

WHAT IS THE STATE OF EMPIRICAL RESEARCH ON
INDIGENT DEFENSE NATIONWIDE? A BRIEF OVERVIEW
AND SUGGESTIONS FOR FUTURE RESEARCH*

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ABSTRACT

In the United States, the Sixth Amendment provides the basis for the assumption that a person accused of a crime is entitled to legal representation and if he/she does not possess the means to attain an attorney, one will be provided for him/her. Unfortunately, the reality is that the right to counsel is not uniformly implemented for indigent defendants, those who cannot afford to hire a private attorney. Indigent defendants may not receive the same access and quality of representation as those with the financial means to secure their own defense counsel. In some instances, individuals have to be eligible for appointment of counsel. Jurisdictions exercise discretion on how and when they provide these legal services to those who are deemed indigent and therefore eligible. Often, indigent defense services are underfunded and defense counsel are overburdened. Advocates for the right to counsel often lament that there is a crisis in indigent defense in the United

* This article was reviewed by graduate student editors from the University at Albany's School of Criminal Justice under the supervision of Andrew Davies, Ph.D., and the Professional Board of Editors for *Miscarriages of Justice*. Because of the interdisciplinary nature of this special issue, the citations in this article use an APA-based alternative to the *Bluebook: A Uniform System of Citations*.

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States. Social science research on the right to counsel provision and indigent defense can play a significant role in ameliorating this crisis. In order to understand the role of empirical research in addressing the needs of the indigent defense bar, we first have to understand what research has been done to date, lessons learned from that research, and what remains to be investigated. The goal of this paper is to examine the empirical research on the types of indigent defense representation, juvenile indigent defense, and the emerging research on holistic defense. Though not an exhaustive list, these areas of research serve as a jumping off point to broaden our understanding of the “state of indigent defense” at the national level. After presenting and analyzing the literature, we examine the gaps that currently exist in our knowledge and highlight areas for future research.

I. INTRODUCTION

For the past several years, the National Institute of Justice (NIJ) focused its attention and resources on social science research of indigent defense and right to counsel issues. The NIJ is the research, development, and evaluation agency of the U.S. Department of Justice and is dedicated to improving knowledge and understanding of crime and justice issues through science. One of the guiding principles of the agency is to encourage and support innovative and rigorous research methods that can provide answers to criminal justice issues through empirical research questions as well as practical and applied solutions. These same guiding principles are relevant to the field of research on indigent defense. The aim of this paper is to examine the empirical research on right to counsel for indigent defendants, those who cannot afford their own attorney. We provide an overview of the literature on the types of indigent defense representation (i.e., public defenders, private attorneys, or contract attorneys), juvenile waiver of defense counsel, and the emerging research on holistic defense. Though not an exhaustive list, these areas of research serve as a jumping off point to broaden our understanding of the research surrounding indigent defense. After presenting and analyzing the research literature on these topics, we identify some of the gaps that exist in our knowledge and highlight areas for future research.

II. BRIEF HISTORY OF THE RIGHT TO COUNSEL

In the United States, it is almost taken for granted that a person

who is accused of a crime will be granted the opportunity to retain legal representation or, if he/she does not possess the means to hire an attorney, to have counsel appointed to him/her. More than a century ago, however, this was not the case. Although the Sixth Amendment to the U.S. Constitution states that “[i]n all criminal prosecutions, the accused shall enjoy the right . . . to have the Assistance of Counsel for his defense,” the amendment was not uniformly implemented throughout the country. Even though the federal system provided and paid for indigent defense counsel, for years most states relied on the volunteer or pro bono efforts of lawyers to provide defense for the poor.¹ Although other U.S. Supreme Court cases help paved the way for indigent defense at the state level,² the most significant judgment on the right to counsel in Supreme Court history was *Gideon v. Wainwright*,³ which overruled *Betts v. Brady*.⁴ In *Gideon*, the Court unanimously held that an indigent person accused of a felony was entitled to the appointment of defense counsel at state expenditure. This decision was followed by a long line of Supreme Court decisions that strengthened support for the right to counsel for those who could not afford private attorneys. Four years after *Gideon*, with *In re Gault*,⁵ the Court extended this right to juveniles. The right to counsel was again expanded in *Argersinger v. Hamlin*,⁶ which provided indigent defendants’ the right to counsel in misdemeanor proceedings where they are at risk for a possible loss of their liberty.

In addition to the right to counsel at trial, the Court also recognized indigent defendants’ right to representation at other stages of criminal case processing. These include post-arrest interrogation, in *Miranda v. Arizona*,⁷ and *Brewer v. Williams*;⁸ line-ups, in *United States v. Wade*;⁹ preliminary hearings, in *Coleman v. Alabama*;¹⁰ arraignments, in *Hamilton v. Alabama*;¹¹

¹ Wilson, R. J. (1999). *Improving criminal justice systems through expanded strategies and innovative collaborations: Report of the National Symposium on Indigent Defense*. Washington, DC: Bureau of Justice Assistance. Retrieved from <https://www.ncjrs.gov/app/abstractdb/AbstractDBDetails.aspx?id=181344>.

² *Powell v. Alabama*, 287 U.S. 45 (1932).

³ *Gideon v. Wainwright*, 372 U.S. 335 (1963).

⁴ *Betts v. Brady*, 316 U.S. 455 (1942).

⁵ *In re Gault*, 387 U.S. 1 (1967).

⁶ *Argersinger v. Hamlin*, 407 U.S. 25 (1972).

⁷ *Miranda v. Arizona*, 384 U.S. 436 (1966).

⁸ *Brewer v. Williams*, 430 U.S. 387 (1977).

⁹ *United States v. Wade*, 388 U.S. 218 (1967).

¹⁰ *Coleman v. Alabama*, 399 U.S. 1 (1970).

¹¹ *Hamilton v. Alabama*, 368 U.S. 52 (1961).

and plea negotiations, in *Brady v. United States*¹² and *McMann v. Richardson*.¹³

The right to counsel for indigent defendants is often extended to proceedings after a conviction as well as a range of “quasi-criminal” proceedings involving the loss of liberty, such as mental competency and commitment hearings, extradition, prison disciplinary hearings, status hearings for juveniles, some family matters such as nonpayment of court-ordered support or contempt proceedings, as well as child dependency, abuse, and neglect hearings. More recently, in *Padilla v. Commonwealth of Kentucky*,¹⁴ the Court decided that criminal defense attorneys must advise noncitizen clients about the deportation risks of a guilty plea.

The Court has also recognized that the mere presence of counsel may not equate to adequate representation. In any criminal proceeding in which counsel appears, the defendant is entitled to *effective* assistance of counsel, under *Strickland v. Washington*.¹⁵ Ineffective assistance of counsel is a claim that can be raised by a convicted criminal defendant that their attorney’s performance was so ineffective that it deprived them of the constitutional right guaranteed by the Sixth Amendment.

Despite the Court’s attention to the right to counsel, important questions that the Justices did not address were who would be responsible for funding the new system of indigent defense and how would the system be implemented. As a result, there are several types of indigent defense systems through which indigent defendant can acquire counsel. Although each state and locality can establish defender service systems in a variety of ways, there are three general types of attorneys and systems for delivering counsel to indigent defendants.¹⁶ The primary method of delivery, which is perhaps the most familiar to the public, is the public defender system. Public defenders represent indigent clients and are typically salaried employees of the state, county, or locality. The

¹² *Brady v. United States*, 397 U.S. 742 (1970).

¹³ *McMann v. Richardson*, 397 U.S. 759 (1970); National Legal Aid and Defender Association (n.d.). Retrieved from http://www.nlada.org/About/About_Home.

¹⁴ *Padilla v. Commonwealth of Kentucky*, 559 U.S. 356 (2010).

¹⁵ *Strickland v. Washington*, 466 U.S. 668 (1984); National Legal Aid and Defender Association. (n.d.). History of Right to Counsel. Retrieved from http://www.nlada.org/About/About_HistoryDefender.

¹⁶ Cohen, T. H. (2014). Who is better at defending criminals? Does type of defense attorney matter in terms of producing favorable case outcomes. *Criminal Justice Policy Review*, 25(1), 29–58; Spangenberg, R. L., & Beeman, M. L. (1995). Indigent defense systems in the United States. *Law and Contemporary Problems*, 58(1), 31–49.

second method is that indigent defendants can be provided legal access through a court-appointed attorney or the assigned counsel system. In these cases, the court assigns a private practice attorney to handle an individual case and he/she is compensated on a case-by-case basis. The third method, the contract system, is where the state contracts with private attorneys or attorney organizations to represent a certain number of indigent cases and then receive compensation as laid out in the contract.¹⁷

Despite the Supreme Court's emphasis on the importance of access to counsel, and the public's general familiarity of indigent defense gained from media accounts, there continues to be a dearth of social science research that examines the indigent defense system, the policies that affect their ability to provide legal services, and ways that they can improve their general operations.

III. THE NATIONAL INSTITUTE OF JUSTICE AND SOCIAL SCIENCE RESEARCH ON THE RIGHT TO COUNSEL

Though there has been a renewed focus on indigent defense research at the NIJ over the past couple of years, the NIJ has funded this research for several decades. Past NIJ-sponsored research includes surveys of the field of indigent defense, indigent defense organizational needs, mental health care provided to indigent defendants, and the early representation by defense counsel and its impacts on case processing and case outcomes. Some of these projects are highlighted in the paragraphs below.

A. Past NIJ-Funded Empirical Research Projects

In 1973, the NIJ funded *The Other Face of Justice*, which was a study conducted by the National Legal Aid & Defender Association (NLADA).¹⁸ This was the first national survey of the state of legal defense services for the poor as of 1972. The purpose of the survey was to gather information on the various systems used by counties to provide indigent defense services. It described many characteristics of defender systems including attorney and support

¹⁷ Feeney, F., & Jackson, P. G. (1990). Public defenders, assigned counsel, retained counsel: Does the type of criminal defense counsel matter? *Rutgers Law Journal*, 22, 361–456.

¹⁸ National Legal Aid and Defender Association, & Benner, L. (1973). *The other face of justice: A report of the National Defender Survey*. Washington, DC: National Legal Aid and Defender Association.

staff levels, scope of representation, client contact, funding sources, and average caseload sizes. It is widely cited and heralded as a landmark publication on public defense in the United States and is still cited in right to counsel articles. Several years later, *The Other Face of Justice* was followed up by *Indigent Defense Systems Analysis*,¹⁹ also by NLADA. It expanded on the previous work by collecting additional data from 300 defender agencies across the country, including an examination of early representation and the availability of support services in defender systems. The report highlighted the importance of plea bargaining and the effective assistance of counsel in court proceedings. These two studies were funded by the NIJ and represent some of the earliest surveys of indigent defender organizations.

The year after *The Other Face of Justice*, the NIJ released another report called *Cost of Providing Defense Services for Indigents Accused in Ohio*.²⁰ The study assessed the cost of indigent defense services existing in Ohio at the time, in comparison to the estimated costs of indigent defense services that were required by the Constitution and the cost of the services that were proposed by the state legislature. The authors determined that Ohio would have had to quadruple its investment in indigent defense in order to meet its constitutional requirements in 1974. At the time, this type of study was groundbreaking and set a precedent for other states' efforts to assess their individual program staffing needs.²¹

Another line of inquiry that the NIJ funded focused on the timing of appointment of counsel. The *Early Representation by Defense Counsel Field Test, Shelby County, Tennessee*²² study found that establishing earlier contact between clients and public defenders had positive impacts on bail set during a defendant's first appearance. Prior to implementation of the study, indigent defendants were unrepresented during the bail hearing and judges generally accepted the recommendations of the prosecutor when

¹⁹ National Legal Aid and Defender Association, Lynch, B., & Smith, K (1976). *Indigent defense system analysis project—Final report*. Washington, DC: National Legal Aid and Defender Association.

²⁰ National Legal Aid and Defender Association, Schaefer, G., Benner, L., & Darrah, J. (1974). *Cost of providing defense services for indigent accused in Ohio*. Washington, DC: National Legal Aid and Defender Association.

²¹ For further discussion of these types of studies, see Lefstein, N. (2011). *Securing reasonable caseloads: Ethics and law in public defense*. Chicago, IL: American Bar Association. Retrieved from: http://www.americanbar.org/content/dam/aba/publications/books/ls_sclaid_def_securing_reasonable_caseloads.authcheckdam.pdf.

²² URSA Institute, & Fazio, E. J. (1984). *Early representation by defense counsel field test: Final evaluation report*. San Francisco, CA: URSA Institute.

setting bail. As a result of the study, appointed defense counsel had an opportunity to present arguments on the bail issue that were based on prior communication with, and in the interest of, their indigent clients. This in turn increased the likelihood of positive results for defendants at bail hearings. Douglas Colbert and his colleagues in their examination of the Lawyers at Bail (LAB) project furthered this line of research.²³ Their project used law students and LAB attorneys to provide counsel for 4000 lower income defendants accused of nonviolent offenses. The study demonstrated that more than 2.5 times as many represented defendants were released on recognizance from pretrial custody, when compared to unrepresented defendants; additionally, 2.5 times as many represented defendants had their bail reduced to an affordable amount.

The NIJ also expressed interest in research on providing defense services for indigent defendants with mental health needs. In *An Evaluation of Mental Health Expert Assistance Provided to Indigent Criminal Defendants: Organization, Administration and Fiscal Management*,²⁴ researchers documented how mental health expert assistance was provided to indigent criminal defendants in light of the *Ake v. Oklahoma*²⁵ decision. In *Ake*, the Court held that an indigent criminal defendant has the right to have the state provide a psychiatric evaluation to be used on the defendant's behalf. The project included reviews of statutes and case law, a national survey of jurisdictional practices regarding the provision of *Ake*-related services, and field research in three jurisdictions (Baltimore, Detroit, and Phoenix).

Another line of inquiry that the NIJ has pursued was to understand the use of national standards in defender practices. NLADA completed *The Implementation and Impact of Indigent Defense Standards* in 2004.²⁶ This study surveyed defender agencies in order to measure the influence of prior national standards and to assess the need for standardization of defense practices. The study concluded that indigent defense standards play a key role in managing defender agencies' workload, staffing

²³ Colbert, D., Paternoster, R., & Bushway, S. (2002). Do attorneys really matter? The empirical and legal case for the right of counsel at bail. *Cardozo Law Review*, 23, 101-165.

²⁴ Casey, P., & Keilitz, I. (1989). An evaluation of mental health expert assistance provided to indigent criminal defendants: Organization, administration, and fiscal management. *New York Law School Law Review*, 34(1), 19-113.

²⁵ *Ake v. Oklahoma*, 470 U.S. 68 (1985).

²⁶ Wallace, S., & Carroll, D. (2004). The implementation and impact of indigent defense standards. *Southern University Law Review*, 31(2), 245-327.

needs, and quality of service.

More recently, the NIJ commissioned a study that assessed the impact of defense counsel on case outcomes. The *Measuring the Effect of Defense Counsel on Homicide Case Outcomes*²⁷ study evaluated the Philadelphia Defender Association (PDA) to understand the effect of attorney type on murder case outcomes. Findings indicated that, compared to murder cases assigned to local appointed attorneys, assigning murder cases to PDA attorneys reduced murder conviction rates, reduced the estimated probability of receiving a life sentence, and reduced estimated time served in prison. Information collected via interviews suggests that locally appointed attorneys are affected by potential conflicts of interest with the judge, limited compensation for case preparation, financial incentives to take cases to trial, and fewer training and professional resources.

This review of the NIJ's past projects illustrates the agency's investments in survey and empirical studies of indigent defense systems. However, the topics researched vary widely, from surveys of the field to examining defender outcomes in murder cases. As we take stock of where we have been and where we are going, the NIJ's research interests need to be shaped by what is known in the field and what remains to be examined. In order to begin framing a new research agenda, the NIJ's objectives will be examined, additional social science research on indigent defense will be presented, and directions for future research will be explored.

IV. THE NIJ'S OBJECTIVES IN SOCIAL SCIENCE RESEARCH ON INDIGENT DEFENSE

A primary objective of the NIJ's research is to stimulate partnerships among social scientists, legal experts, and indigent defense practitioners to enter into joint work that examines, in a scientifically rigorous way, issues relevant to indigent legal counsel. Topics include, but are not limited to, access to counsel and effective assistance of counsel. This objective can be divided into three primary goals:

1. Increase the amount of rigorous research in the field of indigent defense services, policies and practices
2. Develop [practical and] useful tools that improve the

²⁷ Anderson, J., & Heaton, P. (2013). *Measuring the effect of defense counsel on homicide case outcomes*. Washington, DC: National Criminal Justice Reference 2009-IJ-CX-0013.

quality of indigent defense

3. Enhance the understanding of the issues surrounding the availability of indigent defense services.²⁸

In order to move in the direction of actualizing this lofty list of primary goals, it is useful to review some of the empirical literature that has examined indigent defense practice. The following sections review the literature on types of indigent defense providers, counsel in juvenile justice settings, and the emerging field of holistic defense. This is by no means intended to be an exhaustive look at empirical studies on indigent defense; rather, this sampling of topics is meant to be illustrative of some of the debates that social scientists who study the right to counsel are engaged in. Questions surrounding the most effective type of representation have garnered perhaps the most attention from social scientists. The impact of counsel on juvenile case outcomes has also garnered a good deal of researcher attention. In comparison, holistic defense is an emerging topic of research for social scientists.

For various reasons, the question of which type of defender performs the best has garnered a significant portion of the attention of researchers. Although it appears to be a rather simple question to answer, that has not been the case and the question is continually pursued by scholars. The availability of good data and the advent of statistical models with appropriate statistical controls for potentially confounding variables may contribute to why social scientists are engaged in debates on this particular topic more so than others.

A. Types of Indigent Defenders and Their Impact on Procedural and Sentencing Outcomes

A substantial portion of empirical research conducted on indigent defense has focused on the variations between privately retained counsel and the different types of indigent defense attorneys (public, appointed, and contracted). In particular, research has examined procedural outcomes, sentencing outcomes, the cost effectiveness of the different systems, and the effectiveness of counsel in the various defense systems. It is important to review this area of research to broaden our understanding of the different indigent defense systems.

²⁸ National Institute of Justice. (n.d.). *Indigent defense research*. Retrieved from <http://nij.gov/topics/courts/indigent-defense/Pages/research.aspx>.

Part of the Supreme Court's rationale in deciding *Gideon*²⁹ was to provide representation of counsel for defendants facing felony charges in state court. However, without specific guidelines and rules for implementation, there are still concerns that indigent defendants are not afforded adequate legal representation. As a result, scholars have attempted to verify whether or not the provision of indigent counsel through the different delivery systems leads to legal fairness.³⁰ The literature most often examines this by comparing the procedural and sentencing outcomes of private attorneys to the three other types of indigent attorneys: public, assigned, and contract.³¹

Early studies assessed different types of indigent representation by comparing procedural treatment and efficacy. Nagel's study indicated that defendants with private attorneys were more likely to experience preliminary hearings, jury trials, case dismissals, and acquittals and have their case progress more slowly through the court process.³² Meanwhile, Taylor and his colleagues, as well as Stover and Eckart, conducted studies that attempted to address the complex nature of the effectiveness of counsel.³³ Their studies illustrated that indigent cases varied not only because of the type of attorney, but also because there were systematic differences that also proved to have varying effects on case outcomes. For example, when public defenders were obtained earlier in the judicial process this provided an indigent defendant quicker access to adjudication and a more favorable result.

With the advent of the evidence-based research movement, later research on attorney effectiveness attempted to rely on quantitative

²⁹ *Gideon v. Wainwright*, 372 U.S. 335 (1963).

³⁰ Stover, R. V., & Eckart, D. R. (1975). A systematic comparison of public defenders and private attorneys. *American Journal of Criminal Law*, 3, 265–300.

³¹ Though these broad categories are often used to describe the different types of attorney systems, it is important to recognize that there are jurisdictions that offer indigent defense legal services in ways that do not fit neatly into these categorizations. Cohen, T. H. (2014). Who is better at defending criminals? Does type of defense attorney matter in terms of producing favorable case outcomes. *Criminal Justice Policy Review*, 25(1), 29–58; Feeney, F., & Jackson, P. G. (1991). Public defenders, assigned counsel, retained counsel: Does the type of criminal defense counsel matter? *Rutgers Law Journal*, 22(2), 361–456; Taylor, J. T., et. al. (1972) An analysis of defense counsel in the processing of felony defendants in San Diego, California. *Denver Law Journal*, 49, 233–275.

³² Nagel, S. (1973). Effects of alternative types of counsel on criminal procedure treatment. *Indiana Law Journal*, 48(3), 404–426.

³³ Taylor, J. T., et. al. (1972). An analysis of defense counsel in the processing of felony defendants in San Diego, California. *Denver Law Journal* 49, 233–275; Stover, R. V., & Eckart, D. R. (1975). A systematic comparison of public defenders and private attorneys. *American Journal of Criminal Law*, 3, 265–300.

assessments in order to determine which type of attorney is able to obtain better sentencing outcomes for his/her clients. This line of research produced the bulk of quantitative inquiries into indigent defense and focused on the comparison between private attorneys and public defenders. Though this is a wide and vast literature, it demonstrates mixed results when attempting to determine the effectiveness of public defenders in comparison to private attorneys.

Several studies found that private attorneys are able to obtain better sentencing outcomes for their clients when compared to public counsel.³⁴ However, a competing line of research noted that public defender systems are able to achieve very similar outcomes to private attorneys.³⁵ The studies referenced have found no difference between the performances of public defenders in comparison to private attorneys. When compared with other indigent defense systems, however, these studies indicate that public defender systems possess unique characteristics that allow for more favorable outcomes in criminal defense cases. These unique characteristics may include resources for case investigations or expert witnesses, and familiarity with the courtroom workgroup which in turn may influence the public defenders' ability to secure case dismissals, have charges dropped, and achieve more lenient sentences for their clients.

There are various explanations for the conflicting results within the literature that compares the effectiveness of defense attorneys. One possible explanation is more methodological; differences in research design and methodology may account for contrasting

³⁴ For examples, see Gitelman, M. (1971). The relative performance of appointed and retained counsel in Arkansas felony cases: An empirical study. *Arkansas Law Review*, 24, 442–452; Nagel, S. (1973). Effects of alternative types of counsel on criminal procedure treatment. *Indiana Law Journal*, 48(3), 404–426; Hoffman, M., Rubin, P., & Shepherd, J. (2005). An empirical study of public defenders effectiveness: Self-selection by the “marginally indigent.” *Ohio State Journal of Criminal Law*, 3, 223–255.

³⁵ For examples, see Stover, R. V., & Eckart, D. R. (1975). A systematic comparison of public defenders and private attorneys. *American Journal of Criminal Law*, 3, 265–300; Sterling, J. S. (1983). Retained counsel versus the public defender: The impact of type of counsel on charge bargaining. In W. F. MacDonald (ed.), *The Defense Counsel* (pp. 151–167). Beverly Hills, CA: Sage; Houlden, P., & Balkin, S. (1985). Costs and quality of indigent defense: Ad hoc vs. coordinated assignment of the private bar within a mixed system. *Justice System Journal*, 10, 159–172; Hanson, R., et. al. (1992). *Indigent defenders get the job done and done well*. Williamsburg: National Center for State Courts; Harlow, C. W. (2000). *Defense counsel in criminal cases: Bureau of Justice Statistics special report*. Office of Justice Programs; U.S. Department of Justice, NCJ 179023; Hartley, R., Miller, H., & Spohn, C. (2010). Do you get what you pay for? Type of counsel and its effect on criminal court outcomes. *Journal of Criminal Justice*, 38, 1063–1070; Cohen, T. H. (2014). Who is better at defending criminals? Does type of defense attorney matter in terms of producing favorable case outcomes? *Criminal Justice Policy Review*, 25(1), 29–58.

results. For example, some studies that compare public defender and private attorney performance may not have differentiated between public defenders, assigned counsel, and contract attorneys because of the challenges involved in distinguishing between the systems. As a result, assigned counsel and contract attorneys may have been inaccurately included in assessments of public defenders, which could have skewed the results. Consequently, it is argued that studies that were able to clearly distinguish between funded public defenders' offices, assigned counsel, and contract or panel attorneys are more likely to favor public defenders.

Another explanation of public defenders' positive performance is that one of the strengths of the public defender system is that attorneys are afforded staff, training, and experience specifically related to criminal defense cases, whereas private attorneys, assigned counsel, and contract attorneys may not have such resources. Abrams and Yoon note in a study of public defenders in Clark County, Nevada, that the most significant factor for receiving favorable outcomes was the experience of the public defender in criminal court.³⁶ Nevertheless, because public defender systems rely on the state or county for funding, outcomes for each public defender system may vary. If a public defender's office is not provided with sufficient resources, attorneys may not be able to adequately handle expanding caseloads and provide each client with the necessary time to investigate and advocate his/her case.³⁷ Thus far, a consistent trend has not developed in the literature that demonstrates a clear benefit or disadvantage for those who retain a private attorney versus a public defender.

As noted earlier, similar to the empirical literature that compares private and public defense attorneys, research comparing public defenders, assigned counsel, and contract attorneys have also produced mixed results.³⁸ Initial investigations by Hermann and colleagues, Radtke and colleagues, and Clarke and Koch all concluded that there were minimal differences in outcomes obtained by these types of indigent counsel.³⁹ Meanwhile, additional studies

³⁶ Abrams, D. S., & Yoon, A. H. (2007). The luck of the draw: Using random case assignment to investigate attorney ability. *University of Chicago Law Review*, 74, 1145–1177.

³⁷ Cohen, T. H. (2014). Who is better at defending criminals? Does type of defense attorney matter in terms of producing favorable case outcomes? *Criminal Justice Policy Review*, 25(1), 29–58.

³⁸ Cohen, T. H. (2014). Who is better at defending criminals? Does type of defense attorney matter in terms of producing favorable case outcomes? *Criminal Justice Policy Review*, 25(1), 29–58.

³⁹ Herman, R., Single, E., & Boston, J. (1977). *Counsel for the poor*. Boston, MA: Lexington

illustrate that retaining assigned or contract counsel produces less favorable outcomes, including a greater likelihood of being convicted and receiving longer sentences.⁴⁰ Consequently, there is still an unclear picture as to whether or not there are considerable differences in case outcomes between public defenders, assigned counsel, and contract attorneys.

Based on the empirical research reviewed above, it is very difficult to draw definitive conclusions about defense attorney effectiveness. There are a good number of studies that investigate this question, however, there are fewer studies that compare private, public, assigned, and contract attorneys simultaneously. It is also evident that scholars have differed in their focus because of availability of good data. There are studies that have covered specific localities and jurisdictions⁴¹ and also those that examined the federal and state systems⁴² or focused on specific crimes, such as Anderson and Heaton's study on defense counsel's effect on murder case outcomes.⁴³ Because of the specificity of such studies, there has been little replication of them and consequently few generalizable results.

This topic represents the one area in indigent defense research that has received the most empirical research attention. While an interesting question, we would argue that because of the

Books; Radtke, P., Semple, P., & Cohen, L. (1982). *Alternative models for defending the indigent in Virginia*. Washington, DC: American Institutes for Research; Clark, S., & Koch, G. (1980). Juvenile court: Therapy or crime control, and do lawyers make a difference? *Law & Society Review*, 14, 263–308.

⁴⁰ Iyengar, R. (2007). *An analysis of the performance of federal indigent defense counsel* (NBER working paper, No. 13187). Cambridge, MA: National Bureau of Economic Research. Retrieved from <http://www.nber.org/papers/w13187>; Roach, M. (2010). *Explaining the outcome gap between different types of indigent defense counsel: Adverse selection and moral hazard effects*. Unpublished manuscript, Northwestern University. Retrieved from <http://ssrn.com/abstract=1839651>.

⁴¹ Abrams, D. S., & Yoon, A. H. (2007). The luck of the draw: Using random case assignment to investigate attorney ability. *University of Chicago Law Review*, 74, 1145–1177; Hoffman, M., Rubin, P., & Shepherd, J. (2005). An empirical study of public defenders effectiveness: Self-selection by the “marginally indigent.” *Ohio State Journal of Criminal Law*, 3, 223–255.

⁴² Harlow, C. W. (2000). *Defense counsel in criminal cases: Bureau of Justice Statistics special report*. Office of Justice Programs; U.S. Department of Justice, NCJ 179023; Iyengar, R. (2007). *An analysis of the performance of federal indigent defense counsel* (NBER working paper, No. 13187). Cambridge, MA: National Bureau of Economic Research; Roach, M. (2010). *Explaining the outcome gap between different types of indigent defense counsel: Adverse selection and moral hazard effects*. Unpublished manuscript, Northwestern University. Retrieved from <http://ssrn.com/abstract=1839651>; Cohen, T. H. (2014). Who is better at defending criminals? Does type of defense attorney matter in terms of producing favorable case outcomes? *Criminal Justice Policy Review*, 25(1), 29–58.

⁴³ Anderson, J., & Heaton, P. (2012). How much difference does the lawyer make? The effect of defense counsel on murder case outcomes. *Yale Law Journal*, 122, 154–217.

inconclusive nature of the research evidence, social scientists should focus their intellectual energies on other important research questions. Rather than asking which type of system is better, research on the type of counsel might develop in the future by examining each type of representation in its own right and developing innovative strategies to improve the administration of each of these systems.

Another area of empirical research on indigent defense that has garnered its fair share of investigative attention is the implications of counsel in juvenile proceedings and its impact on case outcomes. It is to this body of literature that we now turn.

B. Counsel for Juveniles and the Implications of Waiver

Unlike the adult criminal justice system, the juvenile court was founded on a rehabilitative and therapeutic philosophy in which the overarching goal was to restore youthful offenders into well-adjusted, responsible, and law abiding citizens.⁴⁴ However, abuse of indeterminate sentencing practices and questions about whether or not the rehabilitative ideal could be practically achieved has led to confusion about the goal of the juvenile justice system. In the midst of this confusion, the U.S. Supreme Court decided a series of decisions that provided more due process protections for juveniles. As mentioned above, *In re Gault* established the right to counsel for juveniles. Specifically, the ruling states that “a child has procedural due process rights in delinquency adjudication proceedings where the consequences were that the child could be committed to a state institution.”⁴⁵ Among the due process rights granted by the decision was the legal right to have counsel representation during adjudication proceedings.

1. Early Research on Counsel in Juvenile Courts

One of the early studies that empirically examined the impact of counsel in the juvenile court was by William Stapleton and Lee Teitelbaum. Their book, *In Defense of Youth: A Study of the Role of Counsel in American Juvenile Courts*, was an examination of the events leading up to *In re Gault* as well as the aftermath.⁴⁶ After *In*

⁴⁴ Armstrong, G., & Kim, B. (2011). Juvenile penalties for “lawyering up”: The role of counsel and extralegal case characteristics. *Crime and Delinquency*, 57(6), 827–848.

⁴⁵ *In re Gault*, 387 U.S. 1 (1967).

⁴⁶ Stapleton, V., & Teitelbaum, L. (1972). *In defense of youth: A study of the role of counsel*

re Gault, legal scholars feared that a massive increase in dismissal rates and an increased adversarial process would come to define juvenile courts rather than the *parens patriae* philosophy—meaning in the best interest of the child—that had heretofore been a guiding principle of juvenile courts. Their study examined cases from two cities to assess the impact of *In re Gault* on juvenile court administration. The organizational framework of the courts were compared and analyzed to determine the ways in which the nature and structure of juvenile courts affect the conduct of the defense and the relationship between a defense attorney's willingness to be adversarial and the outcomes of the case. They concluded that differences in the courts themselves accounted for the variations in outcomes for juveniles and not the presence of counsel. Stapleton and Teitelbaum's research began a tradition of research on lawyers in the juvenile court that asked more detailed questions about the nature and types of counsel and how the presence or absence of defense counsel affected case outcomes.

Following the work of Stapleton and Teitelbaum, other scholars have researched the impact of counsel on case outcomes as a function of the type of court (i.e., degree of procedural formality and acceptance of the adversarial process) that the juvenile is adjudicated in. Aday attempted to develop a typology to understand how variations in court structure and procedure impact case outcomes.⁴⁷ Data on case characteristics and disposition decisions were drawn from two types of courts, traditional and due process. Aday's analyses revealed two important differences in the uses of defense attorneys between the different types of courts. Defense attorney use was more important and case decision making is more patterned and regular in the due process courts than in the traditional courts.

Feld has a body of research that supports the findings that the presence of a defense attorney may be an aggravating factor in the juvenile court.⁴⁸ He found that attorneys increased commitment outcomes in the due process courts and had no effect in the *parens patriae* courts. Specifically, when seriousness of the offense and the

in American juvenile courts. New York: Russell Sage.

⁴⁷ Aday, D., Jr. (1986). Court structure, defense attorney use, and juvenile court decisions. *Sociological Quarterly*, 27, 107–119.

⁴⁸ Feld, B. (1988). *In re Gault: A cross-state comparison of the right to counsel in juvenile court*. *Crime & Delinquency*, 34, 393–424; Feld, B. (1991). Justice by geography: Urban, suburban and rural variations in juvenile justice administration. *Journal of Criminal Law and Criminology*, 82, 156–210; Feld, B. (1993). *Justice for children: The right to counsel and the juvenile courts*. Boston, MA: Northeastern University Press.

juveniles' criminal history were controlled for, youths appearing with an attorney were more likely to receive an out-of-home placement and secure confinement than those youth who appeared without an attorney.

In addition to type of court, research examined whether the type of attorney, private attorney or public defender, has an impact on case outcomes for juveniles. Clarke and Koch examined how the type of attorney impacts case disposition.⁴⁹ They found that youths who were either unrepresented or represented by private counsel had higher rates of case dismissal and lower rates of confinement. Carrington and Moyer found that youth with private attorneys were less likely to be adjudicated and more likely to have their charges dropped.⁵⁰

While these findings consistently demonstrate that youth with indigent representation have more severe dispositions than youth without representation or with private attorneys, there are some limitations to the research cited above. Past studies vary in their statistical sophistication, their ability to control for other relevant factors in case processing, and their examination of court contexts. For example, some of the earlier studies failed to control for the criminal history of the juvenile or the interactions between legally relevant factors (presence of counsel) and extralegal factors (race of the juvenile).⁵¹ Some studies only examined cases in one courtroom and were therefore unable to disentangle the impact of the courtroom context on the results. Other studies have been criticized for using inappropriate statistical methods for the outcomes of interest.⁵² Despite these criticisms, the finding that presence of counsel is an aggravating factor in juvenile adjudication cases is still robust.

2. Contemporary Research on Counsel in Juvenile Courts

More sophisticated studies have been done that address some of the criticisms raised above while offering a more nuanced understanding of the effect of counsel on outcomes for juveniles.

⁴⁹ Clark, S., & Koch, G. (1980). Juvenile court: Therapy or crime control, and do lawyers make a difference? *Law & Society Review*, 14, 263–308.

⁵⁰ Carrington, P., & Moyer, S. (1990). The effect of defense counsel and outcome in juvenile court. *Canadian Journal of Criminology*, 32, 621–637.

⁵¹ Guevara, L., Spohn, C., & Herz, D. (2004). Race, legal representation, and juvenile justice: Issues and concerns. *Crime & Delinquency*, 50, 344–371.

⁵² Burruss, G., & Kempf-Leonard, K. (2002). The questionable advantage of defense counsel in juvenile court. *Justice Quarterly*, 19, 37–67.

For example, Burruss and Kempf-Leonard examined juvenile court cases adjudicated in 1998 from three juvenile circuit courts with various caseloads, staff, and routine procedures.⁵³ They examined out-of-home placement, type of representation, prior record for past referrals, and the characteristics of the court using logistic regression models. Their findings indicate that significant disparities exist in juvenile court case processing. These disparities were found across courtrooms and in various areas; for example, urban courts were more likely to use public defenders. Out-of-home placement was more likely to occur if a youth had an attorney even when other relevant legal and individual factors were the same. The greatest disparities in the outcomes of cases in each circuit occurred when youths had no previous involvement in the court.

Guevara, Spohn, and Herz drew from the increasing evidence of racial disparity from the sentencing literature and examined the influence of type of counsel across race on juvenile court outcomes specifically; they examined the interaction between race and type of counsel on dispositions.⁵⁴ Using data on juvenile court referrals from two Midwestern juvenile courts, they found that youth without an attorney were more likely to have their charges dismissed, especially nonwhite males. Nonwhite youth represented by a private attorney were significantly more likely than similar white youth to receive a secure confinement disposition.

Armstrong and Kim improved on the research by Guevara, Spohn, and Herz by examining whether the “counsel penalty” existed regardless of attorney type and used a more comprehensive model to determine the influence of extralegal and contextual factors that may impact the counsel penalty.⁵⁵ The study examined the effects of counsel presence as well as counsel type (private versus public) on the severity of sentence outcome, while controlling for individual and contextual variables including an examination of possible interaction effects. Specifically, they included an examination of the impact of race, family income, and county-level characteristics (e.g., urbanization, county crime rate, income inequalities by race, and county percentage of nonwhite residents). Controlling for contextual, extralegal, and legal factors, they found

⁵³ Burruss, G., & Kempf-Leonard, K. (2002). The questionable advantage of defense counsel in juvenile court. *Justice Quarterly*, 19, 37–67.

⁵⁴ Guevara, L., Spohn, C., & Herz, D. (2004). Race, legal representation, and juvenile justice: Issues and concerns. *Crime & Delinquency*, 50, 344–371.

⁵⁵ Armstrong, G., & Kim, B. (2011). Juvenile penalties for “lawyering up”: The role of counsel and extralegal case characteristics. *Crime and Delinquency*, 57(6), 827–848.

that juveniles represented by counsel were more likely to receive an out-of-home placement compared to juveniles who waived their right to counsel. Legal variables such as the number of prior offenses and detention status significantly impacted the likelihood of placement regardless of counsel presence or type of attorney. Juveniles who were black and represented by public defenders were more likely to be placed outside of the home than their white counterparts after controlling for other legal and extralegal factors. Males with private attorneys were more likely to receive an out-of-home placement compared to females. The community-level, contextual factors were not statistically related to the risk of out-of-home placement.

These more nuanced examinations of the effect of counsel on juvenile case outcomes raise several questions for further investigation. Why does this apparent counsel penalty exist? Duffee and Siegel hypothesize that when the appearance of due process has been maintained through having counsel present, the juvenile court judge may feel secure against future challenges and safer in prescribing stricter control over the court's wards.⁵⁶ But under waiver of counsel circumstances, judges may be less certain that due process has been fully realized and disinclined to sentence a juvenile harshly. However, more research needs to be done to understand the decision making of judges in various juvenile court contexts.

C. *Holistic Defense*

Robin Steinberg articulated the frustration that public defenders in a "traditional" public defender system experience when they are not able to directly address the underlying problems faced by indigent clients.⁵⁷ She observed that the criminal case is not the most challenging issue to deal with. Rather, more often than not, it is the lives of clients, which are messy because they are in the midst of multiple crises. According to Steinberg, a holistic approach was needed that incorporates a broader paradigm and challenges the traditional conceptualizations of indigent representation. The traditional approach of rendering services to indigent clients begins

⁵⁶ Duffee, D., & Siegel, L. (1971). The organization man: Legal counsel in the juvenile court. *Criminal Law Bulletin*, 7, 544–553.

⁵⁷ Steinberg, R. G. (2006). Beyond lawyering: How holistic representation makes for good policy, better lawyers, and more satisfied clients. *New York University Review of Law and Social Change*, 30, 625–634.

and ends with a strict focus on representing the clients' legal interests. In contrast, the holistic defense approach was developed as a means for public defenders to obtain more information about clients' lives and their current circumstances. With increased client engagement they are able to help the client address the myriad of issues that he/she faces, including the issue that brought the client to the attention of the criminal justice system. By knowing more about their clients' lives indigent defenders can advocate for their clients more effectively, which may contribute to better case results and sentencing outcomes for the clients.

In 1990, the Neighborhood Defender Service of Harlem opened its doors with the mission to address some of the problems facing indigent defense providers and, at the same time, search for the underlying issues that bring clients into contact with the criminal justice system.⁵⁸ Its approach involved a team of criminal and civil attorneys, social workers, investigators, paralegals, law school interns, social work interns, and pro bono attorneys that worked collaboratively to represent the clients. Other indigent defense offices adopted the approach and expanded the use of the holistic defense. The Bronx Defenders opened its offices in New York in 1997 to change the way poor people were represented in the criminal justice system.⁵⁹ In Massachusetts, the Youth Advocacy Project was started in 1992 with a focus on the holistic defense approach to ensure that every child has access to zealous legal representation resulting in both legal and life success.

1. Defining Holistic Defense

According to the Center for Holistic Defense, holistic defense combines legal advocacy with a broader recognition that for most poor people arrested and charged with a crime, the criminal case is only one of many issues they are struggling with at the same time.⁶⁰ The key to holistic defense is that in order for indigent defenders to be truly effective they must address both the collateral consequences of criminal justice involvement as well as the underlying issues that play a part in driving clients into the

⁵⁸ The Bronx Defenders. (n.d.). *Our mission and story*. Retrieved from <http://www.bronxdefenders.org/who-we-are/>.

⁵⁹ The Bronx Defenders. (n.d.). *Our mission and story*. Retrieved from <http://www.bronxdefenders.org/who-we-are/>.

⁶⁰ The Bronx Defenders. (n.d.). *Center for holistic defense*. Retrieved from <http://www.bronxdefenders.org/programs/center-for-holistic-defense/>.

criminal justice system.⁶¹

While recognizing that holistic defense may be practiced along a spectrum, there are four pillars of holistic defense that form the foundation of its ideology. The first pillar is *seamless access to legal and non-legal services that meets clients' legal and social support needs*. In cases involving indigent clients, the holistic defense philosophy recognizes that a resolution to the legal matter at hand is not the client's only concern; for example, some indigents may have substance abuse problems, mental health challenges, or immigration concerns. In response, holistic defense offers resources to help remedy these additional problems by directly providing these services through an in-house social services advocate without any lengthy intake process.

The second pillar focuses on *dynamic, interdisciplinary communication*. In holistic defense the client will have a team of advocates including a criminal attorney, civil attorney, social workers, or other social service advocates. The team works on behalf of the indigent client and communicates within an environment that is open, with frequent meaningful open exchanges of information. The workplace culture is not based on a hierarchy in which the public defender is the authority, but rather all individuals working on behalf of the client are given an equal voice in responding to the clients' needs.

The third pillar emphasizes *advocates with an interdisciplinary skill set*. This pillar views the expertise of both legal and non-legal actors (e.g., social workers, mental health experts, sentencing advocates/mitigation specialists) as fundamental skills required to provide holistic representation of clients. Therefore staff are encouraged to cross-train so, for example, attorneys may be able to identify mental illness and their clients and social workers may be able to identify immigration concerns.

The fourth pillar is focused on *a robust understanding of, and connection to, the community served* by the defender office. In other words, a public defender that can engage with and gain a deeper understanding of the environment that the client comes from is in a better position to assess clients' needs and develop successful response strategies. According to the Bronx Defenders, ultimately this engagement will lead to better outcomes for their clients.⁶²

⁶¹ The Bronx Defenders. (n.d.). *Holistic defense, defined*. Retrieved from <http://www.bronxdefenders.org/holistic-defense/>.

⁶² The Bronx Defenders. (2010). *The four pillars of holistic defense*. Retrieved from <http://www.bronxdefenders.org/the-four-pillars-of-holistic-defense/>.

This is an empirical question that remains to be studied. Lee, Ostrom and Kleiman⁶³ have translated these pillars of holistic defense into propositions about their potential impact which can be tested empirically. There are several research teams across the country who are engaging in examinations of holistic defense.

2. Challenges to the Holistic Defense Paradigm

The growing interest in holistic defense is not met without its challenges. Pinard outlines the difficulties of implementing a holistic paradigm in a public defender's office.⁶⁴ These difficulties include financial strains on an already underfunded and under resourced office; increasing the technical knowledge of public defenders to determine when a collateral consequence may apply in a particular case (e.g., linking civil and criminal teams in an office); and the reality that representation does not end at the conclusion of the legal proceeding, but with a new focus on reentry and collateral consequences the attorney would presumably extend services to the client for the foreseeable future. Clark and Neuhard argue that the two primary hurdles to success in developing a holistic model of defense are (1) changing the culture inside public defenders' offices and (2) constructing an evaluation process through data collection to show these approaches have measurable impacts on individuals and on the community.⁶⁵ The NIJ currently has two evaluations underway to answer the second hurdle identified above.⁶⁶

Furthermore, Holland is critical of the fact that the holistic defense paradigm "does not sufficiently prioritize the reality that our justice system is centered around the trial nor the reality that the justice system pursues many non-rehabilitative penological goals."⁶⁷ Also, from a practical standpoint, it may be harder to

⁶³ Lee, C. G., Ostrom, B. J., & Kleiman, M. (2015). The measure of good lawyering: Evaluating holistic defense in practice. *Albany Law Review*, 78, 1215–1238.

⁶⁴ Pinard, M. (2003). Broadening the holistic mindset: Incorporating collateral consequences and reentry into criminal defense lawyering. *Fordham Urban Law Journal*, 31(4), 1067–1095.

⁶⁵ Clarke, C., & Neuhard, J. (2005). Making the case: Therapeutic jurisprudence and problem-solving practices positively impact clients, justice systems and communities they serve. *St. Thomas Law Review*, 17, 781–810.

⁶⁶ For more information on these studies, see National Institute of Justice. (n.d.). *Indigent defense research*. Retrieved from <http://nij.gov/topics/courts/indigent-defense/Pages/research.aspx>. For a more detailed discussion of holistic defense, see Lee, C. G., Ostrom, B. J., & Kleiman, M. (2015). The measure of good lawyering: Evaluating holistic defense in practice. *Albany Law Review*, 78, 1215–1238.

⁶⁷ Holland, B. (2005). *Holistic advocacy: An important but limited institutional role*. Albany, NY: Judiciary of New York. Retrieved from <http://www.courts.state.ny.us/ip/partnersi>

recruit and retain experienced lawyers because many want high remuneration and may not like the holistic approach because it is time consuming and may not lead to extra compensation. Holland argues for the need to change not only the culture of public defenders' offices to be accepting of this philosophical shift but also a change in the justice system as a whole so that judges and prosecutors reflect on the "whole person" in their practice as well. Finally, there may be ethical concerns that inhibit a defense attorney's "adversarial independence" if the attorney finds that a client's legal interests conflict with the client's holistic interests.

V. SUMMARY OF THE LITERATURE REVIEWED ABOVE AND IDENTIFICATION OF WHAT IS MISSING

Three topics of research that are important to the issue of right to counsel were reviewed above: the effectiveness of different types of indigent defense counsel, counsel for juveniles, and holistic defense. Each of these was chosen deliberately because they represent different lines of research that speak to where the field should go from here.

First, upon review of the literature that compares types of defense counsel (i.e., public defenders, private counsel, appointed and contract/panel attorneys), it is clear that much time has been spent and many studies have been done on this topic. Though it is a wide and vast literature, it has demonstrated mixed results in determining the effectiveness of indigent public defenders in comparison to private attorneys. For example, several studies find that private attorneys are able to obtain better sentencing outcomes for their clients when compared to indigent defense counsel.⁶⁸ Conversely, research also notes that public defender systems possess unique characteristics that may allow for more favorable outcomes in criminal defense cases.⁶⁹ However, additional studies

njustice/Institutional-Role.pdf.

⁶⁸ Gitelman, M. (1971). The relative performance of appointed and retained counsel in Arkansas felony cases: An empirical study. *Arkansas Law Review*, 24, 442–452; Nagel, S. (1973). Effects of alternative types of counsel on criminal procedure treatment. *Indiana Law Journal*, 48(3), 404–426; Hoffman, M., Rubin, P., & Shepherd, J. (2005). An empirical study of public defenders effectiveness: Self-selection by the "marginally indigent." *Ohio State Journal of Criminal Law*, 3, 223–255.

⁶⁹ Stover, R. V., & Eckart, D. R. (1975). A systematic comparison of public defenders and private attorneys. *American Journal of Criminal Law*, 3, 265–300; Sterling, J. S. (1983). Retained counsel versus the public defender: The impact of type of counsel on charge bargaining. In W. F. MacDonald (ed.), *The Defense Counsel* (pp. 151–167). Beverly Hills, CA: Sage; Harlow, C. W. (2000). *Defense counsel in criminal cases: Bureau of Justice Statistics*

find no difference between these groups of indigent counsel.⁷⁰

While the research surrounding which type of counsel can produce the best types of outcomes for clients is interesting and informative, it may be a line of research that has run its course. The landscape of indigent defense services across the county will continue to be a mix of different systems that include private attorneys, public defenders, contract attorneys, and assigned counsel. Localities have to make hard choices on which types of systems will work within their local context. For this reason these types of systems will exist for the foreseeable future. Keeping that in mind, research attention should shift focus to assessing the challenges of running these different types of systems and finding evidence-based solutions to addressing those challenges. For example, how does a jurisdiction track and collect data on important case characteristics (i.e., demographics, criminal history, pretrial release, case outcomes, etc.) in an assigned counsel system? Are those data available for study? These are the types of questions that may make research more relevant to indigent defense practitioners.

Second, we turn to juvenile waiver. One finding jumps out with great clarity: presence of a defense attorney may be an aggravating factor in the juvenile court. Even in the studies in which offense seriousness and prior criminal history are controlled for, juveniles appearing with counsel are more likely to receive a harsher sentence. This finding is fairly robust in the literature. However, what should be done regarding these troubling findings? In the case of counsel penalties for juveniles, research should move beyond the universality of this finding and begin to explore solutions. What should be done to begin to reduce the disparity that juveniles with representation face in the juvenile justice system? Research should also examine the long-term consequences of juvenile waiver of counsel. For example, how does waiver of the right to counsel affect a juvenile's experiences in out-of-home placement, recidivism, and

special report. Office of Justice Programs; U.S. Department of Justice, NCJ 179023; Hartley, R., Miller, H., & Spohn, C. (2010). Do you get what you pay for? Type of counsel and its effect on criminal court outcomes. *Journal of Criminal Justice*, 38, 1063–1070; Cohen, T. H. (2014). Who is better at defending criminals? Does type of defense attorney matter in terms of producing favorable case outcomes. *Criminal Justice Policy Review*, 25(1), 29–58.

⁷⁰ Herman, R., Single, E., & Boston, J. (1977). *Counsel for the poor*. Boston, MA: Lexington Books; Radtke, P., Semple, P., & Cohen, L. (1982). *Alternative models for defending the indigent in Virginia*. Washington, DC: American Institutes for Research; Clark, S., & Koch, G. (1980). Juvenile court: Therapy or crime control, and do lawyers make a difference? *Law & Society Review*, 14, 263–308.

the likelihood of later engaging in criminal behavior as an adult and in what way, if any, does this experience vary for juveniles across different ethnicities, genders, ages, and jurisdictions?

Third, we examined holistic defense. Compared to type of counsel effectiveness and juvenile counsel penalties, the research on holistic defense is sparse. The NIJ has two studies currently underway that may address this lack of research. However, regardless of the current state of empirical research, it is important to view this movement as an example of how it is possible to be innovative in the practice of public defense and the importance of capturing data to document and monitor the impact of those innovations. If offices such as the Bronx Defenders did not understand the value of collecting quality data, the opportunity to study the office's approach and impact on the lives of its clients would have been missed.

If we look back at the NIJ's goals for social science research on indigent defense, they are to "[i]ncrease the amount of rigorous research in the field of indigent defense services, policies and practices;" "[e]nhance our understanding of the issues surrounding the availability of indigent defense services;" and "[d]evelop [practical and] useful tools that improve the quality of indigent defense."⁷¹ To achieve these goals, researchers need to move away from studies that are not producing knowledge that is useful for practicing public defenders who are doing their work on the ground in difficult circumstances. Instead let us address the issues that affect public defenders' ability to do their jobs effectively.

⁷¹ National Institute of Justice. (n.d.). *Indigent defense research*. Retrieved from <http://nij.gov/topics/courts/indigent-defense/Pages/research.aspx>.