

# Community-Oriented Defense: **Start Now**

Thomas Giovanni

BRENNAN  
CENTER  
FOR JUSTICE

*at New York University School of Law*

## ABOUT THE BRENNAN CENTER FOR JUSTICE

The Brennan Center for Justice at New York University School of Law is a non-partisan public policy and law institute that focuses on the fundamental issues of democracy and justice. Our work ranges from voting rights to campaign finance reform, from racial justice in criminal law to Constitutional protection in the fight against terrorism. A singular institution — part think tank, part public interest law firm, part advocacy group — the Brennan Center combines scholarship, legislative and legal advocacy, and communications to win meaningful, measurable change in the public sector.

## ABOUT THE BRENNAN CENTER’S JUSTICE PROGRAM

The Brennan Center’s Justice Program pursues justice system reforms designed to reduce the “justice gap,” the distance between the nation’s promise of equal justice and the reality that people of color and low-income litigants face in our courts. We work to achieve a justice system in which the ability of people to rely on courts and other agencies to secure the rule of law and prevent harms is not controlled by wealth, ethnicity, immigration status or the community from which they come.

## ABOUT THE AUTHOR

Thomas Giovanni graduated from Morehouse College, a Historically Black College/University, in 1994, and received his JD from Georgetown University Law Center in 1998.

In 2010, after nearly a decade of providing direct services as a Staff Attorney and then a Supervising Attorney at the Neighborhood Defender Service of Harlem, Thomas joined the Brennan Center for Justice, seeking a platform from which to address the systemic policy barriers to the delivery of indigent defense services. He is Director of the Community-Oriented Defender Network, a network of over 50 defender offices and related service providers, united in the goal of improving the lives of their indigent clients and the communities in which they live through the provision of community-oriented defense services.

Thomas has collaborated extensively with clinical programs at several law school programs, including Cardozo and Fordham and served as a guest lecturer and field placement supervisor for the New York University School of Law Community-Oriented Criminal Defense clinic. Each year, he also serves as a Coach at the New York State Defender’s Association Basic Trial Skills Program, a week-long intensive trial advocacy training for New York State criminal defense attorneys, focused on integrating communication techniques, narrative-based advocacy, and client-centered/holistic representation techniques into defender practices.

# Acknowledgements

Like any chain, the Community-Oriented Defenders Network is only as strong as its links. We are fortunate to have strong, committed members supplying energy, insight, and information year after year. These members have built the Network from eight members in 2003 to over 60 offices and 200 individual members in 2012.

This report began as the brainchild of the previous Justice Program Director, David Udell. His continuing support and guidance are greatly appreciated. Thanks also to the previous Co-Directors, Laura Abel and Rebekah Diller, for their contributions in shaping this report, and for supporting the work of the Community-Oriented Defender Network throughout their tenure at the Brennan Center.

The “bones” of this report—the interviews with the various service providers—were assembled by two remarkable law students: Jeff Oakley and Shayla Silver-Balbus. Jeff was a student in the Brennan Center Public Policy Advocacy Clinic at New York University School of Law, and Shayla was an extern from Stanford Law School. To the extent this report is informative and accurate, they deserve the lion’s share of the credit.

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Also, my thanks to all those using holistic defense practices in their work, whether they are Network members or not. Each day they struggle to make the lofty Constitutional promises of the American criminal justice system less of a myth and more of a reality. Whether they succeed or not in individual cases, they advance the cause of justice through that daily struggle. By hearing and giving voice to the needs of their clients and the clients’ communities, defenders improve the quality of justice their clients receive.

Finally, we all should thank our clients. It is an honor to assist them, just as it is a continuing national shame that our criminal justice system makes holistic defense practices necessary.

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# INTRODUCTION

Over 50 years of legislative budgetary neglect from all levels of government have created an underfunded public defense system where inadequate investigations, abbreviated case preparation, and inadequate court advocacy are the norm. This has led to major deficiencies in the criminal justice system, such as unnecessary and expensive pre-trial detention and wrongful convictions.

In many jurisdictions, the deficiencies of public defender systems have such an impact that they constitute forms of malpractice. If the term “malpractice” seems an exaggeration, consider the following:

- The average amount of time spent by a public defender at arraignment is often less than six minutes per case. And that is when counsel is present and allowed to give information, which is not always the case. In many large jurisdictions, over half of all cases are “disposed of” (a fairly non-holistic term).
- One set of workload recommendations for public defenders suggests 150 felony cases or 400 misdemeanor cases per year. Most jurisdictions across the country exceed these recommendations. In some jurisdictions, public defenders may have more than 300 cases *at one time*. With such high workloads, it is impossible to represent individual clients while adhering to even minimal standards of professionalism.

The public debate about the criminal justice system centers around priorities for repair, not whether repairs are needed. Holistic defense practices are an important improvement to public defense service delivery, and the Community-Oriented Defender (COD) Network works to spread those practices.

The Brennan Center founded the Community-Oriented Defender Network to support defenders and their allies who seek more effective ways to fix the broken defense system. Members of the Network advocate for comprehensive representation, community engagement, and systemic reform. They help communities become healthier by reducing the criminal justice system involvement of community members.

The Network’s mission is to make holistic defense practices the normal standard for indigent defense in this country. Although there is some variation in service delivery reflected in the different terms, for the purposes of this report, the terms “comprehensive,” “client-centered,” “whole client,” “therapeutic,” and “community-oriented” are all roughly synonymous to holistic defense.

Holistic defenders believe their mission is not only to defend, but also to assist clients—both in the immediate case, and in the long term. The defenders’ services can be as varied as the clients’ needs, including pre-arrest services; multi-forum representation; accessing community-based treatment programs; and many other innovative means of service delivery.

From *Padilla*<sup>1</sup> to *Lafler*<sup>2</sup> to *Frye*<sup>3</sup>, the Supreme Court is in the process of recognizing the need to expand indigent defense beyond traditional limits. Throughout the country, service providers are utilizing holistic defense practices to create and implement innovative projects as they attempt to defend their clients and strengthen their clients’ communities.

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<sup>1</sup> *Padilla v. Kentucky*, 130 S.Ct. 1473 (2010) (holding that where the risk of deportation is clear, defense counsel must inform a non-citizen client that a plea carries a risk of deportation.)

<sup>2</sup> *Lafler v. Cooper*, 132 S.Ct. 1376 (2012) (holding that a state *habeas* petitioner is entitled to relief when his counsel deficiently advises him to reject a favorable plea bargain, but the client is later convicted and sentenced pursuant to a fair trial.)

<sup>3</sup> *Missouri v. Frye*, 132 S.Ct. 1399 (2012) (holding that defense counsel must communicate formal offers from the prosecution to the client.)



Although there are reasons to be hopeful that the holistic defense practices will continue to spread, it is unlikely that funding sources for public defenders will provide resources for full-scale, jurisdiction-wide renovations in the more than 3,100 counties in the country. But funding sources for improvements on smaller scales are becoming more available, and even with little or no money, change is possible.

Offices and individual attorneys can implement many holistic defense practices at minimal costs in resources or time. Starting now, offices can begin the process of transforming practices. This will benefit clients, the clients' neighborhoods, and the larger community as a whole. The projects highlighted in this report demonstrate that by starting small, offices can lay the foundation for broader reforms, and can attract greater resources.

*This report gives real-life examples of innovative holistic defense practices that defender offices across the country have implemented in the past year.*

Some of the practices produce objectively verifiable measures of success over a relatively short time period. Results from these practices could be used to seek greater funding for expanded versions of successful projects. Even where the practices do not produce objectively verifiable results, they are not merely cosmetic. They are intended to have positive consequences for the offices and attorneys implementing them, from improved court performance, to better morale among staff and leadership.

*The Brennan Center developed the Ten Principles of Community-Oriented Defense in partnership with leaders of the Community-Oriented Defense movement in order to provide a blueprint that defenders can use to strengthen their client-service programs and improve policies affecting clients' communities. This Start Now report uses the COD Ten Principles as a structure to present the innovative work that Network members have been involved in over the past year, so that it can be successfully replicated in districts throughout the country.*

## Principle #1: Create a Client-Centered Practice

*We aspire to employ a diverse group of attorneys, investigators, social workers and other advocates who respect their clients' wishes and goals and who work together to ensure that the dignity of every client is honored.*

### Celebrate Client Successes and Praise All Staff Involved

**Washoe County Public Defender (Nevada)**  
8,000 clients per year. 33 attorneys.  
22 non-attorney staff.

The Washoe County public defender's office changed an informal office practice in order to focus more on clients. Previously, outstanding attorney efforts were recognized during regular staff meetings with a "Public Defender of the Week" celebration. The office changed the tradition to celebrate clients as well as staff to show appreciation for everyone involved.

The acknowledgement was meant to build morale and incentivize other attorneys. But the "PD of the Week" framework was often overly-focused on trial or motion "victories," and lost sight of the impact on the client. It also omitted the two major players: clients and non-attorney staff. So Washoe switched to a "Client of the Week" event where the client is acknowledged first, followed by the people in the office who worked with the client.

This simple change makes a significant impact over time. For example, winning a drug suppression hearing is a victory for the lawyer and client that day. Seeing the same addicted client next week at arraignments is a sobering postlude. Focusing on defining success in terms of the client's needs would alter both the basis for and implementation of any celebration. The suppression victory is made complete when the client celebrates getting into their first treatment program, and when the client and all staff are recognized for their efforts.

Staff focus turns to those efforts that most impact the well-being of the persons represented, not only those that might produce thrilling or satisfying triumphs over the prosecutors.

In fact, clients and defenders may be celebrated even if they receive a difficult disposition. Recently, the "Client of the Week" event focused on a 20-year prison term (the maximum sentence) for a client who pled guilty to homicide. The client's family had approached the office following the case, and told staff members just how much it meant to them to have the attorneys communicating with the defendant's family throughout the entire ordeal.

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#### Client of the Week: Washoe County

Clients whose civil needs were addressed through contact with the office, including those who kept their public housing, avoided losing Pell Grant funding, or minimized immigration consequences, have been celebrated as clients of the week.

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## Principle #2: Meet Client Needs

*We seek to promote the life success of every client by identifying educational gaps, mental health issues, addiction, and other needs, and linking clients with resources, opportunities, services and providers to meet those needs.*

### Find Cost-Effective Ways to Communicate with Clients

#### Committee for Public Counsel Services (Massachusetts)<sup>4</sup>

In order to counsel, one must communicate. When a client does not speak English and the attorney does not speak the client's language, every aspect of representation is negatively affected. The Committee for Public Counsel Services (CPCS) found a creative, inexpensive way for their lawyers to speak to clients.

The state of Massachusetts provides interpreters for indigent clients, but they are only available in-person, with a minimum payment for two hours, plus travel time. These minimums imposed significant costs in time and money for public defenders. The CPCS decided to use a service called Language Line in order to meet the language needs of its non-English speaking clients, at costs lower than traditional interpreter services. Language Line provides over-the-phone interpreters in over 100 languages. At the beginning of a meeting with a client, the attorney requests an interpreter from the company over the phone and then conferences in the interpreter and client.

Using Language Line means attorneys do not have to endure major scheduling headaches to simply get in touch with their non-English speaking clients. Whether the subject of the call is significant, or simply a reminder about what to wear to court, the ability to communicate with clients in their own language is invaluable.

For Staff Attorney Steve Van Dyke, Language Line has been instrumental in his ability to serve his clients. Van Dyke does not speak Spanish, but many of his clients do. Van Dyke has been able to communicate with his clients, their families, and other community members in their native tongue without being at the mercy of interpreters' schedules. Van Dyke says this is particularly valuable during arraignments, when attorneys are often clients' only lifeline to the outside world. Now Van Dyke can quickly contact family to let them know what has happened, where their loved one is headed, how to visit them, and inform them of any action the client may need—be it locating witnesses, collecting identification cards, or posting bail.

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“Without language line, I risk providing two tiers of service: one for English-speaking clients (whose families I can easily call on my cell phone) and one for Spanish speaking clients, who I can only help by asking a favor of very-busy court interpreters”

- Staff Attorney Steve Van Dyke

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<sup>4</sup> CPCS oversees service provision for private counsel and public defenders, who operate as appointed counsel for those unable to afford representation in civil, criminal and administrative courts. Presenting CPCS' workload demographics would be more complicated, and less helpful than with the other offices profiled.

## Maricopa County Public Defender's Office (Arizona)

40,000 clients per year. 200 attorneys.

150 non-attorney staff.

The Maricopa County Public Defender's Office is doing its part to combat a serious problem affecting Spanish-speaking community members that come into contact with the county's criminal courts. Many Mexican nationals living in the county speak little to no English, and have low levels of formal education. To make matters worse, the Mexican criminal justice system differs greatly from the United States', so expectations about cases may be dangerously wrong.

For example, many Mexican nationals have been deemed incompetent under Arizona's mental competency statute, known commonly as "Rule 11." This is not because of actual mental health concerns, but due to the system's inability to recognize and respond to linguistic, educational and cultural differences.

Those caught in the trap of Arizona's Rule 11 may face serious consequences. At a minimum, they are required to undergo psychiatric evaluation from both a psychiatrist and psychologist before standing trial. If deemed incompetent (a fate not all that unlikely considering the significant language, educational, and cultural barriers at play), they will be forced into in-patient or out-patient treatment before being remanded back to trial. If deemed "unrestorable," Rule 11 requires they be civilly committed.

To combat this egregious misapplication of Rule 11, the Maricopa County Public Defender's Office is creating Spanish-language educational videos to be shown in Arizona jails. One video is aimed at giving in-custody Spanish speakers a broad overview of the United States criminal justice system. The other will explain the plea bargaining process. The Office is also considering additional life skills videos, such as a resume training video.

The Sheriff's Office has been an unlikely partner. The office is sympathetic to the intentions behind the videos and is providing their filming facilities free of charge to the defenders, resulting in very low production costs. Further, given the cooperation in producing the videos, the Public Defender's Office does not expect resistance to showing the videos.

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Other defender offices have created videos comparable to Maricopa's, such as Marin County's highly effective Spanish language video on the DUI arraignment process, posted on their website (<http://co.marin.ca.us/pd>) and YouTube (<http://youtu.be/XpQ35JsUMo8>).

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Many groups of clients could benefit from similar videos while in custody. Defender offices should consider the additional step of instituting such videos within jails. Although there is some investment in time and resources, it may take only moderate efforts to reach vulnerable clients in custody, with a large payoff.

## Principle #3: Partner with the Community

*We seek to maintain a local presence within the communities we serve, and to form relationships with community members, community-based organizations, and community institutions (e.g., courts, schools, government, health care and employment providers) to improve case outcomes and life outcomes for clients, and to strengthen families and communities.*

### Host Attorney Hours Outside of the Office

#### San Mateo County Bar Association Private Defender Program (California)

21,000 clients per year. 3 attorneys.

15 non-attorney staff.

The San Mateo County Bar Association's Private Defender Program (PDP) reached out to Pastor Andre LeBeau Harris Sr., whose congregation at the Born Again Christian Center in East Palo Alto has a large population of formerly-incarcerated people. Attorneys visit the church in the evenings and help congregants draft expungement motions. This directly helps the congregants, and indirectly helps the PDP by strengthening their ties to the community.

John Digiacinto took office as the Chief Defender of the PDP in 2000. The PDP's relationship with the African-American community was weak. After being booed during his introduction at a community initiative for formerly-incarcerated persons at a predominantly African-American church in East Palo Alto, Digiacinto realized that not everyone saw his good intentions. "This little demonstration served as a message for me" he recalled, "I realized that a group of people who had never met me were booing because they didn't feel that the Private Defender Program was truly on their side."

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"Taking this opportunity to go right to where folks live allows the [clients] to be so much more comfortable. This outreach helps us communicate with the largest congregation of African-Americans in the county."

- Chief Defender John Digiacinto.

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Realizing the need to disprove the negative perception of the office, Digiacinto began scheduling "meet and greets." It was "a lovely morning in April," he recalls. "I had 17 PDP lawyers gathered at the city hall in East Palo Alto, along with coffee and doughnuts (and interpreters) to meet community members. No one showed up." On a second attempt, the only African-American member of the Board of Supervisors and her mother were the only community members to show up. She called the local drug rehabilitation facility which sent over several young men. Though some of the young men were hostile and confrontational, Digiacinto and his fellow PDP lawyers engaged them in dialogue which became the beginnings of a relationship.

Digiacinto also made it a point to show up at community events. He attended community meetings coordinated by All of Us or None, a movement of formerly-incarcerated persons, many of whom resided in East Palo Alto. An expungement clinic PDP held in the community was, in Digiacinto's opinion, the turning point in the relationship. The clinic, held on a Saturday in East Palo Alto, drew almost 200 people with criminal conviction records. Digiacinto calls it a "huge success" for attorneys to see clients they had represented in the past at trial outside of the conditions of prison or the courtroom.

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“It was a hugely satisfying experience for them, me and a large turnout of PDP lawyers to be able to sit down with these folks, shake hands and chat, without anyone being dressed in orange jail jumpsuits and no one standing guard over them. There were a lot of smiling faces that day. It was an experience that I will not soon forget.”

- Chief Defender John Digiacinto.

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Those events paved the way for greater community involvement. It was Digiacinto’s frequent attendance at community meetings discussing the creation of the expungement clinic that brought him into contact with Pastor Andre Harris. His relationship with Pastor Harris eventually grew into a friendship with Pastor Harris, which led to the Pastor inviting PDP to his church to present on record clearance. Assistant Chief Defender Myra Weiher, PDP lawyer Alex Easterbrook and Digiacinto met with a group of about 20 people at Pastor Harris’s church and spoke with them about expungement. The lawyers then met with each person individually, following up free of charge, to guide them through the expungement process.

The congregation was very appreciative, but this outreach did more than just help clients. By partnering with their communities and improving relationships, the defenders now have allies that they can count on. For instance, should they decide to exceed formal funding for service expansion, the church, the pastor, and All of Us or None will be in a position to help with letters of support, with personnel to assist service delivery, or with meeting space.

### Neighborhood Defenders Northwest (Baltimore, Maryland)

218,000 clients per year. 518 attorneys.  
300+ non-attorney staff.

Attorneys at the Neighborhood Defenders Northwest (NDN) office of the Maryland Office of the Public Defender view community involvement as part of their job. Encouraged by supervisor Natalie Finegar, they visit community centers during evenings and weekends.

A number of Neighborhood Defenders lawyers have regular hours at the nearby Leonard E. Hicks Community Center. Each week, an attorney hosts open office hours for people with legal questions. Each Thursday, an attorney helps four to five community members with various issues, most often warrants and expungements.

Community office hours are scheduled during the afternoon, when caseloads are lower. During these hours, NDN places a second attorney in court at all times. Finegar found that “the community members that we help are *very* appreciative [of] services [that] are available within walking distance . . . and without the hassle going through a courthouse office (metal detectors, etc.). They are sometimes surprised to learn that we are public defenders because they are [not] used to us being so accessible to them.”

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“I am trying to get the attorneys into the swing of community events by letting them know when something is happening - an expungement summit, membership in a local health group’s garden, talking with students of a high school, etcetera. I still make the activity strictly voluntary, but I then tell the *whole* office how super it was that someone went that extra step. My hope is that this creates a new tone with the staff that community involvement is crucial to our work.”

- Natalie Finegar, Office of the Public Defender

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## Principle #4: Fix Systemic Problems

*We aspire to change policies that harm clients, families and communities (e.g., policing practices that produce racial and ethnic disparities in arrest rates).*

### Get Out of the Bunker and Into the Battle

#### Maricopa County Public Defender's Office (Arizona)

41,000 clients per year. 200 attorneys.  
150 non-attorney staff.

In addition to defending clients, the Maricopa County Public Defender's Office also addresses many of the systemic problems in its clients' communities. The office plays an important role in the Veterans Court, the Regional Homeless Court, and the Continuity of Care Court. Defenders devote considerable efforts to a variety of evidence-based initiatives, including:

1. Working with the courts and prosecution on potential expansion of diversion programs.
2. Serving as a stakeholder for the House Legislative Sub-Committee on Sentencing Reform.
3. Working with Arizona Attorneys for Criminal Justice and a nationally-recognized expert on an in-depth report of evidence-based practices.
4. Serving as a member of the Department of Justice's LEEC's Reentry Committee.
5. Working with Correctional Health Services and Magellan Health Services (a pre-trial, post-booking program that provides qualified misdemeanor offenders an opportunity to participate in relevant counseling) to address the ever-widening gap in mental health support services for clients caused by recent budget cuts.

6. Serving on the Executive Committee of the County's recently-created Jail to Community Services reentry committee.
7. Working with the Adult Probation Department on several training programs regarding expanded use of evidence-based practices.

The office was not always this engaged in addressing systemic problems. When Deputy Director Jeremy Mussman started at the Maricopa County Public Defender's Office in the early '90s, the office had what he describes as a "bunker mentality" and a lack of collaborative spirit. Mussman describes it as an "us against the world" mindset.

Around the same time that the office joined the COD Network, the office brought in a consultant from Florida to find ways to show the community that public defenders promote the public's safety just like prosecutors. Building on the values of effective advocacy and effective sentencing advocated by Janet Reno, the office utilized an "effectiveness argument" that went over well with the community and government officials. Mussman notes that new evidence-based practices and a county manager interested in addressing the root causes of criminal behavior helped the argument. People began to realize that it wasn't that people were bad, but that their programs were failing.

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"If there is one piece of advice I would give to offices trying to make changes, I would urge them to get a place at the decision-making table and to start talking to other stakeholders. Get out of the bunker. Sometimes you need to go at the other side, guns a-blazing. But most of the time you're just trying to work out an effective disposition."

- Jeremy Mussman, Deputy Director, Maricopa County Public Defender's Office

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## Principle #5: Educate the Public

*We seek to describe the human impact of the criminal justice system to policy-makers, journalists, and others so that the public can better appreciate the cost to individuals, communities, and the nation of “tough on crime” policies.*

### Spread The Word

#### **Shelby County Public Defender (Tennessee)**

31,500 clients per year. 74 attorneys.

27 non-attorney staff.

The Shelby County Public Defender found a new way to engage and educate the general public about the criminal justice system’s costs to clients and communities. Josh Spickler, director of the Shelby County Defender’s Resource Network, gave a short presentation at the Ignite Memphis community event.

“Ignites” are fast-paced, volunteer-organized events held in cities all around the world. Each Ignite presenter is allowed 20 slides, shown for just 15 seconds each. Presenters are directed to connect the audience to the thing they’re most passionate about. Josh Spickler took the opportunity to share his office’s message about the “justice gap.”

“The toughest (but most rewarding) challenge of giving this type of presentation is to refine your mission and message into just five minutes, Spickler said. “I was terrified by the thought of being out of control of my slides...but I had a blast, and [preparing for Ignite taught me] more about preparing a speech than anything else in my professional life.”

Spending a few evenings the week before the event creating his slides and rehearsing his script, Spickler had to think hard about how to get a lay audience to grasp the problems of mass incarceration and underfunded public defenders, and the effect on each individual client.

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When he finally gave the talk at Ignite, “the response was very energizing,” Spickler said. The more than 100 people in the audience were wowed, ooh-ing and aah-ing at the unbelievable realities of our system. The presentation was a great success, winning the People’s Choice Award as the best talk given.

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Although this is just one step in the very long road of public outreach and education, stepping out to an event and audience not already “sold” helped the Shelby County Public Defender’s office spread the message and convince reasonable, rational, caring people that injustices suffered by indigent clients are a problem for the entire community.

While it is difficult to measure client benefits from an effort like this, it is impossible to argue that this work is not worthwhile. By reaching out to new arenas and reaching new communities, the Shelby County Public Defenders are helping sow the seeds of future advocacy efforts. By showing the other staff the presentation and sharing the positive feedback with them, morale is increased, and staff is incentivized to undertake similar efforts.

Josh Spickler’s 5-minute Ignite talk on

The Justice Gap is at:

<http://www.youtube.com/watch?v=wgw5-xYk0J0>

To find an Ignite Show near you,

or start your own, visit <http://igniteshow.com>.

#### **Hennepin County Public Defender’s Office (Minnesota)**

52,000 clients per year. 116 attorneys.

50 non-attorney staff.

Twice annually, Hennepin County runs a “Citizens Academy.” The Academy is a series of citizen engagement sessions that offer county residents the opportunity to meet with county government

leaders and to learn about the services in place in their community. As part of the Academy's segment on public safety, the Public Defender's office gave a presentation at the Hennepin County Adult Correctional Facility about the work the office is doing to improve service delivery to clients in holistic and community-oriented ways.

Discussing barriers to implementation is a way to rally community support, and members of the public become more educated on the human impact of the criminal justice system along the way.

Even if a full-fledged Citizens Academy is not currently in place or easy to develop for a given county, a defender's office or individual attorney can achieve the same results by holding their own sessions, or finding other community events to present information.

## Principle #6: Collaborate with Likely and Unlikely Allies

*We aim to create partnerships with likely and unlikely allies including prosecutors, victims, faith-based organizations, and national and state legal aid service organizations, to share ideas, promote change, and support mutual efforts.*

### Find Common Ground

#### **Kentucky Department of Public Advocacy**

153,000 clients per year. 325 attorneys.

195 non-attorney staff.

From 2006 to 2008, the Kentucky Department of Public Advocacy joined researchers at the University of Louisville's Kent School of Social Work to conduct a pilot program measuring the impact of social workers in a public defender office. The study asked: "Can social workers save significant amounts of money for taxpayers by reducing recidivism rates and creating alternative sentencing plans?"

Research found that the state saved \$3.25 in incarceration costs for every \$1 invested in social worker salaries. If the program were funded at the statewide level, the study estimates that taxpayer savings would be between \$3.1 and \$4 million per year.

Ed Monahan, Kentucky Public Advocate, intends to use this study to provide an evidence-based rationale for his continuing advocacy efforts to secure funding for permanent social workers to be stationed in all thirty Public Advocacy offices around the state.

This study is available at [http://dpa.ky.gov/NR/rdonlyres/369E42F6-ECFF-4E51-ACC6-99F609A511D3/0/SW\\_Pilot\\_Report.pdf](http://dpa.ky.gov/NR/rdonlyres/369E42F6-ECFF-4E51-ACC6-99F609A511D3/0/SW_Pilot_Report.pdf)

#### **Washoe County Public Defender (Nevada)**

8,000 clients per year. 33 attorneys.

22 non-attorney staff.

The Washoe County Public Defender's office developed a student intern program with the University of Nevada at Reno School of Social Work. During year-long internships, undergraduate and graduate students provide support services for accused persons.

Social work interns created a risk-needs assessment instrument that is distributed at initial arraignment hearings. The assessment identifies drug, alcohol, mental health, and immigration risk factors for all clients, and is added to their file. The assessment also highlights issues that may trigger the collateral consequences of a criminal conviction, e.g. public housing, or licensure limitations.

Social work interns also developed a psycho-social instrument used to help evaluate and provide better advocacy and options for persons charged with serious felony sex offenses.

Social work interns now conduct a psycho-social, in-depth interview that delves into historical circumstances, family history, previous treatment, and long-term medical and mental health issues. The students further help clients through activities such as: screening in-custody clients for specialty court referrals; maintaining client contact throughout the case via telephone, home, and jail visits; preparing narrative reports about client history so attorneys have information for negotiations or a formal presentence report by parole or probation personnel; assisting clients navigating the maze of community resources and agencies; and accompanying clients to court hearings to reduce the stress and anxiety of court.

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From this simple initial step, further progress is possible. Through collaboration, the WCPD has successfully pushed University of Nevada, Reno to develop a Forensic Social Work Program. Collaborating to draft a curriculum, the school and defender office are now on their way to a deeper relationship and further successes.

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This program was built largely from scratch. The office had no contacts at the school, but Chief Defender Jeremy Bosler “just went up and sat in the lobby every day for a week until they considered [the social work students] for a placement.” Bosler asked an investigator with a Masters in Social Work to supervise the interns.

## Principle #7: Address Civil Legal Needs

*We seek to promote access to civil legal services to resolve clients' legal concerns in such areas as housing, immigration, family court, and public benefits, occasioned by involvement with the criminal justice system.*

### Go Above and Beyond Traditional Services

#### Neighborhood Defenders Northwest (Baltimore, Maryland)

218,000 clients per year. 518 attorneys.  
300+ non-attorney staff.

When a group of law students expressed interest in participating in a spring break service project, the Neighborhood Defenders Northwest put together a driving record clinic.

According to director Natalie Finegar, the clinic required minimal effort on the part of the office: students did research ahead of time on their own; a private attorney gave a free lecture to the students on the applicable law; and the students created their own advertisements and informational brochures, which were left with the office for future use.

During the clinic, students checked the driving records of clients and other community members to identify any license suspensions. Students identified three separate clients with trial dates that had been forgotten, thereby helping the clients avoid a future suspension and/or Failure To Appear warrant.

Even those participants who were not specifically identified reported benefiting from the program. Participants who filled out a sign-out sheet about their experience all responded that the clinic was beneficial. One client wrote, "this program could be a great help to the community." A second client wrote, "more people need to know about the office." In addition to providing needed services to the

community, these programs have the collateral benefit of keeping morale high, as the attorneys find it very rewarding to be present in the community, in a context far different from their stereotypically unpopular role.

#### Marin County Public Defender (California)

7,000 clients per year. 22 attorneys.  
14 non-attorney staff.

The Marin County Public Defender office is using social media as a new way to reach clients. The office created an English-language and Spanish-language informational video on the DUI arraignment process, and posted it on their website's front page<sup>5</sup> as well as on YouTube in both English<sup>6</sup> and Spanish.<sup>7</sup>

On a typical day, many people phone the office with basic questions about what happens after an arrest for a DUI. Answering these questions was necessary, but time consuming. By posting a video addressing the most frequently asked questions, the Marin County defenders have been able to free up more time to work directly on clients' behalf, while providing important information to community members. The Marin County video was made with a professional voiceover service, but Marin County Public Defender Jose Varela believes that offices could create similar videos of other common scenarios at little or no cost.

Social media websites also provide inexpensive and often free ways to increase communications and "discuss office realities with the client," according to Varela.

<sup>5</sup> <http://co.marin.ca.us/pd/>

<sup>6</sup> <http://www.youtube.com/watch?v=xcXPkiLbzJ4>

<sup>7</sup> <http://www.youtube.com/watch?v=XpQ35JsUMo8>

The Marin County Public Defender office also recently created a Facebook page.<sup>8</sup> On the page, staff members post matters of interest to clients and the community, such as notices of amnesty programs for traffic tickets or misdemeanor fines. Even information on community movie showings and celebrations have been posted, which can work to spread good will and foster relationships with the broader community.

It should be noted that the effectiveness of online communications is limited by a community's access to internet services. While many clients and community members do have internet access, it should not be the only way that advocates share information with clients and community-members.

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<sup>8</sup> <http://www.facebook.com/marinpd>

## Principle #8: Pursue a Multi-Disciplinary Approach

*We aspire to rely not only on lawyers but also on social workers, counselors, medical practitioners, investigators, and others to address the needs of clients, their families and communities.*

### Show, Don't Tell

#### Minnesota Public Defenders

150,000 clients per year. 370 attorneys.

200 non-attorney staff.

In Minnesota, the public defenders worked with 25 social workers who serve as dispositional advisors to create short video testimonials to be played at the allocution portion of a client's sentencing (specifically, at hearings for mitigated sentencing departures). The time invested in filming was well worth it, as clients often obtained sentences at the lower levels of Minnesota's mandatory sentencing guidelines.

Dispositional advisor Eric Kunz helped convince a judge to provide a client with an alternative to incarceration (which is at the bottom of the permitted sentencing range) by using a short video. The video featured appeals from a client's family, friends, and employer to paint a vivid picture of the community he would have left behind.

Augmenting a traditional written sentencing memorandum with photos, videos, and testimonials humanizes the client and provides a more dynamic view of their life in society. Since judges otherwise only see the client in custodial or adversarial proceedings, this more full view of a client's life in the community can make all the difference.

Dispositional advisors shoot videos using point-and-shoot digital cameras, camcorders, smartphones, even iPads. The average smartphone is now easily capable of shooting and transmitting video statements by people who can help demonstrate and attest to the client's pro-social behaviors.

Dispositional advisors combine the videos with their written memo that provides details about the client's background, and current progress with substance abuse or mental health treatment. A written sentencing memorandum should be filed and accompany any PowerPoint presentation or video submitted to the judge.

Demonstrating the client's connection to his or her community can be difficult within the courtroom. Lining up witnesses for a sentencing hearing can be impossible, and the court may not have time to hear from everyone willing to speak on the client's behalf. One way to present the testimony of community members, coworkers, family, friends, and others connected to the client's life is through a short video. The client's supervisor might not be able to leave his or her job but may be willing to say a few words about the client on camera.

The presence, even virtually, of the video's subjects, puts a human face on the people beyond the client that will be affected by the judge's disposition. Judges, even when given only limited discretion through sentencing guidelines, can be moved by these stories.

Advisors are trained to create effective videos as part of the Minnesota Public Defender's three-day Sentencing Advocacy Institute. At the training, lawyers bring examples of their own cases that present tough sentencing issues. Small groups of faculty, dispositional advisors, and lawyers then "workshop" these cases. Dispositional advisors thus get invaluable instruction from lawyers and professors on the legal dispositions, as well as technical help on how to use cameras, control for sound, etc.

**Neighborhood Defenders Northwest  
(Baltimore, Maryland)**

218,000 clients per year. 518 attorneys.  
300+ non-attorney staff.

Neighborhood Defenders Northwest of Baltimore is making the most out of its social work interns' school requirements, at truly minimal costs to their office. As part of the social work internship program, each student must run a "group." Two years ago, Neighborhood Defenders and their interns threw a block party and resource fair as their "group" activity. On April 18th, 2012, the office hosted its second annual block party. Local service providers, the Mayor's Office of Employment Development, and other state agencies were invited. Staff contributed food and decorations to keep costs down.

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"We had 30 people come [to the block party despite the] hard rain that day... [A] current client was really impressed when she came into the office. She said, 'Wow you guys really try to help!' I remember that line because we have only been trying to help that client for over a year now! But, something about having decorations up, hotdogs, hamburgers out, sends a new message."

- Natalie Finegar,  
Neighborhood Defenders Northwest

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## Principle #9: Seek Necessary Support

*We seek essential financial support, professionally approved workload limits, and other resources and structures sufficient to enable us to rely on the COD model to succeed.*

### Pursue Federal Grant Money and Share Work With Other Organizations

#### Hennepin County Public Defender's Office (Minnesota)

52,000 clients per year. 116 attorneys.  
50 non-attorney staff.

In recent years, the Hennepin County Public Defender's Office has obtained federal funds for two important initiatives. In 2010, Hennepin County established a Veteran's Court that provides alternatives to incarceration for troubled veterans. To prepare office members for their roles in the new court, 12 members of the Hennepin staff traveled to Oregon for an intensive week-long training on establishing veterans' courts. And all on the federal government's dime.

Also, earlier this year, Hennepin County Chief Public Defender Bill Ward and several other public defenders participated in a two-dozen-member National Focus Group on Indigent Defense reform. The group included legislators, representatives from non-profits, U.S. Attorneys, District Attorneys, public defenders, judges, and law professors. They all met to formulate a report on the most pressing needs of the indigent defense system. The group's findings were written up in a letter and preliminary report to Attorney General Eric Holder, with a formal report to follow.<sup>9</sup> The group was funded by the Bureau of Justice Assistance, so defenders were able to attend at no financial cost to their respective offices.

#### Knoxville Community Law Office (Knoxville, Tennessee):

8,000 – 10,000 clients per year. 23 attorneys.  
28 non-attorney staff.

Every two years, the Knoxville CLO augments its community participation by assisting in a large-scale survey of the homeless community in Knoxville.

Several local social service agencies come together to conduct an extensive 180-question survey. More than 300 people from various organizations interview people over the course of several nights. CLO staffers join in, heading to Angelic Ministries, an outdoor ministry meeting held under an Interstate Highway that is the largest faith-based homeless outreach in the city. Thirty staffers perform interviews at this site, at shelters, and at other campsites used by homeless people not living in shelters. The interviews seek to find out more about the root causes of homelessness, which services are being provided and not provided, and how to better meet the interviewees' needs. Afterward, the director of Knoxville's social services agency writes a report on the state of homelessness in Knoxville to help identify how to best address the needs of homeless people in the city.

<sup>9</sup> [http://www.americanbar.org/content/dam/aba/uncategorized/GAO/2011jan31\\_indigentdefense.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/uncategorized/GAO/2011jan31_indigentdefense.authcheckdam.pdf)

## Principle #10: Engage Fellow Community-Oriented Defender Members

*We are dedicated to sharing ideas, research, and models to help advance the COD movement locally and nationally in order to maximize its benefits for clients, families, and communities.*

### Join the COD Network

If you're not already a member, join! Membership in the COD Network enables you to access a growing community of people who are working on similar issues. Please contact the Brennan Center to learn more about how your organization can tap into the COD Network:

The Brennan Center for Justice  
at NYU School of Law  
161 Avenue of the Americas  
New York, NY 10013  
[www.brennancenter.org](http://www.brennancenter.org)  
646.292.8310

<http://www.brennancenter.org/page/s/CODmembership>

### Attend the COD-N Conference

The annual conference is held in late summer. Sessions focus on listening to client voices, developing holistic internal office culture, low-cost holistic defense practices ready for implementation, and recent legal developments relevant to holistic defense. The conference provides opportunities for networking with leaders in the worlds of indigent defense and community-oriented defense. CLE credits are offered for several panels. The 2012 conference will be held on July 19 and 20 at NYU School of Law.

For more information on this year's conference, visit [http://www.brennancenter.org/pages/2012\\_cod\\_conference](http://www.brennancenter.org/pages/2012_cod_conference).

### Use the COD-N Listserve

COD members share information about COD events, activities and resources.

Sign up here: <http://www.brennancenter.org/page/s/CODmembership>

# CONCLUSION

**H**olistic Defense Practices are the future of public defense. Both jurisprudence and societal expectations are pushing public defenders to use new methods of delivering services. Defenders must meet the expanding challenges presented by the criminal justice system either as a moral imperative, or as a matter of professional self-interest. They may offer services as part of their mission to seek justice for their clients and client communities, or simply to avoid providing ineffective assistance of counsel, as defined by evolving Supreme Court jurisprudence, such as in *Padilla*, *Lafler*, and *Frye*.

This report has focused on initiatives that involved little or no additional costs to the office, in order to demonstrate that not only are expanded services desirable and necessary, they are feasible.

The offices singled out for their efforts are unique, but by no means alone. Many offices, and even more individual attorneys, are finding creative ways to provide new services for clients and communities. Those engaged in expanding service delivery should see that they are an important part of an ever-growing movement. Those contemplating service expansions should see that there is an existing community of service providers waiting for them, ready to offer guidance and support for their efforts.

We hope that advocates will use the stories in this report as advocacy tools—examples of what their own offices are capable of doing, immediately. We also hope that the stories in this report will be a platform for imagination—a spark from which service providers might ignite their own creative responses to the unique issues in their own jurisdictions.

**Start Now.**

HONORABLE MENTIONS:  
ADDITIONAL HOLISTIC ACTIVITIES

The following pages highlight additional holistic defense practices that Community-Oriented Defender Network offices have employed over the past year.

### **Allegheny County Public Defender (Pittsburgh, Pennsylvania): Purchase and Donate Clothes for Court**

In Allegheny County, individual attorneys do their part in helping clients succeed. Many attorneys, despite their own salary struggles, purchase and donate clothes for their clients to wear for court. Though the collection is currently small, some clients are now able to put forward a better physical appearance in court and perhaps fare better in front of the judge.

### **Committee for Public Counsel Services (Massachusetts): Attorney Participation on Community-Based Boards**

As a way to serve client needs outside the confines of the courthouse, attorneys at CPCS sit on the boards of community organizations of their choosing. One attorney, for example, sits on the board of the Worcester Youth Center, an organization that provides developmental and educational programs for at-risk youth. Board service is performed during an attorney's personal time, but the connections made can be powerful ways to reform and improve community-based services for clients—and they come at no monetary cost to CPCS.

Also, CPCS attorneys bring their services directly to the communities of the clients they serve by volunteering in their personal time to conduct “Know Your Rights” trainings and provide information to community members on sealing criminal records. Individual offices of CPCS also participate in a number of community-building (and morale boosting) events, such as book drives for prisoners and children with incarcerated parents; food drives for community pantries; and holiday card lunchtime parties, where attorneys write cards to their clients and clients' families.

### **Hennepin County Public Defender's Office (Minnesota): Immigration Intake Form**

Something as simple as a one-page immigration intake form can have remarkable results for foreign-born clients coming into contact with public defender's offices. It can also streamline the process that defense attorneys use to inform clients of the immigration consequences of a criminal conviction.

At the Hennepin County Public Defender's Office, each client is asked six short questions at an initial *Padilla* screening. The form—which takes no more than a few minutes for a new office to recreate—helps ensure that clients and attorneys are aware of possible issues, and helps defense attorneys do their jobs better. The earlier the screening takes place in the attorney-client relationship, the better clients' needs are met. Bill Ward, Chief Public Defender of Minnesota's 4th Judicial District, reports that the form is incredibly easy to use and has been a great success in helping address the legal immigration needs of their clients.

### **Rhode Island Public Defender: Cell Phones for Clients**

Attorneys for the Rhode Island Public Defender are helping their cases and promoting the life success of their clients who lack access to telephones by connecting clients—especially those dealing with homelessness—to a federal program that enables low-income people to obtain a free cell phone and free service.

Clients eligible for public defense will likely also be eligible for this program. Rhode Island determines eligibility by participation in the Supplemental Nutrition Assistance Program (food stamps). A proof of income is also acceptable. Attorneys and staff fax in a short application, and clients are mailed a prepaid cell phone with up to 250 minutes per month.

The result is better communications between clients and attorneys. Where once there were failures to appear, bench warrants, and unnecessary jail time, there are now on-time and in-touch clients. Meanwhile, the client gets a phone to use as a resource in his or her own life, and increasingly sees the public defender as someone on their side.

### **Rhode Island Public Defender: Serving the Community, Literally**

On the last Friday of each month, three to five volunteers from the staff of the Rhode Island Public Defender volunteer at a local soup kitchen serving the homeless in Providence. Staff enjoys the opportunity to interact with clients in a different setting. Often, they will have an opportunity to help a client with a question about expungement or other outreach.

### **San Diego County: Homeless Court Program**

The San Diego County Homeless Court Program didn't develop without a significant expenditure of time and resources, but we highlight it here to show how something small can evolve over time into much more.

The Homeless Court Program grew out of the 1989 San Diego County Stand Down, a three-day (and now annual) event for homeless veterans, defense attorneys, prosecutors, and judges to work together and resolve hundreds of outstanding misdemeanor charges. Under public defender Steve Binder's vision and guidance, the program was developed in response to exit surveys from the first Stand Down that indicated there was a great need to resolve outstanding bench warrants.

Now, through monthly sessions at local homeless shelters, voluntary participants can resolve outstanding misdemeanor offenses and warrants. The Homeless Court builds on partnerships between the court, the prosecutor, the public defender, local shelters, service agencies, and homeless participants. The prosecution and defense review the cases, and participants are counseled before the court hearing. Fines and custody are replaced with participation in service provider programs completed prior to appearing at a session; cases are dismissed and serious charges are reduced in consideration for demonstrated accomplishments in program activities.

Binder has worked to further develop the model, which has since spread to 24 cities, with more cities in the works.

**San Mateo County Bar Association (California):  
Hosting Student Mock Trials**

Attorneys from the SMCBA collaborate with a local school district and Constitution Society to host a mock trial competition for high school students. This successful program brings a diverse group of people together. In each of the 20 participating schools, attorneys serve as coaches and students compete to display the best oral advocacy. (Chief Defender Digiacinto further exemplifies *Principle #6: Collaborate With Likely and Unlikely Allies* by joining with a District Attorney and Judge from the area to preside over the competition).

**Washoe County Public Defender (Nevada):  
Needs Assessment Form**

Working with social work interns from a local university, Washoe created a needs/risk assessment form that is completed with clients prior to or contemporaneously with the initial arraignment hearing. The holistic intake form becomes part of the file for every person assigned representation by the public defender. The assessment helps identify drug, alcohol, mental health, and immigration needs, as well as potential collateral impacts, including public housing, licensing, and child support. According to Linda Nordvig, deputy public defender, “The information from the needs/risk assessment form gives me a quick snapshot of my client’s circumstances and gives me a better idea of what is important to them and what might be important when negotiating with prosecutors.”





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