

CALL IT AS I SEE IT: IOWA’S INEFFECTIVE COUNSEL IN RURAL COMMUNITIES

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ABSTRACT

The Sixth Amendment and the case law that interprets it, requires that every criminal defendant charged with a crime that could result in imprisonment has a constitutional right to an effective court-appointed attorney if they cannot afford to hire a private attorney. Unfortunately, for rural Iowan’s and Americans across the nation, this right has been forgotten. We have seen case after case of criminal defendants in rural communities not having access to effective attorneys due to a lack of resources, funding, and passion. Through a who, what, when, where, why, and how approach detailing the history of access to legal counsel in criminal defense, this note will address the inaccessibility to effective defense counsel in Iowa and across the nation and poses practical solutions to bring attorneys back

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to rural areas. Ultimately, this Note aims to shine light on the continuous constitutional violations and perpetuate the fight for access to justice so that this constitutional amendment is restored to the status and accuracy it deserves.

I. INTRODUCTION

Thanks to the increased popularity of social media and television, most people today are familiar with the phrase, “You have the right to remain silent. Anything you say can and will be used against you in a court of law. You have the right to an attorney. If you cannot afford an attorney, one will be provided for you.”¹ The United States Supreme Court has declared “[this] right to counsel [as] the foundation for the adversary system.”² Unfortunately, while each statement in the phrase by itself is true, it can be argued that, as a whole, it has lost its value, especially for low-income rural Iowans.

I came into this Note bright-eyed and bushy-tailed, thinking there would be obvious constitutional violations throughout criminal defense and that I would be the one to crack the code and fix the problem, but that is not the case. Attorney conduct I thought of as being unconstitutional has precedent declaring it otherwise. Potential solutions I have thought of have been deemed unworkable, whether they are unprecedented or financially impossible. However, I am going to call it as I see it: rural communities are having their constitutional due process rights trampled.

This Note explores the idea that due process is less clear cut than the Constitution or Supreme Court presents or imagines it to be for rural America. Part II of this Note addresses the Sixth Amendment right to counsel through a who, what, when, where, why, and how approach, detailing the history of access to legal counsel and what that access entails. Part III examines the inaccessibility to justice throughout rural America and in our own backyard for rural Iowans. Finally, this Note will propose solutions on how to draw attorneys into rural Iowa, thus decreasing the number of due process violations affecting Iowans as a result of ineffective assistance of counsel.

II. THE FIVE W’S OF INEFFECTIVE COUNSEL

A. Who Has a Constitutional Right to Assistance of Counsel?

According to the supreme law of the land, the United States Constitution declares, “[i]n all criminal prosecutions, the accused shall . . . have the Assistance

1. *What Are Your Miranda Rights?*, MIRANDAWARNING.ORG (Apr. 6, 2023, 9:59 AM), <http://www.mirandawarning.org/whatareyourmirandarights.html> [<https://perma.cc/T88P-NQS6>]; *see generally* *Miranda v. Arizona*, 384 U.S. 436 (1966).

2. *Martinez v. Ryan*, 566 U.S. 1, 12 (2012).

of Counsel for his defence.”³ The Supreme Court has spent several decades interpreting what exactly the Sixth Amendment right to counsel provides.⁴ In 1963, the Supreme Court held that the Sixth Amendment, in conjunction with the Fourteenth Amendment, guarantees the right to counsel in both federal and state courts and that individuals who are charged with a felony but cannot afford an attorney, known as indigent defendants, must have one appointed to them.⁵ In 1972, the Supreme Court expanded the right to counsel from only felonies to any criminal charge where the defendant faces imprisonment.⁶ Decades before, in 1896, the Supreme Court held that the Fifth and Sixth Amendments apply to “all persons within the territory of the United States.”⁷ Therefore, the Sixth Amendment right to counsel must be afforded to every criminal defendant facing imprisonment regardless of their age, sex, race, alienage, education, wealth, etc.⁸ Or does it? In later sections of this Note, the reader will see that while there is a fundamental right to counsel, even when one cannot afford it, this right has been disrupted, especially in rural communities. At this stage, the author feels compelled to point out that there is no such thing as free counsel, even if the attorney is a court-appointed public defender or a court-appointed private pay attorney.⁹ While a court-appointed attorney may not require payment initially, an indigent criminal defendant will generally have to pay the state all costs associated with the legal assistance, including the attorney cost, witness and expert fees, investigator fees,

3. U.S. CONST. amend. VI; *see also* Iowa CONST. art. I § 10 (similar to the United States Constitution, Iowa’s Constitution states, “In all criminal prosecutions, and in cases involving the life, or liberty of an individual the accused shall . . . have the assistance of counsel”).

4. NAT’L RIGHT TO COUNS. COMM., JUSTICE DENIED, AMERICA’S CONTINUING NEGLECT OF OUR CONSTITUTIONAL RIGHT TO COUNSEL 5 (2009), <https://www.opensocietyfoundations.org/publications/justice-denied-americas-continuing-neglect-our-constitutional-right-counsel> [<https://perma.cc/2S76-3R8H>].

5. *Gideon v. Wainwright*, 372 U.S. 335, 343 (1963); *see also* Zachary Cloud, *The Problem of Low Crime: Constitutionally Inadequate Criminal Defense in Rural America*, 22 B.U. PUB. INT. L. J. 403, 406 (2013) (“In the legal context, the word [indigent] is used to identify ‘a person who is too poor to hire a lawyer and . . . [is] eligible to receive aid from a court-appointed attorney and a waiver of court costs’”).

6. *Argersinger v. Hamlin*, 407 U.S. 25, 37, 40 (1972).

7. *Wong Wing v. United States*, 163 U.S. 228, 238 (1896).

8. *See id.*; *Gideon*, 372 U.S. at 343; *Argersinger*, 407 U.S. at 40.

9. Thomas Seigel & Rebecca Pirius, *Working with Your Public Defender or Court-Appointed Attorney*, LAWYERS.COM (Aug. 12, 2022), <https://www.lawyers.com/legal-info/criminal/criminal-law-basics/public-defenders.html> [<https://perma.cc/FNP7-CY54>] (“A public defender is simply one type of court-appointed counsel. The terms are used interchangeably a lot. Both are fully licensed attorneys whose job is to represent criminal defendants. They are paid with public funds. The primary difference involves their working arrangements”); *FAQs*, OFF. OF THE STATE PUB. DEF. (Mar. 23, 2023, 11:02 AM), <https://spd.iowa.gov/indigent-clients/faqs> [<https://perma.cc/35LJ-PZWX>].

and any other associated fees at the end of representation.¹⁰

B. What Does the Sixth Amendment Guarantee?

In 1984, the Supreme Court in *Strickland v. Washington* continued to interpret the Sixth Amendment and held the constitutional right to counsel means the right to *effective* counsel.¹¹ The Court went on to state that the purpose of the amendment is to ensure a fair trial; thus, “[t]he benchmark for judging any claim of ineffectiveness must be whether counsel’s conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result.”¹² To prove a claim of ineffective counsel, the defendant must show that their counsel was deficient and that said deficiency prejudiced the defendant.¹³ In other words, the Court established a two-prong test for determining whether counsel was ineffective: “1) whether representation was unreasonable in light of prevailing professional norms; and 2) whether there is a reasonable probability that the outcome of the proceeding would have been different had representation been effective.”¹⁴

Regarding the first prong of the *Strickland* test, the Court suggested that future reviewing courts look to the standards created by the American Bar Association and other similar sources as a guide but not as a particular set of rules.¹⁵ The *Strickland* Court made it clear that attorneys are presumed to have acted appropriately and that a court must look at the identified “unreasonable” acts under the totality of the circumstances.¹⁶ The second prong of *Strickland* requires a but-for test: but for the attorney’s conduct, the outcome would have been different.¹⁷ One critic of this but-for test has stated, “the standard has become a floor below which a lawyer may not fall rather than a standard to which the lawyer should aspire . . . [it] is like a ‘foggy mirror’ test - if defense counsel would fog up

10. *FAQs*, *supra* note 9; see Hannah Haksgaard, *Court-Appointment Compensation and Rural Access to Justice*, 14 U. ST. THOMAS J.L. & PUB. POL’Y 88, 100 (2020).

11. *Strickland v. Washington*, 466 U.S. 668, 686 (1984).

12. *Id.*

13. *Id.*

14. *Id.*; Gary Feldon & Tara Beech, *Unpacking the First Prong of the Strickland Standard: How to Identify Controlling Precedent and Determine Prevailing Professional Norms in Effective Assistance of Counsel Cases*, 23 U. FLA. J.L. & PUB. POL’Y, no. 1, 2012, at 1, 3.

15. *Strickland*, 466 U.S. at 688–89 (“Any such set of rules would interfere with the constitutionally protected independence of counsel and restrict the wide latitude counsel must have in making tactical decisions”).

16. *Id.* at 690.

17. *Id.* at 695.

a mirror held beneath his nose, that's good enough."¹⁸ While the Sixth Amendment provides the right to effective counsel, the *Strickland* test and what courts today deem as effective is viewed in a light most favorable to the accused attorney and is an extremely difficult test for the complaining defendant to overcome.¹⁹

C. When Does an Individual Have the Right to Effective Counsel?

The Constitution and prior court rulings grant criminal defendants the right to effective assistance of counsel, but when does that right take effect and for how long? As previously stated, the Sixth Amendment right to counsel is required when a criminal defendant inside of the United States is charged with a crime and faces imprisonment.²⁰ However, there are still limitations to this blanket rule. For example, “the Sixth Amendment right to appointed counsel only applies to true criminal prosecutions and does not extend to parole or probation revocation hearings even if they could result in substantial jail time.”²¹ Therefore, there is no Sixth Amendment right to appointed counsel in civil cases.²² That is not to say that civil litigants are never appointed counsel, it is just a topic that exceeds the scope of this Note.²³ Further, the Court has determined that the right to an attorney begins “at the first formal hearing” and delays are acceptable “as long as the defense attorney is present for all ‘critical stages’ of the prosecution.”²⁴ Unfortunately, this

18. Andrea D. Lyon, *The Promise of Effective Assistance of Counsel: Good Enough Isn't Good Enough*, THE CHAMPION, June 2012, at 67, 67, https://scholar.valpo.edu/cgi/viewcontent.cgi?article=1296&context=law_fac_pubs [<https://perma.cc/FSR6-VKF9>].

19. *Id.* at 68.

20. See *Gideon v. Wainwright*, 372 U.S. 335, 339–340 (1963); *Argersinger v. Hamlin*, 407 U.S. 25, 37 (1972); *Wong Wing v. United States*, 163 U.S. 228, 238 (1896).

21. Eve Brensike Primus, *The Illusory Right to Counsel*, 37 OHIO N. U. L. REV. 597, 600 (2011) [hereinafter *Illusory Right to Counsel*].

22. *Guidance on the Right to Counsel in Legal Financial Obligation Cases*, NAT'L CTR. FOR STATE CTS. (Mar. 30, 2023, 5:57 PM), https://www.ncsc.org/__data/assets/pdf_file/0019/17353/r2c-guidance-final-3-13-19-v2.pdf [<https://perma.cc/42VQ-VPT3>]; *Edgington v. Mo. Dep't of Corrs.*, 52 F.3d 777, 780 (1995) (“Indigent civil litigants do not have a constitutional or statutory right to appointed counsel”).

23. See generally *Civil Right to Counsel*, AM. BAR ASS'N (Mar. 30, 2023, 5:58 PM), https://www.americanbar.org/groups/legal_aid_indigent_defense/civil_right_to_counsel1/ [<https://perma.cc/NN3G-M3W6>]; AM. BAR ASS'N, DIRECTORY OF LAW GOVERNING APPOINTMENT OF COUNSEL IN STATE CIVIL PROCEEDINGS – IOWA 5 (2017), https://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/s_sclaid_judges_manual_ia.pdf [<https://perma.cc/JRL2-C82U>].

24. *Illusory Right to Counsel*, *supra* note 21, at 601 (citing *Rothgery v. Gillispie County*, 554 U.S. 191 (2008) which held “critical” to include “proceedings between an individual and agents of the State . . . that amount to ‘trial-like confrontations,’ at which counsel would help the accused ‘in coping with legal problems . . . or in meeting his adversary’”).

can mean that while a defendant has appointed counsel, they may be unable to meet with them, thereby opening the door for potential claims of ineffective counsel.²⁵ This leads to the question: what happens after a defendant claims ineffective trial counsel?

When a defendant is granted the right to counsel during trial, it is only through a post-trial proceeding that they can claim ineffective assistance and ask for a new trial.²⁶ Unfortunately for criminal defendants, the Supreme Court held in *McKane v. Durston* that “no matter how grave the offense, a criminal defendant has no constitutional right to appeal.”²⁷ Although there is no constitutional right to an appeal, “appellate remedies are nearly universal: the federal court system and forty-seven states provide—as a matter of state law—either a constitutional or statutory requirement for appeals as of right in both civil and criminal cases.”²⁸ While there are arguments on both sides about whether the right to an appeal should be granted by the Supreme Court, the right does exist at both the federal and local level.

In *Griffin v. Illinois*, the Supreme Court held that while there is no constitutional right to appellate review if a state grants a poor defendant such review, it must be equal to those who can pay.²⁹ The decision dictates that “[t]here can be no equal justice where the kind of trial a man gets depends on the amount of money he has.”³⁰ Seven years later, in *Douglas v. California*, the Court found that inequality or unfairness exists when a wealthy individual could hire an attorney to appeal their case but a poor individual was left stranded.³¹ Therefore, the Court held that criminal defendants have a right to appointed counsel in their first appeal when that appeal is a matter of right.³² All of this seems to mean that after the trial is over, a criminal defendant can immediately appeal their case and claim they received ineffective counsel, right? Wrong.

Most jurisdictions do not allow a defendant who was appointed counsel to

25. *Id.* at 602.

26. Ty Alper, *Toward a Right to Litigate Ineffective Assistance of Counsel*, 70 WASH. & LEE L. REV. 839, 843 (2013).

27. James E. Lobsenz, *A Constitutional Right to an Appeal: Guarding Against Unacceptable Risks of Erroneous Conviction*, 8 SEATTLE U. L. REV. 375, 375 (1985); see *McKane v. Durston*, 153 U.S. 684, 687 (1894).

28. Cassandra Burke Robertson, *The Right to Appeal*, 91 N.C. L. REV. 1219, 1222 (2013).

29. *Griffin v. Illinois*, 351 U.S. 12, 19 (1956) (holding that a defendant cannot be denied the right to appeal due to their inability to pay for a trial transcript).

30. *Id.*

31. *Douglas v. California*, 372 U.S. 353, 357–58 (1963).

32. *Id.*

file a claim *solely* for ineffective counsel on direct appeal due to lack of evidence on the record and instead have reserved it strictly for post-conviction review.³³ For example, the Iowa Supreme Court has held “a defendant who asserts only a claim or claims of ineffective assistance of counsel cannot establish good cause to appeal as a matter of right because Iowa’s appellate courts are without authority to provide relief on such claim or claims.”³⁴ Therefore, in Iowa, a defendant can only appeal a judge’s decision to sentence them to prison for too long of a term, but they cannot solely appeal their lawyer’s ineffectiveness. This means defendants must wait until after the appeal process is complete to file a separate lawsuit, endure post-conviction review, and then finally claim ineffective assistance of counsel in the original trial. Post-conviction review is considered a civil proceeding, and because civil litigants do not have a constitutional right to an attorney, where does that leave a poor defendant? In *Coleman v. Thompson*, the Supreme Court held “[t]here is no constitutional right to an attorney in state post-conviction proceedings.”³⁵ Therefore, “[a]s a practical matter, then, the current state of the law ensures that the vast majority of convicted noncapital defendants have no recourse to raise ineffective assistance of counsel claims, and thus no mechanism for vindicating the requirement that the counsel *Gideon* provides be ‘effective.’”³⁶ Somewhat fortunately for Iowans, the Iowa Code and Iowa Supreme Court precedent allow a court to appoint counsel to an applicant for post-conviction relief pending a judge’s review of the asserted claims and the defendant’s indigent or financial status.³⁷

In sum, a criminal defendant has a constitutional right to effective court-appointed counsel only during their original criminal trial and if the state or federal government allows a right to appeal. There is no *constitutional* right to an attorney on appeal nor in a post-conviction relief claim. However, in Iowa, the court may appoint counsel at their discretion. While this is a wonderful opportunity for Iowans, it raises concerns surrounding the lack of a constitutional requirement and the ability for a judge to exercise their discretion.

D. Where Does the Court Look to Determine Reasonableness?

As previously mentioned, to determine whether counsel was ineffective the *Strickland* Court imposed a two-prong test: “1) whether representation was

33. Alper, *supra* note 26, at 843–44.

34. *State v. Newman*, 970 N.W.2d 866, 869 (Iowa 2022).

35. *Coleman v. Thompson*, 501 U.S. 722, 752 (1991).

36. Alper, *supra* note 26, at 845 (noting that “most capital defendants . . . typically are provided counsel for state and federal collateral [post-conviction] proceedings”).

37. *Dunbar v. State*, 515 N.W.2d 12, 14 (Iowa 1994); *Furgison v. State*, 217 N.W.2d 613, 615 (Iowa 1974); Iowa Code § 822.5.

reasonable in light of prevailing professional norms; and 2) whether there is a reasonable probability that the outcome of the proceeding would have been different had representation been effective.”³⁸ This test raises the question of what “prevailing professional norms” means. The *Strickland* court stated that effective assistance of counsel requires basic duties such as:

“advocating for the defendant’s cause; demonstrating loyalty to the client; avoiding conflicts of interest; consulting with the defendant on important decisions; keeping the defendant informed of important developments; conducting reasonable factual and legal investigations or making “a reasonable decision that makes particular investigations unnecessary;” and bringing to bear the necessary skills and knowledge.”³⁹

The Court further suggested using the American Bar Association (ABA) Standards as a guide in reviewing the effectiveness of counsel.⁴⁰ It seems simple enough. A reviewing court can pull out the ABA Standards and determine whether the attorney at issue followed the rules and conducted themselves as a zealous advocate for their client’s position.⁴¹ Unfortunately, it is not that easy.

First, the ABA standards are only guides—nothing more.⁴² The *Strickland* Court further stated that no detailed rules can exist as to an attorney’s effectiveness because “[a]ny such set of rules would interfere with the constitutionally protected independence of counsel and restrict the wide latitude counsel must have in making tactical decisions.”⁴³ The Court continued by declaring that having such a set of rules “could distract counsel from the overriding mission of vigorous advocacy of the defendant’s cause.”⁴⁴ Furthermore, “courts routinely presume that defense attorneys’ decisions to raise or not raise issues are tactical decisions that are entitled to deference,”⁴⁵ meaning that even if the defendant or their appellate attorney thought it was a grave mistake not to introduce certain evidence into trial, the original attorney will be granted deference if they can explain it was a strategic choice. The *Strickland* court reiterated that the Sixth Amendment’s goal “is not to

38. Feldon & Beech, *supra* note 14, at 3; *Strickland v. Washington*, 466 U.S. 668, 686 (1984).

39. AM. BAR ASS’N STANDING COMM. ON LEGAL AID & INDIGENT DEFENDANTS, *GIDEON’S BROKEN PROMISE: AMERICA’S CONTINUING QUEST FOR EQUAL JUSTICE* 14 (2004) (internal citations to *Strickland*, 466 U.S. at 688).

40. *Strickland*, 466 U.S. at 688.

41. *See id.*; Joseph H. Ricks, *Raising the Bar: Establishing an Effective Remedy Against Ineffective Counsel*, 2015 BYU L. REV. 1115, 1137 (2015).

42. *Strickland*, 466 U.S. at 688.

43. *Id.* at 689.

44. *Id.*

45. *Illusory Right to Counsel*, *supra* note 21, at 609.

improve the quality of legal representation . . . [it] is simply to ensure that criminal defendants receive a fair trial.”⁴⁶

Second, society is constantly evolving, and ethics and morals change over time, so the standards for the legal profession change too; this causes discrepancies in how courts apply the standards to the cases and discrepancies in the law.⁴⁷ Furthermore, there are discrepancies in what ABA Standards should be applied, whether it be the ABA Capital Guidelines, ABA Standards for Criminal Justice, ABA Model Code of Professional Responsibility, or the ABA Guidelines for the Appointment & Performance of Defense Counsel in Death Penalty Cases.⁴⁸

In 2004, the ABA Standing Committee on Legal Aid and Indigent Defendants took these four divisions and set forth general standards which identify the role and duties of defense attorneys which includes:

“[T]he responsibility to keep abreast of the substantive and procedural criminal law in the jurisdiction; avoid unnecessary delays and control workload to permit the rendering of quality representation; attempt to secure pretrial release under condition most favorable to the client; prepare for the initial interview with the client; seek to establish a relationship of confidence and trust with the client and adhere to ethical confidentiality rules; secure relevant facts and background from the client as soon as possible; conduct a prompt and thorough investigation of the circumstances of the case and all potentially available legal claims; avoid conflicts of interest; undertake prompt action to protect the rights of the accused at all stages of the case; keep the client informed of developments and progress in the case; advise the client on all aspects of the case; consult with the client on decisions relating to control and direction of the case; adequately prepare for trial and develop and continually reassess a theory of the case; explore disposition without trial; explore sentencing alternatives; and advise the client about the right to appeal.”⁴⁹

Even with these standards in place and courts looking to them as guidelines, the committee still found several violations including pressured guilty pleas, minimal conversations with counsel, counsel being “provided too late or not at

46. Strickland, 466 U.S. at 689.

47. Feldon & Beech, *supra* note 14, at 11 (concluding that the discrepancies of the court finding ineffective assistance of counsel in some cases but not in others was due to using different norms).

48. *See id.* at 14; *see also* Bobby v. Van Hook, 558 U.S. 4, 7–12 (2009).

49. AM. BAR ASS’N STANDING COMM. ON LEGAL AID & INDIGENT DEFENDANTS, *supra* note 39, at 15; Robert R. Rigg, *The T-Rex Without Teeth: Evolving Strickland v. Washington and the Test for Ineffective Assistance of Counsel*, 35 PEPP. L. REV. 77, 98-99 (2007).

all,” and many more.⁵⁰

Under the *Strickland* test, even when defense attorneys are violating ABA Standards, and thus violating the first prong, they are still not automatically found ineffective due to *Strickland*'s second prong which requires a reviewing court to presume the attorney effective and only declare their assistance unconstitutional when the defendant is prejudiced.⁵¹ For a defendant to be prejudiced under ineffective counsel means the trial counsel's conduct deprived the defendant of a fair trial.⁵² The question to determine whether there is prejudice is, “whether there is a reasonable probability that, absent the errors, the factfinder would have had a reasonable doubt respecting guilt.”⁵³

E. Why Does Ineffective Assistance of Counsel Occur?

It takes a great deal of time, money, and effort to become an attorney. For example, in Iowa, an individual must graduate from high school, or at least have a GED, and also graduate from college with at least a bachelor's degree.⁵⁴ Next, an individual must attend an ABA-approved law school and receive a J.D. or L.L.B., receive a predetermined score on the Multistate Professional Responsibility Examination, intend to practice law in Iowa, and possess the required character and fitness qualifications.⁵⁵ All of these requirements are necessary just to sit for the Iowa Bar Exam.⁵⁶ To practice law in Iowa, an individual must pass the Iowa Bar exam and maintain the many ABA standards imposed on them to continue practicing.⁵⁷ So why, after the time, money, and effort spent to attain this profession, do attorneys practice ineffectively?

There are several reasons why attorneys may conduct themselves ineffectively, but it is usually not their fault. Eve Brensike Primus, a law professor at the University of Michigan Law School who has studied claims of ineffective

50. See AM. BAR ASS'N STANDING COMM. ON LEGAL AID & INDIGENT DEFENDANTS, *supra* note 39, at 24; See also Rigg, *supra* note 49, at 99-100.

51. *Strickland*, 466 U.S. at 687.

52. *Id.* at 687.

53. *Id.*

54. *How to Become a Lawyer: Law Schools & Careers*, BECOME (Feb. 28, 2023), <https://www.learnhowtobecome.org/lawyer/> [<https://perma.cc/9CW6-9ZR3>].

55. *Id.*; *Bar Examination Registration*, IOWA JUD. BRANCH (Mar. 31, 2023, 10:16 AM), <https://www.iowacourts.gov/opr/attorneys/admissions/admission-by-examination/bar-examination-registration> [<https://perma.cc/NPL6-BSW5>].

56. *How to Become a Lawyer: Law Schools & Careers*, *supra* note 54; *Bar Examination Registration*, *supra* note 55.

57. *How to Become a Lawyer: Law Schools & Careers*, *supra* note 54.

counsel, coined the terms “personal” and “structural” ineffectiveness.⁵⁸ An attorney that is structurally ineffective “is ineffective not due to some fault of her own but rather by virtue of outside forces that operate on her. This form of ineffectiveness stems from sources external to the trial attorney herself.”⁵⁹ Examples of structurally ineffective attorneys include public defenders who are assigned too many cases and thus are unable to spend sufficient time on each one or are unable to meet with their clients due to lack of time and funding.⁶⁰

Alternatively, attorneys can be “personally ineffective if the failure to provide competent trial representation is attributable to the lawyer herself. This form of ineffectiveness is internal to the defense attorney rather than imposed on her by an external source.”⁶¹ Examples of a personally ineffective attorney would include those who have fallen asleep during a trial, abused drugs or alcohol during their representations, or were too lazy or cocky to conduct research or meet with clients.⁶²

The examples of structurally ineffective attorneys are a tale as old as time; the general population seems to acknowledge that attorneys who are court-appointed are overworked and underpaid. While such conduct is not okay, it seems to be viewed as “reasonable” for such attorneys to have ineffective counsel claims made against them. But why are the attorneys who fall into the second group, the personally ineffective attorneys, still behaving ineffectively? Why are these attorneys not deterred from their sloppy and inadequate behavior?

Joseph Ricks, a practicing attorney, asserts that the lack of consequences or repercussions ineffective attorneys face are minimal—they are basically nonexistent, therefore the so-called “deterrence” is not actually deterring.⁶³ Ricks claims that there are three repercussions that ineffective attorneys face: “harm to the attorney’s professional reputation, legal malpractice claims, and court sanctions,” each failing to affect ineffective attorneys adequately.⁶⁴ First, the attorney’s reputation or possible embarrassment that comes from being declared “ineffective” fails as a deterrent because their peers likely do not read the cases declaring them as such, and even if they did, courts rarely identify the attorney by

58. Eve Brensike Primus, *Disaggregating Ineffective Assistance of Counsel Doctrine*, 72 STAN. L. REV. 1581, 1586 (2020).

59. *Id.*

60. *Id.*

61. *Id.*

62. *Id.* at 1586–87; *Illusory Right to Counsel*, *supra* note 21, at 602–03.

63. *See* Ricks, *supra* note 41, at 1126.

64. *Id.* at 1122.

name.⁶⁵

Second, malpractice claims, while seemingly scary, are unlikely to influence attorneys for numerous reasons.⁶⁶ Specifically, if the criminal defendant could not hire an attorney for their original trial and received a court-appointed attorney, how could they possibly hire a second attorney to sue the first? Even if such a defendant did hire the first attorney, the financial burden of paying for two attorneys is a major deterrent alone.⁶⁷ Further, “[m]any states have granted public defenders qualified immunity from suit for acts or omissions made in the course of ‘executing their official duties’ regardless of whether the attorney had been found ineffective.”⁶⁸ Additionally, for both public and private attorneys, “the majority of courts also require proof of ‘actual innocence.’”⁶⁹ Some states have gone even farther, stating that “a legal malpractice claim cannot succeed unless ‘the person’s conviction has been reversed, whether on appeal or through post-conviction relief, or the person otherwise has been exonerated.’”⁷⁰ Finally, sanctions fail to deter because courts rarely sanction an attorney who has been found constitutionally ineffective.⁷¹

To be disciplined in Iowa, the Attorney Disciplinary Board, the Grievance Commission, and the Iowa Supreme Court require more than a claim of unethical conduct—there must be proof.⁷² In 2020 alone, the Attorney Disciplinary Board had 531 complaints filed against Iowa attorneys.⁷³ Using their inherent discretion, the Board declined to investigate 318 of the complaints due to the alleged behavior not qualifying as misconduct or because the complaint was “facially frivolous, stale, lacking in adequate factual detail, duplicative . . . outside the board’s jurisdiction, or [did] not otherwise reasonably warrant investigation.”⁷⁴ In 2021, communication was one of the most alleged and found violations of the Iowa Rules

65. *Id.* at 1122–23.

66. *Id.* at 1123.

67. *Id.* at 1123.

68. *Id.*

69. *Id.* at 1124.

70. *Id.*

71. *Id.* at 1125.

72. *Under What Circumstances Might Disciplinary Sanctions Be Imposed?*, IOWA JUD. BRANCH (Mar. 31, 2023, 10:17 AM), <https://www.iowacourts.gov/opr/attorneys/attorney-discipline/under-what-circumstances-might-disciplinary-sanctions-be-imposed/> [<https://perma.cc/D3P4-SSPA>].

73. ATT’Y DISCIPLINARY BD. & GRIEVANCE COMM’N OF THE SUP. CT. OF IOWA, ANNUAL REPORT OF 2020 at 6 (2021), https://www.iowacourts.gov/static/media/cms/2020_ADB_and_GC_Annual_Report_A019A6AEFBBF6.pdf [<https://perma.cc/4283-ZKTP>].

74. *Id.*

of Professional Conduct.⁷⁵ This information accentuates a major issue with court-appointed attorneys in criminal defense—a lack of communication with criminal defendants. Even with all of these claims made to the Board, it is important to note two things: first, an ethical violation does not mean that an attorney provided ineffective counsel, they likely just violated one of the many ethical rules of conduct and second, the board only reviews ineffective counsel claims after a court has already found the attorney to be ineffective.⁷⁶

Further, because of the lack of adequate consequences imposed on ineffective attorneys, attorneys who have been effective, claim they were not in an attempt to protect their client's appellate rights.⁷⁷ These strategic false claims, combined with the real claims made by defendants, cause disciplinary boards to be overburdened and unable to determine which attorneys are truly ineffective.⁷⁸ Therefore, a never-ending cycle ensues of attorneys providing ineffective assistance, ineffective assistance claims being made, and nothing being done to break it.

F. How Does This All Fit Together?

So how do the five W's come together? In the United States, every criminal defendant has the right to a court-appointed attorney if they cannot afford one and if they are being charged with a crime that could result in imprisonment.⁷⁹ The attorney, court-appointed or not, must be effective to ensure a fair trial under the incredibly relaxed *Strickland* two-prong test for reasonableness and prejudice.⁸⁰ Courts refer to the ABA Standards for lawyers as a guideline when determining whether an attorney acted reasonably.⁸¹ The Sixth Amendment does not guarantee a right to appellate counsel, but state and federal courts allow for counsel to be provided in the first appeal when it is a matter of right.⁸² Unfortunately, claims of ineffective counsel generally must wait until after all proceedings are complete and

75. ATT'Y DISCIPLINARY BD. & GRIEVANCE COMM'N OF THE SUP. CT. OF IOWA, ANNUAL REPORT OF 2021 at 12 (2021), https://www.iowacourts.gov/static/media/cms/2021_ADB_and_GC_Annual_Report__Comp_A1456389E1687.pdf [<https://perma.cc/A76Y-3WV7>].

76. *What Matters are not Investigated by the Board?*, IOWA JUD. BRANCH (Mar. 31, 2023, 10:21 AM), <https://www.iowacourts.gov/opr/attorneys/attorney-discipline/what-matters-are-not-investigated-by-the-board/> [<https://perma.cc/F6MA-QC2H>].

77. Ricks, *supra* note 41, at 1130.

78. *Id.* at 1131.

79. See *Gideon v. Wainwright*, 372 U.S. 335, 343 (1963); *Argersinger v. Hamlin*, 407 U.S. 25, 40 (1972); *Wong Wing v. United States*, 163 U.S. 228, 238 (1896).

80. *Strickland v. Washington*, 466 U.S. 668, 686 (1984).

81. *Id.* at 688.

82. *Robertson*, *supra* note 28, at 1226.

by then, there is no right to post-conviction counsel.⁸³ It is exceedingly difficult to successfully claim ineffective counsel due to the relaxed *Strickland* test and the ability to have a court-appointed attorney to assist a defendant in making such claims.⁸⁴ Therefore, the Sixth Amendment allegedly provides for effective assistance of counsel, but this Note has explained that in reality, it does not.

A real-world example of this issue comes from a 2001 Iowa Supreme Court case, *Ledezma v. State*.⁸⁵ The defendant, Jose Ledezma, illegally immigrated to the United States and was later arrested for first-degree kidnapping and second-degree sexual abuse.⁸⁶ Because Ledezma was inside the United States when he was criminally charged, the Sixth Amendment provided him the right to appointed counsel, which he received.⁸⁷ After being found guilty, Ledezma appealed and was represented by the State Appellate Defender's Office.⁸⁸ Ledezma voiced his concerns about possible ineffective counsel in the original trial and was told that he could raise these issues in post-conviction relief.⁸⁹ After the guilty conviction was confirmed by the appellate court, Ledezma filed an application for post-conviction relief.⁹⁰ In the application, Ledezma claimed his appellate counsel was ineffective for not raising his original claims regarding the ineffectiveness of his trial counsel during the direct appeal.⁹¹ Ledezma alleged his trial counsel was ineffective in part because they failed to uphold his right to testify; in fact, trial counsel was prepared to have Ledezma testify, but after a brief conversation, they determined it would be a bad move strategically and did not call Ledezma to take the stand.⁹² The court found that while trial counsel erred by denying Ledezma his right to testify, along with other ineffective assistance claims, these errors did not prejudice the defendant—thus, the court denied Ledezma post-conviction relief.⁹³

Ledezma appealed again arguing that the district court was erroneous in its determination that he was not prejudiced by the alleged ineffective counsel.⁹⁴ The

83. Alper, *supra* note 26, at 843–44; *Coleman v. Thompson*, 501 U.S. 722, 752 (1991).

84. *Strickland*, 466 U.S. at 691; *Illusory Right to Counsel*, *supra* note 21, at 609; *see Coleman v. Thompson*, 501 U.S. at 752.

85. *See Ledezma v. State*, 626 N.W.2d 134, 143 (Iowa 2001).

86. *Id.* at 138.

87. *See id.*

88. *Id.* at 139.

89. *Id.*

90. *Id.*

91. *Id.*

92. *Id.* at 140.

93. *Id.* at 141.

94. *Id.*

Iowa Supreme Court applied the *Strickland* two-prong test and determined Ledezma's trial counsel was ineffective when they failed to investigate the only reasonable defense the defendant had against his charges and when they decided the defendant should not testify.⁹⁵ The Iowa Supreme Court noted that while strategically deciding not to have the defendant testify is acceptable in some scenarios, here, the trial counsel's decision was inappropriate because they failed to explain the consequences of not testifying to the defendant.⁹⁶ The Court then determined such failures amounted to prejudice because if both the investigatory evidence and the defendant's testimony were presented to the jury, the fact finder could have found the reasonable doubt necessary to potentially alter the outcome of the trial.⁹⁷ Finally, the Court determined that because his trial counsel was ineffective, the appellate counsel was also ineffective for giving deficient advice to Ledezma when telling him to wait until post-conviction to raise his ineffective counsel claims.⁹⁸ The Court held that Ledezma did have a claim for ineffective assistance of counsel, granted his application for post-conviction relief, and ordered a new criminal trial.⁹⁹

This case represents a successful ineffective assistance of counsel claim and validates the Sixth Amendment's guarantee of the right to effective assistance of counsel, but at what cost?¹⁰⁰ Ledezma endured a trial, an appeal, a post-conviction application, a post-conviction appeal, and eventually a brand-new trial just to provide him with what he should have received in the first place—effective counsel. The case also illustrates the difficulty in determining prejudice under the *Strickland* test as the post-conviction court found there to be no prejudice and the Iowa Supreme Court held there was prejudice after reviewing the same set of facts. The following section further highlights this country's deficiency in providing the constitutionally guaranteed right to effective assistance of counsel, especially in rural America.

III. IN-ACCESS TO JUSTICE: RURAL COMMUNITIES

When one pictures a rural community, they likely imagine a small town surrounded by corn fields and farms filled with white conservatives. However, depending on how one defines "rural," the community could be quite diverse.¹⁰¹

95. *Id.* at 145–148.

96. *Id.* at 147–148.

97. *Id.* at 149.

98. *Id.* at 152.

99. *Id.*

100. *See id.*

101. *See generally* Maybell Romero, *Rural Spaces, Communities of Color, and the*

While it is true that white individuals still make up the majority of rural communities, the percentage has declined since 2010.¹⁰² In fact, rural communities have seen a rise of racial and ethnic diversity over the past few decades with a rise in rural Hispanic, Black, and Non-Hispanic Multiracial populations.¹⁰³ Today, more than 24% of rural Americans are people of color.¹⁰⁴ Beyond its racial and ethnic makeup, how else is rural defined? The Census Bureau thus far has refused to define what it means to be rural and instead states that rural is what urban is not, meaning a population less than 2,500.¹⁰⁵ If one's research is focused on rural in terms of economics, they might be inclined to use what the Carsey Institute describes as four rural Americas: "(1) amenity-rich rural America; (2) chronically poor rural America; (3) declining resource-dependent rural America; and (4) amenity/decline rural America."¹⁰⁶ In this article, while both the Census Bureau's empirical definition and the Carsey Institute's sociological poverty ideology is taken into consideration, the term "rural" will be viewed under "the general idea of sparsely populated areas, including small towns, and associated cultural aspects"¹⁰⁷ as to not complicate things.

As of the 2020 Census, over 66 million people live in rural areas, which is 20% of the United States population.¹⁰⁸ Just because a person lives in a small

Progressive Prosecutor, 110 J. CRIM. L. & CRIMINOLOGY 803, 806 (2020); Kenneth M. Johnson & Daniel T. Lichter, *Growing Racial Diversity in Rural America: Results from the 2020 Census*, U. N.H. CARSEY SCH. PUB. POL'Y, Spring 2022, at 1; *2020 Census Results*, U.S. CENSUS BUREAU (May 17, 2023), <https://www.census.gov/programs-surveys/decennial-census/decade/2020/2020-census-results.html> [<https://perma.cc/JN9C-UKF5>].

102. Romero, *supra* note 101, at 810.

103. Johnson & Lichter, *supra* note 101, at 1; DW Rowlands & Hanna Love, *Mapping Rural America's Diversity and Demographic Change*, BROOKINGS: THE AVENUE (Sep. 28, 2021), <https://www.brookings.edu/blog/the-avenue/2021/09/28/mapping-rural-americas-diversity-and-demographic-change/> [<https://perma.cc/MP9S-DQHB>]; see *2020 Census Results*, *supra* note 101.

104. Johnson & Lichter, *supra* note 101, at 1; Rowlands & Love, *supra* note 103; see *2020 Census Results*, *supra* note 101.

105. Maybell Romero, *Lowball Rural Defense*, 99 WASH. U. L. REV. 1081, 1099 (2021) [hereinafter *Lowball Rural Defense*]; Ann M. Eisenberg, *Distributive Justice and Rural America*, 61 B.C. L. REV. 189, 203 (2020); *contra Urban and Rural*, U.S. CENSUS BUREAU (Apr. 19, 2023), <https://www.census.gov/programs-surveys/geography/guidance/geo-areas/urban-rural.html> [<https://perma.cc/G2MQ-WR8N>] (stating that rural is now anything less than a population of 5,000 or less than 2,000 housing units).

106. Eisenberg, *supra* note 105, at 203.

107. Romero, *supra* note 101, at 808.

108. *2020 Census Urban Areas Facts*, U.S. CENSUS BUREAU (Feb. 9, 2023), <https://www.census.gov/programs-surveys/geography/guidance/geo-areas/urban-rural/2020-ua-facts.html> [<https://perma.cc/8KLU-LZD4>].

community does not mean they lose their constitutional rights.¹⁰⁹ “Rural residents are as entitled to efficient and effective justice as urban and suburban [citizens].”¹¹⁰ Having access to an attorney in rural communities should not be any more challenging or expensive as compared to a city—unfortunately, it is.¹¹¹ Across our nation, access to an effective attorney in our rural communities has been impeded by geography, aging attorneys with few or zero younger attorneys coming to rural areas to replace them, non-existent or unstable internet, lack of funding, and more.¹¹² As prior researchers have stated best, this Note “does not mean to suggest that some of the challenges described herein are not faced by urban indigent defenders. However, ‘rural areas face certain unique disadvantages that should be studied separately.’”¹¹³ This section will explain how in-access to justice is a nationwide epidemic that not only affects rural citizens across the several states, but also our own neighbors.

A. Access to Justice in Rural America

It should be no surprise that individuals who live in rural communities across the nation do not have access to the same features as those who live in cities. If a small town or county does not have access to a Walmart or a McDonald’s, how is it supposed to have access to effective attorneys? As stated previously, there are many reasons why someone from a rural area might have less access to justice compared to someone in a larger city or urban area, such as funding, travel time, and technology, so it is beneficial to break them down into smaller concepts.¹¹⁴

One of the most asserted reasons for the lack of public defense attorneys is attributed to a lack of funding, so the question becomes how does funding work?¹¹⁵ The answer to this question is complex, as it depends on the state, the county, and frequently on what type of criminal case it is.¹¹⁶ Specifically, states vary on whether their funding for indigent defense comes from the federal government, the state, or is left to individual counties within the state and these discrepancies can

109. CONF. OF STATE CT. ADM’RS POL’Y & LIAISON COMM., COURTS NEED TO ENHANCE ACCESS TO JUSTICE IN RURAL AMERICA 5 (2018), https://cosca.ncsc.org/_data/assets/pdf_file/0026/23399/policy-paper-1-28-2019.pdf [<https://perma.cc/69YP-BYMD>].

110. *Id.*

111. *Id.* at 1.

112. *Id.*

113. *Lowball Rural Defense*, *supra* note 105, at 1100 (citing to Haksgaard, *supra* note 10, at 88).

114. CONF. OF STATE CT. ADM’RS POL’Y & LIAISON COMM., *supra* note 109, at 1.

115. *Lowball Rural Defense*, *supra* note 105, at 1100 (citing to Haksgaard, *supra* note 10, at 88).

116. Haksgaard, *supra* note 10, at 93.

drastically affect the funding available.¹¹⁷ When counties are relying on their own taxpayers to provide funding for indigent defense, it means that, for rural areas with small population sizes and even smaller tax bases, there is simply not enough funding to provide an appropriate number of attorneys, leading to ineffective assistance of counsel.¹¹⁸ Even when indigent defense funding is coming entirely from the state, there are still budget shortfalls due to states decreasing their financial support or allocating more funds to the prosecution compared to the defense.¹¹⁹

Furthermore, when it comes to funding, there are three ways a state can set what compensation court-appointed attorneys receive: (1) at a specific rate set in code or regulation, (2) at the discretion of a court, also referred to as the assigned counsel model, or (3) the contract system.¹²⁰ The clearest form of payment structure is the first, which provides a set rate in a state's code or regulation.¹²¹ For example, in Alabama, court-appointed attorneys receive \$70 per hour for trial work, appellate work, and post-conviction proceedings.¹²² While this model is the most straightforward, it can make it extremely difficult to get the hourly rate raised as the state legislature must agree and pass a bill allowing for a pay increase.¹²³ The second model is arguably the most unclear as judges can set the reimbursement rate to whatever fits their discretion.¹²⁴ For example, in Arizona, a judge decides the compensation for a criminal defense attorney to “an amount that the court in its discretion deems reasonable, considering the services performed.”¹²⁵ This model makes it so that attorneys do not know what compensation they are going to receive upfront, likely decreases the level of interest attorneys may have in accepting court-appointed cases, and creates inconsistencies throughout the state and on a case-by-case basis for the same kind of work to those who need it. This unfortunately causes many problems. The attorney who bids the lowest rate may not always be the best person to do the work, and if an attorney is expected to cover all of a certain type of case for a fixed rate of money, they may slack off and do the bare minimum to get their payment.¹²⁶ The National Association of Criminal Defense Lawyers, the Public Policy Center at the University of Nebraska, and the

117. NAT'L RIGHT TO COUNS. COMM., *supra* note 4, at 53-54.

118. *Id.* at 54-55; Haksgaard, *supra* note 10, at 107.

119. NAT'L RIGHT TO COUNS. COMM., *supra* note 4, at 59, 61.

120. Haksgaard, *supra* note 10, at 93; *Lowball Rural Defense*, *supra* note 105, at 1089.

121. Haksgaard, *supra* note 10, at 93.

122. *Id.* at 94.

123. *Id.* at 97.

124. *Id.* at 95.

125. *Id.*

126. *Id.* at 114.

Iowa State Bar Association all share the concern that if lawyers receive too low of compensation for their court appointments, it diminishes the quality of representation that the client receives.¹²⁷ Simply put, if attorneys are not properly compensated, they are less likely to accept indigent clients in the first place, and they are more likely to have a decrease in their quality of representation in order to take more clients on to get a proper wage.¹²⁸

Another asserted reason for the lack of access to justice in rural communities is a problem with lawyer recruitment and retention.¹²⁹ “As reported in the 2019 Iowa Access to Justice Report, 20 percent of the [United States] population is rural, yet only two percent of the lawyers in the [United States] locate and practice in rural areas.”¹³⁰ This absence of lawyers creates “legal deserts” and leads to situations where a community is lacking an attorney altogether.¹³¹ “Legal deserts disproportionately affect rural and especially poor people, who may have to travel hundreds of miles, or experience lengthy and expensive delays for routine legal work.”¹³² For example, “Nebraska has 12 counties with no lawyers [and] South Dakota also has entire counties with no lawyers. In both states, there are residents who are not within 100 miles of a lawyer.”¹³³

Driving through rural areas takes a lot of both time and resources and “the reality of rural distance—namely, poor roads, inclement weather, driving in the dark, and unreliable cellular reception—impacts attorney willingness to take cases and ability to provide representation.”¹³⁴ Sometimes “[c]ounties may have no option but to hire attorneys who have to travel long distances for appointed cases.”¹³⁵ Unfortunately “[n]o national data exists on how many court-appointed

127. *Id.* at 113–14 (citing to Steven D. Benjamin, *Foreword to Gideon at 50: A Three-Part Examination of Indigent Defense in America*, NAT’L ASS’N OF CRIM. DEF. LAWS 1, 6 (March 2013), <https://www.nacdl.org/getattachment/cf613fe0-8f46-4dc1-b747-82346328522e/gideon-at-50-rationing-justice-the-underfunding-of-assigned-counsel-systems-part-1-.pdf> [<https://perma.cc/5JDL-6DE3>]).

128. *Id.*

129. Willard L. Boyd III, *Rural Practice: Challenges, Rewards and Solutions*, in THE IOWA LAWYER, Nov. 2019, at 5, 5, https://www.drake.edu/media/collegesschools/law/docs/November_Iowa_Lawyer_2019_Updated.pdf [<https://perma.cc/8E8W-NH2L>].

130. *Id.*

131. April Simpson, *Wanted: Lawyers for Rural America*, PEW (June 26, 2019, 12:00 AM), <https://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2019/06/26/wanted-lawyers-for-rural-america> [<https://perma.cc/ZW6Z-K2RJ>].

132. *Id.*

133. Boyd, *supra* note 129, at 5.

134. Haksgaard, *supra* note 10, at 109.

135. *Id.* at 110.

lawyers are crossing county or state lines to take cases, but the anecdotal evidence suggests it is a substantial problem.”¹³⁶ Requiring an attorney to travel to meet with their client and prepare for their criminal trial, as constitutionally required, costs the attorney valuable time and money, not only from the physical drive time.¹³⁷ Consequently, this is time being taken away from the attorney’s day that they could be spending with other clients or working on other cases.¹³⁸ Furthermore, requiring a client to travel to their court-appointed attorney is even more cumbersome because:

“[c]lients with court-appointed lawyers are, by definition, indigent. Indigency combined with other barriers will have a large impact on a client’s ability to travel to meet an attorney in a rural area: “[a]n individual’s ability to traverse rural distance largely depends on available childcare; a reliable vehicle; a driver’s license; a consistent work schedule; the ability to secure time off; dis/ability; age; health; weather; and road infrastructure. Each of these diverse needs deserves attention.”¹³⁹

While the same difficulties hold true for urban areas, rural areas lack the same levels of public transportation and close living quarters.¹⁴⁰

Another issue that affects access to justice is the lack of technology available in rural communities.¹⁴¹ There have been claims made that increasing the use of technology for court cases and communication with clients would decrease ineffective assistance of counsel claims by reducing travel time and being accessible from anywhere via Zoom, text, calls, etc.¹⁴² Unfortunately, while this solution of technology may be applicable to urban populations, it does not have the same applicability to rural America.¹⁴³ Specifically, research has found that:

“[w]hile the percentage of rural residents who own smartphones has increased within the last decade, only 71% of rural residents have them, compared to 83% of urban residents. Further, individuals may have smartphones without data plans owing to the high cost of such plans, or have older smartphones

136. *Id.*

137. *Id.* at 112; *see also* Lisa R. Pruitt & Beth A. Colgan, *Justice Deserts: Spatial Inequality and Local Funding of Indigent Defense*, 52 ARIZ. L. REV. 219, 291 (2010).

138. Haksgaard, *supra* note 10, at 112; *see also* Pruitt & Colgan, *supra* note 137.

139. Haksgaard, *supra* note 10, at 112–13.

140. *Id.* at 113.

141. Michele Statz et al., “*They Had Access, But They Didn’t Get Justice*”: *Why Prevailing Access to Justice Initiatives Fail Rural Americans*, 25 GEO. J. ON POVERTY L. & POL’Y 321, 337 (2021).

142. *Id.* at 321.

143. *Id.*

with small screens, as was reported in our research. Each of these issues significantly limit access to [access to justice] apps or websites. . . .

Relatedly, cell phone coverage is not necessarily strong, consistent, or even present in rural areas. . . .

. . . .

. . . In 2019, only 63% of rural residents across the United States had home broadband access, compared to 75% of urban residents.”¹⁴⁴

Further, “[r]ural Americans lack access to high-speed broadband at a rate four times higher than the national average.”¹⁴⁵ This lack of access to technology can make it exceedingly difficult for criminal defendants to prepare for their defense through their own research or through communication with their attorney who works out of a different county.

It appears that Wisconsin is one of the most troubling states to be a citizen in a rural area needing an attorney. “In some rural counties in Wisconsin, the lawyer-to-resident ratio is 1:4,452.”¹⁴⁶ For example, Matthew Kirkpatrick—an attorney who practiced in rural Wisconsin—worked out of his home, did not have any staff to help him, and relied on his wife’s employment benefits so that he could take on court appointments due to the State only paying \$40 an hour at the time.¹⁴⁷ Wisconsin’s low pay means that defendants can wait as long as four months before getting a public defender.¹⁴⁸ In one Wisconsin town, the compensation for attorneys is so low that four different state public defender offices must make an average of 17–80 calls over a span of 17–33 days to various attorneys to get one to take the case, and in difficult cases, it has taken up to 302 calls.¹⁴⁹ “Even then, the lawyer taking the case ‘might be one whose office is several counties away.’”¹⁵⁰ These access to justice issues that rural Wisconsin citizens face also occur in rural communities all over America, including our friends and family in rural Iowa.¹⁵¹

B. Access to Justice in Rural Iowa

As stated previously, the funding provided to criminal defense can vary by state and by crime.¹⁵² In Iowa, the specific rate that is set in the Iowa code and

144. *Id.* at 341–43.

145. CONF. OF STATE CT. ADM’RS POL’Y & LIAISON COMM., *supra* note 109, at 4.

146. Boyd, *supra* note 129, at 5.

147. Haksgaard, *supra* note 10, at 106.

148. Statz et al., *supra* note 141, at 325.

149. Haksgaard, *supra* note 10, at 110.

150. *Id.* at 103.

151. *See generally id.*

152. *Id.* at 93.

legislature sets a flat hourly fee to compensate court-appointed attorneys.¹⁵³ The current flat fee system for cases is “seventy-eight dollars per hour for class ‘A’ felonies, seventy-three dollars per hour for class ‘B’ felonies, and sixty-eight dollars per hour for all other cases.”¹⁵⁴ This flat rate has increased by five dollars in each class in the last 3 years.¹⁵⁵ While these raised rates are still insufficient to attract attorneys to take on criminal work in rural Iowa, it is a small step in the right direction. Additionally, states vary in where they get their funding to pay for indigent defense.¹⁵⁶ Fortunately for Iowans, the state of Iowa funds 90% or more of the indigent defense expenditures.¹⁵⁷

However, because the hourly rate for court-appointed attorneys is still so low, there are frequent times when the costs of representing a court-appointed client actually costs the firm money due to overhead costs.¹⁵⁸ A prime example comes from Garner, Iowa, a city that consists of 3,047 people and is located inside a county with a population size of less than 11,000.¹⁵⁹ Inside this rural community is the law firm of Garland & Rodriguez, where “Phil Garland, the senior attorney at the firm, calculates that having Carrie Rodriguez, the associate attorney, handle juvenile court appointments costs the firm approximately \$35 an hour in the associate’s overall cost.”¹⁶⁰

One of the goals of this Note was to be able to identify how many ineffective assistance of counsel claims are made in Iowa each year, but unfortunately, there is no clear answer. Regrettably, there is no database, report, or statistic table that shows how many post-conviction relief claims have been made. What can be said is that in 2022, 129 cases in Iowa relating to post-conviction relief were made.¹⁶¹ In 2021, the Iowa Court of Appeals filed 1,061 court opinions with 13% of those,

153. *Id.* at 94.

154. Iowa Code § 815.7 (2022).

155. *Id.*

156. Haksgaard, *supra* note 10, at 91.

157. NAT’L RIGHT TO COUNS. COMM., *supra* note 4, at 54.

158. *See* Haksgaard, *supra* note 10, at 104.

159. *Garner, Iowa Population 2023*, WORLD POPULATION REV. (Mar. 31, 2023, 10:46 AM), <https://worldpopulationreview.com/us-cities/garner-ia-population> [<https://perma.cc/874U-G7A7>]; *Hancock County, Iowa Population 2023*, WORLD POPULATION REV. (Mar. 31, 2023, 10:47 AM), <https://worldpopulationreview.com/us-counties/ia/hancock-county-population> [<https://perma.cc/Z5H3-V3TA>].

160. Haksgaard, *supra* note 10, at 105.

161. Thomas Reuters Westlaw Precision, <https://westlaw.com/> (using the search term “postconviction” with the filters of “Iowa State & Federal Cases” and “last 12 months”) (last visited Feb. 18, 2023).

or about 138 of those opinions, dealing with post-conviction relief.¹⁶² The Iowa Court of Appeals opinion summaries list 66 allegations from defendants alleging that their post-conviction relief applications containing ineffective counsel claims were incorrectly dismissed in 2022.¹⁶³ Of the 66 opinions, only three of them were remanded due to a genuine issue of a material fact or a premature dismissal.¹⁶⁴ The other 63 “properly” dismissed ineffective assistance claims were affirmed by the Iowa Court of Appeals for a list of reasons including: the defendant’s failure to prove counsel was ineffective, claims being too speculative to find prejudice or their being no different result even if true, the trial counsel did not breach an essential duty, the claims were time-barred, and the appellate court had no authority to hear the claim on direct appeal.¹⁶⁵

These facts still do not identify how many ineffective assistance of counsel claims have been made in Iowa for the year of 2022, nor do they show how many claims were successful, unsuccessful, or why; it does highlight a few issues already addressed in this Note. Most importantly, it assists in the conclusion that the *Strickland* two-prong ineffective assistance of counsel test is an extremely high burden to meet as most of the claims get dismissed for failure to prove prejudice or a breach of an essential duty.¹⁶⁶ Further, it provides support for the conclusion of the hoops a criminal defendant must jump through in order to successfully make their ineffective assistance claims, such as the court not being able to hear the case on direct appeal or having the claim time-barred for being filed too late.¹⁶⁷

IV. RECOMMENDATIONS: RESTORING DUE PROCESS TO RURAL IOWA

Law Professor Hannah Haksgaard said it best: “[n]one of this is to criticize the individual lawyers who dedicate their time and energy to taking court-appointed cases and providing access to justice to indigent clients.”¹⁶⁸ Instead, this Note is designed to draw attention to the inadequacies in the justice system caused by the legislature, which deprives rural Iowans of their constitutional right to effective counsel. Access to justice is of vital importance to

162. *Iowa Court of Appeals Case Statistics*, IOWA JUD. BRANCH (Mar. 31, 2023, 10:56 AM), https://www.iowacourts.gov/iowa-courts/court-of-appeals/caseload-statistics/#_ftn2 [<https://perma.cc/S9PA-WAPD>].

163. *2022 Archive: Most Recent Court of Appeals Summaries*, IOWA JUD. BRANCH (Mar. 31, 2023, 11:00 AM), <https://www.iowacourts.gov/iowa-courts/court-of-appeals/most-recent-coa-summaries/archive/2022> [<https://perma.cc/3C7X-6BXT>].

164. *Id.*

165. *Id.*

166. *See id.*; Lyon, *supra* note 18, at 67.

167. *See 2022 Archive: Most Recent Court of Appeals Summaries*, *supra* note 163.

168. Haksgaard, *supra* note 10, at 117.

our criminal justice system.¹⁶⁹ This Note has discussed the lack of access to justice that plagues our communities, so what should access to justice truly look like? According to the Iowa Access to Justice 2022 Commission Report, access to justice means:

“having a fair chance to be heard in a court or other forum that can help find a solution to the problem you face, regardless of who you are, where you live, or how much money you have. [It] means that, at a minimum, a person should be able to learn about her rights and then give effective voice to them in a neutral and nondiscriminatory, formal or informal, process that determines the facts, applies the fair rule of law, reaches a resolution, and enforces the result.”¹⁷⁰

The last section explained all the ways both the courts and legislatures have failed to provide Iowans with their Constitutional right to effective assistance of counsel; the remaining pages will provide several solutions on how to get it back.

An important note to consider when thinking of solutions to this rural justice issue is that it cannot be done using urban ideology.¹⁷¹ Access to justice solutions created by urban organizations for rural communities are not only insufficient, “but they compound existing stress and are even experienced as humiliating by many low-income rural residents.”¹⁷² Thus, something that might work for a city like Des Moines¹⁷³ or Cedar Rapids¹⁷⁴ will not have the same effect in Prescott¹⁷⁵ or Beaconsfield.¹⁷⁶ Instead, more focus should be spent on further communication with actual rural attorneys and residents in order to get their take on solutions that would work specifically for them. Otherwise, resources are merely getting thrown at a wall and hoping they stick.

169. *Martinez v. Ryan*, 566 U.S. 1, 12 (2012).

170. IOWA ACCESS TO JUST., 2022 COMMISSION REPORT 3 (2022), <https://www.iowacourts.gov/collections/746/files/1595/embedDocument/> [<https://perma.cc/9F9T-4EFR>].

171. Statz et al., *supra* note 141, at 356.

172. Statz et al., *supra* note 141, at 321; Haksgaard, *supra* note 10, at 118.

173. *Quick Facts: Des Moines City, Iowa*, U.S. CENSUS BUREAU (Apr. 20, 2023, 1:49 PM), <https://www.census.gov/quickfacts/desmoinescityiowa> [<https://perma.cc/ZJ7B-AUPS>].

174. *Quick Facts: Cedar Rapids City, Iowa*, U.S. CENSUS BUREAU (Apr. 6, 2023, 9:52 AM), <https://www.census.gov/quickfacts/fact/table/cedarrapidscityiowa/PST045222> [<https://perma.cc/7LW3-MYYH>].

175. *City of Prescott, Iowa*, U.S. CITIES & TOWNS (Apr. 6, 2023, 9:53 AM), <https://www.citydirectory.us/city-prescott-iowa.html> [<https://perma.cc/BKC8-YT4C>].

176. Kim Magaraci, *The (Almost) Ghost Town in Iowa with Fewer Than 15 Residents*, ONLY IN YOUR STATE (Feb. 6, 2019), <https://www.onlyinyourstate.com/iowa/beaconsfield-iowa-ia/> [<https://perma.cc/35GN-SMHG>].

A. Currently Used Solutions

Because of the utmost importance of access to effective assistance of counsel, this topic has been discussed by numerous scholars who have posed several solutions. In Iowa, there is an Access to Justice Committee that meets frequently throughout the year to improve the civil legal needs of Iowans.¹⁷⁷ While this commission's primary focus is on civil law, objectives developed and implemented by this team do have applicability for criminal defendants as well. For example, one of the objectives is to “[e]ducate the rural public on [the] availability of legal information, services, and dispute resolution” using a website titled People’s Law Library of Iowa.¹⁷⁸ This website defines legal terminology and provides how-to guides for finding lawyers and conducting legal research.¹⁷⁹ Additionally, the website goes over research topics for consumer law, family law, and landlord/tenant law with various guides and pertinent information regarding each field.¹⁸⁰ This website would be a great place to disseminate information to the general public about criminal law just as it has been with civil law. If used correctly, it would provide a resource for criminal defendants in addition to family members and victims. Website visitors could look up legal terminology, search for an attorney, identify and research topics of criminal law such as assault, robbery, stalking, domestic violence, etc. and generally get a better sense of the situation they are going through in their lives.

Additionally, law schools, states, and their respective bar associations have proposed and implemented other solutions to this access to justice crisis.¹⁸¹ Law schools located in rural states are attempting to “[provide] opportunities for law students to experience and learn firsthand about the benefits of practicing in a rural community.”¹⁸² At Drake Law, the school “understands the importance of the rural law practice and plays an integral role in connecting students with employment opportunities to grow the legal practice across Iowa.”¹⁸³ As such, with the help of

177. IOWA ACCESS TO JUST., *supra* note 170, at 1.

178. *Id.* at 23; Inst. of Museum & Libr. Servs., *Empowering Iowans as They Navigate the Legal System*, PEOPLES L. LIBR. (Apr. 6, 2023, 9:56 AM), <https://www.peopleslawiowa.org/index.php> [<https://perma.cc/4PAN-TAPE>].

179. Inst. of Museum & Libr. Servs., *supra* note 178.

180. *Id.*

181. Robin Runge, *Addressing the Access to Justice Crisis in Rural America*, AM. BAR. ASS’N (July 1, 2014), https://www.americanbar.org/groups/crsj/publications/human_rights_magazine_home/2014_vol_40/vol_40_no_3_poverty/access_justice_rural_america/ [<https://perma.cc/T6A2-GBBT>].

182. *Id.*

183. *Rural Practice*, DRAKE UNIV. L. SCH. (Apr. 6, 2023, 9:58 AM), <https://www.drake.edu/law/careers/resourcesforstudents/ruralpractice/> [<https://perma.cc/YCK5-VSSM>].

donors, Drake Law School has established the Rural Access to Justice Initiative that allows the school to help ease the financial burden by providing a stipend to “offset housing, commuting, or other financial obstacles” for students involved in a summer clerkship in rural Iowa.¹⁸⁴ Further, many law schools have some type of loan forgiveness for graduates who practice in public interest.¹⁸⁵ While the programs vary, “they generally agree to pay for the graduate’s law student loans for a specified period of time as long as the student remains employed in public interest law with a net income under a specific amount.”¹⁸⁶ Congress has also stepped in over the last decade and has passed legislation which “provides loan forgiveness to law students to remain employed in the public interest law field for a minimum of 10 years.”¹⁸⁷

While these currently imposed technological and funding resolutions are a great start, there is so much more that can be done to increase lawyer retention in rural Iowa and reduce the chance of Iowans receiving ineffective assistance of counsel.

B. Proposed Solutions

If the issue of Iowa’s ineffective counsel in rural communities is ever going to be fixed, then we need to go straight to the source and talk to those who currently live with and address the problem daily. In response to a questionnaire emailed to practicing rural attorneys throughout the state, rural Iowan lawyers have commented on their challenges specific to working in rural Iowa.¹⁸⁸ When addressing the question “what are the biggest challenges,” these attorneys had a lot to say—including the lack of funding, huge loans, the attractiveness of larger city firms that pay more and can find more work, technology change, and conflicts of interest.¹⁸⁹ Further reported challenges of practicing in rural areas include: seeing clients at the grocery store, approaching lawyers to ask legal questions, not feeling familiar with all areas of law since rural practitioners are often required to be proficient in many fields, learning curves from tackling many areas all at once, lack of attorneys, and having an overwhelming caseload.¹⁹⁰

Based on the survey results of currently practicing attorneys, I decided to

184. *Id.*

185. Runge, *supra* note 181.

186. *Id.*

187. *Id.* (citing to Phillip G. Schrag & Charles W. Pruett, *Coordinating Loan Repayment Assistance Programs with New Federal Legislation*, 60 J. LEGAL EDUC. 563, 587 (2011)).

188. Boyd, *supra* note 129, at 5.

189. *Id.* at 11.

190. *Id.* at 12.

conduct my own survey on current Iowan law students, from first-year to third-year students, to get their perspective on practicing in rural Iowa.¹⁹¹ The survey received 108 responses from current students at Drake Law School and out of those responses, 21 stated they plan on practicing in a rural area, 44 said they do not plan on practicing in a rural area, and 43 stated they were unsure of where they plan on practicing.¹⁹² Out of the 108 respondents, only 25 are from rural areas of 5,000 people or less across America.¹⁹³ Of those 25 students from rural areas, only six plan on practicing in rural areas and 11 are unsure.¹⁹⁴ The following is a list of the major reasons—in order of most to least stated—for why current Iowan law students do not want to practice in a rural community: lack of activities to do such as entertainment and medical treatment, low compensation compared to cities, the small town feel and political ideologies, a lack of resources like mentors and career advancement, and the amount of information an attorney must know to do general practice effectively.¹⁹⁵ Something to note from the survey is that even with the issues current law students believe occur in legal practice such as lack of funding or activities, many responded stating that they would want to practice in a rural community to help people in need.¹⁹⁶ So, hope is not lost for rural Iowans, we just need to find the right solutions to the right problems.

Using the responses from the student survey and the answers to the questionnaire from practicing attorneys, the real reasons for having legal deserts in rural Iowa become more clear—allowing us to pose better solutions.¹⁹⁷ The main similarities between the two surveys presents the idea that the following areas need improvement to gain lawyer recruitment and retention: attorney compensation, career advancement, advertisement of activities and diversity in rural communities, and mentorship programs.¹⁹⁸

Money makes the world go round. If there was money in indigent defense, more lawyers would be attracted to the profession, there would be opportunities

191. *See generally* Kaleigh Blinn, Iowa Rural Practice Survey (Feb. 2023) (on file with author).

192. *Id.* (The University of Iowa College of Law declined to participate in the survey).

193. *Id.*

194. *Id.* (noting that of those 17 who have said yes or unsure, seven are not from Iowa).

195. *Id.*; *see* Simpson, *supra* note 131.

196. Blinn, *supra* note 191.

197. *See generally id.*

198. *Id.*; Ashley Beisch et al., *Examining the Realities of Rural Practice: Veterans and Newbies Share Their Observations*, THE IOWA LAWYER, Nov. 2019, at 11, 11-13, https://www.drake.edu/media/collegesschools/law/docs/November_Iowa_Lawyer_2019_Updated.pdf [<https://perma.cc/8E8W-NH2L>].

for career advancement, and more mentors to choose from.¹⁹⁹ Because the lack of attorney compensation is one of the root causes for most young attorneys are not coming or staying in rural Iowa, this is the issue that should receive most of the focus when crafting solutions.²⁰⁰

Rural Iowa attorneys who were surveyed gave the following ideas to improve payment in rural practice: increasing the hourly rate of court-appointed work in order to pay bills and to allow the possibility to hire another attorney to decrease the legal deserts and current attorneys being overworked.²⁰¹ By limiting court appointments to the local available attorneys, the court creates an option for rural attorneys to increase their revenue.²⁰² The state could implement loan forgiveness programs similar to what is used when bringing young medical professionals to rural areas.²⁰³ Additionally, the rural attorneys further advised that Iowa state and local governments should be careful in shutting down rural courthouses because it causes clients and attorneys to travel farther.²⁰⁴ This forces rural attorneys to leave the area to be closer to where the work is.²⁰⁵ State and local governments have a number of avenues available to improve rural practice; the following paragraphs will address some of these options.

As mentioned above, Iowa's legislature has determined the compensation rate that the court-appointed attorneys receive, but those amounts are not enough to cover firm overhead and personal student loans.²⁰⁶ Further, it is exceedingly difficult for indigent defense attorneys to receive more compensation due to the legislative process and the ideology that criminal defense is a partisan or political issue—politicians do not want to be seen as being soft on crimes and paying for “criminals” to have reduced or no punishments.²⁰⁷ If funding the criminal defense system is framed as a partisan issue, then it should be made a partisan issue. Specifically, advocates can frame this problem to their legislature as a rural versus city problem. By crafting the advocacy in this framework, it demands rural legislators to see the discrepancies between rural and urban communities. Compared to rural communities, urban areas have more attorneys to handle caseloads and more resources to enhance the quality of representation for clients

199. *See generally* Beisch et al., *supra* note 198.

200. *See generally id.*

201. *Id.* at 12.

202. *Id.*

203. *Id.*

204. *Id.*

205. *Id.*

206. Iowa Code § 815.7 (2022); *see* Haksgaard, *supra* note 10, at 104.

207. *See generally* Haksgaard, *supra* note 10, at 97.

in those areas.²⁰⁸ This discrepancy should motivate the legislature to increase the hourly rate across the board. Even after increasing the hourly rate for court-appointed work, there is still the concern of preexisting student loans that students must pay off in addition to a mortgage, starting a family, and other living expenses.²⁰⁹

One idea to decrease the student loan burden for practicing rural attorneys is the method used in South Dakota.²¹⁰ There, the state pays for rural attorneys to establish law practices and meet initial living expenses, so the new attorney can get on their feet.²¹¹ Another solution would be for the Iowa legislature to provide additional funding to law schools so that the school can freeze or lower tuition for those students who will practice in rural Iowa upon graduation.²¹²

As for the student concerns about a lack of activities or diversity in rural communities, there appear to be two solutions.²¹³ The first is increasing the compensation or benefits received by the attorneys to an amount where a lack of activities is not a major concern.²¹⁴ Because this solution may not be feasible for many years, or even at all, the second solution may be just as favorable—increasing advertisement of our rural areas. For example, the responses to the Drake Law student survey established that many students think favorably of raising a family in a rural community but have concerns about diversity and the risk of being ostracized.²¹⁵ These mindsets can be combated by emphasizing the increase in racial and political diversity seen from population migration over the last several years.²¹⁶ Rural Iowa is not as segregated as social media or ideology has led many of us to believe.²¹⁷ Beyond advertising a rural community's diversity, there can be more advertisement of other benefits of living in rural communities such as the school system, best coffee or ice cream shops, ag-farm tours, the scenic parks, and lakes, etc. The goal is to let young attorneys know that even while practicing in a

208. *Id.* at 106.

209. Matt Berry, *Thoughts from a Rural Practice Veteran*, THE IOWA LAWYER, Nov. 2019, at 8, 8, https://www.drake.edu/media/collegesschools/law/docs/November_Iowa_Lawyer_2019_Updated.pdf [<https://perma.cc/8E8W-NH2L>].

210. *Id.*

211. *Id.*

212. *Id.*

213. *See* Blinn, *supra* note 191.

214. *See* Beisch et al., *supra* note 198, at 11.

215. Blinn, *supra* note 191.

216. Johnson & Lichter, *supra* note 101, at 3; *see* Rowlands & Love, *supra* note 103; *2020 Census Results*, *supra* note 101.

217. Johnson & Lichter, *supra* note 101, at 3; *see* Rowlands & Love, *supra* note 103.

small town, there are things to do.

V. CONCLUSION

An indigent criminal defendant's access to an effective attorney is constitutionally required, yet, frequently unfulfilled in rural America, including our own backyards.²¹⁸ The effects of these issues are grand, as rural America is the backbone of our country and feeds our nation.²¹⁹ Thus, understanding the issues of representation facing these defendants and how ineffective assistance of counsel occurs matters, especially moving forward in the 21st century. While there are many reasons contributing to an attorney to behave ineffectively, some of the leading problems stem from a lack of attorneys per defendant, a lack of funding for defense, and deficiencies in the recruitment and retention of young attorneys.²²⁰ These problems are not impossible to fix, however, as survey data indicates, the idea of living in rural America is not the problem, rather, it is the lack of support from our legislatures that is.²²¹ What is needed is more funding from governments statewide for indigent defense in hopes of attracting and retaining attorneys of all ages. Student loan forgiveness programs, funding for technological advances, and resources for boots on the ground action—to actually talk with rural Iowans establish their needs—would greatly benefit our criminal defense system. Additionally, advertising the strengths and unique charm of rural living to aspiring lawyers can help break the narrative that attorneys cannot thrive in our backcountry. This constitutional problem that faces our communities is massive, but it does not have to stay that way. With the right effort and the right mindset, we can ensure that Iowa has effective counsel in *all* rural communities.

218. See generally U.S. CONST. amend. VI.

219. Essence Smith, *Feeding Rural America One Community at a Time*, FORBES (May 10, 2022, 2:24 PM), <https://www.forbes.com/sites/forbeseq/2022/05/10/feeding-rural-america-one-community-at-a-time/?sh=31b4f66326ae> [https://perma.cc/5ADP-N57G].

220. See Boyd, *supra* note 129, at 5.

221. *Id.*; See generally Blinn, *supra* note 191 (in reference to survey results indicating a desire to help rural communities).