

BEYOND THE ADVERSARIAL SYSTEM: ACHIEVING THE CHALLENGE



ASSOCIATION OF
PROSECUTING
ATTORNEYS



SAFETY+JUSTICE
CHALLENGE

Supported by the John D. and Catherine T. MacArthur Foundation



NLADA
National Legal Aid &
Defender Association

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Executive Summary

The Association of Prosecuting Attorneys (“APA”) and the National Legal Aid and Defender Association (“NLADA”) are pleased to serve as strategic allies in the Safety and Justice Challenge (“SJC” or “Challenge”), which is a \$100 million investment by the John D. and Catherine T. MacArthur Foundation aimed at changing the way America thinks about and uses jails. As strategic allies in the SJC, APA and NLADA are committed to supporting jurisdictions in fulfilling their criminal justice reform goals. SJC defenders and prosecutors alike support the Challenge’s twin goals of decreasing unnecessary criminal justice involvement and reducing racial and ethnic disparities to promote justice and create safer communities. They recognize that sustainable change requires collaboration from all criminal justice system stakeholders, including those who are traditionally adversaries in the courtroom, such as defenders and prosecutors. The traditional opposing roles must be respected while embracing collaboration to create positive system change as paramount in ensuring a more just and fair U.S. criminal justice system. While the Safety and Justice Challenge’s ambitious effort requires regular meetings and collaboration, both prosecutors and defenders voiced the realization that the adversarial nature of courtroom advocacy creates complex challenges to effective collaboration outside of the courtroom context.

Accordingly, on April 10-11, 2017, APA and NLADA hosted a joint meeting that brought together four chief defenders and four prosecutors from across the country who are participating in the SJC. The prosecutors and defenders from four SJC sites made group presentations on how they were collaborating to achieve SJC goals and implementing corresponding changes in their respective offices. The goal of the meeting was to share information regarding effective collaboration strategies and develop new ideas on how to best leverage the respective roles and expertise of defenders and prosecutors to address systemic issues that contribute to jail incarceration.

Recommendations

The April 2017 meeting revealed concrete, practical steps that are beneficial to productive working relations. From there, the prosecutors and defenders who attended the April 10 meeting, developed the following recommendations aimed at promoting and improving successful collaborations between prosecutors and defenders (or other traditionally adversarial system leaders).

To foster collaboration in their own jurisdictions, defenders and prosecutors should:

Recommendation 1.

Come to the table with reasonable goals and points of agreement. Defenders and prosecutors share many goals and encounter some of the same obstacles in achieving them. Identifying common goals and starting a conversation here signals that each side understands and respects the other's position.

Recommendation 2.

Avoid blame. Beginning a discussion by pointing fingers will trigger defensiveness.

Recommendation 3.

Work together on local criminal justice coordinating councils and state administering agencies responsible for promulgating criminal justice grants and information. These groups, when properly resourced and structured, provide a neutral forum for all stakeholders to discuss the science, practice, and messaging of improving their criminal justice systems.

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Recommendation 4.

Enlist outside experts to facilitate conversations. A strategic planning facilitator can help define shared values and goals. A social scientist can inform policy discussions and help set measurable benchmarks for success. An expert in implicit bias can help identify and recommend solutions without assigning blame.

Recommendation 5.

Use data to promote stakeholder buy-in. Defenders, prosecutors, and other stakeholders in the criminal justice system (as well key partners in other government and non-profit sectors) may be more open to a policy change that is supported by objective analysis. Data can also provide political cover for decision-making.

Recommendation 6.

Communicate with the media about data showing positive results & create a unified response plan to get out in front of a potential crisis. A key benefit of collaboration is the ability to create a strong, unified message about the value of reform. An essential component to preparing for a potential communications crisis is to proactively and positively engage with the media and work with them to raise public awareness when reform is going well. Prosecutors and defenders should bring in a media expert on crisis communications to help develop a unified response plan in case of an event that could cast a negative light on reform. By doing this, system actors can get out in front of any potential crisis with one unified voice, and they can educate the public before a crisis occurs.

Recommendation 7.

Commit to culture change by engaging all staff in collaborative efforts. The representatives of defender and prosecutor agencies who participate in reform conversations must communicate with the rest of their agencies about the value of this collaboration. When agency leaders are the people at the table, they should ensure that their deputies and mid-level managers are informed and engaged.

Recommendation 8.

Be responsive to respective constituencies. Both defenders and prosecutors have obligations to serve segments of the public. Even when these are largely the same people, defenders and prosecutors have different ethical obligations to them. Defenders and prosecutors should include their client or voter bases in the collaboration process and assure that those constituencies' needs are met.

Recommendation 9

Be intentional about building positive relations. Both defenders and prosecutors are people first, and the same basic approaches that facilitate human interaction outside of the confines of any particular profession apply. In addition to team work, find time for one-on-one or smaller group interactions. Small steps such as committing to a standing conversation, or having lunch or a cup of coffee on occasion, can help develop and strengthen relations.

Why Collaboration is Key

Criminal justice system stakeholders are constantly navigating the balance of keeping communities safe while limiting unnecessary justice involvement for those who are accused of crimes, all while responding to constituent concerns. When key players in the criminal justice system work together, the system becomes more efficient, more effective, and more just.

Collaboration is essential to advancing sustainable system-wide reform. Despite the often uncoordinated efforts of justice system agencies, the reality is that anything that significantly affects any criminal justice function will also impact each of the others. Efforts that do not incorporate unified approaches are doomed to limited success, if not failure. The benefits of integrative efforts are numerous. Integrated data systems, for example, provide a more complete analysis, and are better able to demonstrate success and drive policy. Funding sources can be most successfully leveraged when supporting multi-disciplinary networks in which the members have common objectives. Thus, such efforts strengthen the system as a whole.

Research reveals that when provided with a project to tackle, diverse teams will produce a higher quality product than when the same task is provided to a homogenous group. Similarly, when system actors share their expertise and think

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beyond individual cases, and beyond their individual agencies, to broader criminal justice system reform they are able to ferret out potential weaknesses throughout the system, discover new resources, and reach collective solutions. When that knowledge is combined with the skills brought by researchers, victims, and professionals in disciplines outside of the field of criminal justice such as behavioral health or social work, such teams are better positioned to address underlying issues relating to community health, safety, and prosperity that contribute to involvement in the criminal justice system for a large number of people. Including members of the public in the work will also expand the diversity of views and build support for the reform. Such approaches often result in prioritizing treatment and resolving problems in a manner that disrupts entry into the criminal justice system.

[Recommendation 1]

Working together is imperative for distributing as well as minimizing risk. Getting system stakeholders on the same message, grounded in data and collective expertise, and factoring in a jurisdiction's political environment, is extremely important when discussing criminal justice reform efforts. This way, system actors can get out in front of any potential crisis with one unified voice, and they can educate the public before a crisis occurs. **[Recommendation 6]**

Developing Trust

Communication and trust are paramount when it comes to prosecutors and defenders working together on criminal justice reform efforts. In order to develop trust, prosecutors and defenders need to have professional but frank and open discussions. If there is a disagreement, arguments should be framed in terms of efficacy, safety and fairness by providing concrete examples. These meetings should promote honesty and self-reflection. It is crucial that there not be finger-pointing unless that finger is pointing back at the person speaking in the spirit of self-assessment and acknowledging what he or she can do better.

[Recommendation 2]

Jurisdictions may benefit from an objective facilitator who is not a stakeholder in the criminal justice system. **[Recommendation 4]** A facilitator can help determine mutually agreed upon objectives. Jurisdictions that have engaged in this kind of intervention discovered new insight and substantial benefits. Officials in one jurisdiction, for example, brought in county and city administrators, who were experienced in management but did not have experience with the criminal justice system, to serve as facilitators. The neutral, objective facilitators prompted frank and difficult discussions that resulted in respectful responses on sensitive issues and an opportunity for reflection.

It is imperative to have the hard conversations about policies that create racial and ethnic disparities (R.E.D.) within the criminal justice system. Discussions about race can often be difficult, but stakeholders nonetheless need to acknowledge that R.E.D. exist and are attributable to many different factors. Bringing in external and national voices to local gatherings to discuss racial issues can help break the ice and make it easier for system actors to continue the discussion afterwards. Using third parties with a particular disciplinary expertise is another method that has been utilized to help establish trust and collaboration on criminal justice improvement.

For example, for risk assessment tools, look for nearby universities to seek experts who can assist in tool creation and implementation. Their credentials and approaches may calm some fears and limit pushback. Also, bring in a media expert on crisis communications to help develop a unified response plan in case of an event that could cast a negative light on reform. **[Recommendation 6]** Have an organized conversation with healthcare treatment providers in order to fully understand addiction and mental health illnesses. In sum, conversations that are grounded in science and evidence-based practices can play a key role in establishing trustful relationships. With these tools, teams learn together about what they are doing right, as well as promote unified solutions to what they can do better.

Shifting to a problem-solving framework helps foster collaboration and create a supportive environment conducive to allowing prosecutors and defenders to work together for the safety of the community as a whole.



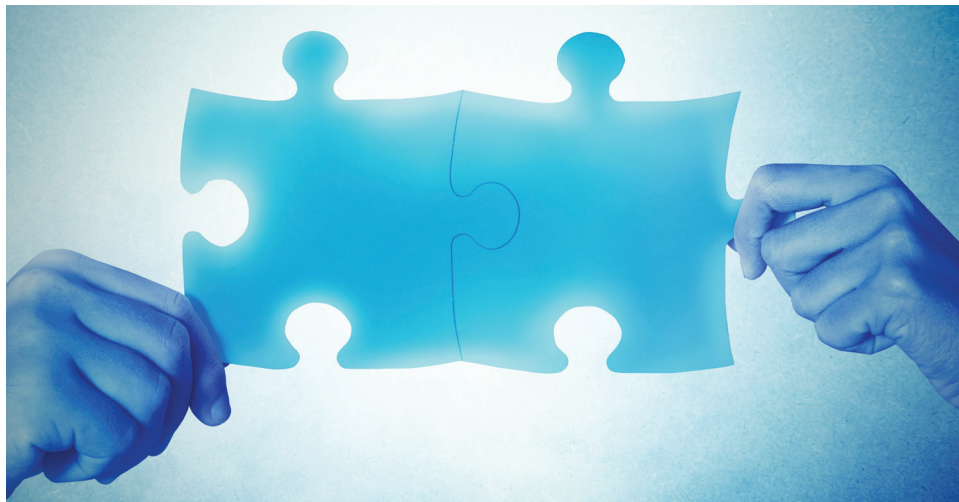
In many instances, strong collaboration between prosecutors and defenders has been fueled by personal relationships. Prosecutors and defenders who were law school classmates, for example, or whose children play on the same sports teams. In some jurisdictions, defenders and prosecutors are co-located, and proximity supports friendly interaction. In the absence of such naturally occurring circumstances, such opportunities can be created to deepen professional relations through human interaction. **[Recommendation 9.]** Trust also requires showing empathy, such as understanding the secondary effects of trauma on professionals such as prosecutors and defenders who handle cases involving situations that often reflect some of the darkest aspect of humanity on a daily basis. Establishing stable, trusting relationships at the leadership level is necessary, but not sufficient to lasting reform. Thereafter, mutually agreed upon ideas should be brought to managers, and other internal staff. **[Recommendation 7]** New, front-end-loaded services require changing the cultures of both prosecutor and defender offices. Mid-level managers frequently have the most contact with those who are engaged

in the daily work that makes system runs and can have a great influence on change management and implementation. It is also important to identify ways to secure support for change at the deputy level, which may even entail restructuring offices to dedicate additional resources there. In sum, communication is key to developing trust. Assigning a liaison to the public defender's office and prosecutor's office can assist in providing a direct line of communication between the two offices. By having professional yet honest and open conversation, prosecutors and defenders can move beyond the adversarial system and work together to create system change.

Challenges to Collaboration

Defenders and prosecutors are central players in the courtroom and can achieve great progress when they have mutual goals. While encouraging collaboration between these two key stakeholder groups, we recognize that there are legitimate challenges to collaboration. Both defenders and prosecutors have valid concerns about public perceptions. **[Recommendation 8]** Defenders must be concerned about ensuring that their clients have confidence in their loyalty to them, and don't want to be perceived as "working with the prosecutors" rather than for their

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clients. Similarly, prosecutors' role is to seek justice, and they must be concerned about protecting victims' rights to feel protected and be heard in the courtroom. Prosecutors and defenders must continually navigate through such complex perceptions when participating in system-wide reform.

There has to be a recognition and appreciation for the traditional and necessary roles that the two sides play in the adversarial process. Both must be sensitive to the others' ethical constraints and requirements. For example, while a diversion program may be created and implemented in a largely collaborative fashion, such programs can raise legal issues that either side may feel compelled to pursue. In sum, the adversarial system still remains in place. Despite the sometimes paradoxical environment in which collaboration among adversaries exists, the current, unique opportunity for system-wide criminal justice reform will not be fully leveraged without effective interaction. Society recognizes that we need to eliminate unnecessary criminal justice involvement. There is also mounting interest in data-driven and collaborative strategies. Communities are paying attention and demanding change. Shifting to a problem-solving framework helps foster collaboration and create a supportive environment conducive to allowing prosecutors and defenders to work together for the safety of the community as a whole.

Examples of Collaboration

Prosecutors and defenders in the Safety and Justice Challenge are navigating beyond the apparent constraints of an adversarial system to help drive System-wide improvements. They are lobbying local and state government together for resources, advocating for data driven policies and practices, and working together on community engagement.

In Arizona, Pima County's Jail Reduction plan seeks to improve public safety, lower jail costs by reducing the jail population, prevent crime by lowering the rate

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of recidivism, and eliminate racial and ethnic disparities. Their strategies include looking at programs like the “Court System Innovations and Treatment Alternatives,” which implements pretrial risk screening as well as substance abuse and mental health screening. Other strategies entail preventing and resolving failure to appear warrants, as well as post-conviction alternatives to jail, such as electronic monitoring. The collaboration between the offices of the District Attorney and Public Defense Services is critical to achieving these reforms in Pima County. The Mecklenburg County (North Carolina) District Attorney and Public Defender are working together through their local Criminal Justice Advisory Group (CJAG). CJAG meetings provide an opportunity to step back from traditional roles and look at the system from a broader data and policy perspective. **[Recommendation 3]** Through CJAG convenings, the Public Defender and District Attorney have been able to work together on the Home, Street, Neighborhood, and Community Initiatives to increase public safety in their community.

Data is a critical component to successful collaborative models between prosecutors and defenders, especially when addressing difficult areas of reform such as race. **[Recommendation 5]** The Public Defender and District Attorney in Milwaukee, Wisconsin learned that addressing the severity of their racial disparities must be a priority after looking at their numbers. The data in Milwaukee showed that black residents were almost twenty times more likely to be in prison than white residents. Those numbers (compiled and reported by Researcher Pamela Oliver, PhD, University of Wisconsin) and are serving as a guide to the Safety and Justice Challenge work.

In Washington State, Spokane County’s Public Defender and District Attorney are working together through the Safety and Justice Challenge to implement the Spokane Assessment for Evaluation of Risk (SAFER) pretrial tool, as well as SAFER-Pro (probation version) tool. Through their work, they offer the following helpful tips for creating successful collaboration:

- **Finding the “small wins”**
- **Making sure line-staff are also engaging in increased levels of collaboration**
- **Establishing standing meetings to address challenges and to celebrate successes**

Conclusion

Prosecutors and defenders, who are traditional adversaries in the courtroom, are now faced with an historic opportunity to improve America’s criminal justice system through collaborative reform efforts. Both stakeholders share many common goals for improved system outcomes, and many of these goals are practically impossible to accomplish without cooperation between these stakeholder groups, which represent two thirds of the adjudicatory actors. By following these recommendations, prosecutors and defenders in Pima County, Mecklenburg County, Milwaukee County, and Spokane County are forging and strengthening relations that demonstrate the potential for successful reforms.

