their duties to each client. Again, public defense leaders must support their lawyers when they struggle to have their professional obligations respected.

The NPDWS reveals how inadequate indigent defense systems are across the nation and provides an opportunity to refocus on the need for strong public defense leadership. As the authors of the NPDWS prepared to release their findings, reporters with Lee Enterprises Public Service Journalism were working to conduct the first-ever national analysis of public defender workloads to explore the extent to which public defenders are overworked in light of the new report. Lee Enterprises requested caseload data from all fifty states, and after analyzing the results against the NPDWS results, found that "more than 9,000 public defenders in 33 states have average caseloads three times the maximum annual cases outlined in the standards, according to a conservative analysis that underestimated workloads."[160] "In another five states and one county, the 50 public defenders with the highest workloads each had four times the maximum cases on average, according to a similar

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[158] Annika Merilees, *Missouri Supreme Court Gives Probation to Columbia Public Defender*, COLUMBIA MISSOURIAN (Sept. 13, 2017), https://www.columbiamissourian.com/news/state_news/missouri-supreme-court-gives-probation-to-columbia-public-defender/article_da19a6e4-98c7-11e7-a553-6f2c15700578.html.

[159] *Id.*

[160] Hamer, *supra* note 74.

analysis."[161] There were eleven states that did not have data sufficient to compare to the standards.[162]

Georgia was among those states with overwhelmed public defenders. However, a closer look at Georgia shows that leadership is unlikely to take advantage of the opportunity to use the NPDWS to fight for relief in the near future.

XI. PUBLIC DEFENSE IN GEORGIA: AN ONGOING CRISES

For 2022, the year Lee Enterprises collected state-wide data, Georgia had approximately 575 lawyers on staff who worked about 108,00 cases collectively. Therefore, even according to conservative analysis, these defenders handled, on average, roughly 190 cases each.[163] This is at least three times the number of cases recommended by the NPDWS.[164]

For anyone who had been following indigent defense in Georgia, this statistic would not be surprising. Several recent news stories raised an alarm about the overburdened indigent defense system in that state.

Hunter Parnell hosts Public Defenseless, a popular podcast that deals with issues facing public defenders. In January 2023, Parnell interviewed Michael Smith, a public defender in Georgia's Lookout Mountain Judicial Circuit. Smith explained that at the time he had over 400 open cases.[165] His caseload included a range of case types, as he was the only public defender in his rural county.

Fourteen months before Mr. Parnell's discussion with Michael Smith aired, The Atlanta Journal Constitution published an article about Georgia's public defender crisis.[166] It found that despite criminal justice reform

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[161] *Id.*
[162] *Id.*
[163] *Id.*
[164] *Id.*
[165] Public Defenseless Podcast, *The Challenges Public Defense Faces in Rural Georgia w/ Michael Smith,* PUBLIC DEFENSELESS (Sept. 22, 2024), https://www.publicdefenseless.com/episodes/3ydrergx7sag5z6-2a83l-eyylx-2k75k-xxapk-z9bge-g3hyh-66cr4-btxj8-mlnjp-bdxjb-pmjtp-ps98s-asbdx-mmbmr-372zs-5rk6p-n5eft-s3596-wyhnm-p36g4.
[166] Dylan Jackson, *Crisis in Georgia's Public Defender System Fuels Case Backlog, Jail Overcrowding*, ATL. J. CONST. (Nov. 10, 2022),

accomplished during Governor Nathan Deal's tenure, progress was reversed after Brian Kemp was elected Governor in 2018, with public defenders feeling the effects.

The reporter looked at the impact on public defenders in Fulton County. A lack of resources led to most of the staff at the Fulton County conflict defenders leaving during the first ten months of 2021. According to the article, "nearly all of the 14 public defenders who staffed the … office at the beginning of 2021 had left by the fall."[167]

Meanwhile, Atlanta News First was in the process of producing what would become a year-long investigation into the crisis in public defense. While the series exposed problems facing public defenders and the people they serve nationally, Georgia's challenges received significant attention.

The opening segment of the series featured Fulton County, Georgia. As of August 2022, records showed 113 people in that county alone who had been indicted but did not have a lawyer.[168] 29 had been held for longer than a year.[169] Highlighting the racial justice aspect of the problem, the report shares that nearly all of the people affected were Black.[170] Judge Robert McBurney, who presided over the hearing of a young man who had been held pretrial for 11 months without a lawyer, explained to the accused's frustrated mother, "the state of Georgia has an obligation to get a lawyer for your son, and the state of Georgia is not living up to its obligation right now."[171] In a subsequent interview, he highlights the harm caused by this clearly unconstitutional situation and compares what is happening in Georgia to authoritarian regimes "where people can get scooped up and held without charges or without it being clear what's going on and most importantly no due process."[172]

The series then introduced its audience to some of the people who have been the primary victims of this neglect, the people whose lives have

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https://www.ajc.com/news/investigations/crisis-in-georgias-public-defender-system-fuels-case-backlog-jail-overcrowding/6G47GRR3HJGRZLDQBPSZES2MBU/.

[167] *Id.*

[168] Andy Pierrotti, *'An Unacceptable Crisis': Defendants Languishing in Jail Because of Public Defender Shortage*: *Part One of The Sixth, An Investigative Series Examining a National Judicial Crisis*, ATL NEWS FIRST (Jan. 3, 2023), https://www.atlantanewsfirst.com/2023/01/03/an-unacceptable-crisis-defendants-languishing-jail-because-public-defender-shortage/.

[169] *Id.*

[170] *Id.*

[171] *Id.*

[172] *Id.*

unraveled as they sit accused of crimes and deprived of the only resource that can help them defend themselves. One episode introduced Tony Turner. At the time, Mr. Turner had already been held in jail for five months without a lawyer. His fiancée, a certified nurse and part-time Amazon employee with no legal training, filed a motion seeking his release. He had no one else to advocate for him.[173]

The audience is also introduced to Marquez Wilson, who appears before a Fulton County judge more than four years after being charged with murder.[174] His lawyer, Emily Gilbert, is his sixth since he was charged. Ms. Gilbert, working as a contract defender for Fulton county, is battling with GPDC due to their refusal to provide funding to hire an investigator. Ms. Gilbert is not surprised by the organization's position. After ten years as an attorney with GPDC, Ms. Gilbert resigned in 2021. In her letter of resignation she offered the reason: "I can see no end to the persistent lack of urgency about adequately staffing this office and compensating our investigators."[175] Ms. Gilbert was eventually able to have the matter heard in court. The judge agreed with her and ordered GPDC to provide funding for an investigator for Mr. Wilson.

There is also Maurice Jimmerson. He spent more than a decade behind bars in Dougherty County awaiting trial, despite the fact that two of his co-defendants had been acquitted years ago.[176] Mr. Jimmerson had a court-appointed lawyer who visited him only four times in the seven years he represented him.[177] He then spent eight months unrepresented before Atlanta News First profiled his case in April 2023.[178] Andrew Fleishman took the case pro bono after learning about it through the ANF Investigation.[179] According

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[173] Andy Pierrotti, *Here's Why These Public Defenders Left Their Jobs*: *Part Three of The Sixth, An Investigative Series Examining a National Judicial Crisis*, ATL NEWS FIRST (Jan. 5, 2023), https://www.atlantanewsfirst.com/2022/12/30/sixth-part-three-why-theyre-leaving/.

[174] Andy Pierrotti, *Atlanta Murder Suspect Denied Resources After Years in Jail: Part Six of The Sixth, An Investigative Series Examining a National Judicial Crisis*, ATL NEWS FIRST (Mar. 14, 2023), https://www.atlantanewsfirst.com/2023/03/14/jailed-four-years-atlanta-murder-suspect-denied-investigative-resource/.

[175] *Id.*

[176] Andy Pierrotti, *This Man Has Been in Pretrial Detention For Ten Years. Why?: The Sixth, An Investigative Series Examining a National Judicial Crisis*, ATL NEWS FIRST (May 31, 2023),https://www.atlantanewsfirst.com/2023/05/31/you-dont-need-law-degree-know-somethings-wrong-here/.

[177]ATL NEWS FIRST, *Judge Sets Court Date For Georgia Man After 10 Years of Waiting,* YouTube (June 29, 2023), https://www.youtube.com/watch?v=xN4KikfqRAw.

[178] *Id.*

[179] Pierrotti, *supra* note 176.

to Fleishman, this is the longest case of pretrial detention in American history.[180] That it takes place in Georgia should sound alarms.

With a lawyer to defend him, Mr. Jimmerson's case was ultimately dismissed after a jury failed to reach a unanimous verdict.[181] Georgia's failure to live up to its Sixth Amendment obligation cost Mr. Jimmerson much of his adult life.

These are just a sampling of the stories across the state that are behind the failure to adequately fund public defense. According to GPDC records, as of August 2022, 650 people charged with crimes in Georgia were unrepresented.[182] Many detained pretrial. Some for over a year.[183]

Echoing the concerns raised in the AJC article, the ANF investigation also found that significant resource challenges were driving committed public defenders from the work. Andy Pierrotti, the investigative reporter covering the story, interviewed six public defenders who recently left. Three of the public defenders said that they left because of woefully insufficient resources needed to represent people. They complained of a lack of paper, pens, envelopes, and folders. One defender shared that they were not provided office space.[184]

Linda Day, one of the defenders who left her position as a full-time public defender, continued to do contract work in Clayton County, Georgia. She was still struggling. At the time of the interview, she told Mr. Pierrotti that she had 500 clients.

It would seem that Georgia was an ideal state to use the NPDWS to begin advocating for relief. The need was as dire as anywhere, and the new standards provided powerful evidence that across the state public defenders were falling woefully short of their professional obligations. However, it would require leadership willing to engage in this advocacy. As far as this author knows, Omotayo Alli, the Director of GPDC, has not done so to date.

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[180] *Id.*
[181] Andy Pierrotti, *Mistrial Declared After Man Waits 10 Years in Jail For Day in Court*, *The Sixth, An Investigative Series Examining a National Judicial Crisis*, ATL NEWS FIRST (July 24, 2023), (https://www.atlantanewsfirst.com/2023/07/21/after-10-years-jail-without-trial-mans-case-finally-jurys-hands/.
[182] Pierrotti, *supra* note 173.
[183] *Id.*
[184] *Id.*

As part of his investigation, Andy Pierrotti interviewed Director Alli. In November 2022, she denied that there was a constitutional crisis.[185] Mr.Pierrotti asked her, "Today, does your agency have enough attorneys to represent defendants in Georgia?" Director Alli replied, "Absolutely."[186] Ms. Alli had been a career public defender who had been in the position for two years. She told Mr. Pierrotti that in her thirty-two years working in public defense, "these last two years have been the most phenomenal."[187]

During that interview, Mr. Pierrotti asked Director Alli about Linda Day's claim that she had 500 cases. Director Alli said that she did not believe Ms. Day. ANF subsequently checked the state's case management system. Ms. Day actually had 687 cases.[188]

The series then brings us to January 2023, two and a half months after Director Alli told Mr. Pierrotti that GPDC had enough attorneys. When testifying before the state legislature, she backtracked. While only a theory, the ANF investigation suggests the change was because GPDC sought public relations assistance to manage public perception, as a spotlight was shined on the resource crisis.[189]

At the hearing, Director Alli acknowledged that "the issue is that we still cannot find attorneys."[190] At this same hearing she also acknowledged

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[185] *Id.*

[186] Andy Pierrotti, *Georgia's Top Public Defender Flips, Admits Her Agency Cannot Hire Enough Lawyers*: *The Sixth, An Investigative Series Examining a National Judicial Crisis*, ATL NEWS FIRST (Jan. 25, 2023), https://www.atlantanewsfirst.com/2023/01/25/georgia-public-defenders-council-director-admits-she-cannot-find-enough-attorneys/.

[187] In *Crisis in Georgia's Public Defender System Fuels Case Backlog, Jail Overcrowding,* Dylan Jackson reports that in the wake of the pandemic, public defenders in Georgia did receive a significant infusion of funding in federal money from the American Rescue Plan. However, it paled in comparison to the tens of millions that went to prosecutors and judges to "get cases moving faster and push [Governor Kemp's] tough on crime plan. Therefore, with a funding increase woefully insufficient to counter the resources that went to prosecution and incarceration, public defenders were arguably in a worse position. Jackson, *supra* note 166.

[188] *Id.*

[189] The ANF investigation revealed that between her November 2022 interview and the January 2023 legislative hearing, Director Alli hired a public relations firm, which may explain the attempt to change her position on whether the agency had enough lawyers. *See* Andy Pierrotti, *State Agency Spending Thousands on Improving Image After ANF Investigations*: *Part Eight of The Sixth, An Investigative Series Examining a National Judicial Crisis*, ATL NEWS FIRST (May 18, 2023), https://www.atlantanewsfirst.com/2023/05/18/plagued-by-image-problems-state-agency-is-spending-thousands-pr-firms/.

[190] Pierrotti, *supra* note 188.

that many Georgia public defenders were carrying 400 cases at a time.[191] Curiously, however, she insisted that "the issue was not funding."[192] It appears that the Director was reluctant to advocate for additional funding.

To the viewer, it seems impossible to reconcile her position that there are sufficient resources, but not enough lawyers, given that so many attorneys left due to resource shortages. This inconsistent messaging is a likely reflection of the conflicts that arise when the leader of the state public defender system is appointed by a Governor who is both tough on crime and adamant that budgets be cut. Forced to ultimately acknowledge what was becoming painfully obvious to everyone, that there were not enough lawyers to represent indigent clients, but equally committed to appearing capable of doing her job within the budgetary limitations demanded by her boss, Director Alli took a position that was internally inconsistent.

The Director's reluctance to condemn what is happening with indigent defense in Georgia and to demand that more funding be provided to public defenders could be a symptom of Georgia's public defense structure. Presumably, the Governor expects GPDC to make ends meet under the existing budget constraints and to project a public facing image that the system is operating just fine.[193]

Several accounts suggest public defenders on the ground feel that leadership is more invested in making the system look good than supporting line defenders and their clients.[194] In fact, the Atlanta New First and Atlanta

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[191] *Id.*

[192] *Id.*

[193] Which explains the significant investment in public relations firms uncovered during the ANF investigation (GPDC spent nearly thirty thousand dollars in public relations following the start of the ANF investigation as detailed in Pierrotti, *supra* note 189).

[194] *See* Radley Balko, *The States of Indigent Defense Part 3: Florida and Georgia,* THE WATCH (June 11, 2024), https://radleybalko.substack.com/p/the-states-of-indigent-defense-part-6eb (defenders complain that Director Alli demanded public defenders cease aggressive advocacy in response to complaints from judges and prosecutors); Jackson, *supra* note 166 (roughly a dozen defenders allege that attorneys who have complained have faced retaliation) (defenders only spoke to the AJC on the condition of anonymity, fearing they could lose their jobs or face retribution); Public Defenseless with Hunter Parnell, *The Fulton County Jail, Cop City, and the Deafening Silence of the Georgia Public Defense Council w/ Devin Franklin,* PUBLIC DEFENSELESS (Aug. 10, 2023), https://www.publicdefenseless.com/episodes/6y6hmbwawzcpmmb-llby2-jf5jj-6x7bk-ernna-xkcxy-zjb3k-srxzk-rayd5-3crhy-xh3p9-6c49w-fn7b5-tc2p3-5jnyp-p7yzg-ej8ff-838yy-p5tyc-s4p7x, (Devin Franklin describes retaliation for refusing a directive from Director Alli to not identify himself as a public defender at a Black Lives Matter rally and for recommending more client centered practices in his office).

Journal Constitution revealed examples of lawyers who believe their advocacy resulted in termination.

The AJC article featured Keisha Steed, a state public defender who raised concerns about the lack of basic resources available to adequately represent her clients, including investigative resources and printer paper. The public defender filed a formal complaint. A month later she was fired, suggesting a connection.[195]

Camile Reddick was one of the defenders interviewed by Andy Pierotti. Like Ms. Steed, Ms. Reddick believes she was terminated after raising concerns that the lawyers in her office were incapable of meeting their constitutional obligations to the people they represented.[196]

From these accounts, it appears the Director prioritizes defending the status quo over advocating for the public defenders she leads. This is an example of the conflict that arises when the public defenders do not have independence. This structure discourages the head of the statewide public defense system from effectively using the NPDWS to advocate for more resources for public defenders. This effort requires the Director first publicly expose the funding inadequacies and challenge the policies of the Governor who appointed her. That such a structure can impact a leader who was herself a respected public defender for many years speaks to the importance of public defender independence.

However, reform need not be initiated by public defender leadership. As mentioned above, the ACLU has brought at least fifteen lawsuits to challenge public defender systems on constitutional grounds. While ideally, public defender leaders would welcome, and cooperate with, litigation to challenge substandard delivery systems, this litigation need not be with the blessing or acquiescence of the public defender leadership.

A second route to drive change in the face of a reluctant public defender leader is by filing a complaint with the State Bar pursuant to Rule 5.1. In systems such as Georgia's, where public defenders are routinely in violation of their professional obligations, and a plethora of news accounts make it impossible for leadership to be unaware of the deficiencies, Rule 5.1 requires that leadership be held responsible.

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[195] Jackson, *supra* note 166.
[196] Pierrotti*, supra* note 173.

Whether through litigation or a grievance pursuant to Rule 5.1, the NPDWS will prove useful in making the case that constitutional and/or professional standards are being violated.

XII. INTRODUCTION PUBLIC DEFENSE IN GEORGIA - A CIVIL RIGHTS IMPERATIVE

Georgia is important in the ongoing fight for civil rights. It is the state where John Downer was sentenced to die after a cursory, sham trial nearly 100 years ago. Atlanta, the home of Dr. Martin Luther King, Jr., is often called the Cradle of the Civil Rights Movement.[197]

The incarceration rate of 881 people for every 100,000 Georgians is 43 percent higher than the national average and greater than the incarceration rate of any democratic country on earth.[198] 59% of people in Georgia's jails have not been convicted of a crime.[199] Most are held simply because they are poor, lacking the ability to pay a bond.

Those incarcerated in Georgia are disproportionately Black. Black people make up 31% of Georgia's population, 59% of its prison population, and 51% of its jail population.[200]

They are also almost exclusively poor. In Georgia, 85% of those accused of crimes rely on GPDC.[201] In Georgia, to qualify for a public defender a person must earn less than the federal poverty guidelines if charged with a misdemeanor and less than 150% of the federal poverty guidelines if charged with a felony.[202] The Federal poverty guidelines are $15,060 for an individual.[203]

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[197] Clarissa Myrick-Harris, *The Origins of the Civil Rights Movement in Atlanta, 1880–1910,* HISTORIANS (Nov. 1, 2006), *https://www.historians.org/perspectives-article/the-origins-of-the-civil-rights-movement-in-atlanta-1880-1910/.*

[198] Prison Policy Initiative, *Georgia Profile*, PRISON POLICY INITIATIVE, https://www.prisonpolicy.org/profiles/GA.html#:~:text=With%20an%20incarceration%20rate%20of,any%20democratic%20country%20on%20earth.

[199] *Id.*

[200] *Id.*

[201] Pierrotti*, supra* note 173.

[202] O.C.G.A. § 17-12-2

[203] U.S. Dep't of Health & Human Servs., *2024 Poverty Guidelines Computations*, Off. of the Assistant Sec'y for Plan. & Evaluation (2024), https://aspe.hhs.gov/topics/poverty-economic-

This data tells an important civil rights story. If the criminal legal system is "The New Jim Crow,"[204] statistics reveal that Georgia is in the midst of a civil rights crisis. As in the 1960s, today Georgia is the front line of the fight for equal justice. Furthermore, if public defenders were deemed critical to that fight in 1963, when *Gideon* was decided, their importance has only ballooned since that time as the criminal legal system has taken on a greater significance in that battle. Therefore, it is not hyperbole to say that public defenders in Georgia are among the most important freedom fighters in the modern fight for civil rights.

XIII. CONCLUSION

As much as is true in any state in the nation, the fight for civil rights and racial and economic justice in Georgia is playing out in the criminal justice system. Every day, these women and men face a system that is hostile to their mission. They do so with inadequate resources and support. The need to support public defenders is critical to ensuring civil rights are realized in Georgia. However, because Georgia is a battleground state in the national fight for justice, success in Georgia can serve as a model for the struggle to make the promise of *Gideon* a reality across the country.

The NPDWS provides a valuable tool to finally push for public defenders to have the resources they need to meet their obligations to the people they serve. However, to take advantage of this study, public defender leaders need to have the courage and independence to expose systemic inadequacies, advocate for change, and inspire and support their public defenders in the process.

As far as this author knows, public defense leadership in Georgia has not yet relied on the NPDWS to push for greater resources. This author could not speculate as to whether that is because the Director of GPDC does not believe there is a funding issue, as she testified last year, or because the

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mobility/poverty-guidelines/prior-hhs-poverty-guidelines-federal-register-references/2024-poverty-guidelines-computations.

[204] In the years since Michelle Alexander published *The New Jim Crow*, the idea that mass incarceration has replaced Jim Crow as the primary system of racial control in America has gained broad acceptance. *See* Heather Pickerell, *How To Assess Whether Your District Attorney Is A Bona Fide Progressive Prosecutor,* 15 Harv. L. & Pol'y Rev. 285, 286-287 (2020) ("Over the past few campaign cycles, a single book has emerged as a favorite among candidates who present themselves as a progressive option for the office of district attorney —The New Jim Crow by Michelle Alexander").

structure of the system puts too much pressure on her to stifle criticism, or because of some other reason.

However, the NPDWS provides an incredible opportunity to reevaluate public defender workloads and the budgets necessary to ensure defenders can fulfill their professional obligations. Whether this effort is initiated by leadership at GPDC or forced upon the state through litigation brought by an outside advocacy organization, the most vulnerable citizens of Georgia need it more than ever.