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Annual Review of Criminology
**Expanded Criminal Defense
Lawyering**

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Abstract

This review collects and critiques the academic literature on criminal defense lawyering, with an emphasis on empirical work. Research on criminal defense attorneys in the United States has traditionally emphasized scarcity of resources: too many people facing criminal charges who are “too poor to pay” for counsel and not enough funding to pay for the constitutionally mandated lawyers. Scholars have focused on the capacity of different delivery systems, such as public defender offices, to change the ultimate outcomes in criminal cases within their tight budgetary constraints. Over the decades, however, theoretical understandings of the defense attorney’s work have expanded to include client interests outside the criminal courtroom, reaching the broader social conditions connected to the alleged criminal act. Researchers have responded by asking a broader range of questions about the effectiveness of defense counsel outside the courtroom and by using improved data to study the effectiveness of lawyers at discrete procedural stages.

INTRODUCTION

The story of underfunded attorneys for indigent defense is familiar, true, and incomplete. The familiar account begins with the US Supreme Court's 1963 decision in *Gideon v. Wainwright*, which declared that state governments have an obligation under the Sixth Amendment to provide defense counsel for all indigent defendants in felony cases. The Supreme Court, however, did not specify how state governments would pay for this important right. Because criminal defense attorneys for indigent defendants are an unpopular public expense, state and local governments fund them grudgingly.

The story of a failed promise has persisted across the decades (Mayeux 2020). Scholars and professional groups survey the state of criminal defense from time to time, confirming that many governments still underinvest in this public benefit. It remains true that the workloads of public defenders and appointed attorneys reach scandalously high levels. The most relevant questions within this narrative ask how to increase the supply of lawyers, how to reduce the demand for lawyers, or how to reduce the high price that defendants pay when supply does not meet demand.

This resource-oriented account of defense lawyering in the United States is undoubtedly true. At the same time, the story obscures several forces that are changing the professional self-image and performance of criminal defense lawyers in the United States over the long-term.

The first source of change for criminal defense lawyers is the growing ability of communities, crime victims, and defendants—as well as some judges, prosecutors, and defenders—to see the criminal courts as just one among many social responses to violence and injustice. As the United States labors under the high fiscal and societal costs of almost half a century of mass criminalization, there is room to reassess the use of criminal law and the judicial system to advance public safety—and to acknowledge that these blunt tools can instead undercut such safety.

Community groups invested in transformative change advocate for less policing, hoping to redirect funds into other social responses to mental health problems, poverty, and other drivers of crime (Clair 2020). Some criminal legal system actors interested in reform conceive of their roles extending beyond the courtroom into other fora to promote justice and public trust. For example, prosecutors in some jurisdictions now find roles for themselves both upstream and downstream from the criminal courts. They design and operate diversion programs and post-sentence community reentry programs. Judges recognize the ability of restorative justice programs to deal with defendants outside the courts.

For defense attorneys, this expanded view beyond the criminal courthouse takes several forms. First and foremost, it is embodied in a client-centered philosophy of representation that takes seriously the client's priorities, even when they do not strictly relate to any immediate criminal proceedings. The defender's view beyond the courthouse also includes holistic representation, which places a client's criminal charge within a larger set of individual and community problems. The defense lawyer in this model works with social workers, counselors, and others to connect clients and their families to a broad range of social services while dealing with the criminal charges as symptoms of larger problems. The work of the lawyer is not limited to trial advocacy, preparation for trial, or even plea negotiations. The defense lawyer's job is multifaceted, carrying attorneys wherever the client's interests send them. These new models of criminal defense lawyering do not treat overcriminalization and underfunding of defense as the only obstacles to justice.

More recently, this expanded approach to criminal defense centers the role of race (Hoag 2021). Some clients need their advocates to account for race as an influence in the case at hand. Defenders could also provide better services for some clients by recognizing the major role of racial inequity in many community problems that contribute to both crime and biased overcriminalization, and even the racist origins of public defender services themselves. As Sean Ossei-Owusu (2019) put it,

“race played a significant role in the creation, maturation, and curtailment of the modern right to counsel.”

A second force that is changing the professional self-image of criminal defense lawyers is more prosaic but equally transformative. The arrival of richer data from court clerks, prosecutors, law enforcement agencies, corrections authorities, and defender organizations makes it possible to look more closely at each segment of the work of lawyers. As these different information systems start to talk with each other, it is possible to ask more targeted questions about lawyering techniques that work in specific settings. The data can isolate the lawyer’s work with particular types of defendants or communities. They can reconstruct the impact of just one facet of a defense attorney’s multifaceted work. With this data, attorneys can approach the job with a mind that is open to empirical evidence. Although the underfunding narrative asks how much of a generic public benefit the lawyer can deliver, the evidence-based view of multifaceted lawyering asks an equally urgent question: how attorneys can adjust the services they provide as their clients’ desires change and as social needs change.

In this review, we summarize the work of historians, criminologists, criminal justice scholars, economists, legal scholars, anthropologists, psychologists, and others who document and critique the work of criminal defense attorneys in the United States. We emphasize empirical scholarship, but we place those studies in the context of influential theoretical works. Over time, this literature has responded quickly when defense attorneys expanded their professional self-image beyond the criminal courts to include multifaceted representation. Qualitative work in particular has explored defender realities beyond the courtroom. Recent quantitative scholarship takes advantage of better courtroom data to create a richer understanding of precise points in criminal proceedings.

Scholars have never lost sight of the familiar reality of underfunded defender services. More investment in defense could still make a difference. And if the United States were to cut back on its rates of arrest, prosecution, and imprisonment, along with its heavy reliance on criminal courts to address so many social problems, the problems of criminal defense would become far more tractable.

Nevertheless, questions about how to adjust defense attorneys’ efforts to the multifaceted needs of their clients, inside and outside the criminal courts, deserve the increased attention that scholars have given them. Going forward, it is likely that scholars will expand their emphasis on racial equity and the social responses to crime that happen outside the criminal courts. They will capture richer descriptions of team defense efforts. And, finally, they will give practicing attorneys more targeted feedback about the effects of innovative representation strategies. This is a field in which scholars have met important challenges of the moment.

In the first section of this review, we describe the legal doctrines and sociological realities that determine which people have access to defense counsel. In the second section, we survey the primary institutions that governments use to deliver defense counsel to those recipients. In the remaining three parts of the review, we survey the scholarship that measures the effectiveness of attorneys. We begin with the courtroom outcomes that different delivery systems produce, then consider the scholarly works that measure the performance of attorneys at distinct segments of the criminal process, and finally turn to the scholars who measure the effectiveness of attorneys in terms of the attorney–client relationship and client satisfaction.

1. ACCESS TO COUNSEL

All roads of the literature on criminal defense lawyering lead back to the foundational issue of access to counsel in criminal cases. There is robust legal academic commentary on the basic doctrine that declares who is entitled to counsel in a criminal case. A more diverse, multidisciplinary

literature addresses who actually gets meaningful access to counsel, regardless of the nominal scope of the right. Together, this scholarship illuminates the range of people who can rely on criminal defense lawyers to address their multifaceted needs.

1.1. Legal Doctrine to Set Minimum Access

Much of the right to counsel literature focuses on the ongoing, long-standing crisis in the delivery of indigent defense services, but scholars also set out the basic legal doctrine. Under the Sixth Amendment's Right to Counsel Clause, indigent individuals facing criminal charges are entitled to government-funded counsel in all felony cases. The Equal Protection Clause of the Fourteenth Amendment requires counsel for any appeal granted as a matter of right. In misdemeanor cases, the right applies if the individual is sentenced to any term of incarceration, whether imposed or suspended. Many jurisdictions rise above the federal constitutional floor for nonfelony offenses through broader state constitutional or statutory rights, although those rights are often honored in the breach (Backus & Marcus 2006).

Furthermore, as many commentators have detailed, the absence of counsel in nonjail misdemeanor cases can leave defendants unaware of the many serious so-called collateral consequences—including deportation, loss of public housing, and employment obstacles—that can result from even minor misdemeanor convictions (Roberts 2011). A related literature considers whether the Sixth Amendment right to counsel extends to immigration proceedings, given Supreme Court jurisprudence that treats some deportations as deeply intertwined with criminal proceedings (Markowitz 2011).

1.2. Realities of Limited Access

Despite the relatively robust doctrine governing access to counsel in all felony and many misdemeanor cases, the reality on the ground is quite different. Numerous studies detail the forces leading to an effective denial of the right, such as high barriers to establishing indigency, application fees for determining eligibility for counsel, “waiver” of counsel under conditions that call the voluntary nature of the waiver into question, lack of counsel at first appearance, and the chronic underfunding of indigent defense. The reality on the ground is particularly dire for access to counsel in misdemeanor cases.

The Supreme Court established the right to counsel for indigent defendants but did not define who is “too poor” to hire a lawyer (Gross 2013). That determination has been left to the states and individual counties, the majority of which rely on the Federal Poverty Guidelines; almost all of them fail to consider what it actually costs to retain counsel. These problematic metrics can result in individuals unable to afford private counsel despite the official determination that they are not “too poor.” Application fees to determine a defendant's eligibility for government-funded counsel, which many states authorize or mandate, is another access barrier. Some states also have statutes allowing the recoupment of the cost of government-funded counsel, and the threat of that financial burden can lead to waiver of the right to counsel, particularly in misdemeanor cases (Bannon et al. 2010). Much of the literature in this area notes the perverse incentives for states and counties to control their own indigent defense costs by setting high barriers to access (Gross 2013).

Access to government-funded counsel for indigent defendants is a constitutional right, so waiver of that right must be knowing, intelligent, and voluntary. Yet studies show that waiver in the lower criminal courts often happens in a rushed or group advisement, without the required judicial inquiry on the record. One study of Florida misdemeanor cases found that 66% of defendants appeared at arraignment without counsel, and more than 80% of these defendants then “waived”

counsel and pled guilty in proceedings that lasted three minutes or less in the vast majority of cases (Smith & Maddan 2011).

Recent work also highlights particular barriers to access to counsel in rural areas, which Pruitt & Colgan (2010) termed “justice deserts.” One study found that misdemeanor defendants in urban Texas counties received appointed counsel in only 39% of cases, and that level dropped to 25% for defendants in rural counties (Davies & Clark 2019).

Chronic underfunding of indigent defense has been described as “a permanent feature of American criminal justice” (Brown 2004, p. 808). Although in felony cases this may affect the quality and timing of appointment of counsel, in misdemeanor cases it can often lead to total denial of the right. This is true even where magistrates are strongly supportive of defense counsel’s presence for efficiency and procedural fairness reasons (Clark et al. 2021).

Willingness and ability to appoint counsel in all cases where it is constitutionally mandated vary greatly from jurisdiction to jurisdiction (Smith & Maddan 2011). For example, the former Chief Justice of the South Carolina Supreme Court described *Alabama v. Shelton*—a 2002 case that established the right to counsel in misdemeanor cases that result in suspended jail sentences—as “one of the more misguided decisions of the United States Supreme Court.” She went on to declare: “so I will tell you straight up we [are] not adhering to *Alabama v. Shelton* in every situation” (Boruchowitz et al. 2009, p. 9).

In sum, a variety of systemic and individual obstacles impede the actual appointment of counsel. These obstacles have proved intractable in the post-*Gideon* era, despite studies showing that appointment of counsel can lead to lower pretrial incarceration costs, a more favorable view of the criminal justice system, and fewer defendants failing to appear in court (Clark et al. 2021).

2. SYSTEMS FOR DELIVERY OF DEFENSE SERVICES

Approximately 80% of defendants are deemed “too poor” to pay and rely on assigned rather than private counsel. States and localities, which are responsible for funding defense counsel for those defendants, have chosen a variety of mechanisms to deliver this constitutionally guaranteed right. Several factors influence those choices, with short-term fiscal considerations often dominating the decision-making process. Much of the early literature catalogs the various mechanisms and critiques the failure to properly fund indigent defense and thus the need to triage.

A significant body of work focuses on defense attorneys in misdemeanor, problem-solving, and juvenile courts and on lawyering during crises. Scholars have also studied the holistic defense movement and the external governance of defender services.

2.1. Options for Delivery of Defense Services

Although there are many variations in the delivery of indigent defense services, there are three basic models: a state- or countywide public defender office; an assigned counsel system in which the court or an administrator assigns private counsel to individual cases; and a contract system between private counsel and the jurisdiction to handle a fixed number of cases, usually for a fixed fee. Most jurisdictions use a variety of models; indeed, there must be an alternative method of representation for defendants presenting a conflict of interest for the primary defender service provider (such as co-defendant cases). Unfortunately, despite the inclusion of most (and sometimes all) misdemeanor charges in a jurisdiction’s chosen delivery model, many individuals facing charges in the lower criminal courts are pressured to go without counsel or are never offered counsel (Natapoff 2018).

The diversity of methods for delivery of the federal constitutional right to counsel is explained at least in part by the various forms of defense services in place before the Supreme Court decided

Gideon v. Wainwright in 1963, combined with the fact that the states bear responsibility for funding indigent defense and some states have delegated that responsibility to counties (Worden et al. 2011). A 2009 study found that 32 states fund indigent defense fully or primarily using state revenue, whereas 18 fund it primarily at the county level (Lefstein & Spangenberg 2009). Per capita defense funding (based on population) varies greatly, with ten times more spending in Alaska than North Dakota (Saubermann & Spangenberg 2006).

In the public defender model, attorneys are employees of either the state or county government or a nonprofit organization and generally work together in an office with support staff and administration. There is a deep literature on the origins of this model, including Barbara Babcock's (2011) description of pioneering attorney Clara Foltz's advocacy for a public defender model with resource parity with the corresponding local prosecutor. More recent historical work exposes the prioritization of ethnic Whites and other racial dynamics in early indigent defense models to demonstrate how "race fundamentally shaped indigent defense jurisprudence and policy" (Ossei-Owusu 2019, p. 1163). Public defender offices are generally considered the gold standard of indigent defense delivery (Bernhard 2002). This model may be particularly important in rural jurisdictions, where one study found that access to counsel in misdemeanor cases was more likely when there was an institutional defender, thus suggesting that physical availability of counsel drives access more than funding or policy issues (Davies & Clark 2019). However, like the other models, public defender offices can be seriously constrained by underfunding and high caseloads. The literature also describes how, in some statewide systems, the governor appoints the head public defender, making lack of political independence a serious concern (Lefstein & Spangenberg 2009, Worden et al. 2011).

The assigned counsel model suffers from several potential problems, including low hourly wages that do not account for overhead or investigative services; lack of screening for eligible attorneys; insufficient training; and lack of independence from judges appointing counsel who then appear in their courtrooms (Bernhard 2002). As one influential report described, "Many jurisdictions lack uniform rules and procedures governing the selection and assignment of counsel, leaving assigned counsel systems ripe for abuse" (Lefstein & Spangenberg 2009, p. 82). A recent empirical study describes a pay-to-play system between judges and assigned counsel who donate to their campaigns. These counsel have the structural motivation to maximize caseloads and minimize effort and produce worse outcomes for clients than nondonating counsel (Sukhatme & Jenkins 2020).

Use of the contract model for indigent defense services grew, beginning in the mid-1980s, due to a variety of factors such as rising defender caseloads and efforts to lower costs. In this model, a private attorney or firm contracts with the jurisdiction to provide defense services. Variations range from capped or uncapped hourly rates to one fixed fee for all nonconflict cases in the jurisdiction and one fee for a set number of cases. Some jurisdictions use a contract model for cases that present a conflict of interest for the public defender. The contract model is heavily critiqued, particularly when the selection method is to award the contract to the lowest bidder and when there are no standards for attorney qualifications or caseload caps. Several lawsuits have challenged, sometimes successfully, the constitutionality of low-bid and other forms of contract systems in particular jurisdictions (Bernhard 2002).

2.2. External Governance of Defender Services

A long-standing literature describes and critiques the different forms of governance of indigent defense service delivery. Many of the governance bodies also make funding requests and oversee defense budgets. As one report emphasized, "Probably the greatest risk to independence of

the defense function is the pressure defenders receive from their funding sources” (Lefstein & Spangenberg 2009).

Scholars and experts agree that state oversight is the preferable mechanism. Such oversight offers the potential for minimum standards of practice across counties, statewide training, and the ability to gather statewide data. Although the vast majority of states now have some sort of statewide oversight, there is great variation in the structure and responsibilities of these organizations (Laurin 2015). Notably, statewide oversight does not mean adoption of a public defender model; the commission or agency might oversee an assigned counsel plan or a contract model in some or all of the state.

Indigent defense oversight is also housed in different branches of government in different states. One study found that 33 states place governance of indigent defense services under the executive branch of state government, eleven place it under judicial branch management, four delegate to local governance, and two have a hybrid model (Joe 2020). Each model has its benefits and drawbacks. For example, although executive-branch placement may lead to actual and perceived lack of independence—particularly where the governor controls appointment of the chief public defender—judicial branch placement can mean direct sanctions (e.g., contempt of court) when the chief defender declares an inability to continue representation without additional resources (Joe 2020). Indeed, a commission appointed by Chief Justice John Roberts issued a report calling for the creation of an independent Federal Defender Commission to replace judicial management of indigent defense in the federal courts, noting that this management has created “conflicts of interests and other serious impediments to genuine justice” (Comm. Rev. Crim. Justice Act 2017). Scholars have made similar calls for independence (Joe 2020).

2.3. Holistic Defense

Holistic defense “strives to encompass the various underlying issues that often lead to clients’ experiences with the criminal justice system, with the aim of addressing those circumstances and preventing future criminal involvement” (Pinard 2004, p. 1067). It departs from traditional approaches to criminal defense in part by broadening the scope of representation for the client beyond the direct criminal matter to include a variety of social and legal services (Steinberg 2013). The Supreme Court’s 2010 decision in *Padilla v. Kentucky*, which held that defense lawyers have a Sixth Amendment duty to advise clients about the deportation consequences of a conviction, illustrated the growing attention to a more holistic model of defense. As one scholar noted, “In place of the image of the lawyer as a heroic and individualistic figure, the Court centers on the lawyer’s responsibility to consult others and to create an effective defense team” (Wright 2011, p. 1517).

Drawing on definitions of holistic defense from practitioners and the academic literature, the National Center for State Courts developed a program theory that identifies core activities for successful holistic practice and common characteristics of holistic defenders. The five core activities are high-quality, client-centered representation; meeting clients’ social service needs; enhanced consideration of collateral consequences and other legal issues; community programs; and systemic advocacy. The three common characteristics are a defense team approach, enhanced information about the client and the case, and community connections (Ostrom & Bowman 2020). An empirical study explored this program theory by interviewing and surveying defenders, clients, judges, and prosecutors about defender offices in three different states. Offices following a holistic model showed significant variations in which clients and which subsets of cases got holistic defense as well as in what role and responsibility social service workers played within the office. Furthermore, underfunding led to severe limitations in the ability to document successes related

to a holistic approach and to limitations on the offices' ability to fully engage in such an approach (Ostrom & Bowman 2020).

Another recent study “provide[s] the first rigorous, large-scale empirical evaluation of the holistic approach to indigent defense, adding to the nascent literature identifying ‘what works’ in indigent criminal defense.” (Anderson et al. 2019, p. 822). Although the study found that holistic representation has similar conviction rates to a more traditional approach, it increased the likelihood of pretrial release, reduced the likelihood of a custodial sentence by 16%, and reduced expected sentence length by 24%. Perhaps most significantly, the study concluded that holistic defense “appear[s] to offer considerable potential to reduce incarceration without adversely impacting public safety” (Anderson et al. 2019, p. 823).

2.4. Mechanisms for Funding Increases

Although state legislatures or county governments are responsible for funding indigent defense, individuals charged with crimes who cannot afford to hire counsel are a low priority for lawmakers parsing out finite and often stretched public resources (Fairfax 2013). There is wide agreement in the academic literature that indigent defense has been in crisis since its inception, failing to deliver any access to counsel in some circumstances and violating even the baseline federal constitutional right to effective assistance of counsel in other circumstances (Backus & Marcus 2006). Most scholars attribute these failures primarily to insufficient funding (Drinan 2009, Sudeall 2013).

Many practitioners and researchers have written about specific mechanisms for funding increases, including through individual and impact litigation and political advocacy. A related literature cautions that increased funding on its own will not remedy pervasive systemic and racial inequalities in indigent defense (Clair 2020, Ossei-Owusu 2019).

The earliest lawsuits, predating but continuing beyond *Gideon v. Wainwright*, included individual lawyers' (eventually successful) claims that being forced into uncompensated representation of indigent defendants constituted a taking of private property in violation of the Fifth Amendment (Bernhard 2002). In the wake of *Strickland v. Washington*—which set the standard for claims of ineffective assistance of counsel in violation of the Sixth Amendment—lawsuits generally challenged the poor quality of indigent defense through postconviction review in individual cases. Courts considering these lawsuits either declined to allow systemic claims or failed to grant relief that led to lasting reform. More recent litigation has targeted systemic flaws with indigent defense and has taken the form of “primarily state-court class actions challenging objective criteria,” including lack of funding (Drinan 2009, pp. 444–45). Many of these lawsuits led to settlements or consent decrees and were far more successful at generating lasting reform. A key feature of this second-generation litigation was its function as a last resort, where political and other solutions had failed (Drinan 2009).

Some scholars have proposed equal protection challenges to inadequate defense funding “in response to significant place-to-place variability in expenditures for these services when underfunding puts delivery of constitutionally adequate representation at serious risk” (Pruitt & Colgan 2010, p. 223). Other scholars have described nonlitigation approaches to the funding woes of indigent defense. For example, although judges could perhaps order parity of compensation and workload between defenders and prosecutors as a constitutional matter, such parity—and the increased funding it would bring to indigent defense—“could take hold as a funding principle in the legislative branch” (Wright 2004, p. 224). Another article proposes “a tighter nexus between the indigent defense reform agenda and the broader smart-on-crime criminal justice reform agenda,” one outcome of which would be fewer cases prosecuted and thus potentially more resources for indigent defense (Fairfax 2013, p. 2328). Vida Johnson (2014, p. 427) has suggested that indigent defenders use a trio of Supreme Court cases—which expanded the right-to-counsel doctrine

relating to plea bargaining and advice about the deportation consequences of a conviction—to lobby legislators (and convince judges) “that more resources spent up front on more defense attorneys, investigators, other public defender support staff, and more training will ultimately save the jurisdiction money in the future.”

2.5. Specialized Systems

Many articles and studies consider criminal defense lawyering from the perspective of the specialized systems or situations in which some lawyers represent their clients. This includes lawyering during crises, and the role of defense counsel in problem-solving courts, juvenile courts, and misdemeanor cases.

2.5.1. Defense lawyering during crises. There is a small literature addressing defense lawyering during crises. This literature will likely grow as defender systems continue to adapt in the wake of the COVID-19 pandemic.

One article put it bluntly: “Hurricane Katrina washed away the New Orleans criminal justice system” (Garrett & Tetlow 2006). There were flooded jails, closed courts, and defendants incarcerated for months awaiting a court appearance and without access to counsel. The flood exposed the state’s total lack of preparation for the operation of the criminal system during a crisis. The breakdown included the near cessation of any funding for indigent defense, which came primarily from traffic tickets and dried up as the population fled the city; all but a small handful of Orleans Parish public defenders were laid off. A small group of criminal defense attorneys and law school clinics filed habeas corpus petitions seeking the release of many detained clients and engaged in other creative avenues to mitigate the constitutional crisis on the ground (Garrett & Tetlow 2006, Metzger 2014).

A similar but nationwide reaction happened when the COVID-19 pandemic hit and it became clear that jails and prisons would become deadly locations. One survey of nearly 200 public defenders from around the country revealed high levels of concern about the health and practical impacts of COVID-19 on both defenders and their clients (Joe & Miller 2020). Pretrial detainees and individuals serving sentences often found themselves with little to no access to counsel due to restrictions on visitation and communication (Leg. Aid Interagency Roundtable Rep. 2021). Advocates worked on many fronts to secure the release of defendants (Levin 2020).

The literature also describes how crises have provided opportunities for reform (Joe 2020). Even before Katrina devastated New Orleans, the indigent defense system was in a well-documented crisis that resulted in an “infrastructure of reformers and developed intellectual capital to move public defense forward” that used the “debacle caused by Katrina as a reason to reform the structure of public defense” (Bunton 2020, p. 5). One result of the restructuring was a drastic reduction in death sentences. Unfortunately, Louisiana continues to struggle with the funding and quality of indigent defense.

Changes stemming from the COVID-19 pandemic might be more enduring, particularly because some of them involve cost savings. The most obvious is the continuation of online court proceedings in some aspects of criminal cases, although this practice preexisted the pandemic in some jurisdictions and raised serious concerns about the attorney–client relationship (Cimino et al. 2014). On the other hand, the recession brought on by the pandemic could continue to lead to major cuts to indigent defense funding, although some evidence from prior financial downturns suggests that this may not come to pass (Davies et al. 2021).

2.5.2. Defense counsel in problem-solving courts. Problem-solving courts aim to address the underlying causes of crime, including drug addiction and mental health. The goal is to divert

defendants to treatment and thus avoid punishment (Miller 2009). Drug courts first emerged in the 1990s; there are now more than 4,000 specialized courts throughout the United States, with subject matter ranging from drugs to sex offenses to drunk driving (Collins 2021, Wolf 2017). These courts are considered an alternative to traditional criminal courts, in part because they are designed to promote a collaborative, team-based approach among courtroom actors, including defense counsel. That is a major departure from the adversarial model, and a small but significant literature has questioned the theoretical and practical implications of this departure for the attorney–client relationship (Collins 2021).

Many problem-solving courts require participants to plead guilty to one or more of the crimes charged before they can participate in programming. Successful completion of all program requirements can lead to a nonjail sentence or withdrawal of the guilty plea and dismissal of the charges. Failure eventually leads to imposition of a traditional sentence. A major critique of problem-solving courts is that defense counsel is effectively cut out of the team once the participant pleads guilty and is brought back only when there is a hearing to address a program violation (Quinn 2000). There are also implications when defense counsel is asked to operate as part of a team with a goal of ensuring that the participant remains in treatment rather than as a zealous advocate with constitutional, ethical, and professional obligations to the client. In some such courts, defense counsel is totally absent (Alkon 2010).

Although there is robust empirical study of drug courts, the same is not true of other types of problem-solving courts (Collins 2021). The data on these courts also do not focus on the role of the defense attorney, although there is anecdotal description in the legal academic literature, including documentation of the exclusion of counsel from post-plea status hearings (Quinn 2000).

2.5.3. Misdemeanor defense lawyering. The role of defense attorneys in the lower criminal courts was a core topic in Malcolm Feeley’s (1979) influential book *The Process is the Punishment*. More recently, several scholars have examined theoretical, doctrinal, and empirical aspects of misdemeanor defense lawyering.

Individuals facing misdemeanor charges are often more affected by—and thus may want their lawyers to be more attentive to—the collateral consequences of any conviction (e.g., loss of professional licenses, housing, or parental rights) than the direct sentence (Roberts 2011). Yet defender offices often shortchange misdemeanor clients, in part by failing to recognize the need to advocate to avoid collateral consequences; defender office administrators might consider the reallocation of scarce resources to bridge this gap (Joe 2017). Misdemeanor defenders generally have the highest caseloads, contributing to their inability to effectively advocate and to clients’ perceptions (and often the reality) that they are part of an assembly-line approach that seeks to impose social control (Kohler-Hausmann 2019, Natapoff 2018). The lower court counsel crisis can also lead to resource allocation that worsens existing racial biases and disparities in the criminal system (Richardson & Goff 2013).

There is far less empirical research on misdemeanors than on felonies, despite the fact that misdemeanors make up approximately 80% of all criminal cases (Joe 2017, Smith & Maddan 2020). However, researchers have documented the lack of due process in the lower courts as well as the ways in which defense counsel’s role in misdemeanor adjudications differs from that of felony defenders (Kohler-Hausmann 2019, Smith & Maddan 2020).

2.5.4. Juvenile court lawyering. Four years after *Gideon v. Wainwright*, the Supreme Court decided *In re Gault* (1967), which extended to juveniles the right to counsel for those who could not afford to hire a private attorney. Unfortunately, defense lawyering in juvenile court suffers from many of the same problems as in the adult setting, and a voluminous literature exists in this area. We review here the literature on the special objectives of representation of juveniles, and in

the next section, we review the research on the quality of outcomes that attorneys achieve in the juvenile courts.

The legal academic literature discusses the various models for the defense lawyer–juvenile client relationship, from a more paternalistic “best interest of the child” approach to zealous advocacy under an “expressed interest” approach (Henning 2005). It also details “the widespread occurrence of deficient legal representation in juvenile court and the absence of any meaningful remedy to this problem” (Fedders 2010, p. 772). The role of the parent, particularly with respect to younger children’s relationship with their defense attorneys, is also considered (Fountain & Woolard 2017). Researchers have also surveyed children and parents about their satisfaction with a holistic approach to juvenile defense, finding positive perceptions of this model (Phillippi et al. 2020).

Kristin Henning (2017, pp. 649–50) has detailed “considerable evidence that defenders in contemporary American courts are, at best, complicit in the racial disparities and injustices that define the modern juvenile and criminal justice systems and, at worst, actively contribute to the harm imposed on black youth through implicit bias, colorblindness, benign neglect, and outright discrimination.” Other work evaluates the effect of structural racism on the juvenile system, with a particular focus on the ethical implications when a defense attorney uses racialized narratives in litigation (Birkhead 2017).

3. MEASURING SYSTEM OUTCOMES

As we have seen, much scholarly attention focuses on access to defense counsel: who the law designates as entitled to a defense attorney, who actually receives support from counsel as a practical matter, and the systems that governments use to deliver counsel to those entitled to access. In this section, we turn to scholarship that goes beyond those questions of access: scholars who advocate for various definitions of success for defense attorneys and those who measure the quality of service that attorneys deliver for their clients.

3.1. Defining Success

Many institutions contribute to a multilayered understanding of what counts as success for the client of an individual criminal defense attorney. There are constitutional, statutory, ethical, and informal standards that define the expected performance levels for defense attorneys.

At the federal constitutional level, the Sixth Amendment gives defendants the right to reasonably effective counsel. A voluminous legal academic literature is nearly unanimous in its critique of the ineffective assistance of counsel standard, set out in *Strickland v. Washington* in 1984. This critique began soon after the Supreme Court articulated the standard and has remained constant over the years (Klein 1986, Marcus 2016). Commentators have noted how ineffective assistance doctrine has several major shortcomings: courts reviewing claims must adhere to a strong presumption that defense counsel’s representation was constitutionally adequate, judicial review of that representation must be “highly deferential,” and individuals must prove that counsel’s incompetence actually prejudiced them (Primus 2020, Sudeall 2013). Other scholars detail the significant obstacles that litigants face when they bring systemic challenges, based on pervasive underfunding, excessive workloads, and other issues leading to unconstitutionally infirm defense services (Backus & Marcus 2006, Sudeall 2018).

Several scholars have explored the shortcomings of this constitutional doctrine in specific settings. For instance, there is an ample literature critiquing this legal doctrine in death penalty cases (Blume & Johnson 2013, Bright 1994) and for defendants with mental health issues (Perlin et al. 2019). There are fewer studies (and judicial decisions) in the context of noncapital sentencing

(Hessick 2009). More recently, a few scholars have elaborated on the meaning of the constitutional standard in the context of high-volume plea negotiations (Roberts 2013).

Some scholars have conceptualized constitutional standards to govern the right to counsel outside of the problematic *Strickland* framework. For instance, they suggest an emphasis on equality of access for all defendants, basing the right in the Equal Protection Clause (Chin 2013, Sudeall 2013). Others have suggested a more robust and complex understanding of the Sixth Amendment (Primus 2020).

Ethical rules create another layer of expectations for competent defense counsel. Bar authorities enact and enforce rules that address fundamental aspects of criminal defense lawyering, including the attorney's duty of competence, confidentiality, and conflict-free representation. Because these ethics rules are framed at a relatively high level of abstraction, professional associations for criminal defense attorneys have issued more detailed guidance for the organization of public defender offices and the conduct to expect from individual attorneys during representation of a client (Little 2011). These rules do not have the binding force of law, but they do influence judicial interpretations of the constitutional right to effective counsel (Blume & Neumann 2007). They also guide the requests that public defenders make for funding and shape the priorities of managers in public defender offices and other organizations that provide services to indigent defendants (Frederique et al. 2014, p. 1323; Wallace & Carroll 2004).

Finally, internal policies and office cultures influence defense attorneys as they create their own definitions of successful criminal defense work (Primus 2016). Qualitative studies have identified the expectations of the managers in public defender offices (McIntyre 1987). Several scholars have recently documented some disturbing reliance on racial stereotypes among public defenders regarding their own clients (Gonzalez Van Cleve 2016, Hoag 2021).

In recent years, the availability of performance data has allowed managers to customize the supervision and support they can offer individual attorneys. Scholars have noted the potential to create practice standards with a stronger empirical connection to successful client outcomes (Laurin 2015, Metzger & Ferguson 2015) while also noting the risk of misinterpretation or over-reliance on such performance data (Laurin 2017).

3.2. Measuring Success for Different Delivery Methods

The use of data to rate the effectiveness of defense attorneys has long fascinated legal scholars. Dozens of evaluations have appeared in print over the years, going back at least to the 1930s (Feeney & Jackson 1990–1991). The most common study design was meant to compare different delivery systems to one another, asking which system provided the highest overall quality of attorney performance.

The earliest studies used a variety of measures for attorney quality—the dependent variable, to use the language of social science research. Some focused on the sheer amount of activity of an attorney, such as the number of motions filed in a case (McConville & Mirsky 1986–1987) or various measures of speedy case processing (Hanson et al. 1992, Nagel 1973). Others looked to court outcomes, such as the proportion of defendants convicted, with attorneys rated more highly when they achieved lower conviction rates (Sterling 1983). More recent studies treat the length of prison or jail terms and other indicators of sentence severity as the best measure of overall attorney quality (Anderson & Heaton 2012, Hoffman et al. 2005).

The quantitative studies of lawyer effectiveness over the years failed to create a reliable ranking of success among the types of attorney organizations. As Frederique and her colleagues (2014, p. 1327) put it, the “vast literature” has produced “mixed results when attempting to determine the effectiveness of public defenders in comparison to private attorneys.” The lack of a research

consensus has several sources. First, the court data available for study typically only cover a few jurisdictions and there is enormous local variety in methods of delivering defense counsel. As a result, it is difficult to draw general conclusions from studies that analyze local data from local institutions. Second, the organizations subject to scrutiny include privately retained lawyers, public defender offices, assigned counsel in private practice, and attorneys in firms that enter into contracts to represent categories of defendants. Most studies compare only two of these delivery organizations, making it difficult to draw general conclusions about the relative strength of all the types.

Over the years, when scholars compare only retained attorneys to public defenders—setting aside the appointed counsel and contract counsel—the results often show no differences in outcomes (Cohen 2014, Hartley et al. 2010). Some studies give the advantage to public defenders (Heaton 2021), whereas others still give the nod to retained attorneys (Williams 2013). When researchers compare retained attorneys to the other three delivery methods combined, the most comprehensive studies tend to show that retained attorneys produce better results: more dismissals, more acquittals, and less severe sentences (Kutateladze & Leimberg 2019). But this result does not always hold true (DuHart Clarke 2021).

Studies that separate out the work of assigned counsel more frequently show that they produced weaker outcomes, on average, than either public defenders or retained counsel (Cohen 2014, Hanson et al. 1992, Roach 2014). This disadvantage becomes more pronounced when appointed attorneys are paid on a flat-fee basis rather than an hourly rate (Lee 2021). Attorneys who represent indigent defendants under a contract with the local courts do not receive much distinct analysis in these studies—they are usually lumped together with other providers of indigent defense services.

Research on juvenile court defenders generally confirms the finding on adult court defenders that appointed counsel systems tend to produce worse outcomes for clients than public defenders or retained attorneys do (Armstrong & Kim 2011, Guevara et al. 2004). The juvenile court research, however, offers an additional disturbing finding: Juvenile defendants who waive their right to counsel receive better dispositions of charges and less severe sentences than juveniles represented by counsel, regardless of delivery system type (Burruss et al. 2020). Researchers have speculated that prosecutors and judges in the cases of unrepresented juveniles restrain themselves out of concern that the defendant might not receive due process or that prosecutors and judges view waiver favorably as an acceptance of responsibility (Armstrong & Kim 2011).

The apparent advantages of retained attorneys (at least in some times and places) might reflect a selection bias. Perhaps clients who believe they have viable defenses work harder to retain lawyers (Agan et al. 2021, Hoffman et al. 2005), or perhaps the systematic advantages of wealth give the attorneys of nonindigent clients more opportunities to succeed.

The earliest research did not control for factors related to the raw materials presented to the defense attorney (Nagel 1973). Later studies recognized this problem and included independent variables, controlling for the seriousness of the initial charges against the defendant, the prior criminal record of the defendant, and other defendant characteristics (Roach 2014, Zane et al. 2021). Some studies focus on particular types of cases, such as homicide (Anderson & Heaton 2012) or domestic violence prosecutions (Kutateladze & Leimberg 2019).

In addition to separating the quality of lawyering from the characteristics of the case and the defendant, researchers over the years began to ask about the personal backgrounds and work environments of defense attorneys. Some of the more recent studies explore factors such as the amount of experience and the demographics of individual attorneys as possible explanations for stronger lawyer performances (Iyengar 2007). Some find evidence that lawyers with particular backgrounds get better results for criminal defendants; for instance, Abrams & Yoon (2007)

conclude that Hispanic attorneys in the Las Vegas public defender office got better results for defendants, possibly because they were not hampered by language barriers with clients and witnesses. Although the defendant's race has received sustained attention (Guevara et al. 2004, Heaton 2021, Kutateladze et al. 2014), there is relatively little empirical study about the effects of the race of the defense attorney on court outcomes (Hoag 2021).

Conflicting results in the outcome studies do not surprise us. Given the amazing variety of models that different jurisdictions use to deliver criminal defense services around the country, it is easy to believe that different factors explain the success of attorneys in those different systems. The major changes over time in the structure of criminal defense organizations also suggest that the formula for success changes over the years.

3.3. Measuring Caseloads

Although outcomes for the client remain the most important measure of defense attorney success, the cost-effectiveness of legal services attracts attention from governments that must pay for attorneys. Government funders have reason to hire fewer lawyers to handle the criminal docket, leading to higher caseloads for attorneys and support staff.

Limited quantitative research has confirmed the intuitive notion that higher caseloads for attorneys and staff result in worse outcomes for clients (Gottlieb & Arnold 2020). When Gottlieb (2021) examined the racial effects of high caseloads, he found evidence that high public defender caseloads exacerbated Latinx–White disparities in sentence length, along with some evidence that they mitigate Black–White disparities. More extensive qualitative research details the disadvantages to defendants when their lawyers carry heavy caseloads (Lefstein 2011).

For public defenders, court administrators, and other providers and purchasers of legal services, the urgent question is how large a caseload can become before it prevents the lawyer from providing adequate representation. The American Bar Association, the National Center for State Courts, and various private consultants such as the Spangenburg Group developed methods over the years to measure caseloads for specific public defender offices, weighting more complex and serious cases to allow for more time per case (Hanlon et al. 2021). Professional organizations create maximum caseload standards to set expectations for staffing that is adequate to provide an acceptable quality of defense: the National Legal Aid and Defender Association declares maximum caseloads of 150 felony cases per attorney per year, or 400 misdemeanors (excluding traffic). Advocates use these weighted caseload studies to support legal claims of inadequate funding for indigent defense and to convince legislatures to increase funding levels (Burkhart 2017).

When defender caseloads remain higher than recommended under professional standards, defender organizations sometimes resort to triage to keep their caseloads within the bounds required by ethical obligations to provide competent representation (Ostrom & Bowman 2020). Underfunding essentially forces defense lawyers to “allocate rights within cases” (Brown 2004). There are various proposals for the most principled approach to triage decisions, including a focus on factual innocence, on cases with systemic significance (such as cases with recurring issues), or on individuals facing the most serious sentences (Mitchell 1994). Scholars note the risk that triage of cases might reinforce implicit racial biases in the prioritization of limited office resources (Richardson & Goff 2013).

3.4. Measuring Attorney Well-Being

One further measure of attorney effectiveness looks to the experience of the attorneys themselves. Scholars with clinical experience have long noted that defense attorneys experience high levels of stress in their work. Too often, lawyers burn out and find themselves struggling to offer the

necessary empathy for their clients (Ogletree 1993, Smith 2004). More systematic qualitative research has emerged to document the sources and manifestations of occupational stress among defense attorneys. One potential source of occupational stress is the growing likelihood that defenders will have to view disturbing video footage of alleged crimes, depicting violent actions by defendants, police, and others (Kimpel 2021). High levels of secondary traumatic stress have a predictably negative impact on job satisfaction (Dotson et al. 2020) and could harm the attorney–client relationship.

4. DEFENSE ATTORNEYS AT WORK DURING PHASES IN CRIMINAL PROCEEDINGS

As we have seen, evaluation of the various systems for delivering legal services to indigent defendants has a long history in empirical research. But the increased availability of data at discrete points in criminal proceedings makes it possible now to concentrate on the defense attorney’s work in distinct segments. In this section, we review the work of scholars who document and evaluate the work of attorneys in each of the phases of criminal proceedings.

4.1. Early-Stage Involvement of Lawyers

The presence of a defense attorney during the earliest stages of criminal proceedings—at first appearance, bail hearings, preliminary examinations, and prosecutor decisions about diversion or initial charges—is a crucial aspect of access to counsel. Scholars have documented the frequency of attorney presence during these early stages, the tasks that lawyers typically perform, and the results of the attorney’s efforts.

Defense attorney involvement in the pretrial detention process has received especially thorough study in the literature. Early empirical studies demonstrated the effects of having defense counsel at the bail determination. One early study, by Douglas Colbert and his colleagues (2002), documented efforts in Baltimore to provide defense counsel to defendants at the first opportunity for pretrial release. The attorneys increased the odds of release for individual defendants and reduced the costs of operating the local jail. In another study, represented defendants expressed a stronger belief in the legitimacy of the court system, regardless of their detention status (Fazio et al. 1984). More recent reforms produced similar results (Vaske 2020, p. 18).

Having counsel at the first appearance seems to reduce later instances of bail violations as well as pretrial and overall future crime (Worden et al. 2011). It also demonstrates counsel’s effect on racial disparities in pretrial detention (Heaton 2021).

Where defendants had early access to counsel at bail hearings, scholars have also tried to determine the most effective system for providing counsel to those defendants. One meta-analysis (DuHart Clarke 2021) concluded that retained attorneys and public defenders produced comparable levels of pretrial release, whereas retained attorneys were more successful than counsel for indigent defendants combined in obtaining pretrial release.

Another possible function of defense counsel during the early stages of the criminal process is to persuade the prosecutor to dismiss or reduce charges or to recommend the defendant for diversion out of the criminal courts (Gould 2021). Because many of these prosecutor choices happen before the assignment of counsel, the impact of counsel in this context is not well documented. One exception is for attorneys representing defendants in white-collar crime contexts (Bennett et al. 2013).

4.2. Plea Negotiations and Trial Preparation

Because most criminal convictions derive from guilty pleas rather than convictions at trial, empirical research in high-volume criminal courts must engage with the defense attorney’s role in

plea negotiations (Alschuler 1975, Heumann 1978). Early research mostly dealt with the outputs of plea bargains and the conditions that might predict those outcomes. More recent research has opened the question of the defense attorney's role during the negotiation itself—the bargaining part of plea bargaining.

The research on outcomes and inputs includes some consideration of the defense attorney's role in selecting cases for early resolution (Henderson 2021). The race, gender, and other characteristics of defendants explain some aspects of plea-bargaining outcomes (Berdejó 2019, Testa & Johnson 2019). Various characteristics of defense attorneys also appear to influence the plea offers that clients accept, including their political ideology and level of empathy for clients (Metcalfe 2021), level of experience, and perceived trustworthiness (Conklin 2020, Henderson & Shteynberg 2020, Lee et al. 2020). Johnson (2017) noted the difficulty of assessing the outcomes of plea negotiations, because for some clients the collateral consequences of a guilty plea outweigh the impact of incarceration.

When it comes to defense attorney contributions during the bargaining process, the research remains exploratory, offering less clarity (Bowen 2009). Lee & Ropp (2020) interviewed courtroom practitioners in a large county to catalog the wide variety of strategies that attorneys use during negotiations, even within a single jurisdiction. Surveys of defense attorneys and factorial analysis of hypothetical cases have begun to distinguish the attorneys who emphasize predictions of trial outcomes from those who stress equitable factors—not strictly relevant to trial or sentencing outcomes—during negotiations (Emmelman 1997, Henderson 2021, Johnson 2017, Wright et al. 2021).

One major obstacle for defense lawyers during plea negotiation is a lack of information about the prosecution's evidence and the plea offers that prosecutors make in similar cases. Thus, some scholars have explored the viability of rules that require prosecutors to deliver the relevant discovery prior to entry of a guilty plea (Turner & Redlich 2016) and systems that enable defense attorneys to share information about plea outcomes in other similar cases (Turner 2021).

Effective defense lawyering requires the evaluation of potential evidence once it arrives via discovery. Researchers have revealed, however, the limited capacity of defense attorneys to evaluate possible confirmation bias in the opinions of forensic expert witnesses for the prosecution (Despodova et al. 2020) or to evaluate the likelihood that a defendant made a false confession (Appleby & McCartin 2019).

4.3. Trial and Sentencing

The work of defense attorneys at trial receives its fair share of empirical study. The attorney's role in jury selection in particular has generated plenty of work. Studies in both the capital and noncapital context routinely demonstrate that defense attorneys use their for-cause and peremptory challenges in an effort to increase the number of non-White jurors to hear their cases (Baldus et al. 2001, Frampton 2020). The strategy has a rational basis in fact: Juries with larger numbers of non-White members tend to convict less often (Flanagan 2018). From time to time, scholars also document the practices of defense attorneys in dealing with specialized forms of evidence that are growing in importance, such as the testimony of expert witnesses on neurosciences (Denno 2016).

In systems that generate most convictions through guilty pleas, some of the most important work of the defense attorney occurs at the sentencing hearing. As we discussed earlier, most studies of defense counsel effectiveness treat sentence severity as the primary measure of success (Abrams & Yoon 2007, Burruss et al. 2020). Others focus on the effectiveness of defense attorneys in avoiding or muting the collateral consequences of a criminal conviction, if their clients place a high priority on that form of punishment (Johnson 2017). Risk assessments of defendants play

an increasing role in sentencing decisions, and defense attorney advocacy about the limitations of risk assessment instruments has become critical to their effectiveness (Metz et al. 2020).

The work of the defense attorney during the penalty phase of a capital case is distinctive and has attracted intense scholarly attention. Effective representation during this phase of criminal proceedings requires a broad focus on the mitigating life experiences of the defendant, a departure from the close attention to alleged criminal acts during the guilt–innocence phase of a trial (Cheng 2010). The distinctive factual settings that are relevant at capital sentencing call for the specialized contributions of a team approach to defense (Maher 2008).

4.4. Relationships with Prosecutors and Judges

At each of the phases of the criminal process described in this section, researchers recognize the importance of the defense attorney’s relationship with the prosecutor and the judge as repeat players in the same courtroom. Eisenstein & Jacob (1977) first described this “courtroom workgroup” as a complex of relationships that are important to understanding system outcomes. Defense attorneys consider their long-term working relationships—and their concomitant obligation to process cases quickly and within normal routines (Metcalf 2016)—and balance those relationships against the interests of the client in the case at hand who might benefit from a slower or less routinized outcome.

Sociological scholarship, with an emphasis on qualitative methods, has documented the situations that create the greatest tensions for defense counsel. The demands of the working group are particularly out of sync with client interests in high-volume misdemeanor courts (Needham et al. 2020). The tensions also appear when defense counsel consider whether to file motions that question the legality of police actions (Nir & Liu 2021) or the motives or abilities of the judge or prosecutor.

5. CLIENT RELATIONSHIPS/PERSPECTIVE OF CLIENT

A particularly important method of assessing defense services—and measuring success in criminal cases—is to seek out the client’s perspective. Asking clients about their experience is a growing but still small part of the defense lawyering literature. A related body of work situates the client centrally in theoretical models of defense lawyering that include holistic and community-oriented defense.

Research on the client experience is closely connected to well-established work in the area of procedural justice, which demonstrates the value clients attach to having a voice in judicial proceedings and to their perception of fair treatment (Tyler 1990). A survey of 120 individuals represented by a rural public defender office showed that effective communication, thorough investigation, and zealous advocacy were valued attorney attributes (Pruss et al. 2021). Another survey of former clients of public defenders who followed a holistic model of representation found that these clients valued interactions with their lawyers, reporting a better ability to tell their stories even if the outcome was not favorable (Ostrom & Bowman 2020). One study found that defendants provided with defense counsel at their bail hearing were significantly more likely to express their intention to comply with the bail decision than defendants without counsel at that hearing, which the authors interpreted as a procedural fairness effect of access to counsel (Colbert et al. 2002).

There is a small but significant literature on the impacts of defense attorneys’ implicit biases on their clients, who are already subjected to systemic racial bias throughout the criminal process (Rapping 2013, Richardson & Goff 2013). Two major recent studies demonstrated how defense attorneys can exacerbate systemic racism. In one, interviews with indigent defendants in Boston

revealed that, when these defendants attempt to advocate for themselves, their own lawyers silence and coerce them (Clair 2020). In the other, indigent defense providers expressed awareness and concern about their clients' racially disparate treatment but ultimately engaged in racialized courtroom practices themselves (Gonzalez Van Cleve 2016). Another scholar called for the Supreme Court to expand the right to counsel of choice—currently conferred upon only those who can pay for their own lawyer—to indigent defendants. This would allow Black defendants to choose “Black and/or culturally competent public defenders [who have] the potential to help mitigate anti-Black racism in the criminal legal system” and the ability to form stronger attorney–client relationships and thus offer better representation (Hoag 2021, p. 1498).

One hallmark of the holistic defense approach is the centrality of the client's voice and goals in their own representation (Steinberg 2013). This is closely related to the practice of community-oriented defense, which “must stem from a belief that the community from which defenders' clients come is at once a valuable resource and an ally in the effort to improve the justice system” (Taylor-Thompson 2004, p. 195). Literature on participatory defense moves beyond these models to critically examine the criminal justice system—including defense lawyers—from the perspective of those facing charges as well as their families and communities (Moore et al. 2014). Relatedly, articles focused on juvenile defenders describe how paternalism threatens children's choice and voice in delinquency proceedings (Henning 2017).

6. CONCLUSION

Some defense attorneys have expanded their professional self-images. Although they once saw themselves as specialists—advocates for criminal defendants to obtain the best available results in criminal court proceedings—some now see their ability to address a wider range of social ills, including systemic and implicit racism, that harm their clients.

Scholars have followed the lead of the practicing attorneys, expanding the field of inquiry while taking advantage of more diverse sources of data. The interplay of empirical methods that contribute to this literature holds great promise for a better understanding of this changing world. Multidisciplinary scholarship is well suited to learn about the multifaceted work of criminal defense lawyers.

Going forward, we hope to see researchers continue to focus on racial equity in the delivery of criminal defense services. Research could also track the effects of social responses to crime that happen outside the criminal courts, and the role of defense lawyers in building those nonjudicial programs. Defense services delivered through teams with multiple types of professional expertise—including lawyers, social workers, counselors, and others—have become common enough to deserve serious research attention. And finally, new data sources allow researchers to give practicing attorneys more granular feedback about the effects of innovative representation strategies for specific types of defendants and procedural contexts.

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