

## THE MEASURE OF GOOD LAWYERING: EVALUATING HOLISTIC DEFENSE IN PRACTICE\*

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### I. INTRODUCTION

It is a weekday morning in a public defender's office located in a downtown office building. Defendants and their family members shuffle into the lobby and take seats in plastic chairs to wait for their attorneys. Seated behind thick glass, the receptionist juggles the steadily ringing telephone with the paperwork on her desk, looking up occasionally to buzz a visitor through the locked door into the inner office. This is business as usual in a traditional public defender's office, underresourced and scrambling to keep up with the constant inflow of new cases.

In another city, clients of the public defender agency enter a sunlit lobby and are greeted in English and Spanish by a receptionist seated at a circular desk. While waiting to meet with their attorneys, clients help themselves to coffee and snacks and read brochures about how to register to vote and have their driving privileges restored. At the top of a spiral staircase, attorneys confer with their clients in private offices, pausing occasionally to make notes in their computerized case management system. Downstairs, one social worker is screening a client for mental health issues while another works the phones to find a bed for another client at a residential drug treatment facility. In a conference room, children

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from the agency's summer enrichment program are working on an electronics project. For this holistic defender office, it is another typical day at work.

Holistic defense, also known as problem-solving lawyering, community oriented defense, therapeutic defense, holistic advocacy, or integrated service representation, is the most comprehensive statement to date of what defines the effective assistance of counsel for criminal defendants.<sup>1</sup> The holistic defense model arose partly in response to widespread criticism of existing systems for delivering defense services to indigent clients, and partly as a component of the larger problem-solving movement taking hold in the criminal justice system over the past two decades. The expansion of collateral consequences such as sex offender registration and ineligibility for public housing over the past three decades was another primary motivator for the development of the holistic defense paradigm.

The holistic model stands in contrast to the traditional model of public defense. Steinberg and Feige note that many public defenders are frustrated by the limitations of a traditional representation model that seeks only to satisfy minimal constitutional requirements.<sup>2</sup> The holistic defense model asks public defenders to do more for their clients and communities. Advocates for holistic defense argue that because it is client-centered, holistic defense humanizes clients and affords them more dignity and respect than a traditional model of criminal defense<sup>3</sup> while protecting defendants from consequences that are often hidden.<sup>4</sup> Further, advocates of holistic defense argue that it can reduce incarceration in several ways. First, because holistic defense attempts to solve underlying social and environmental problems that may have contributed to a client's involvement in crime, advocates for holistic defense argue that it reduces repeat

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<sup>1</sup> Steinberg, R. G. (2006). Beyond lawyering: How holistic representation makes for good policy, better lawyers, and more satisfied clients. *New York University Review of Law and Social Change*, 30, 625–634.

<sup>2</sup> Steinberg, R., & Feige, D. (2002). *Cultural revolution: Transforming the public defender's office*. Boston, MA: Harvard University Kennedy School of Government. Retrieved from <https://www.ncjrs.gov/pdffiles1/bja/193773.pdf>.

<sup>3</sup> Ammar, D., & Downey, T. (2003). Transformative criminal defense practice: Truth, love, and individual rights—The innovative approach of the George Justice Project. *Fordham Urban Law Journal*, 31, 49–68.

<sup>4</sup> Smyth, J. M., Jr. (2005). Holistic is not a bad word: A criminal defense attorney's guide to using invisible punishments as an advocacy strategy. *University of Toledo Law Review*, 36, 479–504.

incarceration.<sup>5</sup> Second, because holistic defense increases the focus on consequences that collaterally result from an arrest or conviction, holistic defense can anticipate future events that might lead to a cycle of crime, including both legal and non-legal consequences such as eviction, loss of employment, civil commitment, sex offender registration, and ancillary civil or administrative proceedings.<sup>6</sup>

Some observers criticize the holistic defense model on normative or theoretical grounds. For example, Moore notes possible ethical concerns when a defender weighs a “client’s liberty issues” against the “client’s best social interests.”<sup>7</sup> Moreover, Holland, building on Lee, argues that holistic defense may directly conflict with the attorney’s obligation of “zealous advocacy,” with a detrimental effect on defenders’ ability to obtain the best legal outcomes for their clients.<sup>8</sup> On a more practical level, Holland suggests that a philosophy of holistic advocacy will lead defender offices to expend scarce resources hiring social workers and investigators rather than an adequate number of attorneys, causing attorneys to spend less time investigating cases and increasing the incentive for attorneys to pursue plea bargains rather than taking cases to trial.

On both sides of the debate over holistic defense, the supporting evidence consists almost entirely of normative arguments and anecdotal information. To inform the debate, Clarke and Neuhard have called for empirical evidence to determine whether “problem solving lawyering is cost-effective, efficient, and creates improved justice systems.”<sup>9</sup> Without empirical assessment, they argue, the cultural shift necessary for the diffusion of the holistic defense model cannot occur. Clarke and Neuhard call for the collection of data and the measurement of outcomes to assess the impact that

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<sup>5</sup> Smyth, J. M., Jr. (2009). From arrest to reintegration: A model for mitigating collateral consequences of criminal proceedings, *Criminal Justice*, 24(3), 42–56. Retrieved from [http://www.americanbar.org/content/dam/aba/publishing/criminal\\_justice\\_section\\_newsletter/crimjust\\_cjmag\\_24\\_3\\_smyth.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/publishing/criminal_justice_section_newsletter/crimjust_cjmag_24_3_smyth.authcheckdam.pdf).

<sup>6</sup> Smyth, M. (2011). Collateral no more: The practical imperative for holistic defense in a post-Padilla world . . . Or, how to achieve consistently better results for clients, *St. Louis University Public Law Review*, 31, 139–168.

<sup>7</sup> Moore, M. H. (2004). Alternative strategies for public defenders and assigned counsel, *New York University Review of Law and Social Change*, 29, 83–112.

<sup>8</sup> Holland, B. (2006). Holistic advocacy: An important but limited institutional role, *New York University Review of Law and Social Change*, 30, 637–653; Lee, K. M. (2004). Reinventing Gideon v. Wainwright: Holistic defenders, indigent defendants, and the right to counsel. *American Journal of Criminal Law*, 31, 367–432.

<sup>9</sup> Clarke, C., & Neuhard, J. (2004). “From day one”: Who’s in control as problem solving and client-centered sentencing take center stage? *New York University Review of Law and Social Change*, 29, 11–56.

holistic defense has on the courts, the prisons, and socioeconomically deprived communities, and for the application of social science methods to establish valid conclusions and public policy implications.

This article seeks to reconcile the competing definitions of holistic defense and to develop a unified framework for empirically evaluating holistic defense. Part II compares and contrasts existing definitions of holistic defense, focusing on how each definition reflects the priorities of its drafters. Part III translates the concept of holistic defense into a formal program theory that can serve as the foundation for an empirical evaluation. Part IV discusses the importance of evaluating holistic defense programs and operationalizes the program theory in terms of measurable outputs and outcomes. Part V concludes by considering what it means for a holistic defense program to be successful.

## II. EXISTING DEFINITIONS OF HOLISTIC DEFENSE

Several agencies and professional organizations have already developed their own definitions of nontraditional criminal defense practice, each branding the practice with a slightly different name: “holistic defense,” “community oriented defense,” and “comprehensive defense representation.” The three primary definitions currently in use include the Bronx Defenders’ Four Pillars of Holistic Defense, the Brennan Center for Justice’s Ten Principles of Community Oriented Defense, and the American Bar Association (ABA) Task Force on Comprehensive Defense Representation’s Six Cornerstones of Comprehensive Representation. Each title reveals a different emphasis in the associated set of principles, an emphasis which is in turn a reflection of the membership and concerns of the group that developed those principles.

### A. *The Four Pillars of Holistic Defense*

The Bronx Defenders, a nonprofit provider of indigent defense services established in New York City in 1997, is widely considered to be the first indigent defense agency to have implemented holistic defense practices.<sup>10</sup> The Bronx Defenders has articulated its

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<sup>10</sup> Steinberg, R. (2013). Heeding Gideon’s call in the twenty-first century: Holistic defense and the new public defense paradigm. *Washington & Lee University Law Review*, 70, 961–1018, at 984–85.

approach to providing defense services in the form of four “pillars,” or core principles:

1. Seamless access to services that meet clients’ legal and social support needs;
2. Dynamic, interdisciplinary communication;
3. Advocates with an interdisciplinary skill set; and
4. A robust understanding of, and connection to, the community served.<sup>11</sup>

The Four Pillars of Holistic Defense (Four Pillars) maintain a dual focus on interdisciplinary, team-based representation of individual clients and the agency’s connection to the community in which its clients live.<sup>12</sup> This dual focus is a natural reflection of the history of holistic practice at the Bronx Defenders. Early on, the attorneys of the Bronx Defenders discovered that their clients were often more concerned about the collateral consequences of a criminal conviction—for example, loss of public housing and other public benefits, removal of children, or deportation—than the prospect of jail time or other direct consequences.<sup>13</sup> To address these concerns, the agency created interdisciplinary teams of advocates that included social workers and civil attorneys in addition to criminal defense attorneys. Civil attorneys handle housing, immigration, and child welfare issues, and social workers and non-attorney “advocates” locate housing and treatment placements and advocate on behalf of clients with public benefits agencies. The team approach is designed to provide “seamless access” to multiple services through a single intake process, eliminating the need for the client to answer the same questions over and over in multiple intake interviews with the criminal defense attorneys, social workers, and civil attorneys.<sup>14</sup> This means that criminal defense attorneys must be trained to ask questions beyond the topics traditionally covered in a client interview in order

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<sup>11</sup> The Bronx Defenders. (2010, November 10). *The four pillars of holistic defense*. Retrieved from <http://www.bronxdefenders.org/the-four-pillars-of-holistic-defense/>.

<sup>12</sup> Prior to the development of the Four Pillars, Bronx Defenders founder and executive director Robin Steinberg asserted that “[h]olistic models of advocacy have two critical components: [a]dvocacy through interdisciplinary work groups; and [p]resence in the client community.” Steinberg, R. G. (2006). Beyond lawyering: How holistic representation makes for good policy, better lawyers, and more satisfied clients. *New York University Review of Law and Social Change*, 30, 625–634, at 630.

<sup>13</sup> Steinberg, R. (2013). Heeding Gideon’s call in the twenty-first century: Holistic defense and the new public defense paradigm. *Washington & Lee University Law Review*, 70, 961–1018, at 963.

<sup>14</sup> The Bronx Defenders. (2010, November 10). *The four pillars of holistic defense*. Retrieved from <http://www.bronxdefenders.org/the-four-pillars-of-holistic-defense/>.

to identify additional legal and social service needs.<sup>15</sup> The team-based approach to holistic practice also necessitates a cultural shift in which criminal defense attorneys, who traditionally work alone or with small groups of other attorneys and are typically evaluated and promoted based on their performance in plea negotiations and in-court advocacy, routinely share case information with, and accept input on, case strategy from civil attorneys, social workers, investigators, and other defense team members.<sup>16</sup>

The history of the Bronx Defenders is also evident in the Four Pillars' emphasis on the defender agency's connection to the community. The Bronx Defenders office has always been located in the community where its clients live. In designing its program, the Bronx Defenders actively solicited input from local residents and community organizations.<sup>17</sup> Today, the agency engages in a broad range of activities that go beyond the representation of individual clients, including educational programs, hosting community events, community organizing, policy advocacy, and systems litigation. Educational programs such as "Know Your Rights" workshops proactively prepare citizens to navigate encounters with law enforcement and the justice system. Public events such as the Bronx Defenders' annual Thanksgiving Dinner and Community Block Party provide an opportunity for program staff to interact with community members outside the context of client representation and for community members to learn about the variety of services the agency offers. Grassroots organizing, legislative advocacy, and systems litigation are employed to address larger justice system issues that impact the Bronx community, such as the New York City Police Department's "stop-and-frisk" program.<sup>18</sup> Bronx Defenders' staff also maintain formal and informal connections with a variety of other organizations in the community. These connections assist attorneys and advocates in connecting individual clients with outside services such as housing

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<sup>15</sup> Steinberg, R. (2013). Heeding Gideon's call in the twenty-first century: Holistic defense and the new public defense paradigm. *Washington & Lee University Law Review*, 70, 961–1018, at 988.

<sup>16</sup> Steinberg, R. G. (2006). Beyond lawyering: How holistic representation makes for good policy, better lawyers, and more satisfied clients. *New York University Review of Law and Social Change*, 30, 625–634, at 630.

<sup>17</sup> Steinberg, R. G. (2006). Beyond lawyering: How holistic representation makes for good policy, better lawyers, and more satisfied clients. *New York University Review of Law and Social Change*, 30, 625–634, at 631.

<sup>18</sup> Steinberg, R. G. (2006). Beyond lawyering: How holistic representation makes for good policy, better lawyers, and more satisfied clients. *New York University Review of Law and Social Change*, 30, 625–634, at 632.

placements and aid in coalition-building in support of larger policy initiatives.

The Four Pillars' foundational principles of team-based representation and integration into the client community appear to be targeted primarily at public defender agencies similar to the Bronx Defenders rather than defense attorneys who work on a contract or court-appointed basis. The practice of holistic defense, however, need not be confined to high-capacity institutional providers. In a solo practice or a small office where representation of indigent clients is funded entirely by legal fees, it may be impracticable to hire a dedicated social worker and civil attorney. In such offices, the concept of the "defense team" may need to be expanded to include social workers and civil attorneys from external organizations, or some of the work of the defense team may need to be outsourced through referrals to outside agencies and legal clinics. Community integration will also look different at a small private law firm than at a large public defender's office. Rather than hosting community events and educational programs, attorneys from smaller firms may participate on an individual basis in community service projects such as school career days; instead of leading systemic reform initiatives, individual attorneys may participate in reform coalitions spearheaded by larger community organizations, or may help to improve the criminal justice system by serving as members of state and local boards and commissions such as indigent defense commissions.

### *B. The Ten Principles of Community Oriented Defense*

In 2003, the Brennan Center for Justice established the Community Oriented Defender (COD) Network "to engage community based institutions in order to reduce unnecessary contact between individuals and the criminal justice system."<sup>19</sup> In partnership with COD leaders, the Brennan Center developed the Ten Principles of Community Oriented Defense to guide defenders in implementing community oriented defense practice. The principles include:

1. create a client-centered practice,
2. meet clients' needs,
3. partner with the community,

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<sup>19</sup> Clark, M., & Savner, E. (2010). *Community oriented defense: Stronger public defenders*. New York, NY: Brennan Center for Justice. Retrieved from [http://www.americanbar.org/content/dam/aba/administrative/criminal\\_justice/StrongerPublicDefenders.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/administrative/criminal_justice/StrongerPublicDefenders.authcheckdam.pdf).

4. fix systemic problems,
5. educate the public,
6. collaborate,
7. address civil legal needs,
8. pursue a multidisciplinary approach,
9. seek necessary support, and
10. engage with fellow COD members.<sup>20</sup>

Overlaying these ten principles are three “overarching advocacy strategies”: whole client representation, community engagement, and systemic reform.<sup>21</sup>

Four of the principles—create a client-centered practice, meet clients’ needs, address civil legal needs, and pursue a multidisciplinary approach—explicitly address individual client representation. Principle 1, create a client-centered practice, explicitly invokes the preexisting concept of client-centered representation. Client-centered representation prioritizes the client’s individual needs, concerns, and preferences, and emphasizes the client as the primary decision maker. Client-centered practice necessarily involves a high degree of information-sharing between client and attorney and leads naturally to enhanced consideration of legal and non-legal issues beyond the direct consequences of the criminal case.<sup>22</sup> Principles 1, 2, 7, and 8 all articulate the need for criminal defense attorneys to identify collateral legal issues and relevant social service needs and to forge partnerships with social workers, civil attorneys, treatment programs, and other service providers to meet clients’ individual needs.

Although the COD vision does address the representation of individual clients, its focus is strongly oriented towards organizational-level activities and relationships. Six of the principles—partner with the community, fix systemic problems, educate the public, collaborate, seek necessary support, and engage with fellow COD members—relate to program-level activities rather than individual client representation. Like the fourth of the Bronx Defenders’ pillars, principles 3, 4, and 6 (partner with the community, fix systemic problems, and collaborate) encourage

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<sup>20</sup> Clark, M., & Savner, E. (2010). *Community oriented defense: Stronger public defenders*. New York, NY: Brennan Center for Justice, at 8–9.

<sup>21</sup> Clark, M., & Savner, E. (2010). *Community oriented defense: Stronger public defenders*. New York, NY: Brennan Center for Justice, at 7.

<sup>22</sup> Steinberg, R. (2013). Heeding Gideon’s call in the twenty-first century: Holistic defense and the new public defense paradigm. *Washington & Lee University Law Review*, 70, 961–1018, at 975–76.

public defender agencies to forge strong partnerships and engage in joint programming with community organizations, local service providers, and other justice system participants such as prosecutors and the courts, and to address systemic problems through policy advocacy and systems litigation. Principles 5, 9, and 10 (educate the public, seek necessary support, and engage with fellow COD members) focus explicitly on the need for defender agencies to educate the general public about the societal impact of problems in the criminal justice system, advocate for adequate resources, and share strategies with other agencies. These three principles appear to be especially relevant for chief public defenders—the primary participants in COD network activities.

Like the Four Pillars of Holistic Defense, the Ten Principles of Community Oriented Defense appear to be designed for implementation in the context of an institutional public defender's office. Although many of the principles, such as client-centered representation, could be implemented in or adapted to a solo or small group practice, the commentary to the principles offers little guidance for court-appointed or contract attorneys (e.g., client needs could be met through referrals to outside service providers).

### *C. The Six Cornerstones of Comprehensive Representation*

In response to the *Padilla*<sup>23</sup> decision, the ABA established the Task Force on Comprehensive Defense Representation, consisting of chief public defenders and other leaders in the field of indigent defense. In 2012, the ABA House of Delegates adopted Resolution 107C, which formally urges criminal defense attorneys to address clients' civil legal and non-legal problems through linkages with other service providers. The report to Resolution 107C articulates a set of Six Cornerstones of Comprehensive Representation (Six Cornerstones):

1. training and education,
2. client interview and initial assessment,
3. investigation,
4. advise and refer the client where appropriate,
5. plea negotiations with the prosecutor and posttrial sentencing, and
6. proactively preparing for reentry.<sup>24</sup>

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<sup>23</sup> *Padilla v. Kentucky*, 559 U.S. 356 (2010).

<sup>24</sup> American Bar Association. (2012). *Resolution 107C: Report*. Washington, DC: American Bar Association Criminal Justice Section. Retrieved from <http://www.americanbar.org/content>

Unlike the Four Pillars of Holistic Defense and the Ten Principles of Community Oriented Defense, which are targeted primarily at public defender agencies, Resolution 107C and the Six Cornerstones are explicitly addressed to “defender organizations, and criminal defense lawyers”<sup>25</sup>—in other words, *all* criminal defense attorneys, including public defenders, contract defenders, appointed counsel, and privately retained attorneys. The Six Cornerstones are highly process-oriented and are sequenced to correspond with the timeline of an individual criminal case. Only the first cornerstone, training and education, is not directly related to the representation of an individual client. The Six Cornerstones emphasize the role of the criminal defense attorney and are designed to be implementable in both large and small law offices; for instance, although the attorney is directed to investigate the client’s civil, legal, and social service needs; refer the client to services to meet those needs; and coordinate with social service providers to the extent desired by the client, there is no suggestion or implication that social services or civil legal services must be provided in-house or integrated directly into the defense team. The report repeatedly and explicitly links comprehensive defense representation to existing legal and professional standards and guidelines, including the ABA Standards for Criminal Justice, the *Padilla* decision, and ethical standards governing the attorney’s duty to the client.

### III. A PROGRAM THEORY FOR HOLISTIC DEFENSE

The existing definitions of holistic defense, community oriented defense, and comprehensive defense representation are intended to guide public defender agencies and attorneys in implementing holistic practices. The necessary foundation for an empirical evaluation of holistic defense practices, in contrast, is a program theory that articulates the objectives of holistic defense, the activities that a holistic defense provider performs, and how those activities are intended to bring about the program’s ultimate goals. As an initial step in its multi-site evaluation of holistic defense programs, currently in progress, the National Center for State Courts (NCSC) has developed a general program theory for holistic defense. The program theory draws on the Four Pillars of Holistic Defense, the Ten Principles of Community Oriented Defense, the

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<sup>25</sup> American Bar Association. (2012). *Resolution 107C: Report*. Washington, DC: American Bar Association Criminal Justice Section.

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Six Cornerstones of Comprehensive Representation, the extant literature, the expertise of the project working group,<sup>26</sup> and a series of qualitative interviews with staff and external stakeholders of a public defender agency practicing holistic defense.<sup>27</sup>

*A. Theory of Action: The Activities of Holistic Defense*

A program theory for a social intervention consists of two primary components: a theory of action that describes the program activities, and a theory of change describing how those activities are expected to bring about the intended results. A general theory of action for holistic defense incorporates the following activities or services:

1. high-quality, client-centered representation in the criminal case;
2. enhanced consideration of collateral consequences and other legal issues;
3. meeting clients' social service needs;
4. community programs; and
5. systemic advocacy.

The first three activities relate to the representation of individual clients; the latter two are undertaken at the community level. With the exception of high-quality, client-centered representation, which is a basic goal of all holistic defense programs, holistic defense practitioners may perform each of these activities in different ways and to different degrees based upon the local context and available resources.

1. High-Quality, Client-Centered Representation in the Criminal Case

High-quality, client-centered representation in the criminal case is essential to the delivery of holistic defense services. Holistic defense in no way subverts the attorney's primary objective of obtaining a case result that is favorable and desirable to the client; rather, holistic practice expands the range of available tools with which the attorney can pursue that goal. Attorneys practicing holistic defense frequently report that social workers are indispensable in crafting alternative disposition plans that can keep

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<sup>26</sup> The project working group consists of experts and seasoned practitioners in the field of holistic defense.

<sup>27</sup> Stakeholders included judges, prosecutors, social service providers, and private criminal defense attorneys.

clients out of custody or avoid a permanent criminal record, and in securing prosecutors' and judges' approval for these plans. Although not all client-centered advocacy is holistic, holistic advocacy is by nature always client-centered.<sup>28</sup> Like all client-centered attorneys, holistic defense practitioners inform their clients of the various potential options and strategies and the risks and benefits of each, empowering the client to make fully informed decisions about the case.

## 2. Enhanced Consideration of Collateral Consequences and Other Legal Issues

A robust consideration of collateral consequences and related legal issues is another defining characteristic of holistic defense practice. The dramatic expansion of collateral consequences that began in the 1980s was a primary motivator for the emergence of the holistic defense paradigm, and the Supreme Court's acknowledgement of the importance of collateral consequences in *Padilla v. Kentucky* led directly to the ABA's establishment of the Task Force on Comprehensive Defense Representation and adoption of Resolution 107C.<sup>29</sup> All holistic defenders strive to identify and mitigate potential collateral consequences relating to the client's employment, housing, child custody, driving privileges, public benefits, student aid eligibility, and immigration status. Some holistic defense agencies, such as the Bronx Defenders, also integrate civil attorneys into the defense team to represent clients in related civil cases, such as child welfare or eviction proceedings. Other offices are unable to provide civil legal assistance as a result of resource constraints or statutory restrictions; these offices sometimes establish referral relationships with law school clinics (as the Knox County Community Law Office in Tennessee has done) or pro bono attorneys.

## 3. Meeting Clients' Social Service Needs

Holistic advocates work to identify and meet social service needs that may contribute to or result from a client's involvement with the

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<sup>28</sup> Steinberg, R. (2013). Heeding Gideon's call in the twenty-first century: Holistic defense and the new public defense paradigm. *Washington & Lee University Law Review*, 70, 961–1018, at 977–78.

<sup>29</sup> Steinberg, R. (2013). Heeding Gideon's call in the twenty-first century: Holistic defense and the new public defense paradigm. *Washington & Lee University Law Review*, 70, 961–1018, at 966–68; ABA Report to Resolution 107C, at 2-4 (2012).

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criminal justice system, such as homelessness, drug addiction, mental illness, educational or job training needs, or a lack of legal identification. In addition to addressing the client's underlying needs, participation in social service programs may also constitute part of an alternative disposition plan. Many holistic defender agencies employ licensed social workers to perform assessments, identify needs, coordinate program placements, and monitor clients' program participation. For example, the Rhode Island Office of the Public Defender sends social workers to interview prisoners prior to arraignment to identify signs of addiction and mental illness, enabling attorneys to present treatment plans to the prosecution at arraignment in some cases.<sup>30</sup> Agencies without the resources to hire social workers may use social work interns from local universities or rely on attorneys to identify needs and refer clients to outside service providers.

#### 4. Community Programs

Many holistic defender agencies offer programming for community members who may not be clients. Some programs, such as the Bronx Defenders' "Know Your Rights" workshops, are designed to educate the public about their rights and responsibilities when interacting with the criminal justice system. Others, such as the Knox County Community Law Office's afterschool and summer programs, provide positive development opportunities for youth. Community festivals and holiday celebrations, such as block parties, Thanksgiving dinners, and holiday gift drives, build trust and rapport with the client community and provide assistance to needy families.

#### 5. Systemic Advocacy

Finally, holistic defense programs advocate for adequate funding and improvements in the criminal justice system in a variety of ways. Through grassroots organizing efforts, holistic defender offices raise public awareness of policy issues, such as racial disparities in policing, and build coalitions to pursue reform. Some holistic defender agencies work directly with legislators to advocate statutory reform. Another avenue for addressing systemic problems that violate defendants' statutory or constitutional rights is

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<sup>30</sup> Clark, M., & Savner, E. (2010). *Community oriented defense: Stronger public defenders*. New York, NY: Brennan Center for Justice, at 24.

litigation. Partnerships with civil rights organizations, pro bono attorneys, or law school clinics may assist defender agencies in pursuing systems litigation. Examples of systemic advocacy by public defender agencies include the Massachusetts Committee for Public Counsel Services' participation in the development of legislation to improve data collection and monitoring on race and traffic stops, a legal challenge by the Legal Aid Society of New York to the New York City Housing Authority's practice of routinely stopping and arresting residents and their visitors for trespass, and data collection and advocacy to reduce racial bias in the criminal justice system by the Racial Disparity Project of the Defender Association in Seattle, Washington.<sup>31</sup>

### *B. Ways of Working in Holistic Defender Offices*

In order to deliver these five types of services, holistic defense providers typically incorporate civil attorneys and/or other non-attorney staff into the defense team, gather enhanced information about clients and share this information within the defense team, and forge a close connection with the community in which clients live. Although these practices do not constitute direct services to clients and are not strict requisites for the existence of a holistic defense program, they are common to many holistic defense providers, and it would be difficult for attorneys to practice in a holistic manner without them.

#### 1. The Defense Team

Many public defenders' offices employ non-attorney staff members such as social workers, mitigation specialists, sentencing advocates, investigators, and paralegals to assist in investigating cases, coordinating social services, and developing mitigation information. In most traditional defender offices, however, such staff resources are quite limited, and their usage is often rationed or prioritized for the most serious cases. Holistic defender offices, in contrast, tend to have higher ratios of social service, investigative, and paralegal staff to attorneys, and typically integrate these staff members more fully into the defense team. Holistic defender offices strive to create a culture of respect for the unique expertise and perspective of non-attorney staff and to encourage greater dialogue between attorneys

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<sup>31</sup> Clark, M., & Savner, E. (2010). *Community oriented defense: Stronger public defenders*. New York, NY: Brennan Center for Justice, at 31–33.

and staff regarding case strategy. Some holistic defender offices also employ civil attorneys to address collateral issues such as immigration, child custody, and evictions, although some states forbid public defenders' offices from engaging in civil litigation.

Vertical representation, in which a single attorney represents the defendant from appointment through case disposition, is the norm across holistic defender offices. Holistic defender offices may be organized into formal "defense teams" in which the same attorneys and staff work together on all of their cases, but such a team structure is not a necessary element of a holistic defense program. In other offices, attorneys may call upon various social workers and other support staff depending on each client's needs, although it is typical to have each defendant work with the same staff members throughout the life of the case.

## 2. Enhanced Information

To identify collateral issues and social service needs, holistic defense practitioners need to gather a broader range of information about the client and the case than is typical in a traditional criminal defense representation. This enhanced information-gathering begins during the initial client interview when the attorney first screens for collateral issues related to housing, immigration status, employment, and other aspects of the defendant's individual situation. Attorneys and social workers also screen certain defendants for social service needs such as homelessness, mental illness, and drug addiction. Information-gathering may involve checklists or standardized interview forms developed within the office;<sup>32</sup> social workers may also use standardized and validated screening instruments from outside sources.

As the case progresses, attorneys, social workers, and investigators may gather information about the defendant's medical, educational, and social history to aid in understanding the case, developing mitigation, connecting the defendant with appropriate services, and formulating alternative disposition plans. This information is shared within the defense team through written case notes, in conferences, and/or computerized case information systems. Social work staff and/or attorneys within a holistic defender office will typically also maintain ongoing contact with

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<sup>32</sup> See, e.g., Adachi, J. (January/February 2015). Using checklists to improve case outcomes. *The Champion*, 30–36; The Bronx Defenders. (n.d.). *Checklist project*. Retrieved from <http://www.bronxdefenders.org/programs/checklist-project/>.

outside treatment and social service programs to monitor the client's participation and progress.

### 3. Community Connections

Another common characteristic of holistic defender agencies is a close connection to the community in which clients live and work. Physical proximity is an important ingredient, and holistic defenders typically prefer to locate their offices in the neighborhood where clients live rather than in or near the court building. Clients are more likely to show up to appointments if the office is located in a familiar, easily accessible location. A neighborhood location also makes it easier to host community programs, and attorneys and staff build familiarity with the community through informal everyday activities such as eating lunch in local restaurants, buying coffee and snacks in local convenience stores, and walking through the neighborhood on their way to work or court.

Holistic defense practitioners are keenly aware of the collateral issues and social service needs that are of particular relevance to the local community. A familiarity with the issues common to many community members—such as a concentration of undocumented immigrants, a high preponderance of public housing, or a lack of public transportation that leads residents to rely on cars to get to work—makes it easier for holistic defenders to identify and mitigate collateral consequences and helps to focus community-wide programming and advocacy efforts. Holistic defenders also strive to build cultural competence and to hire attorneys and support staff who are conversant in languages commonly spoken in the client community. Finally, social workers and attorneys in holistic defender offices build long-term relationships with social service providers and community groups through informal partnerships as well as formal activities such as serving on task forces and boards. These partnerships make it easier for social workers to locate appropriate placements for clients; on a larger scale, they facilitate coalition-building in support of advocacy initiatives.

#### *C. Theory of Change: How Holistic Defense Gets Results*

A theory of change links program activities with intended outcomes by describing the causal mechanisms by which a social program is expected to achieve its intended goals. A primary goal of holistic defense is to improve public safety by decreasing crime. This goal can be accomplished by helping citizens to avoid justice

system involvement in the first place, as well as by reducing recidivism and future justice system involvement among clients. Mitigating collateral consequences and addressing social service needs are two primary methods through which holistic defenders attempt to prevent recidivism. If clients are able to remain in their homes and keep their jobs, it will be easier for them to reintegrate themselves into society and avoid future entanglements with the criminal justice system. Addressing underlying criminogenic needs such as drug addiction and mental illness can also improve law-abiding behavior. For nonclients, community and youth programming such as mentoring and afterschool programs provide opportunities for positive development and may encourage young people to pursue education and careers. Educational programs on topics such as “know your rights” and “what to do when stopped by the police” teach citizens to avoid police contact or to de-escalate contact when it does occur, reducing the chances of a negative outcome. On a larger scale, advocacy to fix systemic problems can prevent young people from being caught up in the justice system and reduce the collateral consequences that may lead to a cycle of repeated arrests.

Holistic defense is also designed to improve clients’ lives by mitigating direct and collateral penalties for criminal conduct, as well as by meeting social service needs. Holistic defense practices are intended to aid attorneys in fulfilling the Sixth Amendment guarantee of effective assistance of counsel and in meeting the ethical obligation to provide competent and diligent representation, both important ends unto themselves. Finally, holistic defense practices may contribute to improved public trust and confidence in the criminal justice system by improving fairness in the legal process.

#### IV. EVALUATING HOLISTIC DEFENSE

As a group, public defenders have historically been resistant to performance measures, workload assessment, evaluation, and other attempts to document and quantify the nature of their work. Public defenders worry that their clients are at greater risk and face greater needs than other criminal defendants, invalidating any potential comparisons. They worry that re-arrest is a poor measure of recidivism due to racial disparities in policing. They worry that any data that are made public may be used against them to justify reducing their funding, to restrict the services they can provide, or

to support claims of ineffective assistance of counsel. In recent years, however, some public defenders' offices have become more open to performance measures, workload assessment, and other data-based management strategies.<sup>33</sup> State legislatures have also become increasingly interested in empirical data to justify funding requests. Empirical evaluation of holistic defense practices can help public defenders to assess their own performance, determine which program characteristics and activities contribute to better client outcomes, advocate for funding, and ensure that scarce resources are being put to the best possible use.

To date, few empirical studies have attempted to evaluate the success of holistic defense programs. The first evaluation of a holistic defense program was an evaluation of the Neighborhood Defender Service of Harlem (NDS), conducted in 1991.<sup>34</sup> The 1991 NDS study compared NDS clients with the larger population of arrestees in Manhattan, concluding that NDS clients were slightly more likely to receive a sentence of imprisonment than Manhattan arrestees generally (forty-seven percent versus forty-three percent). The 1991 study, however, was limited by small sample sizes. In 1993, a follow-up study used matched pairing between NDS clients and non-NDS clients in Manhattan to further evaluate the effectiveness of the NDS program. Although the 1993 study found no statistically significant differences between NDS clients and the comparison group in terms of the percentage of defendants released on recognizance at arraignment, the number of days spent in pretrial detention, conviction or dismissal rates, or the number of court appearances, the study did find that NDS clients who were sentenced to incarceration received sentences that were, on average, 100 days shorter than sentences handed down to non-NDS clients.<sup>35</sup>

In 2012, a process evaluation of the Neighborhood Defenders

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<sup>33</sup> See, e.g., Carmichael, D., Clemens, A., Caspers, H., Marchbanks, M. P., & Wood, S. (2015). *Guidelines for indigent defense caseloads: A report to the Texas Indigent Defense Commission*. College Station, TX: Public Policy Research Institute; Hopkins, Z. (2014). *Best practices, objectives and performance indicators*. Boston, MA: The Committee for Public Counsel Services; Kleiman, M., & Lee, C. G. (2010). *Virginia Indigent Defense Commission attorney and support staff workload assessment: Final report*. Washington, DC: National Center for State Courts; Office of Indigent Defenses, North Carolina Court System. (n.d.). The North Carolina Systems Evaluation Project. Retrieved from <http://www.ncids.org/Systems%20Evaluation%20Project/index.html>.

<sup>34</sup> Sviridoff, M., Sadd, S., Grinc, R., & Wright, A. (1991). *Developing and implementing a community-based defense service: Pilot operations of the Neighborhood Defender Service of Harlem*. New York, NY: Vera Institute of Justice.

<sup>35</sup> Sadd, S., & Grinc, R. (1993). *The Neighborhood Defender Service of Harlem: Research results from the first two years*. New York, NY: Vera Institute of Justice.

Program (NDP) in Baltimore, Maryland, was conducted using interviews, focus groups, and observation.<sup>36</sup> The evaluation concluded that although both staff and clients offered positive support for the program, there was a lack of clarity surrounding the roles of social services staff and program goals in general. The evaluators also identified a need for measurable indicators to track program outputs and outcomes: “[T]hese may include service utilization, recidivism rates, rates of re-offense with lesser or more serious charges, and client contact with their attorney or other NDP staff upon arrest, charge, or for follow-up services.”<sup>37</sup>

At least three evaluations of holistic defense programs are currently underway. In 2013, the Louisiana Center for Children’s Rights engaged the Louisiana State University School of Public Health to perform a large-scale evaluation of the center’s holistic defense program for at-risk children in the juvenile justice system. Data collection began in July 2013.<sup>38</sup> The RAND Corporation is currently gathering data for an impact evaluation that will compare outcomes for clients represented by the Bronx Defenders with outcomes for clients of a traditional public defender agency.<sup>39</sup> And in 2012, the National Institute of Justice awarded a grant to the National Center for State Courts to conduct a multi-site evaluation of holistic defense programs, including process, impact, and cost-benefit evaluations. A solid body of evidence amassed over the course of several rigorous impact evaluations of different holistic defense programs will provide the most persuasive answer to the question of whether holistic defense improves outcomes for clients and the public.

The three basic forms of evaluation are process evaluation, which examines the program outputs; impact evaluation, which analyzes outcomes; and cost-benefit evaluation, which compares the program’s outcomes and costs in monetary terms. An empirical evaluation of holistic defense should incorporate both qualitative

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<sup>36</sup> Hisle, B., Shdaimah, C.S., & Finegar, N. (2012). Neighborhood Defenders Program: An evaluation of Maryland’s holistic representation program. *Journal of Forensic Social Work*, 2, 122–140.

<sup>37</sup> Hisle, B., Shdaimah, C.S., & Finegar, N. (2012). Neighborhood Defenders Program: An evaluation of Maryland’s holistic representation program. *Journal of Forensic Social Work*, 2, 122–140, at 138.

<sup>38</sup> Louisiana Center for Children’s Rights. (2013, September 19). *LCCR invites large-scale evaluation of holistic defense program*. Retrieved from <http://www.laccr.org/news/lccr-invites-large-scale-evaluation-of-holistic-defense-program/>.

<sup>39</sup> Lee, C. G. (2014, November). Holistic defense: An emerging model of public defense representation. Paper presented at the meeting of the American Society of Criminology, San Francisco, CA.

and quantitative data in order to present a complete picture of the program's activities and outcomes.

*A. Evaluation Methodology: Multi-Method Evaluation and Comparison Groups*

Empirical research may rely on two basic forms of data: quantitative data and qualitative data. Quantitative data describe things that can be counted or quantified, such as sentence lengths and rates of recidivism, and may be obtained from sources such as individual case records maintained by attorneys and the courts as well as aggregate reports on arrests, caseloads, and referrals to services. Qualitative data, in contrast, describe the essential qualities or experience of a phenomenon. Data sources may include interviews, observations, and documents. A multi-method evaluation incorporates both qualitative and quantitative data. A focus on the qualitative side can help to describe aspects of a program that cannot easily be quantified, such as the manner in which attorneys relate to their clients. Such perspective can also help to contextualize the quantitative results of an evaluation.

An empirical evaluation of a social intervention compares what happens to program participants with what would have happened in the program's absence—often termed “business as usual” or the “counterfactual.” In the case of holistic defense, the counterfactual is traditional modes of indigent defense, or “defense as usual.” Because the researcher cannot usually observe a particular individual both as a program participant and as a nonparticipant, it is necessary to identify another group of individuals with which to compare program participants. If the comparison group is inherently different from program participants—for example, if clients of a holistic defender agency have more extensive criminal histories than members of the comparison group—the evaluation may produce false or misleading results. For this reason, it is important for researchers to ensure that there is no correlation between individual characteristics and whether an individual is a program participant or a member of the comparison group. This can be accomplished by matching comparison group members to program participants on the basis of individual characteristics such as age, educational level, criminal history, and current charges, or by taking advantage of an existing mechanism for group assignment that is random or approximates randomness. For example, the Bronx Defenders evaluation that is currently in progress relies on

the fact that clients are assigned to various defender agencies based on the courtrooms in which they are arraigned as a virtually random method of assignment to holistic defense versus the comparison group.<sup>40</sup> It is, however, critical to verify any assumption of randomness in assignment and to employ appropriate econometric techniques to compensate for any violations of this assumption.<sup>41</sup>

### *B. Process Evaluation*

A process evaluation is grounded in the program's theory of action and asks whether the program succeeded in providing the intended services to the target population. It measures the direct outputs of the program activities. Output measures related to the quality of legal representation include the time from arrest to initial client contact, the percentage of clients represented at the initial appearance, and the frequency of contact between clients and attorneys. Outputs related to collateral consequences and related legal issues include the number of clients screened for collateral issues at the outset of the representation, the number of clients receiving civil legal representation from in-house attorneys, and the number of clients referred to external providers of civil legal services such as law school clinics, pro bono attorneys, and legal aid services. Efforts to meet clients' social service needs can be measured in terms of the number of clients screened for such needs, the number of clients receiving reentry services, the number of clients working with in-house social workers, and the number of clients referred to outside social service providers. At the community level, a process evaluation should document the number of persons participating in community outreach and education programs, as well as the particulars of the holistic defender agency's advocacy work.

The process evaluation provides important context for an impact evaluation. If the impact evaluation fails to demonstrate that the program achieved its intended outcomes, the process evaluation can help determine whether this was because the program failed to

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<sup>40</sup> Lee, C. G. (2014, November). Holistic defense: An emerging model of public defense representation. Paper presented at the meeting of the American Society of Criminology, San Francisco, CA.

<sup>41</sup> See, e.g., Anderson, J. M., & Heaton, P. (2012). How much difference does the lawyer make? The effect of defense counsel on murder case outcomes, *Yale Law Journal*, 122, 154–217, at 170–73.

carry out the intended activities (implementation failure) or because the assumptions about the causal linkage between the program activities and the intended outcomes were faulty (design failure). A process evaluation may also document a program's history, structure, and operations, providing a guide for replicating the program in other locations.

### *C. Impact Evaluation*

An impact evaluation focuses on the program's theory of change, examining whether the program activities produced the intended outcomes. Outcomes are beyond the direct control of program staff and may be heavily dependent upon external factors such as the court system. Short-term outcomes for an evaluation of holistic defense include rates of pretrial release, time spent in pretrial detention, conviction and dismissal rates, sentence types and durations, and usage of alternatives to incarceration. Long-term outcomes include rates of re-arrest, new convictions, probation violations, appeals, and petitions for postconviction relief. Outcome measures may be qualitative as well as quantitative; for example, client satisfaction may be an important qualitative outcome measure for holistic defender offices.

### *D. Cost-Benefit and Cost-Effectiveness Analyses*

Policymakers' interest in a program often comes down to the bottom line: Is the program a sound investment of taxpayer dollars? Holistic defender agencies can demonstrate their value in monetary terms using cost-benefit or cost-effectiveness analyses. Cost-benefit analysis translates the program impact into monetary terms and compares these benefits with the costs of operating the program. Some of the potential benefits of holistic defense, such as reductions in prison bed days and recidivism, are simple to value using budgetary data or existing estimates of the cost of crime.<sup>42</sup> The exact valuation of costs and benefits is highly dependent upon who is given standing in the cost-benefit model; a model that only considers benefits to taxpayers may produce lower estimates of benefits than a model that also includes benefits realized by defendants.

Where benefits are less readily monetized, evaluators may employ

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<sup>42</sup> See, e.g., Waller, M. S., Carey, S. M., Farley, E. J., & Rempel, M. (2013). *Testing the cost savings of judicial diversion: Final report*. Portland, Ore.: NPC Research.

cost-effectiveness evaluation. Cost-effectiveness evaluation compares costs measured in monetary terms with benefits measured in nonmonetary units. For example, a cost-effectiveness evaluation might calculate the cost of each avoided eviction from public housing.

#### V. CONCLUSION: IS HOLISTIC DEFENSE “JUST GOOD LAWYERING”?

Program evaluation can help holistic defender agencies to demonstrate the extent to which their services go beyond traditional lawyering, whether those services improve outcomes for clients and for society at large, and how these outcomes may benefit funders and citizens in monetary terms. Holistic defense programs are designed in part to achieve more favorable outcomes in the instant case and in part to reduce recidivism by removing obstacles to defendants’ successful reintegration into law-abiding society. But what if empirical evaluations reveal that holistic practices have no impact on case outcomes or recidivism? Might holistic defense still be a worthwhile endeavor? Under the Sixth Amendment, it can be argued that the right to effective assistance of counsel can be an end unto itself, independent of case outcomes.<sup>43</sup> If evaluation can demonstrate that holistic defenders are better than traditional defense attorneys at identifying potential collateral consequences, making the appropriate level of investigation into the facts of the case and the client’s situation, and ensuring that the client has all of the information necessary to make informed decisions regarding the case and the representation, then holistic defense produces a positive impact regardless of case outcomes or rates of recidivism.

On a broader scale, holistic defense practitioners sometimes question whether holistic defense is anything more than “just good lawyering”—in other words, whether anything less than holistic representation is constitutionally adequate. Under the Sixth Amendment, ethical standards, and the emerging case law regarding collateral consequences, they argue, *all* defense attorneys are required to make a thorough consideration of collateral consequences, to investigate the defendant’s background and

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<sup>43</sup> Under *Strickland* there is no remedy for a violation of the right to effective assistance of counsel absent a showing of prejudice to the case outcome. As Justice Marshall pointed out in his dissent, however: “[T]he assumption on which the Court’s holding rests is that the only purpose of the constitutional guarantee of effective assistance of counsel is to reduce the chance that innocent persons will be convicted. In my view, the guarantee also functions to ensure that convictions are obtained only through fundamentally fair procedures.” *Strickland v. Washington*, 466 U.S. 668, 711 (1984) (Marshall, J., dissenting).

circumstances as well as the facts of the case, and to put the client at the center of the decision-making process. The distinctive aspects of holistic defense practice, such as the expanded use of in-house social workers, simply make it easier and more efficient for attorneys to meet the minimum standards for effective assistance of counsel and do not constitute optional extras. Similarly, the report to ABA Resolution 107C makes it clear that all defense attorneys are required to provide comprehensive representation. With renewed concern over the adequacy of traditional indigent defense representation and the growing interest in empirical research on indigent defense in general, the time is ripe for holistic defenders to gather empirical evidence about how holistic practice can play an integral part in efforts to improve the delivery of indigent defense services in the United States.