

**HOLISTIC ADVOCACY:
AN IMPORTANT BUT LIMITED INSTITUTIONAL ROLE**

By Brooks Holland, Esq.

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 indeed has much to offer for enhancing a public defender’s practice, it faces practical, professional and ethical limitations as an institutional model. This essay explores these limitations.

The essay begins by presenting the holistic advocacy model. It then examines the limitations that challenge this institutional model in light of a public defender’s unique client responsibilities. Collateral consequence representation is examined in particular to illustrate how holistic advocacy can offer many benefits, but also potential problems if overemphasized institutionally. The essay concludes that while holistic advocacy may help to decalcify entrenched and sometimes myopic “traditional” defense practices, caution and continued institutional prioritization of a traditional trial practice model are warranted.

A. 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 ‘whole client.’”³ The Bronx Defenders’ web homepage declares: “Created and staffed by advocates with a broad vision of public defense work, 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 in a recent paper, the Bronx Defenders’ Executive Director Robin Steinberg and Trial Chief David Feige

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¹ Michael Pinard, *Broadening the Holistic Mindset: Incorporating Collateral Consequences and Reentry into Criminal Defense Lawyering*, 31 *FORDHAM URB. L.J.* 1067, 1067 (2004).

² *Id.* at 1071.

³ David E. Rovella, *The best defense ...*, *THE NAT’L L.J.* (Jan. 31, 2000) (available at <http://bronxdefenders.org/reso/002lib2.html>).

⁴ See <http://www.bronxdefenders.org/home/index.html>.

presented how a holistic public defender office should function institutionally distinct from the “traditional defender” model.⁵

In a traditional defender office, Steinberg and Feige write, “[t]he 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.”⁶ Moreover, “[i]n the traditional model, the communities from which clients come are generally ignored ... To the extent that there is a sense of community, it is within the courthouse.”⁷

“By contrast,” Steinberg and Feige continue, “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,”⁸ view themselves “as part of the larger community,”⁹ and “implicitly understand[] that the life outcomes for a client can be as important as case outcomes.”¹⁰ These “life outcomes” further an additional priority of the holistic advocacy model—preventive lawyering—where public defender offices 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 ... they have turned the image of the knee-jerk liberal defense lawyer on its head and have, in effect, become crime fighters themselves.”¹¹

Steinberg and Feige note that “[b]ecause of the focus on the whole client, social workers and investigators are part and parcel of what the lawyer does.”¹² Thus, at the Bronx Defenders for instance, “social workers share an equal role with lawyers in addressing client needs.”¹³ As Ms. Steinberg herself expounds, “If you know that

⁵ See Steinberg & Feige, *Cultural Revolution: Transforming the Public Defender’s Office*, 29 N.Y.U. REV. L. & SOC. CHANGE 123 (2004).

⁶ *Id.* at 123-24.

⁷ *Id.* at 124.

⁸ *Id.*

⁹ *Id.*; see also C.B. Morely, *The Bronx Defenders: Truth, Justice and Equality for All*, BRONX TIMES (Jan. 21, 2001) (available at <http://bronxdefenders.org/reso/002lib4.html>) (noting, “we at The Bronx Defenders have transformed the role of the public defender by ... investing in the communities where our clients live, and striving to create justice for the people we serve”); Pinard, *supra* note 1 at 1072 (explaining that “[o]n a broader level, some of these organizations envision themselves as full community partners and engage in activities unrelated to the provision of direct legal services”).

¹⁰ Steinberg & Feige, *supra* note 5 at 124.

¹¹ Rovella, *supra* note 3.

¹² Steinberg & Feige, *supra* note 5 at 124.

¹³ Rovella, *supra* note 3.

97% of the cases ... are disposed of without trial, to focus so singlemindedly on the litigation aspect' doesn't make sense."¹⁴

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."¹⁵ These "lawyers, backed by thoughtful and directed management ... can move a public defender office forward, changing its culture from the traditional model to a more client-centered one ... Through integration and indoctrination, even the most resistant lawyer will begin to understand the value of social work and collaboration."¹⁶

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

1. *Collaborative multidisciplinary work groups*: Emphasizing the importance of social work and extra-legal 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, 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."¹⁷
2. *Physical environment*: 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 work and investigative work."¹⁸ Moreover, "public defenders should create space that reflects a new office culture that is open, warm, and welcoming."¹⁹ So, features such as magazines for clients, toys for their children, and "minimiz[ation] of barriers between clients and the staff work space," can send a clear message: "clients are welcome here and we exist to serve their needs."²⁰
3. *Community outreach*: 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

¹⁴ *Id.*

¹⁵ Steinberg & Feige, *supra* note 5 at 125.

¹⁶ *Id.* at 125-26.

¹⁷ See <http://bronxdefenders.org/whow/003.html>.

¹⁸ Steinberg & Feige, *supra* note 5 at 127.

¹⁹ *Id.*

²⁰ *Id.*

which its staff participates.²¹ “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.”²²

4. *Hiring*: According to Steinberg and Feige, “[s]ome 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 turnover there is both turmoil and opportunity. Take the opportunity to hire staff that supports your new vision.”²³ When hiring, the office should form a hiring committee that includes non-lawyers who share a holistic vision. Indeed, “[a] belief in client-centered advocacy should become the new litmus test for hiring ... You might want to change the interview process from 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 a social worker.”²⁴
5. *Promotions*: Steinberg and Feige note that “[i]n 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
6. *Listening to clients*: Steinberg and Feige explain that “[m]any lawyers believe that a client’s experience is only related to case outcomes. Nothing could be further from the truth. When client-centered advocacy is practiced, even clients who go to prison feel cared for, well-represented, and empowered. Create ways to hear their voices, their criticisms, and their praise,” such as by “creat[ing] a client satisfaction survey, conduct[ing] focus groups with former clients, or just put[ting] a simple cardboard suggestion box in your reception area.”²⁶

B. Limitations to the Holistic Advocacy Model

²¹ See <http://bronxdefenders.org/comm/index.html>.

²² Steinberg & Feige, *supra* note 5 at 128.

²³ *Id.* at 129.

²⁴ *Id.* at 130.

²⁵ *Id.* at 131.

²⁶ *Id.* at 132.

No one reasonably would dispute that holistic advocacy can enhance 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, the holistic model should remain a practice enhancement rather than become the institutional centerpiece to a public defender office. For, as a centerpiece, 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 has as its potential end-game a trial on the merits, regardless of how few cases actually end in trial; and (2) the criminal justice system pursues, and in fact emphasizes, many punitive, non-rehabilitative penological goals, such as deterrence, incapacitation and retribution.

Not to suggest that holistic public defender offices like the Bronx Defenders do not appreciate or prioritize trial work. On 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 to augment it.”²⁷ But, if a public defender office so elevates a social work and community-outreach practice institutionally that it becomes “the new litmus test for hiring” as well as promotions, the office risks professional imbalance. Its lawyers thus may prove unprepared for the core feature of a public defender’s practice: trial litigation on behalf of criminal defendants who commonly are unpopular, even in the communities from which they come.

Beyond these global limitations, several specific concerns about an institutional holistic advocacy model should be considered:

1. Practical concerns

Probably every public defender would choose a constant one-to-one ratio of lawyers, social workers, investigators and clients. But, reality dictates otherwise, as tight funding instead imposes constant institutional limitations. Moreover, public defender offices typically operate under contracts that include institutional efficiency requirements, such as a minimum number of cases handled each year. The practical consequences of the holistic advocacy model thus must be weighed carefully.

A public defender in New York City can carry 50-100 cases—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, pre-trial motions, investigations, plea negotiations, trial preparation, pre-trial hearings and trial itself. The lawyers

²⁷ *Id.* at 124.

additionally must staff day, night and weekend arraignment shifts where they are assigned new cases. As a result, public defender offices perform a constant juggling act to keep attorney caseloads at manageable levels. Yet, every extra social worker or investigator a holistic public defender office hires, or community-outreach program it funds, represents one less attorney, or at least one less *experienced* attorney, whom the office can afford to employ. These resource allocation decisions can impact clients significantly.

First, each lawyer who is not hired means that the 50-100 cases that this lawyer would have handled must be distributed amongst the other lawyers, increasing their caseloads substantially. Add to this increased caseload the time commitments of “holistic” extra-legal duties like community outreach, and the holistic advocacy model ironically may cause lawyers to have even less time for each client’s case, increasing the pressure to dispose of cases quickly.²⁸ This potential effect of institutionalizing the holistic advocacy model must be weighed against the fact that even holistic advocacy proponents estimate that only 10% of cases “require some ‘holistic work,’”²⁹ meaning that at least 90% still must be handled under a more traditional practice model.

Second, the office may face enhanced difficulty hiring and retaining experienced lawyers. A public defender office needs experienced non-management trial lawyers—those with at least 5-10 years of criminal trial experience—to ensure that the office properly can handle its most serious trial cases, to give the office professional legitimacy, and to serve as a constant resource to 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 experience. Experienced lawyers also may prove less willing to engage in community outreach and similar extra-legal activities without extra compensation, since they will have to be fulfilled outside of the already substantial time lawyers must devote to a trial practice.

But if, for instance, a holistic public defender office doubles its social work and investigator staff and hires non-trial legal staff—such as an immigration attorney—to support its holistic advocacy “teams,” yet decides that it must maintain a 30-trial lawyer staff to handle contractual caseload obligations, the office may prove unable to hire a sufficient number of highly experienced lawyers or retain its own lawyers as they become more experienced. Instead, clients risk being represented by high-turnover teams of enthusiastic and energetic but inadequately experienced lawyers working with a high ratio of non-lawyers. This office composition may do

²⁸ *Cf.* Rovella, *supra* note 3 (noting concern that “[w]ithout much time to investigate how solid a prosecution case is, an over-emphasis on holistic advocacy could lead defense lawyers to urge clients to plead guilty and enter a program rather than fight a weak case”).

²⁹ *Id.*

wonders to help clients achieve favorable “life outcomes,” but fall a little short on the “case outcomes” for which the office in fact is assigned to each client’s case.

2. Professional concerns

Reputation and client perceptions mean a lot to a public defender office: a judge or prosecutor’s willingness to take a lawyer’s contentions seriously and at face value, or a client’s trust that he or 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.

Criminal courts face a constant institutional pressure to resolve cases—fairly, of course, but also efficiently. A small percentage go to trial, and some are dismissed prior to trial for a variety of reasons. But most are resolved by plea bargain. In weighing potential plea offers, prosecutors and judges generally will focus on three central questions: “What allegedly happened here?”; “Can the prosecutor prove it?”; and “What do I know about this defendant?”

While holistic advocacy arms the lawyer well in arguing the third question by giving the judge and prosecutor more information than just a criminal complaint and a rap sheet, it largely ignores the first two questions. Yet, the judge and prosecutor still will be thinking about those first two questions, perhaps more so than question three if the answers to one and two are “bad things” and “yes.” In these cases, the first two questions can take full primacy. The less favorable the answer to question three for the client, moreover—such as a long criminal record for violent offenses, or a history of the same type of offense—the less interested the judge and prosecutor generally will be in learning about the “whole” client.

Thus, if a public defender office advances holistic-style advocacy to judges and prosecutors too often, the office runs two risks. First, judges and prosecutors may begin to perceive that the office institutionally shrinks from the tough task of trying cases. Regardless of whether this perception is correct, if it happens, the first two plea-bargaining questions are not debated effectively, much to clients’ detriment, because judges and prosecutors will not take lawyers’ trial positions 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 public defender office routinely submits “holistic” pre-pleading memoranda on behalf of persistent and predicate violent felony offenders—a not unknown occurrence—judges and prosecutors not only may think that the office’s lawyers do not want to try these cases or make difficult plea decisions, but they also may begin to disregard *all* pre-pleading memoranda from the office as submitted solely for naïve or trial-avoidance purposes. Not to intimate that a lawyer ever should shortchange one client to enhance plea bargaining credibility for another. But, an office also must remain careful not to press strategies indiscriminately and thus ineffectually in the name of establishing an

institutional advocacy model, to the detriment of those clients for whom that advocacy model could mean something significant.

Holistic advocacy at an institutional level also can weigh on client perceptions. A public defender's clients sit in the unique position of not having chosen their counsel, a reality of which many clients remain keenly aware. For better or worse, the representation model these clients see for defendants who can retain their own counsel usually is the "traditional" practice model: a single trial-focused lawyer handling the case from start to finish. The lawyer may work in a larger office with other lawyers and a staff who support the lawyer. And the lawyer may retain other professionals such as investigators or social workers to enhance the lawyer's presentations. But all decisions and guidance flow from the one lawyer, and that lawyer tends to proceed focused on one thing—the trial.

By contrast, in a holistic office organized by advocacy "teams," the client may not have the same lawyer at every stage of his or her case. The very nature of holistic team advocacy may necessitate compromises to vertical client representation. As noted previously, the client also may have a team of relatively inexperienced trial lawyers. The client further may see team lawyers with very high caseloads devoting institutional time and resources to extra-legal duties like community outreach, and thus having less time to meet with clients to prepare for trial. Clients consequently may have to seek advice more often from non-lawyer team members, such as social workers. While some clients deeply may appreciate the broad, individualized attention that their holistic advocacy team can provide, to others these teams institutionally may strike them as unpleasantly familiar: clinic-style legal services.

Perhaps the argument may be raised that even so, unlike many of the defendants who can afford to retain private counsel, a public defender's clients uniquely can benefit from holistic representation. Yet, this suggestion would condescend clients severely, and potentially convey the message: "You need special 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, public defenders must remain sensitive to the perceptions of clients who do not get to choose their own lawyers. Client focus groups or the like may offer a valuable forum for identifying and addressing such client concerns. Or, maybe a public defender office simply should ask itself: "If I, or a loved one, was charged with a crime, would I hire an office that institutionally devotes its time and resources to community outreach and client 'life outcomes' in addition to case outcomes, or would I hire a more 'traditional' office that focuses 100% on case outcomes?"

3. Ethical concerns

A public defender office that prioritizes a social work practice and community outreach also will face 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.”³⁰ Not the least of which is that an institutional social work and preventive lawyering practice creates the risk that lawyers will be expected to work collaboratively not just within their own office, but with the court system as a whole. As lawyers ask courts to address the “whole” client and focus on his or her “life outcomes,” lawyers may hamper their ability to take independent stands whenever a client’s legal interests conflict with the “whole” client’s best interests—such as when a client wants to challenge sanctions for failing to comply with a programs’ requirements, when a court-mandated program demands that the client discuss potentially incriminating conduct as part of a therapeutic plan, when a client is rearrested in violation of bail conditions or a plea agreement, or when a client simply says, “I don’t care about a program. I didn’t do it.”

This problem becomes particularly acute as the court system implements more specialized, “problem-solving” 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 they may expect the defense team to cooperate with their “holistic” game plan.³¹ Yet, a rather un-holistic result usually still awaits clients who fail to stick with the game plan themselves: jail. Few if any clients think holistically when that time comes. Lawyers thus need to maintain their adversarial independence for those moments when the criminal justice system returns to its *own* traditional model, and institutionalized “life outcome” management and preventive lawyering may compromise that independence.

Even social workers within a public defender’s own office have a distinct ethical mission from the lawyers themselves: “The primary mission of the social work profession is to enhance human well-being and help meet the basic human needs of all people ... Social workers promote social justice and social change with and on behalf of clients.”³²

This is a laudable and truly holistic mission, and one that commonly overlaps with the goals of a public defender. But, it is not a mission that proves coterminous with the “zealous advocacy” of “single-minded counsel for the accused.”³³ The

³⁰ Rovella, *supra* note 3.

³¹ See Tom Perrotta, *As Specialized Courts Come of Age, Experts Extol Benefits but See Pitfalls*, N.Y. L.J. 03/16/2005, at p.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”).

³² *Code of Ethics of the National Association of Social Workers*, Preamble (1999) (available at <http://www.naswdc.org/pubs/code/code.asp>); see also *id.*, Ethical Std. 6.01 (“Social workers should promote the general welfare of society”). Indeed, this 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.”

³³ *People v. Rosario*, 9 N.Y.2d 286, 290 (1961).

distinction accurately can be viewed as one between client “life outcomes” and “case outcomes.”³⁴ This difference in ethical responsibility between social worker and lawyer is illustrated in the law, as social workers are designated mandatory reporters of child abuse,³⁵ whereas public defenders are not. Circumstances that subject social workers to mandatory reporting requirements include not only signs of physical abuse or neglect,³⁶ but also indications of household drug use.³⁷

Consequently, social workers with a broad and autonomous institutional mandate to inject themselves into clients’ lives can expose the office to conflicts of interest and confidentiality conundrums. Clients meeting with social workers who share an apparently co-equal role with the lawyers, moreover, easily can misperceive the relevance of a social worker’s “life outcome” advice to the “case outcome” for which the office represents the client, and problems commonly develop when a social worker’s advice and priorities conflict with the lawyer’s. Although the office can establish a policy that when such a conflict arises the lawyer makes the final call, the danger exists that clients may default to the strategy that sounds the least punitive, which generally will be the social worker’s. This advice, while important, may not always constitute the best advice for resolving a criminal case.

Institutionalized community outreach also can generate ethical concerns.³⁸ 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 regarded as the misguided child of a sympathetic and understanding community; sometimes the client is viewed as a community predator or blight, fairly or not. The client’s own community thus may offer the loudest voice seeking punishment, not rehabilitation.³⁹

A public defender office that engages itself too deeply in the community at an institutional level hazards splitting its loyalties when the very community it supports wants its client to go to jail. For instance, a public defender office that actively involves itself in local schools may be assigned to represent an alleged child molester

³⁴ *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”).

³⁵ See SOC. SERV. L. §§ 413(1) & 415.

³⁶ See FAM. CT. ACT § 1046(a)(ii).

³⁷ See *id.* at § 1046(a)(iii).

³⁸ This discussion focuses solely 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 create the same issues.

³⁹ 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.

from that very community. 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. At the least, it 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.

The need for caution is amplified when a public defender office seeks supplemental funding from the community.⁴⁰ A public defender office's unique charge requires the utmost in independence. If the office nevertheless obtains funding from local corporations, community groups or other private sources, the office cannot help but become reliant on that income. If a funding source backs out, though, when the office represents a particularly vilified client, the next time such a difficult case comes down the pike, the office may think twice before taking the case or handling it the same way for fear of losing other funders. Again, at the least, it may create the perception of divided interests.

C. 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.⁴¹ These consequences can prove very serious for some clients,⁴² and it is terribly important for a public defender to know as much about them as possible in advising a client about the best course to take.

A holistic approach to advocacy can help, as it opens the lawyer to a mindset of learning more about the client individually. The lawyer thus can offer more “contextualized” representation that enables the client to make more informed decisions.⁴³ This “holistic” component to the attorney-client relationship nevertheless remains only an enhancement to the lawyer's broader, more traditional practice: it ensures that the client understands, anticipates and hopefully can minimize the collateral consequences of the core decision controlling his or her case outcome—whether to accept a plea or proceed to trial—which, as a general rule, must be made regardless of any collateral consequences.

⁴⁰ See e.g., <http://bronxdefenders.org/reso/004.html>.

⁴¹ See Pinard, *supra* note 1 at 1073-77 (listing and explaining various collateral consequences at result from felony and misdemeanor convictions).

⁴² See e.g., Chris Hedges, *Condemned Again for Old Crimes; Deportation Law Descends Sternly, and Often by Surprise*, N.Y. TIMES, August 30, 2000, at B1 (discussing various examples of harsh immigration consequences due to criminal convictions).

⁴³ Cf. Pinard, *supra* note 1 at 1081.

Of course, in some cases, a significant collateral consequence may, and should, control the client's decision about whether to accept a plea or proceed to trial, particularly in minor cases carrying a minimal risk of post-trial incarceration. And, a well-informed lawyer sometimes can fine tune plea bargaining to minimize the risk of collateral consequences by persuading the prosecutor or judge that a potential collateral consequence is both certain to occur and unfairly harsh. For instance, in a misdemeanor plea agreement with a non-citizen client, the lawyer may convince the prosecutor and judge to agree to a plea charge that will not qualify as a mandatory deportable offense. The lawyer also may suggest a "conditional" plea, where the client is permitted to withdraw the plea if the undesirable collateral consequence comes to pass. In a felony plea, the lawyer may convince the sentencing judge to issue a Certificate of Relief from Civil Disabilities,⁴⁴ which can spare the client from numerous collateral consequences.

More commonly, however, prosecutors and judges view collateral consequences as exactly that—something collateral to a criminal prosecution. Many view these consequences as hit-or-miss in application anyway, such as when they view the rap sheet of a non-citizen defendant who somehow has been convicted of three drug felonies without being deported. And, to the extent that prosecutors and judges will consider collateral consequences in weighing plea bargains, many view such consequences as the entirely appropriate product of criminal conduct rather than a factor in mitigation. State and federal legislatures, it is thought, adopted these rules for good reason. Rare, therefore, is the case where a prosecutor changes a felony plea offer to a misdemeanor, for example, or a misdemeanor to a non-criminal disposition, *solely* because the client may be deported or may lose his or her housing.

Accordingly, the *direct* consequences of the choice between trial and plea bargain—jail versus no jail; substantial jail versus a more limited term; a felony conviction versus a misdemeanor conviction; a criminal conviction versus a non-criminal disposition—generally should weigh so heavily on the client's decision-making that to overemphasize collateral considerations disserves the client. Particularly in a strong prosecution case, the client accomplishes nothing by rejecting an otherwise reasonable plea bargain to avoid a collateral consequence except ensure that he or she will face harsher direct consequences after trial. This decision-making model may not emphasize the "whole" client at the time the decision is made, but it may best protect the whole client in achieving a case outcome.

D. Conclusion

Holistic advocacy offers clients many benefits in appropriate cases. Yet, the resistance to the holistic model that is identified among some lawyers may be well placed when holistic advocacy is pressed as an institutional centerpiece. Public

⁴⁴ See CORR. LAW § 701, *et seq.*

defender offices need to retain a trial practice as their institutional advocacy paradigm, and reflect it in their hiring, training and office advancement. If holistic advocacy, however, is advanced as something to compliment a public defender's trial practice but not overtake it, the office's lawyers can benefit from its many virtues while avoiding 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.