



ASSOCIATION *of*  
PROSECUTING  
ATTORNEYS

*The Prosecutor's Policy Guide:  
A Roadmap to Innovation*

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*Chairman & Milwaukee County  
District Attorney*

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**PROSECUTOR'S REPORT VI**

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*by*

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## ACKNOWLEDGEMENTS

Strong leadership is an obvious but essential ingredient to spurring and sustaining innovation. Leadership is the ability to see innovation and change by motivating awareness and facilitating action. This Prosecutor's Policy Guide was commissioned to assist prosecutors' offices in positioning themselves to embrace innovation and those innovative practices which are making our justice system more efficient and effective.

The Association of Prosecuting Attorneys (APA) would like to thank all those who contributed to the development of this prosecutor report, especially recognizing those leaders in the field who dedicated their time and effort to support these roundtable events. Special acknowledgments must also be given to the authors of the document Roy Hubert and Lindsey Carlson and to Robert Hood for his assistance with the facilitation of the roundtables. APA thanks Kelsey Doty, Syrita Simpkins, and Gena Gonzales for their efforts in editing and formatting this publication. Furthermore, APA would like to thank the Public Welfare Foundation for their continuing support which made this report possible.



Steven Jansen  
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# *The Prosecutor's Policy Guide*

## *A Roadmap to Innovation*

### EXECUTIVE SUMMARY

More than twenty-five years ago, a small group of prosecutors met in Executive Sessions with representatives of the *Program in Criminal Justice Policy and Management* at Harvard University's John F. Kennedy School of Government to explore whether the latest research could enhance their operations and strengthen their efforts to increase public safety. These Executive Sessions concluded that further research was needed on performance measures, the administrative and organizational structure of prosecutors' offices, and the expanding role of the prosecutor.

Today, prosecutors are asking questions focused upon emerging creative strategies that combine experience and issue solutions to meet the classic prosecutorial challenges endemic to most communities. To address these questions, the Association of Prosecuting Attorneys (APA) convened two roundtable sessions, one in Brooklyn, NY and the other in Washington, DC, to continue the dialogue about the role of the prosecutor in the 21<sup>st</sup> century. The leitmotif of the roundtables was innovation.

Roundtable discussion topics included the following:

- The best means for promoting innovation in criminal justice systems;
- Policy changes that can facilitate innovative change;
- Common barriers to developing and implementing innovative practices;
- Effective collaborations to address challenges in criminal justice systems;
- Policy guides designed to help bring about innovative change; and
- Use of action plans as tools to drive innovation.

The roundtable discussions on innovation also generated the following persistent themes, suggestions, caveats and anecdotes:

- Barriers to innovation have multiple origins: traditional attitudes, conflicting interests, lack of awareness, etc.; all of which may require office restructuring and integrating old programs into new programs.

- An inefficiently structured organization coupled with inadequate funding restricts the introduction of innovative programs. However, programs that are value-added or those that can demonstrate cost effectiveness enjoy greater public support likely due to their sustainability within the community.
- Measuring the success of innovative programs is challenging because such programs characteristically employ nontraditional means to achieve their objectives.
- The trust of criminal justice and community partners contributes to the effective introduction of innovative programs. However, it is independence - e.g., the exercise of judgment absent outside influence - that builds credible trust.
- Prosecutors must have their own identity, distinct from other law enforcement partners, and one which conveys openness, transparency, and a sense of integrity.
- Discerning leadership qualities among staff by utilizing peer review methods, identifying change-makers, and obtaining bottom-up input fosters the necessary buy-in for successful change and the introduction of new strategies.
- Allocating responsibility appropriately builds efficient institutional structures and allows leaders to direct resources, develop strategies, and pursue policy objectives.
- Intelligence-led prosecution draws upon resources outside of those found within a prosecutor's office and is based upon collaboration, cooperation, and information sharing.
- High performing offices that incorporate elements of a trusting community, collaborating partners, motivating awareness, and facilitating action provide an entrée for effective leadership and the opportunity to develop other innovative programs.

Several key observations were captured through the conversations, relevant documents, and background research associated with the roundtables. First, a wide consensus exists among prosecutors regarding the issues attendant to both innovative and traditional prosecutorial strategies. Second, most of the suggestions, recommendations, and approaches to innovation offered during the roundtable discussions were well grounded in common sense, practicality, and analysis. Finally, the roundtable participants represented jurisdictions across the entire continuum of strategies for change, from those that have adopted incremental modifications to those who have instituted immediate and dramatic shifts in policy and practice. Jurisdictions that engaged in more immediate changes did so by “separating the wheat from the chaff,” or by

openly announcing their intended changes and identifying and overcoming resistance among the office staff.

*The Prosecutor's Policy Guide* concludes with five templates derived from the most frequently discussed roundtable topics. This guide is intended to provide prosecutors with checklists, reminders, or points of departure for further thought and action. Overall, the challenges of the 21<sup>st</sup> century for prosecutors are many and the responsibilities great. As always, it remains the calling of a prosecutor to ensure justice and safety.

## I: Preface

Two and a half decades ago the Program in Criminal Justice Policy and Management at Harvard University's John F. Kennedy School of Government brought together several elected district attorneys who were interested in whether the Kennedy School's latest research could enhance their operations and strengthen their efforts to enhance public safety. Nine elected district attorneys and several appointed prosecutors met together with the representatives of Harvard's Program in Criminal Justice Policy and Management "to discuss specific areas of interest, to get some sense of current strategic issues facing prosecutors nationally, and to determine how the university's Kennedy School faculty and staff could help."<sup>1</sup> The Harvard University Executive Sessions for State and Local Prosecutors identified three primary areas in need of further exploration: performance measures, the administration and organizational structure of prosecutors' offices, and the expanding role of the prosecutor.

The contributions of the Executive Sessions, combined with other crime prevention and prosecution programs affiliated with the John F. Kennedy School of Government, motivated and enabled prosecutors to pursue and grow programs in community building and in defining the role of the community in public safety. Earlier programs, including Executive Sessions in juvenile justice and community policing conducted by the Program in Criminal Justice Policy and Management, provided a platform that strengthened the body of existing knowledge and understanding of community justice principles. Notable early works include that of George L. Kelling, Research Fellow at the School, as described in the 1999 National Institute of Justice research report, "'Broken Windows' and Police Discretion;" and a report by Catherine Coles of Harvard University's Malcolm Wiener Center for Social Policy, entitled "Community Prosecution: District Attorneys, County Prosecutors and Attorneys General."

Twenty-five years after the last of the Harvard Executive Sessions, the Association of Prosecuting Attorneys recreated and updated the Harvard experience by bringing together the country's leading innovative prosecutors to explore how today's prosecutorial policies and practices are creating a more effective and efficient system of criminal justice.

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<sup>1</sup> Tumin, Z. (November 1990). *Summary of Proceedings: Findings and Discoveries of the Harvard University Executive Session for State and Local Prosecutors*. Cambridge, MA: John F. Kennedy School of Government, Harvard University Working Paper #90-02-05.

## **II: Introduction**

The Association of Prosecuting Attorneys (APA) assembled *The Prosecutor's Policy Guide - A Roadmap to Innovation* to identify gaps in the criminal justice system, determine the obstacles to developing and implementing innovative crime solutions, and to equip prosecutors with practical and existing strategies to overcome such challenges. To advance and inform this effort, APA recently convened two roundtables with prosecutors from prominent and innovative jurisdictions throughout the nation, meeting to share their common experiences. Representing some of the largest and most diverse communities in America, each roundtable participant has encountered a variety of obstacles, and yet has successfully addressed those obstacles by developing and implementing creative prosecutorial strategies (Appendix A). The roundtables were facilitated by APA's Chief Operating Officer and Director of the Community Prosecution and Violent Crime Division.

The roundtable conversations centered on the classic challenges endemic to most communities, the impediments that prosecutors face when seeking to implement creative and innovative solutions, and emerging creative strategies to counter such obstacles by combining personal experience and issue solutions. Each jurisdiction was eager to learn from the experiences of others.

## **III: Innovation**

Discussions on innovation among roundtable participants were grounded in a vision of the primary purpose of all prosecutors, offered by New York County (Manhattan) Assistant District Attorney Chauncey Parker: "The mission of a prosecutor's office is to ensure justice and safety." *The Prosecutor's Policy Guide* incorporates this mission statement into its definition of a prosecutor's ultimate responsibility: *It is a prosecutor's duty to pursue equity and justice so that all individuals can pursue their lives free from crime and without fear of oppression.* However, prosecutors are finding that both traditional and new challenges, explored more fully below, are threatening their ability to fulfill this responsibility.

### **A. Challenges**

**1. Challenge - Leadership:** Without effective leadership, prosecutorial offices will be unable to fulfill their mission. Elected prosecutors must be the leaders of their organizations. Leadership is the ability to see innovation and make change by motivating awareness and

facilitating action. An effective leader defines, establishes, and evaluates his or her organization's mission. This includes goal setting, priority setting, maintaining standards, and making the right compromises.

Great leaders excel at four traits:<sup>2</sup>

- Seeing what is—current reality
  - What are the big challenges facing the community and office?
  - Hard data: research and crime data numbers
  - Soft data: hard-to-measure elements such as people's hopes, dreams, fears, and frustrations
- Identifying opportunities—determining what is possible
- Explaining ideas—motivating others to take action
  - Create a clear and compelling message for all employees to value/understand
  - Create a sense of urgency
- Implementing change

Leadership is also a responsibility. For leaders, President Harry S. Truman's statement, "the buck stops here," remains as viable today as it was when first uttered some sixty years ago. The late Peter F. Drucker, internationally recognized guru of modern management, makes this point: "One does not 'manage' people. The task is to lead people. And the goal is to make productive the specific strengths and knowledge of each individual."<sup>3</sup>

Therefore, why do good leaders sometime fail when implementing change? Failure occurs because of four conditions:

- Lack of clarity in terms of conveying who must change and in what ways
- Inadequate training or follow-up support
- Not recognizing or rewarding efforts and early successes
- Choosing an ineffective project manager

**2. Challenge - Trust and Independence:** Roundtable participants agreed that prosecutorial offices seeking to introduce new and innovative approaches to crime are far more effective when they have the trust of their criminal justice and community partners.

Somewhat paradoxically however, while eschewing divisions between criminal justice partners, prosecutors agreed that independence from these same partners is what builds trust. Prosecutors must strike a balance between effective coordination with criminal justice partners and maintaining independence, and must communicate both aspects of that balance to the

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<sup>2</sup> Thornton, P. B. (2011), Why some leaders succeed and others fail, *Leader to Leader*, 2011: 17–21.

<sup>3</sup> Drucker, P. F. (1999), *Management Challenges for the 21st Century*, New York: HarperCollins Publishers.

community. Participants generally agreed that there are a variety of ways to coordinate with other criminal justice actors and still exercise and demonstrate the kind of independence that gives new and incumbent prosecutors legitimacy when seeking to introduce new, innovative, or creative approaches to crime problems.

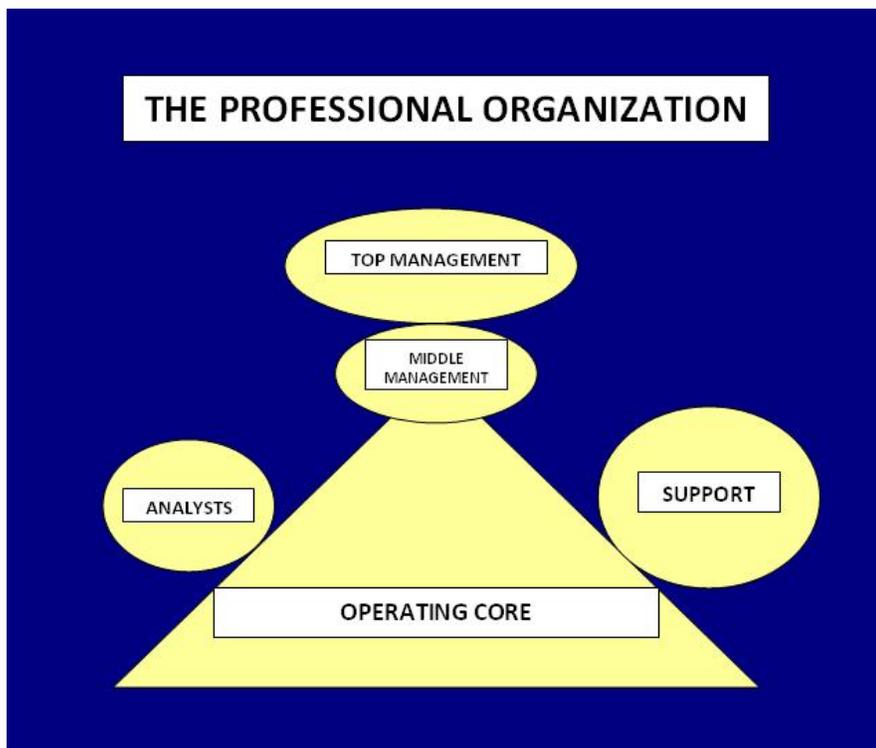
An elected prosecutor from a large jurisdiction expressed one approach to establishing trust. “I shy away from looking for leverage with cops. I want to be independent of them and what they do, but if your community sees you aligned with cops, and if they lose confidence in law enforcement, they lose confidence in you.” Another prosecutor added, “Public perception of prosecution is as adjunctive to law enforcement.” The topic of independence was balanced with the remarks of another prosecutor who added, “Our function is public safety and we partner with police in a number of initiatives and data sharing. Individually and collectively we are connecting with the community.” Cooperation, collaboration, and partnership in trust building require policies and practices that reveal judgment and discretion independent from other law enforcement agencies and community leaders.

**3. Challenge - Organization-wide Involvement:** Prosecutorial leadership seeking to develop innovative programs must be equipped with the tools to manage their offices effectively. High-functioning offices will be more receptive to creative and new approaches to crime problems. Effective management includes not only exploring innovations, but also recognizing and developing the “core competencies” of prosecutors and delegating appropriate resources to both. Albany County District Attorney David Soares recommends that, “In terms of your organization it is important to identify the qualities of leadership you have among your staff. You should identify the ten to fifteen people who will be your office leaders and bring them on-board, and then they will influence others in your office.” Effective managers identify the skill sets of their employees and know how to best engage the human and technological capital available to them, while still facilitating collaboration among the different and often fractious units within a prosecutor’s office. Creating an efficient office organizational structure also means accurately identifying the true crime issues and needs of the community and building an office that is equipped and prepared to address those realities.

Most prosecutorial management configurations can be classified as a “professional organization” structure. This means the design is set for complex technologies in a stable environment, or prosecutors handle complex issues in a fairly stable case processing format which doesn’t seem to change much from their core function or role within the criminal justice

system. The operating core of a prosecutor's office or key part is the assistant prosecuting attorney role (reference Figure 1). Assistant prosecuting attorneys function with a high degree of autonomy making charging decisions, diversionary assessment, plea negotiations, trial preparation, and sentencing recommendations. These functions or tasks require judgment and experience which the assistant prosecutors bring to the organization. Under this professional organizational model, efficiency is not always the goal; instead, accuracy and being particularly good at the tasks at hand become superseding.

Figure 1



Source: *Figure 1*. Turk, Thomas A., Ph.D., Associate Professor of Strategic Management, Argyros School of Business and Economics, Chapman University, 2011. Adapted from: Mintzberg, Henry A. (1981). "Organization Design: Fashion or Fit?" *Harvard Business Review*, January-February, 1981.

As one can see from the graph above, the greatest number of employees is the operating core, with smaller clearly defined secondary roles for support staff and analysis. Support staff is important to assist the operating core in its major function while less importance is reserved for operational analysis. Typically, top management is distinctly defined from the operating core which can lead to an "Us vs. Them" environment as assistant prosecuting attorneys push for autonomy. To help diminish the "Us vs. Them" environment and help assistant prosecuting attorneys focus on priorities outside of trial advocacy and conviction rates, the New York County

(Manhattan) District Attorney's Office hosted an inter-office contest for the "Next Big Idea." Assistant District Attorney Karen Friedman said, "We might think ideas are great, but others might not, so we want them to come from the bottom up...each bureau had to come up with one idea for change in our office." She noted that tweaking ideas and incorporating ideas of others can make office-wide implementation easier.

As the role of the prosecutor has expanded and our nation's prosecutors embrace efforts focused on crime prevention and community or institution building, office organizational structures are shifting and the advantages of an "innovative model" (reference Figure 2) are being recognized. Though the majority of our nation's prosecutors' offices will continue to operate under a professional organizational structure, borrowing design techniques or blending design techniques of the innovative model assists prosecutors in fulfilling their core mission "to ensure justice and safety."

The design for an innovative organizational model is for complex technologies and complex environments. Although less typical of prosecutors' offices, this design creates unclear roles and professionals sometimes work as managers, support staff, analyzers, or operating core depending upon the individual case, situation, or circumstance. This mutual adjustment of people with specialized expertise allows for the embracing and implementation of innovative ideas which can lead to a more efficient and effective criminal justice system. In describing the Kings County (Brooklyn) office organization, Deputy District Attorney John O'Mara noted, "We are learning internally and from others. As an initial step in 1990, we divided general prosecutions into Zones that matched geographic areas and we linked the prosecutors of each Zone with organizations and leaders in the respective communities. As a further step, we sought to increase similar communication and cooperation between communities and our specialized Bureaus such as Homicide and Domestic Violence." O'Mara continued, "Then, we overlaid our nontraditional components such as Alternative Sentencing, Community Relations, and Crime Prevention on top of all the community justice strategy." This more complex and innovative organizational structure puts assistant district attorneys in different roles, be it as a litigator in the courtroom, community outreach person, or advocate for nontraditional criminal justice responses to crime, depending on what the current case or assignment requires.

Figure 2



Source: *Figure 2*. Turk, Thomas A., Ph.D., Associate Professor of Strategic Management, Argyros School of Business and Economics, Chapman University, 2011. Adapted from: Mintzberg, Henry A. (1981). "Organization Design: Fashion or Fit?" *Harvard Business Review*, January-February, 1981.

All of the roundtable approaches discussed by participants were also intended to result in the more efficient administration of justice. An innovative organizational structure enables prosecutorial leaders to dedicate greater time and energy in identifying the issues unique to their communities, and to developing creative crime prevention strategies.

**4. Challenge - Balancing Management with Leadership:** Institutions are far more effective at identifying, promoting, and adopting innovative programs when leaders direct resources appropriately. This permits elected prosecutors to dedicate themselves to the leadership of their office. Identifying, adapting, and implementing innovative programs can be time-consuming and painstaking, and requires the cooperation and contribution of a number of individuals. Institutions that allocate responsibilities effectively lay the groundwork for the smoother adoption of new initiatives. Effective organizations also enable leaders to exercise a leadership role by identifying issues unique to the community and develop creative crime intervention strategies.

An effective program enabling a prosecutor to exercise a strong leadership role exists in Fulton County, Georgia. Fulton County (Atlanta) District Attorney Paul L. Howard, Jr. uses a Criminal Justice Planner to formulate prosecutorial goals and strategies, develop performance objectives and indicators, evaluate existing programs, and make recommendations for

operational improvements. With one individual dedicated to these specific functions within his office, District Attorney Howard is able to develop strategic plans and adopt innovative programs while still directing his energies toward running the office and community engagement.

**5. Challenge - Insular Attitudes:** Prosecutors may struggle with divisions between their offices and their criminal justice partners. Traditional partners - judges, public defenders, and police officers - display conflicting interests, philosophies, and seemingly incompatible approaches to crime problems. Divisions between these stakeholders may spring from entrenched traditions that are inherent in their respective functions and unfortunately, at times from political opportunism, personal agendas, or antipathy due to the adversarial character of the criminal justice system. However, the establishment of Criminal Justice Coordinating Councils (CJCC) can begin to breakdown these insular attitudes between justice partners and foster collaboration. CJCC's improve the administration of criminal justice in a jurisdiction by serving as a forum to identify problems or issues, develop solutions, propose action and facilitate cooperation.

In Milwaukee County, the Milwaukee Collaborative seeks to better coordinate criminal justice initiatives. This project, which was introduced through the National Institute of Correction's Evidence-Based Decision Making initiative, seeks to improve criminal justice outcomes by evaluating "what actually works" and implementing decision-making based upon the evidence. The Collaborative involves all of the major stakeholders, including the Chief Judge, the First Assistant State Public Defender, the District Attorney, the Chief of Police, and the Department of Corrections, as well as the Mayor of Milwaukee, victim advocacy groups, and community-based organizations. This initiative makes an explicit commitment to collaboration, and as a result, Milwaukee County District Attorney John Chisholm has witnessed tremendously improved cooperation among a number of stakeholders. District Attorney Chisholm found that simply soliciting input and sharing information at the conception of an innovative program significantly improved the program's likelihood of success. The Collaborative has also experienced significant success in overcoming traditional divisions among stakeholders because the leaders of each are committed to improving criminal justice outcomes and are invested and working together toward the same objectives.

**6. Challenge - Internal Resistance to Change:** Overcoming resistance to change is a slow and difficult challenge to be addressed by the elected prosecutor. Albany County District Attorney P. David Soares described his approach to this challenge, which incorporates a peer review process. With his peer review process, Soares has been able to identify issues affecting office performance as well as improve cooperation among his prosecutors and staff members. Another prosecutor, recently elected to office, described his experience this way: “Beginning a journey, nobody likes change and the resistance was internal, there was no interest in a redesign of the prosecutor’s office, however, change was needed.”

Shauna Boliker, First Assistant State’s Attorney in Cook County (Chicago), also described her office’s experience in dealing with resistance to change: “We allow staff to have a voice regarding changes. A new administration must respect the past and through a collaborative effort build upon the operations, units and divisions of an office. If there is no process for individuals to express concerns or ideas regarding innovation this could contaminate good efforts of an administration or entire office.”

**7. Challenge - Organizational Inertia:** An obstacle to the introduction of innovative prosecutorial strategies is internal organizational inertia. This refers to organizational inflexibility caused by the traditional structures of prosecutorial offices. The historic role of prosecutors has been as trial attorneys focused on processing cases and obtaining convictions. Some offices are still configured to only accomplish this function. Strategies that focus on community relationships, problem solving, or institution building may require a shift in both office structure and practice. These strategies, however, are often viewed with suspicion by prosecutors functioning primarily under the traditional prosecutorial model. These prosecutors may dismiss these strategies as failing to address public safety and therefore, ineffective.

Generational differences in receptivity among experienced and novice prosecutors are common. Entrenched leadership and senior prosecutors may continue to adhere to the old, conventional role of prosecutors as ‘case processors’ rather than as ‘crime preventers’ or ‘problem solvers’; and hidebound prosecutors may be reluctant to embrace a fundamental shift in self-identification. Other prosecutors may be more flexible and open to a different solution to the same old problem. At times, generating greater organizational flexibility may require restructuring within offices; prosecutorial leaders who are prepared to support restructuring will be better positioned to make changes. Ultimately, successfully remedying organizational inertia

requires understanding and responding to the values and purposes currently driving the organization.

**8. Challenge - Divisions over Strategies:** Elected prosecutors may find their offices not only resistant to change, but also divided over the introduction and adoption of innovative strategies. For example, community prosecution, though not an entirely new concept, has not always been well received by traditional trial prosecutors and resistance may cause division between trial units and community prosecution units within the same office. Because most prosecutorial offices have been engineered toward trial work, prosecutors most familiar with this conventional function may harbor initial misapprehension of the purpose behind community prosecution, and resist cooperative efforts with community prosecutors. Such resistance hinders the flow of information between personnel and decreases the efficacy of crime prevention and reduction strategies, not to mention overall criminal prosecution.

Prosecutorial leaders can alleviate resistance by clearly demonstrating both the function and utility of community prosecution to the trial attorney's task and vice versa. Community prosecution units build connections to community members and witnesses and can play vital roles in developing lines of communication between the community and investigation teams, as well as securing witness cooperation.

San Diego City Attorney Jan Goldsmith implemented a new initiative in an effort to fully integrate the community prosecution and trial units in his office. Through a six-month long process that focuses on staffing court rooms with line prosecutors and community prosecutors, the office is fostering collaboration and information sharing with effective management. The initiative is still being reviewed, but there are a number of positive results thus far, including increased information sharing across units, more creative dispositions of cases, inclusion of the communities' perspectives in negotiations and sentencing, and judicial exposure to neighborhood prosecutors' ideas and sentencing considerations. These increases and the overall positive response to consistent staffing in those departments have been so notable that office management has decided to continue the joint-staffing arrangement indefinitely.

Prosecutorial leaders can assist the breakdown of divisions by employing a neutral personality to evaluate the efficacy of both traditional and innovative programs. Ultimately, internal divisions can be diminished if the benefits of each prosecutorial function can be ascertained by the others.

**9. Challenge - Lack of Awareness:** A common problem is a lack of internal awareness among prosecutorial offices regarding innovative solutions. Although innovative solutions exist and are being implemented all over the nation, many offices operate in isolation and remain unaware of the potential for new approaches. Moreover, compounding this lack of awareness is the “stove piping” of program information internally, by sharing it only with executive management, for reasons that are not always cognizable. Aside from stove-piping and other self-defeating management practices, elected prosecutors hoping to incorporate innovative ideas and new crime prevention strategies benefit from understanding the source of this lack of knowledge. It may spring from a dearth of available resources, limited creativity, or simply inexperience.

Prosecutorial offices are more receptive to change when they receive notice and understanding of the intentions behind innovative solutions. Both individuals and institutions are more willing to embrace new and unfamiliar strategic directions if they are equipped with a clear vision of the purpose of changes and the ultimate desired outcome.

Prosecutors intending to introduce a philosophical shift to their offices can also foster greater receptivity by openly researching and discussing new strategies well in advance of implementation. Collaborating with all the members of the office as well as other stakeholders to generate ideas and innovations also facilitates implementation. Reference to successful efforts of other jurisdictions can assist in laying the groundwork for change. A reluctant office will be more easily persuaded by evidence of successful innovations undertaken by other offices.

Access, transparency, and openness remain positive forces in support of equal justice. The advent of conviction integrity units in prosecutors’ offices was a powerful innovation in support of the criminal justice process. For example, the New York County (Manhattan) District Attorney’s Office employs a Conviction Integrity Chief who reviews all claims of wrongful conviction. A portion of these claims will be reinvestigated. If a claim requires a formal reinvestigation, a new assistant district attorney is assigned to the case. The Milwaukee County District Attorney’s Office directly engaged the Innocence Project during a district attorney led integrity audit.<sup>4</sup> The prosecutor’s office asked the Innocence Project to give them their top priority cases and made sure to give those cases a priority review. Using a template provided by a well-respected jurist who oversaw the San Diego integrity review, the Milwaukee office analyzed those and a number of other cases eventually exonerating one individual. Although that

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<sup>4</sup> The Innocence Project was founded in 1992 by Barry C. Scheck and Peter J. Neufeld at the Benjamin N. Cardozo School of Law at Yeshiva University to assist prisoners who could be proven innocent through DNA testing. For more information, visit: <http://www.innocenceproject.org/>

individual was not on the list provided to the District Attorney by the Innocence Project, this transparency built buy-in and partnership with an organization that had the potential to be a detractor. Milwaukee County District Attorney John Chisholm made the point that when engaged in integrity audits, prosecutors must adhere to the original purpose of innocence reviews, and that is to discover cases where actual innocence can be determined.

## **B. Solutions**

As prosecutors struggle with 21<sup>st</sup> century challenges, traditional strategies are proving insufficient in many jurisdictions. As a result, leading prosecutors have begun adopting innovative solutions that enable them to accomplish their purpose of ensuring safety and justice.

**1. Solution - Restructuring:** After his election in 2009, following the nineteen-year incumbency of his predecessor, Philadelphia District Attorney R. Seth Williams began conducting meetings about restructuring his office. As District Attorney, Williams is committed to ensuring the safety of the citizens of Philadelphia through innovative approaches to fighting crime. To accomplish this goal, Williams moved his office to a geographic, vertical model of criminal prosecution. Geographic prosecution refers to the assignment of prosecutions by discrete areas within a larger jurisdiction. Because the Philadelphia Police Department divides the city into six geographic divisions - South, Southwest, Northeast, Central, East and Northwest - prosecutors were reorganized by these divisions as well. This meant that a team of prosecutors would be assigned to prosecute the criminal cases in each geographic division. Each prosecutorial team developed specialized knowledge in its particular division, and every prosecutor invested in his or her division to work to build partnerships with police, citizen groups, business people, clergy, schools, victim rights groups and other community associations. This comprehensive team effort allows prosecutors to effectively target and prosecute the most dangerous criminals within the city. These relationships promote better communication within the law enforcement community and increase the flow of criminal intelligence that is key to smarter prosecution of the most violent offenders.

The New York County (Manhattan) District Attorney's Office also divided their jurisdiction into five different areas and deployed senior people from different trial bureaus to those five zones. "We need to know what crimes are increasing in these different areas and then focus our resources into what's driving those particular crimes," said Assistant District Attorney

Chauncey Parker. Asking, “What is the primary crime problem?” was integral to implementing Manhattan’s redesign.

Rockland County (New York) District Attorney Thomas Zugibe took a hybrid tack by basing his organizational approach on both geographic and organizational factors. District Attorney Zugibe fully integrated his “intelligence-led” approach by creating regions within his jurisdiction and making programmatic changes by focusing on repeat violent offenders, working closely with federal law enforcement counterparts, misdemeanor and civilian review, and diversion programs.

Similarly, Baltimore City State’s Attorney Gregg Bernstein restructured his office by relying on a community prosecution based model. State’s Attorney Bernstein has divided the city of Baltimore into three prosecution zones. Each prosecution zone consists of three policing districts. Bernstein implemented a vertical prosecution system in each of the three prosecution zone, therefore, having three tiers of trial prosecution teams in each zone. This process resulted in a successful marriage between community-based justice and a vertical organizational structure.

**2. Solution - Collaboration:** Another strategy towards innovation identified by roundtable participants was collaboration. Prosecutors occupy a unique leadership role that carries significant influence and can be used to bring together both traditional and nontraditional partners in collaborative relationships to address crime problems. Those traditional partners include law enforcement and community leaders; nontraditional partners may include a broad array of entities such as community-based groups, private businesses, and faith-based organizations.

Prosecutors realize that innovative strategies continue to be developed that draw upon the resources and expertise of organizations outside the prosecutor’s office. Without the cooperation and input of those organizations, prosecutors are unable to fully realize the potential of promising new approaches. In equal importance, other criminal justice partners and community organizations can contribute significantly to the creation of innovative strategies, particularly if their inclusion occurs at the beginning of the process. The early inclusion of stakeholders means cooperation by soliciting their diverse input and perceptions to better inform crime-fighting strategies and to improve their receptivity among criminal justice partners.

Minneapolis City Attorney Susan L. Segal implemented a collaborative program designed specifically to address livability and reduce property and drug crime in the core

downtown area – a program that aimed to deliver not only short-term, but also more effective long-term solutions in reducing recidivism of chronic offenders in downtown Minneapolis. The “Downtown 100” program partners - in addition to government agencies such as the Hennepin County District Attorney’s Office, Minneapolis Police Department, and Hennepin County Community Corrections - included Downtown SafeZone, a subsidiary of the Minneapolis Downtown Improvement District that responds directly to the homeless issue in Minneapolis; St. Stephen’s Social Services, whose homeless outreach workers and housing advocates work to identify homeless offenders and provide assistance and housing support; the Salvation Army; and other neighborhood associations, community organizations, and business stakeholders in the 1<sup>st</sup> precinct. One of the program’s main goals was to reduce crime committed by the Downtown 100 offenders by over 50%. Downtown 100 met its goal with a 77% reduction in crime in the greater 1<sup>st</sup> Precinct by Downtown 100 offenders.<sup>5</sup>

Programs similar to Minneapolis’ Downtown 100 provide a degree of security for prosecutors and their partners due to the traditional approach used for defining and measuring success; that is, measuring a change in the rate of crimes committed by a selected group of offenders. Effective collaboration builds high-functioning and resourceful partnerships, which, in turn, lead to productive and efficient outcomes.

**3. Solution - Cooperation:** External resistance to innovative prosecutorial strategies is just as common as internal resistance, but often more difficult to address. Law enforcement partners and community members, conditioned to understand crime problems through traditional lenses or the hyperbole of television and media, may misapprehend the nature of the most pressing crime problems and resist innovations. Prosecutors commonly experience particularly stiff resistance from police departments and sheriffs to initiatives that are perceived as focused on outcomes other than public safety.

Prosecutorial leaders can ease external resistance by attending to the timing and collaborative development of new programs. The support of the community is also essential to implementing creative strategies. Community members can partner with law enforcement in improving public safety by investing in and building their own communities. Prosecutorial leaders possess unique influence to introduce programs forging such partnerships. Often, the most effective initiatives draw upon the combined resources and expertise of community services

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<sup>5</sup> “The Downtown 100 initiative leads to a significant drop in crime” (2011). Official Website of the City of Minneapolis. 2012 [http://www.ci.minneapolis.mn.us/news/news\\_20110302downtown100initiative](http://www.ci.minneapolis.mn.us/news/news_20110302downtown100initiative)

and law enforcement and elected prosecutors can remove resistance through thoughtful and collaborative outreach efforts addressing the concerns of both.

Some cooperation with these stakeholders is essential to the successful implementation of prosecutorial innovations. It may also require education, often overlooked, as a part of the implementation process. This education should include a set of carefully crafted and articulable program objectives.

### **C. The Role of Internal and External Infrastructure**

**1. Criminal Justice Silos:** “Information silo” is a relatively new term that describes information systems that lack the capacity or will for reciprocal operations with other systems. Silos exist in “inward” organizations where communication is vertical. Critics of silos maintain that managers serve as information gatekeepers, hindering timely coordination and communication among departments, and making seamless interoperability with external parties impractical.<sup>6</sup> In an effort to embrace innovation and the flow of information, elected or appointed prosecutors should re-evaluate the reliance upon information silos as a management strategy within their office.

**2. Tools of the Trade:** A prosecutor leading the development, introduction, and implementation of innovative programs must be equipped with the tools essential for effective management. High functioning offices, those offices where direct results always come first due to working responsibility in an environment of trust, are more receptive to creative and new approaches to crime problems. High functioning offices explore innovations in the context of the recognition and development of the core competencies of prosecutors and staff. This means accurately identifying true crime issues, the needs of the community, and building an office that is equipped and prepared to address those realities. For example, while violent crime may be of concern to all community members, it may not be the most significant crime issue in that community and pouring significant resources into combating violence may be a misuse of resources for some prosecutorial offices.

There are a number of factors which contribute to an efficiently organized institution, including the appropriate dedication of personnel to administration, identifying and finding funding for new initiatives, and developing effective training opportunities. Efficiently organized

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<sup>6</sup> Hoover, J. N. (2009). “Information Silos Stand In The Way Of Interoperability.” Information Week. <http://www.informationweek.com/news/government/enterprise-architecture/217700611>

offices permit prosecutorial leaders to be more flexible, effective, and creative. Deliberate allocation of such tasks facilitates swifter development and implementation of innovative programs.

In terms of human resources, infrastructure, and funding, it is clear that among prosecutors' offices "one size does not fit all." Many of the innovations discussed at the roundtables were taken from large prosecutor offices, and as a consequence, some roundtable participants expressed concern about whether these innovations were transferable to medium-sized and smaller-sized offices. It is, however, a matter of scale. The key principles behind innovation can be adopted at some level, no matter the size of an office. For example, elected prosecutors can organize their offices to address traditional prosecutorial functions while still dedicating strategic planning and research responsibilities to certain individuals even if it is only on a part-time basis.

**3. Budget Constraints:** Many prosecutors are familiar with the shrinking resources available to criminal justice systems. Budgets are tight and becoming tighter as local and state governments are pressed into finding new areas in which to cut expenses. In 2008, the cost to federal, state, and local governments for corrections expenditures was about \$75 billion, the largest amount of which was spent on incarceration - incarceration that often failed to address the underlying issues contributing to criminal behavior - drug addiction and mental illness.<sup>7</sup> This dynamic forces the criminal justice system to bear additional costs associated with addiction treatment and mental health for those offenders while, at the same time, experiencing an increase in recidivism. As a result, criminal justice strategies intended to improve public safety and reduce the costs of crime, such as moving away from traditional reliance upon arrest and incarceration as solutions, are giving way to new innovative policies and practices. These realities continue to push prosecutors to become ever more creative and resourceful in their strategies, which include incorporating the resources offered by nontraditional community organizations and members. Well-organized offices allocate resources appropriately, identify which units are best-suited for particular tasks, and facilitate cooperation among different personnel dedicating strategic planning and research responsibilities to certain individuals.

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<sup>7</sup> Schmitt, J., Warner, K. and Gupta, S. (2010). *The High Budgetary Cost of Incarceration*. Washington, DC: Center for Economic and Policy Research. <http://www.cepr.net/documents/publications/incarceration-2010-06.pdf>.

## **IV: Intelligent Prosecution**

Intelligent prosecution, a term borrowed from the concept of “intelligent policing,”<sup>8</sup> consists of program frameworks that utilize techniques to prevent crime and with prosecutors, achieve successful case dispositions. Several components are necessary for intelligent prosecution to occur successfully and sustainably.

### **A. “Smart-Programs” Frameworks**

“Smart-program” is a term for describing program frameworks built upon innovation, employing common sense, and achieving measurable results. Smart-programs embrace the best of innovation while avoiding the esoteric.

Rockland County (New York) has successfully developed an example of a smart-program. District Attorney Tom Zugibe built a high functioning and resourceful partnership through his “Intelligence-Led Policing through Community Prosecution, Community Policing and Community Partnership” (IL3CP) initiative. The initiative represents a complete paradigm shift involving every employee of the office including support staff and detectives. District Attorney Zugibe’s core philosophy is centered on community prosecution; he explained why this is possible and why it matters: “We are a common force in our jurisdiction...our function is public safety...we are connecting with the community ...we are far more effective than we used to be.” District Attorney Zugibe's community-based partnerships incorporate tactics such as Code 6, a list of the top 20 worst or most troublesome offenders submitted by each police department and “ComPros Sessions,” which are “ComStat” style meetings, held in one of the designated community prosecution areas. ComPros Sessions are attended by the District Attorney, community prosecutors from that area, Rockland County Intelligence Center Directors, and members of the Rockland County Drug Task Force to discuss ongoing investigations, community crime concerns and policy issues.

Rockland County’s community prosecution IL3CP program has assistant district attorneys attending local meetings, neighborhood watch groups, civic associations, and religious organization gatherings targeted toward building relationships with residents and in identifying community concerns. Through work with law enforcement to analyze community concerns and

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<sup>8</sup> For more information on “intelligent policing”, see “Intelligence-Led Policing: The New Intelligence Architecture” (2005). Bureau of Justice Assistance, U.S. Department of Justice. <https://www.ncjrs.gov/pdffiles1/bja/210681.pdf>

crime issues, solutions have been formulated that are improving public safety. District Attorney Zugibe's programs utilize data that are translated into actionable intelligence resulting in the ability to prosecute smarter.

### **B. Two-way Communication about Innovative Programs**

Elected prosecutors, seeking to embrace new roles in combating crime in their communities as well as develop new or creative strategies, benefit tremendously from effective messaging to their community. This includes identifying and communicating the ways in which traditional approaches to crime may be failing and clearly explaining how innovative concepts; such as prosecutorial transparency, community justice principles, geographic prosecution, gun-reduction initiatives, and specialty courts, can effectively reduce and prevent crime, thereby creating safer communities. Effective messaging must be persistent and clear, and must incorporate evidence of success.

Elected and appointed prosecutors can experience greater success in implementing innovative strategies if they are able to identify the particular interests of community stakeholders and explain the anticipated benefits of innovative strategies according to those interests. This may involve first identifying and highlighting the innovative and receptive individuals within a stakeholder's office or organization; and second, focusing on building relationships with those individuals and incorporating them into innovative efforts. Ultimately, both the immediate and long-term success of innovative crime strategies depends upon the effective collaboration with other criminal justice partners and community members.

"We are far more effective than we used to be. We prosecute smarter and prevent recidivism by addressing the root causes of criminal behavior," stated Anne Swern, a First Assistant District Attorney with the Kings County (Brooklyn) District Attorney's Office. "If ideas come from the community to start...it makes them far more participatory...and the implementation of ideas becomes seamless." As examples, Atlanta's Court Watch program and Philadelphia's Community Action Centers also focus on community involvement between the courts and prosecutor's office. By involving the community and making prosecutors more accessible to community members, prosecutor's offices increase witness cooperation, confidence in the prosecutor's office, and build better relationships. Ensuring that the community is both clearly informed of and closely involved with the purposes of innovative programs enables leading prosecutors to experience greater overall success with the community.

Milwaukee's Safe & Sound program is described as "a community-based, collaborative crime prevention strategy, with the stated mission of 'measurably' reducing violent felonies and revitalizing neighborhoods in the City's high crime areas."<sup>9</sup> Safe & Sound significantly expanded its capacity to reduce crime and violence in Milwaukee when it brought on three Community Prosecution Unit (CPU) Coordinators in March of 2010. Since then, the CPU Teams across the city have evolved and enhanced crime prevention strategies. The CPU Coordinators assist in tracking and managing the process of criminal nuisance abatement, while also providing additional intervention and prevention tools of the CPU team on problematic properties in targeted high-crime neighborhoods. Each of the CPU teams has an assigned assistant district attorney who works out of a police district and in collaboration with other partners and stakeholders such as Milwaukee Police Department, Probation and Parole, City Attorney's Office, Department of Neighborhood Services, Sojourner Family Peace Center, Safe & Sound Community Partners Organizers and other community based organizations. Milwaukee County District Attorney John Chisholm, a member of the Safe & Sound Board of Directors, notes that there is a "need to explore comprehensive community approaches to reduce recidivism." In a 2011 speech, "Smarter, Safer, and Sustainable: A Proposal for the Future of Public Safety in Wisconsin," District Attorney Chisholm set forth his goal to resolve complaints with the least amount of harm to the community while building neighborhood capacity to respond to future community crime problems. Implicit in the title of Chisholm's speech is Milwaukee County's forward motion with a focus on program sustainability - emphasizing to the community that Safe & Sound is not another community project that is "here today, gone tomorrow," but a program with a future.

### **C. Technological Resources**

An important facet of an effective office is its technological capability. There is no shortage of criminal justice informational systems, but sound informational systems require technological capabilities that have the ability to interface with other information management systems, especially the systems of other criminal justice agencies. Criminal justice information management systems, if they are to be innovative and efficient, must be integrated with other criminal justice agency systems where system security can be assured.

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<sup>9</sup> For more information on the Milwaukee Safe & Sound program, visit: <http://www.safesound.org/>

One of the most vexing problems facing prosecutorial offices today is the lack of coherent, efficient, and accessible technologies with which to manage and prosecute cases. Prosecutors need tools they can use to reliably and swiftly analyze information in their possession, a key element for evaluating office performance and efficiency of criminal justice initiatives. Without these tools prosecutors are unable to accurately identify strategies that are or are not effective.

Effective and user-friendly technologies enable prosecutors to lead other criminal justice partners in developing cooperative crime-fighting strategies. In many jurisdictions, however, the data and information-sharing systems are outdated, spotty, or cumbersome, and are compounded by confidentiality issues.

However, when law enforcement agencies use different technology systems, the efficient exchange of information is inhibited and contributes to redundant, incomplete, or inaccurate data. For example, when Philadelphia District Attorney Seth Williams first took office he found that his screening & charging unit needed to convert electronically transmitted Philadelphia Police Department crime reports to hard-copy for the purposes of crime charging and were still forced to rely on paper-based systems, while offices at the other end of the electronic spectrum were already paperless with e-filing and e-discovery systems.

Innovative information management systems exist in an electronic universe filled with such things as Service Oriented Architecture, Enterprise Service Bus (ESB), clouds, security tokens, and elliptic curve cryptography. While information management concepts range on a continuum from the common to the esoteric, none of them should be ignored or dismissed. The ability of disparate network operating systems and independent computers to talk to each other with an acceptable degree of security is essential for any criminal justice community information management system. ESB technology used in system design makes possible the interaction and communication between mutually interacting software applications contributing to the functionality and integration between other information management systems. A lack of system integration, alternatively, can be onerous and require perseverance.

A web search for criminal justice agency information management systems reveals 19 national systems, 23 regional systems across state lines, and 218 state and local systems. Among the systems labeled as state and local, 104 were listed as statewide, 26 as regional, 38 as county-wide, and 50 as 'unspecified region.' Notwithstanding the number of these systems, a lack of the

ability of some of them to import and export data between agencies degrades them to in-house word processing, data storage, and e-mail platforms.

Deserving special note among the wide array of prosecutors' information sharing systems is New York County's (Manhattan) Arrest Alert System. This system is managed by the district attorney's Crime Strategies Unit "whose mission is to harness the collective resources of the office in order to develop and implement intelligence-driven prosecution strategies that address crime issues and target priority offenders."<sup>10</sup> Operationally, the Arrest Alert System notifies assistant district attorneys "when a priority defendant has been arrested and can ensure that charging decisions, bail applications, and sentencing recommendations address defendant impact on criminal activity." A value-added component of the Arrest Alert System has senior assistant district attorneys assigned to Manhattan's Crime Strategies Unit "team[ing] with investigators, community affairs liaisons, and intelligence analysts to identify opportunities to reduce and prevent crime by improving the timely and accurate sharing of criminal intelligence." Manhattan also grew the value-added aspect of its system by adding another tier, "the office has developed a sophisticated mapping capability that enables us to visually depict criminal activity based on various identifiers such as gang affiliation, type of crime or possession of weapon, and help identify, for example, previously unnoticed patterns of gang activity."

New York County shares recognition with Seattle for having an innovative and efficient information management system. With SeaJIS (Seattle Justice Information System), Seattle moved forward to "facilitate interoperation and information integration among the City's Justice and Public Safety community as well as with their municipal, county, state, and federal law partners."<sup>11</sup> Of particular importance regarding Seattle's system is its emphasis on information integration and interoperability based upon a Service Oriented Technology and an Enterprise Service Bus.

## **V: Innovative Practices**

### **A. The Calculus of Success**

One of the more difficult challenges prosecutors encounter in attempting to develop and implement innovations is program performance measurements. Traditional prosecutorial

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<sup>10</sup> For more information on New York County's Intelligence-Driven Prosecution/Crime Strategies Unit, visit: <http://manhattanda.org/intelligence-driven-prosecution-crime-strategies-unit>

<sup>11</sup> "How the City of Seattle Makes Progress." (2011). Progress Software Corporation. [http://www.progress.com/docs/casestudy/city\\_of\\_seattle.pdf](http://www.progress.com/docs/casestudy/city_of_seattle.pdf)

performance measures have consisted of conviction and crime rate changes and although these continue to be relevant, they do not capture all the benefits that new approaches to crime issues may produce. For example, community prosecution may encompass traditional prosecutorial objectives but engage in nontraditional means of achieving them. These are intangible effects, such as increased community support and communication or increased positive contacts with the community, that are quite difficult to measure but essential to reducing crime rates. Other programs exist which also have the effect of reducing crime, but are difficult to assess in quantitative terms.

In order to empirically prove the efficacy of innovations and thereby secure their sustained support, prosecutors must identify specific objectives at the start of implementation and develop appropriate measures that can be employed throughout the process. These measures can calculate the efficacy of the program and identify areas of improvement as well as provide the basis for convincing local decision-makers to sustain programs. Cost-effectiveness is an especially persuasive element to program development, both to community members and to local officials.

Innovative programs, such as Philadelphia's Small Amount of Marijuana (SAM) diversion program, may receive greater initial buy-in if their savings to the system can be clearly demonstrated. According to Philadelphia District Attorney Seth Williams, "approximately 4,160 individuals have participated in the SAM program during its first year, resulting in an estimated \$2 million in saved criminal justice costs to Philadelphia."<sup>12</sup> Establishing measured cost-savings for the SAM program has helped District Attorney Williams overcome some initial resistance from the community and law enforcement.

Finally, prosecutors will experience greater receptivity among other stakeholders and community members if outcomes can be described in terms relevant to the interests particular to each audience. In Kings County (Brooklyn), Assistant District Attorney Anne Swern found that local health officials were far more receptive to new initiatives where such programs were described in terms of their effects upon issues of concern to the health care professionals, such as reduced hospitalizations or improved law enforcement responses to the safety concerns of the medical staff. For example in 1998 the Kings County (Brooklyn) District Attorney's Office implemented Treatment Alternatives for Dually Diagnosed Defendants (TADD), an alternative

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<sup>12</sup> For more information on the SAM program and other initiatives in Philadelphia, visit: <http://www.phila.gov/districtattorney/>

to incarceration program. The program originally targeted mentally ill offenders who also had a co-occurring substance abuse disorder and later expanded to include those suffering solely from a serious mental illness. The TADD program succeeded in building partnerships with health care providers by addressing their concerns and in 2002, the United States Department of Health and Human Services awarded the Kings County (Brooklyn) District Attorney's Office a grant to expand TADD to serve more defendants, create a replicable program, and research and analyze the "diversion process."<sup>13</sup>

### **B. Improving Our Public Image**

There was an overwhelming amount of interest among roundtable participants in the public image of the prosecutor, with the consistent echoing of the theme that "[Prosecutors] need our own identity." The need for prosecutors to develop their own identity is generally grounded in perceptions similar to that of one senior prosecutor, "DAs are not seen as riding the white horse in the public eye." Another prosecutor expressed concern that, "the police are viewed as the face of public safety, and we are just those people in suits who do something after the police make arrests," but thought that, "maybe through innovative strategies we have an opportunity to promote our work ...in that we are leading the charge."

Other strategies for creating a credible media identity for prosecutors include developing surrogate spokespersons. "Community members, clergy, can give you space, you can have literature there and they speak out about you and that gives you credible spokespeople." Another strategy explored "using pre-existing events, such as homeowner association meetings, church functions or monthly block watch gatherings, and timing your message to that."

The quality of the message also concerned roundtable participants. New York County's Chauncey Parker provided an example. Referring to institutional prosecutorial messaging he asked: "Why, of all things the media could cover or read, why something from the prosecutor's office? Because it has a clean message and it's relevant, simple, interesting and understandable." Furthermore, "crystallize it, the goal, make it simple and send it out. The office message can't be 50 different things... it has to be synchronized with what your prosecutors are trying to accomplish."

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<sup>13</sup> For more information and statistics on the TADD program, visit: <http://www.brooklynnda.org/dtap/TADD.htm>

### C. Public Policy Issues

It is undisputed that the criminal justice system operates in a dynamic and rapidly changing environment, subject to sudden shifts in politics and corresponding policies. Such swift changes pose varying degrees of risk to the success of programs as outcomes are often untested and unpredictable.

As an example, after years of prison building and lengthy sentences, the policy tide has changed with states now implementing new policies to reduce the number of prisoners by releasing prison inmates early. However, this policy encompasses significant risk. These released individuals, many with extensive histories of drug addiction and un- or under employment, may destabilize the communities to which they return and heighten the risk of increased recidivism. The unpredictability of the outcomes of the early release of prison inmates into the community is of particular concern to California, given the recent US Supreme Court decision in *Brown v. Plata* (2011)<sup>14</sup>, in which the Supreme Court affirmed a lower court's order requiring the state of California to release 138,000 state prison inmates within two years to relieve the state's prison overcrowding. Historically, this hot button issue is no less poignant for today's prosecutors than it was in the early 1990s when federal courts enforced a cap on the number of inmates in the Philadelphia prison system and thousands of inmates were set free. Justice Alito wrote in his dissent in *Plata* that, "[A]lthough efforts were made to release only those prisoners who were least likely to commit violent crimes, that attempt was spectacularly unsuccessful. During an 18-month period, the Philadelphia police rearrested thousands of these prisoners for committing 9,732 new crimes."<sup>15</sup> In view of the precedent established by *Plata* and the growing interest in the release of non-violent offenders from prison, finding an answer to the question, "How do prosecutors protect our citizens from crimes resulting from the early release of inmates into the community?" takes on new urgency.

Criminal justice initiatives that are developed collaboratively in response to such policy shifts help jurisdictions "spread the risk" of failure or unpredictable outcomes among all partners. California has adopted a multi-tiered approach to dealing with the issue of early prisoner release, and it provides an example of collaboration among courts, the executive branch, the legislature, and academia to address policy and safety concerns. This approach embraces a variety of strategies for dealing with high risk situations; including the following: -

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<sup>14</sup> *Brown v. Plata*, 563 U.S. \_\_; 131 S. Ct. 1910 (2011).

<sup>15</sup> *Brown v. Plata*, 563 U.S. \_\_, \_\_; 131 S. Ct. 1910, 1966 (2011).

**Legislative Approach:** With local communities experiencing an unexpected deluge of inmates who would otherwise have served their sentences in prison, the state of California took a legislative approach to the problem by enacting a Public Safety Realignment Act mandating that “individuals sentenced to non-serious, non-violent or non-sex offenses will serve their sentences in county jails instead of state prison.” California funded its Realignment Act with prospective legislation that takes a portion of vehicle license fees to establish a local reserve fund so counties would receive revenues and appropriate funding for the realignment along with a dedicated portion of states sales tax revenue to counties for local public safety programs.

**Empirical Study Approach:** In an approach recognized as highly innovative, California Attorney General Kamala Harris asked noted criminologist Joan Petersilia, Professor of Law at Stanford University and faculty co-director of the Stanford Criminal Justice Center, to work with her in studying the following: 1) the state's response to the Realignment Act; 2) California's response to *Brown v. Plata*; and 3) the impact on recidivism as the responsibility for certain lower-level offenders shifts from state to county authority. Petersilia and her students, associated with Stanford University's “Advanced Seminar on Criminal Law & Public Policy: A Research Practicum,” are focusing on Santa Clara County, the center of Silicon Valley, as a testing ground for criminal sentencing change. Petersilia is quoted in *Studying Prison Realignment in Real Time* as saying, “This is the most dramatic change in criminal sentencing in California since the passage of Determinate Sentencing in 1977, and no other state has tried it.” Speculating that California's legislation offering counties flexibility in sentencing, early release of low-level offenders, and alternative sanctions could be a game-changer, Petersilia's students will explore a variety of questions including whether offenders really access more local services with decentralization of supervision and legal barriers to reentry into society.<sup>16</sup>

**Program Approach:** Kings County (Brooklyn), while not a part of the California dilemma, may well be ahead of others when it comes to innovative programs for reintegrating prison inmates into the community. In order to meet the challenge of the re-integration of released prisoners into the community, Kings County (Brooklyn) District Attorney Charles ‘Joe’ Hynes established a program called ComALERT that “assists formerly incarcerated individuals to make a successful transition from prison to home by providing drug treatment and counseling, mental health treatment and counseling, GED, and transitional housing and employment.” Hynes

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<sup>16</sup> Driscoll, S. (2011). “Studying Prison Realignment in Real Time” Stanford Lawyer. Issue 85. <http://stanfordlawyer.law.stanford.edu/2011/10/studying-prison-realignment-in-real-time/>

emphasizes that, “We can’t afford to let repeat offenders gobble up our scarce criminal justice funds. To break the vicious cycle of recidivism, we have to deal with the great stumbling blocks to successful re-entry - drug addiction and unemployment. By implementing a collaborative re-entry model such as ComALERT, a district attorney’s office can reduce recidivism, improve public safety, and enhance the overall social and fiscal health of communities.”

ComALERT works through a collaborative network with community and faith-based organizations. District Attorney Hynes’ ComALERT program requires inmates to report to the Division of Parole within 48 hours of their release from prison. A pre-release assessment of the need for treatment is followed with a referral for a psychosocial assessment in order to form the basis for future re-entry planning and treatment which, in addition to substance abuse treatment and counseling, includes a referral to “Ready, Willing, & Able,” a transitional employment program. Re-entry planning and treatment takes place over a three month program enrollment period, however, most participants typically elect to stay in the ComALERT program for one to two years.

Not only is ComALERT innovative and collaborative, but like Minneapolis’ Downtown 100, it meets its goals. The programs results are statistically significant and without negative unintended consequences. In “Report on the Evaluation of the ComALERT Prisoner Reentry Program,” Bruce Western, a Harvard University sociologist, concluded that, “ComALERT clients, especially graduates, show substantially lower rates of recidivism, higher rates of employment, and higher earnings compared to similar Brooklyn parolees. Drug and alcohol use results are more modest, while ComALERT clients show greater likelihood of experiencing more stable family lives.” Professor Western concluded that, “Overall, the results of our evaluation of ComALERT are extremely promising.”<sup>17</sup>

#### **D. Yard Sticks & Benchmarks**

Prosecutors face challenges unique to their location, personality, and tradition. Elected prosecutors must meet the challenges between offices, criminal justice stakeholders, and their communities with an awareness of the hindrances to change within the criminal justice system. What has always worked in the past, may not work at all. Roundtable participants noted that today’s culture and society present prosecutors with challenges to combating crime and

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<sup>17</sup> Jacobs, E. & Western, B. (2007). “Report on the Evaluation of the ComALERT Prisoner Reentry Program” [http://www.wjh.harvard.edu/soc/faculty/western/pdfs/report\\_1009071.pdf](http://www.wjh.harvard.edu/soc/faculty/western/pdfs/report_1009071.pdf)

increasing public safety that are different and more complex than they were twenty years ago. Limited resources, technological restrictions, and criminal justice silos are some of today's challenges, while yesterday's lack of awareness to innovative solutions, inflexible organizational structures, internal and external resistance, and the lack of reliable performance measures continue to obstruct the adoption of prosecutorial innovations.

Providing evidence that they will be or are successful is an obstacle to implementing innovative programs. Performance measures for many criminal justice innovations have yet to be developed, in part, because the ultimate goals of those innovations differ from traditional goals. For example, conventional measures of prosecutorial success are conviction and incarceration rates. Innovative programs that seek to prevent crime, however, are difficult to prove effective according to such measures. Measuring the outcomes of innovative programs may be too cumbersome or expensive for many jurisdictions. However, prosecutorial leaders can begin by drawing attention to correlations between innovative programs and positive outcomes that affect communities. Prosecutors with limited resources can also draw upon the cooperation of universities and experts within their communities in developing methods of measurement. There is no disputing however that identifying the outcomes of new programs is essential to improving them and sustaining their support. Leading prosecutors agree that successful implementation of innovations requires the preliminary recognition of desired outcomes and establishing means of measuring performance.

In order to prove the efficacy of innovations and thereby secure their sustained support, prosecutors must identify specific objectives at the start of implementation and develop appropriate evaluative measures that can be employed throughout the process. These measures will prove efficacy, identify areas of improvement, and provide the basis for convincing local decision-makers to sustain programs.

## **VI: Conclusion**

High performing prosecutor's offices in the 21<sup>st</sup> century must respond to new challenges, instituting performance measures, and, using evidence-based practices as well as traditional challenges, including efficient case processing and decreased case attrition. Prosecutors also need tools with which they can reliably and swiftly analyze the information in their possession, a key element to assessing office performance and the efficacy of criminal justice initiatives.

The dialogue between prosecutors as well as between prosecutors and their criminal justice partners - whether with roundtables, large or small conferences, technical assistance visits, or distance programs such as webinars - must continue. The velocity and quantity of change is overwhelming and growing at an exponential rate.

Finally, it is clear based upon roundtable discussions that prosecutors must find and foster communities of interest if the public is to continue to support a system of criminal law premised upon equality and justice free from burdens of cynicism and doubt. For further information or for professional and technical assistance with innovative program implementation or replication please contact the Association of Prosecuting Attorneys.

**POLICY GUIDE No. 1**  
**LEADERSHIP & MANAGEMENT TEMPLATE**

- ✓ Remember that innovative leaders who want change to flourish at their office must both motivate awareness and facilitate action.
- ✓ Identify the qualities of leadership among your staff
- ✓ Use a peer performance instrument to assess staff strengths and weaknesses
- ✓ Determine who your organization's change-makers are
- ✓ Bring office leaders onboard so that they can influence others on your staff
- ✓ Strengthen support for your ideas by beginning with a bottom-up approach
- ✓ Integrate traditional functions into the organization's new program components
- ✓ Rotate assignments
- ✓ Involve other criminal justice and community partners when implementing new programs
- ✓ Involve your partners early in the planning stage, before introducing new crime prevention programs
- ✓ Continually evaluate organizational and project performance
- ✓ As a confident leader, listen to those who question your efforts so that you can explore unintended consequences or other viewpoints

**POLICY GUIDE No. 2**  
**PROGRAM DEVELOPMENT**

- ✓ Establish a relationship of trust with criminal justice and community partners
- ✓ Avoid leveraging relationships with law enforcement agencies in order to introduce a new crime prevention strategy
- ✓ Maintain a dedicated crime strategies or community prosecution unit
- ✓ Consider vertical or zone organizational structures
- ✓ Base specialty units and programs upon crime numbers and percentages
- ✓ Utilize collaboration and cooperation to achieve buy-in among criminal justice and community partners
- ✓ Work with nontraditional partners; private businesses, faith-based organizations, community-based organizations and non-governmental organizations
- ✓ With the community's input determine the most significant public safety issues
- ✓ Use focus groups, surveys, community meetings, and meetings with individual stakeholders in building program support
- ✓ Learn and be ready to respond to ever-changing developments in the community

**POLICY GUIDE No. 3**  
**INFORMATION MANAGEMENT**

- ✓ Avoid information silos
- ✓ Do not allow managers to unnecessarily stovepipe information
- ✓ Translate available data into actionable plans
- ✓ Design information management systems to interface with other criminal justice systems
- ✓ Enter into partnerships for information sharing that support strategic innovative action
- ✓ Maintain information management system security in order to ensure integrity of information sharing relations with other criminal justice agencies
- ✓ Seek to develop the value added aspects of your information management system in order to reduce its cost by increasing its overall utility
- ✓ Clearly define what information management system deliverables are needed to increase system efficiency, productivity, and data sharing capabilities
- ✓ Use your information management system to identify patterns of activity; gangs, youth crime, hot spots, etc., then design innovative response programs

## **POLICY GUIDE No. 4**

### **PROGRAM EVALUATION & MEASUREMENT**

- ✓ Traditional measures, e.g., outcome measures such as a change in crime rates are more easily understood and accepted than are program process values
- ✓ Predetermined specific program goals and objectives (benchmarks) are essential for program evaluation
- ✓ Cost effectiveness/cost benefit analyses are important components of program measurement
- ✓ Demonstrations of cost savings promote buy-in by funding officials
- ✓ Measurements must be scientifically sound and statistically significant
- ✓ Measurements must be valid, that is, measure the program variables they are supposed to measure, and reliable, measuring what they are supposed to measure consistently
- ✓ Avoid the possibility of random effects or other extraneous factors confounding the measurement of a program's efficacy by determining whether there are correlations between the program's components and outcomes in the community

**POLICY GUIDE No. 5**  
**PUBLIC POLICY INITIATIVES**

- ✓ Be a force in your jurisdiction by connecting to the community
- ✓ Work to create your own identity and independence as a prosecutor
- ✓ Time policy messages to pre-existing events
- ✓ Synchronize policy messages with what you are trying to accomplish
- ✓ Collaboration can help decentralize the risk of criminal justice initiatives and contribute to their success
- ✓ Deal with initiatives that have a criminogenic nexus, i.e., drugs and unemployment while avoiding program that have the potential to destabilize neighborhoods
- ✓ Avoid programs with the potential for unintended negative consequences
- ✓ Remember that policies based upon empirical evidence and that utilize recognized best practices have the highest probability of success
- ✓ What has always worked in the past may not work at all with today's rapidly changing social, community, and public safety environments
- ✓ Quick decision and decisiveness is not always the answer when confronted with challenging issues

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## APPENDIX A: LIST OF CONTRIBUTORS

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