Winter 12-1-2019

Please Tweet Responsibly: The Social and Professional Ethics of Public Defenders Using Client Information in Social Media Advocacy

Nicole Smith Futrell
CUNY School of Law

Julien Eichinger - stock.adobe.com

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Every day the criminal legal system hauls poor and marginalized individuals through a process wrought with trauma, indignity, and abuse. Public defenders representing the criminally accused view their clients and the system from a unique vantage point: they bear witness to the human costs of a system that falls far short of its purported norms and ideals.

For the public defender who works within this reality day in and day out, fighting for each individual client might feel limited in its wider impact. Some public defenders have found that using online and social media platforms, such as Twitter, to provide insights and commentary on the human toll of the criminal legal system is one way to contribute to a deepened public awareness of the criminal legal system's shortcomings. Indeed, while statistics about mass criminalization and mass incarceration provide powerful data points, narratives about the very real ways that clients experience being arrested, charged, processed and adjudicated can influence public debate and create momentum for both an individual case and more comprehensive systemic reform.

These online and social media narratives about clients can be powerful because they help to convey to unfamiliar audiences how the law is actually being experienced by those who have been marginalized because of their economic status, ability, race, sexual orientation, gender identity, or immigration status.[1] While this can be a compelling and effective approach, public defenders need to consider what their ethical obligations are and also what a strong sense of social and professional responsibility requires.[2] The deep racial disparities in the criminal legal system and the particularly unique vulnerabilities of the indigent criminal client necessitate that public defenders refrain from using client narratives in ways that may inadvertently oversimplify and exploit a client's life experience. This article offers public defenders practical guidance on how to ethically and responsibly draw from their specialized knowledge and the experiences of their clients in order to expose systemic injustice.[3]

Author's Note: This article focuses on public defenders to highlight the unique standards and responsibilities associated with the provision of indigent defense representation and to acknowledge the current trend of institutional defenders commenting on client matters on social media. However, it is important to note that public defenders, private defense attorneys who take assigned cases, and criminal defense attorneys who only represent paying clients are all subject to the ethical obligations required by their state's Rules of Professional Responsibility.

BY NICOLE SMITH FUTRELL

Key Ethical Considerations

The American Bar Association provides guidance for public defenders and all defense attorneys on the issue of making public comment about client cases and experiences through its Model Rules of Professional Conduct,[4] Criminal Justice Standards for the Defense Function,[5] and Formal Opinions.[6] As a preliminary matter, the ABA's Standards for the Defense Function recognize that defense attorneys have an important role to play in reforming and improving the criminal legal system. According to Standard 4-1.2(e), "When inadequacies or injustices in the substantive or procedural law come to defense counsel's attention, counsel should stimulate and support efforts for remedial action. Defense counsel should provide services to the community, including … public education. …"[7] As a result, defense attorneys are not simply tasked with representing an individual client. They are encouraged to advocate for reform of the legal process when particular injustices come to their attention through their legal representation.[8] However, public defenders' fidelity to client is paramount and they must be mindful of their specific ethical obligations while working and commenting on reform issues.

The ABA, in directly addressing the issue of attorneys using online platforms to make public commentary that involves client information, has noted that"[w]hile technological advances have altered how lawyers communicate, and therefore may raise unexpected practical questions, they do not alter lawyers' fundamental ethical obligations when engaging in public commentary."[9] These key ethical obligations related to confidentiality, conflicts of interest, and trial publicity are discussed in greater detail below.

Confidentiality

Perhaps the most common ethical concern that arises when considering what public defenders and all defense attorneys may share about client experiences on social media and online platforms is the lawyer's duty of confidentiality.[10] Model Rule of Professional Conduct 1.6 provides that: "A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation," or the disclosure is permitted by a specifically enumerated exception.[11]

Rule 1.6 recognizes the importance of confidentiality and limits the attorney's ability to disclose information relating to the representation. Trust is considered a core value of the attorney-client relationship both while it is ongoing and after it has terminated.[12] In order for a defense attorney to represent a client effectively, the client must have assurances that the information shared, regardless of whether it is seemingly positive or clearly damaging, will be held in confidence.[13] Model Rule 1.6 "applies not only to matters communicated in confidence by the client but also to all information relating to the representation, whatever its source."[14] Attorneys who fail to maintain confidences of client information when posting online can be subject to discipline.[15]

Defenders must conduct a review of their state ethical rules, particularly related to Rule 1.6 on confidentiality of client information, before discussing any details related to a client's experience or case on social media. The ABA's Model Rules and the rules of many states include publicly available information within the definition of confidential information, which significantly limits what can be communicated on social media outside of the rule's limited exceptions.[16] However, not all states regard publicly available information as confidential, and being aware of the scope of the applicable state rule will be critical to knowing what is ethically permissible to post.[17]

Obtaining informed consent and anonymizing a client story are two possible ways to resolve client confidentiality concerns. However, these approaches have their limitations. A defense attorney who engages in public commentary may not reveal information relating to client representation, unless the attorney receives informed consent from the client.[18] If the attorney thinks the client's experience can be shared ethically for a clearly identified purpose, counsel will need to consider the appropriate time and manner to obtain informed consent. It is difficult to imagine making such a request of a client at the initial meeting or even while the case is still ongoing, particularly given concerns about attorney-client privilege and the power imbalance between attorney and client.

Further, describing client information as "hypothetical" does not necessarily circumvent violation of Rule 1.6(a). The Rules emphasize that the duty of confidentiality extends to disclosures that have the potential to reveal client confidences.[19] Comment 4 to Rule 1.6 specifically states that "[a] lawyer's use of a hypothetical to discuss issues relating to the representation is permissible so long as there is no reasonable likelihood that the listener will be able to ascertain the identity of the client or the situation involved."[20] This can be challenging in practice because depending on the nature of the locale, or if the defender is posting the information online with his or her own name and identity attached, there is always some measure of concern that the client's identity could be discovered.[21]

Finally, lawyers assume responsibility for other persons who assist in representation of the client and are privy to client confidences. They must ensure that those parties do not inadvertently disclose client information.[22]

Conflict of Interest

A defense attorney using an online or social media platform to share client experiences must also consider the impact of conflicts of interest involving both current and former clients.[23] Loyalty to client and independent judgment are professional and ethical values at the core of conflict of interest obligations. MRPC 1.7 specifically addresses the risk that arises when a public defender's representation becomes compromised by a conflict between the current client's interests and counsel's own personal interests.[24] An ethical violation occurs when there is a significant risk that the lawyer's representation will be "materially limited" by a personal interest.[25] In contemporary society, many defenders may find themselves gaining recognition and professional opportunities because of their social media commentary on social justice issues. A personal interest that materially limits representation can take shape in ways that might not be immediately apparent.[26]

Aside from concerns about a conflict involving a personal interest, an attorney using client information on social media must also consider whether the information being shared disadvantages a client.[27] Slight differences in the rules exist for former versus current clients. While public defenders have a bit more latitude in discussing the case and experience of a client whose case is resolved, there are still important ethical requirements. Defense attorneys may not use information about a former client to the client's disadvantage, subject to a significant exception. MRPC 1.9(c)(1) instructs that an attorney who has formerly represented a client shall not "use information relating to the representation to the disadvantage of the former client except as these Rules would permit or require with respect to a client, *or when the information has become generally known*."[28] To put it differently, an attorney may use information to a past client's disadvantage without informed consent as long as the information has been disclosed by some source other than the lawyer or the lawyer's representatives and is "widely recognized by members of

the public in the relevant geographic area."[29] Importantly, client information that is publicly available is not automatically considered to be generally known.

For a current client, if the information is disadvantageous, a defender cannot post online about it without informed consent. This is distinct from the obligation to a former client, where a defense attorney may be able to use disadvantageous information without informed consent if the information is widely known and not just publicly available.

What is considered "disadvantageous to client" has been defined rather broadly.[30] For example, "in the context of a criminal case, even when an attorney wins an acquittal for the client, the attorney's post-trial discussion of that case — even when done in a pro-client light — is often considered to work to the client's disadvantage."[31] A dramatic increase in publicity from a lawyer's online discussion of the client's case could embarrass the client or bring about unwanted notoriety, which amounts to a disadvantage.[32]

Trial Publicity

Also applicable to the question of defense attorneys sharing client information on social media is Model Rule 3.6, which addresses the issue of trial publicity and extrajudicial statements.[33] It states that "[a] lawyer who is participating or has participated in the investigation or litigation of a matter shall not make an extrajudicial statement that the lawyer knows or reasonably should know will be disseminated by means of public communication and will have a substantial likelihood of materially prejudicing an adjudicative proceeding in the matter."[34] This rule carves out a limitation that allows the lawyer to make a public communication for the purpose of mitigating any damaging statements made publicly about the client.[35]

In short, defense attorneys are encouraged to engage in law reform efforts and public commentary. While changes in technology have altered the way that lawyers communicate with the public, defense attorneys must consider the rules around confidentiality, conflicts of interest, and trial publicity when drawing from client experiences.

Free Speech Considerations

When public defenders engage in social media commentary about client experiences, concerns about the intersection of ethical obligations and First Amendment constitutional protections are inevitably raised. By entering the legal profession, attorneys tacitly agree to a system of regulation that frequently limits their speech rights. Public defenders, just like other licensed attorneys, can have their speech restricted and penalized by the local rules of their jurisdiction.[36] While lawyers do not completely shed all of their First Amendment rights upon becoming members of the bar, courts must often balance "the State's interest in the regulation of a specialized profession against a lawyer's First Amendment interest in the kind of speech that [is] at issue."[37] It should go without saying that public defenders must take special care to ensure that the content of their tweets, posts, and blogs do not use or reveal confidential client information. First Amendment protections and ethical rules tend to converge when an attorney wants to discuss information that can be found in court documents or sources available to the public.

The case of *Hunter v. Virginia State Bar ex rel. Third Dist. Comm.* demonstrates the tensions between attorney ethics and First Amendment rights in regard to publicly available information.[38] Horace Frazier Hunter was charged with violating Virginia's version of Rule 1.6 by using his legal blog to discuss embarrassing and likely detrimental information about his former clients without their consent.[39] Hunter's blog posts, which he admitted had both marketing and public education purposes, identified clients by name and detailed information about charges of which his clients were later acquitted.[40] The Virginia State Bar argued that allowing attorneys to post about publicly available information related to their clients "could inhibit clients from freely communicating with their attorneys [] because it would undermine public confidence in the legal profession."[41] Nonetheless, the Virginia Supreme Court, noting that "a lawyer is no more prohibited than any other citizen from reporting what transpired in the courtroom," found that the ethics concerns of discussing public information about a former client, even if potentially embarrassing, must yield to the attorney's First Amendment protections. [42] While the Virginia Supreme Court's decision takes a position contrary to that of many legal ethicists, it does signal a split being played out in courts and legal communities around the country.[43]

For all defense attorneys representing indigent clients, particularly attorneys who proclaim a commitment to social and racial justice, the ethical obligations should be considered only a baseline for how to engage with client information online.

Social Responsibilities of Indigent Defense

The ethical rules provide critical guidance for lawyers seeking to discuss client information and experiences on social media. However, for all defense attorneys representing indigent clients, particularly those who proclaim a commitment to social and racial justice, the ethical obligations should be considered only a baseline for how to engage with client information online. When one considers the unique role that indigent defenders play in carrying out a constitutional mandate, as well as the deeply entrenched race and class disparities of the criminal legal system, it becomes apparent that additional caution and consideration are appropriate.

It is a fundamental principle of the legal profession that loyalty, mutual trust, and respect are among the core components of the attorney-client relationship. From the outset, public defenders must overcome several challenges in order to demonstrate loyalty and work toward a relationship of mutual trust and respect with their clients. While the Supreme Court's decision in *Gideon v. Wainwright,* requiring that states provide an attorney to defendants who are unable to afford one, is of critical importance, criminally accused individuals may view their court-appointed counsel with a degree of suspicion.[44] From the accused's perspective, the public defender is an attorney provided by the court whose salary comes from the very state initiating the prosecution against them. Additionally, while the accused has the right to counsel, they do not have the right to counsel of their choosing.[45] Clients are in a position with very little agency: they are fighting against the power of the state with someone they may view as an institutional actor as their advocate. Public defenders must be particularly mindful that their engagement

with a client's experience on social media does not inadvertently exacerbate the perceived lack of agency that is endemic to a court-appointed relationship.

Relatedly, attorneys speak for and about their clients in legal settings on a regular basis. The familiarity they may have with a client's case can create a sense of ownership over the stories and experiences that are connected to it. This phenomenon is further complicated when public defenders do not share the same racial or otherwise marginalized background as their clients. In these instances, the disparities between attorney and client may lead to concerns about the exploitation of a client's trauma. Online and social media platforms do not often allow for nuanced, complex depictions of client narratives.[46] Public defenders must be careful to avoid defaulting to stereotypes and caricatures.

Social media has been proven to provide members of the public with unmediated, up-close access to legal information and experiences that can energize reform efforts. However, public defenders have a primary responsibility to the clients they serve and must always be mindful of avoiding the infliction of unnecessary harm on the individual in the name of progress for the whole.

To Tweet, Or Not to Tweet?

Public defenders can use their specialized knowledge, detailed professional experiences, and the experiences of their clients to effectively show systemic injustice and advocate for reform. However, it is important to keep in mind the ethical obligations as well as the social and moral responsibilities that come with providing legal representation to those without financial means.

Nothing prevents public defenders from using their professional knowledge to comment on a case when they or their organization is not part of the representation. Additionally, public defenders may generate the true hypothetical or composite example to share online. The ethical rules require that there be "no reasonable likelihood that a third party may ascertain the identity or situation of the client from the facts set forth in the hypothetical." However, the public defender should consider going even further to ensure that even the clients themselves would not be able to identify their own experience with changed details. Online platforms usually only allow for a snapshot of a person's story or experience without all the complexity that human interactions carry. It is important to avoid having a client feel exploited or further marginalized even through a hypothetical account.

After reviewing the ethical rules related to confidentiality, conflicts of interest, and trial publicity, a public defender who still wants to use a client experience should consider and clearly identify the purpose of the client-related tweet, post, or blog. Who is the defender trying to influence and what result is being sought? Is there a specific, articulated outcome for the client or greater systemic understanding that can be realized?[47] Client experiences should not be shared on social media simply because they are interesting or satisfy voyeuristic tendencies. They should not be shared as a means of venting or blowing off steam. In this age of social media celebrity, public defenders must also honestly assess whether any part of recounting the story serves to benefit their own reputation or ego.[48] If it truly is not about the individual public defender, it is worth exploring whether a way exists to still achieve the articulated purpose by sharing the story anonymously.

The public defender should also be particularly mindful of the power dynamics at play when seeking informed consent and asking clients about sharing their experiences on social media. A client should always have a say and full information about what it means to have an experience shared online, even if it is for the purpose of effecting change. Informed consent in this context is certainly fraught, yet, one meaningful step would be to establish assurances that the client does not feel any implicit pressure to assist the attorney in the desire to share the client's experience publicly. The public defender might communicate that the client is under no obligation to share anything about his or her story or experience and that the professional relationship will not be impacted by the client's decision. Informed consent might include information about how the experience will be communicated and on what platforms, a willingness to remove or edit the online posting at the client's request, and notice that some posts become the property of the social media platform and may be accessed and shared by other online users in ways not anticipated in the first instance.[49]

It is also important to investigate the impact of the assumptions, biases, and dominant narratives that are unwittingly being advanced. Is the narrative conveyed dignified and affirming? Could the experience be viewed as objectifying poverty or an exploitation of racial trauma? While the rules may permit sharing confidential information of a former client that is widely known, finding a way to do so that does not deepen client marginalization is critical. It is worth exploring whether a legally appropriate way exists to create space for former clients to collaborate with the defender or to speak in their own voices if they choose to. Communicating jointly with the former client or creating space highlights the dynamic process of informed consent, potentially reduces the power imbalance between lawyer and client, and may help reduce biases and disadvantages in the communication.

A public defender interested in social justice reform might also seek other parties that can convey the client's experience in an authentic and effective way. Nothing precludes directing a willing former client to a sympathetic, informed third party to communicate an experience. Increasingly, court watch programs, journalists, and policy advocates observe in criminal court settings. These parties may be able to effectively and authentically identify and articulate cases and experiences that demonstrate systemic deficiencies without directly implicating the attorney-client relationship.[50]

Conclusion

Using social media to comment on systemic injustice and advance criminal legal reform is an important way for public defenders to proactively use their specialized knowledge. However, public defenders must be aware of the important client obligations required by their state's Rules of Professional Responsibility. Further still, the unique social and racial justice considerations of indigent defense should prompt defenders to push beyond the ethical rules to develop social media practices that respect the agency and experiences of their clients.

Notes

1. Client narratives can effectively highlight systemic problems and facilitate empathetic understanding by courts, state actors, and the public. Leigh Goodmark, *Telling Stories, Saving Lives: The Battered Mothers' Testimony Project, Women's Narratives, and Court Reform*, 37 Ariz. St. L.J. 709, 756 (2005); Nicole Smith Futrell, *Vulnerable, Not Voiceless: Outsider Narrative in Advocacy Against Discriminatory Policing*, 93 N.C. L. Rev. 1597 (2015).

2. Clinical law scholars often engage in the use of client stories in their academic

writing. In considering the tension between collaborative representation and the telling of client stories, Binny Miller writes: "Even if the ethical rules governing client confidentiality permit [using client stories] where the client's identity is not disclosed … legal academics need to consider whether clients should have a say in decisions about how their stories are told. Yet surprisingly, while clients are in the forefront of many law review articles, they are almost invisible in the decision-making process about which story to tell or whether to tell a story at all." Binny Miller, *Telling Stories About Cases and Clients: The Ethics of Narrative*, 14 GEO. J. LEGAL ETHICS 1, 4 (2000).

3. These guidelines should be considered in conjunction with an organization's social media policy.

4. AM. BAR ASS'N, MODEL RULES OF PROF'L CONDUCT (Dec. 4, 2018), https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/model_rules_of_professional_conduct_table_of_contents/ [hereinafter MRPC].

5. AM. BAR ASS'N, CRIMINAL JUSTICE STANDARDS FOR THE DEFENSE FUNCTION, 4th ed. (Apr. 16, 2015), https://www.americanbar.org/groups/criminal_justice/standards/DefenseFunctionFourthEdition/ [hereinafter Defense Function].

6. AM. BAR ASS'N, PROF'L RESPONSIBILITY: FORMAL OPINION 480 (Mar. 6, 2018), https://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/aba_formal_opinion_480.pdf [hereinafter Formal Opinion 480].

7. Defense Function, *supra* note 5, at 4-1.2(e).

8. *Id.*

9. Formal Opinion, *supra* note 6, at 1-2.

10. MRPC, *supra* note 4, at 1.6 (a-c).

11. *Id.*

12. *Id.* at Comment 2 & 20 ("The duty of confidentiality continues after the client-lawyer relationship has terminated."), https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_1_6_confidentiality_of_information/comment_on_rule_1_6/.

13. *Id.* at Comment 2.

14. *Id.* at Comment 3.

15. Complaint at ¶ 2, In the Matter of Kristine Ann Peshek, No. 09 CH 89 (Ill. Attorney Registration & Disciplinary Comm'n, Aug. 25, 2009); The disciplinary case of a public defender working in Illinois serves as a cautionary tale about the bounds of sharing confidential client information online. In *In the Matter of Kristine Ann Peshek*, the attorney maintained a blog where she referenced specific information about clients such as their names, jail identification numbers, offenses, substance abuse history, and details about privileged conversations. The attorney ultimately received a suspension from the Illinois State Bar for violating the state's Rules of Professional Conduct.

16. Formal Opinion 480, *supra* note 6; David L. Hudson Jr., *Lawyers Have Enhanced Duty of Confidentiality When Engaging in Public Commentary*, ABA JOURNAL (May 1, 2018).

17. MRPC, *supra* note 4, at 1.6; *See, e.g.*, MA RPC 1.6(a) Comment 3(a) & 3(b). The scope of confidential information in Massachusetts varies from the standard established by the ABA. Confidential information does not ordinarily include "information about a client contained in a public record that has received widespread publicity."

18. MRPC, *supra* note 4, at 1.6.

19. MRPC, *supra* note 4, at 1.6 & Comment 4.

20. *Id.*

21. *See* Lana Gollyhorn, MA, *The Ethics of Sharing Client Stories: One Approach to Handling Confidentiality When We Teach Workshops or Classes*, PSYCHOL. TODAY (Oct. 21, 2016).

22. MRPC, *supra* note 4, at 1.6 & Comment 18; *See also* 1.6 (c): "A lawyer shall make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the representation of a client."

23. *Id.* at 1.7 and 1.8.

24. *Id.* at 1.7(a)(2).

25. *Id.*

26. Defense Function, *supra* note 5, at 4-1.10(h). The ABA Defense Standards caution: "Defense counsel should not allow the client's representation to be adversely affected by counsel's personal interest in potential media contacts or attention."

27. MRPC, *supra* note 4, at 1.8(b).

28. *Id.* at 1.9(c)(1) (emphasis added).

29. AM. BAR ASS'N, PROF'L RESPONSIBILITY: FORMAL OPINION 479 (Dec. 15, 2017), https://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/aba_formal_opinion_479.authcheckdam.pdf.

30. Michael D. Cicchini, *On the Absurdity of Model Rule 1.9*, 40 VT. L. REV. 69, 83–84 (2015).

31. *Id.* at 83.

32. *Id.,* citing *Harris v. Baltimore Sun Co.*, 625 A.2d 941, 947 n.3 (Md. Ct. App. 1993) (quoting RESTATEMENT OF THE LAW GOVERNING LAWYERS § 111 (AM. LAW INST., Tentative Draft No. 3, 1990) ("[A]dverse effects include … personal embarrassment. …")).

33. MRPC, *supra* note 4, at 3.6.

34. *Id.* at 3.6(a).

35. *Id.* at 3.6(c).

36. *Gentile v. State Bar of Nevada*, 501 U.S. 1030, 1071, 1075 (1991) (holding that state-imposed restrictions on attorney speech are subject to less stringent review than state-imposed restrictions on other speakers); *See also* Ría A. Tabacco, *Defensible Ethics: A Proposal to Revise the ABA Model Rules for Criminal Defense Lawyer-Authors*, 83 N.Y.U. L. REV. 568, 596–97 (2008) "These cases reflect Justice Cardozo's maxim that '[m]embership in the bar is a privilege burdened with conditions,' among them restrictions on speech for a lawyer who represents a criminal defendant."

37. *Gentile*, *supra* note 36, at 1051-1052.

38. *Hunter v. Virginia State Bar ex rel. Third Dist. Comm.,* 285 Va. 485, 491, 744 S.E.2d 611, 613 (2013).

39. *Id.*

40. *Id.*

41. *Id.* at 503.

42. *Id*. at 503; *see also* Elizabeth Colvin, *The Dangers of Using Social Media in the Legal Profession: An Ethical Examination in Professional Responsibility*, 92 U. DET. MERCY L. REV. 1, 18–19 (2015); *see also In re Anonymous*, 654 N.E.2d 1128, 1129 (Ind. 1995) (concluding that a lawyer violated Rule 1.6 by disclosing information related to a client representation, even though the information "was readily available from

public sources and not confidential in nature"); *People v. Isaac,* No. 15PDJ099, 2016 WL 6124510 (Colo. O.P.D.J. Sept. 22, 2016); *In re Anonymous*, 654 N.E.2d 1128, 1129 (Ind. 1995); *In re Bryan*, 61 P.3d 641, 656-57 (Kan. 2003); *Akron Bar Ass'n v. Holder*, 810 N.E.2d 426, 434-35 (Ohio 2004); *Lawyer Disciplinary Bd. v. McGraw*, 461 S.E.2d 850, 860-63 (W. Va. 1995); *In re Harman*, 628 N.W.2d 351, 361 (Wis. 2001).

43. Jan L. Jacobowitz & Kelly Rains Jesson, *Fidelity Diluted: Client Confidentiality Gives Way to the First Amendment and Social Media in Virginia State Bar, Ex Rel. Third District Committee v. Horace Frazier Hunter*, 36 Campbell L. Rev. 75, 106 (2013); *See* Andrew Perlman, More on the Confidentiality Implications of Hunter v. Virginia State Bar, Legal Ethics Forum (June 9, 2013, 8:20 PM), http://www.legalethicsforum.com/blog/2013/06/hunter_case.html#comments; Richard Zitrin, *Viewpoint: Guard Your Clients' Public Secrets*, The Recorder (June 7, 2013), https://www.law.com/therecorder/almID/1202603049631/.

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

45. *See Morris v. Slappy*, 461 U.S. 1, 14 (1983) (rejecting the claim that the Sixth Amendment "guarantees a meaningful relationship between accused and his counsel."); *See also United States v. Cronic*, 466 U.S. 648, 657, n.21 (1984) ("the appropriate inquiry focuses on the adversarial process, not on the accused's relationship with his lawyer as such"). These cases illustrate the constraints indigent defendants face in the lack of choice of their right to counsel.

46. Hollywood Homeless Youth Partnership, *Navigating the Ethical Maze: Storytelling for Organizations Working with Vulnerable Populations* (September 2017), http://hhyp.org/wp-content/uploads/2013/04/HHYP-Ethical-Storytelling-Brief-FINAL1.pdf.

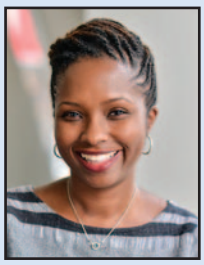
47. Gollyhorn, *supra* note 21.

48. The tendency toward self-interest in using client stories also exists in the academic context. Miller, *supra* note 2, at 37, "If I want to publish, stories about cases and clients are the easiest to draw on. I am to some extent building a career on the backs of my cases and clients. … Nonetheless, lawyer-authors need to recognize that self-interest plays a role in our desire to write about cases and clients. This self-interest may cloud our judgment about the deference that clients are owed when we write about their cases."

49. While not following squarely in the category of client narrative, informed consent on social media posting is also an issue when photographs and information about the client are posted by the public defender after a trial victory. Clients must be carefully informed about the potential lasting nature of information related to a case that now no longer exists.

50. Goodmark, *supra* note 1, at 753. ■

About the Author



Nicole Smith Futrell is an Associate Professor at the City University of New York (CUNY) School of Law in Long Island City, New York, where she teaches Professional Responsibility and directs the Defenders Clinic. Prior to teaching, she was a Staff Attorney at the Bronx Defenders.

Professor Nicole Smith Futrell
City University of New York
School of Law
Long Island City, New York
718-340-4541
Email nicole.smith@law.cuny.edu
Website www.law.cuny.edu
Twitter @nicoles_nyc