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## Out of the Courtroom and into the Neighborhood: Public Defenders Embrace Community Defense

by Kirsten D. Levingston



*Kirsten Levingston is director of public initiatives at the New York University School of Law's Brennan Center for Justice, a non-partisan public policy and law institute that focuses on the fundamental issues of democracy and justice. She has over a decade of experience as a criminal defense lawyer and criminal justice reform advocate. Levingston has directed the Brennan Center's Community Defender Network since its creation in 2003.*

Public defenders and assigned counsel represent indigent clients often define their role principally as individual lawyers fighting on behalf of individual clients. And for good reason. To represent a client well demands a passionate dedication to the client's goals, a depth of perception about the reactions and biases of a variety of audiences, and undaunted ingenuity in the face of often overwhelming odds.

While this role must figure centrally in the work of defenders, it is not the only dimension of their practice. This is not meant either to undervalue the importance of individual representation, or to underestimate its inherent challenges. However, the legal, social, and political arena in which defenders function has changed dramatically over the last couple of decades. In North Carolina, for example, the prison system is currently operating as a large holding facility for the mentally ill. More than half of those incarcerated in North Carolina prisons suffer from a diagnosable mental illness.

Now more than ever, a defender's practice must continue to adapt to remain effective, and a growing number of defender offices have taken on this challenge. They have begun to embrace more community-oriented forms of advocacy that push a defender's skills beyond both the courtroom and the individual case. For almost five years now, the Brennan Center for Justice at New York University School of Law has had the privilege of working with several of these defenders through the Community Defender Network.

The Brennan Center for Justice at the New York University School of Law created the Community Defender Network in 2003 as a way to honor *Gideon's* fortieth anniversary. Since then, it has grown from eight agencies to forty-two. Through bi-annual meetings, a newsletter, public edu-

cation, and ongoing dialogue with defenders, the Network promotes community defense in the defender community.

*Community defense* is both a mindset and an approach. Community defenders see the potential and strength in their clients and their clients' communities. They seek to partner with them to dispose of cases, address clients' problems effectively, and pursue broader policy reform. Working in this way empowers not only individuals and communities, but defenders as well.

### **Community Defense in a Case**

Community defenders do not let a prosecutor's charging document or police report define the terms of their representation. Instead, community defenders work directly with a client to define and prioritize her concerns and needs.

While it may be easy, for example, to negotiate a plea for a mother arrested and jailed for a minor drug offense, that plea may not actually solve the problems the client cares about most. In fact, it may even make them worse. Guilty pleas to even minor offenses may prevent parents from maintaining custody of their children; deny aspiring students access to student loans; or cause public housing residents and their families to be removed from their homes. However, armed with information about these broader needs and priorities, a community defender is in a better position to craft pleas and dispose of cases in ways that work for clients and their families.

This information also may lead the defender to see other ways he can help a client solve the fundamental problems underlying criminal activity. For example, if a client has a drug problem or mental health issue, a community defender might help her secure the treatment she needs. Getting a client sentenced to probation while paying no attention to the underlying problems

that led to the criminal behavior is often an empty and temporary victory. More than half the people in North Carolina prisons are there as a result of a failed probationary sentence.

Public defenders in Marin County, California and in Knoxville, Tennessee, have developed an intake form that helps them identify the broader issues their clients are facing.<sup>1</sup> Other defender offices have hired social workers to increase their ability to identify and respond effectively to a client's non-legal problems.

Four years ago, the Denver, Colorado, Office of the Public Defender launched a pilot project using in-house social workers to assess individuals with mental health or substance abuse needs who had a pending non-violent charge, and to develop individualized plans for treatment in the community. Denver defenders used these plans as part of their arguments against prison.

As a result of this intervention, only eight percent of people who originally received a community sentence were in prison one year after that sentence was imposed. This impressive finding enabled the office to transform the pilot project, which had been funded by a federal grant and limited to one office, into a project funded through the general agency budget and expanded to additional offices.

At The Bronx Defenders in New York, social workers, known as client advocates, work with lawyers and investigators as part of a criminal defense team. The Bronx Defenders explain:

Partnered with a social worker, a lawyer may offer better, informed advice to her client; at the same time, the social worker may focus on countervailing issues that might otherwise impair a client's synthesis of that advice. Most importantly, critical information uncovered by a social worker—recent job loss, battles with alcoholism—can convince a reluctant judge to give clients the benefit of the doubt, releasing them without bail, referring them to a program instead of prison, or dismissing charges entirely.<sup>2</sup>

#### **Community Defense in the Policy Arena**

The Albemarle County–Charlottesville (N.C.) Public Defender saw a recurring

health problem plaguing their office's clients: mental illness. Rather than continuing to deal with the problem on a case-by-case basis, the office sought a more global solution; it's Citizens Advisory Committee (CAC), a community-based group established to advise the defender office, brought together community stakeholders including medical professionals, criminal justice planners, law enforcement, and consumers of mental health services to develop a solution to an agreed-upon problem. Recently, the leadership of the CAC and the public defender's office bore fruit when the jurisdiction announced creation of a "Crisis Intervention Team," which will divert people with mental illness from the criminal system to treatment.<sup>3</sup>

#### **Community Defense in the Community**

As their name suggests, community defenders also are present in the community. Some offices are located in the neighborhoods from which clients come, like the Neighborhood Defender Service of Harlem;<sup>4</sup> Neighborhood Defenders Northwest in Baltimore City; and the Community Defender Division of the Public Defender Service of the District of Columbia.<sup>5</sup>

But defenders need not set up shop in a neighborhood to be a presence there. In Minneapolis, the Legal Rights Center deploys a lawyer to social service agencies for nine hours a week to provide direct advice and counseling.<sup>6</sup> The San Mateo Private Defender Program, an assigned counsel program, participates in expungement summits that have served hundreds of people with criminal records.

And community defenders participate in a variety of community activities, ranging from presentations to students on Law Day; to providing "know-your-rights" trainings to community and youth groups; to setting up public defender booths at county fairs; to spearheading court sessions in the community where homeless people can clear outstanding warrants stemming from their homelessness.

Creating a community presence enables defenders to build support by educating people (including potential jurors) about the criminal system and the defender's critical role in it. A community presence also strengthens relationships that are vital to client representation—for example,

relationships with human service providers whose skills and resources, such as treatment beds and job training, can aid clients.

These relationships are vital to effective policy reform, as well. When a defender comes to the table with a justice reform proposal backed by the community—or better yet, when community members come to the table backed by the defender—those recommendations are more likely to grab a policymaker's attention.

#### **Community Defense on Appeal**

A holistic approach to client representation is not reserved for trial lawyers. Indeed, since many people in prison lose contact with their communities and families while behind bars, their appellate lawyers are in the perfect position to help them reintegrate into society. For instance, the Office of the Appellate Defender and the Center for Appellate Litigation in New York, defense agencies that handle direct appeals and *habeas* proceedings, have hired social workers so the agencies can address issues relating to their clients' housing, employment, mental and physical health needs, benefits, and employment and job training.<sup>7</sup>

#### **Where to Start**

For the defender seeking to provide broader representation for her clients and to partner with communities, it is hard to know where to start. How can you begin to wrap your arms around problems caused by deep and fundamental social ills, such as poverty, racial bias, and the dehumanization of defender clients? Just recognizing that defenders have a role to play beyond defending against a legal charge is a start.

Here are a few first steps an agency or appointed lawyer can take on the road to becoming a community defender:

- **Offer Your Expertise.** Share your skills with the community by volunteering to conduct a "know-your-rights workshop." This is a great way to share what you know, and to learn which issues the community is most concerned about.
- **Identify Connections.** Look for the connections inside your agency. Survey your colleagues to find out the community groups with which they are involved. This is a natural starting

point for identifying additional services you may be able to offer your clients.<sup>8</sup>

- **Explore Possibilities.** A defender's client community often overlaps with communities served by human services organizations and advocacy organizations seeking justice for communities of color. Sit down with them to explore common concerns and potential collaboration.
- **Make Your Office A Resource.** All defenders are low on resources, but you may have a conference room, reception area with brochures, or some other resource the community might value. Think about how you can offer that conference room for community meetings or host regular events informing the community about a new law. Make your agency a resource for everyone, not just those facing criminal charges.

The prospect of adopting a community defense approach can seem overwhelming—or even impossible. But defenders across the country have shown that it can be done. More importantly, however, they are also showing that when they step out of the courtroom, they are able to change the system in ways that benefit their clients. ■

<sup>1</sup> See [www.brennancenter.org/communitydefense](http://www.brennancenter.org/communitydefense) for copies of these forms.

<sup>2</sup> See [www.bronxdefenders.org](http://www.bronxdefenders.org) for more information.

<sup>3</sup> See [www.brennancenter.org/communitydefense](http://www.brennancenter.org/communitydefense) for more information.

<sup>4</sup> [www.ndsny.org](http://www.ndsny.org).

<sup>5</sup> [www.pdsdc.org](http://www.pdsdc.org).

<sup>6</sup> [www.legalrightscenter.org](http://www.legalrightscenter.org).

<sup>7</sup> See [www.appellate-litigation.org](http://www.appellate-litigation.org) and [www.appellatedefender.org](http://www.appellatedefender.org) for more information.

<sup>8</sup> [www.brennancenter.org/communitydefense](http://www.brennancenter.org/communitydefense).



*Jenny Tilford is a sentencing specialist at Orange Chatham Alternative Sentencing in Hillsborough, North Carolina, where she has worked for over five years. Tilford received her master's degree in Social Work from the University of Tennessee in 2001.*

*She lives in Durham.*

## Offenders Last in Line Despite Their Need

by Jenny Tilford

During the past few years, changes have been made in the North Carolina mental health system that have reduced services to a damaging degree. Many offenders entering the criminal justice system are often desperately in need of treatment—they are the least able to obtain it.

In the scramble to find appropriate resources, the state and community supported Sentencing Services program makes a difference by developing treatment options for offenders for presentation at sentencing hearings. Often, this service enables individuals to make significant changes in their lives. Two examples follow:

**Terry** was at the end of his rope. He had become addicted to prescription narcotics when he broke his back several years ago, and he was now charged with breaking and entering, larceny, and assault with a deadly weapon. He faced an active sentence. Terry began working with Sentencing Services, a state and local program that provides background information and describes treatment options for offenders. He applied to several treatment programs, but because he had assault charges, they were hesitant to accept him. Terry was finally accepted to the fourth program to which he applied, and he was able to begin recovery by participating in Narcotics Anonymous and living in a sober environment. Terry's sentencing specialist at Sentencing Services developed a plan that recommended he participate in a recovery program while on probation. Terry later decided to continue his education, and he became a leader in the program in which he participated. Terry's life seems to be back on track. He remains in recovery nine months later.

**Denise** was in jail for stabbing her boyfriend, and desperately in need of some help. HIV positive, with no insurance and a history of substance abuse and bipolar disorder, Denise was on four different medications to help stabilize her mood. Over 15 different agencies were contacted as possible placements, but each was ruled out because Denise did not fit certain criteria. Some of the programs said her emotional issues were too complex for them to handle. She had participated in three of the programs before and been expelled for different reasons. At her disposition, Sentencing Services asked the judge to accept a sentencing alternative that included placement in a residential program for which she was on a waiting list. Several weeks later, after being released from jail, Denise was admitted to a residential program specifically for women who are HIV positive. Two months later, she remains on probation and in treatment.