BROKEN WINDOWS POLICING AND COMMUNITY COURTS: AN UNHOLY ALLIANCE

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INTRODUCTION

Over the past few decades, the American criminal justice system has undergone drastic changes, primarily in ways that unfairly and disproportionately target young black and Latino men. In recent years, individuals and organizations across the country have begun to fight back against many of these changes, with varying degrees of success.

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One such effort is the problem-solving justice movement, which encompasses a wide range of projects that attempt to improve specific aspects of the criminal justice system—often in the areas of policing and court administration—using a data-driven, "problem-solving" approach.[1] Within the problem-solving justice movement, community courts have emerged as a popular choice for criminal justice stakeholders looking to reduce crime and improve community relations.

At the same time, public defender offices in many jurisdictions have begun to move towards holistic defense, a model of legal representation that expands the traditional role of the defense attorney and emphasizes the importance of developing strong ties to the communities that they serve. Since community courts and holistic defense have both gained prominence within roughly the same period of time, people inside and outside of the criminal justice world regularly conflate the two concepts despite the fact that holistic defense and community courts are grounded in completely different philosophies, derive from contrary mandates, and strive toward profoundly disparate goals. Both movements seek to provide support for individuals entangled in the criminal justice system, and both engage the community in that effort, but their approaches diverge drastically because of basic and irreconcilable philosophical differences. This Article explains the differences between holistic defense and community courts, and argues that holistic defense is the better approach for responding to the problems of the twenty-first-century American criminal justice system.

According to its proponents, community courts seek to reestablish the perceived legitimacy of the criminal justice system in poor neighborhoods by offering a more efficient—as opposed to adversarial—alternative for the adjudication of minor offenses.[2] In pursuit of this goal, community courts employ a collaborative approach whereby judges, prosecutors, and defense attorneys work together as teams in determining case outcomes.[3] When the members of a collaborative team agree upon dispositions, the judge hands down sentences that often include both punitive and rehabilitative measures.[4]

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1 *See generally* ROBERT V. WOLF, CTR. FOR COURT INNOVATION, PRINCIPLES OF PROBLEM-SOLVING JUSTICE (2007) (providing an overview of the principles of the problem-solving justice movement).

2 *See* GREG BERMAN & JOHN FEINBLATT WITH SARAH GLAZER, GOOD COURTS: THE CASE FOR PROBLEM-SOLVING JUSTICE 83 (2005) ("[T]he most important goal of community courts is to address the alienation from the justice system that citizens—especially in poor and minority neighborhoods—often feel.").

3 *Id.* at 115–17 (describing the team approach used by judges and attorneys in problem-solving courts).

4 *See id.* at 63 ("But punishment is just one side of the ledger at the Midtown Community Court. The other half of the equation is help. The Court houses an array of professional helpers

In this way, community courts aim to change the way that criminal courts adjudicate cases involving low-level offenses.

While this approach may hold some intuitive appeal and often results in sentences that do not include incarceration, it raises serious ethical questions for defense attorneys by diluting their adversarial function[5] and unfairly pressuring individuals to plead guilty.[6] More importantly, community courts exacerbate the over-policing of poor, minority neighborhoods by providing a mechanism through which the criminal justice system can easily process so-called quality-of-life crimes without confronting the police actions that lead to those arrests.[7] In the end, community courts ratify arrests that should never have been made, and legitimate cases that should never have been brought. Indeed, this Article argues that because these courts legitimize an illegitimate policing strategy that targets low-income communities of color, problem-solving courts actually create problems, and community courts actually harm the very communities they aim to help. Holistic defense, by contrast, aims to stop over-policing, challenge the ever-increasing state control over low-level offenders, and return the poor and disenfranchised to positions of legitimacy within their communities and society as a whole.

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on-site—counselors, educators, nurses, job trainers, and drug-treatment providers. They are there to address the problems—addiction, homelessness, unemployment—that are often associated with criminal behavior.").

5 *See* Tamar M. Meekins, *Risky Business: Criminal Specialty Courts and the Ethical Obligations of the Zealous Criminal Defender*, 12 BERKELEY J. CRIM. L. 75 (2007); Symposium, *The Impact of Problem Solving on the Lawyer's Role and Ethics*, 29 FORDHAM URB. L.J. 1892 (2002); *see also* Anthony C. Thompson, *Courting Disorder: Some Thoughts on Community Courts*, 10 WASH. U. J.L. & POL'Y 63, 72, 77–81 (2002) (criticizing the collaborative approach that community courts employ).

6 *See* Thompson, *supra* note 5, at 87 ("Most jurisdictions do not allow trials to take place in the community court. . . . In order to gain access to the wide range of services available, defendants usually must plead guilty."); *see also* Symposium, *supra* note 5, at 1909–10 (statement of Steven M. Zeidman) ("[I]n years past, for many, the fundamental flaw of the criminal court was its failure to provide trials, failure to provide an opportunity to be heard. . . . [P]roblem-solving courts may well exacerbate this."); Panel Discussion at the University of Maryland Law Journal of Race, Religion, Gender and Class Symposium: A Conversation with the Experts: The Future of Problem-Solving Courts (Nov. 6, 2009), *in* 10 U. MD. L.J. RACE RELIGION GENDER & CLASS 137, 155 (2010) [hereinafter Panel Discussion] (statement of Tamar Meekins) ("[I]t is problematic when my client may be forced to participate . . . because she wants treatment and she doesn't want to go to jail.").

7 *See* Thompson, *supra* note 5, at 63–66, 82–86 (portraying community courts as an unwarranted expansion of the criminal justice system); Symposium, *supra* note 5, at 1908 (statement of Steven M. Zeidman) ("[W]hat you end up with is a situation where we widen the net, we are bringing in more and more people, and primarily again people of color."); *see also* Richard C. Boldt, *A Circumspect Look at Problem-Solving Courts*, *in* PROBLEM-SOLVING COURTS: JUSTICE FOR THE TWENTY-FIRST CENTURY? 13, 13–32 (Paul Higgins & Mitchell B. Mackinem eds., 2009); Victoria Malkin, *Problem-Solving in Community Courts: Who Decides the Problem?*, *in* PROBLEM-SOLVING COURTS: JUSTICE FOR THE TWENTY-FIRST CENTURY?, *supra*, at 139, 139–60.

Community courts actively adhere to a "Broken Windows" theory of disorder and policing. This theory was popularized in a seminal 1982 article by George L. Kelling and James Q. Wilson.[8] Kelling and Wilson popularized the idea that "at the community level, disorder and crime are usually inextricably linked, in a kind of developmental sequence."[9] Broken Windows theory relies upon this proposition to conclude that the police should focus their attention on low-level offenses in order to deter more serious crime. In the years since Kelling and Wilson's article, Broken Windows theory has led to a drastic increase in the policing and prosecution of minor, nonviolent offenses like turnstile jumping, public urination, and vandalism, which commentators now refer to as quality-of-life crimes.[10] That strategy has unquestionably resulted in increasing numbers of people—particularly poor people of color—dragged into the net of the criminal justice system. And these rapidly multiplying arrests, in turn, began to be processed through the criminal justice system, fueled by the rise of community courts—designed specifically to process the kinds of low-level disorder offenses that Broken Windows theory targets.

In contrast to the focus on processing quality-of-life crimes utilized by community courts, holistic defense leverages an innovative

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8 George L. Kelling & James Q. Wilson, *Broken Windows: The Police and Neighborhood Safety*, ATLANTIC (Mar. 1982), http://www.theatlantic.com/magazine/archive/1982/03/broken-windows/304465.

9 *Id.*

10 K. Babe Howell, *Broken Lives from Broken Windows: The Hidden Costs of Aggressive Order-Maintenance Policing*, 33 N.Y.U. REV. L. & SOC. CHANGE 271 (2009) ("In the policing sphere, the Broken Windows theory . . . has given rise to aggressive order-maintenance policing strategies in many jurisdictions. Such policing has drawn millions of individuals into the criminal justice system for minor offenses."); *see also* BERNARD E. HARCOURT, ILLUSION OF ORDER: THE FALSE PROMISE OF BROKEN WINDOWS POLICING 47–50 (2001) ("[Rudolph] Giuliani appointed William Bratton police commissioner in December 1993, and together they soon began implementing a policing strategy called the 'quality-of-life initiative,' expressly premised on the broken windows theory. Both Giuliani and Bratton cite the 'Broken Windows' essay as the main source of their initiative. . . . The quality-of-life initiative was modeled on Bratton's work in the New York subways. . . . From 1990 to 1992, Bratton implemented an aggressive policy of misdemeanor arrests in the subways. . . . As a result, ejections and arrests for misdemeanors both tripled within a few months of Bratton's appointment . . . . When Bratton took over as police commissioner in early 1994, he began implementing a similar policy aimed at creating public order by aggressively enforcing laws against quality-of-life offenses . . . . [I]n the words of Bratton himself, the quality-of-life initiative was the 'linchpin strategy.' Bratton's successor, Howard Safir, continued the strategy of aggressive misdemeanor arrests, and also promoted a more aggressive stop-and-frisk policy. In 1997 Safir tripled the size of the Street Crime Unit (SCU) . . . . The unit stopped and frisked at least 45,000 people in 1997 and 1998 . . . ." (citations omitted)); Thompson, *supra* note 5, at 83–85 ("James Q. Wilson and George L. Kelling posited a theory that gave rise to a new policing movement. . . . Anxious to test-drive his theories, Kelling worked with William Bratton, then chief of the Transit Police in New York City. . . . New York City Mayor Rudolph Giuliani used the Broken Windows theory to declare war on low level offenses. This led to the design and implementation of an aggressive policing approach to quality-of-life offenses." (footnote omitted)).

adversarial model of advocacy to decrease the criminal justice system's control over historically underrepresented communities. Holistic defense consists of client-centered, interdisciplinary advocacy covering the full range of enmeshed penalties that result from and contribute to criminal justice involvement. Whereas community courts seek to strengthen and reform the judiciary, holistic defense is rooted in the traditional defense function; it is an innovative model of public defense that uses legal advocacy, social work support, and community outreach to achieve positive change for clients without sacrificing the individual rights and protections enshrined in the adversarial system. Unlike community courts, which require that defendants attend treatment as a condition of a sentence, attorneys practicing holistic defense connect their clients with social services programs and in doing so, respect their clients' rights to self-determination and refuse to paternalistically force those services upon them. Furthermore, as direct service providers working one-on-one with clients, advocates at holistic defender offices are better positioned to observe and understand the needs of both the clients and of the communities they serve.

The rapid and continued proliferation of community courts necessitates a thorough evaluation of their merits. Since the opening of the first community court in 1993, as many as seventy community courts have emerged in the United States and abroad.[11] Moreover, the inclusion of a wide range of quality-of-life offenses within the jurisdiction of community courts marks an important shift within the problem-solving justice movement. Other types of problem-solving courts attempt to tackle specific issues for which there are much more extensive track records of adjudication and treatment in the criminal justice system.[12]

This Article does not attempt to address these other types of problem-solving courts, nor does it seek to critique the problem-solving justice movement as a whole, which has contributed many valuable innovations to the criminal justice system. Rather, this Article seeks to

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11 *See* CYNTHIA G. LEE ET AL., NAT'L CTR. FOR STATE COURTS, A COMMUNITY COURT GROWS IN BROOKLYN: A COMPREHENSIVE EVALUATION OF THE RED HOOK COMMUNITY JUSTICE CENTER 10 (2013), http://www.courtinnovation.org/sites/default/files/documents/RH%20Evaluation%20Final%20Report.pdf ("Ten years after the 1993 debut of the Midtown Community Court, 21 community courts were in operation; today there are 37 such courts in the United States and 33 in other countries . . . .").

12 *See* Thompson, *supra* note 5, at 88 ("[D]rug courts . . . at least had a body of experience on which to draw. Everyone who had participated in the criminal court model had some sense of what did and did not work. . . . Community courts do not have the same luxury. They typically address matters that have no long-term track record of treatment and no experts . . . . While these [quality-of-life] offenses may be related to well-studied problems such as gang affiliation, unemployment, and even drug dependency, there is far less data than in the drug crime context for formulating approaches to addressing them." (footnote omitted)).

distinguish between holistic defense and community courts, emphasize the importance of the adversarial system, and challenge community courts' faulty reliance on the Broken Windows approach to public safety. This Article is also concerned with the problems inherent in paternalistically using social services as punishment, and the question of whether Broken Windows policing and the construction of these new courts helps or hurts historically disadvantaged communities.

I. DEFINITIONS AND ORIGINS

A. *Community Courts*

Community courts represent the latest and most expansive phase of the problem-solving justice movement, which began in the late 1980s with the creation of the Miami-Dade County Drug Court. At the height of the War on Drugs, Miami-Dade officials were struggling to manage a rapidly increasing volume of drug-related cases. When a judge ordered the county to decrease its jail population, Miami-Dade responded by opening the nation's first drug court.[13] The basic idea behind drug courts was to offer "intensive court-based treatment program[s]" as an alternative to incarceration.[14] For the most part, these courts have received effusive praise.[15]

Soon, the popularity of drug courts brought about a generous funding stream that accelerated their proliferation throughout the

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13 Mae C. Quinn, *The Modern Problem-Solving Court Movement: Domination of Discourse and Untold Stories of Criminal Justice Reform*, 31 WASH. U. J.L. & POL'Y 57, 63 (2009) [hereinafter Quinn, *The Modern Problem-Solving Court Movement*] ("Miami faced both staggering narcotics-based caseloads for prosecutors and jail overcrowding as a result of the 1980s 'drug war' . . . [and] was under court order to reduce its enormous jail population." (footnote omitted)).

14 JAMES L. NOLAN, JR., LEGAL ACCENTS, LEGAL BORROWING: THE INTERNATIONAL PROBLEM-SOLVING COURT MOVEMENT 11 (2009).

15 Mae C. Quinn, *Whose Team Am I on Anyway? Musings of a Public Defender About Drug Treatment Court Practice*, 26 N.Y.U. REV. L. & SOC. CHANGE 37, 37 (2000–2001) [hereinafter Quinn, *Whose Team Am I on Anyway?*] ("[D]rug treatment court initiatives have received much attention, praise, and funding to encourage their development."); *see also* Symposium, *supra* note 5, at 1906 (statement of Steven M. Zeidman) ("[I]n 2000 the Department of Justice Drug Courts Program Office doled out a whopping $50 million worth of grants."). Zeidman also observes that problem-solving courts enjoy "seemingly universal enthusiasm and support" from groups that include "[t]he ABA, the Department of Justice, the judiciary, the legislature, [and] advocacy groups." *Id.* Critics allege that drug courts' success has been overstated. Professor Josh Bowers of the University of Virginia School of Law argues that "drug courts are contraindicated for target populations and may thereby lead to longer sentences for the very defendants who traditionally have filled prisons under the conventional war on drugs." *See* Josh Bowers, *Contraindicated Drug Courts*, 55 UCLA L. REV. 783, 783 (2008).

country,[16] and inspired the creation of new types of problem-solving courts—also known as specialty courts—such as domestic violence courts and mental health courts.[17] Over time, the problem-solving justice movement has grown to encompass a number of initiatives aside from the construction of specialty courts. Recent projects include the Child Witness Support Program, which provides support services for children who have witnessed violent crimes,[18] and the Crown Heights Community Mediation Center, which connects local residents with community-based dispute resolution services.[19]

In contrast to traditional criminal courts, where judges preside over all different types of criminal matters, problem-solving courts focus on specific types of offenses. Although the various types of problem-solving courts seek to address different issues, the courts all share a common approach.[20] As discussed above, problem-solving courts operate through nonadversarial proceedings in which judges and attorneys are encouraged to work as teams, and judges assume more active roles.[21] In each case, the team seeks to develop an individually

16 Symposium, *supra* note 5, at 1906 ("[I]n 2000 the Department of Justice Drug Courts Program Office doled out a whopping $50 million worth of grants."); Quinn, *Whose Team Am I on Anyway?*, *supra* note 15, at 37 ("Due to their purported promise and reported success, drug treatment court initiatives have received much attention, praise, and funding to encourage their development.").

17 NOLAN, *supra* note 14, at 14–20; Mitchell B. Mackinem & Paul Higgins, *Introduction*, *in* PROBLEM-SOLVING COURTS: JUSTICE FOR THE TWENTY-FIRST CENTURY?, *supra* note 7, at vii, ix ("Since the beginning of problem-solving courts in 1986, they have experienced significant growth. As of December 31, 2007, there were 3,204 problem-solving courts."); *see also* Greg Berman, *Problem-Solving Justice and the Moment of Truth*, *in* PROBLEM-SOLVING COURTS: JUSTICE FOR THE TWENTY-FIRST CENTURY?, *supra* note 7, at 1, 2 ("[T]here is a growing movement towards what has become known as 'problem-solving justice.' There are now thousands of problem-solving courts in the United States.").

18 *Child Witness Support Program*, CTR. FOR COURT INNOVATION, http://www.courtinnovation.org/project/child-witness-support-program (last visited Jan. 19, 2016).

19 *Crown Heights Community Mediation Center*, CTR. FOR COURT INNOVATION, http://www.courtinnovation.org/project/crown-heights-community-mediation-center (last visited Jan. 19, 2016).

20 Greg Berman, a leader in the field of problem-solving courts, lists the following six "common underlying principles" of problem-solving courts: enhanced information, community engagement, collaboration, individualized justice, accountability, and outcomes. *See* Berman, *supra* note 17, at 2–3.

21 *See* Mackinem & Higgins, *supra* note 17, at viii (contrasting the "adversarial process" used in traditional courts with the "collaborative process" employed in problem-solving courts); Quinn, *The Modern Problem-Solving Court Movement*, *supra* note 13, at 59–60 ("In the Miami Drug Court, the judge changed from passive arbiter to active participant . . . . Prosecutors and defense attorneys changed their roles, too, shedding their adversarial posture to become part of the treatment court 'team.'"); Thompson, *supra* note 5, at 72 ("Perhaps the single most defining feature of drug courts is the collaborative approach used by otherwise adversarial players."); *see also* BERMAN & FEINBLATT, *supra* note 2, at 4 (arguing that the adversarial system often produces a "kind of homogenized, assembly-line justice that leaves all parties dissatisfied").

tailored mix of punishment and social services, and monitors the defendant's efforts to comply with the court's mandates.[22]

The very first community court, the Midtown Community Court, opened in 1993. Whereas judges in drug courts and domestic violence courts only hear a narrow range of cases, their counterparts at the Midtown Community Court preside over a variety of matters stemming from alleged quality-of-life offenses.[23] Whenever the police arrest an individual within a specific geographic area for a misdemeanor offense, that individual appears before a Midtown Community Court judge and must choose between accepting a community court sanction—usually one of a variety of "visible restitution projects [such as] sweeping the streets"[24]—and fighting her case in criminal court.[25] As we will see, this shift brings with it a myriad of issues that may ultimately negate any positive results from community courts.

According to Greg Berman and John Feinblatt, residents' complaints about quality-of-life offenses served as the primary inspiration for the Midtown Community Court.[26] However, local businesses and political interests also played key roles in the creation of the court.[27] A common thread in these groups' support for community

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22 *See* Berman, *supra* note 17, at 3 (discussing the concepts of "Individualized Justice" and "Accountability").

23 *See* BERMAN & FEINBLATT, *supra* note 2, at 66 ("The Court, which handles between ten and fifteen thousand cases each year, arraigns all misdemeanor offenses—illegal vending, low-level drug possession, disorderly conduct, shoplifting, vandalism, and the like—occurring in and around Times Square."). Critics of community courts such as Anthony C. Thompson argue that the shift from narrow to broad jurisdiction is inappropriate for problem-solving courts. Thompson, *supra* note 5, at 63 ("Drug courts successfully departed from traditional court operations by narrowing their focus to the treatment of drug problems and the criminal conduct that tends to flow from addiction. Such specialized concentration both targeted the defendant's problems and allowed professionals working in the system to develop a level of expertise that attends such focused work. But the community courts that have recently emerged are a different breed. These courts have a wide focus—perhaps too wide. They seek to address complex issues ranging from domestic violence to mental health. In the process, community courts have begun to utilize the coercive power of the judiciary in ways that raise questions about their propriety and necessity.").

24 BERMAN & FEINBLATT, *supra* note 2, at 62–63.

25 *Id.* at 62 ("Defendants have no choice about whether their cases are heard at Midtown or not—anyone arrested for a misdemeanor crime within the three police precincts surrounding Times Square is automatically arraigned at Midtown. But once they arrive at Midtown, defendants do have a choice: they can either accept the alternative sanctions offered at Midtown or they can choose to fight their case in Manhattan's regular criminal court downtown.").

26 *Id.* at 60–62.

27 *Id.* at 60–61. In fact, Thompson argues that business owners and elected officials seeking to attract visitors to Times Square provided virtually all of the support for creation of the Midtown Community Court. Thompson, *supra* note 5, at 89–90 ("Advocates of the community court model have hailed them as an answer to a community's feelings of separation from the justice system. However, it is worth noting that businesses have often been the driving force behind the design and establishment of these courts. . . . The Manhattan Midtown Community Court . . . was reportedly established to address community problems in midtown . . . . [In

courts is the belief that increased focus on low-level offenses leads to decreases in the frequency of serious crimes.[28] Interestingly, while community courts' emphasis on alternative sanctions would seem to imply that these courts are less punitive than traditional criminal courts, Berman and Feinblatt argue for community courts on the grounds that traditional criminal courts fail to impose enough punishments on low-level offenders. Using the example of prostitution, Berman and Feinblatt recount how individuals arrested by the police would quickly be released after being sentenced to time served or to a short jail sentence.[29] In this context, Berman and Feinblatt propose that community courts are preferable to criminal courts for the adjudication of minor offenses because they offer more certain and immediate penalties for quality-of-life incidents.[30]

The Red Hook Community Court in Brooklyn, New York, for example, has contributed to increased sentencing for low-level offenses adjudicated through the community court system. Judge Alex Calabrese, who has presided over the court since its opening in 2000, said: "We give them every reasonable chance, plus two. So when I do have to send them to jail, it tends to be for twice as long as they might ordinarily get."[31] While community courts may in theory promote alternatives to incarceration, in practice, they often impose harsh punishment for quality-of-life offenses and increase the number of people ensnared in the criminal justice system. While public defenders practicing holistic defense agree that delays in the criminal justice system are among the most significant problems facing their clients,[32] improving the system's capacity for processing low-level offenses is a far inferior solution to reducing the amount of people dragged through the courts in the first place. Nevertheless, a multitude of community courts, including the Red

reality,] the Giuliani administration pushed to clean up the area and reclaim it for business and tourism[,] . . . [and t]he Times Square Business Community acted as the court's principal sponsor." (footnotes omitted)).

28 *See* BERMAN & FEINBLATT, *supra* note 2, at 61 ("[T]here's a link between little crime and big crime." (quoting Barbara Feldt, founder, Residents Against Street Prostitution and "a long-time resident of midtown Manhattan")); *see also* Boldt, *supra* note 7, at 18 ("Beginning with the first community court, . . . it has been clear that these courts were designed to implement the 'zero tolerance' and 'quality-of-life' policing tactics at the heart of the 'broken windows' theory[,] . . . under which police are encouraged to increase the number of arrests for minor criminal offenses.").

29 *See* BERMAN & FEINBLATT, *supra* note 2, at 61–62.

30 *See id.* at 62–63.

31 Jim Dwyer, *A Court Keeps People Out of Rikers While Remaining Tough*, N.Y. TIMES (June 11, 2015) (quoting Judge Alex M. Calabrese), http://www.nytimes.com/2015/06/12/nyregion/a-court-keeps-people-out-of-rikers-while-remaining-tough.html.

32 BRONX DEFENDERS, NO DAY IN COURT (2013), http://www.bronxdefenders.org/wp-content/uploads/2013/05/No-Day-in-Court-A-Report-by-The-Bronx-Defenders-May-2013.pdf.

Hook Community Court, have emerged across the country in the years since the founding of the Midtown Community Court.[33]

B. *Holistic Defense*

Practiced by The Bronx Defenders since 1997, holistic defense traces its roots to two earlier approaches to improving public defense: client-centered defense and community-oriented defense. Client-centered defense, which emerged as part of a larger movement in the legal field during the 1970s, requires attorneys to give their clients the primary role in decision making for cases. Community-oriented defense, which developed in the 1990s, recognizes that strong ties to, and knowledge of, clients' communities are vital to public defense.[34] In sharp contrast to the paternalism of community courts, holistic defense synthesizes these philosophies in order to emphasize clients' rights to, and capacities for, self-determination.

When advocates from The Bronx Defenders first set out to practice holistic defense, they were unsure of precisely what their work would entail. After listening to clients, their families, and their communities, it quickly became clear that clients often cared more about the enmeshed penalties of criminal justice involvement—also referred to as collateral consequences—than whether or not they would spend time in jail.[35] This revelation meant that in order to truly be both client-centered and community-oriented, holistic advocates would need to redefine public defense to address more than just criminal cases.

Drawing upon this foundational insight, holistic defense expands the role of the public defender to include seamless access to a variety of legal and social support services, as well as substantial community organizing and outreach. Holistic defender offices operate through team representation, whereby each client is assigned to an interdisciplinary team of legal and nonlegal advocates, rather than a single defense attorney. Teams at offices practicing holistic defense may include

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33 Carolyn Turgeon, *Community Courts Around the World*, CTR. FOR COURT INNOVATION, http://www.courtinnovation.org/research/community-courts-around-world?mode=4&url=research%2F4%2Farticle (last visited Jan. 19, 2016).

34 For a more detailed account of the founding of The Bronx Defenders and the influences of community-oriented defense and client-centered defense, see Robin Steinberg, *Heeding* Gideon*'s Call in the Twenty-First Century: Holistic Defense and the New Public Defense Paradigm*, 70 WASH. & LEE L. REV. 961, 961–84 (2013).

35 *See id.* at 963 ("Clients often cared more about the life outcomes and civil legal consequences of a criminal case than about the case itself. Liberty interests were not always paramount."). *See also* Michael Pinard and Anthony C. Thompson, *Offender Reentry and the Collateral Consequences of Criminal Convictions: An Introduction*, 30 N.Y.U. REV. L. & SOC. CHANGE 585, 585-590 (2005-2006).

lawyers specializing in criminal defense, family defense, immigration, and civil matters, as well as social workers, nonattorney legal advocates, investigators, and community organizers.[36] Unlike the teams found in community courts, advocates practicing holistic defense always collaborate on behalf of their clients, and not on behalf of the government or a court.

The holistic approach is in large part a response to mass incarceration and the devastating consequences of criminal justice involvement that have grown both in number and severity over the past fifty years. As a result of a variety of factors including the rise of "tough on crime" legislation and the War on Drugs, the criminal justice system has not only grown in size, but has also become increasingly intertwined with the family court system and with civil legal matters such as housing and immigration.[37] Today, a mere arrest can throw an individual's life into crisis by placing not only her liberty, but also her housing, public benefits, immigration status, employment, and child custody in jeopardy.[38] At the same time, changes in technology have exacerbated the proliferation of these civil legal enmeshed penalties by facilitating increased data-collection and information sharing between government agencies.[39] In many cases, these penalties ensue regardless of sealing mandates and whether or not the accused is ever convicted of a crime.[40]

The details of holistic defense vary from jurisdiction to jurisdiction depending on the enmeshed penalties that particular communities face. However, the same four pillars guide all offices practicing holistic defense: (1) seamless access to legal and nonlegal services that meet client needs; (2) dynamic, interdisciplinary communication; (3) advocates with an interdisciplinary skill set; and (4) a robust understanding of, and connection to, the community served.[41]

The first pillar recognizes that clients have a wide range of legal and social support needs that, if left unresolved, will continue to push them back into the criminal justice system. These needs include family

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36 *Explore Holistic Defense*, BRONX DEFENDERS, http://www.bronxdefenders.org/who-we-are/how-we-work (last visited Jan. 19, 2016).

37 *See* Steinberg, *supra* note 34, at 965–74 ("How Did We Get into This Mess? The 'Get Tough on Crime' Years").

38 *See id.* at 963, 971.

39 *See id.* at 968–71 ("Advances in technology have made collateral consequences more than just a hypothetical fallout of criminal justice involvement.").

40 *See id.* at 968–69 ("For example, in New York State, there are many different agencies that keep computerized records of arrests and prosecutions, and data-sharing is practiced widely regardless of sealing mandates."); *see also* BRONX DEFENDERS, THE CONSEQUENCES OF CRIMINAL PROCEEDINGS IN NEW YORK STATE 6–9 (2014), http://www.bronxdefenders.org/wp-content/uploads/2014/08/Consequences-of-Criminal-Proceedings-Aug2014.pdf.

41 Steinberg, *supra* note 34, at 987–1002.

custody issues, substance abuse, mental health issues, homelessness, lack of lawful immigration status, and unemployment.[42]

The second pillar highlights the importance of communication between advocates specializing in different practice areas. Dynamic, interdisciplinary communication enables advocates to strategize more effectively about how to tackle cases, address enmeshed penalties, and best connect clients to services that match their needs.[43]

The third pillar concerns the interdisciplinary training that staff members at holistic defender offices must undergo in order to provide clients with the best representation possible. Advocates with interdisciplinary training are able to anticipate and identify the enmeshed penalties that their clients may face, making timely and informed referrals possible.[44]

The fourth and final pillar of holistic defense emphasizes the necessity of community ties for meaningful advocacy. A robust understanding of, and connection to, the community is holistic defenders' primary means for identifying the full array of enmeshed penalties that their clients face and for building trust with clients and their families.[45]

Since its creation, holistic defense has gradually spread to public defender offices and other legal services providers throughout the country. With the support of the United States Department of Justice, Bureau of Justice Assistance, twenty-four organizations from diverse jurisdictions have engaged in formal technical assistance and training related to holistic defense,[46] with other offices working more informally towards the same goal.[47] More generally, there is a growing awareness throughout the legal community of the enmeshed penalties of criminal justice involvement[48] and the need for lawyers to address them.[49]

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42 *Id.* at 987–91.

43 *Id.* at 991–94.

44 *Id.* at 995–97.

45 *Id.* at 997–1002.

46 *The Center for Holistic Defense Training and Technical Sites*, BRONX DEFENDERS (Dec. 18, 2015), http://www.bronxdefenders.org/the-center-for-holistic-defense-technical-and-training-sites.

47 *Training & Technical Assistance*, BRONX DEFENDERS, http://www.bronxdefenders.org/holistic-defense/training-technical-assistance (last visited Dec. 18, 2015); *see also Holistic Representation*, R.I. PUB. DEFENDER, http://www.ripd.org/commpartner/holisticdef.htm (last visited Jan. 19, 2016).

48 The American Bar Association publishes a National Inventory of the Collateral Consequences of Conviction. *National Inventory of the Collateral Consequences of Conviction*, A.B.A., http://www.abacollateralconsequences.org (last visited Jan. 19, 2016).

49 The ruling by the Supreme Court of the United States in *Padilla v. Kentucky*, 559 U.S. 356 (2010), not only establishes that defense attorneys must advise their clients on the potential immigration consequences of criminal dispositions, but also opens the door for applying similar requirements to other enmeshed penalties of criminal justice involvement, *see*

II. BROKEN WINDOWS THEORY AND THE PROBLEMS OF OVER-POLICING

The relationship between Broken Windows theory and community courts sheds considerable light on the philosophical divide between community courts and holistic defense. While Broken Windows theory serves as one of the primary justifications for the establishment of community courts, supporters of holistic defense view the theory as emblematic of misguided policies that have contributed to the over-policing and mass incarceration of historically disadvantaged communities. More fundamentally, Broken Windows theory exposes a deeper disagreement over whether increased government control over poor communities is an appropriate remedy for perceived social ills.

A. *Broken Windows Theory and the Rise of Community Courts*

In the years since *Broken Windows* was published, there has been a substantial increase in the policing and prosecution of low-level, quality-of-life crimes.[50] Yet despite the widespread influence of the theory on important policy decisions, Kelling and Wilson's conclusions lack a reliable empirical foundation.[51] In fact, Kelling and Wilson begin their article by citing a Police Foundation study from the 1970s, which found that increasing foot patrols in Newark made residents feel safer, but had no actual effect on crime.[52] In a 2004 interview, Wilson conceded, "I still to this day do not know if improving order will or will not reduce crime. . . . People have not understood that this was a

McGregor Smyth, *From "Collateral" to "Integral": The Seismic Evolution of* Padilla v. Kentucky *and Its Impact on Penalties Beyond Deportation*, 54 HOW. L.J. 795 (2011).

50 *See* HARCOURT, *supra* note 10, at 47–48; Howell, *supra* note 10, at 271; Thompson, *supra* note 5, at 83–85.

51 *See* HARCOURT, *supra* note 10, at 8 ("[T]here is no reliable evidence that the broken windows theory works. In fact, the existing social-scientific data suggest that the theory is probably not right."); Howell, *supra* note 10, at 278 ("While a significant drop in serious crime has occurred while [Zero Tolerance Policing (ZTP)] has been in effect in New York City, a similar drop in crime has taken place in jurisdictions that have not adopted ZTP. Furthermore, the drop in crime began *before* ZTP or other significant order-maintenance policing was adopted in New York City. Finally, and perhaps most importantly, a number of other significant crime prevention approaches were adopted roughly concurrently to ZTP in New York City, and it is impossible to definitively attribute serious crime reduction to any one of these programs. . . . While there are those who would attribute much of the crime drop in New York City to order-maintenance policing, others see no solid evidence to support such a conclusion." (footnotes omitted)); *see also* Victoria Malkin, Commentary, *Community Courts and the Process of Accountability: Consensus and Conflict at the Red Hook Community Justice Center*, 40 AM. CRIM. L. REV. 1573, 1574 (2003) ("Certain behaviors . . . are no longer tolerated as they are now seen as contributing to disorder. However, the classification of such behaviors as implicating public safety is based not on 'facts' but on moral judgments.").

52 Kelling & Wilson, *supra* note 8; *see also* Howell, *supra* note 10, at 277.

speculation."[53] Other proponents of Broken Windows theory have also failed to offer substantial empirical evidence in support of their claims.[54]

Meanwhile, critics of Broken Windows theory have offered substantial statistical evidence indicating that the theory is not an effective method of crime control.[55] Professor K. Babe Howell of CUNY Law School even goes as far as to suggest that quality-of-life policing *increases* the likelihood of crime in poor communities by imposing unreasonable burdens upon those communities and lessening the perceived legitimacy of the criminal justice system.[56] In contrast to Kelling and Wilson, Professor Howell cites an extensive social psychology study in support of her thesis. Notably, she concludes that community courts are not an appropriate response to perceived quality-of-life issues on the grounds that they treat minor offenses too seriously.[57]

Putting the question of whether or not Broken Windows is an effective theory aside for a moment, there is no disputing the fact that community courts are products of the ideas that Kelling and Wilson championed. In fact, supporters of community courts embrace the courts' connection to Broken Windows theory and the fact that they serve as an avenue through which low-level offenders are processed in the criminal justice system. As Berman and Feinblatt confirm, "Problem-solving courts' emphasis on low-level crime . . . [is] straight out of the broken-windows and problem-oriented policing playbook."[58]

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53 Dan Hurley, *Scientist at Work—Felton Earls; On Crime as Science (A Neighbor at a Time)*, N.Y. TIMES (Jan. 6, 2004) (quoting James Q. Wilson), http://www.nytimes.com/2004/01/06/science/scientist-at-work-felton-earls-on-crime-as-science-a-neighbor-at-a-time.html.

54 Proponents of Broken Windows theory often point to reductions in crime in urban areas such as New York City in support of their claims. However, the decreases in question preceded the implementation of policies and tactics inspired by Broken Windows theory. *See Stop and Frisk Facts*, N.Y. C.L. UNION, http://www.nyclu.org/node/1598 (last visited Jan. 19, 2016); *see also* HARCOURT, *supra* note 10, at 9 ("New York City's spectacular drop in crime tells us little, if anything, about the broken windows theory.").

55 HARCOURT, *supra* note 10, at 6–7; Bernard E. Harcourt & Jens Ludwig, *Broken Windows: New Evidence from New York City and a Five-City Social Experiment*, 73 U. CHI. L. REV. 271 (2006); Howell, *supra* note 10.

56 *See* Howell, *supra* note 10, at 274 ("[P]olicing minor offenses so aggressively creates significant hidden costs that undermine the legitimacy of the criminal justice system, create substantial burdens for poor people (the majority of those arrested for order offenses), and erect barriers to education and employment. In addition to the loss of legitimacy and diminished economic opportunities, another result of aggressive order-maintenance policing may be an increase in crime and disorder.").

57 *See id.* at 323–24 ("It is important to emphasize that, in my opinion, community courts are not a solution. Community courts that handle almost exclusively minor offenses treat each like a major offense, requiring multiple appearances for marijuana possession and other minor offenses. However, I do believe the use of entirely noncriminal proceedings could have potential . . . ." (footnote omitted)).

58 BERMAN & FEINBLATT, *supra* note 2, at 48–49; *see also* GREG BERMAN, CTR. FOR JUSTICE INNOVATION, A THOUSAND SMALL SANITIES: CRIME CONTROL LESSONS FROM NEW YORK 8

In fact, some key supporters of community courts in New York City may have consciously sought to use the courts to increase the government's capacity for prosecuting quality-of-life offenses, as opposed to helping individuals obtain better dispositions in low-level cases or improving the efficiency of the criminal court system. As Professor Anthony Thompson explains, "One of the problems that the Giuliani Administration faced once it shifted its focus to low-level crimes was that the criminal court continued to view these offenses less seriously. . . . [P]olice officers failed to appear for trial . . . and the judge would dismiss the case."[59] Thompson suggests that the Giuliani Administration turned to community courts as a way to force the courts to take quality-of-life cases seriously.[60] In this way, community courts reinforce a key component of Broken Windows theory—the view that "quality of life is no longer a description of a lifestyle, but a new category of crime that includes minor violations and misdemeanors."[61]

B. *Holistic Defense and Opposition to Broken Windows Theory*

Broken Windows theory is at the heart of many of the recent changes to the criminal justice system against which holistic defenders fight each day on behalf of their clients. The level of quality-of-life policing that has developed from Broken Windows theory is both unnecessary and unjust, exposing countless individuals to the enmeshed penalties of criminal justice involvement. While attorneys practicing holistic defense agree with supporters of community courts that alternatives to incarceration are better than jail, holistic defenders believe that most of the individuals brought before community courts should never have been arrested in the first place.

(2012), http://www.courtinnovation.org/sites/default/files/documents/AThousandSmallSanities_June11b_color.pdf ("New York's community courts in particular seek to bring many of the lessons from broken-windows and hot-spot policing to the judicial branch."); LEE ET AL., *supra* note 11, at 2 ("Two key influences on the development of the community court model were the 'broken windows' theory of crime and the related concept of community policing."). Outside observers have also made this connection. *See* NOLAN, *supra* note 14, at 13; Jeffrey Fagan & Victoria Malkin, *Theorizing Community Justice Through Community Courts*, 30 FORDHAM URB. L.J. 897, 930, 941 (2003); Malkin, *supra* note 7, at 154; Thompson, *supra* note 5, at 83–85.

59 Thompson, *supra* note 5, at 85. Moreover, it is not even clear that community courts offer more favorable or individualized sentences than traditional criminal courts do. A study of the Red Hook Community Justice Center found that individuals received jail sentences twice as long as what they would have received in criminal court. *See* LEE ET AL., *supra* note 11, at 87.

60 Thompson, *supra* note 5, at 85 ("By vesting authority for such cases in community courts—and making this their sole focus—the judicial and political system opened the door for police to increase the number of citations and arrests for the low-level offenses.").

61 Malkin, *supra* note 7, at 141–42.

More fundamentally, community courts' reliance on Broken Windows theory distracts from the question of why courts are criminalizing vast numbers of people—predominantly low-income people of color—for low-level offenses that until fairly recently were not subject to such scrutiny, and in many cases were not even considered to be criminal conduct.[62] As Professor Stacy Burns of Loyola Marymount University argues, proponents of community courts need to demonstrate why criminalizing low-level offenses and promoting quality-of-life policing makes for good policy, "instead of just taking the position that 'Well they are in the court system so we have to handle it.'"[63]

Attorneys practicing holistic defense reject the idea that quality-of-life incidents are appropriate matters for criminal courts to address, and worry that the shift towards Broken Windows policing has more to do with racially charged feelings of fear and "popular understandings of what causes crime in urban cities"[64] than with effective crime prevention strategies grounded in empirical evidence. Indeed, the type of quality-of-life policing on which community courts are premised unfairly targets poor, minority neighborhoods.[65] Increasing the government's capacity for processing these types of offenses through community courts serves only to worsen the situation. In Zeidman's words, "what you end up with is a situation where we widen the net, . . . bring[] in more and more people . . . of color[,] . . . [and] subject them to fair

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62 *See* Debra Livingston, *Police Discretion and the Quality of Life in Public Places: Courts, Communities, and the New Policing*, 97 COLUM. L. REV. 551, 555–56, 559 (1997) ("Many . . . jurisdictions have recently enacted ordinances prohibiting loitering for particular purposes . . . . [O]thers—hailing 'quality of life enforcement' as an essential part of both crime control and fear reduction in American communities—have either passed or started enforcing ordinances prohibiting things like aggressive panhandling, unlicensed street vending, graffiti scrawling, public drinking and urinating, and loitering in the vicinity of automated teller machines. . . . Proponents of community and problem-oriented policing . . . [have] concluded that some disorder problems can effectively be handled by either defining behavior newly subject to criminal prosecution, or otherwise invoking police authority to deal with problems without resort to the criminal justice system."); Thompson *supra* note 5, at 84 ("The [New York] city administration utilized a zero tolerance policy, directing police to make arrests for a wide range of offenses that were not previously viewed as custodial offenses."); *see also* HARCOURT, *supra* note 10, at 21 ("The order-maintenance approach turns disorderly persons into dangerous and threatening people. Once upon a time, the disorderly were merely the 'losers' of society."); Jenny Roberts, *Crashing the Misdemeanor System*, 70 WASH. & LEE L. REV. 1089, 1091 (2013) ("Legislators have added misdemeanor after misdemeanor (and many local ordinances) to the criminal law books.").

63 Panel Discussion, *supra* note 6, at 150 (statement of Stacy Burns).

64 Malkin, *supra* note 51, at 1575.

65 As Jeffrey Toobin observes, "a black teen-ager in Brownsville, for example, is a great deal more likely than a white teen-ager in Park Slope to embark on adulthood with the added disadvantage of a drug record, even if their experiences with marijuana are exactly the same." Jeffrey Toobin, *Sanity on Pot and Stop-and-Frisk*, NEW YORKER (Sept. 2, 2013), http://www.newyorker.com/online/blogs/comment/2013/09/sanity-on-pot-and-stop-and-frisk.html.

amounts of social control."[66] From this perspective, community courts threaten to serve as tools for contributing to what Michelle Alexander has called "a new racial caste system."[67]

At best, community courts are well-intentioned institutions that nevertheless help perpetuate a misguided theory; at worst, they are tools for the increased criminalization of poor communities. Whatever the case, support for Broken Windows theory marks a major point of contention between supporters of holistic defense and community courts.

III. THE IMPORTANCE OF THE ADVERSARIAL SYSTEM

Jeffrey Tauber, the former Executive Director of the Center for Problem Solving Courts, once asked, "What is so great about being adversarial?"[68] Supporters of community courts claim that the adversarial system is simply not well suited to the adjudication of many low-level offenses.[69] In response to this perceived dilemma, community courts replace the adversarial system of traditional courts with a collaborative approach in which prosecutors, defenders, and judges work together to determine case dispositions.[70] While it is possible that this approach might foster a more pleasant atmosphere in the courthouse and might even lead to more favorable outcomes in certain cases, an overly collaborative arrangement creates serious problems for defense attorneys and their clients for which supporters of community courts have not provided adequate remedies.[71]

By its very nature, the collaborative approach that community courts follow raises serious ethical dilemmas for defenders, since it is only through loyalty and confidentiality that public defenders are able to ensure the self-determination of their clients. Even supporters of

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66 Symposium, *supra* note 5, at 1908–09; *see also* Boldt, *supra* note 7, at 18 ("[T]he dispersion of surveillance and behavior controls[,] and the widening of the criminal justice system's net, are especially present in the case of community courts.").

67 *See generally* MICHELLE ALEXANDER, THE NEW JIM CROW: MASS INCARCERATION IN THE AGE OF COLORBLINDNESS 3 (2012).

68 Symposium, *supra* note 5, at 1903.

69 BERMAN & FEINBLATT, *supra* note 2, at 4 (criticizing American courts' approach to low-level criminal cases).

70 *See* Mackinem & Higgins, *supra* note 17, at viii (contrasting the "adversarial process" used in traditional courts with the "collaborative process" employed in problem-solving courts).

71 *See* Meekins, *supra* note 5, at 91–92; Symposium, *supra* note 5, at 1907–09; Thompson, *supra* note 5, at 78 (while discussing the use of the collaborative approach in drug courts, Thompson notes that, "[e]ach newly formulated role carries with it a host of ethical ramifications that drug court advocates either minimize or ignore").

community courts acknowledge that this is a significant problem.[72] Some scholars have suggested that defenders should receive more training on how to maintain their professional roles in problem-solving courts.[73] However, there is ample reason to doubt that community courts will be able to resolve this issue. In its landmark decision in *Gideon v. Wainright*, the Supreme Court guaranteed zealous criminal defense to individuals unable to afford private attorneys.[74] Zealous defense requires lawyers to advocate with only their clients' stated interests in mind, yet community courts demand that defense attorneys instead work in pursuit of a different conception of their clients' interests that is developed in consultation with prosecutors and judges. In short, the collaborative system practiced in community courts is antithetical to the defense function—it co-opts defense attorneys into prosecutors' and judges' task of doling out punishment.

The problem with the collaborative approach can be traced to a fundamental shift in how community courts view individuals' interests. As Professor Tamar M. Meekins explains, "unlike in the traditional adversarial model, specialty [problem-solving] court principles put the client's best interests before his stated interests."[75] Rather than take individuals' statements at face value, community courts paternalistically decide what defendants' best interests are for them. In practice, this approach can lead to situations where an individual expresses interests that conflict with what the court has determined to be in her best interests.[76] When defendants take issue with community courts' interpretations of their best interests, they may find that the collaborative approach is not receptive to their objections.[77]

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72 *See* Symposium, *supra* note 5, at 1895 (Former Judge Judy H. Kluger reported that there is "a disturbing trend in some problem-solving courts: lawyers who, when their clients are doing well, let their guard down and sometimes do not appear for routine monitoring sessions."); *see also* Judith S. Kaye, Essay, *Delivering Justice Today: A Problem-Solving Approach*, 22 YALE L. & POL'Y REV. 125, 149 (2004) ("I think it is worth lingering for a moment on the roles of the judge and defender in a problem-solving court. . . . [W]hen the focus is on defendant's success in treatment, there is an understandable concern about ethical obligations . . . .").

73 *See, e.g.*, Meekins, *supra* note 5, at 82, 118–25 ("[D]etailed and definitive written defender standards and ethical guidelines are necessary to guide the defense attorney in the expanding area of specialty court practice."); *see also* Symposium, *supra* note 5, at 1895 (stating that former Judge Judy H. Kluger suggests that "the best way to meet the challenges of advocacy and judging in these courts is by education and training for lawyers and judges").

74 *See* Gideon v. Wainwright, 372 U.S. 335 (1963).

75 Meekins, *supra* note 5, at 103–04.

76 *See id.* at 103–04, 117 (contrasting a "client's best interests" with "his stated interests"); *see also* Panel Discussion, *supra* note 6, at 155 ("[M]y client is coerced into answering those questions and saying things that are against her interest. I didn't say 'best interest,' because I am only concerned with her interest, not her 'best interest.'").

77 *See* Meekins, *supra* note 5, at 91 ("In the name of the 'best interests' of the defendant, the parties are expected to collaborate and cooperate on whatever the court or treatment

The pitfalls of the collaborative approach were abundantly clear during a visit to the Red Hook Community Justice Center. Each week at Red Hook, a meeting takes place during which the judge, an assistant district attorney, a public defender, a social worker, and a court liaison discuss the status of each individual scheduled to appear in court that week. However, on this particular day, the public defender was absent, as was the judge. As the members of the group worked through the cases, they examined whether clients were attending court-mandated programs, and made determinations as to whether the court should impose penalties for poor behavior. There was only a brief mention of the absence of the public defender in the room, and whether it was ethical to discuss clients, penalties, and possible dispositions without proper representation.[78] This kind of conduct could prove extremely harmful to clients and raises serious constitutional issues.[79] Even the presiding judge for the Red Hook Community Justice Center has admitted to witnessing defenders in other community courts "become complacent and . . . too much part of the team."[80]

Whatever its flaws may be, the adversarial model offers the best safeguards for protecting individual rights and for maintaining the fundamental role of the criminal justice system: to check governmental authority and to test the veracity and strength of evidence brought at trial. For this reason, holistic defense seeks to promote the role of the

professionals have determined to be the goal for the defendant . . . . The design of the specialty court discourages any challenge, argument, or assertion of rights that may interfere with the course of treatment.").

78 Site visit at the Red Hook Community Justice Center, in Brooklyn, N.Y. (Feb. 7 2013). Former Judge Judy H. Kluger describes hearing about a similar incident at a drug court. *See* Symposium, *supra* note 5, at 1895 ("A law professor recounted how when she visited with a group of students in drug court and was invited to participate in a treatment conference, they all sat down, and one of the students said, 'Where is the defense lawyer?' She was the only one who noticed that he was missing. . . . [I]t is certainly a good example of how participants can become too relaxed . . . .").

79 Susan Hendricks points out that, "[c]onstitutionally, criminal defendants have a right to attend all proceedings in their court cases." Symposium, *supra* note 5, at 1919. Hendricks does concede that defendants "can waive their presence [at proceedings]," but adds that, "when that happens, clients reasonably expect that their lawyers will report on the matters that were discussed." *Id.* Along the same lines, Richard Boldt cites Jelena Popovic in suggesting that

> closed meetings, which take place without the defendant in attendance, are inconsistent with the principles of open justice because they provide the judge with information that has not been subject to the rigorous adversarial testing that ordinarily accompanies the presentation of evidence in formal court proceedings, and yet that may be determinative in the judge's exercise of broad discretion.

See Boldt, *supra* note 7, at 24 (citing Jelena Popovic, *Court Process and Therapeutic Jurisprudence: Have We Thrown the Baby Out with the Bathwater?*, 1 eLAW J. (SPECIAL SERIES) 60, 63–65 (2006), https://elaw.murdoch.edu.au/archives/issues/special/court_process.pdf.

80 Symposium, *supra* note 5, at 1916.

defender within the adversarial model, rather than scrap the system at the risk of jeopardizing clients' rights.

In contrast to community courts, holistic defense entrusts clients with the ultimate decision on how to proceed and requires defense attorneys to respect these decisions by advocating in accordance with their clients' stated interests. Given the potential for enmeshed penalties to wreak havoc in a client's life, it is not always clear which disposition is best aligned with a client's interests. Determining which outcome is most desirable in a case usually requires balancing a myriad of competing priorities. Holistic defense recognizes that clients—and not the courts—must decide how to order these priorities.[81] For this reason, holistic defenders are intensely skeptical of any system where a judge, attorney, or other criminal justice professional purports to know what is best for a client.

Holistic defense's commitment to providing client-centered representation in an adversarial system offers clients better protection for their individual rights and empowers them to take control of their lives. Interdisciplinary teams at holistic defender offices advocate on behalf of their clients at every step of the way, from arraignments to final dispositions, and help connect clients to the resources they need in order to turn their lives around. Moreover, because holistic defenders understand that many of their clients become involved in the criminal justice system on account of Broken Windows policing, police misconduct, false allegations, and other behavior that does not warrant criminal conviction, attorneys practicing holistic defense give their clients their full support when clients choose to fight cases at trial.

When holistic defenders find that the courts have unfairly stacked the odds against their clients, they look for ways to fix or improve the adversarial model, rather than create a new approach altogether.[82] Many recent efforts of this type—such as teaming up with community members to speak out against police misconduct and having defense attorneys educate judges on best practices for setting bail—involve a substantial amount of collaboration with other players in the adversarial system. Furthermore, holistic defenders recognize that the bigger issue plaguing the criminal justice system is not the failure of the adversarial approach, but rather the unprecedented number of misdemeanor cases

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81 Steinberg, *supra* note 34, at 975–78 (explaining the importance of client-centered advocacy to holistic defense).

82 For example, The Bronx Defenders launched its Marijuana Arrest Project and Fundamental Fairness Project to document the ways in which prosecutorial delay and other factors have conspired to effectively deprive clients of the right to trial. *See Fundamental Fairness Project*, BRONX DEFENDERS, http://www.bronxdefenders.org/programs/fundamenta-fairness-project (last visited Nov. 9, 2015); *Marijuana Arrest Project*, BRONX DEFENDERS, http://www.bronxdefenders.org/programs/the-marijuana-arrest-project (last visited Nov. 9, 2015).

that have flooded the system throughout the past few decades.[83] In this way, attorneys at holistic defense offices embrace collaboration as a method for improving the criminal justice system, but refuse to do so at the expense of the procedures that protect their clients.

IV. THE PROVISION OF SOCIAL SERVICES

Unlike traditional criminal courts, community courts offer in-house social services and frequently impose those programs upon individuals through plea agreements.[84] Describing the strategy of the Midtown Community Court, Berman and Feinblatt explain that the court "was created to break the never-ending cycle [of criminal justice involvement] by combining punishment and help."[85] While attorneys practicing holistic defense agree that therapy and other social services are often crucial to improving clients' lives—indeed, holistic defense is built around the idea that clients need and deserve services that go beyond their criminal cases—holistic defenders question whether courts are appropriate venues for providing these services.

First and foremost, the provision of social services by courts in combination with punitive sanctions presents serious obstacles to the ability of defense lawyers to zealously represent their clients. As Professor Meekins explains, defense attorneys "are expected not to object to the use of . . . coercive tools because they are used in the pursuit of therapeutic jurisprudence."[86] When public defenders feel that certain sanctions are unwarranted and object to them on behalf of their clients, "[s]uch challenges may be met by judicial anger towards the client and may result in harsher sanctions or the imposition of additional conditions."[87]

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83 *See* Roberts, *supra* note 62, at 1090–92 ("There is a misdemeanor crisis in the United States. . . . A 2010 analysis of seventeen state courts revealed that misdemeanors comprised 77.5% of the total criminal caseload . . . . Prosecutors have largely failed to exercise discretion and seek justice in sorting through the huge number of misdemeanor cases that the police send them, instead churning high volumes through the overburdened lower courts.").

84 *See* BERMAN & FEINBLATT, *supra* note 2, at 9 (discussing the "broad array of tools, including drug treatment, mental-health counseling, job training, and community-restitution projects" that community courts use in order to implement a "carrot-and-stick approach"); LEE ET AL., *supra* note 11, at 10–11 ("[A] global survey of 25 community courts found that 92 percent routinely mandate defendants to community service, and 84 percent mandate defendants to social services, including treatment readiness classes (64 percent), individual counseling (64 percent), job skills (64 percent), life skills (56 percent), anger management (52 percent), and substance abuse treatment (48 percent).").

85 BERMAN & FEINBLATT, *supra* note 2, at 62.

86 Meekins, *supra* note 5, at 84.

87 *Id.* at 90–91.

To make matters worse, most community courts follow a postdisposition model for the provision of social services, meaning that the courts require admission of guilt before they will grant individuals access to court-sponsored resources.[88] By withholding critical services until an individual enters a guilty plea, postadjudication courts create an inappropriately large incentive to avoid trial, effectively stripping individuals of their rights to make important legal challenges.[89] Given that police officers in urban areas such as New York City continue to carry out illegal stops and arrests at an alarming rate,[90] any system that impairs individuals' ability to bring these types of grievances to trial is highly problematic.

Even if a community court were to follow a preadjudication model,[91] as is the case in some problem-solving courts, significant flaws would persist. Individuals appearing before preadjudication problem-solving courts still have to agree to court-sponsored programs much earlier than they would in traditional courts, and involvement in these types of programs usually entails lengthy periods of intense supervision. As Thompson notes, this arrangement unfairly discourages individuals from challenging the decisions of community court judges.[92] Moreover, the need to submit to a court-monitored program at the outset of a case could accelerate proceedings to the point of interfering with a defense

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88 *See* Thompson, *supra* note 5, at 87 ("Most jurisdictions do not allow trials to take place in the community court. Instead, they follow a post-disposition model. In order to gain access to the wide range of services available, defendants usually must plead guilty.").

89 *See* Meekins, *supra* note 5, at 88 ("In the post-adjudication model, a defendant must initially enter a plea of guilty . . . and waive his or her pretrial due process rights in order to be eligible for the treatment program."); Thompson, *supra* note 5, at 74 ("In the post-disposition model . . . participation is conditioned on a willingness to forego any legal challenges that the defendant might have raised regarding her arrest or the seizure of evidence.").

90 In May 2013, The Bronx Defenders issued a report, *No Day in Court*, which revealed that as many as forty percent of low-level marijuana arrests in New York City resulted from improper police conduct in 2012. BRONX DEFENDERS, *supra* note 32, at 5. Judge Shira A. Scheindlin confirmed these findings when she wrote her landmark opinion in *Floyd v. City of New York*. 959 F. Supp. 2d 540 (S.D.N.Y. 2013). The opinion stated that "[t]he NYPD has repeatedly turned a blind eye to clear evidence of unconstitutional stops and frisks." *Id.* at 659.

91 Preadjudication courts allow individuals to enjoy court-sponsored resources and enter court-monitored treatment programs prior to the conclusion of a case. *See* Meekins *supra* note 5, at 87.

92 Thompson, *supra* note 5, at 74 ("Even in the deferred prosecution model, where the defendant has less to lose, the choice may not be as simple as one might think. Participants may gain the benefit of treatment and eventual dismissal of their charges, but, in exchange, they must agree to a much longer involvement with the criminal justice system. During this period of supervision, their activities are scrutinized and they can expect close supervision, whereas in the traditional proceeding, they might have faced fewer controls on their behavior. In addition to this prolonged exposure to the court, participants in this model may be reluctant to challenge the legality of their detention or arrest after a lengthy participation in the court's programs." (footnote omitted)).

attorney's ability to determine a client's full range of options and provide the zealous advocacy required by *Gideon*.[93]

The provision of social services by community courts also has negative consequences for the efficacy of those services. Although advocates of community courts tout the combination of treatment and punishment as an effective strategy for improving individuals' behavior, many researchers have concluded that relying upon coercion for participation in social programs significantly reduces the therapeutic value of those services.[94] In particular, the postadjudication model causes individuals to experience such a great amount of stress that "mental health professionals have stated that this model has no therapeutic value."[95] Moreover, as Victoria Malkin points out, "the provision of local social services via the criminal justice system and inside a court building [is] anathema to many who [are] uncomfortable walking through a security system to see a social service provider."[96] Courthouses with holding cells and intimidating security systems are simply not well suited to house social services.

It is not even clear that the "treatment" that community courts offer is an appropriate response to the behavior they seek to change. Community courts borrow the strategy of imposing mandated treatment from drug courts. However, as Professor Thompson notes, drug court administrators were able to draw from a substantial body of evidence regarding failed attempts to address drug addiction in traditional courts. In contrast,

> [c]ommunity courts . . . typically address matters that have no long-term track record of treatment and no experts . . . . While these offenses may be related to well-studied problems such as gang affiliation, unemployment, and even drug dependency, there is far less data than in the drug crime context for formulating approaches to addressing them.[97]

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93 *See* Meekins, *supra* note 5, at 89 ("Although prompt treatment is a key component of many specialty courts, the reality is that the accelerated timelines, plus the defender's often heavy caseload, may frustrate the defender's ability to carry out these duties or to fulfill his or her ethical responsibilities. The defender often has insufficient time to investigate the case or to prepare and seek out alternatives. This lack of defender resources, combined with (in some cases) active or passive judicial intervention to curb zealousness, in addition to the inherently coercive effect of the accelerated timeline principle, create[s] a scenario that is confusing and dangerous for the defendant and counterintuitive for the defender." (footnote omitted)).

94 *See* Boldt, *supra* note 7, at 15 (discussing the "more skeptical view of coerced treatment").

95 Meekins, *supra* note 5, at 88–89.

96 Malkin, *supra* note 7, at 144.

97 Thompson, *supra* note 5, at 88. Even in drug courts, it is unclear that mixing coercion and treatment has helped. Multiple scholars argue that because problem-solving courts typically resort to severe penalties when individuals struggle to complete court-mandated rehabilitative programs, many of the individuals most in need of help who come before drug

As client-centered advocates, holistic defenders understand the importance of clients' self-determination to the successful delivery of social services and are strongly opposed to the provision of such services by courts. While it is often vital for individuals to participate in treatment programs and similar services, they should be able to do so without being pressured to plead guilty and without the threat of being penalized for failing to complete the programs. Moreover, the intrusive levels of court supervision that accompany most court-sponsored social services represent precisely the type of unnecessary criminal justice involvement that holistic defenders feel is overly punitive for individuals accused of minor offenses.

Attorneys practicing holistic defense feel strongly that social services should be administered by advocates and third parties that are invested in their clients' health, stability, and success, as opposed to punishment and control. The power wielded by the collaborative team in community courts to both levy punishment and grant access to social services makes it unclear whom individuals should trust. Despite the best intentions of community court supporters, the model employed by these courts for granting access to social services is largely self-defeating.

V. COMMUNITY ENGAGEMENT

Although holistic defense offices and community courts both partner extensively with local residents, community courts' coercive nature and steadfast adherence to Broken Windows theory prevent them from fully incorporating the views of the communities they serve.[98] As a result, local residents lack sufficient power over the direction of community courts, and are unlikely to succeed in

courts end up receiving more punishment than they would have received in traditional courts. *See generally* Bowers, *supra* note 15; *see also* Quinn, *The Modern Problem-Solving Court Movement*, *supra* note 13, at 65–66 ("Carefully vetted and well-crafted accounts of reformers also overlook the stories of the thousands of defendants who 'fail out' of problem-solving courts. These defendants often are sent to prison for faltering in their treatment efforts—sometimes for longer periods than they would have served had they forgone the problem-solving court option. . . . Recent estimates suggest that between one-third and one-half of all drug treatment court defendants fail out of treatment. Thus, for a large percentage of defendants, the drug court model does not serve as an alternative to incarceration." (footnote omitted)). Indeed, Professor Josh Bowers of the University of Virginia School of Law asserts that, "drug courts provide particularly poor results for the very defendants that they are intended to help most . . . [such as] genuine addicts and members of historically disadvantaged groups." *See* Bowers, *supra* note 15, at 783. With their broad scope, community courts can only be expected to exacerbate these types of negative consequences.

98 *See* Malkin, *supra* note 7, at 145 ("Although [community courts] may be better informed than traditional courts about the neighborhood in which they work, they do not share this authority with the community, nor can they speak for the community.").

implementing their vision for the courts when they disagree with court administrators on important policy questions.[99] This phenomenon is important because local residents and community court advocates often disagree on how to best improve the community, even when all parties aim to address the same set of problems.[100]

In Red Hook, District Attorney Charles J. Hynes and Judge Judith Kaye led the efforts to establish a local community court after a popular school principal was killed by a stray bullet. According to James Nolan, Jr., "the community was left grieving . . . and determined to do something about widespread crime in Red Hook."[101] Yet, as Malkin reveals, "in the case of Red Hook the solutions and policies prescribed to achieve this goal were dictated by the court . . . [and] there was no clear mandate for what role the community should play."[102] Unsurprisingly, local residents found that they possessed very little influence in regards to the actual formulation of policies. In Malkin's words, "community participation did not translate into community authority or power."[103]

Many of the individuals brought before the Red Hook Community Justice Center were given the choice between waiting for a judge and receiving adjournments in contemplation of dismissal after attending a "quality-of-life class."[104] Conversations from these classes reveal a telling divide between community court administrators and the people against whom these courts direct their power. Participants in these classes expressed concern that "quality-of-life policing could encroach on their everyday life."[105] Yet when they voiced these criticisms, they found that "[a]ctive discussions about the cause for deterioration in quality of life as experienced by residents were circumvented," and they were instead advised "that their chance to complain should have been taken in front of the judge."[106] As Thompson argues, "if a community court actually wanted to serve the interests of the entire community including the interests of the poor and disenfranchised . . . [a]t a minimum, [it] would

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99 *See* Malkin, *supra* note 51, at 1583 ("The community may not always share the same understanding as the court about the problems being addressed; if no consensus is found, it remains less likely the community will have the power to implement the reform in question."). In Malkin's view, local residents are too often on the outside looking in. *See id.* at 1585 ("[T]he likelihood of the community being a true partner is reduced if protest is considered to be the primary sign of the court's failure and the best mechanism to effect a change in the court's operations.").

100 *See id.* at 1578 ("[W]hile a court and community may agree in their diagnoses of the primary problem, their proposed solutions often diverge considerably.").

101 NOLAN, *supra* note 14, at 1.

102 Malkin, *supra* note 7, at 143–44.

103 *Id.* at 144–45.

104 *Id.* at 149.

105 *Id.* at 150.

106 *Id.* at 151; *see also* Malkin, *supra* note 51, at 1585 ("[N]o space exist[ed] to incorporate an alternative community vision to address the hardships caused by 'quality of life' policing . . . .").

need to think broadly and creatively about including diverse community perspectives" and consider the possibility that, "community residents may prefer to resolve issues without the threat of the criminal justice system hanging in the balance."[107]

Equally troubling is community courts' tendency to unfairly shift the blame for neighborhood problems on to local residents. According to Malkin, session leaders at the quality-of-life classes "openly pushed a Broken Windows framework," sending participants "an ambiguous moral message . . . [that] they were now held responsible for the physical deterioration and problems in their community."[108] When residents countered by pointing to structural and societal causes, session leaders would insist that, "change [lies] in the individual and individuals must be held accountable for quality-of-life crimes."[109] As Malkin explains,

> The courtroom . . . propel[s] a particular narrative of community problems, which leaves no room to incorporate a vision of the harm policing may cause when not exercised with the type of discretion asked for by the community residents nor of the discontent residents experience over the lack of social and/or government services. The frequent argument heard from that court that it "treats the problems, not just the symptoms" constructs the problem and the solution within its own terms. In the quality-of-life class a popularized version of a culture of poverty thesis is repackaged and presented as a moral argument. Individuals are blamed for the social problems they experience. Not only is an individual's behavior an individual's problem, it is now the cause behind urban blight and just behind this, crime, poverty, and other social ills. Individuals in court are not only a potential drain on limited resources, they become symbolic of what holds the neighborhood down, or closes it off, from its true market potential.[110]

This divide between local residents and community courts is also apparent at the level of specific policies, most notably the courts' frequent use of restitution. As Nolan explains, "various community service sanctions are imposed to provide 'payback' and 'recompense' to local communities for the various 'quality-of-life' crimes to which the communities have been subjected."[111] Rather than provide the community with long-term help, these types of sanctions serve primarily to unfairly place the blame squarely on the community itself for the challenges that its residents face.

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107 Thompson, *supra* note 5, at 90–92.
108 Malkin, *supra* note 7, at 149–51.
109 *Id.* at 151.
110 *Id.*
111 NOLAN, *supra* note 14, at 13.

Community courts' difficulties incorporating residents' views are products of both the courts' philosophy and design. As government institutions that wield coercive power over citizens, community courts can never truly represent the whole community. Despite the best efforts of supporters to partner with local residents, community courts cannot escape the reality that they are institutions created in opposition to certain community members—usually the most disadvantaged members of the community—whom Broken Windows theory has blamed as the culprits for perceived societal decay. For this reason, the spread of community courts is more likely to enhance the power of the government, as opposed to the power of local communities. Malkin summarizes this crucial point as follows:

> Community courts permit state involvement in particular neighborhoods where the state is "needed," but it now arrives through the criminal justice system, which currently seems to be the only expanding domain of government where public security and public order are the favored policy interventions. A court focused on low-level crimes does not merit being called a community court without a clear mechanism in place that prioritizes how and why these courts are there for the community. Currently, the expansion of power these courts represent along with the focus on individual behavior as opposed to collective action seems to suggest that for a court that came in seeking to help and empower a community, it remains with a community very much in the hands of power.[112]

As advocates working in partnership with local residents to challenge coercive government authority, holistic defenders are better situated to listen to and incorporate the concerns of the community into their work. Whereas the power of community courts to levy punishment places the courts in opposition to some members of the community, holistic defense attorneys can always claim in good faith that they are fighting alongside their clients and not against them. As Cait Clarke notes, "Defense lawyers who represent those unable to afford counsel have developed special connections to clients, their families, religious leaders, and community members whose voices are often not heard."[113] Attorneys practicing holistic defense gain even more insight into community issues than traditional public defenders since

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112 Malkin, *supra* note 7, at 155 (footnote omitted).

113 Cait Clarke, *Community Defenders in the 21st Century: Building on a Tradition of Problem-Solving for Clients, Families and Needy Communities*, U.S. ATTORNEYS BULL., Jan. 2001, at 20, 28 (2001), http://www.innovations.harvard.edu/sites/default/files/usab4901.pdf ("[C]ommunity members have begun to see the community defender office as a safe-haven where anyone can seek advice or simply express concerns about police conduct, treatment of the mentally ill, fairness in the justice system or voice other community concerns.").

their work takes into account their clients' life outcomes as opposed to merely their criminal cases.

Holistic defense was born out of input from community members and continues to develop in response to the stated needs of local residents. When attorneys at The Bronx Defenders first set out to create holistic defense, they understood that they needed to support their clients' issues beyond their criminal cases, but they did not know what those issues would be until they spoke with their clients and worked together to build their practice.[114] Since holistic defense aims to help clients address enmeshed penalties that are not usually captured by traditional metrics, community engagement will out of necessity always serve as the engine for innovation at holistic defender offices.

Holistic defense offices also regularly engage with the community through Know Your Rights trainings, community organizing, and more informal events such as block parties and community meals.[115] These efforts are always aimed at empowering disadvantaged groups by helping them make their voices heard and brainstorming creative solutions to the challenges that they face. Far from imposing community projects as punishment, holistic defense offices view clients and local residents as partners in community engagement and organizing. As a result, holistic defenders are able to push for community change together with local residents—not in spite of them. The same cannot be said for community courts, which champion a vision of community development that is insufficiently informed by the perspectives of community members themselves.

VI. CONCLUSION

As Fagan and Malkin astutely note, community courts aim to further the public good by offering an alternative to our overwhelmed court system, but in "struggling to reach these goals, [they] risk forgetting their obligations for due process, fairness, and results."[116] For holistic defenders, these are not concerns to be taken lightly, as they threaten to chip away at the heart of holistic defense's commitment to zealous, client-centered representation. As Professor Meekins reasons, "We cannot adopt an alternative model of adjudication without ensuring that . . . practices [are] implemented in a way that will not hurt the interests of those who are most vulnerable to changes in the system:

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114 *See* Steinberg, *supra* note 34, at 962–63 ("In the Beginning: A New Vision").

115 *See id.* at 997–1002 ("Pillar Four: A Robust Understanding of, and Connection to, the Community Served").

116 Fagan & Malkin, *supra* note 58, at 948.

criminal defendants."[117] Community courts represent a shift away from not only the adversarial system, but also from the narrow mandate of most problem-solving courts. This development exacerbates existing flaws in the problem-solving courts model, and encourages the overpolicing of historically disadvantaged neighborhoods.

In his paper, *A Thousand Small Sanities: Crime Control Lessons from New York*, Greg Berman concedes at the outset that "there is no definitive answer to how and why New York has been able to reduce both crime and incarceration."[118] If the causes behind New York's drop in crime are so difficult to identify, why choose Broken Windows theory as the dominant approach for improving poor communities? Why settle on a strategy that very clearly expands the coercive power that the criminal justice system wields over poor communities? Why funnel money into courts as opposed to social services providers? Supporters of community courts have failed to provide sufficient answers to these questions.

Yet despite the problems inherent in community courts, there are significant positives to draw from the problem-solving justice movement in general. First and foremost, the Center for Court Innovation (CCI), which has served as the chief advocate for community courts, has piloted a number of programs that do not involve the establishment of new courts. For example, the Crown Heights Community Mediation Center has enjoyed a great deal of success in resolving community members' grievances without the threat of criminal sanctions.[119] Along the same lines, Professor K. Babe Howell has suggested that, "the use of entirely noncriminal proceedings [in community courts] could have potential."[120] Removing the possibility of incarceration and criminal records from community courts would alleviate many of holistic defenders' concerns with community courts. Moreover, community courts' emphasis on seamless access to social services represents a welcome development in the criminal justice system. Though community court advocates do recognize the need for social services in the neighborhoods in which they operate, they fail to sufficiently consider what holistic advocates know: that clients appreciate access to much needed services when they are empowered to choose them, but the model of mandating those services and connecting them as part of a potential case sanction through a court is not the most effective way to improve their life outcomes.

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117 Meekins, *supra* note 5, at 125.

118 BERMAN, *supra* note 58, at 3.

119 *See Crown Heights Community Mediation Center*, *supra* note 19.

120 Howell, *supra* note 10, at 324.

Holistic defenders share a number of motivating principles with advocates of community courts. Both believe that organizations in the field of criminal justice can and should continue to use these principles as a guide for innovation. Community engagement, continual data collection and reevaluation, improved use of information, and some level of collaboration between different players in the criminal justice system are important for any attempted reforms. But, it is also crucial to ensure that we do not use these principles to enact policies that sacrifice important safeguards or otherwise disadvantage marginalized, underresourced communities. Unfortunately, that is precisely what community courts have done and will continue to do. In the end, the beautiful vision of community-based justice has been sacrificed to a policing strategy that continues to arrest ever-greater numbers of people of color from low-income neighborhoods. Community courts have helped to erode the most basic protections of the adversarial system, and have greatly expanded the number of people under criminal justice control. Quite simply, community courts have become enablers—their "gentler" form of "justice" allows the system to prosecute, monitor, and supervise an ever-greater segment of the very communities they were designed to improve. And while access to services is unquestionably good for communities, a vast regime of mandated services, backed by the threat of incarceration, does far more to help the system than the individuals it controls. Moving forward, advocates of community courts should take a closer look at the unintended consequences of their efforts and focus their attention on criminal justice strategies that preserve individual rights, provide critically needed social services free from the threat of punishment, and do not result in the overpolicing of low-income communities of color.