

HOLISTIC ADVOCACY: AN IMPORTANT BUT LIMITED INSTITUTIONAL ROLE

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INTRODUCTION

Many criminal law practitioners and academics have promoted “holistic advocacy” as a way to improve the institutional quality of indigent criminal defense services. Although holistic advocacy may greatly enhance a public defender’s practice, it has practical, professional, and ethical limitations as an institutional model. This article explores these limitations.

I begin this article by presenting the holistic advocacy model and its benefits. I then examine the potential hazards of holistic advocacy as an institutional model in light of a public defender’s unique client responsibilities. Collateral consequences are examined in particular, to illustrate how holistic advocacy can offer many benefits, but also raise potential problems if overemphasized institutionally. Finally, I conclude that while holistic advocacy may help to decalcify entrenched and sometimes myopic “traditional” defense practices, the holistic advocacy model should be implemented with caution, and a traditional trial practice model should remain the institutional priority.

I.

THE HOLISTIC ADVOCACY MODEL

“Over the past two decades, public defender offices across the country have broadened the range of defense services provided to indigent clients . . . in what is now commonly referred to as ‘holistic representation.’”¹ This holistic model “recasts the defense role by considering the social, psychological[,] and socioeconomic factors that often underlay such cases.”²

The Bronx Defenders, a well respected public defender office in Bronx County, has been described as “the most extreme example of a handful of groups across the country that have decided to increase their mandate to the

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1. Michael Pinard, *Special Feature: A Conference on New York City’s Criminal Courts: Broadening the Holistic Mindset: Incorporating Collateral Consequences and Reentry Into Criminal Defense Lawyering*, 31 *FORDHAM URB. L.J.* 1067 (2004) (internal citation omitted).

2. *Id.* at 1071.

‘whole client’³ The Bronx Defenders’ website declares: “The Bronx Defenders views clients not as ‘cases,’ but as whole people: caring parents, hard workers, recent immigrants, native New Yorkers, and students with hope for the future.”⁴ And recently, the Bronx Defenders’ Executive Director, Robin Steinberg, and Trial Chief, David Feige, argued that a holistic public defender office should be institutionally distinct from the “traditional defender” model.⁵ In a traditional defender office, Steinberg and Feige write:

The obsessive focus on the trial as the crowning achievement of the public defender leads inescapably to the privileging of the canny trial attorney over the caring . . . advocate focused on both the client’s legal and extra-legal needs

. . . .

In the traditional model, the communities from which the clients come are generally ignored. . . . To the extent that there is a sense of community, it is within the courthouse. . . .

. . . .

By contrast, the more holistic model of representation is client-focused, interdisciplinary, and community-based. Lawyers in these offices see the client’s legal needs as a point of departure. . . .

. . . .

. . . [T]he holistic model sees itself as part of the larger community. . . .

. . . .

. . . Such a vision implicitly understands that the life outcomes for a client can be as important as case outcomes.⁶

These “life outcomes” further an additional priority of the holistic advocacy model: “preventive lawyering.” Through preventive lawyering, a public defender office attempts to address the underlying causes of criminal behavior to prevent it. As one commentator explains, public defender offices like “the Bronx group may . . . be making it less likely that clients will return to jail. In doing so[,] . . .

3. David E. Rovella, *The Best Defense . . .*, NAT’L L.J., Jan. 31, 2000, at A1, available at <http://bronxdefenders.org/reso/002lib2.html>; see also Kyung M. Lee, *Reinventing Gideon v. Wainwright: Holistic Defenders, Indigent Defendants, and the Right to Counsel*, 31 AM. J. CRIM. L. 367, 409–15 (2004) (detailing, *inter alia*, the Georgia Justice Project).

4. The Bronx Defenders, <http://www.bronxdefenders.org/home/index.html> (last visited Apr. 11, 2006).

5. See Robin Steinberg & David Feige, *Cultural Revolution: Transforming the Public Defender’s Office*, 29 N.Y.U. REV. L. & SOC. CHANGE 123 (2004), available at http://www.ksg.harvard.edu/criminaljustice/executive_sessions/esp.d.htm.

6. *Id.* at 123–126.

they have turned the image of the knee-jerk liberal defense lawyer on its head and have, in effect, become crime fighters themselves.”⁷

Steinberg and Feige further note that “[b]ecause of the focus on the whole client, social workers and investigators are part and parcel of what the lawyer does.”⁸ Thus, at the Bronx Defenders, for instance, “social workers share an equal role with lawyers in addressing client needs.”⁹ As Ms. Steinberg herself expounds: “If you know that [ninety-seven percent] of the cases . . . are disposed of without trial, to focus so singlemindedly on the litigation aspect doesn’t make sense.”¹⁰

Anticipating that many public defenders nevertheless will resist changes to their ingrained, trial-oriented practice model, Steinberg and Feige suggest turning to the office’s “true believers”:

[T]he lawyers who want to do more, to reach farther into clients’ lives and communities, and to make a difference in the lives they are sworn to protect. And it is these lawyers, backed by thoughtful and directed management, that can move a public defender office forward, changing its culture from the traditional model to a more client-centered model.¹¹

. . . .

Through integration and indoctrination, even the most resistant lawyer will begin to understand the value of social work and collaboration.¹²

With these premises in mind, Steinberg and Feige propose several institutional components to a public defender office with an effective holistic vision.

A. Collaborative “Multidisciplinary”¹³ Work Groups

Emphasizing the importance of social work and extralegal advocacy, Steinberg and Feige argue that office personnel should be assigned to collaborative work groups, where lawyers work with other members of a client’s “team,” which may include other “lawyers, social workers, investigators,”¹⁴ law students, social work interns, and high school students. This collaboration extends to trial work as well, as “the Bronx Defenders . . . always assigns two lawyers to every felony proceeding.”¹⁵

7. Rovella, *supra* note 3. See also Lee, *supra* note 3, at 396–97 (describing effectiveness of public defender offices at offender rehabilitation).

8. Steinberg & Feige, *supra* note 5, at 124.

9. Rovella, *supra* note 3.

10. *Id.*

11. Steinberg & Feige, *supra* note 5, at 125.

12. *Id.* at 126.

13. *Id.*

14. *Id.* at 131.

15. The Bronx Defenders, <http://www.bronxdefenders.org/whow/003.html> (last visited

B. "Physical Environment"¹⁶

Steinberg and Feige suggest that office design can promote a holistic vision: Placing lawyers, social workers, and investigators in equal spaces, assigned not by role but by work group, is a good way to support a culture that strongly values social and investigative work. . . .

. . . [P]ublic defenders should create space that reflects a new office culture that is open, warm, and welcoming. Small things like magazines for clients, toys for their children. In addition, the design should minimize barriers between clients and the staff work space. If it can be done without doors, so much the better. The new message is clear: clients are welcome here and we exist to serve their needs.¹⁷

C. "Community Outreach"¹⁸

Steinberg and Feige advocate strongly for lawyers to involve themselves in the community in which they practice, and the Bronx Defenders' website identifies many areas of community outreach in which its staff participates.¹⁹ "Ultimately," Steinberg and Feige explain, "exposure to the community makes lawyers both more effective and more sensitive—two things that are traditionally viewed as incompatible."²⁰

D. Hiring

According to Steinberg and Feige:

Some old school trial jocks will certainly find this [holistic] approach too "touchy feely," and will quietly refuse to change or help. Don't give up on them, but remember that there is always turnover and in the turnover there is both turmoil and opportunity. Take the opportunity to hire staff that supports your new vision.²¹

When hiring, the office should form a hiring committee that includes non-lawyers who share a holistic vision.²² Indeed:

A belief in client-centered advocacy should become the new litmus test for hiring You might want to change the interview process from

Apr. 9, 2006).

16. Steinberg & Feige, *supra* note 5, at 127.

17. *Id.* at 127.

18. *Id.* at 127–128.

19. See The Bronx Defenders, <http://bronxdefenders.org/comm/index.html> (last visited Apr. 11, 2006).

20. Steinberg & Feige, *supra* note 5, at 128. Cf. Lee, *supra* note 3, at 405 (noting that "the holistic office may provide services not only to the defendant, but also to the community")

21. Steinberg & Feige, *supra* note 5, at 129.

22. *Id.* at 130.

requiring a lawyer to do an opening statement, conduct a cross examination, and give a summation to conducting a client interview, creating community outreach ideas, and mootng a dispositional conference with a judge and social worker.²³

*E. "Promotions"*²⁴

Steinberg and Feige note:

In the holistic office promoting lawyers with great lawyering skills is not enough. Instead, working collaboratively with social workers and investigators, involvement in community outreach efforts, and establishing significant relationships with clients and their families are additional factors that should be considered in making promotions. Where a lawyer has both sets of skills, there is an obvious choice. But in most cases, when a choice has to be made, it is important to choose the candidate who best supports the new cultural values of the office.²⁵

*F. "Listening to Clients"*²⁶

Steinberg and Feige explain:

Many lawyers believe that a client's experience is only related to case outcomes. Nothing could be farther from the truth. When client-centered advocacy is practiced, even clients who go to prison often feel cared for, well represented, and empowered. Create ways to hear their voices, their criticisms, and their praise.

There are a number of ways to get feedback. You can create a client satisfaction survey, conduct focus groups with former clients, or just put a simple cardboard suggestion box in your reception area.²⁷

II.

LIMITATIONS TO THE HOLISTIC ADVOCACY MODEL

No one reasonably should dispute that holistic advocacy enhances the quality of indigent criminal defense services. It opens doors of information to public defenders about clients and their lives that otherwise would remain closed to the lawyer with trial-focused tunnel vision.

Yet, for a public defender office, the holistic model should remain a practice enhancement rather than become the institutional centerpiece. As a centerpiece,

23. *Id.*

24. *Id.* at 131.

25. *Id.*

26. *Id.* at 131-132.

27. *Id.* at 132.

the holistic model does not sufficiently prioritize two realities of our criminal justice system: (1) the criminal justice system is structured entirely around the premise that every case will have, as its potential endgame, a trial on the merits, even if few cases actually result in a trial; and (2) the criminal justice system often pursues—and sometimes properly prioritizes—many punitive, nonrehabilitative penological goals, such as incapacitation and retribution.

I do not mean to suggest that holistic public defender offices do not appreciate these realities or prioritize trial work. To the contrary, Steinberg and Feige themselves note that “[t]rial skills and aggressive courtroom advocacy remain a mainstay of a client-centered defender organization. The goal is not to diminish zealous legal practice, but rather to augment it.”²⁸ 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.

Beyond these global limitations, I would offer some specific concerns about an institutional holistic advocacy model:

A. Practical Concerns

Any public defender office, if given the option, surely would choose a constant one-to-one ratio of lawyers, social workers, investigators, and clients. But, reality dictates otherwise: tight funding instead imposes constant institutional resource limitations.²⁹ Moreover, some public defender offices operate under contracts that include institutional efficiency requirements, such as a minimum number of cases handled each year.³⁰ Thus, public defender offices carefully must weigh the practical consequences of the holistic advocacy model.

Public defenders routinely carry high caseloads.³¹ In my own experience, a public defender in New York City can carry fifty to one hundred cases or more—not per year or per month, but at any given time. Every case requires “boot on the ground” time in court that can be fulfilled by no one in the office except the lawyers. Each case also can require time for client meetings, pretrial motions, investigations, plea negotiations, trial preparation, pretrial hearings, and the trial itself. Lawyers also must staff day, night and weekend arraignment shifts where they are assigned new cases. As a result, public defender offices

28. *Id.* at 124.

29. See Lee, *supra* note 3, at 373–75 (describing public defender offices as “desperately underfunded”).

30. The office at which I most recently practiced had this type of contract, as does, to my knowledge, the Bronx Defenders.

31. See generally Lee, *supra* note 3, at 377–79 (detailing high caseloads of public defenders in various jurisdictions).

perform a constant juggling act to keep attorneys' workloads at manageable levels. 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. These resource allocation decisions can impact clients significantly.

First, 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. Add to this increased caseload the additional time commitment of extralegal holistic duties like community outreach, and an irony results: the holistic advocacy model may cause lawyers to have even less time for each client's case, increasing the already high pressure to dispose of many cases quickly.³² This potential result of institutionalizing the holistic advocacy model must be weighed against the fact that even holistic advocacy proponents estimate that only ten percent of cases "require some 'holistic work,'"³³ meaning that at least ninety percent still must be handled under a more traditional practice model.

Second, the holistic office may have even fewer resources with which to hire and retain experienced lawyers. In my experience, a public defender office needs a strong base of experienced, nonmanagerial trial lawyers with at least five to ten years of criminal trial experience. These attorneys: (1) ensure that the office properly can handle its most serious trial cases; (2) give the office professional legitimacy; and, (3) serve as a constant resource for less experienced lawyers. A public defender office already has a hard enough time hiring such experienced lawyers, who understandably expect higher salaries commensurate with their greater experience.³⁴ Experienced lawyers also may prove less willing to engage in community outreach and similar extralegal duties without additional compensation, since these duties will require time commitments in addition to, not instead of, the time lawyers must devote to their trial practice.

Suppose, for instance, that a holistic public defender office doubles its social work and investigator staff and hires dedicated nontrial legal staff—such as an immigration attorney—to support its holistic advocacy "teams." Yet, the office also must employ thirty trial lawyers to handle contractual caseload obligations. In such a case, the office may be unable either to hire a sufficient number

32. *Cf.* Lee, *supra* note 3, at 428 (explaining that "[t]he more intent an office is on implementing holistic representation, the more resources and time it will need. A holistic defender who lacks the time (because of the office's inability to hire another defender for the extra case) to sufficiently investigate the government's case could end up urging clients to plead guilty and enter a program when, unbeknownst to the defender, the case was in fact quite winnable"); Rovella, *supra* note 3 (noting concern that "[w]ithout much time to investigate how solid a prosecution case is, an overemphasis on holistic advocacy could lead defense lawyers to urge clients to plead guilty and enter a program rather than fight a weak case").

33. Rovella, *supra* note 3.

34. *Cf.* Lee, *supra* note 3, at 375–77 (describing low pay scale at most public defender offices).

of highly experienced lawyers or to retain its own lawyers as they become more experienced. In the place of these experienced lawyers, the office may have no choice but to employ high turnover teams of enthusiastic, energetic, yet inadequately experienced lawyers to work with a high ratio of nonlawyers. This office composition may do wonders to help clients achieve favorable “life outcomes” but it sometimes may risk falling short on positive “case outcomes.”

B. Professional Concerns

Professional reputation and client perceptions both mean a lot to an effective public defender practice: a judge or prosecutor’s willingness to take a lawyer’s contentions seriously and at face value, or a client’s trust that she is not receiving sub-par or “different” representation solely because the client is poor. Institutionalized holistic advocacy, if overemphasized, may undermine these professional interests.

The plea bargaining process illustrates this importance of professional reputation. A small percentage of criminal cases go to trial, and some are dismissed prior to trial for a variety of reasons. Most criminal cases, however, are resolved by plea bargain.³⁵ In weighing potential plea bargains, the prosecutors and judges with whom I have worked have seemed to focus on three general questions when evaluating the “worth” of a case: “What allegedly happened here?” “Can the prosecutor likely prove it?” and “What do I know about this defendant?”

Holistic advocacy arms a lawyer well to argue the third question, “What do I know about this defendant?,” because it permits the lawyer to give the judge and prosecutor far more information about the client than just a criminal complaint and a rap sheet. The first two questions, however, reflect the criminal justice system’s continued trial-focused evaluation of cases, and holistic advocacy largely ignores them. And, in cases involving serious violent crimes, the first two questions can take full primacy: the interest in rehabilitative, defendant-focused dispositions simply wanes the more serious and violent the charged offense becomes. A lawyer must be equally prepared to advocate in these cases where the “whole” client will have little or no impact on plea bargain decisionmaking. Conversely, the less favorable the answer to question three for the client—such as a long criminal record for violent offenses, or a history of the same type of offense—the less impressed the judge and prosecutor generally will be by the

35. See Albert W. Alschuler, *Implementing the Criminal Defendant's Right to Trial: Alternatives to the Plea Bargaining Process*, 50 U. CHI. L. REV. 931, 938 (1983) (explaining that, according to one study, “guilty pleas accounted for 85 of the convictions in cases commenced by felony arrests but for only 53 of the dispositions of filed cases”); Rebecca Hollander-Blumoff, *Getting to Guilty: Plea Bargaining as Negotiation*, 2 HARV. NEGOT. L. REV. 115, 116–17 (1997) (noting that “[b]y most accounts, plea bargaining disposes of approximately ninety percent of all criminal cases in the United States”). For a very spirited criticism of our plea bargaining system, see Paul Craig Roberts, *Seeking a Return to Justice*, WASH. TIMES, Feb. 13, 2001, at A15.

“whole” client. In many cases, therefore, the first two plea bargain questions may provide the lawyer’s best, and sometimes only, opportunity to persuade the prosecutor or judge that a more lenient disposition is warranted.

If a public defender office nevertheless advances holistic-style advocacy to judges and prosecutors too often, the office may run two resulting risks. First, judges and prosecutors may begin to think that the office’s lawyers shrink from the tough task of trying cases. In my experience, judges and prosecutors become keenly aware over time of those defense lawyers who are perceived to “dodge” trials, especially the tough or complex ones. Even if this perception is flatly incorrect—and in many cases it is—if the perception develops, the trial-focused plea bargain questions may not be debated effectively, much to clients’ detriment, for judges and prosecutors will not take lawyers’ trial positions as seriously.

Second, judges and prosecutors may begin to disregard the office’s holistic advocacy in cases where it otherwise might be well taken. For example, if a lawyer routinely submits “holistic” prepleading memoranda on behalf of repeat violent felony offenders—a not unknown occurrence, in my experience—judges and prosecutors not only may think that the lawyer does not want to try these cases or make difficult plea decisions, but they also may begin to discount *all* prepleading memoranda from the lawyer as submitted solely for naïve or trial-avoidant purposes. Of course, some repeat offenders do have important backgrounds that need to be developed and presented. And a lawyer never should shortchange one client to enhance plea bargaining credibility for others. But, a public defender office also must remain careful not to press holistic strategies indiscriminately and thus ineffectually in the name of establishing an institutional advocacy model, to the detriment of those clients for whom it could mean something significant. A balanced institutional advocacy model instead must be maintained, one that conveys the readiness of lawyers to try any case assigned to the office.

At an institutional level, holistic advocacy also can influence client perceptions, and not just positively. A public defender’s clients sit in the unique position of not having chosen their own counsel, a reality of which many clients are keenly aware. When a public defender’s client sits in court and sees retained counsel appearing for paying clients, for instance, the client often will see something more akin to the “traditional” practice model: a single, trial-focused lawyer handling the case from start to finish. This lawyer may work in a larger office with other lawyers, and the lawyer may retain other nonlawyer professionals such as investigators and social workers who enhance the lawyer’s advocacy. But, all advocacy flows from this one lawyer, and that lawyer tends to prioritize one thing as a guiding force: the trial.

In contrast, clients in a holistic office organized by advocacy “teams” may not have the same lawyer at every stage of their case. The very nature of holistic team advocacy may necessitate some compromises to vertical client

representation.³⁶ And as noted earlier, institutionalized holistic advocacy also may result in advocacy teams composed of relatively inexperienced trial lawyers. Furthermore, clients may perceive that team lawyers with very high caseloads who must devote time and resources to extralegal duties such as community outreach have less time to prepare for trial. Consequently, clients may seek advice more often from nonlawyer team members, such as social workers. While some clients may deeply appreciate the broad, individualized attention that their holistic advocacy team provides, others might find these teams unpleasantly familiar: clinic-style services for the poor.

One might argue, however, that unlike clients who can afford to retain counsel, a public defender's clients uniquely can benefit from holistic representation because of the socioeconomic obstacles they often face. Yet, this suggestion risks condescending clients severely,³⁷ and it potentially conveys the message: "You need different representation because you are poor," or even worse, "Because you are poor, we are not only going to defend you, we are going to *fix* you." While, of course, these sentiments are never intended,³⁸ public defenders must remain sensitive to the perceptions of clients who do not get to choose their own counsel. Client focus groups and suggestion boxes may provide an effective means for identifying and addressing such client concerns. Or, perhaps the attorneys at a public defender office simply could ask themselves: "If I, or a loved one, was charged with a crime, would I hire an office that institutionally devotes a substantial amount of its time and resources to community outreach and client 'life outcomes,' or would I hire a more 'traditional' office that focuses one hundred percent on client case outcomes?"

C. Ethical Concerns

A public defender office that overprioritizes social work and community outreach faces ethical concerns. Even an article on the Bronx Defenders' own webpage notes that "there may be ethical land mines in intermingling law and social work."³⁹ For example, an institutional social work and preventive lawyering practice model creates the risk that lawyers will be expected to work collaboratively not merely within their own office or "teams," but with the criminal justice system as a whole. As lawyers increasingly ask prosecutors and courts to address the "whole" client and focus on client "life outcomes," lawyers may hamper their ability to take independent stands whenever a client's *legal*

36. See generally Tony Fabelo, *What Policy-Makers Need to Know to Improve Indigent Defense Services*, 29 N.Y.U. REV. L & SOC. CHANGE, 135, 145 (2004) (explaining vertical representation, and including it among the "Ten Commandments" of quality indigent defense services).

37. Cf. Lee, *supra* note 3, at 426–27 (discussing the risk of "paternalism" inherent in holistic advocacy).

38. Indeed, the real message being conveyed probably is that the traditional advocacy model still practiced by many attorneys can do better for clients when combined with holistic advocacy.

39. Rovella, *supra* note 3.

interests conflict with the whole client's *best* interests.⁴⁰ In my experience, these divergences between legal and "best" interests arise often in criminal cases. Some common examples include: when a client wants to challenge sanctions for failing to comply with a treatment program's requirements; when a client refuses to cooperate with a program's demand that he or she discuss potentially incriminating conduct as part of therapy; when a client wants to challenge a new arrest that violates treatment-based bail conditions or a therapeutic plea agreement; or when a client simply says, "I don't care about a program. I didn't do it."

This concern has grown particularly acute as the court system continues to implement specialized, "problemsolving" courts, such as drug and domestic violence courts. These courts commonly employ their own social workers and case managers to assess and treat the "whole" client, and these professionals may expect the holistic defense team to cooperate unconditionally.⁴¹ Yet, a rather unholistic result still awaits clients who fail to stick with the game plan assigned to them: jail. Few clients keep thinking holistically when facing jail; case outcomes return to the forefront. Lawyers need to maintain their adversarial independence for those moments when the criminal justice system returns to its *own* traditional adversarial model. Institutionalized "life outcome" management and preventive lawyering, if overemphasized, may compromise that independence.

The central role of social workers to institutionalized holistic advocacy further illustrates these ethical concerns. In general, social workers provide a critical resource to a public defender's clients, helping clients to recognize many of the obstacles or problems that led them into trouble and connecting them to resources to resolve those problems. Yet, social workers who practice in a public defender's office have an ethical mission distinct from the lawyers themselves: "The primary mission of the social work profession is to enhance human well-being and [to] help meet the basic human needs of all people. . . . Social workers promote social justice and social change with and on behalf of clients."⁴²

This is a laudable and truly holistic mission, and one that commonly overlaps with the goals of a public defender. But not always.⁴³ It is one thing

40. Cf. Lee, *supra* note 3, at 425–26 (discussing common conflicts between client "liberty" interests and "best" interests, and noting the ideological inclination amongst holistic advocates to press the best interests model over the liberty interest model).

41. See Tom Perrotta, *As Specialized Courts Come of Age, Experts Extol Benefits but See Pitfalls*, N.Y.L.J., Mar. 15, 2005, at 1 (noting concerns that "[p]roblem-solving courts are often founded on the premise that all who enter are guilty and must first abandon all hope of vindication in order to receive the benefits of treatment," and that "[a]ll players in the system have been urged to put the adversarial model behind them").

42. CODE OF ETHICS OF THE NAT'L ASS'N OF SOC. WORKERS, Pmb1. (1999), <http://www.naswdc.org/pubs/code/code.asp> (last visited Apr. 6, 2006). See also Perrotta, *supra* note 41, at 6.01 ("Social workers should promote the general welfare of society."). Indeed, the Social Worker Code of Ethics notes in its purpose statement that "[i]nstances may arise when social workers' ethical obligations conflict with agency policies or relevant laws and regulations."

43. See Lee, *supra* note 3, at 428 (noting that between social workers and attorneys,

for a public defender office to incorporate the skills and resources that social workers can offer, and quite another to institutionalize “lawyers who are ideologically inclined toward the ‘best interests’ (versus ‘liberty interests’) model that is the substance of social work programs.”⁴⁴ Indeed, a truly holistic, “best interests” model often conflicts directly with the “zealous advocacy” by “single-minded counsel for the accused” to which every client is entitled.⁴⁵ In our system of justice, the accused, not notions of social justice or even client best interests, determines the objectives of representation.⁴⁶

The clash accurately can be viewed as one between client “life outcomes” and “case outcomes.”⁴⁷ And, this clash in ethical mission between social worker and lawyer is reflected in law. Social workers, for example, must report child abuse,⁴⁸ whereas public defenders generally need not. The circumstances that can trigger social workers’ mandatory reporting requirement include not only signs of physical abuse or neglect,⁴⁹ but also indications of household drug use⁵⁰—not uncommon observations in a criminal defense practice.

Consequently, social workers, with their broad ethical and legal mandate to advance social justice, can expose the office to conflicts of interest and confidentiality conundrums if their role does not include appropriate boundaries.

Under the holistic “team” model, where social workers and lawyers may appear to clients to share a co-equal advisory role, clients meeting with social workers might misconstrue the social worker’s “life outcome” advice as authoritatively the best *case* outcome for the client. Indeed, problems may develop under the team model if a social worker’s advice and priorities explicitly conflict with the lawyer’s advice, as the client may not know whose advice to prioritize. An office may establish a policy that in cases of conflict the lawyer will make the final call. But, a danger still exists under an egalitarian team model

“[s]ometimes the two [interests] coincide, but sometimes they do not” (bracket in original)).

44. *Id.* at 425.

45. *People v. Rosario*, 9 N.Y.2d 286, 290 (1961); see also A.B.A. MODEL RULE OF PROF. CONDUCT, Rule 1.3 cmt.1 (Dzienkowski ed., 2005–06) (“A lawyer must . . . act with commitment and dedication to the interests of the client and with zeal in advocacy upon the client’s behalf.”).

46. *Cf.* A.B.A. MODEL RULES OF PROF. CONDUCT, Rule 1.2(a) (providing that the client sets the goals of representation). *Cf.*, e.g., *People v. Mason*, 706 N.Y.S.2d 1, 2–5 (App. Div. 2000) (rejecting defense counsel’s decision to keep defendant from testifying at trial, even when a sincere exercise of professional judgment and reflection on the defendant’s behalf). I and any other experienced attorney can attest to numerous examples of this ethical maxim at play, when we have been obliged to abide by a client’s seemingly wrong-headed decision about whether to go to trial, testify, or any other fundamental choice. Every now and then, of course, the seemingly wrong-headed client has proven us wrong.

47. *Cf.* Steinberg & Feige, *supra* note 5, at 126 (explaining that in a holistic public defender office, social workers not only “help convince judges and prosecutors to offer appropriate case dispositions,” but also “help[] clients address the problems that brought them into the criminal justice system to begin with—whether case-related or not”).

48. See N.Y. SOC. SERV. L. §§ 413(1), 415.

49. See N.Y. FAM. CT. ACT § 1046(a)(ii).

50. See *id.* § 1046(a)(iii).

that clients will defer to the strategy that sounds the least initially punitive, which often may be the social worker's. This advice—while important and maybe even “best” for the “whole client”—may not always be the best advice for resolving a criminal case. Without proper boundaries, a team-based social work agenda potentially may undercut the lawyer's professional independence and responsibility.⁵¹

Institutionalized community outreach also can generate ethical concerns.⁵² Exposure to a client's community undoubtedly will help a lawyer better understand the whole client. This understanding, however, does not always *favor* the client. One must remember that not every client is the misguided child of a sympathetic community; sometimes the client is viewed as, or in fact is, a community predator or burden. Thus, the client's own community may offer the loudest voice seeking punishment, not rehabilitation.⁵³

A public defender office that institutionally engages itself too deeply in the community hazards splitting its loyalties when the very community the office supports wants a client to go to jail. For instance, a public defender office actively involved in local schools may be assigned to represent an alleged child molester from that same community, or even from one of those schools. Or, it may be assigned to represent alleged drug dealers operating in or near those schools. Public defenders are human beings too, and cannot be expected to ignore these emotional conflicts once institutional community relationships are established. At the least, these institutional relationships may create the perception of divided loyalties. Thus, while community involvement can add substantially to a public defender's practice—especially when “community” means the client's *personal* community, such as family, friends, school, church, and employer—institutional community outreach must be approached with caution.

This need for caution is amplified when a public defender office seeks supplemental funding from the community.⁵⁴ A public defender office's unique charge requires the utmost in independence, particularly in the hard cases with

51. Cf. A.B.A. MODEL RULE OF PROF. CONDUCT, Rule 5.4(c) (Dzienkowski ed., 2005–06) (providing that a lawyer shall not permit a nonlawyer “to direct or regulate the lawyer's professional judgment in rendering such legal services”); *Id.*, Rule 5.3 (detailing lawyers responsibilities regarding nonlawyer assistants).

52. This discussion focuses on community outreach that is required institutionally on behalf of a public defender office. An attorney who pursues community activism during his or her own time does not necessarily create the same issues, since the office still can reassign cases when an individual lawyer has a potential conflict. Once an office institutionally engages in community outreach, however, these community relationships implicate the whole office.

53. Indeed, it may be patronizing to imply that a poor client's community necessarily will empathize with the “whole” client any more than any other “community” would empathize with its own criminal defendants.

54. See The Bronx Defenders, <http://bronxdefenders.org/reso/004.html> (last visited Apr. 11, 2006). See also Lee, *supra* note 3, at 407–08 (describing private funding programs of different public defender offices).

reviled clients. If the office nevertheless obtains funding from local corporations, community groups, or other private sources, an office might think twice about whether and how to represent a particularly vilified client. At the least, these institutional relationships again might create the perception of divided loyalties. Public defender offices instead should strive to maximize their independence and autonomy on behalf of clients.⁵⁵

III.

HOLISTIC ADVOCACY AND COLLATERAL CONSEQUENCES

More than ever, criminal convictions can result in negative “collateral consequences” to defendants in a wide variety of areas, such as immigration status, housing, educational grants or loans, welfare benefits, voting, professional licensing, military service, and employment eligibility.⁵⁶ These consequences can prove very serious for some clients.⁵⁷ Therefore, it is terribly important for a public defender to know as much about them as possible before advising a client.

A holistic approach to advocacy can help, as it opens the lawyer to a mindset of learning more about the client. The lawyer thus can offer more “contextualized” representation that enables the client to make more informed decisions.⁵⁸ Nevertheless, this “holistic” component to the attorney-client relationship should only enhance the lawyer’s broader, more traditional practice, which focuses on helping the client make the core decision controlling his or her case: whether to accept a plea bargain or proceed to trial. In the end, this core decision will have to be made regardless of any collateral consequences.

Of course, in some cases, a significant collateral consequence may, and should, control the client’s decision of whether to accept a plea or proceed to trial. These situations arise more often in minor cases that carry a minimal risk of post-trial incarceration, as few clients in my experience will risk substantial jail time to avoid a civil disability. And, a well-informed lawyer at least can lessen the risk of adverse collateral consequences by persuading the prosecutor and judge to fine tune a plea bargain to alleviate a collateral consequence that is perceived as too harsh. For example, I sometimes have seen prosecutors and

55. Cf. A.B.A. MODEL RULES OF PROF’L CONDUCT, Rule 1.7 cmt. 1 (Dzienkowski ed., 2005–06) (“Loyalty and independent judgment are essential elements in the lawyer’s relationship to a client.”).

56. See Pinard, *supra* note 1, at 1073–77 (detailing various collateral consequences that result from felony and misdemeanor convictions).

57. See, e.g., Chris Hedges, *Condemned Again for Old Crimes; Deportation Law Descends Sternly, and Often by Surprise*, N.Y. TIMES, Aug. 30, 2000, at B1 (detailing harsh immigration consequences of criminal convictions).

58. Cf. Pinard, *supra* note 1, at 1081 (noting that “contextualized” representation “affords counsel a broader and deeper perspective within which to evaluate all aspects of the particular case. Thus, thorough knowledge of the particular collateral consequences would enrich not only the information attorneys impart to clients, but also the strategies they would employ throughout the representation”).

judges agree to a plea bargain limiting the guilty plea to only a nondeportable charge specifically to prevent a noncitizen client's deportation. A lawyer also may suggest a "conditional" plea, where the client is permitted to withdraw the plea if the undesirable collateral consequence comes to pass. A lawyer further may convince the sentencing judge to issue a Certificate of Relief from Civil Disabilities,⁵⁹ which can spare a client from many, although not all, collateral consequences. A holistic advocate undoubtedly will identify and develop these opportunities more effectively.

Yet, prosecutors and judges, in my experience, often view collateral consequences as what their name connotes: something collateral to a criminal prosecution,⁶⁰ and perhaps even hit-or-miss in application, such as when a judge or prosecutor sees a noncitizen client with two prior felony convictions who has not been deported. And, not uncommonly, prosecutors and judges may view collateral consequences as the byproduct of criminal conduct rather than a factor in mitigation. State and federal legislatures, it is thought, adopted at least some of these rules for good reason. In my experience, therefore, uncommon is the case where a prosecutor or judge materially mitigates a disposition *solely* because of a perceived collateral consequence, especially in more serious cases.

Accordingly, the *direct* consequences of the choice between a trial and a plea bargain—for example jail versus no jail; substantial jail versus a more limited term; a felony conviction versus a misdemeanor conviction; a criminal conviction—versus a noncriminal disposition—generally should weigh heavily enough on the client's decisionmaking that to overemphasize collateral consequences disserves the client. Particularly in a strong prosecution case, the client will accomplish nothing by rejecting an otherwise acceptable plea bargain to avoid a collateral consequence except ensure that in addition to the collateral consequence, she likely will face harsher direct consequences after trial. Cases simply do not go away because they may result in harsh or unfair collateral consequences. While this decisionmaking model may not seem to emphasize the "whole" client at the time the decision is made, it may best protect the "whole" client in the long run by achieving a more desirable case outcome.

CONCLUSION

Holistic advocacy offers a public defender's clients many benefits in appropriate cases. Yet, the holistic advocacy model may not be warranted as an institutional centerpiece, as the criminal justice system itself does not prioritize

59. See N.Y. CORR. LAW § 701.

60. See, e.g., *People v. Dorsey*, __ N.Y.S.2d __, 2006 N.Y. Slip. Op. 02985 (App. Div., Apr. 20, 2006) (upholding defendant's conviction by guilty plea to course of sexual conduct against a child because, "[w]hile the court did not warn defendant that he would be required to register as a sex offender, this was a collateral consequence and the absence of such a warning did not undermine the voluntariness of the plea").

that model in most cases. Rather, public defender offices need to retain a trial practice as their institutional advocacy paradigm, and to reflect it in their hiring, training and office advancement. If, however, holistic advocacy instead is advanced as a model to complement a public defender's trial practice and not to overtake it, the office's clients can benefit from its many virtues while the lawyers avoid some of its more serious limitations. Indeed, one of the greatest assets of a public defender office is the tremendous diversity of practice visions and experience it can offer. Any institutional model for providing indigent criminal defense services should strive to maintain that practice diversity.