
Defining Social Work within Holistic Public Defense: Challenges and Implications for Practice

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Social work has a history of forensic practice, but social work as an integral component of the holistic model of public defense is new and is creating a demand for better definition of roles and services. The intent of this article is to contribute to and encourage dialogue surrounding social work practice within the holistic public defense model. A brief overview of the indigent criminal defense system and its emerging models of defense practice is provided. Models of practice established by the Knox County Public Defender's Community Law Office are offered. Challenges, implications, and future directions are discussed.

KEY WORDS: *forensic social work; holistic criminal defense; indigent defense; public defense*

The U.S. criminal justice system is in a state of crisis. Prisons and jails have seen a 500 percent increase in inmates over the past 30 years even though crime rates have declined (Sentencing Project, 2015). The United States has less than 5 percent of the world's population, but almost 25 percent of the world's prison population, with the criminal justice system affecting more individuals than any other justice system in the industrialized world (Institute for Criminal Policy Research, 2015; M. Lee, 2015; U.S. Census Bureau, 2015).

Mass incarceration has been exacerbated by poverty and mental illness. These factors are reflected in the phenomena of the "criminalization of poverty" and jails becoming today's asylums for people with mental illness. Poor people, especially people of color, are incarcerated for minor offenses at a much higher rate than other Americans (Dolan & Carr, 2015). The Vera Institute of Justice (2015) noted that three out of five inmates are unconvicted, but sit in jail, too poor to post bail while their cases are processed. Likewise, in 2012 an estimated 356,000 people with serious mental illness were housed in jails and state prisons, more than 10 times the number of patients in state psychiatric hospitals the same year (Treatment Advocacy Center, 2014).

Concern about indigent clients has historically been a hallmark of the social work profession. Attention to the legal rights of indigent clients, however, has lagged. The evolution of public defense for indigent people charged with criminal

offenses has included an emergence of holistic defense—going beyond providing representation for criminal charges to addressing the contributing factors (for example, poverty, mental illness, substance abuse, unemployment, and homelessness) that keep people in or cycling through the criminal justice system.

The focus of this article is on the holistic model of public defense. Social work is an integral component of the model, providing the profession with a tremendous opportunity to influence the criminal justice system and better serve a population with which the profession has long claimed allegiance. However, the role of the social worker in these settings is new and unclear, with "few guideposts or models" for practice, creating a challenge in integrating social workers into defense practice (Hisle, Shdaimah, & Finegar, 2012).

EVOLUTION OF PUBLIC DEFENSE

Clarence Gideon was a drifter with an eighth-grade education who spent time in and out of prison for various nonviolent crimes. In the early 1960s, he was charged with breaking into a pool hall and stealing beer, wine, and change from the jukebox—all amounting to less than \$50. At the time, appointment of legal counsel for poor defendants was required only in capital cases and was the exception rather than the rule in state proceedings, so his request for legal representation was denied. Gideon was convicted and sentenced to five years in prison,

but he challenged the conviction on the grounds that the refusal to appoint counsel violated his constitutional rights. His petition to the Florida Supreme Court was denied. His subsequent petition to the Supreme Court of the United States, however, worked out differently (U.S. Courts, n.d.).

In 1963, the U.S. Supreme Court held in *Gideon v. Wainwright* that the Sixth Amendment requires states to provide defense attorneys to indigent individuals charged with felony crimes. Indigent children were afforded the right to counsel four years later by *In re Gault* (1967). By 1972, the Supreme Court further extended the right to defense counsel to include any crime punishable by imprisonment in *Argersinger v. Hamlin*.

The landscape of criminal defense changed following *Gideon v. Wainwright*. Attorneys who had previously provided pro bono services found themselves faced with new requirements, states found themselves in the position of having to assume the cost of providing legal defense to their indigent population, and policymakers had to quickly develop systematic ways to manage the newly required services (NLADA, 2011b). Public defender offices began to emerge as a result. Each state now has a defense system in place, although the administration, operation, and funding of the systems vary by state (Owens, Accetta, Charles, & Shoemaker, 2014). Some states have public defender offices operating at either the state or county level, some appoint attorneys from a list of private bar members, and others use a hybrid system with both public defender offices and appointed counsel managing cases.

Public defense should not be confused with legal aid. Whereas some legal aid agencies may provide limited criminal defense services, the term “legal aid” generally refers to a network of agencies that provide civil legal assistance and advocacy for low-income individuals (NLADA, 2011a). Public defense focuses exclusively on criminal defense. A discussion of legal aid and issues related to such civil legal practice is beyond the scope of this article.

EMERGING MODELS OF DEFENSE

Following the inception of the public defense system, models of defense emerged that departed from the traditional attorney-centered model. Various terms adopted by the legal profession describe this departure: “community oriented,” “client centered,” and “holistic.” Although the terms are often used interchangeably, differences exist (Steinberg, 2013). According to

C. G. Lee, Ostrom, and Kleiman (2014), each term “reveals a different emphasis in the associated set of principles, an emphasis which is in turn a reflection of the membership and concerns of the group that developed those principles” (p. 1218).

Client Centered

Steinberg (2013) described the client-centered approach that took root within the legal community in the 1970s as marking a “shift from a conservative, paternalistic attorney-as-decision maker strategy, to an approach that considers the needs, wants, and values of the client and includes the client in decision-making for the case” (p. 975). This approach affords the client the power, ability, and right to decide the ultimate course of the case as opposed to the traditional authoritarian model that often devalues clients’ opinions and feelings and can reinforce a sense of powerlessness and alienation. It encourages more proactive, critical thinking by the client and reinforces the client’s innate worth without condoning negative behavior.

Community Oriented

Community-oriented defense, an approach that gained renown in the 1990s, emphasizes addressing policy concerns and educating the public about the impact of criminal justice system policies (Clark & Savner, 2010; Steinberg, 2013). The Brennan Center for Justice at New York University School of Law, along with the Community-Oriented Defender Network, developed 10 principles of practice—(1) create a client-centered practice, (2) meet clients’ needs, (3) partner with the community, (4) fix systemic problems, (5) educate the public, (6) collaborate, (7) address civil legal needs, (8) pursue a multidisciplinary approach, (9) seek necessary support, (10) engage with fellow community-oriented defender members—that “distill the three overarching advocacy strategies” for community-oriented defenders: whole-client representation, community engagement, and systemic reform (Clark & Savner, 2010).

Holistic

The holistic approach that emerged in the 1990s encompasses the belief that ignoring the consequences of poverty and other risk factors is short-sighted (M. Stephens, district public defender, Knox County Public Defender’s Community Law Office, Knoxville, Tennessee, personal communication, May 2015; Steinberg, 2013). The Center

for Holistic Defense (Bronx Defenders, 2015) defined *holistic defense* as

an innovative, client-centered, and interdisciplinary model of public defense that addresses both the circumstances driving people into the justice systems as well as the devastating consequences of that court involvement. Based on individual needs, this model connects clients with criminal defense, family defense, and related civil legal representation, as well as social work support and advocacy beyond the courtroom.

Holistic representation includes, at a minimum, lawyers partnering with social service providers both in-house and in the community to address legal and psychosocial needs. The four pillars of holistic defense are (1) seamless access to legal and nonlegal services that meet client needs; (2) dynamic, interdisciplinary communication; (3) advocates with an interdisciplinary skill set; and (4) a robust understanding of, and connection to, the community served (Steinberg, 2013).

SOCIAL WORK AND PUBLIC DEFENSE

Social work has a history of forensic practice, but attempts to define it are general (Barker & Branson, 2000; Maschi, Bradley, & Ward, 2009; Roberts, 2009) and do not specifically address social work within public defense settings. Several studies have identified social work in a limited number of public defense practice settings since the early 1970s, when the public defense system emerged (Senna, 1975; Wald, 1972). As public defense has evolved, though, opportunities for social work have expanded. The level of integration seen in holistic defense practice is new and growing. Social workers are no longer simply working parallel to attorneys and providing rehabilitation plans and sentencing reports, but are

increasingly integrated as members of defense teams. The National Association for Public Defense (2015) guiding principles state that effective public defense depends on social workers being part of the defense team. Despite localized attempts, though, uniform agreement of roles and duties within the holistic setting is absent (Albert, 2003; Hisle et al., 2012). Clarity and definition of roles and models of practice are critical for both social workers and attorneys.

A HOLISTIC, CLIENT-CENTERED MODEL OF PRACTICE

The Knox County Public Defender’s Community Law Office (CLO), located in Knoxville, Tennessee, provides a model of holistic representation. The office initially operated from 1990 to 2003 under a traditional representation model until the district public defender recognized that the high incidence of recidivism called for a different approach. The belief that problems such as poverty, homelessness, mental illness, addiction, and lack of support systems create barriers to self-sufficiency and successful community reintegration prompted the search for more comprehensive public defense representation. The CLO emerged in 2003 as a holistic office on the 40th anniversary of *Gideon v. Wainwright*. Its mission: to provide holistic, client-centered legal representation to clients, advocate for a fair and just process within the criminal justice system, increase self-sufficiency and integration of clients into the community, and positively affect the quality of life in Knox County (CLO, 2015).

Table 1 illustrates the fundamental difference in approach between the traditional public defense model and the holistic, client-centered model envisioned at the CLO.

Operationalization of the holistic model is based on the tenets that (a) risk factors such as poverty and

Table 1: Public Defense Model Comparison

	Traditional Model	Client-Centered, Holistic Model
Scope	Narrow: legal issues	Broad: legal issues, socioeconomic circumstances, and psychological factors
Relationship	Authoritarian	Collaborative
Attorney’s role	Active	Active
Client’s role	Passive	Active
Communication	Unidirectional	Multidirectional
Structure	Formal	Democratic
Decision making	Attorney	Client and attorney

addiction must be addressed; (b) relationships with clients are collaborative, recognizing strengths; and (c) legal and social services are integrated and dynamic. The model reflects an ecological perspective, recognizing the interaction of legal representation, individual conditions, socioeconomic structure, and environmental circumstances. At the CLO, criminal behavior is viewed as symptomatic of personal, psychological, and social dynamics that have coalesced in the life of the individual. By addressing clients' legal and psychosocial needs, the CLO assists clients in achieving maximum self-sufficiency and avoiding future criminal behavior. The model seeks justice for the client while working to reduce recidivism and empower clients to become productive members of the community.

A SOCIAL WORK MODEL OF PRACTICE

The primary goal of the CLO social services department is to partner with clients in effecting change in their lives and environments in ways that promote self-responsibility and reduce recidivism. The collaborative relationship between social worker and client is fundamental. Increased self-responsibility and self-sufficiency are achieved through collaboratively addressing psychosocial needs, as well as linking clients with community resources including mental health and substance abuse treatment. Creation and implementation of the department required decisions about (a) structure (parallel versus integrated approach), (b) staffing, and (c) services.

A social services department was created when the CLO was founded in 2003. In the initial

implementation, social services staff consisted primarily of people with degrees and experience other than social work. This staffing resulted in a parallel approach, with social services personnel focused on addressing risk for recidivism and resource linkage. Communication among team members was limited and task oriented (M. Stephens, personal communication, May 2015).

The CLO moved toward a social work orientation in 2005. Master's-level social workers were hired, and a shift toward collaboration and integration of services occurred. Emphasis was placed on communication, with each member of defense teams offering a unique perspective. Social work staff was provided with training focused on understanding the legal system, and social service activities were identified and shared with legal staff to better acquaint them with potential social work services. Table 2 identifies social work activities as defined by the CLO.

The decision to strive toward integration of legal and social services rather than a parallel approach was a key developmental factor. With the parallel approach, cases are managed autonomously with little coordination between attorney and social worker, opening the door to ethical dilemmas, conflicts, and tensions when legal and psychosocial needs clash. The lack of defined roles and models of practice for social services staff, along with the general lack of understanding of the other's profession and a lack of time and inclination to bridge the gap between the two professions, are associated with the parallel approach.

Table 2: Activities Performed by Knox County Public Defender's Community Law Office Social Workers

Social Work Activity	Description
Assessment and screening	Identifying and evaluating presenting problems
Community resource assistance	Planning, securing, or coordinating a range of services
Substance abuse assistance	Assessing, planning, and assisting clients in securing services
Alternative sentencing	Proposing strategy to divert client from incarceration
Psychosocial evaluation	Conducting in-depth examination of client and environment
Crisis intervention and stabilization	Providing immediate intervention to reestablish coping strategies
Driver's license assistance	Providing information and guidance for reinstating driving privileges
Education and employment assistance	Giving clients guidance with applications and linkage to resources or jobs
Housing assistance	Identifying and assisting clients with securing appropriate housing
Mental health assistance	Planning or securing inpatient or outpatient services
Mitigation	Identifying factors that contribute to fair sentencing
Therapeutic intervention	Psychotherapy, counseling, and psychoeducation
Release planning	Combining the aforementioned services to assist reintegration
Advocacy	Educating the public, working on behalf of clients

The benefits of the integrated approach, as operationalized at the CLO, include reduced workloads for attorneys, maximizing utilization of team member expertise, and increased client satisfaction. In Maryland's holistic representation program, social workers were viewed by clients as the "heart" of the holistic defense team, offering compassion and support and acting as translators, helping clients and attorneys understand each other (Hisle et al., 2012). This evaluation reinforced what has been observed at the CLO: Social workers build relationships with clients and are in a position to be advocates, supporters, helpers, and effective defense team partners.

Table 3 provides a working outline of both approaches and a description of how social work practice might be implemented given varying levels of ability, interest, and commitment to the model. Although the table offers a contrast, holistic offices may reflect a blending of approaches in practice.

The CLO employs five full-time social workers and 26 attorneys. Four social workers work exclusively with adult clients, and one has primary assignment to juvenile court. Clinical licensure is encouraged and supported. In addition to direct casework, social workers provide field supervision to social work students, host an annual ethics seminar, and offer summer and after-school programs that meet twice weekly for at-risk youths.

The CLO provides legal representation to approximately 12,000 clients per year. The social services department averages 35 client referrals per week, with over 1,500 clients served per year. Attorneys are usually the first point of contact for clients. They assess each client to determine whether a referral to social services is appropriate. If a need is present, the attorney identifies the requested services, provides a due date, and submits the referral via defenderData, an electronic case management system. Discussion of referrals and cases is welcomed. The social services

department holds a staff meeting weekly to review and make case dispositions. Case assignments are a collegial process based on client needs, worker strengths, and balancing caseloads.

Court testimony by CLO social workers is limited. This decision is based on the belief that reducing the judiciary and prosecution's perception of the social worker as adversarial allows defense attorneys to negotiate alternative sentencing plans more objectively. When expert testimony is needed, the social worker plays a vital role in identifying and arranging for appropriate resource people.

CHALLENGES

Sustainment of holistic representation will require empirical evidence of effectiveness and cost-efficiency. Questions remain about how to measure the goals, quality, and cost-effectiveness of defense systems, in general, making it difficult to identify best practices or quantify benefits (Gressens & Atkinson, 2012). There are indications, however, that these problems are beginning to be addressed. *The Challenge: Evaluating Indigent Defense* (Gressens & Atkinson, 2012), a performance measures guide created to promote ongoing state-level evaluation, and *Improving Indigent Defense: Evaluation of the Harris County Public Defender* (Fabelo, Reynolds, & Tyler, 2013), a countywide evaluation, indicate a move toward evidence-based practice for public defense. A few studies (Geurin, Otis, & Royse, 2013; Kentucky Department of Public Advocacy, 2008) have examined various facets of social work services within defense systems and have had favorable findings, although each faced significant limitations.

Evaluation of the holistic model is limited, but emerging (C. G. Lee et al., 2014). CLO preliminary results suggest that holistic representation reduces recidivism and days incarcerated. Examination of over 300 CLO social services clients indicated

Table 3: Potential Structures of Public Defense Practice: Parallel versus Integrated

	Structures	
	Parallel	Integrated
Scope	Narrow: case specific	Broad: multiple responsibilities
Role	Consultant, differentiated	Team member, complementary
Decision making	Independent, authoritarian	Democratic, participatory
Communication	Horizontal, hierarchical	Vertical, interactive
Relationships	Consultative	Collaborative
Focus	Specific	Holistic
Setting	Separate	Shared

reduced number of arrests and days in jail as compared with a sample of non-social services clients. Steinberg (2013) noted that her office, the Bronx Defenders, regularly assesses client satisfaction, legal outcomes, and life outcomes. It is noted that data on life outcomes—instances, for example, of housing being secured, employment licenses being reinstated, eviction or deportation being avoided—indicate that the holistic model is successful (Steinberg, 2013). Based on interviews; focus groups; and observations with clients, attorneys, support staff, and social workers, Hisle et al. (2012) provided overall recommendations that include increased communication between attorneys and social workers, continuous training and networking with similar holistic programs, clarity and definition of social work roles, ongoing community outreach, and continuous program evaluation.

CONCLUSION

Reamer (2004) and others argued that social workers should take steps to reclaim their involvement in the criminal justice system and reengage in the criminal justice discussion (Pettus-Davis, 2012). Indigent criminal defense is evolving and presenting a tremendous opportunity. Data indicating how widespread the adoption of the holistic model has become is currently unavailable; however, a project is underway to begin to determine the extent of its adoption in the legal community, including the use of social workers. Preliminary evidence suggests that public defenders are increasingly adopting the holistic model and acknowledging that social workers are essential members of the defense team. Social work should be poised to respond. If social work is to achieve success in reengaging and reclaiming involvement in criminal justice policy and practice, the profession should take advantage of the existing opportunity by moving forward as effective, integrated team members with clarity and definition of roles and empirical evidence. As the nation struggles with reducing recidivism and the problem of mass incarceration, it is essential that the profession demonstrates to policymakers and lawmakers the value of holistic representation. **SW**

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