

BEYOND LAWYERING

How holistic representation makes for good policy, better lawyers and more satisfied clients

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I. THE TROUBLE WITH LISA:

Lisa looked older than she was – her face and body aged too quickly by a childhood marked by abandonment, sexual abuse, and betrayal. Her teenage years spent as a prostitute; her adulthood ruled by an uncontrollable heroin addiction.

I met Lisa when I was a young public defender in New York City in the mid-1980s. I liked her instantly – her sharp tongue, quick wit, and confrontational style with any authority figure won me over. Lisa was charged with robbing her “john” in a midtown hotel room by hitting him over the head with a champagne bottle, tying his legs and feet behind his back, and leaving him naked, bleeding, and helpless, as she unloaded his wallet into her purse. Turns out that her immobilized customer tried to get her “services” for free and refused to pay her. Lisa was having none of that. Unfortunately, as she left the hotel room, she walked directly into hotel security guards who arrested her.

She was charged with robbery and possession of a weapon. Over the 13 months that I represented Lisa, we shared lunch, talked about her case, and stayed in regular contact preparing for her trial. But it was not until two days before the trial that I began to really understand the life this young woman was living. Concerned that she would show up for her trial “high” on heroin or simply fail to show up on time, I questioned her about where she would be staying and how I could contact her. At that moment it became clear that I did not really know Lisa at all. She had no “home”; her heroin habit was raging; and she had no idea how to present herself to the jury who would decide her fate. So I did what only a young public defender would do – I brought her home to my 15X18 foot studio apartment in Greenwich Village, where I could keep a watchful eye over her during the week-long trial that was about to begin.

I litigated the case like it was my only one – trying to block out the 80 other clients I had waiting for my attention. And even though the jury took several days to make its decision, in the end, they convicted Lisa of the

robbery, and she was sentenced to 1½ to 4 years. I cried as they led Lisa away in handcuffs.

I saw Lisa once again – as she was being released from prison after serving almost a year. Eventually, her conviction was reversed by the appellate court, and she was set free. She walked through the cell gates, threw her arms around me, and thanked me for not forgetting her. As she walked down the steps into the New York City subway system – a free woman – she turned, smiled, and gave a little wave goodbye. And with that, she was gone.

By the traditional standards of public defense, I did a good job. Lisa received a high quality legal defense in her criminal case. I raised all appropriate challenges to the police conduct, challenged the prosecution to prove its case beyond a reasonable doubt, and litigated her case effectively, zealously, and without compromise. I appealed her case and eventually won her freedom.

So why does Lisa still haunt me almost two decades later?

Because while I addressed the needs of her criminal case effectively, I did nothing to change her life—to address, in other words, her human needs. Those needs left unaddressed would eventually drive her back into the criminal justice system and into that same prison cell that she narrowly escaped the first time. Looking back, what Lisa needed was an advocate who could look beyond her criminal case, to her drug addiction, to her homelessness, and to her psychological needs stemming from years of trauma and abuse. Lisa needed an advocate working with her as a “whole client” not just as a case.

II. A BETTER WAY

It was the specter of Lisa and of the thousands of clients like her that I have seen in over 20 years of being a public defender that got me thinking differently about what clients need, and what a public defender should be. What has become clear is that the traditional model of indigent defense representation has become complicit in the broken machinery that is that criminal justice system. That, even when we zealously fight the government and argue passionately and persuasively for our clients, at the end of the day, we do nothing to alleviate the crushing circumstances from which they have come and to which they return. There is, I now believe, a better way.

Working compassionately with indigent clients means seeing firsthand that the problems and challenges they face stretch farther than the confines of the criminal cases before them. It means knowing that clients come with a host of unaddressed social problems—poverty, mental illness, alcoholism, substance abuse, post-traumatic stress disorder, and family dysfunction.

Quite simply, the criminal justice system is the last stop for many clients, and there is no greater moment of need, desperation, or opportunity than in the hours and days after an

arrest. Being arrested after committing a crime is a galvanizing event in the lives of most clients—the moment the drug addiction spills into the open, the desperation becomes unbearable, or the fury becomes unmanageable. And though it is a time of terrible fear and vulnerability, it is also the time that clients are most likely to seek change and respond to help. The criminal case is the ideal place for lawyers, expert in criminal and civil law, to deal preemptively and swiftly with not only the criminal case at hand but with the ancillary eviction from public housing, deportation proceedings triggered by the arrest, and imminent removal of children from the home. It is an ideal time for social workers, psychologists, mental health professionals, and other advocates to work with clients on maintaining health treatment that may have been interrupted by the arrest, securing counseling to deal with the trauma and abuse that may have indirectly led to the arrest, and charting out a service plan involving securing employment, remedial services, and fulfilling court mandated programs that will lead to a better disposition and a better life outcome. It is precisely at this time, when the client is at his lowest and when the potential legal and social service pitfalls are the greatest, that clients need a strong legal defense on a number of criminal and civil fronts and a compassionate social service presence in their lives.

No surprise then that housing a broad array of services in a public defender office makes sense. What I have found in my experience and what is echoed by my colleagues day-in and day-out is that the criminal case is often not the most challenging nor the most complex nor the most pressing issue in the lives of our clients. How do I make sure I have enough to eat for my family and me? How can I find and keep a job? How do I get my child back now that he has been removed from my home? These are the questions they are longing to answer, and if “take a plea” is part of the solution, they are happy to oblige, because pleading guilty is only a small part of their much larger life equation. This is what I call ‘holistic advocacy’. And it is this model—social service intensive, collaborative, long-term, and intensive that I believe has begun to create a radical transformation in the way that public defenders see their function in the criminal justice system. In this paper, I intend to argue that moving away from a traditional model of representation toward a more holistic one is good policy, enhances advocacy, and satisfies clients.

III. TRADITIONAL PUBLIC DEFENDER WORK AND HOLISTIC ADVOCACY

In a traditional public defender, the lawyer is defending a ‘case’ rather than a client. The goal is to remove the immediate threat of legal jeopardy, not ameliorate any larger issue. Unfortunately, within these clearly defined limits, lawyers seldom develop the skills to delve more deeply into the lives of their clients or work collaboratively with them on addressing the issues that drove them into the criminal justice system. Part of the problem is a lack of resources and time. Part of the problem is an institutional bias against forming long-lasting relationships or investing emotionally in the life of a client. Holistic representation addresses both of these shortcomings, by insuring proper resources and requiring professional collaborations with service providers, community members, and family. Though time is always a problem, the resources and expectations

of a holistic office work to ensure that significant compassionate relationships are created and integrated into the representation provided by the lawyer.

The goal of every defense lawyer in any setting is to get the best case disposition for a client. Holistic representation does not change this fundamental and compelling value. Getting an acquittal, less jail time, or avoiding prison altogether for a client will always be a core goal of any criminal defense lawyer. But in a holistic defense model, the goal is also to make a long-term difference in the life of a client.

As any lawyer knows, the better we know someone, the better we are able to advocate for him. Pulling on one thread in the complicated tapestry of a client's life often yields surprising insights. Indeed, addressing one problem helps a client open up to a lawyer in another completely unexpected context. This deeper connection and greater understanding results in better case results for the client and greater success and satisfaction for the lawyer.

What often makes lawyers and other advocates burn out is feeling like they are doing too much work *and* not getting any results for their clients. Seeing the same faces come back with another criminal case with the same issues at home, at work, and in their communities is depressing and depleting. Creating a place where a poor person can get help with her criminal case, find an affordable living situation, seek counseling, get help with her resume, and ask any question with the assurance that someone will work hard for her is obviously an exciting and rewarding place for that client. More impressive, though, are the extraordinary rewards for the advocate.

Not to lose sight of the immediate criminal case, holistic advocacy does yield better criminal case dispositions. With more information about clients' lives and circumstances and with more engagement on the part of clients in addressing the challenges they face, defense lawyers are better able to advocate for their clients and persuade judges and prosecutors to offer better case results and sentencing options. Clients in holistic offices have a far better chance of being referred to an alternative to incarceration program that focuses on drug treatment or vocational training than to prison. Less jail time and more time in rehabilitative services means less harm to clients, less harm to their families and their communities, and better results for society. What is good for clients can certainly be good for lawyers, advocates, the criminal justice system, and society at large.

IV. THE CRITICAL DIVIDE: WHAT CAUSES CRIMINALITY?

Lawyers and advocates for the poor continue to debate vigorously about what clients with criminal cases need. At the core of the debate is a disagreement about what leads to criminality. Is criminality an issue of moral character or is it the result of other forces—some specific to the person and others generalized to social circumstance? Did Lisa break the law, because she was a bad person? Or did she break the law, because she was responding in large part to poverty, to a lifetime of abuse, to a struggle with addiction?

For those who believe crime to be a derivative of poor character, there may be little reason to look at the “whole client” in a case. But for those who believe that the cause of criminal behavior is far more complex and far more tied to the social condition of poverty, then holistic defense makes a great deal more sense. For them, there is a new and effective model of representation pioneered in “holistic defender” organizations like The Bronx Defenders. My argument in this paper is intended for those willing to see beyond simple character failure and for those who are unsure where they sit. If you are willing to consider the notion that criminality is not just an issue of character but also a reflection of broader social problems that require complex and expansive solutions, then it is my hope that you will also accept the need for public defenders everywhere to accept and adopt this new model, ushering in an era of more compassionate and more effective representation of indigent criminal defendants.

V. SOME HISTORY

The movement towards holistic models of indigent defense in the United States is grounded in the diverse and pressing needs of indigent clients. With the prevalence of drug addiction, poverty, and homelessness among poor criminal defendants and with the continuing high rate of recidivism, it became clear rather quickly that penal sanction alone was an insufficient answer to our criminal justice problems. Despite this realization, both the criminal justice system and public defender offices were slow to find an answer. As our prison population doubled and then doubled again, growing toward the almost unthinkable number of two million, the traditional notion that defense work should only address the criminal “case” persisted. Across the country, regardless of whether there are institutional public defenders or private lawyers providing the representation, the scope of services offered to indigent clients was exclusively limited to defending and advising clients with respect to the criminal charges presented against them. Traditional representation, then, is case specific and court-based with little attention paid to the social service, psychological, or civil legal needs of each client. The result? A system that processes cases and the people attached to them, creating a “revolving door” of clients coming through the system over and over again. The system changes nothing—after a period of incarceration, clients are just as poor, just as drug addicted, just as mentally ill, just as homeless, and yet even more hopeless.

The good news is that advocates for the poor are waking up to the reality of their clients’ lives. Across the country we are seeing a slow but advancing movement toward holistic, client-oriented practice, which responds to the limitations of case specific representation and challenges the traditional U.S. system[†]. Lawyers for the poor, along with clients, academics, and social service providers are beginning to recognize that poor clients need more than just criminal defense. They need crisis counseling, therapy, alcoholism and drug treatment, housing assistance, immigration advocacy, child welfare representation, and a host of other services.

VI. HOW DOES HOLISTIC ADVOCACY WORK?

[†] These new holistic defenders have founded offices like The Bronx Defenders, The Neighborhood Defender Service, Knox County Public Defender Community Law Office and the Georgia Justice Project.

At the core of any holistic community of advocates is a commitment to “client-centered” practice. Client-centered means empowering clients to identify the challenges they face and to work with advocates to overcome those obstacles. It begins where the criminal clients are—arrested, traumatized and desperate. By providing zealous criminal defense representation and offering comprehensive and effective solutions to the social service, psychological, and human needs they have, clients can chart their own paths towards a future free from criminal justice involvement and incarceration. How an organization decides what services to provide and how they are delivered is determined by what clients in a given community know they need and want. Unified and guided by a broad vision of criminal defense representation, holistic practice can change lives and strengthen families and communities.

Supporting the core principle of client centered practice, holistic models of advocacy have two critical components:

- ✍ Advocacy through interdisciplinary work groups and
- ✍ A presence in the client community.

The Bronx Defenders for example houses in a single building social workers, criminal defense lawyers, civil lawyers specializing in child welfare, housing, and immigration, and youth and community outreach staff. The office itself is located in the South Bronx, where most of its clients live, and beyond the panoply of social services, the office also provides youth programs to local elementary and high schools. Cementing their place in the community, the social work staff at The Bronx Defenders serves as a clearinghouse for a wide variety of social services, having developed relationships with over 300 local social service organizations, schools, and community groups.

1. Interdisciplinary Work Groups

The centerpiece of a holistic office and the primary way to reinforce the interconnectedness of the issues that clients face is through interdisciplinary work groups. Whole client representation can best be accomplished when an office utilizes interdisciplinary teams of lawyers (with different specialties), social workers, investigators, and support staff. Depending on the needs of clients, there may also be psychologists, job developers, youth program personnel, and community organizers. The Bronx Defenders, for example, includes lawyers who specialize in housing and immigration law, a team of child welfare advocates, several youth service personnel, and a number of community organizers.

Providing a team of advocates for clients is rewarding and challenging. The ability to work collaboratively with experts from different disciplines on behalf of clients is rewarding, because it ensures a unique ability to address both a client’s criminal case and his or her human needs. It is challenging, though, because many lawyers resist multidisciplinary practices for fear of losing control and power over the case and client. Nothing in their law school training or prior experience fosters a collaborative work

style—whether with other lawyers or with other professionals. This resistance hardens in a case-focused, traditional defender model. But by focusing on client needs rather than case needs, advocates soon learn that they must rely on others to help them address the wide array of complex social, economic, legal, and psychological needs that almost every client presents. Lawyers may know what is best in the courtroom, but they do not always grasp what is best for the client.

Through integration and indoctrination, even the most resistant lawyer will begin to understand the value of social work and collaboration. Lawyers inherently understand how investigators make their work on cases possible. Without the fact investigations, lawyers would not be able to assess the strengths and weaknesses of the government's case against their client. But while understanding the value of investigation is easy, lawyers are often less willing to understand how social workers can support their legal work and the clients.

Because social workers are trained so differently from lawyers, they ask different questions and focus on things lawyers often miss or undervalue. As a consequence, they are regularly able to unearth helpful information that even a diligent lawyer would not have uncovered. Social workers give voice to client's experiences and life goals in a way that can help lawyers (often unexpectedly) resolve the client's legal predicament. By working collaboratively with social workers or other mental health experts, lawyers begin to really understand clients. And this understanding quickly yields recognition of the value of social work. With a social worker as a partner, a lawyer can offer the best legal representation for her client, while the social workers can focus on the other problems confronting a client. The client is well served, because he is having all of his questions answered, and the lawyer and social worker are encouraged because they are better able to do their work as advocates.

2. Presence in the Client Community

Whether the defender office is physically located in the community or whether it just has staff and programs in the community regularly, a presence in the communities where clients come from is critical. From a political perspective, outreach affords the office an opportunity to raise its profile in the community. Clients are more likely to seek out the help of defenders and to trust their advice and assistance if they have a good reputation among family, friends, and neighbors. Moreover, regular presence in the client community sensitizes the lawyers and staff to the conditions under which clients live. Finally, the experience of being in the client community strengthens advocacy skills—adding to the attorney's palette the power to paint a picture of a client's life, family, and community from first-hand experience. The effect of that immediacy is hard to underestimate, and it makes for a powerful persuasive tool whether arguing to a judge, prosecutor, police official, or jury.

Being aware of client communities is not enough—to become full participants in the holistic model of advocacy, public defenders should actually get involved in the communities. For example, the Dade County Public Defender Office runs an antiviolence

project. The Public Defender for Albemarle County and the City of Charlottesville has established a citizen's advisory committee, and The Bronx Defenders runs a youth organizing project for local high school students and an art and literacy program for elementary school students down the street from its office.

The effects of such involvement are amazing. Send an otherwise trial-focused lawyer to sit at a card table at a local middle school's career day, and you will find that a day of talking to eighth graders, some of whom have never seen a lawyer before, can make a tremendous impact. Of course, the lawyer's presence is great for the kids and wonderful for the school, but it is also significant that the community knows that professional and compassionate advocates are available to them. Even an attorney steeped in the traditional model will return from this sort of visit deeply aware of the myriad hurdles that everyday life presents for those he or she represents. That knowledge, in the vast majority of lawyers, impels them to be more sensitive to client needs and more effective in communicating the essential humanity of their client to both the prosecutor and the court. Ultimately, exposure to the community makes lawyers both more effective and more sensitive—two things that are traditionally viewed as incompatible.

VII. HOLISTIC ADVOCACY MAKES GOOD SOCIAL POLICY

The costs of incarceration are almost always understated. Beyond the capital expenditures of building and staffing prisons, incarceration wreaks havoc on families and communities left impoverished by the loss of a provider or parent. In the simplest of terms, holistic defense is a criminal justice issue—and is, despite its residence in the defender function, a crime prevention tool. By leveraging information about clients, their circumstances and their families, holistic advocates can actually provide opportunities for clients to solve the complex problems that drive them into the criminal justice system in the first place, lowering recidivism, strengthening families, enhancing public safety, and reducing the systemic costs of a system that can swallow even the most generous budget.

Because government bears the cost of higher crime as well as chronic family violence, alcoholism and substance abuse, homelessness, and mental illness, any significant move to address those problems in communities where people cannot seek help easily can significantly reduce costs and serve a core social function. Justice is better served by providing services, solving problems, and strengthening communities than by blindly arresting, prosecuting, and incarcerating.

Beyond costs and simple justice, holistic representation increases systemic efficiency as well. Contrary to popular belief, judges regularly make decisions without any true understanding of what challenges the people before them face. They do not know about the battles with alcoholism. They do not know about the recent job loss. They do not know about the history of abuse in the home. So they make critical decisions without information. And without that information, judges are reluctant to give clients the benefit of the doubt—releasing them without bail, referring them to a program instead of prison, or dismissing the charges. Much of this is because they have little reason to assure them

that the person before them will respond well given the chance. Put simply, they do not know when to take a chance on a client.

This informational deficit is something directly addressed by a holistic model of advocacy. Through better understanding of clients and their circumstances, lawyers can provide judges with the tools and the assurances they need to feel comfortable rendering a pro-defense decision. Moreover and perhaps surprisingly, prosecutors too can become more flexible when presented with a client's compelling life circumstances. And though most advocates recognize this, most are neither equipped nor impelled to gather this information. In a holistic office though, gathering these persuasive details is seen as part and parcel of the representation, and though it is often done by social workers, the team concept and seamless integration of various professionals into working groups allows the information uncovered by the social workers to be integrated into a persuasive presentation by the lawyers.

Taken together, the benefits of holistic advocacy—in terms of client outcomes, lawyer satisfaction, community empowerment, and enhanced public safety—represent a highly rewarding, morally superior, and cost effective approach to legal representation for the poor.

VIII. CONCLUSION

Public defenders serve a critical purpose by aggressively fighting for the rights of their clients in the courtroom. Unfortunately, zealous courtroom advocacy is not itself enough to make a real difference in the lives of poor people in the United States. Indigent clients are plagued with criminal cases, but also with addiction to alcohol and drugs, joblessness, homelessness, family violence, mental illness, and lack of access of healthcare and other social services. The simple truth is that poor people require a different kind of advocate, one who will fight for them on a number of fronts, not just in the courtroom.

The burgeoning movement toward holistic defense is a powerful response to the realities that poor clients face everyday. It is a model that responds to the needs of poor communities and that brings together lawyers and other advocates to truly make a difference in the cases and the lives of poor people.

No matter how holistic defense is structured, translating this idea into reality is difficult. It requires a cultural shift away from the traditional conception of dealing with the case to a broader and more humane approach that focuses on the client. Because holistic representation relies on interdisciplinary work groups of lawyers, social workers, and investigators, it works best in the organized setting of a public defender system. Not every jurisdiction is able to field a public defender, of course, but even systems that will rely on individual attorneys or bar associations can incorporate the critical features of a holistic approach. Organizing affiliations with other lawyers doing criminal and civil representation and insuring easy access to a centralized group of mental health professionals, social workers, and investigators is absolutely critical.

Holistic defense is more than just a challenge. It is a critical opportunity to fundamentally alter the way justice is experienced—both for indigent clients and for the advocates who represent them. Indeed, the holistic defender movement has the capacity to change the way justice is experienced in poor communities. By engaging the whole client, holistic advocacy actually improves the criminal justice system by finally delivering on the long-held but seldom attained goal of individualized and delicately-calibrated justice.