



## A Comprehensive Introduction to DefenseMap.com

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*A problem well-stated is half-solved.*  
—inventor Charles Kettering

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### A. Introducing the resource and the constitutional issue.

By far the easiest and quickest way for defense attorneys and their staffs to learn about the novel free intake tool *DefenseMap.com* is to refer some clients to it. The first few FAQs show how professionals can learn the site in less than ten minutes—or in about an hour if they want to read some introductory material including some Defense Maps from the [Sample Maps](#) link.

From that introduction attorneys and other professionals can quickly understand how the website works—in both adult and juvenile cases and in both English and Spanish—and refer some clients to it. Experience is showing that the Defense Maps attorneys receive in actual cases are themselves the best case for adopting *DefenseMap.com* as an automatic resource in all cases.

### B. Some early attorney reviews.

The power of Defense Maps in finding and automatically organizing and highlighting powerful defense information seems to have illuminated a hidden defense dilemma: how some entrenched barriers have kept essential information from even the most talented and dedicated defense attorneys.

Sections C-E offer some insights on these barriers and how this website overcomes them. For now, it can help to consider reviews of some attorneys about the startling revelations they are finding in the Defense Maps of even the clients they thought they knew extremely well.

Arizona attorney Doug Passon has posted the following on his website [DougPassonLaw.com](#).

When I first heard about Defense Map, I was admittedly skeptical. I decided to give it a try in a serious federal assault case. I had already spent

considerable time with my client in several meetings and thought I knew him and his case extremely well. I was wrong.

On seeing my client's Defense Map, I was astonished at how much more information my client was able to share when he could work online and on his own. And I was equally impressed at how the Map detected and flagged special issues. Not only did the Map better flesh out mitigating circumstances I knew about, but it uncovered essential matters that had gone undisclosed in the earlier interviews.

I was also able to use direct quotes from my client's Map in later pleadings and presentations. Having the client tell his story in his own words gave it layers of depth and credibility that my own "lawyer language" never could.

I used the information obtained from the Map to craft an effective mitigation/plea letter to the prosecutor. It led to a fantastic diversion plea I'm quite sure the government originally had no thought of considering. I have since used *DefenseMap.com* in every case I can.

Indiana counsel Jeff Kimmell describes a similar experience in his video interview posted on both his law office website at [Kimmell.Legal](http://Kimmell.Legal) and [DefenseMap.com](http://DefenseMap.com).

So, the very first client that I referred to Defense Map I had represented already for almost a year. I thought I knew him well. He was a fellow veteran. I had met with him, interviewed him—I thought thoroughly.

The Defense Map painted a completely different picture. It revealed to me childhood traumas that I had no idea about [and] horrific experiences and posttraumatic stress syndrome . . . . The Defense Map revealed over 40 problem areas that he had from his drug and alcohol abuse and his sincere wish to get help with those issues. And I would have never discovered any of that without the Defense Map.

In conversations Mr. Kimmell has offered four noteworthy amplifications.

1. That every Defense Map he has received has included "some jaw-dropping information."
2. That by his best estimate Defense Maps expand client sharing 3- to 10-fold.
3. That these Maps have dramatically aided attorney-client relationships (so much so that after completing a Map, virtually every clients has thanked him for the referral to the website).
4. That (like Mr. Passon and other early users of this tool) he is now committed to procuring a Defense Map in every case possible.

C. A consideration of Defense Maps' power by a comparison of two cases.

A real-world glimpse of the power of Defense Maps is available from a comparison of two cases from our jurisdiction of Indiana (though similar results abound from other jurisdictions).

- **Case 1**, reported at *Lewis v. State*, 116 N.E. 3<sup>rd</sup> 1144 (Ind. App. 2018), involves the 130-year sentence (the maximum sentence possible and assuredly a life sentence) meted out to Roderick Lewis for his non-triggerman participation in the armed robbery where two operators of a drug house were killed.

With mitigation, the sentence could have been as low as 30 years, and indeed a painstaking review of Mr. Lewis's life revealed at least 10 significant facts arguably supporting some substantial leniency.

- i. Abandonment by his father.
- ii. Widespread dysfunction and mental illness in his family of origin.
- iii. His mother's chronic drug addiction and bipolar disorder.
- iv. Significant physical and emotional abuse at the hands of his mother.
- v. Witnessing a carousel of men violently abusing his mother.
- vi. Direct physical abuse by several of these men.
- vii. Witnessing other highly distressing events as a minor, including a stabbing.
- viii. Violent gang influences in his development.
- ix. Bipolar disorder and a suicide attempt.
- x. Extensive use of drugs as self-medication.

Unfortunately, none of these 10 facts was discovered by Mr. Lewis's trial counsel. They were treated by the defense only after Mr. Lewis's trial, sentencing, and direct appeal when his post-conviction counsel and a psychologist conducted a series of prison interviews. In fact, trial counsel had been so devoid of knowledge of mitigation at sentencing that his entire allocution on his client's behalf consisted of a single utterance: "Judge, I'm going to defer to Mr. Lewis if he has any comments. I don't have anything to add." The Indiana Court of Appeals criticized this exertion by trial counsel but ruled that the defense could not carry its burden under *Strickland v. Washington*, 466 U.S. 668 (1984) of proving that a different sentence would likely have resulted had the overlooked mitigation been presented. *Lewis v. State*, 116 N.E. 3<sup>rd</sup> 1144, 1157-60 (Ind.App. 2018).

- **Case 2** involves a federal prosecution in the Northern District of Indiana of D.M. for possession of child pornography. As well as online photos of nude children, the case involved text loops where the defendant had impersonated an underage boy in sexual conversations. Immediately after the indictment, defense counsel Jeff Kimmell referred the defendant to *DefenseMap.com* and the next day received a Map disclosing at least three noteworthy circumstances: (i) the defendant's sexual victimization as a child, (ii) his current stable life and home, and (iii) some unusual circumstances in the way the illegal photographs reached the defendant's phone and computer.

Mr. Kimmell saw the information in the Defense Map as so compelling that he did something defense attorneys as a whole might be split on: he forwarded the entire unedited Defense Map to the Assistant United States Attorney. There was little hope the government would dismiss the case (the federal defense bar will attest to the extreme rarity of such an outcome in the federal system), but the Sentencing Guidelines called for a sentence of 5-6 years with no chance of probation, so Mr. Kimmell thought this completely upfront candor seemed the best strategy.

The prosecutor was indeed exceptionally impressed by the revelations in the Map. He told Mr. Kimmell he would consider advocating to his superiors for some favorable consideration if Mr. Kimmell would have his client successfully polygraphed and placed in competent therapy to address his personal issues and assure his safety to the community.

The defendant complied with these requests, and this federal charge was actually dismissed.

I've had the chance to speak with all the principals in this case (Mr. Kimmell, his client, the client's psychologist, and the Assistant United States Attorney). All three volunteered that the Defense Map had played an indispensable role in commencing this special review and reaching this outcome. The psychologist shared that the Defense Map overcame what had been some serious client difficulties in their conversations. And the Assistance United States Attorney added that the Map even served the additional function of helping him convince his superiors to agree to this exceptional disposition.

While Defense Maps obviously cannot always completely erase criminal charges, experience is teaching that they are almost always an irreplaceable asset to defenses.

And in many cases—like these concerning Roderick Lewis (who stands to die in prison) and Mr. D.M. (who has his life back)—they can make an incomparable difference.

*D. The breadth and depth of Defense Maps' information.*

Dedicated defense attorneys know that the key facts for success in criminal cases (whether in dismissals, plea negotiations, trials, or sentencing) can lie in any of hundreds of details of clients' backstories.

It is respectfully suggested that the following *partial* list of the topics covered in the over 850 potential questions in *DefenseMap.com* should chasten any wishful claim that this expanse of facts automatically materializes from face-to-face client meetings alone.

1. What's most on the client's mind?
2. For those who are held on bail, what are the many specifics of the possible assurances they will appear, cooperate, and act lawfully? And what are the details of up to 14

reasons for pretrial that are commonly overlooked in the assessments in use by many courts and prosecutor offices?

- a. A high school degree or more.
  - b. Lack of a youth arrest record.
  - c. Compliance with the terms of any prior releases.
  - d. Compliance with the terms of any times on probation or parole.
  - e. A safe residence.
  - f. Ties to the community.
  - g. Responsible people to associate with.
  - h. Responsible activities to engage in.
  - i. A current or possible job.
  - j. The specifics of any changes the client wishes to make in his or her life.
  - k. An Index of Supporters (including names and contact information, their relationship to the client, their trustworthiness, and the specific assistance they are to the client).
  - l. Extreme hardship to the client from continued detention.
  - m. Extreme hardship to others from the client's continued detention.
  - n. All the additional mitigation available in Sections 21 and 22 of the Defense Map.
3. What are all the factors the client thinks played a role in the charged events (including ones explaining the client's involvement or establishing her innocence)?
  4. What are client's reflections looking back on the charged events?
  5. What are the client's feelings about any victims?
  6. Was the client molested as a child?
  7. Was he abused in any of multiple other ways—and in what specific respects and to what outcomes?
  8. What dysfunctions afflicted the family of origin and what specific traumas did the client suffer—and what were the consequences? And what are the details to over 100 questions about these?
  9. Of 10 important childhood assets, which were present, which were partially missing, and which were completely missing—and in what particulars and to what results?
  10. What are the details of the client's education?
  11. What are the details of the client's work history?
  12. What are the details of the client's health history (including current status, diagnoses, medications, head injuries, and more)?
  13. What are the details of any military service?

14. How does the client use his free time—and what are the consequences of that?
15. What PTSD does she carry, from what, and with what repercussions and what role in the case at hand?
16. Has the client had a controlling or hurtful partner and, if so, in which of 15 categories abuse and to what consequence in her life, relationships, and thinking? (This topic is another instance in which the breadth of invaluable inquiry is so broad—encompassing over 100 questions—to itself put into permanent doubt the adequacy of face-to-face interview alone.)
17. Of 14 important life assets in adulthood, which are currently present, partially missing, or completely missing in the client's life—and in what particulars and to what results?
  - a. Good physical health.
  - b. Safety in all parts of one's life.
  - c. Good peace of mind/freedom from worry most of the time.
  - d. A lot of joy/happiness.
  - e. A loving and helpful family life.
  - f. At least 3 good friends who can be called on anytime.
  - g. Satisfying work.
  - h. Satisfying volunteer work.
  - i. A lot of purpose/feeling that one's life matters.
  - j. A good balance between work, rest, and play.
  - k. Enough money/financial security.
  - l. A place to live—without fear of losing it.
  - m. Good feelings and trust for police and other authorities.
  - n. A satisfying spiritual life.
18. What mood and functioning issues does the client have—and how would he describe their source and consequences?
  - a. Depression.
  - b. Thoughts of hurting himself.
  - c. Thoughts of hurting others.
  - d. Uncommon anger.
  - e. Unusual anxiety.
  - f. Attention difficulties.
  - g. Hyperactivity.
  - h. Issues with sex or sexuality.
  - i. Issues with memory.
  - j. Racing thoughts.
  - k. Hearing or seeing things others don't.
  - l. Feeling someone is out to get them.
  - m. Repetitious behaviors without clear purpose or reason.

- n. Difficulties building or keeping good relationships.
  - o. Any other mood or functioning issues.
19. Has the client ever attempted suicide—and what were the exact reasons and circumstances?
20. Have there been other self-destructive patterns?
21. What counseling has occurred, what were the topics and outcomes, and what wish does the client have for further counseling?
22. What negative and positive relationships does the client have and what decisions does he want to make about ending, curtailing, getting help with, or expanding any of those?
23. What specific alcohol, drug, gambling, or other addictive patterns has the client shown—and what are the exact particulars involved, including any wish for help?
24. What specific life changes is the client interested in pursuing, what specific steps would he consider important to each, and which steps are already underway (including in each of these 11 areas)?
- a. In relationships.
  - b. In education.
  - c. In work and work skills.
  - d. In alcohol or drug use.
  - e. In counseling.
  - f. In finances and spending.
  - g. In living arrangements.
  - h. In ways of handling problems.
  - i. In better use of a personal strength or special skill.
  - j. In addressing immigration/citizenship status.
  - k. In any other changes the client is interested in.
25. What special strengths does the client have, and what better use might he want to make of those strengths?
26. What heroic and giving things has she done?
27. Who relies on him? And who would be damaged by his absence—and in what specific ways?
28. Who can speak highly of her—and what specifically can they say?
29. Who can offer life assistance to the client, and what are the specifics of that assistance?

A brief review of this *partial* list of Defense Maps topics should not just dispel, but crushingly dispel the notion that defense attorneys should be relegated to groping for this array of important information without use of a Defense Map.

Professionals interested in how *DefenseMap.com* is able to collect, organize, and highlight such a range of information in just a few hours of online client work may want to consider just five of the special organizing mechanisms built into the website: (1) case typing, (2) skip logic (or conditional branching), (3) follow-on questioning, (4) issue screening, and (5) amendment indexing.

1. *Case typing* refers to the automatic direction of clients to the correct Map version (adult or juvenile and English or Spanish) and, within each adult version, to the applicable case track: (1) a new case, (2) an effort at shortening incarceration such as by sentence reduction, parole, clemency, or pardon, (3) an appeal, habeas, or other post-conviction challenge, (4) a defense against revocation of probation or parole, or (5) an expungement petition.
2. *Skip logic* (or *conditional branching*) is the selection of questions based on prior responses so that of the over 850 possible questions in the adult version, as many as a few hundred may be skipped as irrelevant.
3. *Follow-on questioning*, roughly the reverse of *skip logic*, actually fashions new questions when their relevance is shown by prior responses.
4. *Issue screening* refers to the detection of special issues that are then highlighted on Maps, including on their Flags Pages.
5. *Amendment indexing* is a feature at the top of each Map showing the date of initial completion—followed by the dates of any amendments and the particular sections where changes were made on any particular date (relieving readers of the confusing task of locating where additions or other changes were made to any earlier iteration of a Map).

*E. Increasing client sharing 3-10 times by overcoming the Six Hidden Barriers.*

Mr. Kimmell has estimated that Defense Maps expand client sharing by a factor of 3-10. In large part this is due to the ways it overcomes what can be called the Six Hidden Barriers to client sharing.

1. Almost no face-to-face interviewing, regardless of the capabilities of the professional and number of sessions, can cover the breadth of important topics, let alone the 850+ potential questions posed by [DefenseMap.com](http://DefenseMap.com).
2. Many critical topics are exceptionally difficult to pose in face-to-face interviews (for example, sexual and other childhood abuse, family violence, and the details of mood and functioning issues, to name only a few).



3. The life experiences of professionals and clients are often so radically different from each other that there can be many topics professionals cannot know to ask about and clients cannot know to share about. (One county has found that 37% of its youth see at least one instance of a person being shot or stabbed. *PBS NewsHour*, [To Improve Lifelong Health, Memphis Tries Rooting Out Childhood Trauma](#), April 20, 2016.)
4. By their very nature, face-to-face interviews often cannot give clients the emotional safety and expansive time necessary to reply candidly and completely. (Lest one think this applies only to less-educated people, it can be instructive to recall why the multi-billion-dollar litigation between Microsoft and Netscape came to be dubbed “trial by email.” [“Crush Them”: An Oral History of the Lawsuit That Upended Silicon Valley](#), *The Ringer*, Victor Luckerson, May 18, 2018. While face-to-face exchanges tend to inhibit disclosures, online work can radically expand them.)
5. Before clients can reflect on and respond to the 850+ potential questions drawn from by *DefenseMap.com*, both they and the interview itself can become mentally and physically sidetracked.
6. A significant percent of interviews are with incarcerated clients in circumstances hopelessly deformed by intrusions into privacy, confidentiality, and completeness.

There are no doubt several more barriers to complete client sharing, not to mention to attorneys’ capacity to listen. Drawing on parallel studies in medicine, these would seem to include the inevitable indulgence of quick generation of opening diagnoses, diagnosis bias, and pattern recognition. See Dr. Jerome Groopman, *How Doctors Think*, Houghtman Mifflin Company (Boston 2007), pp. 24-36.

But for addressing the matter of incarcerated persons’ access to *DefenseMap.com*, it’s doubtless sufficient to rest on the distortions from these Six Hidden Barriers—especially since, as shown in Section H below, it is the differential between prosecution and defense resources that is dispositive on the constitutional issue.

F. Some of Defense Maps' benefits—to the defense, prosecution, and community.

1. Defense Maps reveal extensive information commonly left unshared by clients in interviews, often multiplying severalfold insight on both the charges themselves and also the pivotal backstories to clients' lives.
2. They automatically scan each client's information for issues, defenses, and mitigation and organize and highlight the findings on a Flags Page.
3. In the broad range of life details included, they enable counsel to present a contagiously favorable view of each client.
4. They can quickly and powerfully rebut biased and incomplete pretrial risk assessments and highlight up to 14 commonly overlooked reasons for immediate release.
5. Through an "Index of Supporters," they identify which family and other supporters can be of help in clients' lives and defenses—and in what exact ways.
6. They can play an unequalled role in determining in the pivotal early days of cases what defenses to pursue and preparation to undertake.
7. They allow clients to review their lives and make powerful decisions about changes they can undertake (to their legal as well as personal benefit), and instead of offering someone else's judgments, they allow clients to draw their own conclusions on deeply personal issues like addiction and future counseling—a benefit to the prosecution and community as much as to the defense.
8. They can supercharge attorney-client relationships in multiple respects, including by helping to overcome socio-economic divides often threatening these relationships and by assisting clients in relating constructively with their counsel.
9. They allow support staff to help in unprecedented ways—including both securing Maps in all cases and appending memos on important disclosures in Maps and promising options for the defense.
10. They are vital to a system where defenders can actually have some approximation of prosecutors' significantly superior resources, and they accomplish this uncovering, organizing, and highlighting of easily missed information when usually most effective: at the very beginning of cases.
11. They can be completed in almost any setting—including in jails and prisons as shown in [The Constitutional Case for Incarcerated Persons' Access to DefenseMap.com](#)
12. They can afford persons with lengthy sentences the opportunity to create Maps supporting both self-improvement and sentencing relief through parole, sentence modifications, and clemency.

G. Using the power of Defense Maps to address the broader burdens on defense attorneys.

It appears that much more than clients' backstories is emerging from Defense Maps. What is clearer as more and more Maps are used is a question about the overall burdens on defense attorneys: *With accused persons' chance for effective defenses depending on facts hidden in any of hundreds of corners of clients' backstories, what resources are in place to enable defense counsel's discovery of those facts?*

That clarification of defense counsel's challenge, it's submitted, can be part of successfully executing on Charles Kettering's observation that opened this article: "A problem well-stated is half-solved." And it can help to move criminal defense to its rightful place in the "balance of forces" required by the Due Process Clause according to *Wardius v. Oregon*, 412 U.S. 470, 93 S.Ct. 2208, 37 L.Ed.2d 82 (1973). This requirement is explicated in [The Constitutional Case for Incarcerated Persons' Access to DefenseMap.com](#) and this [Sample Motion for Incarcerated Persons' Access to DefenseMap.com](#).

It can also be hoped that Defense Maps will be part of a larger effort to get the defense into a "balance of forces" more broadly.

1. Shouldn't jails be furnished with banks of inexpensive computers linked to *DefenseMap.com* so all charged persons could build Defense Maps within a day or two of arrest?
2. Could public defender programs be staffed with either mental health professionals or mitigation specialists who could review all Defense Maps for the defenders and their clients? And could their reviews enable indigent defendants to have some of the same opportunities of optimal defense (including the chance to address issues in their lives) as wealthier clients enjoy.
3. Could Defense Maps in juvenile cases allow youth to have an early opportunity to understand and address crucial issues in their lives—and to do so with a legal advocate in their corner?
4. Could Defense Maps even aid in addressing systemic issues of excessive defense caseloads, the serious mismatch between prosecution and defense resources overall, the unequal treatment of the indigent, and the sentencing of many defendants with most of the relevant mitigation unknown to the defense attorney?

In short, a final and overarching benefit of Defense Maps may be the light they shine on a problem so longstanding that it's been hidden in plain view: how this overwhelming imbalance of forces between the prosecution and defense, however much ostensibly prohibited by *Wardius v. Oregon*, has left defense attorneys with the impossible task of speaking up for people they've been largely unable to adequately know.