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Cover Page Footnote
Assistant Professor, University of Maryland School of Law. My thanks to Richard Boldt, Carla Cartwright, Randy Hertz, Sherrilyn Ifill, Michael Milleman, Leonard Noisette, and McGregor Smythe, all of whom generously read and provided invaluable critiques od various drafts.

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BROADENING THE HOLISTIC MINDSET: INCORPORATING COLLATERAL CONSEQUENCES AND REENTRY INTO CRIMINAL DEFENSE LAWYERING

*Michael Pinard**

INTRODUCTION

Over the past two decades, public defender offices across the country have broadened the range of defense services provided to indigent clients. These expanded services, some of which involve representing clients on related non-criminal matters such as housing and public benefits, are included in what is now commonly referred to as "holistic representation."[1] This form of representation strives to encompass the various underlying issues that often lead to clients' experiences with the criminal justice system, with the aim of addressing those circumstances and preventing future criminal involvement.[2]

The past several years have witnessed many ways in which defender organizations, utilizing a holistic mindset, have reconceptualized their roles. For instance, the community defender movement, which has led to certain defender offices establishing concrete ties with their relevant communities,[3] has radicalized both the ways in which defender organizations perceive those communi-

* Assistant Professor, University of Maryland School of Law. My thanks to Richard Boldt, Carla Cartwright, Randy Hertz, Sherrilyn Ifill, Michael Milleman, Leonard Noisette, and McGregor Smythe, all of whom generously read and provided invaluable critiques of various drafts.

1. *See, e.g.*, Terry Brooks & Shubhangi Deoras, *New Frontiers in Public Defense*, CRIM. JUST., Spring 2002, at 51.

2. *See* Erik Luna, *The Practice of Restorative Justice: Punishment Theory, Holism and the Procedural Conception of Restorative Justice*, 2003 UTAH L. REV. 205, 283 (2003) (holistic representation "suggests that legal practitioners should be client-centered in their approach, viewing their responsibilities as not just solving issues of law but also helping address the various problems (both legal and non-legal) that have contributed to their client's troubles.").

3. *See* Kim Taylor-Thompson, *Tuning Up Gideon's Trumpet*, 71 FORDHAM L. REV. 1461, 1509 (2003) [hereinafter Taylor-Thompson, *Gideon's Trumpet*] (asserting that quality representation cannot be achieved "without a working familiarity with the concerns of the communities in which defender officers operate and from which their clients come.").

ties[4] as well as the level of services those offices employ on behalf of their clients.[5]

While defender offices have viewed these expanded services as new and improved ways to represent clients, in fact holistic—or "whole client"—representation signals a paradigmatic shift in defense philosophy and ideology. It marks a significant departure from the traditional defense role, which focused narrowly on the criminal case and left unaddressed the related convergent issues.[6] Accordingly, the holistic approach has transformed criminal defense practice by broadening the conception of what defense lawyers actually do.[7]

Viewing holistic representation, however, as a paradigmatic shift that has transformed criminal defense lawyering, rather than as an organically progressive extension of traditional defense services, reveals that much more is needed to truly fulfill its various mandates. The holistic mindset is an ever-searching one; it critiques the traditional and contemporary practice methods, searches for improved delivery of defense services and constantly presses for role reformation.

This essay will explore this conception of holistic representation by looking at two facets of our criminal justice system—collateral consequences of criminal convictions and ex-offender reentry[8]—

4. *See* Kim Taylor-Thompson, *Individual Actor vs. Institutional Player: Alternating Visions of the Public Defender*, 84 GEO. L.J. 2419, 2458 (1996) (noting that "public defender offices traditionally have ignored" community relationships and "in contrast, the community defender office sees its clients as individuals with ties to the community, who should be understood in the context of that community, and thereby rejects a wholly individualized conception of its role.").

5. *See* Anthony V. Alfieri, *Retrying Race*, 101 MICH. L. REV. 1141, 1146 n.10 (2003) (observing the community defender movement to have fostered holistic, multidisciplinary approaches to defense representation); Kirsten D. Levingston, *Indigent Defense*, CHAMPION, Sept.-Oct. 2002, at 34, 35 (describing the link between community defense and holistic representation by observing that attorneys often rely on "community contacts" to address a client's non-criminal needs, such as housing, employment and child custody issues).

6. *See, e.g.*, Robin Steinberg & David Feige, *Cultural Revolution: Transforming the Public Defender's Office*, 29 N.Y.U. REV. L. & SOC. CHANGE 123, 124 (2004) (noting that "[t]raditional defenders address themselves primarily to the client's immediate legal needs, believing that removing or reducing the imminent threat of incarceration is their function.").

7. *See* Adele Bernhard, *Take Courage: What the Courts Can Do to Improve the Delivery of Criminal Defense Services*, 63 U. PITT. L. REV. 293, 302 (2002) (noting that as a result of the holistic approach, defense attorneys view their roles differently today than did their predecessors two decades ago).

8. I fully acknowledge the growing debate surrounding the term "ex-offender." I appreciate deeply the sentiment expressed by some that this is a negative label. *See* E-mail from Eddie Ellis, National Co-Chair, NuLeadership Policy Group (Apr. 23,

that have very recently begun to receive critical attention but which are not part of the traditional defense role. As set forth below, collateral consequences are considered to be the indirect, rather than direct, consequences that flow from a criminal conviction. They include numerous disabilities that are either tied to particular criminal convictions or attach to convictions in general. Some of these consequences relate to housing, public benefits, various forms of employment, and deportation. Reentry pertains to the process by which an ex-offender who has completed the non-community based portion of her sentence, such as incarceration in a jail, prison or juvenile facility, returns to her community.

Using a holistic mindset, this essay offers broader perspectives of collateral consequences and reentry in two ways. First, it addresses the need for criminal defense attorneys to incorporate both collateral consequences and reentry components into their practices. These components have been largely ignored in the defense context, mainly because the traditional narrow defense role focuses on the direct legal aspects of the criminal case and does not consider the ways in which other issues, long perceived as tangential, directly impact clients' lives, the communities from which they come and to which they return, and their abilities to move onto more productive life experiences. While the holistic lawyering movement has greatly widened the defense role by considering the clients' social and broader legal needs, the holistic mindset has yet to generally embrace these collateral consequences and reentry components.

Second, this essay addresses the need to incorporate these components into both felony and misdemeanor practices,[9] as well into

2004) (on file with the author). I fully agree that sensitizing those who advocate for and write about communities (both collective and individual) to the various negative and dehumanizing labels is mandatory. After agonizing over this issue in this context, however, I decided to keep this term in this essay for purposes of cogency and consistency. This is an issue that merits discussion and this will be the subject of considerable dialogue in the immediate future. Indeed, many of the terms in this arena have been debated—for instance, "reintegration" versus "reentry," and "ex-felon" versus "ex-offender"—and I anticipate that terms will continue to change to reflect the way in which "formerly incarcerated persons" and "persons with criminal records" (terms used with increasing frequency as well) view themselves and the complex ways that race, class, and public policy choices punish those with criminal records.

9. As with other discussions about the criminal justice system, the recent focus on collateral consequences and reentry has mainly involved felony convictions. For instance, there has been vast media coverage of felon disenfranchisement laws. *See, e.g.*, Maya Bell, *Ex-Cons Struggle to Regain Rights: For Felons Who Have Done the Time for Their Crimes, Recovering their Civil Rights Can Be a Long, Tough Haul*, ORLANDO SENTINEL TRIB., Mar. 12, 2001, at A1; Gregory Lewis, *The Right to be Angry:*

both community-based sentences, such as probation, and non-community based sentences, such as incarceration. These components are especially significant in misdemeanor cases because they comprise the majority of cases in the criminal justice system. Moreover, these cases overwhelming result in guilty pleas,[10] particularly at the very beginning stages of the criminal process.

Part I of this essay sets forth the tenets of the holistic model. Part II provides an overview of various issues pertaining to collateral consequences and reentry, explains the extent to which courts and institutional actors consider these two facets to stand apart from the criminal process, and discusses the need to expand the holistic mindset to incorporate these components into criminal defense lawyering. Part III addresses some possible barriers and objections to incorporating these components, and offers some possible solutions that could facilitate the ability of defender organizations to integrate these components into the holistic model, either formally by developing specialized units or collaborating with partner organizations, or informally by referring reentry related civil matters to outside organizations.

Though Their Prison Sentences are Behind Them, Florida is Slow to Reinstate Former Felons' Voting Rights, SUN SENTINEL (Ft. Lauderdale), Sept. 29, 2002, at 1A; Alexandra Marks, *Fairness and Felons: A Push to Enfranchise Prisoners*, CHRISTIAN SCI. MONITOR, Sept. 25, 2003, at 2; Mary Mitchell, *Hard-won Voting Rights Threatened by Prison,* CHI. SUN TIMES, Mar. 14, 2002, at 18. There has also been, to a lesser extent, considerable media focus on the inability of those convicted of felony drug offenses to receive certain public benefits. *See, e.g.*, Fox Butterfield, *Freed from Prison, but Still Paying a Penalty*, N.Y. TIMES, Dec. 29, 2002, at 18; Herman Schwartz, *Losing Food Stamps is Now Part of the War on Drugs*, BALT. SUN, Jun. 15, 1999, at 21A; Shannon Tan, *Unexpected Penalties Can Fetter Felons for Life; Sanctions May Restrict Jobs, Welfare, Housing*, INDIANAPOLIS STAR, Jan. 20, 2003, at 1A; Cheryl W. Thompson, *Seeking a Welfare Rule's Repeal; Report Says Ban on Aid to Drug Users 'Devastates' Children*, WASH. POST, Mar. 1, 2002, at A09. Likewise, policies and discussions pertaining to reentry have focused on the increased prison population as well as the longer prisons sentences imposed on those convicted of felony offenses, particularly because the reentry obstacles increase exponentially the longer a person is incarcerated. *See, e.g.*, BUREAU OF JUSTICE STATISTICS, U.S. DEP'T. OF JUSTICE, REENTRY TRENDS IN THE U.S. (2003) (reporting that from 1990 to 2002, the state prison population nearly doubled from 708,393 to 1,277,127 and that approximately ninety-five percent of these inmates will ultimately be released), *available at* http://www.ojp.usdoj.gov/bjs/reentry/growth.htm (last modified Aug. 20, 2003).

10. *See, e.g.*, LAWRENCE HERMAN, THE RIGHT TO COUNSEL IN MISDEMEANOR COURT 13 (1973) (noting that most misdemeanor cases result in guilty pleas); Andrew Horwitz, *Taking the Cop Out of Copping a Plea: Eradicating Police Prosecution of Criminal Cases*, 40 ARIZ. L. REV. 1305, 1321 (1998) (observing that "[t]he vast majority of criminal cases, particularly misdemeanors, are resolved by some form of negotiated plea").

I. ENVISIONING CRIMINAL DEFENSE SERVICES: THE IMPORTANCE OF A HOLISTIC MINDSET

Several commentators have written about the need for public defender organizations and other indigent defense practitioners to provide holistic or "whole client" services to their clients, and have praised particular organizations for broadening the defense perspective by incorporating holistic practices.[11] In contrast to the traditional defense ideology, which espouses a narrow conception of representation by focusing squarely on the particular criminal case and the clients' immediate legal issues,[12] the holistic mindset recasts the defense role by considering the social, psychological and socioeconomic factors that often underlay such cases.[13] This mindset recognizes that clients often enter the criminal justice system with multiple convergent issues. As a result, the holistic mindset seeks to recognize and address the cadre of issues, with the aim of providing a comprehensive solution to the underlying factors that led to the client's involvement with the criminal justice system.[14]

The holistic approach sets in at the very beginning of a criminal case.[15] Early intervention usually entails an immediate outpouring of investigative resources directed at the integral actors in the particular case, most importantly witnesses. It also involves, however, contacting people who are not necessarily factually relevant to the particular incident for which the defendant is charged, but who are critical to other aspects of the case, such as the defendant's back-

11. *See, e.g.*, Bruce J. Winick, *Redefining the Role of the Criminal Defense Lawyer at Plea Bargaining and Sentencing: A Therapeutic Jurisprudence/Preventative Law Model*, 5 PSYCHOL. PUB. POL'Y & L. 1034, 1039-42 (1999) (setting forth a "therapeutic jurisprudence-preventative law model" of representation that recognizes and values the psychological and emotional well-being of clients, and that seeks to prevent future legal entanglements).

12. *See* Steinberg & Feige, *supra* note 6.

13. *See, e.g.*, Brooks & Deoras, *supra* note 1 (defining holistic representation as "advocacy that aims to address the underlying problems in . . . clients' lives that may lead to repeat involvement in the criminal justice system.").

14. *See, e.g.*, Patricia Puritz & Wendy Shang, *Juvenile Indigent Defense: Crisis and Solutions*, CRIM. JUST., Spring 2000, at 22, 25 (describing one joint partnership in which public defenders refer clients to a civil legal aid organization to address underlying issues, including housing, mental health and school expulsion).

15. In some instances it begins even before the client is arrested. For instance, the Neighborhood Defender Service of Harlem, a community defender office that services clients from Upper Manhattan, provides pre-arrest services that include voluntary surrenders and appearing with clients at investigatory lineups. Telephone Interview with Leonard E. Noisette, Executive Director, The Neighorhood Defender Service of Harlem (Dec. 18, 2003).

ground and case disposition. These people could include parents, children, doctors, church members, school teachers, social workers, co-workers, and neighbors. Accordingly the holistic mindset envisions every contingency and seeks to find creative ways to best resolve the myriad issues that contributed to the client's entanglement in the criminal justice system.[16]

The holistic mindset also recognizes the relevance of clients' communities in this process. Several defender organizations, particularly those that are situated squarely in client communities and neighborhoods, have implemented innovative programs and services that utilize their communities as part of a collective enterprise that seeks alternative criminal justice approaches.[17] On 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.[18] Accordingly, these defender offices are part of a network of community resources available to address clients' multiple legal and social issues.

While the holistic mindset has been lauded for broadening perspectives and greatly enriching the provision of defense services, it has largely overlooked two facets of representation that are critical to the adequate provision of both direct criminal defense services and to indirect quasi-criminal defense services: collateral consequences of criminal convictions and ex-offender reentry. While these are technically independent components, in many ways they are intertwined as the nature and extent of collateral consequences stemming from a particular conviction often influences directly the

16. For purposes of this discussion, the holistic mindset assumes that the client was in some way involved in the activity that led to the criminal charge, and holistic representation seeks to effect strategies to prevent future problems. Of course, any form of criminal defense lawyering must consider the client's possible factual innocence.

17. *See* Cait Clarke, *Problem-Solving Defenders in the Community: Expanding the Conceptual and Institutional Boundaries of Providing Counsel to the Poor*, 14 GEO. J. LEGAL ETHICS 401, 445-53 (2001) [hereinafter Clarke, *Problem-Solving*] (providing detailed descriptions of some of these organizations).

18. For instance the Bronx Defenders, a community public defender office that opened in 1997, collaborates with community based organizations and local high schools on diverse activities ranging from organizing street fairs to teaching debate skills to high school students. *Community Outreach*, Bronx Defenders, *at* http://www.bronxdefenders.org/co mm/index.cfm# (last visited Apr. 5, 2004). Another example is the "Raising Voices" series put together by the Brennan Center for Justice's Community Justice Institute, which is "aimed at those seeking to make the criminal justice system more responsive to the needs of low-income communities and communities of color." CMTY. JUST. INST., BRENNAN CTR. FOR JUSTICE, RAISING VOICES: TAKING PUBLIC DEFENSE TO THE STREETS 1-3 (Mar. 2002), *available at* http://www.brennancenter.org/resources/cji/cji1.pdf (last visited Apr. 5, 2004).

ex-offender's ability to reenter her community productively.[19] Accordingly, the holistic perspective needs to expand to embrace these particular issues that have long been stitched into the criminal justice system's fabric, but which have become even more pressing in light of recent legislative developments and current case processing and incarceration trends.

II. EXPANDING THE REPRESENTATION AND THE SERVICES: THE CRITICAL NEED TO INCORPORATE COLLATERAL CONSEQUENCES AND REENTRY PERSPECTIVES INTO THE HOLISTIC MINDSET

A. Collateral Consequences

Relatively recently, a burgeoning chorus of advocates,[20] policy analysts, and commentators has called attention to the various collateral consequences that attend criminal convictions. Such consequences exist at the federal[21] and state[22] levels, and are considered to be the indirect, rather than direct, consequences that flow from a criminal conviction.[23] While direct consequences include the length of the jail or prison sentence the defendant receives as well as, in some jurisdictions, the defendant's parole eligibility[24] or im-

19. *See, e.g.*, Nora V. Demleitner, *"Collateral Damage": No Re-entry for Drug Offenders*, 47 VILL. L. REV. 1027, 1034 (2002) [hereinafter Demleitner, *Collateral Damage*] (noting "[t]he civil sanctions most devastating to offenders are those that deprive them of the ability to reintegrate successfully."); Webb Hubbell, *The Mark of Cain*, CRIM. JUST., Fall 2001, at 33 (providing a personal narrative describing how collateral consequences impact various life activities upon reentry); Jeremy Travis et al., *Prisoner Reentry: Issues for Practice and Policy*, CRIM. JUST., Spring 2002, at 16-17 [hereinafter Travis et al., *Prisoner Reentry*] (noting the relationship between collateral consequences and ex-offender reentry).

20. For a prosecutor's perspective on collateral consequences, see Robert M.A. Johnson, *Collateral Consequences*, CRIM. JUST., Fall 2001, at 32. For a defense attorney's perspective, see Robert G. Morvillo, *Consequences of Conviction*, N.Y. L.J., Dec. 7, 1999, at 3.

21. For an overview of these consequences, see OFFICE OF THE PARDON ATTORNEY, U.S. DEP'T OF JUSTICE, FEDERAL STATUTES IMPOSING COLLATERAL CONSEQUENCES UPON CONVICTION, *available at* http://www.usdoj.gov/pardon/collateral_consequences.pdf (last visited Apr. 5, 2004).

22. For an overview of the various state-level collateral consequences, see OFFICE OF THE PARDON ATTORNEY, U.S. DEP'T. OF JUSTICE, CIVIL DISABILITIES OF CONVICTED FELONS: A STATE-BY-STATE SURVEY (1996), *available at* http://www.usdoj.gov/pardon/for ms/state_survey.pdf.

23. *See, e.g.*, State v. Byrge, 614 N.W.2d 477, 494 (Wis. 2000) ("collateral consequences are indirect and do not flow from the conviction").

24. *See, e.g.*, United States. v. Yazbeck, 524 F.2d 641, 643 (1st Cir. 1975) (mandatory special parole term is direct consequence of guilty plea); Michel v. United States, 507 F.2d 461, 463 (2d Cir. 1974) (defendant must be informed and advised of special parole term that automatically attaches to sentence of imprisonment); Durant

position of fines,[25] collateral consequences encompass a wide array of sanctions—termed civil disabilities—that attach to, but are legally separate from, the criminal sentence. Some of these consequences are imposed automatically by operation of law, while others are imposed at the discretion of agencies detached from the criminal justice system.[26] Although such sanctions are too numerous to detail here,[27] some of the most prominent include permanent or temporary ineligibility for federal welfare benefits,[28] educational grants,[29] public housing,[30] voting,[31] handgun licenses

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v. United States, 410 F.2d 689, 693 (1st Cir. 1969) (ineligibility for parole is a direct consequence of guilty plea); *In re* Moser, 862 P.2d 723, 729 (Cal. 1993) (trial court is obligated to advise defendant of direct mandatory parole consequences of a guilty plea); Young v. People, 30 P.3d 202, 207 (Colo. 2001) (defendant entitled to advisement of mandatory parole consequences); People v. Melio, 304 A.D.2d 247, 250 (N.Y. App. Div. 2003) (mandatory parole is a direct consequence of guilty plea).

25. *See, e.g.*, Duke v. Cockrell, 292 F.3d 414, 417 (5th Cir. 2002) (imposition of fine is a direct consequence); Parry v. Rosemeyer, 64 F.3d 110, 114 (3d Cir. 1995) (a "fine for the offense charged" constitutes a direct consequence (internal citations omitted)); People v. Walker, 819 P.2d 861, 866 (Cal. 1991) (minimum and maximum restitution fine are direct consequences); People v. Marez, 39 P.3d 1190, 1192-93 (Colo. 2002) (fine constitutes direct consequence); Johnson v. State, 654 N.W.2d 126, 135 (Minn. App. 2002), *rev'd on other grounds*, 673 N.W.2d 144 (Minn. 2004) (amount of "any fine" constitutes a direct consequence).

26. *See* ABA CRIM. JUST. STANDARDS ON COLLATERAL SANCTIONS AND DISCRETIONARY DISQUALIFICATION OF CONVICTED PERSONS, STD. 19-1.1(a)-(b) (2003) [hereinafter ABA STANDARDS ON COLLATERAL SANCTIONS] (distinguishing between a collateral sanction, which is imposed "automatically upon [a] person's conviction," and a discretionary disqualification, which is a "penalty, disability or disadvantage . . . that a civil court, administrative agency, or official is authorized but not required to impose on a person convicted of an offense . . . ."); Glen Edward Murray, *Civil Consequences of Criminal Conduct*, N.Y.S.B.J., Nov. 1991, at 28 (noting that the various collateral consequences are either imposed automatically or are discretionary); Ethan Venner Torrey, *"The Dignity of Crimes": Judicial Removal of Aliens and the Civil-Criminal Distinction*, 32 COLUM. J.L. & SOC. PROBS. 187, 197 (1999) (noting that a collateral consequence is one that is imposed by an "agent independent of the court").

27. For a fuller description of the various collateral consequences, see *supra* notes 21 and 22 and accompanying text.

28. 21 U.S.C. § 862a (2004) (denying benefits and assistance for certain drug-related convictions).

29. 20 U.S.C. § 1091(r)(1) (2004). This statute sets forth sets forth escalated periods of ineligibility depending on number of convictions, and whether the conviction involved possession or sale of a controlled substance. *Id.* The statute also restores eligibility before the end of the ineligibility period if the person completes a prescribed rehabilitation program. *Id.* § (r)(2)(A), or if the conviction has been set aside or reversed. *Id.* § (r)(2)(B).

30. *See, e.g.*, 42 U.S.C. § 13661(a) (2004) ("any tenant evicted from federally assisted housing by reason of drug-related criminal activity . . . shall not be eligible for federally assisted housing during the 3-year period beginning on the date of such eviction, unless the evicted tenant successfully completes a rehabilitation program ap-

and military service;[32] prohibitions from various forms of employment as well as employment-related licensing;[33] and, for non-citizens, deportation.[34]

While collateral consequences have historically attended criminal convictions,[35] the last two decades have witnessed their dra-

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proved by the public housing agency"); 42 U.S.C. § 1437f(d)(1)(B)(iii) (2004), noting that:

> [A]ny criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other tenants, any criminal activity that threatens the health, safety, or right to peaceful enjoyment of their residences by persons residing in the immediate vicinity of the premises, or any drug-related criminal activity on or near such premises, engaged in by a tenant of any unit, any member of the tenant's household, or any guest or other person under the tenant's control, shall be cause for termination of tenancy.

See also Gwen Rubinstein & Debbie Mukamal, *Welfare and Housing—Denial of Benefits to Drug Offenders*, *in* INVISIBLE PUNISHMENT 37, 43-46 (Marc Mauer & Meda Chesney-Lind eds., 2002) (providing an overview of federal housing laws that render those with criminal histories ineligible for public housing). Local housing authorities have the discretion to implement their own policies regarding ex-offenders, and some of these agencies have broadened the category of excludable offenses. *See, e.g.*, Laura Vozzella, *City Seeks to Change Housing Policy; HUD Needs to OK Rule Allowing Ex-convicts to Live in Public Units*, BALT. SUN, Nov. 17, 2003, at 1B (reporting plan by Baltimore City Housing Authority to change its guidelines from routinely barring those with criminal records from public housing to restoring eligibility after a three year waiting period to those convicted of felony offenses, and after an eighteen month waiting period to those convicted of misdemeanor offenses).

31. Voting restrictions are matters of state law. Currently, forty-eight states and the District of Columbia prohibit prisoners from voting. *Felony Disenfranchisement Laws in the United States*, SENTENCING PROJECT (Mar. 2004), *available at* http://www.sentenci ngproject.org/pdfs/1046.pdf. Thirty-three states disenfranchise felons who are on parole or probation. *Id.* In seven states a felony conviction will result in lifetime disenfranchisement, while in seven other states certain categories of ex-felons are disenfranchised and/or they are allowed to apply to restore their rights after a specified waiting period. *Id.*

32. 10 U.S.C. § 504 (2004).

33. *See, e.g.*, HOMELESS PERSONS REPRESENTATION PROJECT, EX-OFFENDERS AND EMPLOYMENT: A REVIEW OF MARYLAND'S PUBLIC POLICY AND A LOOK AT OTHER STATUTES (2002) (providing an overview of Maryland's statutory restrictions pertaining to ex-offender employment and comparing those restrictions with those set forth in some other states, including New York, Pennsylvania, and Wisconsin), *available at* http://www.altrue.net/alt ruesite/files/hprp/publications/abell%20final.pdf; *see also* Nora V. Demleitner, *Preventing Internal Exile: The Need for Restrictions on Collateral Sentencing Consequences*, 11 STAN. L. & POL'Y REV. 153, 156 (1999) [hereinafter Demleitner, *Internal Exile*] (noting that professional licenses for which ex-offenders can be ineligible "range from lawyer to bartender, from nurse to barber, from plumber to beautician"); Clyde Haberman, *Ex-inmate Denied Chair (and Clippers)*, N.Y. TIMES, Feb. 25, 2003, at B1 (describing how criminal history can result in denial of barbers' license in New York).

34. 8 U.S.C. § 1227(a) (2004).

35. For a description of the history of collateral consequences, from the "civil death" imposed in continental European countries through the various reform movements of the 1950s, 1960s, and 1970s, to the upward surge of collateral consequences

matic expansion.[36] Much of this growth is directly linked to the "tough on crime" and "war on drugs" movements. As one scholar observes, drug offenses "are subjected to more and harsher collateral consequences than any other category of crime."[37] Indeed, those convicted of drug offenses face a collection of collateral consequences under federal and state law that impact all aspects of their lives, as they are ineligible to receive certain federal welfare benefits,[38] are disqualified from federal educational programs,[39] and are prohibited from securing employment in various industries.[40]

Much of the literature describing and debating these various consequences has focused primarily on felony convictions.[41] In fact, on a much broader level, neither the lawyering methodologies nor the overall provision of defense services in the misdemeanor context, as compared to the felony context,[42] has been vigorously ana-

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in the late 1980s and 1990s, see Demleitner, *Internal Exile*, *supra* note 33, at 155. *See also* Note, *The Need for Coram Nobis in the Federal Courts*, 59 YALE L.J. 786, 786-87 (1950) (observing in 1950 that ex-offenders may be ineligible for naturalization, military service and certain civil rights including voting and holding public office).

36. *See* JOAN PETERSILIA, WHEN PRISONERS COME HOME 136 (2003) ("What is new is that these invisible punishments and legal restrictions are growing in number and kind, being applied to a larger percentage of the U.S. population and for longer periods of time than at any point in U.S. history."); Travis et al., *Prisoner Reentry*, *supra* note 19, at 17 (providing examples of how Congress and state legislatures have expanded the number and scope of collateral consequences over the last twenty years); *see also* Skok v. State, 760 A.2d 647, 660 (Md. 2000) (observing that "serious collateral consequences of criminal convictions have become much more frequent in recent years.").

37. Gabriel J. Chin, *Race, The War on Drugs, and The Collateral Consequences of Criminal Conviction*, 6 J. GENDER RACE & JUST. 253, 259 (2002); *see also* Demleitner, *Collateral Damage*, *supra* note 19, at 1033 (observing that those convicted of drug offenses "suffer from [collateral consequences] disproportionately because many . . . consequences target them specifically").

38. 21 U.S.C. § 862a (1)-(2) (2004) (individuals convicted under federal or state law "of any offense which is classified as a felony by the law of the jurisdiction involved and which has as an element the possession, use, or distribution of a controlled substance . . . shall not be eligible" for cash assistance under the Temporary Assistance to Needy Family program or food stamps). States can elect to completely opt out of these prohibitions, *Id.* § (d)(1)(A), or to limit ineligibility to a certain time period. *Id.* § (d)(1)(B). Approximately forty-two states fully or partly enforce the ban. PATRICIA ALLARD, SENTENCING PROJECT, LIFE SENTENCES: DENYING WELFARE BENEFITS TO WOMEN CONVICTED OF DRUG OFFENSES 1 (2002), *available at* http://www.sentencingproject.org/pdfs/9088.pdf.

39. *See supra* note 29 and accompanying text.

40. *See supra* note 33 and accompanying text.

41. *See supra* note 9 and accompanying text.

42. Chief Administrative Judge Juanita Bing Newton, Remarks at Working Conference, *New York City Criminal Courts: Are We Achieving Justice?* (Oct. 18, 2003) (commending the working conference for focusing on issues pertinent to misde-

lyzed and critiqued.[43] This relative lack of recognition stems largely from the fact that misdemeanors are considered to be the least serious cases in the criminal justice system. As a result, resource-deprived defender organizations focus their limited time and energy on the more serious cases.[44]

Several collateral consequences, however, also attach to misdemeanor convictions. For instance, the federal law declaring those convicted of drug offenses ineligible for educational loans makes no distinctions between felony and misdemeanor convictions.[45] In addition, misdemeanor convictions can render defendants ineligible for several employment related licenses.[46] Perhaps most critically, for non-citizen defendants certain misdemeanor convictions constitute "aggravated felonies" under federal law.[47] As a result,

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meanor practice, observing that most of the critical attention centers on felonies or death penalty issues).

43. The debates surrounding this aspect of the criminal justice system have largely been confined to criminalization policies and the implementation of zero tolerance policies that have focused on quality of life offenses and lower-level misdemeanors. Commentators note that such policies have led to increased misdemeanor arrests and higher incarceration rates. *See, e.g.*, DAVID COLE, NO EQUAL JUSTICE: RACE AND CLASS IN THE AMERICAN CRIMINAL JUSTICE SYSTEM 193 (1999) (stating that zero tolerance polices have further overloaded New York City criminal courts); Clarke, *Problem-Solving*, *supra* note 17, at 421 (stating that arrests for "quality of life" offenses have contributed to the "increased misdemeanor arrest rates and record-high incarceration rates for low-level offenses" and have further strained criminal courts); Douglas L. Colbert, *Baltimore's Pretrial Injustice*, BALT. SUN, Jan. 6, 2003, at 9A (stating that increased arrests for "low-level" crimes in Baltimore have further strained its courts and jails); Vickie Ferstel, *Zero Tolerance Policies Create Court Problems*, ADVOC. (Baton Rouge), Jun. 13, 2001, at 7B (reporting that zero tolerance policies have further burdened Louisiana's juvenile courts).

44. *See* Cait Clarke, *Taking Alabama v. Shelton to Heart*, CHAMPION, Jan-Feb. 2003, at 26 [hereinafter Clarke, *Taking Alabama*] (quoting correspondence).

45. *See* 20 U.S.C. § 1091(r)(1) (2004) (the suspension of eligibility applies to "a student who has been convicted of any offense under any Federal or State law involving the possession or sale of a controlled substance . . . .").

46. *See, e.g.*, ALA. CODE § 5-25-6 (c) (2003) (ineligibility for mortgage broker's license if convicted for any offense involving "breach of trust, fraud or dishonesty in any jurisdiction"); MD. CODE ANN. BUS. OCC. & PROF. §5-314(a)(1)(vii)(2) (2004) (noting that the State Board of Cosmetologists may deny a cosmetology license to any applicant, or suspend or revoke said license if the applicant or licensee has been convicted of "a misdemeanor that is directly related to the fitness and qualification of the applicant or licensee to practice cosmetology.")

47. *See* Clarke, *Taking Alabama*, *supra* note 44, at 26 ("For many, the most serious consequence of a misdemeanor conviction is the impact on immigration status."). The definitions of "aggravated felonies" are spelled out at 8 U.S.C.A. § 1101(M)(43) (2004).

numerous convictions that are misdemeanors under state law can result in deportation.[48]

Accordingly, collateral consequences apply to both felony and misdemeanor convictions and often outlast the direct sentences imposed on defendants. For this reason, several commentators have noted that these disabilities in many circumstances impose harsher and more longstanding penalties than the formal criminal sentence.[49]

Yet despite their lasting—and sometimes permanent—effects, collateral consequences have not generally been recognized as *legally* central to the criminal justice system's processes.[50] For instance, federal and state appellate courts have almost universally held that the right of criminal defendants to receive effective assistance of counsel[51] does not include advisement by counsel of the various collateral consequences attending their convictions.[52] Ac-

48. *See* Teresa A. Miller, *The Impact of Mass Incarceration on Immigration Policy*, *in* INVISIBLE PUNISHMENT 214, 220 (Marc Mauer & Meda Chesney-Lind eds., 2002) (providing examples of misdemeanors that constitute "aggravated felonies"); Miram Gohara, *Indigent Defense*, CHAMPION, Sept.-Oct. 2003, at 46, 47 (pleading guilty to a misdemeanor can "trigger deportation proceedings, regardless of how long the person has lived in the United States and regardless of family ties here"); Tova Indritz, *Puzzling Consequences of Criminal Immigration Cases*, CHAMPION, Jan.-Feb. 2002, at 12 (stating that other than acquittals, any other resolution of a criminal case, including misdemeanors "may have collateral immigration consequences to (or for) a client who is not a . . . citizen").

49. *See* Chin, *supra* note 37, at 253 (stating that "collateral consequences may be the most significant penalties resulting from a criminal conviction"); Rodney J. Uphoff, *The Criminal Defense Lawyer as Effective Negotiator: A Systemic Approach*, 2 CLINICAL L. REV. 73, 100-01 (1995) ("[t]hese . . . collateral consequences may be considerably more important to the defendant than the punishment meted out by the judge at sentencing.").

50. Professor Gabriel J. Chin and Richard W. Holmes, Jr. assert that "the imposition of collateral consequences has become an increasingly central purpose of the modern criminal process," and set forth several supportive examples. Gabriel J. Chin & Richard W. Holmes, Jr., *Effective Assistance of Counsel and the Consequences of Guilty Pleas*, 87 CORNELL L. REV. 697, 699 (2002). There is a disconnection, however, between *the fact* of this centrality, and the failure of appellate courts to recognize the *legal* significance of this centrality.

51. "In all criminal prosecutions, the accused shall enjoy the right to . . . have the Assistance of Counsel for his defence." U.S. CONST. amend. VI.

52. *See* Chin & Holmes, Jr., *supra* note 50, at 699 (explaining that the majority of states and eleven circuits have declared that lawyers "need not explain collateral consequences" to their clients); Jamie Ostroff, Comment, *Are Immigration Consequences of a Criminal Conviction Still Collateral? How the California Supreme Court's Decision In Re Resendiz Leaves the Question Unanswered*, 32 SW. U. L. REV. 359, 359 (2003) (observing that courts generally hold that the failure of attorneys to advise clients of collateral consequences does not constitute ineffective assistance). Several courts have distinguished, for Sixth Amendment purposes, between counsel's failing to provide advice about possible deportation consequences and providing *wrong* ad-

cordingly, defense attorneys have no constitutional obligation to impart this information to their clients during the plea bargaining process or at any other representational stage.

Similarly, trial courts have no legal obligation to impart to the defendant the collateral consequences of his or her conviction during the plea bargain or sentencing phases.[53] Rather, due process requires only that trial courts inform defendants of the direct consequences.[54] Accordingly, such consequences can be imposed on defendants "without the protections and guarantees of the criminal justice system."[55] A general exception exists to a certain extent in the deportation context, as several states have statutes requiring trial judges to warn defendants of potential deportation consequences.[56] Outside of this limited statutory context, however, no

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vice regarding this information, holding the latter to constitute ineffective assistance. *See, e.g.*, United States v. Couto, 311 F.3d 179, 188, n.9 (2d Cir. 2002) (holding that "an affirmative misrepresentation by counsel as to the deportation consequences of a guilty plea is . . . objectively unreasonable" and that the defendant would not have plead guilty "had counsel not misled her"); State v. Rojas-Martinez, 73 P.3d 967, 970 (Utah Ct. App. 2003) (holding that appellant was denied right to effective assistance of counsel as defense counsel affirmatively misrepresented the deportation consequences of appellant's guilty plea to a sexual assault misdemeanor—which constituted an "aggravated felony" for deportation purposes—by stating that the conviction "might or might not" result in deportation).

53. Ostroff, *supra* note 52, at 359 (explaining the collateral consequences doctrine, which holds that trial judges are not required to inform defendants of collateral consequences).

54. Brady v. United States, 397 U.S. 742, 755 (1970) (defendant must be made fully aware of direct consequences of guilty plea for said plea to be voluntary).

55. Demleitner, *Collateral Damage*, *supra* note 19, at 1032.

56. *See, e.g.*, CAL. PENAL CODE § 1016.5(a) (Deering Lexis 2004); CONN. GEN. STAT. ANN. § 54-1j(a) (2004); D.C. CODE ANN. § 16-713(a) (2004); GA. CODE ANN. § 17-7-93(c) (2004); HAW. REV. STAT. § 802E-1 (2004); ME. REV. STATE. ANN. tit. RCRP § 11 (West 2004); MD. RULE 4-242(e) (2004); MASS. GEN. LAWS ch. 278 § 29D (2004); N.Y. CRIM. PROC. LAW § 220.50(7) (Consol. 2004); N.C. GEN. STAT. § 15A-1022(a)(7) (2004); OHIO REV. CODE ANN. § 2943.031(A) (Anderson 2004); OR. REV. STAT. § 135.385(2)(d) (2004); R.I. GEN. LAWS § 12-12-22 (2004); TEX. CRIM. PROC. CODE ANN. § 26.13(a)(4) (Lexis 2004); WASH. REV. CODE ANN. § 10.40.200(2) (Lexis 2004); WIS. STAT. ANN. § 971.08(1)(c) (2004).

At the federal level, courts have long deemed immigration consequences to be collateral, and have therefore held that trial judges are not required to advise non-citizen defendants of their possible deportation stemming from guilty pleas. *See, e.g.*, Fruchtman v. Kenton, 531 F.2d 946, 948-49 (9th Cir. 1976); Michel v. United States, 507 F.2d 461, 465 (2d Cir. 1974). The passage in 1996, however, of the Anti-Terrorism and Effective Death Penalty Act ("AEDPA") and the Illegal Immigration Reform and Immigrant Responsibility Act ("IIRIRA"), broadened the category of crimes—"aggravated felonies"—for which non-citizens can be deported, and also essentially eliminated the provision of discretionary waivers. *See* Anti-Terrorism and Effective Death Penalty Act of 1996, Pub. L. No. 104-32, 110 Stat. 1214 (2004); 8 U.S.C. § 1101(M)(43) (2004) (defining "aggravated felony"); 8 U.S.C. § 1228(a)(3) (2004) (expediting removal proceedings for those convicted of aggravated felonies). Accord-

mechanism exists for defendants to be informed of these consequences prior to their onset.[57]

1. *The Legal Perspective: Expanding the Scope of Representation to Include Collateral Consequences*

As a collective, defense attorneys—as well as trial judges and prosecutors—are generally unaware of the existence and scope of collateral consequences. This lack of knowledge stems largely from the fact that these consequences are scattered throughout federal and state statutes as well as numerous regulations.[58] Also, from a legal standpoint, such consequences either attach automati-

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ingly, "it is now virtually certain that an aggravated felon will be removed." United States v. Amador-Leal, 276 F.3d 511, 516 (9th Cir. 2001). The First and Ninth Circuits have specifically considered whether these statutory provisions have transformed the nature of the deportation consequence, and have held that while this consequence is now essentially automatic it is still collateral because it rests outside of the trial court's control and is executed by an independent agency. *See* United States v. Gonzalez, 202 F.3d 20, 28 (1st Cir. 2000) (citing pre-AEDPA and IIRIRA precedent to hold that "because deportation is a collateral consequence of a guilty plea, district courts are not obliged to grant plea withdrawal motions filed by defendants who realize, post-plea, the immigration consequences of their conviction"); *Amador-Leal,* 276 F.2d at 516-17 (holding that "no matter what changes have been wrought by AEDPA and IIRIRA, removal remains the result of another governmental agency's subsequent actions" and "[t]herefore, immigration consequences continue to be a collateral consequence of a plea and the resulting conviction"). As a result, defendants do not have a due process right to be informed by trial judges of deportation consequences when entering guilty pleas. The Second Circuit, however, albeit in dicta, has stated that the amendments set forth in AEDPA and IIRIRA rendering a non-citizen convicted of an aggravated felony automatically subject to deportation might have created a due process right to be informed of this consequence when pleading guilty. United States v. Couto, 311 F.3d 179, 188-90 (2d Cir. 2002). For an argument that AEDPA and IIRIRA have changed the threat of deportation for "aggravated felonies" to such an extent as to render it a direct consequence, see Lea McDermid, Comment, *Deportation is Different: Noncitizens and Ineffective Assistance of Counsel,* 89 Cal. L. Rev. 741, 762 (2001).

57. For this reason, collateral consequences have invariably been labeled as "a secret sentence," Chin & Holmes, Jr., *supra* note 50, at 700, and "invisible punishments." Jeremy Travis, *Invisible Punishment: An Instrument of Social Exclusion, in* INVISIBLE PUNISHMENT 15, 16 (Marc Mauer & Meda Chesney-Lind eds., 2002) [hereinafter Travis, *Invisible Punishment*].

58. *See* ABA STANDARDS ON COLLATERAL SANCTIONS, *supra* note 26, at R-5 ("collateral consequences have accumulated with little coordination in disparate provisions of state and federal codes, making it difficult to determine all of the penalties and disabilities applicable to a particular offense"); Chin, *supra* note 37, at 253-54 (stating that any inclination judges or attorneys may have to thoroughly explain collateral consequences to the accused would be stymied by their inability to gather all consequences relevant to the particular case); Demleitner, *Internal Exile, supra* note 33, at 154 (noting that institutional actors have no knowledge of the number and scope of collateral consequences "because they are scattered throughout different bodies of law").

cally to the conviction or are imposed at the discretion of governmental or regulatory agencies independent of the criminal justice system. As a result, judges, prosecutors, and defense attorneys neither discuss nor reference these consequences during the various procedural stages of the criminal process.[59]

Accordingly, defense attorneys are not legally obligated to impart this information to their clients. Those attorneys who define their legal role pursuant to traditional narrowly prescribed norms have no need to acquire even a rudimentary understanding of collateral consequences. Because these consequences are not among the information traditionally imparted to clients, any related discussions fall outside of the traditional attorney role.

A true holistic legal mindset, however, requires that defense attorneys incorporate the full ramifications of criminal convictions into all aspects of their practices.[60] Including collateral consequences among this panoply serves two purposes. First, information regarding these consequences provides clients with all pertinent factors necessary to make a truly informed decision about how to proceed with the case. Second, defense attorneys' knowledge of these consequences elevates the provision of legal services by fully contextualizing the representation. Such understanding 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.[61]

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59. Travis, *Invisible Punishment*, *supra* note 57, at 16 ("Because these punishments typically take place outside of the traditional sentencing framework—in other words, are imposed by operation of law rather than by decision of the sentencing judge—they are not considered part of the practice or jurisprudence of sentencing.").

60. *See, e.g.*, ANTHONY G. AMSTERDAM, I TRIAL MANUAL FOR THE DEFENSE OF CRIMINAL CASES 344-46, SUBPART 205 (1988) (providing a "checklist of possible consequences of conviction" that counsel should know about in assessing a guilty plea).

61. For example, thinking expansively about collateral consequences would enhance defense counsel's ability to negotiate and help craft creative and individualized dispositions. As Professor Kim Taylor-Thompson observes, because collateral consequences potentially flow from any decision to negotiate, "lawyers, at a minimum, must maintain a working knowledge of the potential sentencing consequences of any negotiated settlement of the charges." Taylor-Thompson, *Gideon's Trumpet*, *supra* note 3, at 1502; *see also* Flo Messier, Note, *Alien Defendants in Criminal Proceedings: Justice Shrugs*, 36 AM. CRIM. L. REV. 1395, 1415 (1999) (explaining some negotiation scenarios that could avoid the defendant's deportation); Morvillo, *supra* note 20 (stating that "affirmative strategies" are available to ameliorate collateral consequences); Murray, *supra* note 26, at 30. (observing that defense attorneys can seek to avoid or mitigate collateral consequences during plea negotiations).

2. *The Ethical Imperative: Straightening the Representational Baseline*

While some scholars have argued that attorneys should have a sixth amendment obligation to inform clients of the collateral consequences of their guilty pleas,[62] this constitutional norm has not been recognized. Rather, ineffective assistance of counsel claims are measured against the standards set forth by the Supreme Court in *Strickland v. Washington*.[63] To prevail, an appellant must show that counsel's performance fell below that of a reasonably competent attorney and that, but for counsel's acts or omissions, it was reasonably probable that the case would have reached a different result.[64] In *Hill v. Lockhart*, the Supreme Court extended the *Strickland* standards to guilty pleas.[65] Therefore, an appellant seeking to overturn a conviction based on ineffective assistance of counsel in the guilty plea context must prove the same *Strickland* performance-deficiency prong, and that, except for this deficiency, "there is a reasonable probability that . . . [s]he would not have pleaded guilty and would have insisted on going to trial."[66]

Defense attorneys, however, should not rely on the existence of legal imperatives to incorporate a consideration of these consequences into all aspects of their practices. Indeed, as *Strickland* and its progeny illustrate, effective assistance of counsel is simply a floor that undergirds the minimum level of competence necessary to pass constitutional muster. As a result, the constitutional norm embedded in the sixth amendment is not an end that defense attorneys should strive to reach, but rather a marker of zealous representation.

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62. *See* Chin & Holmes, Jr., *supra* note 50, at 701-02 (arguing that cases rejecting ineffective assistance of counsel claims based on failure to advise about collateral consequences are inconsistent with the Supreme Court's approach to ineffective assistance of counsel claims and other indicia of lawyering norms); McDermid, *supra* note 56, at 747 (arguing that defense attorneys have sixth amendment duty to inform defendants of potential deportation consequences and to attempt to avoid or mitigate said circumstances); Guy Cohen, Note, *Weakness of the Collateral Consequences Doctrine: Counsel's Duty to Inform Aliens of the Deportation Consequences of Guilty Pleas*, 16 FORDHAM INT'L. L.J. 1094, 1096 (1993) (arguing that defense counsel should have affirmative sixth amendment duty to inform defendants of immigration consequences of guilty pleas). In addition, Judge Harold Baer Jr. asserts that defense attorneys should be obligated to inform clients of collateral consequences "with a follow up by the Court." Harold Baer Jr., *Outside Counsel; Alerting the Federal Defendant to the Breadth of Civil Disabilities*, N.Y. L.J., Dec. 22, 2003, at 4.

63. 466 U.S. 668 (1984).

64. *Id.* at 687, 694.

65. 474 U.S. 52, 58 (1985).

66. *Id.* at 59.

Accordingly, defense attorneys should look to both their lawyering role and to ethical norms to guide their obligations pertaining to collateral consequences. As Professor Gabriel J. Chin and Richard W. Holmes, Jr. observe, both the American Bar Association Standards for Criminal Justice,[67] explicitly, and the American Bar Association Model Rules of Professional Conduct,[68] implicitly, require defense attorneys to inform their clients of collateral consequences that might result from entry of a guilty plea. Moreover, the lawyer's counseling role dictates that clients be apprised of all consequences that would likely impact their lives.[69] These ethical norms compel defense attorneys to include collateral consequences fully within the array of standard information they convey to clients.

B. Reentry

Very recently, advocates, scholars, social scientists, policy analysts, politicians,[70] media, and numerous grassroots organizations

67. Standard 14-3.2(f) sets out that "[t]o the extent possible, defense counsel should determine and advise the defendant, sufficiently in advance of the entry of any plea, as to the possible collateral consequences that might ensue from entry of the contemplated plea." ABA CRIM. JUST. STANDARDS ON GUILTY PLEAS (Aug. 2003) (quoted in Chin & Holmes, Jr., *supra* note 50, at 714). In August 2003, the ABA House of Delegates adopted standards that expand the range of collateral consequences about which defendants should be informed, and added other standards that recognize the extent to which such consequences are intertwined with the criminal process. *See* ABA CRIM. JUST. STDS ON COLLATERAL SANCTIONS AND DISCRETIONARY DISQUALIFICATION OF CONVICTED PERSONS (2003). Many of these standards address the problems detailed above. For instance, one of the newly adopted standards recommends that state legislatures "set out or reference all collateral sanctions in a single chapter or section of the jurisdiction's criminal code." *Id.* at STD. 19-2.1. This standard addresses the lack of cohesion among these consequences, which greatly contribute to defense attorneys' collective unawareness of their existence and scope. The lack of notice vis-à-vis collateral consequences provided to defendants at the guilty plea and sentencing stage is addressed in two standards: one which recommends that trial courts "ensure, before accepting a plea of guilty, that the defendant has been informed of collateral sanctions made applicable to the offense or offenses of conviction under the law of the state or territory where the prosecution is pending, and under federal law," *id.* at STD.19-2.3(a), and the other which recommends that the trial court do the same at the time of sentencing. *Id.* at STD. 19-2.4(b).

68. *See* Chin & Holmes, Jr., *supra* note 50, at 715.

69. *See* Uphoff, *supra* note 49, at 101 (noting that defense attorneys should alert clients to the "full impact of a criminal conviction and help the defendant evaluate possible collateral consequences before making significant decisions about the case").

70. Perhaps most notably at the federal level, President George W. Bush, in his most recent State of the Union address, proposed a "four-year, $300 million prisoner re-entry initiative to expand job training and placement services, to provide transitional housing and to help newly released prisoners get mentoring." President George W. Bush, State of the Union Address (Jan. 20, 2004), *available at* http://www.

have begun to focus on various issues relating to ex-offender reentry.[71] Much of this attention stems from the increasing numbers of ex-offenders leaving our nations prisons and jails each year,[72] and related concerns about public safety and recidivism.[73]

Each year, approximately 630,000 ex-offenders are released from prisons, jails and juvenile detention facilities.[74] This number has increased steadily since the mid-1980s.[75] Significant numbers of ex-offenders return to a few states.[76] Moreover, many are concentrated in neighborhoods located within our nation's urban cen-

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whitehouse.gov/news/rele ases/2004/01/20040120-7.html. Prior to this proposal, however, Congressman Danny K. Davis introduced in 2002 and 2003 the Public Safety Ex-Offender Self Sufficiency Act, which seeks "to provide for a temporary ex-offender low income housing credit to encourage the provision of housing, job training, and other essential services to ex-offenders through a structured living environment designed to assist the ex-offenders in becoming self sufficient." H.R. 2166, 108th Cong. (2003); H.R. 3701, 107th Cong. (2002).

71. The terms "reentry" and "reintegration" tend to be used interchangeably in this context. However, some have observed these to be distinct concepts. For instance, one commentator observes that reentry is the process by which an ex-offender leaves confinement and returns to his or her community, while reintegration is the ultimate goal. Jeremy Travis, Address at the University of Maryland School of Law (Sept. 8, 2003).

72. *See* Michael Anft, *Seeking a Smooth Reentry: New Funds and Efforts Help Ex-inmates Return to Society*, 14 CHRON. PHILANTHROPY 7 (2002) (reporting that charities and grant makers are turning attentions toward reentry issues in large part because of the unprecedented numbers of ex-offenders leaving prisons and jails); Nora V. Demleitner, *Stopping a Vicious Cycle: Release, Restrictions, Re-Offending*, 12 FED. SENT. R. 243, 243 (2000) (observing that the increased incarceration "has made the question of reentry increasingly pressing").

73. *See* James P. Lynch & William J. Sabol, *Prisoner Reentry in Perspective*, CRIME POL'Y REP. (URB. INST. CRIME POL'Y REP.), Sept. 2001, at 2, 14 (observing that returning ex-offenders present public safety issues for the communities to which they return), *available at* http://www.urban.org/UploadedPDF/410213_reentry.pdf.

74. BUREAU OF JUSTICE STATISTICS, U.S. DEP'T. OF JUSTICE, LEARN ABOUT REENTRY, *available at* http://www.ojp.usdoj.gov/reentry/learn.html (last visited Apr. 5, 2004). In addition, over 4.7 million adults were under federal, state or local probation or parole at the end of 2002. BUREAU OF JUSTICE STATISTICS, U.S. DEP'T. OF JUSTICE, PROBATION AND PAROLE STATISTICS, *available at* http://www.ojp.usdoj.gov/bjs/pandp.htm (last revised Aug. 20, 2003).

75. *See* Lynch & Sabol, *supra* note 73, at 6 (reporting that the number of ex-offenders released from prisons increased from 260,000 to 566,000 between 1985 and 1999).

76. *See* BUREAU OF JUSTICE STATISTICS, U.S. DEP'T. OF JUSTICE, REENTRY TRENDS IN THE U.S.; RELEASES FROM STATE PRISON (reporting that nearly half of all ex-offenders were released from state prisons in California, Florida, Illinois, New York and Texas in 2001), *available at* http://www.ojp.usdoj.gov/bjs/reentry/releases.htm (last revised Aug. 20, 2003).

ters.[77] As a result, these communities, already lacking vital resources, disproportionately absorb the flow of ex-offenders.[78]

The reentry process has garnered substantial attention at the national level. Related concerns about ex-offenders' ability to reenter effectively after serving longer prison terms and the effect their reentry will have on the communities to which they return have propelled federal governmental agencies to fund relevant studies and initiatives. For instance, the United States Department of Justice Office of Justice Programs has allocated funds to support reentry efforts across the country.[79] These initiatives, which include Reentry Partnership Initiatives[80] and Reentry Courts,[81] are de-

77. For instance, in Maryland, roughly 9500 ex-offenders were released from state correction facilities in 2001, fifty-nine percent of whom returned to Baltimore City. NANCY LA VIGNE ET AL., URB. INST. CRIME POL'Y CTR., A PORTRAIT OF PRISONER REENTRY IN MARYLAND 2 (2003), *available at* http://www.urban.org/uploadedPDF/410655 MDPortrait Reentry.pdf. Of those who returned to Baltimore City, thirty percent were from six neighborhoods. *Id.* at 3. In Ohio, twenty percent of those imprisoned on July 1, 2000 were from Cuyahoga County, which includes Cleveland. Lynch & Sabol, *supra* note 73, at 16. Of those, seventy five percent resided in Cleveland prior to their incarceration. *Id.* In New Jersey, nearly one-third of ex-offenders released from prisons in 2002 returned to two counties. JEREMY TRAVIS ET AL., URB. INST. CRIME POL'Y CTR., A PORTRAIT OF PRISONER REENTRY IN NEW JERSEY 41 (2003), *available at* http://www.urban.org/UploadedP DF/410899_nj_prisoner_reentry.pdf. Thirteen percent returned to Newark and ten percent returned to Camden. *Id.* For a discussion of how increased incarceration disproportionately burdens certain communities, see Todd R. Clear, *The Problem with "Addition by Subtraction": The Prison-Crime Relationship in Low-Income Communities, in* INVISIBLE PUNISHMENT 181, 188-92 (Marc Mauer & Meda Chesney-Lind eds., 2002).

78. Some commentators have noted that these communities are shouldered with issues stemming from the interrelationship between the various cycles of the criminal justice process, including the large influx of returning ex-offenders, and their stability. *See, e.g.,* Jeffrey Fagan et al., *Reciprocal Effects of Crime and Incarceration in New York City Neighborhoods,* 30 FORDHAM URB. L.J. 1551, 1552-53 (2003) (observing that "[h]igh rates of incarceration can adversely affect the ability of returning prisoners to re-enter labor markets, and thus aggravate social and economic disadvantages within areas where former inmates are concentrated"); Travis et al., *Prisoner Reentry, supra* note 19, at 12 (stating that large numbers of ex-offenders released from correctional facilities return to "a relatively small number of communities" and that "[i]n these disadvantaged urban neighborhoods the significant increases in arrests, removals, incarceration and return of large numbers of individuals . . . have placed severe burdens on the formal and informal networks that should sustain healthy communities").

79. For information pertaining to these efforts, see OFFICE OF JUSTICE PROGRAMS, U.S. DEP'T. OF JUSTICE, REENTRY: STATE ACTIVITIES AND RESOURCES, *available at* http://www.oj p.usdoj.gov/reentry/sar/welcome.html.

80. The Reentry Partnership Initiatives are partnerships between criminal justice, social services and community groups. There are eight initiatives nationwide: Baltimore, Maryland; Burlington, Vermont; Columbia, South Carolina; Kansas City, Missouri; Lake City, Florida; Las Vegas, Nevada; Lowell, Massachusetts; and Spokane, Washington. DOUGLAS YOUNG ET AL., NAT'L INST. OF JUSTICE, ENGAGING THE COM-

signed to both study the various reentry-related obstacles that ex-offenders and communities confront and to implement plans geared toward productively reintegrating ex-offenders.

Concerns related to reentry have also trickled down to states,[82] cities, and counties, as prisons, jails, and community organizations have begun to formulate plans and provide reentry related services.[83] Some states and cities now provide various employment[84] and family related services[85] for inmates to utilize upon release. Moreover, several community and legal services organizations have either begun or are in the process of beginning to provide reentry-related services to individuals transitioning back into their communities.[86] These various reentry processes involve integrated, holistic approaches that coordinate various service providers, court personnel and communities.[87] Myriad stakeholders have recog-

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MUNITY IN OFFENDER REENTRY 2 (2002), *available at* http://www.ncjrs.org/pdffiles1/nij/grants/196492.pdf. For descriptions of some of these initiatives and programs, see LAVIGNE ET AL., *supra* note 77, at 4; Travis et al., *Prisoner Reentry*, *supra* note 19, at 12-13.

81. The Office of Justice Programs launched the Reentry Court Initiative in 2000. This initiative seeks to start and/or assist reentry courts in California, Colorado, Delaware, Florida, Iowa, Kentucky, New York, Ohio, and West Virginia. These courts are designed to be a formal, judicial resource for ex-offenders during the reentry process. *See* CHRISTINE LINDQUIST ET AL., NAT'L INST. OF JUSTICE, REENTRY COURTS PROCESS EVALUATION (PHASE 1) FINAL REPORT (2003), *available at* http://www.ncjis.org/pdffiles1/nij/grants/202472.pdf.

82. *See* Travis et al, *Prisoner Reentry*, *supra* note 19, at 13 (reporting that the Council of State Governments has formed a Reentry Policy Council to create programs and legislation to aid reentry).

83. *See, e.g.*, *id.* (noting that community coalitions have flourished nationwide to support returning ex-offenders and their families); Paul von Zielbauer, *City Creates Post-Jail Plan for Inmates*, N.Y. TIMES, Sept. 20, 2003, at B1 (reporting that officials from several New York City agencies plan to coordinate "discharge planning" involving employment, drug treatment and housing plans for ex-offenders leaving Rikers' Island).

84. *See generally* MARTA NELSON & JENNIFER TRONE, VERA INST. OF JUSTICE, WHY PLANNING FOR RELEASE MATTERS (2000) (describing employment related programs in Texas, Ohio and Chicago), *available at* http://www.vera.org/publication_pdf/planning_f or_release.pdf.

85. *See, e.g.*, PETERSILIA, *supra* note 36, at 100 (describing the Illinois Department of Correction's Chicago Day Reporting Center, which is a program for "high risk parolees" on Chicago's Southside that includes, *inter alia*, family reintegration services).

86. For a detailed overview of various reentry programs, see Amy L. Solomon et al., *Outside the Walls: A National Snapshot of Community-Based Prisoner Reentry Programs* (Jan. 2004), *available at* http://www.urban.org/UploadedPDF/410911_otwresourceguid e.pdf.

87. *See, e.g.*, Jeanne Flavin & David Rosenthal, *La Bodega De La Familia: Supporting Parolees' Reintegration Within a Family Context*, 30 FORDHAM URB. L.J. 1603, 1612-18 (2003) (describing a program based in New York City's Lower East Side that

nized the need to explore ways to facilitate the reentry process for ex-offenders, with the goals of lowering recidivism rates and fostering eventual reintegration into their respective communities.

While these various efforts are laudable, they have essentially ignored the potential contributions of defender organizations to these coordinated efforts.[88] Indeed, defender organizations, as part of the holistic philosophy, should play a crucial role in the reentry component.[89] A true holistic mindset needs to recognize the relevance of the back-end reentry process to front-end, direct representation. Just as the current holistic model incorporates the client's myriad legal and social needs into the direct representation, it should also recognize the centrality of those same needs to the client's transition back into his or her community.[90] These needs exist irrespective of the client's sentence, although they are obviously more acute if she has been incarcerated, particularly for longer periods of time.[91] Because one of the chief goals of holistic advocacy is to address issues that contributed to the client's entanglement in the criminal justice system, with the aim of preventing any future involvement, critically examining and fostering the reentry component is vital to the integrity of those front-end defense services.

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uses a family case management approach reintegration that involves parolees' families, case managers, community partners and parole officers); John Larivee, *Prisoner Reentry: A Public Safety Opportunity*, PROSECUTOR, May-June 2003, at 45 (explaining the Boston Reentry Initiative as a "partnership of the Boston Police Department, the Suffolk County Sheriff's Department, the Suffolk Country district attorney, the U.S. attorney, probation, parole, a number of inner city churches, social service agencies and community groups").

88. *See, e.g.*, PETERSILIA, *supra* note 36, at 200 (noting that the role of the DOJ-sponsored Reentry Partnership Initiatives is to "bring together law enforcement, courts, corrections, and local social service agencies around issues of prisoner reentry"); *see also* Kim Taylor-Thompson, *Taking It to the Streets*, 29 N.Y.U. REV. L. & SOC. CHANGE 153, 155 (2004) [hereinafter Taylor-Thompson, *Streets*] (observing more generally that defender organizations "as a whole [have] lag[ged] behind other criminal justice players in embracing a community orientation" on various issues, including reentry).

89. *See generally* Anthony C. Thompson, Address at the National Legal Aid Defender Association Annual Conference (Nov. 14, 2002) (addressing the need for collaboration among criminal defense attorneys, civil attorneys, social workers and community members to address reentry-related issues), *available at* http://www.nlada.org/DMS/Documents/1038340494.03/Anthony%20Thompson%20Re-entry%20Speech.doc.

90. *See, e.g.*, Cynthia Works, *Reentry—The Tie that Binds Civil Legal Aid Attorneys and Public Defenders*, J. POVERTY L. & POL'Y, Sept.-Oct. 2003, at 332-34 (suggesting various ways in which attorneys can assist with reentry related matters, including housing and family reunification).

91. Lynch & Sabol, *supra* note 73, at 8 (stating that longer prison stays possibly further complicate reentry as the ex-offender may have less employment opportunities and be more detached from family members).

III. Recognizing and Responding to the Institutional Barriers

Incorporating collateral consequences and reentry components into the holistic representation model pose substantial issues for already overtaxed and under funded defender offices. Both would impose significant resource allocation issues for organizations that already scramble for ways to cover their caseloads.

As set forth below, the barriers related to incorporating services that anticipate and explain collateral consequences are primarily logistical, although one potential issue emanates from the effect these consequences would have on the defender's ability to work through her caseload. Conversely, the barriers related to incorporating a reentry component at the outset are more substantial, as they are wedded to resource issues. Moreover, the reentry component transforms the defense role by stretching services past the formal legal representation.

A. Full Inclusion of a Collateral Consequences Component into Criminal Defense Lawyering: Potential Obstacles and Solutions

Perhaps the most significant obstacle that defenders must confront is simply figuring out which of the myriad collateral consequences are relevant to particular situations. As noted above this is an onerous task, largely because these consequences are not statutorily centralized, but rather must be pieced together by combing through various criminal and civil statutes as well as regulatory codes.[92]

The American Bar Association has recognized the difficulties posed by the non-systematic codification of these consequences. As part of the *ABA Criminal Justice Standards on Collateral Sanctions and Discretionary Disqualification of Convicted Persons*, the House of Delegates recently adopted a standard recommending that the legislature:

> [C]ollect, set out or reference all collateral sanctions in a single chapter or section of the jurisdiction's criminal code. The chapter or section should identify with particularity the type, severity and duration of collateral sanctions applicable to each offense, or to a group of offenses specifically identified by name, section number, severity level, or other easily determinable means.[93]

92. *See supra* note 58 and accompanying text.

93. ABA Standards on Collateral Sanctions, *supra* note 26, at Std. 19-2.1; *see* Chin, *supra* note 37, at 254 ("Basic fairness requires first that collateral conse-

While these standards are aspirational and not binding, they provide key insights into how defense organizations could manage the collateral consequences component. For instance, many defender offices have recognized the importance of linking criminal and civil issues. Some offices have formed civil teams that handle civil issues, such as housing and public benefits, related to the underlying criminal matter. Other offices do not have civil teams but assign identified attorneys to develop expertise in certain related areas, such as immigration. These attorneys are then responsible both for training other lawyers to recognize situations where these issues are likely to exist, and for providing any related legal services. Still other offices that do not handle civil issues have established referral relationships with relevant legal services organizations that can take on these matters.

Defender organizations can use each of these models in moving toward fully incorporating collateral consequences into their practices. As an initial step, organizations can assign an attorney to collect and organize information about the relevant collateral consequences for each criminal offense. The attorney would then be responsible for training her colleagues on these issues, which could include written materials such as annotated outlines or other reference guides, and answering legal questions that arise in particular instances.

Another potential obstacle is the resistance some attorneys may have to incorporating collateral consequences into their practices because of the effect this component would have on their workloads. Defense attorneys, particularly public defenders and assigned counsel, have burdensome caseloads and are often under tremendous time and resource constraints to provide individualized and zealous representation. Thus, requiring that attorneys ascertain and then advise all clients of the myriad consequences attending their convictions would further strain their capacities.[94]

Attorneys, however, already spend significant time advising clients about various aspects of their cases, including many other

quences be collected in one place, and second that persons charged with a crime be notified of what the consequences are when they plead guilty or are sentenced.").

94. At least one court, in holding that the failure to advise defendants of deportation possibilities does not constitute ineffective assistance, reasoned that "[t]o hold otherwise would place the unreasonable burden on defense counsel to ascertain and advise of the collateral consequences of a guilty plea . . . ." United States v. Yearwood, 863 F.2d 6, 7 (4th Cir. 1988). Kim Taylor-Thompson notes the possible resistance by defenders to add new responsibilities to the demands already placed upon them. *See* Taylor-Thompson, *Streets*, *supra* note 88, at 176.

ramifications of accepting plea bargains and the benefits and drawbacks of proceeding to trial. Adding collateral consequences to this mix is not likely to pose significant additional burdens, particularly as attorneys would soon develop an internal database of these consequences, which would allow them to quickly summon those consequences that are relevant to the particular case. Moreover, any additional responsibilities resulting from this component are consistent with their ethical duties to provide clients with sufficient information to allow them to make informed decisions.[95]

B. Reentry

There are two substantial barriers to incorporating the reentry component into criminal defense lawyering. The first relates to the effect this component would have on already strained resources and the second relates to role redefinition.

1. *The Resource Allocation Issue*

Reform measures designed to respond to the reentry issue would grapple for *scarce* resources in institutional defender offices. The interrelated issues of under funding and excessive caseloads in indigent representation have been thoroughly documented.[96] These resource issues have a direct qualitative effect on the representation afforded to indigent clients.[97]

95. MODEL RULES OF PROF'L CONDUCT R. 1.4(b) (2004) ("A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation"); ABA STANDARDS ON COLLATERAL SANCTIONS, *supra* note 26, at STD. 4-3.8(b) ("Defense counsel should explain developments in the case to the extent reasonably necessary to permit the client to make informed decisions regarding the representation); *Id.* at STD. 4-5.2(a)(ii) (the accused makes the decision whether to accept a plea agreement "after full consultation with counsel"); *Id.* at GUILTY PLEAS, STD. 14-3.2(f) ("To the extent possible, defense counsel should determine and advise the defendant, sufficiently in advance of the entry of the plea, as to the possible collateral consequences that might ensue from entry of the contemplated plea").

96. *See, e.g.*, Joan E. Jacoby, *Measuring the Productivity of the Public Defender, in* THE DEFENSE COUNSEL 279 (William F. McDonald ed. 1983) (noting the correlation between lack of adequate funding and excessive caseloads).

97. *See* Bruce A. Green, *Criminal Neglect: Indigent Defense from a Legal Ethics Perspective*, 52 EMORY L.J. 1169, 1169 (2003) (stating that defense lawyers in underfunded offices are "severely restricted in how much time they can devote to individual clients"); Randolph N. Stone, Commentary, *The Role of State Funded Programs in Legal Representation of Indigent Defendants in Criminal Cases*, 17 AM. J. TRIAL ADVOC. 205, 210-11 (1993) (stating that "insufficient funding, excessive caseload pressure, and the absence of mandated standards of performance have hampered the quality of services provided to indigent citizens in the United States").

Adding a reentry component, in the abstract, would siphon the same shallow pool of resources.[98] In addition to the potential financial costs of a reentry component, mainly in the form of hiring additional personal needed to successfully coordinate the various reentry services or training existing staff to handle these issues, the reentry component would possibly further tax the overextended defender office. Already, institutional defenders tend to allocate their resources by prioritizing cases within their caseloads: "Serious" cases may take priority over "less serious" cases; cases that are likely to go to trial may take priority over those that are likely to result in guilty pleas;[99] "winning" cases may take priority over "losing" cases. Likewise, in a given situation, a reentry matter, because it rests at the very end of the criminal process, may assume a lesser priority for the defense attorney than the urgent pre-dispositional matter.

2. *Role Redefinition*

Incorporating the reentry component into criminal defense practice would transform the nature and extent of the representation. No longer would the representation end at the conclusion of the legal proceeding; rather, it would eclipse the proceeding and carry over to the conclusion of the sentence, and even past the sentence if dictated by particular circumstances.[100] The reentry component would extend services even further than the current holistic, "or whole client" model, which itself has revolutionized the practice.

Accordingly, the reentry component would redefine the defense role. The role would no longer be confined to securing the best possible legal disposition. Nor would it be limited to working through the various convergent issues that fostered the client's involvement with the criminal justice system. Instead, the defense role would extend to matters that have not traditionally been considered to be within the realm of defense services, or even within the auspices of the front-end criminal justice system.

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98. *See* Clarke, *Problem-Solving*, *supra* note 17, at 430 (noting that one barrier to providing holistic representation, which author says sometimes extends to post-release services, is lack of funds).

99. *See, e.g.*, Green, *supra* note 97, at 1180 n.45 (providing examples of how public defenders may "systematically" prioritize one group of clients over another, one of which is that defenders "may slight clients whose cases seem likely to end in guilty pleas in order to free up time for clients whose cases go to jury trial . . . to maximize the time devoted to trials.")

100. *See* Thompson, *supra* note 89 ("We need to see our work as encompassing not just the life of the case, but the life of the client.").

As a result of this expanded role, the overarching questions raised by the reentry component relate to the actual duration and scope of the actual representation.[101] For instance, does the representation end as soon as the client has been linked with relevant social services, or does it continue through the client's progression through those services? Moreover, how broad should this representation be? Should defense organizations shoulder the burden of ensuring that the clients' reentry needs are met or should the representation be more limited in scope by providing referral-related services?

C. Possible Solutions to the Institutional Barriers: Model Programs and Individualized Needs

While significant resources are necessary to provide effective reentry assistance, several possibilities exist to enable this extension of defense services. Similar to the collateral consequences component, defender offices could form "reentry teams", which could be part of the civil teams some defender offices have already formed. These teams would help clients navigate through various reentry obstacles, including access to housing, substance abuse treatment and public benefits, family reunification efforts, child support and expungment of criminal records.

To the extent that defender organizations lack the resources to fund such teams, they could sponsor fellowships or grants that are geared toward recent law school graduates to provide civil legal services. Within the past several years, several fellowships have been awarded for attorneys to establish, provide or expand civil practices within public defender offices. While many of these fellows provide an array of pre-dispositional civil services, several have focused their efforts on developing reentry strategies, which are also primarily civil in nature.

Those offices or individual defenders that have no plans to expand their legal services to cover reentry issues have available several community organizations that have begun to provide these services. These defender offices—as well as those that have begun to provide reentry-related services—can partner with these community organizations. These partnerships can either be formal or informal. The formal partnerships would be collaborative in scope, in which defenders and these organizations work together to han-

101. *See, e.g.*, Taylor-Thompson, *supra* note 3, at 1505 (observing generally that the "enhanced notion of representation" reflected in holistic advocacy "raises important questions about when the representation ends").

dle the array of reentry issues faced by their clients. The informal partnerships would be more referral-based, as defender offices could establish a referral network that would allow the outsourcing of reentry related legal and non-legal issues. This would allow defender organizations to inform clients of the various community-based services available both before and after the completion of their sentences. This referral network could be utilized both by those defender organizations that will not provide direct reentry services because of resources, as well as those organizations that do provide such services but which may be confronted by a particular issue that is outside their expertise or capacity.

Several defender organizations have already begun or are soon to begin to model the range of reentry-related services that can be offered to clients as they are released from incarceration or while they are serving community-based sentences such as probation. These offices have extended the spirit of holistic representation by providing an array of services to facilitate eventual reintegration. These services include representation in employment-related proceedings, deportation-related proceedings, and housing-related proceedings, as well as assistance with expunging criminal records.[102]

For example, the Bronx Defenders, a community defender organization that serves clients from the Bronx, has instituted a Civil Action Project that provides services related to the collateral consequences and reentry components. The reentry services involve collaborations between the office's civil and criminal attorneys in representing and advising clients "on the full range of legal issues, including housing, public benefits, employment, civil rights, immigration, forfeiture, and family law."[103] With regard to collateral consequences, this organization will soon start its Community Defender Resource Center, which will serve as an institutional re-

102. At least two public defender offices have programs that help clients expunge records for purposes of securing employment and public benefits. *See* Clarke, *supra* note 17, at 435 (describing a program set up by the Kern County Public Defender in California that helps those convicted of misdemeanors expunge their records, and a program set up by volunteer public defenders with the Somona County Public Defender Office that helps welfare recipients expunge criminal records for purposes of applying for certificates of relief or qualifying for employment).

103. McGregor Smyth, *Bridging the Gap: A Practical Guide to Civil-Defender Collaboration*, J. POVERTY L. & POL'Y, May-June 2003, at 56, 59, *available at* http://www.nlada.org/DMS/Documents/1058455948.26/Bridging%20the%20Gap.pdf.

source to assist defense attorneys throughout New York State in developing strategies to surmount collateral consequences.[104]

The Neighborhood Defender Service of Harlem, long recognized for providing innovative community-based defense services, will soon launch its Harlem Re-entry Advocacy Project. This project will utilize a multidisciplinary approach to reentry services, including social services, civil legal representation and community education. The social services component will help address issues related to public benefits, mental health, substance abuse treatment, family reunification and employment. The civil legal representation component will include representing ex-offenders in employment and housing related proceedings. Similarly, the Public Defender Service of D.C. has a Civil Legal Services Unit that will soon begin to represent clients on various matters related to the collateral consequences of criminal convictions, including eviction proceedings, denial of public benefits, termination of parental rights, deportation and academic expulsion.[105]

Likewise, several defender organizations have recently sponsored training programs and workshops that have focused on these critical collateral consequences and reentry issues.[106] Consistent with the holistic mindset, this recent attention points to an emerging recognition that defense attorneys need to evaluate their clients' legal and extra-legal situations more expansively and that both the traditional and the contemporary holistic defense roles fail to consider the extent to which criminal convictions impact clients' lives, particularly after the formal sentence has concluded.

CONCLUSION

Adopting a holistic mindset paves a path that continually pushes the defense role by searching for ways to provide fuller and deeper

104. *Id.* To assist with this effort, the Civil Action Project has composed a comprehensive guide setting forth the various consequences accompanying criminal convictions in New York State. Bronx Defenders Civil Action Project, The Consequences of Criminal Proceedings in New York State: A Guide for Criminal Defense Attorneys and Other Advocates for Persons with Criminal Records (on file with the author). The guide also offers suggestions for alleviating the effects of these consequences and lists numerous organizational resources for attorneys to consult. *Id.*

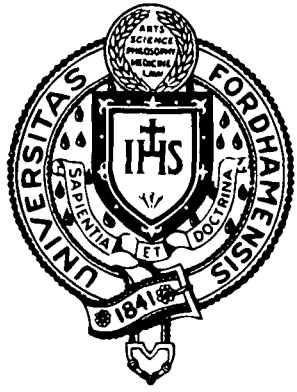
105. Information pertaining to the Civil Legal Service Unit can be found at http://www.pdsdc.org/Civil/Index.asp (last visited Apr. 5, 2004).

106. For an overview of one of these training programs, which includes federal and state case law, see Penny Beardslee, Civil/Collateral Consequences of Criminal Convictions, presented at the Advanced Training Conference of the Criminal Defense Attorneys of Michigan (CDAM) (Nov. 2, 2001) *available at* http://www.sado.org/training/colla teral1.htm.

services. Holistic lawyering is a constantly evolving process, as evidenced by the transformative practices that have flourished within the past couple of decades.

While this essay in no way attempts to address the shortcomings of holistic representation, it does posit that this mindset needs to incorporate into the defense role collateral consequences and reentry, which are interrelated components of the criminal justice system. These components fit squarely within the holistic mindset, which considers the broader socio-legal issues that led to the client's interaction with the criminal justice system and seeks to deploy strategies that resolve these deeper issues, with the aim of preventing future involvement. While incorporating these components would considerably expand the defense role, these components would enhance the quality of the criminal representation by explicitly recognizing, factoring and perhaps mitigating the myriad collateral consequences of misdemeanor and felony convictions, and by helping clients navigate and negotiate the various reentry related obstacles.

The one overarching question that follows the incorporation of the reentry component relates to the endpoint of this expanded criminal representation. There simply is no mechanical answer, as the holistic mindset teaches that cases and circumstances are individualized. Therefore, individual circumstances will dictate the duration and extent of the particular representation. While this is a question worthy of considerable exploration, especially after defender organizations have gained particular insights stemming from this extension of representation, the holistic mindset requires the representation to shadow the legal needs.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