

Public Defense

Papers from the Executive Session on Public Defense

Bolder Management for Public Defense: Leadership in Three Dimensions

by Cait Clarke and Christopher Stone

The boldest managers of public defense organizations are getting out from behind their desks and expanding their work environments. Whether they run a public defender office or oversee a panel of private attorneys, these leaders are already working full time managing budgets, recruiting and deploying lawyers, organizing training, and keeping the courts moving every day. Nevertheless, these managers have made time to branch out beyond their basic administrative duties. They have expanded the scope of their management because they realize they can make a difference on a different plane. Understanding the potential of embracing a bolder form of leadership, these defense leaders have moved into new dimensions of public defense.

For the past 2 years, as members of the Executive Session on Public Defense at Harvard University's John F. Kennedy School of Government, managers have been telling their stories and distilling lessons from their experiences as defense lawyers, supervisors, and leaders in the field. These stories and experiences suggest three dimensions in which managers of public defense services can lead their organizations and their field.

First, inside their offices, they can offer a special clarity of vision. Second, with their colleagues in other criminal justice agencies, they can build consensus for positive reforms within the whole system. Third, in public debate, they can advance a vision of crime prevention that rises above ideology.

Public defense is not the most popular work in the legal profession. Managers in the field are often asked by friends and relatives about their assiduous devotion to the cause of defending poor people accused of crimes that range from smoking marijuana to murder. If more managers practiced leadership in these three dimensions, the work itself could gain appeal, because its connections with powerful values that are widely shared in society would be clearer to all.

No one leader has completely succeeded in this endeavor, but together the efforts of these managers provide a coherent picture of leadership in these three dimensions. This paper, illustrated with examples from around the country, is a guide to how others might adopt a similar, bold vision of management in public defense.

This is one in a series of papers developed with some of the leading figures in public defense during their periodic meetings at Harvard University's John F. Kennedy School of Government. These 30 members of the Executive Session on Public Defense (ESPD) included state public defender leaders, assigned counsel managers, a prosecutor, a legislator, a social worker, a journalist, and criminal justice experts. In their discussions and resulting papers, they tried to rethink the field of public defense—challenging conventional wisdom and exploring new ways to serve clients and society.

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Leadership Inside the Office

In this first dimension of leadership, traditional managers divide their time between organizational administration and individual supervision. The organizational tasks—from budgeting to managing personnel and equipment—have a mundane, generic character. The tasks that relate to the specific mission of the organization—supervising effective representation and shaping strategy in a high-profile case—tend to focus on individual attorneys and cases.

By contrast, the new, bolder leadership integrates the internal role of the manager with the organization's highest aspirations. Inside the office, this kind of leadership aims to

- Focus everyone on organizational goals.
- Articulate standards.
- Align all activities within the office.
- Realize internal efficiencies.

First, the defense leader can focus the organization on what its job is. It is not sufficient to depend on common public understanding of the job of a defense lawyer or public defense office. People choose this work for widely different reasons and this diversity is often a source of strength in an office. However, without a common definition of the work at hand, attorneys and others can wander far afield, get in trouble, and then expect to be rescued. Everyone working in a public defender office or in a

managed system of assigned counsel needs to know exactly what they do and why they do it.

The definition of what each defender office and panel does comes from its state enabling statutes or contracts, from the state and federal constitutions, from its state case law, and from directives it receives from its governing entity. The leader must interpret all of these and provide the staff and contract professionals with a clear statement that draws on all these sources.

For example, most public defender organizations provide legal representation in a hodgepodge of different proceedings, mostly criminal cases but also juvenile delinquency and some mental health matters. Some organizations also exclude certain cases. To give coherence to such organizations, leaders craft statements about the commitment to quality of legal services or closing the gap between the services available to rich and poor.

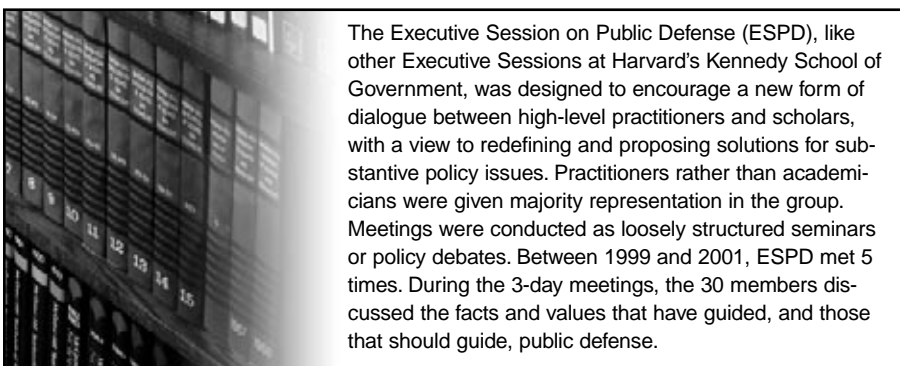
Some offices also include an educational mission or a preventive mission. Everyone in the organization needs to understand where the mission came from and why it is part of their work. At the Neighborhood Defender Service of Harlem (NDS) every attorney, investigator, and social worker participates in community educational programs designed to help young people avoid arrest or injury during encounters with the police. A 10-session course, "Coping with Cops," trains African-American teens to make it through a police

encounter safely. Educational work is included in the office's mission statement and given equal weight with legal representation in individual cases. Leonard Noisette, director of this innovative Harlem public defender office, makes sure that staff members know that the educational work is of principal importance; he also makes sure they understand that it is financed with special public and private funds.

Attorneys on a panel might be able to represent clients in a wider range of cases than can salaried public defenders. For example, under New York State's death penalty law, panel attorneys can continue to represent clients after prosecutors withdraw notice that they are seeking a death sentence; but the special public defender must withdraw at that point. New York State Capital Defender Kevin Doyle, who oversees the training of capital panels attorneys, stresses this statutory provision during initial training. Doyle makes certain that the panel attorneys understand their unique role in providing continuity of representation for literally hundreds of capital defendants who will eventually face a maximum sentence of life without parole.

Articulating just what the job of public defense is—consistently, clearly, and broadly across the entire organization, and tying it back to the organization's enabling documents—is the first step toward an expanded leadership role for public defense service providers.

Next, the leader can articulate standards. Only if the staff and contract professionals understand the standards they are expected to meet can they organize their work accordingly. What, in each particular office, does it mean to provide effective representation? Does it mean that an attorney meets the client within 24 hours of appointment in all cases, or only when the client is incarcerated? Such standards not only help guide the practice of new and veteran lawyers, but also help the office obtain



the resources it needs to provide high-quality representation.

Next, the defense manager can align the activities of the office. Once it is clear what the office does and what standards it is trying to meet, the rest of the operation should be aligned with those ambitions. For example, it was one thing for the leaders of NDS to voice a commitment to conducting educational and preventive work in the Harlem community, but it was another to align its recruitment efforts with this commitment. Some young lawyers who applied for jobs would have made excellent public defenders in a different office but were not interested in the educational and preventive work. Aligning the recruitment process with the mission meant turning these applicants away in favor of more rounded, if sometimes less courtroom-ready, lawyers.

Defense leaders cannot afford to define their mission around the personal preferences of the people who happen to join an office or a panel. Rather, all the activities of the defense organization should align with one another once the work and standards are clearly understood.

Finally, the leader can realize internal efficiencies. Because the managers oversee thousands of cases that move through an office or a panel, they are positioned to see inefficiencies, eliminate them, and deploy the savings to crucial parts of the work. Even something as fundamental as the location of offices and staff can be made more efficient by basing investigators in communities where many potential witnesses may be found. For managers who can decide which cases will be handled by staff lawyers and which by assigned counsel, a careful study of efficiency can allow the leader to make much better use of the limited resources available for public defense.

In all these internal activities, particularly the last one, the leader must work

collaboratively with all the attorneys and other staff of the organization, whether or not they are organized in unions or associations. Daniel Greenberg, President of the Legal Aid Society in New York City, stresses the importance of “leading by listening” and aligning the organization around principles derived from open dialogue with staff. He explains:

[Effective] leadership includes listening for, respecting, and implementing ideas generated throughout the organization. In coping with a massive cut of our budget by the city administration, the process was made easier by the cooperation of the unionized staff. I gathered a working group of management and staff from all levels of the organization who were informed that the best decision on restructuring would be one made quickly and collectively. An open process is not only important in itself, but it produces better decisions.*

Leadership Across the Criminal Justice System

Defense leaders face another set of opportunities at the level of the criminal justice system as a whole. Many institutional changes are under way, such as the creation of specialized courts, community justice initiatives, and collaborative efforts to divert certain types of cases out of the traditional criminal trial process. By giving their approval to new initiatives, and by encouraging their staff or contract professionals to cooperate, defense leaders can help reform the system. Leaders who do this typically

- Engage in policy bargaining.
- Give voice to client communities.
- Urge diversion of classes of cases out of the criminal justice system.

Bold leaders participate in criminal justice policymaking. Indeed, they encourage court administrators, police officials, and prosecutors to include them in planning discussions as early as possible, lest the defense community oppose any

particular plan when it is about to be implemented. In exchange, defense leaders can secure modifications to new initiatives or request support for their own initiatives. This kind of policy bargaining, familiar throughout government administration, is new territory for some defense leaders, but it can allow the government to save money and the system to avoid waste and needless controversy.

For example, Los Angeles County Chief Public Defender Michael Judge took a leading role in the development of the first local drug court, despite his misgivings about some aspects of these courts in other states. He describes his experience in helping to shape the drug court to include several features that other criminal justice stakeholders did not consider.

In early 1993, as an assistant public defender, I traveled to Miami to audit the drug treatment court with a small contingent of judges and some line staff or mid-level managers representing various agencies such as the sheriff and district attorney. Upon return, we explained the drug court concept to the district attorney and the elected sheriff who joined us in supporting a pilot drug treatment court in Los Angeles and to seek funding for the court. After some negotiation, all agreed that the pilot program be pre-plea in nature. A consensus was reached that statements and urinalysis results would be used solely to make treatment selection, phase matriculation, graduation, and termination decisions.

The early success led to the establishment of a countywide Drug Court Oversight Committee to facilitate the development of additional drug treatment courts and to monitor and manage the evolution of practices, procedures, and funding sources. I was selected vice chairperson of the committee, which has been responsible for the establishment of 12 drug treatment courts in Los Angeles. Taking a leadership role in the lobbying effort, I helped secure the first allocation of state general funds to support drug courts. Initially, only \$4 million was appropriated, which

was limited to post-guilty plea programs. The next year it increased to \$8 million. This year, the sheriff—after observing the positive outcomes of the program—convinced the Governor to sign an additional appropriation of \$10 million that can be used in pre-plea programs and which can be allocated on a per capita basis so Los Angeles will receive a fair share.

Consequently, there is now \$18 million in state general funds available for drug treatment courts. Furthermore, the sheriff reopened and renovated a “moth-balled” jail facility and dedicated it as a recovery center. I am now engaged in preliminary discussions with all the criminal justice players to devise remedial legislation to improve the design and, therefore, improve the outcomes, particularly as Proposition 36 goes into effect. That proposition mandates treatment for all persons convicted of use or possession for personal use of all drugs.

As this narrative suggests, Judge’s involvement from the inception of the drug court in Los Angeles demonstrates the positive impact a defense lawyer can have and the importance of collaboration with other criminal justice leaders. This experience also helps him build support for other criminal justice issues that he may introduce to other authorities in the system.

Once defense leaders have found their place in systemwide discussions, they can use their positions to advance reforms conceived in client communities. The priorities of citizens, particularly of families struggling in poverty, often are different from those of the lawyers and other professionals who shape criminal justice policy. Instead of opposing the programs of the professionals, community residents may simply have a different set of concerns, such as the comfort and friendliness of courthouse facilities, procedures for contacting relatives when juveniles are arrested, or access to alternative dispute resolution. Indeed, defense leaders who cultivate this role can bring the concerns of indigent communities

into policy discussions and advance justice in the system as a whole with surprisingly little disagreement.

Finally, defense leaders are in a unique position to urge the diversion of whole classes of cases out of the criminal justice system when the problems behind those cases are within the jurisdiction of other government agencies. Many of the defendants pushed through the criminal justice system are the castoffs from other government systems. They are primarily homeless, mentally ill, or physically addicted, and only secondarily criminal offenders. They are in the criminal justice system because other systems have failed to meet institutional mandates. Defenders are more likely than others in the justice system to get to know the personal circumstances of their clients and public defense lawyers usually are the first to recognize an individual’s underlying problems as well as the system’s problems in dealing with them. Because some of their clients have criminal charges as a result of administrative failures by other government agencies, defenders may be able to identify patterns in the system that will provide clues to how the government could handle these matters more effectively and at a reduced cost. These are issues on which all parts of the criminal justice system will quickly agree, for the solution is often to shift whole classes of cases to more appropriate government systems, saving everyone time and money. Still, to spot the issues early and offer cogent alternatives requires vigilance and analysis by defense leaders.

For example, Robin Steinberg, Executive Director of The Bronx Defenders, states:

The Bronx Defenders staff brought to my attention that groups of men were being arrested for “public lewdness” for sexual activity with other consenting adult men in several specific subway stations in the Bronx. The police department had targeted these men and was putting them through the system, charging them with public lewdness and treating them as sex

offenders. Recognizing that this characterization was inappropriate, The Bronx Defenders created an alternative program designed to address the issues affecting this particular group of clients. With the cooperation of the Bronx District Attorney’s Office, the local judiciary, and experts in the field, the Public Civility Seminar was created.

It was heartening to see the district attorney’s office and the judges respond so favorably to the Public Civility Seminar. Once the issue was brought to their attention, and we proposed concrete solutions, they helped us make the program a reality. Judges even handed out our flyers in their courtrooms and encouraged lawyers from other defender organizations and the private bar to let their clients know about the seminar. Sometimes, we get so caught up in the day-to-day battle with prosecutors and judges on behalf of our individual clients that we forget that they can also be valuable partners in addressing larger criminal justice issues. It was an important lesson for us. Sometimes our clients can benefit greatly from a successful collaboration with unlikely partners.

Steinberg’s example illustrates that bold management in public defense often requires stepping back to reassess a problem from a different angle, seeking input from lawyers and others in the office, and then designing a new solution. The truly bold part is when a manager steps out from behind the desk to propose solutions to local judges, prosecutors, and court administrators. As this example illustrates, others may respond quite favorably when the defense leadership proposes solutions that will divert a certain class of cases away from the justice system. Such situations can benefit all parties.

Leadership in the Public Debate About Crime Prevention

Although this is the most difficult dimension to enter, some defenders who have dared to try this arena report sur-

prising success. Here are two ways that public defense leaders have successfully argued that their work reduces crime:

- Good defense reduces recidivism, which reduces crime.
- Good defense reduces crime committed by the state.

Jo-Ann Wallace still laughs when she remembers how her colleagues thought she was crazy to argue publicly that public defense reduces crime. Wallace was Director of the Public Defender Service for the District of Columbia and knew from experience that one of her office's most important jobs was to persuade prosecutors and judges to sentence clients to good programs rather than to degrading penitentiaries. The clients

and families appreciated this work, but Wallace realized that the public probably did not understand it.

Defense leaders like Wallace can explain that revolving-door justice is good for no one, particularly defenders and their clients, and that reducing victimization is in everyone's interest. Fundamentally, clients should be in better shape when they leave the justice system than when they were arrested. If they do return—and many will—it should be for something less serious, and they should make further progress toward a healthy integration with their community and family.

At an individual level, the relationship between defense professionals and their clients can itself have a salutary effect.

Defense leaders can strengthen and promote this part of the service that their offices are delivering for the public. At a more systemic level, defense leaders can take an active role in the design and promotion of alternative sentencing programs that deliver measurable reductions in crime. Defense lawyers often are aware of the most effective local programs that help change client behavior for the better. They also can help mobilize the communities they serve to join in the design, operation, and accreditation of community sentences. Most important, they can speak publicly about reducing crime and about the true public interest in public defense.

Defense leaders also can speak about preventing crime committed by the state.

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Police brutality, racial profiling, disparate sentencing schemes, and unreasonable traffic stops are state crimes that the public understands and reviles. To this list, some jurisdictions might add witness intimidation by police and use of false confessions by prosecutors. Convicting the innocent is the most serious consequence of this misconduct. Defense leaders should be the first to see the patterns in these state crimes. They should be the first to alert the public and the first to offer solutions that the public can support.

Conclusion

Even the boldest leaders would not try to accomplish all of this by themselves. Just look at the list. They are going to stop the revolving door of justice, reduce crime, protect liberty, stop police misconduct, and improve the fairness of the system for the public. They are going to reduce waste, create efficiencies inside the system, and help implement programs advanced by others. And they are going to define the work of their organizations, set standards, and align the separate work inside their offices. To do all this, defense leaders need to reorganize their shops. Indeed, if this is the agenda for public defense in the United States, it will require reorganization of the entire industry. For a start, public defense organizations—whether employ-

ing public defenders or managing assigned counsel—must be configured to support the defense leader in these tasks, just as the leader supports the frontline professionals.

In a small office, the defense leader may have to plan the work on all these levels at once. In larger offices, the responsibility for the office, the system, and the public might be divided. But in either case, defense leaders will need two kinds of connections with the daily work of frontline professionals. The effort will require the frontline and the leaders to share information and relationships, both of which require outreach and renewal. The information will be on paper and in computer networks. The relationships will be with individuals and organizations. Information sharing needs to take place at the local community level and in the legislative arena.

All this reorganization requires support from the legal community. It also requires support from the public. Now is an opportune time for assigned counsel and defenders to harness public awareness about issues of fairness in the criminal justice system. Innovative defender leaders see this time as “a teachable moment” to educate stakeholders and the public about the important role that all public defenders and assigned counsel play in keeping the criminal justice

system fair. Information gathering to build broad institutional and public support is the cornerstone to success.

What are the precise categories of information and relationships that leaders will need? How will these be shared, mobilized, and deployed to create value on each level? What kinds of reorganization will this effort require? And how will the organization and the public know if the effort is succeeding? The answers to these questions await new experimentation and more bold leadership. However, we already know that improving our system of justice as a whole depends on bold and innovative leadership within the public defense community.

**NOTE: Quotations in this paper were extracted from transcripts of the meetings of the Executive Session on Public Defense and are printed here with the permission of the members quoted.*

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