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# IF ONLY I HAD KNOWN: THE CHALLENGES OF REPRESENTATION

Jenny E. Carroll\*

## INTRODUCTION

I began my career as a public defender in the fall of 1998. I was twenty-seven years old and one year out of law school. I had spent the intervening year as a law clerk to a federal district court judge in my home state of Texas. To become a public defender, I did not stay home, however. I moved to what I perceived at the time to be the center of public defense work—Washington, D.C.—to become an E. Barrett Prettyman Fellow at Georgetown University Law Center.<sup>1</sup> In Washington, D.C., far from my rural home in the Rio Grande Valley of Texas, I brought my ideals of criminal systems.<sup>2</sup> As I began my career, I imagined that my commitment and the commitment of those like me to adversarial representation could render these systems just. Instead, in the courtrooms of the Superior Court of the District of Columbia

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\* Wiggins, Childs, Quinn & Pantazis Professor of Law, University of Alabama School of Law. This Essay was prepared for the Symposium entitled *Mental Health and the Legal Profession*, hosted by the *Fordham Law Review*; the Neuroscience and Law Center; the Center on Race, Law and Justice; and the Stein Center for Law and Ethics on November 6, 2020, at Fordham University School of Law. Thanks to Adam Steinman, Deborah Denno, Bruce Green, Susan Bandes, L. Song Richardson, Ronald Krotoszynski, Lisa Daugaard, and Anna Roberts. Finally, thank you for the fine editorial work done by editors of the *Fordham Law Review*, including Daniel Meagher, Tatiana Hyman, and Saniya Suri.

1. See *E. Barrett Prettyman Fellowship and Stuart Stiller Post-graduate Fellowship Program*, GEO. L. CTR., <https://www.law.georgetown.edu/experiential-learning/clinics/graduate-teaching-fellowships/> [<https://perma.cc/A26Z-LMFE>] (last visited Apr. 14, 2021) (describing the E. Barrett Prettyman Post-Graduate Fellowship Program).

2. I use the plural “systems” in this Essay to describe the myriad of different actors and agencies that influence and effectuate criminal law and procedure in the United States. With this, I resist the temptation to treat “criminal law” as a single system. I do not believe it is one. As Professor Sara Mayeux and others have noted, the thing that frequently gets called a criminal system “encompasses tens of thousands of functionally related, though formally distinct, entities of an almost impossibly wide-ranging set of sizes, scales, aims, and types.” Sara Mayeux, *The Idea of “The Criminal Justice System,”* 45 AM. J. CRIM. L. 55, 57 (2018). Likewise, I have chosen to join other scholars who use the term “criminal systems” as opposed to other frequently used descriptors (e.g., criminal justice system, criminal punishment system, criminal legal system). I believe this phrase accurately encapsulates the different subdivisions within the various systems of criminal law, procedure, policing, and punishment. See *THE NEW CRIMINAL JUSTICE THINKING* 4 (Sharon Dolovich & Alexandra Natapoff eds., 2017) (adopting the term “criminal system” to describe alternate, cooperating, and competing stakeholders in criminal law).

and later in King County, Washington, I bore witness to the complexities of representative systems.

Even before going to law school, I believed that whatever failings criminal systems might suffer, they could be corrected, or at least ameliorated, if two capable advocates represented those on either side of the “v”—the prosecutor for the state and the defense attorney for the accused. I believed this, knowing firsthand the disproportionate rates at which such systems policed, criminalized, and incarcerated marginalized people—the Black, Brown, poor, and LGBTQIA+ folks in my community. I believed this while aware of what appeared to be, even to my pre-law school self, an intentional disregard of the lived realities of complaining witnesses, defendants, and affected communities. I believed in the possibility of change, even as I knew the uncles who never came home and were instead visited on “family day” at Ellis, Hilltop, or Huntsville correctional facilities;<sup>3</sup> the aunties who chose between making rent or keeping a loved one close and reporting crime; the children who lost parents or grandparents as often to shootings as to sentences. I believed this as I experienced the great void left when the “dangerous” or the “criminal” were taken away by sheriffs or police officers. I believed it even as I knew, long before I ever set foot in a law school classroom, much less a courtroom, that criminal systems were broken. I believed this even as I saw the results of these broken systems each day.

Despite all I had known, I still believed that these systems that produced such skewed and awful results could be righted by zealous advocates. I believed that my voice, or my skill as an advocate, would allow the stories of the lives I had known—lives affected by criminal systems and stories I carried with me in my pockets from law school to clerkship, to fellowship to public defenders’ office like so much South Texas grit—to pour out onto the pages of briefs or into the ears of equally eager prosecutors, judges, and jurors. I believed that by hearing these stories, these strangers—who might carry their own stories—would be transformed, and systems could be made right by the power of my words. I did not know then what I know now—the cost and loss of representation.

At twenty-three, my belief in the power of zealous advocacy to level the field drove me to become a first-generation law student, as my dubious family questioned the ethics of lawyers and the ability of one person to make a difference. This belief drove me even as the walls of different criminal systems loomed above me and the people I would represent in literal and figurative ways. This belief formed the basis of the hours I spent defending my decision to become a public defender to family members, mentors, classmates, and strangers who imagined that there must be a “better” use for my education and skills. And this belief fueled righteous and affirming conversations with others who believed that public defense was truly, if not the highest calling, certainly a positive way to spend my time as a lawyer.

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3. Each of these are correctional facilities for men in Texas. See *Unit Directory*, TEX. DEP’T OF CRIM. JUST., [https://www.tdcj.texas.gov/unit\\_directory/index.html](https://www.tdcj.texas.gov/unit_directory/index.html) [<https://perma.cc/M22V-SJ8J>] (last visited Apr. 14, 2021).

This belief in the powers of advocacy and representation was a mantra I repeated until it became near holy in my canon of beliefs—systems are redeemable and systems can work if someone like me works hard enough against my opposite (the prosecutor) to represent my client.

This belief was not original. I borrowed it from progressives and other idealists who came before me.<sup>4</sup> I borrowed it from law professors who taught that the law was neutral and that advocacy was the very undergirding of the rule of law. I believed in the power of representation like it was a religion or an ideal that might keep me safe in the foreign ground of my future practice. This construction—this ideal of the power of representation—creates a good story, after all. I believed that story even in the face of all I had known before I went to law school because I believed that as a first-generation law student, I had missed something, or something had been missing, in the cases I knew that tipped law out of its neutral balance.

At twenty-seven years old, the world of representation I entered as a newly minted public defender was one of discordant and balanced loyalties—between systems of which I was a part and the clients to whom I owed my advocacy. At twenty-seven, I was often ill-equipped to hear, much less understand or retell, the stories of my clients. Even if I had possessed those skills, there were narrow spaces for such narratives in legal proceedings, which were more likely to end with the entry of a plea and a brief sentencing hearing than a trial. In time, I watched those who began as public defenders with me leave their posts to join the ranks of the academy (where I eventually followed) or law firms, or they disappeared from my life altogether. In the offices I worked in, we talked about burning out. We talked about failures and trials won while the battles were lost. We talked—even today my former colleagues and I talk—of clients whose stories haunt us or from whom we

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4. See, e.g., Oral Argument at 13:46–15:20, *Gideon v. Wainwright*, 370 U.S. 932 (1963) (No. 155), <https://www.oyez.org/cases/1962/155> [<https://perma.cc/H4X4-DWPJ>]. Before his appointment to the U.S. Supreme Court, Justice Abraham “Abe” Fortas, who had been appointed to represent Clarence Gideon, argued:

I believe that this case dramatically illustrates the point that you cannot have a fair trial without counsel. Indeed, I believe . . . a criminal court is not properly constituted . . . under our adversary system of law, unless there is a judge, and unless there is a counsel for the prosecution, and unless there is a counsel for the defense. Without that, how can a civilized nation pretend that it is having a fair trial under our adversary system, which means that counsel for the State will do his best within the limits of fairness and honor and decency to present the case for the State and counsel for the defense will do his best similarly to present the best case possible for the defendant, and from that clash there will emerge the truth. That is our concept. And how can we say? How can it be suggested that a court is properly constituted, that a trial is fair, unless those conditions exist. . . .

. . . .  
You cannot have a fair trial unless the defendant has counsel.

*Id.* Professor Paul Butler notes, however, the progressive view of representation as a panacea shifted our collective gaze away from “the kind of conduct that gets defined as crime, the racialized exercise of police discretion, or why punishment is the state’s central intervention for African-American men.” See Paul D. Butler, *Poor People Lose: Gideon and the Critique of Rights*, 122 YALE L.J. 2176, 2195 (2013).

still hear because we cannot let them go, just as they cannot release us. We talk about the challenges of the duty we accepted to represent.

This Essay explores the challenges of that representation and the false dichotomies it creates—dichotomies that carry tremendous burdens for stakeholders—from my perspective as a public defender. It is the only perspective I know, and so it is an incomplete story. I cannot tell the whole story of representation no matter how generous the word count or deadline. I do not know it. Nor can I tell my complete story of what it was to be a representative. But this is a start. My story is written in the first person and tries at once both to be personal and to contemplate representation beyond my anecdotal experiences. It proceeds in three parts. Part I considers the challenges of representation as a premise and in reality. Part II examines the mental health implications of such representation for the attorneys who undertake it. Finally, Part III turns, ever hopeful, to the possibility of what the lawyer's role as an advocate and a participant in the criminal courts might be if it sought to take into account what it means to represent.

In the end, whether you read these pages as my singular experience or as a more broadly shared perspective or do not make it to the end at all, they hold what I know now of representation: a truth of sorts won from years in the litigation trenches and years of reflection as an advisor and academic. I do not mean to suggest in writing this Essay that my personal failings in representation are universal (they may or may not be) or that whatever I felt was greater or should supersede my clients' experiences as the represented. Indeed, quite the contrary; what I say here I say because of what I learned from those with whom I worked. That they may draw a different lesson or tell a different story does not and cannot change that, and I do not mean to appropriate or obscure their realities in this Essay. I do mean to tell what I saw as I saw it.

Finally, I want to acknowledge that while the work of representation can carry disappointment and disillusionment, it also carries wonder, opportunity, and fellowship. My fellow public defenders buoyed me. My clients and their families embraced me countless times when they did not have to, when they, not I, bore the brunt of criminal law's power or my failures. Together we, clients and lawyers, were a team; one that often lost in the face of long odds but still a team. Even now, I tell students I would not trade a minute of my time as a public defender. It was hard work. It was brutal work. But it was also wonderful work. What I write here is not just the memories and life lessons of what I know now but a memoir of active imaging of what could be and what should be. It is a love song of sorts, an epic poem of hope and loss and resiliency born in the most unlikely of places—the criminal courts of our nation. In remembering what my twenty-seven-year-old self believed as she stood for the first time and announced to an only half listening court—"I am Jenny Carroll and it is my privilege to represent . . ."—I also remember all the promise of what might have been and all the resilience of the countless men, women, and children whose names filled that ellipsis and fueled me to stand again, even as court and client sometimes rolled their collective eyes, to represent.

## I. REPRESENTATION AND CRIMINAL LAW

For better or worse, nearly at its inception, the nation adopted criminal court systems that were adversarial.<sup>5</sup> Such systems, whether at a state or federal level, imagined two adversaries (prosecution and defense) stumbling through evidence and argument toward some truth in front of a neutral fact-finder who would, upon recognizing that truth, mete out justice in the form of a verdict. To be sure, it is an ideal—inspirational, aspirational, and imperfect from its inception. Like most ten-thousand-foot views, it obscures the complexity of the reality on the ground.

Unlike their contemporary European counterparts, Revolutionary-era colonial trials utilized professional prosecutors who represented the state against the accused.<sup>6</sup> In time, as the concept of the right to representation by counsel evolved, these professional prosecutors were matched by defense counsel who might advocate on behalf of defendants or at least hold prosecutors to their proof obligations.<sup>7</sup> In this evolution, the narratives around criminal legal systems shifted as well. The power of representation became the necessary means to preserve other procedural protections.<sup>8</sup> The story of adversarial systems came to simultaneously embody the preservation of the world as it existed and resistance to that world. The prosecutor sought to preserve this world by representing the citizens en masse against the alleged law violator. Defense counsel, and by extension the defendant, sought to resist, pushing back against the abusive power of the state to falsely accuse and imprison.

These romanticized descriptions make for good storytelling. So, we tell them over and over again.<sup>9</sup> And in each of these stories, lawyers, first as prosecutors and later as defense attorneys, are heroes—preserving and resisting and, in the process, holding a world in balance. To imagine other stories—to describe the professional prosecutor as a bully, incompetent, or biased or to describe the defense attorney as inadequate, evil, or as a mere salve designed to assuage collective guilt or maintain faith in a system—is to shatter the myth.

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5. See ROBERT A. KAGAN, *ADVERSARIAL LEGALISM: THE AMERICAN WAY OF LAW* 61–96 (2001).

6. See JAMES J. TOMKOVICZ, *THE RIGHT TO ASSISTANCE OF COUNSEL* 9 (James Stark ed., 2002) (noting that “by the time of the American Revolution all of the colonies employed professionally trained and state-funded lawyers to pursue criminal charges”).

7. While the Sixth Amendment to the Constitution guarantees the right to counsel, the right to appointed counsel for indigent defendants was, in many states and at the federal level, the product of reform. See Pamela R. Metzger, *Beyond the Bright Line: A Contemporary Right-to-Counsel Doctrine*, 97 NW. U. L. REV. 1635, 1640–41 (2003) (describing the gradual expansion of the right to counsel in state and federal systems).

8. See, e.g., *Rothgery v. Gillespie County*, 554 U.S. 191 (2008) (extolling the necessity and virtue of defense counsel); *Strickland v. Washington*, 466 U.S. 668 (1984); *Gideon v. Wainwright*, 372 U.S. 335 (1963); *Powell v. Alabama*, 287 U.S. 45 (1932).

9. See, e.g., Herbert L. Packer, *Two Models of the Criminal Process*, 113 U. PA. L. REV. 1, 16, 21 (1964) (describing the coercive power of the state and noting that checking that power in the criminal court systems depends on “the availability of counsel” for the accused); Abbe Smith, *Too Much Heart and Not Enough Heat: The Short Life and Fractured Ego of the Empathetic, Heroic Public Defender*, 37 U.C. DAVIS L. REV. 1203, 1208–11 (2004).

Such descriptions rely on counsel generally, and defense counsel in particular, to absolve a multitude of sins within criminal legal systems.<sup>10</sup> Yet, the power of defense counsel to accomplish this feat is dubious, so faith in them to right the balance of adversarial systems feels misplaced as well. Even the most zealous advocates carry with them stories of injustice and wrongful conviction. How can they not when the appointment of effective defense counsel is as much about making the public believe that it could be just as it is about actually providing some protection for the accused and some resistance to the state?<sup>11</sup> Representation emerges not as a balancing force for systems that might suffer bias and injustice but as a fraught and broken proposition. This part explores the national historical allegiance to representation as a panacea for a tilted adversarial system and challenges to that allegiance and finally turns to the perils of representation itself.

### A. *Lawyers and an Adversarial System*

Colonial and early trials in the United States were, for the most part, mundane and undocumented events. While the founders spent time extolling the virtues of criminal legal systems that included basic procedural guarantees,<sup>12</sup> precious little ink was wasted on day-to-day trials. This is not surprising. First, criminal accusations and their accompanying trials were less frequent in colonial and early America than they are now.<sup>13</sup> Second, courts lacked the ready means to record such proceedings.<sup>14</sup> Third, even with the benefit of our modern robust criminal legal systems (federal courts alone in 2019 boasted 376,762 criminal filings<sup>15</sup>), few criminal cases either actually go to trial or are documented outside of court records.<sup>16</sup>

To the extent that criminal proceedings garnered coverage outside of an appellate record in the early United States, they did so, as they do now,

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10. See Butler, *supra* note 4, at 2196–98 (describing representation as a means to create an outward appearance of just criminal systems, rather than actually just systems); Jenny E. Carroll, *The Resistance Defense*, 64 ALA. L. REV. 589, 595, 636–37 (2013) (same).

11. See sources cited *supra* note 10.

12. See generally LEONARD W. LEVY, *ORIGINS OF THE BILL OF RIGHTS* 180–84 (1999).

13. See *infra* note 15.

14. See, e.g., Erwin C. Surrency, *The Courts in the American Colonies*, 11 AM. J. LEGAL HIST. 347, 349–50 (1967) (describing the vast range of judicial and administrative duties with which colonial justices were charged, including the supervision of laying out roads through the country).

15. See *Federal Judicial Caseload Statistics 2019*, U.S. CTS., <https://www.uscourts.gov/statistics-reports/federal-judicial-caseload-statistics-2019> [https://perma.cc/NT6T-N93Y] (last visited Apr. 14, 2021). Consider that the 1791 census of the newly created United States put the total population at 3,929,214. See *1790 Fast Facts*, U.S. CENSUS BUREAU (Dec. 17, 2020), [https://www.census.gov/history/www/through\\_the\\_decades/fast\\_facts/1790\\_fast\\_facts.html](https://www.census.gov/history/www/through_the_decades/fast_facts/1790_fast_facts.html) [https://perma.cc/N2MY-7V8M]. A corresponding filing rate in 1791 would have resulted in charging just under 10 percent of the total U.S. population.

16. See John Gramlich, *Only 2% of Federal Criminal Defendants Go to Trial, and Most Who Do Are Found Guilty*, PEW RSCH. CTR. (June 11, 2019), <https://www.pewresearch.org/fact-tank/2019/06/11/only-2-of-federal-criminal-defendants-go-to-trial-and-most-who-do-are-found-guilty/> [https://perma.cc/YP9V-CM8K]. When was the last time you read a riveting description of the entry of a guilty plea or even of a routine bench or jury trial?

because they were spectacular or symbolic in some way. Again, this is hardly revelatory or even worth noting, except that the characterization often assigned to these trials when they did receive coverage was that these trials represented more than a battle over the culpability of a particular defendant or the redemption of a victim's interests; rather they represented a struggle between the state and the citizen.<sup>17</sup> The descriptions were often simultaneously embellished and oversimplified, but they struck a chord that trials were adversarial creatures, no matter their precise stake.

In more modern times, this descriptive motif—that court systems produced justice through an adversarial process—was linked to advocacy more directly. That is, the Sixth Amendment right to counsel served as the pivot point around which defendant's rights were protected and the community's stake in the process redeemed. The right to counsel, first characterized in the most literal terms—the right of defendants Ozie Powell and Clarence Gideon to have a lawyer who could negotiate a complex and obscure system on their behalf—later evolved.<sup>18</sup> The right to counsel was a right to more than a mere body at the defendant's side. The right to counsel was a right to an effective advocate.<sup>19</sup> And an effective advocate preserved not only the defendant's rights but the community's interest in the process itself. An effective lawyer guarded not only procedural norms prohibiting unreasonable searches or forced self-incrimination but also faith in the system not to wrongfully convict the innocent or abuse the guilty.

I have always loved these descriptions. As a young lawyer, often bruised and battered by a system seemingly bent on convicting my clients, I listened to (later) Justice Abraham “Abe” Fortas's argument in *Gideon v. Wainwright*.<sup>20</sup> I came to believe what now appears to me naïve and quaint, even as it may be in part true: that good lawyers strike blows against injustice as they push back on a powerful state embodied by police, prosecutors, and even judges. This was a fairy tale of advocacy and adversity. The truth was far more complicated.

### B. *The Challenges to Representative Adversity*

A system grounded in advocacy by necessity places burdens on the representative. Justice Fortas's description of the criminal defense lawyer as standing between the client and a cruel system<sup>21</sup> is simultaneously awe-inspiring and dauntingly problematic. It is not surprising that such a description would inspire a legion of defense attorneys to seize the mantle of

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17. The colonial-era libel trial of John Peter Zenger is an excellent example of such a characterization. See Jenny E. Carroll, *The Jury's Second Coming*, 100 GEO. L. J. 657, 668–75 (2012) (describing the narrative of Zenger's trial).

18. See Metzger, *supra* note 7, at 1641.

19. See generally *Strickland v. Washington*, 466 U.S. 668 (1984).

20. 372 U.S. 335 (1963); see *supra* note 4 and accompanying text.

21. See *supra* note 4.



a representative.<sup>22</sup> It is also not surprising that this description would lead to critiques of systems that ultimately failed both those it sought to represent and the attorneys doing the representing; not all of them and not always but painfully often.

One such critique is that the procedural safeguard of representation quiets community discomfort with criminal systems.<sup>23</sup> In this critique, a lawyer does not stand between the client and the overwhelming power of the criminal process. Instead, the lawyer stands between the public and that process to obscure the realities of a system that fall disproportionately on marginalized populations. The lawyer is a salve for a collective conscience that may (or may not) wonder if the system is fair after all. To paraphrase the U.S. Supreme Court in *Strickland v. Washington*,<sup>24</sup> effective counsel is not just the accused's representative, she is the body in the room that makes the rest of us feel as if the outcome was just and correct.<sup>25</sup>

This myth of the defense attorney as a shield in unjust systems creates impossible expectations of the lawyer. The attorney must use skill and advocacy to ensure that innocent clients are acquitted and the same skill and advocacy (though likely exercised in a different fashion) to ensure that the rights of the guilty are protected. This is a near impossible balance to strike. In my time as defense counsel, I witnessed colleagues, good lawyers and people, struggle under the weight of these expectations. But I saw just as often the same good lawyers and people struggle as they tried to provide rigorous representation to clients who fit neither the category of guilt or of innocence. Guilty and innocent clients are alike in that they are rarely *only* guilty or innocent.

In each of these cases, the burden of representation is not just the lawyer's shortcomings but the peril of representation itself. Not only is representation premised on false dichotomies of guilt and innocence and not only does it serve as both a means of assuaging collective guilt over an unjust system and as a means of actually arriving at some truth, but the ultimate balance representation asks an attorney to engage in is to tell a story not her own in the hopes of urging legal systems to recognize the human dignity of the represented, even as those systems seek to dehumanize that person with their punitive aims.

What do I mean by this? To explain, I want to tell the story of two clients. The first was a man I met early in my career in Washington, D.C., whom I represented on multiple charges. He suffered from substance addiction and the accompanying collateral fallout of this disease. His children had sporadic contact with him. His mother, with whom he had been staying, no longer welcomed him into her home as an overnight guest after he stole from her to

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22. Professor Jonathon Rapping even named his public defender training program "Gideon's Promise" and echoes Fortas's description. See GIDEON'S PROMISE, <https://www.gideonspromise.org> [<https://perma.cc/SFG2-X2RU>] (last visited Apr. 14, 2021).

23. See Butler, *supra* note 4, at 2194–95; Carroll, *supra* note 10, at 622.

24. 466 U.S. 668 (1984).

25. See *id.* at 684 (describing the prejudice standard in terms of a lack of confidence in the outcome of the proceeding).

fund his drug habit. He suffered housing and food insecurity. He presented with various undiagnosed and untreated mental health conditions. He heard voices and spoke to the dead sometimes. Sometimes, he was paranoid and would conjure conspiracy theories for hours; other times, he was lucid and calm. My first representation of him was on charges of drug possession and resisting arrest.

In the course of my representation, I got to “know” this client during the endless hours awaiting court appearances in ways I did not have time to know later clients, as my own caseload grew and I came to “know” the efficiencies and inefficiencies of the court system in which I practiced. My client told me of his frustration with police officers who circled his neighborhood and called out his name when they saw him. He described the lack of social services in his community and the ease with which Black men and boys were “removed” from the streets on drug, assault, theft, possession of stolen property, and resisting charges. His criminal history, which was at the same time lengthy and minor, reflected a string of pleas to misdemeanor charges. His life was measured in time served on short-term sentences. He told me the story of how he dropped out of high school because what “good” would a diploma do a man like him. He talked about gaining and losing homes, loved ones, and a lifetime every time he cycled from manageable to all-consuming addiction. In his stories, this client became more than a man who was stopped and searched, who ran, who tore his arm away from an officer when caught, and who ended up on the ground with a gash on his forehead and handcuffs on his wrist. He was a man who knew good times and hard times.

For my part, with all the zeal of a novice, I litigated the legitimacy of his stop and search in an epic (for me at least) three-week pretrial suppression hearing. We won. The drugs were suppressed. We then went to trial and contested the factual accuracy of the officer’s description of my client’s resisting. In Washington, D.C., a suspect is not legally permitted to resist a legitimate arrest.<sup>26</sup> Even though we had won the suppression hearing, the court allowed the resisting charge to go forward because the arrest itself, in a twist only designed to preserve the system intact, was legitimate. Cross-examination unraveled the officer’s story. At the end of the bench trial, the judge declared that he had doubts about whether my client had initiated the attack on the officer or had merely defended himself against violence as the law allowed him to do. My client was elated. He told me he had doubted my abilities at the start because I had nothing in common with him, but in the end, I had represented him well.

But I had not. I had won his case. It was my first real victory as a lawyer. Even more than twenty years later, I remember his name and how it felt. I thought I was a good lawyer. I thought I had done a great job. But I had not represented him well because there was no space in that criminal court system to tell his story. There was no space in that system for what poured

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26. D.C. CODE § 22-405.01 (2021).

out of him throughout our hours together in C-10 or in the other courtrooms of the D.C. Superior Court. That criminal court system (or any other for that matter) had no interest in his hard times and I, as his representative, had no place (or maybe the right word is *business*) to tell his story.

Yet, he was happy. He felt like he had a good representative. He went free. That is, until the next time or the time after that when I would continue to represent him. Even today, I occasionally still hear from him. I carry him with me because I cannot put him down because I could not *represent* him. Instead, I served my role and guided him through Washington, D.C.'s criminal court system toward an outcome he wanted but one that left him in the same place he had begun.

What if I had not? Fast forward twenty years to March 2020. I was no longer a public defender or even a lawyer, having taken inactive status on all my bar memberships. I was a professor, appearing in court only as a consultant or witness. As I watched COVID-19 begin its sweep across the nation, my thoughts turned to the men, women, and children in jails and prisons across the nation. And I did what any good academic does—I wrote an article<sup>27</sup> and a letter to the Alabama governor's office outlining both the devastation of COVID-19 in jails and prisons and the path toward release, pretrial or post-conviction. This letter had the unintended, though unsurprising, consequence of introducing me to a man in prison in Alabama. Like my client twenty years ago in Washington, D.C., this man suffered from addiction. Their stories, however, diverge.

As a result of his addiction, the man in Alabama is serving a twenty-year sentence for possession of methamphetamine with intent to distribute.<sup>28</sup> In prison, he suffers the usual medical complications of someone ravaged by the disease of addiction. His jaw was painfully infected as a result of poor dental health and the effect of methamphetamine use. His blood pressure spikes and falls depending on his caloric intake. He is often disoriented.

He reached out to me looking for some relief from overcrowded conditions in his facility and what he feared were rising COVID-19 infection rates (though testing information was not available to confirm or deny this fear). As I struggled over a six-month period, first to find him a lawyer and then to serve as a research assistant to that lawyer, new realities emerged. Like my Washington, D.C., client, there were no spaces in a post-conviction world for this man's story, nor was there any available remedy. Whatever representation I, or more accurately the lawyer I found who volunteered to work on his case, could provide was feckless at best and harmful at worst, as it raised his hopes that the systems might afford some remedy to him.

The looming prospect of the contagion created an urgency to the representation but also highlighted its limitations. Defense attorney friends and colleagues regaled me with stories of closed jails (no attorney visits, no family visits) and closed courthouses (no hearings, no speedy trial

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27. Jenny E. Carroll, *Pretrial Detention in the Time of COVID-19*, 115 NW. U. L. REV. ONLINE 59 (2020).

28. See ALA. CODE § 13A-12-211(c)(6) (2021).

protections, no bail reconsideration) over Zoom cocktail hours and over endless Zoom meetings to brainstorm advocacy in the face of COVID-19. Representation during this time is handicapped not only by the usual systemic impediments but also by the unusual ones, most notably the lack of access to client and court alike.<sup>29</sup> For the defendant who lingers in jail or prison, the suffering is real and physical. For the community that defendant leaves behind, the suffering is also real and marked by absence. But for the advocates, those who heeded the call of Justice Fortas, there is a less concrete though equally damaging realization that representation is hollow in the face of systems that cannot keep inmates safe and cannot imagine another story premised on release.

### *C. Telling Someone Else's Story*

In the face of all of this, I cannot help but wonder: if I had known in 1998 when I became a public defender what I know now, would I have turned my back on the profession? If I had read the Essay I am writing now, would it all have seemed too hopeless or too much? I like to think not. At the risk of engaging in my own romanticization of my career, writing myself as a hero in my own story, I found in my clients and colleagues a space I could not find elsewhere in my life. Even as I struggled under the burdens of representation, I found a power to knowing a story not my own. Even if that story was one that the law may decline to embrace or to consider relevant. There is a power to locating other forums and spaces in which to spill the stories that bubble up from representation. There is a power in grounding narrative in a shared humanity. And there is a power that pushes back and resists against inflexible systems that would exact a price of silence and complicity from the lawyer it employs as advocate.

There lies the solace and the hope I found in public defense. In my community of clients, fellow defenders, and their allies, I found and continue to find rooms where people speak their truths, suffer their losses, and rise again. There lies the reason why, even after I ceased my time in the courtroom, I never left the work of advocacy. Why I declare that I am, not that I was, a public defender. This is the other side of the toll of representation.

## II. THE TRAUMA OF REPRESENTATION

Even in acknowledging this “other side” of the toll of representation, one must also give space to the trauma of representation. It is a trauma that rises from the divided loyalties it engenders and the constant exposure to the traumatic experiences of those represented. This part explores that trauma and considers its implications for the mental health of the attorney. To be clear, I do not mean to suggest that such trauma exceeds or is comparable to the trauma of the client or the client's community. Such traumas are decidedly different, however a discussion of representation that fails to

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29. See *infra* notes 44–45 and accompanying text.

consider the trauma of the representative both minimizes these experiences and ignores its impact on the lawyer's effectiveness.

### A. The Secondary Trauma of Representation

Others have explored the phenomenon of secondary or vicarious trauma on those engaged in criminal defense work.<sup>30</sup> Such trauma refers to the effect of vicarious and repeated exposure to highly emotional experiences.<sup>31</sup> Perhaps unsurprisingly, studies focused on criminal defense attorneys reveal a high rate of secondary trauma.<sup>32</sup> One such study notes that in the course of their practices, defense attorneys are constantly exposed to traumatic events, including descriptions, visual depictions, and reenactments of such events.<sup>33</sup> Coupled with high caseloads; often unsympathetic police, prosecutors, and courts; and a lack of funding for defense work, it comes as no surprise that defense attorneys show higher rates of secondary traumatic stress symptoms than other trauma workers.<sup>34</sup> The good work of representing the criminally accused is not just hard work, it is traumatic work.

Those who study secondary trauma chronicle its effects on lawyers. Defense attorneys may experience post-traumatic stress disorder symptoms, such as emotional numbing and physiological hyperarousal.<sup>35</sup> Attorneys may attempt to distance themselves from traumatic events.<sup>36</sup> Such distancing

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30. See, e.g., Sabrineh Ardalan, *Constructive or Counterproductive?: Benefits and Challenges of Integrating Mental Health Professionals into Asylum Representation*, 30 GEO. IMMIGR. L.J. 1 (2015); Andrew P. Levin et al., *Secondary Traumatic Stress in Attorneys and Their Administrative Support Staff Working with Trauma-Exposed Clients*, 199 J. NERVOUS & MENTAL DISEASE 946 (2011); Andrew P. Levin & Scott Greisberg, *Vicarious Trauma in Attorneys*, 24 PACE L. REV. 245 (2003); Ronald Tyler, *The First Thing We Do, Let's Heal All the Law Students: Incorporating Self-Care into a Criminal Defense Clinic*, 21 BERKELEY J. CRIM. L. 1 (2016). Such exploration is not limited to the phenomenon in defense attorneys or even those who work in the legal arena. See, e.g., JEAN KOH PETERS, REPRESENTING CHILDREN IN CHILD PROTECTIVE PROCEEDINGS: ETHICAL AND PRACTICAL DIMENSIONS 447–87 (3d ed. 2007); Jennifer Brobst, *The Impact of Secondary Traumatic Stress Among Family Attorneys Working with Trauma-Exposed Clients: Implications for Practice and Professional Responsibility*, 10 J. HEALTH & BIOMEDICAL L. 1 (2014); Charles R. Figley, *Compassion Fatigue as Secondary Traumatic Stress Disorder: An Overview*, in COMPASSION FATIGUE: COPING WITH SECONDARY TRAUMATIC STRESS DISORDER IN THOSE WHO TREAT THE TRAUMATIZED 18 (Charles R. Figley ed., 1995); Ann E. Freedman, *Fact-Finding in Civil Domestic Violence Cases: Secondary Traumatic Stress and the Need for Compassionate Witnesses*, 11 J. GENDER SOC. POL'Y & L. 567 (2003); Laura J. Schauben & Patricia A. Frazier, *Vicarious Trauma: The Effects on Female Counselors of Working with Sexual Violence Survivors*, 19 PSYCH. WOMEN Q. 49 (1995); Robert J. Ursano et al., *Posttraumatic Stress Disorder and Identification in Disaster Workers*, 156 AM. J. PSYCHIATRY 353 (1999); Dieter Wagner et al., *Prevalence of Symptoms of Posttraumatic Stress Disorder in German Professional Firefighters*, 155 AM. J. PSYCHIATRY 1727 (1998).

31. See generally Figley, *supra* note 30.

32. See, e.g., Levin et al., *supra* note 30, at 946.

33. See, e.g., Levin & Greisberg, *supra* note 30, at 245–46.

34. *Id.* at 250.

35. *Id.*

36. See Brobst, *supra* note 30, at 3.

may affect both attorneys' ability to connect with their clients<sup>37</sup> and the legal advice attorneys give and litigation strategies they adopt.<sup>38</sup> Attorneys may also suffer from function impairment or engage in self-destructive behavior in response to their secondary trauma.<sup>39</sup> Some will experience burnout, which is "the psychological syndrome of emotional exhaustion, depersonalization, and reduced personal accomplishment."<sup>40</sup> These studies and the work that interprets them is important not only because they identify the occurrence and result of secondary trauma related to defense work but also because they offer concrete suggestions to heal such trauma.<sup>41</sup>

These studies, however, fail to contemplate the full traumatic exposure of defense attorneys on two levels. First, they fail to touch the full extent of the trauma that defense attorneys witness. For many clients, criminal systems are one more stop in a long line of systems that marginalize and complicate their daily existence. From housing and food insecurity, to mental health issues, to intergenerational poverty, to immigration concern, and on and on, I never represented a client who did not bring with them a lifetime of trauma that would continue long after my representation ceased. Second, and not unrelated, these studies contemplate trauma drawn from attorney-client interaction and the case itself. Defense attorneys' traumatic exposure is not limited, however, to the stories clients or witnesses might tell them or the horrors that evidence might reveal. A defense attorney's traumatic exposure includes bearing witness to criminal systems' cruelty to clients and acknowledging the attorney's own complicity in such systems. In this, defense attorneys are in unique positions, as they have both a short view and a long view of the power of criminal law and the systems upon which it relies. They have a literal and figurative seat at the table as both advocates and witnesses to the impact of criminal systems and their disparities.

As a new lawyer, I did not need to read studies on racial bias in policing, prosecution, or sentencing to understand that these systems disproportionately impacted Black and Brown communities. I saw it every day in the courtrooms in which I worked and in my own caseload as a public defender. I did not need a study to tell me that criminal systems had intergenerational impacts or that they maintained economic inequities—I saw it every day. I did not need a study to tell me that the bail system was broken, plea systems were coercive, or that every rule I diligently learned in law school and beyond offered precious little of the promised protections for

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37. See Marjorie A. Silver, *September 11th: Pro Bono and Trauma*, 7 CONTEMP. ISSUES L. 64, 69–70 (2003) (describing the challenge of connecting with clients' emotional crises as a result of trauma).

38. See Brobst, *supra* note 30, at 3 (describing the impact of trauma on litigation strategy and in particular the creation of an "anti-litigation" bias); Freedman, *supra* note 30, at 576 (same).

39. See Brobst, *supra* note 30, at 28–33.

40. See Christina Maslach & Julia Goldberg, *Preventing Burnout: New Perspectives*, 7 APPLIED & PREVENTIVE PSYCH. 63, 64 (1998); see also Christina Maslach & Susan E. Jackson, *The Measurement of Experienced Burnout*, 2 J. OCCUPATIONAL BEHAV. 99, 99–100 (1981) (describing further the phenomenon of burnout).

41. See generally Tyler, *supra* note 30, at 7–33 (summarizing such remedies).

my clients. I did not need an abolition movement to tell me that criminal systems were overused to horrific effect or that no one ever got better in jail, prison, or juvenile lockup. I was there in courtrooms, in clients' neighborhoods and living rooms, and in jailhouse visits. I saw it. I saw it on my clients' faces and I saw it on their families' and communities' collective face. I saw it all. And I was part of it.

This is the duplicity of defense work that secondary trauma studies miss. To speak of the hazards and the toll of representation, before or in the time of a public health crisis, is to offer a description of systems that imagines the defense lawyer as simultaneously protecting the accused against the power of those systems, while also working within the system itself to ensure that business always proceeds as usual. This balance was never right for me. Between clients and court, I found myself torn between competing needs and obligations.

The court demanded my efficient participation. Judges demanded allegiance to the rules and rulings that defined when, how, and which stories were told in the courtroom. In the process, a forced but efficient narrative emerged. The theory of the case was built around defined elements and told between the borders of evidentiary rules defining what was relevant and by extension admissible. I was amazed to learn the first time I picked a jury on behalf of a client that the judge could not only limit the types of questions I could ask the people who would eventually sit in judgment of my client but could also limit the amount of time I had to ask those questions.<sup>42</sup> How, in the thirty allotted minutes, could I know with any certainty if the jurors I chose could be impartial? How, with limited and obscure questions, could I know if the jurors I chose could put aside implicit biases they might not even know they possessed and explicit biases they embraced in their lives when they heard the disjointed narrative of the trial through witnesses and arguments? Judge and supervisor alike told me I had to learn to trust the system. The court's docket was long, and a trial was a vortex in which time disappeared. So, I learned to hurry through jury selections, opening statements, closing arguments, and even objections, hoping in the process that I told enough of my client's story to produce the desired result. More common hearings—the endless arraignments, status conferences, plea entries, and sentencing hearings—revealed both a similar curtailment of the client's narrative and an allegiance to efficiency.

If I owed the court efficiency and obedience to the rules, to my clients I owed zealous representation even as the court set the rules by which that representation could occur. As I was repeatedly reminded by judges, the criminal courtroom was not the forum to urge the rejection of over-policing or draconian sentencing policies. Yet, it was often the only forum available. Often my clients and their communities did not run in the circles of legislative reform or progressive electoral politics. Economic marginalization and the realities of voter registration requirements and conviction-based

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42. See D.C. SUPER. CT. R. CRIM. P. 24.

disenfranchisement, coupled with a sense that reform realized through electoral processes was illusory, rendered the common retort of “vote to change the law you do not like” a hollow one for the men and women I represented. They could take to the streets (and have and do). They could boycott, march, and protest. But in the end, for many, the daily burdens of surviving precluded political action. For some, the resistance they offered was their existence.

Even as judges and rules curtailed my clients’ narratives, for my clients, criminal courts were different than other political moments. Ironically, for many of my clients, the systems which I viewed as indifferent or consciously exclusive of their narrative, offered a mechanism of empowerment that had previously been elusive. The entry into criminal court systems was an entry into a formal world that carried with it formal “protections” of counsel. Once arraigned, defendants were appointed counsel. In jail visitor rooms through glass, over the phone, or in face-to-face meetings, I met the men, women, and children I would represent and they met me.

In that initial meeting, I explained the parameters of my representation—my appointment as the public defender on this case and this case alone (i.e., I could not and would not handle divorce, child custody, or eviction disputes; I could not *make* social security finally pay out a claim or find out who kept stealing things off the front porch), attorney-client privilege, and the process to expect going forward (plea, trial, or dismissal).

These initial meetings often went poorly. Why should they not? Except for my repeat clients, these clients I met didn’t know me, but they often knew or knew of the system they had entered. Their neighborhoods were full of stories of “public pretenders”—sorry lawyers who were public defenders because they could not get another job or they worked to convict or shuffle cases through quickly without protecting the client. And who was I? I did not sound or look like them. The disadvantage of my Texas upbringing was a reliance on words like “y’all” and descriptions of what I was “fixin’ to do” that rang discordant out of my mouth to my Pacific Northwest and Washington, D.C., clients. (Although, my contrarian skepticism of police born of years lived on the Texas-Mexico border rang true). In response to their doubts, I worked to win their trust. I began to print my résumé and take it to meetings. I began explaining that I chose to be a public defender. For many clients, we made progress together, mainly because I spent time listening to them and they took time to trust me and tell me their stories, even when we both knew there might be little I could do.

In those meetings, we talked about more than their cases. We talked about lives broken by poverty, substance dependency, over-policing, racism, sexism, and LGBTQIA+ bias (even though I didn’t know the acronym at the time). They told me stories that had nothing to do with the world in which I had grown up that nonetheless resonated with themes of a government simultaneously overwhelmingly grand in its promise and cruelty. Those meetings, even when they went badly, offered many of my clients something they lacked in the outside, non-criminal-procedure-bound world—an advocate. I was their advocate. They did not have to come up with a theory



of their defense, contest the constitutionality of a search, or find a treatment facility on their own, though sometimes they did all three. That was my job. When the judge yelled at someone in the courtroom, it was usually at me, not my client. When the prosecutor behaved badly, I objected, argued, and fought. When the police or a lay witness slid sideways on the witness stand to evade a question or duck a contradiction, I straightened them up with all the skills I had been taught in cross-examination and nimble advocacy. Many clients loved the performance that was every court hearing, not because we won (to the contrary, we lost again and again) but because they had a performer in the arena. And every public defender I know tells the story of the client who invited them to Sunday dinner after the win and consoled them—the lawyer—at the bars of the lockup when they lost, for exactly the same reason. It was the standing up that mattered in the end. In our common ground and our uncommon ground, I increasingly saw myself as failing not because I could not do my job but because my job was not the job that was needed or one at which anyone could succeed. The time I spent with my clients taught me to look beyond the narrow role of representation criminal legal systems allotted me and them. The time I spent representing them taught me that the duplicity of my role created an internal conflict that was both unique to the job and often created distress.

In imagining ways to heal his criminal defense students, Professor Ronald Tyler likens criminal defense work to emergency room care. Like emergency room doctors, he notes that criminal defense attorneys must make quick decisions, triage situations, suffer losses, and deal with uncertain and often overwhelming caseloads.<sup>43</sup> On many levels the analogy works. However, it glosses over several relevant aspects of defense work. First, as noted above, defense attorneys are not just working in the emergency room, they are part of systems that adjudicate criminal matters and as such have competing loyalties.

Second, unlike emergency room doctors, defense attorneys often continue relationships with clients even after triage decisions are made. There was no specialist to whom I could pass the client off once the bleeding stopped. I volunteered hours as an appellate researcher and fell on my sword more than once, dissecting every error I made before appellate counsel and court for clients who based appeals on ineffective assistance of counsel claims. That I lacked the resources, support, or time to do my job did not render admitting my mistakes any less a part of that job.

Finally, there was an ethos of defense, described in the secondary trauma literature as depersonalization and distancing, on which I came to rely. I accepted the insomnia. I engaged in behavior designed not only to evoke a response but to highlight what often felt like the uselessness of my job. I once showed up for a trial in a full-length bridesmaid's dress when a judge sent me home because she did not feel like my sweater twin set was "nice" enough for the scheduled bench trial. I once told another judge, who

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43. See Tyler, *supra* note 30, at 16–17.

instructed me to stop objecting, that I was not doing it for her but rather for the appellate court that would attempt to correct the errors she was committing every time she overruled my objections. Judges complained to my supervisors. Prosecutors yelled at me. Clients sometimes complained. I accepted all this as a badge of honor. My colleagues and I traded war stories. We were more than tough; we were a raised middle finger to the world and the last wall against the raging injustice of the systems we were inextricably part of. We talked less about scars. When one developed a drinking and drug habit that would eventually lead to his disbarment and another quit to become a stripper and a third died by suicide, I still did not break my defense attorney code that there was no crying over the job we did. I was somehow tougher or stronger or better, until the moments in which I was not.

### III. HOW TO MAKE THE LAWYER AND SYSTEMS BETTER

The real questions this journey of self-reflection raises are what would a different model of representation look like and where would a lawyer (and her mental health) fit into that model? In many ways, the COVID-19 pandemic has brought this question to a forefront. In pre-COVID-19 times, I had struggled, as did all public defenders I knew, with the limitations of representation. The COVID-19 pandemic exaggerated those limitations. In-person client meetings disappeared as carceral facilities and the world locked down.<sup>44</sup> Even if meetings had been possible, the closure of courts rendered representation a goal without an outlet.<sup>45</sup> While the COVID-19 pandemic did not create this reality (lack of client access and limited forums predate the pandemic), it highlighted the failure of multiple criminal systems. Coupled with movements for abolition and criminal law reform in the wake of the killing of George Floyd and others, one might question both the torn allegiances of the defense attorney and the inherent inadequacy of representation within such systems.<sup>46</sup>

You could (and should) question whether a defense attorney alone can carry the burden of representation or whether the availability of an advocate should extend beyond criminal systems to civil ones and even beyond legal

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44. See, e.g., Ian A. Mance, *COVID-19 Jail Restrictions and Access to Counsel*, ADMIN. JUST. BULL. (UNC Sch. of Gov't, Chapel Hill, N.C.), Oct. 20, 2020, at 1; *How Prisons in Each State Are Restricting Visits Due to Coronavirus*, THE MARSHALL PROJECT (Apr. 6, 2021, 12:15 PM), <https://www.themarshallproject.org/2020/03/17/tracking-prisons-response-to-coronavirus> [<https://perma.cc/MH2R-LC4V>] (describing limitations in state prisons).

45. See, e.g., Janna Adelstein, *Courts Continue to Adapt to COVID-19*, BRENNAN CTR. FOR JUST. (Sept. 10, 2020), <https://www.brennancenter.org/our-work/analysis-opinion/courts-continue-adapt-covid-19> [<https://perma.cc/7AC6-T7MK>]; *Courts Suspending Jury Trials as COVID-19 Cases Surge*, U.S. CTS. (Nov. 20, 2020), <https://www.uscourts.gov/news/2020/11/20/courts-suspending-jury-trials-covid-19-cases-surge> [<https://perma.cc/7DTN-VXLG>] (describing the suspension of federal jury trials); *Overview of State Court Closures*, BALLOTPEdia, [https://ballotpedia.org/State\\_court\\_closures\\_in\\_response\\_to\\_the\\_coronavirus\\_\(COVID-19\)\\_pandemic\\_between\\_March\\_and\\_November\\_2020#Overview\\_of\\_court\\_closures](https://ballotpedia.org/State_court_closures_in_response_to_the_coronavirus_(COVID-19)_pandemic_between_March_and_November_2020#Overview_of_court_closures) [<https://perma.cc/9HUX-AQ5W>] (last visited Apr. 14, 2021).

46. Such inadequacy has been questioned before. See, e.g., Butler, *supra* note 4; Carroll, *supra* note 10, at 595, 636–37.

systems. (I think yes.) You could (and should) question whether criminal legal systems inappropriately constrain the defense narrative to the point that advocacy is so hamstrung as to be worse than meaningless (or nearly meaningless) but actually harmful in the illusion it creates in the possibility of representation. Make no mistake, I am not saying an advocate can never make a difference (recall two sentences ago where I wanted more, not less advocates) but I am saying that binding the defense advocate to a narrow role can vest too much credit in those times the advocacy makes a difference and obscure the times it did not or made things worse. For every client whom I fought hard for, there were more clients whose cases were triaged or whose cases were lost even as the court assured me, the lawyer, that I had done the best I could do.

The triage was made necessary by some combination of a crushing case load, a client's interest in a speedy resolution, a sweet plea offer, or truly bad facts or law. The reassurance, while meant to salvage my ego (presumably to preserve my mental health or more likely to ensure that I continued to show up for the next case), only served to set up the dynamic that was uncomfortable in the first place. It was not me, the advocate, who was failing—it was the client. I was like the court—hardworking, good intentioned—the client was not. As these clients were sent back to detention or sent home on probation or with fines and fees to pay, they likely heard the court salvaging my ego. What an odd form of representation. You could (and should) question whether criminal systems can and should serve as a point of contact or remedy for the men, women, and children who populated my career as a public defender. (I think not.) As abolitionists have noted, the overreliance on criminal law and its systems and actors to “remedy” or address social ills is poorly advised at best and much more often devastating to the people it contacts. So, where would a lawyer fit into this brave new abolitionist world?

In the end, what I loved about being a lawyer were the same things that ultimately made me want to stop—the lives of the people I knew. The weight of those lives came to feel like something I could no longer bear as other life obligations pulled me in different directions. My clients' stories, my role as the person who bridged the chasm between their lives and the formal systems in which they found themselves ensnared, my own complicity in helping criminal legal systems shuffle one more client through, all have stuck with me. They taught me that I was not the representative my clients needed even as I did my best for them. Or more accurately, I was not the *only* representative they needed.

I have carried the people I represented with me long after I have forgotten their names and they have likely forgotten mine. And in this portage, I have come to accept that I was a conduit to systems that sought to crush them in the first place. True representation for my clients lay in their own communities, where their acts and harms and aching absences were not measured in criminal histories or offense classifications but in lived remembrances and in the cruel, compromising work of figuring out how to exist after the one awful moment that brought the criminal referral in the first

place. In thinking of a new model of criminal systems, a new model of representation seems necessary.

### CONCLUSION

This is not the Essay I intended to write when first approached to write for a symposium about attorneys' mental health. I meant to write a "typical" law review article full of citations and distant observations about law and lives. Instead, I found myself returning again and again to what I could not find in the literature I read: an account of what it was to be a lawyer and the burdens that carried. I found myself returning again and again to not only the stories of my clients but to my story as their representative. So, this is the Essay I wrote. Even as I wrote it, it felt, and still feels, risky. It is personal, not objective. I hear in the back of my head the editorial push to banish the first person from law reviews. I hear the critique that it is emotional, not analytical; anecdotal and therefore not accurate or universal. Even in the face of that self-critique, this Essay is, for all its emotion and anecdotal memory, my experience and perhaps that is what I find missing even as I feel I have laid parts of myself bare to write it. Such a personal account can never be universal, nor is it meant to be. It is meant to say: if you read something here that resonates, that feels like what you feel, I give it word and form not to claim it but to convey that I, too, am here. I, too, felt it in all its introspective contradiction and fraught telling.

In reading over it, it strikes me as depressing. Friends and colleagues who have read it call to say they are sorry or worried. They did not realize how hard things were, or they did and they are lost or overwhelmed. They call to share their own stories or to wring their hands and search for therapy helplines over telephone lines and across years of their own guilt or despair. They remind me that in this work, either as an essayist or a defender, I was and am never alone. A former client who I let read it commented that it was "not nearly as funny as I remember you being." This is a client to whom I wrote for the last sixteen years as she waited out her twenty-two-year sentence. I assured her I was never truly that funny over a prison phone call that warned it was recorded so she and I could not forget where she was and that I was no longer her attorney. She suggested I needed a vacation. The irony of her statement was not lost on me.

Whatever the impression this Essay may leave, let me assuage the impression that I am or was sad for the work I did as a public defender. I was not and I am not. It was hard work. And I am frustrated that it was work in systems that I now realize, with the benefit of age and hindsight, I could never "win" in (at least not in ordinary ways—I negotiated far more guilty pleas than I won "not guilty" verdicts). At the same time, however, it is work I am glad I did and continue to toil over because it was and is the work of imagining the world as something different than what I, or my clients, know. It is the work of claiming space and words. It is the work of resistance and community building. It is the exhausting, terrifying, honest, exhilarating work of representing.

