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## Heeding Gideon's Call in the Twenty-first Century: Holistic Defense and the New Public Defense Paradigm

Robin Steinberg

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# Heeding *Gideon*'s Call in the Twenty-first Century: Holistic Defense and the New Public Defense Paradigm

Robin Steinberg\*

## *Table of Contents*

I. In the Beginning: A New Vision.....	962
II. How Did We Get into This Mess? The “Get Tough on Crime” Years.....	965
III. Holistic Defense, Community-Oriented Defense, and Client-Centered Representation: A Guide for the Perplexed.....	974
A. Client-Centered Defense .....	975
B. Community-Oriented Defense .....	978
IV. Holistic Defense: A Bronx Tale .....	984
A. Pillar One: Seamless Access to Legal and Nonlegal Services That Meet Client Needs .....	987
B. Pillar Two: Dynamic, Interdisciplinary Communication .....	991
C. Pillar Three: Advocates with an Interdisciplinary Skill Set .....	995
D. Pillar Four: A Robust Understanding of, and Connection to, the Community Served .....	997
V. Myths and Facts About Holistic Defense.....	1002
A. Holistic Defense Will Increase My Workload .....	1002
B. We Do Not Have Enough Funding to Do Holistic Defense.....	1004
C. Holistic Defenders Avoid Going to Trial .....	1006

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\* Executive Director, The Bronx Defenders. J.D., New York University School of Law 1982. Many thanks to my assistant, Joanna Zuckerman Bernstein, whose research, writing, and intelligence made this Article possible. Thanks to Justine Olderman, McGregor Smyth, and Kate Rubin for their generous and smart advice, information, and editing skills.

VI. Evaluation and Results .....	1007
VII. Moving Forward: Replicating Our Model Outside of the Bronx .....	1009
A. Tribal Defenders of the Confederated Salish and Kootenai Tribes .....	1011
B. Wisconsin State Public Defender .....	1013
C. East Bay Community Law Center .....	1015
VIII. Conclusion.....	1017

### *I. In the Beginning: A New Vision*

In September of 1997, eight public defenders squeezed into a small storefront office between a Radio Shack and a Rent-A-Center across the street from the courthouse in the South Bronx to practice a new kind of public defense.<sup>1</sup> We had defended people in criminal justice systems across the country, but had come together to create something different—a defender office that would put clients’ lives, not just their cases, first.

Until the moment The Bronx Defenders opened its doors, The Legal Aid Society in New York City had been the sole provider of indigent defense services in the borough. Legal Aid had deep roots and loyal followers, and like most of the other institutional players in the Bronx criminal justice system, it had no interest in making room for a new organization with a new way of practicing. The hostility in the courthouse was palpable. Judges questioned our competence in front of our clients, court personnel threw our case files on the floor when we weren’t looking, and the private bar snarkily dismissed us as “The Bronx Pretenders.” We had a lot to learn and no one was going to help teach us.

Despite the obstructionism and the deluge of cases that come with being an institutional defender, the office rapidly established itself as tough, uncompromising, and innovative. From challenging the way grand jury practice had been conducted for decades, to filing novel motions, we refused to accept the legal status quo in the Bronx Criminal Courthouse.

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1. David Feige also writes about the first few years of The Bronx Defenders in *INDEFENSIBLE: ONE LAWYER’S JOURNEY INTO THE INFERNO OF AMERICAN JUSTICE* (2006).

And while we waged a war in the courthouse to reform Bronx practice, we were doing something far more radical. We were listening. We listened to neighbors in bodega lines, housing projects, and community centers. We listened to members of tenant associations, school boards, and churches. But most of all, we listened to clients because in order to defend our clients powerfully and effectively, we needed to hear their stories, understand their needs, and give voice to their concerns.

Here is what we discovered: Clients often cared more about the life outcomes and civil legal consequences of a criminal case than about the case itself. Liberty interests were not always paramount. The lawyers and social workers were overwhelmed with stories about housing, immigration, public benefits, jobs, and child custody from clients charged with even petty misdemeanors like smoking marijuana in public or jumping a turnstile. As it turned out, the problem was rarely the criminal case itself, but rather the very real threat of losing public housing, getting deported, having their public benefits cut off, or having their children placed in foster care. Fifty years after *Gideon v. Wainwright*,<sup>2</sup> what The Bronx Defenders realized was that its clients were facing a whole new host of problems that demanded an entirely new model of public defense. That model is “holistic defense.”

Fifteen years after those eight public defenders set out to create something different, holistic defense is widely recognized as the most effective model of public defense in the country. This Article will define holistic defense, which is comprised of four “pillars,” and discuss how The Bronx Defenders and other public defenders around the country are implementing the model. It will explain how holistic defense relies on an interdisciplinary team of experts, including criminal attorneys, social workers, civil attorneys, investigators, and legal advocates, who work side-by-side to address all aspects of a client’s case, thus providing *seamless access* to legal services and nonlegal services under one roof (Pillar One). This Article will then outline how working in teams enables advocates to have *dynamic, interdisciplinary communication* about the client and his case. Frequent, open communication—in-person and through e-mail, text, and on the

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

phone—ensures that all team members stay abreast of the details of the case and the client’s life, and that the client feels confident in the strength of his representation (Pillar Two). It will show how advocates are cross-trained in every discipline (criminal law, civil law, immigration, and social work) so that they have an *interdisciplinary skill set*, meaning that they can recognize the numerous issues clients face, ask the right questions, and make the appropriate referrals to other advocates on the team—depending on the client’s situation and priorities. An interdisciplinary skill set thereby enables advocates to represent clients in a fundamentally different way (Pillar Three). Finally, this Article will demonstrate how a holistic public defender office has *a robust understanding of, and connection to, the community served*; it is (ideally) located in the community, making its services accessible to clients and familiarizing its staff with the underlying issues that drive poor people into the criminal justice system. Moreover, a holistic defender office conducts outreach, education, organizing, and policy work in partnership with clients and other community members to create large-scale change in the community (Pillar Four).

Part II will outline the changes in criminal justice policy and practice that have necessitated the creation and implementation of the holistic defense model. Part III will discuss how holistic defense is distinct from client-centered defense and community-oriented defense. Part IV will clearly define holistic defense, elaborate on the pillars that must be met to practice holistic defense, and illustrate each pillar with case-specific examples. This Part will be particularly useful for public defenders, academics, and community-based organizations working on criminal justice issues. Part V will debunk myths about holistic defense, such as the claim that holistic defense is antitrial, and Part VI will describe how to evaluate holistic defense. Finally, Part VII will focus on the holistic defense movement, pioneered by The Bronx Defenders’ Center for Holistic Defense, which trains a wide array of public defender offices around the country in holistic techniques.

*II. How Did We Get into This Mess? The "Get Tough on Crime"  
Years*

The past fifty years have seen a dramatic shift in our country's approach to crime, which has had disastrous consequences for inner-city areas like the South Bronx. Many scholars have discussed the impact on poor black and Latino communities of "tough on crime" legislation that arose during the civil rights era. In the last few decades, it has become favorable for politicians to boost their popularity by promoting "three strikes" sentences and other punitive policies.<sup>3</sup> The acceptance of the "broken windows theory" has also led to overpolicing of inner-city communities through order-maintenance policies<sup>4</sup> and a rise in arrests of people who previously did not have criminal records.<sup>5</sup> Moreover, the "War on Drugs," launched in earnest during Ronald Reagan's presidency, has contributed greatly to mandatory minimum sentencing and mass imprisonment, particularly of poor people of color.<sup>6</sup> In 2010, there were 7.1

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3. See Marc Mauer & Meda Chesney-Lind, *Introduction*, in *INVISIBLE PUNISHMENT: THE COLLATERAL CONSEQUENCES OF MASS IMPRISONMENT* 6–11 (Marc Mauer & Meda Chesney-Lind eds., 2002) (describing trends in criminal justice that have adversely affected racial minorities and the poor); see also MICHELLE ALEXANDER, *THE NEW JIM CROW: MASS INCARCERATION IN THE AGE OF COLORBLINDNESS* 54–58 (2012) (explaining the political shift to "toughness" on crime, including its impetus in the Civil Rights Movement and enhancement during the presidency of Bill Clinton).

4. See generally K. Babe Howell, *Broken Lives from Broken Windows: The Hidden Costs of Aggressive Order-Maintenance Policing*, 33 N.Y.U. REV. L. & SOC. CHANGE 271 (2009).

5. See *id.* at 282 ("[A]s of 1998, the shift to [Zero-Tolerance Policing] had resulted in large numbers of people—largely minorities, youths, and many without criminal records—being arrested and put through the system on especially minor charges, only to have their cases disposed of on first appearance . . .").

6. There are scores of books and articles on this topic. See, e.g., Mauer & Chesney-Lind, *supra* note 3, at 10–11 (describing how the "war on drugs" created "vast racial disparities" in the criminal justice system); see also ALEXANDER, *supra* note 3, at 52–57 ("The War on Drugs, cloaked in race-neutral language, offered whites opposed to racial reform a unique opportunity to express their hostility toward blacks and black progress, without being exposed to the charge of racism."); Gabriel J. Chin, *Race, the War on Drugs, and the Collateral Consequences of Criminal Conviction*, 6 J. GENDER RACE & JUST. 253, 262–70 (2002) (providing statistics regarding racial disparities in drug prosecutions and incarceration rates).

million people under correctional supervision in the United States; nearly 5 million were on probation or parole, and more than 2.2 million were in jail or prison.<sup>7</sup> In 1964, one year after *Gideon*, there were just over 200,000 people in the United States in state or federal prison;<sup>8</sup> by 2010, that number had ballooned to over 1.6 million.<sup>9</sup> African-Americans and Latinos almost exclusively bear the brunt of the dramatic increase in our prison population.<sup>10</sup> Nearly 80% of inmates in state prison for drug offenses are African-American or Latino.<sup>11</sup> According to a Department of Justice report, approximately 1 in 3 black males, 1 in 6 Hispanic males, and 1 in 17 white males are expected to go to prison during their lifetime.<sup>12</sup>

Millions of low-level arrests per year serve as the gateway into a backward criminal justice system, from which many people struggle to escape. In 2010, there were 13.1 million arrests, the highest number of which were for drug violations.<sup>13</sup> As more and more Americans become entangled in the criminal justice system, “collateral consequences” of criminal proceedings—also called “hidden consequences” or “invisible punishments”—have expanded as well, wreaking havoc on the lives of people caught in

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7. LAUREN E. GLAZE, U.S. DEP'T OF JUSTICE, OFFICE OF JUSTICE PROGRAMS, BUREAU OF JUSTICE STATISTICS, CORRECTIONAL POPULATION IN THE UNITED STATES, 2010, at 1–2 (2011).

8. CHET BOWIE, U.S. DEP'T OF JUSTICE, OFFICE OF JUSTICE PROGRAMS, BUREAU OF JUSTICE STATISTICS, PRISONERS 1925–81, at 2 tbl.1 (1982), available at <http://bjs.ojp.usdoj.gov/index.cfm?ty=pbdetail&iid=3414>.

9. PAUL GUERINO, PAIGE M. HARRISON & WILLIAM J. SABOL, U.S. DEP'T OF JUSTICE, OFFICE OF JUSTICE PROGRAMS, BUREAU OF JUSTICE STATISTICS, PRISONERS IN 2010, at 1 (2011), <http://www.bjs.gov/content/pub/pdf/p10.pdf>.

10. Chin, *supra* note 6, at 262–70 (“Although . . . African Americans made up only 12.9% of the population in 2000, they were 46.2% of those incarcerated; the 12.5% of the population which was Latino or Hispanic made up 16.4% of the prison population.”).

11. Mauer & Chesney-Lind, *supra* note 3, at 6.

12. THOMAS P. BONCZAR, U.S. DEP'T OF JUSTICE, OFFICE OF JUSTICE PROGRAMS, BUREAU OF JUSTICE STATISTICS, PREVALENCE OF IMPRISONMENT IN THE U.S. POPULATION, 1974–2001, at 1 (2003).

13. U.S. DEP'T OF JUSTICE, FED. BUREAU OF INVESTIGATION, UNIFORM CRIME REPORT: CRIME IN THE UNITED STATES, 2010, at 1 (2011), <http://www.fbi.gov/about-us/cjis/ucr/crime-in-the-u.s/2010/crime-in-the-u.s.-2010/persons-arrested/arrestmain.pdf>. There were more than 1.6 million arrests for drug violations in 2010. *Id.*

the system and their families.<sup>14</sup> There has been substantial literature in recent years about these collateral consequences.<sup>15</sup> Beginning in the 1990s, many states started permanently banning convicted felons from voting,<sup>16</sup> terminating the parental rights of convicted felons,<sup>17</sup> and increasing occupational bars for people with criminal convictions.<sup>18</sup> Congress expanded the range of crimes that make an immigrant eligible for deportation,<sup>19</sup> and

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14. See Mauer & Chesney-Lind, *supra* note 3, at 1 (describing the unintended effects of social policies as “collateral consequences” and “invisible punishments” and noting that these effects have “transformed family and community dynamics, exacerbated racial divisions, and posed fundamental questions of citizenship in democratic society”).

15. See generally *id.* and articles by my colleague, McGregor Smyth, including: *From “Collateral” to “Integral”: The Seismic Evolution of Padilla v. Kentucky and Its Impact on Penalties Beyond Deportation*, 54 HOWARD L.J. 795 (2011); *“Collateral” No More: The Practical Imperative for Holistic Defense in a Post-Padilla World . . . Or, How to Achieve Consistently Better Results for Clients*, 31 ST. LOUIS U. PUB. L. REV. 139 (2011); *From Arrest to Reintegration: A Model for Mitigating Collateral Consequences of Criminal Proceedings*, 24 CRIM. JUST. 42 (2009); *Holistic is Not a Bad Word: A Criminal Defense Attorney’s Guide to Using Invisible Punishments as an Advocacy Strategy*, 36 U. TOL. L. REV. 479 (2005) [hereinafter Smyth, *Holistic*]; and *Cross Sector Collaboration in Reentry: Building an Infrastructure for Change*, 41 CLEARINGHOUSE REV. 245 (2007). Also, see generally Michael Pinard, *Broadening the Holistic Mindset: Incorporating Collateral Consequences and Reentry into Criminal Defense Lawyering*, 31 FORDHAM URB. L.J. 1067 (2003); Jenny Roberts, *Ignorance is Effectively Bliss: Collateral Consequences, Silence, and Misinformation in the Guilty-Plea Process*, 95 IOWA L. REV. 119 (2009).

16. See Kathleen M. Olivares, Velmer S. Burton, Jr. & Francis T. Cullen, *Collateral Consequences of a Felony Conviction: A National Study of State Legal Codes 10 Years Later*, 60 FED. PROBATION 10, 11 (1996) (noting that in 1996, fourteen states permanently denied felons the right to vote, an increase of three states from 1986).

17. See *id.* (describing ways parental rights may be infringed and noting that in 1996, nineteen states permitted termination of parental rights based on a felony conviction).

18. See Jeremy Travis, *Invisible Punishment: An Instrument of Social Exclusion*, in *INVISIBLE PUNISHMENT: THE COLLATERAL CONSEQUENCES OF MASS IMPRISONMENT* 15, 22 (Marc Mauer and Meda Chesney-Lind, eds. 2002) (describing barriers to employment that stem from the combination of easier employer access to criminal records and increased legal prohibitions on hiring convicted felons in certain fields).

19. See Immigration Control and Legalization Amendments Act of 1986, Pub. L. No. 99-603, 100 Stat. 3445 (expediting the deportation process for aliens who are convicted of offenses that make them subject to deportation); Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. No. 104-208, 110 Stat. 3009 (amending the criteria for deportation of criminal aliens);



made people convicted of drug-related crimes ineligible for federal public assistance and food stamps.<sup>20</sup> Congress also enacted laws that make people convicted of certain crimes temporarily and sometimes permanently ineligible for public housing<sup>21</sup> and federal financial aid.<sup>22</sup> These invisible punishments do not just affect those convicted of criminal offenses. They impact people who are acquitted, too. In New York, where 1 in 3 people who are arrested are never convicted,<sup>23</sup> many of these same people will still face consequences related to their arrests. Loss of legal immigration status, housing, public benefits, and employment are collateral consequences that often affect a person at the moment of arrest, regardless of his or her innocence.

Advances in technology have made collateral consequences more than just a hypothetical fallout of criminal justice involvement. Local, state, and federal electronic data-gathering and information-sharing means that the details of a person's life are immediately revealed to various agencies and that information is never fully erased. For example, in New York State, there are many different agencies that keep computerized records of arrests and prosecutions, and data-sharing is practiced

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*see also* Travis, *supra* note 18, at 23 (“[B]eginning with the Immigration Reform and Control Act of 1986 and the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Congress significantly expanded the categories of crimes that would subject an alien to deportation.”).

20. *See* 21 U.S.C. § 862a (2012) (denying eligibility for food stamps and other public assistance to individuals convicted of certain drug-related felonies); *see also* Travis, *supra* note 18, at 23 (noting that the welfare reform law of 1996 “requires that states permanently bar individuals with drug-related felony convictions from receiving federally-funded public assistance and food stamps during their lifetime”).

21. *See* 42 U.S.C. § 13661 (permitting owners of federally-assisted housing to terminate households with a member who illegally uses a controlled substance or abuses alcohol); *see also* THE BRONX DEFENDERS, THE CONSEQUENCES OF CRIMINAL PROCEEDINGS IN NEW YORK STATE 16–18 (2010) [hereinafter THE CONSEQUENCES OF CRIMINAL PROCEEDINGS] (discussing statutes relating to public housing eligibility).

22. *See* 20 U.S.C. § 1091(r)(1) (making students who are convicted of federal drug crimes ineligible for financial aid for a period of time dependent on their prior record).

23. THE CONSEQUENCES OF CRIMINAL PROCEEDINGS, *supra* note 21, at 2 & n.9 (“In 2004, 36.7% of people arrested were never convicted.” (citation omitted)).

widely regardless of sealing mandates.<sup>24</sup> At the end of 2010, the Bureau of Justice Statistics reported that state repositories held criminal records of more than 97.8 million people, and 92% of these records were automated.<sup>25</sup> In comparison, in 1989, states held only 45.6 million criminal records and only 60% were automated.<sup>26</sup> In New York, the Division of Criminal Justice Services (DCJS) is the state depository, and its criminal records can be accessed fairly easily by future employers.<sup>27</sup> Additionally, anyone willing to pay \$65 can search for a person's criminal history in New York State through the Office of Court Administration.<sup>28</sup>

The federal government maintains its own automated databases to share information with states and local law enforcement. The National Crime Information Center (NCIC) is an electronic database that kept nearly 12 million criminal records in 2011,<sup>29</sup> which can be accessed by law enforcement

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24. *See id.* at 4 (“Technology has provided unparalleled access to an ever-increasing range of criminal history data. Data sharing among government agencies has increased exponentially, and there is widespread availability of criminal history data despite various sealing regimes.”). “In New York State, dozens of agencies maintain their own computerized records of arrests and prosecutions, including DCJS, OCA, NY State Police, and local law enforcement.” *Id.*

25. U.S. DEPT OF JUSTICE, OFFICE OF JUSTICE PROGRAMS, BUREAU OF JUSTICE STATISTICS, SURVEY OF STATE CRIMINAL HISTORY INFORMATION SYSTEMS, 2010, at 3 (2011), <https://www.ncjrs.gov/pdffiles1/bjs/grants/237253.pdf>. Note that a person may have a record in more than one state.

26. U.S. DEPT OF JUSTICE, OFFICE OF JUSTICE PROGRAMS, BUREAU OF JUSTICE STATISTICS, SURVEY OF STATE CRIMINAL HISTORY INFORMATION SYSTEMS, 1989, tbl. 2 (1990) (on file with the Washington and Lee Law Review).

27. *See Access to Criminal History Records & Background Checks*, N.Y. ST. DIVISION CRIM. JUSTICE SERVICES, <http://www.criminaljustice.ny.gov/ojis/recordreview.htm> (last visited Apr. 2, 2013) (permitting an “individual or his/her attorney to obtain either a copy of all criminal history information maintained on file at DCJS pertaining to him or her, or a response indicating that there is no criminal history information on file”) (on file with the Washington and Lee Law Review); *see also* THE CONSEQUENCES OF CRIMINAL PROCEEDINGS, *supra* note 21, at 4 (noting the inaccuracy of criminal history records).

28. *Criminal History Record Search*, N.Y. ST. UNIFIED CT. SYS., <http://www.nycourts.gov/apps/chrs/> (last visited Apr. 2, 2013) (permitting individuals to obtain access to their criminal histories) (on file with the Washington and Lee Law Review).

29. *National Crime Information Center*, FED. BUREAU INVESTIGATION, <http://www.fbi.gov/about-us/cjis/ncic> (last visited Apr. 2, 2013) (on file with the Washington and Lee Law Review).

agencies nationwide in less than one second.<sup>30</sup> As of December 1, 2011, the Interstate Identification Index (III) maintained records on 75.4 million people charged with felonies or “serious” misdemeanors.<sup>31</sup> In 2011, the FBI kept more than 70 million criminal fingerprints and more than 31 million civil fingerprints in its Integrated Automated Fingerprint Identification System (IAFIS), which can be accessed—within minutes—for criminal justice purposes or for civil purposes, like employment or licensing screening.<sup>32</sup>

The automation and availability of criminal record data have made it easier for landlords and employers to conduct criminal background checks. In addition to state depositories and court records, many employers use private commercial databases that compile and manage criminal records; some of these databases keep over 100 million criminal history records.<sup>33</sup> To make matters worse, criminal records—from state, federal, and commercial

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30. See *National Crime Information Center: History and Milestones*, FED. BUREAU OF INVESTIGATION, [http://www.fbi.gov/about-us/cjis/ncic/ncic\\_history](http://www.fbi.gov/about-us/cjis/ncic/ncic_history) (last visited Apr. 2, 2013) (“On August 4, 2006, NCIC set a new record for transactions processed on a single day—6,050,879. The average response time—the time it takes for NCIC to receive, process, and respond to an inquiry—for these transactions was 0.0566 seconds.”) (on file with the Washington and Lee Law Review).

31. *Interstate Identification Index (III)*, SEARCH, <http://www.search.org/programs/policy/iii/> (last visited Apr. 2, 2013) (on file with the Washington and Lee Law Review).

32. U.S. DEP’T OF JUSTICE, FED. BUREAU OF INVESTIGATION, CRIM. JUSTICE INFO. SERVS. DIV., *CJIS ANNUAL REPORT 2011*, at 18–19 (2011) (“More than 18,000 local, state, tribal, federal, and international partners electronically submit requests to the IAFIS, which operates 24 hours a day, 365 days a year . . . . In FY2011, IAFIS criminal submissions were processed in an average of 9 minutes, 56 seconds, and IAFIS noncriminal/civil submissions in an average of 1 hour, 4 minutes, and 32 seconds.”).

33. See REPORT OF THE NATIONAL TASK FORCE ON COMMERCIAL SALE OF CRIMINAL JUSTICE RECORD INFORMATION, SEARCH, THE NATIONAL CONSORTIUM FOR JUSTICE INFORMATION AND STATISTICS, at vi (2005), <http://www.search.org/files/pdf/RNTFCSCJRI.pdf> (describing the private background check industry and noting that “several companies compile and manage criminal history databases with well in excess of 100 million criminal history records”); see also J. McGregor Smyth, Jr., *From Arrest to Reintegration: A Model for Mitigating Collateral Consequences of Criminal Proceedings*, 24 CRIM. JUST. 42, 44–45 (2009) (explaining some of the problems associated with greater availability of criminal history data).

databases—often contain errors or are out-of-date, inadvertently disqualifying our clients from public housing or employment.<sup>34</sup>

At The Bronx Defenders we have seen first-hand the devastating impact of the expansion of city, state, and federal data collection and sharing. As soon as our immigrant clients reach Riker's Island, Immigration and Customs Enforcement (ICE) can swoop in to place the client in deportation proceedings. Our clients are denied jobs, public housing, and private apartments because their future employers and future landlords are informed of their criminal records via an online database, which is riddled with errors. These same electronic systems enable licensing agencies to quickly revoke our clients' licenses to be hairdressers, security guards, and home attendants after they are arrested, even if the arrest has nothing to do with their profession.<sup>35</sup> Today, even minor criminal justice involvement can send a client and her family into crisis, insecurity, and instability.

Moreover, as our clients—and clients of public defenders everywhere—struggled with a widening array of civil legal consequences, it also became increasingly difficult for them to obtain civil legal assistance. Public defender offices typically do not offer civil legal services or social services in-house, and few have partnerships with agencies that do. In fact, an oft-ignored impact of *Gideon v. Wainwright* is the way that it siloed the field

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34. For example, the FBI's criminal history record depository "is still missing final disposition information for approximately 50 percent of its records." U.S. DEPT OF JUSTICE, THE ATTORNEY GENERAL'S REPORT ON CRIMINAL HISTORY BACKGROUND CHECKS 3 (2006), [http://www.justice.gov/olp/ag\\_bg\\_checks\\_report.pdf](http://www.justice.gov/olp/ag_bg_checks_report.pdf); see also Smyth, *supra* note 33, at 45 (noting additional problems with the accuracy of FBI background check reports). This Article also discusses a 2007 study by The Bronx Defenders and a New York law firm that found that, out of a random sample of official state rap sheets, 62% contained at least one error. See THE CONSEQUENCES OF CRIMINAL PROCEEDINGS, *supra* note 21, at 5 (providing statistics regarding errors in commercial background check databases); see generally CRAIG N. WINSTON, NAT'L ASS'N OF PROF'L BACKGROUND SCREENERS, THE NATIONAL CRIME INFORMATION CENTER: A REVIEW AND EVALUATION (2005), available at <http://www.reentry.net/library/attachment.74268>.

35. See J. McGregor Smyth, Jr., *Cross-Sector Collaboration in Reentry: Building an Infrastructure for Change*, 41 CLEARINGHOUSE REV. 245, 245 (2007) ("Punishment by the criminal justice system begins at arrest and, in many ways, never ends. A conviction—or simply accusation of a crime—frequently leads to immediate eviction, termination of employment, loss of benefits, disenfranchisement, or deportation.").

of “poverty law” as conceived in the 1960s<sup>36</sup> by creating a separate stream of government funding exclusively for indigent criminal defense. Other factors also exacerbated the division between public defender offices and civil legal aid providers, including the Legal Services Corporation’s (LSC) funding restrictions on civil legal assistance for people involved in the criminal justice system.<sup>37</sup>

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36. Poverty lawyering, largely inspired by President Lyndon B. Johnson’s “War on Poverty,” launched in 1964, recognized the need for a holistic approach to fighting poverty and advocating for social change, through integrated direct legal services, impact litigation, social services, policy, and administrative advocacy. See Paula Galowitz, *Collaboration Between Lawyers and Social Workers: Re-examining the Nature and Potential of the Relationship*, 67 FORDHAM L. REV. 2123, 2130 n.31 (1999) (explaining the War on Poverty’s method of fighting poverty through collaboration between poverty lawyers, social workers, and other community-based professionals). In the introduction to their groundbreaking article, *The War on Poverty: A Civilian Perspective*, Edgar S. and Jean C. Cahn wrote:

The strategy of [The War on Poverty] appears to have been shaped by an awareness of the interrelatedness of the social, economic, legal, educational, and psychological problems which beset the poor and by a recognition of the necessity to involve all segments of society in a many-pronged attack on these problems.

73 YALE L.J. 1317, 1317 (1964). Many organizations, neighborhood law offices, and law school clinics embraced this vision, notably Mobilization for Youth (MFY) in New York City, and Community Progress, Incorporated (CPI) in New Haven, Connecticut, whose legal division morphed into New Haven Legal Assistance Association. However, most of these organizations concentrated their efforts not on criminal defense, but rather on civil legal services, social services, community organizing, and advocacy. For an overview of poverty law and these organizations, in addition to the above-mentioned article, *The War on Poverty: A Civilian Perspective*, see Matthew Diller, *Poverty Lawyering in the Golden Age*, 93 MICH. L. REV. 1401 (1995); MFY LEGAL SERVICES, MFY LEGAL SERVS., INC. 45TH ANNIVERSARY 1963–2008 (2008), <http://www.mfy.org/wp-content/uploads/AnniversaryBooklet.pdf>; Laura G. Holland, *Invading the Ivory Tower: History of Clinical Education at Yale Law School*, 49 J. LEGAL EDUC. 504, 511–14 (1999); and Gary F. Smith, *Remembering Edward Sparer: An Enduring Vision for Legal Services*, MGMT. INFO. EXCHANGE J., Fall 2005, at 9.

37. For more about Legal Services Corporation (LSC) restrictions, see 45 C.F.R. §§ 1613, 1637 (2012). See also Smyth, *supra* note 33, at 248 (explaining the impact of LSC restrictions on civil legal aid attorney involvement with criminal cases). Even before the passage of the Legal Services Corporation Act, 42 U.S.C. §§ 2996(a)–(l) (2012) (originally enacted as Legal Services Corporation Act of 1974, Pub. L. No. 93-355, 88 Stat. 378), the Office of Economic Opportunity, which was charged with handling President Johnson’s “War on Poverty,” required legal services organizations to provide assistance in all areas of the law except criminal defense. See *History of Civil Legal Aid: OEO Legal Services and the Passage of the Legal Services Corporation Act*, NAT’L LEGAL AID

At The Bronx Defenders, we concluded that this new age of far-reaching technology and punitive criminal justice policy called for a radically different kind of public defender office, one that reflected the original—holistic—spirit of poverty lawyering.<sup>38</sup> The interconnected nature of city, state, and federal agencies in the twenty-first century makes it impossible to defend clients by using the traditional approach of focusing only on the criminal case. Defenders can no longer ignore the ways in which poor people in America are easily ensnared by a web of government agencies once they become involved in the criminal justice system—even if they are found to be innocent. This is even more crucial since the 2010 Supreme Court decision of *Padilla v. Kentucky*<sup>39</sup> mandated that defenders advise their clients on the serious and likely consequences of a plea.<sup>40</sup> While *Padilla* focused

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& DEFENDER ASS'N, [http://www.nlada.org/About/About\\_HistoryCivil#oeo](http://www.nlada.org/About/About_HistoryCivil#oeo) (last visited Apr. 2, 2013) (on file with the Washington and Lee Law Review).

38. See discussion *supra* note 37 and accompanying text. Also, in an address to the University of Chicago Law School on May 1, 1964, shortly after the *Gideon v. Wainwright* decision, Attorney General Robert F. Kennedy recognized the need for public defenders to address clients' civil, legal, and social service needs:

[P]overty is a condition of helplessness—of inability to cope with the conditions of existence in our complex society. We know something about that helplessness. The inability of a poor and uneducated person to defend himself unaided by counsel in a court of criminal justice is both symbolic and symptomatic of his larger helplessness. But we, as a profession, have backed away from dealing with that larger helplessness. We have secured the acquittal of an indigent person—but only to abandon him to eviction notices, wage attachments, repossession of goods and termination of welfare benefits.

Robert F. Kennedy, Attorney Gen., Address at the University of Chicago Law School (May 1, 1964), <http://www.justice.gov/ag/rfkspeeches/1964/05-01-1964.pdf>.

39. *Padilla v. Kentucky*, 130 S.Ct. 1473 (2011).

40. See *id.* at 1494 (“[A]ny competent criminal defense attorney should appreciate the extraordinary importance that the risk of removal might have in the client’s determination whether to enter a guilty plea. Accordingly, unreasonable and incorrect information concerning the risk of removal can give rise to an ineffectiveness claim.”). For additional discussion of the implications of *Padilla*, see two works by McGregor Smyth: *From “Collateral” to “Integral”: The Seismic Evolution of Padilla v. Kentucky and Its Impact on Penalties Beyond Deportation*, 54 HOWARD L.J. 795 (2011) and “*Collateral*” No More: *The Practical Imperative for Holistic Defense in a Post-Padilla World . . . Or, How to Achieve Consistently Better Results for Clients*, 31 ST. LOUIS U. PUB. L. REV. 139

on the immigration consequences of a plea bargain, the language of the Court is more expansive.<sup>41</sup> *Padilla* clarifies what holistic defense was created to address—that criminal case dispositions have dire consequences and effects in many areas of a client’s life that must be addressed.<sup>42</sup> In this context, focusing on securing “the least restrictive disposition”—the mantra of traditional public defense training—does not necessarily result in the most desirable outcome. In fact, that mantra exposes a profound misunderstanding of the nature of poverty in America today. Public defenders must become aware of the many traps, hidden punishments, and big and small losses of liberty that befall their clients, and be equipped to address them.<sup>43</sup> This is where holistic defense comes in.

### *III. Holistic Defense, Community-Oriented Defense, and Client-Centered Representation: A Guide for the Perplexed*

In the four decades since *Gideon v. Wainwright*, there have been several attempts to change the practice of public defense in offices around the country. In addition to “holistic defense,” public defenders often describe themselves as using a “client-centered” or a “community-oriented” approach. Public defenders, academics, and policymakers tend to use these three terms interchangeably, which proves confusing and dilutes holistic defense, making it seem like just another trend. Unlike these approaches, holistic defense not only redefines what public defense is, but it offers an entirely new model of practice—one that can be implemented on an institutional level.<sup>44</sup> Neither the

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(2011).

41. See *Padilla*, 130 S. Ct. at 1481–82 (discussing “direct” and “collateral” consequences of a guilty plea in a context broader than deportation only).

42. *Id.* at 1481 (recognizing that the right to effective assistance of counsel includes advice on the “collateral consequences” of a guilty plea).

43. For a general overview of the “forces affecting the defense role,” see Cait Clarke, *Problem-Solving Defenders in the Community: Expanding the Conceptual and Institutional Boundaries of Providing Counsel to the Poor*, 14 GEO. J. LEGAL ETHICS 401, 421–25 (2001) (“The criminal justice system, and the defense function in particular, have become the catch-basin for the breakdown of social services inside communities.”).

44. See *infra* Part IV (discussing the applicability of the holistic defense model); *Holistic Defense*, CENTER FOR HOLISTIC DEFENSE, <http://www.holistic>

community-oriented nor the client-centered approach has challenged the traditional definition of public defense or offered an alternative to this traditional model that has been replicated since *Gideon*. However, these approaches are clear predecessors of holistic defense and deserve more than a brief mention, as they have greatly informed the evolution of the model. In this section, I will give an overview of the history and definition of client-centered defense and community-oriented defense and how these approaches have been incorporated into the four pillars of holistic defense.

#### A. Client-Centered Defense

Client-centered defense took hold as part of a broader movement in lawyering, beginning in the late 1970s.<sup>45</sup> Client-centered lawyering marked a shift from a conservative, paternalistic attorney-as-decisionmaker strategy, to an approach that considers the needs, wants, and values of the client and includes the client in decisionmaking for the case.<sup>46</sup> In the 1991 book, *Lawyers as Counselors: A Client-Centered Approach*, David A. Binder, Paul Bergman, and Susan C. Price explained how the client-centered approach differed from the traditional approach:

As you might imagine . . . client-centered and traditional conceptions of lawyering have much in common. Both, for example, recognize the critical importance of legal analysis and have as their ultimate goal maximum client satisfaction. . . . However, the client-centered conception “fills in” the traditional approach . . . by emphasizing the importance of clients’ expertise, thoughts and feelings in resolving problems. In a client-centered world, your role

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defense.org/ (last visited Apr. 2, 2013) (inviting readers to learn more about holistic defense principles that can be applied to their own criminal defense practices) (on file with the Washington and Lee Law Review).

45. David Binder and Susan Price’s book, *LEGAL INTERVIEWING AND COUNSELING: A CLIENT-CENTERED APPROACH* is widely cited as the formative text advocating for the merits of client-centered lawyering. *See generally* DAVID A. BINDER & SUSAN C. PRICE, *LEGAL INTERVIEWING AND COUNSELING: A CLIENT-CENTERED APPROACH* (1977).

46. *See* DAVID A. BINDER, PAUL BERGMAN & SUSAN C. PRICE, *LAWYERS AS COUNSELORS: A CLIENT-CENTERED APPROACH* 17–18 (1991) (comparing the client-centered approach to the traditional approach).



involves having clients actively participate in identifying their problems, formulating potential solutions, and making decisions. Thus, client-centered lawyering emanates from a belief in the autonomy, intelligence, dignity and basic morality of the individual client.<sup>47</sup>

Gary Bellow and Bea Moulton's casebook, *The Lawyering Process: Materials for Clinical Instruction and Advocacy*, originally published in 1978, initiated client-centered representation for poor communities. As a Harvard Law School professor, Gary Bellow started a legal services center the following year, in 1979, now the WilmerHale Legal Services Center, which trained Harvard law students to provide client-centered legal services to indigent clients in the Jamaica Plain neighborhood of Boston.<sup>48</sup> Bellow advocated for a "participatory" lawyer-client relationship, which requires "explicit and extensive disclosure" so that clients are well informed of the risks and benefits of various strategies.<sup>49</sup> By informing the client of his options and making the plan of action his responsibility, the attorney "demands energy, intelligence, and judgment"<sup>50</sup> from the client, and "makes the client a doer, responsible for his choices."<sup>51</sup> Bellow also notes that at the very least, client-centered

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47. *Id.* at 18. More recently, Katherine R. Kruse outlined the four "cornerstones" of client-centered representation:

(1) it draws attention to the critical importance of non-legal aspects of a client's situation; (2) it cabins the lawyer's role in the representation within limitations set by a sharply circumscribed view of the lawyer's professional expertise; (3) it insists on the primacy of client decision-making; (4) it places a high value on lawyers' understanding their clients' perspectives, emotions, and values.

Katherine R. Kruse, *Fortress in the Sand: The Plural Values of Client-Centered Representation*, 12 CLINICAL L. REV. 369, 377 (2006).

48. *About the Legal Services Center: History*, WILMERHALE LEGAL SERVICES CENTER, <http://www.law.harvard.edu/academics/clinical/lsc/about/history.htm> (last visited Apr. 2, 2013) (stating that the Legal Services Center was founded in 1979 by Gary Bellow and Jeanne Charn) (on file with the Washington and Lee Law Review).

49. GARY BELLOW & BEA MOULTON, *THE LAWYERING PROCESS: NEGOTIATION* 196 (1981).

50. *Id.* at 194.

51. *Id.* at 197. Bellow and Moulton also note that "[a]ctive participation can actually promote effective problem solving," *id.*, and stress that "[t]he participatory theory promotes an active strategy assuming that it is primarily the client's own responsibility to grapple with the problem." *Id.* at 193.

representation, by demanding active participation from the client, ensures that the client feels more comfortable with his representation.<sup>52</sup>

The definition of client-centered lawyering for poor clients has not changed much since Bellow and Moulton wrote *The Lawyering Process*. Jonathan Rapping, Associate Professor at John Marshall Law School, promotes client-centered defense as the President and Founder of the Southern Public Defender Training Center.<sup>53</sup> Describing the center's philosophy, he writes:

We emphasize the importance of humanizing the client every chance the lawyer gets to combat the impulse of judges and prosecutors to see him as just another faceless defendant. We also stress the importance of advocating for the client's interests, and not assuming the lawyer knows what is best for the client. Ultimately, we want our participants to treat each client with the respect and attention we would all want for our own loved ones.<sup>54</sup>

The client-centered approach is an essential component of effective holistic defense. Client-centered defense is incorporated in all four pillars of the model.<sup>55</sup> While an office that is holistic, by

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52. See *id.* at 223 (“Generally it seems a client can best live with a decision, and follow through with a decision, if it is one the client has made. This may be true because a client-made decision usually more accurately reflects client values.”). This strategy also “reduces excessive anxieties which are the product of uninformed fears and unexpected stress.” *Id.* at 197.

53. See *Goal & Mission*, S. PUB. DEFENDER TRAINING CENTER, <http://thespdtc.org/about/goal-mission/> (last visited Apr. 2, 2013) (stating that the organization's mission is “to inspire, mobilize and train legal professionals to provide the highest quality defense representation to people unable to afford an attorney”) (on file with the Washington and Lee Law Review); *Jonathan Rapping, President and Founder*, S. PUB. DEFENDER TRAINING CENTER, <http://thespdtc.org/about/president/> (last visited Apr. 2, 2013) (providing biographical information on President Jonathan Rapping) (on file with the Washington and Lee Law Review).

54. JONATHAN RAPPING, THE SOUTHERN PUBLIC DEFENDER TRAINING CENTER PHILOSOPHY 2–3, available at [http://www.actl.com/AM/Template.cfm?Section=Advanced\\_Search&content=2008\\_09&template=/cm/contentdisplay.cfm&contentfileid=828](http://www.actl.com/AM/Template.cfm?Section=Advanced_Search&content=2008_09&template=/cm/contentdisplay.cfm&contentfileid=828). For further discussion about the client-centered approach, see Jonathan A. Rapping, *You Can't Build on Shaky Ground: Laying the Foundation For Indigent Defense Reform Through Values-Based Recruitment, Training, and Mentoring*, 3 HARV. L. & POL'Y REV. 161, 167–69 (2009).

55. See *infra* Part IV (showing how client-centered values are incorporated into holistic defense components); see also *Holistic Defense*, CENTER FOR HOLISTIC DEFENSE, <http://www.holisticdefense.org/> (last visited Apr. 2, 2013) (defining

definition, engages in client-centered representation, a client-centered office does not necessarily provide holistic defense. This is not just a matter of semantics. Without advocates trained to identify the legal and social work issues beyond the criminal case, and without providing seamless access to services to address those issues and defend against the direct consequences of even minor criminal justice involvement, even a “client-centered” defender who treats her clients with respect does not provide holistic representation. Getting great criminal case dispositions, treating clients with dignity, and giving them the facts to help them decide whether to take their case to trial or accept a pretrial case disposition is critical, but falls short of the approach’s own goal. By advising clients solely about their criminal case, without also addressing the host of other consequences of criminal justice involvement, defenders inadvertently disempower clients from making real choices about what consequences they are willing to accept and which ones they are not. Some clients might choose a more restrictive criminal case disposition—and possibly even more jail time—if it means keeping their kids out of foster care, avoiding deportation, an eviction, or the loss of a job. And some clients might do anything to avoid more jail time—even if it means risking their public benefits, their housing status, or their custody arrangements. Only clients can prioritize these consequences of criminal justice involvement. Being “client-centered” is a given, but providing holistic defense is the goal.

### *B. Community-Oriented Defense*

Community-oriented defense gained renown in the 1990s with the founding of Neighborhood Defender Service of Harlem (NDS).<sup>56</sup> NDS was located in Harlem, and provided

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holistic defense as “a client-centered and interdisciplinary model of public defense that addresses the circumstances driving poor people into the criminal justice system and the consequences of that involvement by offering criminal and civil legal representation, social work support, and advocacy in the client community”) (on file with the Washington and Lee Law Review).

56. NDS was started in 1991 by Christopher Stone and Richard Finkelstein as a pilot project of the Vera Institute of Justice. I was one of the founding members of NDS and served as the Deputy Director before leaving in 1997 to found The Bronx Defenders.

“neighborhood representation,” meaning that anyone accused of a crime within a certain “catchment area” of Harlem was assigned to an NDS attorney instead of being assigned an attorney at random upon arrival at the courthouse. This enabled NDS to provide crucial prearrest services and represent clients in multiple jurisdictions.<sup>57</sup> NDS also had strong ties to the community through education and outreach programs, devised specifically to meet Harlem residents’ needs.<sup>58</sup> Inspired by NDS, the Youth Advocacy Project in Roxbury, Massachusetts, developed a community-oriented model to represent young people charged with crimes in the early 1990s.<sup>59</sup> Under the leadership of Josh Dohan, who was the first staff attorney, the Youth Advocacy Project established relationships with community organizations, performed community outreach, and participated in advocacy.<sup>60</sup>

However, the philosophy of community-oriented defense had emerged much earlier. In the 1970s, community-based projects in Boston and Chicago forged a small-scale alternative to traditional public defense.<sup>61</sup> The Roxbury Defenders Committee (RDC) was founded in 1971 by a “citizens committee” unhappy with the representation of poor African-Americans in the Roxbury

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57. See MICHELE SVIRIDOFF ET AL., VERA INST. FOR JUSTICE, DEVELOPING AND IMPLEMENTING A COMMUNITY-BASED DEFENSE SERVICE: PILOT OPERATIONS OF THE NEIGHBORHOOD DEFENDER SERVICE OF HARLEM 26–28 (1991) (describing the goals, structure, and community-centered focus of NDS).

58. See *Introduction to NDS*, NEIGHBORHOOD DEFENDER SERVICE OF HARLEM, <http://www.ndsny.org/index.html> (last visited Apr. 2, 2013) (explaining the organization’s commitment to establishing relationships within the community to provide better, more comprehensive service to its clients) (on file with the Washington and Lee Law Review).

59. Now the Youth Advocacy Project is the “Youth Advocacy Division” of the Committee for Public Counsel Services, the statewide defender organization in Massachusetts.

60. See generally Youth Advocacy Div., *History*, <http://www.youthadvocacydepartment.org/about/about-history.html> (last visited Apr. 2, 2013) (on file with the Washington and Lee Law Review).

61. See Harold R. Washington & Geraldine S. Hines, “*Call My Lawyer*”: *Styling a Community Based Defender Program*, 8 BLACK L. J. 186, 188 (1983) (describing the founding of the Roxbury Defenders Committee to serve the Roxbury neighborhood of Boston in 1971); see also Randolph N. Stone, *The Role of State Funded Programs in Legal Representation of Indigent Defendants in Criminal Cases*, 17 AM. J. TRIAL ADVOC. 205, 217–18 (1993) (noting that the Criminal Defense Consortium of Cook County was founded in the mid-1970s to serve several poor communities in Chicago through an “experimental model” of defense).

neighborhood of Boston.<sup>62</sup> At the time, the Massachusetts Defender Committee (MDC) represented all of the cases in Roxbury.<sup>63</sup> The Committee received federal funds managed by the Governor's office and was considered a subcontractor of the MDC.<sup>64</sup> RDC's defining characteristics were a twenty-four hour hotline, managed by an attorney at all times, a community newsletter, a community legal education program, a Prison Legal Services Project, prearrest services, relationships with social service agencies, and a "spirited commitment to law reform."<sup>65</sup> In 1985, the Roxbury Defenders was absorbed into the statewide system that replaced the MDC, the Committee for Public Counsel Services (CPCS).<sup>66</sup>

A few years after the founding of the RDC, in Chicago, the Criminal Defense Consortium of Cook County (CDC) was created as an experimental pilot project in indigent defense, funded by the Department of Justice.<sup>67</sup> The CDC sought to create an alternative to the traditional court-based public defender office, which was rife with patronage, and to establish community-based offices closely aligned with local law schools.<sup>68</sup> The CDC created six offices in poor neighborhoods in Chicago and the surrounding area, each with "four attorneys, a social worker, an investigator,

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62. See Washington & Hines, *supra* note 61, at 188 (discussing the "citizens committee" that was formed "to seek funds, and establish an alternative defender program" and led to the formation of the Roxbury Defenders Committee in 1971).

63. See *id.* (giving a history of the circumstances that led to the creation of the Roxbury Defenders Committee).

64. See *id.* at 189 ("RDC was founded in 1971 as an 'experiment in legal representation' and given vague subcontractual status under MDC.").

65. *Id.* at 186.

66. The Roxbury Defenders now exists as a "unit" of CPCS. See *Public Defender Offices*, COMMITTEE FOR PUB. COUNS. SERVICES, [http://www.publiccounsel.net/Office\\_Locations/public\\_defender\\_offices.html](http://www.publiccounsel.net/Office_Locations/public_defender_offices.html) (last visited Apr. 2, 2013) (on file with the Washington and Lee Law Review). Yolanda Acevedo joined the Roxbury Defenders in 1982 and still works as a staff attorney in the Roxbury Defenders Unit. She said that many original Roxbury Defenders staff members were disappointed with the merger in 1985 because they felt that it compromised its community-oriented mission. Telephone interview with Yolanda Acevedo, Staff Attorney, Roxbury Defenders Unit (Sept. 14, 2012).

67. Telephone interview with Randolph N. Stone, Clinical Professor of Law, Univ. of Chic. Law Sch. (Aug. 14, 2012); see also Stone, *supra* note 61, at 217–18 (describing the founding of the Criminal Defense Consortium of Cook County).

68. Telephone interview with Randolph N. Stone, *supra* note 67.

two secretaries,” and volunteer law students.<sup>69</sup> University of Chicago Professor of Clinical Law Randolph N. Stone, then a young staff attorney at the CDC who was also a founding board member at NDS, said that each CDC office was deeply involved in the community and received a great deal of community support.<sup>70</sup> Staff held events each month for community members to discuss crime prevention, policing, and other topics relevant to the community.<sup>71</sup> They tried to recruit a community advisory board for each office, as well.<sup>72</sup> Unfortunately, the CDC could not obtain renewed funding after two years and was dissolved.<sup>73</sup>

Today, a community-oriented defender generally refers to a public defender office with strong ties to, and knowledge of, the community it serves.<sup>74</sup> Community-oriented defenders are often physically located in the community, and have partnerships with schools, churches, and nonprofit organizations in the community.<sup>75</sup> These partnerships enable them to make

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69. See Stone, *supra* note 61, at 217 (describing the criminal defense consortium of Cook County).

70. Telephone Interview with Randolph N. Stone, *supra* note 67.

71. *Id.*

72. *Id.*

73. *Id.* Stone attributes this dissolution to patronage as well.

74. See BRENNAN CTR. FOR JUSTICE, TAKING PUBLIC DEFENSE TO THE STREETS 2 (2004), <http://www.nlada.org/DMS/Documents/1307720680.4/takingpublicdefense.pdf> [hereinafter TAKING PUBLIC DEFENSE] (exploring ways to make justice more responsive to the needs of the indigent); Cait Clarke, *Community Defenders in the 21st Century: Building on a Tradition of Problem-Solving for Clients, Families and Needy Communities*, 49 CMTY. PROSECUTION 20, 20 (2001), [http://www.justice.gov/usao/eousa/foia\\_reading\\_room/usab4901.pdf](http://www.justice.gov/usao/eousa/foia_reading_room/usab4901.pdf) [hereinafter *Community Defenders*] (discussing community-orientated public defense in today's world); Kim Taylor-Thompson, *Effective Assistance: Reconceiving the Role of the Chief Public Defender*, 2 J. INST. STUD. LEG. ETH. 199, 212 (1999) [hereinafter Taylor-Thompson, *Effective Assistance*] (considering a different role for the public defender); see also Briefing on the Direction of the Public Defender's Office Before the S. of Md. Judicial Proceedings Comm. (2009) (statement of Melanca D. Clark, Counsel to Brennan Center for Justice at N.Y.U. School of Law) [hereinafter Clark testimony]; Kim Taylor-Thompson, *Taking it to the Streets*, 29 N.Y.U. REV. L. & SOC. CHANGE 153, 158–59. (2004) [hereinafter, Taylor-Thompson, *Taking*] (changing to a community-orientated public defense).

75. See Taylor Thompson, *Effective Assistance*, *supra* note 74, at 212 (“Staff lawyers in defenders’ offices often reach out to the larger community. Representing their clients’ interests fully requires that defenders frequently rely on the assistance of other actors outside of the defender community.”); see also Clark testimony, *supra* note 74, at 2 (noting that community defenders achieve

appropriate referrals for clients to get mental health counseling, housing, and employment assistance.<sup>76</sup> Community defenders often engage in advocacy and policy initiatives that focus on fighting discriminatory policies and practices in the communities they serve.<sup>77</sup>

Community-oriented defense is predicated on the belief that low-income communities have assets, which they can contribute to public defender offices and their advocacy efforts.<sup>78</sup> In a 2004 article, Kim Taylor-Thompson explained: “At its roots, community-oriented defense must stem from a belief that the community from which defenders’ clients come is at once a valuable resource and an ally in the effort to improve the justice system.”<sup>79</sup> Community members can help attorneys with their defense strategies<sup>80</sup> and general knowledge of the community can

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success by utilizing the services of other community organizations to assist their clients); Taylor-Thompson, *Taking*, *supra* note 74, at 176–78 (arguing that public defenders should take on a more collaborative role within the community to become more effective); TAKING PUBLIC DEFENSE, *supra* note 74, at 2 (“Community-orientated defense means reaching out and building ties with people, activists, support groups, and service providers in your clients’ communities.”).

76. See *Community Defenders*, *supra* note 74, at 25 (noting that many public defenders have improved their clients’ employment options due to the defenders’ community ties); see also Taylor-Thompson, *Taking*, *supra* note 74, at 195–96 (discussing the benefit of “community-oriented defense”).

77. See TAKING PUBLIC DEFENSE, *supra* note 74, at 4 (describing how some further their role as a community defender by participating in political advocacy for low-income communities); see also Clark testimony, *supra* note 74, at 5 (“Community oriented defenders are also well-placed to support activities and reforms that make the criminal justice system operate more efficiently.”); Taylor-Thompson, *Effective Assistance*, *supra* note 74, at 215–16 (noting that the community defender office’s political campaign choices may also impact the community); *Community Defenders*, *supra* note 74, at 26–27 (describing the political involvement of public defenders).

78. See *Community Defenders*, *supra* note 74, at 28 (“Innovative community prosecutors and community defenders understand that even the poorest communities have many assets and human resources that can help build collaborative programs and improve relations with criminal justice stakeholders.”).

79. Taylor-Thompson, *Taking*, *supra* note 74, at 195.

80. See *id.* at 196

Contacts with residents in a client’s neighborhood can increase the likelihood of mounting a viable defense. Knowing people in a given neighborhood can facilitate investigation of a case, and can help the defender develop facts and identify witnesses who might provide

assist defenders in reaching better outcomes for their clients because they have a deeper understanding of their clients' situations, and can argue for better bail, sentencing, and case outcomes for their clients.<sup>81</sup> Community defenders also recognize the need to partner with community members in order to create long-term change in the community through community education programs, policy, and organizing.<sup>82</sup>

Since 2003, New York University's Brennan Institute of Justice has led a Community-Oriented Defender Network (COD), a coalition of over 100 public defender offices around the country (including The Bronx Defenders), which shares best practices, produces reports, and holds an annual conference for public defender offices.<sup>83</sup> A recent report, *Community-Oriented Defense: Start Now*, outlines ten principles of community-oriented defense, as developed by its members.<sup>84</sup> These ten principles, including "meet client needs,"<sup>85</sup> "partner with the community,"<sup>86</sup> and

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jurors with a different or more complete understanding of what transpired in a given case.

81. See Clark testimony, *supra* note 74, at 5, 7 ("Public defenders throughout the nation have recognized that addressing client needs and developing community relationships improves legal outcomes, while also promoting safer communities, lowering costs, and fostering greater respect for the criminal justice system."); see also *Community Defenders*, *supra* note 74, at 28 (explaining that representing the needy has improved due to connections in the community).

82. See Taylor-Thompson, *Taking*, *supra* note 74, at 195 (describing how increasing public defenders' knowledge about the communities may change how they approach cases and increase their overall effectiveness); see also *Community Defenders*, *supra* note 74, at 26–28 ("The third dimension of community defender activities is focused directly on services and programs for their client communities. Public defenders see their role as one that furthers community welfare in a variety of ways.").

83. See *Community-Oriented Defender Network*, BRENNAN CENTER FOR JUSTICE, [http://www.brennancenter.org/content/section/category/community\\_oriented\\_defender\\_network](http://www.brennancenter.org/content/section/category/community_oriented_defender_network) (last visited Apr. 2, 2013) (describing the history of the group and the services provided) (on file with the Washington and Lee Law Review).

84. See THOMAS GIOVANNI, BRENNAN CTR. FOR JUSTICE, COMMUNITY-ORIENTED DEFENSE: START NOW (2012), [http://www.brennancenter.org/sites/default/files/legacy/publications/COD\\_WEB.pdf](http://www.brennancenter.org/content/http://www.brennancenter.org/sites/default/files/legacy/publications/COD_WEB.pdf) (outlining ten principles of the community-orientated public defender).

85. *Id.*

86. *Id.*



“address civil needs,”<sup>87</sup> could be useful for traditional public defender offices that are just beginning to think about how to reshape their practice.

Community-oriented defense is a broad term, adopted liberally and defined vaguely. As such, it is too wide-reaching to provide a model for public defense in America. Moreover, community defenders have historically practiced their work in small, boutique offices, which exclude large numbers of clients and are thus difficult to replicate on a large scale. However, community-oriented defense espouses a number of important principles, such as engaging with the community, establishing a local presence, and creating a strong referral service for clients. In this regard, community-oriented defense is one component of holistic defense. More specifically, it makes up the fourth pillar: “A robust understanding of, and connection to, the community served.”<sup>88</sup> By integrating a community-oriented approach into a concrete institutional model, holistic defense can be applied by offices in diverse counties and states across the country to become more community-oriented, impacting thousands of communities nationwide.

The next Part uses The Bronx Defenders to illustrate how institutional public defenders can pilot this pillar without compromising their fundamental legal and ethical responsibilities to powerfully defend their clients.

#### *IV. Holistic Defense: A Bronx Tale*

The Bronx Defenders is not—and never was—a small, boutique legal organization. From the beginning, we have been an institutional provider, burdened by the same crushing caseloads and faced with the same funding challenges as many public defender offices around the country. Our attorneys staff eight-hour arraignment shifts eight times per week and, in addition, perform community intake at our office. Like most public defenders, we do not have control over how many or what

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87. *Id.*

88. *The Four Pillars of Holistic Defense*, CENTER FOR HOLISTIC DEFENSE, [http://www.holisticdefense.org/the\\_four\\_pillars\\_of\\_holistic\\_defense/](http://www.holisticdefense.org/the_four_pillars_of_holistic_defense/) (last visited Apr. 2, 2013) (on file with the Washington and Lee Law Review).

types of cases we pick up on our intake shifts. We are required to pick up all the cases that come through the system. In fact, the past few years have brought tremendous growth to The Bronx Defenders—we have doubled our caseload to over 30,000 cases a year,<sup>89</sup> increased our staff to almost 200 advocates in eleven different disciplines,<sup>90</sup> and have had the opportunity to hone our model with The Center for Holistic Defense,<sup>91</sup> an arm of The Bronx Defenders that acts as a think tank *cum* training center for holistic defenders. In 2012, we represented nearly half of the people charged with criminal cases in the Bronx<sup>92</sup> and 80% of low-income parents accused of abuse or neglect in Bronx Family Court.<sup>93</sup> Moreover, our cost-per-case ratio is comparable to other public defenders in New York City. Holistic representation does not radically change the financial equation. In other words, The Bronx Defenders is more similar to other public defender offices than it is different, and holistic defense still works. As this Article demonstrates, holistic defense is the most coherent and comprehensive institutional model for public defense fifty years after *Gideon v. Wainwright*, and can be easily adapted to public defender offices from New York to Montana.<sup>94</sup>

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89. THE BRONX DEFENDERS, INTERNAL CASE MANAGEMENT SYSTEM REPORT (2012) [hereinafter 2012 INTERNAL CASE MANAGEMENT SYSTEM REPORT] (on file with Author).

90. THE BRONX DEFENDERS, INTERNAL HUMAN RESOURCES DATA (2012) (on file with Author).

91. See *What is Holistic Defense*, CENTER FOR HOLISTIC DEFENSE, [http://www.holisticdefense.org/what\\_is\\_holistic\\_defense/](http://www.holisticdefense.org/what_is_holistic_defense/) (last visited Apr. 2, 2013) (“Holistic defense combines aggressive legal advocacy with a broader recognition that for most poor people arrested and charged with a crime, the criminal case is not the only issue with which they struggle.”) (on file with the Washington and Lee Law Review).

92. See Email from the Division of Criminal Justice Services to The Bronx Defenders (Feb. 21, 2013) (stating that 62,326 cases came through Bronx criminal court arraignments in 2012) (on file with Author). Pursuant to its contract with New York City, The Bronx Defenders must take on at least 28,000 new criminal cases every year. See 2012 INTERNAL CASE MANAGEMENT SYSTEM REPORT, *supra* note 89 and accompanying text.

93. See Email from the Administration for Children’s Services to The Bronx Defenders (Feb. 15, 2013) (on file with Author) (stating that 1,303 new cases were filed in Bronx courts in 2012). In 2012, The Bronx Defenders took on 1,037 new family defense cases. See 2012 INTERNAL CASE MANAGEMENT SYSTEM REPORT, *supra* note 89.

94. It is important to note that several articles have been written about holistic defense since the founding of The Bronx Defenders. See Robin Steinberg

Holistic defense is defined by four essential “pillars.” These pillars are analogous to the elements in a criminal statute. In order to be found guilty of a crime, each and every element, as defined in the penal law, must be present. Similarly, each element or pillar of holistic defense must be present in a defender office for it to be truly holistic.

Holistic defense, however, is an aspirational rather than a static model. In *Broadening the Holistic Mindset*, Michael Pinard correctly points out: “The holistic mindset is an ever-searching one; it critiques the traditional and contemporary practice methods, searches for improved delivery of defense services and constantly presses for role reformation.”<sup>95</sup> At The Bronx Defenders, we are truly ever-searching; we constantly ask ourselves, what could we be doing better? What are we missing? How could we improve our training, advocacy, intake, referrals, or management to more effectively defend our clients and serve

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& David Feige, *Cultural Revolution: Transforming the Public Defender’s Office*, 3 HARV. U. JOHN F. KENNEDY SCH. OF GOV’T 1 (2002), <https://www.ncjrs.gov/pdffiles1/bja/193773.pdf> (exploring the changing climate in the public defender’s office); Robin Steinberg, *Beyond Lawyering: How Holistic Representation Makes for Good Policy, Better Lawyers, and More Satisfied Clients*, 30 N.Y.U. REV. L. & SOC. CHANGE 625, 628 (2006) (arguing for a change in the way public defender offices are run); see also several articles by my colleague McGregor Smyth, *supra* note 15; TED GEST, COMMUNITY DEFENDERS: CAN HOLISTIC ADVOCACY HELP CUT CRIME? 1–2 (2002) (discussing the innovative “holistic advocacy” used by The Bronx Defenders and Knoxville’s Community Law Office); Michael Pinard, *Broadening the Holistic Mindset: Incorporating Collateral Consequences and Reentry into Criminal Defense Lawyering*, 31 FORDHAM URB. L.J. 1067, 1067 (2004) (“[Holistic] representation strives to encompass the various underlying issues that often lead to clients’ experiences with the criminal justice system, with the aim of addressing those circumstances and preventing future criminal involvement.”); Cait Clarke, *Problem-Solving Defenders in the Community: Expanding the Conceptual and Institutional Boundaries of Providing Counsel to the Poor*, 14 GEO. J. LEGAL ETHICS 401, 429 (2001)

In a multi-disciplinary practice, defenders work regularly with trained social workers who assist in problem-solving for the defense at all stages from initial client interviews to securing appropriate sentencing alternatives. In the problem-solving mode, a defender views a case in the context of a client’s life and larger community problems that resulted in criminal justice intervention.

David E. Rovella, *The Best Defense, Rebuilding Clients’ Lives to Keep Them from Coming Back*, 22 NAT’L L.J. 1 (2000) (chronicling holistic defense at The Bronx Defenders).

95. See Pinard, *supra* note 94, at 1068.

their community? What do clients think of us and the representation we provide?

Most public defenders lie somewhere on the spectrum of holistic defense, maybe fulfilling only one or two pillars. This Article is not meant to criticize those offices, but rather, to encourage them to continue, as Pinard puts it, to “search for improved delivery of defense services.”<sup>96</sup> This “search” is an individualized one. Although examples for this Part are drawn from The Bronx Defenders, each office should seek to implement the holistic defense model in a way that best fits its clients and community. The pillars provide the framework and foundation of holistic defense, while the particulars of what resources to create, what services to provide, and what representation is promised to clients will be as unique as the clients themselves and the communities they live in. At The Bronx Defenders, we have created holistic defender services that best serve our clients in the South Bronx. As Part VII will demonstrate, holistic public defender offices in rural Wisconsin or on an American Indian reservation might look quite different from The Bronx Defenders because their clients have different needs. This Part will serve as a guide for offices at a variety of points on the holistic defense spectrum, but offices will also have to do the hard work of really listening to clients and engaging with the community.

*A. Pillar One: Seamless Access to Legal and Nonlegal Services That Meet Client Needs*

At its core, holistic defense recognizes that clients have a range of legal and nonlegal social support needs that, if left unresolved, will continue to push them back into the criminal justice system. Holistic defense accepts the challenge of addressing those issues by going beyond the criminal case to the whole person. Critical to this pillar is that the services for clients—legal and nonlegal—are seamless. Our clients spend their lives navigating one indifferent administrative bureaucracy after the next: the welfare office, the child welfare system, school bureaucracies, the housing authority, and Medicare systems.

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96. *Id.*

Defender offices do not want to create one more obstacle, one more hurdle, and one more administrative system to navigate. Clients must be connected to the services they need—quickly, with certainty and ease.

Seamless access starts with interdisciplinary training for criminal attorneys. Attorneys must be trained to ask the right questions to determine what legal and nonlegal services a client needs. In arraignments, attorneys at The Bronx Defenders are trained to ask not just the names of witnesses or how the client was arrested, but also about the client's immigration status, children, public benefits, mental health, employment, housing, student loans, and more. The Bronx Defenders Arraignment Checklist helps attorneys ask the right questions, weigh collateral consequences, and reach out to other attorneys in the office for assistance—immediately, if necessary.<sup>97</sup> Later, the attorneys can then connect the client to the resources he and his family need, either in-house or outside of the office.

Civil attorneys and social workers, working in partnership with criminal attorneys, are crucial to providing seamless access to services. Civil attorneys and legal advocates at The Bronx Defenders address the collateral consequences of criminal proceedings, such as deportation, loss of a job, revocation of an employment license, and eviction from public housing.<sup>98</sup> Social workers conduct psycho-social assessments of the client, identify mental health and substance abuse problems, and recommend treatment. They also gather critical mitigation information that helps contextualize the client's involvement in the criminal justice system. Social workers were always instrumental in our practice and have taken on an expanded role as we have refined our model of holistic defense. Their training makes them better listeners than lawyers. They are uniquely aware of the services available in the community, and they are adept at determining

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97. *The Bronx Defenders Arraignment Checklist*, Updated March, 2012 [hereinafter *Arraignment Checklist*].

98. See *Holistic Defense*, THE BRONX DEFENDERS, <http://www.bronxdefenders.org> (last visited Apr. 2, 2013) (detailing how an arrest can have ripple effects and how The Bronx Defenders attempts to mitigate those effects) (on file with the Washington and Lee Law Review); see also Smyth, *Holistic*, *supra* note 15, at 481 (noting the cyclical nature of crime is furthered by the collateral legal and social consequences of the criminal justice system).

an effective defense strategy based on client needs and the client's history.

Not all public defenders have the resources to hire civil attorneys and social workers in-house; moreover, public defenders operating in a statewide system may not be permitted to resolve civil issues directly. However, public defenders can, and must, create seamless access to whatever services exist, even when those services are located outside of the office. Social work, law, and college interns from local universities can assist in creating partnerships outside of the office with legal aid and other social services organizations. Staff can also “map” the various services in the community for clients and work to establish positive relationships with those providers to ensure that clients get access to the services they need.<sup>99</sup> Our staff has strong relationships with Bronx churches, food pantries, treatment providers, shelters, hospitals, and free health clinics so that with a quick phone call, we can connect our clients to services that we cannot provide.

When deciding what services to offer and what partnerships to create, however, defenders should be careful not to make assumptions about the needs of the client population. Instead, public defenders must begin to gather hard, statistical data in order to understand what resources should be incorporated to strengthen services and connect better with the community. For example, at The Bronx Defenders, we knew that clients were in desperate need of housing because the court intake form asks for a “permanent address” and we saw how often our clients checked “homeless” or “none.” But we had no way of knowing how often our clients were investigated by child welfare agencies, or how often removal petitions were brought in family court. After collecting the data from our clients in a systematic way, we learned how prevalent child welfare interactions were and how often our clients' children were being placed in foster care, often as a result of a criminal charge. So, in 2003, we integrated family defense services into our office by collaborating with another nonprofit organization in the Bronx, and in 2006, we secured a

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99. The Center for Court Innovation, a Bronx Defenders partner, has produced an excellent community mapping guide and checklist. *See generally* CTR. FOR COURT INNOVATION, MAPPING COMMUNITY RESOURCES, [http://www.courtinnovation.org/sites/default/files/documents/mapping\\_2010.pdf](http://www.courtinnovation.org/sites/default/files/documents/mapping_2010.pdf).

contract with the City of New York to become the first institutional provider of parent representation in Bronx Family Court. Now, family defense is another service that our clients can access seamlessly at The Bronx Defenders.

**Case Study:** Seamless Access to Legal and Nonlegal Services that Meet Client Needs

Criminal Attorney Defne Ozgediz first met Carla Ramirez<sup>100</sup> at her criminal court arraignment. Ms. Ramirez was charged with assaulting her boyfriend. In the initial interview, Ozgediz learned that Ms. Ramirez had a 10-year-old son who was present during the altercation, so she immediately referred Ms. Ramirez to a family attorney on her team, Jessica Horan-Block. Sure enough, the Administration for Children's Services (ACS) opened a case against Ms. Ramirez soon after, and a caseworker even spoke to her son at school. Fortunately, Horan-Block intervened, and because of her advocacy, ACS did not file in court or attempt to remove Ms. Ramirez's son at that time.

However, Ms. Ramirez had unmet mental health needs that would drive her back into the criminal justice system. A few months later, Ozgediz got a call from Ms. Ramirez: she was back in arraignments on a second assault charge. This time, Ms. Ramirez's ten-year-old son was removed from her care. Ozgediz and Horan-Block knew that Ms. Ramirez needed extra help in order to obtain a favorable disposition in her criminal and family cases—and to turn her life around. They reached out to a social worker on their team, Lauren Harris.

Ms. Ramirez revealed to Harris that she was suffering from bipolar disorder; although she was on medication, her psychiatrist did not provide counseling or even refer her to a counselor. Harris explored various options among The Bronx Defenders's community partners, eventually finding a private therapist and psychiatrist who worked with Ms. Ramirez and provided supportive letters to family court. Harris also worked closely with Horan-Block to help Ms. Ramirez get her son back. ACS had placed her son with his father, whom he barely knew. Her son would likely not be returned to her care until she engaged in a long list of services, including taking an anger management class and a parenting class. However, Ms. Ramirez was in the middle of a high-risk pregnancy, making it difficult for her to venture far from home. Harris again

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100. Name has been changed to protect the client's identity.

reached out to her community contacts and found an anger management class and a parenting class near Ms. Ramirez's house. Thanks to the advocacy of Ozgediz, Horan-Block, and Harris, both of Ms. Ramirez's criminal cases were dismissed, and her son was returned to her care.

Ms. Ramirez's seamless access to services, however, did not end there. Ms. Ramirez's public benefits had been suspended as a result of a missed appointment while she was in jail. When Civil Legal Advocates Stephanie Lopez and Nora Hirozawa met with her, they found that she had been without benefits—public assistance and food stamps—for nearly five months. Hirozawa accompanied her to a fair hearing, at which she presented a Department of Corrections time sheet as evidence that Ms. Ramirez was incarcerated on the day of the missed appointment. They won the hearing, and all of Ms. Ramirez's benefits were restored. Lopez and Hirozawa are now assisting Ms. Ramirez in restoring her role as a representative payee for her son's Supplemental Security Income (SSI) benefits.

Ozgediz commented that Ms. Ramirez was a particularly resourceful client—always striving to improve her own situation—but she was caught up in so many bureaucratic systems that it was nearly impossible for her to extricate herself without help. Our advocates were able to identify her legal and nonlegal needs and assist her in seamlessly accessing a wide variety of services, both in-house and in the community. Their support enabled Ms. Ramirez to attain positive case outcomes and crucial life outcomes.

### *B. Pillar Two: Dynamic, Interdisciplinary Communication*

The holistic defense model requires dynamic, interdisciplinary communication among advocates in the office and between the advocates and the client. Such communication enables advocates to think and strategize more effectively and to assist clients with collateral consequences and social service needs in a more efficient manner. The importance of communication may seem obvious, but because everything from crushing caseloads to endless court appearances conspire against communication among advocates, it is critical for public defender offices to create clear and easy paths for information sharing and collaboration.



At The Bronx Defenders, our team model facilitates dynamic and interdisciplinary communication. We have six teams of about twenty advocates each, including criminal attorneys, social workers, investigators, civil attorneys (specializing in immigration, housing, employment, criminal records, and public benefits), civil legal advocates, family defense attorneys, and parent advocates. The team model encourages each advocate to seek advice and assistance from a variety of experts, depending on the needs of the client, and regular team meetings provide an opportunity to highlight examples of effective interdisciplinary communication and collaboration.

The office's physical layout also facilitates dynamic and interdisciplinary communication. The office was intentionally designed with an open floor plan. Only team leaders and top management have offices, which are all-glass, and we keep an open-door policy. Throughout the day, team members wander in and out with questions and emergencies. Team members sit together in low-rise cubicles that afford some privacy while also allowing for easy communication with coworkers. Moreover, an effort is made to assign cubicles so that team members sit next to someone who works in a different practice, further encouraging interdisciplinary communication; a criminal attorney may sit next to an investigator, who sits next to a family lawyer, who sits next to a social worker, who sits next to a civil attorney, who sits next to a civil advocate. On any given case, a criminal attorney may turn to the investigator on her team to get a statement from the complaining witness; a social worker may ask a civil attorney in the neighboring cubicle to help preserve a client's housing; a criminal attorney may run over to a family attorney's cubicle because he just learned that a client's children were removed; and a civil attorney may ask a civil legal advocate to help a client apply for food stamps or get into a shelter. The possibilities are endless. When they are out of the office, team members use handheld devices—cell phones, Blackberries, iPhones, and iPads—to allow for ongoing communication. For example, if a criminal attorney is in criminal court arraignments and learns that a client has an immigration issue that could potentially land him in deportation proceedings, the attorney can send out an immediate e-mail to the civil and immigration attorney office listserv requesting help or guidance.

We reshape the teams each year, so that they always have the right balance of experience, race, gender, language ability, personality, and areas of expertise. The reconstitution of the teams enables advocates from all different areas of the office to get to know each other. More importantly, it enhances innovation in the office, as different groups of people collaborate and share new ideas and approaches to addressing our clients' needs. This exchange of ideas is crucial to the holistic defense model, which seeks to constantly improve its services for clients and community members.

**Case Study: Dynamic, Interdisciplinary Communication**

Amanda Jones<sup>101</sup> first came to The Bronx Defenders in the fall of 2011. She was charged with using excessive corporal punishment on her twelve-year-old son. According to everyone who knew Ms. Jones, she was a loving and dedicated mother. However, ACS removed her son anyway. Family defense attorney Lauren Elfant was assigned to represent Ms. Jones in family court. During the intake process, Elfant asked a series of questions, which revealed that Ms. Jones, who was disabled and confined to a wheelchair, also suffered from depression and anxiety and had just been evicted from her home. Elfant immediately called two members of her team, social worker Brenda Zubay and civil attorney Vichal Kumar. The three of them met back at the office to discuss Ms. Jones's case. Now that Ms. Jones was homeless, it would be close to impossible for her to get her son back. Moreover, Elfant needed to convince the family court that Ms. Jones was getting adequate treatment for her mental health issues. Elfant, Zubay, and Kumar started working together to fight Ms. Jones's case in family court and to make it as easy as possible for her to apply for benefits, secure suitable housing, and stabilize her mental health.

Zubay collected letters from Ms. Jones's treatment providers showing that Ms. Jones had been making her mental health appointments and was stable on her medication and gave them to Elfant. Elfant used the letters to help convince the court that Ms. Jones's mental health should not be an impediment to getting her son back. Kumar immediately requested a shelter placement for Ms. Jones but was told he needed a court order verifying that Ms. Jones's son was coming home in order to get the new placement. Kumar called

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101. Name has been changed to protect the client's identity.

Elfant and the two of them went to court to obtain the order. Later that evening, Ms. Jones welcomed her son home to a new apartment.

But there was a problem. Ms. Jones sent a text message to Elfant: the apartment was not wheelchair accessible. Elfant called Kumar who told her that because it was Friday night on a holiday weekend, there was no chance Ms. Jones would get a new placement until Tuesday. So for three days, whenever Ms. Jones needed to go to the bathroom, she had to lift herself out of her wheelchair and crawl in because the doorframe was not wide enough. When she wanted to leave the apartment complex, she had to wait for someone to lift her; there were two steep staircases at the entrance of the apartment building.

On Tuesday morning, Kumar was told that Ms. Jones would be given a new placement the next day. Throughout the day on Wednesday, Elfant and Zubay stopped by Kumar's cube to see if he had heard anything yet. Nothing. He called again the next day. Nothing. Elfant and Zubay visited Ms. Jones in the apartment to provide support and to document the inadequacy of the apartment. They then gave that documentation to Kumar when they got back to the office. Zubay kept in touch with Ms. Jones's ACS caseworker to assure her that Ms. Jones was able to meet her child's needs, despite the challenges of the housing placement.

Ms. Jones and her advocates were getting desperate. Fed up with false promises from the city agency, Kumar, Zubay, and Elfant huddled in Kumar's cube and decided that Kumar should file a Temporary Restraining Order (TRO) against the agency. Less than an hour later, after notifying the agency of the impending TRO, Ms. Jones was given a new, wheelchair-accessible placement. Kumar and another attorney borrowed an investigator van, picked her up, and drove Ms. Jones, her son, and all of their belongings to the new apartment. Elfant bought groceries for Ms. Jones, using money from a client emergency fund that had been created after a recent fundraising event. Although Ms. Jones is still in a shelter, the new placement is a big improvement, and she has called repeatedly to express her gratitude for the zealotry with which her attorneys and social worker advocated on her behalf.

*C. Pillar Three: Advocates with an Interdisciplinary Skill Set*

In addition to working on interdisciplinary teams, individual advocates at a holistic defender office cultivate an interdisciplinary skill set through cross-training. Newly hired criminal attorneys should receive basic training in family, housing, employment, and immigration law; they should be educated on the complexities of school, welfare, and health care bureaucracies; and they should be taught about the different types of addictions and mental illnesses. They should also spend time shadowing advocates in disciplines other than their own to make what they have learned concrete and to enable them to better understand their clients' experiences. This combination of training and shadowing ensures that staff members can identify a client's legal and social work needs and make appropriate referrals within the office or to other community-based providers. Advocates should also be encouraged to work side-by-side with those working in other disciplines on behalf of a client. At The Bronx Defenders, it is not unusual for a criminal defense attorney to co-counsel a family court trial, especially when the criminal and family court cases are based on the same allegations. Likewise, immigration specialists and social workers often accompany criminal lawyers to court to advocate for clients on the record with judges and prosecutors. While advocates are not expected to become experts in disciplines other than their own, their familiarity with other legal and nonlegal issues is critical to their ability to effectively meet their clients' needs.

Identifying a client's interdisciplinary needs may seem like a daunting task to some criminal defense attorneys. However, there are many tools that can make it easier to do so. For example, attorneys at The Bronx Defenders use a detailed checklist during their first conversation with the client at his criminal court arraignment, as mentioned earlier in Part IV.A, which requires the attorney to ask about immigration status, employment, housing, children in foster care, mental health, student loans, orders of protection, police misconduct, and more.<sup>102</sup> One simple form, such as a checklist, can greatly impact interdisciplinary representation, enabling lawyers to identify

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102. *Arraignment Checklist*, *supra* note 97.

issues before they pose insurmountable challenges for clients and quickly include relevant experts in a client's defense.

**Case Study: Advocates with an Interdisciplinary Skill Set**

On a Monday night in September, Desiree Lassiter, one of our criminal defense attorneys, was working the evening arraignment shift. She arraigned Adriana Sanchez,<sup>103</sup> who was charged with felony assault for spanking her six-year-old child with a belt on a single occasion. Using her checklist as a guide, Ms. Lassiter asked her client a series of questions and learned that Ms. Sanchez is not a U.S. citizen and has another child—an eight-year-old son who is autistic. Both children were staying with their father in New Jersey, but Ms. Sanchez had full custody. Recognizing the risk of deportation and potential loss of custody if Ms. Sanchez stayed in jail, Lassiter reached out to friends and family of Ms. Sanchez to get testimonials about her reliability and trustworthiness. Lassiter then used that information to obtain Ms. Sanchez's release from jail. On Wednesday morning, Lassiter received an urgent call from Ms. Sanchez: the father of her children was refusing to return the kids. Ms. Sanchez, who does not speak English, was in despair. She had been in family court since 7 a.m. trying to get the court order, to no avail.

At a traditional public defender office, Lassiter would have probably told Ms. Sanchez to keep trying by herself or to seek legal help elsewhere. But as a holistic defender, Lassiter knew from her training with the family defense attorneys at the office that it would not be wise for Ms. Sanchez to advocate for herself. Lassiter knew from the training she received that ACS would quickly swoop in and try to prevent Ms. Sanchez from getting her kids back.

Lassiter then sent an urgent referral by e-mail to Dinah Adames-Ortiz, the parent advocate on her team, as well as to Stacey Charland, one of her team's family defense attorneys. She also referred Ms. Sanchez's case to Sarah Deri Oshiro, the team's immigration attorney, who would advise Ms. Sanchez and Lassiter on the immigration-related consequences of her charge. Adames-Ortiz and Charland met with Ms. Sanchez and assured her that she would get her kids back. The two advocates got a writ of habeas corpus by 11 a.m., ordering the father to return the kids.

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103. Name has been changed to protect the client's identity.

Thursday morning, Dinah received a call: when Ms. Sanchez returned home the night before, she found a notice of a mandatory ACS conference taped to her door. The conference was for Thursday. Adames-Ortiz rushed over to meet her. Adames-Ortiz demonstrated to the caseworker that Ms. Sanchez was a loving, caring mom, and even pointed out her repeated attempts to get support and specialized services from ACS for her autistic child. Because of her own cross-training, Adames-Ortiz was also able to navigate the minefield of questions she and Ms. Sanchez received about the criminal case and Ms. Sanchez's immigration status. Adames-Ortiz knew that anything Ms. Sanchez said in that meeting could be used against her in criminal and immigration court and so took the lead in talking about the charges and her status in a way that satisfied the caseworker but did not harm Ms. Sanchez. Leaving the meeting, the caseworker said Ms. Sanchez would be allowed to keep custody of her children, and promised to grant her previous requests for extra support for her disabled child.

Lassiter, the criminal attorney, is still working on Ms. Sanchez's case, and all four advocates—criminal defense attorney, family defense attorney, parent advocate, and immigration attorney—continue to touch base with Ms. Sanchez about various aspects of her case.

#### *D. Pillar Four: A Robust Understanding of, and Connection to, the Community Served*

A holistic defender office must have a strong connection to, and understanding of, the community it serves. A deep understanding of the community enables public defenders to argue for more individually tailored case dispositions, get clients the social services support they need faster, and collaborate with residents to create long-term change through policy initiatives and local organizing. Holistic defenders know firsthand about the struggles, deficits, and vibrancy of the community and can place the client's life, experience, and even criminal charges in a broader context. Further, this connection gives holistic defender offices a better idea of what problems are driving people into the court system and how to lower barriers that block clients' successful reentry into the community.

At The Bronx Defenders, we use a myriad of tactics—including, but not limited to, community intake, local organizing,

policy advocacy, coalition-building and collaboration, and legal action—to forge a connection with the community and advocate for systemic change. We determine the needs of the community and our policy and community development priorities through client surveys, focus groups, and data collection.

We are fortunate to have staff members who are dedicated to policy and community development. Cash-strapped public defender offices, however, can make great strides without hiring additional staff by creatively deploying its preexisting staff in different roles. Managing attorneys can pursue policy change through everyday practice—collecting and publicizing data, writing about unjust practices, advocating for administrative changes within the court system, and developing impact litigation. Social workers can take on the role of building relationships with community-based organizations. Administrative staff can represent the organization as part of a local coalition or reach out to elected officials. And staff attorneys can lead “Know Your Rights” workshops or judge a mock trial competition at a nearby school. The Bronx Defenders’s community initiatives rely heavily on the involvement and support of our staff, who foster a personal connection to the community and motivate their clients to participate in local events and projects. We also require each interdisciplinary team to take on a community-oriented project every year, and the entire staff pitches in to help with big events like the Community Block Party and Thanksgiving Dinner.

Some policy reform initiatives can be spearheaded by existing staff, with the help of volunteers. For example, last year Scott Levy, a staff criminal defense attorney, led a “Marijuana Arrest Project,” in which he recruited pro bono attorneys to interview hundreds of clients arrested for low-level marijuana possession. The project results, mentioned in the *New York Times*, found that more than 40% of the marijuana cases reviewed presented constitutional and evidentiary problems arising from unlawful searches and improper charging of clients by the New York City Police Department (NYPD).<sup>104</sup>

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104. Editorial, *Examining Marijuana Arrests*, N.Y. TIMES, Apr. 1, 2012, [http://www.nytimes.com/2012/04/02/opinion/examining-marijuana-arrests.html?\\_r=2&](http://www.nytimes.com/2012/04/02/opinion/examining-marijuana-arrests.html?_r=2&) (last visited Apr. 2, 2013) (on file with the Washington and Lee Law Review).

The intake process is another way of creating a connection to, and building an understanding of, the community. From the beginning, The Bronx Defenders set itself apart from other defender and legal aid offices by operating a community intake program five days per week, eight hours per day. Through community intake, we assist approximately 1,500 Bronx residents each year—nearly all of whom find out about us through word of mouth. On any given day, a community member can arrive at our office, without an appointment, and meet with an intake advocate or lawyer. During the intake meeting, advocates will help the community member recover his or her property, clean up errors on his or her rap sheet, get legal information or prearrest representation from an attorney, or get referred to the appropriate outside agency if we do not provide the services he or she is seeking. In addition, The Bronx Defenders has set up a twenty-four hour hotline for community residents to use when someone has been arrested or a child has been removed by child welfare. Our physical space also helps us build a relationship with the community we serve. Visiting the office of The Bronx Defenders is always a positive and welcoming experience. Unlike at other offices in New York City, Bronx residents do not have to speak to a receptionist through a bullet-proof glass window; they do not have to be buzzed in, or talk to a guard in the lobby; and they are never told to return on a different day or at a different time to meet with someone. Instead, community members are greeted by a bilingual receptionist in a brightly painted lobby, adorned with books for adults and children as well as comfortable sofas, where they can serve themselves hot coffee and water while they wait.

The Bronx Defenders also strives to change the underlying conditions that drive Bronx residents into the criminal justice system through community outreach, community legal education, and policy change. Community events serve as outreach mechanisms, and enable us to build stronger connections to community members, and foster goodwill in the South Bronx. In addition to monthly educational events (town halls, Advocacy Days, etc.), we organize two major events per year: the Thanksgiving Dinner and the Community Block Party. The Thanksgiving Dinner draws a large group of community members, many of whom have no place else to go to celebrate the



holiday. Staff attorneys and advocates cook, serve food, clean up, and, of course, socialize with guests. Our Community Block Party, also run by staff, has become a tradition in the South Bronx, offering hundreds of residents an afternoon of food, music, children's games, face-painting, and information booths about services in the community, including services at The Bronx Defenders. Community legal education is also an integral part of our practice. Our attorneys lead "Know Your Rights" workshops at schools, churches, community fairs, and pretty much anywhere else we are invited. We also hold training and legal education workshops at our office to ensure that clients are actively involved in all of our initiatives and prepared for big events such as a protest or Advocacy Day in Albany. Our Reentry Net project is another community legal education tool that reaches a wider audience of community members, formerly incarcerated people, and advocates.<sup>105</sup> Started in 2005 and updated regularly, Reentry Net is a resource center on prison, reentry, and the consequences of criminal proceedings for the New York reentry community, public defenders, and other criminal justice advocates.<sup>106</sup> Last year alone, through Reentry Net, we provided training and support for over 1,000 attorneys, direct service providers, and other advocates statewide on civil legal problems related to reentry.

Our policy work frequently takes place on a number of different levels: grassroots organizing, citywide coalition building, direct advocacy with legislators, and impact litigation. We organize clients, community members, and sometimes attorneys and partner organizations, as well. For example, in 2012, we were heavily involved in trying to change discriminatory policing practices in New York City. We mobilized interested clients and community members to attend rallies at city hall and town hall meetings on "stop-and-frisk." As members of the Steering Committee of a citywide advocacy campaign, Communities United for Police Reform (CPR), we are developing and implementing a multi-year strategy to increase transparency and

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105. See *Reentry Resource Center: New York*, REENTRY.NET/NY, <http://www.reentry.net/ny/> (last visited Apr. 2, 2013) (describing the Reentry Net project) (on file with the Washington and Lee Law Review).

106. See *id.* (describing the resources available on Reentry Net).

accountability in the NYPD.<sup>107</sup> We are also pursuing reform through class action lawsuits. We are currently co-litigating a case with the New York Civil Liberties Union (NYCLU), *Ligon v. City of New York*,<sup>108</sup> which seeks to end the discriminatory and illegal practice of stop-and-frisk inside of New York City apartment buildings, part of an NYPD program called “Operation Clean Halls.”<sup>109</sup>

As public defenders, we witness daily injustices imposed on our clients by a myriad of broken systems and endemic problems—racism, poor educational options, and lack of economic opportunity. It can be hard to square the immediacy of our desire for change with the slow pace of reform. But over the years at The Bronx Defenders, we have been involved with a variety of efforts, and we have seen some real successes. In 2009 we contributed to a broad coalition that achieved significant reform of New York’s Rockefeller Drug Laws by mobilizing clients, advising lawmakers on drafts of legislation, meeting with Bronx-based lawmakers, and afterward, monitoring the implementation of the new drug laws.<sup>110</sup> We also played a significant role in ending prison gerrymandering in New York State.<sup>111</sup> In addition, we have seen the results of our administrative advocacy: by building a relationship with the Department of Probation, we helped to craft and implement policies that reduce barriers to reentry. And in February 2012, we successfully challenged the

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107. See *Introduction and Members*, COMMUNITIES UNITED FOR POLICE REFORM, <http://changethenypd.org/campaign/intro-members> (last visited Apr. 2, 2013) (describing the CPR and its campaign to end discriminatory policing practices in New York) (on file with the Washington and Lee Law Review).

108. *Ligon v. City of New York*, No. 12 Civ. 2274 (S.D.N.Y. filed Mar. 28, 2012).

109. See Complaint at 1–2, *Ligon*, No. 12 Civ. 2274 (“This action . . . challenges the New York City Police Department’s unconstitutional stop, question, search, citation, and arrest policies implemented pursuant to ‘Operation Clean Halls.’”).

110. See *Drop the Rock Coalition*, CORRECTIONAL ASS’N OF N.Y., <http://www.correctionalassociation.org/cp/rockefeller-drug-laws> (last visited Apr. 2, 2013) (describing the efforts of the coalition to reform the Rockefeller Drug Laws in 2009) (on file with the Washington and Lee Law Review).

111. See *About the Coalition to End Prison-Based Gerrymandering in New York*, CORRECTTHECOUNT.ORG, <http://correctthecount.org/about> (last visited Apr. 2, 2013) (noting that the coalition seeks to eliminate gerrymandering “by changing how the state and counties use the Census data for the purpose of legislative redistricting”) (on file with the Washington and Lee Law Review).

continued practice of arresting people for violating New York State loitering laws even after the laws had been deemed unconstitutional, resulting in an agreement by the City to pay \$15 million to people who had been arrested.<sup>112</sup>

This pillar gives holistic defenders a unique mechanism for gathering information about systemic problems in the community; it also provides defender offices with a model for tackling those problems through policy action and community organizing.

### *V. Myths and Facts About Holistic Defense*

Critics of holistic defense usually raise the same three misconceptions about the model.

#### *A. Holistic Defense Will Increase My Workload*

Public defenders often express this fear, and academics like Gonzaga School of Law Professor Brooks Holland make the theoretical claim that holistic defense unequivocally increases workloads for institutional public defenders because (1) a holistic public defender might hire more ancillary staff and fewer lawyers

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112. See Stipulation and Order of Settlement at 13, *Brown v. Kelly*, No. 05 Civ. 05442 (SAS) (THK) (S.D.N.Y. Feb. 6, 2012) (settling *Brown v. Kelly* and *Casale v. Kelly* through a stipulation and order requiring the city to pay \$15 million to the class action plaintiffs), <http://nycloitering.com/Portals/0/Documents/OrderofSettl.pdf>; see also William Glaberson, *Long Fight Ends Over Arrests for Loitering*, N.Y. TIMES, Feb. 7, 2012, [http://travel.nytimes.com/2012/02/08/nyregion/new-york-settles-suit-on-illegal-arrests-for-loitering.html?\\_r=1&](http://travel.nytimes.com/2012/02/08/nyregion/new-york-settles-suit-on-illegal-arrests-for-loitering.html?_r=1&) (describing the settlement agreement).

for the same caseloads<sup>113</sup> and (2) attorneys will have “extralegal holistic duties like community outreach.”<sup>114</sup>

As our staff attorneys will tell you, holistic defense actually *decreases* their workload. They receive much more support on each case, and can provide services of a much higher caliber to clients. The ability to collaborate with a wide range of advocates on each team takes the pressure off individual attorneys to figure everything out on their own, such as housing, immigration, and public benefits, freeing up their time to focus on what they know best: criminal defense representation. Also, by collaborating with others, attorneys are more likely to figure out the best case strategy—and at a faster pace. Occasionally, staff attorneys do have “extralegal duties” at The Bronx Defenders. For example, each attorney is required to do one community service activity per quarter. However, these commitments also enable attorneys to do their jobs better: attorneys learn more about their clients’ community, which helps the attorneys better understand their clients and, therefore, fight for better and more individualized dispositions. Community involvement also helps dispel negative stereotypes about public defenders in the community, creating fewer obstacles to working with clients who may otherwise be distrustful. Finally, participating in outreach and advocacy enables public defenders to avoid burnout and frustration because they become part of a movement to change the system on a larger scale. Without exception, staff attorneys come back from a day in the community doing outreach activities excited, reenergized, and inspired.

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113. See Brooks Holland, *Holistic Advocacy: An Important But Limited Institutional Role*, 30 N.Y.U. REV. L. & SOC. CHANGE 637, 643 (2006)

Yet every extra social worker or investigator a holistic public defender office hires, or community outreach program it funds, may mean one less attorney—or at least one less experienced attorney—the office can afford to employ . . . each lawyer who is not hired means that the fifty to one hundred cases that this lawyer would have handled must be distributed amongst the other lawyers, increasing their caseloads even more.

114. *Id.*

*B. We Do Not Have Enough Funding to Do Holistic Defense*

Let's face it, public defenders never have enough funding to do everything they want and money is always an issue. But holistic defense is not necessarily more expensive than traditional defense models. And it can be applied just as successfully at a small office with very little funding<sup>115</sup> as it can be at a large office with many private grants and donations. Whether building resources for clients in-house, or creating meaningful relationships with preexisting community-based providers, any defender office can make holistic defense a reality. For example, services can be expanded by using unpaid, skilled interns. At The Bronx Defenders, law student interns and social work interns provide extra support year-round; during the summer, more law student interns, in addition to college interns working with investigators and community organizers, can take care of both short- and long-term projects that staff do not have time to complete. In addition to interns, volunteers from the community can enhance the range of services for clients. At The Bronx Defenders, we trained community volunteers to work with parents in our family defense practice as "parent advocates" before securing, years later, government funding to support that role. Creating relationships with the private bar and establishing robust pro bono relationships can also expand the services of the public defender. From handling a family court case, to working with a client on a forfeiture proceeding, pro bono attorneys are a valuable resource for underfunded offices. Finally, establishing relationships and mutually beneficial agreements with other community-based or local agencies, organizations, and coalitions that work with our clients is a way to expand access to services, without spending a penny.

Smart managers who can properly allocate resources are also key to making holistic defense work. We have similar cost-per-case ratios as other institutional public defenders in urban areas. We accomplish this by thinking carefully about the services clients need and who can provide them in-house and in the community. We hire many nonattorney advocates who work

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115. See, e.g., *infra* Part VII.A (discussing the operation of the small office of the Tribal Defenders of the Confederated Salish and Kootenai Tribes).

directly with clients and who, in many areas, are more effective than lawyers might be. For example, in New York, ACS does not allow attorneys at certain conferences with parents who are under investigation for abuse or neglect.<sup>116</sup> ACS will, however, allow nonattorney advocates at these critical meetings, at which a decision will be made about whether to file a formal “case” against a parent. Rather than hire more attorneys, we have been able to use our resources in a more effective and cost-efficient way by hiring nonattorney parent advocates to accompany clients to all of the investigative meetings with child welfare representatives. Additionally, these parent advocates, who become intimately familiar with the clients, their families, and their cases, work alongside the lawyers in court. Parent advocates provide lawyers with information, insight, and valuable service recommendations for our clients who are seeking reunification or trying to avoid the removal of their child. Hiring fewer attorneys, but creating more internal resources by hiring parent advocates, makes us stronger, better informed advocates and helps us stretch our budget further.

Holistic public defenders should base their hiring on more than just a simple ratio of criminal attorneys to support staff. And support staff should be reenvisioned to think beyond clerical and administrative support to include actual advocacy work on behalf of clients. Holland, in his critique of holistic defense, states that in the case of limited funds, offices should always hire more lawyers and fewer support staffers.<sup>117</sup> A holistic manager, however, must analyze what type of position could best support the team and needs of its clients and then assess the office’s funding scheme in order to support that position. Hiring one more lawyer does not necessarily result in better case outcomes; nor does hiring a social worker mean that each attorney will have to work harder as Holland presumes.<sup>118</sup> It is essential to have a balance of skills, knowledge, and background on each team.

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116. See Theresa Hughes, *Discovering the Undiscoverable in Child Protective Proceedings: Safety Planning Conferences and the Abuse of the Right to Counsel*, 10 U.C. DAVIS J. JUV. L. & POL’Y 429, 439–41 & n. 52 (2006) (listing “conferences in which the Respondent-Parent may not bring counsel in New York City”).

117. See Holland, *supra* note 113, at 642–44 (emphasizing the importance of attorneys over support staff).

118. See *id.* at 642–44 (“[T]he holistic advocacy model may cause lawyers to

Finally, if public defenders can, they should seek extra funding to meet their needs. Some argue that because public defense is a “mandated governmental function” we should not “let government off the hook” by finding alternative sources of money to support our work.<sup>119</sup> This argument is not only unpersuasive, it is self-defeating. Government will never fund public defenders at the levels we need to do exemplary work, but by enhancing our funding with outside sources of support we can make a huge difference. Applying for foundation grants, seeking support from local businesses, advocating for paid fellowships with foundations, law schools, or colleges, or throwing an annual fundraising event are all ways to bring in more money, raise an office’s profile, and gain support for your work.

### *C. Holistic Defenders Avoid Going to Trial*

Brooks Holland and many public defenders misinterpret holistic defense’s emphasis on collateral consequences as a shift away from trial work.<sup>120</sup> However, holistic defense simply calls for defenders to look at the broader context of a client’s life and

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have even less time for each client’s case, increasing the already high pressure to dispose of many cases quickly.”).

119. See N.Y. STATE DEFENDERS ASSOC., STANDARDS FOR PROVIDING CONSTITUTIONALLY AND STATUTORILY MANDATED LEGAL REPRESENTATION IN NEW YORK 4 (2004), [http://www.nysda.org/docs/PDFs/Pre2010/04\\_NYSDAStandards\\_ProvidingConstitutionallyStatutorilyMandatedReprsntatn.pdf](http://www.nysda.org/docs/PDFs/Pre2010/04_NYSDAStandards_ProvidingConstitutionallyStatutorilyMandatedReprsntatn.pdf) (“Government has the full responsibility to fund the full cost of quality legal representation for all eligible persons.”).

120. See Holland, *supra* note 113, at 650–51 (discussing holistic defense’s emphasis on collateral consequences). Holland assumes that holistic defenders always try to convince clients to take plea bargains to minimize collateral consequences. See *id.* at 651 (“[T]he direct consequences of the choice between a trial and a plea bargain . . . generally should weigh heavily enough on the client’s decisionmaking that to overemphasize collateral consequences disserves the client.”). He also assumes that holistic defenders eschew the importance of trial skills during the hiring process. See *id.* at 642

But, if a public defender office so elevates, institutionally, a social work and community-outreach practice that it becomes “the new litmus test for hiring” and promotions, the office risks professional imbalance. This imbalance may leave the office’s lawyers unprepared for the core feature of a public defender’s practice: trial litigation on behalf of criminal defendants who are commonly unpopular—even in the communities from which they come.

respond by addressing these issues. Interestingly, most of holistic advocacy takes place outside of the criminal courthouse, before, during, or after the criminal proceedings—whether they consist of a trial or a plea deal. What's more, clients, and only clients, decide if they want to engage with advocates from other disciplines in a holistic defender office to address the broader range of issues that criminal justice involvement brings. Our responsibility is to provide information, advice, and access to those services that go beyond the criminal case; the decision about whether to use those services rests solely with the client.

Indeed, contrary to the misconception that holistic defenders avoid going to trial, holistic defenders are just as eager to go to trial—if the client wishes—as traditional defenders. In fact, in the Bronx we go to trial quite often—with impressive acquittal rates.<sup>121</sup> In recognition of trial work's importance in a holistic model, we created a “Trial Chief” position in our office and developed the Defenders' Academy, an intensive, five-day, CLE-approved trial skills program for criminal, family, and civil defenders from all over the city, state, and even out-of-state. We also require that all jury trials are co-counseled, with balanced pairs selected by the Trial Chief; this enables us to provide the best possible trial defense for our clients and allows our attorneys to get the frequent trial experience that they need.

## VI. *Evaluation and Results*

Assessment is critical for holistic public defender offices. Evaluation is necessary to prove that the holistic public defense model works, and is superior to, the traditional model; assessment also enables public defenders to tweak the model and their practice, and along the same lines, to make sure that their clients are satisfied. At The Bronx Defenders, this last indicator—client satisfaction—is probably the best gauge of our performance.

The model of holistic defense, with its vigorous, team-based representation and focus on both the individual case and the broader context of clients' lives, results in high levels of client

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121. See *infra* notes 126–27 and accompanying text (providing statistics on The Bronx Defenders's acquittal rates).



satisfaction. It also contributes to procedural fairness; a sense that the criminal proceedings have been just, even if the outcome was not desirable.<sup>122</sup> The Bronx Defenders's client satisfaction surveys have repeatedly yielded very positive results. In our most recent survey, we interviewed 132 clients at random, charged with a wide array of crimes.<sup>123</sup> Eighty-four percent of clients interviewed said that the services they received at The Bronx Defenders were "Excellent" or "Good."<sup>124</sup> Ninety-one percent of clients said they would want The Bronx Defenders to represent them again.<sup>125</sup>

This data is corroborated on a weekly basis by letters that we receive from clients and their family members. Many of these letters underscore clients' appreciation of not just the criminal attorney's work, but of the zealous, caring representation of clients by the holistic teams.

The Bronx Defenders also considers case outcomes and "life outcomes" when assessing the holistic defense model. So far, the results are positive. For the last three years, our felony trial acquittal rates have hovered around 70%,<sup>126</sup> much higher than the overall rate of felony trial acquittals in the Bronx, which have ranged from 43%–57%.<sup>127</sup>

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122. For more on procedural justice, see Tom R. Tyler, *What Do They Expect? New Findings Confirm the Precepts of Procedural Fairness*, CAL. COURTS REV. 22, 22 (2006), [http://www.courts.ca.gov/documents/CCR\\_06Winter.pdf](http://www.courts.ca.gov/documents/CCR_06Winter.pdf)

The idea that people might be more interested in how their cases are handled than in whether or not they win often strikes people as counterintuitive and wrong-headed. Yet it is the consistent finding of numerous studies conducted over the last several decades . . . These studies show that people use ethical criteria to evaluate their experiences, and that they particularly focus on their views about appropriate ways for legal authorities to act when deciding how to resolve legal problems.

123. THE BRONX DEFENDERS, BRONX DEFENDERS CLIENT SATISFACTION SURVEY (2012) (on file with the Washington and Lee Law Review).

124. *Id.*

125. *Id.*

126. See THE BRONX DEFENDERS, THE BRONX DEFENDERS INTERNAL TRIAL DATA (2010–2012).

127. See John Caher, *Felony Dispositions Hinge on Borough Dynamics*, N.Y. L.J., Dec. 21, 2012, <http://www.newyorklawjournal.com/PubArticleNY.jsp?id=1202582225012&slreturn=20130125143147> (providing a chart by the Division of Criminal Justice Services that provides statistics on felony dispositions in each New York City county for 2008–2012).

Our data on the “life outcomes” of clients also demonstrates the success of the holistic model. We consider “life outcomes” to be cases in which, for example, The Bronx Defenders is able to help clients correct criminal record errors, get their employment licenses back, successfully fight eviction or deportation, or secure housing. In 2010, 87% of the hundreds of plea consults given by our immigration attorneys resulted in an immigration-positive outcome in the criminal case.<sup>128</sup> Last year, we prevented the eviction of over 150 families with more than 400 household members, and we prevented over 100 deportations, affecting over 200 family members.<sup>129</sup> More than 50 clients obtained legal immigration status.<sup>130</sup> We also preserved jobs and employment licenses for over 100 clients who are heads of their households, and obtained health insurance for more than 70 families.<sup>131</sup>

#### *VII. Moving Forward: Replicating Our Model Outside of the Bronx*

As The Bronx Defenders grew and became a nationally recognized practitioner of holistic defense, we began receiving requests from public defenders all over the country to give lectures, train their staff, and help them become like The Bronx Defenders. However, we have always maintained that it would be misguided for public defender offices to directly replicate The Bronx Defenders in their communities. That is not what holistic defense proposes to do. It is imperative that an office use the pillars of holistic defense to determine the kind of staff and services that would best fit the needs of its clients and community. What a holistic defender office looks like will vary from district to district and state to state; however, the general

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128. THE BRONX DEFENDERS, INTERNAL CASE DATA (2010); *see also* McGregor Smyth, “*Collateral*” *No More: The Practical Imperative for Holistic Defense in a Post-Padilla World . . . Or, How to Achieve Consistently Better Results for Clients*, 31 ST. LOUIS U. PUB. L. REV. 139, 154 (2011) (discussing the immigration-positive outcomes from the plea consults by The Bronx Defenders immigration attorneys).

129. THE BRONX DEFENDERS, CIVIL ACTION PRACTICE INTERNAL CASE DATA (2012).

130. *Id.*

131. *Id.*

structure and values of the office will be consistent across communities.

The Center for Holistic Defense, first funded by the U.S. Department of Justice in 2010, is the latest attempt by The Bronx Defenders to help other defenders implement holistic defense in their offices.<sup>132</sup> So far, we have conducted training and technical assistance for nine offices around the country: the Washoe County Public Defender's Office (Reno, NV), the District Public Defender (Knoxville, TN), the Wisconsin State Public Defender's Office (WI), the Committee for Public Counsel Services (MA), the Harris County Public Defender (Houston, TX), the Tribal Defender Office of the Confederated Salish and Kootenai Tribes (MT), the Maryland Office of the Public Defender (Baltimore, MD), the East Bay Community Law Center (Berkeley, CA), and the Mecklenburg County Public Defender (Charlotte, NC). Cait Clarke, Director of Strategic Initiatives at the National Legal Aid and Defenders Association, observed that our technical assistance has had a great impact on public defenders around the country.<sup>133</sup> "By breaking [holistic defense] down into pieces that are manageable, [public defenders] can see progress," she commented recently.<sup>134</sup> All of the offices we have trained have reported positive results, and some challenges, too, which have helped us refine the model and better advise other public defenders on how to replicate it.<sup>135</sup> We are also planning a Symposium on Holistic Defense in 2013. The Symposium will bring together the defenders we have trained, in addition to other public defenders interested in improving their holistic practice, for a day of

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132. See The Center for Holistic Defense, THE BRONX DEFENDERS, <http://www.bronxdefenders.org/our-work/center-holistic-defense> (last visited Apr. 2, 2013) (describing the work of the Center for Holistic Defense) (on file with the Washington and Lee Law Review); see also Cara Tabachnick, *Can the "Holistic Approach" Solve the Crisis in Public Defense?*, CRIME REPORT (Mar. 8, 2011), <http://www.thecrimereport.org/news/inside-criminal-justice/2011-03-can-the-holistic-approach-solve-the-crisis-in-public> (last visited Apr. 2, 2013) (describing The Bronx Defenders's holistic approach and the assistance it has provided to other defense offices seeking to implement similar methods of defense) (on file with the Washington and Lee Law Review).

133. Telephone Interview with Cait Clarke, Dir. of Strategic Initiatives, Nat'l Legal Aid & Defenders Assoc. (Aug. 21, 2012).

134. *Id.*

135. *Id.*

seminars, trainings, and, most importantly, dialogue, about how to improve the implementation of public defense in our offices.

Below, three profiles of public defenders trained by the Center for Holistic Defense in Montana, Wisconsin, and California, exemplify how the model of holistic defense fits a wide range of public defenders.

*A. Tribal Defenders of the Confederated Salish and Kootenai Tribes*

The Tribal Defenders of the Confederated Salish and Kootenai Tribes is located on the Indian reservation in Pablo, Montana.<sup>136</sup> The Flathead Indian Reservation is a world away from the South Bronx. However, the Tribal Defenders has been an enthusiastic champion of holistic defense since its training with the Center for Holistic Defense in 2010. The Tribal Defenders is a combined civil legal aid and criminal defense office that serves juvenile and adult members of the Confederated Salish and Kootenai tribes, in addition to members of any federally recognized tribe accused of a misdemeanor within the bounds of the reservation, and representation on some felonies.<sup>137</sup> There are ten people on staff, each with caseloads of 90–200 active criminal cases.<sup>138</sup>

Ann Sherwood is the managing attorney at the Tribal Defenders, and she has been with the office for fifteen years. “Initially, the inclination is to say we can’t do holistic defense because we don’t have the resources,” she said.<sup>139</sup> “But the concepts apply regardless of resources. It’s all about changing agency attitude and goals.”<sup>140</sup> She said that the Center for

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136. See *Tribal Defenders Office*, CONFEDERATED SALISH & KOOTENAI TRIBES, <http://www.cskt.org/gov/defenders.htm> (last visited Apr. 2, 2013) (describing the work of the Tribal Defenders Office) (on file with the Washington and Lee Law Review).

137. See E-mail from Ann Sherwood, Managing Attorney, Tribal Defenders Office of the Confederated Salish & Kootenai Tribes, to Robin Steinberg, Exec. Dir., The Bronx Defenders (Oct. 15, 2012) [hereinafter Sherwood Email] (on file with Author).

138. *Id.*

139. *Id.*

140. *Id.*

Holistic Defense's training helped the office to develop more seamless access to services and better communication on staff, particularly between its criminal and civil programs; become more community-oriented through expanding intake and hosting events relevant to the community; and fostered staff members' multidisciplinary skill set.<sup>141</sup>

For example, as a result of the training, the office manager directs a Bad Checks Diversion Program.<sup>142</sup> Previously, she had only performed secretarial tasks and managed the budget.<sup>143</sup> "With a small, interdisciplinary staff it's important to build on strengths. Our office administrator has a strong working knowledge of Tribal systems and a good rapport with our clients," Sherwood said.<sup>144</sup> In fact, the office administrator convinced the administrator in the prosecutor's office to send bad checks over to the Tribal Defenders before pressing charges, so that the client would have a chance to pay the money before being charged.<sup>145</sup>

After the training by The Bronx Defenders, the Tribal Defenders also started reassessing how they address collateral consequences affecting their clients.<sup>146</sup> For example, they noticed that many clients' driver's licenses were being suspended for a variety of reasons.<sup>147</sup> This causes great hardship for residents of the 1,317-acre reservation, where a suspended license means that a tribe member cannot get to work.<sup>148</sup> A legal advocate on staff has developed a specialty in helping clients get their licenses reinstated.<sup>149</sup> "We used to tell people to call the DMV and figure it out. It's astounding what a difference it makes when [the advocate] makes those phone calls and gives people more

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141. Telephone Interview with Ann Sherwood, Managing Attorney, Tribal Defenders Office of the Confederated Salish & Kootenai Tribes (Aug. 9, 2012) [hereinafter Sherwood Telephone Interview].

142. *Id.*

143. *Id.*

144. Sherwood Email, *supra* note 137.

145. Sherwood Telephone Interview, *supra* note 141.

146. *Id.*

147. Clients' licenses were being suspended for a variety of reasons: failure to pay fines, failure to pay child support, DUI, treatment requirements for DUI, failure to appear in other jurisdictions. See Sherwood Email, *supra* note 137.

148. Sherwood Telephone Interview, *supra* note 141.

149. *Id.*

direction,” Sherwood said.<sup>150</sup> The advocate also frequently takes extra steps to help clients meet requirements for getting their licenses back, such as completing alcohol treatment programs and securing financial assistance to pay fines or reinstatement fees.<sup>151</sup> She also communicates with the prosecutor, advocating on behalf of the client for a diversion that does not result in the suspension of his license.<sup>152</sup> This year, the advocate helped thirty-five clients get valid driver’s licenses.<sup>153</sup>

While this may sound like extra work, Sherwood insists that it is not.<sup>154</sup> The Tribal Defenders has sought out social work interns to help,<sup>155</sup> and reports: “Our attorneys and advocates will tell you it doesn’t create more work for them, but streamlines the process. In order to provide effective assistance of counsel we must address the collateral issues and advise our clients accordingly. A holistic approach helps us do that in an efficient way.”<sup>156</sup>

### *B. Wisconsin State Public Defender*

The Wisconsin State Public Defender’s Office (SPD) is an independent, executive branch state agency with 39 offices throughout the state.<sup>157</sup> In fiscal year 2012, the SPD appointed a public defender in 138,813 cases.<sup>158</sup> Sixty percent of cases were assigned to staff attorneys; 36% to private bar attorneys; and 4% (only misdemeanors) to private bar contractors.<sup>159</sup> Gina Pruski is the Training Director of the SPD and she noted that although the SPD had been moving toward client-centered representation for

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150. *Id.*

151. Sherwood Email, *supra* note 137.

152. *Id.*

153. *Id.*

154. Sherwood Telephone Interview, *supra* note 141.

155. *Id.*

156. Sherwood Email, *supra* note 137.

157. *About the SPD*, WIS. ST. PUB. DEFENDER’S OFF., <http://www.wisspd.org/htm/GenInfo/Facts.pdf> (detailing the Wisconsin State Public Defender’s Office budget and staffing).

158. *Id.*

159. *Id.*

many years, they applied for technical assistance to “make sure we were on the right track.”<sup>160</sup>

The SPD faces challenges that a county office such as The Bronx Defenders does not; for example, it cannot represent clients in civil court (housing, immigration, etc.).<sup>161</sup> However, The Bronx Defenders’s assistance served as a catalyst for many changes, some of which are still in progress.<sup>162</sup> For example, SPD management has changed its hiring practices, making sure to hire on holistic, client-centered values, not just technical skills.<sup>163</sup> They developed and implemented a needs assessment survey, which was conducted by law student interns in summer 2011.<sup>164</sup> The need for more information about collateral consequences arose from the survey results, and so the SPD has begun developing an online collateral consequences database for the state, assisted by law interns.<sup>165</sup> In addition, the technical assistance inspired SPD to do community mapping; its 16 statewide Client Services Specialists have since devised Community Resources Guides for the counties they cover, and they are trying to make these guides electronic.<sup>166</sup>

Finally, the training helped SPD formalize an immigrant practice group that formed post-*Padilla*, consisting of twelve attorneys across the state who had been trained by an immigration lawyer in how to advise clients on immigration issues related to their criminal cases.<sup>167</sup> Now, SPD has designated one lawyer to lead the practice group, an “Immigration Practice Coordinator.”<sup>168</sup> The Coordinator keeps the group up-to-date on immigration law and makes sure to communicate to lawyers across the state that they can reach out to the Practice Group for

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160. Telephone Interview with Gina Pruski, Training Dir., Wis. State Pub. Defender’s Office (Aug. 10, 2012) [hereinafter Pruski Telephone Interview].

161. *Id.*

162. *Id.*

163. *Id.*

164. E-mail from Gina Pruski, Training Dir., Wis. State Pub. Defender’s Office, to Robin Steinberg, Exec. Dir., The Bronx Defenders [hereinafter Pruski Email] (Oct. 5, 2012) (on file with Author).

165. *Id.*

166. Pruski Telephone Interview, *supra* note 160.

167. *Id.*

168. *Id.*

help.<sup>169</sup> The success of SPD in integrating holistic defense into its practice—and the unique challenges it has encountered—makes it a good example and resource for other public defenders working in statewide systems.<sup>170</sup>

### *C. East Bay Community Law Center*

The East Bay Community Law Center (EBCLC) in Alameda County, CA is a civil legal services organization that is part of the clinical law program at the University of California at Berkeley Law School.<sup>171</sup> EBCLC requested support and training from the Center for Holistic Defense to incorporate criminal defense services into its civil practice in the form of a new clinic: the Youth Defender Clinic.<sup>172</sup> The EBCLC demonstrates that there is more than one path to holistic defense; public defender offices can incorporate civil representation, but civil legal services can add a criminal defense component as well.

The Youth Defender Clinic seemed like a natural addition to EBCLC. The organization was already representing young people in Alameda County through a Medical-Legal Practice in partnership with Children's Hospital and Research Center Oakland<sup>173</sup> and a free school-based clinic at five Oakland, CA middle schools.<sup>174</sup> They saw that delinquency cases were frequently connected to hardships at school, unstable or unsafe housing, unmet health needs, immigration complications, and the failure to get appropriate government support.<sup>175</sup> With the

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169. *Id.*

170. *Id.*

171. *See Our Mission*, E. BAY COMMUNITY LAW CENTER, <http://www.ebclc.org/mission.php> (last visited Apr. 2, 2013) (describing the work of the EBCLC) (on file with the Washington and Lee Law Review).

172. *See Youth Defender Clinic*, E. BAY COMMUNITY LAW CENTER, [http://www.ebclc.org/documents/Youth\\_Defender\\_Clinic.pdf](http://www.ebclc.org/documents/Youth_Defender_Clinic.pdf) (describing the work of the Youth Defender Clinic).

173. *See Health*, E. BAY COMMUNITY LAW CENTER, <http://www.ebclc.org/health.php> (last visited Apr. 2, 2013) (describing the health practice at EBCLC) (on file with the Washington and Lee Law Review).

174. Telephone Interview with Kate Weisburd, Project Dir., East Bay Cmty. Law Ctr. (Aug. 16, 2012) [hereinafter Weisburd Telephone Interview].

175. *Id.*



integration of the Youth Defender Clinic, EBCLC is the first law office in Alameda County that represents young people in both civil and criminal matters.<sup>176</sup>

With the help of the Center for Holistic Defense, EBCLC has created and strengthened its relationships with project partners like the public defender office, the East Bay Children's Law Office, the probation office, and Youth Uprising (a community-based organization in Oakland).<sup>177</sup> These collaborations will help the Youth Defender Clinic make and receive referrals; it will also enable its staff to rely on experts for advice and support throughout the pilot phase.<sup>178</sup> In addition, the Youth Defender Clinic has done an informal assessment to better understand the types of collateral consequences young people in criminal proceedings face.<sup>179</sup>

The Youth Defender Clinic began in September of 2012.<sup>180</sup> Project Director Kate Weisburd emphasizes that it is a pilot project, and that EBCLC and its partners will "tinker" with and "adapt" the model upon completion of the pilot phase.<sup>181</sup> In its first semester, it aspired to reach at least 100 young people and youth service providers through direct representation, limited scope assistance, and community outreach and workshops.<sup>182</sup>

Weisburd added:

The Bronx Defenders is having a huge impact not only on the Youth Defender Clinic, but on the entire EBCLC office. Thanks in part to The Bronx Defenders, EBCLC is now thinking about how every client who walks in the door gets coordinated and streamlined holistic legal services. This shift is forcing the entire office to reevaluate our intake procedures, our interoffice referral process, and how to use technology to better communicate about cases and services. . . . One of our staff now often cries out: "I have a client that needs to be

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176. E-mail from Kate Weisburd, Project Dir., East Bay Cmty. Law Ctr., to Robin Steinberg, Exec. Dir., The Bronx Defenders (Oct. 9, 2012) [hereinafter Weisburd Email] (on file with author).

177. Weisburd Telephone Interview, *supra* note 174.

178. *Id.*

179. *Id.*

180. *See Youth Defender Clinic*, *supra* note 172.

181. Weisburd Telephone Interview, *supra* note 174.

182. Weisburd Email, *supra* note 176. When this Article was written, the first semester had not yet been completed.

Bronx Defender-ed!" "Bronx Defender" has become a verb for describing clients who need holistic wrap around legal services.<sup>183</sup>

### VIII. Conclusion

Holistic defense works, and it is replicable. For many years, other public defenders would politely listen to us talk about holistic defense, and then dismissively declare: "That may be needed in the Bronx, but not here." If the Bronx is exceptional, it is only exceptional in the sense that it is poorer than the other boroughs of New York City, and most other areas of the United States.<sup>184</sup> Our clients are like clients of all public defender offices—poor, marginalized, and from underresourced communities. They are disproportionately people of color, young, and male. And they experience a host of issues, often related to poverty, that drive them into the criminal justice system and, once in the system, find themselves caught in a morass of dire consequences that further damage and destabilize them. Holistic defense cannot be dismissed because of geography. Its principles and effectiveness know no bounds. It results in better case outcomes, supports positive life outcomes for clients, and strengthens communities. Clients like it better. More pressingly, it is the only current model of public defense that addresses the real-life consequences of criminal justice involvement—the consequences that are often more dire than the criminal case itself—and addresses the underlying issues driving clients into the system.

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183. *Id.*

184. The Bronx Defenders is located in Congressional District 16, the district with the highest poverty rate in the nation in 2011 (41%). See *Interactive Map: 2011 Poverty Data by Congressional District*, HALF IN TEN, <http://halfintenn.org/issues/articles/interactive-map-2011-poverty-data-by-congressional-district/> (last visited Apr. 2, 2013) (on file with the Washington and Lee Law Review); see also *2011 American Community Survey 1-Year Estimates, Selected Economic Characteristics*, U.S. CENSUS BUREAU, AM. FACTFINDER, [http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS\\_11\\_1YR\\_CP03&prodType=table](http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_11_1YR_CP03&prodType=table) (last visited Apr. 2, 2013) (providing statistics for Congressional District 16 that show its high poverty levels) (on file with the Washington and Lee Law Review).

Holistic defense is scalable, customizable, and universal. All it requires is a deep understanding of client needs, a meaningful engagement with the client community, an interdisciplinary approach to problem solving, and providing seamless access to the services necessary to tackle those problems. Whether the client base is rural or urban, diverse or homogenous, the commitment to these basic ideas will change your practice whether you appear in whitewashed courthouses, suburban judicial centers, or the criminal court fortresses of our cities. By breaking down legal silos, listening to clients, and engaging with their communities, holistic defense changes the goals of the attorney–client relationship to better reflect the reality and goals of the clients themselves and, in so doing, redefines the very nature of public defense in the twenty-first century.