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Part II: Holistic Lawyering

BEYOND LAWYERING: HOW HOLISTIC REPRESENTATION MAKES FOR
GOOD POLICY, BETTER LAWYERS, AND MORE SATISFIED CLIENTS

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Introduction: 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. It turned 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.

Lisa was charged with robbery and possession of a weapon. The thirteen months during which I represented Lisa gave us ample time to share lunch, talk about her case, and stay in regular contact as we prepared 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 be deciding her fate. So, I did what only a young public defender would do--I brought her home to my fifteen-by-eighteen-foot studio apartment in Greenwich Village, where I could keep a watchful eye over her during the impending week-long trial.

I litigated the case like it was my only one--trying to block out the eighty 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, *626 and she was sentenced to one and one-half to four 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, the appellate court reversed her conviction and set her 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.

According to traditional standards of public defense, I did a good job. Indeed, 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 from which 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 (which stemmed from years of trauma and abuse). Lisa needed an advocate who regarded her as a "whole client," rather than as a case.

I.

A Better Way

It was the specter of Lisa and of the thousands of clients like her that I have seen in over twenty years of being a public defender that got me thinking differently about what clients need, and about 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 the criminal justice system. 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 requires a firsthand understanding that the problems and challenges they face stretch farther than the confines of the criminal cases before them. Indeed, working compassionately means knowing that clients come with a host of unaddressed social problems: poverty, mental illness, alcoholism, substance abuse, posttraumatic stress disorder, and family dysfunction. Quite simply, the criminal justice system is the last stop for many clients.

***627** There is no greater moment of need or desperation than in the hours and days after an arrest. When most clients are arrested, it is a galvanizing event in their lives: the moment the drug addiction spills into the open, the desperation becomes unbearable, 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 context for lawyers, expert in criminal and civil law, to deal preemptively and swiftly not only with the criminal case at hand but also with related issues, such as 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 to help them gain a better disposition and a better life outcome. Such collaborations include: (a) helping clients maintain health treatments that may have been interrupted by the arrest; (b) securing counseling to help a client cope with any past trauma or abuse that may have, directly or indirectly, led to the arrest, and; (c) charting out a service plan to help the client secure employment, gain remedial services, and fulfill court mandated programs. It is precisely at this time--when the client is at her lowest and when the potential legal and social service pitfalls are the greatest--that clients need both a strong legal defense on a number of criminal and civil fronts and the compassionate presence of various social services.

Thus, housing a broad array of services in a public defender office makes sense. What I have found, both in my experience and by what my colleagues echo day in and day out, is that the criminal case is often not the most challenging, the most complex, or involving the most pressing issues in the lives of our clients. Everyday issues abound: How do I make sure my family and I have enough to eat? How can I find and keep a job? How do I get my child back now that she has been removed from my home? These are the questions clients ask again and again, and if "take a plea" is part of the solution, they are happy to oblige. After all, pleading guilty is seems an easy solution amidst these much harder, often unanswerable questions. This is what I call "holistic advocacy." It is this model--social service-related, collaborative, long-term, and intensive--that has helped public defenders radically transform their function in the criminal justice system. In this paper, I argue that moving away from a traditional model of representation toward a more holistic one enhances advocacy, satisfies clients, and is an all-around good policy.

II.

Traditional Public Defender Work and Holistic Advocacy

In a traditional public defense model, the lawyer defends a “case” rather than a client. There, the goal is to remove the immediate threat of legal jeopardy rather than to ameliorate any larger issue. Unfortunately, within these clearly defined limits, lawyers seldom develop the skills to delve more deeply into the *628 lives of their clients or to work collaboratively with them to address causal issues. Part of the problem is lack of resources and time. And part of the problem is an institutional bias against forming long-lasting relationships and investing emotionally in the life of a client. Holistic representation addresses both of these shortcomings; it ensures proper resources and requires professional collaborations with service providers, community members, and family. Time is always a problem. However, a holistic office works to ensure that compassionate relationships are rapidly created and integrated into a lawyer's representation.

Universally, the goal of every defense lawyer is to get the best case disposition for a client. Indeed, securing an acquittal, less jail time, or avoiding prison altogether will always be a core goal of any criminal defense lawyer. Holistic representation does not change this fundamental and compelling value. But the added goal in the holistic defense model is 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 her. Pulling on one thread in the complicated tapestry of a client's life often yields surprising insights. Indeed, when an attorney addresses one problem, she often helps a client open up to a lawyer in completely unexpected ways. Deeper connection and greater understanding results both in better case results for the client and in greater success and satisfaction for the lawyer.

One thing that often makes lawyers and other advocates “burn out” is when they feel like they are doing too much work and not getting the results they had hoped for or promised to their clients. Certainly, when an attorney sees the same face come back with another criminal case, it is depressing and depleting. This is particularly the case when the client toils with the same issues at home, at work, and in her community. If the client can visit a place in which she can get help with her criminal case, find an affordable living situation, seek counseling, get help with her resume, and ask any question, the client will obviously be excited by and, ultimately, rewarded through that place. More impressive, though, are the extraordinary rewards for the advocate.

Returning to the immediate criminal case, holistic advocacy yields better criminal case dispositions. With more information about clients' lives and circumstances and with more client engagement, 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, one that focuses on drug treatment or vocational training rather than being consigned to prison. On a policy level, less jail time and more time in rehabilitative services may result in 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.

*629 III.

The Critical Divide: What Causes Criminality?

Lawyers and advocates for the indigent continue to debate vigorously about what clients with criminal cases need. At the core of the debate is a disagreement about what exactly leads a person to commit a criminal act. Does criminal activity depend upon 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 that criminal behavior derives from poor character, there may be little reason to look at the “whole client” in any given case. However, for those who believe that the cause of criminal behavior is far more complex, far more tied to the social condition of poverty, holistic defense makes a great deal more sense. For the latter group, there is a new and effective model of representation pioneered in “holistic defender” organizations like The Bronx Defenders. My argument in this paper is geared toward those willing to see beyond mere character failure and toward those who are unsure into which category they

fall. If we are willing to consider the notion that criminality is not just an issue of character but also a reflection of broader social problems, then it is my hope that we will also come to recognize that public defenders every-where must embrace this new model. We will shepherd in an era of more compassionate and effective representation of indigent criminal defendants.

IV.

Some History

In the United States, the movement towards holistic models of indigent defense is fueled by 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 to many rather quickly that penal sanction was alone not sufficient to remedy our criminal justice problems. Despite this realization, both the criminal justice system and the majority of public defender offices were slow to find an answer. Indeed, as our prison populations doubled and doubled again (nearing the almost unthinkable two million milestone), the traditional notion that defense work should only address the criminal “case” persisted. Across the country and regardless of who provided representation (whether institutional public defenders or private lawyers), the scope of services offered to indigent clients was exclusively limited to defending and advising clients with respect to criminal charges. Thus, traditional representation was (and continues to be) case-specific and court-based, rather than personal and family-based. The result: A system that processed cases and the people attached to them. A system that fashioned a “revolving door” of clients coming through the system over and over again. *630 A system that changed and continues to change nothing. We have created and maintained a system from which many clients emerge just as poor, just as drug addicted, just as mentally ill, just as homeless, and evermore hopeless.

The good news is that advocates for the indigent are beginning to recognize the harsh realities that befall their clients. 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.¹ Along with clients, academics, and social service providers, lawyers are beginning to recognize that indigent clients often need more than just criminal defense; they need crisis counseling, therapy, substance-abuse treatment, housing assistance, immigration advocacy, child welfare representation, and a host of other services.

V.

How Does Holistic Advocacy Work?

At the core of any holistic community of advocates is a shared commitment to “client-centered” practice. Client-centered practice may be defined as lawyering that empowers 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, lawyers can help clients chart their own paths toward futures free from criminal justice involvement and incarceration.

How an organization decides what services to provide and how they are delivered is determined by the extent to which clients in a given community know their needs and wants. Unified and guided by a broad vision of criminal defense representation, holistic practitioners can change lives and strengthen families and communities.

Holistic models of advocacy have two critical components:

- Advocacy through interdisciplinary work groups; and
- Presence in the client community.

The Bronx Defenders, for example, houses--in a single building--social workers, criminal defense lawyers, civil lawyers (many specializing in child welfare, housing, and immigration), and youth and community outreach staff. The office itself is located

in the South Bronx, near where most of its clients live. Beyond offering a panoply of social services to adults, the office also engages *631 young people by providing youth programs to local elementary and high schools. Having cemented its place in the community through relationships with over 300 local social service organizations, schools, and community groups, the Bronx Defenders now serves as a clearinghouse for a wide variety of social services.

A. Interdisciplinary Work Groups

The centerpiece of a holistic office is (and the primary means to reinforce the interconnectedness of the issues that clients face) the interdisciplinary work group. Whole-client representation can best be accomplished when an office utilizes interdisciplinary teams of lawyers, social workers, investigators, and support staff. Depending on the individual needs of each client, the team may also add psychologists, job developers, youth program personnel, and community organizers. The Bronx Defenders, for example, houses: (a) lawyers specializing in housing and immigration law; (b) a team of child welfare advocates; (c) several youth service personnel; and, (d) a number of community organizers.

Clients ultimately feel rewarded through working with a group of advocates who address the full range of their needs. Conversely, working collaboratively with experts from different disciplines is rewarding for advocates, for it ensures that the group will address both a client's criminal case and her individualistic needs. It is often a challenging experience for collaborators, however, because many lawyers resist multidisciplinary practices; they may fear losing control and power over the case and client. After all, nothing in their 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. By shifting the focus from case need to client needs, advocates learn that they must rely on others in order to reach the myriad of consistently-present needs--social, economic, legal, and psychological--of each client. For in the end, lawyers may know what is best in the courtroom, but they do not always grasp what is best for the client.

Through integration of services, even the most resistant lawyer can begin to understand the value of collaboration. To be sure, most lawyers naturally understand how investigators enable a lawyer's work: without factual investigations, a lawyer would not be able to assess the strengths and weaknesses of an adversary's case against her client. But while understanding the value of investigation is easy, she is often less willing to try to understand how social workers can support not only their client but also their own legal work.

Because social workers are trained so differently from lawyers, they often ask different questions and focus on things lawyers tend to miss or undervalue. As such, they are regularly able to unearth helpful information that even a diligent lawyer might not have uncovered. A social worker gives voice to a client's experience and frees a client's voice to articulate life goals in a way *632 that can--often unexpectedly--help a lawyer resolve her client's legal predicament. By working collaboratively with social workers or other mental health experts, a lawyer may begin to truly understand her client and may, in turn, begin to recognize the value of social work. Partnered with a social worker, a lawyer may offer better, informed advice to her client, while, at the same time, the social worker may focus on countervailing issues that might otherwise impair a client's synthesis of that advice. Thus, both the client and collaborating group are well served; the client is engaged and asking questions, and the lawyer and social worker are encouraged to continue.

B. Presence in the Client Community

Whether it is located in the community or whether its presence is felt with regular outreach programs, it is critical for a defender office to make its presence known in the communities around which clients live. From a quasi-political standpoint, outreach affords the office an opportunity to raise its profile in the community: if defenders have a good reputation among family, friends, and neighbors, clients are more likely to seek out the help of defenders and to trust their advice and assistance. From a sociological standpoint, an office's regular presence in any given client community sensitizes its lawyers and staff to the conditions under which clients live. Finally, from a methodological standpoint, the experience of being in the client community gives a lawyer the hands-on experience with which she may comprehend a client's life, family, and community, thereby strengthening her own advocacy skills. For when a lawyer conveys the full complexity of a client's situation before a judge, prosecutor, or police official, she may lend just enough immediacy that her client's argument becomes a winning one.

Nonetheless, awareness of client communities is not enough. To become full participants in the holistic model of advocacy, public defenders should actually get involved in their communities. For example, the Dade County Public Defender Office runs an antiviolence project, the Public Defender for Albemarle County and the City of Charlottesville have established a citizen's advisory committee, and the Bronx Defenders locally run both a youth organizing project for local high school students and an art and literacy program for elementary school students.

The effects of such involvement are amazing. If one sends a trial-focused lawyer to sit at a card table at a local middle school's career day, she will find that a day of interacting with students, some of whom have never even seen a lawyer before, is a transformative experience. 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, more likely than not, return from this sort of visit deeply aware of the myriad hurdles that comprise the everyday life presents for those whom she represents. *633 That knowledge can impel lawyers to be more sensitive to client needs and more effective in communicating the essential humanity of their client both to the prosecutor and to the court. Ultimately, exposure to the community makes lawyers more effective and more sensitive; these two things have often been heretofore viewed as incompatible.

VI.

Holistic Advocacy Makes Good Social Policy

The costs of incarceration are almost always understated. Setting aside the debilitating 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 both a criminal justice issue and--in spite of its name and 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 their complex problems that drive them into the criminal justice system in the first place. Thus, these advocates may lower recidivism, strengthen families, enhance public safety, and reduce the systemic costs of a criminal justice system that can swallow even the most generous of budgets.

Government bears the cost of higher crime, as well as chronic family violence, alcoholism and substance abuse, homelessness, and mental illness. So, any significant moves to address those problems in communities where people cannot seek help easily can significantly reduce costs. The goals of justice, too, are served in the process for those who believe justice is better served by those who provide services, solve problems, and strengthen communities than by those who blindly arrest, prosecute, and incarcerate.

Beyond considerations of costs and simple justice, holistic representation may increase systemic efficiency as well. Judges regularly make decisions without any true understanding of what challenges face the people before them: They do not always know about attempts to overcome diseases such as alcoholism. They do not always know about recent job losses. They do not always know about suppressed histories of domestic abuse. Indeed, they frequently make critical decisions without critical information. Without important information, judges are often reluctant to give clients the benefit of the doubt; they may decline to release defendants without bail, to refer them to a program rather than to prison, or to dismiss the charges. Much of this is the result of institutional bias: judges often 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 particular client.

This information deficit perpetuated by institutional bias 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- *634 defense decision. Moreover (and perhaps surprisingly), prosecutors, too, can become more flexible when presented with a client's compelling life circumstances. Even though most advocates would probably recognize this, they are typically neither equipped nor compelled to gather this information. In a holistic office, however, gathering these persuasive details is part-in-parcel of the representation. Albeit information gathering is often done by

social workers, the whole team, emboldened by the team concept and streamlined by seamless integration into working groups, organizes unearthed information and integrates it into a cohesive and persuasive presentation.

Taken together, the benefits of holistic advocacy--in terms of client outcomes, lawyer satisfaction, community empowerment, and enhanced public safety-- represents a morally superior, socially superior, methodologically superior, and economically superior approach to indigent legal representation.

Conclusion

Public defenders serve a critical criminal justice end: protecting the rights of the accused by aggressively fighting for those 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, as a whole, plagued with criminal charges, but they are also beset with other troubles: addictions to substances, joblessness, homelessness, family violence, mental illnesses, and the general inability to access healthcare and other social services. The simple truth is that the indigent require a completely 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 represents a powerful response to the daily realities facing poor clients. It is a model that responds to the needs of poor communities by unifying advocates in the shared desire 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 case conception to a broader, more symbiotic, more humane client-centered approach. Because holistic representation relies on interdisciplinary groups, it often works best in the organized setting of a public defender system. Of course, not every jurisdiction is able to field a public defender, but even systems that rely on individual attorneys or bar associations can incorporate the critical features of a holistic approach. For starters, organizing affiliations with other lawyers doing criminal and civil representation and ensuring they may easily access a centralized group of mental health professionals, social workers, and investi-gators 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. As I have discussed, the holistic defender *635 movement has the capacity to change the way justice is experienced in indigent communities. Yet there is a symbiosis at work here: by engaging the whole client, holistic advocacy actually improves the criminal justice system from within and breathes new life into the long held--but seldom attained--goal of individualized and delicately calibrated justice.

Footnotes

^{a1} Executive Director, The Bronx Defenders, Inc. [Eds.: The author originally wrote and delivered the text of this article as a speech at the Second European Forum on Access to Justice. It is reprinted here, as revised by the author and the editors of the N.Y.U. Review of Law & Social Change.]

¹ Pioneering holistic defenders have founded offices such as the Bronx Defenders, the Neighborhood Defender Service, the Knox County Public Defender Community Law Office, and the Georgia Justice Project.