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Holistic Client-Centered Advocacy in Juvenile Delinquency Cases

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I. Introduction

1. As a deputy public defender in Los Angeles, my goal was always to get the best result for my client. As all criminal defense attorneys know, depending on the case, a successful result can mean many different things. From an outright dismissal, or keeping the client free from imprisonment, to securing a favorable plea bargain, or minimizing or eliminating financial penalties, each case has its own definition of success.

2. In order to obtain the best result for the client, I did all that I could, testing and challenging the prosecution's case in every way possible. This often meant drafting and filing numerous motions, long hours preparing for and proceeding to trial, leaving no stone unturned when it came to discovering and developing any and all mitigating circumstances, and making sure the prosecution and the court were fully aware of these circumstances, giving my client the best chance for a favorable outcome.

3. When I started working with youth as my clients, representing them in juvenile delinquency court in Los Angeles, my perspective on my job as an advocate changed. Representing kids took more than just an attack the prosecution approach. Along with the typical litigation tactics I discuss above, I had to consider the child as whole.

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4. In order to be effective I had to understand the child's family history, his upbringing, intellectual capacity, school performance, history of trauma, psychological profile, and the child's dreams, aspirations and goals. I learned that, although the child often did not understand the consequences of his actions and usually could not comprehend the long-term effects of any plea deal offered or conviction ("adjudication" in juvenile court), it was my job to help him understand so he would be empowered to make an informed decision about his actions in the case and his life.

5. Additionally, like my adult cases, it was also my ethical duty to advocate for the protection of the child's constitutional rights. Consequently, in the twenty-one months I was assigned to the juvenile unit, I took over 250 cases to trial ("adjudication hearing" in juvenile court). My strategy in these cases often included: requesting school records and other court records, such as those from dependency court, to seeking the assistance of social workers and other experts in a variety of fields from psychology to special education.

6. I often called these professionals as witnesses in the trials and sentencing hearings ("disposition hearing" in juvenile court). I would challenge the transfer of these youth to adult court, utilizing these same tactics and with unrelenting zeal. I genuinely allowed myself to be compassionate and human, while applying my lawyering skills, to provide to the child client, either directly or indirectly, assistance in their lives with the goal of providing "holistic representation," although I do not believe that term was being used back then.

7. This experience laid the groundwork for my commitment to juvenile justice and the eventual formation of a non-profit organization, the Center for Juvenile Justice. The Center focuses on representing youth in delinquency proceedings utilizing a holistic approach; networking with community members to support youth at risk and those incarcerated; and teaching law students to be able to employ their legal skills in a holistic manner and work within an interdisciplinary team to advocate for the whole child.

8. A compassionate advocate must have a fundamental understanding of the context in which they are working with youth clients. This means not only studying and learning the procedural mechanisms and the applicable case law, but also gaining a firsthand understanding of the problems and challenges children face within and beyond the confines of their legal case.

9. Indeed, the advocate should have a working knowledge of the adolescent brain and developmental science, the mass incarceration rates, the poverty, disproportionate minority contact and detention, trauma, mental illness, alcoholism, substance abuse, posttraumatic stress disorder, and family dysfunction. Most children are scared, desperate and confused when they are first arrested.

10. This is an opportunity not to be missed, as this is when youth are most likely to respond to and are able to receive assistance and guidance. It is a moment of vulnerability in a child's life where true transformation can occur.

11. More recently, the stakes with children clients have been raised further. The movement in the United States to treat children as adults, process them in adult criminal courts, and send them to adult prisons — even sending children to die in adult prison with sentences of life without parole — makes it more imperative than ever that juvenile defenders stand up and advocate for their child clients. Often, the juvenile defender is the only one protecting the child’s rights, and the chances that the child will lead a productive and fulfilling life can rise and fall with the quality his representation.

12. While the traditional juvenile defender focuses solely on resolving the delinquency or criminal charges, the “holistic” defender works with the client and an interdisciplinary team including social workers, other professionals, and family members to address the legal issues and underlying problems.

13. Utilizing this method to treat the “whole” child, the holistic juvenile defender seeks to discover and actually deal with the root causes of the client’s current status. To the holistic defender, the “whole client condition is crucial, not just case resolution.” The holistic defender shifts “away from a singular concentration on the life of a case toward a broader focus on the life of the client.”² It is not idealistic to state that, as advocates, we should strive to serve the greater good and long-term effect on the child and community as a whole.

14. In this article, Part II will set out the background for this discussion by briefly laying out the history of the juvenile court and philosophy; identifying the client population; and addressing adolescent brain development and relevant Supreme Court precedent and the mass incarceration of youth, especially youth of color, in our country.

15. Part III will identify the role of the juvenile defense counsel in delinquency proceedings. Part IV will provide a guide to the practical application of the client-centered holistic approach to the representation of youth. Part V will then identify some of the realities in holistic legal practice.

II. Background

A. History of Juvenile Court

16. Even before the juvenile court was ever developed, the difference between child and adult had been recognized in the law in the United States. In common law, William Blackstone defined children under the age of seven as “infants” and therefore incapable of committing a crime, based on their inability to “understand their actions.” English Common Law vaguely defined the age range warranting this distinction as between ages seven and fourteen. However, Blackstone described the doctrine “*malitia supplet aetatem*” (“malice supplies the age”), wherein the legal capacity was not so defined by the number of years but by the child’s understanding and judgment.³

2 Kyung M. Lee, Comment, *Reinventing Gideon v. Wainwright: Holistic Defenders, Indigent Defendants, and the Right to Counsel*, 31 *Am. J. Crim. L.* 367, 371–72 (2004).

3 WILLIAM BLACKSTONE, COMMENTARIES ON THE LAWS OF ENGLAND, Book IV, 23 (1753).

17. Initially, the United States was strongly influenced by this system of juvenile justice, but began to forge a new path at the beginning of the nineteenth century. Some of the innovations included the New York House of Refuge and the Chicago Reform School, both opened in the early 1800s. These were established as a way to house only alleged juvenile offenders and keep them separate from adults and focus on rehabilitation rather than punitive measures.

18. The first juvenile court was established in Chicago in 1899. “*Parens Patriae*” was the newly developed doctrine wherein the state was able to act as the guardian of the child, attempting to serve the “best interests of the child.” Juvenile cases were tried in a civil format that focused on meeting the needs of the child and establishing a plan for them to develop into productive, law-abiding citizens. One method of rehabilitation was to remove the child from home and place him in a reform institution.⁴

19. In 1967, the United States Supreme Court heard *In re Gault*, with Justice Fortas penning the majority opinion, which concluded that “neither the Fourteenth Amendment nor the Bill of Rights is for adults alone.”⁵ The High Court held that juveniles subject to delinquency charges were entitled to Due Process to include the right to legal counsel. The Court concluded that any child “facing the awesome prospect of incarceration” needed “the guiding hand of counsel at every step in the proceedings against him.”⁶

Congress expressed similar concern over the need to safeguard the rights of children when it enacted the Juvenile Justice and Delinquency Prevention Act in 1974. The Congressional statement of findings specifically observed that “understaffed, overcrowded juvenile courts, probation services, and correctional facilities are not able to provide individualized justice or effective help.”⁷

20. Congress continued to be apprised of the poor quality of juvenile indigent defense when the Act was reauthorized in 1992, and again in 1996. In 2002, along with reauthorizing the Act:

Congress emphasized the importance of lawyers in juvenile delinquency proceedings, specifically noting the inadequacies of both prosecutorial and public defense systems to provide individualized justice or effective assistance.⁸

21. Yet, despite the Supreme Court mandates and Acts of Congress, the very spirit of the landmark decision in *Gault* seems to have been lost. Numerous studies and reports have shed light on the dark truth that many youth face charges and severe consequences with no legal counsel or ineffective assistance of counsel.

4 ABA Division for Public Education, *The History of Juvenile Justice*.

5 387 U.S. 1, 13 (1967).

6 *In re Gault*, 387 U.S. 1, 36 (1967).

7 National Juvenile Defender Center, *Gault Forty Years Later, Importance and Impact*.

8 National Juvenile Defender Center, *Gault Forty Years Later, Importance and Impact*.

B. Juvenile Defenders' Clients Are Children

22. The juvenile defender's clients are the youth of our country. Youth in modern society experience the whole myriad of emotions on a daily basis, ranging from stress, confusion, anxiety and depression, sometimes all at once, and occurring alongside their fast-paced biological metamorphosis. Between the ages of 16 and 18, youth frequently undergo essentially a life crisis; according to the famed psychologist Erik Erickson there is a "struggle between ego identity and role diffusion." "Ego identity" is formed when youth develop the full sense of the Self, combining how they see themselves and how they fit in with others. "Role diffusion" occurs when they experience personal uncertainty, spread themselves too thin and place themselves at the mercy of persons who promise to give them a sense of identity that they cannot form for themselves.⁹

23. Inherent in the experience of adolescence, youth may feel obliged to meet adult expectations and yet may not be able to meet them and concurrently perceive that they are being treated as children, and this can prove confusing and frustrating for them. Some youth are even expected to parent younger siblings and find themselves resentful and overwhelmed, perhaps even having to parent their parents, virtually losing their own childhood in the process.

24. Adolescents are in a state where they are desirous of more autonomy and simultaneously need the structure and guidance that is usually provided by parents and adult role models. This desire for autonomy, however, can result in a form of rebellion against authority and lead to conflict at school, home or in the community. In fact, unfortunately, this one factor alone puts youth at risk for delinquency and suicide. Suicide is the third leading cause of death in the United States among youth between the ages of 10 and 24.¹⁰ The American Psychological Association (APA) has reported that children worry about everything in their lives and the more they worry the more they are at risk for delinquency and suicide.¹¹

25. There is a wide body of scientific literature that demonstrates just how ill-equipped young teens are to exercise mature judgment. The American Medical Association's (AMA's) amicus curiae brief in support of the child-client in *Roper v. Simmons*, examines some of the research confirming adolescents' limited cognitive capacity.¹² The AMA explained as follows:

Brain studies establish an anatomical basis for adolescent behavior. Adolescents' behavioral immaturity mirrors the anatomical immaturity of their brains. To a degree never before understood, scientists can now demonstrate that adolescents are immature, not only to the observer's naked eyes, but in the very fibers of their brains. . . . First, adolescents rely for certain tasks, more than adults,

9 ERIK H. ERIKSON, *IDENTITY: YOUTH AND CRISIS* (1968).

10 CENTER FOR DISEASE PREVENTION AND CONTROL, *SUICIDE PREVENTION: YOUTH SUICIDE* (2014).

11 *American Psychological Association Survey Shows Teen Stress Rivals That of Adults*, AMERICAN PSYCHOLOGICAL ASSOCIATION (2014).

12 543 U.S. 551 (2005).

on the amygdala, the area of the brain associated with primitive impulses of aggression, anger, and fear. Adults, on the other hand, tend to process similar information through the frontal cortex, a cerebral area associated with impulse control and good judgment. Second, the regions of the brain associated with impulse control, risk assessment, and moral reasoning develop last, after late adolescence . . .

[A]s teenagers grow into adults, they increasingly shift the overall focus of brain activity to the frontal lobes . . . [which are responsible for] decision making, risk assessment, ability to judge future consequences, behavioral inhibition, impulse control . . . and making moral judgments. . . . Adolescents, as a group, “are risk takers” [and] . . . “exhibit a disproportionate amount of reckless behavior, sensation seeking and risk taking. . . . [I]t is statistically aberrant to refrain from such [risk-taking] behavior during adolescence.” In short, teenagers are prone to making bad judgments. Cognitive experts have shown that the difference between teenage and adult behavior is not the adolescent’s inability to distinguish right from wrong. . . . Rather, the difference lies in what scientists have characterized as “deficiencies in the way adolescents think, an inability to perceive and weigh risks and benefits accurately.”¹³

26. Drawing on social science and common sense, the United States Supreme Court has recognized and officially acknowledged the differences between adults and children which require the justice system to treat children differently, to consider their immaturity and undeveloped brains. *Roper v. Simmons* abolished the death penalty against minors as a category, expanding the 1988 *Thompson v. Oklahoma* decision.¹⁴

27. *Thompson* held that children under 16 could not be subject to capital punishment, finding that youth diminishes culpability. The Court found youth to be a mitigating factor because children lack maturity, responsibility, and perspective, and because “offenses by the young also represent a failure of family, school, and the social system, which share responsibility for the development of America’s youth.”¹⁵

28. *Roper* increased the age for children to be protected from the death penalty to 18, finding that killing children was a violation of the Eighth Amendment. The Court discussed three main reasons why young age makes a person less culpable. First, children lack maturity and responsibility, which leads to ill-informed and impulsive decisions and recklessness. This broadly accepted fact of youth is the sound policy behind age restrictions on voting, serving on juries, and getting married. Second, children are more vulnerable to bad influences and outside pressures because they have less control over their own environment. They also have both emotional and legal hurdles in the way of escaping their dysfunctional

13 *Brief of the Am. Med. Ass’n et al. as Amici Curiae in Support of Respondent* at 4–5, 5–6, 9–11, 15, in *Roper v. Simmons*, 543 U.S. 551 (2005).

14 *Roper v. Simmons*, 543 U.S. 551, 570–71 (2005); *Thompson v. Oklahoma*, 487 U.S. 815, 838 (1988).

15 *Thompson v. Oklahoma*, 487 U.S. 815, 834 (1988), quoting *Eddings v. Oklahoma*, 455 U.S. 104, 115, n. 11 (1982).

lives. Third, children have not yet developed as individuals and therefore have a greater capacity for reform.¹⁶

29. The *Roper* Court held that youth was not merely a mitigating factor to be presented on a case-by-case basis for a jury to assign its own weight, but rather a trait that requires categorical constitutional protection. The Court acknowledged an international consensus and finally joined every other country in the world in condemning the practice of putting children to death.¹⁷

30. Then the Supreme Court decided *Graham v. Florida*, where the Court determined that a sentence of life without parole for a juvenile convicted of a non-homicide crime violates the Eighth Amendment. Confirming the three main reasons in *Roper*, the Court held that children are less culpable than adults for the same crimes and that there are “fundamental differences between juvenile and adult minds.”¹⁸

31. It further expanded on the justifications for punishment given in *Roper* and why they are not applicable to a child. Life without parole cannot be justified by incapacitation because kids can be reformed, and keeping them locked up for their entire lives wrongly assumes they will always be criminally inclined. A sentence to die in prison also forecloses the youth from ever proving that he is reformed, and often circumvents his ability to participate in rehabilitative programs. Finding that a categorical rule is the best protection against cruel and unusual punishment, and again citing an international consensus, the *Graham* Court abolished juvenile life without parole for non-homicide crimes.¹⁹

32. Most recently, the Supreme Court found mandatory life without parole sentences for children convicted of any crime to be unconstitutional in *Miller v. Alabama*. Again reinforcing the three reasons from *Roper* why children are less culpable, the Court acknowledged the constitutional difference between children and adults established by recent jurisprudence.²⁰

33. The Court expanded *Graham*'s holding to all juvenile offenders, including those convicted of homicide because the “distinctive (and transitory) mental traits and environmental vulnerabilities” of children is not “crime-specific.” Youthfulness is “relevant to the Eighth Amendment and so criminal procedure laws that fail to take defendants’ youthfulness into account at all would be flawed,” which is why a mandatory penalty scheme that precludes taking youth into account offends the Constitution. “[I]mposition of a State’s most severe penalties on juvenile offenders cannot proceed as though they were not children.” The Court explained that the Constitution demands individualized sentencing that takes mitigating factors, including age, into account. Despite strong evidence that a child can be

16 *Roper v. Simmons*, 543 U.S. 551, 570–71 (2005); see also *Eddings v. Oklahoma*, 455 U.S. 104 (1982).

17 *Roper v. Simmons*, 543 U.S. 551, 570–71 (2005).

18 *Graham v. Florida*, 130 S. Ct. 2011, 2026 (2010).

19 *Graham v. Florida*, 130 S. Ct. 2011 (2010).

20 *Miller v. Alabama*, 132 S. Ct. 2455 (2012).

rehabilitated, mandatory life without parole ignores that possibility and thus violates the Constitution.²¹

34. *Roper, Graham, and Miller* all used the Eighth Amendment standard of “whether the punishment is contrary to the evolving standards of decency that mark the progress of a maturing society.”²² Youth has inherent mitigating qualities. “It is a time of immaturity, irresponsibility, impetuosity, and recklessness. It is a moment and condition of life when a person may be most susceptible to influence and to psychological damage. And its signature qualities are all transient.”²³

35. In *J.D.B. v. North Carolina*, the Supreme Court held that youth was a factor in the custody analysis in terms of *Miranda* warnings. The reality of childhood, including a heavy reliance on adults, makes it more likely that a reasonable child would not feel free to leave where a reasonable adult might.²⁴

36. Reiterating that children are different because “age is far ‘more than a chronological fact,’” the Court found children to be less mature and responsible; to lack experience, perspective, and judgment; to be more vulnerable to outside pressures; and to be easily overwhelmed by authoritative questioning.²⁵ Children “possess only an incomplete ability to understand the world around them” and must be treated with this fact in mind. “Our history is replete with laws and judicial recognition that children cannot be viewed simply as miniature adults.”²⁶

37. The custody analysis is no exception, and the Court held that the known generalizations about childhood, including that children are rather susceptible to influence and pressure, must be taken into consideration by police and prosecutors.²⁷

38. In punishment and in custody, children must be treated differently because they are different. This applies to other stages in criminal proceedings, and it even applies to representation of the child as an attorney. In *Graham* as well as *Miller*, the Supreme Court discussed the unique difficulties that come with representing a child defendant and the particular disadvantages children face in court. In *Graham*, the Court adopted the wisdom expressed by *amici*: youth mistrust adults and have limited understandings of the criminal justice system and the roles of the institutional actors within it.

21 *Miller v. Alabama*, 132 S. Ct. 2455, 2465, 2466 (2012).

22 *Stanford v. Kentucky*, 492 U.S. 361, 369 (1989); see also *Miller*, 132 S. Ct. 2455, 2463; *Graham*, 130 S. Ct. 2011, 2021; *Roper*, 543 U.S. 551, 561.

23 *Miller*, 132 S. Ct. 2455, 2467; *Roper*, 543 U.S. 551, 569; *Eddings*, 455 U.S. 104, 115.

24 *J.D.B. v. North Carolina*, 131 S. Ct. 2394 (2011).

25 *J.D.B. v. North Carolina*, 131 S. Ct. 2394, 2406 (2011), quoting *Eddings v. Oklahoma*, 455 U.S. 104, 115 (1982).

26 *J.D.B. v. North Carolina*, 131 S. Ct. 2394, 2403, 2404 (2011), quoting *Eddings v. Oklahoma*, 455 U.S. 104, 115–16 (1982).

27 *J.D.B. v. North Carolina*, 131 S. Ct. 2394 (2011).

39. Difficulty in weighing long-term consequences, a corresponding impulsiveness, and reluctance to trust defense counsel seen as part of the adult world that a rebellious youth rejects, all can lead to poor decisions by one charged with a crime or delinquent act. These factors are likely to impair the quality of a child-client's representation. In *Miller*, the Court found youth to be a disadvantage throughout the criminal process, because a child "might have been charged and convicted of a lesser offense if not for incompetencies associated with youth — for example, his inability to deal with police officers or prosecutors (including on a plea agreement) or his incapacity to assist his own attorneys."²⁸

40. The Supreme Court has clearly acknowledged that children face unique challenges when experiencing the justice system and that lawyers must fully understand those challenges in order to provide effective representation. Developing adolescents require a specialized legal approach and attorneys can either empower their clients to make the best decisions or create further obstacles by ignoring the difference between adults and children.

41. The developmental science and the case law that recognizes it should be the starting place in every juvenile delinquency case, with every child client. It provides the context within which the advocate is working and it sets the stage upon which the players engage. The deeper understanding the lawyer has of this science and law, the more effective advocate she is for her client.

C. Our Youth Face Mass Incarceration in Juvenile and Adult Facilities

42. In the early 1990s, Princeton criminologist John DiIulio ignited a fear-based socio-political attack on our country's youth when he wrote:

America is now home to thickening ranks of juvenile "super-predators" — radically impulsive, brutally remorseless youngsters, including ever more pre-teenage boys, who murder, assault, rape, rob, burglarize, deal deadly drugs, join gun-toting gangs and create serious communal disorders. They do not fear the stigma of arrest, the pains of imprisonment or the pangs of conscience. . . . At core, the problem is that most inner-city children grow up surrounded by teenagers and adults who are themselves deviant, delinquent and criminal.²⁹

43. In direct response to this reckless call for fear-motivated reaction, nearly every state in our nation enacted some legislation to enable prosecution of kids as adults in more cases and punish children more severely. DiIulio's theory was inflammatory and provocative, resulting in permanent damage to thousands of youth and was in fact, dead wrong. Rather than rising, the crime rate among juveniles has fallen substantially. From 2002 to 2011, the number of juvenile arrests declined 31%.³⁰

²⁸ *Graham v. Florida*, 130 S. Ct. 2011 (2010).

²⁹ BENNET, DI IULIO & WALTERS, *BODY COUNT: MORAL POVERTY AND HOW TO WIN AMERICA'S WAR ON DRUGS* 27 (1996).

³⁰ U.S. DEPARTMENT OF JUSTICE, OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION, *JUVENILE ARRESTS 2011* (2013).

44. This former White House Aide had an “epiphany” and was enlightened when he actually visited the very inner cities he had written off as beyond hope and irredeemable. DiIulio realized that these children needed support and faith in God, not prisons. In an article with the New York Times in 2001, he regretted his call for the building of more prisons for youth. In 2000, a Human Rights Watch Report blamed the theory of “super-predators” for state initiatives to move juvenile offenders into the adult criminal justice system. Mr. DiIulio responded to that claim by simply stating, “I’m sorry for any unintended consequences . . . [b]ut I am not responsible for teenagers going to prison.”³¹

45. Despite the fallacy being revealed, the mass incarceration continues. In 2011, 1.5 million children were arrested by law enforcement. The number of children detained in delinquency cases increased 7% between 1985 and 2011. One out of every five youth (21%) who is brought before the court with a delinquency case is detained. Two-thirds of youth in detention are held for nonviolent charges. These youth are charged with property offenses, drug offenses, public order offenses, technical probation violations, or status offenses (crimes that wouldn’t be crimes if they were adults, like running away or breaking curfew).³²

46. These staggering statistics warrant an even more steadfast challenge to the detention of youth as a matter of course. This practice is unacceptable and the duty of the juvenile defender is to stand up in the face of the ongoing movement to detain and incarcerate more children.

47. Specifically and perhaps even more importantly, the wave of adult prosecutions of children necessitates a commitment by all juvenile defenders to rail against this misguided abuse of power. On any given night in America, 10,000 children are held in adult jails and prisons. An estimated 250,000 youth are tried, sentenced, or incarcerated as adults every year across the United States. Most of the youth prosecuted in adult court are charged with non-violent offenses.

48. Research shows that young people who are kept in the juvenile justice system are less likely to re-offend than young people who are transferred into the adult system. According to the Centers for Disease Control and Prevention, youth who are transferred from the juvenile court system to the adult criminal system are approximately 34% more likely than youth retained in the juvenile court system to be re-arrested for violent or other crime.³³

49. The disproportionate application of the law based on race undermines the fundamental fairness of our entire justice system. African-American youth overwhelmingly receive harsher treatment than white youth in the juvenile justice system. African-American youth make up 30% of those arrested while they only represent 17% of the overall youth population. African-American youth are 62% of the youth prosecuted in the adult criminal system and are nine times more likely than white youth to receive an adult prison sentence.

31 Elizabeth Becker, *As Ex-Theorist on Young “Superpredators,” Bush Aide Has Regrets*, [The New York Times](#), February 9, 2001.

32 SARAH HOCKENBERRY & CHARLES PUZZANCHERA, [JUVENILE COURT STATISTICS 2011](#) (2014).

33 JASON ZIEDENBERG, [YOU’RE AN ADULT NOW: YOUTH IN ADULT CRIMINAL JUSTICE SYSTEMS](#) (2011).

50. Compared to white youth, Latino youth are 4% more likely to be petitioned, 16% more likely to be adjudicated delinquent, 28% more likely to be detained, and 41% more likely to receive an out-of-home placement. Latino children are 43% more likely than white youth to be waived to the adult system and 40% more likely to be admitted to adult prison.³⁴

51. Although the federal Juvenile Justice and Delinquency Prevention Act (JJDP A) requires that youth in the juvenile justice system be removed from adult jails or be sight-and-sound separated from other adults, these protections do not apply to youth prosecuted in the adult criminal justice system. The National Prison Rape Elimination Commission found that “more than any other group of incarcerated persons, youth incarcerated with adults are probably at the highest risk for sexual abuse.”³⁵

52. More than 1 in 10 youth (12%) in state juvenile facilities and large non-state facilities reported experiencing one or more incidents of sexual victimization by another youth or facility staff in the past 12 months or since admission, if less than 12 months.³⁶

53. Most youth are denied educational and rehabilitative services that are necessary for their stage in development when in adult facilities. A survey of adult facilities found that 40% of jails provided no educational services at all, only 11% provided special education services, and a mere 7% provided vocational training. This lack of education increases the difficulty that youth will have once they return to their communities.³⁷

54. Many children are often placed in isolation, which can produce harmful consequences, including death. Youth are frequently locked down 23 hours a day in small cells with no natural light. These conditions can cause anxiety, paranoia, and create mental disturbance or exacerbate existing mental disorders and put youth at risk of suicide. In fact, youth housed in adult jails are 36 times more likely to commit suicide than are youth housed in juvenile detention facilities.³⁸

55. It seems as though the juvenile justice system has distanced itself intolerably far from the earlier goal of rehabilitation. The effects of putting so many children into detention in either youth or adult facilities include a less-educated populace, higher crime rates, and mentally and emotionally scarred individuals returned to the community with inadequate resources or support.

34 JASON ZIEDENBERG, [YOU'RE AN ADULT NOW: YOUTH IN ADULT CRIMINAL JUSTICE SYSTEMS](#) (2011).

35 NATIONAL PRISON RAPE ELIMINATION COMMISSION, [REPORT 18](#) (2009).

36 ALLEN BECK, PAIGE HARRISON, & DEVON ADAMS, [SEXUAL VIOLENCE REPORTED BY CORRECTIONAL AUTHORITIES, 2006](#) (2007); NATIONAL PRISON RAPE ELIMINATION COMMISSION, [REPORT](#) (2009).

37 NEELUM ARYA, [STATE TRENDS: LEGISLATIVE VICTORIES FROM 2005 TO 2010 REMOVING YOUTH FROM THE ADULT CRIMINAL JUSTICE SYSTEM](#) (2011).

38 CAMPAIGN FOR YOUTH JUSTICE, [JAILING JUVENILES](#) (2007).

56. There are many alternatives to detention that should be further explored in order to better serve both the youth involved and society as a whole. There is simply no evidence in favor of locking up so many children. A new study by the Youth Advocate Programs Policy and Advocacy Center (YAP) documents how thousands of youth served by YAP have been served safely at home through community-based programs instead of incarceration. This study finds that more than 8 out of 10 youth remained arrest free and 9 out of 10 were at home after completing their community-based program, at a cost that is a fraction of what it would have cost to incarcerate these youth. Moreover, the report highlights how youth are best served through programs that build on youth strengths, engage their family members and connect them to local community supports.³⁹

57. More than ever, this disconnect highlights the importance of juvenile defenders to not only represent their child client's legal interest but assist them in ancillary areas through referral and interdisciplinary teams in order for them to successfully avoid imprisonment in their present case and avoid future court involvement in their lives.

III. Role of the Juvenile Defender

58. Whether appointed by the court, taking the case *pro bono*, acting as a public defender, or hired by the parents to represent the child in delinquency proceedings, the role of the juvenile defense attorney is the same. She is bound by the same ethical obligations she would be to an adult client and, some would argue, an even higher standard of care is warranted when representing children.

59. Many attorneys, new and experienced, believe that when they represent a child-client in delinquency court, their role is as guardian *ad litem*, solely to seek and protect the "best interests of the child," and this is not correct. A juvenile defender is an advocate for the child and the child alone. Therefore, the child's expressed or "stated interests" are what guides the advocate.⁴⁰

60. While the landmark case of *In re Gault* laid the framework within which counsel was guaranteed for youth in juvenile delinquency proceedings, the United States Supreme Court failed to set clear parameters on the role of defense counsel in that case.⁴¹ Further, the culture of the juvenile court was initially, and still is in many jurisdictions, paternalistic, operating under the *parens patriae* model. In fact, an advocate who takes on a juvenile delinquency case without knowing and owning their role is likely to be confused and even convinced their role is otherwise.

39 DOUGLAS EVANS & SHEYLA DELGADO, [MOST HIGH RISK YOUTH REFERRED TO YOUTH ADVOCATE PROGRAMS, INC. REMAIN ARREST FREE AND IN THEIR COMMUNITIES DURING YAP PARTICIPATION](#) (2014).

40 Ellen Marrus, *Best Interests Equals Zealous Advocacy: a Not So Radical View of Holistic Representation for Children Accused of Crime*, 62 Md. L. Rev. 288 (2003).

41 387 U.S. 1 (1967).

61. Efforts since the *Gault* case to clarify this role have been made and shed light on this dilemma. In 1979 there were the standards issued by the IJA and the ABA (IJA-ABA Standards) which discuss the function of the child's counsel as follows:

However engaged, the lawyer's principal duty is the representation of the client's legitimate interests. In general, determination of the client's interests in the proceedings, and hence the plea to be entered, is ultimately the responsibility of the client after full consultation with the attorney. Ordinarily, the lawyer should not make or agree to a specific dispositional recommendation without the client's consent. It is the lawyer's duty to insist that proper procedure be followed throughout the disposition stage and that orders entered be based on adequate reliable evidence.⁴²

62. The ABA Model Rules of Professional Conduct also note that when

taking any protective action the lawyer should be guided by such factors as the wishes and values of the client to the extent known, the client's best interests and the goals of intruding into the client's decision-making autonomy to the least extent feasible, maximizing client capacities and respecting the client's family and social connections.⁴³

63. In 2012, the National Juvenile Defender Center published National Juvenile Defense Standards, which were promulgated to provide guidance, support, and direction to juvenile defense attorneys and juvenile court stakeholders. The mission of the National Juvenile Defender Center is to ensure excellence in juvenile defense and promote justice for all children. Like the *ABA Standards for Criminal Justice: Prosecution and Defense Function*,⁴⁴ these standards are not necessarily binding but provide guidelines by which a defense counsel should abide. At the outset, these standards outline the "role of Juvenile Defense Counsel" and indicate "Counsel's primary and fundamental responsibility is to advocate for the client's expressed interests."⁴⁵

64. The Commentary clarifies, however, that this client-centered approach does not mean that a lawyer is to set aside her legal training and go along with the client without a second thought, but rather should educate and inform the child client, allowing him to make an informed choice. This is consistent with the guiding principle as NJDC has outlined in view of the "unique vulnerabilities of youth, it is all the more important that juvenile defense

42 AMERICAN BAR ASSOCIATION INSTITUTE OF JUDICIAL ADMINISTRATION, JUVENILE JUSTICE STANDARDS: STANDARDS RELATING TO COUNSEL FOR PRIVATE PARTIES §§{ } 3.1(a), 9.4(a) (1980); NATIONAL ADVISORY COMMITTEE FOR JUVENILE DELINQUENCY PREVENTION, *STANDARDS FOR THE ADMINISTRATION OF JUVENILE JUSTICE* (1980); see also Kristin Henning, *Loyalty, Paternalism, and Rights: Client Counseling Theory and the Role of Child's Counsel in Delinquency Cases*, 81 *Notre Dame L. Rev.* 245, 255–57, 270–280 (2005).

43 AMERICAN BAR ASSOCIATION INSTITUTE OF JUDICIAL ADMINISTRATION, JUVENILE JUSTICE STANDARDS: STANDARDS RELATING TO COUNSEL FOR PRIVATE PARTIES §§{ } 3.1(a) (1980); see also Kristin Henning, *Loyalty, Paternalism, and Rights: Client Counseling Theory and the Role of Child's Counsel in Delinquency Cases*, 81 *Notre Dame L. Rev.* 245, 255–57, 270–280 (2005).

44 *ABA STANDARDS FOR CRIMINAL JUSTICE: PROSECUTION AND DEFENSE FUNCTION* (3d ed., 1993).

45 NATIONAL JUVENILE DEFENDER CENTER, NATIONAL JUVENILE DEFENSE STANDARDS §§{ } 2.1 (2012).

attorneys firmly adhere to their ethical obligations to articulate and advocate for the child's expressed interests, and to safeguard the child's due process rights."⁴⁶

65. In reality, the juvenile court bench and the stakeholders in the juvenile justice system often misunderstand the juvenile defender's role and when the advocate stands up for her child client's rights and demands yet another trial/adjudication, there is often pushback. In the minds of many in the juvenile justice system, the time it takes to provide a youth with due process may clog the docket. And either way, the thought goes, a guilty plea will be beneficial for the child because a guilty plea means the child gets certain services, where if the child is not found guilty, he will not receive those sorely needed services. The juvenile defender then seems to be in the way and they themselves become disillusioned about their role.

66. This is where the advocate should step up and remind everyone involved about the Sixth Amendment, *Gault* and the ethical obligation she has to zealously defend her client. It is advisable to set the tone early and often concerning pleading clients "guilty" in order to be provided necessary services or to avoid trial.

67. An advocate should file written motions outlining the legal issues in a comprehensive manner so the record is clear and all are on notice of the motives of the advocate. All too often, when push comes to shove, cases are dismissed as a result of a failure of proof just because the advocate was willing to fight for her client and the court and prosecution did not want to waste time. In order to ensure the client obtains those necessary services despite the acquittal or dismissal of charges, juvenile defenders should apply on behalf of the child client for such services, if necessary, or at the very least refer him to the appropriate agencies.

68. Juvenile defense lawyers should form a network with community members and have the local youth agencies screen the clients for suitable programming, access appropriate therapeutic modalities, and provide encouragement for the youth to get involved with creative and productive outlets, such as art or music, and community involvement of any type. This framework fosters self-esteem, empowerment and positive and healthy relationships with adults and authority. The child often turns a corner when given the opportunity to become all they can be; they even start to view the world with a new perspective of hope and promise. This is where the transformation happens.

IV. Holistic Lawyering in Practice

A. Client Interviewing and Counseling

69. As discussed, developmental science and the U.S. Supreme Court have fully recognized that adolescents' decision-making may be limited by developmental immaturity. While this

46 NATIONAL JUVENILE DEFENDER CENTER, NATIONAL JUVENILE DEFENSE STANDARDS 20 (2012); see also ROBIN WALKER STERLING, *ROLE OF JUVENILE DEFENSE COUNSEL IN DELINQUENCY COURT* (2009).

is the context within which juvenile defenders practice, it does not provide an exception to the ethical obligation to honor the child-client's expressed interest. Nor does a child's poor decision-making constitute grounds for finding that the client suffers from diminished capacity. "A juvenile defender's abiding purpose is to empower the client to make informed decisions."⁴⁷

The ABA standards emphasize the active counseling role of the child's attorney: The child's lawyer helps to make the child's wishes and voice heard but is not merely the child's mouthpiece. As with any lawyer, a child's lawyer is both an advocate and a counselor for the client. Without unduly influencing the child, the lawyer should advise the child by providing options and information to assist the child in making decisions. The lawyer should explain the practical effects of taking various positions, the likelihood that a court will accept particular arguments, and the impact of such decisions on the child, other family members, and future legal proceedings.⁴⁸

70. This is where the advocate is truly "counsel," explaining in developmentally-appropriate language the stages of the process, the role of all the players, and the options before him, with both the upside and downside to each. In client-centered advocacy, the first goal is to enable the youth to comprehend their role as the client, and then to empower them to make the decisions relating to their case with the advice of counsel. This comprehension and empowerment is key to the end goal of enhancing the life of the child. The child now has a true advocate who is earning his trust by taking the time to explain the intricacies of the legal process and listening to him, empowering him to make life-altering decisions. This uplifts the entire juvenile justice system, as it serves the greater good as well as the whole child.

71. Teaching kids about the law and how the justice system works is more than a valuable civic lesson. It has been shown that these informed youth are more likely to be law-abiding citizens as they understand that they too have rights and they feel more a part of the societal realm.⁴⁹

72. It is crucial at the outset of establishing the attorney-client relationship with the child for the lawyer to be sensitive to the intellectual capacity of the child; any mental health issues; and effects of trauma as well as the ever present perception of lawyers as authority figures to be feared or ignored by teenagers. Using age or developmentally appropriate language when advising a child client is a great start, but then the conversation must become a participatory dialogue in which the child feels heard and genuinely understands what the lawyer is telling him.

47 ROBIN WALKER STERLING, [ROLE OF JUVENILE DEFENSE COUNSEL IN DELINQUENCY COURT](#) 8 (2009).

48 AMERICAN BAR ASSOCIATION INSTITUTE OF JUDICIAL ADMINISTRATION, [JUVENILE JUSTICE STANDARDS: STANDARDS RELATING TO PRETRIAL COURT PROCEEDINGS, COMMENTARY TO STANDARD 7\(C\)](#) (1980).

49 Ellen Marrus, *Best Interests Equals Zealous Advocacy: a Not So Radical View of Holistic Representation for Children Accused of Crime*, 62 Md. L. Rev. 288 (2003) (citing Kathleen Sylvester, *Attorneys Who Teach "Street Law,"* Nat'l L.J., at 1 (1983)); see also Marvin Ventrell, *Rights & Duties: An Overview of the Attorney-Child Client Relationship*, 26 Loy. U. Chi. L.J. 259, 268 (1995).

73. One way to establish this is to check for comprehension by having the child explain it back to the lawyer in his own words. Visual aids are sometimes helpful, especially if the child has learning disabilities. It is imperative to find out as much as possible as soon as possible about the child client to include school attendance and performance, any cognitive or intellectual deficits, prior IQ testing, medical conditions, head injuries, prior trauma, medications past and present, as well as the client's current mental condition.⁵⁰

74. In order to place these factors into context, the lawyer should have a working knowledge of adolescent brain development, as well as any potential biases including those based on socio-economic status, race, gender, gender identification, and sexual orientation that may be at play in a given case. Counsel must have skill and practice in the communication with youth as clients.

75. The lawyer should not forget that she was a teenager once too, as was the prosecutor and the judge. The instincts of the human being should not be left at the door, but, to the contrary, the combination of humanity and good lawyering skills are the make-up of a zealous advocate. The juvenile defense lawyer should look for the red flags: any ticks (e.g. excessive eye blinking), the aversion of the eyes, the shaking or trembling of hands, sweating, speaking quickly, or having disorganized thoughts, all of which may simply mean the child is nervous speaking with an ominous authority figure, his lawyer, or the child has experienced some sort of trauma, and these red flags should be noted and addressed accordingly, either with follow-up evaluation or investigation.

76. Knowing the developmental status of your child client is paramount to reaching a reasonable disposition by which he will understand, agree and comply. In fact, counsel should be well versed, consulting with other experts and professionals when necessary, with regard to developmental science and utilize that informed mindset at all stages of the legal process for her child client.

77. Further, as occurs frequently in juvenile cases, there may a false confession or coerced statement that will absolutely require an intimate working knowledge of the series of United States Supreme Court cases recognizing the developmental science to be effective in litigating these complex and crucial issues to the benefit of the client. While it is true that the child client will frequently ultimately agree with the attorney's recommendations, it is important that he knows that he has a say in the matter and is fully informed of his choices. As such, the youth can also be held accountable for his decision to fight the case or take the plea and will be invested in the success of his own case and ultimately, his own life.

78. The child client and his parents must be advised thoroughly of the duty of confidentiality owed solely to the client as well as the duty of loyalty owed solely to the client. The advocate should always explain the general nature of the proceedings, the charges, and her role as attorney for the child and then politely request that the parents step out of the room so that the lawyer can interview her client and then invite the parents back in afterward

50 Katherine Hunt Federle, *The Ethics of Empowerment: Rethinking the Role of Lawyers in Interviewing and Counseling the Child Client*, 64 *Fordham L. Rev.* 1655 (1996).

to answer questions. The lawyer should then conduct another meeting after each court appearance to discuss what happened and answer any questions. Consistent contact with the child client is necessary to maintain trust and client control and it is helpful to have the parents on board as team members if possible.

B. Interdisciplinary Team Method

79. Building a team to support and advocate for the child is the most successful model for holistic advocacy. Collaboration with social workers, psychologists, teachers, school counselors, probation officers, mentors, coaches, and other legal experts, such as educational lawyers, immigration specialists, and others is the most effective way to address the whole child.

80. The child's parents may be involved, but usually are part of the problem. They must be consulted and brought into the collaborative effort to help get and keep them on the right path.

81. The child's teachers are an important resource and also must be brought in to do their part and teach and assist in the development of the youth. Community members from law enforcement to shopkeepers must be brought into the fold to offer their support for the youth at risk and aid in the development of these children. The community as a whole is responsible for the child's welfare. The community is partially at fault when the child fails their expectations. As the child's advocate, the juvenile defender leads the way in coordinating, and orchestrating the team effort.

82. There is a spectrum of parent/guardian involvement ranging from the divorced parents, who do not agree on the tack they should take with regard to their roles in the case, to the single foster parent, who is ambivalent about the course of the case. Regardless of the situation, an effort needs to be made to have the parents/guardians on board, although it may not always prove successful.

83. Often it helps to have a social worker involved from the outset, and the social worker can act as an intermediary and also advise the parents on possible programs and activities to get the child involved to keep him occupied and out of more trouble, as well as assist him in achieving his goals in the case and his life as a whole. The child, however, must always participate and be encouraged and allowed to have a voice. The way to ensure this as advocates is to listen and instill confidence and earn trust. An advocate should work diligently to serve the client's best interest and stated interest by identifying the individual's needs and deficits and networking and zealously advocating for those to be addressed.

84. The delinquency case is often the first intervention the child has actually had. It is the ideal context for an advocate and the team to finally address not only the delinquency/criminal case at hand but also any related issues and work with clients to help them gain a more favorable disposition and better life outcome. An initial screening and assessment done by an in-house or contracted social worker or mental health specialist is recommended for

each child client. The advocate should obtain releases signed by the parent or guardian and permission granted to gain access to school records, special education testing results, IEPs (Individualized Education Plans), and other records, including but not limited to, school counseling records, disciplinary records, any dependency court records, and any and all psychological evaluations and medical records.

85. These records are an often-overlooked and undervalued tool that could provide a wealth of information not otherwise available, either because the child or parent does not share fully or may not understand how the information is relevant. For example, the fact that a child had a head injury as an infant may not seem important to a child client or parent when he is facing a charge of burglary, but legally there may be a diminished capacity defense or lack of specific intent should the child suffer cognitive deficit as a result of that injury. Further, there is neuro-trauma rehabilitation that the child can receive to help overcome such a deficit and therefore enable him to better assess a situation and learn to avoid risk of long-term consequences for short-term gain.

86. The team should request any and all discovery related to the case itself and interview the witnesses and investigate the case, just as they would in an adult case. While this is being done, the social worker and mental health component of the team should be networking with the community and the parents to get the child client the counseling or health care he needs to cope with any trauma he may have endured leading to, during, and subsequent to the arrest. As the lawyer maintains contact with the child client, it should be outlined how the child's cooperation with the case plan of action will not only help him in court — as it will impress the prosecutor and judge — but also will set him up for success in the long term, providing him with the life skills he needs to navigate the complexities of adulthood.

87. An advocate should secure the disposition that the client wants. This disposition should be in alignment with the client's expressed interests, as well as further the advancement of the child in his life to be able to avoid trouble with the law, and to potentially encourage him to be accountable to himself and the community. One way to frame this advancement is to assist the youth in self-regulating his own behavior, utilizing resources to his advantage, including educational and youth engagement programs. For example, a mentor program where the youth can be mentored and then become a mentor. This builds self-esteem and leadership skills.

88. It is precisely at this time, when the child client is the most willing to do whatever it takes to stay out of detention or avoid being committed to a youth or adult facility, that the client needs the most zealous legal advocate and the most compassionate team members who are researching and securing the necessary services to place the kid on the right path.

Universally, the goal of every criminal defense lawyer is to get the best case disposition for her client. Indeed, securing an acquittal, less jail time, or avoiding prison altogether will always be a core goal of any criminal defense lawyer. Holistic representation does not change this fundamental and compelling value.

But the added goal in the holistic defense model is to make a long-term difference in the life of a client.⁵¹

V. Realities in Practice

A. *Is the Client Competent?*

89. The assertion that adolescents have an enhanced predilection for risky behavior is uncontroverted.

The temporal gap between the arousal of the socio-emotional system, which is an early adolescent development, and the full maturation of the cognitive control system, which occurs later, creates a period of heightened vulnerability to risk taking during middle adolescence.⁵²

90. The link between allocation of decision-making capabilities to the less advanced sections of the brain and increased risk taking is also well documented:

[P]atterns of development in the prefrontal cortex, which is active during the performance of complicated tasks involving long-term planning and judgment and decision-making, suggest that these higher order cognitive capacities may be immature well into late adolescence.⁵³

91. Lawyers need be particularly sensitive to the level of developmental maturity of their child clients and have the client professionally evaluated if any doubt arises as to his competence to proceed. The professional should be an expert familiar with adolescence, a forensic psychologist or psychiatrist, possibly a neuropsychologist, and someone who is familiar with the competence standards in the jurisdiction and as set forth in *Dusky v. United States*.⁵⁴

92. In *Dusky*, the United States Supreme Court set forth the definition of competency as “whether [the defendant] has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding of the proceedings against him.” While it is true that adult clients’ competency is usually questioned due to a significant mental health disability, with adolescents, developmental immaturity may in fact cause the child to be incompetent.⁵⁵

51 Robin G. Steinberg, *Beyond Lawyering: How Holistic Representation Makes for Good Policy, Better Lawyers, and More Satisfied Clients*, 30 N.Y.U. Rev. L. & Soc. Change 625, 626–27 (2006).

52 Laurence Steinberg, *Adolescent Development and Juvenile Justice*, 5 Ann. Rev. Clinical Psychol. 459, 466 (2009).

53 Laurence Steinberg & Elizabeth S. Scott, *Less Guilty by Reason of Adolescence*, 58 Am. Psychologist 1009, 1013 (2003).

54 362 U.S. 402 (1960).

55 Thomas Grisso, et al., *Juveniles’ Competence to Stand Trial: A Comparison of Adolescents’ and Adults’ Capacities as Trial Defendants*, 27 L. & Hum. Behav. 333 (2003).

93. Most states do not, however, recognize this reality. Careful consideration must be given to the options once a doubt as to competency is declared, and one such option might be that the lawyer and team attempt to delay the proceedings and educate the client and eventually, with natural maturation and development, the child may become competent. An advocate should ensure that, once an expert is consulted, they are provided with any and all pertinent information supporting the concern as to competency. Should the expert opine that the child is incompetent, even if based solely on developmental immaturity, only then should a competency hearing be sought and held.

94. If the client is found to be incompetent, a request for dismissal should be made immediately, and civil commitment should be avoided if possible. Should the court not dismiss the case, counsel should again request dismissal after passage of time if it appears that the child is not becoming competent.

B. Mandatory Reporting Requirements and Duty of Confidentiality

95. The interdisciplinary team approach may have to overcome some significant and seemingly contradictory goals within various professional disciplines. For example, the lawyer's role is to provide zealous advocacy and further the client's stated interest. The mental health professional is furthering the client's best interests, and this may not always coincide with the client's wishes.

96. For example, suppose a child charged with committing a crime informs his team members that he is in fact guilty of the offense, but wants to fight the case and stay home with his parent, despite the abuse he is suffering there, claiming it is better than being sent to live in a group home. He clearly indicates that he wants this information to be kept confidential. Ethically, the lawyer's duty is to keep the information confidential and to try to get an acquittal or, at the very least, reach a disposition where the child gets to stay home, assuming the disposition is otherwise agreeable to the client. On the other hand, the social worker may understand their professional responsibility is to report the abuse and attempt to ensure the client's safety. Here, the attorney-client privilege trumps the mandatory reporting scheme.

97. As such, any and all professionals working on the interdisciplinary team for the client would be held to the attorney-client privilege as any agent of the attorney. My recommendation is that there be a written agreement to that effect for the team members to sign at the outset of the representation. Should the social worker or mental health professional not be willing to agree to those parameters, the interdisciplinary team approach will break down and be ineffective as the client will likely not be fully forthcoming in speaking with team members.⁵⁶

56 Ellen Marrus, *Best Interests Equals Zealous Advocacy: a Not So Radical View of Holistic Representation for Children Accused of Crime*, 62 Md. L. Rev. 288 (2003).

C. What is the Definition of “Success”?

98. In holistic practice, “success” is not just getting the case dismissed pre-trial or winning the trial, but affecting change in the child’s life. While it seems at first blush that this lofty goal is far beyond the bounds of the oath of an attorney to support or uphold the Constitution, it remains as the only right way to advocate for the whole child.

99. Is it a “success” then if a 14-year-old client is caught stealing and the charges are dismissed because his confession was thrown out due to a constitutional violation that the lawyer raised? Yes. Is it even more of a “success” if the charges are thrown out and the client now goes to counseling and is dealing with his learning disability and has after school activities like rock climbing and is volunteering at the humane society? Of course.

100. The first example lacks the holistic approach, and the second example represents both the client’s stated interest, and also addresses the client’s best interest by providing him with tools to keep him on track. The holistic approach benefits the child and society, reducing recidivism and increasing the chance of this child becoming a productive member of the community.

VI. Conclusion

101. Holistic client-centered representation addresses the client’s immediate legal circumstances and incorporates the objective of assisting the client to live as a law-abiding, productive member of the community. Holistic advocacy addresses psychological, emotional, familial, and medical conditions. It recognizes the impact of the client’s age, education, socio-economic condition, race, ethnicity, gender or gender identification, and sexual orientation on the client’s path in life. The ultimate goal of holistic representation is to prevent recidivism, and therefore serves the greater good, the interest of community as a whole. In turn, this supports the advocate in arguing for alternatives to incarceration and furthers the client’s interest to remain free. For the most part, defenders are sympathetic toward their clients, especially children. These youth are more than the just “offenders” or “defendants” and are certainly not “super-predators.” Consequently,

102. For the most part, defenders are sympathetic toward their clients, especially children. These youth are more than the just “offenders” or “defendants” and are certainly not “super-predators.” Consequently,

the defenders’ vantage point affords analyses more penetrating, compassionate, and thorough than one rendered by a professional less interested in finding out why the client got into trouble in the first place. In contrast, a less empathetic defender “might overlook the humanity of her client — his positive attributes, the background which may have led him to commit crimes, and the multiple needs that transcend his current criminal case.” An empathetic lawyer is, in effect, a more effective lawyer.⁵⁷

⁵⁷ Kyung M. Lee, Comment, *Reinventing Gideon v. Wainwright: Holistic Defenders, Indigent Defendants, and the*

103. The lawyer who brings her humanity into the courtroom and genuinely cares for the client and his future, will in turn work harder and more diligently to advocate for him and will do more than provide legal advice.

“When she cares about the client as an individual, not only does she want to assist him through the complex maze of our legal system, but she also wants him to succeed; as a result, her defense is zealous.”⁵⁸

104. This is perhaps the first time, and hopefully not the last time, this child will see himself as worthy of fighting for. Who knows, maybe this child may even become a lawyer and advocate for some other kid someday.

Right to Counsel, 31 *Am. J. Crim. L.* 367, 394 (2004), quoting Charles Ogletree, Jr., *Beyond Justification: Seeking Motivations to Sustain Public Defenders*, 106 *Harv. L. Rev.* 1239, 1273 (1993).

⁵⁸ Kyung M. Lee, Comment, *Reinventing Gideon v. Wainwright: Holistic Defenders, Indigent Defendants, and the Right to Counsel*, 31 *Am. J. Crim. L.* 367, 394 (2004), quoting Charles Ogletree, Jr., *Beyond Justification: Seeking Motivations to Sustain Public Defenders*, 106 *Harv. L. Rev.* 1239, 1273 (1993).