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Evaluating the Effect of Holistic Indigent Defense on Criminal Justice Outcomes¹

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¹ The full report with references can be found at James Anderson, Maya Buenaventura, and Paul Heaton, “The Effects of Holistic Defense on Criminal Justice Outcomes,” *Harvard Law Review*, Vol. 132, No. 3, January 2019, pp. 819–893.

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Abstract

Holistic indigent defense involves not just addressing the immediate criminal case of the defendant but also the underlying life circumstances that can contribute to client contact with the criminal justice system. We undertook the first large-scale, rigorous evaluation of the impact of holistic indigent defense on criminal justice outcomes. In the Bronx, a holistic defense provider (the Bronx Defenders) and a traditional defender (the Legal Aid Society) operate side-by-side within the same court system, with case assignment determined quasi-randomly based on court shift timing. Using administrative data covering over half a million cases and a quasi-experimental research design, we estimate the causal effect of holistic defense on case outcomes and future offending. Holistic defense does not affect conviction rates, but it reduces the likelihood of a custodial sentence by 16% and expected sentence length by 24%. Over the ten-year study period, holistic defense in the Bronx resulted in nearly 1.1 million fewer days of custodial punishment. As of one year post-arraignment and beyond, holistic defense has neither a positive or adverse effect on criminal justice contacts. While holistic defense does not dramatically reduce recidivism, as some proponents have claimed, strengthening indigent defense apparently offers considerable potential to reduce incarceration without harming public safety. Indigent defense thus deserves a more prominent place in conversations about how to address mass incarceration, and future research should examine the effects of this promising model beyond the criminal justice system and in other jurisdictions.

Introduction

The vast majority of U.S. criminal defendants receive government-provided counsel, so methods for organizing, staffing, and appointing indigent defense counsel have far-reaching effects on the criminal justice system. One recent promising development in indigent defense is the growing recognition that indigent clients may be best served by a team of professionals that address a range of the client's needs rather than simply a heroic solitary lawyer who represents a defendant solely at criminal trial. This notion is embodied by the holistic defense model.

According to its proponents, the key insight of holistic defense is that to be truly effective advocates for their clients, defenders must adopt a broader understanding of the scope of their work with their clients. Defenders must address both the enmeshed, or collateral, legal consequences of criminal justice involvement (such as loss of employment, public housing, custody of one's children, and immigration status), as well as underlying non-legal issues that often play a role in driving clients into the criminal justice system in the first place. To this end, holistic defender offices are staffed not only by criminal defense lawyers and related support staff (investigators and paralegals) but also by civil, family, and immigration lawyers as well as social workers and non-lawyer advocates, all working collectively and on an equal footing with criminal defense lawyers. This holistic model contrasts with the traditional public defense model, which focuses almost exclusively on criminal representation.

Proponents of holistic defense contend that it improves case outcomes and reduces recidivism by better addressing clients' underlying needs and reasons for criminal justice involvement. In addition, holistic defense can anticipate and avoid potential collateral consequences of criminal justice involvement, such as loss of employment and housing, eliminating risk factors for future crime. Skeptics, in contrast, argue that diverting resources and

attention from criminal advocacy may lead to worse case outcomes. Despite the fact that it has been embraced in many jurisdictions, there is virtually no systematic evidence demonstrating whether holistic representation delivers on its promise of better case outcomes or lower recidivism. A persistent problem has been isolating the contribution of holistic representation from the myriad of other factors operating in communities and the courts that shape what happens to indigent defendants once they enter the system.

Purpose

In this study, we provide one of the first rigorous, large-scale empirical evaluations of the holistic approach to indigent defense, adding to the nascent literature identifying “what works” in indigent criminal defense. In the Bronx, two institutional providers of indigent defense – the Bronx Defenders and the Legal Aid Society of New York (“Legal Aid”) - exist side-by-side within the same court system along with individual criminal defense attorneys that are sometimes appointed to cases. The Bronx Defenders have been operating under a holistic defense model since their office’s inception in 1997. Legal Aid also recognizes the importance of addressing collateral issues and clients’ non-legal needs, and recently has adopted elements of the holistic defense model. However, as one of the nation’s oldest and largest indigent legal services providers, they have used a more traditional model throughout much of the study’s observation period, and due to certain features of their organizational structure, continues to represent a comparatively traditional approach to criminal defense. Operationally, this has meant fewer resources available and less focus on addressing client issues other than the criminal case. Individual criminal defense attorneys are appointed in cases with conflicts of interest. They represent the most traditional approach to criminal defense and typically have neither the resources nor the expertise to provide the range of services that the defender organizations can.

Clients are assigned to the two defender associations through a rotating shift assignment system that furnishes a natural experiment enabling rigorous measurement of the effect of the holistic defense approach.

Project Design and Methods

In the Bronx, a holistic defense provider (the Bronx Defenders) and a traditional defender (the Legal Aid Society) operate side-by-side within the same court system, with case assignment determined quasi-randomly based on court shift timing. In New York City, the arraignment is typically the first judicial proceeding in a criminal case, and generally occurs within 48 hours of arrest. A judge, defense counsel, and assistant district attorney participate, and the defendant is formally notified of the charges and a bail determination made. Either Legal Aid or the Bronx Defenders are the primary organization assigned to each arraignment shift, and defendants appearing for arraignments during the shift always get assigned to the primary organization absent special circumstances. Because of the how assignments are made, whether a particular defendant is assigned to the Bronx Defenders or Legal Aid largely depends on which day he or she is arraigned and/or to which courtroom he or she is assigned, factors that are unlikely to be directly related to case outcomes. In short, we attempt to exploit features of the counsel assignment system in the Bronx that mimic random assignment, in that they cause similarly-situated pools of defendants to differ in whether they are assigned holistic versus traditional defenders.

Using administrative data covering over half a million cases and a quasi-experimental research design, we estimate the causal effect of holistic defense on case outcomes and future offending. The primary case-level data used in the analysis below were obtained from the New York Division of Criminal Justice Services (DCJS) and the New York City Office of Court

Administration (OCA). We requested an extract of all records from the DCJS Computerized Criminal History (CCH) database involving individuals arraigned within Bronx County between 2000 and October 17, 2016 and supplemented these data with Bronx arraignment data from OCA. The CCH database includes all finger-printable arrests that occur within the state of New York, and is the data source used to generate rap sheets following arrest for arraignments in the state. DCJS provided data covering over 2.8 million individual arrests involving nearly 400,000 distinct individuals. In our analysis, the unit of observation is a defendant/case pairing, and we initially restrict attention to cases where arraignments occurred between 2000 and 2014 that had an initial disposition by October 2016, leaving a pool of 940,546 observations. We exclude the roughly 5% of Bronx criminal defendants who were not indigent and were represented by hired private counsel, as well as the <1% of cases where the DCJS file had missing data on counsel type. We then cross-checked the DCJS data with annual Bronx Defender caseload statistics published by the New York Court's Indigent Defense Organization Oversight Committee as a data quality check. Comparison of the two sources suggest that from 2008 through Q3 of 2012, the DCJS data under-recorded the number of cases assigned to the Bronx Defenders, so we omit those years in the analysis that follows. We also omit 4,556 cases (<1% of remaining sample) arraigned on a handful of days where there were unusually few arraignments recorded, reasoning that the court may have departed from the normal assignment process on such days. The final analytic sample includes 587,487 individual defendant/case pairings initiated in the Bronx between 2000-2007 and 2012-2014, which is 62.4% of the original pool of 940,546 observations.

Data Analysis/Results

We describe the results of our quantitative analysis, *i.e.* the causal effect of the holistic representation implemented by the Bronx Defenders on case outcomes and future offending:

- Pre-Trial Outcomes and Case Processing: Clients with holistic representation were more likely to be arrested during the pretrial period when measuring arrests using either the fraction of clients with a new arrest or the total number of arrests. Pretrial misdemeanors increased by 14% and felonies increased by 17%, although there is no measurable increase in violent pretrial felonies. We view the increase in pretrial arrests as most likely reflecting a higher release rate for holistic defender clients. Holistic representation is associated with a 9% increase in the amount of time it takes to resolve a case. Although the precise explanation for this longer case adjudication time is unclear, one possibility is that holistic defenders strategically delay case resolution for some clients in order to allow them to begin drug treatment, secure employment, or engage in other positive actions that might lead to more lenient sentences.
- Immediate Case Outcomes: Approximately one half of all defendants obtained charge downgrades, and there was a modest (3%) but statistically significant increase in this rate for those represented by the holistic defender. Although holistic defenders were more successful at obtaining charge downgrades, there was no statistically significant effect on the overall conviction rate or the guilty plea rate. However, holistic representation has a statistically significant and practically large impact on punishment severity, reducing the likelihood of a jail sentence by 3.9 percentage points (16%) and the average length of the custodial sentence (including zero sentences) by 9.5 days (24%). These are large effects, implying, for example, that there were roughly 4,500 individuals in our sample who avoided jail sentences who would have otherwise received them had they not had access to holistic representation.

- Future Criminal Justice System Involvement: There is no measurable effect of holistic representation on recidivism as measured by arrest at any of the follow-up periods (1, 2, 3, 5, and 10 years post-arraignment). While the fact that holistic representation does not measurably reduce recidivism may seem disappointing at first glance, taken in concert with the results above, these findings suggest that the model may in fact have important benefits. Holistic representation produces fairly sizable percentage reductions in custodial sentences and sentence length. Defendants were de-incarcerated without increasing recidivism and compromising public safety. Holistic representation apparently offers a means to appreciably reduce the use of prison and jail as punishment without fueling future crime.
- Effects over time: For most outcomes, there is little evidence of a change over time. One notable exception, however, is custodial sentences, where we observe large reductions due to holistic representation in the earlier years but limited evidence of a reduction in the most recent years. There are several potential explanations for this pattern. One possibility is that there has been an actual convergence in performance across the holistic and traditional defenders, as Legal Aid attorneys have increasingly embraced the need to consider collateral consequences and increased involvement of outside experts such as social workers and civil attorneys in their practice.

Findings

Our results suggest that indigent defense deserves a more prominent place in discussions about how to address mass incarceration. Like a small number of prior studies, it rigorously demonstrates the large and critical role that defense counsel can have in shaping case outcomes; however, unlike past work, it identifies a solution that improves the quality of defense with no

apparent tradeoff in terms of downstream crime. Over the ten-year study period, holistic representation in the Bronx has resulted in nearly 1.1 million fewer days of custodial punishment saving state and local taxpayers an estimated \$165 million on inmate housing costs alone. This suggests that improving defense counsel may be an overlooked tool for reducing overall incarceration. While these results suggest holistic representation does not dramatically reduce recidivism, holistic defense does appear to offer considerable potential to reduce incarceration without adversely impacting public safety.

More broadly, this study suggests that indigent defense has received too little attention in the broader discussion of criminal justice reform in the U.S. Although interest groups and policymakers from all points along the ideological spectrum have expressed considerable concern about mass incarceration and the associated human and fiscal costs, much of the reform agenda has focused on areas such as policing, sentencing reform, and pretrial detention. Perhaps one reason indigent defense has gained less prominence in the debate is policymakers' perception that providing better quality representation might lead to acquittals of guilty defendants, undermining one of the core purposes of the criminal justice system. However, this study demonstrates that strengthening indigent defense can instead offer a means to reduce unnecessary and unproductive punishment that does not further society's goal of ensuring public safety. Given the promise of the model, further research to assess its mechanisms of impact, scalability to other jurisdictions, and effects on outcomes outside of the criminal justice system is warranted.

For the holistic model to reach its full potential for improving the criminal justice system, we need richer understanding of how to apply the model across the myriad of different communities and circumstances facing indigent defenders today. Another important objective for

future holistic defense research is to evaluate the effect of holistic defense on outcomes beyond the criminal justice sphere (*e.g.*, deportations prevented, housing retention, connecting clients to Section 8 vouchers, getting clients' bail money back, getting clients' property back, maintaining static income through public benefits, avoiding removal of children from their homes/stabilizing families/shortening time in foster care). After all, a key purpose of holistic defense is to address a client's needs beyond their criminal case.

Limitations

Several important limitations of the data used for this analysis affect the interpretation of the results. Although we have reliable sentencing data, we do not know the actual custody status of any particular defendant post-adjudication, and so our analyses that look at post-trial crime will include both defendants still being held in state custody and those who were never convicted or who were released. A second limitation is that we do not observe the immigration status of defendants. Not only is ability to remain in the United States a plausible outcome of interest -- as many defendants might pursue legal strategies based on potential immigration consequences -- but it also shapes who is observable in the crime data post- adjudication. Finally, our data include only measures of what happens in the criminal justice system, while the holistic model is designed to affect a wider range of outcomes such as family stability, housing, and economic outcomes. The analysis is thus limited to one particular set of outcomes across a much larger set of outcomes that one would ideally evaluate in understanding the overall impact of holistic defense. Finally, it is important to note that it is based on a single jurisdiction. While we have no reason to believe that there is anything idiosyncratic about the Bronx, it would be useful to rigorously measure the effects of holistic defense in other jurisdictions.