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EFFECTIVE ASSISTANCE: RECONCEIVING THE ROLE OF THE CHIEF PUBLIC DEFENDER

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In recent years, scholars have raised critical questions about the role of public defenders.[1] Some have critiqued the ways that defender offices function,[2] and even openly questioned their continuing need.[3] Still others have examined the visions of defender offices, suggesting that more coherence in their missions might ultimately serve their clients better in the future.[4] But for all their variety, most have presumed that the compelling issues occur in the direct representation of clients. In limiting their sphere of analysis, though, they have ignored fundamental questions about an individual who centrally affects the offices' external policies and internal operations: the chief defender.

This is not at all surprising. In the last two decades, chief defenders have been locked into a narrow managerial role. Instead of actively par-

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1. *See, e.g.*, Barbara A. Babcock, *Defending the Guilty*, 32 CLEV. ST. L. REV. 175 (1983); Randy Bellows, *Notes of a Public Defender, in* PHILLIP B. HEYMANN & LANCE LIEBMAN, THE SOCIAL RESPONSIBILITIES OF LAWYERS: CASE STUDIES (1988); JAMES S. KUNEN, "HOW CAN YOU DEFEND THOSE PEOPLE?": THE MAKING OF A CRIMINAL LAWYER (1983); Michael McConville & Chester L. Mirsky, *Criminal Defense of the Poor in New York City*, 15 N.Y.U. REV. L. & SOC. CHANGE 581 (1986-87); LISA J. MCINTYRE, THE PUBLIC DEFENDER: THE PRACTICE OF LAW IN THE SHADOWS OF REPUTE (1987); Charles J. Ogletree, Jr., *Beyond Justifications: Seeking Motivations to Sustain Public Defenders*, 106 HARV. L. REV. 1239 (1993).

2. *See, e.g.*, Kenneth B. Nunn, *The Trial As Text: Allegory, Myth and Symbol in the Adversarial Criminal Process — A Critique of the Role of the Public Defender and a Proposal for Reform*, 32 AM. CRIM. L. REV. 743 (1995); Charles J. Ogletree, Jr. & Randy A. Hertz, *The Ethical Dilemmas of Public Defenders in Impact Litigation*, 14 N.Y.U. REV. L. & SOC. CHANGE (1986).

3. *See, e.g.*, Stephen J. Schulhofer & David D. Friedman, *Rethinking Indigent Defense: Promoting Effective Representation Through Consumer Sovereignty and Freedom of Choice for all Criminal Defendants*, 31 AM. CRIM. L. REV (1993).

4. *See, e.g.*, John B. Mitchell, *Redefining the Sixth Amendment*, 67 S. CAL. L. REV. 1215 (1994); Charles J. Ogletree, Jr., *An Essay on the New Public Defender for the 21st Century*, 58 WTR LAW & CONTEMP. PROBS. (1995); Kim Taylor-Thompson, *Individual Actor v. Institutional Player: Alternating Visions of the Public Defender*, 84 Georgetown L.J. 2419 (1996)(hereinafter "*Alternating Visions*").

ticipating in the development of criminal justice policy, chief defenders essentially have disengaged themselves from the public dialogue about crime. They have retreated into a holding pattern, absorbing rather than openly challenging reductions in their funding. Wedged between competing obligations to clients and funding authorities, chief defenders have narrowly defined their function as controlling the office's operations to stay within budget guidelines. In a profound sense, chief defenders seem to have lost their bearings.

To put the point differently, chief defenders need to break out of these bounded conceptions of their roles. For too long, they have isolated themselves and their offices from the center of activity on issues of crime. Sweeping changes in the welfare system and cuts in services to poor people throughout the country have weakened the social safety net for economically subordinated communities. Predictably, as the legal problems of poor people continue to mount, they will increasingly turn to public defender offices for help. Chief defenders, therefore, can no longer be content to preserve the status quo. They must re-imagine their roles if they intend to address the growing—and ever-changing—needs of their clients. By recognizing the power that accompanies collaboration and cooperation, they may be able at once to advance their clients' interests and shape policy in ways rarely tried by defender offices.

I. ENHANCING THE CHIEF DEFENDER'S EFFICACY WITHIN THE LEGISLATIVE PROCESS

A. *The Context in Which the Chief Defender Functions: The Fiscal Crisis*

In the years immediately following *Gideon v. Wainwright*,[5] public defender offices enjoyed a largely hospitable funding environment, perhaps for the only time in their history.[6] An infusion of capital from local governments enabled public defender offices to open and expand in the early 1960s.[7] Although the criminal justice system demanded that public defender offices handle a volume of cases that often outpaced their resources, these offices had access to grants and discretionary funds to supplement their budgets.[8] Even then, the general public and politicians questioned the legitimacy of the defender's role and, at times, lacked

5. Gideon v. Wainwright, 372 U.S. 335 (1963).

6. *See generally* Kim Taylor-Thompson, *Alternating Visions*, *supra* note 4.

7. *See* NAT'L LEGAL AID & DEFENDER ASS'N, THE OTHER FACE OF JUSTICE 13 (1973); SHELDON KRANTZ ET AL., RIGHT TO COUNSEL IN CRIMINAL CASES: THE MANDATE OF *ARGERSINGER V. HAMLIN* 202 (1976).

8. *See generally,* KRANTZ ET AL., *supra* note 7.

sympathy for the offices' mission to defend guilty and unpopular clients.[9] But the Supreme Court's mandate to provide counsel seemed to temper political discontent over the function of defense counsel. So the government could direct resources to basic defense needs, at least at that moment.

The moment passed. Indeed, the financial plight of defender offices grew worse over time. As the political and economic climate of the country shifted in the 1980s and 1990s and the country witnessed rising crime rates, the electorate openly expressed anger about the government's apparent inability to control crime effectively. In the midst of this heightened tension over crime, budgets for defender offices came under fire. Although the public had supported efforts to protect the rights of the accused in the 1960s and 1970s, public outcry over the neglect of the interests of crime victims inspired legislative initiatives affecting the criminal justice system.[10] Legislators now not only had license but also visible and vocal encouragement to steer resources toward law enforcement and away from indigent defense. Coinciding with this political shift, the courts began to subordinate the interests of the individual accused of a crime to the systemic goal of crime control.[11]

This change in perspective translated politically into a rise in resources available to the enforcement side of the criminal justice equation.[12] Expansions in budgets for law enforcement agencies, prosecutors' offices and corrections on the state and local level accompanied an increased availability of federal grants for both state and federal prosecutors to fight crime.[13] As a result, prosecutors' offices enjoyed improved funding in the 1980s and early 1990s with greater access to supplemental funds. Simultaneously, state and local governments faced shortfalls in revenue, caps on property taxes and substantial budget deficits. The

9. *See generally, id.*

10. *See, e.g.,* Comprehensive Crime Control Act of 1984, Pub.L.No. 98-473, 98 Stat. 1976 (codified as amended in scattered sections of 18 U.S.C.)(permitting pretrial detention, mandatory minimum sentencing and fee forfeitures).

11. *See, e.g.,* New York v. Quarles, 476 U.S. 649, 651 (1984)(adopting "public safety" exception to Miranda v. Arizona); United States v. Leon, 468 U.S. 897, 913 (1984)(establishing good-faith exception to Fourth Amendment exclusionary rule).

12. In Fiscal Year 1990, for example, while seventy-four billion dollars were spent by federal, state and local governments on the justice system, 42.8% went to police, 33.6% to corrections, 12.5% to the courts, 7.4% to prosecution. Public defense pulled up the rear, receiving 2.3% of the overall justice budget. *See* RICHARD KLEIN & ROBERT SPANGENGERG, THE INDIGENT DEFENSE CRISIS 1 (1993)(prepared for the American Bar Association Section of Criminal Justice Ad Hoc Committee on Indigent Defense Crisis).

13. *See* Richard Klein, *The Eleventh Commandment: Thou Shalt Not Be Compelled to Render the Ineffective Assistance of Counsel,* 68 IND. L.J. 363 (1993).

financial decline forced state and local governments to make difficult choices about funding priorities.[14] While politicians may have been somewhat apprehensive about the electorate's reaction to budget cuts in services such as schools and hospitals, there were no such concerns when it came to attacking the piece of the fiscal pie reserved for defenders.[15] Public defenders represented a constituency comprised of the unpopular and often dangerous members of our society who could neither vote[16] nor wield power in traditional ways. Without either an effective lobby or a strong independent political base, defender offices became prime targets for the government's fiscal axe.

Budgets shrank, but caseloads did not. Because of an escalation in arrests and prosecutions of defendants, criminal cases began to flood the court system. As fees, billed by members of the bar who were appointed to cases, began to skyrocket, state and local governments as well as courts turned increasingly toward public defender offices to handle the additional cases within a prescribed and severely limited budget. Denied the funding necessary to hire enough lawyers and often subjected to hiring freezes for the replacement of lawyers who left the office, public defender offices simply operated on overload.[17] As might be expected, reactions to this crisis among defender offices varied. Some chief defenders were more politicized. As they began to rethink their role and tactics in this unsympathetic environment, some chief defenders tentatively formed coalitions to fight for increased budgets.[18] Other chief defenders could not effectively resist the assignment of more cases than their offices could handle. Their offices found themselves drowning in cases with scarce funds available to assist them in handling the basic aspects of representation.[19]

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14. *See, e.g.*, Richard McGahey, *Response*, 14 N.Y.U. REV. L. & SOC. CHANGE 259, 262 (1986) (noting that since budget pressures in the 1980s forced the federal government to reduce nutritional aid to mothers and newborn infants, increases to indigent defense seemed unlikely).

15. *See generally,* KLEIN & SPANGENBERG, *supra* note 12.

16. All states except four deprive convicted felons of the right to vote. In 13 states, most if not all felony convictions result in the loss of voting privileges for life. *See, e.g.*, Alice E. Harvey, *Ex-Felon Disenfranchisement and Its Influence on the Black Vote: The Need for a Second Look*, 142 U. PA. L. REV. 1145 (1994).

17. *See, e.g.*, Schulhofer & Friedman, *supra* note 3, at 85 (discussing the reasons that the great majority of public defender systems are understaffed and underfunded); Mark Hansen, *P.D. Funding Struck Down*, A.B.A.J., May 1992 at 18 (noting that caseload in Orleans Indigent defense program prevented lawyers from providing effective assistance of counsel).

18. *See* KLEIN & SPANGENBERG, *supra* note 12, at 32 (citing Missouri and Ohio as states whose defender offices worked with broad-based task forces to obtain improvements for indigent defense).

19. *See, e.g.*, The Spangenberg Group, Overview of the Fulton County, Georgia Indigent Defense System (1990)(on file with JOURNAL OF THE INSTITUTE FOR THE STUDY OF LEGAL

B. *Reconceptualizing the Defender's Role in the Legislative Process*

Chief defenders have, perhaps understandably, become preoccupied with funding. To the virtual exclusion of all other tasks, they have devoted their energies and creative talents to securing adequate budgets for their offices. Yet in doing so, chief defenders have essentially misread what it takes to maneuver successfully in the political environment. Legislative funding decisions inherently and inevitably involve trade-offs in which politicians make choices between relative priorities, rival constituencies and vocal political groups. Predictably, whether chief defenders seek financing from the city, county or state government, they must compete with other more popular—or at least less controversial—entities for a piece of the limited fiscal pie.[20] In a political arena that thrives on exchange relationships, chief defenders have chosen not to barter. Rather than cultivating common bonds that might serve their offices and their clients, they have drawn seemingly impenetrable boundaries between themselves, other criminal justice entities, and the communities in which they operate. Perhaps they have intended to position themselves above the political fray. Instead, they have actually taken themselves out of the game.

A variety of factors have converged to produce defenders' budget difficulties, not all of them within chief defenders' control. Still, focusing on those which they can shape, twin variables emerge. First, chief defenders have relied on important, but largely unpersuasive, reasons for increasing their funding. Arguing lofty constitutional principles has rarely moved politicians who base their careers on popular polls. This leads to the second problem: chief defenders have chosen to engage the political system as lone warriors. Although they have certainly appreciated the need to leverage legislators to address their needs, they have, nonetheless, failed to align themselves with allies who might help them exert such pressure.

Let us turn first to how chief defenders have framed the problem of funding. A standard argument has involved raising equal protection claims in an effort to appeal to legislators' senses of equality. Chief

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ETHICS)(finding the defender office near collapse as a result of case overload and grossly inadequate funding); *see also* Peter Appelbome, *Study Faults Atlanta's System of Defending Poor*, N.Y. TIMES, Nov. 30, 1990, at B5.

20. *See, e.g.*, John B. Mitchell, *Redefining the Sixth Amendment*, *supra* note 4, at 1215 (observing that since the public does not even allocate money to its deserving poor, it is "unlikely to rally behind the protection of those it perceives are preying upon it"); Suzanne E. Mounts Mitchell & Richard J. Wilson, *Systems for Providing Indigent Defense: An Introduction*, 14 N.Y.U. REV. L. & SOC. CHANGE 193, 200 (1986) (noting that "providing free lawyers to accused criminals is one of the government's least popular functions").

defenders have pointed out that the wealthy defendant, unlike his indigent counterpart, can purchase comprehensive defense representation to level the playing field between the state and the defense. Even before her counsel utters her first words in the courtroom, the wealthy client tends to have an edge that the indigent client does not. But in a political environment, these arguments have failed. This is not because they lack merit. The disparity in representation afforded the wealthy and the indigent deserves attention. Yet, the American public has consistently demonstrated its willingness to tolerate vast disparities between the rich and the poor. A certain perverse logic permits us to accept and condone the notion that, in a capitalist society, the rich should enjoy certain advantages. By urging that our legal system attempt to equalize services between rich and poor, perhaps chief defenders have ignored the extent to which the suggestion smacks of socialism or simply seems inconsistent with the "American Dream."

Chief defenders also have argued the moral imperative of funding public defender offices in order to help the poor. But again this appeal misses the mark. It is not at all obvious that the way to help the poor is to pay more for lawyers. More importantly, in a world in which the public subjects every expenditure to tremendous scrutiny, legislators may prefer to direct spending for the poor in ways that will not compromise the appearance of being tough on crime. They may opt to assist the "deserving poor" rather than those who seem less worthy—indigent criminals. In the end, chief defenders' arguments rarely gather much support and more often fail to have their desired impact.

The second variable raises the greatest concern. Chief defenders have consistently chosen to operate independently in the political realm. But maneuvering without either a constituency or allies is risky at best. As most chief defenders quickly realize, they cannot influence political decisions in standard ways. Only in a few jurisdictions will chief public defenders represent a district as elected officials.[21] More significantly, the communities for which chief defenders speak are indigent and often disenfranchised by law. Without the power of wealth or even the vote to pose a political threat, public defenders have little hope of moving politicians in new directions. Moreover, given the ways in which chief defenders have divorced themselves from the neighborhoods in which

21. Chief public defenders in Florida, San Francisco, California, and in parts of Nebraska and Tennessee are elected. *See* ROBERT L. SPANGENBERG & PATRICIA A. SMITH, AN INTRODUCTION TO INDIGENT DEFENSE SYSTEMS 9 (American Bar Association, 1986); Stephen J. Schulhofer & David D. Friedman, *supra* note 3, at 84 (1993)(discussing the compromises that elected defenders have made to assure victory).

they operate, supporters in those communities may not be easily located. If chief defenders chose to forge coalitions with other entities in the criminal justice system, they might build a constituency that would offer considerable leverage. Chief defenders might then be better able to press political leaders to respond to their interests rather than being in the unenviable position of relying on politicians' largesse.

Of course, collaboration with other actors in the system is far from easy. To do this successfully, chief defenders would need to curb their institutional instincts to observe and defer to adversarial boundaries. Far too often, the antagonistic relations that serve clients at the trial level inform chief defenders' management decisions as well. Out of habit, chief defenders position themselves on the margins and often fail to nurture or even recognize joint interests with other entities in the justice system. But for all their familiarity, these adversarial impulses may, in the end, prove to be a trap. Unless chief defenders can recognize that they operate in a marketplace that tolerates and builds on "exchange relationships,"[22] they will overlook opportunities to find new ways to work more effectively on behalf of their clients.

One possible outcome of such a collaboration might be that chief defenders would perceive new strategies for ensuring sufficient funding for their offices. They might recognize that collaboration with other criminal justice players would afford opportunities for persuasive arguments that the criminal justice system operates in tandem: each arm of the system relies on the other.[23] For example, appropriations that permit the hiring of more assistant district attorneys necessarily result in a greater number of cases prosecuted. If funding authorities fail to provide the defense with proportionate support to enable them to increase their staffing, the existing number of defenders must absorb the additional caseload. The net impact of such one-sided funding is overload in the defender office. This ultimately slows the progress of the system as a whole, deprives the accused of adequate protections of her individual rights,[24] and may lead to an increased number of appeals based on inef-

22. *See* George F. Cole, *The Decision to Prosecute*, 4 LAW & SOC'Y REV. 331, 332 (1970)(describing the legal system as a market with interorganizational exchange relationships); *cf.* John B. Mitchell, *Redefining the Sixth Amendment*, *supra* note 4, at 1235 (questioning whether the legal system operates with sufficient rationality to be considered a marketplace).

23. SPECIAL COMM. ON CRIMINAL JUSTICE IN A FREE SOCIETY, ABA, CRIMINAL JUSTICE IN CRISIS 39 (1988).

24. *See, e.g.*, *Low-Bid Criminal Defense Contracting: Justice in Retreat*, THE CHAMPION, November 1997, at 10 (discussing national crisis in public defender case overload as routinely causing violations of ethical obligations to clients); Patrick Noaker, *It Doesn't Come with the Territory: Public Defenders Must Decline to Violate Legal & Ethical Standards in the Face of*

fective assistance of counsel.[25] The interdependence of the prosecutor's office and the public defender's office seems obvious, yet chief defenders have typically approached the funding process as if the two players were wholly separate and distinct.

C. *Implementing the New Approach*

1. Fine-Tuning the Legislative Agenda

Let's assume that chief defenders choose to approach their funding dilemma by refocusing legislators' attention on the budget for the prosecutor's office. In rationing criminal justice appropriations, political leaders predictably pit defender offices against other institutions in which they can readily locate their own electoral interests. The police department will protect its constituents against criminals. The courts will secure justice for victims. Typically, in a contest with their institutional counterparts chief defenders recognize that the political winds will tend to favor prosecutors. Legislators see them as using the tools of the legal system to control crime. While each of these entities presents political leaders with opportunities to advance crime fighting policies, the prevailing narrative casts public defenders as thwarting that agenda. But, instead of using the prosecutor's office as a trade-off, suppose chief defenders enabled legislators to see public defenders and prosecutors as mutually dependent parts of an ecosystem.

What then? The chief defender might, for example, propose connecting both offices' budgets by statute. A link could be developed such that the public defender office would receive a fixed percentage of the prosecutors' budget. If the goal of chief defenders is to reduce the likelihood that politicians will target defender office budgets for cuts, tying them to the prosecutors' office might shield them from attack. Moreover, since prosecutors' offices enjoy better funding than defenders' offices,[26] connecting the budgets might produce increased funding for defenders' offices—particularly if the statute mandated automatic adjustments to the defenders' budgets upon any increase to the prosecutors' budgets. Interestingly, this linkage might force policy makers to think about the sys-

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Rising Caseloads, 10 SUM CRIM. JUST. 14, 16 (1995) (noting that defendants' rights are violated due to case overload).

25. *See, e.g.*, Rodger Citron, Note, *(Un)Luckey v. Miller: The Case for a Structural Injunction to Improve Indigent Defense Services*, 101 YALE L.J. 481, 491(1991); John Van de Kamp, *The Right to Counsel: Constitutional Imperatives in Criminal Cases*, 19 LOY. LA. L. REV. 329, 330 (1985)(noting increasing frequency of complaints about incompetence of counsel).

26. *See generally* KLEIN & SPANGENBERG, *supra* note 12. Indeed, the nation's spending on defense services pales in comparison to the expenditure on prosecution and enforcement.

tem-wide impact of their funding choices, making the process more comprehensive and somewhat less divisive.

Here is how the funding scheme would operate. In arriving at the appropriate formula, the defender's office would calculate the percentage of indigent criminal cases it handles in relation both to other defense providers and the prosecutor's office. Defenders' offices often do not serve as the sole provider of indigent defense services in a given jurisdiction. They commonly share responsibility for the indigent criminal caseload with contract providers,[27] court-assigned counsel,[28] and, in a growing number of jurisdictions, alternative institutional defenders' offices.[29] Thus, the budget ultimately allocated the defender's office would have to reflect the average percentage of the indigent caseload that it carried.[30]

Similarly, the funding scheme would not allot equal funds between the defender's and prosecutor's offices. Prosecutors handle cases that never result in formal charges and, consequently, do not affect the defender's office. Also, the prosecutor's budget covers institutional functions that again do not directly match indigent defense services. For example, in many jurisdictions, prosecutors expend a large percentage of time presenting cases before grand juries. Typically, defender's offices play no role at this stage of the criminal process.[31] Likewise, district attorneys' offices prosecute a percentage of cases that do not involve indigent defendants and would have no impact on the defender's office. So, the public defender's office should tie its budget request to that portion of the district attorney's budget that directly relates to the prosecution of criminal cases involving an indigent accused.

For the sake of simplicity, let's assume that a district attorney's office receives a budget of $100,000 per fiscal year. Of the total number

27. The contract model of indigent defense involves the government entering into a contract with a lawyer, a group of lawyers, a bar association or a non-profit organization that will provide representation to indigent clients. *See* Robert L. Spangenberg & Marea L. Beeman, *Indigent Defense Systems in the United States*, 58 WTR LAW & CONTEMP. PROBS. 31, 32 (1995).

28. Under an assigned counsel model, courts appoint private lawyers from a list or on an ad hoc basis to represent indigent clients in criminal cases. *See id.*

29. Alternate defender offices are being established to handle cases in which the principal institutional defender office has a conflict of interest. *See* Kim Taylor-Thompson, *Alternating Visions, supra* note 4, at 2439.

30. Such a legislative scheme exists in Tennessee. Adopted in 1992, the state statute instructs funding authorities that the defender office will receive 75% of the budget allotted the district attorneys' office. *See* T.C.A. Section 16-2-518.

31. Federal defender offices, though, may have some interaction with grand juries. *See generally* CHARLES D. WEISSELBERG, FEDERAL DEFENDERS OF SAN DIEGO, INC., DEFENDING A FEDERAL CASE (1986).

of cases it prosecutes, approximately 75% involve indigent defendants. We should then further assume that the defender's office handles 80% of the indigent caseload in that jurisdiction, with private appointed counsel representing the remaining 20% of cases. In its most basic formulation, the legislative proposal might require that the statutory link reflect the relative number of cases each office handles. This would give the defender's office a budget of approximately 60% of the prosecutor's budget or $60,000. Alternatively, legislators might require that the district attorney's office identify the percentage of its budget associated with prosecuting those cases. The matching formula would then give the defender's office 75% of that amount.

In refining this formula, a jurisdiction might, of course, choose other measures for determining the real expenditure of resources. For example, although 75% of the prosecutor's caseload involves indigent defendants, this figure may not adequately capture the actual expenditure of time and money. A prosecutor's office may devote more resources to complex conspiracy cases or to cases involving mandatory sentencing schemes that simply will not be reflected in the raw numbers of cases processed by the office. Or the defender's office may demand a larger percentage of the prosecution budget to account for in-kind, investigative resources that prosecutors receive from police departments.[32] In implementing the statutory formula, therefore, defenders and prosecutors may make adjustments that take into account the actual operations of each of the offices. But the initial inquiry would still involve applying a formula that recognizes the interrelation between the two entities. By developing such a scheme, defenders' offices might, in the end, make the funding process less polarized.

2. Advancing the Legislative Agenda

To enact the statutory change needed to implement the foregoing proposal, chief defenders would have to enter the political fray. At a minimum, they would need to lobby local legislators. While such a campaign might seem obvious to any other body intent on advancing a political agenda, public defenders tend not to engage in such strategies. Instead, to the extent that they weigh in on legislation, they often react to items that have already been proposed, offering comments and suggesting changes in language rather than devising collaborative efforts to defeat it. Rarely will defenders take the lead in mobilizing a team to

32. *See, e.g.*, David Luban, *Are Criminal Lawyers Different?*, 91 MICH. L. REV. 1729, 1732-36 (1993)(noting the "investigative free ride" that the prosecution enjoys as a result of investigations conducted by the police department).

advance a legislative proposal. Public defenders tend to approach political issues as an isolated voice.[33] But given the politics involved in changing the legislature's approach to funding defenders' offices, chief defenders' cannot hope to accomplish this goal alone.

Uncovering and building upon mutual concerns would undoubtedly be difficult. It would require sophisticated and sustained work along unchartered frontiers: the ideological dividing lines between institutions. Indeed, chief defenders might resist attempts to develop coalitions, for fear that they may be expected to compromise or sacrifice fundamental interests of their clients to maintain the alliance. But chief defenders should come to see that acknowledging differences may be a healthy reaction to this process.[34] With a clear sense of their institutional mission, chief defenders could make judgments about trade-offs that their offices could abide and about the acceptability of proposals brought to the negotiation table by these other actors in the system. In the short run, this cooperation might promote passage of this legislation. Equally important, by aligning interests with other criminal justice actors, the chief defender might set the stage for future collaborative efforts.

The chief defender might begin by enlisting the support of the local courts. Chief defenders could appeal to the courts' interests in moving their calendars more efficiently. When defenders cannot adequately staff or prepare cases, they may be compelled by their ethical obligations to request postponements of hearings in order to have adequate time to assess a plea offer or to prepare a defense.[35] With sufficient funding, the percentage of such requests could decrease, allowing courts to process cases more efficiently. Of course, in lobbying the courts, chief defenders could encounter a perverse—and unstated—dynamic. Courts may, in one sense, benefit from an underfunded defender's office.[36] The competing demands of large numbers of clients often force defenders' offices to limit the number of cases they take to trial and to resolve the overwhelm-

33. Having engaged in various projects offering technical assistance to public defender offices across the country, I have found that public defenders often see their issues as unique. To the extent that they engage in lobbying, they tend to act independently. *Accord*, MCINTYRE, *supra* note 1, at 73.

34. *See* GERALD P. LÓPEZ, REBELLIOUS LAWYERING 373-374 (1992)(cautioning against ignoring differences among groups in coalition-building).

35. *See, e.g.*, MODEL RULES OF PROFESSIONAL CONDUCT Rule 1.4(b)(1994) (requiring that "[a] lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation); MODEL CODE OF PROFESSIONAL RESPONSIBILITY EC 7-8 (stating that a lawyer "should exert his best efforts to insure that decisions of his client are made only after the client has been informed of relevant considerations").

36. *See* William J. Stuntz, *The Uneasy Relationship Between Criminal Procedure and Criminal Justice*, 107 YALE L.J. 1, 60 (1997).

ing majority through guilty pleas. So, the chief defender would need to anticipate this unspoken reality perhaps by appealing to the judges' interests in maintaining the public's confidence in the legitimacy of the justice system. If the courts are perceived to be poorly managed, trust in the justice system could diminish. Particularly in jurisdictions where judges run for election, they would likely have a strong self-interest in being perceived as effective and efficient ministers of justice.

The chief prosecutor would also be key. Although many defenders would view the prosecutor as the least attractive ally, such a partnership could fundamentally shift the balance of interests in favor of this statute's passage. Of course, teaming up with an institutional adversary requires caution and careful planning. But for all its challenges, the chief defender would face considerable difficulty succeeding in this legislative strategy with opposition from the district attorney's office. One possible bridge to this collaboration might involve appealing to the prosecutor's interest in resolving cases—a goal both institutions share. Without sufficient resources to investigate a case, a defender would experience difficulty evaluating the strengths or weaknesses of a given case. Unless she could amass sufficient information about the government's case, an individual defender could not ethically counsel a client about the advisability of proceeding to trial or disposing of a case through a plea agreement.[37] Ensuring adequate funding for the defender's office might enable the chief defender to devote greater resources to an investigation to supply this information to her lawyers and their clients. In the end, higher funding levels could move cases through the system in a more timely manner.

If the district attorney's office ultimately refuses to engage in this collaboration and to back the legislation, the chief defender could consider approaching the local bar association for support in persuading the prosecutors. A bar committee could commission a study of the impact of prosecutorial policies on the cost of indigent defense. As other such studies have shown, the costs of defenders' and prosecutors' offices are fundamentally intertwined.[38] The prosecutor's office may regard the

37. *See, e.g.*, MODEL CODE OF PROFESSIONAL RESPONSIBILITY EC 7-8 (stating that a lawyer "should exert his best efforts to insure that decisions of his client are made only after the client has been informed of relevant considerations"); MODEL RULES OF PROFESSIONAL CONDUCT Rule 1.4(b)(1994) (requiring that "[a] lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation) and Rule 1.1 (requiring that "[a] lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation").

38. In 1989 in Oregon, I participated in such a study along with two other members of an investigating team: a chief prosecutor from North Carolina and a trial judge from the District of Columbia. After a series of on-site interviews and a review of records and procedures, we concluded

statute as a preferable alternative to the scrutiny that such a study would produce.

The coalition would then approach the legislature. No longer would the chief defender need to resort to the standard arguments for funding that are so easily rejected. Proceeding as one voice among other respected voices in the criminal justice system, the chief defender would have less difficulty being heard. Her former institutional competitors would now be enmeshed in a supportive relationship with the chief defender. The coalition would not only provide the chief defender with needed insulation in the heated political debate about funding but could similarly serve as cover for a reluctant legislator. She would be able to justify her decision to support such legislation because every key player agrees that the system requires such a statute.

Of course, this is but one example of cooperation. Still, if chief defenders would take the time to reconsider their approaches to this process and reach out to other entities in the system, they might discover other ways to improve their efficacy in the legislative arena.

Although the funding process offers an illustration of the shortcomings of acting as solo players, equally troubling examples emerge when we examine the chief defenders' roles with respect to the communities in which they operate. Part II will address this topic and offer some suggestions for increasing chief defenders' involvement with their communities.

II. DEVELOPING A COMMUNITY-ORIENTED ROLE FOR THE CHIEF DEFENDER

A. *Challenging Prevailing Notions of the Chief Defender's Role*

Chief defenders have tended to presume that maintaining a public profile invites confrontation.[39] Given the volatility of crime, this is not surprising. The general public reserves its most visceral reactions for individuals accused of crimes and, of course, for their lawyers.[40] And because the most vocal representatives of communities on issues of crime will often be victims' rights advocates, chief defenders tend to equate communities' interests with those of victims. Accordingly,

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that the cost of indigent defense had skyrocketed, in part, because of certain charging practices by the prosecutor's office. As a result of this review, the prosecutor's office became the focus of intense political scrutiny and the indigent defense providers received additional funding.

39. *See* MCINTYRE, *supra* note 1, at 72-73.

40. *See, e.g.*, SPECIAL COMM. ON CRIMINAL JUSTICE IN A FREE SOCIETY, ABA, CRIMINAL JUSTICE IN CRISIS 37, *supra* note 23 (finding "it is clear that those who represent the poor are not generally held in high esteem, either within the legal profession or outside it.")

defenders draw dividing lines. But perhaps better than others, defenders should understand that the boundary between victim and accused is fluid.[41] Economically and racially-subordinated communities often experience higher rates of crime, making it more likely that residents will become victims of crime.[42] As importantly, residents in those communities often have greater interaction with law enforcement, increasing the likelihood that many of the same individuals will be stopped, detained or arrested in their lifetimes.[43] Given this relationship, the chief defenders' choice to erect walls between themselves and communities is far from self-evident.

Staff lawyers in defenders' offices often reach out to the larger community. Representing their clients' interests fully requires that defenders frequently rely on the assistance of other actors outside of the defender community. For example, when clients have unstable living circumstances, individual public defenders will often reach out to local social agencies at the pretrial stage to find housing or meals for clients until they can manage on their own.[44] Or defenders may enlist the assistance of churches or community-based treatment facilities to ease their clients' transitions back into neighborhoods after periods of incarceration.[45] Although these activities do not technically assist their clients in litigating claims in court, they have become essential components of individual representation. Knowing this, chief defenders might logically fashion their roles as extensions of this work: developing partnerships with communities to create less retributive approaches to the problem of crime. Instead, chief defenders tend to keep communities at arms' length as they have historically done.[46]

Perhaps this is to be expected. Like other public executives, chief defenders have learned not to stray substantially from their legislative mandate. Society tends to maintain different expectations of public

41. *See* Kim Taylor-Thompson, *The Politics of Common Ground*, 111 HARV. L. REV. 1306, 1310 (1998).

42. *See* RANDALL KENNEDY, RACE, CRIME, AND THE LAW 19 (1998).

43. *See* Marc Mauer & Tracy Huling, *Young Black Americans and the Criminal Justice System: Five Years Later* (The Sentencing Project, Washington, D.C.), Oct. 1995 at 1 (finding that one in three African American men between the ages of 20 and 29 is under criminal justice supervision on any given day); MICHAEL TONRY, MALIGN NEGLECT (1995)(discussing some of the reasons for the high incidence of arrests of African Americans in this country).

44. *See, e.g.*, CRIMINAL PRACTICE TRIAL MANUAL SECTION 10 (1996)(Listing resources programs as alternatives to incarceration).

45. *Id.*

46. *See, e.g.*, Harold R. Washington & Geraldine S. Hines, *"Call My Lawyer": Styling a Community Based Defender Program*, 8 BLACK L.J. 186, 188 (1983)(discussing the establishment of an alternative defender program in Roxbury, Massachusetts to "be responsive to community needs").

administrators than executives in private firms. While corporate culture encourages and rewards imagination and initiative, we as a society often perceive those very qualities as dangerous in public sector executives.[47] Of course, in the private sector, the marketplace operates as a ready measure of whether executive decisions have produced the desired economic benefits. But because decisions by public managers are not so easily assessed and may be slower to produce tangible results, we tend to rely on mechanisms outside of market forces to hold public managers accountable. Legislatures seek to guide and limit the discretion of public managers by restricting them to specified goals.[48] Theoretically, this restraint of the public sector executive reduces the potential for corruption and abuse of power. For all its well-intentioned caution, though, this limitation encourages public managers to become the worst sorts of bureaucrats—focusing more on being organizational caretakers than innovative leaders.

When we examine the role of chief public defenders, this dynamic becomes apparent.[49] While legislators recognize a governmental obligation to provide counsel to indigent defendants, they often seek to buy this service at the lowest possible price.[50] In their efforts to factor such resource constraints into operational decisions, chief defenders find themselves oriented downward, attempting to serve their client base while at the same time controlling their operations in ways that satisfy legislative overseers. But chief defenders seem not to appreciate that by shifting their orientation outward toward the communities in which they operate, they might mobilize support for renegotiating those legislative policy objectives. They might also dislodge themselves from the administrative box in which they have been placed. More importantly still, through sustained and interactive dialogue with other entities and individuals in the community, chief defenders might discover an evolving mission that could move them beyond their traditional mandate and conceptions of themselves.

That's not just fancy talk. Other actors in the criminal justice system have already seized this opportunity. Police departments across the country have been experimenting with new forms of crime prevention that

47. *See* MARK H. MOORE, CREATING PUBLIC VALUE: STRATEGIC MANAGEMENT IN GOVERNMENT 19 (1995).

48. *See id.* at 32.

49. *See* Schulhofer & Friedman, *supra* note 3, at 85 (noting that most chief defenders temper their activities "with pragmatic instincts for bureaucratic survival").

50. *See* William J. Stuntz, *supra* note 36, at 23.

employ community-based models.[51] Prosecutors' offices have begun to recognize the need to maintain, or in some instances, develop or repair relations with communities.[52] In some jurisdictions, the judiciary has taken an active role in developing drug courts and youth courts, and has even worked with ministers and other sectors of their communities to address recurring problems in a more global way.[53] One might expect chief defenders to be at the forefront of this trend. Instead, they trail the pack.

In assessing the effectiveness of their choice to withdraw from communities, chief defenders might ask whether they can or should play a broader role in serving their client base. They might begin by examining what it ultimately means to defend the public. Perhaps the most important component of the role will always be the defense of the clients assigned to the defender's office. But by broadening the focus of their own mission, chief defenders might see advantages to working with their geographic communities as well as with their client communities. In turn, communities might benefit from chief defenders' experiences with criminal justice issues. Defenders' vantage points in the criminal justice system often provide them with critical insights about those accused of crime. For example, representing individuals who are the targets of criminal justice policy initiatives enables public defenders to recognize the benefits and limits of these strategies. By hearing clients recount their experiences with punitive sanctions, intermediate approaches and rehabilitative strategies, defenders gain insights, that often escape policymakers, about the reasons why such strategies succeed or fail. To the extent that lawyers communicate this knowledge, they may share it within the defender community or perhaps include it in an individual case before a sentencing judge. But this information might better be used to inform criminal justice policies at a systemic level.

Of course, chief defenders ought to proceed cautiously in expanding their role. Without the clarity provided by the office's specific mandate, chief defenders risk the disapproval of legislative authorities or the wrath of the voting public if they engage in activities that seem far removed from the functions they have traditionally performed. In a comprehen-

51. *See generally,* JEROME H. SKOLNICK & DAVID H. BAYLEY, THE NEW BLUE LINE: POLICE INNOVATION IN SIX AMERICAN CITIES (1986).

52. *See, e.g.,* Julie Goodman, *Prevention Effort Puts Law Enforcers in Classroom,* PROVIDENCE J., Jan. 27, 1999, at 2C; Ralph C. Martin, *Franklin Hill Turnaround,* BOSTON GLOBE, March 8, 1998, at D7.

53. *See, e.g.,* Warren Richey, *Drug Courts: More Evidence They Reduce Repeat Offenses,* THE CHRISTIAN SCIENCE MONITOR, May 19, 1997, at 1; Consella A. Lee, *Teen Court Considered By Committee,* BALT. SUN, June 25, 1997, at 1B (discussing experiments with youth courts in 35 states).

sive examination of the role of public managers, Mark Moore of the Kennedy School of Government at Harvard University has proposed three criteria to guide the manager in undertaking projects that extend her reach beyond legislative constraints.[54] Although Moore does not directly address the role of public defenders, his "strategic triangle" may prove helpful.[55] First, he recommends that the selected strategy be substantively valuable. It must be seen either as producing an important "product" or helping to solve an otherwise intractable problem that has been of concern to funding authorities, clients and their communities. Second, the program must be politically sustainable. Finally, the activities in which the public manager chooses to engage must be operationally feasible. The chosen problem need not be solved, but the public manager's efforts must be seen as helping to address it or to develop a better understanding of its nature.

Integrating Moore's insights, one must ask what activities a chief defender might adopt that would likely produce something of value to the communities in which they operate. If, as chief defenders contend, those same communities perceive them as the source of their problems rather than as helping to identify answers, chief defenders might not want to select a strategy that would fuel that impression. Suppose, for example, a chief defender considered organizing a community-based campaign to defeat the death penalty in that jurisdiction. While such an activity might seem a logical extension of the defender's office's activities, it might be an unwise first step into the community. The political price may be too high.[56] Given the controversy surrounding the death penalty, such a program might only appeal to certain segments of the community. Vocal members of the electorate might debate the program's value and raise questions about whether the chief defender should engage in such partisan activities. In the end, such a program might not be operationally or politically feasible.

Instead, the chief defender might choose a program that has more widespread support while still reflecting the values of the defender office. Using Moore's strategic triangle as a guide, the chief defender might work with community groups to identify their concerns and to find

54. *See* MOORE, *supra* note 47.

55. *Id.* at 22.

56. This is not meant to suggest that a chief defender could never lead a campaign opposing the death penalty. Certainly, their institutional opponents, district attorneys, are often quite vocal supporters of capital punishment. But in initially choosing a community-based campaign, chief defenders would want to take care that the program they embraced would appeal to a broad constituency, allowing them to have a new presence in the community. Building on the success of such a program, they might then pursue more "controversial" plans.

issues on which their views might coincide with those of the defender office. The next section offers one such problem that the chief defender might decide to address: gun-related violence within a community.[57]

B. *Expanded Visions of the Chief Defender's Role*

The story is familiar. Across the country, communities have experienced the related problems of a proliferation of guns and violent crime. Various local and national policy initiatives have attempted to curb gun-related violence, but typically with limited success. Assuming that a defender office is situated in an urban area that has endured its share of gun-related deaths and injuries, what role might a chief defender play? The traditional responses are well-known. A chief defender would make it possible for her lawyers to represent individuals who might face gun charges. On a broader scale, the chief defender might choose to challenge proposed legislation that increases penalties for weapons offenses. But if chief defenders wish to have a greater impact within their communities, these need not be their only options.

Suppose instead that chief public defenders begin to include community concerns in their mission. This would necessitate conceiving of themselves as part of their communities and might require that they engage in outreach activities that rarely occur in the isolated environment that defenders typically create. The chief defender might meet with members of the community to discuss issues of crime, or she might regularly attend church or town meetings that address the crime problems in the neighborhood. In conjunction with members of the community, the chief defender might begin to explore ideas for reducing the level of violence within the various communities that make up the affected neighborhoods. Interestingly, in attempting to gather this information, the chief defender might gain access to communities broader in scope than, for example, those which the Chief of Police or District Attorney might tap. Because of defenders' unique abilities to speak with those who actually possess weapons, the chief defender might be able to offer suggestions for creating the type of incentive that would induce someone to refrain from such activities.

57. This example grows out of a community-based effort in northern California. *See* Donna Wasiczko, *Gun Amnesty Program Planned for Richmond*, WEST COUNTY TIMES, Nov. 4, 1991 (describing gun program proposed by Deputy Public Defender Tony Thompson); Donna Wasiczko, *It's Good Business to Help Gun Amnesty Project, Say Sponsors*, WEST COUNTY TIMES, Jan. 6, 1992 (discussing the joint efforts of business and community groups in supporting gun amnesty program).

Given the motivations[58] that typically lead public defenders to choose their careers, a chief defender committed to playing a role in addressing neighborhood crime might want to pursue initiatives that do not rely on punitive measures to shape behavior. Instead, the chief defender might suggest positive incentive structures. If we imagine that in the course of these discussions that most members of the community agree that removal of guns from their streets represents an important first step in reducing gun-related violence, the chief defender might recommend initiating a program that offers money in exchange for the surrender of guns. Such a program might appeal to residents of the community who, for example, worry about guns in their homes and fear the likelihood of either an accidental injury or an intruder's use of the weapon against them in the course of a crime. It might also attract victims' rights advocates who would likely want to disarm potential offenders. And chief defenders might support such a program as providing citizens a safe haven to surrender guns without the threat of incurring a criminal record.

Turning next to Moore's criteria, would this program make sense? It would potentially produce something of value to this community. If the program could reduce the number of guns available, the neighborhood might experience a decrease in gun-related injuries. This type of success might also empower the neighborhood to continue seeking and implementing its own community-based solutions to the problem of crime. Given the pervasive nature of the problem of gun-related violence, a program that attempts to reduce the availability of guns could enjoy wide community acceptance across political lines. Although the chief defender might have neither the time nor the expertise to administer such a program, she could serve as instigator and enlist the support and participation of other groups within the target community. By embarking on this path, the chief defender would assume a different role in the community. She could be seen as working with a community rather than against it.

Here's how the program might unfold. To encourage the surrender of as many weapons as possible, anyone possessing a gun would be granted amnesty from prosecution. The developers of the program would designate a neutral site for the collection of weapons since an individual possessing a gun might be reluctant to surrender it to the police department and expose herself to arrest and prosecution. Personnel trained to handle and collect weapons would need to staff the site with the under-

58. *See* Charles J. Ogletree, Jr., *Beyond Justifications*, *supra* note 1.

standing that they would not question anyone bringing in guns. The program participants would need to solicit funds or products to be distributed in exchange for the guns. Finally, and perhaps most importantly, the program would need to enlist the support of political and community leaders.

To put this initiative into action, the chief defender, along with other members of the community, might first approach the local police department. Much like the process required for the passage of the budget amendment, the chief defender would need to identify common concerns among the proponents of the gun program and law enforcement officials. Without the agreement of the police, the program could not succeed. So the chief defender might suggest that the gun program would offer the department an opportunity to do more than simply patrol communities. Instead, this program would allow police officers to work with communities in preventing crimes before they occur. To further ensure safety and reduce the possibility of accidental injuries, off-duty police officers could volunteer to assist in dismantling the guns at the designated exchange points.

The local district attorney's participation would, of course, be critical. The chief defender would need to secure her agreement to refrain from prosecuting anyone exchanging a gun at one of the established sites. The chief defender might seek prosecutors' endorsements of this program by suggesting that it offers them an opportunity to protect the interests of potential victims before violence occurs. Moreover, given district attorneys' interests in reinforcing relations between their offices and the communities that elect them, chief defenders should be able to count on their support. It seems unlikely that the prosecutor would choose to alienate community groups that have already backed this program.

Less obvious groups would also fit within this network. The chief defender might consider approaching the local Chamber of Commerce for its support. Businesses, such as the telephone, electric and gas companies, that routinely assign employees to work in neighborhoods, might see this program as a method to provide greater safety for their employees. Similarly, the business community can be encouraged to recognize that neighborhoods that are free from violence provide environments in which local businesses can thrive. Thus, companies and banks doing business in the community could be tapped to donate the products or money to be given in exchange for the guns. In addition to the business community, chief defenders might approach churches and synagogues to serve as neutral ground for the collection of weapons. Hospitals in the

community or insurers might agree to participate in publicizing the program because a reduction in the availability of guns might lead to a decrease in the number of gun-related injuries.[59]

The success of any strategy that attempts to bring public defender perspectives on policy to light would necessarily depend on an ability to communicate with the public. Such would be the case with a gun exchange program. Since chief defenders tend to avoid regular interaction with the media,[60] they would need to begin cultivating relations with reporters to ensure favorable coverage of this program. By working with reporters assigned to the crime beat, offering background on cases, the chief defender might help produce more balanced coverage of stories on crime-related subjects. Indeed, the gun exchange program might lead the media to portray the work of the defender office in a more positive light.

In many ways, a gun exchange program has obvious links to the defender's role. But other examples might be susceptible to a similar approach. For example, chief defenders might choose to work with school systems in developing programs that encourage students to develop non-violent methods of conflict resolution.[61] Recognizing that individuals who enter the criminal justice system often have failed to develop adequate coping mechanisms to handle their frustrations,[62] chief defenders could be instrumental in devising scenarios that schools and community programs can use to help students appreciate the range of non-violent options available in particular situations. Or chief defenders might work with their communities by organizing a consortium of service providers within the community. Bringing together representatives from social agencies, churches, the police department and other community groups might enable these providers to share non-confidential information about recurring problems in the community. Through regular interaction, they might avoid duplication of effort and develop a better understanding of the roles that each group plays.

In the end, collaborative efforts of this sort would afford the chief defender the opportunity to become an active participant in the development of community-based solutions to the problem of crime. By no

59. *See, e.g.*, David Satcher, *Gunning for Research*, WASH. POST, Nov. 5, 1995, at C2 (defining guns as a public health problem).

60. *See* MCINTYRE, *supra* note 1, at 72-73 (discussing tendency of chief defender to shun publicity).

61. For example, the Neighborhood Defender Service of Harlem expanded the role of its public defenders to include working with New York high schools in developing such programs.

62. *See generally* ELLIOTT CURRIE, CRIME AND PUNISHMENT IN AMERICA 103-108 (1998)(discussing 'multisystemic" approaches that work with juvenile offenders as participants in a range of institutions, from school to family, rather than as isolated individuals with problems).

means would one program erase all hostility that a community might feel toward a defender's office. But the program might begin to open a dialogue about other methods of ensuring a community's safety.

CONCLUSION

The expanded role that I have proposed may also place the chief defender at odds with her own office. Rarely will an individual staff lawyer view other actors within the criminal justice system as anything other than adversaries. Although legal academics periodically suggest that criminal defense lawyers should adopt what they describe as a more expansive view of their role—one that subordinates the defense of clients to the overall good of the public[63]—defense lawyers scoff at such notions. Instead, they embrace the concept of zealous advocacy and singular devotion to the client's needs. More significantly, defenders tend to view with suspicion actions by their leadership that smell of collaboration. This suspicion is not baseless. Chief defenders have at times seemed more concerned with appeasing political authorities than with ensuring high-quality service for their offices' clients.

The solution to this internal political problem may be to adopt more collaborative methods within the office. Through open discussion of priorities and plans, the staff may not only come to understand but actually to embrace the expanded role of the chief defender. In particular, the fact that individual lawyers may come to appreciate that collaboration with other criminal justice actors as well as the community does not necessarily mean a diminution of service to clients. Rather, it may broaden options available to individual defenders in serving their clients.

Any change to the chief defender's role would not be without risk. Indeed, the ideas presented here are designed to provoke thought and question. But what might make the changes proposed here attractive to chief defenders is that they offer defenders an opportunity to break out of a role that has been increasingly characterized by conciliation and deference to political authorities. More importantly, since chief defenders' efforts have not always protected their offices' or their clients' interests sufficiently, this expanded role might give them new strategies for influencing attitudes and policy within the criminal justice system. The challenge for the next century may simply be to recognize that standing still is not risk free.

63. *See, e.g.*, William H. Simon, *The Ethics of Criminal Defense*, 91 MICH. L. REV. 1703 (1993).