

# BOLDER MANAGEMENT FOR PUBLIC DEFENSE: LEADERSHIP IN THREE DIMENSIONS\*

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The boldest managers of indigent defense organizations are getting out from behind their desks and expanding their work environments. Not that they had any free time. Whether they run a public defender office or oversee a panel of private attorneys, these leaders were already working full-time: managing budgets, recruiting and deploying lawyers, organizing training, and keeping the courts moving every day. However, these managers have made time to branch out beyond these basic administrative tasks. They have expanded the scope of their management because they realized they could make a difference on a different plane. Understanding the potential of embracing a bolder form of leadership, these defense leaders have decided to move into new dimensions of public defense.

For the last two years, some of these bold managers, as members of the Executive Session on Public Defense at Harvard University's John F. Kennedy School of Government, have been telling their stories and distilling lessons from the wide variety of experiences they have had as defense lawyers, as managers, and as leaders in the field. These stories and experiences suggest three dimensions in which managers of indigent 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.

Indigent defense is not the most popular work in the legal profession. Many managers are regularly questioned by friends and relatives about how they can devote themselves so thoroughly to the cause of poor people accused of crimes ranging from smoking marijuana to murder. However, if more managers practiced leadership in these three dimensions, the work itself could gain appeal, for its connections with powerful values widely shared in society would be clearer to all.

No single leader has completely succeeded, but together their efforts

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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.

## I.

### 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 the management of personnel and equipment—have a mundane, generic character. The tasks that relate to the specific mission of the organization—supervising effective representation, shaping strategy in a high-profile case—tend to focus on individual attorneys and cases.

In 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; and
- 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 is often a source of strength in an office or on a panel. However, without a common definition of the work at hand, attorneys and others can wander far afield, get themselves 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 the case law in its state, and from directives it receives from its governing entity. The leader must interpret all of these and provide to the staff and contract professionals a clear statement that draws on all these sources.

For example, the majority of public defender organizations provide legal representation in a hodgepodge of different proceedings. These organizations provide representation mostly in criminal cases, but also in 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, in which case everyone in the organization needs to understand where it came from and why it is part of their work. At the Neighborhood Defender Service of

Harlem (NDS), for example, 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 ten-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 that 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 salaried public defenders can. 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. Kevin Doyle, New York State's Capital Defender, 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 eventually face a maximum sentence of life without parole.

Articulating just what the job is—consistently, clearly, and broadly across the entire organization, and tying it back to the enabling documents—is the first step toward an expanded leadership role for indigent 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 representation? Does it mean that an attorney meets the client within 24 hours of appointment in all cases, or only in cases when the client is incarcerated? Not only do such standards help guide the practice of new and veteran lawyers, but they help the office obtain the resources it needs to provide high-quality representation.

Next, the defense leader can *align the activities* of the office. Once it is clear what the office does and what standards it is trying to achieve, the rest of the operation should be aligned with those ambitions. For example, it was one thing for the leaders of the Neighborhood Defender Service of Harlem 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 at a moment in time. Rather, all the activities of the defense organization should be aligned with one another once the work and the standards are clearly understood.

Finally, the leader can *realize internal efficiencies*. By seeing hundreds and thousands of cases move through an office or a panel over time, the leader is in a position to see inefficiencies and eliminate them, redeploying the savings to crucial parts of the work. Even for something as fundamental as the location of offices and staff, efficiencies can be achieved by basing investigators in communities where many potential witnesses may be found. For offices that 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 indigent 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.<sup>§</sup>

## II.

### 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 underway, 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 facilitate the reform of the system as a whole. Leaders who do this typically:

- engage in “policy bargaining”;
- give voice to client communities; and
- 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

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§. 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.

in planning discussions as early as possible, lest the defense community oppose any particular plan when it comes to be implemented. In exchange, defense leaders can secure modifications to new initiatives or ask 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, in 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 as the Vice-Chairperson of the Oversight Committee, which has been responsible for the establishment of twelve 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 re-opened 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. In the long run, this experience helps him build support for other criminal justice issues that he initiates.

Once defense leaders have found their place in system-wide discussions, they can try to 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 cast-offs 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. Because defenders are more likely than others in the justice system to get to know the personal circumstances of their clients, defense lawyers for the indigent usually are the first to recognize an individual's underlying problems as well as problems of the system. 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 were 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.

As Steinberg’s example illustrates, 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 her desk to propose solutions to local judges, prosecutors and court administrators. As this example illustrates, for diverting a certain class of cases, other stakeholders may respond quite favorably to a proposed solution offered by the defense leadership. Such situations can benefit all parties.

### III.

#### LEADERSHIP IN THE PUBLIC DEBATE ON CRIME

Although this is the most difficult dimension to enter, some defenders who have dared to try, report surprising success. Here are two ways that indigent defense leaders have successfully argued that their work reduces crime:

- good defense reduces recidivism, which reduces crime; and
- 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 she knew from long experience that one of the most important jobs her office did 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. 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 families. Reducing victimization is in everyone's interest.

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 then 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*. Police brutality, racial profiling, disparate sentencing schemes, and unreasonable 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 they should be the first to offer solutions that the public can support.

#### IV. CONCLUSION

Not even the boldest leaders would 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 indigent defense in the United States, it will require the reorganization of the entire industry. For a start, indigent defense organizations—whether employing public defenders or managing assigned counsel plans—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 take responsibility for

planning the work on all of 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 or 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 outside support from the public. Now is an opportune moment. Assigned counsel and defenders can harness the current public awareness on issues of fairness in the criminal justice system. Innovative defender leaders see this time as “a teachable moment” to educate stakeholders as well as the public-at-large 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 indigent defense community.

