

National Defender Leadership Project

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# Ultimate Advocacy:

A Defender's

Guide to Strategic

Management

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Ultimate Advocacy:  
A Defender's Guide to Strategic Management

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Clara Darrow, chief public defender of the Thurgood County Public Defender Agency, is worried. Last year's "three strikes" legislation has flooded her office with new work, and her attorneys can barely keep pace. She has grave concerns about the quality of representation her agency is now providing.

In three months, Darrow will make her annual funding request to the county board of supervisors, a process she dreads even more than usual. In the past, no matter how eloquently she argued for the rights of the accused, she could never convince the board to give her more than the bare minimum. How can she ask for the dramatic increase she needs this year?

Late one evening, alone in her office, Darrow grimly surveys the situation. Although violent-crime rates have dropped in Thurgood County, three strikes remains popular. In fact, public support has actually increased, largely as a result of a recent newspaper series on parole violators. After a few well-publicized muggings in Miranda City, downtown restaurant owners banded together to demand stronger anti-crime measures. The resulting police crackdown has led to a surge in arrests, mainly of African-Americans.

Through her window Darrow glimpses City Center Park, the bustling center of Miranda City until drug-dealing drove away the crowds. The dealers are gone now, but few visitors, other than vandals, have replaced them. Local politicians have seized on the park's decay as a symbol of the city's declining quality of life and the need for further crackdowns on crime.

Darrow's staff includes thirty lawyers. She fears many are on the verge of resigning. She doesn't have enough investigators or support staff. And her office technology is woefully outdated. For every four lawyers, there is only one computer – a source of particular bitterness in her agency, since all of the lawyers in the district attorney's office have their own state-of-the-art PCs.

How can Darrow get her agency the support it needs?

This program brief uses the fictional case of Clara Darrow to introduce strategic management, an approach to problem-solving that can help defender leaders handle large-scale dilemmas like hers, as well as smaller, more routine situations. One of strategic management's leading proponents is Mark H. Moore of Harvard's Kennedy School of Government, who has taught it to a wide range of government leaders. This brief draws extensively from his book *Creating Public Value: Strategic Management in Government*.

You may wonder how an abstract academic theory can help you solve real-world problems. If you think of management as a group of skills analogous to those you use in trial work, you might find it easier to see what strategic management offers. Like trial preparation, strategic management prepares you to deal with different scenarios and audiences. It provides steps to follow and alternative ways to make your case. And just as trial practice makes you a better advocate in the courtroom, strategic management makes you a better advocate for indigent defense in the larger world.

To complement the Darrow scenario, the program brief spotlights several real-life defender agencies. Their stories offer lessons that will help you adopt strategic management in your own jurisdiction.

# Strategic management for defenders

## From trial attorney to agency leader

As a trial attorney, you had a single objective: to provide the best possible defense for your client. You worked in an inherently adversarial setting, the courtroom.

As an agency leader, you now have multiple clients. You represent all of the indigent defendants served by your office, whose needs sometimes conflict. You are an advocate for your staff. And, since your agency receives public funding, you are

accountable to taxpayers and their representatives. In addition, you must juggle these responsibilities with a view of the long term. A trial generally lasts only a few days or weeks. But as office head, you must often focus on objectives that can take months or years to accomplish.

Perhaps most difficult of all, you have become an important player in a system that has traditionally disparaged indigent defense, and you must cooperate in policy forums with the same people you oppose in court. As Gary Horton, public defender of Genesee County, New York, explains, When I became the department head, I had to overcome the accumulated experiences

of over twelve years as an advocate. Although I was long past having any difficulty articulating a position before the bench, voicing policy positions required a whole new set of advocacy skills.

This shift can be profoundly unsettling. Sometimes it may seem impossible to reconcile your role as trial advocate — as defender — with your role as agency leader. Your staff may resist your attempts to change office policies or operations. Your criminal justice counterparts may mistrust you. You may wonder whether you are compromising your principles or failing your clients.

Meeting your obligations as both defender and manager is hard. But this difficult balancing of ethical considerations, as Thomas Burns, deputy defender of Genesee County, describes it, does not shortchange your clients. In fact, it helps them. As Burns has found, engaging other members of the criminal justice establishment, as well as the public, not only improves the systems of criminal justice, but also significantly improves dispositions in cases involving indigent criminal defendants.

Strategic management makes this balancing act easier. Its techniques will help you reconcile your duties as defender and as agency head. Equally important, strategic management leads to better results for individual clients and for the cause of indigent defense.

I was quite proud of the nickname bestowed on the 'in trial' me by a friend: Junkyard Dog. But I learned that the aggressiveness required to be effective as a defender manager was significantly different from what was needed in the heat of a trial. John Digiacinto, Assistant Administrator of the Private Defender Program, San Mateo County, California







## Defining your agency's value

What is the rationale for the effort I am considering?

What substantive values, or benefits, will it produce?

Anne Daly, chief counsel of the Society of Counsel Representing Accused Persons in Seattle, tells an all-too-familiar story: A man asked why guilty people needed representation at all and why that representation should be funded at public expense. That man – a lawyer – was a member of her funding agency.

Why do we need you? This question is rarely put to other members of the criminal justice system. Most people understand the value they gain from the police, for instance, or the prosecution. At times, they may be dissatisfied with these agencies performance, but citizens seldom question the need for their services.

Defenders, on the other hand, are constantly asked to justify their existence. How do you respond when someone asks why society needs public defenders or what value you provide? Chances are, you say that you defend the Constitution, or protect the least powerful members of society, or perhaps that you bring integrity to the criminal justice system.

These values are doubtless important to you, and few people oppose them. Yet few people embrace them passionately, either, especially in comparison with values typically articulated by the police (fighting crime, keeping citizens safe) or the district attorney (holding criminals accountable, giving victims a voice).

But there are other ways to make the case for indigent defense, in terms that resonate with the public – or, to be more precise, with the different constituencies that comprise the public. By tailoring your message to the concerns of different interest groups, you can convince many doubters of the value of indigent defense.

## Different versions of value

The case of Clara Darrow shows how this process might work. In the past, when arguing for the funding her agency needed, she invoked the Constitution. She reminded the board of supervisors that Gideon gives every accused person the right to an energetic defense and explained that she could not provide such representation without adequate funding. She argued that Thurgood County was failing in its duty to provide justice by depriving her office of resources.

That's what she said. What did the board members hear? They heard a sanctimonious civics lesson, which they resented. They heard the public defender do what she always did: ask for more money. They heard Darrow belittle citizens' fear of crime and victims' indignation that offenders were getting off scot-free.

Darrow now realizes her fundamental error. She had been framing her argument in terms of constitutional and legal ideals that she revered, but that her board did not consider particularly important. She needs a different approach.



and judges to develop dispositions like the one Black brokered this morning – dispositions that not only meet her clients' needs, but also address the requirements of public safety, keep families together, and save money.

### Making the money argument

Many defenders rely on the values of cost savings and efficiency, pointing out that alternatives to incarceration reduce the tax burden or explaining how a well-funded and -staffed public defender office can help move cases through the system faster. These can be highly effective arguments. But Darrow doubts they would work for her, at least in those forms. She remembers the experience of a colleague from a county similar to her own. He was pressed by a skeptical budget examiner for good data on ATTIs, which he did not have, and asked to explain precisely how additional funding for his agency would prevent the need for a new jail, which he could not do.

Still, Darrow believes that residents of her fiscally conservative county might respond to other, more focused explanations of how her agency can contribute to savings and efficiency. Her board has been concerned about the prevalence of parole violations, which has been the subject of harsh media coverage. (Forty percent of the county's prison admissions are for parole violators.) So she decides to address this concern by requesting new funding for additional staff to represent clients in parole-revocation hearings. Since Darrow's office has previously represented these clients, most of the background work has already been done. As a result, she can make an effective bang for the buck argument based on hard data (the 40 percent figure, as well as the average number of days her staff will save by relying on the office's earlier work).

This proposal addresses the board's concern about unfavorable publicity. It also responds to Darrow's concern about her lack of attorneys. And, because her plan requires full access to client information, it even provides an indirect way to seek funding for additional computers – something the board might have otherwise refused to consider.

### Looking beyond your own motivations

In the past, Darrow would have rejected these kinds of approaches. She did not become a public defender to make the system run more efficiently, or to save taxpayers money, and certainly not to provide political cover for her funders. She wanted to defend the rights of society's least powerful citizens.

She still does. But now she sees that promoting other values does not mean abandoning the values that motivate her. Even members of her own staff would say that different values drive their work. Some joined her office to gain trial experience. A number are motivated by a strong anti-authoritarian bent; others believe deeply in the system but want to ensure that it functions well. Darrow is a liberal, her deputy a libertarian, yet they work well together toward their shared goal. If people inside her

office have such different views about their work, she reflects, then it is only natural for people outside to have different reasons to support it.

How can defenders know what these reasons are? By knowing their audiences. As a defender leader, you need to consider who your audiences are, think about their interests, and then describe your agency's value in ways that reflect their concerns.

If you follow this general process, you can convince many people to look at your office in a new way. In fact, with a collection of messages, each tailored to particular audiences, you can win over groups that might once have dismissed you – or that you might not have viewed as likely supporters for your work.

### **Building legitimacy and support**

Who benefits from the work of my agency?

Who might support my agency's efforts?

Do people understand what my office does, and feel connected to its mission?

What is the source of defenders' legitimacy? Where do they get their support? The most basic answer is Gideon and its requirement that states pay for indigent defense.

In theory, Gideon provides a broad foundation for defenders' work and an unshakable rationale for funding defender agencies. In practice, however, it offers only a sliver of support, as any veteran of a budget battle knows. That sliver will grow larger – or smaller still – depending on the degree to which the public accepts the importance of indigent defense.

What does that mean for defender leaders? They need to continue their efforts to strengthen the legal basis for their work. But they must also focus on fostering a climate of general support for indigent defense – an atmosphere in which citizens feel that justice must include representation of the poor.

### **Who has a stake in defenders' work?**

In seeking support, defender leaders often focus on their supervisors and funders. But defenders' authorizing environment – the array of constituencies, inside and outside their agencies, with a stake in their work – is far broader, and more diverse. It is a collection of groups with very different reasons to support strong indigent defense – reasons they are often unaware of.

In thinking about the different groups that might support her agency's work, Darrow once again reflects on Black's success in keeping his client out of jail. She also considers other creative solutions her attorneys have promoted, such as restitution or community service. These kinds of outcomes have immense importance for the communities her office serves. They satisfy crime victims, through compensation as well as the message that offenders are being held accountable. They keep clients closer to their children and neighbors – the people who need and support them. And they make

it more likely that clients will be able to overcome their problems and make positive contributions to their communities in the future.

Darrow knows that her office enjoys broad, though unfocused, support within these communities. Now she needs to help community members understand more explicitly how her agency helps them, not only in practical ways, but also by soliciting their input and giving them a say – and sometimes a role – in what is done with their offenders. By spreading this message, she will help motivate these communities to be more vocal in their support of her office.

### Courting latent constituencies

Next Darrow considers her office's latent constituencies. The three-strikes law and the recent spate of arrests in downtown Miranda City have already sparked concerns among civil rights activists and advocates for the poor, the mentally ill, and substance abusers. The local branch of the NAACP, for instance, has compiled statistics showing not only that disproportionate numbers of African-Americans are being arrested, but also that an unusually high number of their cases are ultimately thrown out. Social-service agencies have begun to notice increases in substance abuse and mental illness caused, they believe, by Thurgood County's emphasis on arrest and imprisonment, which has sharply cut resources for treatment.

Darrow remembers that several members of the NAACP are also in law enforcement. What if an NAACP leader who is a police lieutenant helped her press for more funding at her next hearing? His testimony – or simply his presence – would have an enormous impact. She wonders if a social worker could also speak about clients who might have benefited from drug treatment, but instead went to prison, only to relapse. She has someone in mind, the director of a treatment center who can deftly convey the human, social, and economic waste of Thurgood County's failure to provide treatment.

But she quickly realizes that although these groups are logical allies, they may initially be reluctant to give her the active support she seeks. Why would the NAACP, already fighting its own difficult battles, expend political capital on her cause? She needs to convince its leaders that her cause is their cause as well, and to build the goodwill and trust that will prompt them to support her agency. That means seeking out NAACP leaders, talking to them, exchanging views about common problems. Realistically, it also means offering some concrete assistance. A judge Darrow knows might speak at an NAACP event. Maybe some of her staff – perhaps a few are already members – could participate in an NAACP school program.

### Expanding your constituent base

What about less obvious constituencies, like the business community? The restaurant association, as well as the many other business owners in Thurgood County, probably think that Darrow's office harms them because it represents the very people who are hurting their businesses. She could argue that her agency makes the streets safer by

steering clients to drug rehabilitation or mental health services instead of simply cycling them through the jails and back onto the streets. She could also point out that these businesses employ many people who would be eligible for indigent defense services. If these workers get into legal trouble, defenders fight to get charges dropped or secure dispositions that enable them to return to work quickly, outcomes that spare them – and their employers – weeks or months of lost work time.

These arguments work, but not with every business owner. Once again Darrow needs to build relationships to find out the best approach. She decides that one way to start might be to offer her agency's services to these employers. As bosses, as prominent members of the community, they receive frequent calls for help from neighbors, friends, relatives, or many others who get into trouble with the law. When she meets with Thurgood County businesspeople, Darrow will hand them her card. She wants them to understand she is available to talk when someone they know has a legal problem. It will be a simple gesture, but a powerful one.

What about the people who no longer visit City Center Park? She focuses on two nearby schools, whose students once used the park extensively. It occurs to her that these schools can also bring her important allies – teachers, student groups, parents groups, the PTA – all of whom have a strong interest in cleaning up the park and keeping it safe.

There are many other groups whose support could help public defenders, including neighborhood associations, taxpayer and good-government organizations, the medical community, churches, cultural groups, block clubs, and libraries. Even an adversary in the courtroom might be an ally in the legislative arena. Good prosecutors understand the benefits of trying cases against opponents able to mount an effective defense, and might come to defenders' aid. The list of potential allies is nearly limitless.

### Making the connections

Who should reach out to these different groups? In many defender offices only the defender manager, or perhaps a deputy or two, does this networking, and often only to a narrow range of audiences.

**My primary challenge as a manager and leader in the public defender's office is to look for opportunities for our staff to participate in community activities and to use those opportunities to educate the public on the importance of our function to the community.** Henry Coker, Chief Deputy, Branch Offices, Law Offices of the Public Defender, San Diego County

But outreach works best if it is an organizational rather than an individual task. Having more of your staff involved obviously extends your agency's reach. Equally important, it increases the visibility of your office, and humanizes it. The more people who see your staff as members of their own community – as taxpayers, churchgoers, parents – the better your chance to advance your goals. Edwin Burnette, deputy public defender of Cook County, Illinois, points out that if we're connected to the community, it's very hard for them to deny us the resources we need to do our job. And the simple fact that you are willing to meet with people, to listen to their concerns in addition to presenting your own, often sets the stage for good relationships.

There are many ways to expand your office's outreach. One is to encourage volunteerism. Miami-Dade County's public defender office, for instance, participates in traditional activities, like speaking at Law Day events in local schools, coaching and judging high school mock trial competitions, painting inner-city schools, and competing in charity races. Recently, the office approached the bar association about creating a mentoring project with local schools. Many attorneys and staff have volunteered to be mentors. As Carlos Martinez, the office's director of program development, notes, "Every single day that you are out in your community, you're generating goodwill and support for your office and creating opportunities for your clients' rehabilitation."

You might also make outreach a formal requirement. This can be a difficult process to get started, and your staff might resist the time commitment it entails. But if you make it a standard practice and a widely shared responsibility, your staff will probably be willing to help you. That's what has happened in Nashville's public defender office. Deputy defender Ross Aldeman says that convincing attorneys of the need to do outreach is not hard. "Overall they understand it, and I've pretty much found them to be willing to do what we ask them to do. The culture in the office is that we do outreach, so young lawyers who come in see that and it doesn't seem odd to them." In Minnesota, a demonstrated commitment to working with diverse communities is a hiring criterion for public defender staff. So the state, by definition, is drawing in people who are already committed to outreach.

This last point is a useful reminder that staff members, too, are important stakeholders. At times it may seem that their support is the most difficult to secure. Defenders often respond poorly to supervision or feel entitled to define their own responsibilities. Along with your investigators and clerical staff, they may simply fear change. Still, as with outside parties, you must try to find ways to show how your proposals will help them do their jobs.

The more parties you can engage – both inside and outside your agency – the better. As you reach out to different groups, explain how they benefit from your efforts, and gain their support, you will dramatically increase your political clout. With it, you will increase your odds of securing adequate funding, improving client services, advancing your ideas, and ensuring balance in the system.

### **Expanding your office's operational capacity<sup>1</sup>**

Do I have the capabilities to accomplish my goal?

Where can I get the resources I need?

Do I have the know-how to use these resources effectively?

<sup>1</sup> This section draws from the work of the Asset-Based Community Development Institute (ABCD) at the Institute for Policy Research at Northwestern University. See John P. Kretzmann and John L. McKnight, *Building Communities From the Inside Out: A Path Toward Finding and Mobilizing a Community* (Chicago, ACTA Publications, 1993). For other resources on mobilizing community assets, contact ABCD at 847 491-8711.



What are defender leaders' most pressing needs? Many offer the same quip: funding, funding, and funding. They tend to focus on staffing and equipment – on resources money can buy.

In other words, they look inward, at their organizational capacity, which is far more limited than their operational capacity, the sum of available resources inside and outside their agencies. To determine their operational capacity, defender leaders must also look outward, toward their clients' communities.

This shift in thinking can be very hard to accomplish. Defenders serve communities generally defined by their needs. Most outsiders see what these communities lack – education, services, stable families – but fail to notice, let alone consider, what they can offer.

### From needs to assets

What happens if defenders take a different view of the communities their clients come from? Instead of needs, they see assets – knowledge, expertise, neighborhood groups, physical space – that can help them in many ways. Even the poorest and seemingly most troubled communities are home to numerous active, committed individuals, associations, and institutions. Grand Boulevard, in Chicago, is a case in point. In 1996, researchers at Northwestern University conducted a survey of groups and organizations in the neighborhood, then the fourth poorest community in the United States. They found over three hundred, ranging from athletic groups to book clubs to senior citizens' organizations. Two years later, the number had doubled.

Like many of her colleagues, Clara Darrow has always viewed Thurgood County's poor communities as places that desperately need services, including hers. But as she reexamines this tendency, she realizes her office is already drawing on these communities for concrete help. Black, the attorney who had secured an alternative disposition for his client, succeeded because he had been able to point to specific neighborhood resources available to him. To accomplish her larger goals – securing more of these alternative dispositions, helping her clients get the treatment they need – Darrow needs to find and use more community resources.

### Finding community resources

How should she begin seeking out these resources? She starts with religious institutions, reasoning that they provide ready-made support systems for clients and their families. They are also fruitful sources for contacts, since they usually sponsor or offer meeting space to organizations ranging from senior citizens' groups to Alcoholics Anonymous to scouting troops.

Many social-service agencies already serve Darrow's clients, but are there additional ones that could get involved, or other ways they could help? What if a job-training program joined forces with Miranda City restaurants to help her clients learn kitchen skills? Her clients would benefit, and so would the restaurants, which are always short

of kitchen staff. Many local businesses fund charitable activities or urge their employees to participate. Why not try to get them involved with initiatives that benefit her clients, which would not only reduce crime but also provide valuable public relations?

Next she thinks about City Center Park. Could a youth or gardening group enlist the help of her clients in restoring its beauty? Would a science teacher run a program that teaches juvenile clients about their natural surroundings while keeping them occupied after school?

In Minnesota, public defenders are cultivating law-enforcement programs at community colleges, in the hope of finding interns to perform investigations. Some Massachusetts defenders are working with health officials, who are increasingly viewing violence as a public health issue. An inventory of your own community would likely turn up many similar possibilities. Charitable organizations, ethnic associations, hobby groups, support groups, youth groups – these are just a few of the many other candidates.

Don't forget to apply this new perspective inside your office too. Some of your employees might be active in churches that serve your clients, or speak Spanish, or do volunteer work with a group that could provide services to indigent defendants.

### Choosing resources wisely

Like Darrow, you may find that once you begin considering community assets, you come up with a list that seems dizzyingly long. It's important to remember, though, that operational capacity embraces more than the resources themselves. It includes knowing how to make savvy choices about which resources would be most useful. It also means ensuring that your office is set up to take full advantage of them. If you begin a search for community resources without a clear sense of which kinds would help you most, and which would be most practical to enlist, you will probably expend huge amounts of energy and time without arriving at many useful possibilities.

One solution to this difficulty is to look for resources that will open up new sources of funding. A foundation that would not normally support services for juvenile offenders, for instance, might consider funding Darrow's proposed science project because of its educational component. Businesses on the rim of City Center Park are unlikely to support a project because it provides an alternative to incarceration. But they might support the project because it will improve the park.

Edna Johnson, a community activist in the South Bronx, once observed that she lived in a prison made up of other people's ideas about who we are in my community.

These ideas are powerful, and they may have limited your own thinking. But if you look at the communities you serve with a different perspective – if you focus on their assets, not just their needs – you will find new ways to help your clients and expand your capacity to provide effective indigent defense.





Strategic management might be very different from what you're doing now. In reading through this booklet, you've probably come up with some objections. Most defenders do. Here are some of the most common, along with some responses.

**What's wrong with the public value that I rely on now? What could be more persuasive than a constitutional mandate?** A lot of things may be more persuasive than a constitutional mandate – depending on the audience you're trying to persuade.

There are many, many reasons to support indigent defense. Different values aren't wrong. They're just different. It's important to separate the reasons that motivate you from reasons that motivate other people.

Even members of your own staff will stress different values of their work. Your most zealous attorney might be motivated less by reverence for the Constitution than the way indigent defense embodies her religious values. Another committed attorney might be interested in building his trial skills, not promoting social change. Does that make their advocacy less effective?

**The values that sell in the community are not the ones that sell in my office. My staff doesn't care about them, and I can't afford to lose their support.** You won't lose their support if you convince them that appealing to different conceptions of your agency's value doesn't mean abandoning their own values.

This can be hard, but it is essential. Again, you might use the different definitions of value that exist within your own office to illustrate this point. You might also explain that considering alternative visions of value will help your staff do their jobs better, because it will increase support for what they do.

**I don't have time to do all this outreach.** There's no doubt about it: Outreach can eat up time, especially if you haven't done much of it before, or if you have a hard time getting your staff on board. But in the long run, the relationships you build and the resources you locate can actually save your office

time. Your investigators, for instance, will be able to work more quickly and effectively if your office has established contacts and become more familiar with the community.

Building relationships will also create networks you can call on later. Imagine the effect of attending a legislative hearing accompanied by a group of religious leaders, or of being able to quickly mobilize a network of parent and teacher groups to help fend off a harsh new juvenile-crime proposal.

Or think about all the time you now spend just trying to get calls returned, or figuring out the appropriate person or agency to contact during a crisis. Outreach will help you prevent these wastes of time.

Finally, you might remember that you already spend a great deal of time meeting with different groups. But these meetings are probably reactive – you may have been called before your funders, for instance, to justify a budget request. Outreach allows you to be proactive, to set the terms of the gathering. If you're going to spend your time dealing with other people, why not deal with people *you* choose, and discuss issues on *your* agenda?

**If I collaborate with the other members of the criminal justice system, won't I be compromising my ethical obligation to defend my client?** This question goes to the heart of the dilemma faced by many defender leaders: reconciling their duties as leaders with their role as advocate.

The fact is, public defenders do not stand outside the criminal justice system. They are part of it. You simply cannot uphold the standards of public defense – or meet your obligations to your clients – if you are not in the room where decisions about criminal justice are made. Being at the table with other members of the criminal justice system is the best way to keep your options open.

**Isn't it risky for me to form alliances with groups whose interests might conflict with mine?** You do need to be careful in forming partnerships. But remember, your organization already works with people whose aims differ from yours – most notably the district attorney, whose goal at the trial level is the precise opposite of yours.

But ask yourself if you really know what a group stands for. Think about how others often view public defenders. Because you defend “the bad guys,” many people assume you don’t care about crime. Is it possible that you have similarly narrow views about other groups?

Strategic management forces you to challenge such assumptions. Consider victims’ rights groups, for instance. Do you really believe they are unconcerned with due process? Many of these groups support restorative justice – isn’t that an obvious area to explore together? And given that defenders work with poor communities, where the line between perpetrator and victim can be very blurry, doesn’t it make sense to explore an alliance?

A creative or unusual partnership can also draw much-needed positive publicity to your agency. An alliance with a victims’ rights group might receive press coverage that portrays your agency in a new light – and gets you out of the crime pages.

Finally, on a more practical level, remember that collaboration does not mean surrender. Nor does it mean forever – your cooperative work may focus on narrowly defined or short-term issues. You can collaborate on many different levels, and you always have the option of leaving an alliance if necessary.

**Why should I spend my time seeking out new or different groups when my own board of supervisors can’t remember who I am or what I do?** Are you speaking your board’s language? Are you defining the value of your work in ways the board will relate to?

Chances are, your board isn’t going anywhere, and you can’t use its ignorance to prevent you from doing your job. If you must constantly explain what public defenders do, and why they are important, you have probably not found the right description. It’s up to you to reframe it in a way that will make the board remember you.

But don’t stop seeking out those other groups in the meantime – keep working on definitions of value that will appeal to them as well.

# Strategic management on the ground



**“We make the system run better”:**

**In Mississippi, a targeted message builds support**

When Hinds County established its first full-time public defender office in Jackson, Mississippi, the board of supervisors turned to an experienced defender leader to head it. Thomas Fortner had run a defender office for ten years, during which he learned the importance of cultivating good relationships with anybody who had anything to do with the criminal justice system. Outside the courtroom, I don't think you have to be adversarial with police officers or judges or even DAs.

In the office's early months, Fortner and his deputy, Beth Davis, devoted much of their time to meeting with members of the criminal justice system, as well as their funders. They stressed the same theme: that public defenders make the criminal justice system run more efficiently and at lower cost, since competent representation

**Outside the courtroom, I don't think you have to be adversarial with police officers or judges or even DAs.**

moves the docket faster. But they realized that different aspects of this message would appeal to different audiences. Judges liked the idea of docket control. The sheriff realized that public defenders could keep his jail from becoming overcrowded, steer county inmates to the state system, and save him money. The sheriff really got behind this office and he bent over backwards to do anything he could to get this thing started, Fortner explains. Even the district attorney was receptive, because he saw the benefits of having a uniform public defender staff (previously the county had used an assignment system) for improving communication and moving cases faster. As a result, Davis says, everybody has realized that we make the system run better. She also notes that this argument, and the ties their office developed, helped increase staffing from seven attorneys to twelve in six years.

Today Fortner is trying to broaden his office's outreach and to involve more of his staff in the process. He has always made presentations at schools and has increasingly spoken at civic organizations like the Rotary Club. More recently, he has focused on the Metropolitan Crime Commission, a powerful watchdog group set up by concerned citizens. The commission has generally been prosecution oriented, but Fortner believes he can enlist its aid if they understand that the people who work in my office live in this community and are just as concerned about crime as anybody else.

Davis and Fortner were also active in the effort to establish Mississippi's recently adopted statewide public defender system. Among the allies they and other defenders recruited were former Supreme Court Justice James Robertson and the Mississippi Economic Council, an influential business group. The Hinds County district attorney, who had initially opposed the county defender office, appeared before the legislature to lobby for the statewide office.

It took several years to cultivate this support and get the bill passed. Now the newly established Public Defender Commission faces the daunting task of designing the

statewide system. The commission must do on a statewide level what Thomas Fortner did when he went to Hinds County: explain the value of an effective public defender system and convince people to support it. Fortunately, the commission hired an executive director well versed in this process: Beth Davis.

### **“Always reaching out”:**

#### **For Nashville’s elected public defender, community outreach is part of the job**

Unlike most public defenders, Karl Dean of Nashville’s Metro Public Defender’s Office is an elected official. He sees this as an advantage. For the length of his term, he is given a degree of autonomy rare among public defenders. Because he has been voted in, just like judges or the district attorney, his agency gains the same sense of legitimacy in the public’s mind. And since he must periodically run for reelection, community outreach is automatically part of his job. Elections give him the opportunity to mobilize supporters and keep them interested in the public defender office.

If you’re politically active, if you’re being forced to go out into the political arena to run, you obviously have to do community outreach anyway, he says. A lot of that stuff – going to churches, going to events, reaching out to different groups – is something I do almost instinctively as a political figure.

Dean is fortunate to have a supportive mayor and city council, who understand that a strong district attorney must be balanced by a strong public defender. He also

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receives solid public support, partially because his office is well established (it was founded in 1963). In fact, Dean says he spends less time explaining why public defenders are needed than in countering the still widespread notion that they are less competent than private lawyers.

He points out that elected or not, all public defenders can benefit from outreach.

One of the key things is this notion of always reaching out and trying to expand your base, and knowing that you have to deal with the public and the political side. Even if you’re not elected, part of this job is that you’re constantly asking people for things and to do that they’ve got to know you. And the only way that can happen is to be out there. That doesn’t necessarily mean you have to go to every fundraiser, but you have to let people know you’re a part of the system and that you’re a player.

### **“We’re beginning to be recognized as a major player”:**

#### **An Indiana public defender agency survives a rocky start**

It didn’t take the Indianapolis prosecutor’s colorful accusation – that the Marion County Public Defender Agency was spending money like drunken sailors on shore leave – to convince David Cook that his office was in trouble. Soon after taking over as chief defender in 1995, he had discovered the agency was in dire financial straits,

although he didn't share the prosecutor's opinion of the cause.

One of Cook's first tasks as manager was to figure out what had actually happened. He and his staff soon discovered the problem was caused not by mismanagement, as critics claimed, but by the county's miscalculation of the cost of running the agency, which had opened its doors in 1994.

I am an old trial attorney, Cook says. The only way I knew how to deal with this situation was to accumulate evidence that proved I was right. To counter the continuing accusations of fiscal irresponsibility, he met individually with all 29 members of the city-county council to explain the legitimate reasons for the shortfall. It would sometimes take me hours and hours to undo a two- or three-minute radio interview by the prosecutor claiming mismanagement and abuse of public moneys and to get everyone to understand what had really happened. But slowly, through persistence, the public defender began to counter the impression of fiscal irresponsibility. In the end, his

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request for an additional \$500,000 – the only way he could keep the agency running through the rest of the year – was passed unanimously by the appropriation committee.

Meanwhile, Cook faced an equally daunting task: convincing the rest of the criminal justice system that his young agency should play a role in policymaking. Other agency heads viewed his participation as an intrusion, somebody wedging their way in the door.

How could the public defender make inroads in such a hostile environment? An important weapon came in the form of a management study suggested by one of the agency's funders. Almost immediately, the consultants, from the American University School of Public Affairs, decided they could not study the public defender's office in isolation from the rest of the criminal justice system – providing early, implicit support for the agency's claim to equal status. Their final report made this point explicitly, by advocating a strong and active role for the public defender. This was a major step forward for Cook and his staff. A credible, impartial, outside group – whose presence had been suggested by the funders themselves – was saying that the public defender had too big a piece of the pie to be ignored. Their management report to the council – I don't even know how many times I've reproduced it and given it to other people in the system. And the system has adopted a lot of their recommendations, Cook says.

We're beginning to be recognized as a major player in what goes on around here.

Cook also took advantage of his unusual background as a longtime senior prosecutor. I'm in an unusual, maybe unique, position with a lot of funders because I prosecuted for a number of years. So they find me more palatable than some persons who could have taken this office. Often I can meet with people who wouldn't give some other individuals the time of day.

But that background was something of an obstacle within his office. Cook had tremendous credibility problems at the beginning with some staff members. His chief deputy, Robert Hill, helped him immensely. He's always been in the defense community, so Bob was a credibility bridge. Another help was his work to professionalize the office by raising salaries and hiring full-time defenders. We've doubled the budget, increased the quality of representation, won more trials than ever before. People are beginning to see that the end result is what it should be.

And the agency's public image? In conservative Marion County, there are many people who still struggle with the concept of why we have to do all this to begin with. But, as was the case inside his office, doing good work has done a lot to convince people. Cook believes that the public image is improving in the community because the quality of the service we're providing is increasing.

Still, he feels he has more work to do. I need to redefine my job description. I need to spend more time in endeavors to change the public image around here – to identify latent constituencies in this community, to go out and let people see me as chief public defender and see that I'm not a nut, and that I don't spend money recklessly, and that these are principles that are very important to protect.

### **“Seeing the full picture”:**

#### **Kentucky defenders take a fresh look at their clients**

By 1996, Rebecca DiLoreto was convinced of the need to change how attorneys in her office, the Kentucky Department of Public Advocacy, thought about their juvenile clients. A lot of people didn't look at the full scope of their clients, for the giftedness rather than the deficits. They weren't seeing the full picture, she says. Too often,

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everyone in the court process was giving up on the accused person before the case was on the docket. DiLoreto, post-trial division director, recalls being told that while educators look at the strengths of a person, specialists in the mental health field often look at the weaknesses, deficits, or illnesses. I think that's what we do in the criminal defense realm a lot too. And we're probably pretty good at identifying those deficits, but we aren't necessarily so good at seeing our clients in a holistic way.

DiLoreto, who had handled statewide juvenile-defender training for about ten years, decided to create an instrument that would help attorneys see all facets of their juvenile clients. She consulted with a psychologist, and the Inventory of Juvenile Client's Assets was born.

The inventory form helps attorneys elicit detailed, varied information about clients. It is divided into seven categories: personal characteristics, home life, school life, work-related experience, drug and alcohol use, prior court experience, and the availability of

alternative dispositions. The inventory poses many questions, some for clients, others for their parents or guardians. Some are very specific, others quite broad, as these examples show:

- What does client see as his/her best characteristics in his/her personality?
- Has child learned good grooming skills?
- Is there a church/youth group that client belongs to? Is there a church/youth group that is near client's home that s/he would agree to attend?
- How many years has client gone to school? What are client's academic strengths?
- What chores does child have to do around the house?
- Is client willing to be paired with a college student in a big brother/big sister situation?

DiLoreto has conducted training on both the inventory itself and the concepts behind it. Overall, lawyers have welcomed the inventory, realizing it is a more sophisticated approach than merely telling clients to dress up, arrive on time for court, and be polite to the judge. Clients, she has found, are grateful for the concern the inventory conveys.

We're in the art of persuasion; that's what we're about as advocates, DiLoreto says. Having the knowledge of your client contained in the inventory allows you to first comprehend and then communicate your client's assets in a way that persuades the triers of fact. The inventory helps attorneys paint a hopeful, future-oriented, three-dimensional portrait of their clients, instead of focusing on the trouble they are in or the misdeeds they are accused of.

### **“Open to being creative”:**

#### **A Boston defender agency taps unusual resources**

Boston's Youth Advocacy Project (YAP) is one model for defender agencies seeking to improve community relations and take advantage of community assets. Through open-mindedness and creativity, its staff has formed valuable contacts and found numerous, sometimes nontraditional, resources for its juvenile clients.

Established in 1992, YAP is an initiative of the Committee for Public Counsel Services, Massachusetts's statewide indigent defender agency. Its founder, Jay Blitzman, saw himself both as a criminal defense attorney and an advocate for children.

#### **People were open to being creative and saying not “can we do it?” but “how can we do it?”**

YAP itself operates according to this vision. Its mission is not only to provide effective legal representation, but also to prevent initial or repeat court involvement by juveniles. It stresses the need to intervene early – to help kids avoid trouble before it starts.

YAP is located in Roxbury, a neighborhood with many disadvantaged young people. Since its inception it has devoted considerable time and effort to community outreach.

Roxbury is not a wealthy community, but it is rich in resources. It was just hard to tap into, says Assistant Director Christine Fiechter. So from the start, YAP's small staff (then only four people) included a full-time community liaison, who was from the neighborhood. She had a dual mandate: describe YAP's activities and solicit views from community members about what it should be doing.

Through this outreach, YAP became more responsive to the neighborhood's concerns, fostered trust, and gained valuable support. The connections staff members made and the publicity they created have had a direct impact on the project's ability to find resources – or in some cases, for the resources to find the agency.

A snowboard company might seem like an unlikely partner for a defender agency. But Burton Snowboards was interested in establishing a youth program in Boston, and its community liaison approached YAP. Today, YAP coordinates a program that sends thirty children to Chill, a free eight-week snowboarding program at Mount Wachusett.

When the Huntington Theater Company realized its free programs were attracting mainly white, suburban children, rather than kids from its own neighborhood, it applied for a grant to encourage low-income neighborhood kids to attend. Huntington then joined forces with YAP, which referred teens of color from Roxbury and surrounding communities to the company to act, receive technical training, and watch shows. In 1998 the partners set up a more formal program, in which young actors, many of whom are involved in the criminal justice system, perform in YAP's frequent Know the Law workshops.

YAP's receptiveness to unconventional resources has been present from the start. People were open to being creative and saying not "can we do it?" but "how can we do it?" That took us a long way. Fiechter adds that this approach has broadened funding opportunities. For instance, YAP might approach an agency that does not fund services for court-involved youth, but does support youth development. Even funding that might have seemed implausible in the past has opened up. YAP's theater collaboration, for instance, is funded by a state cultural agency.

Today YAP's staff works closely with a wide range of community partners to identify and sometimes create resources to help Roxbury's young people. But the agency never minimizes its responsibility to provide legal representation. According to Fiechter, "We always want to be community partners in whatever initiative we may choose to take on. But we can't lose sight of the mandate we have to represent kids."

The National Defender Leadership Project provides training, produces publications, and fosters discussion, all with the aim of helping defender managers fully realize their leadership roles in the criminal justice system. It brings together defender managers from across the country to share ideas and explore ways to shape criminal justice policy. For more information, contact [dorenstein@vera.org](mailto:dorenstein@vera.org).

The Vera Institute of Justice is a private nonprofit organization dedicated to making government policies and practices fairer, more humane, and more efficient. Working in collaboration with government officials, Vera designs and implements innovative programs that expand the provision of justice and improve the quality of urban life. Vera operates demonstration projects in partnership with government, conducts original research, and provides technical assistance to public officials and communities in New York and throughout the world.

The Bureau of Justice Assistance is an agency within the United States Department of Justice. Its mission is to provide leadership and assistance in support of local criminal justice strategies to achieve safe communities. BJA's overall goals are to reduce and prevent crime, violence, and drug abuse, and to improve the functioning of the criminal justice system. To achieve these goals, BJA programs emphasize enhanced coordination and cooperation of federal, state, and local efforts.

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