

Courtroom Adversaries; Policy Reform Allies

MacArthur Safety and Justice Challenge Brings Defenders and Prosecutors Together to Address Jail Reform



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Criminal justice system reform has become a priority on both sides of the political aisle and within our communities as America’s over-reliance on incarceration and racialized patterns of injustice are brought into sharper focus. The John D. and Catherine C. MacArthur Foundation Safety and Justice Challenge has brought still greater urgency to this conversation, and is promoting models of reform in 20 jurisdictions across the country in order to change the way America thinks about and uses jails. Designing meaningful reform that will create lasting change requires participation and collaboration from all justice system stakeholders, even — and especially — those that are more used to approaching one another in an adversarial capacity.

Cornerstone spoke to leaders from two “Strategic Allies” of the Safety and Justice Challenge, David LaBahn and Jo-Ann Wallace, about why these partnerships are important. LaBahn is President and CEO of the Association of Prosecuting Attorneys (APA), and Wallace is President and CEO of the National Legal Aid & Defender Association (NLADA).

While defenders and prosecutors may have opposing perspectives in the courtroom, we often have many common goals when it comes to criminal justice reform. What would you say are a few of the most important shared objectives?



Jo-Ann Wallace: There are more than 2 million people behind bars in the United States, and we all recognize that this is unsustainable. The Safety and Justice Challenge is focused on our country’s jails, where almost half a million people are detained each year despite having never been found guilty of a crime. Many of those individuals pose no real flight risk or danger to community. The starting point for shared objectives are the

Safety and Justice Challenge goals themselves: eliminating the unnecessary use of jails and racial disparities in the justice system. On the defender side, a sincere desire to make substantial progress toward those objectives is what has brought us to the table. It seems the same is true of the prosecutors on the teams. Incarceration is expensive and too often unnecessary and ineffective. Its imposition on such a vast scale is engendering mistrust in the justice system as well as harming individuals, families and communities. I believe a shared desire

for fair justice systems is also motivating both defenders and prosecutors to pursue better solutions.



David LaBahn: Both prosecutors and defenders understand that our work in the courtroom is caused by conditions outside of our control. Recidivism rates are high, and individuals who enter the criminal justice system often don't receive the treatment or resources needed in order to improve their circumstances.

Both prosecutors and defenders agree that the criminal justice system should aim to assist and rehabilitate individuals. We believe that having treatment alternatives to incarceration is key. Those suffering need to have access to effective treatment that will combat both mental health and substance use. Through implementation of diversion and deflection programs, defenders and prosecutors can work together to achieve the most successful results, and ultimately make our communities safer.

What are some of the challenges to collaborative advocacy between defenders and prosecutors on these issues? How can they be resolved?

DL: One of the biggest challenges to collaborative advocacy is the notion that prosecutors and defense attorneys are on opposing sides, which leads to a fear of working together. However, collaborations need to take place between defenders and prosecutors in order to stomp out that stigma. Prosecutors and defenders agree on many issues surrounding criminal justice reform, and they can work together to see positive changes that occur from these reform efforts.

In order for collaborative advocacy to take place, the parties involved need to understand that it's alright to agree to disagree. Instead of focusing on opposing viewpoints, prosecutors and defense attorneys can work together to ensure that the individual's sentencing is tailored to their circumstances.

JW: Defenders face additional pressures. A public defender's most important duty is to advocate zealously for his or her clients, and this requires having their complete confidence. Unfortunately, clients are sometimes so mistrustful of the justice system that they even view their attorney with suspicion. The fact that public defenders are often considered by the public, including clients, as "government attorneys," who are paid by the same entity that pays the prosecutors' salaries, is a further challenge toward gaining a client's confidence. The perception of a close relationship with the prosecution can damage that trust even further.

Defenders can take a variety of different steps to help their clients understand that collaboration on policy issues does not undermine their ability or their ethical duty to provide effective client representation in the courtroom. As a new attorney with the Public Defender Service in D.C., I was trained to talk to our clients about the reasons for having positive relationships with prosecutors. Later as the director of the agency, I had to have similar conversations with the staff about the role that I played at policy tables and why it was important to our clients for me to be there.





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Collaboration on the ground looks different from collaboration at policy tables in Washington. How can defenders and prosecutors work together on the ground to make diversion programs or alternative sentencing more effective? What is your role in preventing crime, and in reducing recidivism?

DL: While it is important to advocate for criminal justice reform legislation, prosecutors and defense attorneys realize that the most effective change occurs on the ground. Diversion programs are only successful if a host of multi-disciplinary professionals work together to benefit the individuals attending these programs, which in due course benefits the community at large. These professionals should not only be comprised of defenders and prosecutors, but also judges, probation and parole officers, mental health and substance abuse professionals, as well as members of the community. The success of these programs should also be measured through data, and the professionals involved should not be afraid to change the program to best fit the needs of the individuals who are participating. Together, these alternative sentencing programs will be successful.

With respect to deflection, some prosecutor’s offices determine which individuals are considered a danger to the public and should enter the criminal justice system, and which individuals should participate in a rehabilitative or community services. By deflecting low-risk individuals out of the criminal justice system, individuals would get the assistance they need. This would lead to a shift in resources, which would focus on expanding programming to concentrate efforts for those most in need leading to successful outcomes.

JW: Effective public defenders know their clients and the people with whom they are connected — their loved ones, their employers and their community. They also know the social service providers and other resources in the community. Moreover, because of the attorney-client privilege individuals who trust their attorneys will provide a lot of information, including, for instance, information about issues relating to substance use or mental illness, and the effectiveness or ineffectiveness of treatment programs in which they may have participated. While defenders are bound by the privilege to protect individual client information, this knowledge translates into a collective expertise that can be shared and relied upon to help shape effective programs. The growing focus on holistic defense, advocacy aimed at improving the client’s overall life outcomes and which encourages active community engagement, has only increased this expertise.

A well-resourced defense team can also have a more immediate impact, particularly with the assistance of dedicated social workers or sentencing advocates and often by working with local diversion and social programs, by designing alternative sentencing plans. These alternative programs offer justice to all parties while promoting public safety and — crucially — not contributing to the crisis of over-incarceration.

Many in the defender community believe that the justice system is broken. Do you agree, and can it be fixed with improvements to the existing system or are there some fundamental flaws that require comprehensive reform? If so, what are they?

DL: While our criminal justice system has many successful components, such as effective apprehension of criminals, public hearings, adjudication of cases based on the merits, and keeping our communities safe through maintaining order, however, there is definitely room for improvement.

Prosecutors and defenders agree that there is an over reliance on incarceration, and we support the use of deflection and diversion programs, especially for low-risk individuals. People with substance abuse and mental health issues must have access to treatment readily available. Prosecutors and defenders alike realize that data-driven and evidence-based proof should be used in creating model practices for successful diversion programs.

By working together, prosecutors and defenders can collaborate to advocate for an increase in programming through prison reform legislation, and help to decrease racial disparities. I know there is a lot of work to be done, but by working together, the criminal justice system can assist individuals who need help, and make our communities safer.

JW: Our criminal justice system is dealing with social problems that it is not equipped to address. For example, many individuals with mental illnesses should not encounter the justice system at all, but should be diverted directly into the healthcare system. As a result, it is bloated like our jails and prisons, beyond the point of effectiveness in many instances and resources are stretched too thin. The overwhelming workload has created a system that is more focused on processing cases than dealing with human beings.

The MacArthur Safety and Justice Challenge teams are exploring what is driving their jail populations and working to develop strategies to reduce them, and also presents a model for a larger reassessment of how we approach social issues and the role of our criminal justice system. Until we get there, two additional small but significant changes would make a world of difference. First, every criminal justice stakeholder (judge, defense counsel, prosecutor, etc.) should commit to treating clients and their families as they would want their loved ones to be treated — with respect and dignity — and refuse to define them only by their worst mistake. Second, these same stakeholders should receive high quality training on implicit bias.

With a narrower focus however, there are parts of our system that do need to be torn down and rebuilt differently. I believe it is time to eliminate cash bail systems, for example, which put liberty at a price only the wealthy can afford. Improvements can help — the presence of defense counsel at bail hearings dramatically reduces the average bail set and improves the chance a defendant will be released on recognizance — but the system itself remains unjust.





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What would you like prosecutors to know about the defender community, and vice versa, and its role in making our justice system fairer and our communities safer?

DL: It is the role and the duty of the prosecutor as the “minister of justice” to ensure that we have a just system, which focuses on public safety. We recognize that the system needs improvements, and we are striving to work with all parties involved to make a difference in their communities. Here at APA, we are fortunate enough to work with many prosecutors who are creating successful changes in the criminal justice arena. What we have seen is when prosecutors and defenders work together, they will be successful in steering individuals towards rehabilitation, and improving their circumstances. I believe that this will create safer communities, as well as just outcomes for all involved in the criminal justice system.

JW: While it is not the responsibility of public defense to reduce crime, the fact of the matter is that many of the activities of defense counsel, the manner in which they carry out their work, and the defense role itself promotes crime reduction and public safety. Positive perceptions of procedural justice are known to be associated with reduced recidivism. In other words, if a person feels that they have been treated fairly and with respect by the justice system, that they understand the court proceedings, and that their voice was heard during the adjudicative process, they are significantly less likely to become involved with the justice system again.

Everyone in court must take some responsibility for this, but no one else in the system has the responsibilities written into their job descriptions as extensively as a client’s dedicated advocate. Competent defense counsel is vital to maintaining the faith of the client — and the public at large — in our institutions of justice.

Indeed, a substantial body of research identifies fairness as a deeply engrained American value, and nowhere is this sentiment stronger than in the public defense community. Prosecutors certainly identify with “justice,” and I suspect that for most this concept is inclusive of fairness. Thus, we have a more common starting point than we sometimes perceive. Like prosecutors and the general public, defenders have children and families and others that we love and want to be safe. If defenders and prosecutors approach each other looking for common ground, in the same manner that defenders urge everyone to see their clients — as people first — we can work together to create policies and practices that protect public safety while upholding procedural and substantive justice.■

For more information about the Safety and Justice Challenge, visit www.safetyandjusticechallenge.org.